

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 05.05.2017

1. RSA No.2452 of 2017 (O&M)

Tarsem Singh

... Appellant

Vs.

Kashmir Singh and others

... Respondents

2. RSA No.2453 of 2017 (O&M)

Tarsem Singh

... Appellant

Vs.

Lakhbir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Hari Om Sharma, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

These two identical regular second appeals bearing RSA No.2452 of 2017 (Tarsem Singh Vs. Kashmir Singh and others) and RSA No.2453 of 2017 (Tarsem Singh Vs. Lakhbir Singh and others), are being disposed of vide this common order, with the consent of learned counsel for the appellant, as both these appeals are directed against the common impugned judgment and decree passed by the learned first appellate Court. However, for the facility of

reference, facts are being culled out from RSA No.2452 of 2017 (Tarsem Singh Vs. Kashmir Singh and others).

Feeling aggrieved against the impugned judgment and decree dated 07.03.2017 passed by the learned Additional District Judge, whereby two identical appeals of the defendants were allowed, setting aside the judgment and decree dated 01.10.2016 of the learned trial Court in a suit for declaration and permanent injunction, plaintiff has approached this Court by way of these two identical regular second appeals.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that defendant No.1 was real uncle of the plaintiff. Defendant No.1 was owner of land measuring 19 kanal 14 marlas. It had been averred that the plaintiff was owner of land measuring 07 kanal 17 marlas bearing khewat No.150 khatauni No.268 khasra No.36//4/2(1-5), 5(6-13) vide jamabandi for the year 2008-09, situated in the area of village Lehra Bet, Tehsil Zira. The land measuring 19 kanals 14 marlas, as detailed in the head note of the plaint, was of inferior quality and the land measuring 07 kanal 17 marlas, which was earlier owned by the plaintiff, was of good quality. Further, it had been averred that the plaintiff was the owner of land measuring 20 kanals 02 marlas bearing khewat No.197 khatauni No.345 khasra No.51 M//12(8-0), 8/1 (1-18), 9 (2-4), 19 (8-0) and also owner of land measuring 53 kanal 02 marlas bearing khewat No.150 khatauni No.268 khasra No.39 M//19/1(3-0), 19/2 (4-0), 20 (8-0), 21/1 (4-0), 21/2 (3-0), 22 (7-18), 51M//1(7-16), 2(9-4), 3(6-4) and the said land was adjoining with the land measuring 19 kanal 14 marlas and defendant No.1 Darbara Singh was owner of land bearing khasra No.23M//24(8-0), 25(5-12), 26 (1-0), 36M//4/1(5-17), which was adjoining

with the land measuring 07 kanal 17 marlas. About 20 years back, the plaintiff and defendant No.1 effected exchange of land and the land measuring 19 kanal 14 marlas, which was owned by defendant No.1, was given in exchange by defendant No.1 to the plaintiff and the actual possession of suit land was delivered to the plaintiff and the plaintiff was in possession of suit land as owner since then. Similarly, the plaintiff gave the land measuring 07 kanal 17 marlas, as fully detailed in para No.2 of the plaint, to defendant No.1 and delivered possession of same to him. It had been averred that defendant No.1 was in possession of said land measuring 07 kanal 17 marlas as owner. Further, it had been averred that the electric connection was also working in the land in dispute, which was owned by the plaintiff. The plaintiff requested the defendants to admit his claim, but they refused to do so.

Having been served in the suit, defendants No.1, 3 to 5 appeared and filed their joint written statement, taking more than one preliminary objections. Separate written statement was filed on behalf of defendant No.2. Plaintiff filed his replications. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled to declaration as prayed for? OPP
2. Whether the plaintiff is entitled to consequential relief of permanent injunction as prayed for? OPP
3. Whether the suit is not maintainable? OPD
4. Whether the plaintiff has no cause of action to file the present suit? OPD
5. Relief.

In order to substantiate their respective pleaded cases, both the parties produced their documentary as well as oral evidence. After going through the evidence brought on record and hearing learned counsel for the parties, learned trial Court came to the conclusion that plaintiff has proved his case. Accordingly, suit for declaration and permanent injunction filed by the plaintiff on the basis of an oral exchange of the suit land was decreed, vide judgment and decree dated 01.10.2016. Defendants filed two identical appeals. Both these appeals filed by different defendants came to be allowed by the learned first appellate Court, vide its common impugned judgment and decree dated 07.03.2017. Hence these two identical regular second appeals at the hands of plaintiff.

Heard learned counsel for the appellant in both these cases.

It is a matter of record and not in dispute that entire case of the plaintiff-appellant was based on an oral exchange. However, the plaintiff-appellant failed to prove the exchange of his land measuring 07 kanals 17 marlas with the land measuring 19 kanals 14 marlas owned by Darbara Singh-defendant No.1, who died during pendency of the suit and his legal representatives were brought on record. Plaintiff also failed to prove that his land was of superior quality, because of which Darbara Singh, original defendant No.1 might have agreed to exchange the land measuring 19 kanals 14 marlas owned by him with the land measuring 07 kanals 17 marlas owned by the plaintiff.

On the other hand, both the abovesaid pieces of land were found to be recorded in the revenue record as *chahi* land (irrigated land). Having said that, this Court feels no hesitation to conclude that the learned trial Court fell in

serious error of law, while decreeing the suit of the plaintiff without there being any cogent evidence. In such a situation, learned Additional District Judge was well within his jurisdiction to set aside the judgment and decree of the learned trial Court, by allowing two identical appeals of the defendants, because of which the impugned judgment and decree of the learned first appellate Court deserve to be upheld.

It is also pertinent to note here that defendant No.1 Darbara Singh transferred his land measuring 19 kanals 14 marlas, vide registered transfer deed dated 22.02.2011, in favour of his legal representatives. Consequent upon this registered transfer deed, mutation was also sanctioned, which has not even been challenged by the plaintiff-appellant, for the reasons best known to him. Under these undisputed facts and circumstances of the case, it can be safely concluded that there was, as a matter of fact, no exchange of the land between plaintiff and Darbara Singh-defendant No.1, thus, the learned Additional District Judge committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld, for this reason also.

Once the plaintiff failed to prove on record the exchange of suit land, on which his entire case was based, he was bound to fail, because he would not be entitled for a decree of declaration. So far as his prayer for permanent injunction was concerned, he could not have been granted the decree of injunction against the true owner. Ownership of Darbara Singh-defendant No.1 had never been in dispute. In this view of the matter, no fault can be found with the impugned judgment and decree passed by the learned first appellate Court and the same deserve to be upheld, for this reason as well.

The abovesaid view taken by this Court also finds support from the

following judgments of the Hon'ble Supreme Court as well as this Court: -

1. *Premji Ratansey Shah Vs. Union of India, 1994 (5) SCC 547 (SC).*
2. *Mahadeo Savlaram Shelke Vs. Puna Municipal Corpn., 1995 (3) SCC 33 (SC).*
3. *Sopan Sukhdeo Sable Vs. Assistant Charity Commissioner, 2004 (3) SCC 137 (SC).*
4. *Nazir Ali Mian Vs. Dokal Mian, 2010 (7) SCC 384 (SC).*
5. *Gurdial Singh Vs. Ajmer Singh, 1987 PLJ 124 (P&H).*
6. *Jagdish Vs. Mani Ram, 1997 (1) RCR (Civil) 278 (P&H).*
7. *Jit Singh Vs. Sardara Singh, 2000 (3) RCR (Civil) 566 (P&H).*
8. *Chand Singh (dead) through LRs Vs. Gangadhar, 2006 (1) RCR (Civil) 434 (P&H).*
9. *Nirbhai Singh Vs. Rajbir Singh and another, 2008 (3) RCR (Civil) 515 (P&H).*
10. *Jaswant Singh Vs. Chamkaur Singh, 2010 (45) RCR (Civil) 919 (P&H).*
11. *Subodh Chand Nayyar Vs. Veena @ Dr. Vinod Veena, 2011 (6) RCR (Civil) 367 (P&H).*
12. *Rajinder Pal Singh and others Vs. Amar Singh and another, 2016 (4) Law Herald 2846 (P&H).*
13. *RSA No.2952 of 2015 (Lal Chand Vs. Govind Lal @ Gobind Ram and others), decided on 20.03.2017.*

Before arriving at his judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the

case as well as the evidence available on record, in the correct perspective. The cogent and relevant findings recorded by the learned first appellate Court in para 14 of its impugned judgment, which deserve to be noticed here, read as under: -

“The main contention raised by learned counsel for the defendant is that the predecessor in interest of the defendant, namely, Darbara Singh had never exchanged his land measuring 19 kanals 14 marlas with the land of the plaintiff measuring 7 kanal 17 marlas, I fully agree with the contention raised by learned counsel for the defendant in this regard. On the other hand, the plaintiff has tried to justify the exchange of huge chunk of land measuring 19 kanals 14 marlas with his meager land of 7 kanal 17 marlas on the pretext that the land of the plaintiff was Chahi land and of superior quality, whereas, the land of the defendant was of inferior quality, but the plaintiff has failed to prove on record, rather the entire evidence on record reveals that the land of both the plaintiff as well as defendant are recorded as Chahi land and are situated in the same village. Thus, it can not be stated that the land of the plaintiff was much costly, then the land of the defendant. No such proof has been placed on record by the plaintiff to show the value of the land of the plaintiff in comparison to the land of the plaintiff. I agree with the contention of learned counsel for the defendant that no oral exchange had in fact been effected between the parties. It has come in evidence that since both the parties had cordial relations with each other and also that the land of the

defendant was situated near the other land of the plaintiff and the land of the plaintiff was situated near the other land of the defendant. So, both of them had made a mutual arrangement that they would continue cultivating the land of each other being convenient one. It has also come into evidence even at the time of filing the suit by the plaintiff, the revenue record regarding the land measuring 19 kanals 14 marlas was in favour of Darbara Singh , defendant No.1, which also goes a long way to reveal that in fact, no oral exchange of land between the parties took place. Moreover, it has also come into evidence that defendant No.1 Darbara Singh had transferred the land measuring 19 kanals 14 marlas in favour of other defendant/now appellant and respondents No.5 to 7 vide registered transfer deed dated 22.2.2011 and qua which mutation had also been sanctioned in their favour, whereas, the said mutation had not been challenged by the plaintiff. This also goes a long way in strengthening the claim of the defendant that in fact, no oral exchange had been effected between the parties. Thus, the learned lower court has ignored these vital facts on record. The learned trial court was erred in holding that plaintiff had exchanged his 7 kanal 17 marlas of land with 19 kanal 14 marlas of the land of the defendant. Hence, the impugned Judgment and decree passed by the learned trial court is set aside.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgment

and decree. He also could not refer to any question of law, much less substantial question of law, which is sine qua non for entertaining the 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 regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 both these appeals having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, both these regular second appeals stand dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

05.05.2017
vishnu

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