

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

RSA No. 4865 of 2017 (O&M)

Date of decision: 22.02.2022

Sarabjit Kaur ... Appellant
versus

Kamaljit Singh ... Respondent

Coram : **Hon'ble Mr. Justice Arun Monga**

Present : Mr. Charanpal Singh Bagri, Advocate, for the appellant.

Mr. S. D. Sharma, Senior Advocate assisted by
Mr. Anupam Sharma, Advocate, for the respondent.

Mr. Alok Mittal, Advocate, for PSPCL.

Arun Monga, J.

1. For convenience, parties herein are described as per recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, the defendant is in second appeal before this Court assailing the trial Court judgment and decree dated 30.09.2016, as upheld by the learned First Appellate Court vide its judgment and decree dated 08.09.2017.

3. Briefly stated, succinct facts first, as noticed by Courts below. Plaintiff Kamaljit Singh purchased 5K-19M of land along with the share in electric motor connection from its previous owners Rajinder Singh and Jaswinder Kaur (children of Harbhajan @ Gurbhajan Singh son of Naranjan Singh) vide registered sale deed No. 686 dated 23.05.2013. Plaintiff pleaded that he had also purchased another 5K-19M land along with share in the electric motor connection from one Balwant Singh son of Gurdev Singh vide registered sale-deed No. 3793 dated 24.01.2014, who had in turn purchased

the said share from Baljinder Singh son of Harbhajan @ Gurbhajan Singh. Said Harbhajan Singh @ Gurbhajan Singh had four children, namely, Rajinder Singh, Jaswinder Kaur, Jasvir Singh and Baljinder Singh. Accordingly, the plaintiff claimed to be owner in possession of 11K-18M in the suit property and thus entitled to joint use of electric motor connection No. 2G-374. However, defendant Sarabjit Kaur wife of Jasvir Singh son of Harbhajan @ Gurbhajan Singh resisted the claim of usage of electric motor connection. On the other hand plaintiff claimed that ever since he became the owner of the respective share of land in the joint holding, he had been maintaining the said electric motor connection. The motor connection in question still subsists in the name of ancestor of Rajinder Singh, namely, Naranjan Singh. He has been using the said connection for irrigation purposes. The defendant is therefore illegally attempting to obstruct into the peaceful use and enjoyment over the said electric motor connection. Hence, the suit for permanent injunction.

4. In return, the defendant took preliminary objections to the suit being not maintainable; concealment of true and material facts; estoppel, suit being filed on frivolous and vexatious grounds; and *locus standi*. She contended that the previous owners from whom the plaintiff had purchased the land had already relinquished their right, title and interest regarding the electric motor connection bearing account number 2G-374 of 10 HRP in favour of her husband Jasvir Singh. Grand-father of Jasvir Singh had seven sons, namely, Harbhajan @ Gurbhajan Singh, Malkit Singh, Jit Singh, Bakshish Singh, Jora Singh, Parupkar Singh and Jagdish Singh. Jasvir Singh had transferred his share of land measuring 14K-18M including all the rights by transfer deed bearing No.02/09/2001 dated 12.10.2009 in her favour.

Jasvir Singh acquired the said property through registered Will bearing no.11 dated 19.04.2004 executed by Malkit Singh son of Naranjan Singh in his favour with sound disposing state of mind. Malkit Singh son of Naranjan Singh was unmarried and issueless. Jit Singh son of Naranjan Singh had sold his land to Jasvir Singh, husband of the defendant/ appellant for a sale consideration of Rs.13,05,000/- vide registered sale-deed No. 3331 dated 17.11.2009. Thereafter, Jasvir Singh had transferred this share of land in favour of the defendant/ appellant. Thus she became the owner of the electric motor connection in question qua the share of Jit Singh and Malkit Singh as the said property had been acquired by the defendant/appellant. Widow of Harbhajan @ Gurbhajan Singh relinquished her entire property including share in motor connection in favour of her son Baljinder Singh. She refuted the claim of the plaintiff/respondent on the ground that even prior to selling of his share, Baljinder Singh and Rajinder Singh had relinquished their rights regarding the motor connection in favour of her husband through family settlement dated 21.04.2009. In exchange, her husband had relinquished his rights in his ancestral house measuring about 3½ Marlas in favour of Baljinder Singh and Rajinder Singh. The land was purchased by the respondent in the year 2013 and 2014 from Baljinder Singh and Rajinder Singh. There were two motor connections in the name of Naranjan Singh. Connection bearing no. 2G-599 of 7½ BHP came to the share of Bakshish Singh, Jora Singh, Parupkar Singh and Jagdish Singh. The said connection is not in dispute. Connection bearing No. 2G-374 of 5 BHP (now 10 BHP) came in share of Malkit Singh, Jit Singh and Harbhajan @ Gurbhajan Singh, per oral family settlement. Thus, on the basis of the above said Will dated 19.04.2004; sale-deed dated 17.11.2009 and family

