

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.6125 of 2016
Date of decision:2.5.2017**

Balbir Singh @ Bhola Singh

...Appellant

Versus

Harjit Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.M.S.Khaira, Sr. Advocate with
Ms.Charanjit Kaur, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Plaintiff is in the regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby the suit for possession was dismissed by the learned trial court, vide its impugned judgment and decree dated 1.12.2014 and first appeal of the plaintiff-appellant was also dismissed by the learned Additional District Judge vide impugned judgment and decree dated 18.7.2016.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of the impugned judgment, are that the plaintiff before the trial Court as it emerged out of his plaint, was that relying upon a document in the shape of exchange deed dated 22.8.1994 executed by Shri Jarnail Singh, predecessor in interest of respondents Nos.1 to 3, he claimed to have purchased 4 Marlas of land besides exchange of some other land. According to the plaintiff, respondents Nos.1 to 3 encroached upon the said property said to have been purchased by him and the failure of the said respondents

to pay any heed or to extend any positive response to the alleged requests of the appellant-plaintiff seeking vacation of the suit property, constrained the appellant-plaintiff to set the law into motion in the shape of a suit for possession. The contesting respondents on the other hand contended that Jarnail Singh was originally the owner of 28½ Marlas of land out of which he exchanged 10 Marlas of land with the plaintiff besides sale of another 10 Marlas of land by him in favour of Sukhdev Singh (respondent No.4) whereafter he was left with ownership rights only in respect of 8½ Marlas. Out of said remaining land, two Marlas of land was being used as passage while the remaining land was claimed to be in possession of the respondents. According to further version of the said respondents, although Jarnail Singh had made some commitment to sell the said remaining land to the plaintiffs, but the deal could not get materialized and the suit filed by the plaintiff was dubbed to be an attempt on his part to grab the property of the respondents as earlier also the appellant tried to take forcible possession of the suit property whereupon a suit for permanent injunction was filed by these respondents which culminated into a decree in their favour passed on 1.4.1999. With these submissions and claiming themselves to be the owners of the suit property, the respondents at last made a prayer for dismissal of the suit brought by the plaintiff (now appellant).

Having been put to notice, defendants No. 1 to 3 appeared and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial Court framed the following issues:-

- (1) Whether the plaintiff is entitled to get the relief of possession as prayed for? OPP.

(2) Whether the plaintiffs are stopped by their own act and conduct to file this suit? OPD.

(3) Whether the suit is not maintainable? OPD.

(4) Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiffs have failed to prove their case for want of sufficient evidence. Accordingly, suit of the plaintiffs for possession was dismissed by the learned trial Court, vide its impugned judgment and decree dated 1.12.2014. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned first appellate court by passing the impugned judgment and decree dated 18.7.2016. Hence this regular second appeal, at the hands of plaintiff No.1.

Heard learned senior counsel for the appellant.

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below would make it crystal clear that the entire case of the plaintiff-appellant was based on the exchange deed dated 22.8.1994 Ex.P1. It was the pleaded case of the plaintiffs that they exchanged the suit land with Jarnail Singh with the aid of exchange deed dated 22.8.1994 Ex.P1 and as a consequence thereof, the plaintiffs were put in actual physical possession of the suit land. They also pleaded that the plaintiff purchased the land measuring 4 marlas from Shri Jarnail Singh, who was the undisputed owner of the suit property.

It is also a matter of record that the alleged exchange deed

Ex.P1 was not a registered document in spite of the fact that property for the value of more than Rs.100/- was sought to be transferred by way of this exchange deed. It is also not pleaded or argued case on behalf of the appellant that exchange deed was the result of any family settlement because Jarnail Singh was not related to the plaintiffs. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Had the plaintiffs been put into actual possession as a consequence of the above-said exchange deed Ex.P1 dated 22.8.1994, there was neither any necessity nor any occasion for the plaintiffs to file the suit for possession. When learned senior counsel for the appellant was confronted with this factual aspect of the matter, he had no answer and rightly so, it being a matter of record. Then the stand was sought to be changed, pointing out that since the plaintiffs were forcibly dispossessed, they had to file the present suit for possession. When asked to explain as to when and how the plaintiffs came to be dispossessed and by whom, learned senior counsel for the appellant again had no answer, because there was no supporting material available on record to substantiate this plea raised on behalf of the appellant.

In fact, the pleadings and evidence of the appellant were not going hand in hand. Pleadings alone will not be sufficient to prove the case of the plaintiffs. In the instant appeal, there was no sufficient evidence and whatever evidence was available, it was contrary to the pleadings of the appellant-plaintiff. In such a situation, plaintiffs were bound to fail. That is what has been held by both the learned courts below, while recording

concurrent findings of facts. In this view of the matter, it can be safely concluded that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in para 6 of its impugned judgment, which deserve to be noticed here, read as under:-

“The rival submissions made before me have been considered by me in the light of respective pleadings and evidence as available on the record. Admittedly, the plaintiff-appellant in this case founded his claim upon an Exchange deed dated 22.8.1994 whereby besides exchange of 10 Marlas of land, the plaintiff-appellant also claimed to have purchased 4 Marlas of land from Shri Jarnail Singh, the admitted original owner of the suit property and who is now succeeded by respondents Nos.1 to 3. The said document has been proved on record as Ex.P1 a perusal whereof shows that although the document is dubbed as an Exchange deed, it is only Jarnail Singh who gave 10 Marlas of land to the appellant in exchange without there being any reference as to any land given by the appellant to Jarnail Singh. Simultaneously, there is a reference regarding sale of 4 Marlas of land by Jarnail Singh in favour of the appellant plaintiff at the rate of Rs.3700/- per marla i.e. for total consideration of Rs.14800/-. Thus, the value of the said allegedly purchased land being more than Rs.100/-, the transfer thereof could be made only by means of a registered document. Admittedly, the document Ex.P1 is not a registered document and this being the situation, the plaintiff-appellant cannot claim to have been clothed with any right, title or

interest in the property on the basis of such unregistered document and it is rather Jarnail Singh who continued to be the owner of said property for all intent and purposes. A reference in this regard can safely be made to a Judgment rendered by Hon'ble Supreme Court in the case of 'State of Gujrat Vs. Narges K.Panthaky' reported as 1996 Supreme Court Cases (1) Page 298 wherein it has been laid down that if a document requiring compulsory registration, is not registered, the original owner is not divested of right, title and interest and continues to be the owner of the properties mentioned in such a document. This being the situation and settled preposition of law, the plaintiff cannot claim himself to be the owner of the suit property on the basis of an unregistered document and thus cannot maintain the suit for possession of such property for want of any title therein in view of the law laid down by Hon'ble Supreme Court in the case of Avinash Kumar Chauhan (supra) and the Judgment rendered by our own Hon'ble High Court in the case of Chandan (supra). Accordingly, the finding of the learned trial court on issue No.1 is affirmed and upheld."

During the course of argument, learned senior counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in *Naryanan Rajendran Vs. Sarojini*

Lakshmy, 2009 (2) RCR (Civil) 286 and Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

2.5.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No