

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

RSA No.336 of 2016 (O & M)

Date of Decision:-18.01.2017

Guranditta Singh and others

...Appellants

Versus

Baltej Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Tajinder Pal Singh Makkar, Advocate
for the appellants.

HARI PAL VERMA J.

The appellants/plaintiffs have filed the present regular second appeal against the judgment and decree dated 24.11.2015 passed by learned Additional District Judge, Sri Muktsar Sahib, whereby their appeal against the judgment and decree dated 21.10.2014 passed by learned Civil Judge (Junior Division), Gidderbaha, District Sri Muktsar Sahib was dismissed.

Briefly stated the appellants/plaintiffs have filed the suit for declaration to the effect that they are owners in possession in equal shares of land measuring 2 Kanal 11 Marlas detailed in the plaint, situated in Village Gidderbaha-I, Sri Muktsar Sahib and the defendants have no right, title or interest in the suit land. Prayer for permanent injunction restraining the defendants from alienating the suit land had also been made. The plaintiffs have broadly based their claim that they are owners in possession

of equal shares of land measuring 2 Kanal 11 Marlas on the basis of exchange deed dated 14.3.1995 between plaintiff No.1 and Nand Singh, father of defendant No.1-Baltej Singh and accordingly exchange deed dated 23.7.1992 was executed between plaintiff and Banta Singh, father of defendants No.2 and 3 and husband of defendant No.4 as described in the heading of plaint. Plaintiffs have claimed that they are close relatives of defendants No.1 to 4 as father of appellants/plaintiffs namely Gurdas Singh, father of defendant No.1 namely Nand Singh and father of defendants No.2 and 3 and husband of defendant No.4 were real brothers. All the aforesaid brothers had joint land measuring 38 Kanal 4 Marlas in equal shares, which was divided in two takks, one takk comprised of suit land 2 Kanal 11 Marlas bearing Khewat No.77, Khatauni No.108, rectangle No.104, Killa No.28(2-11) and the other takk was of 35 Kanal 13 Marlas, comprised Khewat No.77, Khatauni No.107, Kittas 7(35-13) known as Jand Wala Khet. Plaintiff No.1 and father of defendant No.1 exchanged their shares and Nand Singh relinquished his share in the land measuring 2 Kanal 11 Marlas to the extent of 17 Marlas in favour of plaintiff No.1 and plaintiff No.1 relinquished his share to the extent of 1 Kanal 9 Marlas out of total land measuring 35 Kanal 13 Marlas and exchange deed dated 14.3.1995 was scribed in that respect and the respective possession was transferred. Since then Nand Singh and defendant No.1 have no right, title or interest in the land measuring 2 Kanal 11 Marlas. Similarly, plaintiffs and Banta Singh father of defendants No.2 and 3 and husband of defendant No.4 exchanged their respective shares with each other and Banta Singh father

of defendants No.2, 3 and husband of defendant No.4 relinquished his share in the suit land to the extent of 17 Marlas in favour of plaintiffs and the plaintiffs relinquished their share to the extent of 01 Kanal 8 Marlas out of rectangle No.271, Killa No.22/1 Min (1-8) East in favour of Banta Singh and an exchange deed dated 23.7.1992 was scribed to that effect. Both exchange deeds were reduced into writing and were explained to the respective parties and were thumb marked by the parties as token of their correctness. Therefore, after the said exchange the plaintiffs became exclusive owners of the suit land and defendants had no concern whatsoever with the same. Since the parties are closely related, the factum of exchange deed was not got prepared by the Revenue Department. Moreover the plaintiffs are illeterate and rustic villagers and though the khasra girdawaris have been recorded in favour of plaintiffs, but no mutation has been sanctioned in their favour. It has further been alleged that as per terms and conditions of the exchange deed dated 23.7.1992, the mutation of exchange was to be got sanctioned upto 14.4.1993 and the defaulting party was to pay Rs.60,000/- to the other side. The parties were bound by the agreement of exchange. Similar conditions were laid down in the exchange deed/ agreement of exchange deed dated 14.3.1995 and the mutation was to be got sanctioned upto 14.4.1995. However, now taking advantages of the entries in the revenue record, defendants No.1 to 5 intend to take forcible possession of the suit land from the plaintiffs. They intend to alienate the suit land illegally, forcibly and without any right. They have also made futile attempts in this respect.

On notice having been issued, defendants appeared and filed the written statement. A joint written statement was filed by defendants No.1 to 5 contesting and controverting the allegations of the plaint. In the preliminary objection, issue of maintainability of the suit has been raised. It has been pleaded that neither such alleged exchange deeds dated 23.7.1992 and 14.3.1995 ever came into existence, nor the same ever reported to the Halqa Patwari as well, as there was no mutation on the basis of such exchange deed. On merit, it is pleaded that the suit land is a joint property of the parties and no such division as alleged in the plaint ever took place. The exchange deeds dated 23.7.1992 and 14.3.1995 as alleged in the plaint have been denied. The property described in Khewat No.77, Khatauni No.107 is in the joint possession of all the co-sharers. The relations between the parties have been admitted and it has further been stated that the partition proceedings between the parties are pending since 1998.

