

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

**RSA No.729 of 2018
Date of Decision : 24.09.2019**

Pal Singh (since deceased) through his legal heirs and others

.....Appellants

Versus

Jasbir Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Bhavesh Aggarwal, Advocate for
Mr. Ashish Aggarwal, Advocate for the appellants.

ARUN PALLI, J. (Oral)

The suit filed by the appellants/plaintiffs was dismissed by the trial Court, vide judgment and decree dated 07.12.2013 and as even the appeal preferred against the said decree failed and was dismissed on 06.04.2017 they are before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiffs prayed for a declaration that they were owners of a land measuring 16 kanals 16 marlas out of a land measuring 21 kanals 18 marlas comprised in specific numbers as set out in the cause title of the plaint. Further entries in the name of the defendants as also the alleged mutation of exchange regarding the suit land, if any, was illegal and null and void. A consequential relief by way of injunction also prayed for injuncting the defendants from alienating the suit property in any manner.

In brief, the case set out by the plaintiffs was that Harnam Singh son of Sunder Singh was the owner of the suit land who died on 22.11.1994, at village Boharwal, Tehsil Patti, District Amritsar. Post his death his estate was inherited by his three daughters namely Charan Kaur, Harbans Kaur and Gurdeep Kaur. Harbans Kaur also died and mutation of her inheritance was sanctioned in the name of Pal Singh (Plaintiff No.1). Plaintiffs No.2 and 3 i.e. Charan Kaur and Gurdip Kaur daughters of late Harnam Singh had appointed Pal Singh and Sukhdev Singh to be their special attorney to file the present suit. It has been the case of the plaintiffs that Harnam Singh did not exchange the suit land with defendants No.1 and 2, however, they in connivance with the revenue authorities got their names entered in the revenue record. Late Harnam Singh died in the year 1994 and till his death he continued to be in occupation and possession of the suit property and thereafter the plaintiffs were cultivating the possession. For, the defendants were taking undue advantage of the wrong entries in the revenue record, sought to forcibly dispossessed the plaintiffs, thus, the suit.

Defendants in the written statement pleaded *inter alia* that Harnam Singh was not the original owner of the land in question. In fact plaintiffs and Harnam Singh and elders of the defendants were from the same brotherhood and related to each other. For, the elders of the plaintiffs got more land and an exchange took place between the elders of the parties and since then they were owners of the land in question. They have been in possession of the suit property prior to 1985.

Upon consideration of the matter in issue and the evidence on

record both the Courts concurrently concluded that Sukhdev Singh-PW1 power of attorney holder of Charan Kaur and Gurdeep Kaur and Pal Singh were cross-examined, who stated that Harbans Singh and Harnam Singh were related to each other. Sukhdev Singh-PW1 did not present himself for the purpose of cross-examination after 06.01.2009, as also Narinder Singh PW2, hence, their statements could not be read in evidence. Harbans Singh-PW3, admitted in his cross-examination that Harbans Singh and Harnam Singh were related to each other. Further Harbans Singh was cultivating the suit land since 25 years. And, post his death Jasbir Singh was in cultivating possession. Mutation (Ex.P6) was sanctioned in the year 1990 and analysis whereof showed that on identification of Pritam Singh, parties appeared before the revenue authorities and the exchange was accepted. Concededly, Harnam Singh, predecessor-in-interest of the plaintiff died in the year 1994 but he never questioned the said mutation during his life time. Thus, grievance of the plaintiffs that they were dispossessed from the suit property three years prior to the institution of the present suit in the year 2000, pales into insignificance. Still further, Sukhdev Singh-PW1 admitted in his cross-examination that plaintiffs Charan Kaur and Gurdeep Kaur were married and living in another village i.e. Boharwal. On the contrary, the defendants proved their continuous possession over the suit property for the past more than 20 years. Further, in a decision of this Court in 1990(1) SLJ, 194 (Bhagwan Kaur and ors Vs. Ranjit Kaur and ors), it was concluded that where the exchange of the property was followed by delivery of possession, no registered deed was required and a mere entry

in this regard in mutation register was sufficient. Even otherwise, oral exchange qua immovable property of Rs100/- or more was permissible in Punjab and the provisions of Section 118 of the Transfer of the Property Act as regards exchange were not made applicable to the State of Punjab. *Ex facie*, the exchange was effected and duly reflected in the record of rights since long and Harnam Singh never objected thereto during his life time. Further, the plaintiffs having failed to substantiate their continuous possession over the suit property as also their alleged dispossession, the only and the inevitable conclusion the Courts below could reach was: the plaintiffs failed to substantiate their claim.

On being specifically asked, learned counsel for the appellants failed to refer to anything on record to show if the conclusion recorded by both the Courts was either contrary to the record or suffered from any material illegality. No ground is made out to interfere in the concurrent findings recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

24.09.2019

Manoj Bhutani

(ARUN PALLI)

JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No