

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

RSA No. 443 of 2017(O&M)

Date of decision: 15.7.2019

Harbans Kaur (since deceased) through her LR Manminder Singh
.....Appellant

VERSUS

Sukhminder Singh and others
.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Mahesh Gupta, Advocate for the appellant.

Mr. H.P.S. Ghuman, Advocate for respondent No.1.

None for respondents No.7 and 8.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for declaration and permanent injunction filed by the respondent/plaintiff in respect of Electric Motor Connection bearing AC No.B1-152 of 7.5 BHP installed in Khasra No.539/6-5 was decreed by the trial Court vide judgment and decree dated 26.08.2014 that came to be affirmed in appeal by the Additional District Judge, Sangrur.

The aforesaid electric connection stands in the name of Smt. Gurnam Kaur who was co-owner to the extent of half share in land measuring 104 bighas 17 biswas in the revenue estate of village Banbhauri. Gurnam Kaur suffered a consent decree dated 19.01.1982 in respect of 2/3 share of land measuring 36 bighas 3 biswas comprising khasra numbers detailed in Ex.P9 in favour of respondent/plaintiff Sukhminder Singh. The

remaining 1/3rd share of land qua share of Smt. Gurnam Kaur was inherited by her legal heirs (private defendants in the suit) on the basis of natural succession. The respondent/plaintiff has claimed 2/3rd share in the aforesaid electric motor connection in view of land to that extent having become his ownership on the basis of consent decree dated 19.01.1982.

Counsel for the appellant would argue that in the consent decree suffered by Smt. Gurnam Kaur in respect of land, subject matter of civil suit No.809 dated 24.12.1981, there is no reference to electric motor connection in her name, therefore, the respondent/plaintiff cannot stake his claim of ownership in the electric motor connection much less to the extent of 2/3 share. It is further argued that since Smt. Gurnam Kaur never transferred her rights in the aforesaid electric motor connection in favour of respondent/plaintiff Sukhminder Singh, the appellants being legal heirs of the deceased and entitle to succeed her movable and immovable property on the basis of natural succession are exclusive owner of the electric motor connection. In support of his contention, he has also made reference to Electricity Supply Instructions Manual particularly para 30.2 pertaining to death of a consumer and entitlement of the heirs to apply for transfer of connection in the name of one of the heirs. He has also relied upon judgment of this Court **Surjit Singh Vs. Narinder Singh and others, RSA No.2353 of 2013 decided on 11.01.2016.** Another submission made by counsel is that the appellants produced on record various receipts with regard to payment qua electric motor connection to PSPCL, Patiala.

Counsel representing the respondent/plaintiff has supported the judgments passed by the Courts with the submission that concurrent

findings recorded by the Courts do not suffer from an error much less perversity. It is further argued that since the respondent/plaintiff has become co-owner in joint possession of the entire land owned by Smt. Gurnam Kaur on the basis of decree dated 19.01.1982 whereby the respondent/plaintiff was held to be owner in possession of $\frac{2}{3}$ rd share of land measuring 36 bighas 3 biswas detailed therein, the respondent/plaintiff became owner to the extent of $\frac{2}{3}$ share in the electric motor connection. It is further argued that the electric motor connection is installed in khasra No.539 which is recorded to be in joint possession of all the co-sharers including the appellant and respondent/plaintiff. He has further submitted that the parties had been irrigating their land from the aforesaid electric motor connection on the basis of their shares to the extent of $\frac{2}{3}$ rd share in favour of respondent and $\frac{1}{3}$ rd of the appellant.

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

Indisputably, the respondent/plaintiff became co-owner to the extent of $\frac{2}{3}$ share in land previously owned by Smt. Gurnam Kaur on the basis of consent decree dated 19.01.1982. Perusal of the aforesaid judgment and decree passed in favour of respondent/plaintiff makes it evident that in the said litigation, there is no reference to the electric motor connection in question which was sanctioned in the name of Smt. Gurnam Kaur and as such Smt. Gurnam Kaur did not transfer any right in the electric motor connection in question in favour of the respondent/plaintiff on the basis of decree dated 19.01.1982. That being so, the respondent/plaintiff became co-owner to the extent of $\frac{2}{3}$ share only in the land owned by Smt. Gurnam Kaur. There is also no denial that remaining

1/3rd share of land owned by Gurnam Kaur was inherited on the basis of natural succession by her heirs and they also became co-owners in the land to the extent of 1/3rd share. In this view of the matter, respondent/plaintiff cannot claim any right of ownership in the electric motor connection on the basis of decree dated 19.01.1982.

The question for consideration is, whether respondent/plaintiff can claim his ownership in the motor connection in question to the extent of 2/3 share merely because he became co-owner to the extent of 2/3 share in land of Smt. Gurnam Kaur and he is recorded to be in joint possession of land previously owned by Smt. Gurnam Kaur. Since Smt. Gurnam Kaur never transferred the electric motor connection in favour of the respondent/plaintiff, on her death, this property was inherited by her heirs on the basis of natural succession. The respondent/plaintiff did not adduce any evidence to establish that he ever got the load increased, spent any money for maintenance of the motor connection or qua consumption charges in respect thereof. Assuming that the respondent/plaintiff or his lessee was irrigating land from the motor connection in question, the same would not create/ confer any right of ownership qua the motor connection in favour of the respondent/plaintiff. In this context, reference can be made to judgment of this Court **Uttam Singh Vs. Sohan Singh, 2010 (4) PLR 120**, wherein para 10 reads, 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.”

When the case is examined in the light of aforesaid extract, it can safely be held that findings of the Courts upholding plea of the respondent/plaintiff that he is entitle to 2/3 share in the motor connection suffer from gross error rather perversity, thus, cannot be allowed to sustain. I find merit in contention of the appellant that since Smt. Gurnam Kaur never transferred electric connection either in favour of the respondent/plaintiff or some third person during her lifetime, the same continued to be property of Smt. Gurnam Kaur and available for inheritance by her heirs on the basis of natural succession, in view of provisions of the Hindu Succession Act, 1956. That being so, findings of the Courts decreeing suit of the respondent/plaintiff suffer from gross error rather perversity, therefore, cannot be allowed to sustain and are accordingly set aside.

In view of what has been discussed hereinbefore, the appeal is allowed. The impugned judgments and decrees are set aside and suit filed by the respondent/plaintiff is dismissed with costs throughout.

JULY 15, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

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