

RSA No. 2273 of 2016 (O&M)

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

RSA No. 2273 of 2016 (O&M)

Date of Decision: May 05, 2016

Dilbagh Singh

...Appellant

Versus

Jarnail Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vikram Bali, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (Oral):

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Balachaur (S.B.S. Nagar), dated 02.07.2014, whereby, the suit for permanent injunction restraining the defendants from obstructing the appellant-plaintiff in any manner from irrigating his remaining share of land comprised in khasra No.92 as detailed in the head note, situated within the revenue estate of village Jagatpur, Hadbast No.214, Tehsil Balachaur, District S.B.S. Nagar, from the common tube-well of co-sharers of the property, has been dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the Additional District Judge, Shaheed Bhagat Singh Nagar at Nawanshahr, on 14.10.2015.

It is the contention of the learned counsel for the

appellant that no partition of the suit land has taken place between the appellant-plaintiff, who is the eldest brother and the other three brothers who are respondents-defendants. He contends that in the light of the fact that there has been no partition, each co-sharer is in possession of each inch of the land and further entitled to take the benefit of whatever facilities are available on the land and share them proportionately as per their own share. He asserts that although 1 kanal and 10 marlas land has been sold out of khasra No.92 by the appellant-plaintiff vide sale deed dated 20.08.1991 (Ex.D-2) in favour of the respondents but that does not dis-entitle the appellant-plaintiff from using the water from the tube-well for irrigation purpose of that very khasra number as the whole khasra has not been sold and only a part thereof has been sold. He, thus, contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

I have considered the submissions made by the learned counsel for the appellant and with his assistance have gone through the impugned judgments, the cross-examination of the appellant-plaintiff and the relevant contents of the sale deed dated 20.08.1991 (Ex.D-2) as reproduced in the grounds of appeal.

The factum of the sale deed dated 20.08.1991 (Ex.D-2) having been executed by Dilbagh Singh, appellant-plaintiff, whereby, he sold 1 kanal and 10 marlas of land in khasra No.92 alongwith all

rights pertaining thereto including the share in tube-well alongwith electric tube-well connection for a consideration of ₹9,500/-, leave no manner of doubt that the land which has been sold is clearly identifiable and was known to the parties as to what piece of land was sold and purchased by them and for what purpose alongwith what all rights thereon. It is also admitted by the appellant-plaintiff in his cross-examination that although the partition has not been entered into in the revenue records but all the brothers had mutually partitioned and settled the land between them and were in possession of their respective shares. In the light of the above admission on the part of the appellant-plaintiff, it is apparent that there was a specific sale deed qua a particular and specific piece of land alongwith specified rights therein, which cannot be now disputed by the appellant-plaintiff. The assertion of the counsel for the appellant that he being the co-sharer shall be entitled to all rights and all facilities of the land in question, cannot be accepted in the light of the sale deed dated 20.08.1991 (Ex.D-2).

It may be further added here that after the execution of the sale deed 20.08.1991 (Ex.D-2), the electric tube-well connection bearing No.AP-43/0042 was transferred from the name of the appellant-plaintiff Dilbagh Singh in favour of respondent-defendant No.1-Jarnail Singh, which is proved from the statement of Lalit Chaudhary dated 08.02.2012 in the case titled as 'Dilbagh Singh Vs.

RSA No. 2273 of 2016 (O&M)

Punjab State Power Corporation Ltd. & Ors.' (Ex.P-7), wherein, it has been stated that an electric connection has been transferred in favour of Jarnail Singh. All these facts clearly establish that the appellant-plaintiff has consciously given up his rights qua the particular piece of land alongwith all rights therein as specified in the sale deed which included his rights to the tube-well and the tube-well connection. The findings, thus, recorded by the Courts below cannot be faulted with.

No other point has been urged or argued by the learned counsel for the appellant.

A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below being in accordance with the pleadings and the evidence brought on record and further based upon the settled principles of law which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the appeal, the same stands dismissed.

CM No.5943-C of 2016 &
CM No.5944-C of 2016

In view of the order passed in the main appeal, prayer made in these applications for directing status quo qua the

RSA No. 2273 of 2016 (O&M)

possession and staying the impugned judgments cannot be accepted as the same have been rendered infructuous.

Disposed of as such.

May 05, 2016
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE