

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

**RSA No.3553 of 2016(O&M)
Date of Decision: 05.09.2016**

Gram Panchayat Village Dandama

.....Appellant

Vs

Balbir Singh and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Sumit Sangwan, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Defendant No.4/appellant has preferred this Regular Second Appeal.

[2]. In a suit for prohibitory injunction filed by plaintiffs-respondents No.1 to 3, trial Court partly decreed the suit with costs thereby directing the defendants to remove the sewerage drain/nallah from the land of the plaintiffs within a period of one month from the date of passing of judgment and further defendants were directed not to allow the sewerage water flow in the land of the plaintiffs. In the event of default on behalf of defendants in not complying with the direction, then the plaintiffs were held entitled to remove the same from their fields and to

recover the expenses incurred by them from the defendants by adopting due course of law.

[3]. The lower Appellate Court partly accepted the appeal of the plaintiffs and Gram Panchayat was directed to pay an amount of Rs.40,000/- for four years and an amount of Rs.5000/- towards leveling costs as damages along with interest @ 6 % per annum from the date of filing of the suit till final realisation of the amount.

[4]. Plaintiffs filed a civil suit for prohibitory injunction thereby seeking to restrain the defendants from releasing dirty water through the land of the plaintiffs as shown in the plaint. Consequential relief was also sought thereby seeking to restrain the defendants from causing any injury or damage to the property of the plaintiffs and for restoring the part of the land to its original condition and to pay damages to the tune of Rs.1,10,000/- with interest @ 12 % per annum from the date of filing of the suit till final realisation of the amount.

[5]. Plaintiffs alleged that the suit property was very fertile and was situated in the close proximity of the village *abadi* and the same was having great potentiality for being developed as residential and commercial site. Some of the land was abutting to village Phirni. Since plaintiff-Sher Singh being employed was living at Dadri and he used to come to village occasionally,

therefore, in his absence the Sarpanch of Gram Panchayat in collusion with other defendants constructed a nallah by using the sand from the land of the plaintiffs and opened the same in his land comprising in rectangle No.44, field Nos.14,17 and 24 in the month of April 2006. With the opening of the drain, the land of the plaintiffs was flooded with dirty water and filthy articles. Resultantly, the suit land became uncultivable and developed deep and big ditches. The act of the defendants resulted into loss to the plaintiffs during the year 2006-07, 2007-08, 2008-09 and 2009-10. Plaintiffs could not cultivate his land and suffered great losses. Lakh of money will be required to improve the nature of land. With this background, suit came to be filed.

[6]. Defendants contested the suit on all counts. Construction of nallah was admitted. However, it was pleaded that the same was constructed in the land of the Gram Panchayat. Flowing of water through the land of the plaintiffs was denied. Rather, it was claimed that the water was flowing in the land of the Panchayat.

[7]. After completion of pleadings and framing of issues, both the parties led evidence. Trial Court decreed the suit in the manner as mentioned above vide judgment and decree dated 25.10.2012 and the lower Appellate Court partly accepted the

appeal of the plaintiffs thereby awarding compensation along with interest as shown in the preceding para vide judgment and decree dated 28.08.2015.

[8]. I have considered the arguments raised by learned counsel for the appellant.

[9]. Learned counsel for the appellant has vehemently argued that there is no evidence to presume that water was flowing through land of the plaintiffs and there was no evidence on record to establish the actual loss caused to the plaintiffs on the basis of alleged grounds.

[10]. The controversy with regard to construction of nallah in the month of April 2006 and opening of the same in the field of the plaintiffs was the core question before the Courts below. Plaintiff No.1 Balbir Singh himself stepped into witness box as PW 1 and reiterated the stand on Oath by his affidavit Ex.PW 1/A. The witness was thoroughly cross examined, but nothing incriminating could be extracted by the defendants from his cross examination. Halka Patwari, Ravinder Kumar also stepped into witness box as PW 2 and he proved that the suit property was owned and possessed by the plaintiffs. He also proved Aks-sizra Ex.PW2/B wherein killa Nos.14, 17 and 24 abutting to Phirni of the village was proved to be owned and possessed by the plaintiffs.

