

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA No.4316 of 2011 (O&M)

Kulwinder Singh

..... Appellant

Versus

Mohan Singh

..... Respondent

2. RSA No.4774 of 2011 (O&M)

Kulwinder Singh and another

..... Appellants

Versus

Mohan Singh and another

..... Respondents

Date of Decision: 07.05.2015

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vijay Lath, Advocate,
for the appellant(s).

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

This order will dispose of RSA No.4316 of 2011 titled *Kulwinder Singh vs. Mohan Singh* and RSA No.4774 of 2011 titled *Kulwinder Singh and another vs. Mohan Singh and another*. The facts are taken from RSA No.4316 of 2011.

The present appeal is directed against the decree dated July 29, 2009 passed by the learned Additional Civil Judge (Senior Division), Nawanshahr (S.B.S. Nagar) and the First Appellate decree dated May 02,

2011 passed by the learned District Judge, Shaheed Bhagat Singh Nagar affirming the decree of the trial Court. This appeal is by the plaintiff arising out of a suit for permanent injunction restraining the defendants from removing/damaging or dismantling the underground water supply pipes which are running through the land in dispute and for restraining the defendant from encroaching upon and raising any construction in the suit property. The suit was contested by the defendant pleading that the portion of land comprised in Khasra No.130 and denoted by green colour in the site map is in possession of the defendant where he has constructed a residential house. He pleaded that towards north from his house, he has left some vacant space which is his access to light and air with windows of the house opening from the wall of the house falling on the northern side of the corpus.

The defendant denied the existence of underground pipes through the portion of land shown in green colour in the map Ex.D-1. The plaintiff asserted that the suit land is joint holding and he is a co-sharer with the defendant with a right to each and every inch of the land as common property. The water pipe has been laid down to carry water from the tubewell denoted by letter 'M' in Ex.P-1 situated over land of Khasra No.10//22/1 from where it was drawn to reach the portion of land falling in Khasra No.130. The water pipe has been laid 3 to 4 feet below the ground level. The plaintiff claims that his fields are being irrigated through the tubewell. The trial Judge found that the forefathers of the plaintiff and defendant had joint khata which was recorded joint as per revenue record but there was an arrangement among co-sharers for separate possession of

land over which the parties had raised their respective constructions and are living in their independent houses which they possess exclusively. Nevertheless, not even an iota of evidence was forthcoming on the part of the plaintiff as to when he laid down the pipes or was there any family settlement for the use of said portion shown as red as common between the parties. Nothing was pleaded on this account. If plaintiff claimed easementary rights, the same could be claimed through a suit for declaration. The plaintiff simply filed a suit for permanent injunction assuming that he has a right to use the property of the defendant.

The trial Court rightly observed that when a particular right, title or interest is under cloud it is necessary for the concerned party to seek a declaration from court of the existence of such right. The plaintiff has got no right to continuing using the land which has fallen to the share of the defendant without seeking declaration for the purpose. Long settled possession has not to be disturbed except for the best of reasons and upon partition of property by any of the modes available. The trial Judge has accepted that parties were governed by mutual partition. If there are co-sharers then no injunction would normally issue against one another. The learned District Judge by his order dated May 02, 2011 has endorsed the view of the trial Court being based on evidence on record. The plaintiff failed to lead evidence as to when the waterpipes were laid. The learned District Judge has rightly wound up this judgment by noting that whatever may be the position, it is not for the Court to fetch any evidence for either party.

I find no reason whatsoever to interfere with the findings of fact

in second appeal. No question of law much less substantial arises in the present appeal for the consideration of this Court under Section 100 CPC.

The appeals, are accordingly, dismissed.

**(RAJIV NARAIN RAINA)
JUDGE**

07.05.2015
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