

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

RSA No.3668 of 2008 (O&M)

Date of decision : 09.10.2017

Mange Ram (deceased) through LRs

...Appellant

Versus

Narender Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Naveen Gupta, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

CM No.9215-C of 2017

Application is for disposal of an appeal qua respondent Nos.1 to 5 in terms of compromise deed dated 17.07.2017. A written compromise deed signed by respondent Nos.1 to 5 i.e. legal heirs of Lachhman has been annexed. One of the legal heir namely Narinder Sharma, who is identified by the plaintiff, is present in the Court and admit the correctness of the compromise deed.

In view thereof, appeal with respect to the rights of the legal heirs of Lachhman i.e. respondent Nos.1 to 5 is allowed in terms of compromise deed. Compromise deed shall be made part of the decree.

Application is allowed.

Main Case

The plaintiff is in Regular Second Appeal against the judgment of reversal.

The plaintiff had filed a suit for declaration with consequential relief of permanent injunction claiming that the plaintiff and defendants had exchanged the property way back in the year 1951-52. The defendants were owners of khasra No.319 (1 bigha and 4 biswa), whereas the plaintiff was owner in possession of land comprised in khasra No.331 min (1 bigha and 8 biswa). It was pleaded that the land was exchanged and land falling in khasra No.319 fell to the share of the plaintiff whereas land comprised in khasra No.331 went to the share of the defendants.

The defendants denied the exchange.

Learned trial Court after appreciating the evidence available on the file and after noticing that the revenue record supports the case of the plaintiff, decreed the suit. Learned trial Court noticed that the jamabandi for the year 1966-67 which is Ex.P5 on the file shows that the khasra No.331 is in possession of defendants namely Lachhman and Ram Kishan sons of Ram Chand on account of exchange whereas jamabandi for the year 1966-67 which is Ex.P6 on the file with respect to khasra No.319 shows that the plaintiff-Manga is in possession because of exchange. Learned trial Court further noticed the jamabandi for the year 1996-97 which proves that khasra No.319 is in possession of plaintiff-Manga Ram @ Mange Ram whereas land comprised in khasra No.331 is in possession of Lachhman and Ram Kishan-defendants in the suit. Taking into consideration the aforesaid evidence, the trial Court decreed the suit filed by the plaintiff.

The defendants filed the first appeal. Learned First Appellate Court accepted the appeal on the ground that no document of exchange has been produced on the file. The First Appellate Court laid stress on the fact that no evidence has been produced to prove the factum of the exchange in the year 1951-52.

I have heard the learned counsel for the parties at length and with their able assistance gone through the record of the case.

In my considered opinion, following substantial questions of law arise in the present case:-

1. Whether an oral exchange followed by transfer of possession was permissible in the State of Punjab and Haryana in the year 1951-52?
2. Whether the judgment passed by the First Appellate Court is a result of mis-reading and non-reading of the evidence?

1. Whether an oral exchange followed by transfer of possession was permissible in the State of Punjab and Haryana in the year 1951-52?:-

It is well settled that the oral exchange followed by transfer of possession was permissible in the erstwhile State of Punjab which now includes State of Haryana. This position has been consistently laid down by this Court in number of judgments. First judgment to this effect is titled as *Sardara Singh and another Vs. Harbhajan Singh and others, 1974 Punjab Law Journal 341*. This view was reiterated in the judgment reported as *1986 PLJ 113 Sewa Singh Vs. Joginder Singh and others*. More recently, this has also been reiterated by a Division Bench of this Court while deciding *CWP No.21312 of 2010 decided on 15.12.2011, Smt. Kamlesh Vs. Housing Board, Haryana, Panchkula and another*.

In view thereof, question No.1 is answered in favour of the appellant.

2. Whether the judgment passed by the First Appellate Court is a result of mis-reading and non-reading of the evidence?:-

Learned First Appellate Court has clearly overlooked the pleadings and the evidence led by the parties. It was never the case of the plaintiff that there was any exchange in writing. Learned First Appellate Court has accepted the appeal only on the ground that the exchange deed has not been produced. It is the case of the plaintiff that there was a oral exchange which was followed by transfer of possession. The factum of exchange is duly recorded in the revenue record. The jamabandi for the year 1966-67 Ex.P5 proves that the land comprised in khasra No.331 is in possession of the defendants although owned by the plaintiff. Whereas land comprised in khasra No.319 proves that the plaintiff-Manga is in possession because of exchange although the land is owned by the defendants. In the remarks column, it is clearly recorded that the possession is on account of exchange. The same position exists in the revenue record i.e., the jamabandi for the year 1996-97. The plaintiff has further produced on file copies of khasra girdawaries to prove their possession. Now even defendant No.1 while entering into a compromise has admitted the fact that there was a exchange between the parties in the year 1951-52.

Learned counsel for the respondents has vehemently argued that the date or the month of exchange has not been disclosed. He has further submitted that the land is a vacant land and, therefore, the pleadings of the plaintiff that a house has been constructed is erroneous. He has

further submitted that the plaintiff while appearing in the witness-box has submitted that the exchange had taken place with defendant No.1 i.e. Lachhman although Ram Kishan was also owner.

I have considered the submission of the learned counsel. No doubt, the exact date and month of the exchange has not been given, however, the date and month of the exchange would not be of much relevance particularly when the suit was filed in the year 2007. The revenue record consistently proves that the parties have exchanged their possession and in the revenue record, it is clearly recorded that the entry of possession has changed on account of exchange.

Next argument of the learned counsel is that the revenue record for the year 1951-52 does not support this fact. In the present case, entry of exchange is established from the revenue record of the year 1966-67 and 1996-97. The entries in the revenue record have a presumption of truth. The aforesaid presumption of truth has not been rebutted by the defendants.

Next submission of the learned counsel is that the plaintiff has failed to prove that he has constructed a house. Failure to prove construction of house is not material for the decision of the case. The plaintiff was required to prove that there was some oral exchange between the parties. The plaintiff has proved this fact by leading oral evidence as well as by proving the revenue record. In the year 1966-67, there was no dispute between the parties. In the remarks column, the factum of exchange is specifically recorded.

Still further, legal heirs of Lachhman as noticed in the beginning, has entered into a settlement with the plaintiff-appellant. In the

compromise deed, Lachhman admits that there was a exchange which again proves the case of the plaintiff.

It may further be noticed here that it is only defendant No.2 who is contesting the suit. Defendant No.2 himself has not stepped into the witness-box. Only his son has come into the witness-box. The exchange was with the defendant No.2. Once defendant No.2 has not appeared in the witness-box, adverse inference is required to be drawn against defendant No.2.

For the reasons recorded above, both questions of law as framed earlier are answered in favour of the appellant.

Appeal filed by the appellant is accepted.

Judgment and decree passed by the First Appellate Court is set aside and that of the trial Court is restored.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

09.10.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No