

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

1. RSA-2088-2017 (O&M)

Gurmail Singh and another ... Appellants

Vs.

Bahadur Singh and another ... Respondents

2. RSA-2577-2017 (O&M)

Gurmail Singh and another ... Appellants

Vs.

Gian Singh and another ... Respondents

Date of Decision: 20.11.2018

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present : Mr. Parvinder Singh, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

CM-5067-C-2017 in RSA-2088-2017

In view of the averments made in the application as well as affidavit, delay of 18 days in re-filing the present appeal stands condoned.

The application is allowed accordingly.

CM-6331-C-2017 in RSA-2577-2017

In view of the averments made in the application as well as affidavit, delay of 18 days in re-filing the present appeal stands condoned.

The application is allowed accordingly.

Main cases

This order of mine shall dispose of aforementioned two regular second appeals arising out of the decision rendered in Civil Suit No.18399 of 2013; titled as Gian Singh and another v. Gurmail Singh and another.

The trial Court partly decreed the suit qua plaintiff No.1 but

dismissed qua plaintiff No.2. Accordingly two appeals were preferred by the defendants and plaintiff No.2 which have been dismissed.

Plaintiffs instituted the suit claiming to be co-owners with the defendants in respect of electric motor tubewell connection bearing A/C No.KA 377, 7 ½ BHP installed in the land bearing khata No.288/343, Khasra No.48//27 (1-8). It was alleged that vide agreement dated 29.05.1974 executed by the parties including predecessor in interest of the defendants, electric connection in the name of Banta Singh was allowed to be used by plaintiff No.1.

Defendants opposed the suit by stating that tubewell connection was installed in the name of Banta Singh who died on 18.11.1987. After his death entire estate including the tubewell connection on the basis of a registered will dated 8.6.1977 was inherited by the defendants in equal share, thus, plaintiffs could not claim the injunction as sought for.

Learned counsel for the appellants submitted that agreement of 1974 could not have been executed as there was a misrepresentation. The will did not accord joint ownership. Documentary evidence on record proved the ownership of the defendants of the electric motor/tubewell connection, hence, injunction as sought and granted by the trial court is not sustainable.

I am afraid the aforementioned argument of the learned counsel for the appellants-defendants is not sustainable as agreement of 1974 has been proved on record. Since parties are co-owners, remedy lied elsewhere. As per the agreement, plaintiff No.1 was conferred right to use the tubewell and electric motor connection as per their shares in the tubewell.

In this view of the matter, I do not find any illegality and

perversity in the concurrent finding of fact rendered by both the court below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeals are dismissed.

20.11.2018
rajeev

(AMIT RAWAL)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**