

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

RSA No.6111 of 2015(O&M)
Date of decision: 14.05.2018

The Guru Nanak Cooperative Tube Well Irrigation Samiti Ltd.

... Appellant

Versus

Ajmer Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sanjay Verma, Advocate for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 12.12.2012. As even the appeal preferred against the said decree failed and was dismissed on 29.09.2015, they are in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff claimed a decree for permanent injunction restraining the defendants from obstructing the plaintiff-Society from operating the tubewell, and from getting their fields irrigated through the drain (khal), comprised in khasra Nos.131 and 139, in any manner. Briefly, the case of the plaintiff has been that in the year 1953, a tubewell No.77 was installed in the land measuring 2 kanal 2 marla, under the scheme that provided irrigation facilities to the landowners whose lands were situated in

the vicinity. A department in the name of MITC was also established in this regard. The tubewell installed by MITC remained in operation upto the year 1997. And post consolidation proceedings, the area in which the tubewell was installed was assigned a new number i.e. khewat No.259 min/240, khatoni No.282 min, rect. No.12, khasra No.26(2K-2M). Futher, a drain (khal) was also constructed in khasra No.131 (4-8) and 139 (0-15). In the year 2002, a scheme was framed, and in terms thereof, MITC decided to transfer the tubewells that were installed by the department to the registered Cooperative Societies. The plaintiff-Society through its President approached the State Government for transfer of tubewell No.77 and an agreement in this regard was executed between the parties. However, in terms of the agreement, Dhayan Singh, through whom the present suit was filed, was required to form a Cooperative Society, and get it registered, for only thereafter the tubewell could be transferred in the name of the Society. That is how, a Society in the name of the Guru Nanak Cooperative Tube Well Irrigation Samiti Ltd. was constituted and registered. Accordingly, tubewell No.77 was transferred in the name of the plaintiff-Society. Further, a huge expense incurred to restore the tubewell and in getting the reconnection in the name of the Society from Haryana Uttri Bijli Vitran Nigam Ltd. The possession of the land, measuring 2 kanal 2 marla, comprised in khasra No.26, and the area comprised in khasra Nos.131 and 139, was transferred in the name of MITC. Therefore, the defendants had no right to interfere in the operation of the tubewell by the plaintiff-Society and the drain (khal) recorded in khasra Nos.131 and 139 for the purpose of irrigation.

On a consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that even earlier Dhayan Singh had filed a suit seeking decree for injunction against Ajmer Singh and Kaku as regards this suit property, which was partly decreed vide judgment and decree dated 20.03.2007 (Ex.DC). The appeal preferred against the said decree by Dhayan Singh was dismissed vide judgment dated 05.02.2008 (Ex.DA), and it was specifically observed in paragraph 17 of the said judgment that both the parties were trying to encroach upon the tubewell/panchayat land mentioned at point 'B' i.e. khasra No.240, khatoni No.282 min, rect. No.12, khasra No.26 (2K-2M) as the tubewell was lying closed. Further, plaintiff Dhayan Singh had failed to prove his possession over the Panchayat land. And even if the plaintiff was presumed to be in possession of some portion of the Panchayat land, still no injunction could be granted to protect an unlawful possession upon the public property. The plea set out by the plaintiffs that he had formed a Society to obtain the tubewell electric connection from MITC, which had even been transferred in the name of the plaintiff-Society (Ex.PW2/C), was rejected. For even if the tubewell connection was transferred in favour of the plaintiff-Society yet it had no right, title or interest in the land measuring 2 kanal 2 marla, comprised in khasra No.26, for it was exclusively owned and possessed by the Gram Panchayat. In other words, even if the plaintiff had obtained an electric tubewell connection, nothing stopped the plaintiff-Society to install a tubewell on its own land. In these circumstances, it was highly unjustified for the plaintiff-Society to use the land of the Gram Panchayat for their individual benefits. Apparently, the plaintiff-Society had failed to prove its ownership/title over the land comprised in khasra No.26(2K-2M), which was

shown to be exclusively owned and possessed by the village Panchayat. Further, the Gram Panchayat was not even arrayed as party to the suit and, therefore, the defendants being the residents of the village or office bearer of the Gram Panchayat had every right to protect the public property from the hands of encroacher/strangers. Therefore, a mere transfer of electric tubewell connection by MITC in the name of the Society would not confer any right to use the land belonging to the Gram Panchayat. On being pointedly asked, learned counsel for the appellant could not point out anything from the record to show if the conclusions arrived at by both the Courts were either contrary to the record or suffered from any material illegality. Thus, no question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

14.05.2018
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO