

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

Regular Second Appeal No.2587 of 2015 (O&M)
Date of decision:09.10.2015

Kuldeep Kaur and another ... Appellants

versus

Mohan Singh and others Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. H.K. Aurora, Advocate,
for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

CM No.12620-CI of 2015

For the reasons stated in the application, the same is allowed and the appeal is restored to file.

CM Nos.6674-75-C of 2015

For the reasons stated in the applications, delay in re-filing and filing the appeal is condoned.

Applications stand disposed of.

Regular Second Appeal No.2587 of 2015

1. The defendants are the appellants before this court. The suit was brought by the plaintiffs for declaration and for mandatory

injunction for the electricity connection installed in property in Khasra No.16//24 to be removed and installed in plaintiffs' property and the connection changed in their name. The plaintiffs were the sons of one Charan Singh, while the defendants were the daughter-in-law and son of Charan Singh. During the lifetime of Charan Singh, he had obtained an electricity connection for a borewell, sunk at the property in Khasra Nos.16//17/1, 24, 25//4/1. The property in khasra No.16//24 was exchanged by the father with the defendant and the father got 13 kanals 13 marlas in some other village. This exchange was challenged by the plaintiffs on a plea that the father had no right to make the exchange and that they were ancestral properties. The said suit was contested by the defendant on a plea that Charan Singh was the absolute owner of the property and he had a right to exchange the same. The challenge to the exchange failed and the suit was dismissed on 07.10.1991 holding the property to be the separate property of Charan Singh and that the exchange was valid and could not be impeached by the plaintiffs. The appeal filed by the plaintiffs also was dismissed in the year 1995.

2. Charan Singh died on 05.08.1993 and the plaintiffs claimed that the exchange related only to the land and did not include the electricity connection and the borewell. Neither the exchange deed nor the decree made any reference to the electricity connection and the borewell as part of the exchange transaction.

The plaintiffs' claim was, therefore, as successors to the father with reference the electricity connection and borewell and since the land which had been installed was already found to have been obtained by the defendant in exchange, they had sought for mandatory relief for shifting the borewell and electricity connection out of the property. The said suit was decreed and the appellate court also confirmed the decision. There is no this instant appeal to this court contending that the electricity connection and the borewell installed in property in 16//24 ought to be allowed to be retained only by the defendant since the right to the property by the exchange was already found in favour of the defendant. I would reject such a plea, for, if the borewell and the electricity connection were also part of the bargain in exchange, they should have been referred to in the previous proceedings. Even if the plaintiffs had not included the borewell and the electricity connection, the defendant would have definitely pressed for such a valuable item as having been obtained also in exchange. I cannot allow for this contention making reference of transfer of electricity connection since the electricity connection itself appears to have been granted in favour of the defendant only subsequent to the disposal of the case in the year 1999 after the death of Charan Singh. If the connection was given pursuant to an application filed by Charan Singh during his lifetime with reference to his own ownership in Khasra Nos. 16//17/1, 24,

25//4/1, then that right to obtain connection must be taken as connection availing to the father and before the connection, the property had stood transferred the benefit of such connection must avail only to the heirs of the father and not to a person who has bought the property on exchange unless there was positive proof that the father, who was attempting to exchange the land, had made it a part of the bargain as the electricity connection that he had applied for, would also avail only to the defendant. There was no such case made and that no proof available for such transfer for electricity connection to obtain in favour of the defendant along with exchange. The courts below were justified in allowing for the decree as sought for by the plaintiffs. I would find no error for interference in second appeal. Second appeal is dismissed.

(K.KANNAN)
JUDGE

09.10.2015
sanjeev