

RSA-1985-2011(O&M)

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-1985-2011

Date of decision : 11.01.2016

Harpal Singh

... Appellant

Versus

Rajpal Singh and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vipin Mahajan, Advocate
for the appellant.

Mr.H. S. Ahluwalia, Advocate
for the respondents.

REKHA MITTAL. J.

The present petition has been directed against the judgment and decree dated 11.12.2010 passed by the Additional District Judge (Adhoc), Fast Track Court, Gurdaspur, setting aside the judgment and decree passed by the trial Court whereby the suit filed by the plaintiffs/respondents was dismissed and as a result, the suit filed by the plaintiffs/respondents has been decreed.

The facts relevant for disposal of the present appeal are that Rajpal Singh son of Atma Singh and Charanjit Singh son of Sohan Singh (respondents herein) filed a suit for permanent injunction restraining the appellant/ defendant from dismantling or demolishing or blocking the arh/khal passing through the land measuring 4 kanals 14 marlas bearing

khasra No.16R/9/2, 12/2/1, khewat No.52 khatauni No.140 as mentioned in the site plan at point X, Y, Z situated at village Thariawal, Tehsil Batala, District Gurdaspur. The plea of the respondents is that they are co-sharers /co-owners in possession of the aforesaid land to the extent of 2/3 share while the appellant/ defendant is co sharer in possession of 1/3rd share in the said land. The respondents are also co-sharers in possession in land bearing khasra No.16R/13/1/2 16R/13/1/1, 12/2/2. There is arh/khal passing through the land bearing khasra No.16R/9/2/ and 12/2/1 which goes to other fields of the respondents bearing aforesaid khasra numbers and they are irrigating their land through the said arh/khal which is the only source of irrigation. The appellant / defendant is threatening to demolish and block the arh/khal passing through the land in dispute illegally and forcibly to which he has no right.

The appellant filed the written statement and, in turn, denied the existence of any arh/khal in land measuring 4 kanals 14 marlas. It is pleaded that land measuring 4 kanals 14 marlas bearing khasra No.16R/12/2 (0-12) min Lehnda, 9/2 (4-2) was purchased by the respondents and the appellant from Mohan Singh vide sale deed dated 11.04.1980. The respondents and the appellant also purchased land measuring 6 kanals bearing khasra Nos.7R/4/2, 4/3, 7 min charda, 7R/6/2 min Lehnda (1-10) from said Mohan Singh vide sale deed dated 15.07.1982 registered on 16.07.1982. Mohan Singh sold the said land in favour of the parties in equal shares with right of irrigation of said land

through his tubewell. The said joint land was partitioned amongst the co-sharers vide memo of partition dated 16.07.1991 executed between Atma Singh, father of respondent No.1, Sohan Singh, father of respondent No.2 and the appellant and mutation on the basis of said memorandum of partition has already been sanctioned and said land is being irrigated through the tubewell installed by the respondents in the land which had fallen to their share. The respondents have got no right to pass any arh/khal through the suit land for approach to the land which is not joint with the appellant.

The respondents filed the replication reiterating the averments set up in the plaint while controverting the averments raised in the written statement.

The controversy between the parties led to framing of following issues by the learned trial Court:-

- 1. Whether plaintiff is entitled for permanent injunction restraining the defendant from dismantling or demolishing or blocking the aarh/khal passing through the suit land? OPP*
- 2. Whether plaintiff has got no cause of action to file the present suit? OPD*
- 3. Whether suit is not maintainable in the present form? OPD*
4. Relief.

The learned trial Court permitted the parties to adduce evidence in support of their respective claims.

The appellant examined Gurbhej Singh DW1, Mohan Singh DW2 and himself appeared in the witness box as DW3. On the other hand, one of the respondents Rajpal Singh examined himself as PW3 and the respondents examined Satish Chander, Draftsman PW1, Swaran Singh PW2 and tendered into evidence jamabandis for the year 1997-98 Ex.P2, 1997-98 Ex.P3, Khasra girdawari Ex.P4, Aks Shajra Ex.P5, Jamabandi for the year 2002-03 Ex.P6 and khasra girdawari Ex.P7.

