

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

RSA No.1778 of 1988

Date of decision : August 10, 2016

Balbir Singh and others

.....Appellants

Versus

Sher Singh and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE GURMIT RAM

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

Mr. P.S. Punia, Advocate
for the respondents.

GURMIT RAM, J.

This appeal is preferred by the appellants-herein (defendants) against the judgment and decree dated 20.05.1988 passed by the Court of learned Additional District Judge, Ludhiana vide which the appeal preferred by the appellant-herein (defendant) Balbir Singh against the judgment and decree dated 15.10.1987 passed by the Court of Sub-Judge Ist Class, Khanna was dismissed and findings of trial Court were affirmed.

2. The case of the respondents-herein (plaintiffs) before the learned trial Court in brief was that one Sardara Singh (deceased), father of plaintiff No.1 and Kartar Singh were the real brothers, who constituted a

Joint Hindu Family. Kartar Singh defendant No.1 being the *Karta* was managing the affairs of joint family. The said Sardara Singh (deceased) along with the plaintiffs and defendant No.1 got installed an electric tubewell jointly in their well bearing Khewat No.183, Khatauni No.222, Mustil No.12, Killa No.27 in the year 1965 and since then the plaintiffs had been using this electricity tubewell for the purpose of irrigation according to their respective shares. The electricity charges for the use of this electric tubewell were being paid by both the parties to this suit according to their respective shares. Both the parties were having 1/2 share each in the abovesaid well. The electric motor and all the accessories including centrifugal pump were purchased jointly by the parties. Then reference was also made to one family settlement dated 07.06.1973 arrived at between the parties vide which it was undertaken that the said electric tubewell was to be used to the extent of 7th share out of 16th shares by the plaintiffs and since then they had been using the same in terms of this settlement and also paying the electricity charges in accordance thereto. It was further case of plaintiffs that electric connection bearing No.E-1/58 which was previously in the name of Kartar Singh was got transferred during the pendency of this suit mala-fidely in the name of Balbir Singh-defendant No.5 vide No.E-1/391. Since defendants had been forcibly restraining the plaintiffs from using this electric tubewell, hence was the suit.

3. Notice of suit was given to the defendants who appeared and filed written statement taking preliminary objections with regard to maintainability of suit; that there was no cause of action for filing the instant suit and that plaintiffs were not entitled to discretionary relief of injunction as they have concealed true facts from the Court.

Then plea was also taken that this suit was liable to be dismissed since as per instruction No.35, 5(a) of Sales Manual, defendant-Balbir Singh had deposited the amount of security, arrears of the electricity consumption charges etc. etc. Connection which was existing already, was not transferred in the name of defendant-Balbir Singh, rather a new connection was released after completing all the required formalities. Besides this, this defendant also got constructed a new *pucca kotha* for the installation of electric tubewell and a new bore was dug. Even the electric motor, switch, starter and all the accessories were new one. Defendant No.5-Balbir Singh was the exclusive owner of the electric connection bearing No.E-1/391, which was newly released in his name.

Then it was admitted that Sardara Singh (deceased) and Kartar Singh-defendant No.1 were the real brothers and they constituted a Joint Hindu Family. Then it was further admitted that earlier the land of Kartar Singh and other co-sharers was joint. In this regard it was also pleaded that now defendants are cultivating their land which was allotted to them separately from the plaintiffs since 07.06.1973 from the date of abovesaid family settlement. Then it was also admitted that said Sardara Singh (deceased) along with plaintiffs and defendant No.1 had installed an electric tubewell jointly in the year 1965 as mentioned in the plaint. The electricity charges in respect of abovesaid electric tubewell in dispute were not paid and as such it was dis-connected by the Electricity Department on 10.12.1984 and since then it was not functional. In this regard it was also pleaded that the plaintiffs did not pay the electricity consumption charges for a period of about 2 years and ultimately this connection was disconnected. Then the family settlement dated 07.06.1973 as pleaded in

the plaint was admitted. Then it was also admitted that electric connection in dispute bearing No.E-1/58 was in the name of Kartar Singh-defendant and electric connection bearing No.E-1/391 was in the name of Balbir Singh-defendant. The defendants never restrained the plaintiffs from using their 7/16th share in the joint electric tubewell, which in fact was disconnected as aforementioned on account of non-payment of electricity consumption charges. Rest of the averments were also denied.

4. From the pleadings of the parties, following issues were framed:-

- i. Whether the plaintiffs are entitled to the injunction as prayed for? OPP
- ii. Whether the suit is not maintainable in the present form? OPD
- iii. Relief.

5. Findings on all the abovesaid issues were recorded by the learned trial Court in favour of the plaintiffs and the suit was decreed vide impugned judgment and decree dated 15.10.1987. Appeal preferred against this judgment and decree was dismissed by the Court of learned Additional District Judge, Ludhiana vide judgment and decree dated 20.05.1988 which necessitated to file the instant appeal, notice of which was given to the respondents. Record of both the Courts below was also requisitioned.

6. I have heard the learned counsel for both the parties and have also perused the record carefully.

7. The learned counsel for the appellants has contended that the impugned judgments and decrees passed by both the Courts below are liable to be set aside being the result of misreading of statements of DWs as well

as misinterpretation of documents i.e. Ex.D1 to Ex.D5. It is further his contention that when the suit was filed, the electric connection in dispute was not in existence and as such, the findings of both the issues No.1 & 2 were required to be recorded in favour of appellants-herein (defendants). Appellants-herein (defendants) did not get restored this electric connection, rather a new connection was got installed by them by completing all the formalities for getting a new electric connection. The respondents-herein (plaintiffs) did not make any attempt to get restored the earlier electric connection bearing account No.E-1/58 which was disconnected on account of non-payment of electricity consumption charges. Since a new connection was taken in the name of appellant No.1-herein (defendant) Balbir Singh by paying all the charges, so respondents-herein (plaintiffs) had no concern whatsoever with this connection.

Prayer is made to accept this appeal and to set aside the impugned judgments and decrees passed by both the Courts below.

8. But on the other hand, the learned counsel for the respondents-herein (plaintiffs) has denied the above entire contentions of learned counsel for the appellants and has contended that both the Courts below have recorded concurrent findings in favour of the respondents-herein (plaintiffs) on the basis of the evidence and documentary record available on the file and as such there is no ground to poke any nose into their findings. It is further his contention that respondents-herein (plaintiffs) were to use the electric connection in dispute to the extent of 7/16th share as per family settlement dated 07.06.1973 Ex.P1 and as such appellants-herein (defendants) have no right to restrain them from using this electric connection to this extent.

9. In the case in hand, the most material question which is to be seen is that as to whether the electric tubewell connection in dispute was functional on the date of the filing of the suit or not, as well as the conduct of both the parties regarding this connection. For this purpose, brief appreciation of the evidence of both the parties is needed.

i. PW-1 Ram Parkash, Assistant Accountant of Electricity Department, Khanna produced the record pertaining to electric connection bearing Account No.E-1/58C which was earlier in the name of Kartar Singh s/o Sunder Singh. As per his statement, this connection was dis-connected permanently on 04.12.1985 due to non-payment of dues. Then on the request of Balbir Singh-defendant this connection was restored in his name vide Account No.E-1/391 on the payment of charges which were due qua the connection bearing old No.E-I/58C.

In his cross-examination this witness stated that Balbir Singh deposited a sum of Rs.380/- as a security amount by moving an application. Earlier one Kartar Singh was the owner of this connection, whereas now it is in the name of Balbir Singh, who has been depositing its bills issued regarding consumption of electricity charges. In case any connection is dis-connected permanently, then any blood relation of the previous owner of the connection can get the connection restored on depositing all the due requisite charges. When connection is issued in the name of new person, then its earlier owner has no concern with the same. Then he admitted that this connection was issued in the name of Balbir Singh as per instructions of Electricity Board.

ii. PW-2 Jagan Nath was the scribe of the abovesaid family settlement Ex.P1 which was in Urdu and proved its translation in Punjabi

version as Ex.P3. Ex.P2 is the copy of his register wherein the entry of this settlement was made.

iii. PW-3 Sher Singh, one of the plaintiffs, narrated the version as produced in the plaint.

In his cross-examination, he showed his ignorance as to whether the connection of the motor in dispute was dis-connected permanently w.e.f. 11.04.1985. Further he also showed his ignorance as to whether Balbir Singh had got deposited any security amount and a sum of ₹5,564/- plus ₹140/- on account of arrears of electricity consumption charges. He did not move any application to deposit the arrears of electricity bills and to get the connection restored. He stopped from using the electricity motor in question since the last about 2 years and since then he also stopped making payment of electricity charges. He has been irrigating his fields from a separate tubewell by installing an engine. Besides this, he has also got installed an electric motor of 5 horsepower for irrigating his seven acres of land since the last 8-9 months. He got installed this motor when the defendants prevented them from using the electric tubewell in dispute.

10. DW-1 Balbir Singh defendant deposed that earlier the electric motor in dispute was in the name of Kartar Singh. It was dis-connected temporarily on 11.04.1985. He moved an application for transfer of this connection in his name and deposited a sum of ₹380/- as security vide receipt Ex.D1 and a sum of ₹5,564/- vide receipt Ex.D2 on account of arrears of electricity consumption charges. Further, he also got constructed a new *Kotha* and got done the new fitting. E-1/391 is the account number of the connection at present and he has been paying its bills issued in

respect of electricity consumption. Then he also brought on the file one bill Ex.D4 and the receipts Ex.D5 and Ex.D7 with regard to the payment of electricity charges. In his cross-examination, he admitted that it is the same motor which was got installed by Kartar Singh and Sardara Singh. He also admitted that this motor is installed in the *Taur* (joint land). Then it was further his admission that Sher Singh etc. used to take water for irrigating their fields from this motor. Killa No.27 was also admitted to be joint one. Electricity Department did not install any new pole and wire and the pole and wire which were earlier issued were used to transfer the connection in his name. The electricity connection in dispute remained non-functional till 04.12.1985, since its disconnection. The electric motor is installed on the previous bore. Sher Singh etc. have been irrigating their land from their own tubewell by installing an engine.

