

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

RSA No. 601 of 2018(O&M)

Date of decision: 16.2.2018

Gurcharan Singh

....Appellant

VERSUS

Jasbir Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sanjay Kaushal, Senior Advocate with
Mr. Sudhir Sharma, Advocate and
Mr. Mandeep Kaushik, Advocate for the appellant.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts below whereby suit filed by Gurcharan Singh – appellant (since deceased) represented by Smt. Sukhwinder Kaur, his wife was dismissed by the trial Court vide judgment and decree dated 05.01.2015 and the appeal preferred by the unsuccessful plaintiff did not find favour with the Additional District Judge, Ludhiana.

Gurcharan Singh sought declaration and permanent injunction by claiming himself to be exclusive owner in possession of property No.B-XI-372 old and B-XII 590 new measuring 792 square yards depicted in the site plan, situated at Jail Road, Ludhiana on the basis of agreement of exchange dated 11.09.1984 with the averments that defendants have no right, title or interest in the said property. He also challenged decree passed in the civil suit No.216 dated 09.06.1987 in favour of defendants No.2 to 4 being illegal, null and void and the result of fraud and misrepresentation, thus, not binding upon right of the plaintiff. Further

challenge has been directed against sale deed dated 22.08.1991 executed by deceased Lachhman Kaur wife of Sh. Kala Singh in favour of defendants No.2 and 3 bearing vasika No.10628 and 10751 in respect of part of the suit property measuring 370 square yards each.

It is averred that on 11.09.1984, Smt. Lachhman Kaur exchanged property measuring 792 square yards (hereinafter to be referred as the suit property) with the plaintiff in lieu of land measuring 2500 square yards comprised in khasra No.4389/1271, 4390/1271, Hadbast No. 172 situated at village Taraf Saidan, New Shiva Ji Nagar Ludhiana vide agreement of exchange dated 11.09.1984. Possession of land measuring 2500 square yards was given by the plaintiff to Smt. Lachhman Kaur as owner in exchange whereof, physical actual possession of portion measuring 400 square yards out of 792 square yards of suit property was given by Smt. Lachhman Kaur to the plaintiff as owner. The plaintiff was already residing in the said portion with his family and remaining portion of 10 shops was in occupation of tenants. It was further agreed that Smt. Lachhman Kaur and her husband would be entitled to realize rent of 10 shops till their lifetime. Kala Singh and Smt. Lachhman Kaur died on 25.05.1991 and 19.12.1998, respectively. After death of Smt. Lachhman Kaur, plaintiff was admitted by tenants as their landlord of the shops which are in occupation of defendants No.7 to 16.

The sole submission made by counsel for the appellant is that the Courts below refused to rely upon agreement of exchange on the premise that the same is not a registered document, therefore, is not admissible in evidence. It is argued with vehemence that this finding of the Courts is perverse and the result of their failure to appreciate that Section 118 of the Transfer of Property Act, 1882, is not applicable in the

State of Punjab, therefore, there is no requirement in law for properties situated in State of Punjab to be exchanged by way of registered document. In addition, it is argued that in Punjab, oral exchange followed by delivery of possession is sufficient to transfer ownership of the exchanged properties. In support of his contention, he has referred to judgments passed by this Court **Gurdev Singh Vs. Mukhtiar Singh and others, 2016(1) RCR (Civil) 860, Paramjit Singh Vs. Ratti Ram, 2004(2) RCR (Civil) 742, Kishori Lal Vs. Babu Ram etc., 2003(1) RCR (Civil) 807, Bhagwan Singh Vs. Madan Lal and another, 1997(3) PLR 60, Bhagwan Kaur and others vs. Ranjit Singh and another, 1990(1) PLR 290, Randhir Singh Vs. Ranjit Singh, 2011(2) RCR (Civil) 246 and Jai Narain through his LRs and others Vs. Piria and others, RSA No.2013 of 1985, decided on 06.02.2014.**

There cannot be any dispute about the settled position in law that in the State of Punjab, Section 118 of the Transfer of Property Act, 1882 is not applicable. Equally true is that as per the judgments rendered by this Court as back from the year 1973, oral exchange coupled with delivery of possession of exchanged property is a valid transfer by way of exchange.

In the case at hand, the appellant has not pleaded oral exchange coupled with delivery of possession of alleged exchanged properties. On the contrary, he has relied upon agreement of exchange dated 11.09.1984 executed between Smt. Lachhman Kaur and Gurcharan Singh (appellant herein).

Before advertng to the submissions made by counsel for the appellant, it is necessary to examine agreement of exchange relied upon by the appellant and basis of the suit claiming title to the suit property and

relief of injunction by setting aside decree of the Court and two sale deeds executed by Smt. Lachhman Kaur in favour of defendant Nos.2 to 4.

Agreement for exchange has been marked as Ex.P2. The document is in Punjabi but its translation in English reads as follows:-

“That I, Lachhman Kaur wife of Kala Singh son of Dhan Singh, resident of B-11-372, Jail Road, Ludhiana, am the executant of this agreement of exchange. That I am the owner in possession of House no. B-11-372, Jail Road, Ludhiana, the area of which is 792 Sq. yards and the boundaries thereof are as under:- East: Sargoda School etc. West: Kamran Road North: Gurjit Singh etc South: Jail Road. Today I, with free will and in full senses, have executed this agreement of exchange in lieu of property measuring 2500 Sq. yards situated at Taraf Saidan, Mohalla New Shivaji Nagar, Ludhiana comprised in Khasra no. 4389/1271 and 4390/1271, Hadbast no. 172 and we, Gurcharan Singh son of Kala Singh son of Dhan Singh have taken the possession of abovementioned property through General Power of Attorney vide vasika no. 670 dated 19.03.1975 and we have spent the money after selling the same. In lieu of the abovementioned constructed house no. 372, measuring 792 sq.yards, some part of which is vacant and 10 shops are constructed, whole amount has been recovered from 2500 sq. yards. The price of both the properties is same. As long as I and my husband Kala Singh are alive, we will reside there and continue to receive the rent of said ten shops. But, from today onwards, Gurcharan Singh son of Kala Singh has become owner in possession of this property. Gurcharan Singh is already in possession of 400 sq. yards and residing there. Therefore, this exchange deed has been scribed and I have appended my signatures after hearing and admitting the same as correct to use it as proof (*sanad*).

Dated: 11/09/1984

Executant:

Sd/- Lachhman Kaur (in punjabi)
Sd/- Gurcharan Singh

Witness:

Sd/- Balbir Singh Saini son of S. Ram Singh Saini, r/o 1795/9,
Madhopuri, Ludhiana (In English)

Witness:

Sd/- Ashok Kumar son of Hans Raj, Baijman Road (In
English)”

The Court in appeal in para 21 of the judgment has held,
quoted thus:-

“21. It would not be out of place to mention here that although agreement (Ex.P2) is being claimed as exchange deed, but in fact it is sale deed, because the sale consideration of land measuring 2500 sq. yards has been taken into account as price for suit property. This opinion of court is fortified from the contents of agreement (Ex.P2) itself, wherein it has been recorded that land measuring 2500 sq. yards has been sold and sale consideration has been used by Lachhman Kaur and her husband Kala Singh. Moreover, it has come in evidence of Gurcharan Singh (PW-1) that he paid sum of Rs.5000/- against property, which means that value of the suit property is more than Rs.100/-. Thus, the document considering to be sale deed, was required to be registered.”

A plain and careful reading of the aforesaid extract from agreement for exchange makes it evident that possession of land measuring 2500 square yards situated at Taraf Saidan, Mohalla New Shiva Ji Nagar Ludhiana comprised in khasra No.4389/1271, 4390/1271, Hadbast No. 172 was taken through General Power of Attorney vide vasika No.670 dated 19.03.1975 and after selling the same, money has been spent by them. It is not clear as to who had spent the money after selling property measuring 2500 square yards. Even it is not clear as to when and by whom property

