

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

**RSA NO. 3622 OF 2018 (O&M)
DATE OF DECISION : 02.03.2020**

Sarwan Singh

...Appellant

versus

Gurdev Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Vijay Lath, Advocate,
for the appellant.

ARUN MONGA, J. (ORAL)

CM NOS. 9427-C & 9425-C OF 2018

For the reasons stated in the applications, same are allowed and delay of 10 days in filing and 58 days in re-filing the appeal is condoned, subject to all just exceptions.

MAIN CASE

Having suffered concurrent adverse findings by the two Courts below, the defendant/appellant is before this Court in Regular Second Appeal assailing the judgment and decree dated 30.08.2016 passed by the trial Court as upheld by the First Appellate Court vide its judgment and decree dated 03.08.2017.

2. Succinct factual matrix as noticed by the First Appellate Court first. Plaintiff filed a suit for declaration with consequential relief for permanent injunction on the ground that Gurdas Singh father of the plaintiff and defendant No.1 were

owner in possession of the land measuring 74 kanals 7 marlas situated in village Garcha, Tehsil Nawanshahar as per Jamabandi for the year 2009-10. Father of the plaintiff got installed electric motor tubewell connection of 7.5 BHP bearing account No.B-1-93 in the suit property for the purpose of irrigation. After the death of Gurdas Singh, his entire estate including electric motor tubewell connection was inherited by the plaintiff and defendant No.1 in equal shares by virtue of testamentary succession. On the basis of same, mutation was also sanctioned and incorporated in the revenue record. Defendant No.1 illegally got the electric motor tubewell connection transferred in his exclusive name. He started obstructing the plaintiff from use of said electric motor tubewell connection for irrigating his part of land. Hence, the suit.

3. Upon notice, defendant No.1 filed his written statement, inter-alia, taking preliminary objections regarding maintainability of suit; suppression of material facts; locus standi etc. On merits, it was pleaded that Gurdas Singh executed Will dated 26.03.1984 on the basis of which mutation of his estate was entered and sanctioned in equal shares. Thereafter, a family settlement took place on 20.11.2001, according to which the parties partitioned their land and other properties with specific terms and conditions regarding tubewell connection, its infrastructure and user. It was further pleaded that defendant No.1 was exclusive owner and in possession of the electric motor

connection.

4. Defendants No.2 to 5 filed their separate written statement reiterating the objections taken by defendant No.1. On merits, it was submitted that after the death of Gurdas Singh, defendant No.1 applied for tubewell connection on the basis of partition-cum-agreement dated 22.11.2001. The Gram Panchayat of village Garcha also gave certificate for transfer of said electric connection in the name of defendant No.1 as plaintiff was residing in United Kingdom. All other averments were denied.

4. No replication was filed by the plaintiff. Based on the rival pleadings, following issues were framed :-

- 1) Whether the plaintiff is co-owner in possession of electric motor tubewell connection in dispute jointly owned by the plaintiff and defendant No.1 ? OPP
- 2) Whether the plaintiff is entitled to declaration, as prayed for ? OPP
- 3) Whether the plaintiff is entitled to permanent injunction as prayed for ? OPP
- 4) Whether the suit is not maintainable in the present form ? OPD
- 5) Whether the plaintiff has got no locus standi to file the present suit ? OPD
- 6) Relief.

5. In order to prove their case and to discharge their onus as per the issues framed *ibid*, the parties to suit adduced their respective evidence.

6. Based on the collective evidence adduced by both the parties and upon appreciation thereof, the trial Court decreed the suit of plaintiff, declaring him owner and in possession of the electric motor tubewell connection bearing account No. B-1-93 along with defendant No.1 in equal shares. Further defendant No.1 was restrained from obstructing the plaintiff from its use and operation. However, defendant No.1 was held entitled to recover half of the amount spent at the time of enhancement of load from 5 BHP to 7.5 BHP from plaintiff, as per his share.

7. The First Appellate Court agreed with the findings rendered by the trial Court and upheld the judgment and decree passed pursuant thereto.

8. I have heard learned counsel for the appellant and have perused the judgments and decrees of both the Courts below. To my mind, these judgments are in consonance with record, facts and circumstances of the case and have been passed after due and correct appreciation of evidence adduced by the parties.

9. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No fresh ground warranting interference in this regular second appeal to disturb the

concurrent findings of facts recorded by the Courts below, is made out.

10. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

11. In view of my discussion above and the reasons recorded therein, no interference is called for by this Court. The instant regular second appeal, being bereft of merit, is accordingly dismissed.

12. Pending application, if any, also stand disposed of.

13. No order as to costs.

(ARUN MONGA)
JUDGE

MARCH 02, 2020
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| 1. | Whether speaking/reasoned : | Yes/No |
| 2. | Whether reportable : | Yes/No |