

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

RSA No. 2875 of 2013(O&M)

Date of decision: 29.3.2019

Nirmal Singh

.....Appellant

VERSUS

Atma Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Arnav Sood, Advocate for the appellant.

Mr. H.S. Dhandi, Advocate for the respondents.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for permanent injunction restraining the respondents/defendants from obstructing or stopping the appellant/plaintiff from using tubewell connection for irrigation of joint agricultural land from common tubewell measuring 51 kanal 11 marlas, detailed in headnote of the plaint was dismissed by the trial Court vide judgment and decree dated 11.06.2012 and appeal preferred by unsuccessful appellant did not find favour with the Additional District Judge, Fast Track Court, Ludhiana, whereby findings recorded by the trial Court were affirmed without variance.

The appellant and respondents are real brothers being sons of Chanan Singh. The controversy in the present appeal is in respect of tubewell motor connection installed in the name of Atma Singh – defendant No.1, in land measuring 51 kanal 11 marlas situated at village Kartarpur, Tehsil Payal, District Ludhiana. The plea of the appellant is

that the plaintiff and defendants are owners in possession of their respective shares to the extent of 1/5th share each of land which was duly partitioned under oral settlement and they are cultivating land of their respective shares since long. At the time of installation of tubewell, as a mark of respect, connection of tubewell was applied in the name of eldest brother Atma Singh. The tubewell is used for irrigation of land for the past more than 10 years. It is further averred that due to some family dispute, respondent No.1 in connivance with other respondents by taking advantage of tubewell in his name has refused to allow use of tubewell by the appellant/plaintiff.

The respondents/defendants filed the written statement and challenged maintainability of the suit in present form. They denied that appellant has right or interest in the motor connection/tubewell connection bearing No.PL-271 installed in the name of Atma Singh who spent huge amount from his own pocket. They further resisted the suit for want of locus standi and suit being without cause of action. However, partition of land through oral family settlement is not denied and so also the parties cultivating their respective shares on the basis of oral partition.

The controversy between the parties led to framing of issues, reproduced in para 4 of the judgment of trial Court. The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial Court answered issue No.1 with regard to permanent and mandatory injunction against the appellant and consequently the suit was dismissed. As has been noticed hereinbefore, appeal preferred by the appellant came to be dismissed by the Additional District Judge, Ludhiana.

Counsel for the appellant would argue that during pendency of suit, a compromise was effected with the intervention of respectables of village whereby it was agreed that the connection would continue in the name of Atma Singh but Nirmal Singh, Ram Singh, Kaka Singh, Mehar Singh and Kuljit Singh shall be entitle to irrigate their land according to their turn and the said compromise is Ex.P4. It is further argued that Atma Singh in his cross examination conducted on 31.05.2012 had stated that he had asked the police that he had no objection for continuing irrigation from the electric motor but he should pay for the same. He further admitted that Nirmal Singh had been cultivating the land himself as well as giving land on theka to someone and the person who used to give (sic) the land on theka was also irrigating the fields from same motor. According to counsel, in view of settlement dated 28.02.2005 Ex.P4 and facts elicited in cross examination of Atma Singh, the appellant has right to irrigate land of his share by using the motor connection in question. It is further argued that the mere fact that electric connection was installed in the name of Atma Singh would not enure to his benefit to deny use of water from the said electric motor by the appellant and other co-sharers in land measuring 51 kanal 11 marlas.

Counsel representing the respondents, on the contrary, has supported consistent findings recorded by the Courts with the submission that it is not open for the Court in second appeal to re-appreciate the evidence and intervene in concurrent findings merely because another view is possible. It is further argued that appellant has miserably failed to establish that concurrent findings suffer from perversity or raise a question of law that needs determination in second appeal. The last submission

made by counsel is that the appellant has failed to prove that he ever spent any money either for installation of motor connection, its maintenance and electric consumption etc, therefore, he cannot claim any right in the electric connection in question. In support of his contention, he has relied upon judgment of this Court **Uttam Singh Vs. Sohan Singh, 2010 (48) RCR (Civil) 437.**

I have heard counsel for the parties, perused the paper-book and records.

It is undisputed position of the case that though in the revenue records, land measuring 51 kanal 11 marlas is recorded to be joint ownership of Atma Singh and others including appellant – Nirmal Singh to the extent of 1/5th share each as per jamabandi for the year 2001-02 Ex.P1 but the parties have admitted that joint land was orally partitioned amongst the co-owners and they are cultivating their respective shares separately. The motor connection in question was installed in the name of defendant No.1 and continued to be so. There is nothing on record suggestive of the fact that the present appellant ever spent any money for digging tubewell bore, installation of electric connection and maintenance of electric motor etc.

This Court in **Uttam Singh's case** (supra) in para 10 of the judgment has held, quoted 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 the 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.”

In view of enunciation laid down in **Uttam Singh's case** (supra), it is difficult to accept contention of the appellant that he can assert a right to use the electric connection in question merely because he is recorded to be one of the co-owners of joint land measuring 51 kanal 11 marlas to the extent of 1/5th share.

Counsel for the appellant has sought to rely upon Panchayati Faisla Ex.P4 and facts elicited in cross examination of Atma Singh. Atma Singh has not admitted the compromise Ex.P4 though he had stated that it bears his thumb impression at point – X which is actually the thumb impression of someone else. Perusal of the document Ex.P4 would reveal that as per the settlement, the appellant/plaintiff agreed to withdraw the suit pending in the Court. Admittedly, the appellant/plaintiff did not withdraw

the suit and proceeded with the same for decision on merits. Once the appellant himself has not complied with the terms and conditions of settlement Ex.P4, he cannot derive benefit thereof in order to assert his right in the motor connection in question as no one can be allowed to approbate and reprobate at the same time.

This brings the Court to facts elicited in cross examination of Atma Singh, highlighted by counsel for the appellant. Atma Singh had admitted that Nirmal Singh had been cultivating the land himself as well as giving the land on theka to other person and the person who used to give (sic) the land on theka was also irrigating the fields from the same motor. He had also stated that Nirmal Singh did not make payment of electricity charges of motor but he used to irrigate the land from the said motor. Assuming that Atma Singh permitted the appellant or lessee under Nirmal Singh to irrigate the fields from the motor connection in question, the same would not *ipso facto* create a right in favour of the plaintiff to seek injunction against the defendants/respondents particularly in the circumstances that there is nothing on record suggestive of the fact that he ever paid any expenses for installation of the motor connection, maintenance thereof and consumption of electricity charges etc.

To be fair to the appellant, counsel had made a vain attempt to argue that the appellant is ready to share the electricity charges if ascertained by the Court or disclosed by the respondents to the extent of use of water from the electric connection in question. When the case is examined in the light of observations made in **Uttam Singh's case** (supra) discussed hereinbefore, the appellant/plaintiff is not entitle to discretionary and equitable relief of injunction merely on the basis that either he or

lessee under him was allowed to use water from the electric motor in question by Atma Singh, being real brother of the appellant/plaintiff. In this view of the matter, I do not find an error much less perversity in findings recorded by the Courts determining issue No.1 against the appellant and in favour of the respondents.

No other point has been raised.

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

MARCH 29, 2019		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no