

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(258)

CR No. 2844 of 2021

Date of Decision : 21.04.2023

Ashok Kumar

...Petitioner

Versus

Satbir and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sahil Gupta, Advocate for the petitioner.

Ms. Samridhi Sareen, Advocate for the respondents.

Harsimran Singh Sethi J. (Oral)

The present civil revision petition has been filed for setting-aside the judgment of the lower appellate court dated 19.10.2021 (Annexure P-1) by which, the order passed by the trial court allowing the application filed by the petitioner-plaintiff under Order 39 Rule 1 and 2 read with Section 151 CPC, has been set-aside.

As per the facts, which have come on record, the land in question is in joint ownership of three brothers, who are the parties to the present petition. The petitioner-plaintiff filed a suit seeking declaration and permanent injunction to the effect that the tube well, which is situated in the jointly owned land, be allowed to be used by the petitioner-plaintiff as well and the respondents-defendants be restrained from raising any obstruction for its use. In the reply filed, defendant No. 1 raised a claim that though the land is in joint ownership of the parties but separate portions are being cultivated by them and especially when the tube well in question is in the

name of defendant No. 1 exclusively and the electricity charges are being paid by defendant No. 1 out of his own funds, no restraint order can be passed against defendant No. 1 so as to allow the petitioner-plaintiff to use the said tube well to irrigate the portion of the land, which is in his possession.

The application filed under Order 39 Rule 1 and 2 read with Section 151 CPC was decided by the trial court on 19.08.2021 and while deciding the said application, the trial court allowed the said application and held that as the property in question is in joint ownership of the parties concerned, the tube well though might be in the name of defendant No. 1, the petitioner-plaintiff will also be entitled to use the said tube well to 1/3rd share and will also share the charges of running and operating the said tube well.

Aggrieved against the said decision, the defendants filed an appeal before the lower appellate court and the lower appellate court vide order dated 19.10.2021 (Annexure P-1) held that as the tube well is in the exclusive name of defendant No. 1 and the running charges of the said tube well including electricity charges are being paid by defendant No. 1, the petitioner-plaintiff has no right to use the same even if the same is to be used on a land, which is jointly owned. The said order is under challenge in the present revision petition.

Learned counsel for the petitioner-plaintiff argues that once the land is jointly owned by the parties concerned and there are no partition proceedings going on as of now, the tube well, which is installed in the joint property, is for the usage of all the co-sharers and one co-share cannot be

restrained from using the said tube well. Learned counsel relies upon the judgment of a Co-ordinate Bench of this Court in RSA No. 1213 of 2006 titled as ***Gopi Ram Vs. Shyam Sunder and others***, decided on 03.04.2006.

Learned counsel for the respondents-defendants submits that once the tube well connection was installed on the asking of defendant No. 1 and all the charges of the running of the said tube well are being borne by defendant No. 1, even if the said tube well is in the joint land but the same is on a portion of a land, which is in the possession of defendant No. 1, the usage of the same cannot be claimed as a matter of right by the petitioner-plaintiff, hence the order passed by the lower appellate court dated 19.10.2021 (Annexure P-1) is perfectly valid and legal and is liable to be upheld. In order to support the contention, learned counsel for the respondents-defendants relies upon the judgment of the Co-ordinate Bench of this Court in RSA No. 2592 of 2009 titled as ***Uttam Singh Vs. Sohan Singh***, decided on 06.08.2010.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The facts are not in dispute that the parties to the litigation are the joint owners of the property in question. It is also not in dispute that the tube well is installed on the joint land though, the portion of the land on which the tube well is installed, is in the possession of defendant No. 1. It is also a conceded position that the tube well connection is in the name of defendant No. 1 and the charges of the tube well are being paid by defendant No. 1.

The question, which arises is whether, the tube well installed on

a joint land can be used by all the co-sharers without any restriction or the said tube well can only be used by a particular co-sharer on the ground that the tube well connection is in the name of said co-sharer and the charges are being paid by the said co-sharer.

The judgment being cited by the learned counsel for the petitioner in ***Gopi Ram's case (supra)***, held that even if a tube well is installed on a joint land by one of the owners at his own expenses, the tube well becomes a joint property. That being so, once according to the settled law, installation of tube well on the property, which is in joint ownership, is to be treated as a joint property irrespective of the fact that the running cost of the tube well has been paid by one of the co-sharer, the claim of the petitioner-plaintiff to use the same, in the facts and circumstances of the present case, cannot be declined.

The principle of law on the said aspect as laid down in ***Gopi Ram's case (supra)***, has been followed by the Co-ordinate Bench of this Court in CR No. 98 of 2007 titled as ***Om Parkash and others Vs. Ishwar Singh and others***, decided on 03.04.2008 as well as CR No. 105 of 2016 titled as ***Pritpal Singh and others Vs. Hari Singh and others***, decided on 04.10.2016, according to which, the tube well installed on a joint un-partitioned land by one of the co-sharers, becomes the joint property to be shared by all the co-sharers, hence the claim of the petitioner-plaintiff so as to use the said tube well for his purpose, needs to be allowed.

The judgment being relied upon by learned counsel for the respondents-defendants in ***Uttam Singh's case (supra)***, though the same recites that any electric connection/motor installed on the joint land but is in

the name of a particular co-sharer, the others are not entitled to use the same but, the law laid down in ***Gopi Ram's case (supra)***, was not brought to the notice of the court while rendering the judgment in ***Uttam Singh's case (supra)***. After the passing of the judgment by Co-ordinate Bench in ***Uttam Singh's case (supra)***, the other judgments passed by the other Co-ordinate Benches, support the view taken in ***Gopi Ram's case (supra)***.

Hence, keeping in view the facts and circumstances of the present case, the present civil revision petition is allowed. The order passed by the lower appellate court dated 19.10.2021 (Annexure P-1) is set-aside and that of the trial court is reinstated. It is made clear that anything said in this order is not expression of an opinion on the merits of the case as the suit will be tried and decided on the basis of the evidence, which will come on record.

It is made clear that the usage of the tube well by the petitioner-plaintiff will be in a manner that it does not cause any prejudice to defendant No. 1 in any manner and petitioner will be liable to pay 1/3rd of the running cost of the tube well. The trial Court is directed that in case, appropriate order with regard to the usage of the tube well by the co-sharer is to be passed. The same be passed in case any such application is moved before the trial court.

Revision petition is allowed in above terms.

April 21, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No