

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

C.R. No.7890 of 2017

Date of Decision.26.03.2018

Lashkar Singh (deceased through LRs)

.....Petitioner

Vs

Ajit Singh and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Khyati Goyal, Advocate and
Mr. Kanwal Goyal, Advocate
for the petitioner.

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AMIT RAWAL J.(ORAL)

The petitioner-decree holder is aggrieved of the impugned order dated 13.05.2015 rejecting the application moved under Order 21 Rule 32 CPC and 12.07.2017 rendered by the lower Appellate Court dismissing the appeal preferred against the order declining the aforementioned application.

The petitioner-plaintiff instituted the suit for injunction restraining the judgment debtor/defendants from not only causing any hindrance in the use of tubewell but also not to interfere from irrigating his land from the tubewell connection. The decision in the aforementioned suit ultimately reached to this Court in RSA No.672 of 2010 wherein the respondent defendant on 09.08.2011 suffered a statement and on the basis of the same, the regular second appeal was disposed of in the same terms.

Ms. Khyati Goyal, learned counsel appearing for the petitioner submitted that the respondent did not abide by the said statement and injunction granted by this court, compelling the petitioner to move application under Order 21 Rule 32 CPC on 14.06.2012 averring that the

respondents-judgment debtors had blocked the water coming from the tubewell situated in his land. In support of aforementioned submissions, two witnesses have been examined to establish that even Panchayat or the police was approached but the judgments debtors did not adhere to the order passed by this Court, resulting into orders of the Courts below. The Courts below have committed illegality and perversity in not appreciating the aforementioned fact, for, there had been blatant violation of regard and respect to the orders of the Court, which cannot be allowed to be flouted with impunity. There is no limitation for seeking implementation of judgment in case of violation of injunction, in view of the provisions of Order 21 Rule 32 CPC, thus, urges this Court for setting aside the

I have heard learned counsel for the petitioner and appraised the paper book. It would be apt to reproduce the statement and order passed by this Court, resulting into dismissal of the regular second appeal:-

“Statement of Ajjit Singh son of Waryam Singh aged about 77 years, resident of village Madhopur, Tehsil and District Jalandhar on SA.

Stated that my elder brother Lashkar Singh had filed a suit for permanent injunction restraining me and my sons not to block/stop the irrigation of the land from the bore of the tubewell existing in my land. Detail and description of the suit property has been mentioned in the head note of the plaint.

Today, Harbhajan Singh son of my elder brother Lashkar Singh is present in the court. My elder brother Lashkar Singh is aged about 83 years. The land of my brother is being cultivated by his son Harbhajan Singh. My nephew Harbhajan Singh today assured me that he will extend all cooperation to me. Hence, I undertake not to block or obstruct flow of water from the bore of the tubewell in my land and shall permit my brother Lashkar Singh, respondent-plaintiff to

irrigate his land.

*Sd/- Kanwaljit Singh Ahluwalia
Judge*

RO & AC

09.08.2011

Order dated 9.8.2011.

The present regular second appeal has been filed by Ajit Singh defendant No.1 to the suit. Lashkar Singh respondent No.1-plaintiff had instituted a suit for permanent injunction restraining Ajit Singh and his two sons namely Jasbir Singh and Sukhbir Singh not to block/stop or obstruct flow of water to the fields of respondent-plaintiff from the Bore of the Tubewell existing in the suit land. Detail and Description of the suit property has been mentioned in the head not of the plaint.

Today, Ajit Singh is present in the Court. His statement has been recorded separately. The same be read as part of this order. Ajit Singh has stated in his statement that he will not block or obstruct flow of water from the Bore of the Tubewell in the suit land and he will facilitate irrigation of the fields in possession of the plaintiff.

Mr. Kanwal Goyal, Advocate, counsel for respondent No.1 states that the present appeal be disposed of in terms of the statement made by Ajit Singh. Mr. Setia also has made similar prayer.

Ordered accordingly.”

During the course of the hearing, a faint attempt had been made by referring to the statement of Ajit Singh, judgment debtor to state that the decree holder (since deceased) knew about the existence of joint bore, which had sunk down and was not giving the water in 2005-2006, in essence, it had been established on record that it was intentional act of the

holder from the tubewell connection. There was a clear admission, therefore, there was violation. I am afraid that the aforementioned plea would not help the petitioner, for, the statement as extracted above leaves no manner of doubt that supply of the water is from the tubewell constructed on land of judgment debtor but the petitioner-decree holder did not take the assistance of the Court for inspection of the premises where the tubewell is situated, photographs or the statement of the area officer of the Panchayat to prove the factum of the alleged violation. Having failed to do so, in my view, the Courts below have rightly declined to interfere in the aforementioned application, in essence, the petitioner-decree holder has failed to discharge the onus, which was heavily laid on him in respect of claim sought under Order 21 Rule 32 CPC.

I view of the aforementioned, I do not find any illegality and perversity in the orders under challenge and the same cannot be said to be passed without jurisdiction or beyond jurisdiction. No ground for interference is made out. The revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

March 26, 2018

Pankaj*

Whether reasoned/speaking Yes

Whether reportable No