

**RSA No.3946 of 2011 (O & M) and
RSA No.3952 of 2011 (O & M)**

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

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RSA No.3946 of 2011 (O & M)
Date of Decision:22.12.2017

Yudhishter

...Appellant

Versus

Raj Kumar and others

...Respondents

RSA No.3952 of 2011 (O & M)

Yog Raj

...Appellant

Versus

Yudhishter and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjiv Gupta, Advocate
for the appellant.

Mr. Shailendra Jain, Senior Advocate with
Mr. Satyendra Chauhan, Advocate
for respondent No.1.

ANIL KSHETARPAL, J.(Oral)

CM No.16278-C-2017

Application is allowed.

Legal heirs of Yudhishter-appellant as mentioned in Para 2 of
the application are brought on record for the purpose of prosecuting this
appeal only.

Amended memo of parties is taken on record.

CM No.16279-C-2017

Exemption as prayed for is allowed.

CM No.16280-C-2017

Application under Order 41 Rule 27 of the Code of Civil Procedure is for permission to lead additional evidence. Following six documents are sought to be placed on the file:-

(i) application for sanction of mutation, (ii) application for correction of judgment and decree, (iii) khasra girdawari, (iv) khasra girdawari, (v) khasra girdawari, (vi) summoning order passed by the Sub Divisional Judicial Magistrate in a criminal complaint.

It may be noticed that the application for sanction of mutation is already part of the learned trial Court file. Appellant has only filed an application for correction in the judgment and decree dated 10.02.2009, however, no order has been filed. Although, it is pleaded that such application was dismissed. While deciding the main case, this aspect would be considered.

Other documents filed by the appellant for permission to lead in the application are not relevant for the purpose of deciding the controversy involved in the present litigation.

Main Cases

RSA Nos.3946 and 3952 of 2011 are being disposed of by a common judgment as two connected suits filed were disposed of by a consolidated judgment of the learned trial Court as well as learned First Appellate Court.

Plaintiffs are in the regular second appeals against the concurrent findings of fact arrived at by the Courts below.

One suit was filed by Yudhishter whereas second suit was filed

pleaded that the Civil Court judgment and decree dated 20.10.2002 passed by the Civil Judge (Senior Division), Fatehabad in Civil Suit No.202-C of 2002 tiled as 'Yudhishter etc. vs. Raj Kumar etc.' be declared illegal, null and void based upon fraud and misrepresentation. In the other suit filed by Yog Raj, it was pleaded that the parties are Hindus governed by Hindu Law in the matter of alienation and succession and the property being ancestral land, the judgment and decree dated 20.10.2002 acknowledging oral exchange suffered by Yudhishter, is wrong, illegal and not binding upon his rights.

Defendants contested both the suits pleading that the Civil Court judgment and decree dated 20.10.2002 acknowledging an oral exchange between the parties is in accordance with law and, therefore, binding between the parties.

Both the Courts below had dismissed both the suits filed by the respective plaintiffs after appreciation of evidence available on the file.

It may be noticed that Yudhishter-plaintiff along with his son Bal Krishan had filed a suit against Raj Kumar and Hardevi pleading that there was an oral exchange between the parties, which has been implemented upon and the parties have exchanged their respective possessions and hence a decree be passed for declaration that the plaintiffs have become owners of the land received in exchange and the defendants be declared owners of the land received by them in exchange. Plaintiff along with his son Bal Krishan filed an affidavit in support of the pleadings. The defendants in that suit admitted the claim of the plaintiffs. During the pendency of the aforesaid previous suit, plaintiff No.1 filed an application

both the parties appeared before the Court and made their statements on 26.09.2002. Thereafter, the Additional Civil Judge (Senior Division), Fatehabad passed a judgment and decree dated 26.10.2002.

Plaintiff-Yudhishter has challenged the aforesaid decree passed by the Civil Court on the ground of fraud. It has been pleaded that he has not given land measuring 106 kanals and 4 marlas. On the other hand, respondents have pleaded that in fact in the head note of the plaint there is some typographical mistake, although, the plaint was filed by the plaintiff/appellant-Yudhishter and the defendants have no objection to the correction of the same. Respondents have further drawn attention of the Court to the judgment passed by the Civil Court on 26.10.2002, wherein the Civil Court in Para 6 has clearly recorded that exchange is between the plaintiffs and the defendants with respect to the land measuring 106 kanals and 4 marlas i.e. plaintiffs have given land measuring 106 kanals, in lieu thereof they have received land measuring 106 kanals and 4 marlas.

