

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

RSA-3050-2023

Date of Decision : 05.10.2023

Jang Bahadur Singh

..... Appellant

Versus

Jaswinder Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Pankaj Kalia, Advocate for the appellant.

Mr. Vipin Mahajan, Advocate for the respondent.

VIKRAM AGGARWAL, J (ORAL)

1. This is plaintiff's second appeal against the decisions of the Courts below vide which the suit filed by the appellant-plaintiff for permanent injunction restraining the respondents-defendants No.1 to 5 from interfering or creating any kind of hindrance in the smooth functioning and usage of 3 BHP tube-well connection bearing No.AP-854 and restraining the respondent-defendant No.6 from transferring/shifting the same from the place of its existence to any other place at the instance of respondents-defendants No.1 to 5 was dismissed by the Civil Judge (Junior Division), Gurdaspur vide judgment and decree dated 29.01.2018 and the appeal preferred against the said judgment was also dismissed by the Addl. District Judge, Gurdaspur vide judgment and decree dated 16.08.2023.

2. The case, set up by the appellant-plaintiff, was that he was the owner in possession of land measuring 13 kanals 17 marlas, (fully described in the plaint), situated in Village Ghot Pokhar, Tehsil and District Gurdaspur alongwith

some other land. He had leased out land measuring 14 kanals 14 marlas (hereinafter referred to as 'the disputed land') to one Kartar Singh who was the father of respondents-defendants No.1 to 4 and grand-father of respondent No.5 vide registered lease deed dated 31.03.1997. The condition of the lease deed was that the lessee could get a tube-well installed and could also get an electric connection for irrigation purposes. On request of Kartar Singh, he was permitted to take a tube-well connection in his name, the expenses of which were borne by the appellant-plaintiff. Kartar Singh had assured that he would hand over the possession of the tube-well connection to the appellant-plaintiff upon the expiry of the lease period.

2(i) After the expiry of the lease period, the vacant possession of the land was handed over to the appellant-plaintiff and appellant-plaintiff kept on using the tube-well for irrigation of his land and had been paying all electricity bills and other charges. Kartar Singh expired in 2002. Suddenly, the relations between the appellant-plaintiff and respondents-defendants No.1 to 5 became strained on account of which they started asserting their right over the tube-well connection leading to the filing of the suit.

2(ii) The suit was opposed by way of a written statement in which usual objections were raised. The factum of execution of the lease deed, the condition with regard to the tube-well in the lease deed etc. were admitted. However, it was denied that the tube-well had been installed in the disputed land at the expenses of Kartar Singh. A stand was taken that the entire expenses were infact borne by respondent-defendant No.3 from his own pocket. Some other averments with regard to the business dealings between the father of the appellant-plaintiff and respondent-defendant No.3 etc. were also made which are not relevant for the

purposes of the present controversy. A separate written statement with identical averments was filed by defendant No.3. Defendant No.6 also filed a separate written statement stating that the tube-well connection had been issued in the name of Kartar Singh and the same had been applied by Kartar Singh. Respondent-defendant No.3 had moved an application in 2014 for change of name of the connection which was changed after following the due process.

2(iii) From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is entitled for relief of permanent injunction as prayed for ? OPP
2. Whether the plaintiff is entitled for relief of mandatory injunction as prayed for ? OPP
3. Whether the plaintiff has concealed the material facts from this Court ? OPD
4. Relief.

3. Parties led their respective evidence. The trial Court dismissed the suit filed by the appellant-plaintiff. The first appeal filed by the plaintiff-appellant against the said decision was also dismissed leading to the filing of the present second appeal.

4. I have heard learned counsel for the appellant-plaintiff.

5. Learned counsel for the appellant-plaintiff has submitted that the Courts below erred in non-suiting the appellant-plaintiff. It has been submitted that when the appellant-plaintiff was the owner of the disputed land and had given the same on lease to respondents-defendants No.1 to 5, the tubewell connection even if it was issued in the name of respondents-defendants, would belong to the appellant-plaintiff and he had been able to prove that it was the appellant-plaintiff

who had borne the expenses for the same. It was submitted that the Courts below did not consider the matter from the right perspective and erroneously rejected the claim of the appellant-plaintiff.

6. Before advertng to the merits of the appeal, it would be essential to observe that the requirement of framing of a substantial question of law in second appeal in terms of the provisions of Section 100 of the Code of Civil Procedure and as had been laid down in various pronouncements by the Hon'ble Apex Court including *Hero Vinoth (minor) versus Seshammal 2006 (5) SCC 545*, was subsequently held to be not there by the Hon'ble Apex Court. It was held that in the States of Punjab and Haryana, it is the provisions of the Punjab Courts Act, 1918 which would be applicable and, therefore, Section 100 CPC would not hold the field and, accordingly, there would be no requirement of framing substantial question of law in second appeal. With regard to the States of Punjab and Haryana, it was so held in Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors. 2019 (3) R.C.R. (Civil) and Satyender and Ors. Versus Saroj and Ors. 2022 (12) Scale 92 respectively.

7. Reverting to the present case, I have considered the submissions made by learned counsel for the appellant-plaintiff but do not find any merit in the same. Admittedly, the application for the tube-well connection was moved by Kartar Singh who was the father of respondents-defendants No.1 to 4 and grand-father of respondent No.5. The tube-well was installed in the disputed land which had been taken on lease by said Kartar Singh. This fact was duly acknowledged by respondent No.6 in its written statement. There is no mention in the written statement about any role whatsoever of the appellant-plaintiff in applying for the tube-well connection or in the release of the same. Even the change of the tube-

well connection in the name of respondent No.3 was done after following the due procedure. This transfer was never challenged by the appellant-plaintiff despite the fact that it had been effected before the filing of the suit.

8. Still further, the appellant-plaintiff did not produce any evidence worth its name to prove that he had borne the expenses for installation of the electric tube-well connection and that Kartar Singh had nothing to do with it. No details were given either in the pleadings or in the evidence led by the appellant-plaintiff. Infact, it was admitted by him that no written document had been prepared in this regard. The Courts below, therefore, did not commit any error in non-suiting the appellant-plaintiff. Learned counsel for the appellant has not been able to point out any ground on which the judgments passed by the Courts below would be liable to be interfered with.

In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is hereby dismissed.

(VIKRAM AGGARWAL)
JUDGE

05.10.2023

mamta

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No