

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
103.**

C.M. Nos. 4617-18-C of 2013 &
RSA No. 1748 of 2013

Date of decision: February 23, 2016

Bhupinder Singh and another

...APPELLANTS

Versus

Manjit Singh and others

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Raj Kumar Kakkar, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No. 4617-C of 2013

Prayer in this application is for exemption from filing the certified copy of judgment and decree dated 07.02.2011 passed by the Additional Civil Judge, (Senior Division), Ferozepur.

Prayer granted. Filing of the certified copy of judgment and decree dated 07.02.2011 passed by the Additional Civil Judge, (Senior Division), Ferozepur is dispensed with.

Application stands disposed of.

RSA No. 1748 of 2013

Challenge in this appeal is to the judgment and decree passed by the Additional District Judge, Ferozepur dated 21.12.2012, whereby the appeal preferred by the respondents-defendants No. 1 to 3 has been allowed by setting aside the judgment and decree passed by the Additional Civil

Judge (Senior Division), Ferozepur dated 07.02.2011, whereby the suit for injunction filed by the appellants-plaintiffs claiming the water course in dispute to be their personal property and for restraining the respondent-defendant No. 4 from sanctioning an outlet and for granting the turn to irrigate the water, was decreed.

2. It is the contention of the learned counsel for the appellants that the judgment and decree passed by the learned Additional District Judge, Ferozepur is contrary to the order dated 11.03.1998 Ex. PX where it has specifically been stated that the water canal would be on the land of the appellants-plaintiffs and the construction as well as the maintenance thereof will be of the plaintiffs themselves. He contends that once the order clearly states that it is on the private land of the appellants-plaintiffs and that it was to be constructed and maintained by them, there is no question of granting any turn on the water course by providing a outlet thereon to the respondents-defendants No. 1 to 3. He further contends that a stray admission on the part of the appellant No. 2-Dharminder Singh and other witnesses, during their cross-examination, that the water course was constructed by the Punjab State Tubewell Corporation and was the property of the Government/Canal Department would not obliterate the order, vide which the said canal was sanctioned and in pursuance thereto, constructed. He, therefore, contends that the impugned judgment and decree cannot sustain and deserve to be set aside.

3. I have considered the submissions made by the learned counsel for the appellants but find myself not in agreement with the same.

4. Although as per the order dated 11.03.1998 Ex. PX, it is mentioned that the canal would be constructed and maintained by the

appellants-plaintiffs but there is nothing on record which would indicate that it was indeed constructed by them especially when there is an admission on the part of the appellant No. 2-plaintiff No. 3 Dharminder Singh as also the other witnesses, who were examined by the plaintiffs that the water course was constructed by the Punjab State Tubewell Corporation and the said water course was the property of the Government/Canal Department. That Apart, Jasbir Singh, Assessment Clerk from Harike Canal Division, Ferozepur, who was examined by the plaintiffs as PW4, has also admitted that the outlet was constructed at Ferozepur Feeder by the Divisional Canal Officer and not by the appellants-plaintiffs. He has gone to the extent of stating that the water of the said outlet irrigates the land of respondents-defendants No. 1 and 2.

5. In the light of these statements and the admissions of the witnesses of the plaintiffs, the findings, as recorded by the Lower Appellate Court, cannot be faulted with. The injunction, as has been prayed for by the appellants-plaintiffs restraining the official respondents from sanctioning any outlet on the water course in dispute being a private property cannot be accepted.

6. The appeal, therefore, is devoid of merit and, therefore, the same stands dismissed.

C.M. No. 4618-C of 2013

In the light of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

February 23, 2016**(AUGUSTINE GEORGE MASIH)
JUDGE**