

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

RSA-2930-2012 (O&M)
Date of decision: 18.11.2019

Surjit Singh

...Appellant

Versus

Avtar Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Ms. Sarika Gupta, Advocate for the appellant.

Mr. K.S. Brar, Advocate for
Mr. I.S. Brar, Advocate for the respondents.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiffs Avtar Singh, Gurmeet Singh, Tarlochan Singh, Sukhdev Singh sons and Pritam Kaur widow of Jaswant Singh, all residents of Village Kajauli, Tehsil and District Ropar had filed a suit against defendant Surjit Singh of their village, seeking a declaration that plaintiffs are owners in possession of land bearing khewat/khatoni No.3/3, khasra No.17//5/1 (3-11), 6/1 (2-0), 18//1/3 (8-12), 9(3-18), situated at village Kajauli, Tehsil and District Ropar. In addition to seeking declaration, they sought relief of permanent injunction, restraining the defendant from interfering into ownership into ownership and possession of plaintiffs over the suit land. In the alternative, plaintiffs sought relief of possession as owners of the said land.

As per version of plaintiffs, their predecessor-in-interest Sh.

Jaswant Singh son of Sh. Dharm Singh, who expired on 28.08.2001 was reflected in the revenue record as owner in possession of the suit land, though, nature of the said property was joint Hindu family property and mutation regarding his estate was sanctioned in favour of the plaintiffs. Sh. Jaswant Singh had not exchanged the suit land with the defendant and had not parted with its possession. The defendant started proclaiming himself to be the owner of the suit land on the basis of one mutation of exchange bearing No.577 of village Kajauli, which was sanctioned on the basis of alleged exchange deed dated 07.05.2001. According to the plaintiffs, Sh. Jaswant Singh had not delivered the possession of the suit land to the defendant and had not received any land from him in lieu of suit land. As a matter of fact, defendant is in possession of the land bearing khewat/khatoni No.28/31, khasra No.3//12/2, 18, 19/1, 19/2, 20/1 situated at village Kajauli as owner. That although, the possession of the suit land is with the plaintiffs, however, in case, the Court come to the conclusion that the plaintiffs were not in possession of the said land, then they be delivered possession thereof.

On getting notice of the suit, the defendant appeared and filed written statement, contesting the suit, raising preliminary objections to the effect that the suit was not maintainable and the plaintiffs were estopped by their own act and conduct from filing the present suit etc. On merits, the defendant admitted that Sh. Jaswant Singh was original owner of the suit land but denied that the nature of the suit land in his hand was joint Hindu family ancestral property. According to the defendant, since the suit land was self acquired property of Jaswant Singh, he had orally

exchanged 13K-12M of that land with the defendant and memorandum of exchange was prepared on 07.05.2001. The property of defendant comprised in khewat/khatoni No.28/31, khasra No.13//12/2(6-13), 18(1-4), 19/1(3-6), 19/2(0-5), 20/1(2-0), total 13 K-8M and 0K-4M out of khara No.17//26(0-19) bearing khasra/khatno No.35/38 as entered in the jamabandi for the year 1996-97 was given to Jaswant Singh. Both these pieces of land are situated within jurisdiction of village Kajauli, H.B. No.266, Tehsil & District Ropar. The memorandum of exchange dated 07.05.2001 was brought to the notice of the revenue authorities. It was acted upon and the parties had come into possession of their respective land; that after completion of the formalities including sanction of mutation, Sh. Jaswant Singh during his life time admitted the oral exchange to be correct and the electricity meter connections standing in the respective land were got changed by both the parties. After death of Jaswant Singh, the entire property belonging to him including the suit property has been mutated in the name of plaintiffs, vide mutation No.583; that since, it was an oral exchange by way of delivery of possession, the memorandum of exchange was prepared on 07.05.2001.

The suit was earlier decreed partly by Addl. Civil Judge (Sr. Divn.) Rupnagar, vide judgment and decree dated 04.04.2006, in terms of that, the plaintiffs were granted relief of declaration that they were owners of the suit land, however, relief of permanent injunction was declined to them, since, they were not shown to be in possession of the suit property. The parties went in appeal and the first Appellate Court, vide its order/judgment dated 19.10.2007, allowed the application under

Order 6 Rule 17 CPC moved by Surjit Singh and remanded the case to the trial Court to take written statement from the defendant, frame issues afresh and thereafter, decide the case on merits on the basis of evidence already led and the new evidence to be adduced by the parties. From the amended pleadings of the parties, the following issues were struck:-

1. Whether the plaintiffs are entitled to the declaration as prayed for? OPP
2. Whether the plaintiffs are entitled to the permanent injunction as prayed for? OPP
3. Whether the plaintiffs are entitled to possession of the suit property as an alternative relief? OPP
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the plaintiffs are estopped by their own act and conduct to file the present suit on account of exchange agreement dated 07.05.2001 following the mutations? OPD
6. Whether the plaintiffs have no locus standi to file the present suit? OPD
7. Relief.

During the course of evidence of plaintiffs, plaintiff No.1 Avtar Singh got his statement recorded as PW1 and the plaintiffs tendered into evidence copy of jamabandi for the year 1996-97 Ex.P1, Ex.P2, khasra/girdawari Ex.P3, copy of jamabandi for the year 1971-72 Ex.P4, copy of jamabandi for the year 2001-02 Ex.P5, copy of Aks Shajra Ex.P6, copy of khasra/girdawari Ex.P7, copy of jamabandi for the year 1996-97 Ex.P8, copy of rapat No.406 Mark-A and thereafter closed their evidence.

In rebuttal, defendant Surjit Singh got his statement recorded as DW1 and examined DW2 Surinder Pal Singh-Revenue Accountant, DW-3 Harjinder Singh, Assistant Qanungo, Tehsil Office Ropar, DW-4 Surjit Kumar, Consumer Clerk, DW5 Karnail Singh Lambardar, DW6 Raghbir Singh, DW7 Bhupinder Singh besides tendering various other documents.

After hearing arguments, the trial Court decided issue No.1 in favour of the plaintiffs, issue No.3 was decided in favour of the plaintiffs, issue No.2 was decided holding that since the defendant is in possession of the suit property, the relief of permanent injunction cannot be granted to the plaintiffs, issue No.4 was decided holding that the suit was maintainable in the present form, so the issue was accordingly decided in favour of the plaintiffs and against the defendant, issue No.5 was decided in favour of the plaintiffs against the defendant, holding that plaintiffs have every right to file the present suit, issue No.6 was decided in favour of the plaintiffs and against the defendant holding that the plaintiffs have requisite locus standi to file the present suit, vide judgment and decree dated 24.05.2011, suit of the plaintiffs was decreed for declaration that plaintiffs are owners of the land bearing khewat/khatoni No.3/3, khasra No.17//5/1 (3-11), 6/1 (2-0), 18//1/3 (8-12), 9(3-18), situated at Village Kajauli, Tehsil & District Ropar and they were held entitled to possession of the suit property. Therefore, a direction was issued to defendant to hand over the physical vacant possession of that land to the plaintiffs within two months from the date of order, however, observing that as the defendant is in possession of the

suit property, the suit of plaintiffs as regards relief of permanent injunction for restraining the defendant from interfering into possession of the plaintiffs was dismissed.

Feeling aggrieved by the said judgment and decree, defendant Surjit Singh had preferred an appeal before District Judge, Rupnagar and vide judgment dated 27.01.2012, the appeal was found to be devoid of merit and was dismissed, leaving the parties to bear their own costs.

The defendant still felt dissatisfied and has approached this Court, by way of filing Regular Second Appeal, notice of which was given to the plaintiffs/respondents who have put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The trial Court while decreeing the suit of the plaintiffs has given the following reasons for doing so:-

- The version of the defendant that Ex.D1 is just a memorandum of exchange and, therefore, does not require registration, is not acceptable. Firstly, there is no averment in that regard in the initial written statement filed by the defendant that deed Ex.D1 was proceeded by an oral exchange and it has clearly been mentioned therein that the exchange was effected in the light of the exchange deed Ex.D1.
- Perusal of Ex.D1 shows that actual exchange was effected through this deed and it was not a mere memorandum.

- The exchange deed was inadmissible in evidence being an unregistered document, hit by Section 17 of the Registration Act.
- That the exchange deed Ex.D1 is of the value for more than Rs.100/- and as per Section 17 of the Registration Act, it is compulsorily registerable. It being so, Ex.D1 cannot be read into evidence, therefore, the defendant Surjit Singh cannot be held to have become owner of the suit property on the basis of any exchange referred to in Ex.D1. Thus, it was Jaswant Singh who despite the execution of Ex.D1 was owner in possession and upon death of Jaswant Singh, his LR's i.e. plaintiffs stepping into his show would inherit the suit land and would, thus, be natural owners of the same.
- The plaintiffs have failed to prove that the suit property held by Jaswant Singh was ancestral but that does not have any bearing on the relief of declaration.
- The suit property had devolved upon plaintiffs being LR's of Jaswant Singh, who were declared to be owners of such land. Therefore, the defendant was held liable to vacate the suit land and give its possession to the plaintiffs.
- Relief of permanent injunction had been declined to the plaintiffs for the reason that they were not in the possession of the suit land.

