

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

RSA No.2866 of 2016(O&M)
Date of decision: 10.05.2018

Bhir Singh

... Appellant

Versus

Rachhpal Singh (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. GS Sirphikhi, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the appellant was dismissed by the trial Court, vide judgment and decree dated 31.01.2012. As even the appeal against the said decree failed and was dismissed on 26.10.2015, the appellant is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a declaration that he and defendant No.1 were the owners in possession of tubewell connection No.H2086 of 3 HP, installed in the land comprised in khasa No.17R/28, situated at village Kotili Moulvi, Tehsil Dera Baba Nanak with a consequential relief restraining defendants No.2 to 4 from transferring or shifting or disconnecting the tubewell connection in question. In brief, the case set out by the plaintiff was that the tubewell connection in dispute was installed by his father late Harwant Singh son of Sher Singh about 20 years ago. And post death of Harwant Singh, plaintiff and defendant No.1 being his sons and legal heirs not only inherited his estate but also the said connection,

which was being used for irrigating their holding. Further, defendant No.2 alleged to have got the tubewell connection transferred in his favour, but her alleged claim was wholly misconceived. And even if any such transfer is proved the same was not binding upon the rights of the plaintiff.

Defendant No.1 in the written statement filed on his behalf averred that subsequent to death of Harwant Singh, the connection in dispute had fallen to his share, thus, defendant No.2 had no right, title or interest therein.

Defendant No.2 in a written statement filed by her pleaded that the tubewell connection was installed in the name of Sant Singh son of Sher Singh. And Sant Singh, Arjan Singh, Ananti and Santi sons and daughters of Sher Singh had sold a land measuring 70 kanals 19 marlas in favour of Iqbal Singh and Joga Singh sons of defendant No.2, to the extent of half share and the rest half share was sold to Satnam Singh son of Rachhpal Singh (defendant No.1). But Satnam Singh son of Rachhpal Singh sold the said land to one Kulwant Singh of another village. Thus, plaintiff and defendant No.1 did not possess any land upon which the tubewell connection was installed. Defendant No.2 was in possession of the pass books and the receipts issued by defendants No.3 & 4 as regards the electricity bills.

In a separate written statement filed on behalf of respondents No.3 & 4, it was maintained that although Harwant Singh got the tubewell connection installed in his name in the year 1983, but during his lifetime he moved an application on 10.01.1992 for transfer of the said connection in the name of his brother Sant Singh. For the land in which the connection was installed had fallen to the share of Sant Singh in a family partition. For Harwant Singh in his application had stated no objection if the connection

was transferred in the name of Sant Singh, upon compliance of the necessary formalities, the tubewell connection No.H2086/AP was transferred.

Although on a consideration of the matter in issue, the trial Court observed that plaintiff had succeeded to prove that Harwant Singh never consented to the transfer of connection in the name of Sant Singh and, therefore, plaintiff and defendant No.1 were owners of the tubewell connection H2086/AP, after the death of their father Harwant Singh. However, the evidence on record is to contrary, for the finding recorded by the appellate Court was that plaintiff admitted in his cross-examination that their father had transferred the tubewell connection to Sant Singh on 10.01.1992. Further, it was concurrently concluded by both the Courts that plaintiff failed to lead any evidence to show that after 03.03.1992, he ever deposited the electricity bills qua the tubewell connection. Rather, on the contrary, defendant No.2 proved on record the original receipts Ex.D1 to Ex.D22, issued by defendants No.3 & 4, which showed that defendant No.2 has been depositing the electricity bills, ever since the purchase of the land, vide sale deed dated 18.08.1994, by her sons, namely, Iqbal Singh and Joga Singh, from the heirs of late Sher Singh. The veracity of these documents was never questioned by the plaintiff, as even otherwise these were produced from official custody of defendants No.3 & 4. So much so, Prem Singh, SDO, who appeared as DW3, also admitted in his cross-examination that the said receipts were issued by their office. Significantly, the connection was transferred in favour of Sant Singh on 03.03.1992 vide Ex.DG i.e. eight years prior to the institution of the suit on 18.07.2000. Concededly, father of the plaintiff had expired 5/6 years before the filing of the suit i.e. in the year 1994-95, but neither did he question the transfer of

the tubewell connection in favour of Sant Singh during his lifetime nor made any complaint in this regard. That being so, both the Courts concurrently concluded that the cause of action, if any, had accrued to the plaintiff firstly on 03.03.1992, and 18.08.1894 when the sale deed was executed in the name of sons of defendant No.2, and even thereafter on 05.12.1994 when the electricity bills were cleared by defendant No.2, vide receipt Ex.D20. Therefore, the suit filed by the plaintiff was even time barred. Defendant No.2 is none else but a daughter-in-law of defendant No.1 Rachhpal Singh, the real brother of the plaintiff. Once it is proved that Harwant Singh was not the owner of tubewell connection at the time of his death, the question of inheritance thereof by plaintiff and defendant No.1 would not arise. On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at by both the courts were either contrary to the record or suffered from any material illegality.

Thus, no question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

10.05.2018

Rajan

Whether speaking / reasoned:
Whether Reportable:

YES
NO