

**RSA Nos.2750, 2748 & 2749 of 1989 (O&M) and
CR No.573 of 1993 (O&M)**

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

Date of decision : 12.04.2019

1. RSA-2750-1989 (O&M)

The Ganaur Bhardwaj Cooperative Joint Farming
Society Ltd. and others

... Appellants

Versus

Atma Ram (deceased) through LRs and others

... Respondents

2. RSA-2748-1989 (O&M)

Ajit Kumar

... Appellant

Versus

Atma Ram (deceased) through LRs and others

... Respondents

**3. RSA-2749-1989 (O&M) AND
XOBJC-13-C-1993**

The Ganaur Bhardwaj Cooperative Joint Farming
Society Ltd.

... Appellant

Versus

Atma Ram (deceased) through LRs and others

... Respondent

4. CR-573-1993 (O&M)

Ram Piari and others

... Petitioners

Versus

The Ganaur Bhardwaj Cooperative Joint Farming
Society Ltd. and others

... Respondents

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CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjay Majithia, Senior Advocate with
Mr. Inderjit Singh, Advocate
for the appellant(s) in RSA Nos.2750, 2748 & 2749 of 1989 &
for respondent Nos.4, 10 to 13 in CR No.573 of 1993.

Mr. Vaneet Soni, Advocate
for the petitioner in CR No.573 of 1993 and
for the respondents in RSA Nos.2750, 2748 & 2749 of 1989.

AMIT RAWAL, J.

CM-16953-CII-2013 in CR-573-1993

For the reasons stated in the application, which is supported by
an affidavit, delay of 1464 days in filing the application for restoration of
the revision petition is condoned.

CM stands disposed of.

CM-16954-CII-2013 in CR-573-1993 _

For the reasons stated in the application, which is supported by
an affidavit, the revision petition is ordered to be restored to its original
number and taken on board today itself.

CM stands disposed of.

MAIN CASES

This order of mine shall dispose of three regular second appeals
bearing **RSA No.2750 of 1989** titled as **“The Ganaur Bhardwaj
Cooperative Joint Farming Society Ltd. and others V/s Atma Ram
(deceased) through LRs”** arising out of the Civil Suit No.767 of 1981 for
declaration and for possession (hereinafter called 'first suit'), **RSA No.2748
of 1989** titled as **“Ajit Kumar V/s Atma Ram (deceased) through LRs”**

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arising out of the Civil Suit No.641 of 1982 for possession (hereinafter called 'second suit') and **RSA No.2749 of 1989** titled as **“The Ganaur Bhardwaj Cooperative Joint Farming Society Ltd. V/s Atma Ram (deceased) through LRs and others”** arising out of the Civil Suit No.901 of 1982 for possession (hereinafter called 'third suit') as well as CR No.573 of 1993 titled as **“Ram Piari and others V/s The Ganaur Bhardwaj Cooperative Joint Farming Society Ltd. and others”**, filed against the order dated 21.01.1993, whereby the application for amendment of the judgment and decree dated 15.06.1988 qua defendant No.4 only, has been dismissed.

All the aforementioned suits were consolidated.

In first suit, the plaintiff Atma Ram sought the declaration and possession in respect of land measuring 39 kanals 10 marlas i.e. land measuring 30 kanals 1 marla situated in Village Panchi Gujran and land measuring 9 kanals 9 marlas situated in Village Bai; and for possession in respect of land measuring 35 kanals 5 marlas i.e. 8 kanals 16 marlas and 26 kanals 9 marlas situated in the aforesaid villages, on the premise that he was the owner in possession of the land measuring 150 kanals 5 marlas situated in Village Mimarpur Tehsil Sonapat. Defendant No.1 was owner in possession of land measuring 85 kanals 16 marlas i.e. 11 kanals 1 marla situated in Village Gannaur, 38 kanals 18 marlas situated in Village Panchi Gujran and 35 kanals 18 marlas situated in Village Bai. The aforementioned land was orally exchanged between the plaintiff and defendant No.1 some time in July 1970 along with possession. The plaintiff became owner in possession of land measuring 85 kanals 16 marlas and

