

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

RSA-3791-2012(O&M)

Date of decision:-9.4.2019

Hoshiar Singh (since deceased) represented through his legal
representatives

...Appellants

Versus

Ajmer Singh and others

...Respondents

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

Present: Ms.Amandeep Kaur, Advocate
for the appellants.

Mr.Alok Mittal, Advocate
for respondent No.1.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Ajmer
Singh had brought a suit against defendants Hoshiar Singh, Rajinder
Singh and Khanna Primary Co-operative Development Ltd. through
its Branch Manager seeking possession of the suit land and in
addition to that craving for declaration to the effect that the exchange

deed dated 30.8.1991 is illegal, null and void and so is mutation No.5283 dated 27.12.1991 sanctioned on the basis thereof, further that mortgage deeds dated 19.9.1997 and 19.4.2002 are illegal, null and void; in addition to that he had sought recovery of Rs.37,740/- on account of mesne profit and he had sought permanent injunction also.

As per the case of the plaintiff, he was owner of land measuring 27 Kanals 16 Marlas situated at village Ikolaha, Tehsil Khanna, District Ludhiana; that the defendant No.1 was the owner of the land measuring measuring 9 Kanlas 5 marlas i.e. 1/2 share in the land measuring 18 kanals 11 marlas situated at village Ikolaha, Tehsil Khanna; that the plaintiff and defendant No.1 had agreed to exchange the land measuring 9 kanals 5 marlas resultantly, an agreement of exchange was reduced into writing on 30.8.1991 vide which defendant No.1 agreed to give land measuring 9 kanals 5 marlas to the plaintiff out of his property and plaintiff No.1 had agreed to give his land to the defendant No.1; that after execution of the said agreement of exchange, it was given to Patwari Halqa to enter the mutation; subsequently, defendant No.1 resiled from that agreement and mutation was neither pursued nor acted upon, however, inadvertently the mutation regarding the land agreed to be given in exchange by the plaintiff to defendant No.1 was wrongly sanctioned by Halqa Patwari in favour of the defendant No.1 but no mutation was sanctioned in respect to the land given by defendant

No.1 to the plaintiff; that defendant No.1 had entered into an agreement to sell his land measuring 9 kanals 5 marlas mentioned in para No.2 of the plaint with one Paramjit Singh son of Ujjagar Singh son of Bagga Singh, which further proves that the land was never exchanged and the exchange was never given effect to; that defendant No.1 had obtained loan from PADB, Khanna by pledging his 1/2 share out of 18 kanals 11 marlas, thus showing that the land was never exchanged and the said exchange deed was never given effect to by the parties; that even the defendant No.1 entered into an agreement to sell dated 31.5.1999 in respect to land measuring 9 kanals 5 marlas in favour of the plaintiff; that if this land had been exchanged, defendant No.1 could not have mortgaged this property and could not also enter into any agreement to sell and this land should have been mutated in the name of the plaintiff; that under the agreement to sell dated 31.5.1999, the defendant No.1 delivered the possession of the property mentioned in para No.2 of the plaint to the plaintiff in part performance of the agreement and the plaintiff moved an application for correction of khasra girdawari in respect to said land, which was contested by defendant No.1 but it was sanctioned in favour of the plaintiff by the revenue authorities; that defendant No.1 himself preferred an appeal against the mutation No.5283 dated 27.12.1991 and stated in the grounds of appeal that mutation No.5283 was illegal, null and void and the same was liable

