

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

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Regular Second Appeal No.2857 of 2015 (O&M)
Date of Decision: March 01, 2016

Dharminder Singh

...Appellant

Versus

Gurraj Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Suresh Kumar Aneja, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.6996-C of 2015

Prayer in this application is for exemption from filing the true typed copies of judgment and decree of both the Courts below.

Application is allowed.

Exemption from filing the true typed copies of judgment and decree of both the Courts below is granted subject to just exceptions.

RSA No.2857 of 2015

Challenge in this appeal is to the judgment and decree dated 19.07.2013 passed by the Civil Judge (Junior Division), Fazilka, whereby the suit filed by the appellant-plaintiff for permanent injunction restraining respondents-defendants 1 and 2 from illegally and unlawfully entering in the peaceful possession of the appellant-plaintiff over the land measuring 22 kanals 1 marla as fully detailed in the headnote of the plaint and/or forcibly using any portion of the said land for any purpose whatsoever without the consent of the plaintiff and without recourse to law, has been dismissed on the ground that the suit is not maintainable as the remedy available to the appellant-plaintiff is under the Northern India Canal & Drainage Act, 1873, as also on merits, appeal preferred by the appellant-plaintiff against the said judgment and decree has been dismissed

by the Additional District Judge, Fazilka, on 10.12.2014, wherein the suit was held to be maintainable in the light of the judgment of this Court in *Ram Sarup Versus Harphul and others 1972 AIR (Punjab) 338*, however, the findings as recorded by the trial Court on the other issues, have been upheld.

2. It is the contention of learned counsel for the appellant that once the respondents-defendants have come forth and stated that they do not intend to interfere in the peaceful possession of the appellant-plaintiff, therefore, the decree should have been passed in favour of the appellant-plaintiff and the dismissal of the suit is not justified and in accordance with law and, therefore, the impugned judgments and decree deserve to be set aside.

3. I have considered the submissions made by learned counsel for the appellant but do not find any merit in the same in the light of the fact that an order dated 02.04.2009 Exhibit D-2 has been proved on record, according to which a *khal* is already in existence in the land of the appellant-plaintiff bearing Rectangle No.49 Killa No.25. As per the said order dated 02.04.2009, the *khal* has been running in the suit land and the assertion of the appellant-plaintiff that there is no watercourse in existence over the suit land, stands belied.

4. Furthermore as the Canal Department had sanctioned the watercourse in the land of the appellant-plaintiff after adopting due process of law and the said canal is in existence, the appellant-plaintiff cannot file the present suit against the respondents-defendants, especially when the plea as taken in the plaint, has been found to be incorrect. Further the respondents-defendants have clearly mentioned that they do not intend to

interfere in the peaceful possession of the appellant-plaintiff, rather the intention of the appellant-plaintiff is only to restrain the respondents from using the water from the canal for irrigation purposes for which purpose the injunction as prayed for, cannot be granted. The findings as recorded by the Lower Appellate Court cannot be faulted with as the same are in accordance with law and based upon proper appreciation of the pleadings and the evidence brought on record.

5. No other point has been argued by the counsel for the appellant.

6. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

7. In the light of the dismissal of the appeal, the application for stay i.e. CM No.6997-C of 2015, stands disposed of as infructuous.

March 01, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE