

Regular Second Appeal No.4529 of 2011 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.4529 of 2011 (O&M)

Date of Decision: August 17th, 2016

Gurdial Singh & others

...Appellants

Versus

Bachan Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Gagandeep Singh Sirphikhi, Advocate,
for the appellants.

Mr.R.L.Batta, Senior Advocate with
Mr.Nikhil Batta, Advocate,
for the respondent.

AMIT RAWAL, J.

Appellant-defendants are aggrieved of the judgments and decrees of both the Courts below, whereby the claim of the respondent-plaintiff seeking declaration that he is owner in possession of land measuring 14 kanals 14 marlas bearing Khasra No.43R/9/2 (2-0), 12/1 (1-11), 43R/9/1 (6-0), 43R/8 (5-3) as per jamabandi for the year 1993-94 situated at Village Ladha Munda and in the alternative for declaration that he is owner of the land and the defendants have no right and title

With consequential relief of possession, has been allowed.

Mr.Gagandeep Singh Sirphikhi, learned counsel for the appellant-defendants submits that the suit, aforementioned, was instituted by Bachan Singh son of Thakar Singh, who had exchanged the land, aforementioned, with the defendants through oral exchange and in lieu thereof, mutation bearing No.1609 dated 26.2.1997 was entered into. Not only this, the appellant-defendants were put into possession and the jamabandies/ khasra girdawries in this regard have been brought on record, i.e., jamabandi for the year 1996-97 (Ex.D2), 2003-04 (Ex.D3), khasra girdawri from 1999 to 2004 (Ex.D4), 2004 to 2009 (Ex.D5), 2007 onwards (Ex.D6) and jamabandi for the year 2008-09 (Ex.D7) and so was the respondent-plaintiff, who was put into possession of the land given to him in exchange.

He further submits that the plaintiff has not stepped into the witness box and, therefore, the presumption under Section 114(g) of the Indian Evidence Act, 1872 was required to be proved on record as it is a categorical pleading in the plaint that the mutation, aforementioned, was effected by playing fraud. Both the Courts below have decreed the suit on the ground that the oral exchange cannot be taken into consideration for want of registration. The oral exchange had taken place before 24.9.2001 when the amendment in Section 17 of the Registration Act was caused and, therefore, oral exchange is permissible. No doubt,

entering of the mutation would not give a cause of action to the parties to file the suit, but the fact remains that when appellant-defendants have been put into possession, the respondent-plaintiff knew about the aforementioned fact, but did not avail the remedy as late as upto 2003 when the suit was filed on 28.10.2003, therefore, suit was also barred by law of limitation as plaintiff cannot be permitted to take the advantage of Article 58 of the Indian Limitation Act, much less the judgment rendered by the Division Bench of this Court in **Ibrahim alias Dharam Vir Versus Smt.Sharifan alias Shanti**, 1979 PLJ 469. All these factors have been ignored by both the Courts below and, therefore, there is illegality and perversity.

He further submits that there is a categorical pleading in Paragraph 8 of the plaint that few days ago, the defendants came to the suit land and threatened the plaintiff that they had become owners of the land on the basis of some exchange deed, which gave the cause of action to file the suit. In order to fortify his contention with regard to non-appearance of the plaintiff, for, the mutation (Ex.D1) bore the thumb impression of plaintiff, he relied upon the ratio decidendi culled out in **Iswar Bhai C. Patel @ Bachu Bhai Patel Versus Harihar Behera & Anr.**, 1999 (1) Apex Court Journal 407, **Man Kaur (Dead) by L.Rs Versus Harpar Singh Sangha**, 2010 (10) SCC 512 and **Janki Narayan**

Bhoir Versus Narayan Namdeo Kadam, 2003 (1) RCR (Cvil) 409 as the appellant-defendants have been permitted to confront the thumb impression of the respondent-plaintiff and in case he has denied the same, defendants would have taken the assistance of an Expert and, thus, urges this Court for setting-aside of the judgments and decrees of both the Courts below and formulation of the following substantial questions of law:-

- 1) Whether the plaintiff-respondent having abstained from entering into the witness-box and not submitting himself for cross-examination, an adverse inference is required to be drawn on the basis of principles contained in illustration (g) of Section 114 of the 'Act' of 1872 that the case set up by the plaintiff is not correct one?
- 2) Whether the cause to sue first accrued to the plaintiff-respondent as per Article 58 of 'Act' of 1963 on 26.02.1997 when the mutation i.e. Ex.D1 having been sanctioned in the immediate presence of plaintiff-respondent and the plaintiff-respondent thumb marked the same?
- 3) Whether in the absence of the plaintiff-respondent having entered into the witness-box, it can be concluded that the case set up and pleaded by the plaintiff-respondent

stands proved on the point of cause of action when the suit is not within limitation?

Mr.R.L.Batta, Senior Advocate assisted by Mr.Nikhil Batta, learned counsel for the respondent-plaintiff submits that the suit cannot be thrown out for want of limitation in view of the ratio decidendi culled out by the Division Bench of this Court in **Ibrahim alias Dharam Vir's case (supra)**. He further submits that it would not be adverse to the interest of the respondent-plaintiff in case the party does not appear in the witness-box as suit was based upon the fraud and misrepresentation, much less appreciation of legal position. In support of his contention, he relies upon the ratio decidendi culled out in **Smt.Swarn Kanta and another Versus Amar Chand Tamra and others, 2011 (2) The Punjab Law Reporter 308.**

Regarding registration of the oral exchange, he has relied upon the ratio decidendi culled out by this Court in **Satyawan and others Versus Raghbir, 2002 (1) PLJ 448** to contend that after the amendment of Section 49 of the Registration Act, no oral exchange is permissible for want of registration and, thus, urges this Court for affirming the findings rendered by both the Courts below.

I have heard the learned counsel for the parties, appraised

the paper book and of the view that there is merit and force in the

submission of Mr.Sirphikhi, for, on perusal of the records of the Courts below, particularly mutation (Ex.D1), it reveals that the left hand impressions of respondent Bachan Singh are there. There is a categorical pleading in the plaint with regard to fraud and misrepresentation. It is the plaintiff, who could have come in the witness box and deposed in support of the averments made in the plaint and the defendants would have had a chance to confront the thumb impression and take the help of Expert. In my view, the Courts below ought to have presumption under Section 114 (g) of the Indian Evidence Act.

As regards the plea of limitation, there is no dispute to the ratio decidendi culled out in **Ibrahim alias Dharam Vir's case (supra)**, for, while interpreting the language of Article 58 of the Limitation Act, the Division Bench had an occasion to ponder upon the question as to whether entry of mutation in the revenue record would give a cause to the adverse party to challenge the same and if challenged after lapse of more than three years, would the rigour of limitation can be pressed into service by the adverse party and the answer was that it is only when there is threat of forcible dispossession, only then cause of action would arise. However, in the instant case, relief of possession itself shows that the defendants were put into service. No doubt, for seeking possession, the limitation is twelve years, but for seeking declaration, particularly of a

title, there is no limitation. In my view, the counsel for the respondent-plaintiff is required to be patted as the relief sought in the plaint clearly brings out the case within the period of limitation as there is no direct challenge to the mutation, therefore, the objection of Mr.Sirphikhi that the suit is barred by law of limitation is repelled.

Vis-a-vis non-registration of the exchange deed or non-production of the same, I am of the view that amendment in Section 17 of the Registration Act was caused on 24.9.2001, whereas the alleged oral exchange is of 1997 and, therefore, it did not require any registration.

I cannot remain oblivious of the revenue record which shows that in pursuance to the act done by both the parties, the appellant-defendants had been put into possession. This fact was in the knowledge of the respondent-plaintiff, yet he did not avail the remedy for a period of almost six years as the suit was filed in the year 2003, therefore, the oral exchange at the relevant point of time is permissible and did not require any registration, thus, submission of Mr.Batta vis-a-vis non-registration of the exchange deed is hereby repelled and rejected. Aforementioned contentions, in my view, have not been noticed by both the Courts below and, therefore, there is illegality, falsity, much less perversity.

For the foregoing reasons, the judgments and decrees of both the Courts below are hereby set-aside and suit of the respondent-

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plaintiff is hereby dismissed. The questions of law, as noticed above, are answered in favour of the appellant-defendants and against the respondent-plaintiff.

Appeal stands allowed.

August 17th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No