

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

RSA No.1739 of 2016 (O&M)

Date of Decision.14.11.2018

Harjinder Singh

.....Appellant

Vs

Kulwant Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. V.K. Sandhir, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff has not been successful in seeking possession in respect of 1/3rd share out of land measuring 12 kanals 15 marlas i.e. 4 kanals 5 marlas. It was admitted that estate of one Rajwinder Kaur daughter of Sadhu Singh, on her demise, devolved upon Balbir Kaur, for, she died virgin. The defendants forcibly entered into land on the premise that the same had been taken in exchange and therefore, filed the suit for possession as the exchange was never executed.

The aforementioned suit was opposed on the premise that possession of the respective exchanged land between the parties was duly transferred to each other and they had been in possession since long. Even mutation of exchange was sanctioned on 22.01.2001 in favour of Mukhtiar Singh.

The plaintiff examined two witnesses and brought on record application Ex.P1 and its endorsement Ex.P2, copy of jamabandi for the year 2003-04 Ex.P4 and for the 2005-06 Ex.P3. Defendants brought on record Ex.D1 to D11 and examined four witnesses.

On preponderance of evidence, the Court relying upon the

exchange deed, declined the relief as sought. The appeal laid before the lower Appellate Court was also dismissed.

Mr. Sandhir, learned counsel appearing on behalf of the appellant submitted that exchange was never reflected in the revenue record as the alleged mutation does not confer any right, thus, possession of the defendant was unauthorized. The Courts below ought to have decreed the suit. Exchange was neither signed or thumb marked by the plaintiff. Report of the expert has also not been taken into consideration, thus, there is gross illegality and perversity.

I am afraid aforementioned argument of Mr. Sandhir is not sustainable, for, regarding exchange, mutation had been sanctioned in the year 2001. No explanation has come forward to challenge the same in the year 2006, once parties in lieu of exchange have been enjoying their respective possession. It was clear cut case of a mala fide or greed and rightly so rejected. It is common practice that the expert bows to the line of party, who hires it. It was not perfect science unless and until both the parties agreed to get the signature or thumb impression examined from forensic science laboratory.

As an upshot of my finding, I do not find any illegality and perversity in the concurrent finding of fact rendered by both the Court below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 14, 2018
Pankaj*

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No