

**In the High Court of Punjab and Haryana at Chandigarh**

R.S.A.No. 2079 of 1991

Date of decision: 20.10.2015

Das Singh

.....Appellant

Versus

Niranjan Singh and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr.Ish Puneet Singh, Advocate for  
Ms. Jatinder Jit kaur, Advocate,  
for the appellant.

Mr.M.L.Saini, Advocate  
for respondents.

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- 1. Whether Reporters of local papers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

**Raj Mohan Singh, J.**

1. Plaintiff Das Singh has come in regular second appeal against the judgment and decree dated 16.9.1991 passed by Additional District Judge, Jalandhar, dismissing the appeal and upholding the judgment and decree dated 30.5.1990 passed by Sub Judge, Jalandhar.

2. Plaintiff Das Singh filed a suit for permanent injunction restraining defendants No.1 and 2 from forcibly constructing new *aar* (water channel) from his land measuring

8 kanals 3 marlas comprised in khewat No.71, khatauni

No.188, Khasra No.478 (4-14), 479 (1-13) and 480 (1-16) situated in village Laroi, District Jalandhar as per jamabandi for the year 1985-86 and from interfering in the possession of the plaintiff over the suit land in any manner. Plaintiff alleged that he is owner in possession of the aforesaid agricultural land and defendants have threatened to construct new *aar* forcibly from the land of the plaintiff. Defendants have no right, title or interest in the said land

3. Defendants contested the suit, alleging that plaintiff and defendants along with other co-sharers have been watering the land from common well since long and property is ancestral in nature. Defendants have admitted the ownership of the plaintiff to the extent of 8 kanals 3 marlas but denied other allegations. They pleaded that the *aar* has been in existence since long and the land of the joint owners including the plaintiff and defendant Mohan Singh etc. have been irrigating their land through the same water channel (*aar*). After obtaining the stay, plaintiff demolished the existing *aar* from the part of suit land, thereby causing irreparable loss to the defendants by way of damaging their crops.

4. After filing replication, following issues were framed by the trial Court:-

“1. Whether the plaintiff is entitled to the injunction prayed for ? OPP

2. Whether there exists a water channel in the property in dispute as alleged ? OPD

3. Relief”

5. Trial Court, after discussing issues No.1 and 2 jointly, dismissed the suit vide judgment and decree dated 30.5.1990. Appeal filed by the plaintiff-appellant was also dismissed by the lower Appellate Court , vide judgment and decree dated 16.9.1991.

6. During the pendency of appeal, sole appellant died on 18.3.1998 and his legal representatives were ordered to be brought on record.

7. I have considered submissions of both the sides and have also perused the record.

8. So far as ownership of plaintiff over 8 kanals 3 marlas of land is concerned, it is not in dispute. The water channel in dispute was in existence since long. Case of the plaintiff is that the defendants have no right to construct the water course on the land of the plaintiff. On the other side, case of the defendants is that the water course was in existence since long and they have right to irrigate their land through common water course.

9. Whether the water course passes through the fields of the parties or not is a factor to be determined on the basis of evidence. Niranjn Singh appeared as DW-1, who stated that

defendants have inherited the land from their grand father and all were irrigating the land from one common well. Now the water is being taken through common water course from their own tubewell. Between the well and the land of plaintiff Das Singh, land of Mohan Singh is in existence and thereafter, field of Das Singh starts and after that field of defendants comes. Common water course which passes from the well first reaches to the field of Mohan Singh defendant, then to the fields of Das Singh and then to the fields of Niranjn Singh-defendant. This common channel was in existence even prior to the age of discretion. As per site plan Ex.D-2, the witness has stated that on 23.2.1988, he was summoned in the police station and thereafter, common water channel was demolished which resulted in stoppage of water supply to the fields of the defendants. The witness has stated that a loss to the tune of ₹ 8,000/- to 9,000/- was suffered and he also placed on record *Masavi* Ex.D-3.

10. Resham Singh as DW-2 deposed that the land was joint. Land of Mohan Singh is situated first from the side of well then the land of Das Singh falls and thereafter, land of the defendants is situated. The land of the defendants is irrigated from the water channel which passes through the land of Mohan Singh and Das Singh. Ultimately, the water channel reaches to the fields of Niranjn Singh and this arrangement was in force

even prior to age of discretion. The witness further alleged that plaintiff Das Singh closed the water channel and the defendants could not harvest the crop.

11. Mohan Singh has been examined as DW-3, who has also corroborated the fact that the parties are related to each other. Well is joint water channel. Parties used to irrigate the fields through common well and this water channel leads to the fields from the common well through water channel. The witness has also admitted that in a common taur there is tubewell of Naranjan Singh and adjoining to taur he has his fields and after that there is fields of Das Singh and thereafter, there is field of Naranjan Singh- defendant. As DW-1 and DW-2, he has admitted that the water channel passes through his fields and then to the fields of plaintiff and thereafter, it goes to the fields of defendants. The existence of *aar* in his field is admitted, whereas, plaintiff has demolished the same in his fields. Plaintiff still irrigates the land through this water channel up to his land.

12. So far as existence of well is concerned, the same has not been denied by the plaintiff. PW-2 Amar Singh, in his cross-examination, has admitted the common ancestors of the parties. Existence of the fields of Mohan Singh in between the fields of the parties has been evasively replied. The plaintiff has even denied the knowledge of any relation with the defendants.

Both the Courts after due appreciation of evidence on record held that the evidence produced by the plaintiff does not inspire confidence even the site plan produced by the plaintiff does not portrays the land of Mohan Singh, whereas, the site plan produced by the defendants Ex.D-2 shows the correct possession which further stood supported from the testimonies of DW-2 Resham Singh to the effect that the well is in existence in khasra No.464.

13. Defendant Niranjan Singh has also corroborated the site plan to prove that the tubewell is in existence in khasra No.465. The old well has been shown in khasra No.464 in the site plan Ex.D-2 and tubewell of Niranjan Singh has been shown in khasra No.465. The *aar* has been shown from these khasra numbers to the fields of Mohan Singh-defendant to the fields of Das Singh and finally to the fields of Niranjan Singh. Both the Courts have appreciated the evidence to hold that the *aar* was in existence since the time of their forefathers and ultimately held that the *aar* which was in existence further goes through the fields of Mohan Singh then to the fields of Das Singh plaintiff and ultimately to the fields of Niranjan Singh. No evidence of rebuttal so far as existence of *aar* and well are concerned could be substantiated on record. The Courts recorded firm finding of fact that the plaintiff has not come to the court with clean hands.

14. The argument of learned counsel for the appellant is

that in para 1 of the written statement factum of demolition has been admitted by the defendants. A perusal of the contents of the written statement reveals that factum of ownership of plaintiff to the extent of 8 kanals 3 marlas of land has been admitted. Other submissions have been denied. The defendants have pleaded that the *aar* has been in existence since long and the land of the joint owners including plaintiff and defendants and Mohan Singh etc. was being irrigated through this *aar*. Plaintiff, after obtaining stay from the court demolished the existing *aar* from the part of the land and has caused irreparable loss to the defendants.

15. In the light of aforesaid plea in the written statement, it cannot be presumed that the defendants have admitted any such demolition in the manner as projected by the plaintiff. Rather the demolition under the garb of stay order has been pleaded which goes to the established case on record to the effect that the plaintiff has demolished the *aar* which passes through his land, thereby disentitling the owner of the land whose land falls after the plaintiff. Though no specific question of law has been framed by the appellant but this Court has considered the following issues:-

“ 1. whether long use of water channel since time of forefathers entitles the defendants to use the water channel by way of easmentary right?

2. Whether such easmentary right is extinguished with the installation of tubewell in khasra No.465 by the defendants.”

16. According to evidence appearing on record, the water channel, which was being used by all the parties was common water course from old well situated in khasra No. 464. Nothing has been brought on record whether installation of new tubewell in khasra No.465 has led to carving out of one another water channel for irrigating the land of the defendants from said tubewell. Water channel remains the same. Khasra Nos. 464 and 465 being adjoining to each other do not suggest any earmarking to different water channels from these sources to the land of different persons. Once the common water channel has been established on record which started from the well situated in khasra No.464 then passes through the land of Mohan Singh and then to the plaintiffs and ultimately reaches to the land of the defendants. Therefore, no such distinction can be made and the use of water channel since long gives rise to easmentary right in favour of the defendants and qualification of such right in the context of long user even more than 20 years can be appreciated from the facts on record. Even otherwise the plaintiff being co-sharer of common water channel cannot deprive other co-sharers from benefit of irrigation by means of demolition. Therefore, points as formulated above go in favour

of the defendants even, if, it is found that a new tubewell has been installed in khasra No.465 that does not deprive the defendants from using water channel in the capacity of co-sharer which passes through the land of Mohan Singh, plaintiff and ultimately reaches to the land of Niranjana Singh- defendant.

17. Looked from any angle, the evidence on record does not inspire any confidence in favour of the plaintiff. Plaintiff has not led any evidence to support his claim and he cannot take benefit of weakness of the case of the defendants in any manner. Having considered the issues, this Court is of the opinion that the appeal is bereft of merits and the same is accordingly dismissed.

**(RAJ MOHAN SINGH)**  
**JUDGE**

**October 20, 2015**  
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