

**In the Court of Nitin Raj,
Additional District Judge, Narnaul. UID No. HR0287**

CNR No. HRNR- : 01000358-2018
CIS No. : 43 of 2018
Civil Appeal No. : 194RT-2018
Date of Institution : 01.02.2018/05.09.2019
Date of Decision : 08.07.2026

Baiya Ram son of Sh. Prahalad son of Ramu resident of village Bhedanti
Tehsil Nangal Chaudhary, District Mahendergarh.

....Plaintiff/ Appellant

Versus

1. Babu Lal

2. Hansraj sons of Murlidhar son of Prahalad resident of village Bhedanti
Tehsil Nangal Chaudhary, District Mahendergarh.

.....Defendants- respondents

**Appeal against the judgment and decree
dated 05.01.2018**

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Argued by: Sh. Chander Prakash Gurjar, counsel for appellant

Sh. JK Gurjar, counsel for respondents

JUDGMENT:

The present appeal is presented by the appellant-plaintiff
against the judgment and decree dated 05.01.2018, passed by the court of
Sh. Madhur Bajaj the then learned Civil Judge, (Jr. Divn.), Narnaul in
civil suit no.181 of 2014, vide which suit filed by the plaintiff for

declaration and permanent injunction, was dismissed and the counter claim filed by the defendants was also dismissed; with the prayer for setting aside the impugned judgment and decree thereby decreeing the suit of the plaintiff, while allowing the present appeal. Hereinafter parties are referred to their original nomenclature.

2. Brief facts of the case are that the present suit has been filed by the plaintiff against the defendants seeking the relief of declaration to the effect that the plaintiff is owners in possession to the extent of 1/6th share of land comprised in Khewat No. 2 Khatoni No.2, Kitta 21, total rakba 103 Kanal 16 Marla situated at village Bhatendi, tehsil Nangal Choudhary, Narnaul vide jamabandi for the year 2011-12 (hereinafter to be referred as suit property). Further the plaintiff is a co-sharer in tubewell connection bearing No. NI-52-0006 installed over mustatil and killa no. 16//16 and is entitled to use the same for the irrigation purposes as per his share. It is also prayed that the plaintiff is entitled to get aforesaid electricity connection bearing No. NI-52-0006 in his name to the extent of his share. Further relief of injunction is sought thereby restraining the defendants from transferring electricity connection in the name of any third person. That the parties to the present suit had obtained a tubewell electricity connection No. NI-52- 0006 from the electricity board, Nangal Choudhary, Narnaul. That an electric motor of 15 Horse Power was also installed over the bore located at mustatil and killa No. 16//16. That initially, the plaintiff, defendants and Guljari Lal (brother of plaintiff)

were owners of the bore and the electricity connection. However, Guljari Lal relinquished his 1/4th share in the said bore/electricity connection and thereafter the parties to the present suit became owners to the extent of 1/3rd share. That a writing dated 16.7.2008 was also executed qua the same. It is averred that the electricity connection and tubewell was used by one Mange Lal, sarpanch for the bajri plant and the monthly rent was fixed as Rs.20,000/-. That the rent was paid by him to the defendants. That the plaintiff was not given a single penny from the rent received from the bore/electricity connection. That the defendants have now refused to give access to the water in the borewell to the plaintiff as per his share. The plaintiff requested the defendants for allowing him to use the electricity connection/bore for the agricultural purposes, but of no use. Hence, the present suit.

3. On notice, written-statement as well as counter-claim has been filed by the defendants taking preliminary objections regarding maintainability, locus standi, limitation etc. On merits, it is averred that the defendants are maintaining possession over the suit property after the family settlement which took place around 25 years back. That after the family settlement, the defendants had installed a bore over the land which came in their share. That subsequently, tubewell connection bearing account No. NI-52-0006 was obtained in the name of defendant No.1. That the plaintiff has no concern with the tubewell and the electricity connection and question of making payment of the bills of the electricity

connection by the plaintiff does not arise. It is averred that entire expenses of digging the bore/tubewell, installing the motor as well as expenses of the electricity connection were borne by the defendants. That Sh. Guljari Singh also had a share in the bore but the same was relinquished by him in the year 2007. That the plaintiff has no share in the tubewell as well as electricity connection. In fact, the plaintiff had stolen the cable of the tubewell and a written complaint dated 9.9.2014 was moved before the police. That the plaintiff also threatened the defendants of dire consequences in case the defendants use the bore. That plaintiff and the sons of Guljari also physically assaulted the defendant No.2. That the present suit has been filed only to harass the defendants. Rest of the averments were denied and dismissal of the present suit and allowing of the counter-claim was prayed for.

