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

**CR No.3165 of 2018 (O&M)
Date of Decision: 26.09.2018**

Jatinder Kumar @ JK

.....Petitioner

Vs

**Punjab State Power Corporation Limited and others
....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Ms. Jasneet Mehra, Advocate
for the petitioner.

Mr. Sehajbir Singh, Advocate
for respondents No.1 to 4.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the Order dated 06.01.2017 passed by the Civil Judge (Jr. Divn.) Hoshiarpur and order dated 05.12.2017 passed by the Addl. District Judge, Hoshiarpur vide which application under Order 39 Rules 1 and 2 CPC filed by the petitioner was dismissed and appeal preferred against the same was also dismissed.

[2]. Brief facts are that the plaintiff/petitioner filed a suit for permanent and mandatory injunction against the defendants on the ground that earlier plaintiff and defendant No.5 (brother of the plaintiff) were living jointly. During that period, defendant

No.5 got the signature of the plaintiff on no objection certificate in order to get electricity connection for installing a tubewell in the land mentioned in the plaint. Thereafter dispute arose between them. Since the electricity connection was not released by the defendants-Corporation, therefore, plaintiff sought to withdraw no objection certificate for releasing electricity connection for installing a tubewell. Along with the suit, an application under Order 39 Rules 1 and 2 CPC was also filed.

[3]. The trial Court found that the land between the plaintiff and defendant No.5 was joint and the same was not partitioned so far. It was pleaded by the plaintiff that defendant No.5 under the garb of installation of tubewell would get a valuable land without getting the same partitioned. By way of installation of tubewell, defendant No.5 would also cause loss to the plaintiff. The trial Court found that the plaintiff has already installed another tubewell in his name and the said tubewell is also in the joint land. Since both the parties were co-sharers in the joint land, it was held that installation of the tubewell in the joint land would not affect ultimate partition between the co-sharers. Plaintiff has already given no objection for installation of tubewell connection. No partition proceedings were pending between the parties, nor the same were initiated by either of the

parties. On the basis of interpretation of concept of co-sharership, it was held that installation of electric connection in the joint land would not be affecting rights of any of the parties adversely, nor the same would bestow any of the co-sharers with any exclusive right of ownership over the joint land. Possession of the co-sharers would be subject to partition by metes and bounds.

[4]. The order of the trial Court was upheld by the lower Appellate Court vide order dated 05.12.2017.

[5]. During course of arguments, the same arguments were repeated by learned counsel for the petitioner which were addressed before the Courts below.

[6]. On the other hand, learned counsel for the respondents No.1 to 4/Corporation submitted that needful in the context of release of connection was done and the connection has already been installed by defendant No.5.

[7]. Having heard the arguments of both sides, I am of the view that since the land is still joint between the parties, no formal partition has been effected, nor the same has been initiated at the instance of any party so far. Installation of tubewell on the joint land would not cloth any of the party to claim exclusive possession as the same would be subject to partition which would be effected while considering all

necessary factors. Plaintiff has already installed his tubewell connection the joint land.

[8]. Since the needful in the context of release of connection has already been done by the defendants-Corporation, therefore, the case if tested on the three golden principles i.e. existence of *prima facie* case, balance of convenience and irreparable loss likely to be caused in the event of non-grant of *ad interim* injunction, would not go in favour of the plaintiff for grant of any restrain order against the defendants-Corporation.

[9]. In view of above, this revision petition is found to be totally devoid of merits. No error of jurisdiction can be noticed in the impugned orders passed by the Courts below. This revision petition is accordingly dismissed.

September 26, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No