

RSA-5261 of 2019 (O&M)

2023:PHHC:119711

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

RSA-5261 of 2019 (O&M)
Date of decision: 12.09.2023

Santokh Singh (since deceased) through his LRs

.....Appellants

Versus

Mohinder Singh (since deceased) through his LRs

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. R.K. Arya, Advocate,
for the appellants.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 30.08.2013 passed by the Court of learned Civil Judge (Junior Division), Batala, whereby suit filed by plaintiff-Santokh Singh for declaration and permanent injunction was dismissed as well as against the judgment and decree dated 05.03.2015 passed by the Court of learned District Judge, Gurdaspur, whereby appeal filed by the appellants against the judgment and decree dated 30.08.2013, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. The brief facts of the case are that plaintiff-Santokh Singh filed a suit for declaration that he is actual consumer, holder and owner of tubewell connection bearing No.B-412 of 5BHP installed in khasra No.10R/13/1/1, khewat/khatauni

No.447/1143 and for permanent injunction restraining the defendants from transferring or shifting the connection in question or disconnecting the tubewell connection illegally and forcibly. It was pleaded that tube-well in question was installed in the name of Amrik Singh brother of the plaintiff for cultivation of joint holding of land since long. However, later on in family partition tube-well connection in dispute fell to the share of the plaintiff vide agreement dated 21.11.1996. Amrik Singh also authorized the plaintiff to get the connection transferred in his name. Since then it is the plaintiff, who is actual consumer and holder of tube-well connection in dispute. Said Amrik Singh has expired and is represented by defendants. Now defendants are threatening to shift or interfere in his possession over the tube-well connection in question, of which they have no right. Plaintiff requested them not to do so, but they refused, hence the suit was filed.

3. Upon notice, defendants No.1 to 6 appeared and filed written statement admitting relationship between the parties but denying the execution of any agreement dated 21.11.1996. According to them no partition as alleged has ever taken place between the parties and that after the death of Amrik Singh, defendants are actual consumers, holders and owners of the tube-well connection in question.

4. Defendants no. 7 and 8 in their written statement have also denied the existence of any agreement dated 21.11.1996. According to them no application for change of name of electric connection in question has been moved before the Electricity Board and that electric

connection is still in the name of Amrik Singh. It had been prayed that suit be dismissed.

5. From 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 permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiff is maintainable? OPP
4. Relief.

6. Both the parties led documentary as well as oral evidence to prove these issues.

7. After hearing arguments and after appreciating evidence on record, trial Court dismissed the suit of plaintiff vide judgment and decree dated 30.08.2023.

8. Aggrieved against the judgment and decree of the trial Court, plaintiff-appellants preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 05.03.2013.

9. Learned counsel for the appellant contended that judgments and decrees passed by the Courts below suffer from perversity as they are based upon mis-interpretation of the evidence on record. He further contended that the Courts below failed to appreciate that as per agreement Ex.P1 Amrik Singh predecessor-in-interest respondents No.1 to 6 had given tubewell and land to his brother Santokh Singh (appellant). He further contended that the judgments

and decrees of the Courts below being perverse are liable to be set aside.

10. Plaintiff filed a suit for declaration to the effect that he was the actual consumer of the tubewell connection in dispute as the same had fallen to his share vide agreement dated 21.11.1996 Ex.P1 to have been executed by its actual consumer Amrik Singh. As per the instructions produced before the trial Court by the Electricity Department, consumer of an electricity connection is merely treated as a licensee and it is the electricity board itself who is owner of electricity connection and without the consent of electricity board (which is to be obtained by complying the complete procedure as incorporated in the instructions), a person cannot claim to have become consumer of the electricity board and cannot claim to have become owner of the electricity connection. Admittedly, Amrik Singh remained owner in possession of the connection in dispute during his life time. Neither Amrik Singh nor Santokh Singh filed any application with the electricity board to get the connection transferred in the name of the plaintiff. As per copy of ledger Ex.D-2, proved on record by the PSPCL the connection in dispute is still running in the name of Amrik Singh. There is nothing on record to prove that appellants ever approached the electricity department or even applied to get the said connection transferred in their name as per rules. Mere agreement, which is not incorporated in the record, does not entitle the appellants to seek the relief of declaration and permanent injunction. Moreover,

there are material discrepancies in the evidence led by the plaintiff-appellants to prove the agreement Ex.P1.

11. Concurrent findings have been recorded by both the Courts below and learned counsel for the appellant has failed to show that the same are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

12. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

13. Moreover, there is inordinate delay of 1385 days in refiling the appeal for which no plausible explanation has been given by the appellants.

14. In view of the above, present appeal is dismissed on merits and on the ground of limitation as well.

15. Pending application(s), if any, stand disposed of accordingly.

12.09.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No