

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2198 of 2016
Date of decision: 27.05.2016

Kartar Singh

.....Appellant

Vs.

Kulwant Singh

.....Respondent

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

Present:- Ms.Sonia G.Singh, Advocate,
for the appellant.

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

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AMOL RATTAN SINGH, J.

This is the second appeal of the defendant, in a suit filed by the respondent/plaintiff (hereinafter referred to as "the plaintiff"), seeking a decree of permanent injunction restraining the appellant-defendant (hereinafter referred to as "the defendant"), from interfering in his peaceful use of an electric motor connection, described in detail in the suit, on which a tubewell was being run and which, as per the plaint, was jointly owned and possessed by both the parties to the lis.

2. The case of the plaintiff was that, previously, the defendant and one Surjit Kaur were joint owners of the land in which the motor tubewell connection was installed and that the plaintiff had purchased 8 kanals of that land, out of 22 kanals 3 marlas belonging to Surjit Kaur, along with her share in the motor, tubewell bore etc. It was further contended that after the water level went down, the plaintiff shared in digging the submersible tubewell bore and in getting the electric connection enhanced from 5 H.P. to 7 H.P. and that he had duly shared the expenditure to the extent of a 1/4th share. However, a few days prior to the

plaintiff's peaceful use of the motor, leading to the filing of the suit.

3. Upon filing of the suit, notice having been issued to the appellant-defendant, he filed his written statement, with the usual preliminary objections, further stating that he was the owner of the electric connection with which tubewell motor was run and had paid for enhancement of the load from his own pocket and that the plaintiff had no concern with it.

4. Upon a replication also having been filed, the following issues were framed by learned Civil Judge (Sr.Divn.), Nakodar:

1. Whether connection bearing account No.1110-M is joint between parties to the suit? (OPP)
2. Whether plaintiff is irrigating his land from disputed tubewell connection? (OPP)
3. Whether defendant has started threatening to interfere in use of disputed electric connection by plaintiff?(OPP).
4. Whether present suit is maintainable? (OPP).
5. Whether defendant is exclusive owner of disputed electric connection?(OPP).
6. Whether plaintiff has concealed true and material facts from the Court?(OPD).
7. Relief.”

The plaintiff examined himself as PW-1 and one Bachittar Singh as PW-2. The defendant examined himself and one Tarsem Pal as DW-2 and Hans Raj as DW-3.

5. Upon appraisal of the evidence, the learned Civil Judge found that the defendant had not denied the sale of 8 kanals land by Surjit Kaur to the plaintiff, or the fact that she had re-sold 12 kanals out of 20 kanals purchased by her from

the defendant, to the defendant himself.

Vide the sale deed dated 14.08.2003, by which the appellant-defendant had sold 20 kanals to Surjit Kaur, he had also sold the aforesaid 'rasta' and motor connection in dispute, to her.

It was also found that along with the 12 kanals re-sold to the defendant, she had again sold the 'rasta' (path) and the motor connection in dispute, but while selling 8 kanals to the respondent-plaintiff, she had also sold a 1/4th share of the motor connection installed in the land, to him.

Hence, eventually the learned Civil Judge came to the conclusion, that the sale of 1/4th share in the electricity/tubewell connection to the plaintiff by Surjit Kaur, was very much in consonance with the sale-deed actually executed by her in his favour, (proportionate to the share of land transferred to him).

(Actually a 1/4th share would still fall short as 1/4th of 20 kanals is 5 kanals, whereas the plaintiff had purchased 8 kanals out of 20 kanals. However, the plaintiff never having claimed more than what he had purchased along with the land, that issue is obviously not required to be gone into).

Hence, the suit was decreed in favour of the plaintiff.

6. In the first appeal filed by the present defendant-appellant, the learned Additional District Judge, also held, on the same reasoning as above, in favour of the plaintiff, and dismissed the appeal.

7. Before this Court, learned counsel for the appellant submits that the learned Courts below have failed to appreciate the fact that the electricity connection by which the tubewell was running, is in the name of the appellant-defendant Kartar Singh.

Whereas that fact has been duly appreciated by the Courts below, it is seen that what has been held by those Courts, is that out of the land originally

owned by the appellant-defendant, he had sold 20 kanals to one Surjit Kaur on 14.08.2003, along with the tubewell connection installed on the land. The said Surjit Kaur sold 8 kanals of the said land to respondent-plaintiff Kulwant Singh, vide a sale deed dated 03.03.2006, again along with a 1/4th share in the tubewell connection.

The appellant is stated to have repurchased 12 kanals of land vide a sale deed dated 11.06.2008, along with the tube well connection.

Eventually, the learned first appellate Court has gone on to hold that the appellant and the respondent are joint owners of the land and joint owners to the extent of the transferred share of the tubewell connection also. Hence, the appellant cannot claim exclusive possession or usage of the tubewell, simply because the electricity connection is in his name.

8. Having considered the argument of the learned counsel, as also the judgments of the Courts below, I see no error whatsoever in the conclusion arrived at by those Courts. Simply because the electricity connection on which the tubewell is run, stands in the exclusive name of the appellant, he cannot wriggle out of his contracted sale of land, along with the tubewell connection, to Surjit Kaur, who in turn transferred it in favour of the respondent-plaintiff, to the extent of a 1/4th share thereof.

Though it is not shown in the judgments of the Courts below that the sale deed by which the appellant-defendant repurchased 12 kanals of land, specified that he was being sold only a 3/4th share in the tubewell electricity connection, however, it is stated therein that the defendant (present appellant), was a signatory to the sale deed executed by Surjit Kaur in favour of plaintiff-respondent (Kulwant Singh). Hence, I see no infirmity in those Courts having drawn an inference that the appellant was conscious of the transfer of a 1/4th

share of the tubewell connection, necessarily from the aforesaid fact, along with the 8 kanals sold by Surjit Kaur to the respondent-plaintiff. In any case, since the tubewell connection had been wholly transferred to Surjit Kaur at the time of the sale of 20 kanals of land to her, by the appellant-defendant, in 2003, she was very much within her right to transfer a part of it to her vendee (respondent-plaintiff).

Therefore, I see no reason to interfere with the judgments appealed against, there in any case, being no substantial question of law involved to entertain a second appeal.

9. Accordingly, as has been held by the learned Courts below, the appellant would obviously also continue to enjoy possession of the tubewell to the extent of his share, along with Kulwant Singhs' right to usage of a 1/4th share thereof, till a partition is effected.

Consequently, finding no merit in the appeal, it is dismissed in limine, with no order as to costs.

27.05.2016
anil

(Amol Rattan Singh)
Judge