

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

Date of decision : 20.09.2016

1. RSA-3481-2011 (O&M)

Ajmer Singh

... Appellant

Versus

Sher Singh and others

... Respondents

2. RSA-3683-2011 (O&M)

Ajmer Singh

... Appellant

Versus

Sher Singh

... Respondent

3. RSA-4590-2011 (O&M)

Ajmer Singh

... Appellant

Versus

Sher Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Raj Paul Kansal, Advocate
for the appellant(s) in all the appeals.

Mr. M.K. Singla, Advocate
for respondent No.1 in RSA-3481-2011,
for the respondent in RSA Nos.3683 & 4590 of 2011.

Brig. B.S. Taunque (Retd.)
for respondent Nos.2 to 4 in RSA-3481-2011.

AMIT RAWAL, J. (ORAL)

CM-9773-C-2011 IN RSA-3481-2011

For the reasons stated in the application which is duly supported by an affidavit, the delay of 343 days in filing the appeal is condoned.

CM stands disposed of.

CM-10419-C-2011 IN RSA-3683-2011

For the reasons stated in the application which is duly supported by an affidavit, the delay of 364 days in filing the appeal is condoned.

CM stands disposed of.

CM-13369-C-2011 IN RSA-4590-2011

For the reasons stated in the application which is duly supported by an affidavit, the delay of 346 days in filing the appeal is condoned.

CM stands disposed of.

CM-13371-C-2011 IN RSA-4590-2011

For the reasons stated in the application which is duly supported by an affidavit, the delay of 47 days in re-filing the appeal is condoned.

CM stands disposed of.

CM-13370-C-2011 IN RSA-4590-2011

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and deficiency in Court fees has been made good subject to all exceptions.

CM stands allowed.

MAIN CASES

This order of mine shall dispose of three appeals bearing **RSA No.3481 of 2011** titled as **“Ajmer Singh V/s Sher Singh and others”**, **RSA No.3683 of 2011** titled as **“Ajmer Singh V/s Sher Singh”** and **RSA**

No.4590 of 2011 titled as “Ajmer Singh V/s Sher Singh”.

The appellant-Ajmer Singh is aggrieved of the judgment and decree of the lower Appellate Court, whereby the Civil Suit No.186 of 2001 titled as “Ajmer Singh V/s Sher Singh”, seeking restraint order against the defendant-Sher Singh as he extended the threat to irrigate his agricultural field from the electric connection bearing Account No.ND-100, in the name of the plaintiff, forcibly and illegally, has been dismissed by the lower Appellate Court, though decreed by the trial Court and Civil Suits bearing No.213 of 2003 titled as “Sher Singh V/s Ajmer Singh” & No.56 of 2003 titled as “Sher Singh V/s Ajmer Singh and others” for permanent injunction seeking a restraint order against the appellant-Ajmer Singh from shifting the disputed motor connection illegally and forcibly and restraining Ajmer Singh from interfering, making any type of obstacle, hindrance in peaceful usage of the electric connection aforementioned, have been decreed by the lower Appellate Court, though, dismissed by the trial Court. It is, in this background of the matter, three appeals, aforementioned, have been filed.

Mr. Raj Paul Kansal, learned counsel appearing on behalf of the appellant-Ajmer Singh submits that the electricity connection, aforementioned, has been issued, by the Electricity Board, on his name. Even the *khata* is joint, the other co-owner cannot seek the injunction against co-owner in the absence of the partition. Regulation of the Punjab State Electricity Board provides that after partition, the other co-owner can apply separate connection, though, there is categorical admission of the respondent-Sher Singh that he had installed a submersible for irrigating his

agricultural field and keeping in view this fact, the trial Court decreed the suit of Ajmer Singh and dismissed the suits of Sher Singh, but the lower Appellate Court reversed the findings of the trial Court by relying upon the judgment rendered by this Court in “Gopi Ram V/s Shyam Sunder and others” 2006 (2) RCR (Civil) 710. He submits that this Court below was not apprised of the electricity regulations which are sacrosanct, whereby an account-holder is bound by the terms and conditions, thus, urges this Court for setting aside the judgment and decree of the lower Appellate Court under challenge.

Per contra, Mr. M.K. Singla, learned counsel appearing on behalf of the respondent No.1-Sher Singh submits that as per the ratio decidendi culled out by this Court in “Gopi Ram's case (supra), until and unless the property is not partitioned, none of the co-owners cannot seek the restraint order against the other co-owners from using the electric connection. The respondent No.1-Sher Singh, who was the defendant in first suit and the plaintiff in the other two suits, cannot be restrained, rightly so, the lower Appellate Court has granted the injunction from shifting the electric connection and issued injunction restraining the appellant-Ajmer Singh not to interfere in using the electric connection for drawing the water from the tube-well installed therein, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book.

It is matter of record that the electric connection bearing No.ND-100 is not jointly owned by Ajmer Singh and Sher Singh, but it is in

the name of the appellant-Ajmer Singh. Sher Singh cannot seek a restraint order against Ajmer Singh from shifting the connection, he has to apply for a separate connection. As regards the injunction from drawing the water from the tube-well, whereby the electric connection, aforementioned, has been given, the regulation do not permit the connection in the name of the co-sharer. Once, the Electricity Board has issued the electric connection in the name of one of the co-owners, he could/can use the connection in any manner and mode, but the other co-owners cannot seek the restraint order. The remedy, if any, was to seek the partition. All these facts have not been taken care by the lower Appellate Court, thus, in my view, the Civil Suit bearing No.186 of 2001 was liable to be decreed and other two suits bearing Nos.213 and 56 of 2003 are liable to be dismissed.

No doubt, this Court on earlier occasions had been framing substantial questions of law while deciding the appeals, but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in **"Pankajakshi (dead) through LRs and others Vs. Chandrika and others" AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97 (1) CPC, whether the provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure. The Constitution Bench of Hon'ble Supreme Court held that the decision in **"Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others" 2001 (4) SCC 262**, applicability of Section 97 (1) of CPC was not correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back and therefore, I do not intend to frame the

substantial questions of law while deciding the appeal aforementioned.

For the foregoing reasons, the judgment and decree of the lower Appellate Court is hereby set aside and that of trial Court is restored. The suit bearing No.186 of 2001 is decreed and the other two suits bearing Nos.213 and 56 of 2003 are dismissed.

However, the respondent-Sher Singh shall be entitled to seek the partition of the property and also apply for separate connection and such application, if moved, the Electricity Board shall take into consideration the said regulation for issuing the electric connection, expeditiously.

With the aforesaid observations, the appeals are allowed.

20.09.2016
yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned

Yes/ No

✓

Whether Reportable

Yes/ No