

(2011) 05 P&H CK 0258

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 3369 of 2011 (O and M)

Omi

APPELLANT

Vs

Teji and Another

RESPONDENT

Date of Decision: May 20, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 151
- Constitution of India, 1950 - Article 227

Hon'ble Judges: Ram Chand Gupta, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ram Chand Gupta, J.

C.M. No. 13340-CII of 2011

1. Application is allowed subject to all just exceptions.

Civil Revision No. 3369 of 2011

2. The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 3.5.2011 passed by learned District Judge, Faridabad and order dated 24.8.2010, passed by learned Civil Judge, Faridabad, vide which application under Order 39 Rules 1 and 2 read with Section 151 of the CPC (for short "the Code") filed by Petitioner-Plaintiff for ad interim injunction order in a civil suit filed by him against Respondents-Defendants was dismissed.

3. I have heard learned Counsel for the Petitioner and have gone through the whole record carefully including the impugned orders passed by learned courts below.

4. Facts relevant for the decision of present revision petition are that a suit for permanent injunction was filed by present Petitioner-Plaintiff on the plea that as per jamabandi for the year 2003-04, he is absolute owner in possession to the extent of

1/3rd share in the agricultural land to the extent of 6/7th share forming part of the land mentioned in para 1 of the plaint and that pro forma Defendants are co-sharers and co-owners in possession over the said land. It is further pleaded that contesting Defendants are also co-owners and co-sharers in possession over the agricultural land mentioned in para 3 of the plaint, which is adjacent to the land belonging to Plaintiff and that Plaintiff is having his own tube well installed in the land bearing Rect. No. 27 and Defendants are having no concern qua the same and as they intend to interfere in the rights of the Plaintiff over the land in dispute by constructing a Doll/Maid by encroaching a portion of the suit property along with the Rasta, which is in use and occupation of the Plaintiff, for which they have no right. On the same facts, an application under Order 39 Rules 1 and 2 read with Section 151 of the Code was also filed by Petitioner-Plaintiff for ad interim injunction order.

5. The suit as well as the application was contested by Defendant No. 1 on the plea that suit is collusive between Plaintiff and Defendants No. 2 to 5. Plea has been taken that he is also having separate possession of the land in his share and the same is irrigated by Agra canal, as shown in the jamabandi for the year 2003-04. It is denied that Plaintiff is having any tube well in the separate khewat. Rather the plea has been taken that he is having tube well in his other land.

6. Learned trial Court did not find prima facie case in favor of Petitioner-Plaintiff. Rather it was observed that as per entry in the jamabandi the land in dispute is Nehri and can be irrigated and the same is joint of the parties and the tube well is also not in working condition.

7. Appeal filed by present Petitioner-Plaintiff against the said order has also been dismissed by learned District Judge, Faridabad, by observing as under:

17. Copies of jamabandi for the year 2003-04 shows that the land of the Respondents is Nahri. It means the same is being irrigated with canal water. Defendant has also placed on file the copy of the proceedings conducted by Zildar, Agra Canal Palwal dated 30.11.96. These proceedings were initiated on the basis of an application moved by Randhir Singh the father of Respondent No. 1. The perusal of these proceedings shows that for the decision of the application moved by Randhir Singh, the spot was inspected by the Zildar and it was found that outlet No. 1 was fixed on the left pavement of the Agra Canal on the middle line of Rect. No. 27, Killa Nos. 19 and 12. The water channel leads both sides i.e. towards the head and tail of the canal. It is categorically mentioned that the water channel passes through Rect. No. 27, Killa Nos. 8 and 3, 4 and 7, 5 and 6. It was also found that the old water channel was in existence on the killa line of Rect. No. 27, Killa Nos. 3/1, 3/2 and Killa No. 8. It was found that the water channel was at Killa No. 27/4 and was recently demolished and the remaining water channel was old. It was also observed in the proceedings dated 30.11.96 that the said water channel was demolished by Ombir, Om Parkash, Jagdish sons of Chhittar, Bharat and Raghbir

sons of Shahzad to destroy the crops. Thus, the proceedings dated 30.11.96 clearly show the existence of the disputed water channel on the killa line of the suit land.

18. A local commission was also appointed by the learned trial Court. He has submitted his report dated 26.4.2010. In this report also the local commission has reported that outlet No. 1 is situated on the middle line of Killa Nos. 12, 19 of Rect. No. 27. One water channel comes towards killa Nos. 19 and 22 of Rect. No. 27 and the second water channel comes towards killa Nos. 12, 9, 2 of Rect. No. 27. The land to the extent of 10-15 feet in length has been deeply excavated with JCB machine. There was an old water channel on the middle line of killa Nos. 3/1, 3/2 and 8 of Rect. No. 27. A tube well was also found installed in Killa No. 6 of Rect. No. 27 but the same was not in running condition which belongs to the Appellant. It was found that he had been irrigating the land through this very water channel. It is also reported that he has been irrigating his land by making a cut in the Doll of Killa No. 7 and 4 of Rect. No. 27 through canal water. The tube well has no connection with this water channel. He has also reported that it appears that there had been a water channel at the spot. So, even as per the report dated 26.4.2010 the old water channel appear to have been existing.

19. The Appellant has concealed all these material facts from the Court about the previous existence of the water channel through killa number/middle line of Rect. No. 27, Killa Nos. 4, 7, 8 and 9. He has also concealed the facts regarding the proceedings of the canal authorities wherein the findings were given in favour of the father of the Respondent No. 1 and against him and his brothers. The proceedings dated 30.11.96 clearly show that the water channel in dispute was in existence and the same was demolished by the present Appellant and his brothers Om Parkash and Jagdish. The restoration of the said water channel was recommended. It shows that the Appellant wants to take the benefit of his own wrong. He wants the protection of injunction order issued by the Court to protect his own wrongful act, i.e., the demolition of the canal water channel leading to the fields of the Respondent No. 1. Equity does not permit for granting any such relief to the Appellant. Consequently, the Appellant has no prima facie case in his favor.

20. The balance of convenience is also not in favor of the Appellant as water channel in dispute was in existence since long. There is also no question of any irreparable loss to the Appellant if the injunction is refused, rather it will cause great hardship to the Respondent No. 1 as he will have no source of irrigation of his fields.

8. Hence, sufficient reasons have been given by Courts below in declining relief of ad interim injunction order in favor of Petitioner-Plaintiff.

9. Law is well settled that at this stage, learned trial Court is to see prima facie case, balance of convenience and the fact as to whether irreparable loss would be caused to Petitioner-Plaintiff, if ad interim injunction order is not granted to him.

10. Law is also well settled that relief of ad interim injunction is a equitable relief, and a party to succeed to such relief has to come to the Court with clean hands. However, it has been rightly observed by learned appellate Court that Petitioner-Plaintiff has not come to the Court with clean hands. He has suppressed the material facts. As per revenue record, the land in possession of Petitioner-Plaintiff as well as in possession of other co-owners is canal irrigated. The said fact has also been proved from the report of Local Commissioner.

11. In view of the aforementioned facts, it cannot be said that any illegality or material irregularity has been committed by learned courts below in passing the impugned orders or that a grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.

12. Moreover, law has been well settled by Hon"ble Apex Court in [Surya Dev Rai Vs. Ram Chander Rai and Others](#), , that supervisory jurisdiction is not available to be exercised for indulging in re-appreciation or evaluation of evidence or correcting the errors for drawing inference like a Court of appeal. It has been observed as under:

Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

13. Hence, the present revision petition is, hereby, dismissed being devoid of any merit.