settlement dated 21.04.2009, the appellant became the owner of the electric motor connection. Further, the load of the motor connection was 5 BHP, which was got increased to 10 BHP by the appellant from Punjab State Power Corporation Limited by depositing the requisite charges. Even the electric motor of 10 BHP was purchased by the appellant from Electrical Motors, Village Sanipur, District Fatehgarh Sahib for a sum of Rs. 12,000/- on 05.02.2012. All the expenses with regard to extension of load, purchase of new electric motor, digging of submersible bore had been borne by the appellant.

5. Based on the rival pleadings, following issues were framed:

1. *Whether plaintiff is entitled to Permanent Injunction as prayed for? OPP*
2. *Whether the suit of plaintiff is not maintainable? OPD*
3. *Whether the plaintiff has concealed the true and material facts from the Court? OPD*
4. *Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD*
5. *Whether the plaintiff has no locus standi or cause of action to file the present suit? OPD*
6. *Whether the plaintiff has not complied with the mandatory provisions of CPC ? OPD*
7. *Relief.”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-a-vis pleadings, issue No.1 was decided in favour of the plaintiff. Issues No. 2 to 6 were decided against the defendant by the learned trial Court and the suit was decreed with costs vide judgment and decree dated 30.09.2016 by restraining the defendant from obstructing or interfering into the peaceful joint use and enjoyment of plaintiff over the electric motor connection in question as per his share in the suit property. The parties were further restrained from changing the position

of the motor connection from its existing position except by following due process of law.

8. First Appellate Court dismissed the appeal of the appellant/defendant vide judgment dated 08.09.2017 and the respondent/plaintiff was granted injunction subject to the condition that the respondent will approach the Electricity Department to get his name in the record straight in his favour within a period of 60 days from the date of passing of the order, resulting in Regular Second Appeal before this Court.

9. Learned counsel for the appellant argues that the learned Courts below have gone wrong in observing that family settlement required registration as per mandate of Section 17 of the Registration Act, 1908. According to him, the relinquishment of right in electric motor does not amount to transfer of immovable property. As per the family settlement, the appellant came into exclusive possession of the electric motor connection. The learned Courts below have also gone wrong in not considering the fact that Naranjan Singh got installed the electric motor for 5 BHP and the defendant had spent huge amount for increasing its capacity. The electric motor was installed within the boundary wall of the house of the appellant/defendant which is situated in the fields.

10. Learned counsel for the appellant further argues that the learned Courts below have not properly appreciated the evidence including the cross-examination of the witnesses as there are major discrepancies in their statements. He further argues that the learned First Appellate Court exceeded its jurisdiction while directing the respondent/ plaintiff to get his name included in the record of the electricity department within a period of 60

days. The same is contrary to the interim restraint order, rather it has transferred the motor connection in the name of the respondent/ plaintiff.

11. Learned senior counsel appearing for the respondent/plaintiff submits that plaintiff Kamaljit Singh had purchased land along with the share in electric motor connection from its previous owners Rajinder Singh and Jaswinder Kaur, (children of Harbhajan @ Gurbhajan Singh son of Naranjan Singh). He had also purchased another 5K-19M land along with share in the electric motor connection from one Balwant Singh son of Gurdev Singh, who had purchased the said share from Baljinder Singh son of Harbhajan @ Gurbhajan Singh. In this connection, thus, both the Courts below have rightly restrained the defendant from obstructing or interfering into the peaceful joint use and enjoyment of electric motor connection in question as per his share.

12. I have heard the learned counsel for the parties and perused the judgments of both the Courts below.

13. To my mind, judgments under challenge have been rendered after due and correct appreciation of evidence adduced by the respective parties.

14. Relevant extract of judgment rendered by learned First Appellate Court is as below:-

“17. Adverting to the instant case in hand, the electric motor has been permanently fastened by way of submersible bore and when anything which has been permanently fastened, to anything which has been embedded in the earth, it falls under the category of immovable property. In the backdrop of said explanation, it would be suffice to say that the first aspect i.e. Electric Motor falls under the category of immovable property and thus requires compulsory registration. Since the alleged family arrangement is for the relinquishment of the rights with regard to Electric Motor and share in the house situated in the village, it clearly shows that there is creation and

extinguishment of the rights in the immovable property thus it falls within the mischief of section 17 (2) of Registration Act, 1908 and requires compulsorily registration and is thus hit by Section 49 of the Registration Act, 1908.

18. *Moreover, there is no cogent evidence of the alleged private partition taken place subsequent to said family settlement. No effort was made by the parties to get the family settlement incorporated in the revenue record. The mere fact that appellant is in exclusive possession of some separate portion out of the suit land, would not depict that there was any private partition among the co-sharers. It may, at best, depict mutual arrangement for proper use of the suit land until partition is effected. However, such arrangement for use of the suit land does not amount to partition thereof. There is also no document of alleged partition nor the alleged partition was got recorded in the revenue record.*
19. *Even if the family settlement dated 21.04.2009 is assumed to be genuine document but no effort was made by any of the family members to get the relinquishment incorporated in the revenue record. Perusal of the Jamabandi for the year 2012-2013 Ex.P-4 shows that respondent is co-sharer of the suit property along with the other co-sharers. As per the Jamabandi electric motor connection in dispute is jointly owned by all the co-sharers. Since presumption of truth is attached to the annual record of rights and in absence of any cogent and clinching evidence by the appellant with regard to partition and the factum of partition incorporated in the revenue record, an inference can be drawn that the respondent is bonafide purchaser of the suit property. The revenue record shows that electric motor connection is joint in the name of all the co-sharers and also vide sale deed Ex.P-1 and Ex.P-3 the vendors have transferred their rights along with the electric motor connection in the favour of the respondent, since, Rajinder Singh and Jaswinder Kaur had transferred their rights in motor connection in the favour of the respondent through sale deed dated 23.05.2013. And Rajinder Singh, Jaswinder Kaur appeared in witness box and have deposed about the execution of the sale deed in favour of the respondent and also since the partition of the joint property has not been taken place thus the appellant cannot claim to be in absolute and exclusive owner of the electric motor connection in dispute. The respondent is thus entitled to the use of electric motor connection and the plea of the appellant that she is exclusively entitled to use electric motor connection in question is misconceived. From the corollary of the above discussion, it can be safely culled that no weightage can be attached to the family settlement dated 21.04.2009.*

20. *There is no dispute to the fact that electric motor connection belongs to ancestor of Rajinder Singh, Baljinder Singh and Jasvir Singh namely Naranjan Singh from whom presently both the parties to the suits are deriving their rights. From the perusal of the copy of the passbook Ex. D11 shows that the same is still running in the name of Nirranjan Singh which was obtained by him for his entire joint holdings. The only document placed on record is the letter issued by Assistant Engineer Punjab Raj Power Corporation Limited, Sub-Division Chauranwala dated 03.05.2016 vide which it was intimated that electric connection number 2G-374 is running in the name of Sh. Nirranjan Singh son of Jaati Singh resident of Badouchi Kalan and the same has been running since past 35-40 years. Both the parties have failed to show any representation made before the Department for the change of electric connection in their name. Even, perusal of the jamabandi Ex.P4 also shows that the electric connection is joint in the name of all the co-sharers and no partition has been effected between the parties. Merely because the electric motor connection is installed in the property which is in the exclusive possession of the appellant and in absence of any evidence as to the partition qua the said electric connection, it cannot be deduced that the other co-sharers are not entitled to the enjoyment of the electric motor connection.”*

15. As regards the argument of learned counsel for the appellant that there are major discrepancies in the statement of the witnesses and the learned Courts below have not properly appreciated the evidence is concerned, no such discrepancy has been pointed out by him which has not been dealt with by the Courts below.

16. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

17. No question of law, much less substantial one, a sine qua non for entertaining regular second appeal, is involved herein, for exercise of

appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code. .

18. In any case, as an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld. However, it is made clear that the decree of permanent injunction shall be co-terminus with the grant of fresh connection, as and when PSPCL accepts the application qua the same in accordance with the applicable policy, to install an independent tubewell connection of the plaintiff/respondent. Appropriate application seeking new connection shall be filed as expeditiously as possible in his own interest by the plaintiff.

19. Pending application/s, if any, shall also stand disposed of.

20. No order as to costs.

22.02.2022

vs

(Arun Monga)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No