IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

101-1

RSA No.4948 of 2017 (O&M)
Reserved on : 12.12.2022
Date of Decision : 20.12.2022

Bachan Singh and Another ....Appellants

VERSUS

Baljinder Kaur and Another ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

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

ALKA SARIN, J.

The present regular second appeal has been preferred by the defendant-appellants against the judgments and decrees passed by both the Courts below decreeing the suit for permanent injunction filed by the plaintiff-respondents.

The brief facts relevant to the present *lis* are that the plaintiff-respondents filed a suit for permanent injunction to the effect that they are joint owners in possession of the land measuring 7 *marlas* comprising in *khewat* no.663/664, *khatauni* no.1115, *khasra* no.224/18/3 (0-7), as per *jamabandi* for the year 2009-10, situated in the area of Phull-IInd, Tehsil Phul, District Bathinda, and that the defendant-appellants have no right, title or interest in the suit property and that they be restrained from interfering into the peaceful possession of the plaintiff-respondents. The suit was contested by the defendant-appellants and they claimed to be owners in possession of the suit property on the basis of exchange deed dated 19.03.1997.

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

1. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for ? OPP
2. Whether the suit of the plaintiffs is not maintainable in the present form ? OPD
3. Whether the plaintiffs have no cause of action to file the present suit ? OPD
4. Whether the plaintiffs have concealed the material facts from the court ? OPD
5. Whether the plaintiffs have not come to the court with clean hands ? OPD
6. Whether the plaintiffs have no locus standi to file the present suit ? OPD
7. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct ? OPD
8. Whether the suit has been filed by the plaintiffs only to harass the defendant ? OPD
9. Relief.

The Trial Court on the basis of pleadings of the parties and the evidence on the record held that the plaintiff-respondents have been able to prove their possession over the suit property on the basis of *jamabandi* for the year 2009-10 in which it finds mentioned that the plaintiff-respondents were *Mushtarian Kashat Mushtarian* meaning thereby that the plaintiff-respondents were purchasers in cultivating possession and there was a separate *khatauni* of the plaintiff-respondents i.e. *khatauni* no.1115. The Trial Court decreed the suit vide judgment and decree dated 23.12.2016. Aggrieved by the same, the defendant-appellants preferred an appeal. The lower Appellate Court held that the exchange deed upon which the defendant-appellants were relying upon could not be looked into being an unregistered document having been reduced into writing. The appeal was dismissed vide judgement and decree dated 01.07.2017. Aggrieved by the said judgments and decrees of both the Courts below, the present regular second appeal has been preferred by the defendant-appellants.

Learned counsel for the defendant-appellants would contend that the defendant-appellant no.1 had produced on record the electricity bills as Ex.D2 to Ex. D6 which have been ignored. It is further the contention that on the basis of the exchange deed the defendant-appellants were in possession of the suit property which is also apparent from the electricity bills (Ex.D2 to Ex. D6).

I have heard learned counsel for the parties.

In the present case the plaintiff-respondents came to Court claiming themselves to be owners in possession of the suit property on the basis of the revenue record. Both the Courts below held them to be owners in possession. The claim of the defendant-appellants that they were owners in possession on the basis of an exchange deed stood rejected.

In case of **Subodh Chand Nayyar vs. Veena @ Dr. Vinod Veena [2011 (6) RCR (Civil) 367]** 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 & Ors. vs. Mohinder Singh & Ors. [2008 (16) RCR (Civil) 94]** 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, 19992 (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 Satyawan 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 vs. Smt. Bimla Devi [2000(2) RCR (Civil) 471]** 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 being sought to be relied upon by the defendant-appellants is an unregistered and unstamped document and hence cannot be looked into in evidence. Learned counsel for the defendant-appellants has not been able to show any contrary revenue record on the record to depict possession of the defendant-appellants on the suit property. Entries contained in the *jamabandi* which remain un-rebutted carry a presumption of truth as per Section 44 of the Punjab Land Revenue Act, 1887. Further, learned counsel has not been able to convince this Court that they were owners in possession of the suit property only on the basis of certain old electricity bills (Ex.D2 to Ex.D6).

In view of the above and the law laid down, 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.

(ALKA SARIN)
20.12.2022 **JUDGE**
jk

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