

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

Date of decision: 14.5.2019

1.

RSA No.2757 of 2014(O&M)

Surjit Singh

.....Appellant

VERSUS

Jarnail Singh and another

.....Respondents

Present: Mr. G.S. Toor, Advocate for the appellant.

Mr. P.S. Dhaliwal, Advocate for respondent No.1.

2.

RSA No.5156 of 2014(O&M)

Jarnail Singh

.....Appellant

VERSUS

Surjit Singh and another

.....Respondents

Present: Mr. P.S. Dhaliwal, Advocate for the appellant.

Mr. G.S. Toor, Advocate for respondents.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order will dispose of RSA Nos.2757 and 5156 of 2014 as these have emerged out of Civil Suit No.95 of 05.06.2010 titled Surjit Singh Vs. Jarnail Singh and another and involve identical questions of law and fact for adjudication. For facility of reference, facts are taken from RSA No.2757 of 2014.

The present litigation pertains to *shamlat deh* stated to be under cultivation of Sh. Gurbax Singh son of Hardit Singh (since

deceased), predecessor in interest of the parties being sons and daughter of said Gurbax Singh.

Surjit Singh – plaintiff filed suit for permanent injunction restraining the defendants/respondents from interfering in possession or forcibly taking possession of land qua his share, detailed in headnote of the plaint, with the averments that the plaintiff and defendants are in possession and jointly cultivating the suit land . He also sought injunction restraining the defendants from causing hindrance in use of electric motor connection for irrigating his fields qua his share.

The trial Court dismissed the suit vide judgment and decree dated 03.05.2013 which resulted in filing of Civil Appeal No.58 of 16.05.2013 by Surjit Singh and cross appeal No.160 of 20.09.2013 filed by Jarnail Singh (defendant No.1) and both the appeals were decided vide common judgment and decree dated 25.02.2014. The appeal preferred by Surjit Singh – plaintiff was partly allowed to the effect that he is entitled to permanent injunction qua using electric motor connection in question but appeal filed by Jarnail Singh – defendant No.1 was dismissed.

Still feeling dis-satisfied, one appeal has been preferred by Surjit Singh whereas the other appeal has been filed by Jarnail Singh. Surjit Singh has filed the appeal with regard to non-grant of injunction in respect of his alleged possession of suit land. Counsel for the appellant has not disputed that the land in question is *shamlat deh* and the appellant cannot claim ownership of the said land. He has also not denied that as per revenue record, suit land is not recorded to be in joint much less exclusive possession of the plaintiff/appellant. This apart, as per averments raised by the appellant/plaintiff, land is stated to be in joint possession of the

plaintiff and defendants, therefore, the question of grant of injunction against a person who is stated to be in joint cultivating possession does not arise in any circumstances, whatever. In this view of the matter, I do not find an error much less illegality in consistent findings recorded by the Courts rejecting claim of the plaintiff/appellant for grant of injunction against interference in possession or forcible dispossession of plaintiff from the suit land. Accordingly, appeal preferred by Surjit Singh (RSA No.2757 of 2014) is liable to be dismissed being devoid of merits and ordered accordingly.

This brings the Court to dispute with regard to electric motor connection No.PHA-294/AP. Counsel for the parties have not disputed that the aforesaid connection was installed in the name of Sh. Gurbax Singh, predecessor in interest of parties to the suit. The plaintiff has claimed his right to use water from the said connection on the premise that he has become a co-owner/co-sharer in the said connection on the basis of natural succession. On the contrary, Jarnail Singh – defendant No.1 has raised the plea that the said connection was sold by Sh. Gurbax Singh in his favour and Gurbax Singh executed affidavit dated 13.05.1997 Ex.D1. The trial Court by relying upon affidavit Ex.D1 negated plea of the plaintiff with regard to his entitlement to use electric motor connection in question. However, the Appellate Court set aside findings of the trial Court with regard to Jarnail Singh being exclusively entitled to motor connection in question on the basis of affidavit Ex.D1 for the reasons assigned in para 22 of its judgment.

Counsel for the respondent would argue that affidavit Ex.D1 has been proved in accordance with law by examining Darshan Pal Singh,

Ex-Sarpanch, who is the attesting witness to the affidavit Ex.D1. It is argued with vehemence that as Sh. Gurbax Singh executed the affidavit accepting factum of sale of connection in question in favour of Jarnail Singh and Jarnail Singh can file an appropriate application before the electricity authorities for transfer of connection in his name, the plaintiff/appellant is left with no right or interest in the electric motor connection and as such he is not entitle to use the connection in question.

Counsel for the appellant while refuting contention of the respondent/defendant No.1 has supported findings of the first Appellate Court with the submission that had it been true that Sh. Gurbax Singh sold the motor connection in favour of Jarnail Singh, there was no reason for him to remain silent till date as he never filed an application for transfer of the connection in his name either during lifetime of Gurbax Singh or subsequent thereto.

Respondent/defendant No.1 examined Darshan Pal Singh, Ex-Sarpanch to prove affidavit Ex.D1. He tendered into evidence affidavit Ex.DW2/A by way of examination in chief. Para 2 of the affidavit pertains to execution of affidavit dated 13.05.1997 by said Gurbax Singh. To be fair to the respondent, there is no challenge to testimony of Darshan Pal Singh in respect of averments made in para 2 of the affidavit, both in regard to its execution as well as attestation and as such testimony of Darshan Pal Singh in respect of the affidavit in question remains altogether unchallenged.

The question for consideration is that even if it is accepted that the affidavit Ex.D1 has been proved in accordance with law, whether

the respondent can claim exclusive right to the electric motor connection on the basis of affidavit Ex.D1.

In the affidavit, particulars of the motor connection i.e. number etc. have not been mentioned. It makes reference to motor connection in khasra No.241//17 (8-0). There is no evidence adduced by the respondent to establish that the motor connection in question is installed in khasra No.241//17. As a matter of fact, in the suit filed by the plaintiff/appellant, khasra No.241//17 is not the subject matter of controversy. Perusal of the revenue record, particularly copies of jamabandis and khasra girdawari would reveal that there is no reference that electric motor connection has been installed in khasra No.241//17. However, in the jamabandis various khasra numbers including khasra No.241//17 are shown to be irrigated with bore. In the given circumstances, respondent cannot derive advantage to his contention from affidavit Ex.D1 that the same pertains to account No.PHA-294/AP, installed in the name of Sh. Gurbax Singh.

A copy of motor connection in the name of Gurbax Singh is available on record. In the column pertaining to connected load, it is 12.5 BHP. In the affidavit Ex.D1, there is reference to electric motor of 5 horse power. The respondent has not examined a witness of the electricity department to prove that either the electric motor connection in the name of Gurbax Singh was installed in khasra No.241//17 or this connection was of 5 horse power in May 1997 or the connected load was increased to 12.5 BHP later in point of time. As has been rightly noticed by the Appellate Court, affidavit does not make reference to the sale consideration paid to Sh. Gurbax Singh. There is no explanation much less tangible rendered by

the respondent that if Sh. Gurbax Singh had sold the motor connection in question in the year 1997, why the respondent did not get it transferred in his name at an appropriate stage. Analyzed from any angle, it is difficult to accept contention of the respondent that findings of the first Appellate Court with regard to the motor connection in question suffer from any flaw much less perversity. That being so, findings of the first Appellate Court with regard to electric motor connection are liable to be affirmed and ordered accordingly.

In view of what has been discussed hereinbefore, finding no merit, the appeals fail and are accordingly dismissed leaving the parties to bear their own costs.

MAY 14, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no