

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

Regular Second Appeal No.2502 of 2015 (O&M)
Date of decision:22.09.2015

State of Punjab and others ... Appellants

versus

Baldev Singh (deceased, through his LRs), and others.
.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Ms. Vandana Malhotra, Additional Advocate General,
Punjab.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

CM No.6522-C of 2015

For the reasons stated in the application, delay of 135
days in filing the appeal is condoned.

Application stands disposed of.

CM No.11406-C of 2015

Application is allowed, as prayed for. Annexures A2 to
A4 are taken on record.

Regular Second Appeal No.2502 of 2015

1. The appeal is at the instance of the State against which
the suit had been filed for injunction by the true owner for a restraint

against the State from in any manner drawing water from his land or digging any drainage over the plaintiff's property. While the ownership of the property of the plaintiff was accepted, the State contended in defence that they had laid a drainage on the plaintiff's property in the year 1976 and had incurred expenses over a period of time in the years 1989, 1996 and 1998 for maintaining the drainage. The trial Court decreed the suit, finding after inspection by a Local Commissioner that there had been no drainage in existence. The State, when it preferred an appeal, sought to produce additional evidence in proof of the expenses incurred for maintaining the drainage and to explain that the drainage had closed by silting and if the State were not to maintain the same by de-silting and by digging, it will result in inundation. The State was prepared to concede that they had not acquired the property but would plead for a case of a voluntary handing over of the property to the State by the villagers to allow for the water to be taken as a drainage through the plaintiff's property. The appellate court declined to entertain the additional plea and dismissed it.

2. The villagers cannot decide for the plaintiff of how his land should be used for their benefit. If the plaintiff had at some time allowed for the drainage to be taken and the government did not think of acquiring the same, the best that the State can plead was that it had a licence to do what the villagers wanted to do and when

the plaintiff did not object. But if the State had allowed a disuse of the drainage and the Local Commissioner's report vindicated the plaintiff's stand that there was no drainage in existence, the State shall not be permitted to enter upon the property without the consent of the plaintiff and more so when the State had no thought it fit to acquire the property for the benefit of the public.

3. I must also observe that the additional documents could have no relevance even granting that the State Government was spending money for maintenance of a drainage. When it had been put to disuse and the property in its natural state allowed for the plaintiff to exercise the right of ownership, the State cannot exercise any right in derogation of proprietary right of an individual.

4. The decrees granted by the two courts below therefore seem to be justified and there is no scope for interference in second appeal. Second appeal is dismissed.

(K.KANNAN)
JUDGE

22.09.2015
sanjeev