

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1880 of 2012 (O&M)

Date of decision : 29.11.2019

...

Sukhdev Singh

.....Appellant

vs.

Amarjit Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Rajat Malhotra, Advocate for the appellant.

Mr. Samir Rathaur, Advocate for respondents No. 2 to 4
and 8 to 10.

...

H. S. Madaan, J.

Briefly stated facts of the case are that plaintiff Amarjit Singh, Charanjit Singh and Bhag Singh sons of Bhajan Singh r/o village Shahjahanpur, Tehsil Raikot, District Ludhiana, had brought a suit against defendants Punjab State Electricity Board, Patiala through its Chairman (for short 'the PSEB'), its X-EN at Raikot, SDO PSEB, Sub Division Bassain, Tehsil Raikot besides, Mohinder Kaur wd/o Hardev Singh, Jatinder Singh & Raj Kamal Singh – both sons

of Hardev Singh, Shivdev Singh and Jagdev Singh (Retd. E.T.O.), sons of Hazara Singh, seeking a declaration that they are joint owners to the extent of $\frac{3}{4}$ share in electric motor connection No. SJ36-9 installed in Killa No. 13/1/1 of Rect. No. 24, denoted by Khata No. 125/134 as per jamabandi for the year 1997-98, situated in the area of village Shahjahanpur, Tehsil Raikot, District Ludhiana and that they are entitled to get the aforesaid connection transferred in their favour according to their share on the basis of ownership, in addition to that asking for grant of permanent injunction restraining defendants No. 1 to 3 from shifting the disputed electric motor connection to some other place or transferring it further in the name of any third person and further restraining defendants No. 7 and 8 from interfering in the peaceful use of the electric motor connection for irrigation of their agricultural land according to the terms stipulated in the compromise effected between the plaintiffs and heirs of Sh. Hardev Singh deceased.

As per version of the plaintiffs, earlier Sh. Hardev Singh s/o Hazara Singh was exclusive owner in possession of the land measuring 18 kanal 9 marla, having an electric motor. Out of the said land, Sh. Hardev Singh sold land measuring 7 kanal 5 marla to plaintiffs No. 1 to 3 vide sale deed dated 7.11.1996 alongwith share in the electric motor for irrigation of the land. Sh. Hardev Singh had also asked plaintiffs No. 1 to 3 to get $\frac{1}{2}$ share of the electric motor connection transferred in their names, but the same could not be got done due to demise of Sh. Hardev Singh. Nevertheless, since the date

of purchase of land, the plaintiffs have been utilizing 1/2 share in the disputed connection for irrigation purposes. After death of Sh. Hardev Singh, his LRs who are defendants no. 4 to 6 in this case, sold the land measuring 5 kanal 4 marla out of the land, which they inherited from Hardev Singh, in favour of plaintiff No.4 along with the share in electric motor for irrigation of her land. Defendants No. 4 to 6 sold the remaining 6 kanal 0 marla of land, which they had inherited from Hardev Singh in favour of defendants no. 7 and 8 who are their close relatives. Defendants No. 4 to 6, in order to defeat the valuable rights of the plaintiffs in electric motor connection got the same transferred in the name of defendant No.7. However, the dispute which had arisen in that regard was got compromised with intervention of village Gram Panchayat, in which terms were settled for irrigation of the respective lands of the plaintiffs and defendants No. 7 and 8 as per turns. Defendants No. 7 and 8 on the strength of wrong and illegal transfer of disputed connection in their names threatened to interfere with the peaceful use of the disputed connection by the plaintiffs for irrigation of their land for which they are not entitled. Defendants No. 1 to 3 threatened to shift the disputed connection to some other place from its existing place of installation at the instance of defendants No. 7 and 8. Feeling alarmed, the plaintiffs brought the suit in the Court of law.

On getting notice, all the defendants appeared and filed separate written statements, contesting the suit. In the written statement filed by defendants No. 1 to 3, they had denied that Sh.

Hardev Singh s/o Hazara Singh was exclusive owner in possession of electric motor connection in question or that he was owner of the land measuring 18 kanal 9 malra. Sales claimed by the plaintiffs made by him were also denied for want of knowledge, so were the other material assertions made by plaintiffs in that regard. According to such defendants, the disputed connection was in the name of Sh. Hardev Singh, father of defendants No. 5 and 6 and husband of defendant No.4. Accordingly, defendants No. 4 to 6 had filed an affidavit dated 15.9.1999 in the office of PSEB that Hardev Singh has died and they being legal heirs of Hardev Singh had sold the land to Shivdev Singh, defendant No.7 and motor connection in question be also transferred in the name of Shivdev Singh. Jagdev Singh and Surjit Singh also filed their affidavits. Necessary formalities were completed in that regard. Thereafter, the connection was transferred in the name of defendant No.7. Refuting the remaining assertions, such defendants prayed for dismissal of the suit.

In the written statement filed by defendants No. 4 to 8, they had taken up various legal objections, on merits contending that Sh. Hardev Singh was cultivating the land of his brothers, namely, Shivdev Singh, defendant No.7, Jagdev Singh defendant No.8 and Surjit Singh, as they were in service. The disputed electric connection was got released in the name of Hardev Singh, just to facilitate him to complete formalities of the PSEB. The expenses for the release of disputed connection, purchase of electric motor and other accessories, expenses for sinking the bore were borne by

Hardev Singh and his brothers. Hardev Singh was not competent to sell the share in electric motor connection. Such defendants however, admitted that Sh. Hardev Singh had sold land measuring 7 kanal 5 marla in favour of plaintiffs No. 1 to 3 but denied that he had transferred the share in electric motor to plaintiffs No. 1 to 3 for irrigation purposes. According to such defendants, Hardev Singh was owner of 1/4th share only in the electric motor connection and he had wrongly mentioned his share in the sale deed dated 7.11.1996 executed by him in favour of plaintiffs No. 1 to 3 . It was further contended that heirs of Sh. Hardev Singh were not competent to sell the land measuring 5 kanal 4 marla and plaintiffs have wrongly concealed the actual date and other particulars of the sale deed as well as Khasra numbers of the alleged land. It was further contended that Sh. Hardev Singh was not owner of land measuring 5 kanal 4 marla at the time of his death. Rather he was owner of 0 kanal 9 marla and as such heirs of Hardev Singh were not competent to alienate the land measuring 5 kanal 4 marla. Sale by defendants No. 4 to 6 of land measuring 6 kanal 0 marlas in favour of the answering defendants vide registered sale deed dated 20.5.1999 was admitted, contending that defendants No. 4 to 6 have transferred the disputed electric motor connection in the name of defendant No.7. However, it was denied that any such compromise was got effected between the parties with intervention of the village Panchayat, since answering defendants were not signatory to any alleged compromise, the same if proved is not binding upon them. That the plaintiffs are neither in

use nor in possession of the disputed connection. Defendant No.7 being lawful owner was entitled to get the disputed connection shifted at the suitable place convenient for irrigation of his land as per rules of PSEB. Denying remaining assertions, the answering defendants prayed for dismissal of the suit.

No replication was filed by the plaintiffs.

From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiffs are entitled for declaration as prayed for ? OPP
2. Whether the plaintiffs are entitled for injunction as prayed for ? OPP
3. Whether the plaintiffs have got no locus standi to file the present suit ? OPD
4. Whether the plaintiffs are estopped by their act and conduct to file the present suit? OPD
5. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
6. Relief.

Parties led evidence in support of their respective claims.

In order to prove their case, plaintiffs examined Paramjit Singh as PW-1, Dalbara Singh as PW-2, Surjit Singh as PW-3, Gurdial Singh as PW-4, Jagjit Kaur as PW-6 and plaintiff Amarjit Singh himself stepped into witness box as PW-5 and thereafter

closed their evidence.

On the other hand, defendants examined Charan Singh, LDC office of PSEB, Bassian Jagraon as DW-1, Nachhattar Singh, Senior Head Clerk, Tehsil Office, Jagraon as DW-3 and defendant No.7 Shivdev Singh, himself appeared as DW-2 and defendants No. 4 to 8 closed their evidence by suffering statement by their counsel on 4.5.2007 after tendering into evidence copy of judgment dated 9.8.2005 as Exhibit D-9 and copy of sale deed as Exhibit D-10 and counsel for defendants No. 1 to 3 closed their evidence.

After hearing the arguments, the trial Court of Civil Judge (Junior Division), Jagraon, vide judgment and decree dated 15.2.2007, decreed the suit of the plaintiffs partly, in as much as, a decree to the effect that plaintiffs are entitled to 3/4th share in the electric motor connection and also entitled to have irrigation from the electric motor connection 5 BHP and a decree for permanent injunction restraining the defendants from shifting the electric motor connection from its present position and changing the name of the electric connection in the name of any third person and transferring it to any third person was passed in favour of the plaintiffs and against the defendants. However, relief claimed in the form of declaration for entitlement for getting the names of the plaintiffs incorporated in the records of the PSEB was however, declined and to that extent the suit was dismissed.

Feeling aggrieved, appellant Shivdev Singh had preferred an appeal before District Judge, Ludhiana, which was assigned to

Additional District Judge, Ludhiana, who vide judgment and decree dated 28.11.2011, dismissed the appeal. Still feeling dissatisfied legal representative of Shivdev Singh, defendant No. 7 in the suit and appellant before the Ist Appellate Court, has approached this Court again, by way of filing the present appeal, notice of which was given to the respondents.

I have heard learned counsel for the parties, besides going through the record.

The judgment passed by the trial Court is quite detailed and well reasoned, which is based upon proper appraisal and appreciation of evidence and correct interpretation of law. The trial Court in light of the factual and legal position has found merit in the claim of the plaintiffs. The fact has been noticed that electric motor connection issued by PSEB is standing in the name of Sh. Hardev Singh since dead. Sh. Hardev Singh had sold the property measuring 7 kanal 5 marlas in favour of Amarjit Singh, Charanjit Singh and Bhag Singh sons of Bhajan Singh in equal shares and 1/2 share in 5 BHP electric motor connection alongwith Kotha, bore etc. and the rights connected thereto by way of sale deed dated 07.11.1996. Copy Exhibit P-1 recital in the sale deed is also to that effect. Therefore, plaintiffs vendees have acquired 3/4th share each out of 1/2 share which had been sold by Sh. Hardev Singh to the plaintiffs, though there is a procedure and formalities, which are required to be completed by plaintiffs for the purpose of getting their names incorporated in the PSEB, for which affidavit of previous owner of

the connection holder is to be supplied. But that formality has not been completed by the plaintiffs so far. The trial Court has observed, that defendant Shivdev Singh alongwith other defendants became holder of connection in records of PSEB, but that does not mean that the plaintiffs cannot acquire right in the connection itself. If the connection cannot be transferred in the names of the plaintiffs, however, they can certainly enjoy vested rights to have their land irrigated from the said electric connection in accordance with their $\frac{3}{4}$ th share each and according to the plaintiffs they were declared joint owners to the extent of $\frac{3}{4}$ share in the electric motor connection. Therefore, defendants No. 1 to 3 were restrained from shifting the disputed electric connection to some other place or transferring it further in the name of any third person without the consent of the plaintiffs and defendants no. 7 and 8 were also restrained.

In appeal also, the Appellate Court had affirmed the judgment and decree passed by the trial Court. The Ist Appellate court has drawn the following conclusion:-

“The learned trial Court was as such justified in arriving at the conclusion that as per the sale deed plaintiffs/vendee had certainly acquired $\frac{3}{4}$ th share each out of half share that was sold by deceased Hardev Singh to them. Although the connection in question could not be shifted or transferred in their names as only a share was transferred in their

favour concerning the use of connection in question which remained in the name of only one person in the record of PSEB, yet it did not mean that they could not acquire rights to use the connection to the extent it was transferred to them. The connection thus could not be transferred technically speaking in the names of all its users and it remains in the name of only one person at a time in the records of PSEB. But the rights to use the same normally keep on devolving and passing. It was therefore, rightly found by the learned trial Court that plaintiffs certainly enjoyed their vested rights to have their land irrigated from the electric connection in question according to their shares i.e. $\frac{3}{4}^{\text{th}}$ each. They were hence justifiably declared joint owners to the extent of $\frac{3}{4}^{\text{th}}$ share in the said connection. There was absolutely nothing unjustified and wrong with the findings and conclusion arrived at by the trial Court in deciding the issues and controversy.”

That conclusion drawn is proper and appropriate. Both the Courts below by proper appraisal and appreciation of evidence and correct interpretation of law, have found merit in the claim of the plaintiffs, for that reason suit filed by the plaintiffs was decreed partly. I do not see any reason to upset such judgments passed by the

Courts below. There is no illegality or infirmity therewith.

No substantial question of law arises in the present appeal.

Accordingly, the present appeal is found to be without any merit and is dismissed accordingly.

29.11.2019
chugh

(H.S. Madaan)
Judge

Whether speaking / reasoned	Yes / No
-----------------------------	----------

Whether reportable	Yes / No
--------------------	----------