

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.3513 of 2014 (O&M)

.....

Date of decision:14.5.2015

Harbans Singh and another

.....Appellants

v.

Harjit Singh and others

.....Respondents

.....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. S.S. Bhinder, Advocate for the appellants.

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Inderjit Singh, J.

This regular second appeal has been filed by Harbans Singh and Jarnail Singh-appellants/plaintiffs against Harjit Singh etc.-respondents/defendants challenging the impugned judgment and decree dated 23.9.2011 passed by the learned Additional Civil Judge (Senior Division), Talwandi Sabo and the judgment and decree dated 16.4.2014 passed by the learned Additional District Judge, Bathinda in appeal.

The brief facts of the case are that Harbans Singh and Jarnail Singh alias Karnail Singh-plaintiffs filed suit against Harjit Singh etc.-defendants for declaration to the effect that the plaintiffs and defendant No.1, are owners and in possession of the land measuring 63 Kanals 19 Marlas and 1136/1256 shares of land measuring 62 Kanals 16 Marlas,

which is wrongly recorded in the name of the defendants No.2 to 5 and defendant No.6 and 7, as owners and in possession of it, in the Jamabandi for the year 2000-2001 and the alleged exchange of this land with defendants No.2 to 5, for the land situated at Village Rampura, Tehsil Phul, District Bathinda, and the alleged writing regarding the alleged 'Khangri' exchange dated 30.6.1997 are illegal, null and void etc. The plaintiffs and defendant No.1 are real brothers and they constituted a Joint Hindu Family. Defendant No.1 was 'Karta' of the Joint Hindu Family. Plaintiffs and defendant No.1 were owners in possession of the land measuring 158 Kanals 12 Marlas, situated at Village Lehri, whereas defendants No.2 to 5 were owners of land measuring 32 Kanals 11 Marlas situated at Village Rampura. Defendant No.1 being 'Karta' of Joint Hindu Family had, on 30.6.1997, exchanged their land measuring 37 Kanals 17 Marlas, out of the aforesaid land measuring 158 Kanals 12 Marlas situated at Village Lehri with land of defendants No.2 to 5 measuring 32 Kanals 11 Marlas situated at Village Rampura and the parties had exchanged the possession of said land with each other. It is the case of the plaintiffs that later on they came to know that defendants No.2 to 5 in connivance with defendant No.1 played a fraud and exchange was shown of the total land measuring 158 Kanals 12 Marlas.

On the other hand, defendant No.1 admitted the claim of the plaintiffs. Defendants No.2 to 5 took a plea that the plaintiffs as well defendant No.1 had exchanged their land with the land of defendant No.2 to 5. The land owned by defendants No.2 to 5 was near the municipal limits of

Rampura Phul Mandi and was of more value, whereas the land situated at Village Lehri was not of good quality and was of less market value.

The learned Additional Civil Judge (Senior Judge), Talwandi Sabo, dismissed the suit on the basis of evidence produced before it. An appeal was filed, which was also dismissed by the learned Additional District Judge, Bathinda, vide judgment and decree dated 16.4.2014. Aggrieved against these judgments and decrees passed by the Courts below, the present regular second appeal has been filed.

At the time of arguments, learned counsel for the appellants argued that the original memorandum of exchange has not been placed on record. Therefore, the findings given by the Courts below are not as per evidence as this document cannot be read into evidence.

I have heard learned counsel for the appellants and have gone through the record.

From the record, I find that the learned Additional Civil Judge (Senior Division), Talwandi Sabo, in the judgment held that the secondary evidence has been allowed by the Court and this document has been duly proved subject to proof of existence, loss and due execution. To prove the exchange deed, the defendants had examined Jaswinder Singh son of Piara Singh Namberdar as DW-8, who deposed through his affidavit Ex.DW.8/A and who identified the signatures of his father Piara Singh on the agreement to exchange Ex.DX. Further Gurjant Singh Namberdar was examined as DW-2, who identified his hand-writing and signatures on Ex.DX and stated that the parties to this document had exchanged their land situated at Lehri

and Rampura. DW-7 Jagjit Singh Patwari proved Rapat No.408, which was entered by him on producing of document of exchange dated 30.6.1997. Further the defendants have brought the Hand-writing and Finger-print Expert Dr. Inderjit Singh, who had duly compared disputed signatures of Harbans Singh, Harjit Singh and Gurjant Singh over the document Mark-DA i.e. memorandum of exchange and also compared thumb impression of Piara Singh Namberdar and found the same tallying with each. As per the findings of the learned Additional Civil Judge (Senior Division), the secondary evidence has been allowed by the Court and has held the proof of its existence and the execution of the document and also the loss. Therefore, this argument that original document has not been produced is having no merit. It is written in the memorandum of exchange itself that the difference of the land in the area was due to the value of both the lands and this document shows that possession of said parcels had already been exchanged and they have been cultivating their respective shares. It is also the finding of the learned Additional Civil Judge (Senior Division) that it was not through the document Ex.DX that exchange took place, rather it took place prior thereto. So, the document Ex.DX can only be said to be memorandum of exchange.

Keeping in view the findings given by the learned Additional Civil Judge (Senior Division), which were upheld by the learned Additional District Judge in the appeal, I find that these findings are correct and as per laws which do not require any interference from this Court and the same are upheld.

Finding no substantial question of law arisen in this regular second appeal, the same is dismissed.

May 14, 2015.

(Inderjit Singh)
Judge

hsp