

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

(I) RSA-3287-2013 (O&M)
Date of decision: 02.06.2016

Hardev and others

...Appellant(s)

Versus

State of Haryana and others

...Respondent(s)

(II) RSA-3891-2013 (O&M)
Date of decision: 02.06.2016

Hardev and others

...Appellant(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Shiv Kumar, Advocate,
for the appellants.

JITENDRA CHAUHAN, J.

This judgment shall dispose of the above captioned two separate appeals filed by the plaintiff-appellants against judgment and decree dated 11.04.2013, passed by learned Additional District Judge, Faridabad (for brevity, 'the first appellate Court'), whereby, cross-appeals filed by the parties were disposed of; the appeal filed by the plaintiffs was dismissed whereas, the appeal filed by the defendants was allowed. The revenue authorities were directed by learned first appellate Court to enter the ownership of the canal constructed in Khewat/Kahtoni No.348/334, 391,

Killa No.104/3/1 (0-16) in the name of Canal Department.

The brief facts necessary to dispose of the appeals are that the plaintiffs filed suit for mandatory injunction against the defendants directing them to put *nala/rajwaha*/Canal at the correct side as per their plan sanctioned by the Government and not to interfere in the peaceful possession of the plaintiffs over the land in dispute. It is the case of the plaintiffs that they are joint owners in exclusive possession of the suit property to the extent of half share. They inherited the suit property from their father and the land in question is ancestral. The plaintiffs have been cultivating the land in question since the time of their forefathers where they had raised temporary construction and a boundary wall. The said property had never been acquired by the defendants. Defendant Nos.3 and 4 had demolished the said construction as was admitted by them in their reply to the legal notice dated 14.03.2006. It is pertinent to mention here that the plaintiffs had instituted the suit through Parmanand, who was son of plaintiff No.1 and nephew of plaintiff No.2. Subsequently, plaintiff No.2 was substituted by his son, Chanderpal, and his grandson, Ashok Kumar. A demarcation had been conducted at the spot in the presence of defendant Nos.3 and 4 but they had denied the same and, therefore, Parmanand moved an application before Assistant Collector, II Grade, Ballabhgarh, for proper demarcation which was allowed vide order dated 12.05.2006. The demarcation was completed in the presence of concerned officials of the defendants and as per the report of demarcation, the land in dispute had never been acquired by the defendants and continues to be owned and possessed by the plaintiffs. However, defendant Nos.1 and 2 had dug the land and defendant Nos.3 and 4 had demolished the construction thereon. Hence, the suit.

Two sets of written statements were filed; one by defendant Nos.1 and 2 and the other by defendant Nos.3 and 4. The tone and tenor of both the written statements are similar. It was submitted by the defendants that the demarcation conducted by Bhim Singh, Kanungo, on 22.06.2006, was incorrect and the officials of the department had objected to it on the spot itself. The suit of the plaintiffs was clearly barred by limitation as the Ballabgarh Distributary had been dug more than four decades earlier on the acquired land but no objection had ever been raised. The suit was thus, not maintainable. It was clarified that on 22.06.2006, when the demarcation was conducted by Bhim Singh, Kanungo, the land was not found to be owned by the plaintiffs. The canal had been dug at the acquired site. Merely because the report mentioned that the Government of Uttar Pradesh had never acquired the land did not imply that the plaintiffs were owners thereof. The plaintiffs were neither owners nor in possession of the suit property.

After hearing learned counsel for the parties and evaluating the material available on record, learned Civil Judge (Junior Division), Faridabad (for brevity, 'the trial Court'), decreed the suit of the plaintiffs for recovery of compensation at the Collector's rate as existing on the date of decree, vide judgment and decree dated 01.09.2012.

Feeling aggrieved, both the parties filed cross appeals, which were disposed of by learned first appellate Court vide impugned judgment and decree dated 11.04.2013 in the manner as indicated in the opening paragraph of this judgment.

Still dissatisfied, the plaintiffs have filed these second appeals.