We find that the interpretation of document Ex.D1 is very

vital. It is to be seen, as to whether it is a partition deed i.e. a deed vide which the exchange had taken place and if so, it required compulsory registration and in the absence of such deed being registered, the same cannot be looked into or relied upon. However, if the document is taken to be memorandum of exchange i.e. a document which does not result in exchange having taken place but records such transaction having taken place in the past, then, that does not require compulsory registration and can be acted upon as it is.

According to learned counsel for the appellant, this document is a memorandum of partition. Even otherwise, oral exchange is permissible in the State of Punjab and no document needs to be executed. It can take place by exchange of possession even. The Courts below have wrongly interpreted the document as a partition deed requiring compulsory registration, rejecting the documents not considering the fact that the mutation had already been sanctioned on the basis of exchange and possession was also transferred. In support of her contentions, she had referred to various judgments; first being **Randhir Singh Vs. Ranjit Singh, 2011 (2) RCR (Civil) 246** by a single judge of this Court wherein it was observed that Section 118 of the Transfer of Property Act, is not applicable in the State of Punjab and consequently, oral exchange is legally permissible, as such, in case of exchange sale deeds are not required to be executed. She further referred to judgment **Rakesh Kumar and another Vs. Tek Chand and another in RSA-50-1986, decided on 30.01.2014** and **Sardara Singh and another Vs. Harbhajan Singh and others, 1974 PLJ 341** by a Division Bench of

this Court in that regard.

On the other hand, learned counsel for the respondents, defending the judgments passed by the Courts below, had referred to various judgments; **Chander Shekhar and Ors. Vs. Des Raj and Ors., 1983 (1) All India Land Laws Reporter 396** by a single judge of this Court, wherein, it was observed that when a document, by which partition is effected or a document evidencing partition is not registered, it cannot be looked into. He further placed reliance upon **Satyawan Vs. Raghbir 2002 (2) RCR (Civil) 669** by a single judge of this Court, wherein, it was observed that transfer of immovable property by exchange has to be viewed as transaction of sale and oral exchange of immovable property of more than Rs.100/- is not permissible, in view of the amendment of Section 49 of the Registration Act. The document which is required to be registered necessarily under the Transfer of Property Act but not under the Registration Act falls within the scope of Section 49 of the Registration Act and if the document is not registered, such document is not admissible in evidence of such transaction by virtue of Section 91 of the Evidence Act and do not affect any right in the immovable property comprised therein. It was further observed that where there was no valid exchange, the transaction cannot be saved merely, because it took place long back and the position can no more be restored.

Indisputedly, oral exchange is permissible in the State of Punjab, though, if some document is prepared for the purpose of partition, then, it requires compulsory registration. This is so, if a document is prepared and thereafter, exchange is carried out in the form

of change of possession. However, if the possession is exchanged under an oral agreement and a document is prepared later evidencing that transaction, then, the said document is to be treated as memorandum of partition and not a partition deed, which does not require any compulsory registration. The interpretation of document Ex.D1 in this case is very necessary, wherein, it has been mentioned to be agreement of exchange and not an exchange deed. Secondly, it records that under the agreement, the possession had been transferred between the parties and mutation in that regard would be got entered and sanctioned. The mutation has admittedly been sanctioned on the basis of exchange and it has been incorporated in the revenue record. Possession has also changed hands. Now one wonders how the plaintiffs can wriggle out of exchange taking a technical plea that since the document Ex.D1 is not a registered one, therefore, it be not relied upon. The Courts below completely misread the evidence and wrongly interpreted the law while decreeing the suit of the plaintiffs, merely, for the reason that on account of non registration, Ex.D1 was inadmissible in evidence and cannot be looked into. The first Appellate Court of District Judge, Ropar is also not shown to have applied judicious mind while affirming the judgment and decree passed by the trial Court and dismissing the appeal, resulting in miscarriage of justice. The exchange between the parties in this case stood duly proved and acted upon. The mutation on the basis thereof had also been entered and sanctioned. The possession had been exchanged. Then, one cannot understand how the whole transaction can be faulted. The Courts below wrongly picked up faults in the entire transaction while accepting the

claim of the plaintiffs. The appeal has merit. The same is accordingly accepted. The judgment and decrees passed by the Courts below are set aside. Resultantly, suit filed by the plaintiffs against defendant Surjit Singh stands dismissed with costs.

18.11.2019

sumit.k

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No