

RSA No. 3488-2014

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

RSA No. 3488-2014 (O & M)

Date of Decision: 15.02.2016

Rupinder Singh and others

... Appellant (s)

Versus

Mohan Lal Singla and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

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

Present: Mr. Nandan Jindal, Advocate,
for the appellants.

Paramjeet Singh Dhaliwal, J.

CM-8079-C-2014

Allowed, as prayed for. For the reasons mentioned in the application, delay of 68 days in re-filing the instant appeal is condoned.

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This regular second appeal of the plaintiffs is against the judgment and decree dated 19.03.2012 passed by learned Civil Judge (Jr. Divn.), Abohar whereby suit filed by the appellants-plaintiffs for permanent injunction has been dismissed and against the judgment and decree dated 29.10.2013 passed by learned Additional District Judge,

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Fazilka whereby appeal preferred by the appellants-plaintiffs has been dismissed.

For convenience sake, hereinafter, reference to parties is being made as per their status in the plaint.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that plaintiffs filed a suit for permanent injunction restraining the defendants from causing any damage to their property, shown in green, yellow and blue colours by shifting the existing electric line, shown in red colour and marked with letters XY in the area of street marked with letters AB, as fully shown in the site plan attached with the plaint illegally, forcibly and except in due course of law. It was averred that plaintiff No.1 is owner of land measuring 9.5 marlas i.e. 114/984 share of the total land measuring 04 kanals 02 marlas comprised in rect. No.287 killa No.7/1(4-2), khewat No.4546 as shown in green colour. Similarly, plaintiff No.2 is the owner of the land measuring 9.5 marlas i.e. land comprised in rect. No.288, killa No.4(8-0), khewat No.4546 as shown in yellow colour and similarly plaintiff No.3 is also owner of land measuring 0.9 Marla i.e. land comprised in rect. No.288, killa No.7/1(4-2), khewat No.4546 as shown in blue colour. The plaintiffs are owners in possession of the suit property fully detailed in the head-note of the plaint and street marked with letters AB, shown in the site plan for approaching the property i.e.

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plot, house of the plaintiffs. The said street in width is 17 feet 10 inches through which the plaintiffs' egress and ingress to their houses, which abuts the Gobindgarh link road. Defendant No.3 owns the land in his name and in the name of his family and relatives through which the electric line of high voltage is already installed and is in existence as fully shown in red colour and marked with letters XY in the site plan. The defendants in collusion with each other threatened that they would shift the existing electric line marked with letters XY in the area of street Mark-AB illegally and forcibly, for which they have got no right to do so. The plaintiffs requested the defendants to admit their claim, but to no avail. Hence, suit was filed.

Upon notice, defendant No.1 resisted the suit and filed separate written statement taking various preliminary objections. On merits, it was admitted that electric line of high voltage is already installed and in existence as fully shown in the site plan. Other averments in plaint were denied and dismissal of suit was prayed for.

Defendant Nos.2 and 3 also filed their joint written statement taking various preliminary objections and denied the averments made in plaint.

Defendant Nos.4 and 5 also filed their separate joint written statement taking various preliminary objections. It was averred that the matter has to be referred to the Dispute Settlement Committee of the PSEB. On merits, it was admitted that the electric line of high voltage is

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already installed and is in existence as fully shown in the site plan. The said wires/line passes over the residential plots and is a big danger for human life. Defendant No.1 approached the answering defendants and requested to shift the wires passing over his residential plot. The answering defendants inspected the spot and made a rough site plan and after that an estimate of Rs.27,073/- also made to shift the wires from the residential plot of defendant No.1, who deposited the said money with the answering defendants. Other averments in plaint were denied and dismissal of suit was prayed for.

On the basis of pleadings of parties, the Court of first instance framed following issues:

- “1. *Whether the plaintiffs are entitled to relief of permanent injunction as prayed for?OPP*
2. *Whether the plaintiffs have no cause of action or locus standi to file this suit?OPD*
3. *Whether this suit is not maintainable in its present form?OPD*
4. *Whether the plaintiffs have not come to the court with clean hands?OPD*
5. *Whether this suit is bad for want of notice under Section 80 CPC?OPD*
6. *Relief.”*

After appreciating the evidence, the Court of first instance dismissed the suit vide impugned judgment and decree dated 19.03.2012. Feeling aggrieved, the plaintiffs preferred an appeal which has been dismissed vide impugned order dated 29.10.2013. Hence, this regular

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second appeal.

I have heard learned counsel for the appellants and perused the record.

Learned counsel for the appellants has referred to following substantial questions of law formulated in the grounds of appeal in para 11 for consideration by this Court:

- (i) *Whether the respondents-PSPCL can shift the line near the locality of the inhabitants?*
- (ii) *Whether the procedure which has been adopted by the PSPCL is in accordance with law?*
- (iii) *Whether a person who purchased the property later on, can Board/PSPCL shift the line, only on his asking, ignoring other residents of the locality?*
- (iv) *Whether the judgments and decrees passed by the learned courts below are not sustainable in the eyes of law and are against the settled provisions of law?*

I have heard learned counsel for the appellants and perused the record.

Learned counsel for the appellants submitted that both the courts below have not properly appreciated the evidence and there is misreading of material evidence by the courts below. Both the courts below have wrongly appreciated that the electricity department cannot shift the existing line which is running for about 15-20 years. There is no permission for transferring the line from the existing place to the

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disputed place. There is an alternative space for shifting the line which is more convenient to the Electricity Department as well as defendant No.1 and Rs.27,000/- were deposited by defendant No.1 for transferring the 11000 Volts line.

I have considered the contentions of learned counsel for the appellants.

Both the courts below have concurrently held that the electric supply line, Mark XY, is passing through the residential plot of defendant No.1 and it would be more dangerous for the life and property of defendant No.1. On the other hand, the plaintiffs have failed to prove that how the street is going to be closed while shifting the electric line in the street. It is also pertinent to mention here that the plot of defendant No.1 abuts the same street where the electric pole is going to be shifted by the Board. Both the courts below have concurrently held that the plaintiffs have failed to prove that any specific hardship, inconvenience or injury is going to be suffered by them if the existing electric line is shifted into the street in question. Rather defendant No.1 will suffer hardship and inconvenience if the electric wires passing over his plot are not shifted from his plot. The defendant No.1 has also deposited the amount of Rs.27,073/- as assessed by the Board for shifting the electric line.

In *Shanti Devi vs. Haryana Vidut Prasaran Nigam Limited*, 2000(4) RCR (Civil) 585, it has been held by this Court that

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the Boards have all the powers under the Electricity Supply Act for proceeding with the work of constructing concrete basis for installing high posts to draw high tension wires for supply of electricity over the field of an individual, subject to his right to claim damages/compensation. It will not be proper for the court to exercise discretion to restrain the Board from executing the scheme by grant of injunction, if the work is done by the Board in accordance with the sanctioned scheme and provisions of law.

Learned counsel for the appellants has failed to show that findings recorded by the courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. Consequently, the concurrent findings recorded by the courts below do not warrant interference in regular second appeal. No question of law, muchless substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine.

15.02.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge