

[105] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3597-2018 (O&M)
Date of Decision : 01.02.2023

Surjan Singh

...Appellant

versus

Harjit Singh and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Amit Arora, Advocate for the appellant.

B.S. Walia, J. (Oral)

[1] Challenge in the instant regular second appeal is to judgment and decree dated 06.02.2018 passed by the learned Addl. District Judge, Tarn Taran in Civil Appeal/161/2016 in case titled as '*Surjan Singh* *versus* *Harjit Singh and others*' upholding the judgment and decree dated 15.07.2016 passed by the learned Addl. Civil Judge (Senior Division), Khadur Sahib whereby the suit for declaration filed by respondent No.1-plaintiff was decreed, holding him to be owner of electricity tubewell connection bearing No.AP27-19, HP 7.5 installed in his agricultural land situated in Village Fazilpur, Tehsil Khadur Sahib, District Tarn Taran since 1986-87, besides restraining defendant Nos. 1 to 3 from interfering in the use of said tubewell/electricity connection bearing No. AP27-19 as also from disconnecting and transferring the said tubewell electricity connection.

[2] Learned Counsel contends that joint property was partitioned by Niranjan Singh, father of appellant-defendant No.1 and Santokh Singh father of

respondent No.1-plaintiff on the basis of mutual settlement and while the property situated in Village Jalalabad, fell to the share of Niranjana Singh, father of appellant defendant No.1, the property situated in Village Fazalpur, fell to the share of Santokh Singh, father of appellant defendant No.1, and there is no mention in Ex. D-1 regarding exchange of the tubewell/electricity connection between the parties, therefore, respondent No. 1 / plaintiff had no right to the said tubewell/electricity connection and the appellant was free to deal with the same and get it transferred either in his name or in the name of any other person and further that the agreement (Ex. P-1) dated 20.05.1996 allegedly executed between the appellant-defendant No.1 and respondent No.1-plaintiff was a fabricated document.

[3] That on the basis of pleadings of the parties, the following issues were framed:-

1. *Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
2. *Whether the plaintiff is entitled to permanent injunction as prayed for? OPD*
3. *Whether the suit of the plaintiff is not maintainable? OPP*
4. *Whether the plaintiff has not come to the court with clean hands, if so, it effect? OPD*
5. *Whether the suit is without any cause of action and no locus standi? OPD*
6. *Whether the suit of plaintiff is mis joinder and non joinder of the necessary parties? OPD*
7. *Relief.*

[4] Learned Addl. Civil Judge (Senior Division), Khadur Sahib decreed the suit by taking into account that Santokh Singh father of the

plaintiff and Niranjan Singh, father of appellant defendant No.1 had during their life time effected partition of joint property and while the property situated in Village Jalalabad had come to the share of Niranjan Singh, the property situated in Village Fazalpur had fallen in the share of Santokh Singh and both had also mutually agreed to get transferred the tubewell connections situated in their respective share of land with each other and both the parties kept using the tubewell/electricity connection which was installed in their respective properties at Fazalpur and Jalalabad respectively and that while Santokh Singh transferred the electric connection which was in his name in the property situated at Jalalabad in the name of Surjan Singh by giving an affidavit (Ex.D4) and furnishing affidavit to the PSPCL to transfer the electric connection from his name to the name of Surjan Singh, besides, as per PW-5, tubewell connection bearing No.AP05 1241 previously in the name of Santokh Singh resident of Village Fazilpur (father of respondent No.1-plaintiff), was transferred in the name of appellant-defendant No.1 on the basis of family partition.

[5] The learned Addl. Civil Judge (Senior Division), Khadur Sahib in paragraph No.9 of the judgment, referred to agreement (Ex.P-1) containing reference of transfer of tubewell connection as also to the evidence of PW-1 Randhir Singh, that when the agreement was executed in his presence, the tubewell connection was also got transferred and further that Rajbir Kaur (PW-2), Kabal Singh (PW-3), Amarjit Singh (PW-6) also supported and corroborated the version of the plaintiff. Learned Addl. Civil Judge (Senior Division), Khadur Sahib also held that even if there was no reference of

tubewell in the exchange deed (Ex.D1), the affidavit (Ex.D4) revealed that the tubewell/electricity connection in the name of Santokh Singh father of respondent No.1-plaintiff was transferred in the name of appellant-defendant No.1 and that evidence of PW5 proved the ownership of tube well connection and that he was consumer of the same and on the basis of the aforementioned position held that the plaintiff was using the tubewell connection, therefore, the defendants were restraining from interfering, disconnecting, transferring the said tubewell connection bearing No.AP27-19. Accordingly, issue Nos.1 & 2 were decided in favour of respondent No.1-plaintiff and against the defendants, while issue Nos.3 to 6 were decided against the appellant and defendant Nos.2 and 3 as not pressed and in view thereof the suit of respondent No.1-plaintiff was decreed. Appeal filed by appellant defendant No.1 was dismissed vide judgment dated 06.02.2018.

[6] I have perused the record with the able assistance of learned counsel and considered his submissions.

[7] Admittedly, joint family property was partitioned between two brothers namely Niranjan Singh and Santokh Singh i.e. fathers of appellant-defendant No.1 and respondent No.1-plaintiff. It is also an admitted fact that there was a tubewell/electricity connection on the respective lands owned by the fathers of the parties, as also that the tubewell connection on the land of respondent No.1/plaintiff's father was transferred in the name of the appellant-defendant No.1. Apart from the same, there is an agreement (Ex. P-1) giving reference of transfer of tubewell executed between appellant-defendant No.1 and respondent No.1-plaintiff. No doubt, the appellant has denied the said

agreement, but PW-1, PW-2 & PW-3 examined by respondent No.1-plaintiff supported and corroborated the version of respondent No.1-plaintiff that when the agreement was executed, tubewell connection was also got transferred.

[8] Learned Courts below have upheld the agreement between the parties (Ex. P-1) as per which there was agreement between the parties vide which the said tubewell connection was to be transferred in the name of respondent No.1-plaintiff and in view of the same having been proved, the same was to be read along with the Exchange Deed (Ex. D-1). Learned Counsel for the appellant has candidly conceded that the land of father of appellant-defendant No.1 as well as respondent No.1- had electric tubewell installed on their respective lands and on exchange of the lands between the fathers of the parties, along with the land, the tubewell/electricity connection were also transferred and were being utilized on the lands, which fell to the share of the fathers of the parties ever since the exchange of the land in question in the year 1987 pursuant to partition of joint family property amongst the fathers of appellant-defendant No.1 and respondent No.1-plaintiff and further that both the parties had been using the respective tubewell/electricity connection installed in the respective suit properties ever since the date of partition and exchange of the land in question.

[9] Since the lands with the respective tubewells on the same were exchanged between the fathers of the parties being brothers on partition of joint family property besides, in view of the agreement Ex. P-1 giving reference of transfer of tubewell executed between appellant-defendant No.1 and respondent No.1-plaintiff. as well as evidence of PW1, PW2 & PW3

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[6]

supporting the same, I do not find any infirmity with the concurrent findings of fact recorded by the Courts below.

[10] No other point has been argued.

[11] In the given facts and circumstances, no question of law much less substantial question of law, arises for consideration.

[12] *Dismissed.*

(B.S. Walia)
Judge

01.02.2023
'Rajneesh'

Whether speaking/ reasoned	:	Yes/No
Whether reportable	:	Yes/No