

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

**RSA No.5502 of 2015 (O&M)
DECIDED ON: OCTOBER 10, 2015**

DAVINDER SINGH & ANOTHER

.....APPELLANTS/PLAINTIFFS

VERSUS

AVTAR SINGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Navjot Singh, Advocate
for the appellants.

JASPAL SINGH J. (ORAL)

CM No. 13195-C of 2015

Application is allowed, as prayed for.

CM No. 13194-C of 2015

In view of averments made in the application, the same is allowed and delay in filing the instant appeal is condoned.

RSA No. 5502 of 2015 (O&M)

Unsuccessful plaintiffs/appellants has preferred the instant Regular Second Appeal feeling dissatisfied against the judgment and decree dated May 30, 2015 passed by learned Additional District Judge, Sangrur whereby, judgment and decree dated May 15, 2013 passed by learned Additional Civil Judge (Sr. Division), Sangrur in Suit No. 144 dated June 01, 2009 was upheld vide which suit of plaintiffs/appellants seeking permanent injunction

restraining the defendant not to create any obstacle in the use of Electric Motor bearing electric connection No. A.P-04335 (old No. A/P 2406) installed in khasra No. 2024/535/5-5 and Kotha motor constructed in khasra No. 2022/534/3-17 for irrigating the share of plaintiffs in the land measuring 13 bighas 15 biswas bearing khata no. 301 khatauni no. 583 khasra nos. 2022/5343/3-17, 2024/535/5-5, 536/4-13 situated at village Bhurthala Mander, Tehsil Malerkotla, District Sangrur according to jamabandi for the years 2003-2004.

2. Appellant has assailed the impugned judgments and decrees passed by both the courts below while ebulliently arguing that the same are absolutely against the evidence available on file and settled cannons of law. Both the courts have not properly appreciated the facts of the case in hand. Especially, while rendering finding on issue No.1. It is an admitted fact that land measuring 13 bighas 15 biswas is joint of the parties as well as some other co-sharers in which the electric connection No. A.P.04335 has been installed. In fact, electric connection was installed with the joint funds of the parties and other co-sharers. Similarly, amount for construction of room was also incurred by them jointly but the electric connection was got released in the name of defendant, as per Rules and Regulations of Electricity Board. The payment of electricity bills of electric motor installed in agriculture land has also been exempted by Government. Since the electricity connection as well as the room meant for installation of an electric motor were raised with joint funds of the parties and other co-sharers, the defendant/respondent has no right to create any obstacle in the use of electric motor as well as connection for irrigating

their fields. It is also an admitted fact that the land has not so far been partitioned amongst the co-sharers. Thus the impugned judgments and decrees passed by lower court and affirmed by lower Appellate Court are not sustainable in the eyes of law and deserves to be set aside by way of acceptance of instant appeal. The suit of plaintiffs/appellants deserve to be decreed.

3. This court has given an anxious thought to the submissions made by learned counsel for the appellants and have minutely scanned the documents available on file.

4. A glance scrutiny of impugned judgments and decrees are transpires that though the suit land is joint of the co-sharers as reflected in the revenue record but all the co-sharers are in separate cultivating possession of their separate shares. This fact has not only emerged from the statement of plaintiffs/appellants but also in the statement of PW-Baldev Singh one of the witnesses, who has categorically stated that all the co-sharers has installed their separate connection in their respective shares and they are cultivating their separate shares on their own motors. Baldev Singh has also categoric in unfolding that Davinder Singh used to irrigate his land from his own motor. Similarly, Avtar Singh-defendant is irrigating his share of land, which is in his possession with his own motor which has been installed in his share. Meaning thereby, that all the co-sharers have installed their separate motors for irrigating their separate parcels of their land. Even, it is also appeared in the statement of Davinder Singh that all the co-sharers are cultivating their own shares and have installed their own motors for irrigation purposes. There is another important piece of document, which has been discussed in the judgments of both the

courts below that defendant has examined Shamsher Singh, UDC of PSPCI as DW-1, who has placed on record the copy of assessment register Ex.D-16. A glance at the said document clearly reveals that the plaintiffs/appellants as well as respondent-defendant have installed their separate motors. The stand taken by plaintiffs/appellants that electric motor or the room meant for electric motor were raised/constructed with the joint funds of the parties, is not supported with any documentary evidence and except the bald assertions there is nothing on record in this regard. There is also nothing on record to suggest that there is no source of irrigation with plaintiffs/appellants to cultivate the land of their shares.

5. The contentions putforth by learned counsel for the appellant are without any legal substance. In the light of what has been discussed above, this Court is of the considered view that findings recorded by learned lower court which are affirmed by learned Appellate Court are absolutely in consonance with the evidence available on file and settled cannons of law and as such do not call for any interference by this Court. Rather the same are affirmed.

6. Consequently, the instant appeal being devoid of merits is dismissed.

OCTOBER 10, 2015
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(JASPAL SINGH)
JUDGE