

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

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CR 8622 of 2015 (O&M)

Date of decision: 06.05.2016

Darshan Singh

..... *Petitioner*

Versus

Gurdial Singh

.....*Respondent*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Rajesh Bhatheja, Advocate
for the petitioner

Mr. Naresh Kumar Manchanda, Advocate
for the respondent

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

Rekha Mittal, J. (Oral)

The present petition has been directed against the order dated 20.11.2015 passed by Civil Judge (Junior Division) Moga (Annexure P5), whereby the application filed by the petitioner/plaintiff for framing additional issue (*whether the plaintiff has easmentary rights over the tubewell electric connection in dispute, is so, its effect? OPP*) has been dismissed.

Counsel for the petitioner has submitted that Darshan Singh-petitioner in para 5 of the plaint has taken up a plea that there is no other source of irrigation to the land and the plaintiff has easement of necessity for being in usage from the last more than 35 years, therefore, a specific issue is required to be framed as prayed for.

Counsel for the respondent has supported the impugned order

with the submissions that as the petitioner has not filed a suit for declaration, claiming easmentary rights either by way of prescription or that of necessity, no fault can be found in the order impugned.

I have heard counsel for the parties, perused the records and find no merit in the petition.

The petitioner has filed a suit for permanent injunction, restraining the defendant/respondent from interfering forcibly in running and using of electric connection account No. BR3/316 of 5 H.P. now 12 H.P. on the tubewell installed in the corner of the land bearing khasra No. 66//25/1 adjoining to khasra no. 66//24 and 78/4 of khewat No. 577, situated in the revenue estate of village Bhinder Khurd, Tehsil Dharamkot, District Moga and further restraining the defendant from transferring the above said electric connection to any body and shifting the same to other place on the basis of averments raised in paras 1 to 5 of the plaint. As the petitioner has filed a simpliciter suit for injunction on the basis of various averments set up in the aforesaid paras and a plea of the petitioner that he has easement of necessity would be covered by the issues already framed by the trial Court, there is no necessity to frame a specific issue as has been prayed for particularly in the circumstances that the plaintiff/petitioner has not filed a suit for declaration by taking recourse to the provisions of right of easement of necessity.

In view of what has been discussed herein-above, finding no merit, the petition stands disposed of accordingly.

(Rekha Mittal)
Judge

06.05.2016
mohan bimbura