

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

**RSA-5913-2018 (O&M)
Date of Decision:29.10.2018**

Harbans Singh

... Appellant

Versus

Rajwinder Singh @ Raj & others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Siddharth Gupta, Advocate for the appellant.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Plaintiff/appellant is in second appeal before this Court having remained unsuccessful in both the Courts below.

Plaintiff-Harbans Singh filed a suit for permanent injunction for restraining the defendants from shifting/transferring or disconnecting the electricity motor connection of 10 HP which had otherwise been issued in the name of defendant No.1 Rajwinder Singh @ Raj. The precise case set up by the plaintiff/appellant herein was that he and defendant/respondent, Rajwinder Singh @ Raj are real brothers and the land between both of them is joint. An electric motor connection of 10 HP bearing account No.AP-20/471 was issued in the name of defendant/respondent but the same was got installed out of joint expenses and for irrigating the land jointly. Case set up was that since expenses for installation of the electric motor connection were given jointly by the plaintiff as also the respondent, plaintiff is also entitled for using the said connection and defendant has no right to shift the same.

Suit filed by the plaintiff was dismissed by the trial Court on

25.10.2017 and even a civil appeal preferred has met the same fate vide judgment dated 23.08.2018 passed by the learned District Judge, Bathinda.

Learned counsel representing the appellant has submitted that prior to the year 2013, the electric motor in question had been used jointly. However, a dispute having been arisen, matter had been taken up in the Panchayat and at that time, a decision was taken that cost of the motor be determined and the connection was to be given to the appellant but subsequently, the defendant/respondent refused to receive the amount so determined and wanted to illegally shift the motor connection to some other place. It is contended that such aspect has been completely overlooked by the Courts below. It is also the contention raised by counsel that earlier in point of time, the litigation pertaining to the joint land was contested by the brothers i.e. appellant herein and defendant/respondent Rajwinder Singh @ Raj jointly and as such, the Courts below ought to have taken an inference that even the electricity/tubewell connection/motor connection had been installed out of joint funds.

Reliance has been placed by counsel upon judgment of this Court in **Bhagwan Dass Vs. Jai Kishan & others, 2010 (2) PLR 787.**

Having heard counsel for the appellant at length and having perused the pleadings on record, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

Even though, it is the case of the appellant herein that the dispute between parties had been settled in Panchayat proceedings and whereby the appellant was to pay a certain amount of money to the defendant/respondent towards the electricity/motor connection, yet such

stand does not find any corroboration from documents/evidence adduced on record. To the contrary, the respondent/defendant had adduced evidence to prove that the electricity connection had been applied for in his sole name and that no amount had been deposited by the appellant herein with the Punjab State Power Corporation Limited. In this regard, defendant/respondent examined Sandeep Garg, Accountant of M/s Jay Bee Industries as DW2, who proved on record copy of invoice dated 01.01.2011 as Ex.DW2/A. Er. Pankaj Bansal was examined as DW3, who testified that it was the defendant/respondent Rajwinder Singh @ Raj, who had applied for electricity connection for installation of tubewell and he further stated that no amount was deposited by the present appellant with the defendant/Corporation for installation of the tubewell. DW3 further deposed that the electricity connection bearing account No.AP-20-471 was installed in the name of defendant/respondent Rajwinder Singh @ Raj after following due procedure and as per record of the Corporation, the plaintiff/appellant had no concern with the tubewell connection.

The Courts below also taken note of the deposition recorded of the plaintiff/appellant, Harbans Singh. In his cross-examination, he admitted that all the necessary material for installation of the motor such as transformer, electric wire, starter etc. were purchased by defendant Rajwinder Singh @ Raj himself.

Under such circumstances, this Court does not find any infirmity in the concurrent view taken by the Courts below as regards the electricity connection/motor connection having not been installed out of joint funds.

Even the submission raised by counsel with regard to the joint holding of land between the parties and as such, an inference to be drawn that the appellant would also have a right to avail of the electricity connection is not well founded. Even though, the land holding between the parties may be joint but the plaintiff/appellant, Harbans Singh while appearing into the witness box as PW1 and having tendered in evidence his duly sworn affidavit Ex.PW-1/A had clearly deposed that the real brothers are owners in possession of their respective shares in common khewat of total land measuring 259 kanals 11 marlas and the land is still joint. It clearly emerges that the parties are in cultivating possession of their own share out of the joint land holding. The judgment cited by counsel in **Bhagwan Dass's case (supra)** would have no applicability to the facts of the present case as the parties therein were concededly in joint possession over the suit land.

There is no merit in the instant appeal.

Dismissed.

29.10.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No