



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

RSA No.3495 of 2014 (O&M)

Date of Order:18.02.2025

Banarsi Dass

.Appellant

Versus

Ashwani Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Namit Gautam, Advocate
for the appellant.**

**Mr. Manu Loona, Advocate
for the respondents**

ANIL KSHETARPAL, JUDGE (Oral)

1. The plaintiff assails the correctness of the concurrent findings of fact arrived at by the courts below while dismissing his suit for grant of decree of declaration that he is entitled to use 2/3rd share of the electric connection installed on tubewell for irrigating the land.
2. Originally, the property belonged to Sh. Janak Raj and his family members. The total land holding was 73 kanals and 13 marlas. Smt. Mohinder Kaur widow of Sh. Janak Raj transferred 33 kanals and 13 marlas on 03.05.2002, in favour of her daughter-in-law, namely Smt. Santosh Rani widow of Sh. Inderjit son of Sh. Janak Raj. There was specific recital in this sale deed that Smt. Santosh Rani shall have right of irrigating and use of electric connection installed at the tubewell. Smt. Santosh Rani in turn has sold the land and all other rights in favour of the plaintiff (appellant) vide registered sale deed dated 30.04.2004. Mr. Ashwani, the second son of Sh. Janak Raj has consented to the sale of land with right of irrigation and use of



electric connection when Smt. Mohinder Kaur sold the property in favour of Smt. Santosh Rani.

3. Defendant no.1 contested the suit on the ground that defendant no.2 was never the owner of 2/3rd share in the electric connection, hence she was not competent to transfer. Actually the connection was in the name of Sh. Janak Raj, who executed the Will in favour of defendant no.1, namely, Sh. Ashwani Kumar

4. Both the Court dismissed the plaintiff's suit on the ground that it is not proved that Smt. Mohinder Kaur had inherited the property from Sh. Janak Raj or she had any right over the electric connection.

5. This court has considered the submissions of the learned counsel representing the parties.

6. The learned counsel representing the appellant submits that when Smt. Mohinder Kaur executed the sale deed on 03.05.2002, in favour of Smt. Santosh Rani. Sh. Ashwani Kumar, defendant no.1 appended the note under his signatures admitting transfer of rights of irrigation through tubewell electric connection to the extent of 2/3rd share. He submits that there is only one electric connection on the entire land and the appellant stands deprived of a source of irrigation after having purchased the same.

7. The learned counsel representing the respondents submits that the plaintiff has failed to prove that Smt. Mohinder Kaur had inherited the property from Sh. Janak Raj.

8. Be that as it may. The appellant is not a member of the family. He has purchased the property from Smt. Santosh Rani along with rights of irrigation including 2/3rd right in the electric connection.



9. There was specific recital of transfer of 2/3rd share in the electric connection in favour of the appellant in sale deed dated 30.04.2004, executed by Smt. Santosh Rani. There was also specific recital in the sale deed dated 03.05.2002, executed by Smt. Mohinder Kaur in favour of Smt. Santosh Rani widow of Sh. Janak Raj to the same effect. Sh. Ashwani Kumar signed it. He does not dispute his signatures. Hence, both the courts have erred in taking a very narrow view of the matter. Even if Smt. Mohinder Kaur had not inherited the property from Sh. Janak Raj, still there was only one tubewell connection on the entire land. Once, Sh. Ashwani Kumar's mother, namely, Smt. Mohinder Kaur transferred 33 kanals and 13 marlas in favour of Smt. Santosh Rani with his consent which includes rights over 2/3rd share in the electric connection, he cannot be permitted to wriggle out.

10. Hence, the Regular Second Appeal is allowed. The judgments passed by both the courts are set aside. The plaintiff's suit shall stand decreed with costs.

11. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

February 18, 2025
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No