

R.S.A. No.4184 of 2015 (O&M)

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high court

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

R.S.A. No.4184 of 2015 (O&M)

Date of Decision: 20.04.2017

Jaswinder Singh and others

....Appellants

Versus

Ram Singh and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. M.L. Saini, Advocate
for the appellants.

DAYA CHAUDHARY, J.

The present Regular Second Appeal has been filed to challenge the impugned judgments and decrees dated 31.10.2014 and 20.11.2010 passed by the lower Appellate Court as well as by the trial Court.

The appellants-plaintiffs filed a suit for declaration to the effect that they are the owners and in joint possession of the electric tubewell/Motor connection of 3 BHP along with Kotha of the tubewell, the Pumping Set, Bore, Chubacha etc. installed in Khasra No.26 of Khewat No.83, Khatauni No.101, situated in the revenue estate of Dhanda, Tehsil Samrala, District Ludhiana. The claim in the suit was also for grant of permanent injunction restraining defendants No.1 to 5 from interfering into the peaceful possession of the Electric tubewell/connection/motor, tubewell Kotha, Chubacha, bore, pumping set to the extent of 1/3rd share. However, the suit of the appellant-plaintiffs was dismissed vide judgment and decree dated 20.11.2010.

Aggrieved by said judgment and decree passed by the trial Court, the appellants filed an appeal before the Additional District Judge, Ludhiana, which was also dismissed on 31.10.2014.

The appellants, after losing their case before the two Courts below, have filed the present appeal.

Learned counsel for the appellants submits that both the Courts below have not properly appreciated the evidence adduced by the parties as the dispute was with regard to joint ownership and joint possession of electric tubewell/motor/connection along with kotha of tubewell, pumping set, bore, chubacha etc. There was a compromise between the parties but the same has not been taken into consideration. It has also not been taken into consideration that one more electric motor was there in the name of Tara Singh, who died and his property was inherited by the plaintiffs and defendants No.1 to 3 to the extent of ½ share. Learned counsel also submits that no objection was raised by the respondents in transferring the tubewell connection. Learned counsel also submits that there was no evidence on record to prove that the compensation was paid to the appellants and the connection is still joint and the appellants were held entitled for using that connection as per their share.

Heard the arguments of learned counsel for the appellants and have also perused the judgments of both the Courts below.

Facts relating to filing of suit by the plaintiff-appellants; filing of written statement to the suit, framing of issues, dismissal of suit as well as of appeal are not disputed. The following issues were framed by the trial Court ;

“1. Whether the plaintiffs are owners in joint possession of electric motor/tubewell connection to

the extent of 1/3 share? OPP

2. Whether the motor in dispute is in exclusive ownership of defendant No.1? OPD

3. Whether plaintiffs are entitled to permanent injunction as prayed for ? OPP

4. Relief.”

The suit of the plaintiffs-appellants was dismissed on the ground that the plaintiffs have failed to prove that motor, in dispute, was joint and they themselves admitted the factum of partition. It was also proved on record that the motor was in the exclusive ownership and possession of defendant Ram Singh as it was falling in the share of Taur. The trial court, while dismissing the suit, has categorically held that plaintiff Harbans Singh and PW Amar Singh have admitted in their statements that plaintiffs and defendants had mutually partitioned their agriculture land long back about 20 years ago and question did not arise that the electric connection, in dispute, was kept joint between the parties. Plaintiffs were also having other source of irrigation besides the motor connection, in dispute. Even in the reply filed to the application for appointment of local commissioner, it was admitted that they installed a fresh bore in Killa No.2/1. It was also admitted by plaintiff Harbans Singh that they have 62 kanals of land near this electric tubewell, in dispute.

The lower Appellate Court dismissed the appeal of the appellants by holding that both the parties were having joint ownership and possession. At the time of filing of suit, the plaintiff-appellants were cultivating their land separately by using their own source of irrigation and they were not irrigating their land from the electric connection in dispute. Even the kotha was constructed by defendant-respondents, namely, Ram Singh, Harnek Singh and Malkiat Singh. Defendant-Ram Singh was

recorded as a consumer in the record of Punjab State Electricity Board and a licence was given in his favour, which shows that said defendant-Ram Singh was in exclusive possession of that electric connection.

On persual of findings recorded by both the Courts below and also on the basis of evidence adduced by both the parties, the plaintiffs were not able to prove that they were using that electric connection and the same was installed on the land, which was in their possession. It has also come in the statements of the parties that earlier a compromise was arrived at between the parties on 27.04.1998, wherein, the factum of joint connection was admitted. Even it was proved on record that the tubewell, in dispute, was installed by defendant No.1 with his own funds to irrigate the land owned by him and this connection was maintained by him. Even the land of khasra no.26 had already been partitioned in three equal shares and the plaintiff-appellants have constructed a boundary wall and the electric motor, in dispute was also installed in the portion of khasra no.26 which fell to the share of defendants. It was proved on record that the plaintiffs had no right or concern with the electric connection, in dispute. It was also proved on record that other electric connection was installed in the name of Tara Singh, who was brother of father of defendant. Said Tara Singh died issueless and his land was inherited by defendants No.2 and 3 to the extent of half share and plaintiffs also got share to the extent of half on the basis of registered Will. It was a mutual settlement arrived at between the parties in the month of April, 2005. On the basis of that settlement, defendants left their share in the electric connection in favour of plaintiffs and it was agreed that the plaintiffs will not claim any share in the electric connection, in dispute.

Keeping in view the facts as mentioned above and by perusing the concurrent findings recorded by both the Courts below, no ground is made out to interfere with the judgments and decrees passed by two Courts below.

Hence, the appeal, being devoid of any merit, is hereby dismissed.

20.04.2017
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes