

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 645 of 2013 (O&M)

Date of Decision: 16.9.2019

Raj Mohan Singh

---Appellant

vs.

Manjiv Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Vivek Salathia, Advocate
for the appellant
Mr. Aayush Arora, Advocate
for respondent No. 1
Mr. Judgpreet Singh Warring, Advocate
for respondent No. 3

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for permanent injunction, declaration and mandatory injunction filed by the respondent-plaintiff in respect of electric connection Nos. F-1049 and F-1050, was decreed by the trial court, vide judgment and decree dated 22.1.2010 to the following effect:-

“.....suit of the plaintiff succeeds and is decreed for declaration that plaintiff and defendants No. 1 and 2 are owners of the electric motor connections No. F-1049 and F-1050 in equal share and defendants are restrained from disconnecting, shifting or transferring these two electric motor connections in any manner. Defendant No. 3 is further directed to restore the electric motor connection No. F-1050 running in village Kalyan within a period of two months from the date of decree.”

Appeal preferred by unsuccessful defendant No. 1 did not find favour with the Additional District Judge, Patiala as the court affirmed findings of the trial court without variance, vide judgment and decree dated 16.10.2012.

The facts relevant for disposal of present appeal are that as per case of the plaintiff-respondent, plaintiff and defendants No. 1 and 2 are holding joint ancestral land in three villages namely Bibipur, Kalyan and Bishanpur Chhanna, Tehsil and District Patiala. They, for joint cultivation of land, took two temporary electric connections in the name of defendant No. 1. The same were made permanent by depositing charges jointly by the parties in the name of defendant No. 1, in the year 2001. Since the year 2005, plaintiff, defendant No. 1 and 2 started cultivating the land separately for the purpose of cultivation. Plaintiff has been cultivating land measuring 22 kanal 7 marlas at village Kalyan and irrigates this land with water from electric motor connection No. F-1050. Land measuring 24 bigha and 19 biswas situated at village Bibipur is irrigated by the plaintiff from electric motor connection No. F-1049. Besides this land, parties have been cultivating their land as per their share from other six electric motors. In the month of November 2005, dispute arose between plaintiff and defendant No. 1 as defendant No. 1 wrongly started cultivating one acre of land out of land situated at village Bibipur and proceedings under Section 107/151 Cr.P.C. were initiated against defendant No. 1. On 16.11.2006, defendant No.1 without any right, title or authority has got disconnected motor connection No. F-1050 temporarily to cause loss to the plaintiff. The above said electric connections are running in the name of defendant No. 1 but

charges of the same were deposited by the parties from agricultural income.

The load was got extended by the plaintiff himself and now plaintiff, defendants No. 1 and 2 are joint owners of the aforesaid electric motor connections in equal shares.

Defendant No. 1 filed the written statement raising preliminary objections that the suit is not maintainable; plaintiff has not approached the court with clean hands and has no locus standi to file the suit. The relationship between the parties is admitted. However, it is averred that plaintiff, defendants No. 1 and 2 are cultivating the land separately as per their shares since 2001. Defendant No. 1 applied for two temporary electric connections exclusively in his name and charges were deposited by him from his own pocket. It is denied that plaintiff is irrigating land by using the aforesaid electric connections. All other material averments of the plaint were denied with a prayer for dismissal of the suit.

Defendant No. 2 filed separate written statement and admitted claim of the respondent-plaintiff.

Punjab State Electricity Board (in short “the Board”)- defendant No. 3 also filed the written statement with regard to electric connections being applied and allotted in the name of defendant No. 1. Electric connection No. F-1050 was disconnected on the request of defendant No. 1.

Plaintiff filed replication and reiterated the facts stated in the plaint while controverting the preliminary objections raised by defendant No. 1.

The trial court framed issues, reproduced in para 8 of the

judgment of said court. Evidence adduced by the parties finds reference in paras 9 and 10 of the judgment of trial court. Having heard counsel for the parties in the light of materials on record, trial court decided issues No. 1 to 3, taken up together in favour of respondent-plaintiff on the basis whereof suit of the plaintiff was decreed, noticed hereinbefore.

Appeal preferred by unsuccessful defendant No. 1 did not find favour with the Additional District Judge, Patiala.

Counsel for the appellant would argue that findings recorded by the trial court with regard to any custom in jat sikh families to live in joint families and have joint income and expenditure are based upon surmises and conjectures, therefore, can not stand the test of judicial scrutiny. It is further argued that as the respondent-plaintiff had approached the court for grant of relief of declaration and mandatory injunction by raising a specific plea that connections in question were obtained from joint family funds, it was obligatory for the respondent-plaintiff to adduce sufficient rather cogent evidence to establish his plea in this regard. It is further argued that plea of the respondent raised in the replication that appellant did not have any source of income other than land jointly owned by the plaintiff and defendants No. 1 and 2 gets falsified and belied in view of testimony of the appellant and one witness examined by him coupled with admission of plaintiff Manjiv Singh that appellant was working in sugar mill, Rakhra since 1996 and he continued to be there when the electric connections in dispute were installed temporarily and thereafter made permanent in the year 2001. It is further argued that appellant also placed on record various documents as evidence of payment made to the Board in respect of the

connections in question.

Counsel representing the respondent-plaintiff, on the contrary, has supported consistent findings recorded by the courts with the submission that the same are based upon materials on record and do not suffer from any legal flaw. It is further argued that respondent-plaintiff has produced pass books in respect of the aforesaid connections as well as receipts with regard to increase of load. It is further argued that land in villages Kalyan and Bibipur in which the electric motor connections are installed is the ancestral land inherited by the plaintiff and defendants No.1 and 2 and the land had not been partitioned either by agreement between the parties much less by the revenue courts. It is further argued that all the three co-sharers had started cultivating the land separately just for the purpose of cultivation from the year 2005 and all of them had been using electric motor connections in question besides six other connections installed in joint land situated in three villages namely Kalyan, Bibipur and Bishanpur Chhanna.

I have heard counsel for the parties, perused the paper book and copies of documents supplied during the course of hearing.

Before adverting to the submissions made by counsel for the parties, reference to few judgments of this Court dealing with dispute of tubewell connection between co-sharers/co-owners of agricultural land is material. In **Gopi Ram vs. Shyam Sunder and others 2006(2) RCR (Civil) 710**, counsel for the appellant made submissions that onus was on respondent Nos. 1 and 2 to prove that the tubewell was jointly owned and possessed by the parties but the trial court has gone wrong while holding that the appellant has failed to prove if the tubewell was exclusively got

installed by him. It was held that respondents have succeeded to prove that the land was jointly owned by the parties and the tubewell has been installed in the land which is jointly owned by them. No doubt, the tubewell is in the name of the appellant but that will not advance case of the appellant unless he shows that it was got installed by him in that piece of land which was in his possession. In **Uttam Singh vs. Sohan Singh 2010 (4) PLR 120** it was held in para 10, reads thus:-

“To my mind, the question involved in this appeal is “as to whether the plaintiff, on the strength of being a co-sharer, can seek a restraint order against the defendant from irrigating his land from the Well/bore dug up by him from his own expenses in which he had installed electric motor, obtained electricity connection and is making payment of the electricity charges to the electricity Board.” In this case, both the Courts below have recorded a concurrent finding of fact, insofar as the electric motor and electricity connection and also the payment of electricity bills by the defendant is concerned in favour of the defendant and insofar as the bore/Well is concerned, the defendant has categorically pleaded and proved in his statement that the bore/Well dug up in the year 1975 had become non-functional and after that in the year 1986 the defendant had dug up a new bore with his own expenses on which he has not been cross examined at all nor even a suggestion has been put to him that he is making a false statement. Thus, from the preponderance of evidence, it is proved that the defendant is

not only the owner of the electric motor and electricity connection but also of bore/Well which is in question and is entitled to use it in a husband like manner without any interference from any quarter much less on the basis of the suit filed by his co-sharer.”

Reverting to the case at hand, indisputably the electric motor connections are installed in land jointly owned by the plaintiff and defendants No. 1 and 2. No such plea has been raised by either of the parties that joint land has been partitioned between the co-sharers. On the contrary, respondent-plaintiff has raised the plea that parties are cultivating the joint land separately for the purpose of cultivation since the year 2005 but the appellant has pleaded that they are cultivating the joint land separately since the year 2001. However, counsel for the appellant has failed to point out any materials on record to substantiate plea of the appellant that joint land is cultivated separately since the year 2001. Nevertheless, neither the appellant has raised any such plea nor adduced any evidence with regard to khasra numbers in which electric motor connections are installed much less to prove that these are installed in khasra number which is in his exclusive possession. That being so, when the case is examined in the light of judgment of this court **Gopi Ram's case (supra)**, it is difficult to accept contention of the appellant that the courts have committed error much less perversity by holding that all the three co-sharers in the land are entitle to ownership and user of electric motor connections.

The respondent-plaintiff appeared in the witness box and

tendered into evidence his duly sworn affidavit reiterating the averments raised in the plaint. He also produced documents, copy of application for temporary connection Ex. P1, receipt of extension of load of connection No. F-1050 Ex. P2 and P3, receipt regarding extension of load of connection No. F-1049 Ex. P4 and copies of original pass book of connection No. F-1050 Ex. P9 and original pass book of connection No. F-1049 Ex. P10. All these documents were tendered into evidence without any objection by counsel for defendant No. 1/appellant before the trial court. In cross examination, a suggestion was put to him that pass books are forged one and original pass books are in possession of defendant Raj Mohan Singh.

The defendant examined an official of the Board-defendant No. 3 but the witness was not confronted with the documents i.e. pass books and receipts pertaining to connections in question produced by the plaintiff in order to prove that these documents were not issued by the Board or the same are forged one. Not only this, the appellant-defendant No. 1 did not produce pass books in respect of the connections in question when he appeared in the witness box.

With regard to receipts pertaining to payment of charges for extension of load of both the connections, it was suggested to the plaintiff that the same might have been stolen by him from the house of defendant No. 1. The plea raised by defendant No. 1 during cross examination of the plaintiff in respect of aforesaid documents was merely an expression of helplessness and to escape consequence of respondent/plaintiff having custody of pass books of connections as well as receipts qua payment for extension of load of disputed connections. Keeping in view that

connections in question were installed in the joint land coupled with that payment with regard to extension of load was made vide receipts in possession of plaintiff and pass books are also in custody of the plaintiff, it is difficult to accept contention of the appellant that he is exclusive owner of the aforesaid connections merely because the same were installed in his name. It is pertinent to note that stamp paper(s) on which the appellant got prepared his affidavit for submitting application for sanction of connections was purchased by plaintiff Manjiv Singh in view of endorsement made by the stamp vendor, as has been proved. Taking a cumulative view of the aforesaid facts and circumstances, when examined in the light of aforesaid judgments, there is no escape from conclusion that consistent findings recorded by the courts do not suffer from an error much less perversity nor the present appeal raises a question of law that needs determination. In this view of the matter, contentions raised by the appellant are bereft of merit thus repelled.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

16.9.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No