to be set aside; that defendant No.1 illegally mortgaged the land measuring 3 kanals 3 marlas in favour of defendant No.2, to which defendant No.1 has no right, therefore the mortgage deed dated 19.4.2002 and report No.5934 sanctioned on the basis of said mortgage deed was also null and void and liable to be set aside; that similarly the defendant No.1 had mortgaged land measuring 3 kanals 16 marlas in favour of defendant No.3 vide mortgage deed dated 19.9.1997 and mutation on the basis thereof was sanctioned, which according to the plaintiff was illegal and void and had no effect on the ownership rights of the plaintiff and was also ineffective, inoperative on the rights of the plaintiff. As per the version of the plaintiff, possession of defendant No.1 was illegal and as that of a trespasser and therefore, the plaintiff is entitled to get the possession being owner since the plaintiff is still the owner of the property; that the defendant No.1 was illegally and unlawfully using and enjoying the property in dispute, therefore, the plaintiff is entitled to mesne profits at the rate of Rs.8,000/- per year, coming to Rs.27,750/- for a period of August 1999 to August, 2002; that the defendant No.1 threatened to alienate, transfer, mortgage this property, to which he had no right. Feeling aggrieved the plaintiff had brought the suit.

On notice, only defendant No.1 put in appearance to offer contest. In the written statement filed by defendant No.1, he has raised preliminary objections contending that the plaintiff had filed a

false and frivolous suit to grab the property of the answering defendant taking advantage of illiteracy and innocence of the answering defendant; that the real facts were that the plaintiff and answering defendant agreed to exchange their land vide exchange deed dated 30.8.1991 and the possession of the land was exchanged at that time and since then the parties were in possession of the exchanged properties; that the plaintiff mischievously tried to grab the property of the answering defendant; that the defendant had filed a suit titled “Ajmer Singh Versus Hoshiar Singh” for specific performance on the basis of alleged agreement to sell dated 31.5.99, which was a complete sham paper transaction and was a result of fraud and misrepresentation; that it was difficult to understand how the defendant could enter into an agreement to sell when he was already litigating; that the plaintiff was estopped by his own act and conduct; that the suit was hopelessly time barred and not maintainable that the the exchange deed had already taken place in spirit and letter; that the plaintiff had filed the suit by distorting true facts. On merits, the answering defendant stated that plaintiff had agreed to exchange the land vide exchange deed dated 30.8.1991 and the possession of the property was also exchanged and then the parties were owners in possession of the exchanged property; that the agreement of exchange was legal and valid and the plaintiff himself had got the mutation sanctioned; that the defendant No.1 had

obtained a loan from defendant No.3 and the plaintiff was signatory to that mortgage deed, however, now the plaintiff had concocted a false story. Refuting the remaining allegations, such defendant prayed for dismissal of the suit.

It may be mentioned here that defendant No.2 had made a statement through his counsel on 6.9.2003 in the trial Court that he had no concern with the property since the same stood redeemed and he did not want to file written statement. Subsequently he and defendant No.3 had been proceeded against ex parte.

The plaintiff had filed replication controverting the allegations in the written statement filed on behalf of defendant No.1 whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to declaration as prayed for?
OPP.
2. Whether the plaintiff is entitled to injunction as prayed for?
OPP.
3. Whether the plaintiff is entitled to injunction as prayed for?
OPP.
4. Whether the plaintiff is entitled to recover Rs.37,740/- on account of mesne profits from the defendants? OPP.
5. Whether the suit of the plaintiff is based on falsehood as

alleged, if so its effect? OPD.

6. Relief.

Additional issues 5A and 5B framed on 7.8.2010.

5(A) Whether the suit of the plaintiff is time barred? OPD.

5(B) Whether the plaintiff is estopped by his act and conduct for filing the suit? OPD.

Both the parties led evidence in respect of their claims.

During the course of their evidence, the plaintiff had examined Sh.Ajmer Singh as PW1.

On the other hand, defendants examined defendants No.1 Hoshier Singh as DW1, Sh.Narinder Kumar as DW2, Sh.Baldev Singh as DW3.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 to 3 against the plaintiff, issue No.4 against the plaintiff, issue No.5(A) in favour of the defendant, issues No.5 and 5B in favour of the defendant. Resultantly, suit of the plaintiff was dismissed with costs. This was so done vide judgment and decree dated 8.9.2010.

