

RSA-5122-2017 (O&M)

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

**RSA-5122-2017 (O&M)
Date of decision : 10.12.2018**

Natha Singh

... Appellant

Versus

Amarjit Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D.S. Gurna, Advocate
for the appellant.

AMIT RAWAL, J.

CM-13635-C-2017

For the reasons stated in the application, the delay of 52 days in
refiling the appeal is condoned.

CM stands disposed of.

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The appellant-plaintiff has not been successful in claiming the
declaration to be owner in possession of plot measuring 0K-6M out of 0K-
18.2/3 marlas being 1/12th share, by issuing the mandatory injunction to the
defendants to transfer of the ownership of the plot measuring 0K-6M, in the
name of the plaintiff, on the basis of the agreement to sell dated 15.10.2007,
with a further consequential relief of permanent injunction.

It was alleged that one Bagga Singh, grandfather of the
plaintiff, had half share in the aforementioned parcel of land. The
defendants along with Jaswinder Kaur daughter, Balwinder Singh and

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Manjit Singh sons of Ajit Singh, inherited 18.2/3 marlas out of 11K-1M and mutation of inheritance bearing No.3543 of Ajit Singh, was sanctioned. The plaintiff and defendants agreed to exchange/transfer the plot, in this regard, entered into memorandum of agreement dated 15.10.2005. One of the terms and conditions was that the defendants would not get the mutation of inheritance of Ajit Singh, in their favour. The plaintiff got mutation sanctioned in his favour and in favour of Gurnam Kaur and Harpal Kaur, whereas the defendants did not comply with the terms and conditions, a cause of action arose to file the suit, aforementioned.

The defendant No.1 opposed the suit and admitted that he along with Jaswinder Kaur, Balwinder Singh and Manjit Singh from Ajit Singh, had inherited the plot. On the other hand, defendant Nos.2, 3 and 4 admitted that the defendants inherited the plot mentioned the plaintiff, but denied the agreement of exchange, which was said to be a complete forgery.

The plaintiff in support of the case, examined four witnesses and brought on record various documents. On the other hand, the defendant stepped into witnesses as DW1 and tendered the affidavit.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that it is no body's case that the plaintiff got the mutation of inheritance from grand father in their name, but the fact of the matter is that the defendants did not get the mutation of inheritance of Ajit Singh as both the parties had consciously and physically were put into the possession of the land, subject matter of the exchange.

I am afraid the aforementioned argument is not sustainable as no such proof of possession has been placed on record, much less, the fact that whether the plaintiff had, in the absence of any right drawing from the

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revenue record, competent to enter into exchange deed. The provisions of Section 43 of the Transfer of Property Act could not have been pressed into service, until and unless reflected in the revenue record by virtue of inheritance of Bagha Singh.

In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed on merits as well as on account of delay of 193 days in filing the appeal.

10.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**