Respondent No.6 has filed his separate written statement taking preliminary objections that he is a bona fide purchaser for consideration and is protected under the Punjab Transfer of Property Act, therefore the suit is liable to be dismissed qua him. On merits, this defendant has pleaded that he along with defendant No.5 has already purchased land measuring 6 Kanal 4 Marlas from Hardev Singh son of Banta Singh and Hardev Kaur @ Lakhwinder daughter of Banta Singh for a total sale consideration of Rs.2,16,500/- vide sale deed wasika No.473 dated 16.5.2005. After going through the revenue record, no defect was found in the title of the vendors. Since the date of its purchase, he is in possession of the land and is a

bonafide purchaser for a valid consideration.

From the pleadings of the parties, the following issues were framed :-

- “1. Whether the plaintiffs are entitled to declaration as prayed for ? OPP
2. Whether the plaintiffs are entitled to permanent injunction as prayed for ? OPP
3. Whether the suit is not maintainable in the present form ? OPD (defendants No.1 to 5)
4. Whether the defendant No.6 is a bonafide purchaser ? OPD (defendant No.6).
5. Relief.”

Vide judgment dated 21.10.2014, learned Civil Judge (Junior Division), Gidderbaha had dismissed the suit observing therein that partition proceedings are pending and no mutation was ever sanctioned on the basis of agreement of exchange, which is essential. Both the exchange deeds as referred in the plaint are not reflected in the revenue record. The Court held that the co-sharers, who are in exclusive possession over any specific portion of joint land holding are entitled to retain their respective possession to the exclusion of other, till the partition is effected by metes and bounds. Vide order dated 5.4.2001, the Commissioner Ferozepur Division, Ferozepur has already dismissed the appeal filed by plaintiff Guraditta Singh etc. against the order dated 31.3.2000 of SDM-cum-Collector Gidderbaha, whereby suit property had already been partitioned. The plaintiff did not bring anything on record or any document to contend that the order passed by the Commissioner has been modified or set aside.

Since the plaintiff has failed to prove the exchange deed i.e. family settlement, there is no question of partition. Against the aforesaid judgment and decree dated 21.10.2014, the appellant/plaintiff has preferred an appeal before the learned Additional District Judge, Sri Muktsar Sahib. However, vide judgment and decree dated 24.11.2015, the appeal was also dismissed. It is in the aforesaid circumstances, the appellants have filed the present regular second appeal.

Learned counsel for the appellants has formulated the following substantial questions of law :-

- “(A) Whether both the learned Courts below have illegally ignored and failed to consider and appreciate the documentary evidence produced by the appellants/plaintiffs ?
- (B) Whether both the learned Courts below failed to appreciate that the agreements of exchange Ex.P-1 and P-3 are proved as per law ?
- (C) Whether both the learned Courts below failed to appreciate that the appellants/plaintiffs are in possession of the suit property and the same has also been admitted by DW-1 Baltej Singh in his cross-examination ?”

Learned counsel for the appellants has argued that apart from the fact that the Courts below have given wrong findings on issues No.1 to 3, the Courts have also failed to appreciate that it has been proved on record that Nand Singh, father of defendant No.1 gave 17 Marlas of land out of

rectangle No.104, Killa No.28/2-11 in exchange to Gurdas i.e. the father of the appellants/plaintiffs and agreement regarding exchange deed dated 14.3.1995 was reduced into writing. Nand Singh got 1 Kanal 9 Marlas of land from the share of Gurdas Singh out of land 35 Kanal 13 Marlas. It has wrongly been pleaded that the Courts below have failed to appreciate that agreement of exchange Ex.P1 and Ex.P3 have not been proved, whereas these were proved as per law.

I have heard learned counsel for the appellants/plaintiffs and find that there is no illegality or perversity in the impugned judgments and decrees passed by the Courts below.

Learned lower Appellate Court has rightly observed that the plaintiffs have set up their claim on the basis of exchange deeds Ex.P1 and Ex.P3, but surprisingly these exchange deeds have neither been carried out in the revenue record nor reflected in the same. Therefore, these documents carry no legal sanctity in the eyes of law, more particularly when no ownership has been transferred on the basis of these documents. Further, these deeds were allegedly executed between the parties in the years 1992 and 1995, but plaintiffs did not act on these deeds and remained silent for about 12 years without exhausting the right of filing the suit for declaration, which is otherwise now barred by limitation. Since the exchange deeds have not taken the place of legal documents, as the same were not entered in the revenue record and not all the co-sharers have participated in the execution of these documents, the validity and legality of these documents cannot be accepted. Once it is established that the alleged exchange deeds

have not been carried out in the legal manner, have not formed part of the revenue record and the parties remained in possession in the capacity of co-sharers, then it cannot be termed that the plaintiffs have entered into possession on the basis of the exchange deeds. Thus, the exchange deeds have not been acted upon. The plaintiffs are required to prove their own case but the same is lacking badly.

Accordingly, no substantial question of law arises in the present regular second appeal. It being a case of concurrent finding of facts recorded by the learned lower Appellate Court, this Court does not find any merit in the present appeal, hence, the same is hereby dismissed and judgment and decree passed by the learned lower Appellate Court dated 24.11.2015 does not warrant any interference.

January 18, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No