

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

**RSA No.5120 of 2015
Date of decision: 11.01.2016**

Charanjit Singh

... Appellant

Versus

Swarn Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Manuj Nagrath, Advocate,
for the appellant.

AMOL RATTAN SINGH, J.

The appellant filed a suit for declaration to the effect that he is owner in possession of tubewell bearing A/c No.B-788 of 3 BHP, situated in land comprised in Khewat No.71, Khatoni No.105, Rect. No.7, Killas (7-14), in village Chak Tarra, Tehsil and District Gurdaspur. He also sought permanent injunction restraining the three respondents herein (defendants) and their servants, agents and assigns, from dispossessing him (appellant-plaintiff) or interfering in his peaceful possession of the tubewell.

2. The present appeal has been filed on account of the suit having been dismissed and the appeal filed before the learned lower appellate court, also having been dismissed, vide judgments dated 23.12.2011 and

22.04.2015 respectively.

3. The respondents are the father, first cousin and brother respectively, of the appellant.

The case set up by him was that the aforesaid tubewell, with electricity connection, though in the name of the 1st respondent (appellants' father), was installed by the appellant with his own money; subsequently he also paid Rs.20,000/- to respondent No.1, on account of which he relinquished his right and interest in the tubewell connection, vide affidavit dated 10.09.1996 (Ex.P1). Thereafter, the appellant paid Rs.10,000/- to respondent No.2, who also similarly relinquished his right and interest, vide affidavit dated 17.06.1999 (Ex.P2). As per the plaint, the appellant therefore became the exclusive owner of the said tubewell and connection though it was installed in the joint Hindu family coparcenary property.

The appellants' father (respondent No.1), is stated to have made some transfer of land of the said coparcenary property, which is termed to be “illegal, false and forged”, and which is subject matter of a different suit filed before the competent Court (and, as per the learned counsel appearing before this Court, is stated to be at the stage of appeal before the first appellate court).

Since the respondents-defendants were allegedly threatening to dispossess the appellant from the tubewell, he filed the suit which is subject matter of the present appeal.

4. In the joint written statement filed before the trial Court, by the respondents-defendants, other than the objections with regard to maintainability and non-joinder etc., on merits it was contended by them that the tubewell was actually installed by the 1st respondent with his own

money and subsequently was transferred in favour of respondent No.3 (brother of the appellant), after completing all legal formalities. It was averred in the reply that the name of the appellant-plaintiff did not figure anywhere in the tubewell/electricity connection. In fact, it was also averred, that a compromise deed was signed on 22.04.2005, by the appellant, the respondents and other respectable persons, because of which the tubewell connection was transferred to the name of respondent No.3. The amount of Rs.20,000/- and Rs.10,000/- stated to have been paid by the appellant, to respondents No.1 and 2 respectively, were denied to have been paid, further stating that the affidavits dated 10.09.1996 and 17.06.1999, were “false, collusive, manipulated and prepared in connivance of plaintiff with the defendant No.2”.

5. After issues were framed, the appellant appeared as PW1 and examined Satwant Singh, Gurmit Singh and Harpal Singh as PWs2, 3 and 4 respectively, whereas the respondents examined Balwinder Singh, Upper Division Clerk as DW1 and Sukhjit Singh (respondent No.3) as DW2.

6. After considering the evidence before it, the trial Court held that though the appellant had proved the affidavits (dated 10.09.1996 and 17.06.1999), i.e. Ex.P1 and Ex.P2, by stepping into the witness box himself alongwith the other witnesses, who had also sworn their respective affidavits to the effect that respondents No.1 and 2 had relinquished their rights in favour of the appellant, however, the compromise deed entered into, dated 22.04.2005 (Ex.D1), also stood duly proved by the respondents, even by reference to the cross-examination of respondent No.3 in the other suit pending qua the coparcenary land, in which the appellant had cross-examined present respondent No.3, qua the same document.

The trial Court further held that even if, as admitted by respondent No.3, the appellant was using the electricity/tubewell connection by force, he was not entitled to an injunction in his favour as he had not come to the Court with clean hands because though he had agreed to surrender the tubewell connection vide the agreement Ex.D1, he had not disclosed this fact.

In any case, there was no evidence to show that the connection which had been granted to respondent No.1 was illegally transferred to respondent No.3, or was at any point in the ownership of the appellant.

