

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

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Date of decision: 28.01.2016

**RSA 1032 of 2012 (O&M)**

*Habib Mohd.*

.....*Appellant*

*Versus*

*Malkiat Singh and others*

.....*Respondents*

**RSA 2477 of 2012 (O&M)**

*Habib Mohd.*

.....*Appellant*

*Versus*

*Saraj Khan and others*

.....*Respondents*

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Nandan Jindal, Advocate  
for the appellant  
Mr. Sherry K Singla, Advocate  
for the respondents

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

**Rekha Mittal, J.**

This order will dispose of **RSA Nos. 1032 and 2477 of 2012** titled '*Habib Mohd v. Malkiat Singh and others*' and '*Habib Mohd. v. Saraj Khan and others*', respectively as common questions of law and fact calls for adjudication. However, for the sake of convenience, facts are taken from **RSA No. 2477 of 2012**.

Habib Mohd, the appellant filed a suit for permanent injunction, restraining the respondents/defendants from interfering in possession of the appellant over the suit land, detailed in the head-note of the ~~the~~ **plaint**. As per allegations, Malkiat Singh, husband of respondent No. 3

was owner in possession of land bearing khasra No. 467/187 (0-2) situated within the revenue estate of village Jatiwal, Tehsil Malerkotla. On 20.05.1988, Malkiat Singh exchanged his above said land with the land of the appellant and an agreement/memorandum of exchange was reduced into writing. The appellant appended his thumb impression and Malkiat Singh signed the agreement in presence of witnesses after admitting its contents as correct. The possession of the property was also exchanged at that time and the appellant is in continuous and peaceful possession of the suit property and Malkiat Singh is in possession of khasra No.468/187 (0-2). The respondents are mischievous persons and hell-bent to interfere in peaceful possession of the appellant over the suit land to which they have no right or authority.

Respondents No. 1 and 2 filed the written statement jointly, categorically pleaded that they have no concern with the suit property. By way of additional objections, they challenged maintainability of the suit and the appellant having no cause of action to file the suit. The suit is alleged to be bad for misjoinder of parties.

Smt. Jaswant Kaur wife of Malkiat Singh-respondent No. 3 also filed the written statement, seriously contesting claim of the appellant. It is averred that Malkiat Singh was and is still owner in possession of land bearing khasra No. 467/187 (0-2). It was denied that on 20.05.1988, Malkiat Singh exchanged the suit land with the land of the appellant or any agreement/memorandum of exchange being executed between the appellant and Malkiat Singh. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

The controversy between the parties led to framing of following issues:-

- 1)Whether the plaintiff is entitled to the permanent injunction as prayed for?OPP*
- 2)Whether the suit of plaintiff is not maintainable?OPD*
- 3)Whether suit is bad for misjoinder of parties?OPD*
- 4)Relief.*

To prove his case, the appellant examined Akbhar Khan (PW1), Baggu Khan (PW2), Rajinder Pal Chopra (PW3), Jagtar Singh (PW4) and himself appeared in the witness box as PW5. He also tendered into evidence a copy of jamabandi Ex.P3.

To rebut evidence of the appellant, respondents examined Rashid Mohd (DW1) and one of respondents Jaswant Kaur appeared as her own witness (DW2). Respondent No. 3 also tendered into evidence certified copies of statements of Rashid son of Abdulla (Ex D1), Raj Kumar Singla (Ex.D2), Gurmeet Singh Patwari (Ex.D3), Jamaldin (Ex.D4) and Jaswant Kaur (Ex.D5) recorded in civil suit No. 1 of 02.01.2004 with no objection from counsel for the appellant.

On a detailed consideration of the pleadings of the parties, issues framed for determination, evidence adduced on record and submissions made by respective counsel for the parties, the learned trial Court determined issue No.1 against the appellant and as a consequence, the suit of the appellant was dismissed.

Feeling dissatisfied with the judgment of the learned trial Court, the matter was carried in appeal by Habib Mohd-appellant, but he remained unsuccessful in appeal as the appellate Court concurred with the

findings recorded by the learned trial Court.

Still feeling dissatisfied, the present appeal has been preferred by Habid Mohd. Other appeal i.e. RSA No. 1032 of 2012 has been filed to assail the consistent findings recorded by the Courts below in a suit for injunction filed by Malkiat Singh, husband of respondent No 3-Jaswant Kaur in respect of land bearing khasra No. 467/187 measuring 4 biswas.

Counsel for the appellant, Shri Nandan Jindal, Advocate would urge that the appellant and Malkiat Singh exchanged land of their ownership comprised in khasra no.468/187 and 467/187 respectively, to the extent of two biswas each, executed an agreement as an evidence of exchange effected between them and possession of the exchanged land was delivered in pursuance of the exchange. It is further argued that in the State of Punjab, an oral exchange followed by delivery of possession is permissible as has been held by a Division Bench of this Court in ***Sardara Singh and another v. Harbhajan Singh and others, 1974 PLJ 341***. The Courts below have committed a gross error by failing to appreciate that an oral exchange followed by delivery of possession is legal and thus, exchange between the parties created a valid title in favour of the appellant in respect of 2 biswas of land comprised in khasra No. 467/187 earlier owned by Malkiat Singh. It is further argued that as the appellant got possession of the land in question in pursuance of a valid exchange, he is entitled to protect his possession against forcible and illegal intervention by the respondents.

