

RSA No.4685 of 2014 (O&M)

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

RSA No.4685 of 2014 (O&M)

Date of Decision: February 10, 2016

Chanan Singh

...Appellant

Versus

Navjeet Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Baltej Singh Sidhu, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (Oral):

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Malout, dated 26.04.2012, whereby, the suit for permanent injunction restraining the defendants from interfering into the peaceful possession of the plaintiff and from dispossessing him from the land as detailed in the head-note of the plaint, situated in revenue limits of Village Kandu Khera, Tehsil Malout, which was amended and converted into a suit for possession as it was asserted that the appellant-plaintiff has been dispossessed by the respondent-defendants on 09.11.2006 i.e. after filing the suit, has been dismissed, appeal against which preferred by the appellant-plaintiff dismissed by the Additional District Judge, Sri Muktsar Sahib, on 23.05.2014.

2. It is contention of the learned counsel for the appellant

that the appellant-plaintiff was in possession of the suit land and the revenue entries supporting the said assertion, have been placed on record. After filing of the suit on 06.06.2006, the appellant was dispossessed by the respondent-defendants on 09.11.2006, which forced the appellant to amend the suit and prayer to grant him possession of the suit land along with injunction. He contends that the findings as recorded by the Courts below that the respondent-defendants are in possession of the suit land since the year 1975 is not sustainable. His further contention is that a writing Ex-DW1/A which is asserted to be an exchange deed between father and the two brothers of appellant-plaintiff as one party with the respondent-defendants as the other party, is not a registered document and therefore, could not have been read in evidence or relied upon. The due execution of the said document has also not been proved. His further contention is that so far as the possession of the appellant-plaintiff is concerned, it is apparent that after the suit has been filed, Ex. D-1, which is an affidavit dated 09.06.2006, has been obtained from the appellant's two brothers, namely, Angrej Singh and Hardeep Singh, wherein, the execution of the writing dated 03.08.1975 (Ex.DW-1/A) and the delivery of possession to the respondent-defendants in the same year i.e. 1975 has been admitted. He contends that his two brothers have given this affidavit as they are not in good terms with the appellant and the same, thus, cannot be relied upon to deny the injunction as has been prayed for. Prayer

has been made for allowing the present appeal by setting aside the impugned judgments and decree and decreeing the suit of the appellant-plaintiff.

3. I have considered the submissions made by the learned counsel for the appellant and with his able assistance, have gone through the impugned judgments but find myself not in a position to accept his contentions.

4. The first assertion of the learned counsel for the appellant that the appellant-plaintiff has been dispossessed after the filing of the suit from the land in dispute and in support of this assertion, he has referred to the affidavit dated 09.06.2006 (Ex. D-1), which has been procured by the respondent-defendants from his two brothers to show his possession from the year 1975 and that there was no reason why the revenue entries were not got corrected in the light of the exchange deed (Ex.DW-1/A) since the year 1975, cannot be accepted in the light of the fact that the due execution of Ex.DW-1/A, the exchange deed, has been proved. When the said document when read alongwith the affidavit dated 09.06.2006 Ex.D-1, it is clear that the possession on the suit land is that of the respondent-defendants as in this exchange deed and in the affidavit it has been admitted that the possession has been handed over of the suit property to the respondent-defendants. Although presumption of truth is attached with the revenue records but it is rebuttable which the respondent-defendants have been able to do on the basis of the

above two referred documents i.e. Ex.DW-1/A and Ex.D-1. Merely because the revenue entries have not been changed according to the said exchange deed, would not mean that the appellant-plaintiff is in possession of the said property.

5. As regards the contention of the learned counsel for the appellant that the exchange deed dated 03.08.1975 (Ex.DW-1/A) is not admissible in evidence as it is not a registered deed, suffice it to say that as per the judgments of the Division Bench of this Court in **Sardara Singh & another Vs. Harbhajan Singh & others, 1974, PLJ, 341**, it has been held that Section 118 of the Transfer of Property Act, is not applicable to the State of Punjab and therefore, an oral exchange followed by delivery of possession and execution of memorandum of exchange is permissible which does not require registration. In the present case, the memorandum of exchange (Ex.DW-1/A) dated 03.08.1975 has been duly proved to have been executed and further the possession has also been proved to have been handed over to the respondent-defendants in the year 1975. The mandate of the statute and the requirements as laid down by the Division Bench of this Court has been fulfilled and therefore, this objection of the learned counsel for the appellant cannot be accepted. The findings as recorded by the Courts below cannot be faulted with.

6. A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on

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proper appreciation of the pleadings and the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

7. No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the appeal, the same stands dismissed.

CM No.10914-C of 2014

In view of the order passed in the main appeal, no order is required to be passed in the present application as the same has been rendered infructuous.

Disposed of as such.

February 10, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**