

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.6046 of 2016

Date of Decision: September 16, 2016

Balwant & another

...Petitioners

Versus

Rambir & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Akshay Kumar Jindal, Advocate,
for the petitioners.

AMIT RAWAL, J. (Oral)

Petitioner-defendants are aggrieved of the allowing of the misc.appeal filed against the interim order passed under Order 39 Rule 1 & 2 CPC, whereby the respondent-plaintiff has been permitted to use the tubewell connection bearing No.NA-25/1106 (old A/C No.K5-252/A P42-1205) in the name of Nar Singh.

Mr.Akshay Kumar Jindal, learned counsel for the petitioner-defendants submits that no doubt the suit land is joint holding of all the co-sharers, but the connection is in the name of their father Nar Singh. The respondent-plaintiff has been able to prove only one solitary bill showing that he was paying the consumption charges. Otherwise, there has been the series of criminal litigation and possibility of sharing the consumption charges is too remote. The Court below has not appreciated this fact. In fact, the plaintiff is having independent source of water, i.e., tubewell, which is being run by use of generator set. In fact, the provisions of Order

39 Rule 1 & 2 CPC are not made out. All these aspects have not been taken into consideration by the Lower Appellate Court and, thus, urges this Court for setting-aside of the findings.

I have heard the learned counsel for the petitioners, appraised the paper book and of the view that there is no merit and force in the submission of Mr.Jindal. The tubewell connection is in the name of Nar Singh, but there is a joint holding. The remedy, if any, for the petitioners is to seek the partition, which will also be of the tubewell connection. As per the revenue record, it has not been mentioned that the electricity connection is in the name of Nar Singh, though bill shows that it is in the name of Nar Singh. The plaintiff had been able to produce on record the electricity bill to show that the connection charges have been paid by him. In fact, it is the joint khata. I do not intend to delve on the findings rendered by the criminal court amongst the parties as the same could have a bearing on the disposal of the suit. Moreover, criminal findings do not have bearing on the civil suit. Civil suit is to be decided independently on the preponderance of the evidence.

In my view, the respondent-plaintiff has been able to make out the case under the provisions of Order 39 Rule 1 & 2 CPC. The order passed by the Lower Appellate Court cannot be said to be without jurisdiction. No interference is called for.

Revision petition stands dismissed.

September 16 , 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No