measuring 2500 square yards was sold. It is also not clear from Ex.P2 in whose favour this General Power of Attorney vide vasika dated 19.03.1975 was executed. However, there is a reference in the proceedings that in regard to property measuring 2500 square yards, Power of Attorney was executed in favour of Kala Singh son of Dhan Singh, father of plaintiff/appellant Gurcharan Singh. Nevertheless, it becomes an established position of the case that Gurcharan Singh was not owner of property measuring 2500 square yards on the date agreement for exchange was executed on 11.09.1984. It is a matter of common knowledge that if Gurcharan Singh was not owner of property measuring 2500 square yards in the year 1984 as that property already stood sold, there was no possibility of property measuring 2500 square yards being exchanged with the suit property, admittedly, owned by Smt. Lachhman Kaur. The document Ex.P2 certainly does not record any past transaction of exchange between the appellant and Smt. Lachhman Kaur, therefore, it cannot be termed as a memo of exchange recording past transaction. This fact alone is sufficient to negate plea of the appellant that through agreement of exchange Ex.P2, the appellant and Smt. Lachhman Kaur exchanged ownership of properties of their respective ownership coupled with delivery of possession.

As per plea of the appellant, power of attorney in respect of property measuring 2500 square yards was given to Sh. Kala Singh, father of the appellant and Kala Singh on the basis of said power of attorney sold property measuring 2500 square yards. Indisputably, Kala Singh is not privy to agreement of exchange. As Kala Singh was the attorney holder and sold the property on behalf of the appellant being his attorney, where was the authority with Smt. Lachhman Kaur to enter into an agreement of

exchange qua the suit property in lieu of property measuring 2500 square yards that stood sold by Kala Singh on the basis of Power of Attorney executed by the appellant.

In concluding lines of the agreement, it says that so long as we means Lachhman Kaur and her husband Kala Singh are alive, they will reside there and continue to receive rent of 10 shops. Meaning thereby that Smt. Lachhman Kaur continued to be in possession of suit property both in regard to its actual possession of the portion not under tenancy with right to receive rent of 10 shops. This fact also negates plea of the appellant that on the basis of agreement of exchange, possession of suit property was delivered by Smt. Lachhman Kaur to Sh. Gurcharan Singh. I would hasten to add that in the document Ex.P2, there is reference that Gurcharan Singh is already in possession of 400 square yards and residing there. Firstly, reference to 400 square yards is not qualified by the words “of suit property”. Secondly, if it refers to suit property, where is the delivery of possession if Gurcharan Singh was already in possession. That being so, plea of the appellant that possession of a part of the suit property was delivered to him under the agreement of exchange is also misconceived and liable to be rejected.

The Appellate Court has held that the appellant failed to adduce any evidence to prove his possession of the suit property. The tenants in the suit property have not accepted the appellant to be their landlord much less payment of rent to him. On the contrary, they have supported cause of the defendants with regard to receipt of rent by them. Analyzed from any angle, the appellant has miserably failed to prove that there was any valid exchange between him and Smt. Lachhman Kaur, erstwhile owner of the suit property. Under the circumstances, the

appellant cannot derive any advantage of the document Ex.P2 to claim himself to be owner of the suit property. It appears that as Kala and Smt. Lachhman Kaur purportedly utilized the funds obtained on sale of property measuring 2500 square yards, she agreed to sell the suit property to the appellant and sale proceeds of property measuring 2500 square yards were intended to be used as sale consideration for transfer of the suit property in favour of Gurcharan Singh. The document in question, at best, can be said to be an agreement of sale that needed to be got specifically enforced in accordance with law by taking recourse to appropriate proceedings. The appellant was under a complete wrong impression that he obtained ownership of the suit property by way of exchange on the basis of agreement dated 11.09.1984. As the appellant cannot claim himself to be owner of the suit property by way of exchange on the basis of agreement Ex.P2, this Court need not to go into the question whether this document required registration or was not admissible in evidence on that score. This issue would be considered by this Court in an appropriate proceeding that in case a document creates/extinguishes rights in immovable property of the value of more than Rs.100/-, whether it requires registration or otherwise in view of the provisions of Section 17 and 49 of the Registration Act, 1908.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

FEBRUARY 16, 2018

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no