The plaintiff was aggrieved by the said judgment and decree and he had filed an appeal before the Court of District Judge, Ludhiana, which was assigned to Additional District Judge, Ludhiana, who vide judgment and decree dated 29.2.2012 accepted the appeal, set aside the judgment and decree passed by the trial

Court and decreed the suit of the plaintiff to the effect that the exchange deed dated 30.8.1991 and mutation No.5283 sanctioned on the basis thereof were illegal, null and void and the plaintiff was owner of the property in question and also entitled to recover mesne profit @ Rs.5,000/- per year per acre with effect from August 1999 till August, 2002. Respondent No.1 was also restrained from alienating the property in dispute in any manner.

Now it was turn of the defendant No.1 to feel dissatisfied and he had filed the present regular second appeal before this Court. Since he (defendant No.1) had expired, his legal representatives were brought on record. Notice was issued to respondents. Contesting respondent No.1 has put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the appeal.

The trial Court without properly appreciating the evidence adduced before it and by misinterpretation of law had dismissed the suit of the plaintiff, whereas the First Appellate Court appreciated the facts and circumstances of the case in a judicious manner and by correct interpretation of law came to the conclusion that the suit of the plaintiff deserves to be decreed and accordingly decreed it.

Learned Additional District Judge, Ludhiana referring to copies of jamabandies Ex.PX and Ex.PY has observed that the

appellant and respondent No.1 were the owners of the property detailed in the plaint, which they had agreed to exchange vide writing dated 30.8.1991 (Ex.D3); that the said document had been given to Halqa Patwari and on the basis of which mutation No.5283 (Ex.P7) was sanctioned but that was done erroneously inasmuch as the land agreed to be exchanged by the appellant and owned by him was incorporated in the revenue record in the name of defendant No.1, however, the land which was to be given by defendant No.1 to the appellant was not so done, therefore no valid exchange had taken place and even possession of the properties was not exchanged; that the defendant No.1 had executed an agreement to sell dated 31.5.1999 (Ex.P5) in favour of the appellant-plaintiff, the subject matter of that agreement was the same as mentioned in the exchange deed dated 30.8.1991. The First Appellate Court further observed that the plaintiff had filed a suit for specific performance of that agreement of sell, which was decreed in his favour vide judgment Ex.P16; that defendant No.1 had filed an appeal against that judgment, which was dismissed. Since he had not approached this Court by way of filing regular second appeal, the said decision became final and binding upon the parties. The First Appellate Court has further observed that the possession of the land owned by defendant No.1, which was earlier agreed to be exchanged by him with land of plaintiff/appellant was in fact delivered to the

appellant/plaintiff at the time of execution of agreement to sell and not when the alleged exchange deed was handed over to the Patwari for entering mutation. It has further been observed that defendant No.1 had earlier executed mortgage deed (Ex.P4) vide which he had mortgaged part of land owned by him showing that he in fact mortgaged part of the land which he had earlier agreed to exchange with appellant/plaintiff meaning thereby that the exchange deed had in fact not been acted upon. It has further been observed that the record showed that although the possession of the property owned by respondent No.1 and which was agreed to exchanged with property of the appellant, remained with respondent No.1 but under the garb of exchange deed as well as mutation No.5283, defendant No.1 took possession of the property earlier owned by the appellant, which was allegedly agreed to be exchanged by him with the land of respondent No.1; thus mutation No.5283 could not be termed as legal and valid and even otherwise respondent No.1 by his own act and conduct had not admitted the said mutation to be correct inasmuch as in the grounds of appeal submitted by him in the Court Ex.P13, he himself had challenged the legality and validity of mutation No.5283 stating that no exchange ever took place or was implemented on the basis of agreement dated 30.8.1991; furthermore defendant/respondent No.1 could not show as to what property had been given by him to the plaintiff under that arrangement. Therefore, possession of defendant

No.1 was unauthorized and he was liable to pay mesne profits, which were assessed to be Rs.5,000/- per year per acre.

I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Ludhiana.

The appeal stands dismissed accordingly.

9.4.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No