

(2014) 08 P&H CK 0030

High Court Of Punjab And Haryana At Chandigarh

Case No: RSA No. 1848 of 2014 (O and M)

Sukhvinder Singh and
Others

APPELLANT

Vs

Lachhman Singh

RESPONDENT

Date of Decision: Aug. 1, 2014

Citation: (2015) 178 PLR 733

Hon'ble Judges: Rajesh Bindal, J

Bench: Single Bench

Advocate: N.S. Kamboj, Advocate for the Appellant;

Final Decision: Dismissed

Judgement

Rajesh Bindal, J.

1. The defendants are before this court against the concurrent findings of fact recorded by both the courts below, whereby the suit filed by the respondent-plaintiff for permanent injunction restraining the appellants-defendants from use of the tubewell installed in the land for irrigation purpose, was decreed. Both the parties to the suit are real brothers. The respondent-plaintiff filed the suit restraining the appellants-defendants from interfering in use of the tubewell for irrigation purpose. Both the courts below found that the property in question was still joint. The tubewell was installed in the name of Jhanda Singh, father of the parties, hence, both had the right to use the same for irrigation purpose.

2. Learned counsel for the appellants submitted that during the life time of Jhanda Singh, who died in the year 2002, a settlement took place between the brothers on 21.3.1994, whereby 1/6th share each was given to the appellants-defendants and respondent-plaintiff to use the tubewell for irrigation. However, some dispute arose and thereafter a compromise was effected between the parties on 3.6.2007, in terms of which the respondent-plaintiff had surrendered his right to use the tubewell, vide which the share of land owned by the respondent-plaintiff was sold by

him to Sukhvinder Singh and others. Once the respondent-plaintiff did not have any share in the land, there was no question of permitting him to use the tubewell.

3. After hearing learned counsel for the appellants, I do not find any merit in the submissions made. Both the courts below found that the tubewell had been installed in the suit land in the name of Jhanda Singh deceased, father of the parties. It was admitted by one of the appellants when he appeared in the witness box that the suit land was still joint and partition proceedings are pending before the revenue court, meaning thereby they are all still co-sharers in the joint land. Further, the courts below found that the appellants had not been able to prove the compromise (Ex. D8) dated 3.6.2007, arrived at between the parties, by confronting the same to the respondent-plaintiff during his cross-examination. If it was claimed that the suit land had been sold, as the value thereof is more than Rs. 100/-, no sale deed had been produced on record to show that the plaintiff had sold his 1/6th share in the land, as is mentioned in the alleged compromise dated 3.6.2007, which itself has not been proved on record. Khasra girdawari for the period 2010-11 clearly shows that the respondent-plaintiff and Jhanda Singh are in possession of the land, on which the tubewell had been installed.

4. Considering the fact that the tubewell had been installed on the joint land, which was initially owned by Jhanda Singh-deceased, father of the parties, and the land has still not been partitioned, in my opinion, no illegality has been committed by the courts below in decreeing the suit filed by the respondent-plaintiff restraining the appellants from use of the tubewell to the extent of his share. As admittedly the joint khewat has still not been partitioned, where the tubewell is installed, the findings recorded are pure and simple findings of fact. No substantial question of law arises. Accordingly, the appeal is dismissed. Consequently, the accompanying applications are also dismissed.