

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1855 of 1993 (O&M)

Date of Decision: December 05, 2018

Kapoor & others

...Appellants

Versus

Nafe Singh (since deceased) through L.Rs

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Ajay Ghangas, Advocate,
for the appellants.

Mr. Rajesh Bansal, Advocate,
for the respondent.

AMIT RAWAL, J.

The present Regular Second Appeal is directed against the concurrent findings of fact and law, whereby the suit at the instance of the respondent-plaintiff for permanent injunction, has been decreed and affirmed by the Lower Appellate Court.

Respondent-plaintiff sought the injunction on the premise that he was owner in possession of agricultural land measuring 33 kanals 18 marlas situated in Village Jawhra, Tehsil Gohana as per jamabandi for the year 1983-84, fully described in Para No.1 of the plaint. Out of the aforementioned land, there was Ghair measuring 1 kanal in the abadi-deh, which was purchased by the plaintiff vide separate sale deed and mutations bearing No.1307 and 1308 were sanctioned. The defendants with malafide intention had prepared a group to take forcible and illegal possession and make construction over the suit land. Despite repeated

requests, the defendants did not adhere to, therefore, the suit was filed.

Appellant-defendants opposed the suit and denied the ownership of the plaintiff on Killa No.177 (1-0). It was clarified that one Telu son of Abhe was owner of the agricultural land and a plot bearing Killa No.177, which was exchanged with defendant No.1 Kapoora son of Gokal vide exchange deed dated 24.08.1969 over and above the consideration of ₹ 1500/-. In lieu of the exchange, the appellant-defendants had taken the possession of the plot and, thus, plaintiff never remained in possession of the suit land.

On the basis of the aforementioned pleadings of the parties to the lis, the trial court framed the following issues:-

- “1. Whether the plaintiff is owner in possession of the agricultural land alongwith killa no.177 as alleged in para 1 of the plaint? OPP*
- 2. Whether the defendants have constructed KIJK wall shown in the attached site-plan during the pendency of the suit? OP Parties.*
- 3. Whether the suit is not maintainable in the present form? OPD*
- 4. Whether the defendants are owners in possession of the plot in dispute since 1969? OPD*
- 5. Whether the defts. got this plot in exchange vide exchange deed dated 24.8.69? OPD*
- 6. Whether the defendants are entitled to special costs U/s 75-A CPC? OPD*
- 7. Relief.”*

Plaintiff examined five witnesses and brought on record jamabandi Ex.PX, Aks-shijra Ex.PY, registered sale deeds Ex.PW1/A, Ex.PW1/B and Ex.PW1/C, whereas the defendants examined four witnesses and brought on record site plan Ex.D1 and closed the evidence. Even the

Local Commissioner was also appointed.

Mr. Ajay Ghangas, learned counsel appearing on behalf of the appellant-defendants submitted that both the courts below have abdicated in not appreciating the fact that appellant-defendant No.1 in lieu of the exchange, referred to above, was put into possession. Factum of the exchange has been proved through the testimony of attesting witness. Non-mentioning of the exchange deed in the revenue record cannot be a ground to injunct the defendants as by necessary implication, much less act and conduct, even the oral exchange is permissible in law.

Per contra, Mr. Rajesh Bansal, learned counsel for the respondent-plaintiff submitted that in pursuance of the order of the trial court, it was found that the defendants had attempted to take forcible possession by raising wall which has been ordered to be removed. Revenue record did not reflect any exchange deed nor Telu was examined. The concurrent findings cannot be interfered with unless and until there is gross illegality or perversity and, thus, prayed for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Ghangas, for, appellant-defendants have miserably failed to prove the exchange deed. Bald statement of the witness regarding factum of the exchange cannot be a sufficient ground for establishing the exchange as the revenue record did not reflect any entry. The suit was filed in 1986, whereas the exchange alleged to have been executed in 1969. No effort was made by the appellant-defendants to get the document registered, thus, the story coined has not been proved by direct and cogent evidence.

The injunction granted cannot be, thus, faulted with. No ground for

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interference is made out, much involvement of any substantial question of law. The judgments and decrees cannot be said to be suffering from from any illegality or perversity. Resultantly, the appeal is dismissed.

December 05, 2018
ramesh

(AMIT RAWAL)
JUDGE

**Whether speaking/reasoned
Whether Reportable:**

Yes/No
Yes/No