

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

RSA No.4514 of 2009

Date of Decision: July 18, 2016

Harbhajan Singh and another Appellants

Vs.

Gurcharan Singh and others Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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

Present: Mr. G.S.Mann, Advocate
for the appellants.

Mr. P.P.S.Tung, Advocate,
for the respondents.

Amol Rattan Singh, J.

This is the second appeal of the plaintiff (now represented by his LRs) who had filed a suit for permanent injunction against the respondents-defendants seeking that they be restrained from demolishing the water course running through part of the land described in the headnote of the plaint, in village Poohla, Tehsil and District Bathinda, as the said water course was being used by the plaintiff by laying water pipes for irrigating his land. He also sought that the defendants be restrained from raising any construction on the said property so that the plaintiff is not

deprived of the use of the water course.

2. The facts, as taken from the judgments of the Courts below, are that the plaintiff contended that he was owner of land adjoining to the suit property, comprised in khasra No.63//13/1, 62/12 and 63/11, situated in the revenue limits of the aforesaid village and that he is using the water course to water his fields through khasra No.63//13/1, as described in the plan prepared by the Soil and Water Conservation and Waste Land Development Department, Government of Punjab, as was annexed with the plaint. He further submitted that the water course was in existence for more than 25 years and before him, it was being used by his father. The water course was also stated to pass through khasra No.63//7 and that khasra girdawaries (annual records) also showed that the property was in the ownership of the defendants but that the water course flowing therein was being used by the plaintiff.

It was further contended that for installing the pipes in the water course, on account of its high level, the plaintiff had raised a loan of Rs.51,000/- from the Nathana Primary Cooperative Agricultural Development Bank Ltd. and thereafter had laid the pipes before 1996, with outlets also provided by the Canal authorities, to facilitate the plaintiff in irrigating his land.

However, now the defendants were trying to dismantle the pipes and had raised construction, for which they had already stored the material on the site and as such, were hindering the plaintiff from irrigating his land.

3. It was also contended that the defendants had earlier filed a suit for permanent injunction against the plaintiff, seeking that he be restrained from raising a fresh water course on the suit land, in which the plaintiff had filed his written statement, giving the facts as given hereinabove, alongwith relevant record.

In that suit, the defendants (plaintiffs in that suit) had suffered a statement that they would not interfere in the use of the existing water course and the plaintiff herein (defendant in that suit) had stated that he would not illegally and forcibly construct a water course. Thereupon that suit had been withdrawn; however, they had also stated in that suit that there were no pipes affixed in the water course but, it was contended that the said statement was incorrect and the truth could be verified by appointing a Local Commissioner.

4. The defendants (present respondents) upon notice issued to them in the 'present suit', (i.e. out of which this second appeal arises), appeared and filed a written statement, taking preliminary objections with regard to maintainability, locus etc., and on merits stating that actually there was no sanctioned water course through khasra No.63/7, which is in the ownership of the defendants, and that on 20.06.1998 they had already built a 'pacca kotha' measuring 10' x 10'.

The earlier suit filed by them (present respondents-defendants) was also referred to in the written statement and it was stated that on 15.06.1998, the present plaintiff, Nachhattar Singh, had made a statement that he would not forcibly and against law, dig a water course through the

land of the present defendants.

5. Upon the aforesaid pleadings, the following issues were framed by the learned Civil Judge:-

- “1. Whether the plaintiff is entitled to decree of permanent injunction as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff has no locus standi to file the present suit? OPD
4. Whether the jurisdiction of civil court is barred, in view of under Canals and Drains Act? OPD
5. Relief.”

6. The plaintiff examined four witness including himself and tendered the *jamabandies* (records of rights) for the year 1991-92 and 1996-97 and a copy of the khasra girdawari as also some orders, by way of documentary evidence.

The defendants examined respondent No.4 (defendant No.3) Baldev Singh and closed their evidence.

