

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

105

RSA No.2458 of 2015 (O & M)

Date of Decision:09.10.2015

Bahadur Singh and another

....appellants

Versus

Jagdish and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1.Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.J.P.Jangu, Advocate
for the appellants

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiffs was decreed by the trial Court vide judgement and decree dated 30.09.2013. As even the appeal preferred against the said decree failed and was dismissed vide judgement dated 24.12.2014, defendants No.1 and 2 are 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 a suit filed by the plaintiffs, they prayed for a decree for injunction restraining defendants No.1 and 2 from interfering with the possession of the plaintiffs over the suit property and also from causing interruption in irrigating their fields. Further, respondents No.1 and 2 be enjoined from transferring the electricity connection, in connivance with defendant No.3, to any other person. It was maintained that predecessors-in-interest of the plaintiffs and

defendants No.1 and 2 were real brothers, and, they were the owners in possession of a joint land. They had been cultivating their joint holding through a tubewell electricity connection No.HKMA-4 bearing account No.JA-51-0272. As the electricity connection could only be taken in the name of one individual, as envisaged under the rules, the same was obtained in the name of Shree Ram, who happened to be the father of defendants No.1 and 2. However, the said connection was obtained by predecessors-in-interest of the parties, out of the joint funds of the family and both the parties have been using the said connection as per their requirement to cultivate the joint land. An agreement was executed between the parties on 17.10.2007 with the intervention of certain respectables of the family and village and it was agreed upon that both the sides shall use the connection turn wise and the expenses shall be borne in proportion to their respective usage. And after the alleged season, the tubewell connection would be transferred in the name of Jagdish by defendants No.1 and 2 and in turn, Jagdish would pay ₹ 30,533/- to them. Likewise, Jagdish would also pay a sum of ₹ 30,533/- to defendant No.3 on 31.05.2008, for the said agricultural land had fallen to the share of Jagdish, pursuant to an oral partition between the parties. Since, defendants No.1 and 2 were contemplating to have the connection transferred in their names, thus, the suit.

In defence, it was pleaded, inter alia, that fathers of the plaintiffs and defendants had separated during their life time and had been cultivating their specific shares. Electricity connection No. HKMA-4, account bearing No.JA-51-0272 was obtained by Shree

Ram, father of defendants No.1 and 2, from his own funds. Consequently, the electricity bills of the alleged connection were also defrayed by defendants No.1 and 2. Execution of the agreement dated 17.10.2007, though, was admitted.

On a due and comprehensive consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that the electricity connection bearing No.HKMA-4 was indeed released in the name of Shree Ram, father of defendants No.1 and 2. However, an analysis of the agreement Ex.PW2/B dated 17.10.2007, revealed that a settlement was arrived at between the plaintiffs and defendants qua the use and enjoyment of the connection and it was agreed that both the parties would have a right to use the tubewell connection in turns for one particular season. And the electricity bills shall be paid by both the parties in proportion to the actual usage. Concededly, the said agreement was signed by parties to the lis, and attested by number of respectables of village Kheri Motla. The plea that the agreement in question was a result of coercion, remained un-substantiated, for lack of any evidence. No doubt, the electricity bills proved on record by defendants No.1 and 2 show that these were issued in the name of Shree Ram. But that was quiet obvious as the connection was in his name. Some minor cuttings in the agreement Ex.PW2/B were only as regards the certain spelling mistakes. Concededly, the suit land was joint between the parties, for no partition had yet taken place. Since the electricity connection was installed in the land that was still joint between the parties, a presumption could be drawn that even the

electricity connection was also jointly owned by them. Just because the tubewell connection was released in the name of the father of defendants No.1 and 2, would not conclusively prove that the plaintiffs had no right to use the same. If the plaintiffs indeed had no right, title or interest therein, they would never have been allowed to irrigate the fields for all those years.

Learned counsel for the appellants could not point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality.

In the wake of the position as set out above, there hardly exists 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 in the present appeal. The same being devoid of merit is accordingly, dismissed.

09.10.2015
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(ARUN PALLI)
JUDGE