

RSA No. 4089 of 2015 (O&M)

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

**RSA No. 4089 of 2015 (O&M)
Date of Decision: 21.8.2017**

Pargat Singh

.....Appellant

Vs.

Bakshish Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Veneet Sharma, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Having been failed in both the learned courts below in his suit for declaration and permanent injunction with consequential relief of mandatory injunction, plaintiff has approached this Court by way of present regular second appeal, for setting aside the impugned judgments and decrees passed by the learned courts below.

Brief facts of the case, as recorded by the learned first appellate court in para No.2 of its impugned judgment, are that the plaintiff filed the suit for declaration that he was owner of electric connection in question and further sought permanent injunction restraining defendant No.4 from shifting/transferring the said connection from Khasra No.2/15/1 to some other place and also in the name of defendants No.1 to 3 and also sought mandatory injunction directing defendant No.4 to get transferred the connection in the name of plaintiff.

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It was alleged that the plaintiff purchased the land measuring 7 Kanals 15 Marlas falling in Khasra No.2/15/1 situated at Village Kairo Nangal, Tehsil and District Amritsar. One Kartar Singh son of Sunder Singh, father of the defendants No.1 to 3 applied for Tubewell connection, which was allotted to him in the year 1992-93. Kartar Singh was not having any money. He received ₹10,000/- from the plaintiff in the presence of Amrik Singh son of Pritam Singh, Gurdip Singh son of Teja Singh and other respectables and he allowed the plaintiff to get the tubewell connection in his hand and as such, the tubewell connection was installed in his land on the corner of Eastern side as shown in site plan attached with plaint. The plaintiff had also installed submersible bore with electric motor on it and he was using the same since 1992-93. Kartar Singh had died and after his death, defendants No.1 to 3 started harassing and threatening him to shift the said tubewell and defendant No.4 was conniving with them. The plaintiff had requested the defendants many a times to admit his claim and to declare him owner of the tubewell connection and also requested defendant No.4 not to transfer or shift the said electric connection from Khasra No.2/15/1 to some other place, but they were adamant. So these circumstances necessitated the filing of the suit.

Defendants were put to notice. They appeared and filed their contesting written statements, raising more than one preliminary objections. Defendants No.1 to 3 filed one joint written statement whereas respondent No.4 filed its separate written statement. Plaintiff filed his replication. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether plaintiff is entitled for declaration as prayed

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for? OPP.

2. Whether plaintiff is entitled for permanent injunction as prayed for?OPP.

3. Whether plaintiff is entitled for mandatory injunction as prayed for?OPP.

4. Whether suit of the plaintiff is not legally maintainable?OPD.

5. Whether plaintiff is liable for its own acts and misconducts? OPD.

6. Whether plaintiff has concealed material facts from the Court?OPD.

7. Whether the suit is bad for mis-joinder and non-joinder of necessary parties?OPD.

8. Whether the suit is not properly valued for the purposes of Court fee and jurisdiction?OPD.

9. Whether plaintiff has no locus standi to file the present suit?OPD.

10. Whether plaintiff has no cause of action to file the present suit?OPD.

11. Whether suit of the plaintiff is hopelessly time barred?OPD.

12. 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, the learned trial court came to the conclusion that plaintiff has failed to prove his case for want of cogent and convincing evidence. Accordingly, his suit for declaration, permanent injunction and mandatory injunction came to be dismissed by the learned trial court vide impugned judgment and decree dated 12.5.2014. Feeling aggrieved, plaintiff filed his first appeal, which was also dismissed by the

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learned Additional District Judge, vide impugned judgment and decree dated 1.5.2015. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Heard learned counsel for the plaintiff-appellant.

It is a matter of record that tubewell connection in question was in the name of late Sh. Kartar Singh-father of defendants No. 1 to 3. It is also not in dispute that tubewell was installed in the land owned by the plaintiff-appellant. After the death of Sh. Kartar Singh, his sons-defendants No.1 to 3 apprehended unwarranted financial liability on them, in the event of failure of payment of electricity charges by the plaintiff. Consequently, they applied for disconnection of the tubewell connection, which was still operating in the name of their deceased father late Sh. Kartar Singh. It was, at that point of time, when plaintiff filed his suit for declaration, permanent injunction and mandatory injunction.

However, since admittedly the tubewell connection was in the name of late Sh. Kartar Singh but the tubewell was dug and operated from the land of plaintiff, respondent-Power Corporation expressed its inability to transfer the tubewell connection from the name of late Sh. Kartar Singh to the name of plaintiff. No fault can be found with such a genuine stand taken by the respondent-Power Corporation. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

It was not even pleaded or argued case on behalf of the appellant that tubewell connection was wrongly or illegally issued in the name of late Sh. Kartar Singh. On the other hand, plea taken on behalf of the plaintiff was

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that tubewell connection came to be released in the name of late Sh. Kartar Singh, on the basis of some understanding between plaintiff and late Sh. Kartar Singh. However, what was that understanding, has not come on record.

It does not appeal to reason as to why late Sh. Kartar Singh would have agreed to such an understanding once admittedly, tubewell connection was operating in the name of late Sh. Kartar Singh-deceased father of defendants No.1 to 3. That is what has been held by both the learned courts below. In this view of the matter, it can be safely concluded that the learned trial court as well as learned first appellate court 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 a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 15 and 16 of its impugned judgment, which deserve to be noticed here, read as under:-

“ Admittedly in the present case, no evidence has come on file that plaintiff paid any money to Kartar Singh. He had not examined any witness to this effect. Moreover the question arises, if for the sake of arguments, it is admitted that he had paid any money to Kartar Singh, whether Kartar Singh was competent to sell away the connection to the plaintiff, as learned counsel for respondent No.4 raised point that Kartar Singh cannot sell the connection to anyone without permission of the Corporation and also without completing all necessary formalities. Moreover when plaintiff appeared in witness box,

he admitted this fact that the connection in question is in the name of Kartar Singh and till today, he had not moved any application to get it transferred in his name. The plaintiff had tried to introduce a case that the Tubewell is installed in his land, but again there is no evidence in this respect. He has examined PW3 Rohit Gupta, who had prepared site plan Ex.P2. This witness stated that he prepared the site plan Ex.P2 at the instance of Pargat Singh on 28.5.2010. When he was cross-examined, he admitted this fact that whatever Khasra number was told to him by plaintiff, he mentioned the same and he had not seen any document regarding any Khasra number mentioned in the site plan.

On the other hand, Iqbal Singh son of Kartar Singh has appeared as DW1 and he had produced the original bill, which he had received regarding the Tubewell connection in question as well as proved on record the photographs Ex.DC, Ex.DD and Ex.DE and learned counsel argued that this shows that Tubewell is installed in their land and the defendants are receiving the bill of the Tubewell in question. Moreover, the defendants being legal heirs of deceased Kartar Singh, after his death, are owners of the same. Moreover in the ledger record of Electricity Board, the said connection is in the name of Kartar Singh. The plaintiff has failed to establish his claim in any respect, firstly he is not owner of the Tubewell connection. He had not moved any application to get it transferred in his name. So when he is not owner of the same, no declaration can be granted in his favour. When no declaration can be granted in his favour, the other reliefs which arise on account of that cannot be granted in his favour.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the judgments rendered by both the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine

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qua non for entertaining a 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 **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. 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 present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

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

21.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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