

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

RSA No.1640 OF 2014 (O&M)
DATE OF DECISION : 21st SEPTEMBER, 2015

Chander Dev

.... Appellant

Versus

Sher Singh & another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. S. K. Yadav, Advocate for the appellant.

* * * *

SURINDER GUPTA, J. (ORAL)

1. Heard.
2. The plaintiff filed suit seeking the relief of permanent injunction to restrain the defendants from shifting or disconnecting the electric connection No.DJ 32/0252 in the name of defendant No.1 and tubewell constructed by the plaintiff and defendants in mustil and killa no.31//11, khewat no.61, khatoni no.70-72 of village Kothal Khurd as per Jamabandi for the year 1998-99 with the joint funds; to restrain defendant No.1 not to install new drilling machine and dig well in khewat no.61, khatoni no.70 to 72 to cause loss to the plaintiff; not to interfere in use and irrigation by the abovesaid pumping set and well in any manner and not to install new pumping set near the land jointly owned by parties.
3. The suit was dismissed by learned Civil Judge (Junior Division), Mohindergarh with the observations that the connection in

dispute is in the name of defendant No.1. The plaintiff has taken separate electricity connection in the year 2001 i.e. after the institution of this suit. The plea of the plaintiff that the electric connection DJ 32/0252 which is in the name of defendant No.1 was taken from joint funds of the parties, was held as not proved. It was also observed that the plaintiff had admitted that there had been informal private partition of the suit land. The plaintiff and defendant No.1 are in exclusive possession of their share of the land and having separate well and electric connection. The appeal filed by the plaintiff was also dismissed by the Additional District Judge Narnaul with the observations in para 9 and 11 as follows:

“9. The plaintiff in his testimony as PW1 has admitted that he had dug a new well and have also taken an electricity connection over it. The aforesaid testimony of the plaintiff PW1 tantamount to the severance of joint status between the plaintiff and the defendant no.1. The perusal of the compromise dated 3.1.1997 Ex.P7 before the Panchayat shows that its merely a settlement between the plaintiff and the defendant no.1 for the use of the well. The aforesaid settlement will come to an end as and when a new electricity connection is taken by the plaintiff because it states that the moment the plaintiff will take a new electricity connection he will have to clear all the outstanding bills of the electricity connection in dispute. Therefore, the joint user of the electricity

connection in dispute by the plaintiff and the defendant no.1 came to an end when the plaintiff took the new electricity connection over the new well dug by him. Since the plaintiff himself has dug a new well, therefore he cannot stop the defendant no.1 from digging a new well because the well in dispute has already dried.

10. xxx... xxx... xxx... xxx...

11. This Court has already concluded that the plaintiff by digging a new well and by taking a new electricity connection has already severed his joint status vis a vis use of electricity connection in dispute. The same is also borne out from the compromise dated 3.1.1997 Ex.P7, which took place in the Panchayat which states that the settlement qua the joint use of the well in dispute and electricity connection in dispute would come to an end, when the plaintiff would take a new electricity connection.”

4. Referring to the settlement between the parties dated 03.01.1997 Ex. P-7, learned counsel for the appellant argues that vide this settlement the parties have agreed to share the electricity bill of the tubewell connection in dispute. This reflects that the tubewell connection was joint.

5. Admittedly, the connection is in the name of defendant No.1 Sher Singh. The parties have separated their share of land and plaintiff has

separate electric connection. Defendant No.1 is having the liberty to shift his connection presently installed in killa no.31//11 and to use it. It has been held by the court below that the plaintiff has not produced any evidence that he has been paying electric bill under the settlement. Even otherwise, if settlement Ex.P-7 is an agreement between the parties the remedy available to the plaintiff is to seek specific performance of agreement.

6. On perusal of the judgment of both the courts below, I find no legal or factual infirmity therein calling for interference by this Court. No substantial question of law requiring determination arises in this appeal, which has no merit. The same is dismissed in limine.

21st September, 2015
'raj'

(SURINDER GUPTA)
JUDGE