

A RANDHIR KAUR (DECEASED) THROUGH HER LRS.

v.

BALWINDER KAUR & ORS.

(Civil Appeal Nos. 4629-4630 of 2019)

B MAY 6, 2019

[UDAY UMESH LALIT AND INDU MALHOTRA, JJ.]

Transfer of Property:

C *Exchange of property – Propriety of – Property donated to school run by Education Society – For the specific purpose of advancing the cause of education of children – The then Principal of the School exchanged the land of the School (including the donated land) with his own land situated in another village – Thereafter the Principal leased the exchanged land to the School – Suit by the donor seeking possession and in the alternative seeking*
D *declaration that the exchange was illegal – Trial court denied decree of possession while granted the alternative relief declaring the exchange as illegal – First Appellate Court held that the donor had no locus standi to agitate the matter after having executed the Gift Deed – High Court in Second Appeal, affirmed the order of First*
E *Appellate Court – Appeal to Supreme Court – Held: The appellate courts wrongly confined their discussion to the prayer for declaration for possession – Trial Court rightly decreed the suit on alternative prayer as the purported exchange was collusive, illegal and unauthorized – The Jamabandis reflecting the purported exchange are quashed and set aside – Cost of Rs. 1 lac imposed.*
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Allowing the appeals, the Court

HELD: 1.1 It has been erroneously held that the mutation entries for exchange by Respondent No.1 was valid. The purported oral exchange dated 01.08.1988, followed by the
G **Agreement dated 25.08.1988, between the then Principal of the School, with the President of the School, was a wholly collusive and illegal transaction. The exchange was illegal and unauthorized, since there was no Resolution passed by the Education Society, which was running the school, in favour of the President to exchange the land owned and vested in the School pursuant to**
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the Gift Deed. The Principal and the President of the school entered into this collusive transaction, whereby the then Principal became the owner of the suit property. The school could not have been divested of the ownership of the suit property by the so-called exchange. This was in complete breach of faith and trust by the President of the Society and Principal of the School. [Paras 4.1 and 4.2] [241-B; E-H]

1.2 The so-called exchange was a mere ruse to transfer the valuable land of the School which had been gifted by the mother of the appellants, to the Principal, in exchange for some unirrigated inferior quality banjar land situated in a remote corner in a Village. Once the School was divested of ownership on the basis of the purported exchange, the respondents executed a Lease Deed in favour of the School, wherein the School was now shown as a Lessee, and was required to pay lease rent to the Principal and later his legal heirs. The purported exchange dated 01.08.1988 and 25.08.1988 being wholly illegal, is liable to be quashed and set aside. The Jamabandis reflecting the purported exchange are quashed and set aside. The Jamabandis be restored by the revenue authorities in the name of the School. [Paras 4.3 and 5] [242-C-E]

2. Even though, the appellants/plaintiffs had prayed for a decree of possession of the land which had been gifted to respondent No. 2-School; there was an alternate prayer made for a decree of declaration that the School was the owner in possession of the land which had been gifted to it, and that the mutation of exchange was illegal, unlawful, and liable to be set aside. The Trial Court had rightly decreed the suit on the alternate prayer. The First Appellate Court and the High Court confined their discussion only with respect to the prayer for declaration for possession of the suit property. [Para 4.1] [241-B-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4629-4630 of 2019.

From the Judgment and Order dated 25.05.2018 of the High Court of Punjab and Haryana at Chandigarh in RSA No. 2879 of 2015 (O&M) and RSA No. 4771 of 2015 (O&M).

Ms. Tina Garg, M. K. Ghosh, Rohit Dutta, Advs. for the Appellants.

A Ms. Sonia Mathru, Sr. Adv., Vineet Talal, Sushil Kr. Dubey, Umesh Kumar Khaitan, Advs. for the Respondents.

The Judgment of the Court was delivered by

INDU MALHOTRA, J.

