

**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

**RSA No. 201 of 2015(O&M)**  
**Date of decision: December 21 , 2015**

**Pritam Singh (deceased) through L.Rs**

**..... Appellants**

**Versus**

**Mohinder Singh and others**

**..... Respondents**

**RSA No. 1286 of 2015(O&M)**

**Phuman Singh and another**

**..... Appellants**

**Versus**

**Mohinder Singh and others**

**..... Respondents**

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Puneet Jindal, Senior Advocate with  
Mr. Parambir Singh, Advocate and  
for the appellants.

Mr. Prateek Pandit, Advocate  
for the appellants in RSA No. 1286 of 2015.

Mr. Surinder Sharma, Advocate  
for the respondent No. 1 to 3.

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**Amit Rawal, J (oral).**

Both the parties are ad idem that instead of pondering upon the application seeking vacation of stay, which was granted, while admitting the appeal, the appeal be heard on merits.

This order of mine shall dispose of two appeals bearing RSA No.201 of 2015 and 1286 of 2015.

Mohinder Singh, Mota Singh, Swaran Singh sons of Ishar Singh Uncle of Pritam Singh brother of Ishar Singh sought declaration that they are joint owners in possession of land to the extent of 3/4<sup>th</sup> share and defendant No.1 to the extent of 1/4<sup>th</sup> share in the estate of Ishar Singh in respect of the property mentioned in the head note of the plaint and also challenged the exchange allegedly executed by Charan Kaur widow of Ishar Singh in favour of defendant Nos.2 to 6, the sale deed executed on 3.10.2000 by defendant Nos. 3 to 6 in favour of defendant No.7 and sale deed dated 31.1.2003 executed by defendant No.1 in favour of defendant No.8 with a consequential relief of permanent injunction. The appellants are none else but the defendants i.e. defendant No.2 in RSA No. 201 of 2015.

Mr. Puneet Jindal, learned Senior counsel assisted by Mr. Parmbir Singh, Advocate appearing on behalf of appellant-defendant No.2 in RSA No. 201 of 2015 submits that Ishar Singh owned a land of 146 Kanals 9 Marlas. During his life time he executed a Will dated 3.4.1984 vide which he bequeathed the entire property situated in different villages in favour of his wife but put a rider, that during his life time he would be the owner and after his death her wife would be the owner of the property with a further rider that she would not alienate the property.

Charan Kaur during her life time exchanged a piece of land measuring 11 Kanals 13 Marlas with defendant No.2-Pritam Singh, who is none else, but brother of Ishar Singh for the reason that he has been in continuous, long and settled possession of the

land. This fact has been proved through the jamabandis for the year 1984-85 Ex.P-20 and the exchange would not fall with the expression “alienation”. It was basically arrangement instead of creating a subsequent dispute amongst the family members.

He further submits that such occasion arose for the reason that partition proceedings were initiated amongst the siblings i.e. Ishar Singh, Pritam Singh and Jarnail Singh sons of Sunder Singh.

He further submits that though, as per provisions of Section 14(1) of Hindu Succession Act, 1956 (hereinafter referred to as 'the Act') Charan Kaur had become absolute owner, therefore, she could deal with the property in any manner she wanted to. No pre judice or loss had been caused to the respondents-plaintiffs as the total area of land remains same, even after exchange.

He further submits that ex facie the suit filed on 21.10.2013 was barred by law of limitation, though exchange had taken place on 29.9.2000. Thus, prays that there is illegality and perversity in the impugned order and following substantial questions of law arise for determination by this Court:-

“i) Whether the exchange viz-a-viz land measuring 11 Kanals 13 Marlas was inevitable arrangement and fall within the expression of “alienation” for the reasons that partition proceedings had already initiated during the life time of Ishar Singh.

ii) Whether Charan Kaur as per the terms and conditions of the Will dated 3.4.1984 had become

full owner of the property as per Section 14 (1) of the Act or not.

iii) Whether the suit filed on 21.10.2013 challenging the exchange deed dated 29.9.2000 was barred by law of limitation.

Mr. Prateek Pandit, learned counsel appearing on behalf of the appellants in RSA No.1286 of 2015 submits that Charan Kaur had become absolute owner of land measuring 146 Kanals and 9 Marlas and all the brothers are siblings/brothers would not be affected in view of the fact that Charan Kaur during her life time had executed Will dated 9.3.1994. As per the said Will all the children i.e. plaintiffs and Phuman Singh would be having equal interest/share in the property left behind by Ishar Singh/Charan Kaur. Though, Charan Kaur had become absolute owner under Section 14 (1) of the Act, but the fact remains that she has balanced equities, rather has acted in an impartial/ unbiased manner, much less caused no harm or pre judice to the interest of any of her children.

Mr. Surinder Sharma, learned counsel appearing on behalf of respondent Nos. 1 to 3 submits that the contents of sale deed does not fall within the provisions of Section 14 (1) of the Act. However, only the life interest was given to Charan Kaur, therefore, she could not have entered into an exchange with Pritam Singh. The exchange, if any, thus was bad in law. No doubt that by virtue of exchange there is no deficiency in the area of the land but of course in valuation. Thus submits that there is no illegality and perversity in the impugned orders.

I have heard learned counsel for the parties and appraised the paper book.

In view of the aforementioned facts, I am of the view that the intention of parents have been respected between parties to the *lis*, for the reason that Ishar Singh had bequeathed the entire property owned by him in favour of his sons after demise of her wife Charan Kaur. Charan Kaur has also given the same land owned by him during her life time by executing a Will dated 9.3.1994 on the same terms and conditions and lines as per the desire and whim of Ishar Singh. Since children of Ishar Singh and Charan Kaur are not affected with the area, in essence, there is no shortage of area, except that Charan Kaur had entered into an exchange of land with Pritam Singh son of Sunder Singh as Ishar Singh and Pritam Singh along with brother-defendant No.3 initiated partition proceedings and Pritam Singh had been found to be in possession of piece of land measuring 11 Kanals 13 Marlas, which has been exchanged. Though, the Hon'ble Supreme Court in **Jupudy Pardha Sarathy Vs. Pentapati Rama Krishna and others in Civil Appeal No.375 of 2007** decided on 6.11.2015 reiterated the principals viz-a-viz conforming the absolute ownership on the widow by interpreting the terms and conditions but in the present case, there has been no impartiality, much less any interest of the siblings has been prejudiced.

Even otherwise the suit challenging the exchange, in my view was barred by law of limitation as it has been filed on 21.10.2013 whereas the exchange has taken place on 29.9.2000.

The cause of action accrued only on account of death of Charan Kaur who died on 5.5.2003 which is not able to cut an ice. No one had challenged the exchange during her life time perhaps, she wanted to protect interest of the family.

Keeping in view the aforementioned reasoning, the substantial questions of law, except the one framed under Section 14 (1) of Hindu Succession Act, 1956 are answered in favour of the appellants-defendants and against the respondents-plaintiffs.

The appeals stand allowed.

**(AMIT RAWAL)**  
**JUDGE**

**December 21 , 2015**  
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