

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

**RSA-3824 of 2009 (O&M)
Date of Decision:28.01.2015**

Amrit Pal Singh

... Appellant

Versus

Maghar Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI.

Present: Mr. P.S.Dhaliwal, Advocate,
for the appellant.

Mr. A.S.Jattana, Advocate,
for the respondents.

- i)Whether Reporters of local papers may be allowed to see the judgment?
- ii)To be referred to the Reporters or not?
- iii)Whether the judgment should be reported in the Digest?

ARUN PALLI, J. (ORAL)

Suit filed by the plaintiff was dismissed by the trial Court vide judgment and decree dated 15.01.2008. Appeal preferred against the said decree failed and was dismissed on 19.03.2009. This is how, plaintiff is before this Court in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by late Gurdial Singh, he prayed for a declaration that he was the owner in possession of two electric motors i.e. 5 HP having account No.KK65 AP and 7 ½ HP, bearing account No.KK 79 AP to the extent of ½ share and was entitled thereto by way of partition. A decree for injunction was also claimed restraining defendants from creating

any impediment for the plaintiff from taking water from the said two motors. It was averred that father of the plaintiff and defendants No.1 and 2 were the owner in possession of the aforesaid two motors and after their death, plaintiff and defendants had become owners to the extent of half share each of the suit property i.e. motors in question. It was averred that pursuant to an agreement dated 16.05.1985 the landed property owned by the parties, was partitioned, and consequently they were owner in possession of their respective shares. However, the two motors that were installed in the land were not subjected to partition as these were to be used jointly by the parties. Kartar Singh, who happened to be the father of defendants No.1 and 2 and husband of defendant No.3, died and his estate was inherited by the defendants. However, as defendants, in breach of the terms and conditions of the agreement dated 16.05.1985, were causing hindrance for the plaintiff to use the aforesaid two motors, thus the suit.

In defence, it was pleaded inter alia that the agreement dated 16.05.1985, was never executed between the parties. Nor any partition was ever effected pursuant to the said agreement. Agreement in question was got fraudulently executed and the same was never reflected in the revenue record. It was maintained that even the account number of the motors were not mentioned in the agreement, therefore, plaintiff had no concern with the motors. In fact, the motors were installed in the name of Kartar Singh i.e. predecessor in interest of defendants, and, thus the defendants inherited them. Still further, two separate motors i.e. bearing account No.KK-120-AP and KK-122-AP, were in the name of the plaintiff and this fact was kept concealed.

Trial Court, on a consideration of the matter in issue and evidence on record found that the plaintiff to prove his claim had relied upon an agreement dated 16.05.1985 (Ex.P-1). And to prove the said document (Ex.P-1), Bikkar Singh (PW-1) scribe of the agreement was examined. However, none of the two attesting witnesses of the said agreement were examined by the plaintiff. Accordingly, it was observed that in terms of the provisions of Section 68 of the Indian Evidence Act, to prove the instrument, plaintiff was required to prove at least one of the attesting witness. Sukhdev Singh and Kartar Singh sons of Chanan Singh were the two attesting witnesses, but none was examined. Therefore, it could not be said that the agreement dated 16.05.1985 was proved as required in law. Although, agreement dated 16.05.1985, revealed the details of the land that was alleged to have been partitioned between the brothers and there was also a reference to the motors, however, their respective account numbers were not mentioned in the agreement. No specific details of the motor connections were set out in the document, therefore, it could not be said that the agreement dated 16.05.1985 pertained to the motor connections i.e. bearing account Nos. KK-65-AP and KK-79-AP. Darshan Singh (PW-3) testified in his cross-examination that he was the legal heir of plaintiff Gurdial Singh, and was irrigating his fields with motors, and their connections were in the name of his father. The position on record showed that the defendant had sold a land measuring 38 kanals, that has fallen to their share. Although, plaintiff had sought a declaration that motor connections bearing No.KK65-AP and KK-79-AP were jointly owned by the parties, but yet failed to produce on record the pass books qua the said

two connections, issued by the Punjab State Electricity Board. In reference to the policy of the Electricity Board, it was observed that motor connections were always recorded in the name of one person only and thus, plaintiff could not claim joint ownership of the motors. Though, plaintiff had sought a declaration claiming ownership qua the motor connections, that were maintained by the Electricity Board, but yet the Board was not arrayed as a party. Resultantly the suit was dismissed.

