

RSA No.1797 of 2018 (O&M)

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

RSA No.1797 of 2018 (O&M)

Date of decision:04.04.2018

Swaran Singh @ Sawaran Singh (deceased) through LRs ... Appellant

Vs.

Daulat Ram and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. R.L.Sharma, Advocate
for the appellant.**

AMIT RAWAL J. (Oral)

C.M.No4921-C of 2018

The application is allowed subject to all just exceptions. Legal representatives of appellant- Swaran Singh @ Sawaran Singh deceased as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

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The appellant-plaintiff is aggrieved of the concurrent findings of facts and law, whereby, suit seeking declaration to the effect that he was absolute and exclusive owner in possession of land measuring 4 kanals comprised in khewat No.51 khatoni no.102, khasra no.9//8/1(4-0) situated in village Khandulia, HB No.16 as per the jamabandi for the year 2004-05 by challenging the alleged writing agreement dated 24.05.2007, has been

dismissed by the trial Court, vide judgment and decree dated 14.10.2015 and upheld by the Lower Appellate Court, vide judgment and decree dated 16.01.2018.

The appellant-plaintiff instituted the suit on 10.05.2011 on the premise that he was absolute and exclusive owner in possession of the suit land, aforementioned. The defendant was a clever person who was compelling the plaintiff to give some land out of khasra no.9//8/1(4-0), which he required for a passage. When the plaintiff refused to oblige the defendant by selling out the suit land, defendant made forged and fabricated writing/agreement dated 24.05.2007 vide which 5 marlas of land out of the suit land were exchanged with the land of the defendant comprised in khasra no.9//8/2(4-0) without taking the plaintiff into confidence. The plaintiff was never told that an exchange of land was going to take place between the plaintiff and defendant and did not effect upon the rights of the plaintiff. The alleged mutation bearing no.727 on the basis of alleged exchange sanctioned was incorrect and liable to be corrected. In fact, the possession of the suit land was never delivered to the defendant, therefore, the exchange was never acted upon by the parties. The plaintiff filed an appeal against the order dated 11.07.2007 before SDM Dasuya which was dismissed, vide order dated 04.12.2008.

The aforementioned suit was contested by the defendant by filing written statement stating therein that the suit was barred under Order 2 Rule 2 CPC. In fact, due to transfer/exchange deed, mutation was rightly sanctioned by the revenue authority in favour of the parties. It was averred

that partition application was filed by the defendant before the revenue authority which was allowed.

On the basis of the pleadings of the parties, following issues were framed:-

“1. Whether the defendant forged and fabricated a writing / agreement dated 24.05.2007? OPP

1-A Whether writing/agreement (Yadashtnama) dated 24.05.2007 is illegal, unlawful, null and void and inadmissible? OPP

2. Whether the plaintiff is entitled to declaration as prayed for? OPP

3. Whether the plaintiff is entitled to consequential relief of permanent injunction as prayed for? OPP

4. Whether the present suit is barred under Order 2 Rule 2 CPC? OPD

5. Whether the plaintiff is estopped by his own acts and conducts from filing the present suit? OPD.

6. Whether the plaintiff has concealed the true and material facts from the Court? OPD

7. Relief.”

Plaintiff examined PW1 Usha Rani, who was Power of Attorney of the plaintiff-Sarwan Singh, PW2-Avtar Singh, PW3-Nazar Singh, who brought on record the following documents:-

Ex.P1 copy of attorney

Ex.P2, Ex.P3	copy of jamabandi for the year 2004-05
Mark A	copy of agreement dated 24.05.2007,
Ex.P4, Ex.P5	copy of jamabandi for the year 2004-05
Ex.P6	copy of mutation no.727
Ex.P7	copy of order dated 4.12.2008
Ex.P8	copy of order dated 31.05.2010

On the other hand, defendant examined Sukhdev Singh as DW1, Daulat Ram-defendant appeared himself as DW2, Rajmal Singh as DW3, Teja Singh as DW4, Mukesh Puri deed writer as DW5 and brought on record the documents as Ex.D1 to Ex.D13.

The trial Court on the preponderance of evidence dismissed the suit and the appeal preferred before the Lower Appellate Court was also dismissed.

Mr. R.L.Sharma, learned counsel appearing on behalf of the appellant submitted that alleged agreement/writing could not have been acted upon by the revenue authorities as it required registration. The possession of the suit land was through out with the plaintiff. The partition proceedings was finalized on 31.05.2010, whereas, the land in dispute was allegedly exchanged in the year 2007. The document dated 24.05.2017, Ex.D12, i.e., alleged exchange incorporating the handing over of possession, was in fact transaction of sale which required registration as per Section 17 of Registration Act read with Section 54 of the Transfer of Property Act, 1908. The previous injunction suit could not have been pressed into defence by the defendant as right in the suit property continued

to exist and urged this Court for setting aside the judgments and decrees under challenge.

I have heard the learned counsel for the appellant, appraised the judgments and decrees of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Sharma, for, the mutation in respect of exchange, i.e. Ex.D13 was effected way back and the plaintiff remained silent and woke up from the slumber in the year 2011. The previous suit of injunction which was decided on 8.2.2014 was also not in favour of the plaintiff, therefore, the plaintiff had not been able to prove that he was in possession of the suit land and therefore, declaration could not have been granted.

Both the Courts below examined the documentary evidence and found that as per the mutation, the land exchanged between the parties were of equal value. The aforementioned documents did not require exchange as in lieu thereof, the plaintiff was also given land comprised in khasra no.9//8/2 instead of 9//8/1. The partition proceedings placed on record by the defendant proved that revenue authorities had taken into consideration the possession of the respective parties, i.e. possession given to the defendant vide alleged exchange.

All these factors weighed in the mind of the Courts below in rendering the concurrent findings of facts and law. The arguments of Mr. Sharma, have not been able to bring the case within illegality and perversity enabling me to form the different opinion than the one arrived at by both the Courts below.

Appeal stands dismissed.

April 04, 2018
savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No