

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

**RSA No.436 of 2016 (O&M)**

**Date of decision: 12.03.2018**

**Mukhtiar Singh**

**.....Appellant**

**Versus**

**Sukhdev Singh and others**

**.....Respondents**

**CORAM:HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Jagjit Singh, Advocate,  
for the appellant.

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**Ritu Bahri, J.**

This appeal has been filed against the judgment dated 21.09.2015 passed by the Additional District Judge, Tarn Taran, dismissing an appeal filed by plaintiff-appellant against the judgment and decree dated 05.05.2015 passed by the Additional Civil Judge (Senior Division), Khadoor Sahib, whereby suit filed by plaintiff-appellant for declaration, has been dismissed.

Mukhtiar Singh-plaintiff (appellants herein) filed a suit for declaration, permanent injunction as well as mandatory injunction alleging that Kirpa Singh son of Khushiya, who was father of the plaintiff and defendant Nos.1 to 4 was exclusive owner/consumer of tubewell water connection in the suit property. He died on 25.07.1998. Thereafter, vide mutation No.1840, his property was succeeded by the plaintiff and defendant Nos.1 to 4 in equal shares, including the disputed connection, by way of inheritance. Since then, water of disputed connection was being used jointly by the plaintiff and defendant Nos.1 to 4 for irrigation of their land.

As per plaintiff, about one year before filing of the suit, defendant No.1 had refused to allow the plaintiff to use the disputed connection for irrigation of his land. He was also threatening to get the said connection transferred in his own name through defendant No.7. Hence, the suit.

Upon notice, defendant-respondent Nos.1 to 3 filed written statement by taking preliminary objections with regard to maintainability of suit, estoppels, locus standi, cause of action, non-joining of necessary parties etc. On merits, it was stated that Kirpa Singh was exclusive owner/consumer of Tubewell connection, who was fully competent to alienate the same in favour of defendant Nos. 2 and 3. Khasra Nos.62 and 63 had already been allotted to defendant Nos.2 and 3 in partition. Gift deed dated 02.05.1997 was executed by Kirpa Singh in favour of defendant Nos.2 and 3 with the knowledge of plaintiff and defendant Nos 4 to 6. It was further submitted that defendant Nos.2 and 3 were exclusive owner in possession of the tubewell connection and they had got every right to get the same transferred in their name. Defendant Nos.4 to 6 filed separate written statement by taking a plea that previously Kirpa Singh, who was father of plaintiff and defendant Nos.1 to 4, was owner of the tubewell connection in dispute and after his death, plaintiff and defendant Nos.1 to 4 came into the joint ownership of the same.

Defendant No.7-SDO filed a separate written statement to the effect that Kirpa Singh was recorded a consumer of the disputed tubewell connection as per consumer ledger of the defendant. As per rules of PSPCL, in case of death of a consumer, all the legal heirs have to apply for change of name or if one legal heir applies, then he has to submit no objection certificate of other legal heirs. Application, in this regard, has to be made in

the prescribed application cum agreement form A. In case of failure to do so within six months of the death of consumer, the connection is liable to be disconnected. In the present case, no such application had been filed by the legal heirs as required under rules. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

Replication to the written statement was filed controverting the allegations made in the written statement and reiterating those of the plaint.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to relief for declaration as prayed for? OPP
2. Whether the plaintiff is entitled to relief for permanent injunction as prayed for? OPP
3. Whether the plaintiff is entitled to relief for mandatory injunction as prayed for? OPP
4. Whether the suit is not maintainable? OPD
5. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD
6. Whether the plaintiff has no locus standi to file the present suit? OPD
7. Whether the plaintiff has no cause of action to file the present suit? OPD
8. Whether the plaintiff has not come to the court with clean hands and suppressed the material facts from this Court? OPD
9. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. Appeal against the said judgment also met the same fate.

Heard.

Plaintiff Mukhtiar Singh while appearing as PW-1, had admitted

that his father Kirpa Singh had gifted 14 Kanals 18 Marlas of land along

with tubewell connection in dispute in favour of Paramjit Singh and Amanjit Singh (defendant Nos. 2 and 3) by way of gift deed dated 02.05.1997 Ex.D3. Both the Courts have returned a finding that this gift deed has never been challenged by the plaintiff on the ground that the land was joint/ancestral in nature. Hence, the gift deed has attained finality. Since transfer of land has been done, argument of learned counsel for plaintiff-appellant that the tubewell connection should have been treated to be joint is liable to be rejected, as the gift deed has not been challenged till date. Therefore, the presumption of the tubewell connection being joint is also rejected. It has also been held that after transfer of land, defendants had got enhanced the connection from 3 BHP to 5 BHP, vide receipt dated 30.01.2005. Hence, possession of the land and usage of the tubewell connection with the defendant-respondents has been duly proved. Moreover, after the death of Kirpa Singh, neither any attempt was made nor any application was moved by the plaintiff-appellant to get the tubewell connection transferred in the joint name of plaintiff and defendants being ancestral.

After going through the impugned judgments, it is apparent that defendants are exclusively using the tubewell connection in dispute by virtue of the gift deed Ex.D3 and are owners of the same. In the absence of any cogent and convincing evidence, the suit of the plaintiff has been rightly dismissed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments, warranting interference by this Court. The evidence has been appreciated in the right perspective.

appeal.

Dismissed.

12.03.2018  
ajp

**(RITU BAHRI)**  
**JUDGE**

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