



RSA-562-2024 (O&M)

-1-

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

118

RSA-562-2024 (O&M)

Date of decision: 23.01.2025

Jagdish

... Appellant

Vs.

Ajay & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Hritik Gupta, Advocate for the appellant.

...

SUKHVINDER KAUR, J.

1. Instant regular second appeal has been filed by the plaintiff/appellant against the concurrent finding recorded by both the Courts below vide which suit of the plaintiff was dismissed.

2. Brief facts of the case as per plaint are that it has been alleged that Khem Ram S/o Shiv Daan grandfather of plaintiff was owner in possession of land comprised in khewat No.101/87, khatoni No.247, khasra No.64/3/2 total land measuring 0 kanal 16 marlas situated within the revenue estate of village Bhangarh, Tehsil and District Bhiwani (hereinafter to be referred to as 'the suit land') as per jamabandi for the year 2009-10 to the extent of 1/4th share. After his death, his five sons, namely, Moti Ram, Daya Ram, Bhagwana (father of the plaintiff), Shri Chand and Sukh Ram inherited the share of the deceased and as such all became owners in possession of the suit land. Remaining share of land was inherited by legal heirs of two sons of Shiv Daan, namely, Nahna and

**RSA-562-2024 (O&M)****-2-**

Chnni and others. It was alleged that after death of his father, plaintiff became owner in possession to the extent of 1/60th share of suit land and defendant No.1 has no concern with this share of plaintiff and other co-sharers as defendant No.1 is stranger. In his share, plaintiff had constructed a well for his tubewell to irrigate his crops and this well is also owned and possessed by the plaintiff. Though defendant No.1 had no connection with this well in any manner but two years back in collusion with defendants No.2 and 3 he obtained electric tubewell connection bearing No.LA-54/3397 in his name. Defendants No.2 and 3 without inspecting the revenue record of the site released the electric connection in the name of defendant No.1 illegally and unlawfully, whereas defendant has neither any right on the land upon which the said electric connection has been got installed nor with the well which had been got constructed by the plaintiff. It was alleged that defendant No.1 has no right or title to obtain the electric connection on the land or well which is exclusively owned and possessed by the plaintiff. So all the proceedings of issuing electric connection in the name of defendant No.1 by defendants No.2 and 3 are absolutely wrong, illegal, null and void, without any right or title and same is not binding upon the rights of the plaintiff. Plaintiff asked defendants many times to remove the electric connection from his well and not to irrigate his crops from his well by using said illegal electricity connection and not to interfere in the peaceful possession of the plaintiff over the suit land and not to change nature of



the suit land, but defendant No.1 refused to accede to his request. Hence, the present suit was filed.

3. Upon notice, defendant No.1 filed his written statement by taking preliminary objections regarding maintainability, cause of action, *locus standi*, estoppel, suppression of true and material facts, under valuation and payment of deficit court fees and mis-joinder and non-joinder of necessary parties. On merits, it was averred that Khem Ram S/o Shivdaan predecessor-in-interest of defendant No.1 was owner in possession of the suit land who had already died. He had conferred ownership of the suit land upon defendant No.1 during his lifetime under a family settlement. The tubewell connection was installed on the suit land with the knowledge and consent of all the co-sharers. All the other material averments of the plaint were denied.

4. Joint written statement was filed by defendants No.2 and 3 taking the similar preliminary objections. On merits, it was averred that as per record, defendant No.1 has obtained electricity connection in khasra No.52//2 (8-0) comprised in khewat No.13/12 and khatoni No.83. Defendant No.1 applied for tubewell connection vide application No.15055 AP dated 08.11.2011 and also furnished agreement, affidavit, copy of jamabandi for the year 2009-10 of village Bhangarh and copy of *aks-shijra* with the application for tubewell connection in the aforesaid khasra No.52/2. Defendant No.1 has not taken any connection in khasra No.64/3/2 as per the record furnished by defendant No.1 with defendants



RSA-562-2024 (O&M)

-4-

No.2 and 3 with the connection application. Defendant No.1 was released connection bearing No.LA-54/3397 vide SCO No.10/166 dated 12.12.2011 and effected on 04.01.2012 on the spot and it was within the knowledge of the plaintiff and was visible at the spot. Defendants No.2 and 3 had never colluded with defendant No.1 at any stage for harming the plaintiff, rather they have released connection on the basis of record of land furnished by defendant No.1 with the connection application.

5. From the pleadings of the parties, the following issues were framed:

1. Whether the plaintiff is entitled for the declaration and consequential relief of permanent injunction, as prayed for?

