

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1193 of 2016 (O&M)

Date of decision: 13.05.2016

Resham Singh

.....Appellant

Vs.

Narinder Singh and others

.....Respondents

CORAM:- HON'BLE MR.JUSTICE AMOL RATTAN SINGH.

Present:- Mr.Tanmoy Gupta, Advocate, for the appellant.

- (1) To be referred to the Reporters or not? Yes
- (2) Whether the judgment should be reported in the Digest?

.....
AMOL RATTAN SINGH, J.

This is the second appeal by the plaintiff, after his suit seeking a declaration, as also permanent and mandatory injunction restraining the defendants No.1 and 2 from stopping the supply/use of a water electricity motor which was running on an electricity connection in the name of the first defendant, was dismissed by the learned Civil Judge (Jr.Divn.), Ludhiana, and the appeal against that judgment and decree was dismissed by the learned first appellate Court.

(2) Briefly, the plaintiff's father, the late Karam Singh, was owner in possession of some land on which the electric motor in question was installed, by an electricity connection provided by-

defendant No.3, i.e. the Punjab State Electricity Board (hereinafter

referred to as 'the Board').

(3) Allegedly, the brother of the plaintiff (not impleaded in the suit), had forged some documents of his father and “obtained an illegal power of attorney” in the name of one Harjinder Pal Singh Cheema and sold about 6 acres of land to defendants No.1 and 2 through registered sale deeds. The said sale deeds and power of attorney were challenged by the appellant-plaintiff in another civil suit titled as Resham Singh Vs.Devinder Singh, which at the time of the filing of the present suit (the one out of which this second appeal arises), was still pending.

It was further alleged in the plaint that defendants No.2 and 3 were interfering in the plaintiff's use of the electricity connection and motor and they had also illegally got it transferred in their name. Hence, there being only one electric motor to irrigate the fields in the possession of the plaintiff, he sought that the first two defendants be restrained from stopping his water supply from the aforesaid motor and tubewell.

(4) Upon notice issued to them, the first two defendants filed their written statement in which other than the usual preliminary objections, they also took an objection with regard to the suit being barred under Order 2 Rule 2 of the CPC.

On merits, they pleaded that in fact, the entire land holding of the late Karam Singh had not been mentioned in the plaint,

as he was the owner of 102 kanals and 6 marlas of land and not just

95 Kanals and 13 Marlas given in the plaint.

It was further alleged that if the plaintiffs' brother had fabricated and forged some documents in the name of his father, to sell about 5 acres of land to the defendants, the father (Karam Singh) having remained alive for about 2 years after the execution of the sale deed, would have challenged the same, which he never did.

(5) The respondent -Board (defendant No.3 in the civil suit) also filed its written statement denying that the electricity connection in question was illegally transferred, or that such transfer was to be declared null and void.

(6) Replications to the written statement having been filed, the learned Civil Judge, Ludhiana, framed the following issues:

- “1. Whether the plaintiff is entitled to decree of declaration as prayed for? OPP.
2. Whether the plaintiff is entitled to decree of permanent injunction and mandatory injunction as prayed for? OPP.
3. Whether the plaintiff is guilty of suppression of material facts from the Court? OPD-1& 2.
4. Whether the present suit is barred under Order 1 rule 9 of CPC? OPD-1& 2
5. Whether the present suit is barred under Order 2 rule 2 of CPC? OPD-1& 2
6. Whether present suit is bad for multifariousness? OPD-1,2.
7. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction?

OPD-1& 2.

8. Whether the suit is bad for mis-joinder of necessary parties? OPD-3.
9. Whether the present suit is without any cause of action? OPD-3.
10. Relief.”

