

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

**RSA No. 4403 of 2015 (O&M)
Date of decision: 14.05.2018**

**Jasandeep Singh son of Jaspal Singh son of Chanan Singh resident of
Village Shahpur Begu, Tehsil and District Sirsa and another.**

.....Appellants

Vs.

**Suba Singh son of Ishar Singh son of Sohan Singh resident of Village
Shahpur Begu, Tehsil and District Sirsa and others.**

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE**

Present: Mr. Satbir Gill, Advocate for the appellants.

Ajay Kumar Mittal, (ACJ)

1. The present regular second appeal has been filed by the defendants-appellants against the judgment and decree passed by the lower Appellate Court dated 25.02.2015 whereby their appeal against the judgment and decree dated 17.03.2012 passed by the trial Court, decreeing the suit for declaration with consequential relief of permanent injunction filed by the plaintiffs-respondents, has been dismissed.

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. Ishar Singh son of Sohan Singh had four sons and two daughters. He exchanged his land with defendant-appellant No.2 Jaspal Singh. Accordingly, Ishar Singh became owner in possession of land measuring 18 kanals 3 marlas being 480/1067 share of land measuring 40 Kanals 7 Marlas comprised in Khewat/Khatuni No.444/549 situated in same village. He also became owner in possession by way of exchange of land measuring 3 Kanals 12 Marlas being 480/1067 share comprised in Khewat No.9082/1081. Hence, Ishar Singh became owner in possession of said land in two Khewats. Possession of land was also delivered to him on the same date. In the said exchange, Jaspal Singh, defendant-appellant No.2 got land measuring 16 Kanals comprised in Khewat No.474/601. He also got in exchange aforesaid land in two different Khewats. Both Ishar Singh and defendant-appellant No.2 got an entry of exchange in Rapat Roznamcha of Patwari of Village at Sr.No.631 on the same day. Possession was also transferred. Since Jaspal Singh was only owner in possession of 480/1067 share of land measuring 8 Kanals before exchange took place, thereafter, after exchange of said land i.e. land measuring 3 Kanals 12 Marlas, he was left with no land at all in the said Square No. 61. However, after exchange, Ishar Singh became owner in possession of same. Vide judgment and decree dated 9.11.2003 in Civil Suit No. 313 of 2003, titled ***Jasandeep Singh vs. Jaspal Singh***, Jasandeep Singh, defendant-appellant No.1 was declared owner in possession of 480/1067 share of total land measuring 8 Kanals as per jamabandi for the year 1997-98. After the passing of the said decree, mutation was also sanctioned in favour of defendant-appellant No.1. After the death of Ishar Singh, plaintiffs-respondents and proforma defendants are in possession of suit land

as owners. On 20.03.2006, when plaintiffs-respondents went to the office of village Patwari to get jamabandi in order to obtain loan, they came to know about mutation. Further, they also came to know that mutation was sanctioned on the basis of exchange but due to inadvertence of revenue officials, entries of exchange regarding suit land in favour of Ishar Singh or after his death in favour of plaintiffs-respondents and proforma defendants were not incorporated. It was also noticed that defendant-appellant No.2 transferred suit land in favour of his son, defendant-appellant No.1. Hence, the plaintiffs-respondents filed suit seeking declaration that they and proforma defendants Nos. 3 to 5 were owners in possession to the extent of $1/6^{\text{th}}$ share each and proforma defendants Nos. 6 to 8 were owners in possession in equal share of remaining $1/6^{\text{th}}$ share of suit land. The judgment and decree dated 09.11.2003 in Civil Suit No.313 of 2003 being illegal was prayed to be set aside. The notice was given to the defendants-appellants who contested the suit.

