

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

RSA No. 3006 of 2015(O&M)

Date of decision: 19.3.2018

Jarnail Singh

....Appellant

VERSUS

Hukam Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sarju Puri, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal directs challenge against consistent findings recorded by the Courts whereby suit filed by the respondent/plaintiff Hukam Singh for declaration and permanent injunction in respect of electric motor tubewell connection bearing No.AP-02-1546 (old No.NB-112) installed in khasra No.4//18 as per jamabandi for the years 2007-08 situated at village Shamshpur, Tehsil and District S.B.S. Nagar has been decreed by the trial Court to the following effect:-

“.....the plaintiff is co-sharer in the electric motor/tubewell connection in question and he has right to use the same for irrigation of his share in joint khata and defendants are also restrained from shifting the electric connection from the present position and also from interfering in the user of the electric tubewell/motor in question by the plaintiff.”

The appeal preferred by Jarnail Singh (appellant herein) did not find favour with the District Judge S.B.S. Nagar at Nawanshahr and accordingly findings recorded by the trial Court were affirmed.

Counsel for the appellant has assailed judgments of the Courts on few counts. The first submission made by counsel is that as per plea of the respondent/plaintiff he became a co-sharer in the electric motor tubewell connection in question on the basis of sale deed dated 27.05.1991 purported to be executed by Sarwan Singh himself and as attorney of Gurdev Singh, Baldip Singh, Mohan Singh and Jaswinder Kaur in respect of land measuring 20 kanal but the said sale deed has not been proved by the respondent/plaintiff in accordance with law as he did not examine any attesting witness of the sale deed whereas Sarwan Singh was only examined-in-chief and the appellant did not get the opportunity to cross-examine him.

The second submission made by counsel is that the respondent/plaintiff did not appear in the witness box to prove his case. Gurnail Singh PW-2 examined as an attorney of the respondent/plaintiff did not have personal knowledge of the material facts pleaded by the respondent/plaintiff. He has assailed findings of the Court in appeal in respect of affidavit executed by Sarwan Singh in favour of the appellant on the basis whereof, the connection in question was transferred in the name of appellant as deposed by Daljit Singh, an official from the office of PSEB, Rahon. It has further been argued that Gurnail Singh PW-2 in his cross examination has admitted that Sarwan Singh gave one affidavit in the name of Jarnail Singh for transfer of motor in his (Jarnail Singh's) name. The original affidavit was produced before the Court by Daljit Singh DW-

2 and attested copy thereof was marked as Ex.D2/A, therefore observations of the Court in appeal that original affidavit was not brought before the Court are incorrect. The last submission made by counsel is that as respondent/plaintiff did not avail efficacious remedy seeking partition of the joint land, suit filed by respondent/plaintiff is hit by the provisions of Section 41(h) of the Specific Relief Act, 1963 (in short 'the Act'). In support of his contention, he has relied upon judgments of this Court **Jangir Singh Vs. Naranjan Singh and others, 2015(1) RCR (Civil) 149** and **Kishan Singh Vs. Sucha Singh, 2008(2) RCR (Civil) 394.**

I have heard counsel for the appellant, perused the paper-book and copies of records supplied by counsel during the course of hearing.

Sarwan Singh son of Mela Ram, vendor of the respondent/plaintiff tendered into evidence his duly sworn affidavit Ex.PW1/A along with copy of sale deed Ex.P3 but later his cross examination could not be completed as he passed away. Gurnail Singh, attorney of the respondent/plaintiff tendered into evidence his duly sworn affidavit Ex.PW2/A and in his testimony notarized copy of sale deed dated 27.05.1991 was marked as Ex.P3 without any objection by the contesting party. Perusal of cross examination of Gurnail Singh would make it evident that there is no cross examination to Gurnail Singh with regard to purchase of land measuring 20 kanal by Hukam Singh and others vide sale deed dated 27.05.1991 executed by Sarwan Singh for himself as well as attorney of Gurdev Singh, Baldip Singh, Mohan Singh and Jaswinder Kaur. The original sale deed was also produced before the Court by Sarwan Singh PW-1 when the copy thereof was marked as Ex.P3. This apart, Sarwan Singh or other co-sharers who executed the sale deed in

favour of Hukam Singh and others have not denied execution or correctness of the sale deed in question. Not only this, Jaswinder Singh son of Sarwan Singh was also examined who tendered into evidence his affidavit Ex.PW3/A and identified the signatures of his father on Ex.P3 at point A. Under the circumstances, contention of the appellant that sale deed in favour of Hukam Singh and others has not been proved in accordance with law is devoid of merit and liable to be rejected.

Counsel for the appellant has fairly conceded that as per the sale deed Ex.P3, Sarwan Singh and others also transferred a share in the connection in question along with transfer of ownership rights qua land measuring 20 kanal detailed in Ex.P3. He has further admitted that recital in the sale deed Ex.P3 with regard to transfer of share in electric connection is similar to the one made in the sale deed Ex.D3 executed in favour of Jarnail Singh by Sarwan Singh. Once Sarwan Singh in whose name the connection in question was sanctioned has transferred a share in favour of Hukam Singh and others, it is difficult to accept contention of the appellant that merely because this connection has been transferred in the name of appellant on the basis of affidavit purported to be executed by Sarwan Singh, the other co-owners of the joint khewat are not entitled to use the electric connection in question for irrigating the land in their possession which continues to be a mustarka khata despite the co-owners being in possession of separate parcels of joint land for the purpose of cultivation. I would hasten to add that it has been established on record that there is no other electric connection in the joint land except the connection in question, installed in khasra No.4//18, subject matter of sale deed Ex.P3 in favour of the respondent/plaintiff as well.

Though Gurnail Singh attorney of the respondent/plaintiff has admitted the factum that Sarwan Singh gave one affidavit in the name of Jarnail Singh for transfer of motor but no document was put to the witness in order to prove that Gurnail Singh had admitted correctness of the affidavit, copy whereof was produced by Daljit Singh DW-2 examined much later. Perusal of testimony of Daljit Singh would reveal that the witness has deposed about having brought the summoned record regarding electric motor No.NB-112 in the name of Jarnail Singh son of Sarwan Singh. He has also deposed that Sarwan Singh has given one affidavit to PSEB office for transfer of connection in the name of Jarnail Singh. He has tendered into evidence attested copy of the affidavit Ex.D2/A by stating that copy of affidavit which has been attested by him at present in the Court which is true and correct as per original is Ex.D2/A. However, it is not very clear if the original document was available with the witness at the time, copy of affidavit was attested by him. Assuming that the witness had brought the original affidavit in the Court and the Appellate Court was not correct in its observation that original affidavit has not been brought before the Court but even then the appellant cannot claim exclusive right in the connection in question on the basis of affidavit of Sarwan Singh who had already transferred a share in the connection in favour of Hukam Singh and others as per sale deed Ex.P3. Once Hukam Singh and others have become co-sharers in the electric connection on the basis of sale deed executed by Sarwan Singh, erstwhile owner of the connection, Hukam Singh and others cannot be deprived of their right to use the electric motor in question on the ground that same has been transferred in the name of Jarnail Singh by the authorities.

This brings the Court to the last submission with regard to the suit being not maintainable for want of failure of the respondent/plaintiff to avail efficacious remedy of partition of land. In the case at hand, respondent/plaintiff has not filed a suit for injunction against his co-sharer in respect of possession of joint land in order to say that he had efficacious remedy to file an application for partition of the joint land. On the contrary, the respondent/plaintiff has pressed his right of being entitled to use the electric connection in question on the basis of right given to him under the sale deed Ex.P3. The judgments relied upon by counsel for the appellant deals with an entirely different controversy, therefore, the appellant cannot derive any advantage thereof to contend that suit filed by respondent/plaintiff is barred under Section 41(h) of the Act. This apart, as the appellant has filed a suit for declaration with consequential relief of injunction, the provisions of Section 41 (h) of the Act would not be attracted in the given circumstances.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

MARCH 19, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no