

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

**R.S.A No.1505 of 2010 (O&M)
Date of decision : 02.05.2016**

Boota Singh Dhaliwal

..... Appellant

Versus

Mukand Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Amit Jhanji, Advocate
for the appellant.

Mr. Parshotam Lal Singla, Advocate
with Ms. Gurpreet Kaur, Advocate
for the respondents.

1. **Whether Reporters of Local papers may be allowed to see the judgment?Yes.**
2. **To be referred to the Reporters or not?Yes.**
3. **Whether the judgment should be reported in the Digest?Yes.**

DARSHAN SINGH,J

The present appeal has been preferred by the plaintiff-appellant against the judgment and decree dated 23.12.2009 passed by the learned Additional District Judge, Moga, whereby the appeal filed by him against the judgment and decree dated 22.02.2008 passed by the learned Civil Judge (Junior Division), Moga, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.
3. Appellant-plaintiff Boota Singh Dhaliwal has filed the suit for permanent injunction restraining the respondents-defendants from

interfering in his peaceful and lawful possession and dispossessing him from the suit land as detailed and described in the head note of the plaint situated within the revenue estate of village Kussa, Tehsil Nihal Singh Wala, District Moga, illegally, forcibly except in due course of law.

4. As per the case of the appellant-plaintiff, Sardara Singh, the father of defendants was co-sharer in the suit land. He was in exclusive possession thereof. Sardara Singh and Kartar Singh, the father of appellant-plaintiff were the real brothers. Plaintiff and his brother Roop Singh inherited the estate of Kartar Singh. Defendants-respondents inherited the estate of Sardara Singh. Sardara Singh has given the land in dispute to Kartar Singh, the father of plaintiff in exchange vide mutation no. 8191 dated 20.07.1987. Since then, Kartar Singh-deceased as well as plaintiff and his brother Roop Singh are in actual, peaceful and continuous possession of the suit property as owner. The defendants have no concern with the suit land after the said exchange. But, they are bent upon to interfere in the possession of plaintiff and wants to dispossess them. Hence, the suit.

5. Defendants-respondents contested the suit on the grounds *inter alia* that Kartar Singh had no right to be in exclusive possession of the suit land. There was no exchange. The question of sanctioning of mutation does not arise. Plaintiff is not in possession of the suit land. He cannot claim any relief against the other co-sharers. Thus, they prayed for dismissal of the suit.

6. Plaintiff filed replication to the aforesaid written statement controverting the pleas raised therein. From the pleadings of the parties,

the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to permanent injunction prayed for?OPP
2. Whether the plaintiff has got no locus standi to file the present suit?OPD
3. Whether suit of the plaintiff is not maintainable in the present form?OPD
4. Relief.

7. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit filed by the plaintiff-appellant with costs, vide impugned judgment and decree dated 22.02.2008.

8. Aggrieved with the aforesaid judgment and decree, appellant-plaintiff preferred the appeal and the same was also dismissed by the learned First Appellate Court, vide impugned judgment and decree dated 23.12.2009. Hence this Regular Second Appeal.

9. I have heard Mr.Amit Jhanji, Advocate, learned counsel for the appellant, Mr. Parshotam Lal Singla, Advocate with Ms. Gurpreet Kaur, Advocate, learned counsel for the respondents and have meticulously gone through the record of the case.

10. Initiating the arguments, learned counsel for the appellant contended that originally Bishan Singh was the owner of the land in dispute. He had two sons namely Kartar Singh, the father of the appellant-plaintiff and Sardara Singh, the father of the respondents-defendants. They were co-sharers and were in exclusive possession of the land in dispute. He contended that the mutual exchange has taken place between Kartar Singh and Sardara Singh. The land in dispute was given

by Sardara Singh to Kartar Singh in exchange and on the basis of that mutation no. 8191 dated 20.07.1987 was sanctioned in favour of Kartar Singh. He contended that on the basis of said exchange, the plaintiff is in exclusive possession of the land in dispute, which is evident from the copies of Jamabandi Ex.P-1 for the year 1994-95, Ex.P-4 for the year 1999-2000 and Khasra Girdawries Ex.P2 and Ex.P-5. Thus, he contended that defendants have no right to interfere in his possession. He contended that the relief of injunction can be granted even on the basis of possession. The possession of the appellant-plaintiff is established from the oral as well as documentary evidence. Thus, he contended that the learned Courts below have wrongly dismissed the suit.

