IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

103 CR No.6393 of 2016 (O&M)
Date of decision:13.3.2020

Gurnam Singh and another
... Petitioners

versus

Bant Singh and others
... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.A.K.Goel, Advocate,
for the petitioners
Mr.Munish Jolly, Advocate,
for respondents no.1 and 3(i) to (iv)
...

AMOL RATTAN SINGH, J. (Oral)

By this petition, the petitioners challenge the order of the learned trial court (Additional Civil Judge, Senior Division, Rajpura), dated 21.7.2016, by which their application under Order 6 Rule 17 of the CPC, seeking an amendment of their written statement, has been dismissed, on the ground that the application was moved at a stage after the plaintiffs had even closed their evidence on 4.9.2015, the application having been filed on 6.5.2016, (erroneously shown to be 6.5.2015 in the impugned order).

Notice of motion having been issued in this petition on 24.9.2016, with at that stage no interim order having been passed in favour of the petitioners. However, on an application seeking stay of proceedings before the trial court, this court, vide an order passed on 31.5.2019, had directed that court to adjourn the matter to a date beyond that given by this court at that stage. That interim order was continued thereafter.

Vide an order dated 24.2.2020, the contention of learned counsel for the petitioner-defendants had been noticed, to the effect that the amendment sought to be incorporated in their written statement was that the legal representatives of plaintiff no.2, i.e. presently respondents no.2 (i) to (iii), had exchanged their share in the suit land with the petitioners on 25.1.2016 and consequently, an amendment to that effect was very much required to be made.

On that date this court had, on an argument raised by Mr.Jolly, learned counsel for respondents no.1 and 3 (i) to (iv), asked learned counsel for the petitioners to answer the following two questions:-

> "i) As to how an exchange deed, without it being a registered document, can be led by way of evidence and consequently, if that is so, why an amendment *qua* which no evidence at all can be led and therefore would have no effect on that case, should be allowed;
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> ii) As to how a minors' property, i.e. of one of the sons of the late Balbir Singh, could have been exchanged by his brother without an appropriate order from an appropriate court (as contended by learned counsel for the respondents)."

On the next date of hearing, i.e. 28.2.2020, the following order had been passed:-

> "Pursuant to the order of this court dated 24.02.2020, learned counsel for the petitioners relies upon four judgments of

coordinate Benches of this court, in **Gurdev Singh v. Mukhtiar Singh and others**, 2015(3) PLR 446; **Randhir Singh v. Ranjit Singh**, 2011(2) RCR (Civil) 246; **Hardit Singh v. Gulzara Singh and another**, 1973 PLJ 329 and **Warjit Singh v. Avtar Singh and others** (RSA no.1610 of 1987, decided on 07.08.2013), to submit that Section 118 of the Transfer of Property Act, 1882 (in short "the Act of 1882"), not having been made applicable to the State of Punjab, an exchange of immovable property valued at even more than value of Rs.100/- is not compulsorily required to be registered for such document, and consequently the deed that the petitioners wish to rely upon before the trial court in the suit filed by the respondents herein, is still a document that can be led by way of evidence and the fetters contained in Section 54 of the Act of 1882 and Section 17 read with Section 49 of the Registration Act, 1908 (in short "the Act of 1908"), would not apply.

Having at least glanced through the judgments relied upon by the learned counsel, though undoubtedly they do hold that Section 118 of the Act of 1882 not having been made applicable to the State of Punjab, an exchange of immovable property of even more than a value of Rs.100/- is not compulsorily required to be registered, (because vide that provision immovable property as is exchanged would be governed by the conditions for a sale, i.e. by the process provided in Section 54 of the Act of 1882), however, none of the judgments relied upon are seen to be dealing with Sections 17 and 49 of the Act of 1908.

Consequently, learned counsel for the parties would address arguments as to how the Act of 1908, which is an Act enacted after the Act of 1882, would not hold the field, notwithstanding the fact that Section 118 of the Act of 1882 has not been made applicable to the State of Punjab.

As regards the second question raised on the last date of hearing, with regard to sale of the property of a minor (Gurvinder Singh son of Sukhwinder Singh), learned counsel for the petitioners has produced in court an order passed by the learned Addl. Civil Judge (Sr. Divn.), Rajpura, dated 27.09.2019, to submit that even though the exchange in question took place prior to 2019, it was held to be a valid exchange vide the said order.

Mr. Jolly would go through that order and would address arguments on that question also.

It is necessary to be noticed here that Mr. Jolly has also relied upon a judgment of the Supreme Court in **Shyam Narayan Prasad v. Krishna Prasad and others,** 2018 (3) RCR (Civil) 527, which of course is not a case arising from the State of Punjab.

Adjourned to 05.03.2020."

Today, learned counsel for the petitioners has produced in court the following documents:-

i) A notification issued by the Government of Punjab on 10.8.1989 extending the provisions of Section 118 of the Transfer of Property Act, 1882 (hereinafter to be referred to as the T.P.Act), to the urban areas of the State of Punjab, with effect from the date of the notification.

