

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

RSA No.6486 of 2017

Date of Decision: 27.09.2018

Baljeet Singh

.....Appellant

Versus

Buta Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Lalit K. Gupta, Advocate
for the appellant.

TEJINDER SINGH DHINDSA J.(ORAL)

Plaintiff-Baljeet Singh is in second appeal before this Court having remained unsuccessful in both the Courts below.

Brief facts of the case are that plaintiff filed a suit seeking a decree for mandatory injunction with consequential relief of permanent injunction on the averments that he is owner in possession of agricultural land as described in the plaint. Land of private defendants No.1 to 3 was adjacent and defendant No.1 Buta Singh had applied for a electric tube-well connection to defendant No.4 i.e. Uttar Haryana Bijli Vitran Nigam Limited and in pursuant thereto an electric pole had been installed in the fields of the plaintiff in khasra No.53/18. It was asserted that the erection of electric pole and installation of electric transformer thereupon in the fields of the plaintiff is illegal, unlawful and without any right. Plaintiff voiced a grievance that on account of installation of the pole and projection of iron angle an obstruction is being caused in usage of the “*Daul*” as also is creating a hindrance in movement of tractor-trolley of the plaintiff.

Suit was contested in terms of filing separate written

statements on behalf of defendants No.1 to 3 as also defendant No.4. Private defendants took a stand that the electric connection had already been released prior to purchasing of land by the plaintiff and that the electric pole was erected in the land of the defendants. Further stated that there was a gap of 5 feet between the land of the plaintiff as also the defendants and as such the electric pole in question could not possibly create any hindrance to the plaintiff. Defendant No.4, the UHBVNL took a stand that the pole and transformer had been installed in the fields of defendant No.1-Buta singh.

Trial Court dismissed the suit of the plaintiff on 31.10.2014 by observing that no cogent and convincing evidence had come forth to prove that the electric pole had been installed by defendant No.4 in the land comprised in rectangle No.53, killa No.18. Deposition of DW2, who was an official of defendant No.4-Nigam was noticed and who had stated that the electric pole had been erected on the land of Buta Singh-defendant No.1. Furthermore, PW5 in his cross-examination had admitted that the electric connection released in favour of Buta Singh, was prior to purchase of land by the plaintiff. While dismissing the suit it has also been noticed that the transformer affixed on the electric pole was at a height of 7-8 feet and as such would not cause any hindrance. The civil appeal preferred by the plaintiff-appellant has been dismissed vide judgment dated 04.08.2017 passed by the learned Additional District Judge, Karnal.

Learned counsel for the appellant has argued that an application under Order 41 Rule 27 CPC for leading additional evidence had been moved to prove a vital fact that the transformer as also the angle iron upon which the transformer was affixed, falls in killa No.53/18 and towards the side of the plaintiff-appellant but application was wrongfully

dismissed on the ground that it has been moved to fill up the lacuna in the case. It is contended that the application has been filed to ascertain the real fact in issue as regards precise location of the electric pole and which would have thrown light with regard to the hindrance being caused to the plaintiff-appellant while ploughing his fields by usage of tractor. It is urged that on account of dismissal of the application for leading additional evidence grave prejudice has been caused to the plaintiff-appellant. Yet another argument raised by learned counsel is that the Courts below have given contradictory findings as regards the land on which the electric pole and transformer was affixed and erected. Trial Court while dismissing the suit had come to the conclusion that the electric pole and transformer are in the fields of the defendants-respondents whereas the lower Appellate Court had concluded that the electric pole and transformer are in the fields of the appellant. It is contended that in such situation the suit filed by the plaintiff-appellant could not have been dismissed.

Learned counsel for the appellant has been heard at length and pleadings on record have been perused.

Undoubtedly, Trial Court has dismissed the suit of the plaintiff-appellant by taking a view that no evidence had been adduced on record to prove that the electric pole and transformer had been erected on the land under ownership and possession of the appellant. On the other hand, the lower appellate Court has not dealt with such aspect with clarity.

Be that as it may, it has gone uncontroverted that the electricity connection in favour of respondent-Buta Singh had been energized even prior to purchase of the land by the appellant herein. Learned counsel has also not disputed that the transformer affixed on the electric pole is at the height of 7-8 feet. Under such circumstances there would be no hindrance

insofar as the ploughing of fields is concerned. Even if it is to be assumed that an electricity pole has been erected on a piece of land belonging to the appellant still no interference would be warranted. Admittedly, the appellant herein is also the beneficiary of an electricity connection. The respondent-Nigam to ensure the supply of electricity to the appellant, must have erected poles on land which may not be in the ownership of the appellant. To release electricity connections and electricity tube-well connections it is imperative for the respondent-Nigam to lay down a network of electricity supply lines with the aid of electric poles as also transformers. To facilitate such network and which otherwise is in public interest there would always be a need to erect electric poles in the fields under the ownership of a particular person and which may not be for the sole benefit of such person.

Taking an overview of the matter, this Court is not inclined to interfere in the concurrent view taken by the Courts below, declining the relief of mandatory injunction in favour of the plaintiff-appellant.

The instant appeal does not raise any question of law.

Appeal dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

September 27, 2018

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No