

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

**RSA-890-2012 (O&M)
Date of decision : 22.09.2016**

Makhan Singh and others

... Appellants

Versus

Jagjiwan Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. N.S. Sidhu, Advocate
for the appellants.

Mr. Rajan Bansal, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The appellants-plaintiffs are aggrieved of the concurrent findings of fact and law, whereby the suit for permanent injunction seeking restraint order against the respondents-defendants from forcibly digging the *khal* (Water Channel) on the eastern side of *pahi* of the land shown in the site plan point A & B or interfering the possession of the property measuring 31 kanals 2 marlas, has been dismissed by both the Courts below.

Mr. N.S. Sidhu, learned counsel appearing on behalf of the appellants-plaintiffs submits that there has been a gross misreading and misconstrual of the oral and documentary evidence. The matter regarding *pucca* water channel has already been settled between the parties vide order dated 13.10.2015 of this Court in **CWP No.16036 of 2013** titled as **“Jagjiwan Singh and another V/s State of Punjab and others”**. The copy of the same has been handed over to this Court during the course of the

arguments. He submits that by way of additional evidence i.e. CM No.13069-C-2014, certain documents have been placed on record to show that the grievance of the defendants for constructing the *khal* on the property, in dispute, has been rejected by the authority. The aforementioned evidence has not been placed before the Courts below, but it is essential and necessary for the adjudication of the present controversy and thus, urges this Court for setting aside the findings under challenge. The same very khasra number was the subject matter in *CWP No.16036 of 2013* and therefore, injunction was liable to be granted.

Per contra, Mr. Rajan Bansal, learned counsel appearing on behalf of the respondents-defendants submits that there are two *khals* one is *pucca* and other *kucha*, in question on the eastern side of the property, in fact, there is already order dated 18.02.1986 (Ex.D-2/6) passed by the Deputy Collector. Ex.D-3 is the application moved by the respondents-defendants to the Sub Division Officer, Irrigation Department, Barnala for restoration of the *khal demolished* by the plaintiffs. The application was marked to Deputy Collector and ultimately, the compromise was arrived at. He has drawn the attention of this Court to the statement of PW-3-Makhan Singh, who admitted his signatures on the compromise, arrived at, between the parties. He submits that there is no force and substance in the submissions of Mr. N.S. Sidhu that the compromise was under pressure, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the Deputy Collector, who submitted his report (Ex.D-4), specifically mentioned that *khal* was on the eastern side of khasra No.849, 848, 847, 846/1/2 and about the compromise also. The

factum of compromise was admitted by Makhan Singh in his cross-examination. The respondents-defendants have purchased the property vide sale deed dated 26.05.1998 which has been proved on record through the testimony of the attesting witness. Makhan Singh also admitted that the property of the respondents-defendants adjoins to their property and he also admitted the existence of the passage on the eastern side of the property. He further admitted that Bachan Singh son of Chanan Singh sold his share in favour of defendants-respondents. PW-2-Pawan Singh, in cross-examination also admitted that there is *khal* on the eastern side of the property in question and the land owned and possessed by the respondents-defendants is *nehri*. All these facts have been taken into consideration by both the Courts below. The controversy in the writ petition was with regard to the *pucca* watercourse and not on the present controversy i.e. on the eastern side of *pahi*, therefore, it cannot be connected for the adjudication of the present appeal.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial questions of law arises for determination and accordingly, the appeal is dismissed.

22.09.2016
yogesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No