4. From the pleadings of the parties, following issues were framed by the ld. trial court vide order dated 05.01.2015:-

1. Whether the plaintiff is entitled for declaration as well as injunction as prayed for? OPP.
2. Whether the present suit is not maintainable? OPD.
3. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD.
4. Whether the plaintiff has not come to the court with clean hands? OPD.
5. Whether the plaintiff has concealed the true and material

facts from the court? OPD.

6. Whether the suit of plaintiff is time barred? OPD.
7. Whether the defendants are entitled for counter-claim as prayed for? OPD.
8. Relief.

5. In order to prove his case, following evidence has been led by plaintiff, which is as follows :-

1. Baiya Ram, Plaintiff himself as PW1.
2. Gugan Ram as PW2.
3. Guljari as PW3.
4. Mahada Ram as PW4.
5. Om Parkash as PW5.

Plaintiff also tendered following documents:

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|-----------|--|
| Ex. P1 | Copy of jamabandi for the year 2011-12 |
| Ex.P2 | Discharge summary |
| Mark P1-2 | Copy of receipts |
| Mark P3 | Copy of electricity bill |

Thereafter, learned counsel for the plaintiff closed the evidence on behalf of plaintiff vide statement dated 16.2.2017.

6. On the other hand, defendant Babu Lal examined himself as DW1. Defendants tendered following documents:

- | | |
|-----------|------------------|
| Mark D1-3 | Receipts of bill |
| Mark D4 | Electricity bill |

Thereafter, evidence of defendants was closed by the court vide order dated 30.11.2017.

7. After taking into account the pleadings, submissions and documents placed on record and after hearing learned counsel for the parties, learned trial court dismissed the suit of the plaintiff as well as counter claim of the defendants.

8. Feeling aggrieved with impugned judgment and decree dated 05.01.2018, plaintiff preferred the present appeal. Notice of the appeal was served upon the defendants. Defendants appeared through their counsel. Trial court record has been requisitioned.

9. It has been argued by learned counsel for the plaintiff that the judgment and decree dated 05.01.2018 passed by the learned trial Court are contrary to the evidence available on record and have been passed without proper appreciation thereof. It is contended that the plaintiff and the defendants are co-sharers in the suit property, each having a 1/6th share therein. It is further argued that a joint tubewell had been in existence for the last seven years in the name of defendant No.1 and that the electricity charges pertaining to the said tubewell were borne by the plaintiff and the defendants in proportion to their respective shares. It has further been argued that a joint pipeline was also installed for irrigating the joint holding. Learned counsel submits that the share of the plaintiff in the suit property stood enhanced after co-sharer Gujar Lal relinquished his share by way of a relinquishment deed dated

16.07.2008, but the learned trial Court failed to appreciate the same. It is further contended that the defendants have illegally restrained the plaintiff from using the tubewell and the pipeline for irrigating his share of the land. Learned counsel has further argued that the defendants have failed to establish that the joint property had already been partitioned. Rather, according to the plaintiff, the electricity connection for the tubewell was jointly obtained in the year 2007, thereby demonstrating that the parties continued to enjoy the property jointly. It is submitted that DW-1 has categorically admitted in his cross-examination that the suit property continues to be joint and that the electricity connection along with the pumping set is also joint. However, the learned trial Court has ignored these material admissions. It has also been argued that the machinery and equipment relating to the tubewell were purchased by the plaintiff along with Gujar Lal, and this fact has been duly corroborated by PW-3 Gujar Lal in his testimony before the Court. Learned counsel further submits that the plaintiff has successfully proved his case by leading cogent oral as well as documentary evidence, but the learned trial Court has failed to appreciate the same. It is, therefore, prayed that the impugned judgment and decree be set aside, the appeal be allowed, and the suit of the plaintiff be decreed. Ld. counsel placed reliance upon *Sewa Singh Vs. Raghbir Singh and another* LJR 2025 (2) 108, *Hari Chand Vs. Tek Chand* LJR 1995 (1) 607 and *Parkash Kaur & Ors. Vs. Joginder Singh & Ors.* LJR 2018 (2) 281.

10. Per contra, learned counsel for the defendants has supported the judgment and decree passed by the learned trial Court. It has been argued that the revenue record clearly reflects that the source of irrigation of the suit land is 'Chahi', which itself disproves the plaintiff's claim regarding the alleged joint tubewell. It is further contended that the borewell electricity connection was obtained exclusively by the defendants in their own names after the land had already been partitioned amongst the parties. It has also been argued that the plaintiff neither contributed towards the purchase of the borewell equipment nor paid any part of the electricity charges. Learned counsel further submits that the defendants independently obtained government subsidy for installation of the borewell, which clearly establishes their exclusive ownership and possession over the same. It is, therefore, prayed that the present appeal, being devoid of any merit, be dismissed with costs.

