

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

101

RSA No.4764 of 2017 (O&M)

Reserved on : 12.12.2022

Date of Decision : 20.12.2022

Bachan Singh

....Appellant

VERSUS

Mukand Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Siddharth Gupta, Advocate for the appellant.

Mr. D.S. Virk, Advocate for the caveator/respondents.

ALKA SARIN, J.

The present regular second appeal has been preferred by the plaintiff-appellant against the judgments and decrees passed by both the Courts below whereby his suit for declaration and permanent injunction has been dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for declaration to the effect that he is owner in possession of land measuring 6 *marlas* comprising in *khewat* no.1156/2274 as per *jamabandi* for the year 1989-90, in view of the exchange deed dated 19.03.1997. The plaintiff-appellant also sought grant of permanent injunction against the defendant-respondents. It is further averred that the plaintiff-appellant has constructed his house over the land and was residing there with his family since the exchange. The plaintiff-appellant averred that one Kirpal Singh son of Jagmit Singh had appointed Mukand Singh (defendant-respondent no.1 herein) as his General Power of Attorney vide registered GPA No.180 dated 02.01.1997 registered in the office of Sub Registrar, Rampura Phull and on the basis of said Power of Attorney, defendant-respondent no.1 had exchanged the land of Kirpal Singh with the land of

plaintiff-appellant through exchange deed dated 19.03.1997 in the presence of witnesses. The suit was contested by the defendant-respondent no.1 who denied having been appointed as GPA holder of Kirpal Singh. It was further denied that he ever exchanged the land of Kirpal Singh with the plaintiff-appellant and that the exchange deed dated 19.03.1997 was forged and fabricated. The suit was also contested by the other defendant-respondents.

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

1. Whether the plaintiff is entitled to declaration as prayed for ? OPP
2. Whether the plaintiff is entitled to permanent injunction as prayed for ? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
4. Whether the plaintiff has no cause of action to file the present suit ? OPD
5. Whether the plaintiff has no locus standi to file the present suit ? OPD
6. Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD
7. Whether the plaintiff has concealed the material facts from the court ? OPD
8. Whether the plaintiff has filed the present suit only to harass the defendant ? OPD
9. Whether Kirpal Singh son of Jagmit Singh never executed power of attorney in favour of defendant no.1 ? OPD
10. Relief.

The Trial Court dismissed the suit of the plaintiff-appellant. Aggrieved by the same, an appeal was preferred. The lower Appellate Court upheld the findings of the Trial Court holding that though oral exchange is permitted, however, if the exchange is reduced into writing the same requires stamp duty and registration, which is not the case in the present suit since the exchange deed was neither stamped nor registered. Aggrieved by the judgments and decrees passed by both the Courts below, the present regular second appeal has been preferred.

Learned counsel for the plaintiff-appellant would contend that the plaintiff-appellant had led in evidence copies of *jamabandis* to show that he was the owner in possession. It is further the contention that the GPA holder of Kirpal Singh exchanged the land of Kirpal Singh with the land of the plaintiff-appellant as was borne out from the exchange deed dated 19.03.1997 which stood proved. On the other hand the counsel for the defendant-respondents has argued that the exchange deed was a forged and fabricated document and a result of fraud. It is submitted that the GPA in favour of the defendant-respondent no.1 was never proved.

I have heard learned counsel for the parties.

In the present case the entire edifice of the suit stands on the allegations that an exchange deed dated 19.03.1997 had been executed by the power of attorney holder of one Kirpal Singh and the land of Kirpal Singh was got exchanged with that of the plaintiff-appellant and since then he was coming in ownership and possession of the suit property. The argument of counsel for the plaintiff-appellant that the exchange deed dated 19.03.1997 stood proved and hence there was no reason to discard the exchange deed cannot be accepted in view of the law laid down in cases of **Subodh Chand**

Singh & Ors. vs. Mohinder Singh & Ors. [2008 (16) RCR (Civil) 94] and Shiv Ram vs. Smt. Bimla Devi [2000(2) RCR (Civil) 471].

In case of **Subodh Chand Nayyar** (*supra*) it was held as under:

