

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 2335 of 2014 (O&M)
Date of decision 25.08. 2015.

Sawinder Singh

..... Appellant.

versus

Gurbachan Singh and others

..... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? yes
2. To be referred to the Reporters or not? yes
3. Whether the judgment should be reported in the Digest? yes

Present : Mr. N.S.Sodhi, Advocate for the appellant.

K.C.PURI, J.

C.M. No.5623-C of 2014.

For the reasons mentioned in the application, delay of 03 days in re-filing the appeal stands condoned on the grounds mentioned in the application.

2. CM stands disposed of accordingly.

MAIN APPEAL

3. Sawinder Singh plaintiff-appellant has directed the present appeal against the judgment and decree dated 20.11.2013 passed by Shri S.K.Garg, District Judge, Gurdaspur vide which the appeal preferred by plaintiff/appellant against the judgment and decree 29.09.2012 passed by Smt. Amita Singh, the then learned Civil Judge (Senior Division), Batala

was dismissed.

4. Brief facts of the present case are that tube-well connection in question is installed in the name of defendant No.1 since 1978 in the land of the plaintiff which was given to him in family partition. The expenses for the installation of the tube-well were born by defendant Nos.1 to 4 and plaintiff. At that time, defendant No.1 was serving in Revenue Department as Kaunango, defendant No.2 was serving in Army and defendant Nos.3 and 4 were serving in police. Plaintiff being at home has been looking after and maintaining the tube-well in all respects. He has got only source of irrigation of his land. Defendant No.1 Gurbachan Singh and other defendants have filed an application before SHO, PS Fatehgarh Churian dated 04.06.2001 and have admitted that the plaintiff is owner of 1/5th share of land. Now they became inimical towards him due to some domestic problem and in order to harm him, defendant No.1 has given an application to defendant No.5 for shifting the tube-well connection from his land to some other land. Defendants are trying to shift the connection. Hence this suit.

5. Upon notice, defendant Nos.1 and 5 appeared and filed separate written statements. Defendant No.1 in his written statement has pleaded that he is the absolute owner of the tube-well connection in dispute, which has been installed in Khasra No.11R/20, which is exclusively owned and possessed by him. The plaintiff has got no right, title or interest with the tube- well connection in dispute. Plaintiff is not using the tube – well connection in question. Denying all other averments, defendant No.1 prayed

for dismissal of the suit.

6. Defendant No. 5 appeared and filed separate written statement. He pleaded that plaintiff is neither consumer of the connection in question nor holder of the disputed connection and as such he has no right, title or interest in the electric connection in question. Denying all other averments, defendant No.5 prayed for dismissal of the suit.

7. Replication was filed. From the pleadings of the parties, following issues were framed :-

1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ?OPP
2. Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for ? OPP
3. Whether the suit is not maintainable in the present form ? OPD
4. Whether plaintiff has no locus standi to file the present suit ? OPD
5. Relief.

8. The parties have led their respective evidence on the aforesaid issues. The trial Court after appraisal of the evidence dismissed the suit of the plaintiff vide judgment and decree dated 29.09.2012.

9. Feeling aggrieved, the plaintiff preferred First appeal. The learned District Judge, Gurdaspur vide judgment and decree dated 20.11.2013 dismissed the appeal of the plaintiff.

10. Still feeling dissatisfied with the aforesaid judgments and decrees, the present regular second appeal has been directed by the plaintiff/appellant.

11. The appellant in paragraph No.09 of the grounds of appeal, has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- i) Whether the facts and evidence in impugned judgments and decrees under appeal of both the Court needs re-consideration ?
- ii) Whether the admission of respondent with regard to using and irrigating land by appellant from the tube well in question since the day of installation given right, title or locus standi to restrain the respondent from depriving him from using/shifting to another khasra/killas no. ?
- iii) Whether there is any necessity to prove a fact, which is admitted by respondent in his own cross-examination ?
- iv) Whether there is violation of principle of natural justice ?

12. I have heard learned counsel for the appellant and have gone through the case file.

13. This is a mere suit for permanent injunction restraining the defendants from stopping the plaintiff from using the electric connection for irrigating his fields. The finding returned by both the Courts below is that plaintiff has no right in the respective suit property and moreover, electric connection has already been transferred. So, no substantial question of law has arisen in the present appeal. The question of fact cannot be agitated in the regular second appeal. There is nothing on the record that both the Courts below have misread and misinterpreted the evidence and interfered in the evidence on the file. So, I have no hesitation in holding that no substantial question of law has arisen in the present appeal.

14. Consequently, the present appeal is without any merit and the same stands dismissed.

15. A copy of this judgment be sent to the trial Court for strict compliance.

**(K.C.PURI)
JUDGE**

August 25, 2015
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