

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

RSA No.643 of 2013 (O&M).
Date of Decision: 28.09.2015.

Dilbagh Singh

....Appellant.

VERSUS

Bachan Singh and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. Sandeep Arora, Advocate for the appellant.

SNEH PRASHAR, J.

CM-1792-C-2013

Allowed as prayed.

RSA No.643 of 2013

1. This was regular second appeal filed by appellant-defendant No.1 Dilbagh Singh (hereinafter referred to as the “appellant”) impugning the judgment and decree dated 08.01.2011 passed in Civil Suit No.239 of 2005 by learned Additional Civil Judge (Senior Division), Amritsar, vide which the suit for permanent injunction filed by plaintiff-respondent No.1 Bachan Singh (hereinafter referred to as the “plaintiff”) was decreed and the

same was upheld by the first appellate Court vide judgment dated 30.11.2012.

2. Precisely, the facts which need elaboration are that plaintiff Bachan Singh by way of present civil suit prayed for a permanent injunctive order restraining appellant Dilbagh Singh and Assistant Executive Engineer-cum-Sub Divisional Officer, Punjab State Electricity Board, Tangra, Tehsil Baba Bakala, District Amritsar (defendant No.2), from transferring the electric tubewell connection with connected load 2.318 (3BHP) bearing account no.A-342 (situated at village Rana Kala) located in Khasra No.23/23 from his name. It was alleged that Pritam Singh, father of the plaintiff, had two brothers, namely, Ajit Singh and Chanchal Singh who were co-sharers in the land situated at village Rana Kala. Appellant Dilbagh Singh was earlier owner of the tubewell electric connection in question, but he sold the same to the plaintiff on payment of Rs.5000/- in the presence of Sarpanch Kewal Singh. A receipt in the shape of agreement dated 25.01.1994 was executed by appellant Dilbagh Singh. As per the terms of the agreement, the balance payment of Rs.1033/- was deposited by him in the account maintained by Sub Divisional Office, Tangra (defendant No.2) who also issued a receipt in that regard. After observing all the formalities, the office of defendant No.2 transferred the connection in his (plaintiff's) name and a new passbook was issued to him. Appellant Dilbagh Singh in connivance with defendant No.2 was now threatening to get the tubewell electric connection transferred back in his name.

3. The suit was contested by the appellant and defendant No.2.

The appellant denied that he had received Rs.5000/- as sale consideration for transfer of the tubewell electric connection in the name of the plaintiff and alleged that the receipt-agreement is a forged document. Submitting that he had not been enjoying good health and had never consented for the transfer, he prayed for dismissal of the suit.

4. Defendant No.2 in its written statement pleaded that the electric tubewell connection had been disconnected as the plaintiff had shifted the site of the connection without prior permission of the Punjab State Electricity Board (hereinafter referred to as the “defendant board”). It further alleged that the appellant had given an application stating that the application for transfer does not bear his signatures and the Sarpanch also stated that he never put his signatures on the alleged affidavit and that the plaintiff had committed a fraud with them.

5. On the rival contentions of the parties, following issues were framed:-

- (1) Whether the plaintiff is entitled to permanent injunction as prayed for? OPP.
- (2) Whether the plaintiff has no locus standi to file the present suit? OPD.
- (3) Whether the suit is not maintainable? OPD.
- (4) Whether the suit has become infructuous? OPD.
- (5) Whether this court has got no jurisdiction to try and decide the present suit? OPD.
- (6) Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD.
- (7) Whether the plaintiff has no cause of action to file the present suit? OPD.

(8) Relief.

6. Both the parties adduced evidence in support of their rival contentions.

7. Considering the ocular and documentary evidence produced by the parties and the submissions made on their behalf, learned trial Court decreed the suit of the plaintiff vide impugned judgment and decree dated 08.01.2011.

8. Appellant preferred an appeal against the judgment and decree dated 08.01.2011 which was dismissed by learned Additional District Judge, Amritsar vide judgment and decree dated 30.11.2012.

9. Feeling aggrieved, the appellant has filed the instant Regular Second Appeal.

10. The submissions made by Mr. Sandeep Arora, learned counsel representing the appellant have been considered and record has been perused.

11. Learned counsel for the appellant argued that it was not a matter in dispute that initially the tubewell electric connection bearing account no.A273 was in the name of appellant Dilbagh Singh. Plaintiff Bachan Singh, real brother of Dilbagh Singh fraudulently got the said tubewell connection transferred in his name. As submitted by the defendant board that the connection was shifted from the site where it existed without its consent. It also pleaded alleged that an application had been given by the appellant that the application of the plaintiff for transfer of the electricity connection neither bears his signatures nor the signatures of the Sarpanch,

who was shown to be an attesting witness. Kewal Singh Sarpanch was examined by the appellant as DW2 who supported the case of the appellant. Learned counsel contended that the appellant was suffering from mental illness and taking advantage of the same the plaintiff had managed to get the tubewell connection transferred in his name.

12. There appears to be no force in the argument of learned counsel for the appellant. The plea of the plaintiff that initially the account number of the electric tubewell connection was A273 and on transfer of the said connection in his name he was allotted permanent account no.A342 could not be denied by the appellant or the defendant board. The agreement for transfer of the electric tubewell connection was executed between the appellant and the plaintiff on 25.01.1994. The proceedings of transfer were completed on 18.05.1999. During this very period, the appellant transferred his land in the name of his wife Nirmal Kaur by executing a sale deed dated 15.11.1995. Therefore, it does not lie in his mouth to say that during the said period he was suffering from mental illness. There is a receipt Ex.P1/1 executed by the appellant in lieu of sale consideration amount, received by him, corresponding to the agreement Ex.P1/10.

Kewal Singh Sarpanch may have supported the case of the appellant but the fact remains that the electric tubewell connection was transferred by the defendant board adopting the due departmental process because only then it was able to issue a new permanent account number of the tubewell connection in the name of the plaintiff. It is further important to note that although in its pleadings, the defendant board alleged that they

had received an application from the appellant that the application for transfer given by the plaintiff does not bear his signatures and the signatures of Sarpanch Kewal Singh but no substantive evidence was led by the appellant to disprove their signatures on the application which admittedly was still in the record of the defendant board. Moreso, when the connection was shifted from the site where it is existed to some other site in the year 1999 the process must have been completed by the officials of the defendant board and therefore also it cannot take the stand that the connection was shifted without its consent.

Thus, there being no merit and no substantial question of law involved in the present appeal warranting intervention in the judgment and decree dated 08.01.2011 passed by learned trial Court and affirmed by learned first appellate Court, the instant appeal is dismissed.

(SNEH PRASHAR)
JUDGE

28.09.2015
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