The notification also stipulates that an urban area would mean as follows:-

"1. The local areas which are declared to the Municipalities of Notified Area Committee under the provisions of the Punjab Municipal Act, 1911;

2. The local areas which are constituted to be cities under the provisions of the Punjab Municipal Corporation Act, 1976, and

3. The areas declared to be as urban estates under the provisions of the Punjab Urban Estates Development and Regulation Act, 1964.";

ii) A circular issued by the Department of Revenue (Stamp and Registration Branch), Government of Punjab, dated 18.9.1989 by which all Divisional Commissioners, Registrars and Sub Registrars etc. were informed that with Section 118 of the T.P.Act having been made applicable to the urban areas of the State of Punjab, stamp duty and registration fee would now be chargeable on exchanges made under that provision of the T.P. Act, in terms of the Indian Stamp Act, 1899, and the

Registration Act, 1908, and

iii) A circular issued by the same department to all the Deputy Commissioners/Registrars in the State of Punjab, dated 5.7.2000, stating therein that despite Section 118 of the T.P. Act having been made applicable to the urban areas of the State of Punjab, mutations were being entered in the revenue record even though registration of exchanges of property made in urban areas were not being registered in some cases.

Hence, the Deputy Commissioners/Registrars were directed to take appropriate action."

Mr.Goel, learned counsel for the petitioners, today further submits that the suit property in the present *lis* not being urban property, very obviously Section 118 of the T.P. Act has still not been made applicable to the State of Punjab and consequently, compulsory registration of any exchange of immovable property made in a rural area is still not required, as the provisions of Section 54 of that Act, by which registration of a sale made of tangible immovable property of a value of more than Rs.100/-, is compulsory. The said provision of Section 54 is made applicable by virtue of what is stipulated in Section 118 itself, which reads as follows:-

> **"54. "Sale" defined.-** "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.
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> **Sale how made.-** Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing,

can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyers, or such person as he directs, in possession of the property.

Contract for sale.- A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest or in charge on such property."

Mr.Goel thus contends that as the above provision is not applicable to rural areas even as per the circular dated 18.9.1989 issued by the Department of Revenue of the Government of Punjab (as has been referred to herein above), in any case registration of any exchange of an immovable property, in such areas, is also not compulsory.

As regards the aforesaid contention, I find myself unable to agree with learned counsel, in view of the fact that though he is absolutely correct in saying that Section 118 of the T.P. Act not being applicable to the rural areas of the State of Punjab even today, therefore, compulsory registration of an exchange of immovable property (even of a value of more than Rs.100/-) would not be compulsory, yet, what obviously cannot be ignored, in the opinion of this court, is that Section 17 of the Registration Act, 1908, does not carve out any exception as regards compulsory registration of a document the subject matter of which is an immovable property of a value of more than Rs.100/-.

The relevant part of Section 17 of the Registration Act, 1908, is reproduced herein below:-

“17. Documents of which registration is compulsory.- (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely-

xx xx xx

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

xx xx xx

(e) non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.”

xxxxx xxxxx xxxxx

Thus the Act of 1908, which is very obviously an Act enacted after 1882, does not carve out an exception even for exchange of land, whether urban or rural, if the value of such land is above Rs.100/-, which in the present case is not denied to be so.

Hence, as regards the compulsory registration of a document the subject matter of which is an exchange of an immovable property even in rural areas of Punjab, in the opinion of this court, Section 17 of the Registration Act, 1908, even read with Section 49 thereof (which carves out an exception in the case of agreements of sale sought to be led by way of evidence in a suit seeking specific performance of such agreements), would not obviate the need for registration of such instrument, if such an instrument is sought to be led by way of evidence.

Thus, in view of the fact that the eventual intention of the petitioners is to produce the exchange deed entered into by them with the legal representatives of plaintiff no.2, i.e. respondents no.2 (i) to (iii) herein, in my opinion, unless any such exchange deed is registered in terms of Section 17 of the Registration Act, 1908, it would not be admissible in evidence.

Having said that, as regards the amendment in the written statement itself, to bring on record the factum of the exchange, even though it may not be provable by exhibiting that document by way of evidence, yet, that (the amendment) could not have been refused, in view of the fact that the petitioners wish to state therein that they had actually entered into an exchange of land with the aforesaid respondents, after the evidence of the plaintiffs was closed, and consequently even the proviso to Order 6 of Rule 17 of the CPC would not apply, with that provision reading as follows:-

> **"Order VI:**
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> **Rule 17. Amendment of pleadings.-** The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:
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> Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

Thus, the exchange deeds having been executed on 25.01.2016, 31.01.2016 and 08.02.2016, i.e. after the evidence was led by the respondent-plaintiffs, obviously, even with due diligence, the petitioners could not have incorporated such exchange in the original written statement filed by them.

Consequently, this petition is allowed to the extent that the impugned order is set aside, with the amendment sought to be incorporated by the petitioners in their written statement allowed to be so incorporated, in terms of their application dated 6.5.2016 (copy Annexure P-9), but with the aforesaid observations made by this court, to be kept in mind by the learned trial court, as regards the inadmissibility of any document sought to be led in evidence, on the basis of such amendment.

13.3.2020 **(AMOL RATTAN SINGH)**
pk/diinesh **JUDGE**

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