Being aggrieved against the said decree, plaintiff preferred an appeal. First Appellate Court, reviewed the matter in issue, evidence on record and on an analysis thereof found itself in concurrence with the view drawn by the trial Court and findings recorded in support thereof. Accordingly, the appeal was dismissed.

I have heard the learned counsel for the parties and perused the records.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the Courts below and rejected after due and comprehensive consideration. All what he has urged is, that plaintiff had duly proved the execution of the agreement dated 16.05.1985, as he examined Bikkar Singh (PW-1) the scribe of the agreement and plaintiff himself deposed in support of his claim, therefore, the Courts below erred to hold that the plaintiff failed to prove the agreement in question.

As opposed to this, learned counsel for the defendants (respondent) submits that both the Courts have concurrently recorded that the alleged agreement dated 16.05.1985 (Ex.P-1) remained unsubstantiated

on record. Further, even the recitals in the agreement do not refer to the motor connections i.e. KK-65-AP and KK-79-AP qua which a declaration is being prayed for. Thus, he submits that the decree being assailed does not require any interference.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merits and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Needless to assert, for plaintiff to succeed he was required to prove the agreement dated 16.05.1985 (Ex.P-1), vide which the two motor connections were kept joint and were to be used jointly. No doubt, plaintiff examined Bikkar Singh (PW-1), scribe of the agreement Ex.P-1, and he also appeared in support of his claim as PW-3. As observed by the First Appellate Court, no doubt, the document in question was not required to be attested by a witness, but the fact remains that neither of the two attesting witnesses namely Sukhdev Singh or Kartar Singh was examined by the plaintiff. As observed, defendant had alleged the agreement dated 16.05.1985, to be a forged and fabricated document, thus the onus strictly lay upon the plaintiff to substantiate the due and valid execution of the agreement Ex.P-1. Even otherwise, the recital set out in the agreement Ex.P-1, do not specifically refer to the motor connections i.e. KK-65-AP and KK-79-AP. So much so, even the khasra numbers in which these two connections were installed do not find mention in the agreement Ex.P-1. Nothing was brought on record to prove that the parties to the lis had even partitioned the land that was jointly owned by them, pursuant to the agreement dated 16.05.1985. Concededly, the alleged partition was never

reflected in the record of rights. Ex.A-1 and Ex.A-2 (pass books issued by the Electricity Board) showed that the two motor connections i.e. KK-65-AP and KK-79-AP were in fact installed in the name of Kartar Singh i.e. predecessor in interest of the defendants. Darshan Singh (PW-3), who happened to be one of the heirs of the plaintiff, admitted in his cross-examination that electric connection bearing No.KK-65-AP was installed in the name of Kartar Singh and the said motor was changed from 5 HP to 7 ½ HP by Kartar Singh during his life time. Therefore, as observed by the First Appellate Court, it could not be disputed that Kartar Singh was recorded as consumer in the records of the Punjab State Electricity Board. As is made out from the record, two separate and independent motors i.e. account No.KK-120-AP and KK-122-AP, were installed in the name of plaintiff Gurdial Singh and as admitted by Darshan Singh, he was irrigating his fields with the aid of these motors. Learned counsel for the appellant could not point out as to how the conclusions that were concurrently recorded by both the Courts below were either contrary to the records and suffered from any material illegality.

In the wake of the position as set out above, there hardly exist any ground, least plausible in law to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration.

Appeal being devoid of merits, is accordingly, dismissed.

28.01.2015

Mohan

(ARUN PALLI)
JUDGE