3. From the pleadings of the parties, the trial court framed following issues:

- “1. Whether plaintiff is entitled to declaration as alleged in plaint? OPP
2. Whether plaintiff is entitled for consequential relief of permanent injunction as prayed for? OPP
3. Whether suit of plaintiff is not maintainable in the present form? OPD
4. Whether plaintiff is stopped from filing present suit by his own act and conduct? OPD
5. Whether civil court has got no jurisdiction to entertain and try the present suit? OPD
6. Relief.”

On appreciation of the oral as well as documentary evidence led by the parties, the trial Court decreed the suit filed by the plaintiffs-respondents vide judgment and decree dated 17.3.2012. The plaintiffs-respondents and proforma defendant Nos.3 to 5 were declared owners in possession to the extent of $1/6^{\text{th}}$ share each and proforma defendants No.6 to 8 of remaining $1/6^{\text{th}}$ share of suit land. The judgment and decree dated 9.11.2003 and subsequent mutation being wrong was set aside. Aggrieved thereby, the defendants-appellants filed an appeal before the lower appellate court which was dismissed vide judgment and decree dated 25.2.2015. Hence, the instant regular second appeal by the defendants-appellants before this Court, claiming following substantial questions of law:-

“i) Whether the admission of PW2 (Plaintiff No.1) to the effect that suit land belongs to Jasandeep Singh and he knows this fact for the last 6-7 years back, document Ex.D6 and D.7 proves that appellant No.1 is in the possession of the suit land?

ii) Whether ownership and possession of the appellant No.1 is admitted in view of the fact that plaintiff No.1 has entered into agreement to sell with appellant No.1 with regard to suit land?

iii) Whether there is any tampering with the Rapat No.631 dated 12.7.1080 and without examining the Finger Print Expert it can be considered to be proved when appellant defendant has denied the correctness of this entry and alleged that entry with regard to Khewat/Khatauni No.982/1192 is forged and incorporated at belated stage?

iv) Whether the evidence has been led by the plaintiffs to prove their possession over the suit land and findings of the courts below holding the possession of the plaintiffs are the suit land is sustainable?

v) Whether separate suit for possession is required to be filed by the plaintiffs/respondents?

vi) Whether the suit of the plaintiffs is time barred?”

4. I have heard learned counsel for the appellants and have gone through the judgments and decrees with his assistance.

5. It has been categorically recorded by the trial court on appreciation of entire evidence on record that there was exchange of land between Ishar Singh as well as defendant-appellant No.2 – Jaspal Singh in the year 1980. The entries in this regard were proved. Hence in view of the said exchange, defendant-appellant No.2 became owner of land measuring 16 Kanals comprised in Khewat No.85 Killa No.3(8-0) and 8(8-0) in Khewat No. 58/94 and another land measuring 4 Kanals comprised in Square No.61 Killa No.23/2(4-0) comprised in Khewat/Khatuni No. 476/6-1 min. Further, Jamabandis on record showed that despite transfer of the share of Jaspal Singh defendant-appellant No.2, he was again shown as owner in possession of land measuring 3 Kanals 12 Marlas on account of mistake by revenue officials for not making necessary entries in the revenue record. Thereafter, on the basis of entries in Jamabandi for the year 1997-98, the suit land was transferred by him in favour of his son though he was not owner of the same. Thus, defendant-appellant No.2 was not having title qua suit land at the time of passing of the impugned judgment and decree dated 09.11.2003. The relevant findings recorded by the trial Court read thus:-

“13. While assessing merits of the case, it is found to be undisputed by contesting defendants that there was exchange of land between Ishar Singh, predecessor of plaintiffs as well as defendant No.2 in year 1980. Entries No. 630 and 631 dated 12.07.1980 are proved by concerned Patwari who executed

