

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

**RSA No.852 of 2013 (O&M)
Date of Order:12.12.2017**

Baldev Singh

..Appellant

Versus

Jagdev Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vijay Lath, Advocate,
for the appellant.

Mr. R.K.Singla, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

C.M.No.2336-C-2013

Prayer in this application is for condonation of delay of 31 days
in filing the appeal.

For reasons mentioned in the application, which is supported by
an affidavit, the delay of 31 days in filing the appeal is condoned.

Application is allowed.

RSA No.852 of 2013

Plaintiff-appellant is in regular second appeal against the
concurrent findings of fact arrived at by the Courts below.

Plaintiff had claimed that the alleged memorandum of exchange
dated 21.06.2004 executed between the parties is forged, fabricated and
result of fraud.

On the other hand, defendants contested the suit and pleaded
that pursuant to the exchange, possession of the respective land owned by

the parties changed hands 19 years before the memorandum of exchange in writing was executed. Defendants further filed a counter claim for mandatory injunction seeking direction from the Court to disburse the payment of Rs.2,00,000/- as per terms of the memorandum of exchange dated 21.06.2004.

Both the Courts below after appreciating the evidence available on the file dismissed the suit filed by the plaintiff as also the counter claim filed by the defendants. The Courts have noticed that the plaintiff has admitted his signatures on the memorandum of exchange dated 21.06.2004.

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

Learned counsel for the appellant has submitted that as per memorandum of exchange, if any of the party resiles therefrom, the other party was entitled to specifically enforce the same. He has further submitted that since in the counter claim, no relief of specific performance has been prayed for, therefore, the suit filed by the plaintiff was entitled to be decreed.

I have considered the submissions of learned counsel for the appellant.

The alleged memorandum of exchange is 21.06.2014. It is specifically recorded in the memorandum of exchange that parties had exchanged their possession of properties 19 years back. Thus, there was nothing left for specific performance of the agreement of exchange.

Still further it is not the case of the plaintiff that since the alleged memorandum of exchange has not been implemented, therefore the exchange has become infructuous. The case of the plaintiff is that the

alleged exchange deed being put forth by the defendants is forged, fabricated and result of fraud.

Learned counsel for the appellant could not dispute that the plaintiff failed to prove that the memorandum of exchange was result of forged, fabrication or fraud. Learned counsel for the appellant further did not dispute that the plaintiff while appearing in the witness box has admitted his signatures on the exchange deed.

Next submission of learned counsel for the appellant is that since the memorandum of exchange is not registered, therefore, even if Section 118 of the Transfer of Property Act is not applicable to the State of Punjab (as it has not been extended), still the Registration Act would apply and hence once the exchange deed is in writing, it is required to be registered.

I have considered the submission of learned counsel for the appellant.

Learned counsel for the respondents has read over the memorandum of exchange dated 21.06.2004. It is clear from the reading of the aforesaid memorandum of exchange that in fact the exchange between the parties had taken place 19 years before the memorandum of exchange was reduced into writing. Thus, the document was being reduced into writing only to record a past event.

It is also not in dispute that oral exchange in the State of Punjab is permitted. Such being the situation once the oral exchange had taken place 19 years before the memorandum of exchange deed was executed, there was no requirement of getting the memorandum of exchange registered under the Registration Act.

Taking into consideration the aforesaid facts, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

The regular second appeal is dismissed.

December 12, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No