

RSA No. 4627 of 2015 (O&M)

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

RSA No. 4627 of 2015 (O&M)

Date of Decision: 12.9.2017

Bir Singh

.....Appellant

Vs.

Punjab State Electricity Board (Now PSPCL), Patiala and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Amandeep Singh Manaise, 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 was dismissed by the learned trial court vide its impugned judgment and decree dated 25.4.2012 and his first appeal was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 23.2.2015.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of the impugned judgment, are that 3 BHP tubewell connection No. D-1335 in dispute originally was of 2BHP and was so applied by defendant No.4 in the year 1983. During such course of sanctioning of tubewell connection, said defendant No.4 entered into an agreement of its sale with Mohinder Singh-father of plaintiff and received all expenses regarding sanctioning of this connection. Defendant No.4 also

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duly sworn an affidavit dated 18.7.1991 in favour of Mohinder Singh in this regard. This connection was issued in the name of defendant No.4 by defendants No.1 to 3 vide letter No. 17041 dated 10.6.1983, regarding which defendant No.4 mentioned in the abovesaid affidavit that it be transferred in the name of Mohinder Singh. Thereby, this defendant was left with no concern qua this connection. On the basis of this affidavit, defendant No.2 had installed this tubewell connection in 1991 in the land bearing khasra No. 8//17/4 (1-8) owned and possessed by Mohinder Singh. Since then plaintiff and his brother were using this connection for irrigation/cultivation of their land. No hindrance in it had been made by defendants.

This connection originally was of 2 BHP. Plaintiff paid ₹1200/- to defendant Board vide receipt No. 463 dated 17.1.2005 and this connection became of 3 BHP. In 1998, Mohinder Singh sold abovesaid land to Massa Singh son of Bhagat Singh (PW2) for ₹21,000/-. Disputed tubewell connection though was not sold to him. It was still in possession of plaintiff. He requested defendants No.1 to 3 to transfer it in his name on the basis of its purchase made by his father-Mohinder Singh. They did not take any step in this regard. Plaintiff was owner in possession of this tubewell connection on the basis of abovesaid affidavit. Defendants were threatening to transfer the connection to the land of defendant No.4, forcibly and illegally, despite his requests.

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 defendant No.4 filed his separate written statement. Plaintiff filed his replication. On

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

1. Whether the plaintiff is entitled to declaration that he is owner in possession of tubewell connection in dispute?
OPP
2. Whether the plaintiff is entitled to a decree of mandatory injunction directing defendants No.1 to 3 to transfer the tubewell connection in question in the name of the plaintiff?OPP
3. Whether the plaintiff is entitled to a decree of permanent injunction restraining the defendants from uplifting/transferring the tubewell connection from its existing place to somewhere else?OPP
4. Whether the suit is not maintainable in the present form?OPD
5. Whether the plaintiff has got no cause of action and locus standi to file the present suit?OPD
6. Whether the plaintiff has concealed the material facts from the Court?OPD
7. Whether the suit is liable to be stayed under Section 10 CPC and under order 2 Rule 2 CPC?OPD
- 8) Relief.

In order 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 miserably failed to prove his case for want of cogent and sufficient evidence. Accordingly, his suit for declaration was dismissed by the learned trial court, vide its impugned judgment and decree dated 25.4.2012. Feeling aggrieved, plaintiff filed his first appeal, which was also dismissed by the learned first appellate court, vide its impugned

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judgment and decree dated 23.2.2015. 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 entire case of the plaintiff-appellant was based on the affidavit allegedly filed by defendant No.4 in favour of the plaintiff-appellant. However, said affidavit could not be proved on record by the plaintiff. Defendant No.4 also denied his signatures on the said affidavit. It is pertinent to note here that once defendant No.4 specifically denied his signatures on the alleged affidavit, plaintiff was put at caution. In such a situation, it was for the plaintiff-appellant to bring on record cogent evidence in this regard, including a Fingerprint and Handwriting Expert, so as to get compared the signatures of defendant No.4 on the abovesaid affidavit dated 18.7.1991, with his admitted signatures. However, plaintiff failed to do so and that too, for no good reasons. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their impugned judgments and decrees and the same deserve to be upheld.

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 12 to 14 of its impugned judgment, which deserve to be noticed here, read as under:-

“The contention of learned counsel for appellant-plaintiff is that impugned judgment and decree are against law and facts. Version in plaint was duly proved by him and yet, issues No.1 to 3 were illegally decided against him ignoring the fact

that DW1-Rupinder Singh (one of LRs of respondent-defendant No.4) had admitted in his cross-examination that he has no concern with abovesaid land bearing khasra No. 8//17/4. Learned counsel ultimately prayed that appeal be accepted and suit be decreed.

Learned counsel for respondents-defendants vehemently opposed these submissions, while referring to the evidence and conclusion of learned trial court in the impugned judgment where it is observed that when entire version of appellant-plaintiff is based on an affidavit dated 18.7.1991, allegedly sworn by defendant No.4, this affidavit has not seen light of the day. Learned counsel ultimately prayed that as there is no illegality in the impugned judgment and decree, the appeal may be dismissed.

The above summarized facts bring out that entire version of appellant-plaintiff revolves around existence of an affidavit dated 18.7.1991 said to have been sworn by defendant No.4 in favour of Mohinder Singh, father of appellant-plaintiff. It is an admitted aspect on file that tubewell connection in question was allotted to defendant No.4 in the year 1983. Documents Ex.D1 to Ex.D4 also reflect so. Admittedly, it was lying installed in khasra No. 8//17/4 in Village Zaffarwal. Perusal of lower court record shows that such original affidavit was never attempted to be brought on file by appellant-plaintiff. One photocopy of such alleged affidavit came on record as Mark-B. Result is that appellant-plaintiff could not prove existence/execution of this affidavit by defendant No.4 in favour of his father-Mohinder Singh. In written statement, this defendant categorically denied if he had sworn such affidavit. Otherwise also, such affidavit between two private parties like Mohinder Singh (father of plaintiff) and defendant No.4 does not bind others. Defendants No.1 to 3 are Electricity Department who had issued this connection to defendant No.4. They are alien to this affidavit and it was not binding on them.

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Mere admission of DW1 that he has no concern with above referred land in khasra No. 8//17/4 in Village Zaffarwal can have no impact on the allotment of disputed connection. It remained with defendant No.4. Appellant-plaintiff failed to prove his version that it was transferred to his father by this defendant. The suit, therefore, was rightly dismissed. In the circumstances, I do not find any illegality or perversity in the impugned judgment and decree.”

When learned counsel for the appellant was confronted with the abovesaid findings recorded by the learned first appellate court to point out any patent illegality or perversity therein, he had no answer and rightly so, it being a matter of record. The affidavit which was sole basis of plaintiff's case was placed on record as Mark-B, thus, could not be proved on record, in accordance with law. In such a situation, plaintiff was bound to fail. That is what has been held by both the learned courts below. In this view of the matter, no fault can be found with the impugned judgments and decrees passed by the learned courts below and the same deserve to be upheld, for this reason also.

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

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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.

12.9.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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