7. The learned first appellate court, while dismissing the appeal, held that it was actually respondent No.1 Swarn Singh, father of the appellant, who had got the tubewell installed and that the affidavits dated 10.09.1996 and 17.06.1999 were not reliable documents. The trial Court was of the opinion that if the appellant, as claimed, had already made the entire expenditure of the installation of the tubewell himself, even while getting the connection in his fathers' name, there was no need to have made further payments of Rs.20,000/- and Rs.10,000/- to the respondents. Further, even if the payments and relinquishments were to be believed for the sake of argument, it was not understandable as to why the appellant did not move the Electricity Board to have the tubewell connection transferred to his name, right upto the time when the suit was filed in 2002, i.e. for a period of at least 13 to 16 years.

Conversely, the respondents had proved that the tubewell connection was transferred to the name of respondent No.3 at the instance of respondent No.1 and it was accordingly assigned a fresh number (B-1809) in the name of respondent No.3, Sukhjit Singh. The original passbook

pertaining to the electricity/tubewell connection and the other passbook (Ex.D2), also supported the aforesaid contention of the respondents.

The appellate court also noticed that the appellant, during his cross-examination as PW1, had admitted to the comprise Ex.D1, but had stated that he had signed it under the pressure of police. However, despite this, he had not even referred to the document in his plaint.

Consequently, the appeal too was dismissed.

8. Mr.Manuj Nagrath, learned counsel appearing for the appellant, submitted to this Court that the courts below misapplied themselves to the fact that the affidavits dated 10.09.1996 and 17.06.1999, sworn by respondents No.1 and 2 respectively, were not actually disproved in any manner. In fact, even the trial Court had held that the appellant had proved the said documents. Hence, he submitted that the appellant having paid due consideration, to the said respondents, even though he had himself had the tubewell installed with his own money, the findings of both the Courts below are wholly erroneous.

Mr. Nagrath further contended that in any case, the suit pertaining to the land on which the tubewell is installed, is still pending at the stage of first appeal, in the Court of the learned District Judge and as such, dismissal of the plaint qua the tubewell installed therein, was wholly uncalled for. On this ground alone, the matter needs to be remitted to the lower appellate court to be heard alongwith the suit pertaining to the land, as per learned counsel.

9. Having heard the arguments vehemently made by learned counsel, I find myself unable to agree with him. Firstly, as regards the second contention of Mr. Nagrath, that the matter be remanded to the first

appellate court to be heard alongwith the suit pertaining to the land on which the tubewell is installed, it is to be taken notice of that a separate suit qua the tubewell was filed by the appellant himself and not by the respondents. If the main issue is with regard to the land in question, then all appurtenances thereto, could also have been made subject matter of the same suit and the matter decided on merits qua each component/appurtenances, in that suit itself. The appellant having chosen to file a separate suit qua the tubewell and the electricity connection for the tubewell and having failed to prove his ownership or his exclusive right over the same, cannot now take a plea that the two suits be heard together at the stage of the appeal before the first appellate court.

10. Other than that, I find no error, much less any perversity in the judgments, of the learned trial Court and the first appellate court, in arriving at the conclusion that they have, even on merits. The appellant could show no proof whatsoever that he had actually paid for the installation of the tubewell and even if that were so, at a time when he was not in conflict with his family/coparceners, and as such got the connection in his fathers' name, the fact remains that even on the basis of the affidavits stated to be sworn by respondents No.1 and 2, in the years 1996 and 1999, he did not make any attempt to get the connection transferred to his name.

Secondly, even presuming that the affidavits (Exs.P1 and P2) were sworn by the respondents, it obviously cannot be lost sight of that the compromise deed dated 22.04.2005, is well after the date of the said affidavits having been sworn. Thus, even if at first the respondents had relinquished their rights to the tubewell connection, then by virtue of the compromise deed (Ex.D1), the appellant himself had agreed to relinquish

his right in the same. The tubewell connection having been transferred to respondent No.3, whether before or after the compromise deed, in any case, the appellant had forgone his right in it by the said deed, which he eventually admitted to having signed, during his cross-examination. The plea he took before the courts below, that the signatures were obtained under threat of the police, is wholly not worthy of taking note of, because if that were so, then he would have disclosed that fact in the plaint itself, to the effect that he had even been made to sign a compromise deed by force/pressure. He having not made even a whisper in the plaint with regard to the same, obviously the story given by him, when the factum of his having signed the compromise deed was elicited from him during his cross-examination, is not a story to be believed.

12. Consequently, in view of the discussion above, I find no merit in the appeal, which is dismissed *in limine*, with no order as to costs.

11.01.2016
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(AMOL RATTAN SINGH)
JUDGE