[11]. Similarly, photographer namely Rakesh was examined as PW 3 who proved the photographs Ex.P1 to Ex.P20 and digital CD Ex.P21. The receipt was also proved by the witness. This witness was also cross examined, but the testimony remained unimpeached. Independent witness Ramotar while appearing as PW 4 supported the case of the plaintiffs to the hilt. He had also given the details of the suit property. Another photographer Vijay Kumar was also examined as PW 5. Kuldeep Bhardwaj, Advocate was examined as PW 6 who proved the notice dated 10.08.2009 and postal receipts issued in pursuance thereof. The person who had cultivated the land i.e. Phool Chand was also examined as PW 7. The cultivation was done by the aforesaid witness. After assessment of the evidence led by the plaintiffs, it was found that there was substance in the claim of the plaintiffs.

[12]. Even otherwise, the Sarpanch of the Gram Panchayat i.e. Laxmi Narain while appearing as DW 1 had admitted that the nallah was left open in the field of the plaintiffs. He even admitted in his cross examination that he had got the Panchayat land demarcated and found that the nallah was released in the land of the plaintiffs. Thereafter, he closed the nallah. Testimony of the Sarpanch as DW 1 was clearly an admission of fact that the nallah was left open in the field of the plaintiffs and water

was flowing in the field of the plaintiffs. The admission made by the Sarpanch could not be explained by the defendants. No evidence was led by the defendants to support the plea except the statement of Sarpanch whose testimony rather went in favour of the plaintiffs on material particulars.

[13]. The decree granted by the trial Court was only in respect of restraint qua flowing of dirty water in the field and in default, the plaintiffs were held entitled to remove the same from his fields and to recover the expenses incurred by him from the defendants by adopting due course of law. Appellate Court has rightly assessed the loss of four years along with interest. Evidently, the case of the plaintiffs stood admitted by the sole defendant examined by the defendants. The admission made by DW 1 could not be explained by any evidence on record. The opening of nallah in the field of the plaintiffs was admitted by the defendant. The loss during the period 2006-2009 has to be assessed. Taking proximal extent of damage to the tune of Rs.10,000/- per year, total amount of loss was calculated to be Rs.40,000/- for four years and an additional amount of Rs.5000/- towards leveling charges, in considered opinion of this Court cannot be said to be on higher side. The plaintiffs were rightly held entitled to the aforesaid amount along with interest @ 6 % per annum from the date of filing of the suit till

final realisation of the amount. Defendants were rightly restraint from releasing the dirty water in the field of the plaintiffs.

[14]. The substantial questions of law as framed by the learned counsel for the appellant in grounds of appeal do not arise inasmuch as that the judgments and decrees passed by the Courts below are not the result of any misreading of evidence or having suffered with perversity, therefore, question No.1 does not arise at all. Question No.2 is a pure question of fact. Question No.3 needs to be answered in the manner that the assessment was on minimum basis. In the event of proving the release of dirty water in the field of the plaintiffs for the period in question, the award of minimum damages was just and appropriate and the same cannot be termed to be the alleged computation of loss on guess work, rather the loss could have been more in quantum than the award made by the Courts below. On the basis of pleadings and evidence on record, the filing of the suit was not time barred. No issue was struck on that premise, nor any evidence was led by the defendants. Limitation is a mixed question of law and facts. In the absence of any evidence, no such question can be answered. Question No.5 does not arise at all.

[15]. In the assessment of this Court, the judgments and decrees passed by the Courts below need not to be interfered

with on the basis of any ground made by the appellant. This appeal is found to be totally devoid of merits and the same is accordingly dismissed.

[16]. Since the appeal is being dismissed on merits, therefore, there is no necessity to pass any order in the application for condonation of delay i.e. CM No.9309-C of 2016 and the same has become inconsequential. CM is accordingly disposed of.

05.09.2016

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No