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

**RSA-4330-2018 (O&M)
Date of Decision : 21.01.2025**

Nazar Singh

..... Appellant

Versus

Balwinder Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Ashok Paul Batra, Advocate
for the appellant.

VIKRAM AGGARWAL, J (ORAL)

This is plaintiff's second appeal against the judgment and decree dated 30.04.2018 passed by the Court of learned Addl. District Judge, Bathinda, dismissing the appeal against the judgment and decree dated 15.07.2017, passed by the Court of learned Civil Judge (Senior Division), Bathinda vide which the suit for declaration and permanent injunction, filed by the plaintiff, was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiff Nazar Singh filed a suit for declaration and permanent injunction. It was pleaded that being Hindus and governed by Hindu Law regarding matters of succession etc., the plaintiff, defendant Balwinder Singh and three sons of Niranjn Singh namely Major Singh,



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Palwinder Singh and Harjinder Singh were the members of a joint Hindu family. Niranjan Singh and defendant Balwinder Singh were the owners in possession of land measuring 19 kanals 19.5 marlas (fully described in the plaint), situated within the revenue limits of Village Tungwali, Tehsil & District Bathinda as per jamabandi for the year 2005-2006. It was claimed that the said suit land and the other lands were ancestral properties.

4. It was pleaded that Niranjan Singh expired on 05.05.2011 and after his death, it came to the knowledge of the plaintiff that by playing a fraud, the defendant Balwinder Singh had cheated Niranjan Singh and had prepared an unregistered exchange deed dated 04.03.2009 claiming that Niranjan Singh and Balwinder Singh had entered into an exchange whereby Niranjan Singh had left the suit land in favour of Balwinder Singh and in return of the same, Niranjan Singh had received a plot measuring 01 kanal 2 marlas from Balwinder Singh. Mutation was also sanctioned on the basis of said unregistered exchange deed but no mutation regarding the *Gair Mumkin* land measuring 1 kanal 2 marlas situated in the *Lal Lakeer* of the village had been sanctioned.

5. The exchange deed was challenged on the grounds of equal land not having been exchanged, the exchange without being any consideration, the same having no value in the eyes of law, being an unregistered document, mutation having wrongly been sanctioned, the exchange deed having been obtained by fraud etc. Some other grounds were also raised. It was claimed that the suit land was in joint possession of all the legal heirs of Niranjan Singh and the exchange deed was the result of exercise of undue influence of Balwinder Singh as Niranjan Singh was an illiterate person.



6. The defendants opposed the suit raising certain preliminary objections as regards cause of action, locus standi, maintainability, the suit being bad for non-joinder of necessary parties, the plaintiff not having approached the Court with clean hands, a suit for mere declaration and injunction not being maintainable, estoppel, the suit being time barred etc. It was averred that no part of the suit land was joint and that the plaintiff had taken his share from Niranjn Singh 30 years back and had thereafter been residing separately. The land owned by Niranjn Singh had equally been divided amongst his sons and the suit land was kept by him as his share. As Niranjn Singh was in need of space in the village for construction of a house, he took 01 kanal 2 marlas *Gair Mumkin* land from the defedant Balwinder Singh and in return, he gave 19 kanal 19.5 marlas of land to the defendant Balwinder Singh. Other averments were denied.

7. From the pleadings of the parties, the following issue were framed:-

1. *Whether the plaintiff is entitled to declaration as prayed for OPP*
2. *Whether the plaintiff is entitled to relief of permanent injunction as prayed for ? OPP*
3. *Whether the plaintiff has no locus standi or cause of action to file the present suit ? OPP*
4. *Whether the suit is not maintainable ? OPD*
5. *Relief.*

Parties led their respective evidence.

8. The trial Court dismissed the suit filed by the plaintiff and the appeal filed against the said decision was also dismissed, leading to the filing



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of the present regular second appeal.

9. I have heard learned counsel for the appellant.

10. Learned counsel for the appellant has referred to the document Annexure A1 which is the alleged family settlement/exchange deed and has submitted that the said document was an unregistered document and, therefore, could not have been considered. Reference has also been made to the statement (DW1/A) of the defendant Balwinder Singh (DW1) especially to his cross-examination. Learned counsel submits that since the deed of exchange was unregistered, it was not valid. Reliance has also been placed upon the judgments of Coordinate Benches of this Court in the cases of ***Bachan Singh and another versus Baljinder Kaur and another 2023 (3) RCR (Civil) 746*** and ***Gurnam Singh and another versus Bant Singh and others in CR No.6393 of 2016, decided on 13.03.2020.***

11. I have considered the submissions made by learned counsel for the appellant but find the same to be devoid of merit.

12. As regards fraud etc. is concerned, the same was to be pleaded and proved by leading cogent evidence. However, no evidence was led to prove the said fact. The exchange deed was produced on record as Ex.P3 and the last line thereof clearly showed that possession had already been exchanged between the parties and the document was just a memorandum of exchange and was not the exchange deed itself. Still further, mutation No.20479 was entered on 15.03.2009 regarding the area falling within the *Lal Lakir* and the mutation dated 18.03.2009 was also entered. The exchange was also, therefore, effected in the revenue record. In the case of ***Randhir Singh versus Ranjit Singh 2011 (2) R.C.R. (Civil) 246***, it was held by a



Coordinate Bench of this Court as under:-

9. *The plaintiff has been non-suited by lower appellate court on the ground that document dated 07.4.2000 is unregistered although it required compulsory registration. This conclusion of the lower appellate court is illegal and unsustainable. As noticed here-in-above, there was oral exchange between the parties. Possession was also exchanged between the parties pursuant to oral exchange. It was thereafter that the document dated 7.4.2000 was executed as memorandum of exchange. A bae perusal of the said document also reveals that the exchange was not effected through this document. It was only a memorandum of exchange which had already taken place and even exchange of possession had already taken place. Section of the Transfer of Property Act is not applicable in State of Punjab and consequently oral exchange is legally permissible. In view thereof, the memorandum of exchange dated 7.4.2000 did not require compulsory registration. In this conclusion, I am supported by judgment of this Court in the case of **Kishori Lal v. Babu Ram etc., 2003 (1) RCR (Civil) 807**. Consequently, there was valid exchange between the parties and pursuant to exchange the plaintiff has become owner in possession of the suit property.*

10. *Following substantial question of law arises for determination in the instant second appeal :-*

“Whether the finding of the lower appellate court that document dated 7.4.2000 require compulsory registration and being un-registered did not have the effect of exchange is perverse and illegal ?”

11. *For the reasons already recorded, the aforesaid substantial question of law is answered in favour of the plaintiff-appellant and it is held that the aforesaid document did not require compulsory registration because it is only memorandum of exchange whereas oral exchange had already been taken*



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place between the parties and even possession had also been exchanged.”

13. In the considered opinion of this Court, the said judgment is squarely applicable to the facts of the present case and the exchange deed will be taken to be a memorandum of exchange and not an exchange deed. Under the circumstances, no registration would be required. Even otherwise, as has been noticed in the said judgment, in the State of Punjab, Section 118 of the Transfer of Property Act, 1882 is not applicable and consequently, oral exchange is also legally permissible. The issue before the Coordinate Bench of this Court in the case of ***Bachan Singh and another versus Baljinder Kaur and another*** (supra), was slightly different as reliance was placed upon the exchange deed to prove the possession. It was held that being an unregistered and unstamped document, it could not be looked into in evidence. It was never the issue before the Coordinate Bench as to whether the exchange deed should have been registered or not. The judgment, therefore, will not come to the aid of the appellant.

In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

21.01.2025
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(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No