

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

Regular Second Appeal No.1589 of 2012 (O&M)
Date of decision: 16.8.2016

Lodha Singh and another

... Appellants

Versus

Hamir Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Vijay Sharma, Advocate,
for the appellants.

Mr.BPS Virk, Advocate,
for respondents No.1 and 2.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower appellate court whereby the judgment and decree dated 7.12.2007 decreeing the suit for declaration and permanent injunction has been set aside.

Mr.Vijay Sharma learned counsel appearing on behalf of the appellant submits that Kartar Singh was owner of the land measuring 144K-8M. He died in the year 1980. He was survived by his two sons i.e. Gurmit Singh and Hari Singh and two daughters Hamir Kaur and Charan Kaur. Charan Kaur sold away her share in favour of Gurmit Singh in the essence Gurmit Singh became owner of ½ share of the entire property. Gurmit

Singh defendant No.1 vide sale deed dated 23.5.2002 Ex.P22 sold 27K-6M of land to Dharam Pal including 1/3rd share in the tubewell electric connection. Mr.Vijay Sharma submits that it is so reflected in the sale deed. Dharam Pal vide sale deed dated 6.11.2003 Ex.P5 sold the same piece of land along with 1/3rd share in the tubewell connection to the plaintiff. Gurmit Singh himself sold 16K of land to the plaintiff vide sale deed dated 24.4.2003 Ex.P4 which also contains a recital with regard to the share of the tubewell connection. Even Hamir Kaur the other sister executed a lease deed dated 2.6.2004 in favour of the appellant Ex.P1 in the essence the appellant had been put into possession having the tubewell electric connection. The cause of action to file the suit arose in the year 2002 when defendant No.1 wanted to shift the tubewell electric connection to other piece of land as the same is situated in Khasra No.52/8. The trial court after examination of the jamabandi for the year 1998-99 Khasra Girdawari Ex.P7 as well as the electricity bills Ex.P9 to Ex.P21, granted declaration and consequential injunction. However, the lower appellate court being the last court of fact and law did not discharge the obligation and misinterpreted and mis read the regulation of Punjab Electricity Board in the essence read regulation No.38 but did not read material regulation particularly regulation 41 which deals with the transfer of the tubewell electric connection in case of such exigencies and eventuality, thus has been a gross misreading and misconstruing of the documentary evidence and urges this Court to formulate the following questions of law :

- (i) Whether the judgment and decree dated 29.11.2011 passed by 1st appellate court is perverse and illegal?

(ii) Whether the non-performance of formalities for change of name of electric connection would mean that plaintiff has not acquired share/interest in the electric connection/tubewell?

Mr.Virk learned counsel appearing on behalf of the respondents submits that the appellant has failed to prove the aforementioned sale deeds. The sale deed Ex.P22 was tendered in evidence which was seriously objected to, and the plaintiff failed to discharge onus and, therefore, the question of selling tubewell connection in the sale deed has seriously been disputed. Learned appellate court examined the aforementioned pleadings as well as regulations in correct perspective and dismissed the suit. There is no illegality or perversity in the impugned judgment and decree in the essence defendant No.1 had never sold the land to Dharam Pal including the electric connection.

Mr.Vijay Sharma submits that the first appeal before the lower appellate court was preferred by Hamir Kaur defendant No.2 who had never executed the sale deed but have only executed the lease deed Ex.P1. He further submits that the attesting witnesses to the lease deed i.e. Lambardar and Member Panchayat have been examined, they stated that their signatures appear on the lease deed. During the course of arguments, he has also shown to this Court latest revenue record i.e. jamabandi for the year 2008-09 to show that there was partition proceedings and after mutation, tubewell connection situated in Khasra No.52/8 had been transferred in the name of the plaintiff as a consequence to the partition proceedings, thus as the status of the appellant-plaintiff after purchase of the land with other siblings was of a co-sharer. He has also drawn attention of this Court to the

cross-examination of Gurmeet Singh where he admitted execution of the sale deed dated 23.5.2002 and urges this Court to set aside the judgment and decree under challenge.

I have heard the learned counsel for the parties and perused the paper-book and found that there is force and merit in the submission of Mr.Sharma, for DW2 Gurmeet Singh admitted selling of the land along with all rights attached thereto. The relevant part of the statement of DW2 Gurmeet Singh is thus : -

“....It is correct that I sold land measuring 27 kanal 6 marlas to Dharampal son of Raghbir Chand son of Chanan Mal on 23.5.2002 along with all the rights attached thereto. I do not know whether Dharampal sold away that land measuring 27K 6M to the plaintiff or not along with all the rights attached thereto. I did not sell any electric connection.”

Sale deed dated 23.5.2002 also reveals selling of the electric connection having 7.5 BHP which was later on upgraded and the electricity connection was sold to the extent of 1/3rd share. The factum of demarcation was also admitted by him. The lower appellate court misread the regulations in the fact that Regulation 41 deals with Change of Title or Transfer of Agreement. Particularly 41.4 where in the event of transfer of a property, the transferee will submit an application along with letter of consent and in the absence of a letter of consent, he is required to provide proof of ownership. He submits that the other co-owners have not given the letter of consent. It was in these circumstances declaration was sought as it is borne from the record, that the plaintiff had been put in possession and had been using the land along with tubewell connection. Once the factum of the sale deed has been admitted, then the objection of Mr.Virk with regard to the

improvisation of the sale deed pales into insignificance. In my view, the learned trial court after appreciating the oral as well as documentary evidence granted declaration and injunction. For the sake of brevity, regulation 41 reads thus :

“41. CHANGE OF TITLE OR TRANSFER OF AGREEMENT

41.1 A consumer will not, without the consent in writing of the Board, assign, transfer or part with the benefit of the agreement for obtaining a connection. The consumer will also not in any manner part with or create any partial or separate interest except in the event of : -

- a) Change in partnership,
(after supplying a certified copy of the new partnership deed and execution of a new agreement).
- b) Change in the name of a company,
(after supplying a certified copy of the new Memorandum of Association/Articles of Association alongwith supporting documents and execution of a new agreement).

41.2 A consumer may at any time seek the consent of the Board to transfer the connection and its liabilities to any other person. After obtaining such consent the transferee will execute a new agreement and will deposit the Security (Consumption) and Security (Meter) at the prevalent rates after accounting for the Security (Consumption) and Security (Meter) already deposited by the previous consumer. The Security (Consumption) of an existing consumer may with his/her consent be transferred in the name of the new consumer, who will make good the shortfall, if any, at the prevalent rates. The new consumer will also undertake to pay/bear the current and past outstanding liabilities of the old consumer or those detected in the future.

41.3 In the event of death of a consumer, the heirs may apply for the connection to be transferred in the name of one of the heirs. The application will be accompanied by the following documents:

- (a) Death certificate
- (b) Succession Certificate
- (c) No objection from other heirs to the connection being transferred in the name of one of the heirs.

In the absence of documents at (a) and (b) above, all the heirs may submit an affidavit duly attested by a Magistrate confirming the death of the

consumer, identification of the legal heirs and their consent to the connection being transferred in the name of a particular heir.

The Board will, on the submission of the above documents, transfer the connection subject to the condition that it is not required to be shifted to another premises and that charges payable as per the Schedule of General Charges have been deposited with the Board by the transferee.

In case the transfer of the connection is not obtained within 6 months of the death of a consumer, the Board will issue notice requiring that any of the heirs submit an application for transfer of the connection within 15 days of the service of notice. The connection is liable to be disconnected in case no application is submitted to the Board within the period indicated in the notice.

41.4 In the event of transfer of a property, the transferee will submit an application on A & A form along with the following documents : -

- a) Letter of consent of the previous owner for transfer of connection;
- b) In the absence of a letter of consent, the transferee will provide proof of ownership of premises. In case of partition, details thereof/ a family partition deed if any, may be submitted;
- c) In case the consent of the previous owner for transfer of the Security (Consumption) cannot be produced, the applicant will deposit Security (Consumption) and Security (Meter) at prevalent rates. He will also be liable to pay the outstanding dues, if any of the previous consumer.

41.5 In the case of land having an AP connection being jointly owned by more than one person and a part of the land along with the AP connection thereon being sold, the connection may be transferred in the name of the vendee if all the co-sharers consent to such transfer and submit an affidavit duly attested by a Magistrate to that effect.

41.6 The connection will in all cases be transferred within the period stipulated in Regulation 11.3 of the Supply Code.

41.7 In the event where benefit of agreement for a connection is assigned to another person without the approval of the Board, a notice will be served upon the consumer requiring that transfer of the connection be sought as per the procedure prescribed above within 30 days of the service of notice. The connection will be liable to be disconnected in case no application is submitted to the Board within the period indicated in the notice.”

This Court can always take cognizance with regard to the subsequent events regarding partition proceedings culminated into Jamabandi for the year 2008-09 whereby Khasra No.52/8 and tubewell connection has also been transferred in favour of the plaintiff-appellant. The certified copy of the jamabandi for the year 2008-09 is taken on record.

The questions of law are answered in favour of the plaintiff-appellant and against the defendant-respondents.

For the aforementioned reasons, the appeal is allowed and the judgment and decree of the lower appellate court is set aside and that of the trial court is restored.

(AMIT RAWAL)
JUDGE

August 16, 2016

Paritosh Kumar

Whether speaking/reasoned : Yes

Whether reportable : Yes