

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.3451 of 2016

Date of decision:20.7.2017

Punjab State Power Corporation Pvt. Ltd.

...Appellant

Versus

Kewal Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Ms.J.K.Gurna, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the concurrent findings of facts recorded by both the learned courts below, whereby the suit for mandatory injunction filed by the plaintiff-respondent was decreed, directing the defendant to remove the poles of 66 KV electricity line, as it was blocking the passage, defendant No.1 has approached this Court, by way of instant regular second appeal.

Brief facts of the case, as noticed by the learned first appellate court in para 4 of its impugned judgment, are that plaintiff was owner of land measuring 5 Acres (approximately) being co-sharers in the land comprised in khasra nos.112//12/1, 11/1,/11/2,113//14, 112//19/2, 20,113//13, 16/1, 16/2, 17, 113//16/3 situated at village Kartarpur, District Jalandhar. The defendants installed electricity poles of 66 KV electricity line illegally in the rasta mark AB (shown red in the site plant) leading to

the land of the plaintiff and other co-sharers which was 2 Karams in width whereas the law did not permit the defendants to install the electricity poles in between the Rasta leading to the lands of farmers. The rasta marked AB has been fully shown in the Aksh Shajra issued by Halqa Patwari. Many years ago, land situated in village Kartarpur and in the nearby areas was wholly owned by Guru Amarjit Singh and his predecessors and after that Guru Amarjit Singh sold away the land to the farmers giving passages leading to the land of farmers. So, the ownership of the Rasta still exists in the name of Rani Kamaljeet Kaur widow of Tikka Karamjeet Singh and Charanjit Singh, both sons of Guru Amarjit Singh in equal shares after the death of Sh.Guru Amarjit Singh. It has further been pleaded that earlier the plaintiff and other co-sharers were allowed by the owners of land adjoining to the Rasta, to go to their fields or to take their tractor/trolley from the side of the poles installed in the Rasta but now they stopped the plaintiff from passing through their fields. It has further been stated that the plaintiff alongwith his son, who was non resident of India, moved an application to the NRI Sabha, Punjab on 10.08.2010 for removal of electricity poles and then a letter was written by NRI Sabha to defendant No.2, but nothing was done by defendant No.2 in this regard. So, many requests were made by visiting personally by the plaintiff to the defendants either the poles may be removed or shifted to near by place, so that passage leading to the fields of the plaintiff may be cleared, but deaf ears were paid to the request made by the plaintiff with some ulterior reasons. It has further been pleaded that due to blockage of passage, it became difficult for the plaintiff to cultivate or irrigate his fields in proper manner and consequently, he and other co-

sharers were suffering loss in every crop.

Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether plaintiff is entitled to mandatory injunction as prayed in the plaint? OPP
2. Whether suit of the plaintiff is not maintainable as the Power Com has full powers to affix the poles and other equipment on the public as well as on the private property? OPD.
3. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has duly proved his case, by leading cogent and convincing evidence. Accordingly, suit of the plaintiff was decreed, vide its impugned judgment and decree dated 10.1.2014, thereby directing the defendants to remove the poles of 66 KV electricity line leading from Jalandhar to Mustfapur installed in khasra numbers given in the plaint because poles were blocking the passage. Feeling aggrieved, defendant filed its first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 5.2.2016. Hence this second appeal, at the hands of unsuccessful defendant No.1.

Heard learned counsel for the appellant.

A bare combined reading of both the impugned judgments and decrees would make it crystal clear that the learned trial court as well as the learned first appellate court considered each and every relevant aspect of the matter before passing their respective impugned judgments and decrees, which are based on true facts of the case and the same deserve to be upheld. Plaintiff has duly proved his case by producing relevant evidence including *aks shajra* and *jamabandi*. A perusal of these relevant revenue documents will also make it clear that the defendants have installed the electricity poles of 66 KV through the passage, which were causing obstruction.

It seems that at the time of installation of electric poles, the concerned authorities did not consult relevant revenue record and committed a serious mistake at the site. Such a glaring mistake committed by the Department cannot be permitted to continue for all times to come. Plaintiff cannot be made to suffer for none of his fault. That is what has been held by both the learned courts below. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It is also a matter of record that the appellant itself asked the plaintiff to deposit the requisite amount along with no objection certificate from the neighbourers for shifting the electricity poles. While taking this stand, defendants indirectly admitted the case set up by the plaintiff. Had there been any substance in the stand taken by the defendants, there was no scope for them in asking the plaintiff to deposit the requisite amount for shifting the electricity poles. Thus, defendants including the appellants

have contradicted themselves to such an extent that it cannot be reconciled. Under these undisputed facts and circumstances of the case, it can be safely concluded that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 17 to 19 of its impugned judgment, which deserve to be noticed here, read as under:-

“During the course of arguments, counsel for the appellant/defendant has argued that there was/is no passage as alleged by the plaintiff and electricity pole in dispute has been affixed since 1987. But no evidence has been produced by the defendant to prove their version that there is no passage on the spot. During the cross-examination of plaintiff and other witness, counsel for defendants did not put any suggestion to the witnesses of the plaintiff during cross-examination that there was or is no passage as alleged by the plaintiff. On the other side, plaintiff produced copy of Aksh Shajra as well as Jamabandi from perusal of which it clearly reveals that there is passage where defendants have installed the electricity pole of 66 KV. Although defendants have powers to affix poles and other equipments on the public as well as private property, however, it does not mean that they have any right to obstruct the passage leading to the land of the plaintiff. They cannot affix the pole in between the passage which cause obstruction to the plaintiff.

The other contention of the counsel for the

appellant/defendant is that defendant had told to the plaintiff and NRI Sabha that as per rule 40 of Electricity Supply manual, the applicant who wants for shifting of a pole should also deposit the expenditure for pole shifting. But plaintiff failed to deposit the required fee for removal of electricity pole in dispute. This court is of the considered view that appellant/defendant had failed to produce even a single document to prove fact that they have ever informed the plaintiff to deposit the required fee/expenditure for the removal of electricity pole in dispute and plaintiff failed to comply with the same. Even DW-2 Gurnam Singh in his cross-examination has stated that they did not estimate the removing the electricity pole in dispute till date and the defendant has proved on record letter as Ex.R1. But from the perusal of Ex.R1, it reveals that it is the letter written by the officer of the department of defendant No.1 to his higher official. It has not been proved that any copy of the same was ever forwarded to the plaintiff for intimation or any letter prior to that was ever written by the department of defendant to the plaintiff. DW2 himself admitted in his cross-examination that he did not have any receipt of received the letter Ex.R1 by the plaintiff. No notice has been produced on record by the defendant in order to show that plaintiff failed to deposit the required fee or expenditure as prepared by the department of defendant for the removal of electricity pole in dispute. However, plaintiff in his cross-examination has stated that "Letter memo No.781 dated 24.09.2010 which is Ex.R1 never received by him." Counsel for defendants put a suggestion to the plaintiff during cross-examination that "plaintiff was informed with regard to the contents of Ex.R1 orally as well as in writing." However, no document has been produced on record by the defendant to show that intimation with regard to Ex.R1 was ever given to the plaintiff in writing.

Counsel for the appellant/defendant also argued that as per Rule 40 of PSPCL. No Objection Certificate from the nearby land owners to shift the pole is required, but the plaintiff failed to get NOC from the neighbourers in order to shift the electricity pole into their fields. However, this court is of the view that lower court has rightly observed that it is not the duty of plaintiff to get NOC from his neighbourers in order to shift the electricity pole in dispute. Rather, defendants are entitled to affix/install electricity pole on public as well as private land. DW-2 himself admitted that “department of defendant did not obtain any NOC from the concerned people on whose land department wants to install electricity pole” Moreover, defendants mentioned in Para No.1 of the written statement in preliminary objections that department of defendants has full power to affix the poles and other equipment on the public as well as on private property. Therefore, the plaintiff has no need to get any type of NOC from his neighbourers and supply the same to the department of defendants for the shifting of electricity pole in dispute.”

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down

Lakshmy, 2009 (2) RCR (Civil) 286 and Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

20.7.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No