ii. DW-3, Ram Prakash as per record deposed that connection No.E-1/58 which was in the name of Kartar Singh was dis-connected temporarily w.e.f. 26.12.1984 since arrears of ₹4,124/- were standing in this account. This connection was subsequently disconnected permanently w.e.f. 11.04.1985. Thereafter defendant-Balbir came to their office with a request to transfer the electricity connection abovementioned in his name who deposited a sum of ₹380/- as security as well as arrears of electricity consumption charges. Further along with test report, he also produced one receipt dated 07.11.1985 regarding purchase of one motor. Thereafter, connection was started in the name of Balbir Singh on 04.12.1985. Then in his cross-examination, he admitted that no new connection was issued, rather it was the old one. Earlier account number of this connection was E-1/58 and its new number is E-1/391. For this connection the same cable was

used which was issued earlier.

11. From the above discussed evidence of both the parties, it was established on the record that connection in dispute was disconnected temporarily on 26.12.1984 on account of non-payment of electricity charges and disconnected permanently on 11.04.1985 for the same very reason. This suit was filed on 16.07.1985. The above alleged connection was got transferred by defendant-Balbir Singh in his name by depositing all the requisite charges and fulfilling all the formalities and this connection was issued in his name w.e.f. 04.12.1985. So meaning thereby the alleged connection remained non-functional till 03.12.1985 w.e.f. 26.12.1984. With this it is also held that this connection was not functional/running, when the instant suit for injunction was filed by respondents-herein (plaintiffs) on 16.07.1985. They were not aware about the factual position of this connection when this suit was filed. Then as above discussed, it had also come in the statement of PW-3 Sher Singh-plaintiff that he stopped using the connection in dispute bearing account No.E-1/58 for the last about 2 years and also stopped making payment of its electricity charges since then. When he had been defaulting in making payment of the charges qua the electricity consumption of his share, then certainly he and other plaintiffs had no right to use the electric tubewell in question since as per the alleged family settlement Ex.P1, plaintiffs were bound to pay the charges qua electricity consumption for the use of this tubewell to the extent of 7/16th share. Then it is well established on the record that the electricity connection in dispute which was dis-connected by the Electricity Department on account of non-payment of charges was got transferred by defendant-Balbir Singh in his name by depositing security charges and

making payment of all the dues of electricity consumption charges. The mere fact that the defendant-Balbir Singh had got installed the new electric motor on the same very bore under the new account No.E-1/391 does not mean that it entitles the plaintiffs to enjoy the same, when they had defaulted to pay the arrears of charges as abovementioned. It also does not matter if the cable, electricity poles and wires earlier issued were used as such to make the connection running which was got transferred in the name of defendant-Balbir Singh vide account No.E-1/391.

12. When the electric connection of the tubewell in question was not in running condition on the date of filing of this suit, then the question that appellant-herein (defendant) had been obstructing the respondents-herein (plaintiffs) from using this connection did not arise at all.

13. Then the learned counsel for the respondents-herein (plaintiffs) has also contended that electric connection in dispute was disconnected due to default of Kartar Singh-defendant No.1 in depositing bills of electricity charges who was responsible to pay the same. But as per the family settlement Ex.P1, the respondents-herein (plaintiffs) were liable to pay 7/16th share of the electricity charges, repair charges etc. for the use of the connection in dispute and they had not brought on the file any evidence to show that they had paid their said share to Kartar Singh defendant No.1, who further defaulted to pay the bills of electricity consumption, whereby resulting into disconnection of the connection in dispute. So for this reason, the above contention of learned counsel for respondents-herein (plaintiffs) is not found to be tenable.

14. The relief of injunction is a discretionary relief, based on equity and good conscience. He who seeks equity, must do equity. The

appellants-defendants had brought on the record receipts as well as bills in the shape of Ex.D1 to Ex.D7 to show that a new motor was purchased by them, though it was got installed at the earlier bore. Then it also came on record that at present respondents-plaintiffs are irrigating their land from their separate bore by installing an engine as well as electric motor.

15. Any observation made in this judgment is not to cause any effect on the nature of the property on which this connection is installed. In other words, if it is joint, then it will remain as such till the same is got partitioned by all the concerned co-sharers as per law.

16. In the light of above discussion, there are merits in the appeal. Consequently, the same stands accepted and suit filed by the respondents-plaintiffs stands dismissed. Consequently, judgments and decrees passed by both the Courts below are also set aside.

August 10, 2016
Gaurav Sorot

(GURMIT RAM)
JUDGE

1. Whether reportable? No / Yes
2. Whether speaking / reasoned? No / Yes