

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

CR-1890-2021(O&M)

Date of decision:-3.2.2023

Jarnail Singh and another

...Petitioners

Versus

Harjit Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Aditya Dassaur, Advocate
for the petitioners.

Mr.D.S. Bhinder, Advocate
for the respondent No.1.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Harjit Singh had brought a suit against defendant Jarnail Singh, his wife Ranbir Kaur as well as Amar Singh, Lambardar, all residents of village Madhopur, Tehsil Phagwara, District Kapurthala, seeking grant of permanent injunction to restrain the defendants or persons claiming under them from obstructing the plaintiff from use of 15 HP electric motor/tubewell for irrigating his land measuring 75 kanals 16 marlas detailed in head note of the plaint situated in village Madhopur, Tehsil Phagwara, District Kaurthala through the underground pipes laid down in that land.

2. As per the case of the plaintiff, he is co-owner to the extent of 75 kanals 16 marlas of land in joint khata; similarly defendant No.1 – Jarnail Singh is a co-sharer in the joint holding; the plaintiff had purchased the land vide four sale deeds dated 6.9.2017, 18.9.2017,

18.9.2017 and 22.12.2017 and his name is duly entered in the revenue record; there is an electric motor/tubewell connection bearing new No.AP-08-1193 and old No.MK-820 installed in the property in dispute, which is joint between the plaintiff and defendant No.1 for irrigating their share of land in dispute and it is the only source of irrigation of the land coming to share of plaintiff; underground pipes are already laid down in the land belonging to the plaintiff from electric motor/tubewell. According to the plaintiff, he had purchased share of Davinder Singh @ Balwinder Singh, a real brother of defendant No.1 Jarnail Singh; an agreement had taken place between Jarnail Singh and Davinder Singh vide which the electric tubewell/motor was given to Davinder Singh and defendant No.1; however defendants threatened to obstruct the plaintiff from drawing water from the tubewell connection for the purpose of irrigation of his fields. Feeling aggrieved, the plaintiff had brought a civil suit in question. Along with the civil suit, he had filed an application for grant of ad interim injunction.

3. Notice of the suit was given to the defendants, who had put in appearance and filed written statement as well as reply to the application for ad interim injunction.

4. The trial Court of Civil Judge(Jr.Divn.), Phagwara vide order dated 24.5.2019 had dismissed the application.

5. Feeling aggrieved, the plaintiff had approached the Court of District Judge, Kapurthala by way of filing an appeal, which was assigned to Additional District Judge, Kapurthala, who vide order dated 25.8.2021 accepted the appeal, set aside the order passed by the trial Court and

allowed application under Order 39 Rules 1 & 2 CPC, resultantly, restrained the defendants/respondents from stopping or creating any hindrance in the use of electric mother/tubewell in question by the appellant/plaintiff for irrigating his land measuring 75 kanals 16 marlas through underground pipes.

6. This order left defendants aggrieved and they have approached this Court by way of filing the present revision petition, notice of which was issued to the respondents and respondent No.1 has appeared through counsel.

7. I have heard learned counsel for the parties besides going through the record.

8. In this case plaintiff Harjit Singh claims to have purchased 75 kanals 16 marlas of land from Davinder Singh, a brother of petitioner/defendant Jarnail Singh, who was also a co-sharer in the suit land. The plaintiff is relying upon agreement of partition said to have been entered into between the petitioner/defendant Jarnail Singh and his brother Davinder Singh as well as Richhpal son of Hazara Singh and Onkar Singh son of Richhpal, the other co-sharers in the joint holding. They had agreed to partition the joint holding amongst themselves, the details are mentioned in the agreement. In this very agreement, it is mentioned that 15 horsepower motor was there in the land, which had been given to petitioner Jarnail Singh and his brother Davinder Singh, the vendor of the plaintiff in equal shares. Jarnail Singh is taking advantage of the fact that the electricity connection to the tubewell stands in his name, in that way he is exclusive owner of the same and the plaintiff has no right to draw

water from the said tubewell. But his such plea is not acceptable for the reason that in the agreement of partition between the co-sharers, the 15 horsepower motor in question had been allotted to petitioner Jarnail Singh and his brother Davinder Singh, vendor of the plaintiff in equal shares. The plaintiff is claiming his rights through Davinder Singh. The underground pipes being there starting from tubewell going up to the land in possession of the plaintiff goes to show that the said chunk of land was being irrigated with water drawn from that tubewell. The trial Court while dismissing the application for grant of ad interim injunction had not properly examined the agreement of partition. Perhaps the line of allotting 15 horsepower motor to petitioner Jarnail Singh and his brother Davinder Singh vendor of predecessor in interest of the plaintiff had skipped his notice. However, learned Additional District Judge, Kapurthala by considering the factual and legal position had rightly accepted the appeal, setting aside the order passed by the trial Court and allowed the application for grant of ad interim injunction filed by the plaintiff.

9. As regards the objection taken by the counsel for the petitioners that plaintiff had filed a suit for grant of permanent injunction without seeking a declaration and as such the suit is not maintainable, that objection does not seem to have any force. The suit as framed is maintainable and merely because no declaration has been sought by the plaintiff that he is co-owner in the tubewell and has a right to draw water therefrom and thereafter seeking permanent injunction as a consequential relief is not fatal to the case considering the facts and circumstances.

10. The judgments i.e. *Anathula Sudhakar Versus P.Buchi*

Reddy (Dead) by LRs and others, 2008(2) RCR(Civil) 879 passed by the Apex Court and *Surjit Singh Versus Narinder Singh and others*, RSA-2353-2013, decided on 11.1.2016 and *Nirmal Singh Versus Atma Singh and others*, RSA-2875-2013 passed by Co-ordinate Bench of this Court, referred to by learned counsel for the petitioners are not applicable due to different facts and circumstances and the context in which such observation had been made.

11. It cannot be lost sight of that the only ad interim injunction has been granted to the plaintiff, which is to remain in operation during the pendency of the suit to avoid mischief of land of the plaintiff getting barren or unfit for cultivation without being irrigated. The parties may lead evidence in the trial Court and then get a verdict on merits. However, as far as the impugned order is concerned, I do not see any reason to interfere therewith.

12. Finding no merit in the revision petition, the same stands dismissed. Status quo ante order passed on 13.9.2021 as such comes to an end.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

3.2.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No