

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Regular Second Appeal No.3826 of 2012 (O&M)
Date of decision: 28.08.2015**

Bhajan Singh

.....Appellant

Versus

Avtar Singh

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Gulzar Mohammad, Advocate,
for the appellant.

Ritu Bahri, J.

Plaintiff-appellant has come up in regular second appeal against the judgment dated 07.06.2012 passed by the Additional District Judge, Jalandhar, whereby his appeal against the judgment and decree dated 15.01.2011 passed by the Civil Judge (Junior Division), Nakodar, has been dismissed.

Bhajan Singh-plaintiff (appellant herein) filed a suit for declaration to the effect that he was owner in possession of land measuring 4 Kanals 16 Marlas, being $\frac{1}{2}$ share of total land measuring 9 Kanals 13 Marlas i.e. $\frac{1}{3}$ rd share which is already recorded and $\frac{1}{6}$ th share of defendant-respondent, by way of oral exchange. As per plaintiff-appellant, he was recorded as owner to the extent of $\frac{1}{3}$ rd share out of 9 Kanals 13 Marlas of land, whereas the defendant-respondent was recorded co-owner to the extent of $\frac{1}{6}$ th share in total land measuring 9 Kanals 12 Marlas. In the year 1986, the plaintiff and defendant had exchanged their lands, by virtue of which the plaintiff was given possession of land measuring 18 Kanals 16 Marlas and defendant was also given 18 Kanals 16 Marlas of land. Later on a

memorandum of exchange dated 17.06.1986 was reduced into writing. After the exchange, the plaintiff had become owner to the extent of ½ share in Khasra No.17//19 (8-0), 17//21/3 (1-13). On the basis of oral exchange, mutation No.3640 was entered, however, due to clerical error on the part of Patwari Halqa and other revenue authorities, Khasra numbers with regard to the land in question could not be entered, as a result of which, name of defendant-respondent continued to figure in the revenue record as owners, whereas he (defendant) was left with no right in the land in dispute.

Upon notice, defendant-respondent filed written statement and took preliminary objections with regard to limitation, maintainability of the suit and non joinder of necessary parties. On merits, it was stated that the plaintiff was owner of land measuring 18 Kanals 16 Marlas, but he had exchanged this land with 17 Kanals 3 Marlas of land owned by the defendant. It was an oral exchange and mutation No.3640 was sanctioned on the basis of the same. The exchange was rightly recorded by the Assistant Collector IInd Grade vide order dated 29.12.1988. The land given to the plaintiff was of higher value, whereas the land given to the defendant was of lesser value.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether plaintiff is entitled for declaration to the effect that he is owner of ½ share out of the suit property? OPP
2. Whether plaintiff is entitled for permanent injunction restraining the defendant from alienating the property in dispute and from interfering into peaceful possession of the plaintiff over the property in dispute? OPP
3. Whether the property in dispute has not been properly

described? OPD

4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD

5. Whether the suit is not within limitation? OPD

6. Relief.

Trial Court examined the evidence led by the parties and perused the copy of mutation Nos. 3638 and 3640 (Ex.P11 and Ex.D1). As per these documents, both the parties went to the Patwari on 21.12.1988 and produced the agreement with regard to an oral exchange. Thereafter, the mutation was sanctioned by the competent authority on 29.01.1989 specifying the land, which was received by both the parties in the exchange, with Khewat and Khasra numbers, excluding Khasra number in dispute i.e. Khasra No.21//3 (1-13). The plaintiff-appellant could not derive any benefit from Ex.P3, as it was dated 17.06.1986 and the Patwari had entered the oral exchange on 21.12.1988 when both the parties were present before him and had produced the agreement regarding oral exchange. There was lapse of more than two years. No evidence was led by the plaintiff to prove that Khasra No.21//3 (1-13) was left out due to clerical error. Plaintiff had also failed to prove that he was in exclusive possession of the above stated Khara number. The suit of the plaintiff was partly decreed by the trial Court declaring him owner in possession of 3 Kanals 13 Marlas of land i.e. 1/3rd share of 9 Kanals 13 Marlas. His claim for 1/6th share out of 9 Kanals 13 Marlas i.e. 1 Kanal 13 Marlas was dismissed.

In appeal, the lower appellate Court has affirmed the findings recorded by the trial Court. Pursuant to the oral exchange which took place in the year 1988, mutation No.3640 (Ex.P11) was sanctioned vide order

of plaintiff-appellant with regard to memorandum of oral exchange dated 17.06.1986 (Ex.P3) was rejected, as Bhajan Singh (PW-1) had admitted in his cross-examination that this memorandum of exchange was given to the Patwari, but mutation was not sanctioned on its basis. It was observed that the oral memorandum of exchange does not require registration. However, the oral exchange dated 17.06.1986 (Ex.P3) indicated that the said exchange was never acted upon. There was a recital in this document that if, any party resiles from this exchange, it can approach to the Court of law. Mutation No.3640 (Ex.P11) entered and sanctioned in the year 1988, was based on oral exchange. In his cross-examination, the plaintiff had admitted that no mutation was sanctioned pursuant to the memorandum of exchange dated 17.06.1986 (Ex.P3). Moreover, the plaintiff had filed this suit after a gap of 18 years on 03.06.2004, therefore, it was held to be hopelessly time barred. Ultimately, the appeal filed by the plaintiff-appellant was dismissed.

Perusal of the impugned judgments passed by both the Courts below shows that the oral memorandum of exchange dated 17.06.1986 (Ex.P3) was never executed or acted between the parties, as no mutation was sanctioned on its basis. After a gap of two years, mutation No.3640 was sanctioned when the parties appeared before the Patwari on 21.12.1988.

Having examined the impugned judgment(s) passed by the Courts below, no illegality, much less perversity, has been found therein warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

28.08.2015
ajp

(RITU BAHRI)
JUDGE