Learned counsel for the appellants contends that the learned first appellate Court relied upon untrustworthy documents placed on record

by the respondents. The respondents acquired khasra No.104/3/2 and the suit property was never acquired by the respondents. In fact, the respondents constructed the *kachha nala/rajwaha* in the land of the appellants. The aforesaid facts have been admitted by PW-4, Om Parkash, Patwari and PW10-Shiv Kumar, Patwari, that the suit land was not acquired. Learned trial Court decreed the suit of the appellants only to the extent of granting compensation instead of decreeing the suit in toto. Further, learned first appellate Court wrongly granted the relief which was beyond the pleadings and evidence on record. Learned first appellate Court did not consider the fact that as per demarcation report, submitted by local commissioner appointed by learned trial Court, the land in question had never been acquired by the defendants.

Though, notice of motion has not been issued so far but vide order dated 22.01.2016, learned State counsel was directed to complete instructions with regard to factual aspect of the matter.

Notice of motion.

Mr. Saurabh Mohunta, DAG, Haryana, who is present in the Court, accepts notice on behalf of the respondents.

Per *contra*, learned counsel for the respondents has opposed the arguments raised by learned counsel for the appellants and submitted that the plaintiffs had cleverly got the demarcation conducted in the year 2006, which was a misuse of the process of law. The Ballabgarh Distributary had been in existence for more than 40 years and the government has developed infrastructure rightly on the acquired land after spending huge amount. No objection had ever been raised by the plaintiffs or their predecessors in this regard for the entire period and as such, the suit of the plaintiffs was clearly

barred by limitation. He has placed reliance on site-plan, Ex.P7/A, which depicts that the Agra Canal abuts the canal in dispute. He has also produced on record the site plan of the land in question which is taken on record as Mark 'A'.

I have heard learned counsel for the parties and carefully perused the record.

After giving anxious consideration in the matter, this Court is of the considered opinion that the contentions of learned counsel for the appellants lack merit. The canal in question had been constructed more than 40 years ago and neither the plaintiffs nor their predecessors had ever objected to the construction of the canal either at the time of construction or at any stage during the intervening period till the demarcation proceedings referred to in the suit had taken place. This implies that for more than four decades the plaintiffs and their predecessors remained mute spectators. Learned first appellate Court rightly observed that the act of the plaintiffs in issuing legal notice and getting the demarcation conducted shall not impact the bar of limitation qua the plaintiffs.

It is neither the case of the plaintiffs nor is made out from the facts and circumstances of the case or the evidence on record that the plaintiffs were unaware about the existence of the canal in question or the fact that it was constructed on a portion of property recorded in their name. It is manifest that the demarcation proceedings were very cleverly conducted by the plaintiffs merely to make out a case within limitation. So can be said about the legal notice dated 14.03.2006, Ex.P8. Therefore, learned first appellate Court has rightly held the suit of the plaintiffs to be barred by limitation and that the plaintiffs cannot use back-door tactics to seek a

legally impermissible relief.

It is established on record that the canal in question has been in active use by the defendants as also by the neighbouring land-owners for decades. It appears that the plaintiffs have filed the suit with ulterior motive of seeking compensation. There is no document on record to show that the property in dispute had ever been acquired by the respondent, however, the fact remains that the canal in question has been in existence and in active use for over four decades and defendants have rightly been deemed to be its owners by efflux of time. As per record, the land in question was never acquired and the construction of the canal was never assailed by any landowner, nor they ever approached any authority to lodge their protest. This fact has not been disputed by the plaintiffs, rather it is their specific plea that the defendants had raised this construction by demolishing their temporary construction. No evidence regarding such alleged illegal demolition has been adduced, rather it appears that the then owners had willingly acquiesced to the construction and would have facilitated the same by removing the temporary structures, if any, raised by them. In these circumstances, the arguments advanced on behalf of the plaintiffs are completely erroneous and are patently false in view of all attending circumstances. The government in larger public interest is bound to maintain properties which are for the general good of public. Any particular individual cannot become owner of any watercourse which is constructed and maintained by the government. The claim of the plaintiffs is barred by limitation. The principle of *estoppel* also operates against the plaintiffs. The finding of fact recorded by learned first appellate Court are fully justified by the evidence on record. These findings have neither been shown to be

perverse or illegal nor based on misreading or misappreciation of evidence. Consequently, the said findings do not call for interference in exercise of second appellate jurisdiction.

No question of law, much less substantial question of law arises for adjudication in these second appeals.

The appeals are merit-less and are, therefore, dismissed.

02.06.2016
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(JITENDRA CHAUHAN)
JUDGE