same i.e. PW-1. Herein, there is due mention about exchange of land between Ishar Singh and Jaspal Singh as well as fact that in pursuance of these entries, mutations have been sanctioned. In regard to entry No. 631 Ex.P.2, there is mutation of same date Ex.P.3. While both of these documents are read collectively, it provides for that in view of said exchange, defendant No.2 became owner of land measuring 16 Kanals comprised in Khewat No. 85 Killa No.3(8-0) and 8(8-0) comprised in Khewat No. 58/94 as well as another land measuring 4 Kanals comprised in square No.61 Killa No. 23/2(4-0) comprised in Khewat/Khatuni No.474/6-1 min. At back page of said mutation, there are entries in favour of Ishar Singh, predecessor of plaintiffs. Accordingly in view of exchange, he is shown to become owner in possession of land measuring 18 Kanals being 480/1067 share of land measuring 40 Kanals 7 Marlas comprised in Khewat/Khatuni No.444/549 share as well as land measuring 3 Kanals 12 Marlas being 480/1067 share of land measuring 8 Kanals comprised in Square No. 61 Killa No.18(8-0) Khewat/Khatuni No. 982/1181 comprised in Khewat/Khatuni No. 982/1181 situated in same village (suit land). Further, it is also mentioned here that Ishar Singh was already owner in possession of remaining part of land bearing Square No. 61 Killa No. 18(8-0) to the extent of his share 587/1067 share. Hence, on transfer of share of Jaspal Singh i.e. 480/1067 in his favour, he became owner of whole Killa (i.e. 480/1067+587/1067 share).

Further exhibited Jamabandis reflects that despite of transfer of his share by defendant No.2, he is again shown here as owner in possession of land measuring 3 Kanals 12 Marlas being 480/1067 share. Hence, there remained mistake by revenue officials for not making necessary entries in further revenue record. Same fact is also admitted by PW-1 Patwari.

Judgment and decree dated 09.11.2003 Ex.P.9 and Ex.P.10 shows that on the basis of entries in Jamabandi for the year 1997-98 Ex.P.7, which is wrongly in favour of defendant No.2, suit land was transferred by him in favour of his son

though he was not owner of same. By dint of entry Ex.P.2, defendant No.2 already relinquished his rights qua suit land in favour of predecessor of plaintiffs and proforma defendants. Hence, as defendant no.2 was not owner of suit land, thereof, he cannot convey better title to other/his son. As such, when defendant No.2 was not having title qua suit land at the time of passing of impugned judgment and decree, thereof, impugned judgment and decree is certainly wrong and void, thus not effecting rights of plaintiff and proforma defendants being legal heirs of previous owner Ishar Singh (now died).

14. In view of above said observation, impugned judgment and decree alongwith consequent mutation are wrong and illegal, hence liable to be set aside. For exchange of suit land, revenue entries are also liable to be corrected. Hence, rights of plaintiffs and proforma defendants regarding suit land accrues. Hence, plaintiffs are entitled for sought declaration as well as consequential relief of permanent injunction to restrain defendants Nos. 1 and 2 from interfering into rights of plaintiffs and proforma defendants qua suit land. As such, both these issues are decided in favour of plaintiffs.”

The findings recorded by the trial Court were affirmed by the lower Appellate Court. It was inter alia recorded that although contesting defendants/respondent Nos. 1 and 2 in their written statements denied exchange of land in dispute but they had by implication otherwise admitted the factum of exchange held in July, 1980 between defendant No. 2 Jaspal Singh and Ishar Singh although by taking a plea that the said exchange pertained to other land. It was further recorded that although in subsequent Jamabandis, Ishar Singh was left to be recorded as owner of disputed land measuring 3 Kanals 12 Marlas, but it was arithmetical mistake committed by revenue officials and as such said act could not be permitted to deny extinction and creation of rights qua disputed land in favour of Ishar Singh

who is deceased now and represented by his legal heirs who are plaintiffs-respondents and proforma defendants. The relevant findings recorded by the lower Appellate Court read thus:-

“21. After going through the record and hearing learned counsels for the parties, it is expressed that although contesting defendants Nos. 1 and 2 in their written statements outrightly denied exchange of land in dispute (3K-12M) but they had by implications otherwise admitted the factum of exchange held in July, 1980 between contesting defendant No.2 Jaspal Singh and Ishar Singh (now deceased) although by taking a plea that said exchange pertained to other land. As such, it was incumbent upon Jaspal Singh to prove and clarify which other land was given in exchange by him to Ishar Singh.

