

In the High Court of Punjab and Haryana at Chandigarh

RSA- 2745 of 2018 (O&M)
Date of Decision:13.2.2020

Jasvir Singh

---Appellant

vs.

Harbans Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. B.S.Bhalla, Advocate
for the appellant

Rekha Mittal, J.

Challenge in the present appeal has been directed against judgments and decrees passed by the courts whereby suit for permanent injunction restraining the respondents-defendants from interfering in peaceful use of electric connection bearing account No. BD- 137 installed for the purpose of irrigating the land bearing khewat No. 3/1, Khatauni No. 3, Khasra Nos. 12//22/1, 15//14/2, 15, 16, 16 min, 17, 25, 17//21/1/1, 18//25/1, khewat No. 4/1, khatauni No. 4, khasra nos. 12//21/2, 14//10, 11, 20, 21, 17//21/1/2, 18//24, 25/2, khewat no. 5/1 khatauni No 5 khasra No. 40//24/1/2 and also restraining the respondents from shifting/disconnecting the same from its existing position to any other place, was dismissed by the trial court vide decree and judgment dated 17.3.2016 that came to be affirmed in appeal by the District Judge, Moga.

The appellant, one of the plaintiffs is paternal nephew of Harbans Singh-respondent No. 1 in whose name the aforesaid electric

connection was installed and he (Harbans Singh) continued to be the account holder of said connection.

Counsel for the appellant would argue that there were two electric connections in the name of Harbans Singh but installed in the joint land owned by successors in interest of Narain Singh. It is further argued that at the time of oral partition of joint land, there was an understanding between co-sharers of joint land that the aforesaid connection would be used for irrigating land of aforesaid khasra numbers that had fallen to share of appellant-plaintiffs. It is further argued that a local commissioner was appointed with a direction to inspect the spot. He submitted report that electric connection stands installed in khasra No. 15//15 that has fallen to share of appellant in oral partition. It is vehemently argued that in view of the aforesaid facts and circumstances, the courts have wrongly negated plea of the appellant for grant of injunction against interference in use of aforesaid electric connection for irrigating the land in possession of the appellant-plaintiffs. In support of his contention, he has placed reliance on judgment of this Court **Om Parkash and others vs. Ishwar Singh and others 2008(3) RCR (Civil) 777.**

I have heard counsel for the appellant and perused the paper book particularly the judgments impugned.

There is no denial that electric connection in question is owned by Harbans Singh-respondent No. 1. The appellant and his co-plaintiff did not raise a plea that said electric connection was installed by spending joint family funds or the plaintiffs ever incurred any expenses for its maintenance etc. Both the courts have consistently held that land jointly

owned by the plaintiffs and defendant No. 1 already stood partitioned amongst co-sharers. Counsel has not disputed consistent factual findings with regard to partition of joint land. Since the appellant was not owner of the connection in question nor can he assert any right of ownership qua the disputed connection, he can not be heard to say that he is legally entitle to use the said electric connection for irrigating his land despite there being partition of joint land amongst co-owners merely because the connection stands installed in khasra No. 15//15 that had fallen to his share. The judgment relied upon by counsel has got no bearing on the facts of the case at hand because in that case, this Court was dealing with interim relief of injunction and in the petition filed before this court there was no contest on behalf of respondent No. 1 in whose name the electric connection stood installed. This Court, in concluding lines of para 7, has held that the question whether the land has been partitioned or not and whether the tubewell was purchased from joint or private funds is a question to be determined during the course of the trial. Taking into consideration the aforesaid, the appellant cannot derive any advantage to his contention from the referred authority.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay of 40 days in refiling the appeal is of academic relevance.

(Rekha Mittal)
Judge

13.2.2020

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Whether speaking/reasoned: Yes

Whether reportable : Yes/No