OPP

2. Whether the present suit is not maintainable? OPD

3. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD

4. Relief.

6. Thereafter both the parties led their respective evidence. In order to prove his case, plaintiff – Jagdish himself stepped into the witness box as PW1 and tendered his affidavit Ex.PW1/A in his examination-in-chief while reiterating all the averments made in the plaint. Plaintiff also brought on record Ex.P1 - memo No.CH4 dated 18.02.2015, Ex.P2 - memo No.CH3 dated 19.03.2015, Ex.P3 - copy of jamabandi for the year 2009-10, Ex.P4 - application under order 3 of RTI, Ex.P5 - application of RTI, Mark A to D - Indian Postal Orders, Mark 'E' - RTI reply dated 18.02.2015, Mark 'F' - RTI reply dated 19.03.2015,



RSA-562-2024 (O&M)

-5-

Mark 'G' - Application of plaintiff dated 25.04.2016 and Mark 'H to N' - photographs.

7. To rebut this evidence of plaintiff, defendant No.1 – Ajay appeared as his own witness and while appearing as DW2 reiterated the entire version as given in the written statement. Besides that, he examined DW1 Gordhan Numberdar, who stated that defendant had taken the said electricity connection with consent of all the co-sharers and also examined DW3 Tek Chand, his father, who corroborated his statement.

8. Defendants No.2 and 3 examined DW4 O.K. Dalal, SDO Sub Division of DHBVNL, Bhiwani, who relied upon Ex.D1- copy of mutation No.2636, Ex.D2 - site plan, Ex.D3 - Affidavit of Kailash Chand, Ex.D4 - payment receipt of material, Ex.D5 - receipt of Anil Kumar regarding payment, Ex.D6 - receipt of Parveen Kumar regarding payment, Ex.D7 - receipt of Raju regarding payment, Ex.D8 - receipt of Bijender regarding payment, Ex.D9 -receipt of Roopram regarding payment and Ex.D10 - electricity bill.

9. Vide judgment and decree dated 09.05.2018 of learned Civil Judge (Junior Division), Bhiwani, suit of the plaintiff was dismissed. Aggrieved of the said order, plaintiff – Jagdish filed an appeal before the First Appellate Court which was also dismissed vide judgment and decree dated 14.12.2023 by the Court of learned Additional District Judge, Bhiwani. Hence, plaintiff – Jagdish/appellant has knocked the doors of this Court by way of filing the present Regular Second Appeal.

**RSA-562-2024 (O&M)****-6-**

10. Learned counsel for the appellant has contended that respondent No.1 had applied for taking the electricity connection on the land comprised in khasra No.52//2 (8-0) in khewat No.13/12 but he got installed that tubewell connection over the suit land. He has argued that plaintiff is owner in possession of the suit land to the extent of 1/60th share. Suit land is in possession of the plaintiff and well meant for irrigation was also owned by the plaintiff. Plaintiff had got constructed the well in question with his own labour and money and defendant No.1 has no right to use the same without consent of the plaintiff. He has prayed that the appeal may be accepted and judgments and decrees of the Courts below be set aside.

11. I have heard learned counsel for the appellant at length and have gone through the record.

12. As is evident from from jamabandi for the year 2019-20, Ex.E3, which was tendered into additional evidence before the Appellate Court, plaintiff has acquired a very small share in the suit land. He is one of the co-sharers and suit land is still joint and un-partitioned. In the absence of relevant revenue record, plaintiff has failed to prove his exclusive possession as alleged over the suit land. Neither any of the co-sharers has been impleaded as a party in the suit nor has been examined who might raise any objection when suit property is stated to be joint. Plaintiff has admitted in his cross-examination that when defendant No.2 was installing the poles and the transformer, he did not raise any objection

**RSA-562-2024 (O&M)****-7-**

at the spot and raised objections only after one year of the same. So plaintiff did not raise any objection, even after having knowledge about installation of the tubewell, which strengthens the plea of the defendant that tubewell was installed with the consent of all the co-sharers.

13. As already observed, plaintiff is having a very small share in the suit property and when the partition has not been effected as yet then plaintiff cannot claim to be in exclusive possession over any specific portion of suit land in the absence of any revenue record to that effect. Courts below have rightly held that if defendant No.1 got installed tubewell connection wrongly on some other land then it is a matter between plaintiff and defendants No.2 and 3, who are competent in their own capacity to take note of any irregularity at the time of applying or taking the said tubewell connection.

14. No question of law much less substantial question of law arises for determination in the present second appeal. Accordingly, the appeal is without any merits and is hereby dismissed.

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

**(SUKHVINDER KAUR)
JUDGE**

23.01.2025
harjeet

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|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |