

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.745 of 2011 (O&M)

Date of Decision: February 19, 2018

Satender

...Appellant

Versus

Ganga & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.M.L.Sharma, Advocate,
for the appellant.

Mr.Shailendra Jain, Senior Advocate with
Mr.Satyendra Chauhan, Advocate &
Mr.Vikrant Rana, advocate,
for respondents No.1 to 15.

AMIT RAWAL, J. (Oral)

Appellant-defendant is in Regular Second Appeal against the concurrent findings of fact, whereby the suit of the respondent-plaintiffs for granting them declaration of ownership and permanent injunction restraining the defendant not to sell the land in dispute, has been decreed by the trial Court and upheld by the Lower Appellate Court.

The facts, which emanated from the pleadings of the parties, are that respondent-plaintiffs instituted the aforementioned suit pleading therein that in the year 1959-60, Ram Chander, their predecessor-in-interest and that of defendants No.2 to 5, had orally exchanged 4 bighas 18 biswas of land being ½ share of total land measuring 9 bighas 16 biswas comprised of Khasra Nos.599 (0-2), 653 (2-8), 645 (1-10), 658 (2-0), 673 (2-11) and 652 (1-5), situated in the revenue estate of Village Shikohpur, Tehsil and

District Gurgaon with the agricultural land measuring 14 bighas 14 biswas, detail of which has been given in Para 2 of the plaint situated in the same village owned by Badlu, predecessor-in-interest of defendant No.1. By virtue of the aforementioned oral exchange, Ram Chander became owner of the suit land while said Bablu owner of the land as per details given in Para 2 of the plaint. Both the parties continued to enjoy the possession, which was delivered at that time.

Out of land measuring 4 bighas 18 biswas received in exchange, land measuring 1 bigha 4 biswas was acquired by the Haryana Government for construction of a road and the remaining land measuring 3 bighas 14 biswas was sold to one Mangal Singh son of Ami Chand vide registered sale deed dated 18.6.1962 (Ex.PW3/A) for a valuable consideration. The mutation qua the oral exchange could not be recorded in the revenue record and taking advantage of the same, the appellant-defendant intended to sell the land which was given in exchange to the respondent-plaintiffs. It is in this backdrop of the matter, the suit aforementioned was filed.

The suit was contested by the appellant-defendant with regard to the maintainability, limitation, jurisdiction and stated that oral exchange was not recorded in the jamabandi and, therefore, could not be entered into as it required registration, for, the value of the land was more than ₹100/-. It was also pleaded that the plaintiffs had no concern with the suit land as mutation No.644 was not only incorrect but was not binding upon him. However, the mutation was set-aside by the Assistant Collector Ist Grade and in appeal, the order of the Assistant Collector was set-aside and the matter was pending before the Commissioner and, therefore, sought stay of

the proceedings as per Section 10 of the Civil Procedure Code.

Since both the parties were at variance, the trial Court framed the following issues:-

1. *Whether the plaintiffs and defendants No.2 to 5 are the owners in possession of the suit land mentioned in para No.1 to the plaint by way of oral exchange took place between the predecessor of plaintiffs and defendants No.2 to 5 Ram Chand, on one hand and Badlu son of Ballu on the other hand by mutation No.827?*
2. *Whether Badlu son of Ballu became the owner in possession of the land mentioned in para No.2 of the plaint?*
OPP
3. *Whether Badlu had sold the land measuring 3 Bighas 4 Biswas out of the land mentioned in para No.2 of the plaint to Mangal Singh son of Ami Chand resident of village Shikohpur vide sale deed dated 18.06.1962 and rest of the land had been acquired by the Government for construction of the road after the said oral exchange? OPP*
4. *Whether the suit is not maintainable in the present form as the plaintiffs are neither owners nor in possession of the suit land? OPD*
5. *Whether the plaintiffs have no locus standi to file the present suit? OPD*
6. *Whether the plaintiffs are estopped from filing the present suit by their own act, conduct and acquiescence? OPD*
7. *Whether the suit is not within limitation? OPD*
8. *Whether the civil court has no jurisdiction to try the present suit? OPD*
9. *Relief.*

The respondent-plaintiffs, in support of their case, examined PW-1 Naveen Gupta, DRK, Gurgaon, PW-2 Naresh Kumar Clerk to Shri V.K.Maheshwari, Advocate, PW-3 Prem Lata Clerk, Registrar Office, Gurgaon, PW-4 Narinder Singh and PW-5 B.P.Jhangra Advocate and also

tendered into evidence following documents:-

- “1) *Jamabandi for the year 1965-66, Ex.P1*
- 2) *Ex.P2 Jamabandi for the year 1970-71*
- 3) *Ex.P3 Jamabandi for the year 1970-71*
- 4) *Ex.P4 Jamabandi for the year 1975-76*
- 5) *Ex.P5 Jamabandi for the year 1980-81*
- 6) *Ex.P6 Jamabandi for the year 1985-86*
- 7) *Ex.P7 Jamabandi for the year 1965-66*
- 8) *Ex.P8 Jamabandi for the year 1970-71*
- 9) *Ex.P9 Jamabandi for the year 1975-76*
- 10) *Ex.P10 Jamabandi for the year 1980-81*
- 11) *Ex.P11 Jamabandi for the year 1985-86*
- 12) *Ex.P12 Jamabandi for the year 1985-86*
- 13) *Ex.P13 site plan Ex.P13*
- 14) *Ex.P14 another site plan*
- 15) *Ex.P15 copy of mutation No.827*
- 16) *Ex.P16 copy of mutation No.828*
- 17) *Ex.P17 copy of mutation No.857*
- 18) *Ex.P18 copy of mutation No.858*
- 19) *Ex.P19 copy of mutation No.905*
- 20) *Ex.P20 copy of mutation No.1176*
- 21) *Ex.P21 copy of mutation No.1131*
- 22) *Ex.P22 copy of mutation No.1407*
- 23) *Ex.P23 copy of mutation No.1414*
- 24) *Ex.P24 copy of mutation No.1415*
- 25) *Ex.P25 copy of mutation No.1422*
- 26) *Ex.P26 copy of mutation No.1436*
- 27) *Ex.P27 copy of Khasra Girdawari Kharif 1971 to Rabi 1995*
- 28) *Ex.P28 copy of Khasra Girdawari 1994 to 1999*
- 29) *Ex.P29 copy of Khasra Girdawari 1994 to 04*
- 30) *Ex.P30 Certified copy of order in suit No.890*
- 31) *Ex.P31 certified copy of order of Collector Gurgaon in appeal No.3/Collector/Mutation decided on 29.11.99 with certified copy of mutation no.827.*
- 32) *Ex.P32 Certified copy of order dated 6.12.2001 of Collector, Gurgaon.*
- 33) *Ex.P33 application regarding verification of jamabandi.*
- 34) *Ex.PW3/A sale deed*
- 35) *Ex.PW5/A copy of plaint in suit No.890*
- 36) *Ex.Pw2/A certified copy of W.S.*

Appellant-defendant despite availing several opportunities, did not lead any evidence and the evidence was closed by order of the Court on 14.6.2005. The trial Court decreed the suit and the appeal laid by the appellant-defendant was also dismissed by upholding the judgment and

decree of the trial Court.

Mr.M.L.Sharma, learned counsel representing the appellant-defendant submits that the oral exchange was not recorded in the jamabandi. The respondent-plaintiffs have not been able to prove the possession and, therefore, oral exchange, as per the provisions of Section 118 of the Transfer of Property Act, was not admissible in evidence for want of registration as per Section 49 of the Registration Act. This aspect was required to be looked into by the Courts below, therefore, there is illegality and perversity. In support of his contention, relied upon the ratio decidendi culled out by the single bench of this Court in **Satyawan and others Versus Raghbir, 2002 (1) PLJ 448**. He does not dispute the pleadings, as noticed above.

Per contra, Mr.Shailendra Jain, learned Senior Counsel assisted by Mr.Satyendra Chauhan, Advocate, representing respondents No.1 to 15 submits that the oral exchange has been proved to the hilt, for, the appellant-defendant in pursuance to the acquisition of the land by the Land Acquisition Collector, received the compensation which was not objected to by the respondent-plaintiffs. Had there been a dispute with regard to the exchange, he would have definitely raised the dispute. Even rest of the land had already been sold vide registered sale deed Ex.PW3/A. If the argument of Mr.Sharma is to be accepted, even then the registered sale deed executed by him was also nonest in the eyes of law as he did not derive any title or interest owing to the oral exchange.

As regards the applicability of the oral exchange, in support of his contention, Mr.Jain has relied upon the ratio decidendi culled out in **Kishori Lal Versus Babu Ram etc., 2003 (1) R.C.R. (Civil) 807 and**

Randhir Singh Versus Ranjit Singh, 2011 (2) R.C.R. (Civil) 246 to contend that the oral exchange followed by possession is a document of exchange which does not require any compulsory registration as per the provisions of Section 49 of the Registration Act and, thus, urges this Court for dismissal of the appeal by upholding the concurrent findings.

I have heard the learned counsel for the parties and appraised the paper book.

The observations rendered in **Satyawan's case (supra)**, relied upon by Mr.Sharma, read thus:-

“24. It was submitted that there is no difference between exchange and sale. Except that, in sale, title is transferred from the vendor to the vendee in consideration for price paid or promised to be paid. In exchange, the property of “X” is exchanged by “A” with property “Y” belonging to “B”. In this manner, the property is received in exchange of property. There is transfer of ownership of one property for the ownership of the other. It was submitted that prior to when decree dated 20.10.1992 was not passed, there was no title of “A” in property “Y” and there was no title of “B” in property “X”. It was submitted that for the first time, the right was created in immovable property by decree and, therefore, that decree required registration. It was submitted that if there was no pre-existing right in the property worth more than Rs.100/- and the right was created in the immovable property for the first time by virtue of decree, that decree would require registration. In my opinion, oral exchange was not permissible in view of the amendment of Section 49 of the Registration Act brought about by Act No.21 of 1929, which by inserting in Section 49 of the Registration Act the words “or by any provision of the Transfer of Property Act, 1882” has made it clear that the documents of which registration is necessary under the Transfer of Property Act but not under the

Registration Act falls within the scope of Section 49 of the Registration Act and if not registered are not admissible as evidence of any transaction affecting any immovable property comprised therein, and do not affect any such immovable property. Transaction by exchange which required to be affected through registered instrument if it was to affect any immovable property worth Rs.100/- or more.

25. Learned counsel for the respondent submitted that the parties had exchanged possessions through exchange long ago and it was only in Civil Suit No.959 of 1992 when the exchange was recognised. It was submitted that after such a long lapse of time, parties should not be displaced. It will be difficult to put them in the same position in which they were prior to when this transaction of exchange had not taken place. Be that as it may, when there was no valid exchange, the transaction of exchange has to fall and it has to be set aside.”

With all humility, I intend to differ with the findings rendered by the Courts below as the exchange had taken before filing of the suit. The provisions of Section 118 of the Transfer of Property Act were not applicable to the erstwhile State of Punjab, therefore, it did not require any registration. The factum of the sale deed and receipt of the benefit of the compensation, in view of the land having acquired, has not been disputed by the appellant-defendant in any of the proceedings, which have been proved through documentary evidence on record.

I am of the view that the findings rendered by the Courts below do not enable me to form a different opinion, for, if the argument of Mr.Sharma is accepted that it is the sale deed of remaining piece of land which had fallen to his client's share by way of exchange, even then he had no title.

For the reasons stated above, no ground for interference is

made out, much less any substantial question of law. Resultantly, the appeal is dismissed.

February 19, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No