11. On the other hand, learned counsel for the respondents-defendants contended that the basic story set up by the plaintiff with respect to exchange is not established. No mutation no. 8191 dated 20.07.1987 has been placed on record by the plaintiff-appellant. Rather, they have placed on record the copy of mutation no. 8190 Mark A/P-3, which is a forged document as the said mutation relates to the inheritance of one Jaswant Singh. Thus, he contended that the appellant-plaintiff had tried to obtain the equitable relief of injunction on the basis of a forged document. No explanation has been given as to how the revenue entries came in favour of the plaintiff. Thus, these revenue entries have no evidentiary value. He further contended that it is an admitted case that the parties have inherited the estates of their fathers, who were co-sharer in the suit land and no injunction can be granted against another co-sharer. Thus, he contended that there is no illegality in the impugned judgments.

12. I have duly considered the aforesaid contentions.

13. The foundation of the case of the appellant-plaintiff is that his father Kartar Singh came into exclusive possession of the land in dispute on the basis of exchange. It is alleged that the land in dispute was given in exchange by Sardara singh, the father of defendants to Kartar Singh, the father of plaintiff vide mutation no. 8191 dated 20.07.1987. So, it was incumbent upon the appellant-plaintiff to establish his plea of exchange. As per the case of the appellant-plaintiff, mutation no. 8191 dated 20.07.1987 was sanctioned on the basis of the said exchange. But, no such mutation no. 8191 dated 20.07.1987 has been placed on record. Rather, the plaintiff has placed on record the copy of the mutation no. 8190 Mark A/P-3 to prove the exchange of the suit land between Sardara Singh and Kartar Singh. But, from the statement of Ajmer Singh, Patwari Halka, Kussa, it comes out that mutation no. 8190 pertains to the inheritance of one Jaswant Singh son of Jagir Singh in favour of Gurdial Kaur and others. He has further stated that this mutation does not relates to entry of exchange of land. Copy of which is Mark A. Thus, mutation no. 8190 produced by the plaintiff alleging it to be a mutation of exchange between his father Kartar Singh and Sardara Singh is a fake document. In fact, this mutation no. 8190 relates to the inheritance of one Jaswant Singh son of Jagir Singh. Consequently, the basic plea raised by the appellant-plaintiff with respect to exchange is based on a fake document and is not established at all. Moreover, it is nowhere mentioned in the plaint or evidence as to what property was given to Sardara Singh in exchange of suit land. Thus, the basic ingredients of exchange are

totally missing.

14. Thus, the revenue documents produced in evidence by the appellant-plaintiff which are all subsequent to the alleged exchange are of no help to the plaintiff to establish his exclusive possession over the land in dispute. This fact is not disputed that the parties are co-sharer in the suit land and it is the settled principle of law that no injunction can be granted against the other co-sharer. Moreover, the permanent injunction is an equitable relief and is available to the person who comes to the Court with clean hands. A person with soiled hands is not entitled to such equitable relief. But, in the instant case, the appellant-plaintiff has based his claim on the basis of a fake document and has raised the false plea of mutual exchange. Consequently, he is not entitled for the equitable relief of injunction. Thus, this Court have no reason to differ with the concurrent findings recorded by the Courts below.

15. Therefore, no question of law, much less, the substantial question of law arises in the present appeal.

16. Consequently, the present appeal being devoid of merits, is hereby dismissed with costs.

May 02, 2016

s.khan

(DARSHAN SINGH)
JUDGE