

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 5528 of 2015(O&M)

Date of Decision:26.3.2019

Ravinder

---Appellant

vs.

Rajbir Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sumit Sangwan, Advocate
for the appellant

Mr. Ravinder Phogat, Advocate
for respondent No. 1

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for permanent injunction filed by respondent No. 1 in respect of tubewell and electric connection was partly decreed by the trial court vide judgment and decree dated 20.10.2012 that came to be affirmed in appeal filed by unsuccessful defendant No. 2 (appellant herein) by the Additional District Judge, Bhiwani as appeal preferred by the appellant was dismissed on 16.7.2015. Still feeling dissatisfied, the present appeal has been preferred by defendant No. 2-appellant.

The facts relevant for disposal of present appeal are that respondent No. 1 claimed injunction against alienation of joint tubewell and electric connection more than his share by respondent No. 2(defendant No.

1) on the premise that plaintiff and defendant No. 1 are joint owners in possession of land measuring 40 kanal comprised in khewat No. 156/127 khatauni No. 172 as per jamabandi for the year 2002-03 situated in revenue estate of village Jhojhu Kalan Tehsil Charkhi Dadri District Bhiwani. It is averred that there exists a joint tubewell on the above said land but the electric motor connection is in the name of defendant No. 1. The plaintiff and defendant No. 1 have equal share in above said land, tubewell and electric connection. Defendant No. 1 is a strong head person and intends to sell specific numbers of land in dispute, joint tubewell alongwith electric connection but he has no right to do so.

Satbir Singh defendant No. 1 filed the written statement and admitted that he was in joint ownership and possession of land measuring 40 kanal but tubewell and tubewell connection exclusively belongs to him as he incurred all the expenses for installation of the tubewell and he has already sold the same. The plaintiff is a strong head person and keeps on interfering in exclusive possession of answering defendant over tubewell. In order to avoid daily bickering, he had to sell his share in 40 kanal alongwith tubewell and electric connection.

Appellant-defendant No. 2 filed his separate written statement and stated that there was a family settlement between the plaintiff and defendant No. 1 and thereafter both were owners of land measuring 20 kanal each. Defendant No. 1 installed a tubewell in his share and also constructed a room therein. He also had an electric connection in his name and the electricity bills were paid by defendant No. 1. The plaintiff has no concern with tubewell. Land measuring 20 kanal was sold to him by

defendant No. 1 for Rs. 6,00,000/- vide sale deed No. 4171 dated 6.1.2007.

The trial court framed following issues for determination:-

1. Whether the plaintiff being co-sharer is entitled to decree of permanent injunction as prayed for? OPP
2. Whether the plaintiff has no locus standi to file the present suit? OPD
3. Whether present suit is not maintainable in the present form? OPD
4. Whether plaintiff has not come to the Court with clean hands and concealed the true and material facts? OPD
5. Relief.

To prove his case, the respondent-plaintiff appeared in the witness box and examined Balwan Singh PW2. To rebut evidence of plaintiff Ravinder, appellant appeared in the witness box and examined Chandu Lal DW2 and Sunil Kumar DW3. Satbir Singh defendant No. 1 also stepped into the witness box.

The trial court answered issue No. 1 in favour of the plaintiff but issues No. 2 to 4, onus whereof was placed upon the defendants were decided against them and eventually the suit was partly decreed in the following terms.

“As defendant No. 2 purchased the suit land from defendant No. 1 during pendency of the case he shall, stepped into his shoes. Defendant No. 1 has also failed to prove that there had been a family partition between both the brothers. So as long as there is any partition either by mutual settlement or decree of

court, the plaintiff has every right to use tubewell and electricity connection and defendant No. 2 is hereby restrained from causing any disturbance in peaceful enjoyment by plaintiff. He can get possession of land purchased by defendant No. 1 through partition.

As has been noticed hereinbefore, appeal preferred by unsuccessful defendant No. 2/appellant did not find favour with the Additional District Judge, Bhiwani whereby findings of the trial court on issue No. 1 were affirmed and accordingly the appeal was dismissed with costs.

Counsel for the appellant would argue that electric connection in respect of tubewell in question is admittedly issued in the name of Satbir Singh, brother of respondent-plaintiff Rajbir Singh and said Satbir Singh has sold his share to the extent of 20 kanal out of 40 kanal of land vide sale deed No.4171 dated 6.1.2007 executed during pendency of the suit alongwith tubewell and motor connection. It is vehemently argued that as there is not even an iota of evidence led by respondent-plaintiff that either he incurred any expenses for digging of tubewell or installation of electric connection, he cannot claim any right in the tubewell and electric connection merely because land measuring 40 kanal is recorded to be joint ownership of plaintiff and his brother Satbir Singh prior to sale by Satbir Singh in favour of the appellant. In support of his contention, he has relied upon judgment of this Court **Uttam Singh vs. Sohan Singh 2010(4) PLR 120**. In addition, it is argued that the courts have wrongly relied upon document Ex. PW2/A and testimony of Balwan Singh PW2 in order to

accept prayer of the respondent-plaintiff for grant of injunction.

Counsel representing the contesting respondent-plaintiff, on the contrary, has supported consistent findings recorded by the courts with the submission that the same neither suffer from an error much less perversity that would call for intervention in second appeal. It is further argued that plaintiff produced documentary evidence with regard to payment of electricity bills sufficient to establish that both the brothers were using the tubewell jointly. For this purpose, he has referred to cross examination of Balwan Singh PW2 wherein he had deposed that security on account of SP connection was deposited by Rajbir Singh son of Dalip Singh and an amount of Rs. 1180/- after withdrawal was adjusted towards account No. JJ-41/0021.

Counsel representing the appellant, in response, would argue that electric motor connection earlier in the name of Stabir Singh has now been transferred in the name of appellant bearing account No. 834 JK52-1006 JAP 247 as has been reflected in Ex. D3 and D4 i.e. Bill-cum-receipt issued by Dakshin Haryana Bijli Vitran Nigam Limited Sub Division code B34 Sub Division name Jhojhu Kalan. It is further argued that since the electric connection in the name of Satbir Singh did not bear account No. JJ-41/0021 referred to in receipt Ex. PW2/A, the plaintiff-respondent neither can support findings of the courts on the basis of document Ex. PW2/A nor can be heard to say that the respondent-plaintiff made any payment in respect of the bills qua electric connection in question.

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

Before advertng to the submissions made by counsel for the parties, it is appropriate to go through the judgment passed by this Court in **Uttam Singh's case (supra)**. In the said case, plaintiff filed a suit for permanent injunction restraining the defendant from interfering in watering his fields comprising in khewat No. 71/1 khatauni No. 100/1 khasra No. 30/4 situated in village Lehal, Tehsil and District Ludhiana from electric motor (tubewell) on the ground that he is joint owner in possession of land surrounding land of the defendant where the electric motor is installed and the defendant has no right to restrain the plaintiff from watering his fields. It was alleged that the defendant is his brother with whom he has the joint holding. The plaintiff has been watering his fields through electric motor installed in khasra No. 30/4 from the date he inherited the land and never relinquished his right in the well and as such his share continues to exist. The defendant in the case claimed himself to be exclusive owner of the motor and electricity connection bearing account No. Z-181. This court 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.”

Reverting to the case at hand, perusal of judgments passed by the courts leaves no manner of doubt that there is no reference to any

evidence led by the respondent-plaintiff to prove that he had incurred any expenditure for digging tubewell in the joint land, purchase of electric motor or electric connection, admittedly in the name of Satbir Singh, vendor of the appellant. Counsel for the contesting respondent has failed to point out any material on record to prove that respondent-plaintiff ever made any payment of electricity bills qua the electric connection in question except that a witness of the electricity department produced Ex. PW2/A, relied upon by the courts. However, the courts have failed to appreciate that said document makes reference to account No. JJ-41/0021 and similar is the statement of Balwan Singh PW2 with regard to security amount deposited by Rajbir Singh to the tune of Rs. 1180/- being adjusted towards account No. JJ-41/0021. Counsel for the respondent-plaintiff despite raising an argument by counsel for the appellant that account number of electric connection in question is the one shown in documents Ex. D3 and D4 has failed to advance any arguments to counter that contention of counsel for the appellant or to establish on the basis of materials on record that in fact the account number of the electric connection in question is bearing No. JJ-41/0021. In the given circumstances, I find merit in contention of the appellant that the document Ex. PW2/A produced by Balwan Singh PW2 cannot be connected with motor connection in question nor findings of the courts that the respondent-plaintiff had been making payment of bills in respect of electric connection in question can be allowed to sustain. In this view of the matter, it can safely be held that findings of the courts by relying upon document Ex. PW2/A are the result of misreading of evidence and suffer from perversity.

In absence of the respondent producing and proving the fact that he ever had contributed for installation of tubewell/motor or electric connection sanctioned in the name of his brother Satbir Singh, it is difficult to sustain findings of the courts merely on the basis that the respondent-plaintiff happens to be one of the co-owners of land measuring 40 kanal out of which his brother Satbir Singh had already sold his half share alongwith tubewell and electric connection in favour of the appellant-defendant No. 2. In this view of the matter, findings of the Courts on issue No. 1 are set aside.

No other point has been raised.

For the foregoing reasons, the appeal is allowed. The judgments and decrees passed by the courts are set aside. The suit filed by the respondent-plaintiff for grant of permanent injunction is dismissed with costs throughout .

(Rekha Mittal)
Judge

26.3.2019
paramjit

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