

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.1463 of 2011 (O&M)
Date of Decision: 07.05.2015**

Chamkaur Singh and another

..... Appellants

Versus

Secretary, Irrigation Department,
Punjab, Chandigarh and others

..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Tribhawan Singla, Advocate,
for the appellants.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

CM No. 4082-C of 2011

Since the appeal has been dismissed, no orders are passed on the application for condoning the delay in filing the appeal.

Main case

The appellants purchased the suit land from the original owner in 2002. Some land, including the land of the previous owner were acquired under the Land Acquisition Act, 1894 in 1963. The public purpose of the acquisition was for construction of a canal by the Irrigation Department, Punjab. The civil works were completed and the canal was made operational long before the appellant purchased the land from the previous owner only to turn around to complain in litigation brought by him in the civil court that some of land bought had been consumed unlawfully by the Irrigation Department in the construction of the canal and its banks which was on

sanctioned plans at the point of the suit land wider by a few feet than the normal width of the canal which was 19 ft running. The appellant who is the subsequent purchaser of suit property brought a suit against the Government of Punjab in the department of Irrigation praying for a mandatory injunction against the State to remove the encroachment measuring 3 Kanals and 8 Marlas of land along the bank side of the suit land in a thin strip bordering the 36 Kanals 8 Marlas of land bought by the appellant from the previous owner.

The Courts below have found no merit in the contention and have non-suited the appellant on the ground that the demarcation report relied upon by him as his mainstay ground was not made in the presence of the officials of the Irrigation Department and, therefore, no trust could be placed on it since it was done behind the back of the State. The second reason which weighed in the mind of the trial court for dismissing the suit was that the plaintiff has not been able to prove by best evidence his ownership over the 3 Kanals 8 Marlas of land to claim the strip of land alongside the canal admeasuring in sum total of claimed encroached land since the only document produced to set up to establish title was the Jamabandi for the year 1998-99 which alone was not enough.

In appeal, the plaintiff filed an application under Order 41 Rule 27 CPC praying that the sale deed, not produced before the trial court be permitted to be led in additional evidence in appeal which described the land comprising 36 Kanals 8 Marlas. The appellant complains that due attention was not paid by the First Appellate Court on the contents of the sale deed and has decided the appeal without passing an order either

separately or considering the argument in the judgment itself. The learned Additional District Judge, Barnala vide his judgment and decree dated November 10, 2010 found that there was nothing on record produced by the plaintiff to match the property which was bought by him with what was acquired by the Government to reach the truth. In absence of such a vital clue, it was not possible to return a positive finding in favour of the plaintiff. I find nothing wrong in the judgments delivered by the Court *a quo*. To this reasoning, I would add that when the appellant purchased the land in 2002, adjoining the acquired land, he ought to have been careful when the land he was buying which may have included a gray area was in fact available for sale. The principle of contract law of realty summed up in Roman law phrase *caveat emptor* is well known to law and should be applied to this case. In short, let the buyer beware.

No ground is made out to interfere in this appeal which is ordered to stand dismissed.

Ordered accordingly.

(RAJIV NARAIN RAINA)
JUDGE

07.05.2015
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