

RSA No.2444 of 2013

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

RSA No.2444 of 2013 (O&M)

Date of decision: 25.02.2016

Jagdev Singh and other

....Appellants

Versus

Hardip Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

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

Present: - Mr. Dhirinder Chopra, Advocate, for the appellants.

PARAMJEET SINGH DHALIWAL, J. (ORAL)

This regular second appeal of plaintiffs is directed against the judgment and decree dated 20.09.2011 passed by learned Civil Judge (Senior Division), Jagraon whereby suit for declaration filed by the appellants-plaintiffs has been dismissed and against the judgment and decree dated 31.01.2013 passed by learned Additional District Judge, Ludhiana, whereby appeal preferred by the appellants-plaintiffs, has been dismissed.

For convenience sake, hereinafter, reference to parties is being made as per their status in the plaint.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that the

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plaintiffs filed a suit for declaration with the averment that parties to the suit, residents of Village Lohatbaddi, entered into an agreement on 03.11.2002 for exchange of their agricultural land. As per agreement of exchange, plaintiffs agreed to give their land measuring 14 bighas 1 biswa bearing khasra No.651 and defendant No.1 agreed to give his land measuring 17 bighas 17 biswas bearing khasra No.2171/1832/618 to each other. The parties had also exchanged their respective possessions as per agreement of exchange and mutation was to be got entered and sanctioned on the basis of this exchange agreement by both the parties. The plaintiff was and has always been ready and willing to get the mutation entered and sanctioned as per terms of agreement dated 03.11.2002 whereas defendant No.1, despite requests, refused to get the mutation of exchange entered and sanctioned on the basis of exchange deed. Defendant also threatened to take forcible possession of the land given to the plaintiff in exchange. Thus, in the alternative plaintiff sought relief of possession in case defendant failed to comply with the agreement deed. Defendant No.1 had executed a sale deed qua $\frac{1}{2}$ share out of the suit land on 15.03.2004 in favour of defendant No.2, which was registered on the same date. Plaintiffs claimed the sale deed to be illegal, null and void as defendant No.1 was not competent to effect the sale deed in respect of the suit land. Thus, the sale deed is liable to be set aside.

Upon notice, the defendants resisted the suit and filed separate

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written statements taking various preliminary objections. It was pleaded by defendant No.1 that alleged agreement of exchange dated 03.11.2002 was a result of fraud, misrepresentation and forgery and the suit of the plaintiff was based on forged document and the same was not maintainable. The agreement in question is not a registered document and not properly stamped as required under the law. Defendant was not competent to enter into alleged agreement dated 03.11.2012 of land measuring 17 bighas 17 biswas, thus, the question of entering into the alleged agreement dated 03.11.2002 and exchanging the land with the land measuring 14 bighas 1 biswa did not arise. The plaintiff intended to grab the valuable land of the defendants.

Defendant No.2 filed his separate written statement taking various preliminary objections to the effect that plaintiff has got no locus standi to file the present suit, the suit has been filed by the plaintiff in collusion with defendant No.1 – Bachan Singh, plaintiff is estopped by his act and conduct from filing the present suit, suit is not maintainable in the present form, the suit has not been properly valued for the purposes of court fee and jurisdiction, defendant No.2 is the bonafide purchaser for consideration and without notice, he has purchased the land by obtaining possession of the land from defendant No.1 and is entitled to benefit of Section 41 of the Transfer of Property Act, also the alleged agreement of exchange dated 03.11.2002 has no value in the eyes of law and is inadmissible in evidence for want of registration.

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Defendant No.1 was not the absolute owner of land measuring 17 bighas 17 biswas bearing khasra No.2171/1831/618 and as such the question of giving such land to anybody by defendant No.1 does not arise. Defendant No.1 was the owner in possession of ½ share in the said khasra numbers, which he has sold to defendant No.2 vide registered sale deed dated 15.03.2004 for a sale consideration of ₹5,85,000/- and delivered the possession to him at the time of execution of sale deed and since then defendant No.2 is in possession of the same. Mutation No.5573 has also been sanctioned in favour of defendant No.2. The alleged agreement of exchange is a false document and has no value in the eyes of law. Other averments in plaint were denied and dismissal of suit was prayed for.

Plaintiff filed replication to the written statements reiterating the averments made in the plaint and controverting those made in the written statements.

On the basis of pleadings of parties, the Court of first instance framed following issues:

- “1. *Whether agreement of exchange was executed between the parties on 3.11.2002 and the plaintiff is now entitled for declaration as prayed for?OPP*
2. *Whether alleged agreement dated 3.11.2002 is a result of fraud, misrepresentation and forgery?OPD*
3. *Whether sale deed dated 15.3.2004 executed by*

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defendant No.1 in favour of defendant No.2 is illegal, null and void and is liable to be set-aside?OPP

4. *Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD*
5. *Whether plaintiff has no locus standi to file the present suit?OPD*
- 5A. *Whether defendant No.2 is bonafide purchaser for consideration? OPD*
6. *Relief.”*

After appreciating the evidence, the Court of first instance dismissed the suit vide impugned judgment and decree dated 20.09.2011. Feeling aggrieved, the plaintiffs preferred an appeal which has been dismissed by the lower Appellate Court vide judgment and decree dated 31.01.2013. Hence, this second appeal.

I have heard learned counsel for the appellants and perused the record.

Learned counsel for the appellants has referred to following substantial questions of law formulated in para No.7 of the grounds of appeal for consideration by this Court:

- (a) *Whether the Courts below have misread and misinterpreted the evidence brought on record?*
- (b) *Whether the judgments and decrees of the Courts below are based on conjectures and surmises?*
- (c) *Whether the judgments and decrees of the Courts below are judicially perverse and are liable to be set aside?*

- (d) *Whether the Courts below have failed to appreciate that under Section 92 of the Indian Evidence Act, 1872 oral evidence can be looked into contrary to the recitals made in agreement to exchange entered into between the parties?*
- (e) *Whether the Courts below failed to appreciate that under Section 52 of the Transfer of the Property Act, 1882 no plea of being a bonafide purchaser can be taken when the sale is hit by principle of lis pendens?*
- (f) *Whether Courts below could have decreed suit for possession on the basis of agreement to exchange dated 03.11.2002?*

Learned counsel for the appellants submitted that both the courts below have not properly appreciated the evidence and there is misreading of material evidence by the courts below. Learned counsel for the appellants contended that both the courts below have wrongly come to the conclusion that possession of the land in dispute was not delivered as per the agreement to exchange dated 03.11.2002. Courts below have fell in error in holding the respondent No.2 to be bona fide purchaser.

I have considered the contentions of learned counsel for the appellants.

Both the courts below have concurrently held that alleged agreement of exchange was never given effect. The khasra numbers which were agreed to be given by father of the appellants to respondent

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No.1 in pursuance of the exchange of his land, were still in possession of the appellants. The alleged exchange deed was never entered in the revenue record. Appellants have failed to prove that they are in possession of the suit land. It is rightly held that it is highly improbable to believe that respondent No.1 would have agreed to give 17 bighas 17 biswas of land by taking 14 bighas 1 biswa land from the father of the appellants, situated in the same village. Moreover, the attesting witness Jarnail Singh PW1, examined by the appellants, has admitted that alleged agreement has not been given effect to in the revenue record.

Learned counsel for the appellants has failed to show that findings recorded by the courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. Consequently, the concurrent findings recorded by the courts below do not warrant interference in this regular second appeal. No question of law, muchless substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine.

(Paramjeet Singh Dhaliwal)
Judge

February 25, 2016
R.S.