

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

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RSA No.5094 of 2016 (O & M)
Date of Decision:18.05.2018

Sulakhan Singh

...Appellant

Versus

Amar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.S. Rekhi , Advocate for the appellant.

ANIL KSHETARPAL, J.(Oral)

Plaintiff-appellant has filed the regular second appeal against the concurrent findings of fact arrived at by the Courts below, dismissing the suit filed by the plaintiff for declaration under Section 45 of the Punjab Land Revenue Act, 1887. The plaintiff claims that he was owner of the property and mutation of the exchange entered in the year 1987 was illegal, null and void.

On the other hand, the defendant defended the suit on the ground that there was an oral exchange between the parties, pursuant where to, possession was exchanged and mutations were got entered. In fact, there was a triangular exchange as one Sulakhan Singh gave his land to Kartar Singh and Kartar Singh gave land to Sulakhan Singh and Sulakhan Singh thereafter gave land to Amar Singh. Learned trial Court has noticed that when the plaintiff appeared in the witness-box, he admitted the factum of exchange and the finding recorded by the learned trial Court is extracted as under:-

“Further, plaintiff Sulakhan Singh PW1 has tried to prove his case in examination in chief but during cross-examination he deposed that Patwari has entered

the mutation after verification done by the Kanungo and he has also admitted the exchange of land between Kartar Singh and defendant, Kartar Singh and him and he also admitted that the above exchange took place about 30 years ago and he has also admitted that the above exchange was oral exchange and the Jamabandies were prepared on the basis of above exchange.”

On the basis of the aforesaid, suit filed by the plaintiff was dismissed. First appeal preferred before the learned First Appellate Court was also dismissed, after re-appreciating the evidence available on the file.

This Court has heard learned counsel for the appellant. He submits that in absence of any document, no exchange was permissible. Although, he admits that in State of Punjab, since Section 118 of the Transfer of Property Act, 1882 has not been extended and, therefore, not applicable and hence, the oral exchange is permissible in the State of Punjab. However, he submits that oral exchange although permissible but still it was required to be supported by some documents. The argument is without any basis as once oral exchange in State of Punjab is permissible and the mutation of exchange was recorded in the year 1987 and the plaintiff filed the presumption suit after a period of almost 35 years to challenge the aforesaid fact, this Court does not find any good ground to interfere.

Regular second appeal is dismissed.

18.05.2018
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(ANIL KSHETARPAL)
JUDGE