

Civil Revision No.2069 of 2016 (O&M)

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

Sr. No.249

**Civil Revision No.2069 of 2016 (O&M)
DECIDED ON: April 19, 2017**

DARSHAN SINGH

..PETITIONER

VERSUS

GURDIAL SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Rajesh Bhatheja, Advocate,
for the petitioner.

Mr. Naresh K. Manchanda, Advocate,
for the respondent.

JASPAL SINGH, J.

CM No.6006-CII of 2016

Application is allowed as prayed for.

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CR No.2069 of 2016

By virtue of the instant revision petition preferred under Article 227 of the Constitution of India, the petitioner has sought the setting aside of order dated February 02, 2016 (Annexure P-7) passed by the learned District Judge, Moga whereby upholding the order dated July 27, 2015 (Annexure P-3) passed by the learned Civil Judge (Jr. Divn.) Moga vide which an application filed by petitioner/plaintiff under Order XXXIX Rule 1 & 2 read with Section 151 CPC has been dismissed.

2. The brief facts rise to the instant petition are that the appellant/plaintiff filed suit for decree of permanent injunction restraining the respondent/defendant from interfering illegally, forcibly and except in due course of law in running and using of the electric connection bearing Account No.BR3/316 of 5 H.P now A/c No.APU179 of 12 H.P. by appellant/plaintiff on the tube-well 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 respondent/defendant from transferring the aforesaid electric connection to any other person or shifting the same to any other place.

3. The contention of the learned counsel for the petitioner/plaintiff is that the petitioner/plaintiff and the respondents/defendants are co-sharers in the land comprising Khewat No.577. Previously, predecessor interest of the petitioner/plaintiff as well as that of respondent/defendant along with other co-sharers were owners of the land having joint cultivation. Jagir Singh father of respondent/defendant was in service of Indian Army and as

per the policy of electricity department, a person who is in service or retired from the Indian Army, can get tube-well electric connection for agriculture of land on priority basis. Thus, the electric connection was obtained about 35 years ago in the name of Jagir Singh i.e. father of the respondent/defendant for irrigating the joint land. All the expenses were incurred by the predecessor of co-sharers of Khewat No.577, since the date of the installation of the electric tube-well, the petitioner/plaintiff and other co-sharers are irrigating their land from it. Moreover, there is no other source of irrigation to the land. Thus, a right has accrued to the petitioner/plaintiff on the basis of easement of necessity. But both the courts below have misconstrued the facts narrated above and have also ignored and disbelieved the same simply on the ground that the tube-well connection is exclusively in the name of Jagir Singh. While relying upon the pronouncement of this court made in case “*Gopi Ram Vs. Shyam Sunder and others, 2006(2) RCR (Civil) 710 (P&H)*”, it has been urged by learned counsel for the petitioner that when one of the joint owners installs tube-well connection at his own expenses in the joint property, it becomes joint property of all the co-sharers and they can use the same in a husband like manner. Thus, the impugned orders passed by both the courts below are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of instant petition. Consequently, an application moved under Order XXXIX Rule 1 & 2 read with Section 151 CPC deserves to be allowed.

4. On the other hand, learned counsel for the respondent has supported the impugned order(s) submitting that the respondent is an

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exclusive owner in possession of the tube-well in question which was installed by Jagir Singh, the predecessor interest of the present respondent in Khasra No.66//25/1. The passbook is also in the name of Jagir Singh and he has been paying the electric consumption charges regularly. The petitioner-Darshan Singh has no concern whatsoever with the tube-well in question. Thus, the injunction sought by the petitioner/plaintiff has rightly been declined by both the courts below. The impugned orders being perfectly legally justified do not call for any interference by this court and the revision petition being devoid of merit is liable to be dismissed.

5. This court has given a deep thought to the rival submissions made by learned counsel for the parties besides scrutinizing the impugned orders and is of the considered view that the impugned orders are absolutely in consonance with the evidence as well as with the principles governing the grant of injunction. Moreover, it is also well settled proposition of law that this court on jurisdiction to the revisional court is limited and the interference by the revisional court is only justified where it comes to the conclusion that the impugned order is capricious against the law and facts and against the evidence.

6. Before proceeding to decide the matter in controversy on merits, it would be desirable to highlight the extent and scope of jurisdiction of the lower appellate court or the revisional court to interfere with the order passed by the trial court in exercise of its discretion under Order XXXIX Rules 1 & 2 CPC. The extent and scope of jurisdiction was discussed at length by the Rajasthan High Court in Vimla Devi Vs. Jang Bahadur, AIR 1977 Rajasthan 196 wherein the legal proposition was summed up in the

following words:-

“The order refusing temporary injunction of a discretionary character. Ordinarily Court of appeal will not interfere with the exercise of discretion by the trial Court and substitute for it its own discretion. The interference with the discretionary order, however, may be justified if the lower Court acts arbitrarily or perversely, capriciously or in disregard of sound legal principles or without considering all the relevant records. The mere possibility of the Appellate Court coming to a different conclusion on the same facts and evidence will also not justify interference.”

7. Similar has been expressed by this Court in Krishan Kumar v. The State of Haryana and another, 1992(1) RRR 433 (P&H) : 1992(1) Revenue Law Reporter 207, wherein this Court has observed as under:-

“A perusal of the Appellate Court’s order shows that it has not assigned any cogent reason to set aside the discretion exercised by the trial Court. The lower Appellate Court has not demonstrated as to how on admitted facts principles of law have been wrongly applied. I am, therefore, of the opinion that the lower Appellate Court was not justified in setting aside the order and interfering in the discretion exercised by the trial Court.”

8. Both the above referred judgments were further relied upon by this Court while rendering pronouncement in case Guru Nanak Education Trust v. Balbir Singh, 1995 AIR (Punjab) 290 : 1995(3) R.R.R. 721.

9. Now, in the light of the aforesaid limited jurisdiction, it is to be seen whether the impugned order and judgment being arbitrary, perverse,

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capricious or in disregard of sound legal principles or without considering all the relevant records, deserve any interference by this Court?

10. But taking into consideration the facts and circumstances in the instant case, no such thing emerges from the record rather this court is of the considered view that the impugned orders are well reasoned, elaborated and justified. Not only, the facts and evidence but the legal proposition also. The judgment relied upon by the learned counsel for the petitioner captioned as "*Gopi Ram Vs. Shyam Sunder and others* (supra) is being distinguishable on the facts and is not applicable in the facts and circumstances of the instant case.

11. The courts below have rightly dismissed an application moved under Order XXXIX Rule 1 & 2 read with Section 151 CPC and as such, the impugned orders are not required to be meddled with by this court.

12. As an upshot of the aforesaid discussion, this court is of the considered view that the instant revision petition is being devoid of merits. As such, it stands dismissed.

13. No order as to costs.

April 19, 2017
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No