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

RSA-2353-2013 (O&M)
Date of decision : 11.01.2016

Surjit Singh

...Appellant

Versus

Narinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Satinder Khanna, Advocate
for the appellant.

Mr. Sanjiv Kumar Virk, Advocate
for respondent No.1.

Mr. Ashok Kumar Sharma, Advocate
for respondent Nos.2 and 3.

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?

AMIT RAWAL, J. (ORAL)

The appellant-defendant No.1 is in regular second appeal against the judgment and decree rendered by the lower Appellate Court, whereby suit filed by respondent No.1-plaintiff for permanent injunction, seeking restraint orders against defendant No.1, from shifting, transferring and disconnecting the

electricity tubewell connection bearing No.BA-172 of 5 BHP jointly owned by the plaintiff and defendant No.1, has been decreed.

Mr. Satinder Khanna, learned counsel appearing on behalf of appellant-defendant No.1 submits that as per the written statement filed by the Electricity Board, it has ex facie been, averred that the electric connection cannot be jointly owned, even if, it has been installed on the land, jointly owned by the co-sharers. He further submits that though the property between the co-sharers was partitioned, de hors of that fact, in the suit for injunction, title cannot be adjudicated, yet the lower Appellate Court has erroneously decreed the suit while relying upon aforementioned facts, by holding that since the property at the hands of respondents No.1-plaintiff and defendant No.1 was joint and, therefore, the electricity connection would also be joint, enjoined the appellant and the Board not to transfer, shift and disconnect the electricity connection aforementioned, thus, the following substantial question of law arises for determination by this Court:

1. Whether tubewell connection can be shared by two co-sharer even though the money has been paid by the person in whose name the tubewell connection stands?
2. Whether the regulation of the electricity board prohibiting illegal transfer of the electricity connection can be bye passed by civil courts?

Mr. Sanjiv Kumar Virk, learned counsel appearing on behalf of respondent No.1-plaintiff submits that there is no illegality and perversity in the judgment rendered by the lower Appellate Court. Since the appellant-defendant No.1 failed to prove the land between the co-sharers was partitioned and he prays for dismissal of the appeal.

Mr. Ashok Kumar Sharma, learned counsel appearing on behalf of Electricity Board, respondents No.2 and 3 herein, submits that as per the regulation, the electricity connection cannot be jointly shared, it has to be issued in the name of an individual person. It is an arrangement between the co-sharers to use the electricity connection in the way/manner, they choose.

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

I am of the view that the appeal is liable to be allowed for the following reasons:

The simpliciter suit for the injunction restraining defendant No.1 in my view was not maintainable. The respondent-plaintiff could file the suit for partition and thereafter, seek for separate connection. Since the suit is for injunction, therefore, the adjudication of the title as to whether the property at the hands of the plaintiff-defendant No.1 is joint or partitioned would be immaterial. The fact remains, the regulation of the Electricity Board does not permit the connection

in the name of co-sharers. Once the Electricity Board issued a connection in favour of defendant No.1, it was defendant No.1 who could use the connection in the manner and mode, he choose.

In my view, the lower Appellate Court has committed the illegality and perversity in decreeing the suit, as it has rightly been dismissed by the trial Court.

Keeping in view the aforementioned observations, the substantial questions of law is answered in favour of the appellant-defendant No.1 and against respondent No.1-plaintiff.

Accordingly, the appeal is allowed and the judgment and decree of the lower Appellate Court is set aside.

11.01.2016
yogesh

(AMIT RAWAL)
JUDGE