Counsel for contesting respondent No. 3, Shri Sherry K Singla, would urge that there cannot be any quarrel with the settled position in law

that an oral exchange followed by delivery of possession is permissible in the State of Punjab as has been laid down by the Division Bench in the referred authority. However, it is argued with vehemence that there is no evidence on record that possession of the alleged exchanged land was exchanged between the parties on the basis of any such oral exchange or an agreement in writing. It is further urged that Malkiat Singh is the owner of land measuring 4 biswas comprised in khasra no. 467/187, the appellant has neither pleaded nor proved as to which part of land measuring 4 biswas was delivered to the appellant to sustain his claim qua 2 biswas of land. It is further argued that as the appellant claims ownership of 2 biswas of land out of total 4 biswas comprised in khasra no. 467/187, it was incumbent upon the appellant to specify boundaries and dimensions of 2 biswas of land which he purportedly obtained in exchange. According to counsel, in absence of describing the suit property in a manner sufficient to identify, the Courts have rightly rejected claim of the appellant to seek injunction.

In reply, counsel for the appellant has referred to documents, agreement of exchange Ex.P1 and copy of jamabandi Ex.P2 in order to contend that mutation was also sanctioned on the basis of exchange between the appellant and Malkiat Singh.

I have heard counsel for the parties and perused the records.

Concededly, provisions of Section 118 of the Transfer of Property Act, 1882 are not applicable to the State of Punjab but an oral exchange followed by delivery of possession is permissible as has been held by a Division Bench of this Court in *Sardara Singh's* case (supra). The appellant has claimed his ownership and possession of the suit land on the

premise that Malkiat Singh exchanged his land measuring 2 biswas comprised in khasra no. 467/187 with land to the same extent comprised in khasra no. 468/187 belonging to the appellant. Perusal of the records would make it evident that Malkiat Singh was owner of khasra no. 467/187 measuring 4 biswas. No plea has been raised by the appellant as to which 2 biswas out of 4 biswas was given in exchange or possession of which 2 biswas was delivered to the appellant in pursuance of the alleged exchange between the parties.

Order 7 rule 1 of the Code of Civil Procedure, 1908 (in short, ‘CPC’) provides for particulars to be contained in plaint. Rule 3 of Order 7 CPC deals with cases where subject matter of the suit is immovable property. A relevant extract of Rule 3 reads as follows:-

***“3. Where the subject-matter of the suit is immovable property***

*Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.”*

A plain reading of the above extract makes it apparent that in a case where the subject matter of the case is immovable property, the plaint must contain a description of the property sufficient to identify it and if such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint must specify such boundaries or numbers.

To enable a litigant to secure a decree of injunction, it must be

established on record as to how the suit property can be identified at the spot as no injunction can be granted by the Court which cannot be supervised, in case of breach thereof.

In the case at hand, the appellant has failed to plead and prove dimensions/boundaries of 2 biswas of land which was allegedly delivered to him in pursuance of the exchange set up by him. In absence of evidence on record to identify the suit property measuring 2 biswas, no fault can be found in the consistent findings recorded by the Courts below holding against the appellant and in favour of respondent No. 3. In this view of the matter, I find that neither any substantial question of law arises for adjudication nor there is any error much less illegality in the findings recorded by the Courts below.

Before parting with this order, it is pertinent to point out that the suit, subject matter of RSA 1032 of 2012 was filed by Malkiat Singh husband of Jaswant Kaur (respondent No. 3 in RSA No. 2477 of 2012) and the suit filed by Malkiat Singh for injunction was decreed by the trial Court and the judgment and decree passed by the trial Court was affirmed in appeal. It is an undisputed position in law that he who seeks equity, must do equity. In an effort that dispute between the parties is set at rest for all the times to come, this Court called upon Malkiat Singh, respondent in RSA 1032 of 2012, if he is ready to file an affidavit that he will not claim any right or interest in 2 biswas of land comprised in khasra no. 468/187 previously owned by appellant Habib Mohd.

Malkiat Singh, in response, filed an affidavit in the Court. A

relevant extract from the affidavit reads as follows:-

*“1. That the above mentioned appeal has been filed by defendant/appellant Habib Mohd. Against the impugned judgement and decree dated 03.06.2009 and 13.10.2011 passed by ld. Courts below whereby the suit for permanent injunction pertaining to khasra No. 467/187 (0-4) biswa has been decreed by Courts below. The above mentioned appeal is fixed for 27.01.2016 for arguments.*

*2. That the deponent will not claim his right over the alleged khasra No. 468/187 min (0-2) which is alleged to have been given to the deponent by the appellant by way of alleged exchange deed dated 20.05.1988. The deponent is not in possession of the any part of khasra No. 468/187 min (0-2) biswa and will not claim his ownership rights over the khasra No. 468/187 (0-2) biswa. The deponent further made the statement before this Court that he will not file any objection for setting aside the mutation if any sanctioned in favour of the deponent on the basis of alleged exchange deed dated 20.05.1988 pertainingn to khasra no. 468/187 min (0-2) biswa and therefore, the deponent has got no concern of any sort whatsoever over the disputed khasra no. 468/187 min (0-2) biswa.*

*3. That the deponent further undertake that he has not sold any part of khasra NO. 468/187 min (0-2) biswa and is not in possession of the said khasra No. The deponent is having his claim over khasra No. 467/187 (0-4) biswa and the same has been held to be owned and in possession of the deponent by the Courts below.”*

In view of what has been discussed here-in-above, finding no merit, both the appeals are dismissed, leaving the parties to bear their own

Photocopy of the order be placed on the file of connected case.

(Rekha Mittal)  
Judge

28.01.2016  
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