

Om Parkash and ors. Vs. Ishwar Singh and ors.

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Court : Punjab and Haryana

Decided On : Apr-03-2008

Reported in : (2008)152PLR38

Judge : Rajive Bhalla, J.

Appellant : Om Parkash and ors.

Respondent : ishwar Singh and ors.

Disposition : Petition allowed

Judgement :

Rajive Bhalla, J.

1. Challenge in this revision petition is to the orders, dated 20.5.2006 and 4.10.2006, passed by the learned Civil Judge, Junior Division, Kaithal and the learned Additional District Judge, Kaithal, dismissing the petitioner's application for temporary injunction, and the appeal respectively.

2. Counsel for the petitioner states that after partition, the land with the tubewell has fallen to the petitioner's share, however, as the electricity connection was in respondent No. 1's name, it was apprehended that respondents Nos. 2 and 3 could disconnect the electricity connection at the behest of respondent No. 1. It is submitted that in case the parties are directed to maintain status quo with respect

to disconnection of the electricity connection, the petitioner would not prevent respondent No. 1 from using the tubewell or accessing water flowing therefrom, if required by respondent No. 1.

3. Despite service, no one has put in appearance on behalf of respondent No. 1.

4. Counsel for respondent Nos. 2 and 3 states that the dispute is, in essence, between the petitioner and respondent No. 1. The Electricity Board has no role to play except to grant or disconnect electricity connection, in accordance with the rights of the parties.

5. I have heard learned Counsel for the parties and perused the impugned orders.

6. The learned courts below dismissed the petitioner's application for temporary injunction on the ground that the electricity connection stands in the name of respondent No. 1. The Courts below fell into an error, while holding that as the electricity connection stood in the name of respondent No. 1, the petitioner would not suffer any irreparable loss, harm or damage. The aforementioned conclusion is inherently flawed, as it disregards the fact that if the electricity connection is disconnected, the petitioner would be deprived of a source of irrigation. As asserted by counsel for the petitioner, the electricity connection was obtained in the name of respondent No. 1, when the land was joint and as further submitted the tubewell is situated in the land, which the petitioner claim has fallen to his share after a family settlement but respondent No. 1 claims that the land has not been partitioned.

7. At the stage of consideration of an application for grant of an injunction, Courts are required to consider the irreparable loss, harm and damage likely to be caused, if the injunction is declined. As no one has come forward to oppose the revision petition on behalf of respondent No. 1, and as disconnection of the electricity connection would deprive the petitioner of a much needed source of irrigation, the Courts below committed an error in declining to grant of an injunction to the petitioner. The question whether the land has been partitioned or not and whether the tubewell was purchased from joint or private funds is a question to be determined during the course of the trial. Disconnection of the electricity

connection would definitely cause prejudice to the petitioner.

8. Consequently, the revision petition is allowed and the orders, dated 20.5.2006 and 4.10.2006 are set aside. The parties are directed to maintain status quo with respect to the disconnection of the electricity connection, subject to the petitioner paying the monthly electricity bills and clearing all up to date arrears, if any. The petitioner shall not prevent respondent No. 1 from using or accessing water from tubewell, if necessary.

9. Any opinion, as to the merits, shall not be construed to be a binding expression of opinion, in respect thereof.

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