After having heard counsel for the parties, the learned trial Court determined issue No.1 against the respondents whereas issues No.2 & 3 were answered against the appellant and the suit filed by the respondents for grant of injunction was dismissed.

Challenge to the judgment and decree passed by the trial Court was laid before the Court of appeal by the respondents/plaintiffs and the appellate Court reversed the judgment and decree passed by the trial Court, accepted the plea of the respondents/plaintiffs and as a consequence, the suit of the respondents was decreed and the appellant/defendant was restrained from demolishing /blocking the arh/khal in dispute illegally, forcibly and without getting the land partitioned amongst the co-sharers.

Feeling dissatisfied with the judgment and decree passed by the Ist Appellate Court, the present appeal has been preferred by the defendant/appellant.

Counsel for the appellant has contended that there is no

revenue record depicting the existence of any khal in the disputed land to favour the contention of the respondents/plaintiffs. It is an admitted position of the case that no such khal was sanctioned by the revenue authorities and for that reason, there is no mention of any such khal in the Aks Shajra or jamabandis etc. Counsel has vehemently argued that the respondents have failed to establish the identity and existence of arh/khal in question, therefore, the judgment and decree passed by the Ist Appellate Court reversing the well reasoned judgment passed by the learned trial Court are perverse and cannot be allowed to sustain. In order to bring home his contention, it is argued that as per the case set up by the respondents, the Khal in dispute is shown in the site plan Ex.P1 at point X, Y, Z which was allegedly prepared by Satish Chander Sharma. The draftsman who prepared the site plan Ex.P1 appeared in the witness box and candidly admitted that he did not visit the spot to prepare the plan and the same was prepared by him on the instructions of the respondents. It is further argued that in the light of facts elicited during cross-examination of PW1, no evidentiary value can be attached to site plan Ex.P1 for establishing the existence and identity of khal in question.

Another submission made by counsel is that there is no averment in the plaint as to the existence of tubewell in a particular khasra number from which the water was to be carried through the Khal in dispute to irrigate the land of the respondents comprising in khasra No.16R/13/1/2 16R/13/1/1, 12/2/2. There is no evidence on record to

prove that khal in question in any manner is connected with any other water course connected with the tubewell allegedly installed in the land belonging to father of one of the respondents.

In the last, it is submitted that as the respondents have failed to establish existence and identity of the khal in dispute, the judgment passed by the Ist Appellate Court is virtually the result of mis-appreciation of evidence and ignoring the relevant provisions of the Code of Civil Procedure.

Counsel for the respondents has supported the judgment passed by the Ist Appellate Court with the submissions that the error committed by the trial Court was rightly rectified by the Court in appeal. During cross-examination of respondent Rajpal Singh, it was suggested to him by counsel for the appellant that they had made this khal with the help of police. According to learned counsel, the suggestion put to the witness is a clear admission on the part of the appellant in regard to existence of khal in dispute. It is meant for irrigating land of the respondents bearing khasra No.16R/13/1/2 16R/13/1/1, 12/2/2 from the tubewell installed in land belonging to father of the respondent.

I have heard counsel for the parties and perused the records.

The substantial question of law which arises for adjudication is **Whether the respondents have been able to establish the existence and identity of khal in dispute to entitle themselves to get the relief of injunction.**

Before advertng to the rival submissions made by counsel for the parties, it is pertinent to mention that a Court cannot pass an injunction order which cannot possibly be supervised or executed by the Court. Order VII of the CPC deals with plaint. Rule 1 of Order VII provides for particulars to be contained in plaint in every suit. Rule 3 of Order VII envisages the particulars required to be contained in the plaint where subject matter of the suit is immovable property. A relevant extract from Order VII Rule 3 reads as follows:-

“It is enjoined upon the plaintiff filing a suit in regard to immovable property that he should describe the property sufficient to identify it.”

The respondents/plaintiffs have mentioned in the plaint that the khal in dispute runs through land measuring 4 kanals 14 marlas bearing khasra No.16R/9/2/, 12/2/1 as mentioned in site plan at point X, Y and Z.

A bare look at the site plan Ex.P1 would show that there is no reference to the khasra number with which this khal is attached at point X, which is shown as the starting point of khal. The points X, Y and Z have been marked only in the area of khasra No.9/2 and not in the area of khasra No.12/2/1 when otherwise as per case set up by the respondents it passes through khasra Nos.9/2 and 12/2/1. This fact alone is sufficient to hold that the respondents have not described the khal in dispute as per pleadings in site plan Ex.P1.

The site plan Ex.P1 was prepared by Satish Chander,

draftsman. He was examined by the respondents to prove the site plan. During his cross-examination, he has candidly admitted that he has not prepared the site plan on the basis of spot inspection and the same has been prepared on the instructions given by the respondents/plaintiffs. He has also admitted that he does not remember if any arh is depicted in the aks shajra. It has also been admitted by the witness that he has shown the arh in the site plan at the asking of the respondents /plaintiffs. The cross-examination of PW1 Satish Chander demolishes the evidentiary value of his statement. As has been noticed hereinbefore, nothing has been depicted in the site plan as to with which khasra number the khal in dispute is attached to carry the water from a tubewell installed in some other khasra number. The plaint is conspicuously silent in regard to khasra number in which the tubewell connection is existing and the khasra number(s) with which the khal in question is attached to carry the water for the purpose of irrigation of khasra Nos. 16R/13/1/2, 13/1/1, 12/2/2. Similarly, nothing has been mentioned in the plaint nor depicted in the site plan as to in which direction of khasra No.9/2 and 12/2/1, khasra Nos.16R/13/1/2, 13/1/1, 12/2/2 are existing, statedly being irrigated with the water carried through the arh in question. In this view of the matter, it can be safely held that the respondents did not describe the suit property in detail, sufficient to identity it to grant the discretionary relief of injunction. It appears that both the Courts below did not bother to examine this important aspect of the matter and for that reason, the Court

in appeal committed a serious error in accepting the appeal and allowing the claim of the respondents / plaintiffs.

To be fair to the respondents, counsel representing the respondents has pressed into service a suggestion put to Rajpal Singh, plaintiff-respondent by the opposite counsel, to substantiate her contention that the khal in question exists at the spot. The said suggestion reads as follows:-

“It is wrong to suggest that we have made this khal with the help of police.”

I am afraid if this suggestion put to the respondent by counsel for the appellant is sufficient to prove claim of the respondents/plaintiffs. The suggestion certainly does not prove the identity of khal in dispute. No such suggestion was put to the witness that any such khal was being used for carrying the water from the tubewell installed in the land of Atma Singh for irrigating the fields of the respondents comprising khasra Nos. 16R/13/1/2, 13/1/1, 12/2/2. There may be some khal existing at the spot but in absence of any evidence to establish its identity and further its user for the purpose of irrigation by the respondents, the respondents do not entitle themselves to the relief of injunction. The appellate Court has committed a gross error by failing to appreciate the matter in right perspective and in view of the provisions of Order 7 Rule 3 CPC. In view of the above, the judgment and decree passed by the learned appellate court cannot be allowed to sustain and accordingly set aside.

For the aforesaid reasons, the appeal is allowed, the judgment and decree passed by the appellate court is set aside and that of the trial Court is restored. The suit filed by respondents Rajpal Singh and Charanjit Singh is ordered to be dismissed leaving the parties to bear their own costs.

(REKHA MITTAL)
JUDGE

January 11, 2016.
Davinder Kumar