

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

RSA-6099-2016(O&M)

Date of decision:-2.2.2023

Chhote Lal

...Appellant

Versus

Jagmal Singh and others

...Respondents

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

Present: Mr.M.S. Yadav, Advocate
for the appellant.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Jagmal Singh son of Devi Sahai, resident of village Sharpur, Tehsil Narnaul, District Mohindergarh had brought a suit against his brothers Chhote Lal and Chandgi Ram, resident of that very village as well as against DHBVNL and its officers impleading Smt.Vidhya daughter of Sh.Devi Sahai as a proforma defendant.

2. By way of filing the suit, the plaintiff sought a decree for permanent injunction restraining the defendants No.1 and 2 from getting shifted the electricity connection along with pumping set bearing No.L-276-AP and new No.N-12 SESI-0176, which is installed in the joint land comprised in Khewat No.38 Khatoni No.57, Killa No.19//16(6-6). According to the plaintiff the electricity

connection and pumping set had been got installed by the plaintiff and defendants No.1 and 2 jointly and they have been using it jointly; he had been serving in Indian Army and in his absence, his brother defendant No.1 Chhote Lal was Karta of the family for doing all acts and duties on behalf of the family; defendants No.1 and 2 used to cultivate the entire joint land; defendant No.1 in connivance with defendants No.3 to 5 tried to get the electricity connection shifted to some other bore installed by him. Feeling aggrieved, the plaintiff brought the suit for grant of injunction.

3. On notice, the defendants appeared. Defendants No.1 and 2 in joint written statement filed by them had contested the assertions in the plaint praying for dismissal of the suit. They had raised various legal objections also. According to them, pumping set in killa No.16 was got installed by defendant No.1 utilizing his own funds and even electricity connection was taken by him and a room was also constructed; the electricity connection is in the name of defendant No.1 and all the bills and dues have been paid by him regularly; the plaintiff has no concern with the pumping set/electricity connection and the room. Defendants No.1 and 2 submitted that the defendant No.1 being owner of the disputed pumping set and electricity connection has got every right to use the same as per his wishes and to get it shifted to any other place. Refuting the remaining allegations, such defendants prayed for dismissal of the suit.

4. In the written statement filed on behalf of defendants No.3 to 5, they had also contested the suit contending that as per their record, defendant No.1 had taken the connection, which is still continuing and as per rules defendant No.1 consumer is authorized to get it transferred to any place after depositing the charges. Such defendants also prayed for dismissal of the suit.

5. The plaintiff had filed replications to the written statements controverting the allegations in the written statement whereas reiterating the averments in the plaint.

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

1. Whether plaintiff and proforma-defendants are joint owner of pumping set as well as electricity connection bearing No.L-276 AP and its new No.12 SESI-0175? OPP.
2. Whether plaintiff is entitled to decree of permanent injunction against defendant Nos.1 and 2? OPP.
3. Whether present suit is not maintainable? OPD.
4. Whether the plaintiff has no locus-standi to file the present suit? OPD.
5. Whether plaintiff is estopped by his own act and conduct from filing the present suit? OPD.
6. Relief.

7. Both the parties were afforded adequate opportunities to

lead their evidence in support of their respective claims.

8. After hearing the learned counsel for the parties, the trial Court of Additional Civil Judge (Sr.Divn.), Narnaul decided issues No.1 and 2 against the plaintiff, issues No.3 to 5 were decided against the defendants. As a result of findings on the issues, the suit of the plaintiff was dismissed vide judgment and decree dated 12.5.2012.

9. Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Narnaul, which was assigned to Additional District Judge, Narnaul, who vide judgment and decree dated 23.8.2016 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed suit of the plaintiff resultantly restraining the defendants from shifting the electricity connection along with pumping set and if during the pendency of the suit/appeal, the same has been shifted, the same be got installed/transferred to its original place.

10. Being dissatisfied with the judgment and decree passed by Additional District Judge, Narnaul, the defendant No.1 has filed the present regular second appeal before this Court, notice of which was given to respondents, who were served but did not put in appearance.

11. I have heard learned counsel for the appellant besides going through the record.

12. The trial Court on conclusion of trial had dismissed the suit of the plaintiff having been rendered infructuous although observing that the plaintiff has got a right in the pumping set and electricity connection. The reason for dismissal of the suit was that it had transpired from the record that pumping set had been removed and electricity connection got transferred from its existing place to some other place by Chhote Lal much before filing of the suit.

13. The judgment and decree passed by the trial Court were upset by Additional District Judge, Narnaul while hearing the appeal. Learned Additional District Judge, Narnaul had observed that it was not proved on record that the electricity connection along with pumping set had been shifted before filing of the suit and rather came to the conclusion that since the electricity connection and pumping set have rightly been held to be joint between the parties, with the land having not been formally partitioned between the co-sharers, Chhote Lal cannot get the electricity connection and pumping set transferred to prejudice the plaintiff and plaintiff has got a right to use the same. For that reason, learned Additional District Judge, Narnaul had allowed the appeal.

14. I on my part do not see any reason to take a different view from that of the First Appellate Court. Even otherwise, learned counsel for the appellant has submitted that as per his information, the suit property has been partitioned between the co-sharers, as a

result of compromise between them and a preliminary decree in that regard had been passed, in that way, the dispute with regard to the electricity connection and pumping set must have been settled between the parties and in case not settled, they can settle the same amongst themselves.

15. Learned counsel for the appellant has contended that the plaintiff had straightway filed a suit for grant of permanent injunction without seeking a declaration, as such the suit was not maintainable. However, I am not convinced by this contention. The defendants had taken an objection with regard to maintainability of the suit before the trial Court and issue No.3 had been struck in that regard. However, though the trial Court had held that the suit is not maintainable but the First Appellate Court had reversed that finding. In my considered view the suit as framed was maintainable and the plaintiff could sue for grant of permanent injunction without seeking declaration.

16. 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 judgment passed by the Additional District Judge, Narnaul.

17. No substantial question of law or fact arises in this appeal.

18. The appeal stands dismissed accordingly.

Since the main appeal stands dismissed, the

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

2.2.2023

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No