

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

RSA No.3516 of 2010 (O&M)

Date of decision:17.12. 2015

SDO Irrigation and others

-Appellants

Versus

Raj Kumar and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Siddharth Sanwaria, DAG, Haryana.

Mr. Bhupinder Singh, Advocate
for the respondents.

RAJ MOHAN SINGH, J. (ORAL)

[1]. Plaintiffs-appellants filed suit for permanent injunction and mandatory injunction on the ground that they are owners in possession of the suit land fully depicted in the head note of the plaint.

[2]. There is no sanctioned drain to be constructed through the land of the plaintiffs nor any notice was ever issued to the plaintiffs in respect of construction of any drain. The land was never acquired by the State nor any award was passed in terms of granting any compensation to the plaintiffs. Defendants started making survey of the suit land and informed the plaintiffs that they are going to construct the drain through the land of the plaintiffs whereas another sanctioned drain exists near the land of the plaintiffs. Seeing the conduct of the defendants, the present suit came to be filed seeking restraint against the

defendants not to construct the drain without any sanction or scheme of the Government. Plaintiffs also alleged that defendants unauthorizedly dug out a drain through the suit land.

[3]. The Local Commissioner visited the spot and found that drain is in existence which appears to be dug very recently. Since the land has been dug forcibly, illegally and without any sanction, the suit has been filed restraining the defendants from digging out the suit land for constructing the drain without any authority or sanction and restore the same in the original position.

[4]. The suit was contested by the defendants by alleging that the drain is in existence for the last more than 30 years, being desilted regularly and is being subjected to necessary repair by the Irrigation Department. Nobody raised objection at any point of time. Plaintiffs admitted to fill the drain with earth in order to cause obstruction in the flow of water. There is no question of destroying the suit property belonging to the plaintiffs in any manner.

[5] On the pleadings of the parties, following issues were framed:

“1. Whether the plaintiffs are owners in possession of agricultural land and mentioned & described in the head note of the plaint? OPP

2. In case issue No.1 is decided in favour of plaintiff then whether plaintiff is also entitled to injunction as prayed for? OPP

3. Whether the suit filed by the plaintiff is not maintainable in the present form? OPD

4. Whether there exists a drain passing through the suit land owned by the plaintiff for the last more than 30 years? OPD”

[6]. To prove their case, both the parties led their respective evidence. Issue No.1 was decided in favour of the plaintiffs on the basis of evidence. Plaintiffs were proved to be owners in possession on the basis of revenue record viz. Jamabandi Ex.P11 to P13 and on the basis of depositions before the trial Court in the form of PW 1 to PW4, trial Court held the plaintiffs to be owners in possession of the suit land. Question No.2 is also based upon the findings recorded under issue No.1 to the extent of proving ownership. Local Commissioner appointed for the purpose who reiterated that there is a drain in the suit property having 4' depth and 4' in width and the drain is passing through the suit land which has been dug up about 5-6 days back. This fact was also admitted by one Sh. K.C. Goyal, SDO, Department of Irrigation who was present at the spot at the time of inspection by the Local Commissioner. 'Aksijra' in respect of suit land Ex.P9 shows that there is no mention of any Khalasi/water course passing through the land in question nor any khasra number has been given to the drain passing through the land in question.

[7]. DW 1 has admitted in his cross-examination that

drain passing through the agricultural fields bears a khasra number in the revenue record. Since nothing has been proved by the defendants, therefore, there is no connectivity viz-a-viz the existence of drain in respect of khasra numbers in revenue record. On the basis of apprehension shown by the trial Court, issue No.2 was decided in favour of the plaintiffs. After noticing that land was never acquired for laying a drain nor any compensation was paid to the plaintiffs, therefore plaintiffs were held entitled to injunction as prayed for under issue No.2. Under issue No.4, existence of drain as claimed by the defendants for the last more than 30 years has been negated for want of any evidence to that effect. No sanction has been produced in respect of drain in question nor any other material has come forth to show that drain was in existence over the last 30 years as claimed by the defendants. Consequently, the suit was decreed.

[8]. Defendants-appellants remained unsuccessful in the first appeal before the lower Appellate Court as well. During the pendency of first appeal before the lower Appellate Court, the defendants-appellants sought to adduce additional evidence in the form of revenue record. The said application was declined by the lower Appellate Court. The lower Appellate Court has also discussed the grounds on which the application for additional evidence was declined. In the absence of sanction granted by

the Competent Authority and also for want of acquisition of land of alleged drain, there cannot be any presumption with regard to existence of drain for the last so many years as claimed by the defendants. Even, if, it is claimed that there is a drain in the land of the plaintiffs, unless and until factum of sanction and acquisition by the State is not proved on record nothing could be acquired by the State in respect of private property of the plaintiffs. No notice was ever served upon the plaintiffs for carving out any drain. The lower Appellate Court has rightly discarded the plea of the defendants for adducing additional evidence. Defendants never sought to adduce any sanction granted by the Competent Authority nor any notice of acquisition was sought to be adduced by way of additional evidence. The suit land is proved to be private property of the plaintiffs qua which defendants have no right title or interest in any manner to cause interference by way of seeking digging of drain therein. Even, if, it is presumed that drain was in existence for sometime, defendants cannot take benefit of it for want of any sanction and title to the land in which drain is sought to be done.

[9]. Having considered the issue in the light of aforesaid, this Court finds that no lawful point worth consideration is involved in the present case. The law points as formulated in para No.14 of the grounds of appeal are pure questions of fact.

Questions No.1 and 2 do not arise at all. Question No.3 as

formulated by the appellants is also of no consequence. The additional evidence which was sought to be adduced before the lower Appellate Court did not contain any document of sanction nor of any acquisition proceedings initiated by the State at any point of time acquiring the land in question for the purpose of digging drain. In view of aforesaid, question No.3 does not arise at all. Question No.4 cannot be appreciated as the cause of action in favour of the plaintiffs appears to be recurring cause of action. In the absence of any sanction for digging drain and for want of acquisition or title to the property in favour of defendants, any effort made by the defendants in private property of the plaintiffs would be an act to which lawful restraint has to be done by the plaintiffs and therefore, filing of suit cannot be held to be barred by limitation. Cause of action accrues to the plaintiffs only when their possession is threatened. Questions No.5 and 6 are also pure questions of fact and do not arise in the present context.

[10]. Having considered the matter at some length, I do not find any ground to interfere in this appeal, Resultantly, this appeal is dismissed.

(RAJ MOHAN SINGH)
JUDGE

December 17, 2015

prince