

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

RSA No.685 of 2015 (O&M)

Date of Decision: 20.05.2015

Ram Singh

.....Appellant

Versus

Ram Niwas and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present:- Mr. J.P.Jangu, Advocate,
for appellant.

SHEKHER DHAWAN, J (ORAL)

Present regular second appeal is against judgment and decree dated 04.12.2014 passed by Court of first appeal.

2. For the sake of convenience the parties are being referred to as per their status before the Court of first instance.

3. Detailed facts of the case have already been recapitulated in the judgments of Courts below. For the purpose of decision of present Regular Second Appeal that plaintiffs filed suit for permanent injunction for restraining defendants No.1 and 3 from transferring the tubewell connection No.HBA29/JA-51-0027 and necessary directions be issued to respondent No.1. As per plaintiff, they along with proforma defendant No.4 and defendant No.1 are joint owners of the suit land. The electricity connection was installed on the tubewell in question. The tubewell was dug up out of

joint funds. Now defendant No.1 in collusion with defendants No.2 and 3 wants to transfer it to his own tubewell. Defendant No.1 contested the suit on the ground that he is exclusive owner of the electricity connection in question and the plaintiffs and proforma defendants has no right in the same tubewell. Defendant No.1 has already dug up on which electricity meter is running since 01.07.2010. So, plaintiffs have no right for issuance of injunction.

4. On these facts following issues are framed and settled by the Court of first instance:

1. Whether the tubewell connection No.HBS-29 is joint of the plaintiffs and defendant No.1? OPP
2. Whether the plaintiffs are entitled decree of permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
4. Whether the plaintiffs have not come with clean hands? OPD.
5. Relief.

5. The Court of first instance after recording of evidence and appreciation thereof returned the findings and dismissed the suit of the plaintiffs. Plaintiffs preferred first appeal and the Court of first appeal accepted the appeal and reversed the order passed by Court of first instance and resultantly decreed the suit of the plaintiffs.

6. Being aggrieved of passing of said judgment and decree dated 04.12.2014 defendant No.1 is in appeal.

7. At the time of arguments Mr. J.P.Jangu, learned counsel for appellant took the plea that Court of first appeal has reversed the findings of Court of first instance without any basis. The Court of first instance has rightly observed that only one out of two plaintiffs were examined. More so

plaintiff No.1 was minor at the time of installation of the tubewell and he had not contributed any fund for installation of tubewell connection as such he is not entitled to seek any injunction qua appellant. The Court of first appeal has not appreciated the controversy in its true prospective so the judgment and decree of Court of first appeal be set aside.

8. Having considered the submissions made by learned counsel for the appellant this Court is of the considered view that facts and evidence of the case have already been appreciated by Courts below. The short controversy involved in this case is that both the plaintiffs were son and widow of Bodan and sought injunction against Ram Singh for shifting of tubewell connection. It is the case of plaintiffs that the said tubewell was joint property and both the plaintiffs are joint owners of the tubewell as well as the land where the tubewell was installed. The Court of first instance completely ignored this fact and simply returned the findings that one of the plaintiff was cross-examined out of two plaintiffs. There is no such requirement of law that all the plaintiffs must be examined in support of their case. However in the present case one out of two plaintiffs had already stepped into the witness box. The next contention which weighed in the mind of Court of first instance was that plaintiff No.1 was minor and he had not contributed any amount for installation of tubewell. This controversy has been dealt in its entirety by Court of first appeal though Court of first instance has not recorded any observation. The status of plaintiffs as well as defendant No.1 and proforma defendant No.4 is of co-sharer and there being no formal partition having been taken place as yet. The land and tubewell continued to be status of joint property and all the joint owners are entitled to enjoy the benefit of the same. The Court of first appeal has

already recorded the observations that the new bore will be installed and other co-sharers will have the same right and electricity, connection will remain joint.

9. The findings of fact recorded and appreciated by the Courts below. This Court is of the considered view that view taken by Court of First Appellate Court is the correct and legal one. Resultantly the present appeal is without any merit and same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

May 20, 2015
msd