IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

RSA No.2061 of 2015 (O&M)
Date of Decision: September 01, 2015

Nasib Kaur and another

...Appellants

Versus

Chand Rani

...Respondents

(2)

RSA No.2060 of 2015 (O&M)
Date of Decision: September 01, 2015

Nasib Kaur and others

...Appellants

Versus

Sohan Dass & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Aakash Singla, Advocate
for the appellants.

Mr. Sanjeev Kumar Bawa, Advocate
for the caveator-respondents.

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AUGUSTINE GEORGE MASIH, J. :

By this order, I propose to decide two regular second appeals i.e. RSA No.2060 of 2015, titled as 'Nasib Kaur & others versus Sohan Dass and others' and RSA No.2061 of 2015, titled as 'Nasib Kaur & another versus Chand Rani', as these appeals have been preferred, wherein, the memorandum of exchange dated

21.12.1999 is in question.

Suit No.691 dated 16.07.2008 was filed by Nasib Kaur widow of Sajjan Singh, Virpal Kaur and Sukhwinder Singh, daughter and son of Sajjan Singh respectively, praying for a decree of declaration and possession to the effect that the plaintiffs being legal representatives of deceased Sajjan Singh son of Inder Singh, are owners in equal shares of the land/site measuring 0 Kanal 8 Marlas comprised in old Khata No.181/340 New Khata No.230/411-412 Khasra Nos.36min(0-6), 37 min(0-2) vide jamabandi for the year 2004-05 situated within the revenue limits of Dhanaula Khurd, Tehsil Barnala and are, thus, entitled to get the mutation of inheritance and ownership entered and sanctioned in their favour and for permanent injunction restraining the defendants Sohan Dass, Paramjit, Rakesh Kumar, Gagandeep and Vijay Kumar sons of Sohan Dass and Chand Rani widow of Sohan Dass, from changing the nature of the suit land by raising any kind of construction over it etc.

In RSA No.2061 of 2015, Suit No.709 dated 06.08.2008 was filed by Chand Rani widow of Sohan Dass against Nasib Kaur and Gurmeet Kaur, widows of Sajjan Singh, for declaration to the effect that the plaintiff is owner in possession of the same land which is a subject matter of Suit No.691 dated 16.07.2008 on the basis of the same memorandum of exchange dated 21.12.1999 and defendants have no right, title or concern with the same and the plaintiff is entitled to get her name recorded being owner in possession in the revenue records and the defendants are bound by the terms and conditions of the memorandum of exchange and for permanent injunction restraining defendants from interfering in the possession of the plaintiff etc.

On the basis of the evidence led by the parties, Suit No.691 dated 16.07.2008, preferred by Nasib Kaur and others, was dismissed on 08.07.2013 by the Additional Civil Judge (Senior Division), Barnala, whereas, Suit No.709 of 06.08.2008, preferred by Chand Rani was decreed on 11.09.2013 by the Additional Civil Judge (Senior Division), Barnala. The appeals preferred in both the suits have been dismissed by the District Judge, Barnala, on 14.10.2014 which has resulted in the filing of these appeals.

On the joint request made by the counsel for the appellants as also the caveator-respondents, both the appeals have been taken up together and the arguments have been addressed in RSA No.2061 of 2015, titled as 'Nasib Kaur and another versus Chand Rani'.

It is the contention of the counsel for the appellants that memorandum of exchange dated 21.12.1999 is a forged and fabricated document. Further, as the suit property is valued more than hundred rupees, it being unregistered, the same is not admissible in evidence, thus, could not have been relied upon by the

Courts below to dismiss the suit filed by the appellants and could not have been relied upon to decree the suit filed by the respondent-plaintiff. He contends that memorandum of exchange dated 21.12.1999 being in present tense, which indicates that the same had not been acted upon prior to the date of execution of the memorandum of exchange and therefore, rights have been conferred upon the parties by way of the said instrument, the same required mandatory registration. In support of this contention, he places reliance upon the judgment of this Court in **Ram Nath versus Sham Sunder, 2001(3) R.C.R. (Civil) 674**, **Satyawan versus Raghbir, 2002 (2) R.C.R. (Civil) 669**, **Jaswant Singh versus Chamkaur Singh, 2010 (4) ICC 344** and Supreme Court judgment in **Raghunath and others versus Kedarnath, 1969 (1) SCC 497.** He, accordingly, contends that the impugned judgments and decrees in both the appeals, cannot sustain and deserve to be set aside.

On the other hand, counsel for the caveator contends that after the death of Sajjan Singh son of Inder Singh on 25.08.1990, Nasib Kaur and Gurmeet Kaur, both widows of Sajjan Singh, exchanged the suit property in lieu of land situated in village Dhanaula, which was situated next to their house. Since the value of both the lands was equal, no consideration was passed under the exchange deed. When the exchange had taken place, the memorandum of exchange was reduced into writing which was got typed by Gurcharan Singh Dhaliwal, Advocate, Barnala, who put his seal and signatures on the same and both the parties also signed and thumb marked the same on 21.12.1999 which was duly attested by Kulbir Dass, Sarpanch of Dhanoula Kalan and Harkewal Singh son of Harnek Singh resident of Dhanoula Kalan. Both the attesting witnesses have appeared and identified their signatures on the exchange deed. After taking of the possession of the suit property, one room was constructed by Smt. Chand Rani where her son Gagandeep Singh is running a welding workshop etc. and one more room was constructed behind the said workshop to which no objection was raised. Gagandeep Singh got released electricity and water supply connection to the said workshop. As Nasib Kaur had disputed the thumb impression on the exchange deed, the same has been got compared with the thumb impression on the Power of Attorney given by her to her counsel by an expert Dr. Inderjit Singh who have proved on record his detailed report and has opined that the disputed thumb impressions tally with the specimen thumb impressions of Nasib Kaur and these are of the same person. In her cross-examination, Nasib Kaur has admitted the exchange of land and that Chand Rani is in possession over the same and the workshop in question is there. He contends that by cogent and credible evidence, the actual exchange of the property in question prior to the memorandum of exchange having been reduced into writing, stands duly proved. The findings, thus, recorded by the Courts below are in accordance with law. On the question with regard to the admissibility of the memorandum of exchange because of non-registration of the same, he has placed reliance upon the Division Bench's judgment of this Court in **Sardara Singh and another versus Harbhajan Singh and others, 1974 PLJ 341** to contend that the provisions as contained under Section 118 of the Transfer of Property Act, 1882 (hereinafter referred to as '1882 Act'), does not apply to the State of Punjab and only Sections 54, 107 and 123 of the 1882 Act, have been made applicable with effect from 01.04.1955 and therefore, oral exchange is permissible. He has further relied upon the judgment of this Court in **Kishori Lal versus Babu Ram and others, 2003 (2) PLR 54** to contend that since Section 118 of the 1882 Act does not apply, therefore, even an oral exchange being permissible as such, the question of registration of any such document did not arise. Reliance has also been placed upon another judgment of this Court in **Randhir Singh versus Ranjit Singh 2011(1) PLR 413** wherein it has been held that when exchange of land between the parties has taken place and possession also exchanged between the parties pursuant to an oral exchange and thereafter, document was executed, the same would be a memorandum of exchange when no sale consideration in terms of money has been recited in the document, registration of the same is not required. He, on this basis, contends that the impugned judgments and decrees do not call for any interference as there is no question of law involved in these cases and the findings are concurrent by both the Courts below.

I have considered the submissions made by the counsel for the parties and with their assistance have gone through the judgments impugned.

On the basis of the pleadings and the evidence led by the parties, findings have rightly been returned by the Courts below that after the death of Sajjan Singh on 25.08.1990, oral agreement of exchange was entered into between the parties and even the possession was exchanged between them prior to the writing of the memorandum of exchange dated 21.12.1999 which has been duly proved to have been executed between the parties. The only question which is required to be decided in the present case is whether the memorandum of exchange dated 21.12.1999 is required to be registered mandatorily .

As far as the judgments which have been relied upon by the counsel for the appellants, the same when gone into, clearly are distinguishable as in *Ram Nath's* case (supra), *Satyawan's* case (supra) and *Jaswant Singh's* case (supra) none of these judgments deal with a situation where non applicability of Section 118 of the 1882 Act, has been dealt with and its effect in the State of Punjab has been referred to. That apart, in none of these judgments, it was a case where exchange of land has already taken place prior to the memorandum of exchange having been reduced into writing. It may be added here that consideration was not exchanged in the present case, whereas, that was an issue which was consider in the said judgments.

On the other hand, the judgments on which reliance has been placed by the counsel for the respondents, cover the facts, circumstances and the principles of law which are involved in the present case and would be applicable to the case in hand.

In *Sardara Singh and others'* case (supra), it has been held in para 5 as follows:-

> ***5.*** *Mr. P.S. Jain, learned Counsel for the appellants has raised a very fantastic argument. According to him, a sale and an exchange are one and the same thing and so no sale can be made without a registered instrument, no exchange can also be made without a registered instrument. We are unable to accept this contention. In the first place, it is common ground that the Act does not apply to Punjab and only Sections 54, 107 and 123 of the Act have been made applicable with effect from April 1, 1955. In this connection, reference may be made to notification dated March 26, 1955, which is reproduced below:-*
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> *"No. 1605- (CH)-55/589.-In exercise of the powers conferred by Section 1 of the Transfer of Property*

Act, IV of 1882, and all other powers enabling him in this behalf, the Governor of Punjab is pleased to extent the provisions of Sections 54,107 and 123 of the said Act with effect from the 1st April, 1955, to the entire State of Punjab. The Punjab Government Notification No. 183-St, dated the 27th April, 1935, is hereby cancelled."

Section 54 is in Chapter III which deals with sales of immovable property. Chapter IV starts with Section 58 and deals with mortgages of immovable property and charges. Chapter V deals with leases of immovable property, and Chapter VI deals with exchanges. The very scheme of the Act clearly shows that the sales, mortgages, leases and exchanges of the immovable property are dealt with on totally different footings and it is futile to urge that one takes colour from the other merely because under Section 118 of the Act, an exchange can be made only in the manner provided for a sale. Mr. Jain, learned Counsel for the appellants, for his wonderful argument relies on Section 1 of the Act which is in the following terms:-

"This Act may be called the Transfer of Property Act, 1882.

It shall come into force on the first day of July, 1882.

It extends in the first instance to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in Part B States or in the States of Bombay, Punjab and Delhi.

But this Act or any part thereof may by notification in the Official Gazette be extended to the whole or any part of the said territories by the State Government concerned.

And any State Government may.................... from time to time, by notification in the Official Gazette, exempt, either retrospectively or prospectively, and part of the territories administered by such State Government, from all or any of the following provisions, namely:-

Sections 54, paragraphs 2 and 3, 59, 107 and 123.

Notwithstanding anything in the foregoing part of this section. Sections 54, paragraphs 2 and 3, 59, 107 and 123, shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act. 1908, under the power conferred by the first section of that Act or otherwise."

It will be seen from this section that the Act does not apply to the State of Punjab. However, by notification in the Official Gazette, a State Government can extend the whole or any part of the Act to its territories. Similarly, a State Government has been given the power to exempt, by notification in the Official Gazette, either retrospectively or prospectively, any part of its territories administered by such State Government, from all or any of the following provisions of the Act, namely, Sections 54, paragraphs 2 and 3, 59, 107 and 123. It is on the basis of Section 1 of the Act reproduced above, that an argument has been built *that the exchange must take its colour from Section 54 and whatever are the requirements of Section 54 of the Act must per se apply to an exchange. We have already held that this result does not follow. In this view of the matter, no fault can be found with the decision of the learned Single Judge."*

In *Kishori Lal's* case (supra) this Court has held that the oral exchange is permissible and does not require registration of the document and in paras 7 and 8 held as follows:-

*"**7.** I have given my thoughtful consideration to the entire matter and have also perused the record of the case. I have also perused the document Exhibit P-1, the agreement, which is bone of contention between the parties. Although the Courts below have also held it as a fact that the said document was duly executed between the parties, however, the Lower Appellate Court has completely mis-read the aforesaid document and held it to be an exchange deed. As a matter of fact the said document was only a memorandum of exchange, which was entered into between the parties. The aforesaid mis-reading of the document and consequential mis-interpretation thereof has clearly resulted in the findings, which cannot be legally sustained and can be termed as judicially perverse, necessitating interference by this Court in the present regular second appeal.*

***8.** Even otherwise as has been noticed by a Division Bench of this Court in Sardara Singh's*

> *case (supra), the provisions of Section 118 of the Transfer of Property Act have not been extended to the State of Punjab. In these circumstances, oral exchange is permissible in Punjab. Thus even if it be taken that the aforesaid document Exhibit P-1 was an exchange deed, therefore, still the same did not require any compulsory registration in as much as when the oral exchange was permitted in the State of Punjab then the aforesaid document could not be required to be compulsorily registerable. In these circumstances, ruling out of consideration of the aforesaid document on the ground of its non-registration by the learned First Appellate Court has resulted in findings which are completely vitiated."*

In *Randhir Singh's* case (supra), in paras 9 to 11, it has been held as follows:-

> *"**9.** The plaintiff has been non-suited by lower appellate court on the ground that document dated 07.4.2000 is unregistered although it required compulsory registration. This conclusion of the lower appellate court is illegal and unsustainable. As noticed hereinabove, there was oral exchange between the parties. Possession was also exchanged between the parties pursuant to oral exchange. It was thereafter that the document dated 7.4.2000 was executed as memorandum of exchange. A bare perusal of the said document also reveals that the exchange was not effected through this document. It was only a memorandum of exchange which had already taken place and*

even exchange of possession had already taken place. Section 118 of the Transfer of Property Act is not applicable in State of Punjab and consequently oral exchange is legally permissible. In view thereof, the memorandum of exchange dated 7.4.2000 did not require compulsory registration. In this conclusion, I am supported by judgment of this Court in the case of Kishori Lal v. Babu Ram etc., 2003 (1) RCR (Civil) 807. Consequently, there was valid exchange between the parties and pursuant to exchange the plaintiff has become owner in possession of the suit property.

***10.** Following substantial question of law arises for determination in the instant second appeal:-*

"Whether the finding of the lower appellate court that document dated 7.4.2000 required compulsory registration and being un-registered did not have the effect of exchange is perverse and illegal?"

***11.** For the reasons already recorded, the aforesaid substantial question of law is answered in favour of the plaintiff-appellant and it is held that the aforesaid document did not require compulsory registration because it is only memorandum of exchange whereas oral exchange had already been taken place between the parties and even possession had also been exchanged."*

In view of the judgments which have been reproduced above, the law stands settled by this Court that oral exchange is permitted in Punjab and if the same has been acted upon by the parties, i.e. the exchange of the properties have already been taken place and even possession exchanged prior to such exchange being rendered into writing, it is only a memorandum of exchange and the said document did not require compulsory registration as this instrument did not confer right on the parties for there was valid exchange between the parties and in pursuance of exchange the moment the possession was taken by the respective parties they became owners in possession of the property. In view of the above, I find no merit in these appeals.

Both the Courts below have returned concurrent findings which are based on proper appreciation of the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of evidence nor is there any perversity or illegality in the same. Further, no substantial question of law arises in these appeals which requires consideration of this Court.

The appeals, therefore, stand dismissed.

CM No.5395-C of 2015 in RSA No.2060 of 2015 and
CM No.5396-C of 2015 in RSA No.2061 of 2015

In view of the order passed in the main appeals, these applications for stay, stand dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

September 01, 2015
Harish