

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

RSA No.2163 of 2012 (O&M)

Date of decision : 12.01.2016

Surjit Singh and another

...Appellants

Versus

Ravisher Singh and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Sandeep Singh Deol, Advocate for appellants.

None for respondent Nos.1 and 2.

AMIT RAWAL, J. (Oral)

The appellants-defendants are in Regular Second Appeal against the judgment and decree of the lower Appellate Court, whereby, the suit filed by the respondents-plaintiffs seeking mandatory injunction for restoration of the water channel, has been decreed.

Mr. Sandeep Singh Deol, learned counsel appearing on behalf of the appellants submits that the suit aforementioned was dismissed by the trial Court on the ground that plaintiffs failed to establish the water channel. However, the lower Appellate Court rendered the findings by relying upon the jamabandies which show the nature of the land as *Nehri*. He further

submits that the trial Court did not have the jurisdiction to try and entertain the suit as it was barred by provisions of Section 30(g) of the Northern India Canal Drainage Act 1973, thus, submits that following substantial questions of law arise for adjudication of the present appeal:-

“1. Whether in the absence of the establishment of the water channel, jambandies could have been looked into for adjudication of the lis or not?

2. Whether the civil Court had jurisdiction to try and entertain the suit in view of the provisions of Section 30(g) of Northern India Canal Drainage Act 1973?

Respondents No.1 and 2 though have put in appearance through counsel till 10.11.2014 but from 05.02.2015 onwards there is no representation on their behalf and appeal is of 2012. Accordingly, I proceed to decide the same.

I have heard learned counsel for the appellants and appraised the paper book.

I am in agreement with the findings rendered by the trial Court as it is settled law that the plaintiffs have to discharge the onus, much less, to stand on his own legs by corroborating the averments made in the suit. Once the existence of the water channel has not been proved, the reference of the jamabandis showing the nature of the land as 'Nehri' would not show the existence of the water channel. The plaintiffs failed to discharge the burden as per Section 101 of the Indian Evidence Act, I am of the view that plaintiffs have miserably failed to prove the averments made in the suit.

I am in agreement with the contention of Mr. Deol that Civil

Court would have jurisdiction, if there was threatened or injury whereas, suit is for mandatory injunction, in essence, seeking restoration of water channel, if any, allegedly demolished, therefore, remedy for the plaintiffs was to invoke the provisions of Section 30 (FF) of Northern India Canal Drainage Act 1973, thus, suit was ex facie not maintainable as trial Court had no jurisdiction to try it.

In view of what has been observed above, substantial questions of law as noticed above are hereby answered in favour of appellants-defendants and against the respondents-plaintiffs.

Judgment and decree of the lower Appellate Court is set aside.

Suit is accordingly dismissed.

Appeal stands allowed.

12.01.2016

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**(AMIT RAWAL)
JUDGE**