7. Upon appraisal of the evidence and the pleadings, the learned Additional Civil Judge referred to one 'writing' dated 13.05.1971, placed on the case file as Mark-A by PW3, Charanjit Singh, Soil Conservation Officer, in which the defendants were shown to have given their consent for laying the underground pipes through their land, upon the intervention of the Gram Panchayat. It was stated to have been settled that instead of an open water channel, underground pipes would be laid and in lieu of the

same, plaintiff Nachhattar Singh would give 10 Marlas of land to Lal Singh, father of defendant No.3 (present respondent No.4). The said writing also bore the signatures of the Sub-Divisional Soil Conservation Officer, as also those of plaintiff Nachhattar Singh, aforesaid Lal Singh and of defendant No.1, Gurcharan Singh.

However, it was found by the learned Civil Judge that there was no evidence led by the plaintiff to show that he had given 10 Marlas of land to Lal Singh, in lieu of the water channel and in fact, the plaintiff had not even uttered a word about the writing dated 13.05.1971.

Hence, it was held that the plaintiff not having complied with his part of the contract, then after a period of more than 35 years, he could not restrain the defendants from raising construction on their own property.

Consequently, the suit of the appellant-plaintiff was dismissed.

8. In the first appeal filed by him, the learned Additional District Judge, after noticing the pleadings and considering the evidence led before the lower Court, held that, in fact, the writing dated 13.05.1971 had never been duly proved on record, having been simply produced by PW2, with no reference to it either in the plaint or in the written statement. Hence, the said document was ignored by that Court.

9. As regards the other evidence led by the parties, it was found by the lower Appellate Court that PW1, Jangir Singh, a Member of the village Panchayat, had testified to the effect that the water course had been provided by the Canal Department, but in cross-examination, he had admitted that it was not so.

As regards laying of pipes by the plaintiff, this witness had also admitted that the pipes were not laid in his presence and he did not know as to which department had laid them.

The testimony of this witness was consequently discarded by the lower Appellate Court for this reason, that he had contradicted himself and also because he had admittedly remained a Clerk to the counsel for the plaintiff, for 20 years.

10. Discussing the statement of PW2, i.e. the Soil Conservation Officer, the first Appellate Court found that firstly, the witness had accepted that even in the document dated 13.05.1971, no khasra numbers had been mentioned and that defendant Gurcharan Singh had never given his consent, even though this witness had stated that the pipes were laid between 07.03.1996 and 25.03.1996 with the consent of both the parties for laying the pipes. Also, though sanction for laying of pipes was given by the Soil Conservation Department on 02.03.1996, it was only in the area of khasra No.63//13/1.

11. As regards the previous suit “decided on 15.06.1998” (filed by the present respondents-defendants), the plaintiff had suffered a statement that he would not dig any water course forcibly on the property in dispute and that the pipes which had been laid by the department can not be interfered by the respondents. Respondent Baldev Singh had also suffered a statement to the effect that there were no pipes on the spot and further, as regards the water course, the defendants would be bound by their statement. Upon these statements made, that suit was withdrawn.

(Though the aforesaid observation of the lower Appellate Court actually does not show any ground for withdrawal of the suit by the present defendants, who were plaintiffs in that suit, however, the statement of the plaintiff, made in the earlier suit as a defendant, has been seen from the records of the lower Courts by this Court, and shall be discussed further ahead).

12. Discussing the testimony of PW3, Sukh Ram, from the Irrigation Department, who proved the order of 'warabandi' (turn of usage of the canal water), it was held that the said document (Ex.P4), would have no bearing on the issue in view of the fact that actually there was no sanctioned water course at the spot.

It was further noticed that despite the testimony of the plaintiff himself, no document showing deposit of any amount for installation of pipes by the Department of Soil Conservation, had been placed on record.

It was alleged by the plaintiff that the respondents-defendants had built a '*kacha kotha*' despite a stay order by the Court and that he had also filed an application under Order 39 Rule 2-A CPC. However, that was found to have been dismissed and, in fact, even the status quo order dated 18.07.1998, had been vacated by the Civil Judge on 25.09.1998.

