

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

**RSA No.5318 of 2015 (O&M)
Date of Order: 27.03.2019**

Karnail Singh

..Appellant

Versus

Dilbag Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jagjot Singh, Advocate, for
Mr. Kunal Dawar, Advocate
for the appellant.

Mr. S.S.Swaich, Advocate
for the cross-objectors/respondents.

ANIL KSHETARPAL, J(Oral)

By this judgment, regular second appeal as well as cross-objections filed by the respondents shall stand disposed of.

Plaintiff-appellant-Karnail Singh filed a suit for declaration with a consequential relief of permanent injunction claiming that on the basis of exchange deed dated 06.06.1979 and sale deed dated 07.06.1979, he is owner in possession of 5 bighas and 1 biswas of land. He claims that 3 bighas and 15 biswas of land was exchanged with the father of the defendants whereas he is owner of 8 biswas of land pursuant to a registered sale deed dated 07.06.1979.

Defendants contested the suit and denied execution of the exchange deed. Defendants also challenged the correctness of the sale deed.

Learned trial court on appreciation of the evidence held that the exchange deed dated 06.06.1979 has not been proved, however granted a

decree for permanent injunction in favour of the plaintiff and against the defendants.

Both the parties went up in appeal before the first appellate court. First appellate court on appreciation of the evidence once again found that neither the exchange deed nor the possession is proved to have been exchanged. However, the first appellate court held that the sale deed with respect to 8 biswas of land dated 07.06.1979 has been proved and, therefore, the first appellate court granted decree for declaration with regard to the land purchased through the sale deed.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel appearing for the appellant has submitted that in the area of State of Punjab relevant provisions of Transfer of Property Act have not been extended and therefore even oral exchange is permitted. Hence, he submitted that the plaintiff is in possession of the area received in exchange and, therefore, the courts have erred in dismissing his suit qua exchange.

On the other hand, learned counsel for the respondents-cross-objectors submitted that the plaintiff has not only failed to prove the exchange deed dated 06.07.1979 but the exchange deed required registration as per Section 17 of the Registration Act, 1908, which is applicable to the state of Punjab.

As regards requirement of compulsorily registration, this court has already examined the aforesaid issue and held that registration is compulsorily in case there is a document in writing while following the

judgment passed in the case of Satyawan and others vs. Raghbir, AIR 2002 (Pujab), 290. Still further the exchange deed has not been proved.

Keeping in view the aforesaid facts, this court has left with no choice but for to uphold the judgment passed by the learned first appellate court. However, in order to resolve the controversy, it is directed that, if any of the party is in possession of the land received in exchange which has been held to be not permissible then they shall hand over the possession to the owner.

Learned counsel for the defendants-respondents has pointed out that they are already co-sharers in the khewat which is alleged to have been given in exchange to them by the plaintiff. In such situation, it shall be the duty of each of the party to hand over possession of the land which is in their possession pursuant to exchange or in excess of their share.

In view of what has been stated hereinabove, the regular second appeal as well as cross-objections are disposed of accordingly.

March 27, 2019
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No