

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.1349 of 2017 (O&M)
Date of Decision.01.05.2019

Kulwant Singh and others

...Appellants

Vs

Jassa Singh and others

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sushma Chopra, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is directed against the concurrent finding of fact whereby suit of the respondent-plaintiff has been decreed in the following manner:-

“28. On the basis of the aforesaid discussion and findings on issues, suit for mandatory injunction of the plaintiff is hereby decreed directing the defendants No.5 to 7 to restore the electric poles to its original position at point U and V as shown in the site plan dt. 21.8.14 Ex.P2 (also original position is shown as Mark U and V in Black Colour in the site plan dt. 16.01.13 (not exhibited) and further the defendants No.5 to 7 are restrained from passing any order with regard to completion of the record in respect of the illegal shifting of the electric pole by defendant no.1 to 4 to point B and E shown in the site plan dt 21.08.2014 Ex.P2 (i.e. point/Mark WX in site plan dt. 16.01.13). The defendants No.1 to 4 are also restrained from laying bricks in the land bearing khasra No.104/15, 104/6, 104/5/1, 5/2, 5/3, 65//25 fully shown in the jamabandi for the year 2010-11 Ex.PY situated at village Naushera Pannuan, Tehsil and District Tarn Taran except in due

course of law.....”

The respondent-plaintiff in the plaint alleged that there is sub-urban 24 HP Line shown in yellow colour in the site plan dated 13.10.2011 for supplying electricity to village Jawande Kalan and the electric pole at point A shown in blue colour in the site plan towards northern side of corner of land bearing khasra No.5/3 was not causing any obstruction to anyone. The defendant-Corporation i.e. PSPCL in connivance with defendants No.1 to 4 i.e. appellant herein without passing any site plan threatened to shift the electric pole from the existing point to install the same at point B or C in the land bearing khasra No.104//5/3 and 65//25 under the exclusive possession of the plaintiff. In case, the said proposed line is passed then the plaintiff will suffer irreparable loss and during the pendency of the suit, defendants were able to shift the pole from its original position, thus, mandatory injunction was sought.

Defendants No.1 to 4 alleged that they had deposited the requisite charges for shifting of the electric pole from the existing place, which has been shifted on the side of the passage measuring 3 karams. The aforementioned poles were not installed in the land of the plaintiff but on the corner of the passage. The Halqa Patwari visited the site and made a report in this regard. Defendants had shifted the poles after following the legal course.

Defence of defendants No.5 to 7 was struck off on account of non-filing of the written statement.

Plaintiff in support of the evidence examined various witnesses and brought on record Ex.P1 site plan dated 13.10.2011,

site plan dated 21.08.2014 Ex.P2, Aka shijra Ex.P3, Rapat Roznamcha for the year 2011-2012 Ex.P4, jamabandi Ex.PY and closed evidence whereas defendants examined six witnesses including the local commissioner and brought on record the application submitted to the SDM Mark A, postal receipts Ex.D1 and D2, book No.80283 Ex.D4, SJO receipt Ex.D4, Aks Shijra Ex.D5 and report of Patwari and Kanungo Ex.D6.

The trial Court as noticed above decreed the suit in the manner aforementioned, which was upheld by the lower Appellate Court.

Ms. Sushma Chopra, learned counsel appearing on behalf of the appellants submitted that both the Courts below have committed illegality and perversity in not referring to the report of the local commissioner dated 29.11.2012 wherein the installation of electric poles were demonstrated by the site plan at point X and A which are on the corner of the passage and not on the land of the plaintiff. Even the un-exhibited site plan dated 16.01.2013 on comparison with site plan dated 21.08.2014 Ex.P2, revealed that earlier and the shifted poles are on the corner of the road, which would not cause any inconvenience or impediment in the cultivation of the land. There was apparent collusion of PSPCL with plaintiff as they did not contest the suit.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit. On juxtaposition of site plan dated 21.08.2014 Ex.P2 and un-exhibited site plan dated 16.01.2013 qua restoration of the pole at

point U and V from B and E would reveal that transmission line would pass through the land of plaintiff. This Court before giving finding raised specific query to the counsel for the appellants as to how the decree is affecting the appellants and the answer was in negative, as defendants were provided with electricity. In such circumstances, I am of the view that there was no cause for the appellants-defendants No.1 to 4 to impugn the decree *vis-a-vis* grievance of the plaintiff, as they have not been prevented from usage of the electricity provided by defendants No.5 to 7.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 01, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No