

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

**RSA No.3222 of 2015 (O&M)
Date of decision: 29.09.2017**

Bhagwan Singh Sandhu

... Appellant

Vs.

Punjab State Electricity Board and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Anil Kumar Garg, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful plaintiff is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby his suit for declaration and permanent injunction was dismissed by the learned trial Court vide its impugned judgment and decree dated 10.01.2011 and first appeal was also dismissed by the learned Additional District Judge vide impugned judgment and decree dated 20.03.2014, upholding the judgment and decree of the learned trial Court.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of the impugned judgment, are that originally defendant No.3 Inder Singh son of Ram Chand, resident of village Dhaler Kalan was consumer

of electric motor connection bearing No.PG-172, situated at village Fatehgarh. He sold the connection to plaintiff existing in the suit property. Defendant No.3 executed an affidavit in favour of plaintiff and same had been transferred in the name of plaintiff by allotting new account No.PG-397. Plaintiff was using the said electric connection to irrigate his land at village Fatehgarh Panjgrian. Defendant No.3 had already sold the connection to plaintiff and had no concern with the same. Plaintiff had been paying the electricity charges regularly. Plaintiff and his father had filed recovery suits against Harbans Lal and sons, Malerkotla. The said firm belonged to Darshan Pal and others. Raksha Devi wife of Harminder Pal was one of the partner of the said firm. Harminder Pal was Lineman in P.S.E.B, Sandaur. He insisted the plaintiff and his father to withdraw the recovery suits and otherwise he would get them involved in false litigation. He got issued two notices from A.E Sandaur regarding connection in dispute and connection No.PG-155. Both these notices were illegal. The defendants and above said Harminder Pal threatened to transfer connection in the name of defendant No.3 by preparing false documents in connivance with each other. Defendants No.1 and 2 also threatened to disconnect the connection. Plaintiff requested the defendants not to do so, but to no effect. Plaintiff came to know about this fact on receipt of notice dated 27.10.2006 from the defendants. He prayed for declaration that he was owner in possession of electric connection existing in the land as described in heading of the plaint and defendant No.3 had no concern with it and memo No.1852 dated 27.10.2006 is null and void. He also sought injunction restraining defendants No.1 and 2 from changing the ownership of electric connection in the name of defendant No.3 or any other person.

Defendants were put to notice. Defendants No.1 and 2 filed their joint written statement, raising more than one preliminary objections. It was specifically pleaded on behalf of the respondent-Board that plaintiff committed fraud with the respondent-Board. Area Incharge of the Board Shamshad Ali came to know from defendant No.3 that he never sold any connection to the plaintiff. Defendant No.3 filed his separate written statement pointing out that he had no concern with electric motor bearing connection No.PG-397 of Village Fatehgarh Panjgrian nor he was owner of the electric connection bearing account No.PG-172. It was further clarified by defendant No.3 that he was consumer of electric motor connection bearing No.DK-196 at Village Dhaler Kalan.

On completion of pleadings of the parties, the learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled to the relief of declaration that he is owner in possession of motor connection bearing account No.PG-397 which is installed in his land in the revenue estate of village Fatehgarh Panjgrian? OPP.
2. Whether the notice memo No.1852 dated 27.10.2006 is illegal, null and void? OPP.
3. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP.
4. Whether the plaintiff has committed fraud with the board and has got the motor connection No.PG-397 installed in his name, on the basis of forged and fabricated document and by defrauding the authorities of the Punjab State Electricity Board? OPD.

5. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that plaintiff indulged in committing fraud with the respondent-Board in connivance with officials of the respondent-Board. Accordingly, not only the suit for declaration and permanent injunction filed by the plaintiff was dismissed but the learned trial Court also directed forthwith disconnection of the electricity of electric connection in question and also ordered registration of criminal case against the plaintiff as well as erring officials of the Punjab State Electricity Board in addition to departmental inquiry against them vide its impugned judgment and decree dated 10.01.2011.

Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned first appellate Court, however, directions issued by the learned trial Court for registration of criminal case and conducting departmental inquiry were set aside, vide impugned judgment and decree dated 20.03.2014. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

Fraud vitiates everything as held by the Hon'ble Supreme Court in **S.P. Changalvaraya Naidu (dead) by LRs Vs. Jagannath (dead) by LRs, 1994 (1) SCC 1**, which came to be followed in subsequent judgments in the cases of **Parkash Singh and others Vs. Joint Development Commissioner, Punjab and others, 2014 (2) RCR (Civil) 721 (Full Bench), Bhaurao Dagdu**

Paralkar Vs. State of Maharashtra, 2005 (7) SCC 605, A.V. Papayya Sastry and others Vs. Govt. of A.P. and others, 2007 (4) SCC 221, Preetpal and others Vs. State of Haryana, 2013 (19) RCR (Civil) 380 and Bhuru Ram Vs. Dharampal and others, 2015 (2) RCR (Civil) 768. Once the case of the plaintiff-appellant was found to be based on falsehood and misrepresentation, it was bound to be dismissed and the same has been rightly dismissed by both the learned Courts below, by recording their concurrent findings of facts in this regard. It is so said because had the case of the plaintiff-appellant been based on truth, there was no difficulty for him to implead his vendor as party-defendant or at least the plaintiff-appellant would have examined him in the Court as his witness. However, despite there being a reason and occasion available with the plaintiff-appellant, neither he impleaded his vendor as party-defendant nor he examined him as his witness in the Court and that too for no good reasons. This conduct of the appellant further raises a doubt qua his bonafide intention. A litigant, who is not coming to the Court with clean hands and has been found misusing the process of law, does not deserve any sympathy from the Court of law as well. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Although the learned trial Court has not committed any patent illegality in issuing directions to the respondent-Board to conduct departmental inquiry against erring officials and also for registration of criminal case, but since said directions were set aside by the learned first appellate Court and the finding recorded in this regard by the learned Additional District Judge is not under challenge before this Court at the hands of defendant-Board, this Court

would not like to comment anything further in this regard. So far as the suit for declaration and permanent injunction filed by the plaintiff is concerned, the notice issued by the respondent-Board was factually correct and legally justified, which was rightly not set aside by the learned Courts below, because plaintiff-appellant was found proceeding on a malafide approach right from day one. In fact, the appellant had no case either on facts or in law. Under these undisputed circumstances of the case, it can be safely concluded that 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, learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned Additional District Judge in paras 13 to 15 of the impugned judgment, which deserve to be noticed here, read as under: -

“The plaintiff has not examined any witness of the affidavit executed by Inder Singh son of Ram Chad of village Dhaler Kalan nor he has tried to get his thumb impression compared with his standard thumb impression appearing on the other documents on the file. In his cross-examination he admitted that Inder Singh son of Ram Chand had no land in village Fatehgarh Panjgrian. He further stated that this connection was running in the name of Inder Singh son of Ram Chand at village Fatehgarh Panjgrian. However this fact has not been proved by any document. He

admitted his application for transfer and other documents but stated that application was filled by officials of electricity Board. DW1 Harjinder Singh, AE has reiterated the version of defendants. He admitted that there are documents and orders of Board for transfer of connection in the name of plaintiff in the file Ex.D2. However, as discussed above, since there was no connection in the name of defendant No.3, therefore, entire process become void.

From the facts and evidence on record as discussed above, the plaintiff has failed to prove if there was any connection existing in the name of defendant No.3. Thus the transfer of connection in his name is totally illegal and he is not entitled to declaration that he is owner of the motor connection No.PG-397 or that notice dated 27.10.2006 is null and void. The officials of board were well within their rights to issue notice after the mistake/fraud come to their notice. The plaintiff is thus also not entitled to permanent injunction as prayed for. The learned trial Court has rightly observed that plaintiff does not deserve any relief and very foundation of the case is fake and based on false documents. There is no illegality in the findings of learned trial Court to that extent.

The learned lower Court after discussing these facts has further referred to statement of Siri Ram SDO, PSEB, which was recorded on 07.01.2011 without oath. He had produced ledger for the years 1994, 1997, 2002 and 2011. He stated that Dhaler Kalan was in Sub Division Sherwani Kot earlier but in the year 2002 new ledger were started and ledger of village Panjgrian was produced.

He stated that page for the year 2002 for village Dhaler Kalan is torn of. Inder Singh son of Ram Chand defendant No.3 was allotted new account No.196 as per computerized ledger for the year 2011. He further stated that record is maintained by concerned LDC and might have been tampered with in connivance with officials of PSEB. The plaintiff was not given any opportunity to cross-examine this witness on this fact and the learned lower Court went on to hold that plaintiff concealed material facts and obtained the electric motor connection in his name in connivance with staff of electricity Board. The learned lower Court further held in the relief clause that officials of PSEB are committing fraud and becoming party to the conspiracy for installing fake connection. The board was directed to initiate inquiry against erring officials and to lodge criminal case of theft and forgery against the plaintiff and erring officials and further directed to disconnect the connection in the fields of plaintiff immediately. Now, these observation of learned lower Court are totally out of context. The plaintiff had come to Court for seeking relief but without affording proper opportunity even to cross examine witness from the Board, the learned Lower Court has directed for disconnection of his electric connection and lodging of criminal case against the plaintiff and erring officials of the Board. So far as direction to initiate inquiries are concerned, the order of ld. Lower Court to that extent may not be faulted but after inquiry it is for the concerned authorities to take action as per law and

sweeping direction given to Board are not as per law and are liable to be set aside. Thus in view of my above discussion though there is no illegality in the judgment and decree dismissing the suit of plaintiff, but the directions of learned lower Court to lodge FIR against the plaintiff and officials and to disconnect the electric connection immediately are not as per law and are set aside to that extent only. With these observations the appeal filed by the plaintiff is dismissed with costs.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He also failed to raise any question of law, much less substantial question of law, 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 regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 since no illegality has been found in either of the impugned judgments and decrees passed by the learned Courts below, the same deserve to be upheld. Present regular second appeal having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Since the appeal has been dismissed on merits and there is hardly any explanation for inordinate long delay of 346 days in filing the appeal, the application for condonation of delay has also been found without any merit and the same is dismissed accordingly.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

29.09.2017
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

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