

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

Regular Second Appeal No.6476 of 2014 (O&M)
Date of decision:13.10.2015

Swinder Singh @ Surinder Singh ... Appellant

versus

Jarnail Singh and another Respondents

II. Regular Second Appeal No.5235 of 2014 (O&M)

Jarnail Singh ... Appellant

versus

Sansar Devi and another Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Dheeraj Mahajan Advocate,
for the appellant in RSA No.5235 of 2014.

Mr. Vipin Mahajan, Advocate,
for the appellant in RSA No.6476 of 2014.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. Both the appeals are connected and are against the same judgment. The appeal in RSA No.5235 of 2014 is at the instance of the plaintiff who has obtained 3/4th share in the borewell connection,

while the 2nd defendant, who has been granted only 1/4th share, is in appeal in RSA No.6476 of 2014.

2. The dispute was with reference to the tubewell situate in a land which admittedly belongs to the plaintiff. The plaintiff purchased the property from the defendants under two transactions, one, the sale dated 22.05.2006 from the 3 brothers of the 2nd defendant and by way of exchange from the 1st defendant. The contention is that the 3 brothers of the 2nd defendant, who were the joint purchasers along with the 2nd defendant of the land and as regards the borewell connection obtained on 23.11.1983 in a family partition that took place on 03.06.2002, it was allotted only to the 3 brothers except the 2nd defendant. By virtue of the purchase, the plaintiff had become owner of the whole property. The 2nd defendant denied that there was any such family partition and that the sale by his brothers with reference to the borewell connection will not bind since he was a joint purchaser of the land and the borewell under document dated 23.11.1983. The defendant was claiming a right to the entire borewell connection by producing an affidavit whereunder the other three brothers were purported to have transferred their right in borewell to the 2nd defendant. The suit came to be filed by the plaintiff on a plea that the 2nd defendant knew all along that he had no right to the property after the family partition and that was the reason why he had exchange of the

property with him on 14.05.2007 allowing the entire land where tubewell was situated in favour of the plaintiff but the brothers had now colluded together and taking advantage of the fact that the family partition was not registered, sought for declaration with reference to the borewell connection.

3. The crucial point that stood for consideration at the trial court was whether there was family partition, under the terms of which, the plaintiff get transferred the entire borewell connection in his favour by virtue of the purchase from the brothers of the 2nd defendant. The original had not been produced and the copy of the document was marked. The plaintiff could not also secure any witness to support the case about the family partition. However, he was relying on the fact that the 2nd defendant had himself transferred his right in the property where the borewell connection was situate to him by virtue of exchange and after the said exchange, there could be no way by which he could lay any claim in the borewell connection. The trial Court dismissed the suit but in appeal, the appellate Court allowed for a decree for 3/4th in the borewell connection on the basis of sale executed in favour of the plaintiff by three of his brothers and allowed for a retention of 1/4th share to the 2nd defendant as a joint purchaser of the borewell. The appellate Court did not rely on family partition since it was not proved.

4. In the manner in which the case proceeded, there could be simply no objection at all for the 2nd defendant against the decree that was granted by the appellate court and allowed for 1/4th share which was the best bargain that he should take. He could not have obtained right from the borewell connection by the affidavit from the other brothers. The source of title was a document of purchase dated 23.11.1983. He could be stated to have only a 1/4th share in the borewell and that the share has been granted already by the court. The appeal filed by the 2nd defendant in RSA No.6476 of 2014 is wholly without merit and it is dismissed.

5. The issue of whether the 2nd defendant could have been granted 1/4th share would obtain relevance, having regard to his own conduct of selling the property where the borewell was situate through the exchange with the plaintiff. The moot point is whether the 2nd defendant could have any right to the borewell on a standalone basis when the land over which it is situate had been transferred by him. It must also be seen whether this document of exchange shows the conduct of the defendant that he had retained to himself no right in the borewell connection and how it was ever possible for him to sell the land and retain merely the borewell connection. The substantial questions of law that would arise for consideration in RSA No.5235 of 2014, under the circumstances, are as follows:-

i) Whether the courts below were not in error in failing to assess that the 2nd defendant retained no share in the borewell, judged by his conduct that he had transferred the right in the land where the borewell was situate by means of a registered exchange (D3) with the plaintiff?

ii) Whether the plaintiff was competent to make reference to the so-called family arrangement even without pleading therefor?

Admit.

Mr. Vipin Mahajan, Advocate, takes notice for the 2nd defendant.

1st respondent remained ex parte. Notice to 1st respondent dispensed with.

Appellant shall supply copy of the paper book to the counsel for the 2nd respondent.

RSA No.6476 of 2014 is dismissed and RSA No.5235 of 2014 is admitted.

(K.KANNAN)
JUDGE

13.10.2015
sanjeev