

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

**RSA No. 4762 of 2014 (O&M)**

Date of decision : 19.5.2015

Surta Singh

... Appellant

VS

Tirlok Singh and another

... Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal**

Present: Mr. Sandeep Jasuja, Advocate, for the appellant.

**Rajesh Bindal, J.**

The plaintiff is before this Court against the concurrent findings of fact recorded by both the Courts below whereby the suit seeking cancellation of agreement to exchange dated 14.8.1968 executed between the appellant-plaintiff and respondent no.1/ defendant no. 1, was dismissed.

Learned counsel for the appellant submitted that the parties to the dispute are real brothers. An agreement of exchange was executed between them on 14.8.1968, in terms of which both the parties were put in possession of the property, which was exchanged. However, just before the filing of the suit, the appellant came to know that the property given in exchange to him by respondent no. 1 was not, in fact, owned by him, hence, he had been cheated. On that ground the suit was filed seeking cancellation of agreement to exchange dated 14.8.1968.

After hearing learned counsel for the appellant, I do not find any reason to interfere with the concurrent findings of fact recorded by both the Courts below. Vide impugned exchange-deed dated 14.8.1968, respondent no. 1 agreed to transfer his land measuring 9 kanals against 11 kanals of land owned by the appellant. After exchange mutation was entered. It has also come on record that earlier respondent no. 1/ defendant no. 1 filed a suit on 18.10.1991 seeking declaration that he had become absolute owner of 11 kanals received by him by virtue of agreement of exchange dated 14.8.1968. The same was dismissed by the trial court vide

judgment and decree dated 7.1.1993. However, the appeal filed by respondent no. 1/ defendant no. 1 was accepted on 8.11.1993 and thereafter, he was recorded owner in possession of land received by him in exchange.

In the aforesaid earlier litigation between the parties, the agreement of exchange dated 14.8.1968 was upheld. The plea raised by the present appellant denying the agreement to exchange and other plea that the same was not the valid document, were rejected.

Once the agreement to exchange has already been gone into by the Courts below in an earlier litigation between the parties, the learned Courts below have rightly opined that the fresh suit filed for the same purpose is barred by principle of *res judicata*. Even the contention raised by learned counsel for the appellant that just before filing of the suit in question, he came to know that the land which he got in exchange was not owned by respondent no. 1/ defendant no. 1 is also merely to be noticed and rejected. This plea was available with the appellant when the earlier litigation was decided and could very well be raised by him but he did not choose to take up the same. Hence, he cannot be permitted to initiate fresh proceedings for the same dispute. No substantial question of law arises.

The appeal is, accordingly, dismissed. Consequently, the accompanying applications are also dismissed.

19.5.2015  
vs

(Rajesh Bindal)  
Judge