

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101+355

RSA No.1882 of 1989 (O&M)

Date of decision: 24.01.2018

Natha Singh

..... Appellant

Versus

Kartar Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. S.K. Jain, Advocate
for the appellant.

None for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant is in appeal against the judgment passed by the learned Additional District Judge, Rohtak decreeing the suit filed by the plaintiff for declaration and permanent injunction. The plaintiff was owner in possession of half share of land measuring 2 kanals and 2 marlas which comes to one kanal and one marla. The plaintiff exchanged half share of his one kanal and one marla i.e. 10½ marla with the defendant. A registered exchange deed was executed on 15.10.1984. The exchange was with regard to another plot of the defendant of the same size. However, later on the defendant started interfering in the possession of the plaintiff. The plaintiff filed a suit for possession which was decreed on 14.2.1984. In first appeal, the suit was dismissed on a technical ground that the plaintiff has not proved his possession, therefore, his suit is not maintainable.

Learned First Appellate Court upheld the finding of the trial

Court with regard to the validity of the exchange deed. The learned First

Appellate Court further held that the parties would remain bound by the exchange deed. The defendant's challenge to the validity of the exchange deed was rejected. Operative part of the judgment passed by the learned First Appellate Court on 02.03.1985 reads as under:-

“Para No.7:

..... His only submission is that the alleged exchange is illegal and not binding on the appellants-defendants because possession was never transferred as a result of this exchange. I, however, do not find any merit in this argument. The exchange-deed cannot be held to be illegal or not binding on the parties, simply because possession of the plot was not transferred.....”

Observation in para No.8.

“..... I hold that the parties are bound by the exchange-deed Ex.P-1, executed by them. But the plaintiff's suit for permanent injunction is not maintainable because he has failed to prove if he ever got possession of the plot as regards which he seeks decree for permanent injunction.”

Thereafter, the plaintiff filed a fresh suit for declaration and possession. The trial Court dismissed the suit on the ground that the exchange deed has not been acted upon. Learned First Appellate Court has reversed the finding and has held that the plaintiff has become owner of the property pursuant to the exchange deed dated 15.10.1984.

Learned counsel for the appellant has vehemently argued that since the previous suit was dismissed, therefore, the finding arrived in the previous suit would not operate as res judicata. No doubt, the previous suit was dismissed and it would not operate as res judicata. However, the finding arrived at by the Court would be a piece of evidence in a subsequent suit. The existence of the registered exchange deed is not being disputed. Once the property has been exchanged and the deed has been

registered, the defendant-appellant cannot be permitted to resile therefrom.

In view thereof, there is no scope for interference in the order passed by the learned First Appellate Court.

Appeal is dismissed.

24.01.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No