

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 4055 of 2015(O&M)
Date of decision : March 17, 2016

Dass Ram @ Gurdass Ram

..... Petitioner

Versus

Satnam Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sarju Puri , Advocate
for the petitioner.

Mr. S. S. Toor, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The petitioner-father-defendant is aggrieved of the order of the lower appellate court whereby the appeal filed against the dismissal of the application filed under Order 39 Rules 1 and 2 CPC at the instance of the respondent-plaintiff has been allowed and they have been restrained from interfering and obstructing the plaintiff from using and operating the electric motor tubewell connection No. AP/26/223.

Learned counsel appearing on behalf of the petitioner submits that unfortunately, the parties to the *lis* are father and son. The electric connection is exclusively in the name of the

father which cannot be claimed as a right, much less even by a co-sharer. Even otherwise, the respondent-plaintiff has independent source of irrigation. Even, mediation proceedings, in this regard failed. The plea taken in the plaint is that the land stood partitioned and therefore submits that as per the Electricity Manual, no co-sharer can claim a right to the tubewell which has been issued in the name of other co-sharer, the remedy is to apply for a fresh connection. These facts have not been noticed by the lower appellate court.

Mr. S. S. Toor, learned counsel appearing on behalf of respondent No.1 submits that there is no illegality and perversity in the order under challenge. The co-sharers have a right for irrigation of the entire land, if the respondents are restrained then the land cannot be irrigated and it would result into immense loss and prays for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that the view expressed by the lower appellate court is not sustainable in view of the fact that the electric connection is in the name of the petitioner and this fact has been noticed by the trial court. As per the electricity Manual, in case the ownership of the land is of a co-sharer though, it is not admitted, even then the other co-sharer cannot seek restraint order and a right on the tubewell connection. The remedy, is to apply for a separate connection. It is a categorical case of the respondent-plaintiff that the partition has been affected, thus, he cannot have any right on the tubewell connection and seek injunction for irrigation of the land which has allegedly fallen to his share.

With the aforementioned observations, the impugned order is set aside. The revision petition stands allowed.

Nothing expressed herein shall be construed as an expression on the merits of the pending suit.

(AMIT RAWAL)
JUDGE

March 17 , 2016
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