B 1. Leave granted in both the Special Leave Petitions.

2. The present Appeals have been filed against the common judgment and order dated 25.05.2018 passed by the Punjab and Haryana High Court in RSA Nos. 2879 and 4771 of 2015.

C Aggrieved by the impugned judgment, the Appellants have filed the present Appeals.

3. The background facts in which the present Appeals have been filed, briefly narrated are as follows: -

D 3.1 The predecessor-in-title of the suit property Smt. Randhir Kaur w/o Harnandan Singh *vide* a registered Gift Deed dated 27.05.1981 donated a property admeasuring 4 Kanals 10 Marlas of land bearing Khata No. 15/18, Khasra No. 766/567 (4-10) situated at Parowal Tehsil Garhshankar to Doaba Public School, Garhshankar [hereinafter referred to as the “suit property”]. The Gift was executed for the specific purpose of advancing the cause of education of children of the area, for which the property was transferred with all rights to the Doaba Public School, run by the Doaba Education Society, Garhshankar.

E The Gift Deed was executed by the Donar *viz* Smt. Randhir Kaur through her husband as power of attorney holder. The Gift Deed was witnessed by Mr. Ujjagar Singh, Nambardar, Parowal. The second witness was Mr. Balwant Singh, the Principal of the School.

F 3.2 The suit property was duly mutated in the name of the Doaba Public School *vide* Mutation Entry dated 04.12.1981.

G 3.3 The Respondents contend that by an oral memorandum of exchange on 1.8.1988, the Principal of Doaba Public School - Mr. Balwant Singh, and Mr. Mohinder Singh, - the President of Doaba Education Society, purportedly

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exchanged the land of the School admeasuring 24 Kanals in Tehsil Garhshankar, with the personal land owned by Mr. Balwant Singh in Village Khanni, Tehsil Garhshnakar. This exchange included the land admeasuring 4 Kanals 10 Marlas which had been donated by Smt. Randhir Kaur, the predecessor of the Appellants herein. Subsequently, an agreement dated 25.8.1988 was executed by the Principal of the Doaba Public School and the President of the Doaba Education Society.

- 3.4 Mr. Balwant Sing, Principal had the lands of the school mutated in his own name on 29.10.1988 vide mutation of exchange no.1824, based on the aforesaid agreement of exchange.
- 3.5 On the death of Balwant Singh in 1995, his widow Balwinder Kaur/Respondent No.1 herein became the owner of the suit property.
- 3.6 Smt. Randhir Kaur – the donar of the suit property and therefore filed Civil Suit No. 66 of 2001, wherein she prayed for the following two reliefs: -

“It is, therefore, prayed that decree for possession of land measuring 4 kls 10 mrls bearing Khewat no.94, Khatauni no. 124 Khasra No. 756/567 (4-10), as entered in Jamabandi 1994-95 situated in the area of vill-persona, M.B. No. 266. The-Garhshankar, Distt.-Hoshiarpur, after removal of all types of Malba.

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In the alternative a decree for declaration to the effect that the defdt. No.2 is owner in possession of land measuring 4 kls 10 mrls bearing Khewat No.94, Khatauni No.124, Khasra No.756/567 (4-10), situated in the area of Vill-Parowal, The-Garhshankar. Distt-Hoshiarpur and that the mutation No.1824 allegedly regarding exchange of above said land from the name of defdt. No.2 in the name of husband of defdt. No.1 i.e. Balwant Singh is wrong, incorrect, illegal, unlawful, null and void-ab-initio, ineffective and inoperative,

