

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE RAJENDRA KUMAR-IV

ON THE 3rd OF JANUARY, 2024

MISC. PETITION No. 1308 of 2021

BETWEEN:-

**RAMSEWAK YADAV S/O SHRI BHAJAN SINGH YADAV,
AGE 41 YEARS, OCCUPATION: AGRICULTURE, R/O
CHAR SHEHER KA NAKA, GWALIOR (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI YASH SHARMA - ADVOCATE)

AND

- 1. BHAJAN SINGH YADAV, S/O LATE SHRI SOHAN
SINGH, AGE 74 YEARS, OCCUPATION
UNEMPLOYED, R/O CHAR SHEHER KA NAKA,
BEHIND MAHARANA PRATAP SCHOOL,
RANIPURA, GWALIOR (MADHYA PRADESH)**
- 2. JAGAT SINGH YADAV, S/O SHRI BHAJAN SINGH
YADAV, AGE 35 YEARS, OCCUPATION
UNEMPLOYED, R/O CHAR SHEHER KA NAKA,
BEHIND MAHARANA PRATAP SCHOOL,
RANIPURA, GWALIOR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI RAJEEV SHRIVASTAVA - ADVOCATE)

.....
*This petition coming on for admission this day, the court passed the
following:*

ORDER

Challenge is made to order dated 10.12.2020 passed by Third Civil Judge Class-I, District Gwalior in Case No.569/2020 and order dated 12.10.2021 passed by 7th Additional District Judge, Gwalior (M.P.) in Misc. Civil Appeal No.67/2020 whereby application under Order 39 Rule 1 and 2 of CPC has been

dismissed and appeal there against has also been dismissed respectively.

2. Heard learned counsel for the parties and perused the record.

3. Plaintiff/petitioner herein filed a suit against the defendants/respondents for seeking permanent injunction and declaration in respect of bore in question along with an application under Order 39 Rule 1 and 2 of CPC with a prayer that land in question is an ancestral property and plaintiff jointly got a bore-well dug, from which entire land was to be irrigated, but in the year 2015-16 there was a division of the land among the plaintiff and defendants and the land in which bore was situated was got to the defendants/respondents. Bore was situated in plot No.844 and on the basis of mutual consent, all the parties were getting their land irrigated from the aforesaid well. It was further alleged in the plaint that defendants encroached over the bore in dispute and declined to provide water from the bore, due to which cause of action arose. Prayer was made to restrain the respondents/defendants from interfering in the peaceful irrigation of land of the plaintiff through aforesaid bore-well.

4. Matter was contested by the respondents/defendants denying the allegation of the plaintiff. Court below, in its order dated 10.12.2020 recorded its finding that in affidavit filed by plaintiff itself, entire expenses of bore in question was made by plaintiff, electricity connection was in the name of his father, but pleading made by plaintiff is not supported by any documentary evidence. Court below did not find *prima facie* case in favour of the plaintiff. Thus, ad-interim injunction has been rejected.

5. Even in an appeal, Appellate Court has not found any *prima facie* case in favour of the plaintiff/petitioner. Appellate Court confirmed the finding of Lower Court.

6. Perusal of both the impugned orders and having heard the submission

made by learned counsel for the parties, I do not find any *prima facie* case in favour of the plaintiff. I am not inclined to grant indulgence in the matter. Petition has no legs to stand upon and deserves dismissal.

7. In view of above, petition fails and is accordingly, **dismissed**.

(RAJENDRA KUMAR-IV)
JUDGE

(alok)



ALOK KUMAR
2024.01.05
17:46:00 +05'30'

