

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5182 of 2016 (O&M)

Date of Decision: December 05, 2018

Surinder Singh

...Appellant

Versus

Amar Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Jatinder Singla, Advocate,
for the appellant.

AMIT RAWAL, J.

The present Regular Second Appeal is directed at the instance of appellant-defendant No.7, who has not been successful in defending the appeal before the Lower Appellate Court preferred by the plaintiffs against the judgment and decree of the trial court dismissing the suit.

Respondent-plaintiffs instituted the suit by stating that on the basis of the permission granted by the Lower Appellate Court vide order dated 18.09.2009 as the previous suit claiming ownership on the basis of the adverse possession held to be not maintainable, fresh suit was filed with appropriate prayer on the same cause of action.

Shiam Kaur, predecessor-in-interest of the plaintiffs, was owner in possession of land measuring 12 bighas 10 biswas comprising of Khasra No.1056 (6-5), 1057 (6-5) along with other land situated at Village Palasour. She orally exchanged land measuring 10 bighas with one Hardam Singh son of Partap Singh, successors-in-interest of defendant Nos.9 and 10

and delivered the possession. Since then Hardam Singh was in possession of the said land as owner. Hardam Singh orally exchanged land measuring 16 bighas 16 biswas comprised in Khasra Nos.1041 and 1042 with the predecessor-in-interest of Narinder Singh son of Kahla Singh (now deceased) predecessor-in-interest of defendant Nos.1 to 8 and delivered possession to Narinder Singh etc. On the basis of the oral exchange, Narinder Singh became the owner of the said land which was alienated to Amar Singh plaintiff and mutation No.2892 in this regard was sanctioned in his favour. Narinder Singh and Hardial Singh sons of Kahla Singh, predecessor-in-interest of defendant Nos.1 to 8 orally exchanged land measuring 9 bighas 3 biswas comprised in Khasra Nos.1031 and 1032 with the predecessor-in-interest of the plaintiffs and delivered possession which was already with the predecessor-in-interest of the plaintiffs. The exchanges were done with an intention of conferring ownership accompanied by possession. It was averred that Narinder Singh and Hardial Singh sons of Kahla Singh predecessor-in-interest of defendant Nos.1 to 8 obtained ownership right in the land received in exchange from Hardam Singh vide mutation No.2252, whereas the plaintiffs and as well as defendants No.9 and 10 continued to be in possession of respective lands received in oral exchange, but the ownership rights were not recognized by law. The plaintiffs and defendant Nos.9 and 10 have been in continuous cultivating possession on the basis of the oral exchange for the last 40 (forty) years and in this background of the matter, declaration was sought.

Defendant Nos.1 and 2 opposed the suit and raised the objection of concealment of factual facts, much less non-joinder and mis-joinder of the parties. It was contended that the partition proceedings

regarding whole of the khata including the suit land were initiated in the year 1992, but no objection was raised by the plaintiffs and, therefore, suit after lapse of 18 (eighteen) years was not maintainable and liable to be dismissed. The factum of oral exchange was denied but stated that Narinder Singh was owner in possession of land measuring 16 bighas 16 biswas as per judgment and decree dated 28.09.1983.

Defendant Nos.3 and 4 filed separate written statement and sought the dismissal of the suit and taken stand identical to the one by defendant Nos.1 and 2. Defendant No.7 filed separate written statement and opposed the suit. Similarly defendant Nos.6 and 8 and 9 and 10 filed separate written statements.

Both the parties led extensive evidence.

Mr. Jatinder Singla, learned counsel representing the appellant-defendant submitted that the Lower Appellate Court committed illegality and perversity in decreeing the suit on the premise that the tripartite agreement between the parties has been proved. In fact, the entire approach of the Lower Appellate Court was based upon surmises and conjectures. Jamabandies Ex.P4 to Ex.P10 showed Shiam Kaur was not the exclusive owner in possession of land measuring 12 bighas 10 biswas comprised in Khasra No.1056 (6-5) and 1057 (6-5), i.e., the alleged land exchanged with Hardam Singh but was co-sharer up to the extent of 1/8 share, therefore, exchange of 10 bighas by Shiam Kaur did not arise. Jamabandies Ex.P4 to Ex.P10 showed Khasra No.1031 and 1032 against Khasra Nos.1056 and 1057, thus, in such circumstances, it could not be presumed that the land of Khasra Nos.1031 and 1032 was exchanged with land of Khasra Nos.1056, 1057 and 1041 and 1042 owned and possessed by different owners.

I have heard the learned counsel for the appellant-defendant, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel, for, the plaintiffs had sought the declaration only with regard to Khasra Nos.1031 and 1032 and defendant Nos.9 and 10 in respect of land measuring 10 bighas comprising of Khasra Nos.1056 and 1057. In such circumstances, appellant-defendant cannot be permitted to take the plea of Khasra Nos.1041 and 1042. All the jamabandies, as noticed by the court below reflected exchange of Khasra Nos.1031 and 1032 and 1056 and 1057, much less possession.

The documentary evidence established the factum of oral exchange between the predecessor-in-interest of the parties. Jamabandies Ex.P4 to Ex.P10 showed ownership of Shiam Kaur over the land comprised of Khasra Nos.1056 and 1057 and possession of Hardam Singh over this land, but the possession was reflected on the basis of exchange in lieu of Khasra Nos.1031 and 1032. Jamabandies Ex.P11 to Ex.P16 and Ex.P23 also showed Narinder Singh along with his other brothers sons of Kahla Singh to be co-sharers over Khasra Nos.1031 and 1032, but the possession was of the plaintiffs obviously on the basis of exchange. Jamabandies Ex.P17 to Ex.P22 and Ex.P25 reflected Hardam Singh to be owner of Khasra Nos.1041 and 1042, but the possession of sons of Kahla Singh.

The factum of tripartite agreement had been proved through the aforementioned jamabandies. In such circumstances, the defendants have not been able to controvert the entries in the jamabandies with regard to the ownership and as well as possession. The aforementioned revenue record, as per provisions of Section 44 of the Punjab Land Revenue Act, carried a presumption of truth as they remained un rebutted. Defendants have not been

able to belie the stand of the plaintiffs through any documentary evidence.

For the reasons stated above, I do not find any illegality or perversity in the findings rendered by the Lower Appellate Court, which are based on appreciation of documentary evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

December 05, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No