

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

CR No. 8496 of 2015 (O&M)
Date of Decision: July 11, 2017

Jaswinder Singh and others

..Appellant(s)

Versus

Gurmail Singh and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Jasbir Rattan, Advocate
for the petitioners.

Mr. Mahesh Dheer, Advocate
for respondent no.1.

ANITA CHAUDHRY, J.

The petitioners are aggrieved of the order (Annexure P-1) passed by the Additional District Judge, Patiala who set aside the order (Annexure P-2) passed on the stay application moved by the plaintiff.

The dispute pertains to a electricity connection, which is in the exclusive name of the plaintiff. Earlier the connection was in the name of his father, Sant Singh. Sant Singh transferred the connection in favour of his one son and the Electricity Department transferred the connection in favour of Gurmail Singh, plaintiff. Plaintiff's other brothers namely Jaswinder Singh and others had earlier filed a suit relating to this connection and their plea was that the

connection could not be transferred in favour of one son. The father had given an affidavit in favour of Gurmail Singh. The suit was dismissed. The appeal also met with the same fate. The RSA is said to be presently pending in the High Court. There is no stay in that case.

Gurmail Singh filed a suit in 2012 seeking injunction restraining the defendants from interfering in his use of the electric connection. The lower Court dismissed the stay application holding that the plaintiff had failed to disclose in which Khasra number the connection was installed and it was a case of concealment. It was observed that the plaintiff alone could not be the exclusive owner of the property and he was a co-sharer and the Khewat was joint and it had not been partitioned and every co-sharer was entitled to its user. Aggrieved by the order, an appeal was preferred and the order was set aside. The 1st Appellate Court noted the observations made in the earlier suit and held that the lower Court had gone wrong in dismissing the stay application and there was no concealment and the fact that there was a Tubewell connection was in the knowledge of both the sides and was not disputed. The defendants were restrained from interfering in the possession and exclusive use of the electricity connection.

Aggrieved by the reversal of the order, four defendants who are brothers and nephews of Gurmail Singh have preferred this revision.

The counsel for the petitioners submits that the tubewell was in the joint holding and though the connection was in the name of the plaintiff but they were also entitled to use it as the land had not been partitioned and the Court could not restrain them from using the tubewell. The counsel refers to the Jamabandi to show that the land was still joint. Reliance was placed upon *Major Singh Vs. Sahib Singh and others 2006(4) ICC 311*, *Ram Bilash Vs. Hanuman 1998(4) RCR (Civil) 659*, *Mahanga Ram Vs. Gurdail Singh and others Vs. 1997(2) RCR (Civil) 368*, *Om Parkash and others Vs. Ishwar Singh and others 2008(3) RCR (Civil) 777* and *Bhagwan Dass Vs. Jai Kishan and others Vol. CL VIII-(2010-2) 787*.

The submission on the other hand is that the connection is in the exclusive name of the plaintiff and this was purchased from the father and thereafter, the connection was transferred in the name of Gurmail Singh and there has been an earlier round of litigation and Gurmail Singh was held to be the exclusive owner. It was urged that the lower Court had failed to appreciate the facts and went wrong in observing that there was concealment and none of the parties had any doubts regarding the Khasra numbers.

It would be relevant to refer to para no. 19 of the judgment passed by the 1st Appellate Court in the previous litigation between the parties with respect to this connection the petitioners had lost the case before the lower Court and lower Appellate Court, though a second appeal is pending. There is no stay in operation. Para

no.19 of the judgment read as under:-

(19). "So far as connection no.APP-102 is concerned, defendants no.3 & 4 have admitted in their written statement that the said connection is being used by the plaintiff and his brother Raghbir Singh. The said connection was owned by Sant Singh, who has expired leaving behind the plaintiff and his other children as his natural legal heirs. Defendants no.1 & 2 cannot transfer the said connection on the name of any one else without the consent of the plaintiff and they cannot shift the said connection from its existing location. Therefore, the findings of the trial court on issue nos.1, 2 and 4 regarding connection no.APP 102 requires modification. So far as connection no.APP 101 is concerned, the same was in the name of Sant Singh. Defendant no.4 in the written statement has alleged that Sant Singh had sold the said connection to defendant no.4. The defendants have also proved the affidavit dated 13.6.2006 Ex.D1 sworn by Sant Singh in this regard. The said affidavit has been proved by defendant Gurmail Singh in his statement. It is not the case of the plaintiff that the said affidavit is a forged document. When defendant Sant Singh had transferred the said connection in favour of defendant no.4 Gurmail Singh, defendant no.4 was having legal right to get the same transferred in his name in the record of the Electricity Board. It cannot be said that defendants no.1 & 2 have committed any illegality by transferring the said connection in the name of defendant no.4 Gurmail Singh. Merely because DW1 Tarsem Chand an employee of the Electricity Board has stated that

they can transfer the electric connection in the name of any legal heir of Sant Singh only with the consent of all the legal heirs, it cannot be accepted to be law governing the situation. When Sant Singh had sold the said connection during his life time to defendant no.4, the electricity board could transfer the same in the name of defendant no.4. Therefore, it cannot be said that the electricity board has committed any illegality by transferring the connection in the name of defendant no.4. Therefore, the trial court has rightly observed that the plaintiff is not entitled to injunction regarding connection No.APP-101. The judgments relied upon by the learned counsel for the appellant are not applicable to the facts of this case as in this case there is nothing to show that the plaintiff was co-owner of the land in question as the relevant time and moreover the connections were got installed by the father of the plaintiff and receipts regarding payment of electricity charges have also come on record from the possession of the defendants.”

The connection was un-disputedly owned by Sant Singh. During his life time, he sold it to his one son. He approached the Electricity Board for transfer of the connection in favour of his son. The Electricity Board thereafter transferred the connection in favour of Gurmail Singh plaintiff. Since the connection had been held to be exclusively owned by the plaintiff, he was entitled to its exclusive use. I find no infirmity in the order passed by the Additional District Judge. There is no merit in the revision. The revision is dismissed. However,

it is made clear that nothing contained herein would have a bearing on the order that may be ultimately passed by the Court below on merits.

July 11, 2017
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No