

Date of Decision : 3.4.2018

VS.

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agreement to sell 30 Kanal and 17 Marlas of land (which included above mentioned 16 Kanals of land) to Jasbir Singh-elder brother of Sukhbir Singh. He filed a suit for specific performance on 6.5.2002. On the other hand, the appellant filed the instant suit for declaration on 15.6.2007 claiming that as a result of the exchange reference to above he had become the owner of 16 Kanals of land. On the one hand the suit for specific performance of Jasbir Singh was decreed right up to the Supreme Court. In the execution petition filed by Jasbir Singh the present appellant filed objections which, having not been decided, he filed the above-mentioned civil revision. As regards the suit filed by the appellant the Courts below held that the exchange having been effected by way of document, required registration and since the same was not registered it could not be looked into as evidence and consequently, dismissed the suit and hence the regular second appeal.

Learned counsel for the appellant has argued that the Courts below have misread the document and have wrongly considered it to be an exchange deed but it is actually only an agreement to exchange. I have gone through the document in question. I find that it is an ill-drafted, confused document. Different assertions have been made at different parts of the document. Counsel for the appellant has relied upon a couple of sentences, as per which it was mentioned that both the parties can give effect to the document within one month either through Court or by any other means. As per him, this shows that it is not completed transaction and merely an agreement to exchange. On the other hand, learned counsel for the respondent Jasbir Singh has pointed out that two important sentences which

appear in the document are :-

1. With effect from today the respective parties have become owner of the exchanged objects.
2. Possession has been handed over.

As per the counsel for the respondent-Jasbir Singh this shows that it was a complete exchange where title had passed and other confusing phrases and sentences would not detract from this essential fact.

In my opinion, the arguments of the counsel for the respondent-Jasbir Singh hold more weight. A reading of the document shows that title and possession both have passed and the phrase that one month's time is granted for giving effect to it seems to have sprung from a lack of understanding by the draftsman and the parties. Resultantly, no fault can be found with the judgments of the Courts below dismissing the suit filed by the appellant. Once the suit filed by the appellant is out of the way, no interference can be made in the impugned order in the revision also. Consequently, the appeal and the revision are both dismissed.

Since the main cases have been decided, the pending civil miscellaneous application, if any, also stands disposed of.

3.4.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No