

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

**RSA-642 of 1991 (O&M)
Date of Order: 18.08.2023**

Abhey Ram and others

.Appellants

Versus

Khem Chand (since deceased) through LRs and others

..Respondents

COCP No.539 of 2001(O&M)

Khem Chand

...Petitioner

Versus

Hari Kishan and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Sudhir Aggarwal, Advocate
for the appellants no.1, 3, and 4.**

**Mr. R.S.Mamli, Advocate
for appellant no.2.**

**Mr. Vijay Kumar Jindal, Sr. Advocate, with
Mr. Akshay Jindal, Advocate
Mr. Deepak Balyan, Advocate
Ms. Anita Balyan, Advocate
Mr. Pankaj Gautam, Advocate
for the petitioner (in COCP-539 of 2001)
for the respondents (in RSA-642 of 1991)**

ANIL KSHETARPAL, J

1. Two connected cases, namely, Regular Second Appeal No.642 of 1991 and COCP No.539 of 2001 have come up for final disposal. The learned counsel representing the parties are ad-idem that decision in the Regular Second Appeal would be sufficient to dispose of both the matters.

2. In the Regular Second Appeal, the defendants (appellants herein) assail the correctness of the concurrent findings of fact arrived at by

the courts below.

3. In order to comprehend the issue that requires adjudication, it is important to take note of the relevant facts, in brief.

4. The plaintiffs are the owners of the land measuring 23 kanals, whereas defendant no.1 was the owner of land measuring 16 kanals. The plaintiffs and defendant no.1 entered into settlement of exchange of their respective parcels of land in the year 1981 which was entered in the revenue record vide mutation no.2524 on 14.03.1981. Subsequently, it came to the notice of the plaintiffs that 16 kanals land which originally belonged to defendant no.1 given in exchange to the plaintiffs was in fact a part of the surplus pool and had been allotted to Sh. Daya Nand, Sh. Sultan Singh and Sh. Hoshiair Singh etc.

5. The defendants while contesting the suit submitted that he purchased 16 kanals land and the land was never included in the surplus pool.

6. Both the courts on appreciation of the evidence held that both the parties were under a mutual mistake and therefore, the agreement to exchange the land is void in terms of Section 20 of the Indian Contract Act, 1872. The correctness of the aforesaid finding was confirmed in the first appeal.

7. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

8. The learned counsel representing the appellants contends that the plaintiffs did not file a suit for grant of decree of declaration that the exchange is bad in law. He further submits that the entries in the revenue record have also not been challenged and therefore, the courts have erred in

decreeing the suit.

9. On the other hand, the learned counsel representing the respondents submits that the plaintiffs had filed a suit for possession on the basis of ownership of the plaintiffs. In such circumstances, the relief of declaration is implicit in the suit for possession.

10. This court has considered the submissions of the learned counsel representing the parties.

11. As found by both the courts below the agreement for exchange was the result of a mutual mistake of facts between both the parties. In the exchange, the plaintiffs lost their 23 kanals land in lieu of 16 kanals land which was not owned by defendant no.1 at the time of exchange. As per the provisions of the Haryana Ceiling of Land Holding Act, 1972, the surplus land which was beyond the ceiling limit vested in the State on the appointed day i.e. 24.01.1971. Consequently, defendant no.1 was not the owner of the 16 kanals land. In these circumstances, the exchange itself was *void ab-initio*. In fact, there was no need to challenge the same because the exchange did not exist.

12. As regards the argument of the learned counsel representing the appellant that the plaintiff did not challenge the entries in the revenue record and the mutation, it shall be noticed that that such entries are only the administrative act performed by the revenue authorities to reflect the current status of the property. These entries itself do not confer any right on the parties.

13. Keeping in view the aforesaid facts and discussion, the judgments and decrees passed by both the courts below are upheld. There is no scope for interference.

14. Hence, the regular second appeal is dismissed.
15. The learned counsel representing the petitioner in the contempt
petition does not press this contempt petition.
16. All the pending miscellaneous applications, if any, are also
disposed of.

August 18, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO