

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

RSA-5528-2016(O&M)

Date of decision:-19.12.2022

Mohan Singh

...Appellant

Versus

XEN, Punjab State Power Corporation Ltd. and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Amandeep Singh Rai, Advocate
for the appellant.

Mr.H.S. Ghuman, Advocate
for the respondents.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Mohan Singh had brought a suit for declaration and mandatory injunction against defendants i.e. XEN Punjab State Power Corporation Ltd., Sub Division Officer, PSPC Ltd. Division Naushehra, Pannuan, Tehsil and District Tarn Taran and Dalip Singh son of Hakam Singh, resident of village Dhotian, Tehsil and District Tarn Taran contending that Dalip Singh – defendant No.3, who is father of the plaintiff had submitted an affidavit dated 6.6.2011 duly attested by Tehsildar, Tarn Taran in the office of defendants

to the effect that tubewell connection No.A/c No.M-571 AP-5 HP be transferred in the name of the plaintiff; the plaintiff requested defendants No.1 and 2 several times to transfer the connection in his name but to no effect, rather such defendants threatened to disconnect the connection in question from the land of the plaintiff, to which they had no right. Feeling aggrieved, the plaintiff had brought the suit in question.

2. On notice, the defendants put in appearance. Defendants No.1 and 2 filed a joint written statement, whereas defendant No.3 came up with a separate written statement. In the joint written statement filed by defendants No.1 and 2, they had raised preliminary objections that plaintiff is not the consumer of the answering defendants; the suit is not maintainable in the present form; the plaintiff has not come to the Court with clean hands and suppressed the material facts; the plaintiff has filed a frivolous suit with malafide intention in connivance with his father Dalip Singh – defendant No.3.

As per the version of the defendants No.1 and 2, the alleged connection No.M-571 AP was running in the name of defendant No.3, but he had not deposited the arrears of bill, therefore the said connection was closed before 1995; the plaintiff is not owner in possession of the suit land. The answering defendants denied having received any affidavit dated 6.6.2011 allegedly submitted by defendant No.3 Dalip Singh. According to answering defendants, the plaintiff has nothing to do with the suit land and he is not owner in possession of the same. Refuting the remaining assertions, such defendants prayed for dismissal of the suit.

3. In the written statement filed on behalf of defendant No.3, he

had admitted the claim of the plaintiff in entirety praying that suit be decreed.

4. On the pleadings of the parties, following issues were framed:

- 1. Whether the plaintiff is entitled to the relief of declaration, as prayed for? OPP.*
- 2. Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for? OPP.*
- 3. Whether the suit of the plaintiff is not maintainable in the present form? OPD.*
- 4. Whether the plaintiff has suppressed the material facts from the Court and has not come to the Court with clean hands? OPD.*
- 5. Whether the suit of the plaintiff is frivolous one and has been filed with malafide intention? OPD.*
- 6. Relief.*

5. The parties led evidence in support of their respective claims.

During the course of evidence of plaintiff, he got his own statement recorded as PW1 and repeated on oath his case as given in the plaint. He further examined Darshan Singh as PW2, Narinder Kaur as PW3 and thereafter closed his evidence without producing any document.

6. Dalip Singh defendant No.3 appeared as DW1. The contesting defendants No.1 and 2 had examined SDO Surjit Singh as DW2 and thereafter closed the evidence. The defendants had also not produced any document.

7. After hearing the learned counsel for the parties, the trial

Court decided issues No.1 and 2 against the plaintiff and in favour of defendants, issues No.3 to 5 were disposed of being not pressed. As a result of the findings on the issues, the suit of the plaintiff had been dismissed with cost vide judgment and decree dated 1.10.2014.

8. The plaintiff filed an appeal against the judgment and decree passed by the trial Court, which was assigned to learned Additional District Judge, Tarn Taran, who did not find any fault with the judgment and decree passed by the trial Court and dismissed the appeal vide judgment and decree dated 26.4.2016.

9. Dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and the suit filed by him be decreed. Notice of the appeal was issued to the respondents, who put in appearance through counsel.

10. I have heard learned counsel for the parties besides going through the record.

11. Both the Courts on analysis of the evidence adduced by the parties in light of the settled legal position and considering facts and circumstances of the case have returned concurrent findings that plaintiff is not entitled to relief of declaration and mandatory injunction. For ready reference, the operative part of the judgment passed by the trial Court, which is contained in paras No.14 and 15 is being reproduced as under:

14. As discussed above, it was the duty of the plaintiff to stand upon his own legs and to prove his case by way of leading

cogent and convincing evidence. In the very head note of the plaint, plaintiff has pleaded that earlier tubewell connection in question was owned by his father namely Dalp Singh i.e. defendant no.3 and he further pleaded in para no.2 of the plaint that Dalip Singh, defendant no.3, i.e. his father had given an affidavit dated 6.6.2011 duly attested by Tehsildar, Tarn Taran, as per which he expressed his no objection in transferring the tubewell in question in the name of plaintiff and on the basis of this very document, plaintiff is alleging his ownership over the tubewell connection in question. Meaning thereby proving of due execution of above mentioned document i.e. affidavit dated 6.6.2011 is very much important for the success of case of plaintiff. Though plaintiff examined three witnesses in oral evidence including himself but he miserably failed to prove the above mentioned document executed by his father in his favour qua tubewell connection in question. Above mentioned document could be very well proved by the plaintiff by way of examining his father Dalip Singh or by way of summoning the relevant record from the office of Executive Magistrate, Tarn Taran in respect of above mentioned affidavit but plaintiff has not made such efforts, for the reason best known to him. Apart from this document, no other document has been proved on file from which it could be presumed that tubewell connection in question is the ownership of plaintiff and further khasra no.25/1 is also owned and possessed by him, where above mentioned tubewell connection has been installed.

15. *So, plaintiff miserably failed to prove his case as pleaded in the plaint. Accordingly, issues no.1 and 2 are decided against the plaintiff and in favour of defendants.*

12. Whereas learned Additional District Judge, Tarn Taran hearing the appeal also found little merit in the claim of the plaintiff and rather observed that both the plaintiff and his father Dalip Singh defendant No.3 are found to have joined hands with each other and if the plaintiff wanted to get any benefit of his father having executed sworn affidavit in his favour on 6.6.2011, then at least he should have produced this affidavit for examination of the Court and it is quite surprising as to how the plaintiff and his father have woken up from deep slumber when they are trying to get this connection revived and transferred from original owner to plaintiff Mohan Singh, which has already been disconnected long ago before 1995 itself. The reason for the disconnection was that Dalip Singh had not cleared arrears of bills, which were issued in respect of the connection. Therefore, it was permanently disconnected much before 1995.

13. Both the Courts are unanimous in coming to the conclusion that plaintiff is not entitled to seek declaration that he is owner of tubewell connection No.M-571 AP-5 HP installed in khasra No.25/1, which was previously owned by his father Dalip Singh son of Hakam Singh and for mandatory injunction directing XEN, Punjab State Power Corporation Ltd. Sub Urban Division, District Tarn Taran and Sub Division Officer, Punjab State Power Corporation Ltd., Division Naushehra Pannauri, Tehsil & District Tarn Taran to transfer said disputed connection in his

favour. The judgments and decrees passed by the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

14. No substantial question of law arises in this appeal.

15. Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments and decrees passed by the Courts below. Those are upheld.

16. The appeal stands dismissed accordingly.

19.12.2022

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No