11. I have heard ld. Counsel for parties and have gone through the record carefully.

12. It is the case of the plaintiff that the defendants have illegally restrained him from using the tubewell existing over the suit property, though he is entitled to use the same as a co-sharer, particularly when the suit property has not been partitioned by metes and bounds. On the other hand, the case of the defendants is that the borewell was exclusively installed by them after the suit property had already been partitioned by metes and bounds therefore, the plaintiff has no right in the said Borewell.

13. In order to substantiate his case, the plaintiff examined five witnesses. A careful scrutiny of the evidence led by the plaintiff, however, does not advance his case. PW-1 the plaintiff, while appearing in the witness box, categorically admitted in his cross-examination that all the parties have been in separate possession of their respective shares for the last 8–9 years therefore, no suit for partition had been instituted by him. He further admitted that the defendants had obtained a loan for installation of the borewell and pipelines and had also received subsidy from the Government in respect thereof. The plaintiff further admitted that he himself has a separate borewell and that it was he who had refused to permit the defendants to connect their borewell with the Well and had even threatened them. Significantly, PW-3 Gulzari Lal, who is admittedly a co-sharer in the suit property, also deposed that the suit property had already been partitioned about 15 years ago. In the light of the aforesaid testimonies, the plea of the plaintiff that the suit property continues to be joint becomes unsustainable. It is true that the Jamabandi, Ex. P1, for the year 2011-2012 depicts the parties as co-sharers. However, it is equally well settled that entries in the revenue record carry only a rebuttable presumption of correctness. In this regard, reference may be made to the judgment of the Hon'ble Supreme Court in **Chhotte Khan v. Mal Khan**, AIR 1954 SC 575, wherein it was held by Section 44 of the Punjab Land Revenue Act, an entry made in the record of rights or in an annual record shall be presumed to be true until the contrary is proved.

Applying the aforesaid principle to the facts of the present case, the Court is of considered opinion that the admissions made by the plaintiff himself and by PW-3 Gulzari Lal regarding the prior partition of the suit property constitute cogent and convincing evidence sufficient to rebut the presumption attached to the revenue entries. Consequently, mere continuance of joint entries in the Jamabandi cannot, by itself, establish that the property remained joint when the oral evidence on record unequivocally proves that the parties had already partitioned the property and were enjoying separate possession of their respective shares.

14. It is further pertinent to note that the plaintiff has failed to establish, by any documentary evidence, that he had contributed towards the installation of the borewell or had borne any part of the electricity charges pertaining thereto. During his cross-examination, the plaintiff was specifically questioned regarding his alleged contribution towards the installation expenses and payment of electricity bills. However, he was unable to produce any documentary evidence, such as receipts, bills or payment records, in support of his assertion.

15. It is also an admitted position that the electricity connection in respect of the borewell stands in the names of the defendants and not in the name of the common ancestor or father of the parties. The position might have been different had the connection originally stood in the name of the father of the parties. Consequently, the ratio laid down in **Sewa Singh (supra)** is clearly distinguishable, as in the said case the electricity

connection had been obtained in the name of the father of the parties, whereas in the present case it is not so.

16. Learned counsel for the plaintiff has placed considerable reliance upon the cross-examination of DW-1 Babu Lal, wherein he stated that the suit property is still joint and has contended that the said statement amounts to an admission supporting the case of the plaintiff. The said contention, however, is devoid of merit. It is a settled principle of law that a statement made in cross-examination cannot be read in isolation and must be appreciated in its entirety. A holistic reading of the testimony of DW-1 reveals that he stated that the property had not been partitioned through any Court proceedings and further stated that the parties had effected a private partition through mutual settlement about 25 years earlier and had since been enjoying separate possession of their respective shares.

Consequently, the reliance placed by plaintiff on **Parkash Kaur (supra)** is misplaced, as there is no unequivocal admission on the part of the defendants that the suit property continues to be joint.

17. No other point was argued before me.

18. In view of the above, I am of considered opinion that there is no illegality or infirmity in the impugned judgment and decree dated 05.01.2018 and the same are upheld. The appeal is without merit and is hereby dismissed with cost. Decree sheet be prepared. Record of the

learned trial court be sent back along with a copy of this judgment. Appeal
file be consigned to the record room after due compliance.

Announced in open court.
Dated: 08.07.2026.
Meena SG-I

Nitin Raj
Additional District Judge,
Narnaul. UID No. HR0287

Argued by: Sh. Chander Prakash Gurjar, counsel for appellant

Sh. JK Gurjar, counsel for respondents

Remaining arguments heard. Judgment pronounced. Vide my separate judgment of even date, instant appeal has been dismissed with costs. Decree sheet be prepared. Record of the learned trial court be sent back along with a copy of this judgment. Appeal file be consigned to the record room after due compliance.

Announced in open court.

Dated: 08.07.2026.

Meena SG-I

Nitin Raj

Additional District Judge,
Narnaul. UID No. HR0287