

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

CR No.7183 of 2015 (O&M)

Date of decision: 06.11.2015

Sube Singh and others

...Petitioners

versus

Bhag Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vinod Bhardwaj, Advocate,
for the petitioner.

RITU BAHRI, J.

CM No.23731-CII of 2015

Copy of bill dated 03.03.2006 (Annexure P-4) is taken on record.

Misc. application stands allowed accordingly.

CR No.7183 of 2015

Challenge in this petition is to the order dated 08.10.2015 (Annexure P-3) passed by the Additional District Judge, Kaithal, whereby appeal filed by the plaintiff-respondent against the order dated 23.07.2014 (Annexure P-2) passed by the Civil Judge (Junior Division), Kaithal, has been accepted and the plaintiff-respondent has been allowed to use water for irrigating his fields/ sowing his crops.

Bhag Singh-plaintiff (respondent herein) has filed a suit for permanent injunction restraining the defendants-respondents, alleging therein that he and his son-Sube Singh had jointly purchased 40 Kanals of land, out

of total land measuring 385 Kanals 18 marlas, from original owners namely Naresh Kumar and his father-Chandan Singh vide registered sale deed dated 06.05.2005. A tubewell was installed in the suit land. Payments for installation of the said tubewell were paid by Chandan. None of the vendees i.e. Bhag Singh (plaintiff) and his son Sube Singh was given exclusive possession of any specific killa number qua the purchased land. After the aforesaid sale transaction, Sube Singh (defendant No.3) sold his share to Smt. Sumresh and Manisha, wives of defendant Nos. 1 and 2 namely Subhash and Rajesh sons of Dharam Singh. As per plaintiff-respondent, defendant Nos. 1 and 2 were not permitting him to take water from the tubewell, as a result of which, he was unable to irrigate the land and sow the crops. During the pendency of suit, plaintiff-Bhag Singh filed an application to allow him to irrigate his land by use of tubewell in question.

The stand taken by the defendants-respondents, in their reply, was that the plaintiff had no right to draw water from the tubewell.

Vide order dated 23.07.2014, the application made by the plaintiff was dismissed and he was not granted any permission to irrigate his land by using the tubewell in question.

However, the lower appellate Court, on appeal, has rightly returned a finding that pursuant to the sale deed dated 06.05.2005, both Bhag Singh and Sube Singh had a right to use the tubewell and after Sube Singh had sold his share of land to the wives of defendant Nos. 1 and 2, they (vendees) had merely stepped into the shoes of their vendor (Sube Singh). The plaintiff-respondent, who is a co-owner in the land in dispute, could not be restrained from drawing water from the tubewell. Ultimately, the order dated 23.07.2014 was set aside and appeal of the plaintiff-respondent was

accepted vide impugned order dated 08.10.2015.

Learned counsel for the petitioners has placed reliance on the bill dated 03.03.2006 (Annexure P-4) to show that the entire cost for installing the tubewell in question was borne by Sube Singh.

Even if, this fact is accepted, by virtue of sale deed dated 06.05.2005 at the time of purchase of the land from Chandan Singh and Naresh Kumar, necessary payment of security had been deposited by Chandan Singh. This money was adjusted at the time of purchase of the land by Sube Singh and Bhag Singh. The order dated 08.10.2015 is merely an interim measure to allow the plaintiff-respondent to draw water from the tubewell in question enabling him to irrigate his crops. As Sube Singh had sold his share of land to wives of defendant Nos. 1 and 2, the plaintiff being owner of 8 Kanals of land, out of 40 Kanals (which was purchased vide sale deed dated 06.05.2005), has been rightly given the benefit of drawing water from the tubewell in question. Since in the sale deed dated 06.05.2005, it has been mentioned that the electric connection had been given in the name of Chandan Singh, both Bhag Singh and Sube Singh had a right to use the aforesaid tubewell.

In view of the above, no ground is made out to interfere in the impugned order.

Dismissed.

(RITU BAHRI)
JUDGE

06.11.2015
ajp