

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

**Civil Revision No.8837 of 2015 (O&M)
Date of decision : 01.08.2016**

Jarnail Singh

.....Petitioner

Versus

Majhail Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Deepak Verma, Advocate for petitioner.

DARSHAN SINGH, J.

CM-13169-CII-2016

This is an application for placing on record documents *i.e.* partition order & mode of partition (Annexure P-7).

Heard.

In view of the reasons mentioned in the application, same is allowed and the documents Annexure P-7 are taken on record, subject to just exceptions.

CR-8837-2015

The present revision petition has been preferred against the order dated 23.10.2015 passed by the learned Additional District Judge, Hoshiarpur and the order dated 03.04.2015 passed by the learned Civil Judge (Senior Division), Garhshankar.

2. On the basis of an application filed by respondent No.1-plaintiff Majhail Singh under Order 39 Rules 1 & 2 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter called the “CPC”), the learned trial Court granted the *ad interim* injunction restraining the defendants from getting the electric connection of the tube-well in dispute disconnected and from getting the same shifted to some other place without the consent of respondent No.1-plaintiff and his brother and from creating obstruction in the user of the tube-well in dispute to irrigate their land till the decision of the suit. The appeal filed by the petitioner-defendant No.1 against the said order has also been dismissed by the learned Additional District Judge vide impugned order dated 23.10.2015.

3. Learned counsel for the petitioner contended that the total land was measuring 174 Kanals 12 Marlas, which was in the respective possession of the parties. Two tube-wells were existing in the suit property. One tube-well was existing in Khasra No.27//22/1/1 and 22/1/2, which was in exclusive possession of the defendants. The aforesaid land was partitioned by the Assistant Collector First Grade on 27.06.2008. The petitioner has purchased the share of defendants No.2 & 3. The land wherein the tube-well was installed had fallen to the share of defendants No.2 & 3 and the same has been purchased by the petitioner. So, the petitioner is owner in possession of the said tube-well and the electric connection, wherein the plaintiff-respondent No.1 has no legal right. So, the plaintiff has no *prima facie* case. He contended that the agreement dated 01.05.2009, relied upon by the plaintiff-respondent No.1 has been denied by

the petitioner/defendants. He further contended that moreover, the *ad interim* injunction granted by the learned trial Court is in the nature of the mandatory injunction which was not permissible. Thus, he contended that the impugned orders are not legally tenable.

4. I have duly considered the aforesaid contentions.

5. In para No.5 of the plaint the respondent No.1-plaintiff has categorically pleaded that in the partition proceedings the jointness of the tube-well in dispute was not reflected. The agreement dated 01.05.2009 was executed and it was mentioned that tube-well in dispute shall remain joint between the parties to the suit. It is an admitted fact that the petitioner has purchased the suit property on 26.10.2009 *i.e.* after the said agreement. The learned trial Court has categorically mentioned that the said agreement shows that tube-well in dispute was in joint ownership and in joint possession of both the parties. The plea raised by the petitioner-defendant that the said agreement was a forged and fabricated document is certainly a matter of evidence. The said agreement is shown to have been thumb marked by defendants No.2 & 3, the vendors of the petitioner. In the said agreement the tube-well in dispute was shown to be the joint. So, certainly respondent No.1-plaintiff had the *prima facie* case in his favour.

6. The balance of convenience was also in his favour and he will suffer the irreparable loss if the electric connection of the said tube-well is got disconnected and the same was shifted without the consent of the plaintiff, as he will not be able to irrigate his land.

7. I do not find any substance in the plea raised by learned

counsel for the petitioner that the injunction granted by the trial Court is mandatory injunction as the tenor of the order clearly establishes that it is the temporary prohibitory injunction and not the mandatory injunction.

8. Thus, keeping in view my aforesaid discussion, I do not find any illegality in the discretion exercised by the learned courts below.

9. Resultantly, no interference is called for by this Court in the impugned orders. So, the present revision petition, being devoid of merits, is hereby dismissed.

01.08.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No