



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**Reserved on: May 20, 2025
Pronounced on: May 22, 2025**

(i)		RSA No.3712 of 2000 (O&M)
Balbir	 Appellant
	Vs.	
Sanjeev and others	 Respondents

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(ii)		COCP-477-2004 (O&M)
Sanjiv Kumar	 Petitioner
	Vs.	
Balbir and others	 Respondents

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CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by :- Mr. Rakesh Nehra, Sr. Advocate with
Mr. Sahil Nehra, Advocate for the appellant.

None for the respondents.

DEEPAK GUPTA, J.

Defendant No.1 of the case has approached this Court by way of the present regular second appeal against the concurrent findings of the Courts below. Suit filed by sole plaintiff - Sanjiv seeking decree for permanent injunction regarding the property in dispute was decreed by the Court of learned Addl. Civil Judge (Sr. Divn.), Jhajjar vide judgment dated 26.11.1998. The appeal filed by defendant No.1 - Balbir (*appellant herein*) was dismissed by learned Addl. District Judge, Jhajjar on 12.06.2000, thus affirming the findings of the trial Court.

2. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

3.1 Plaintiff claimed that he along with other co-sharers was owner in possession of plot No.203 comprised in khewat No.218 situated within the revenue estate of village Gochhi, District Jhajjar, on which he had constructed a garage and a shop and with which defendants had no concern whatsoever. It was alleged that defendants were threatening to interfere in his possession. With these allegations, decree for permanent injunction was sought against defendants.

3.2 The suit was contested only by defendant No.1 - Balbir. The other defendants, who are his brother, son and nephew did not contest the suit. Defendant Nos.2 and 3, namely Chander and Satbir were proceed *ex parte*; whereas, defendant No.4 - Narinder alias Nando was given up. Controverting the stand of the plaintiff, it was pleaded by defendant No.1 that he along with his brother - defendant No.2 is the owner in possession of the plot in dispute. According to him, an exchange had taken place between Smt. Harkaur wife of Sunder & Mahabir son of Sunder on one hand, and Diwan Singh son of Charan Singh & Hukam Singh (father of defendant Nos.1 & 2) son of Behari on the other hand in 1975 and by virtue thereof, the plot in dispute was given to said Hukam Singh & Diwan Singh in lieu of some residential property and in this regard, a writing dated 19.11.1975 was prepared. Subsequently, he (defendant No.1) had constructed a residential house on the suit plot about 15 years back in the presence and to the knowledge of the plaintiff, who did not raise any objection whatsoever. Denying any concern of the plaintiff with the suit property and with this stand and also raising some preliminary objections like estoppel etc., defendant No.1 prayed for dismissal of the suit.

3.3 Necessary issues were framed. Evidence produced by the parties was taken on record. Trial Court held that it is the plaintiff, who was the owner in possession of the property in dispute and that defendant No.1 had failed to prove the exchange relied by him. It was further found that even if

the exchange relied by defendant No.1 is taken on record, it was not pertaining to the property in dispute. After appreciating the entire evidence on record, the suit was decreed by the trial Court on 26.11.1998 and the findings have been affirmed by the First Appellate Court on 12.06.2000, as have already been noticed.

4. Assailing the aforesaid concurrent findings, it is contended by learned senior counsel for defendant No.1-appellant that evidence on record has not been properly appreciated by the Courts below and therefore, the impugned judgments are liable to be set aside.

5. The contesting respondent was duly represented by counsel. However, despite intimation about the date of hearing, nobody put in appearance for the plaintiff-respondent No.1 at the time of final hearing. As such, the arguments have been heard in the absence of the counsel for the respondent.

6. I have considered submissions made by learned counsel for defendant No.1-appellant and have appraised the record carefully.

7. As per the jamabandi for the year 1991-92 (Ex.P3), it is the plaintiff, who along with his brother Rajiv and mother Parbati, who were recorded to be owner of the suit property in possession to the extent of 1/2 share; along with Dharambir son of Sunder, who is recorded to be owner in possession to the extent of remaining 1/2 share in the suit property. Defendant claimed the suit property based upon an exchange of 1975, regarding which a writing dated 19.11.1975 was claimed to have taken place.

8. The trial Court has referred to the evidence as produced by the parties in this regard, which reads as under:-

"18. From the perusal of Jamabandi for the year 1975-76, Ex.D-2 & Ex.D.3, it goes to show that Harkaur Devi is recorded to be owner and in possession along with other co-sharer in the plot no. 203. Though, PW1 in his cross examination has admitted that exchange took place

in the year 1975 but he has stated the suit land was not a part of the property given in exchange. Besides, from the perusal of exchange deed Ex.DW7/A, it shows that nothing is stated in this writing regarding the transfer of suit property comprised Khasra no. 203 in favour of the father of the defendants and the its perusal is further goes to show that this exchange regarding the other residential property. Moreover the defendant has failed to the due execution of this writing. DW-7 namely Balbir Singh has stated in the cross examination that exchange deed was executed in his presence and he purchased the stamp paper from the Tehsil and got his name recorded to the stamp vendor. Whereas from the perusal of writing Ex.DW.7/A it shows that the name of this witness is not find mentioned overleaf the writing. Besides, from the perusal of the statement of DW7, it goes to show that after the alleged exchange which took place in the year 1975, Harkaur was sole owner and in possession of the suit property. He has stated in his chief that Harkaur suffered a decree in the year 1980 and when she suffered a decree, Tejbir, father of the plaintiff, and Dharambir have become owner and in possession.

19. Thus, from the perusal of the statement of DW7 - defendant no.1, it goes to show that the alleged exchange was not relating to the property in dispute. It is pertinent of mention here that Dharambir, defendant no.2 has stated that he has transferred his 1/2th share about 22/23 years earlier in favour of defendant no.1 where defendant no.1 is residing and the exchange took place orally, no writing was recorded. Nothing is stated by this witness regarding the transfer of suit property by Harkaur in favour of the defendant. Thus, the facts that Harkaur etc. transferred the suit property in favour of the father of the defendant are not supported with the DW.2 namely Dharambir, who has took a different stand regarding the ownership and possession of defendant no. 1. From the perusal of Jamabandi for the year 1975-76 which is Ex.D.2 & Ex.D.3 it goes to show that Harkaur is recorded to be co-owner and in possession of the plot no. 203. It is admitted by defendant no.1 as DW7 that Harkaur suffered a

judgment decree in favour of Dharambir and Tejbir, father of the plaintiff in the year 1980, on the basis of Mutation no. 2237 sanctioned and attested in favour of Tejbir and Dharambir sons of Sunder. Though, this mutation was not intentionally tendered by the defendant in the evidence because if this document tendered would have gone against the defendants and on the basis of judgment decree suffered by Harkaur in the year 1980 in the civil suit no. 804/97 the name of the Dharambir was incorporated as owner and in possession 1/2th share and Parbati, Rajive and Sanjiv sons of Tejbir, Deceased were recorded to be owner and in possession 1/2 share. Though, Harkaur was recorded to be co-owner and in possession of suit land comprising khasra no. 203 but Dharambir and Tejbir, father of the plaintiff have become owner and in possession on the basis of decree over the suit land and after the death of Tejbir along with his mother namely Parbati and his brother namely Rajiv are recorded to be owner and in possession 1/2th share and the alleged exchange took place in the year 1975, is not related to the said property. Had the father of the defendant become owner and in the possession of the suit property they would have challenged the judgment decree suffered by Harkaur in the year 1980. In fact, the suit land was not related to the property exchanged in the year 1975."

9. The aforesaid evidence would clearly indicate that exchange deed (Ex.DW7/A) relied by defendant No.1-appellant was not regarding Plot No.203, i.e. the suit property and rather, it was regarding some other residential property. It has also been observed that defendant-appellant - Balbir during cross-examination claimed that he had purchased the stamp paper for exchange deed and that his name was also recorded. However, perusal of the exchange deed (Ex.DW7/A) relied by him did not show his name to be mentioned overleaf the said writing. As per own testimony of defendant - Balbir - DW7, after the exchange of 1975, Harkaur became owner in possession of the suit property. Harkaur had suffered a decree in 1980 and

on suffering of that decree, Tejbir, the father of the plaintiff, and Dharambir became owner in possession.

10. Thus, it is evident from the evidence on record that the exchange relied by defendant No.1 did not pertain to the suit property. Not only this, the stand of defendant No.1 was contradicted by his own witness, i.e. DW2 - Dharambir, who did not support the case of the defendant to the effect that suit property was transferred by Harkaur in favour of father of defendant No.1 by way of any exchange and rather, he took a different stand regarding the ownership and possession of defendant No.1.

11. The Court has also found from the evidence on record that as per jamabandi for the year 1975-76 (Exs.D2 and D3), it is Harkaur, who was recorded to be co-owner in possession of the suit property and it was admitted by defendant No.1 as DW7 that Harkaur had suffered a judgment & decree in favour of Dharambir and Tejbir, i.e. father of the plaintiff in the year 1980 and on that basis, mutation No.2237 had been sanctioned and attested in favour of Tejbir and Dharambir sons of Sunder. Defendant No.1 even did not tender the said mutation in evidence, otherwise it would have gone against him. It was found that based upon the judgment and decree suffered by Harkaur in 1980 in Civil Suit No.804 of 1997, the name of Dharambir was incorporated as owner to the extent 1/2 share in the suit property, whereas plaintiff, his brother and mother being successors of Tejbir were recorded to be owner to the extent of remaining 1/2 share.

12. In view of all the aforesaid evidence, this Court finds that the Courts below did not commit any error in coming to the conclusion that defendant No.1-appellant failed to prove his stand to have become owner of the suit property by virtue of an alleged exchange of 1975, which was found to be not regarding the property in dispute. It is plaintiff, who along with his brother and mother are proved to be owner in possession of the suit property. As such, the trial Court rightly decreed the suit of plaintiff- Sanjeev (respondent No.1 herein) and the findings have been rightly affirmed by the First Appellate Court.

13. This Court does not find any ground whatsoever to interfere in the concurrent findings of facts as recorded by the Courts below, which are based upon proper appreciation of evidence on record. As such, holding the present appeal to be devoid of any merit, the same is hereby dismissed.

14. **COCP 477 of 2004** was filed by respondent No.1 of the present appeal, i.e. plaintiff - Sanjiv, but as noticed earlier that counsel representing him did not appear at the time of hearing. As such, said COCP is dismissed in default for want of prosecution.

Photocopy of this order be placed on the connected case file.

May 22, 2025
Sarita

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No