A *against the rights of defdt. No.2 and is liable to be set*
aside and that the entries in the column of ownership
of Jamabandi 1994-95 showing the defdt. No.1 as
owner of the said land are wrong, incorrect, illegal,
 B *unlawful, null and void, having no effect on the rights*
of defdt. No.2 and are liable to be corrected to show
the defdt. No.2 as owner in possession f the same with
a consequential relief of Perpetual Injunction
restraining the defdt. No.1 from execution any
 C *instrument of alienation in favour of some third person*
by taking undue-advantage of the wrong entries in her
favour and for restraining the defendant from using
the suit land for any other purpose except for the
purposes sub-servient to the educational activities of
defdt. No.2 may kindly be passed in favour of the
plaintiff and against the defdts. with costs which is in
 D *the interest of justice and equity.”*

3.7 The Trial Court *vide* its detailed judgment and order dated 29.07.2011 partly allowed the suit filed by the appellant herein. The first prayer for decree of possession could not be granted pursuant to the registered Gift Deed, the land had vested in the School. However, the Court granted the alternate relief prayed for. The Court held that as the School failed to produce any Resolution passed by the Doaba Education Society empowering the Principal to enter into an exchange of the property of the School. The Respondent No.2 had sought to exchange 24 Kanals of un-arable, unirrigated land situated in a remote village of Khanni located in the Shivalik foothills for the valuable property of the School. By the exchange the Principal-Balwant Singh claimed ownership over the suit property. The Respondent No.1 had the mutation of the suit property changed into his own name. Thereafter, he executed a lease-deed dated 27.05.2002 of the School property, showing the School to be the lessee. As a consequence, the school now became the lessee, and the Principal became the owner of the suit property.

The Trial Court held that the exchange was clearly illegal, in the absence of any resolution passed by the Society. Since

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- the exchange was held to be illegal, the Appellants were granted the alternative relief prayed for, i.e. a declaration that the Doaba Education Society as the owner in possession of the land. The Respondent No.1 had no right to use the suit property for any other purpose, except the educational activities of the Respondent No.2-School. The Respondent No.1 was permanently restrained from alienating the suit property, or using it in any manner, than for the educational needs of the school. The Trial Court held that the Respondent No.2-School was the duly appointed trustee in possession of the land of 4 kanals 10 marlas donated by the plaintiffs. The Court ordered that the mutation of exchange No.1824 be set aside, being illegal, null and void. The entries in the revenue record be corrected in favour of the Respondent No.2 School as owner and in possession of the suit property. A
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- 3.8 Respondent No.1 filed an appeal before the Additional District Judge. The Appellate Court held that it would not be possible for the donor to contend that the gift is not valid. The Appellate Court was of the view that the Appellants have no locus standi to agitate the matter, because she was left with no concern over the suit property after the execution of the Gift Deed. The cancellation of the Gift Deed could not be considered. The Court set aside the judgment of the Trial Court, and declared that the cancellation of the mutation in favour of the Respondent herein was not correct. D
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- 3.9 Aggrieved by the said judgment, the Appellants filed a Second Appeal before the High Court of Punjab and Haryana. The High Court *vide* impugned judgment dated 25.5.2018 affirmed the order of the First Appellate Court. F
- 3.10 The present Appeals have been filed by the Appellants who are the legal representatives of Smt. Randhir Kaur - the donor of the suit property. The Appellants have *inter alia* contended that the donation of the suit property was for the benefit of the students of the School; the transfer/exchange by Balwant Singh-husband of Respondent No.1 who was the Principal of the School, was illegal and vitiated by ulterior motives. The property which had been donated by the Appellants was of high value and quality, which was sought G
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A to be exchanged with a property which was inferior in quality, and was unirrigated land, situated in a remote village Khanni; the exchange was without any legal sanction or authority from the society running the School.

3.11 The learned Counsel for the Respondents *inter alia*
B submitted that the Gift Deed dated 27.05.1981 did not reserve any rights for the Donor. After the execution of the Gift Deed the Appellants had no locus to file a suit for possession of the suit property, as possession was delivered to the Respondent No.2-School *vide* the registered Gift Deed. It was further submitted that the Gift Deed had no condition
C wherein it could be cancelled by the Donor.

The Appellants divested themselves from any right of title in the suit property which was passed to the Donee. Once the registered Gift Deed had been executed without
D reserving any right in the suit property, it could not be revoked.

The oral exchange of lands on 1.8.1988 between the Principal of the School, and the President of the Doaba Education Society, was later reduced in writing by virtue of an agreement dated 25.08.1988. The Respondents produced
E for the first time a copy of a Resolution dated 1.8.1988 in favour of Mohinder Singh, the President of the Society to sell or exchange the School's property. This document was never produced before the Courts below. The authenticity of this document has not been proved. We did not permit
F the Respondent to place additional documents on record at the fag end before this Court.

It was further argued that even though the land was exchanged to set up a school in a remote area which would give an opportunity to the children of Village Khanni to get access to education, the school continued to run from the
G suit property. During the course of arguments, the learned Counsel also suggested that the Respondents would give an Undertaking that the School would be run from the suit property in the future also.

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4. We have heard the learned counsel appearing for both the parties A
at length.

4.1 Having carefully perused the record filed before this Court, B
and considering the oral submissions made by the Counsel
for the parties, we are of the considered view that both
the First Appellate Court and the High Court, C
erroneously held that the mutation entries for exchange by
Respondent No.1 was valid. Even though, the Appellants
plaintiffs herein had prayed for a decree of possession of the
land which had been gifted to Respondent No. 2-School; there
was an alternate prayer made for a decree of declaration D
that the School was the owner in possession of the land which
had been gifted to it, and that the mutation of exchange was
illegal, unlawful, and liable to be set aside. The Trial Court
had rightly decreed the suit on the alternate prayer. The First
Appellate Court and the High Court confined their discussion
only with respect to the prayer for declaration for possession E
of the suit property. The Appellate Court and High Court
completely vest right of the alternate prayer made by the
Appellant.

4.2 The purported oral exchange dated 01.08.1988, followed by F
the Agreement dated 25.08.1988, between Balwant Singh, E
the then Principal of the Doaba Public School, with Mohinder
Singh - the President of the School, was a wholly collusive
and illegal transaction. The exchange was illegal and
unauthorized, since there was no Resolution passed by the
Doaba Education Society which was running the school in F
favour of the President to exchange the land owned and
vested in the School pursuant to the Gift Deed. The Principal
and the President of the school in Garhshankar entered into
this collusive transaction, whereby Balwant Singh - the then
Principal became the owner of the suit property. The school G
could not have been divested of the ownership of the suit
property by the so-called exchange mentioned above. This
was in complete breach of faith and trust by the President of
the Society and Principal of the School.

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- A 4.3 The ostensible reason given by the Respondents for the exchange was that this was for the benefit of the students in Village Khanni, Garhshankar.

B This reason was a mere camouflage which is apparent from the fact that the School has not been shifted to Village Khanni since the date of purported exchange on 25.08.1988 i.e. since the past 31 years. The School to date continues to be run from the suit property and adjoining lands.

C It is obvious that the so-called exchange was a mere ruse to transfer the valuable land of the School which had been gifted by the mother of the Appellants, to the Principal, in exchange for some unirrigated inferior quality banjar land situated in a remote corner in Village Khanni.

D Once the School was divested of ownership on the basis of the purported exchange, the Respondents executed a Lease Deed in favour of the School, wherein the School was now shown as a Lessee, and was required to pay lease rent to the Principal and later his legal heirs.

E 5. The purported exchange dated 01.08.1988 and 25.08.1988 being wholly illegal, is liable to be quashed and set aside. The Jamabandis reflecting the purported exchange are quashed and set aside. The Jamabandis be restored by the revenue authorities in the name of the Doaba Public School, Garhshankar, Village Parowal, District Hoshiarpur, Punjab.

The Appeals are allowed accordingly.

F The Respondents are directed to pay costs of Rs. 1 lac to the Appellants herein within a period of 12 weeks, and report compliance to this Court.