Defendants have further pleaded that the plaintiffs had subsequently agreed to sell the land measuring 106 kanals and 4 marlas received in exchange in favour of the plaintiffs vide agreement to sell dated 11.11.2004, wherein it was specifically noticed that the plaintiffs have filed a suit challenging the decree as there is a typographical error, which the parties would get it corrected. It is further noticed in the agreement between the parties that they had already exchanged their possession and are in respective possession of the parcels of the land received in exchange. Plaintiffs refused to honour the aforesaid agreement to sell and suit for specific performance of agreement to sell filed by the defendants is pending

before the Courts below.

I have heard learned counsel for the parties at length and with their able assistance gone through the judgments and records of the Courts below.

Learned counsel for the appellant in both the appeals has submitted that no doubt an oral exchange is permissible in Haryana as Section 118 of the Transfer of Property Act has not been extended but since there was a document of exchange between the parties, therefore, such document of exchange would have no force of law unless it has been registered. He has further submitted that a fraud was played with the plaintiffs/appellants as the plaintiffs have not been given the equivalent land and there is an error in the decree passed. He has further submitted that the land in dispute is an ancestral property and the plaintiff- Yudhishter had no right to alienate the family property.

On the other hand, learned counsel for the respondents has submitted that no doubt there is a typographical error in the judgment and decree passed by the learned trial Court in the year 2002 but the same can be corrected by the Court as has been found by the Courts below and decree on that basis cannot be set aside. Learned counsel for the respondents has further submitted that in the year 2002 it was plaintiff No.1 and his son Bal Krishan, who had filed the suit and the typographical error can be corrected at any point of time and the respondents have no objection.

Learned counsel has further drawn attention of the Court to the subsequent agreement to sell executed by Yudhishter and his other son Bal Krishan, wherein the plaintiff and his son has agreed to sell this property to the defendants on the intervention of the Panchayat and the plaintiffs have

that after this agreement to sell even the grievance of the plaintiffs with regard to typographical error in the earlier judgment and decree of 2002 pails into in-significance.

It has been concurrently found by the Courts below that in fact, family of the plaintiffs have already taken possession of complete land measuring 106 kanals and 4 marlas. Courts have further found that the typographical error in the judgment can be got corrected by the plaintiffs by moving an appropriate application.

Learned counsel for the respondents during the course of argument has specifically stated that the respondents would have no objection to the correction being carried out.

Plaintiffs are alleged to have subsequently entered into an agreement to sell the land received in exchange with the defendants and received Rs.5,00,000/- as an earnest money. Therefore, the grievance of the plaintiffs, if any stand redressed. Yudhishter-plaintiff and his son Bal Krishan had filed a suit in the year 2002 they had also filed a supporting affidavit and appeared in the Court and made the statements. Now at this stage, the plaintiffs cannot be permitted to challenge the aforesaid Civil Court judgment and decree, which has been passed on the basis of admission made by the plaintiff and his son. In the affidavit filed along with the plaint, the plaintiffs have themselves given the correct particulars of the land, which has been exchanged. In Para Nos.1 and 2 of the plaint filed in previous suit, details of the land have been correctly given, however, in the head note, the share has wrongly been mentioned. Therefore, that small typographical error can easily be corrected by the learned trial Court

Learned counsel for the respondents has already made a statement that they would not object to the correction.

In the present case, the plaintiffs are challenging the Civil Court judgment and decree passed on 26.10.2002, which is not based upon any document of exchange. The decree is based upon an oral exchange, which is permissible in the State of Haryana. The decree passed by the Civil Court cannot be set aside on the ground that there was an agreement of exchange Ex.D-1 on the file. Once a decree for declaration has been passed on the basis of an oral exchange, which has been given effect to by the parties by exchanging the possession and acknowledging the exchange in a civil suit, the aforesaid decree cannot be set aside on the ground that there was some agreement of exchange, which required registration.

Learned counsel for the appellant(s) could not point out any error in the judgments passed by the Courts below while deciding the civil suit filed by Yog Raj, who had challenged the Civil Court judgment and decree on the ground that the property was ancestral and hence could not be alienated.

The application for additional evidence filed by the plaintiff in RSA No.3946 of 2011 is disposed of with liberty to the parties to move a fresh application for correction of the typographical error in the judgment and decree dated 26.10.2002.

Learned counsel for the respondents has specifically stated that the respondents shall not oppose the application for correction of typographical error. Even if the application for correction has already been dismissed as pleaded by the appellant in the application for additional evidence, however, as agreed to by learned counsel for the respondents a

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fresh application shall be maintainable and the Court would adjudicate upon the same without being prejudice by dismissal of the first application, if any.

In view thereof, there is no force in both the appeals filed by the plaintiffs/appellants against concurrent findings of fact.

Appeals are dismissed.

22.12.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No