“8. In view of the aforesaid situation, letter Annexure A/1 does not help the defendant. Firstly, this letter is per-se doubtful because it is addressed to defendant’s father but the envelope Annexure A/2 is addressed to the defendant himself. Secondly, this letter does not speak of any exchange as pleaded by the defendant. On the other hand, according to this letter defendant’s father had got adjusted amount of Rs.5800/- out of his claim amount towards price of the house at Jalandhar. Plaintiff’s father stated in this letter that he had not given anything in lieu of the said amount of Rs.5800/- to the defendant’s father. Consequently, the plaintiff’s father stated in this letter that through the letter he was declaring the defendant’s father to be owner in possession of the suit house at Karnal. This letter is un-dated but according to the defendant’s version alleged exchange take place in the year 1985-86. However, there could be no such exchange in the year 1985-86 when plaintiff’s father had already become exclusive owner of the house at Jalandhar in April, 1960. This letter also does not speak of any exchange of the suit house in lieu of alleged share of defendant’s father’s share in the Jalandhar house. On the other hand, this letter simply states that in lieu of amount of Rs.5800/- which the defendant’s father had got

adjusted out of his claim amount in the year 1960, plaintiff's father was declaring defendant's father to be owner in possession of the suit house. It would clearly mean that the plaintiff's father was allegedly selling suit house to defendant's father for consideration of Rs.5800/- which had been paid by the defendant's father out of his claim in April, 1960. However, no such sale could take place without registered deed. Moreover, even if this letter is taken to be document of exchange, even then it required compulsory registration notwithstanding that oral exchange with exchange of possession could legally take place. However, when there is document of exchange then it requires compulsory registration."

This Court in **Pritam Singh's** case (*supra*) held as under :

"7. The document of partition Ex.P1 dated 2.6.1971 is totally silent about the details of Khasra numbers of the land having been partitioned and exchanged by the predecessor in interest of the plaintiffs and the defendants. I am in total agreement with the counsel for the respondents that if khasra numbers are not mentioned in the document Ex.P1, it becomes a void contract being uncertain. In this regard, reliance can be placed on a decision of this Court in Mr. Dharam Pal Mohinder Nath v. Nirmal Singh, 1992 (122) PLR 744. Moreover, if it is a case of exchange then it is regulated by the provisions of Section 118 of the Transfer of Property Act, 1872 (for short the Act) which defines the exchange as under :

“When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an 'exchange'. A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.”

8. *Oral exchange in the States of Punjab and Haryana is permissible but if it is reduced into writing, it requires stamp duty and registration as held by this Court in the case of Shiv Ram v. Smt. Bimla Devi, 2000-2 (125) PLR 799. Further more, in the case of Satyawar v. Raghbir, 2002-2 (131) PLR 467, it was held that oral exchange of immovable property of more than Rs.100/- requires registration. Since the document Ex.P1 is uncertain and vague and coupled with the fact that it is not entered in the revenue record and is unregistered, the same is unreliable and no relief can be granted to the plaintiffs on the basis of said document.”*

In case of **Shiv Ram** (*supra*), this Court held as under :

“10. There is hardly any illegality and impropriety in the impugned judgment and decree, still the learned counsel for the appellant submitted that the decree dated 18.7.1985 is null and void and is not binding upon the rights of the plaintiff. According to the plaintiff, the said decree was a sale. There was no exchange at all and the same could only be effected by a regular deed of transfer,

which has not been done in this case and in this view of the matter the decree dated 18.7.1985 does not convey any right, title and interest in the defendants. The argument is misplaced. The perusal of the impugned decree show that when the suit was instituted against the plaintiff, the plaintiff made a statement voluntarily on 15.6.1984 and admitted the claim of the defendant in that suit. The said decree could only be challenged by the plaintiff on the ground of fraud or undue influence. It has not been established on the record that the earlier written statement filed by the plaintiff in the earlier suit did not bear his signatures. The possession of a large area which was mortgaged with possession with the defendants was returned to the plaintiff and a small area of the land was taken in exchange by the defendants. In Punjab or Haryana there can be an oral exchange and no document is required to be written. If it is written, it requires stamp and registration. We all know that a mortgage with possession can be redeemed by the mortgagor within 30 years from the date of mortgage. Mortgage is a transfer of interest in the immovable property. A mortgagee gets interest in a mortgaged property by virtue of mortgage deed. Thus if that interest is exchanged in lieu of an area, it will amount to an exchange. In such a situation, it can be said that a mortgagee has an existing interest in the area which has been surrendered in favour of the mortgagor and in lieu of that interest, which is an

immovable property in the eyes of law, if the mortgagee gets some land, it is an oral exchange and such an exchange would not require stamp or registration. The said decree could only be challenged within three years but the present suit has not been instituted within a span of three years.”

In the present case, admittedly, the exchange deed is unstamped and unregistered. Further, the plaintiff-appellant while appearing as PW-1 admitted in his cross-examination that defendant-respondent nos.2 and 3 were in possession over *khasra* no.224//18/3 (0-8). This is also fortified by the entry in the *jamabandi* for the year 2009-10 (Ex.P7). Further PW3, Dharamvir, and PW4, Major Singh, who were witnesses to the exchange deed had also categorically admitted in their cross-examination that possession of the suit land was never exchanged between the parties before them.

In view of the above and the settled law, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. No question of law, much less substantial question of law, arises in the present appeal which is wholly devoid of any merits and is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

20.12.2022
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO