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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-15781-C-2016 IN/AND
RSA-6007-2015 (O&M)
Date of decision : 28.11.2016

Bawa Singh

... Appellant

Versus

Balkar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. T.P.S. Tung, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

CM-15781-C-2016

Prayer in this application is for restoration of the appeal bearing
RSA No.6007 of 2015.

For the reasons stated in the application which is duly
supported by an affidavit, the application is allowed and the appeal bearing
RSA No.6007 of 2015 is restored to its original number.

The appeal is taken on board for hearing today.

RSA-6007-2015

The appellants-plaintiffs are aggrieved of the judgment and
decree rendered by the lower Appellate Court, whereby the suit for
permanent injunction restraining the defendant No.1 from creating
hindrances in the smooth joint use of electric connection No.E-801 of 7.5
BHP by plaintiff and defendant No.1 and restraining defendant No.2 from

shifting the said tube-well connection from its present place to some other place at the instance of defendant No.1 installed in the joint land (now partitioned) of the plaintiff and defendant No.1 bearing Khasra No.11 R/16/2 and 11R/15/2/2 respectively situated at Village Samrai, Tehsil Batala, District Gurdaspur, has been partly decreed, in essence, the judgment and decree of the trial Court decreeing the suit has been modified.

Mr. T.P.S. Tung, learned counsel appearing on behalf of the appellants-plaintiffs submits that as per the agreement, electric connection has to be used by them being brothers. Partition proceedings had taken place. Injunction was sought on the premise that defendant No.1 had submitted an application to defendant No.2-Electricity Board for shifting the electricity connection to his piece of land. The trial Court decreed the suit, but the lower Appellate Court has declined one of the reliefs by relying upon the categorical stand of the Electricity Board/defendant No.2 that no such application was moved, whereas the injunction was sought on the mere apprehension and therefore, the lower Appellate Court ought not to have set aside the aforementioned relief. Even otherwise, the electricity connection has to be used by both the brothers in pursuance to the agreement, de hors of the fact that the suit property has been partitioned, thus, urges this Court for setting aside the judgment and decree under challenge as there is gross illegality and perversity.

I have heard the learned counsel for the appellants-plaintiffs and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. T.P.S. Tung, for, the agreement is dated 13.05.1983, whereas the partition had taken place much thereafter. The

partition proceedings have not seen the light of the day, much less, qua of the tube-well connection. Concededly, defendant No.1 is the owner of the electricity connection and the other co-owner cannot seek the injunction restraining the defendant as he has to apply for a separate connection i.e. as per the Regulations of the Electricity Board. The Court would have been sanguine with regard to upholding the finding of the trial Court, had the partition proceedings being brought to its notice. Having failed to do so, I am of the view that the judgment and decree of the lower Appellate Court is perfect, legal and justified.

For the foregoing reasons, I do not find any illegality and perversity in the judgment and decree passed by the lower Appellate Court as the same is based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. The second appeal is dismissed.

28.11.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No