After appreciating the evidence in the form of 3 witnesses examined on behalf of the plaintiff, as also the documents tendered in evidence by him, and the testimony of the first defendant, along with his documentary evidence tendered, the learned Civil Judge firstly found that the witness (PW-2 Manpreet Singh), who claimed to have appeared as the special attorney of the plaintiff, actually did not produce any such special power of attorney in his favour and thereafter admitted in cross-examination, that he was cultivating the land from the same motor even after the sale effected in favour of defendants No.1 and 2, who had been giving the plaintiff and him the water facility for about 3 years prior to the filing of the suit. Thereafter, he stated that the defendants were not permitting the plaintiff to take water from the motor, the electricity connection of which had been transferred in the name of defendant No.1.

The witness who appeared for the plaintiff from the Board, i.e. an Assistant Linesman, also testified that all formalities had been complied with before transfer of the connection from one consumer to the other.

(7) Upon further appreciation of the evidence, the learned

Civil Judge found that the father of the plaintiff, Karam Singh, had never challenged the sale deeds during his life time and that they had now been challenged (in a separate suit), more than 3 years after their execution and further, that no illegality in the transfer of the connection could be proved by the plaintiff, whose attorney, Sh.Raghubir Singh Grewal, actually never appeared and instead Manpreet Singh PW-2 appeared, without any power of attorney in his favour. (It may be noticed here that the plaintiff is shown to be a permanent resident of England).

The suit was, consequently, dismissed.

(8) In the first appeal filed by the plaintiff, the learned Additional District Judge, other than noticing the above, also held that in the sale deed, Ex.D1 dated 13.05.2003, by which the land had been sold to defendants No.1 and 2, the motor connection, alongwith the 'Kotha", tubewell bore and trees etc. had also been sold, all for a sum of Rs.9,60,000/-, in favour of defendant No.2 by Karam Singh, father of the plaintiff, who never challenged such sale deed in his life time and in fact, the suit was instituted on 17.07.2008, i.e. more than 5 years after the execution of the sale deed.

It was further noticed that the suit earlier filed by Resham Singh, challenging the sale of the land itself, had also since been dismissed and he had yet again filed another suit.

Hence, holding that the there was obviously intention of the vendor of the land, i.e. Karam Singh, father of the plaintiff, to sell

the electricity connection and other appurtenances on the land along with the land, the transfer of the electricity connection to defendant No.1, made by the Electricity Board, was found to be perfectly legal and valid and consequently, the appeal filed by the plaintiff was also dismissed.

9. Before this Court, learned counsel for the appellant submits that in the absence of any record produced by the respondent-Electricity Board, showing that transfer of the electricity connection in question had been effected by proper procedure, by way of necessary applications, no objection certificate etc., the electricity connection could not have been transferred in the name of respondent-defendant No. 1.

On specific query he admits that the electricity connection was not in the name of the appellant-plaintiff but in the name of his late father Sh. Karam Singh, who had sold the land upon which the electricity connection was installed to respondents No. 1 and 2, by virtue of two sale deeds, in one of which there was a specific recital of sale of the electricity connection also to respondent No. 1.

The contention that the electricity connection could not have been transferred simply by way of sale by the father of the appellant, i.e. the consumer of the electricity connection, is correct, in view of the fact that eventually it is the electricity company/board which is to make such transfer; however, there is no denial to the fact

that the transfer has actually been effected by the respondent-Board

(respondent No. 3) to respondent No. 1. Just because records showing the formalities of an application having been made and the no objection certificate having been received, were not produced in Court, would not negate the transfer, or make it void or legally unsustainable, in view of the fact that firstly, the father of the appellant who was admittedly the consumer, in whose name the electricity connection stood, had never objected to such transfer or at least no such objection was ever proved by the appellant, and secondly, once the intention of the consumer was made clear by the sale deed that he wished to transfer it, and in pursuance to that the transfer actually was effected in favour of respondent No. 1, again, to repeat, with no objection by the consumer himself during his life time, I do not see what error the Courts below have committed while passing the judgments under challenge.

10. In any case, there actually being no substantial question of law involved in this 2nd appeal, and the judgments of the Courts below not being perverse in any manner, I find no merit in the appeal, which is consequently dismissed, *in limine*, with no order as to costs.

13.05.2016
anil

(Amol Rattan Singh)
Judge