

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Regular Second Appeal No. 3374 of 2013 (O&M)
Date of decision: 2.7.2015

Ishwar Singh and others

.. Appellants

v.

Nihal Singh and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sushil Bhardwaj, Advocate for the appellants.

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Rajesh Bindal J.

The plaintiffs are before this court impugning the judgment and decree of the learned lower appellate court, whereby that of the trial court was reversed and the suit filed by the plaintiffs for permanent injunction, was dismissed.

In the case in hand, the appellants filed suit seeking restrain against respondent No. 1-defendant from raising any construction on the land in dispute measuring 10 marlas depicted in the revenue record as “*gair mumkin chah*”. The land being joint and without partition, the defendant was not entitled to raise any construction. Prayer was also made for removal of the construction already raised. The trial court decreed the suit, whereas the learned lower appellate court reversed the findings recorded by the trial court and dismissed the suit.

Learned counsel for the appellants submitted that once in the revenue record, the property has been shown to be joint, the defendant did not have any right to raise construction thereon without the same being partitioned by meets and bounds as any construction raised on a part of the joint property would prejudice the rights of the appellants.

After hearing learned counsel for the appellants, I do not find any reason to interfere with the findings recorded by the learned lower appellate court. The appellants are claiming themselves to be co-owners of a small plot measuring 10 marlas bearing khasra No. 93/26. For the purpose, reliance has been placed upon the entries made in the jamabandi for the year 2001-02. It is sought to be claimed that joint ownership of the plot between the parties is a result of consolidation in the year 1964. It is not in dispute that though the parties own other portions of land in the village, but none of that is joint. There is no reason coming on record justifying ownership of number of persons on a small piece of land measuring 10 marlas, on which a well was existing. The learned court below has further found that no doubt, the names of the appellants have been shown in the jamabandi in column No. 5 in red colour, however, the entry does not depict them as owners of the land, rather, it shows that persons have been given right to use the water of the well in terms of their shares mentioned in the jamabandi. In case, the small portion of land was joint property between the parties, that should have a separate khewat number, which is not there in the record. Ajit Singh-Lambardar of the village was examined, who stated that parties had share in water of the well. However, he stated that the water being not sweet, it was not fit for human consumption or irrigation and the well was not being used ever since consolidation took place in the year 1964. Further, it has come on record that because of flood in the village in the year 1995, the well was damaged and was filled with sand. Though initially this fact was sought to be disputed by the appellants-plaintiffs, however, in evidence they admitted that in the year 1998, the well was filled up with sand and the plot was levelled. Meaning thereby the well is not in use from 1998.

With the aforesaid material on record, I do not find any error in the judgment and decree passed by the learned lower appellate court. No

substantial question of law arises in the present appeal. The same is, accordingly, dismissed.

(Rajesh Bindal)
Judge

2.7.2015
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