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defendant No.1-Society of land measuring 150 kanals 5 marlas and mutation Nos.2001, 5888, 2675 and 562 to that effect were also sanctioned. Both the parties i.e. the plaintiff and defendant No.1-Society represented by the then President Naunihal Kishan, acknowledged the aforesaid exchange. Out of land measuring 85 kanals 16 marlas, the plaintiff further exchanged the land measuring 10 kanals 10 marlas situated in Village Gannaur comprised in field Nos.90/18 (8-0), 21/1 (2-10) with the land of Tara Chand son of Chhaju Ram, vide mutation No.3902 sanctioned on 16.09.1970 and the land, obtained in exchange, was sold by him to many other persons and the mutations of three villages, namely, Mimarpur, Panchi Gujran and Bai, came up for review before the revenue authorities, where Naunihal Kishan, the then President of the Society/defendant No.1, backed out of the already effected exchange and the mutations, aforementioned, were cancelled on 30.09.1972. The oral exchange in the State of Haryana was permissible, therefore, there was no question and occasion for the parties to revoke the transaction of exchange. The remaining land was measuring 75 kanals 6 marlas. The plaintiff had been in actual possession of the land measuring 39 kanals 10 marlas and was out of the possession of the land measuring 35 kanals 5 marlas as detailed in para 9 of the plaint. Defendant No.1-Society illegally sold the land measuring 38 kanals 17 marlas situated in Village Panchi Gujran, 9 kanals 9 marlas situated in Village Gannaur, 10 kanals 4 marlas situated in Village Bai to various persons i.e. the defendants.

Defendant No.1-Society opposed the suit by filing separate written statement, but did not deny the ownership of the land measuring measuring 150 kanals 5 marlas and 85 kanals 16 marlas. It was alleged that

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exchange if any was unauthorized, illegal and ineffective by denying the possession and claimed to be owner of the land measuring 11 kanals 1 marla situated in Village Ganaur and 16 kanals 5 marlas situated in Village Bai, whereas it had already sold land measuring 38 kanals 17 marlas situated in Village Panchi Gujran to various other persons and so on and so forth. The factum of the cancellation of the mutation was also admitted. As regards the act of Naunihal Kishan, the then President of the Society/defendant No.1, it was explained that the plaintiff related to him and therefore, it was an act of collusion to defraud the society/defendant No.1. The exchange of land measuring 10 kanals 10 marlas situated in Village Gannaur by the plaintiff with Tara Chand was also said to be illegal, ineffective and not binding on the rights of defendant No.1. It was further explained that Ajit Kumar/defendant No.3 filed a suit for recovery of amount on account of use and occupation charges of the land purchased by him and cultivated by the plaintiff without his consent under Section 14 of the Punjab Tenancy Act. It was decreed by the Assistant Collector 1st Grade and affirmed by the Collector, Sonipat. The aforementioned orders had attained finality.

On the basis of the pleadings, the trial Court framed the following issues:-

- 1. Whether the plaintiff is the owner in possession of the suit land as detailed in para No.2 of the plaint as alleged, if so, to what effect? OPP*
- 2. Whether the suit for declaration is not maintainable in the present form as plaintiffs is not at all in possession of the suit property? OPD*
- 3. Whether the plaintiff is estopped by his own act and conduct from filing the present suit ? OPD*

4. Whether the suit is liable to be stayed u/s 10 CPC? OPD

5. Relief.

In the second suit, the Society filed the suit against Atma Singh and etc., for possession of the land measuring 10 kanals 14 marlas situated in Village Gannaur, District Sonapat, comprising of the khasra number, referred to above and other allegations remained the same as taken in the written statement filed, in the suit of Atma Ram.

The third suit was filed by Ajit Kumar/defendant No.3 for recovery of possession of land measuring 27 kanals 10 marlas, out of land measuring 30 kanals 1 marla, purchased by him from the Society for a sum of ₹21,500/-, vide sale deed dated 27.09.1979.

On the basis of the pleadings, the trial Court framed the following issues:-

Issues in Second Suit.

- 1. Whether the plaintiff-Society is the owner of the suit land?
OPP*
- 2. Whether the exchange as alleged in para No.3 of the plaint was wrong, false, illegal, fraudulent and ineffective? If so to what effect? OPP*
- 3. Whether the suit has been filed by duly authorized person?
OPD*
- 4. Whether the suit is time barred? OPD*
- 5. Whether the suit is not maintainable in the present form/
OPD*
- 6. Whether the suit is liable to be stayed under Section 10 of CPC? OPD*
- 7. Relief.*

Issues in Third Suit

- 1. Whether the plaintiff is the owner of the suit land as alleged?
OPP*
- 2. Whether defendant is in unauthorized possession of the suit
land as alleged? OPP*
- 3. Whether the defendant has become the owner of the suit
land by way of adverse possession as alleged in para No.2 of
the written statement? OPD*
- 4. Whether the defendants has made any improvement and to
what effect? OPD*
- 5. Whether the suit is liable to be stayed u/s 10 CPC as alleged
in para 2 of the Addl. Pleas of W.S.? OPD (Preliminary
issue).*
- 6. Relief.*

Both the parties led extensive evidence in support of their respective cases.

The trial Court on the basis of the evidence brought on record partly decreed the first suit of the plaintiff, by declining the relief of 9 kanals 9 marlas, but declared the owner in possession of land measuring 30 kanals 1 marla, detailed in para 8(b) of the plaint and for possession of land measuring 35 kanals 05 marlas, whereas dismissed the second and third suit by holding the Society was not entitled to the possession of land measuring 10 kanals 14 marlas situated in Village Gannaur, as the mutation No.5888 (Ex.P4) was based upon the oral exchange. The appeals taken before the lower Appellate Court also met with the same fate. Hence three regular second appeals were filed before this Court and one revision petition filed on behalf of the legal heirs of Atma Ram against the order dated 21.01.1993, whereby the application for amendment of the judgment and decree dated 15.06.1988 qua defendant No.4 only, has been dismissed.

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Mr. Sanjay Majithia, learned Senior Counsel assisted by Mr. Inderjit Singh, learned counsel appearing on behalf of the appellant(s) in RSA Nos.2750, 2748 & 2749 of 1989 and for respondent Nos.4, 10 to 13 in CR No.573 of 1993, raised the following submissions:-

- i) The oral exchange, in the absence of registration, as per the provisions of Sections 17 & 49 of the Registration Act and Notification dated 26.03.1995 extended the provisions of Section 54 of the Transfer of Property Act, to Punjab, w.e.f. 01.04.1955, was not permissible in law.
- ii) The oral exchange could not have been accepted by the Courts below particularly, when the mutations were already cancelled.
- iii) The oral exchange was not in respect of the equal holding of land as Atma Ram was in ownership of land measuring 150 kanals 5 marlas, whereas the Society 85 kanals 16 marlas.
- iv) No resolution as per the provisions of Section 30 of the Haryana Cooperative Societies Act, 1984 (in short 'the 1984 Act') was passed authorizing the President, for oral exchange.
- v) The Civil Court, as per the provisions of Section 79 of the 1984 Act, did not have the jurisdiction.
- vi) The plaintiff-Atma Ram was the Member of the Society and it had also been a Managing Committee of the Society w.e.f. August 1961 to December 1978, therefore, the

possibility of active involvement and participation, cannot be ruled out.

- vii) If actually exchange had taken place, the Society could not have alienated the land, but the same was alienated.
- viii) The Courts below failed to notice the petition filed by Ajit Kumar under Section 14 of the Punjab Tenancy Act.
- ix) Mutations do not confer the right and had been cancelled.
- x) The oral exchange was not acted upon.

In support of his contentions, he relies upon the following ratio decidendi:-

- i) **"Ram Singh V/s Inderjit and others" 1969 PLJ 560,** regarding applicability of the notification dated 26.03.1955
- ii) **"Gurdial Singh V/s Ajmer Singh" 1987 PLJ 124** and **"Murid Khan and others V/s Usman Khan and others" 1962 AIR (Punjab) 475,** that the oral exchange requires registration.
- iii) **"Santa Singh Gopal Singh and others V/s Rajinder Singh Bur Singh and other" AIR 1965 Punjab 415,** that plea of limitation as per the Section 3 of the limitation Act, can always be taken up.
- iv) **"Shiv Ram V/s Smt. Bimla Devi" 2000(2) RCR (Civil) 471,** to contend that oral exchange, if written, requires stamp duty and registration.

Per contra, Mr. Vaneet Soni, learned counsel appearing on behalf of the respondents in RSA Nos.2749, 2748 and 2750 of 1989 and for

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the petitioner in CR No.573 of 1993, supported the judgments and decrees of the Courts below decreeing the first suit and dismissing the second and third suits. It was contended that the declaration of title and possession can always be granted by the Civil Court. The provisions of Section 55 of the 1984 Act, do not apply as Atma Ram was the third party and member of the Society failed to bring on record the register and resolution, therefore, adverse inference, was rightly drawn. The oral exchange was permissible in the State of Haryana. There was no writing and therefore, it did not require any registration. The Notification of 1955 pertained to Punjab and not to the Haryana. On the basis of exchange, Atma Ram proved to be owner of the land and therefore, the sale deeds executed by the Society, in favour of the private respondents/defendant Nos.2 to 11, were not sustainable in the eyes of law and rightly has been set aside. The aforementioned beneficiaries of the sale deed have not come forward in filing the appeal.

As regards the revision petition, Mr. Soni, submitted that the Court below abdicated in not granting the amendment of the judgment and decree in the interest of justice, as the petitioners were found to be owner of the land. The trial Court had completely fallen an error by non-suiting the petitioners, in the absence of any filing of the appeal, which cannot be a ground to throw out the petitioners, in view of Sections 152 & 153 of the Code of Civil Procedure.

In rebuttal, Mr. Majithia, submitted and the application for amendment of the decree, in the absence of the appeal, had rightly been dismissed as it was *ex facie* not maintainable.

I have heard learned counsel for the parties, appraised the paper

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book as well as records of the Courts below, much less, judgments cited supra and of the view that the following "Substantial Questions of Law" arise for determination:-

- 1. Whether the oral exchange is permissible in law or required registration?*
- 2. Whether the notification of 1955, as noticed in the judgment cited (supra), would apply to the State of Haryana.*

In order to answer the aforesaid questions, it would be in the fitness of things to notice that whether there was an intention amongst the parties to enter into oral exchange. The pith and substance of the arguments of Mr. Majithia, as well as in the second suit, was that the President was not authorized to enter into exchange, resulting into, the mutations, which were subsequently cancelled. The withholding of a document is recognized in law for drawing the adverse inference, as per the provisions of Section 114(g) of the Indian Evidence Act, 1872, which reads as under:-

"Section 114(g) in The Indian Evidence Act, 1872

(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it"

Naunihal Kishan, DW2, in evidence, admitted that the relevant books were in the office of the Assistant Registrar and there was no difficulty for the Society to obtain the same and produce in evidence. Ex.P3, the resolution, was attached with the mutation of exchange. The Society, in utter haste, just before cancellation of the mutations, in one day i.e. on 27.09.1979, sold the land measuring 30 kanals 1 marlas situated in village Panchi Gujran, to Ajit Kumar, vide Ex.D6, and remaining land

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measuring 8 kanals 16 marlas to Sheetal Dass, vide Ex.D4, and 10 kanals 4 marla situated in Village Bai to Ishwar Dass, vide Ex.D-3 and 9 kanals 9 to Jog Raj, vide Ex.D5, on an assumption of the cancellation of the mutation of two villages, but concededly, Atma Ram continued to be in possession of the entire land situated in Village Panchi Gujran, sold to one Ajit Kumar, vide sale deed (Ex.D6), which fact was unfolded through the testimony of Ajit Kumar. The Society, in such circumstances, was only able to hand over the possession of land 8 kanals 16 marlas to Sheetal Dass, vide Ex.D4, 10 kanals 4 marlas to Ishwar Singh, vide Ex.D3 and 9 kanals 9 marlas to Jog Raj, vide Ex.D5, but took back the possession of remaining land measuring 16 kanals 5 marlas in respect of land situated in Village Bai, for, the plaintiff, as per his own admission, was not in possession.

There is no dispute to the *ratio decidendi* culled out by this Court in **Shiv Ram's case** (supra), holding that where the exchange is oral and not written, it does not require registration. The oral exchange is recognized in law as the parties in the present case, acted upon, resulting into, mutations, though subsequently cancelled, but their possession of majority of land remained intact except few, for which, sought vindication of the grievance. The suit, in such circumstances, could not be said to be barred as per the provisions of 1984 Act. The registered document can be set aside only by the Civil Court. The aforementioned view of mine is derived from the *ratio decidendi* culled out by Hon'ble the Supreme Court rendered in **"Satya Pal Anand V/s State of M.P. and others" 2016 (4) RCR (Civil) 904.**

The whole genesis of the judgment was that DW2-Naunihal

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Kishan, was never authorized to enter into oral exchange as the exchange was forged and fabricated. It was not a complete denial. For the sake of repetition, the records of the Society did not see the light of the day, thus, arguments of Mr. Majithia, must fail. Even the trial Court also noticed the fact that in the written statement, there was no denial and it tantamounts to admission, as per the Order 8 Rule 5 of the Code of Civil Procedure. DW2, in cross-examination, admitted that the land was exchanged by Atma Ram i.e. the plaintiff and Tara Chand-defendant No.2, in the second suit, was initially in possession of the Society, but in exchange, the possession was transferred from the Society to Atma Ram. Naunihal Kishan and the plaintiff-Atma Ram, appeared before the Assistant Collector, on 04.08.1970, acknowledged the oral exchange of their land and mutation (Ex.P5) was sanctioned. Similarly, the other mutation No.582 (Ex.P2) pertaining to Village Bai, was also sanctioned. Though mutation does not confer any title and right and it is only meant for fiscal purposes i.e. for the purpose of the land revenue. The cancellation of the mutations, was not on the basis that exchange had not taken place, but only on the premise of possession, which was contrary to the reality, as per the statement/testimony of the witnesses.

In **Ram Singh's case** (supra), the dispute pertained to a transfer and not exchange. Transfer is one sided, whereas exchange is mutual, therefore, the said judgment would not apply.

In **Gurdial Singh's** case (supra), the findings came on the basis of the recital in document (Ex.R-1), which was found to be not on account of past transaction, but exchanged through the document. It is, in such

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circumstances, the Court had an occasion to opine with regard to the registration as it was a written exchange deed. For the sake of brevity, para No.4 of the judgment reads as under:-

"4. In the present case, the exchange took place through written Exchange Deed consisting of Exhibit R-1 and the other similar document which was executed by Ajmer Singh, on his own behalf and as guardian of respondents Nos.2, 3 and 4, who were minors at that time, in favour of Rura Singh. The learned counsel for the respondents, however, urges that Exhibit R-1, does not bear the signatures of the respondents, it was only an acknowledgment and could not be termed as an Exchange Deed. The argument is wholly misconceived. A contract need not be contained in several documents as held in Regina Ernest De Soysa V. The Attorney General for Ceylon, AIR 1919 Privy Council 242. Though the second part of the document has not been produced on the record, but its execution stands admitted by the respondents. The following recital in the document, Exhibit R-1, shows that it was not a record of past transaction, but the exchange had been actually effected through this document:-

I have given in exchange my land valued rupees Twenty to Ajmer Singh, Gurnam Singh, Chander Singh and Joginder Singh in lieu of their land valued rupees Ten, annas eight and possession thereof has been delivered to Ajmer Singh. Ajmer Singh has given in exchange his land through a similar agreement of the same date and has delivered its possession to me."

In **Murid Khan's case** (supra), the question raised was not with regard to the exchange, but oral sale and such oral sale would require registration or not. For the sake of brevity, para No.1 of the judgment reads as under:-

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"(1) Whether the transaction of oral sale requiring compulsory registration under [Section 54](#) of the Transfer of Property Act is saved by the doctrine of part performance is the question which falls for determination in this appeal. "

In such circumstances, the arguments of Mr. Majatia that oral exchange required registration, are not sustainable in law.

Keeping in view the aforementioned facts and circumstances, I do not find any illegality and perversity in the judgments and decrees of the Courts below and the same are hereby upheld. The 'Substantial Questions of Law' as framed above, are answered in the following manner:-

RSA No.2750 of 1989

In favour of the respondent-plaintiff-Atma Ram and against the appellants-defendants.

RSA Nos.2748 and 2749 of 1989

In favour of the respondent-defendant-Atma Ram and against the appellant-plaintiff.

Coming to the revision petition, I am of the *prima facie* view that the petitioners had no legs to stand, for, the provisions of Section 152 of CPC, for amendment of the decree, cannot be invoked, in the absence of any cross-objections or the appeal, preferred against the findings declining the possession of land measuring 9 kanals 9 marlas and rightly so, the trial Court dismissed the application for amendment of the decree.

As regards the cross-objections bearing XOBJC-13-C of 1993, the same have been filed by the plaintiffs on the premise that the judgment and decree passed by the Courts below deserves to be modified to the extent of decree of possession in the alternative, was also required to be awarded

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in favour of the plaintiffs in respect of land measuring 9 kanals 9 marlas situated in Village Bai, Tehil Ganaur, District Sonapat as both the Courts below found that the plaintiffs/respondents are the owners of the entire land including the land, aforementioned, but only decree of declaration has been awarded in respect of land measuring 30 kanals 1 marla. Both the Courts below failed to appreciate the fact that since the plaintiffs have been found to be owner of the said land, they need not have been driven to file another round of litigation.

I am afraid the aforementioned submissions are not sustainable in the eyes of law as no relief of possession of land measuring 9 kanals 9 marlas was sought. The possession was only qua 35 kanals 5 marlas, in other words, there was admission of possession of 9 kanals 9 marlas, sold vide registered sale deeds *ibid*, executed in favour of Jog Raj.

Resultantly, all the three regular second appeals, cross-objections as well as the revision petition are dismissed.

12.04.2019

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**