

RSA-67-2016(O&M)

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-67-2016(O&M)

Date of decision : 27.01.2016

Jaswant Singh

... Appellant

Versus

Dilbag Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Dilpreet Singh Gandhi, Advocate
for the appellant.

REKHA MITTAL. J.

The present regular second appeal has been directed against the concurrent findings recorded by the courts below whereby the suit filed by the appellant was dismissed by the learned trial Court and the judgment and decree passed by the trial Court was affirmed in appeal by the Additional District Judge, Amritsar.

The appellant prayed for grant of permanent injunction restraining the respondent-defendant from removing, damaging the cemented water pipes laid underground through land bearing khasra Nos. 192, 193, 194, 195, 196, 199, 218, depicted as blue in the site plan from Mark A to B, for carrying water from tubewell installed in khasra no.192 for the purpose of irrigating appellant's land bearing khasra Nos.198, 126 and 203, situated in village Galluwal, Tehsil and District Amritsar. The

plea of the appellant is that underground cemented water pipes have also been installed in land bearing khasra Nos.194, 218 owned by Arjan Singh and land bearing khasra Nos. 195, 196 and 199 of the respondent. The said cemented water pipes were installed about 10 years ago and at the time of installation, the respondent was paid ₹30,000/- in the presence of respectables.

The respondent filed the written statement challenging locus standi of the appellant to file the suit and the suit being without any cause of action. It is denied that the appellant is owner of land bearing khasra No.192/193 or the tubewell connection of the appellant is working on the the said land. All material averments in regard to installation of underground cemented water pipes in land of the answering respondent or payment of ₹30,000/- as alleged have been denied with a prayer for dismissal of the suit.

On due consideration of the pleadings of the parties, issues framed for determination, evidence adduced on record and the rival submissions made by counsel for the parties, the learned trial Court negatived claim of the appellant to the relief of permanent injunction. The judgment and decree passed by the trial Court was affirmed in appeal as the appeal preferred by the appellant did not find favour with the Court of Additional District Judge, Amritsar.

Counsel for the appellant would contend that the Courts below failed to appreciate the evidence on record properly and

meticulously and as a result committed a gross error in non-suiting claim of the appellant. It is further argued that a serious prejudice is likely to be caused to the appellant in case he is not allowed to carry water from his tubewell through the underground water pipes laid in the land of the respondent as well, therefore, the appellant is entitled to permanent injunction against illegal and unwarranted action of the respondent.

I have heard counsel for the appellant, perused the records and find no merit in the appeal.

It is an admitted position of the case that the respondent filed a suit for permanent injunction restraining the appellant from laying down water pipes in the land owned and possessed by him. After contest by the appellant, the said suit was decreed by the Civil Judge (Senior Division), Amritsar. There is no denial that the judgment and decree passed by the trial Court in the said suit has attained finality as the appellant did not prefer an appeal against the judgment and decree dated 19.03.2013 Ex.D1 and D2, passed during pendency of the present suit. The grant of injunction in favour of the respondent in regard to the same dispute negatives his plea in regard to existence of any underground water pipes passing through khasra No.195, 196 and 199, admittedly, owned by the respondent. In view of the judgment passed in the suit preferred by the respondent, binding upon the parties coupled with consistent findings recorded by the Courts below, there is no merit in the appeal as neither any substantial question of law arises for consideration nor there is any

error much less illegality in the findings recorded by the Courts below.

For the foregoing reasons, finding no merit, the appeal is dismissed in limine. No order as to costs.

(REKHA MITTAL)
JUDGE

January 27, 2016.
Davinder Kumar