

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.749 of 2018

Date of Decision.05.02.2018

Maghar Singh and another

.....Appellants

Vs

Shingara Singh and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. H.S. Saggu, Advocate
for the appellants.

-:-

AMIT RAWAL J.(ORAL)

The appellants-plaintiffs are aggrieved of the concurrent finding of fact whereby the suit instituted seeking restraint order against the defendants in respect of electric motor connection bearing No.0521-M in the name of Roor Singh son of Jeon Singh of 15 BHP installed in the land comprised of Khasra No.2326 situated in the revenue estate of village Kumbharwal, Tehsil Dhuri, has been dismissed by both the Courts below.

Mr. H.S.Saggu, learned counsel appearing on behalf of the appellants-plaintiffs submitted that the land of the appellants-plaintiffs and respondents-defendants is in joint ownership. The aforementioned electric connection was issued in the name of their father Roor Singh, who after his death transferred the same in favour of the defendants. Since there is a joint khata of the land, plaintiffs cannot be prevented from using the motor connection. It is in this backdrop of the matter when the defendants caused an obstruction, the suit aforementioned was filed. He also relied upon the judgment of judgment of this Court rendered in **Bhagwan Dass Vs. Jai Kishan and others Vol.CLVIII (2010-2) PLR 787.** In the absence of the

partition, all the co-owners, according to him, are entitled to use the electric

connection. All these facts have not been taken into consideration by the Courts below, therefore, there is illegality and perversity.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Saggu, as admittedly the electric connection was in the name of Roor Singh. During his life time, he had transferred the same in favour of the defendants, thus, it cannot be said to be a joint ownership, though the tubewell connection existing on the land, according to Mr. Saggu, is joint. In my view, the remedy for the plaintiffs is to seek partition of the property and the tubewell connection enabling the plaintiffs to prove that they had subsisting right in the tubewell connection.

The concurrent finding of fact based upon the appreciation of evidence, in my view, cannot be faulted with as it was a case of joint possession of land, in view of the ratio decidendi culled out by Full Bench of this Court in **Bhartu Vs. Ram Sarup 1981 PLJ 204** and Division Bench judgment in **Bachan Singh Vs. Swaran Singh 2000(3) RCR (Civil) 70**.

There is no dispute to the judgment referred to above by the counsel for the appellants. A judgment is passed after taking into consideration the facts and circumstances of each and every case. The appellants-plaintiffs would have a case, had the connection remained in the name of Roor Singh and thereafter, after his death, transferred in the name of the legal heirs. In the absence of the same, I am of the view that the remedy of the appellants-plaintiffs is only to seek partition.

In view of the aforementioned, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below, much less, no substantial question of law arises for determination by this Court.

No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 05, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No