

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

RSA-5903 of 2014 (O&M)

Date of decision: 06.05.2016

Gopal Singh

...Appellant

Versus

Sub Divisional Officer and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Amit Arora, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

This regular second appeal has been filed by the plaintiff-appellant, assailing the judgment and decree dated 18.4.2012, passed by learned Addl. Civil Judge (Sr. Division), Tarn Taran (hereinafter referred to as 'the trial Court') dismissing the suit of the plaintiffs as well as judgment and decree dated 16.7.2014, passed by learned Additional District Judge, Tarn Taran (hereinafter referred to as 'the First Appellate Court'), whereby, the First Appeal was also dismissed.

2. Brief facts of the case are that the plaintiff-appellant

was consumer of one agricultural tubewell connection against account no. C-2/1338/AP in his name. The said connection existed in khasra no. 10//5/2/3(3-10) min Charda of Khata number 152 khatoni no.515 as recorded in the jamabandi for the year 2005-06 situated within the revenue estate of Panjwar, Tehsil and Distt Tarn Taran and was continuously using the same for the past many years without any interruption. The passbook regarding ownership of the connection was issued by the defendant board in his favour. Moreover, the receipts regarding the increase of load from 5 BHP to 6 BHP were also issued and no charges or dues were pending or outstanding against the plaintiff-appellant for payment to the defendant board. It was further averred that the defendants, without any right or reason were threatening to forcibly disconnect the tubewell connection. Hence, the plaintiff-appellant filed a suit for permanent injunction restraining defendants from transferring the tubewell connection.

3. Defendant-respondent Nos. 1 to 3 filed a joint written statement admitting that the plaintiff-appellant was a consumer of the disputed tubewell connection. However, it was pleaded that the defendant board had no knowledge about issuance of

passbook in the name of the plaintiff-appellant or about increasing the load from 5 BHP TO 6 BHP.

4. Defendant no. 4 also filed his written statement taking preliminary objections that the suit was not maintainable as a civil suit regarding the same subject matter was withdrawn by the plaintiff on 14.3.2009. On merits, it was submitted that the plaintiff-appellant had no concern with the tubewell connection as it was running in the land of the answering Defendant no. 4.

5. From the pleadings of the parties, following issues were framed:

1. Whether plaintiff is entitled to permanent injunction as prayed for? OPP
2. Whether present suit is not maintainable? OPD
3. Relief.

6. In order to prove his case, the plaintiff himself appeared as PW1 and closed the evidence after producing on record certain documents. On the other hand, in order to rebut the evidence of the plaintiff, defendant nos. 1 to 3 examined Pardeep Bansal, Revenue Accountant, PSEB and produced on record certain documents. Defendant no. 4 Ram Singh himself appeared in the witness box as DW2 and then closed the

evidence.

7. The trial court, after considering the evidence and hearing the counsel for the parties, observed that the plaintiff was unable to prove his ownership qua the tubewell connection. The plaintiff had relied upon one passbook issued by the defendant board, which was produced on record as Ex.PW1/2. The plaintiff had pleaded that he was in possession of the tubewell connection for the last so many years, but no revenue record had been brought on record. Although, Pardeep Bansal, Revenue Accountant, PSEB, Sub Division Jhabal, while appearing as DW1 had deposed that the tubewell connection was in the name of the plaintiff-appellant, but this deposition was not supported by documentary evidence. This witness had admitted in his cross examination that earlier the tubewell connection was in the name of Joginder Singh, son of Lachman Singh, but he has shown his ignorance as to how the tubewell connection in question was transferred in the name of the present appellant. With regard to the question of maintainability, the learned trial court had held that since the plaintiff had earlier filed a civil suit qua the same subject matter, which was dismissed as withdrawn on 14.3.2009, the principle of *res judicata* would be applicable.

Hence, the suit of the plaintiff was barred by *res judicata*.

8. Feeling aggrieved by the aforesaid judgment and decree of the learned Trial Court, the plaintiff-appellant filed an appeal before the learned First Appellate Court which was dismissed. However, it was observed that the suit of the plaintiff was not barred by the principle of *Res judicata* since the earlier suit was dismissed as withdrawn.

9. Still feeling aggrieved, the plaintiff-appellant has filed the present second appeal assailing the judgments and decrees of both the Courts below.

10. The learned counsel for the appellant contends that both the courts below have wrongly come to the conclusion that the appellant has not been able to prove the possession of land in question where the tubewell was running and on that ground alone has dismissed the suit.

11. I have heard the learned counsel for the appellant and carefully perused the record.

12. In the present case, the appellant averred that he was owner/consumer of Respondent Nos. 1 to 3 and a tubewell connection existing in khasra No. 10//5/2 (3-10) min situated within the revenue estate of village Panjwar, Tehsil and District

Tarn Taran. The appellant sought permanent injunction restraining the respondents from disconnecting the said tubewell connection without any right or reason. Both the Courts below have come to the conclusion that the plaintiff has miserably failed to prove his ownership qua the tubewell connection. Without proving on file either revenue records showing the ownership or receipts for payment of electricity charges qua the tubewell by the the appellant, it cannot be presumed that the appellant was owner in possession of the tubewell connection. Except the passbook issued by respondent nos. 1 to 3, exhibited as PW1/2, there is no other evidence. The alleged increase in load from 5 BHP to 6 BHP has not been proved on record either. Furthermore, learned first appellate court was justified in holding that the suit is not barred by the principle of *Res Judicata*. In such circumstances, the findings with regard to maintainability of the suit returned by the learned first appellate court are affirmed.

13. These are pure findings of fact. No substantial question of law arises for consideration. Hence, no interference is called for. Dismissed.

06.05.2016

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(JITENDRA CHAUHAN)
JUDGE