

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

RSA-4177 of 2017 (O&M)
Date of decision: 16.12.2017

Chaman Lal

.... Appellant

Versus

Electrical Operation Circle and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.O.P.Kamboj, Advocate for
Ms. Kanta Lamdharia, Advocate
for the appellant.

Avneesh Jhingan, J.

The present regular second appeal is at the behest of plaintiff being aggrieved of concurrent judgments and decrees of the Courts below dismissing the suit.

For the sake of convenience, the parties are being referred to as per their original position in the suit.

Though this appeal is accompanied with an application (CM No. 10849-C of 2017) for condonation of delay of 194 days in filing the appeal, yet the learned counsel for the appellant has been heard on merits.

The plaintiff filed a suit for mandatory injunction directing the defendants No.1 and 2 to shift the pole mounted electrical transformer from the plot No.1265, Deep Complex, Hallomajra, to any other common place.

The facts as averred in the plaint are that the plaintiff is a retired Government employee who had purchased the land measuring 2 Biswas, share

of Khewat No.8, Khatauni No.21 to 24, Khasra No.405(6-2) in village Hallomajra, HB No.219, UT Chandigarh, to settle his family after his retirement. The mutation of the said land was entered in the name of the plaintiff in the revenue record. Thereafter, the plaintiff came to know that defendants had installed pole mounted electrical transformer in the plaintiff's plot without the consent of the plaintiff. He approached defendant No.2 for shifting the transformer. He wrote a letter on 17.02.2011. The defendants vide memo No.841 dated 14.03.2011 asked to submit the documents of ownership of plot from the plaintiff which were handed over. The transformer was not removed. Plaintiff gave a legal notice under Section 80 CPC and filed the present suit in year 2013.

Upon notice, defendants filed written statement. In the written statement, it was pleaded that the transformer in question was erected 20-25 years back and was catering the electric supply of the southern part of village Hallomajra for the residents inside Lal Dora along with agricultural tubewells situated outside Lal Dora. It was further averred that in the recent past, there was a lot of constructional activities and there were encroachments, hence, the transformer cannot be shifted to any other alternative place as it was not technical feasible and was against the safety of the general public.

The learned trial Court framed the issue whether the plaintiff is entitled for mandatory injunction?

The plaintiff, in order to support his suit, himself stepped into the witness box as PW1, Clerk of Sub Registrar Office deposed as PW2. The sale deed and copy of mutation were exhibited as P1 and P2, respectively. Memo received by him, reply sent, copy of legal notice and copy of postal receipts

were exhibited as P3 to P8.

In order to rebut the claim of the plaintiff, Vijay Kumar, Engineer appeared as DW1.

Learned trial Court dismissed the suit vide judgment and decree dated 25.02.2015.

Aggrieved of the judgment and decree, appeal was filed by the plaintiff. The District Judge, Chandigarh dismissed the appeal vide judgment and decree dated 19.08.2016.

Hence the regular second appeal.

In the appeal filed, though seven substantial questions of law have been framed but at the time of the arguments, learned counsel for the plaintiff argued only one issue that the defendants without acquiring the land or paying the compensation have installed the pole mounted transformer in the land of the plaintiff. The transformer had been mounted without consent of the plaintiff.

Before deciding the issue raised in the present appeal, it would be pertinent to mention that learned Courts below while dismissing the suit, have taken into consideration the fact that the plaintiff is entitled to the compensation by way of money for which he can avail his remedies.

In the present case, the facts which have not been disputed are that the plaintiff is owner of the suit land by virtue of a sale deed of 1995. The mutation in the revenue record has been entered in his favour on the basis of sale deed. It is also not disputed that the transformer is mounted on the said land.

The issue which arises is whether the plaintiff was rightly

declined the relief by the learned Courts below. For this purposes, two aspects of the matter have to be seen. Firstly, the plaintiff averred that he had purchased this land to settle with his family after retirement. The defendants have specifically raised an objection that the said land does not fall within Lal Dora of the village. The plaintiff had not even produced an iota of evidence to show that the said land falls within Lal Dora and he could have legally constructed a house on the said land.

The second aspect is that it was averred by the defendants that the transformer was mounted 20-25 years back i.e. much prior to the sale deed in favour of the plaintiff. The said averment was not rebutted rather from the pleading of the plaintiff, it appears that after the entry in the revenue record, the plaintiff came to know that there was an electric transformer installed on the plot.

In such circumstances, the plaintiff should have been aware while purchasing the land that there was already a transformer mounted on the said plot. If the land is not within Lal Dora, there is no irreparable loss to the plaintiff and same has not been pleaded also.

The transformer caters electric supply to the villagers within Lal Dora and to the tubewells outside Lal Dora.

In the present case, the public interest is pitted against personal interest and it is not a case where the plaintiff cannot be compensated in monetary terms. Huge public money had been invested for distribution of electricity. The powers of the Electricity Board under the Electricity Supply Act, 2003 read with Sections 10 and 16 of the Indian Telegraph Act, 1885 have not been challenged or disputed.

The contention of learned counsel for the plaintiff that no consent was taken from him before erecting the transformer otherwise also cannot be accepted as it has not been proved that the transformer was erected after the purchase of land by the plaintiff.

During the course of hearing, learned counsel for the appellant could not point out any illegality or perversity in the impugned judgments passed by the Courts below. He could not refer to any question of law much less substantial question of law which is sine qua non for this court to exercise its appellate power under Section 100 of the CPC.

The cogent findings recorded by the learned trial court as well as the first appellate court have been found factually correct and legally justified. Thus, no fault can be found in the impugned judgments and decrees passed by the courts below and the same deserve to be upheld.

No other argument was raised.

Considering the 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 bereft of merit and without any substance, thus it must fail.

Resultantly, the instant Regular Second Appeal is dismissed, however, with no order as to costs.

(AVNEESH JHINGAN)
JUDGE

16.12.2017
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1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable : Yes