

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

119

RSA No.4357 of 2016 (O&M)

Date of decision: 04.04.2018

Rohit Verma

..... Appellant

Versus

S.P. Gupta and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. V.K. Jindal, Sr. Advocate with
Mr. Gopal Soni, Advocate
for the appellant.

Mr. V.K. Jain, Sr. Advocate with
Mr. Ravi Kadian, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

CM-11403-C-2016

Prayer in the application is for permission to lead additional evidence so as to call Patwari (revenue official) of the area along with the record of Akshazra. The application shall be discussed and decided with the main case.

Main Case

Plaintiff-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Dispute in the present case is with regard to exchange of land between the plaintiff and defendant No.1. Both the Courts after examining the evidence have found that the memorandum of understanding dated 15.12.2007 has not been acted upon. Still further, the memorandum of

understanding is in fact deed of exchange and since such deed of exchange is unregistered, therefore, not admissible in evidence. The Courts have further found that there was another pre-condition to the deed of exchange as contained in Clause VI, which has not been fulfilled. The Courts have further noticed that the plaintiff admit that he is not in possession of the property which was exchanged.

This Court has heard learned senior counsels for the parties and with their able assistance gone through the judgments passed by the Courts below and the record.

The memorandum of understanding is Ex.PW-3/1 on the file which is extracted as under:-

“MEMORANDUM OF UNDERSTANDING

- 1. That Shri B.R. Verma, S/o Shri Kesho Ram, R/o 2148, Sector 27-C, Chandigarh, duly Authorized by Shri Rohit Verma, S/o Shri B.R. Verma, R/o 2148, Sector 27-C, Chandigarh. (Hereinafter referred to as Party of 1st Part).*
- 2. Whereas Party of 1st Party is Absolute Owner of Khewat / Khatauni No.381/468 Khasra Nos.10//16/1, Agriculture Land at Village Mauli, District Panchkula, Haryana.*
- 3. That Shri S.P. Gupta, S/o Banu Mal, R/o 610, Sector 18-B, Chandigarh, is Authorized by the Owners (Hereinafter referred to as Party of 2nd Part) of Khewat/Khatauni No.85/118 Khasra No.30//10/2, Agriculture Land at Village Tabar, District Panchkula, Haryana.*
- 4. Both Parties have Mutually Agreed, to Exchange aforesaid (1K – 0M) Mauli Land with (1K – 0M) of Tabar Land.*
- 5. That After Aforesaid Exchange Party of 1st Part will be Holding (1K – 0M) in Khasra Nos.30//10/2 at Village Tabar, and Party of 2nd Part will be Holding (1K–0M) in Khasra No.10//16/1 at Village Mauli.*
- 6. This agreement is Integral Part of Exchange of Tabar Land : 29//521/412 (Sides 14 Karam and 13 Karam and Width*

20 Karam) and 29//521/312 (Sides 13 Karam and 9 Karam and Width 20 Karam), which is being purchased by Party of the 1st Part.

7. It has been Agreed between the Parties of 1st and 2nd Part to meanwhile Permit Party of 1st Part to use Tabar Land of Party of the 2nd Party for passage and Permit Party of 2nd Party to use Mauli Land of 1st Party for Passage.

*(B.R. Verma)
Duly Authorized by
Rohit Verma
Owner of Mauli Land*

*(S.P. Gupta)
Duly Authorized by
Owners of Tabar Land*

Dated : 15.12.2007

Witness 1 :

Witness 2 : ”

Sh. B.R. Verma, had signed on behalf of Rohit Verma. Sh. S.P. Gupta had signed on behalf of defendant No.2, which is a limited company. A reading of the memorandum of understanding reproduced above prove that through this document exchange of immovable property is sought to be carried out. In the considered opinion of this Court, such document is not admissible in evidence being unregistered. No doubt, in the State of Haryana, oral exchange is permissible, however, once a deed of exchange is reduced into writing, it is required to be compulsory registered as per Section 17 of the Registration Act, 1908. Still further, Clause VI of the memorandum of understanding provide that it is an integral part of the memorandum of understanding. Both the Courts have concurrently found that as provided Clause VI has not been complied with by the plaintiff.

Sh. B.R. Verma when appeared in the evidence has stated that the exchange was to come into effect after his son Rohit Verma, the plaintiff was to become major. In view of the aforesaid statement, the deed of exchange as reproduced above cannot be said to be recording any past

transaction.

Through the application for additional evidence, the appellant wants to produce a revenue official along with Akshazra. In the present case, the parties were given sufficient opportunities to lead their evidence. The plaintiff has already examined Patwari (revenue official) of the area as PW-8. The plaintiff ought to have proved the Akshazra, which is only a lay out plan, when the revenue official was examined by him in the trial Court. At the stage of regular second appeal, the additional evidence cannot be allowed as a matter of right.

Appellant has failed to make out a case for permission to lead additional evidence. Hence, application is rejected.

In view of the aforesaid, this Court does not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

04.04.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No