Further, no efforts had been made by the plaintiff to get the spot inspected by the Local Commissioner and as regards the consent of the respondents for laying pipes in their fields, the plaintiff did not know whether the respondents-defendants had signed or thumb marked any such document and also did not know as to the kind of paper that was used for

any such document.

13. It was further found by the lower Appellate Court, from the testimony of defendant Baldev Singh, that he was irrigating his land with the help of a tubewell and that there was no water course from which he was getting his turn of the canal water and no suggestion to the contrary had been made to him by the counsel for the plaintiff.

14. Consequently, holding that in the absence of any documents to show that water course was duly sanctioned by the competent authority (in the interference of which the defendants should be restrained), the first appeal of the plaintiff was also dismissed.

15. Before this Court, Mr. Shiv Charan Jeet Singh, learned counsel for the appellant, submitted that once the respondents had consented not to interfere with the pipes laid by the Soil Conservation Department, in the previous suit, the Courts below wholly erred in holding that the plaintiff had no right over a water course which was not shown to be sanctioned by the competent authority, especially as the Officer from the Department of Soil Conservation had testified that the pipes were in fact laid through the fields of the respondents-defendants.

16. Having considered aforesaid argument, it is seen from the records of the courts below, that in fact defendant Baldev Singh (plaintiff No.3 in the previous suit, i.e. Civil Suit No.89 dated 03.06.1998), had stated that in that suit, that there is no water course existent on the spot.

The present plaintiff (defendant in that suit) is shown to have suffered a statement to the effect that he would not construct any water

course that was not sanctioned by the Department. That suit was then dismissed as withdrawn, with the parties held bound to their statement, on 15.06.1998.

The suit out of which this second appeal arises, was instituted by the plaintiff on 18.07.1998, i.e. one month later, though that may not have any bearing on the present controversy.

17. What is material is that there was no water course sanctioned by the Irrigation and Canal Department, that would run through the fields of the defendants, so as to enable the plaintiff to irrigate his fields.

I agree with the reasoning with the lower Appellate Court that the document dated 13.05.1971, not having been duly proved, by way of any reference to it in the pleadings of either side, no reliance can be placed on it, simply because it was produced by the officer from the Soil Conservation Department (PW2). However, even if some credibility is to be attached to it, it having been produced by a Government Officer, though not a public document nor a document that was duly exhibited; even so, the undertaking given by the plaintiff in that document itself, was to the effect that he would surrender 10 Marlas of land to the defendants, in lieu of them allowing him to get pipes installed through their land. That undertaking not having been honoured by the plaintiff, no mileage can be taken by him from the document dated 13.05.1971, or the testimony of PW2 in that regard.

18. Hence, to conclude, I agree with the reasoning given by the learned Appellate Court, to the effect that once there is no water course shown to have been sanctioned by the competent authority from the

Department of Irrigation, to run through the fields of the defendants, to the fields of the plaintiff, the defendants cannot be restrained from raising construction on their own land, even if it were presumed (though not proved) that water pipes had been laid through the land of the defendants at some stage, by the soil conservation department. Thus, even if, pursuant to any agreement reached in 1971 (again not actually admissible in evidence, never having been even referred to in the plaint by the plaintiff), underground pipes were laid, the plaintiff not having honoured his part of the agreement and in any case such water pipes having been laid through the land of the defendants, with no canal water course sanctioned through their land, by the irrigation department, the plaintiff cannot have a perpetual right to continue with the pipes even if they are existent and the respondents-defendants consequently, cannot be restrained from constructing over their own land.

Therefore, finding no merit in this appeal, it is dismissed, with no order as to costs.

However, dismissal of the appeal would not preclude any authority to sanction a water course to the parties, if any such water course is found to be sanctionable at all, in due course of law.

July 18, 2016

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**(AMOL RATTAN SINGH)
JUDGE**