22. Surprisingly defendant No.2 Jaspal Singh while testifying as DW2, in his cross examination revealed that he was owner of 8K land i.e. 480/1067 share which he had exchanged with Ishar Singh in the year 1980 and mutation No. 3530/31.7.1980 Ex.P.3 was sanctioned. As such, DW2 himself made clear cut admissions of happening of exchange of 8 K land, whereas, he had in his written statement denied said fact.

23. A bare perusal of mutation No.3530/31.07.1980 Ex.P.3 revealed that it was sanctioned on the basis of Rapat No. 631 dated 12.07.1980 which was produced in evidence as Ex.P.2. By virtue of mutation No. 3530 there was clear cut incorporation of factum of exchange took place between various lands of Jaspal Singh and Ishar Singh. By virtue thereof Jaspal Singh was recorded as owner of 16K-0M land comprising in Square No. 85 Killa No. 3(8-0), 8(8-0) comprising in Khewat/Khatuni No.58/94 min and also of land 4K-0M comprising in Square No. 61 Killa No. 23/2(4-0) in Khewat/Khatuni No. 474/601 min.

24. Similarly, by virtue of mutation Ex.P.3 Ishar Singh was recorded as owner of land measuring 18K-3M being 480/1067 share of total land 40K-7M in Khewat/Khatuni No.444/549 and

also of disputed land 3K-12M being 480/1067 share of total land 8K comprising in Square No.61 Killa No. 18(8-0) in Khewat/Khatuni No. 982/1181.

25. Thus, it was crystal clear that when Jaspal Singh (DW2) himself made clear cut admission of the fact that he had entered into exchange of 8K land also so obviously disputed land 3K-12 was part of said 8K land and moreover, when Rapat No. 631/12.7.1980 Ex.P.2 was the basis of mutation No. 3530/31.07.1980 Ex.P.3 so both these documents were required to be read collectively. Hence, although in the subsequent Jamabandis, Ishar Singh was left to be recorded as owner of disputed land 3K-12M but it was a arithmetical mistake committed by revenue officials and as such said act could not be permitted to deny extinction and creation of rights qua disputed land in favour of Ishar Singh, who is deceased now and represented by his legal-heirs who are plaintiffs and proforma defendants. As such, element of limitation is also not involved.

26. Further it is expressed that rights of contesting defendant No.2 Jaspal Singh qua disputed land (3K-12M) stood extinguished on sanctioning of Rapat No. 631/12.7.1980 Ex.P.1 of exchange of land in favour of Ishar Singh followed by mutation No.3530/31.7.1980 Ex.P.3, so Jaspal Singh had no legal right over disputed land. As such, his subsequent act of suffering impugned consent decree dated 9.11.2003 Ex.P10 which is also Ex.D2 in favour of his son Jasandeep Singh (DW1) could not be recognised as legal act since Jaspal Singh (DW2) ceased to be owner long back. Hence, impugned decree Ex.P.10 was illegal, void abnatio.

27. Hence, finding of lower Court on issue on 1,2,3 are affirmed.”

6. Learned counsel for the appellants has not been able to point out any error or illegality in the concurrent findings of fact recorded by the Courts below warranting interference by this court in the regular second

appeal except to urge that on re-appreciation of the evidence, the findings recorded by the courts below are unsustainable. I do not find that there has been any misreading or mis-appreciation of relevant evidence on record so as to differ with the view taken by the courts below.

7. No question of law, much less a substantial question of law arises in this appeal for consideration of this court. Consequently, the appeal stands dismissed.

May 14, 2018 ‘gs’	(Ajay Kumar Mittal) Acting Chief Justice
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Whether speaking/reasoned	Yes
Whether reportable	Yes