

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

R.S.A No. 2720 of 1989

DATE OF DECISION : 18.11.2015

Superintending Engineer, Irrigation Department, Lehal Division, Patiala and
another

.... APPELLANTS

Versus

Balvir Singh and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. B.S. Chahal, DAG, Punjab,
for the appellants.

* * *

SATISH KUMAR MITTAL, J. (Oral)

Superintending Engineer, Irrigation Department, Lehal
Division, Patiala; and Sub Divisional Officer, Lining Department, Irrigation,
Patiala, have filed the instant Regular Second Appeal against the judgment
and decree dated 09.08.1989 passed by the court of learned Additional
District Judge, Sangrur, whereby the appeal filed by Balbir Singh and others
(respondents herein) was allowed and the judgment and decree dated
01.06.1987 passed by the court of Sub Judge Ist Class, Sunam, dismissing
the suit for permanent injunction was set aside.

It is the case of the plaintiffs-respondents that Outlets No.
12713/R, 10816/R, 12132/L, 12874/L and 10769/L, which were in existence
in Gurjranwala minor ever since the erstwhile Pepsu State, were being used

by them to irrigate their lands. At the time of brick-lining the said minor, the defendants-appellants threatened to reduce the said outlets. The plaintiffs-respondents then filed suit for permanent injunction for restraining the defendants-appellants from substituting the old outlets with any new ones and also from reducing the diameter of the outlets in question, except in due course of law.

The defendants-appellants contested the suit by filing written statement.

The trial court, after considering the evidence available on record and hearing learned counsel for the parties, vide judgment and decree dated 01.06.1987, dismissed the suit of the plaintiffs – respondents.

On appeal filed by the plaintiffs – respondents, the first appellate court, while referring to the provisions of the Northern India Canal & Drainage Act, 1873 (hereinafter referred to as 'the Act'), vide impugned judgment and decree dated 09.08.1989, allowed the appeal and decreed the suit of the plaintiffs – respondents restraining the defendants – appellants from substituting the old outlets with any new ones except by complying with the procedure prescribed by law. In this regard, after re-producing the provisions of Sections 30-A and 30-B of the Act, the following findings of facts were recorded by the first appellate court :-

“A clear mode has been provided by the statute as laid down above for effecting any change in the already existing outlet and no

change could be effected without complying with the above said provisions of law. Admittedly, no compliance was made so far by the defendant-respondents with the above said provisions so as to substitute the outlets in question with any outlet of lesser circumfrance.”

During the course of arguments, learned counsel for the appellants could not controvert the finding of facts recorded by the first appellate court with regard to substituting the old outlets with any new ones only by complying with the procedure prescribed by the Act.

In view of the above, I am of the opinion that no substantial question of law is involved in the instant appeal.

Consequently, the appeal filed by the defendants is dismissed with no order as to costs.

November 18, 2015
ndj

(SATISH KUMAR MITTAL)
JUDGE