

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

RSA No.1234 of 1994 (O&M)

Date of Order: 14.03.2018

Hari Ram and another

..Appellants

Versus

Parkash Ram

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gurcharan Dass, Advocate,
for the appellants.

Mr. Zorawar Singh Chauhan, Advocate,
for the respondent.

ANIL KSHETARPAL, J.
C.M.No.3563-C-2018

Prayer in this application is for bringing on record the legal representatives of Hari Ram, appellant no.1.

For the reasons mentioned in the application, which is supported by an affidavit, the application is allowed, subject to all just exceptions. The legal representatives mentioned in paragraph 3 of the application are impleaded as appellants for the purpose of prosecuting this appeal only.

The amended memorandum of parties is taken on record.

MAIN

Defendants-appellants are in the regular second appeal against the judgments passed by both the courts below. In fact the trial court had partly decreed the suit except the property under exchange whereas the first

appellate court in an appeal filed by the plaintiff decreed the suit in toto.

Plaintiff claims that he had purchased the property through registered sale deed dated 18.05.1987 from defendant no.1 Dass Ram and, therefore, he is owner in possession of the property i.e. 5 marlas. Defendant no.2 Hari Ram claims that in fact there was an oral exchange between defendants no.1 and 2 and hence property measuring 2½ marlas was exchanged out of the suit property. Defendant no.2 became owner of the same pursuant to the aforesaid exchanged.

On appreciation of the evidence available on the file, learned trial court partly decreed the suit filed by the plaintiff except plot measuring 15'x44'.

Only plaintiff filed the first appeal. Learned first appellate court after re-appreciating the evidence available on the file, accepted the appeal and decreed the suit filed by the plaintiff.

Learned counsel for the appellants has proposed following substantial questions of law, which are extracted as under:-

- “1. *Whether exclusion of documentary evidence of contents of Ex.D1 by the ld. Addl. District Judge about the factum of oral exchange of land on the grounds mentioned in judgment dated 4.4.1994 is not contrary to the provisions of Sections 63, 64, 65 & 91 of the Evidence Act?*
2. *Whether the appellants are excluded from the bar of Section 118 of the Transfer of Property Act?*
3. *Whether the findings recorded by the ld. Lower Appellate Court are based on misreading of evidence on*

record?”

It is not in dispute that defendant no.2-appellant had claimed that the earlier exchange between the parties was subsequently reduced into writing by way of memorandum of exchange written on 28.06.1970. The original memorandum of exchange or its photocopy has not been produced. Defendant after seeking permission for leading secondary evidence, produced on file extract of the register of the scribe. Learned counsel for the appellant has read over the aforesaid extract. From the reading of the extract, it is clear that there is no reference to any previous exchange between the parties. The deed of exchange, if any, is in presentie. Such being the position, the exchange deed once reduced into writing in presentie was required to be registered. In the present case, the only defence of the appellant-Defendant no.2 is that he is owner of the property pursuant to the exchange. Once the aforesaid exchange is not permitted under the law without a registered document, the entire defence of the defendant no.2 falls on the ground.

At the cost of repetition, it may be noticed that a careful reading of the extract clearly proves that there is no reference to the oral exchange between the parties prior in time before the execution of the writing and the writing executed is in presentie. Learned first appellate court has further noticed that the evidence led by the defendants on the question of oral exchange, is discrepant. The witnesses are not in unison above the time when the exchange took place.

In view thereof, in the considered opinion of this Court, the questions of law proposed by learned counsel for the appellant would not arise.

Hence, the regular second appeal is dismissed.

March 14, 2018
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(ANIL KSHETARPAL)
JUDGE

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