

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

**RSA No.3097 of 2016 (O&M)
Date of Decision: July 03, 2017**

Vedbhanu

..Appellant(s)

Versus

Shish Ram and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Anil Ghanghas, Advocate
for the appellant.

Mr. S.S. Dinarpur, Advocate with
Mr. Subhash Godara, Advocate
for respondent no.1.

None for respondents no.2 to 6.

ANITA CHAUDHRY, J.

This appeal is by a third party. Vide order dated 04.08.2016 passed in CM No.8321 of 2016 leave was granted to file the instant appeal.

Few facts are necessary. Shish Ram filed a suit against Dakshin Haryana Bijli Vitran Nigam (here-in-after referred to as the Nigam) and its Officers seeking a declaration that the electricity line connected to his tubewell connection was re-routed illegally. He sought restoration to its original position. The plaintiff claimed that he

had constructed a Well and had a residential house in the fields. He had taken a electricity connection and was paying the electricity bills. On 14.12.2012 he found that the electricity line depicted by letters EFG was uprooted and had been laid again and connected to another low tension line. His tubewell was not functioning. The domestic electric appliances were not working on account of low voltage and the reason was that the line had been changed. They made enquiries and came to know that it was done on the asking of Vedbhanu son of Rati Ram. The case of the plaintiff is that the LT line had been shifted in an illegal manner and it was resulting in constant sparking and electric fault. It was pleaded that an application was moved on 19.12.2012 for redressal of the grievance but the defendants demanded money, which he did not want to pay and was also threatened. The plaintiff's grand-son made representations and wrote to the Department to rectify it but they did not respond.

The defendants filed their written statement and took the plea of maintainability and that the plaintiff had not come to the Court with clean hands and it was a case of concealment and the grand-son of the plaintiff had informed them that the line had been shifted and the line was shifted without intimation to them and upon their visit to the site they found that compromise had been affected mutually. It was pleaded that on 25.01.2013 an estimate was prepared and the amount was deposited and the line was running perfectly and the voltage was not low nor was lost on the way.

On the pleadings of the parties, the following issues were framed:-

1. Whether the plaintiff is entitled for the relief of declaration, as alleged in the plaint? OPP.
2. Whether the plaintiff is entitled for the relief of mandatory injunction directing the defendants to restore and reroute the LT line to the tubewell of plaintiff to its previous place depicted by letter EFG at the expense of defendants as they have played woke with the right of plaintiff, as alleged in the plaint? OPP
3. Whether the suit is not maintainable in its present form? OPD
4. Whether the plaintiff has no locus standi or cause of action to file the present suit? OPD
5. Whether the suit is not valued for the purpose of Court fees? OPD.
6. Whether the Civil Court has no jurisdiction to try and decide the preachment suit? OPD
7. Relief.

The trial Court after giving an opportunity to both the sides made the following observations in para no.16 of the judgment, which reads as under:-

“16. After hearing rival contention of both the counsel for the parties and after having gone through the case file very carefully, this Court is of the considered view that it is admitted fact on the case file that LT line of plaintiff was shifted from mark CJIHG to CDEFG shown in the site plan. It is also admitted fact that the line was changed without intimation and knowledge of the defendants department. The line was changed by one Vedbhanu. After changing the line grand son of

plaintiff moved an application on 19.12.2012 but the line was not shifted. Defendants taken stand that after receiving intimation/application of Pardeep, defendants department constituted a team, who visited the spot, where team came to know that the line was shifted by the mutual consent of the consumers in line. DW1 Rakesh Kumar SDO Dhigawa, in his examination in chief deposed that Ved Bhanu son of Rati Ram, who shifted the line of Shish Ram plaintiff on 13.12.2012. On 19.12.2012 Pardeep Grand son of plaintiff moved an application to the defendants department, on which Ved Bhanu informed that the line was shifted by the defendant with the mutual consent of the consumers in the line. In his cross examination DW1 Rakesh SDO also admitted that before changing of the line department was not informed as per law, no line can be shifted without preparation of estimate. Since DWI himself admitted that no line can be changed without permission of the defendant department and preparation of the estimate. Meaning, thereby, shifting of line is exclusive right of defendants department. Defendants department has knowledge of shifting of the line, despite that information, defendants department has not taken any action against the person, who on its own shifted the line of the plaintiff. Defendants have not produced any evidence by which, it could be proved that the line was shifted with the mutual consent of the persons, who are having connection in the line in dispute. It is also very strange that after shifting of line by private person, defendants department prepare estimate and got deposited the estimate in the

defendants department. This act and conduct of the defendants department, itself shows that the department was also hand in glove with Vedbhanu, who shifted the line of the plaintiff without permission of the defendants department.”

The trial Court decreed the suit and directed the defendants to restore the line.

Aggrieved by the judgment the Nigam filed an appeal, which was dismissed on 27.05.2016.

No further appeal was filed by the Nigam. Vedbhanu a third party had filed this appeal. He moved an application for being impleaded as a party which was allowed by the Co-ordinate Bench. He claims that the order passed by the Court had seriously affected him and he was suffering because of the magnetic field and it was dangerous for their health.

Notice was given to the respondents. The record was summoned.

I have heard learned counsel of both the sides.

The submission on behalf of the appellant was that the plaintiff had consented to the change in the line but thereafter, he changed his mind and approached the Nigam with a complaint. It was urged that the Department had regularized the change and the amount had been deposited after the estimate was prepared. It was urged that the electricity wires were crossing over his property which was

dangerous. It was urged that the plaintiff did not implead him as a party. The counsel referred to the site plan Annexures A-1 & A-2 to show the LT line was crossing over his property and the position after the line had been shifted.

The submission on behalf of the plaintiff was that he had never approached the Nigam nor had asked Vedbhanu for shifting the line and the line had been shifted by Vedbhanu without permission and illegally. It was urged that there was no letter from his side and the officials of the Department had colluded with Vedbhanu and therefore, they obtained an application and got the estimate prepared and the payment was deposited only on 25.01.2013. It was urged that the line was in existence since 30 – 40 years and the appellant had not made any complaint and a false plea had been taken. It was urged that the Department had got an application moved from Vedbhanu to save their skin and even after coming to know of it no FIR was registered and removing electric line is a violation of Section 136 of the Electricity Act as the Department had regularized the act as there was collusion. It was urged that the site plan filed would indicate that the line is not crossing over his residence and no relief was claimed against the appellant and he was not a necessary party.

The appeal is by a third party who claims that the judgment and decree passed by both the Courts below have prejudicially affected him. Sections 96 & 100 of CPC makes provision for preferring an appeal from any ordinary appeal or from a decree in

an appeal respectively but it does not enumerate the categories of persons who can file an appeal but if a judgment and decree prejudicially affects a person he can prefer an appeal.

In this context, a passage from *Smt. Jatan Kanwar Golcha v. M/s. Golcha Properties Private Ltd., AIR 1971 SC 374* is worth noting: -

“It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the appellate Court and such leave should be granted if he would be prejudicially affected by the judgment.”

In *State of Punjab v. Amar Singh and another, AIR 1974 SC 994*, while dealing with the maintainability of an appeal by a person who is not a party to a decree or order, has stated thus: -

“84. Firstly there is a catena of authorities which, following the doctrine of Lindley, L.J., in re Securities Insurance Co., (1894) 2 Ch 410 have laid down the rule that a person who is not a party to a decree or order may with the leave of the Court, prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it. As a rule, leave to appeal will not be refused to a person who might have been made ex nominee a party – see *Province of Bombay v. W.I. Automobile Association, 3 AIR 1949 Bom 141; Heera Singh v. Veerka, AIR 1958 Raj 181 and Shivaraya v. Siddamma, AIR 1963 Mys 127; Executive Officer v. Raghavan Pillai, AIR 1961 Ker 114. In re B, an Infant (1958) QB 12; Govinda Menon v. Madhavan Nair, AIR 1964 Ker 235.*”

In *Baldev Singh v. Surinder Mohan Sharma and others, 2002(4) RCR (Civil) 781:2003(1) SCC 34*, a three Judge-Bench opined that an appeal under Section 96 of the Code would be maintainable only at the instance of a person aggrieved by and dissatisfied with the judgment and decree. In the said case, while dealing with the concept of ‘person aggrieved’, the Bench observed thus:-

“A person aggrieved to file an appeal must be one whose right is affected by reason or the judgment and decree sought to be impugned. It is not the contention of Respondent 1 that in the event the said judgment and decree is allowed to stand, the same will cause any personal injury to him or shall affect his interest otherwise.”

In the present case, the appellant claims that the electricity wires were crossing over his house and there was a magnetic field which was dangerous to his life and the decree affects him adversely. He also claims that with the change in the line, no prejudice has been caused to the plaintiff.

Both the Courts below had found that the line had been changed illegally by the appellant. The appellant at no point had approached the Nigam nor had filed any application. He shifted the electricity line at his own level. It appears that there was collusion with some of the officials of the Nigam as a line can not be changed without someone from inside helping him. The case set up by the Nigam was that the information regarding the change of line was given by the family member of the plaintiff. A wrong plea was taken by the Nigam that a compromise had been affected. Had it been so, they would have recorded it and placed it on their record. They did not take any action on the complaint as their own officials would have got into trouble.

No line can be changed unless a request is given to the Nigam. According to the procedures set down in the rules, an estimate is prepared and the applicant has to deposit the expenses and

thereafter, the line is changed after calling for objections. In the present case Vedbhanu the appellant himself got the line shifted without the permission of the Nigam. The appellant claims that the decree passed by the Courts below has affected him as the electricity line was crossing over his property. I find the arguments of the appellant to be totally baseless.

The site plan appended by with the appeal shows the LT line is crossing over the agricultural land and not over his residence. Admittedly this line was laid over 30 years ago and he has failed to refer to any single instance. No test has been carried out. No report was placed along with the appeal. Mere averments are not enough. Had there been any danger to his life or property, he would have approached the Nigam decades ago for shifting the LT line. There is no material to record a finding that the restoration of the line would cause any injury to him or would affect his interest in any manner. Both the Courts below had elaborately dealt with the issues and from the evidence it had come out that it was the appellant who changed the electricity line without intimation and knowledge of the Nigam. It appears that some officials of the Nigam were involved otherwise it would have not been possible. The Nigam failed to get a FIR registered against the appellant and it points to their complicity. No material could be placed on record by the appellant to show that the plaintiff had consented to the change. It is a case of collusion. The defendants had tried to regularize the illegal act of the appellant.

There is no reason to disturb the findings recorded by both the Courts below. The appeal is dismissed.

July 03, 2017
sunil

(ANITA CHAUDHRY)
JUDGE

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