

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5542 of 2014 (O&M)

Date of Decision.17.08.2015

Sukhdev Singh

.....Appellant

Versus

Kamal Singh and others

.....Respondents

Present: Ms. Sarika Gupta, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J. (ORAL)

1. Delay in filing and refiling the appeal is condoned.
2. The suit was for a permanent injunction restraining the defendant from demolishing underground pipes marked ABCDE shown in the site plan of the plaintiffs and causing any obstruction and hindrance to use of electric motor connection of 7 ½ BHP in account No.AP-19/0123 installed in khasra No.35/7/2. The plaintiffs' contention was that the service connection had been originally obtained in the name of the defendant's mother Satto @ Satya and it was sold for a consideration of ₹ 40,000/- on 08.01.1996. A half share was sold in favour of plaintiffs' father Gurdev Singh on 08.01.1996 for consideration of ₹ 40,000/-. Pursuant to the sale, underground pipes had been laid and the plaintiffs were enjoying user of the electric motor and the connection. Satto @ Satya who was entitled to remaining half share died some time in the year 2002 and the defendant was trying to cause an obstruction to the plaintiffs' peaceful enjoyment of the electric motor and the connection and was attempting to remove the pipes

going underneath the land.

3. The contention was that there was no sale in favour of the plaintiffs. The document purporting to be an agreement transferring half share in the property was not brought in original and only a copy had been filed. The plaintiff had not exercised any right of specific performance to establish unregistered document. The trial Court decreed the suit finding that the document had been shown to have been lost by the plaintiffs in their evidence and the document had been received after an application filed for reception of secondary evidence and therefore, at the trial the plaintiffs had attempted to prove the document by summoning the deed writer who brought the register and spoke about the genuineness of the document with all its details. The attesor to the agreement dated 08.01.1996 was also examined to speak about the genuineness of the document. The Court was, therefore, convinced that there was no adequate evidence as regards actual transfer of half interest in the electric motor and the electric connection. The defendant did not go as far as to plead for complete fabrication of the document but was stating that he did not know that this mother had transferred the right and he had gone away foreign country and he returned to sell the electric connection and the electric motor which he held in his land. The defendant also admitted that he had no proof of payment of any charges to the electricity department but the same was produced by the plaintiffs in proof of the fact that they had been actually paying electricity charges for the user of the electric motor. There was also an admission by appointment of commissioner that there had been underground pipes running across the land and that installations themselves were proved to be consistent with the contention raised by the plaintiffs that the electric motor and electric connection had been sold by the

defendant's mother during her life time. With sure evidence about the loss of the original document with proof of payment of electricity charges and the installations through the defendant's land, it became evident that the transaction was true and the plaintiffs were asking for right of what their father had purchased from the defendant's mother.

4. The argument that no suit for specific performance was made is meaningless, for, the document did not contemplate any executory contract. It was an executed contract for consideration of ₹ 40,000/- for transfer of right in movable property of an electric motor and an electric installation which does not require to be registered and the document itself was proved of how the parties had allowed for a joint user of the electric motor and the installation in equal share. The defendant was bound by the transaction which his mother had executed and there was no transaction of sale which could be made by the defendant in such a way as to defeat the plaintiffs' right secured through the document which was proved at the trial. Even the Court had taken the issue that if the document was unregistered and assuming it was required to be registered, the defendant would be estopped from pleading against the genuineness of the document and denying to the plaintiffs' right of exercising user of the electric motor and the installation. I do not find any error in the judgments passed by the Courts below and any substantial point of law as involved in the second appeal for consideration.

5. The judgments of the Courts below are confirmed and the second appeal is dismissed.

(K. KANNAN)
JUDGE

August 17, 2015

Pankaj*