

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

R.S.A No.5313 of 2015(O&M)
Date of decision :05.12.2016

Karan Singh, Advocate

.....Appellant

Versus

Superintendeing, Canal Engineer, Canal Department, Bhiwani and
others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Lajpat Sharma, Advocate
for the appellant.

DARSHAN SINGH, J. (Oral)

CM No. 12659-C of 2015

This application has been filed under Section 5 of the
Limitation Act for condonation of delay of 40 days in filing the present
appeal.

Heard.

In view of the reasons mentioned in the application, the present
application stands allowed and the delay of 40 days in filing the present
appeal is hereby condoned.

RSA No. 5313 of 2015

The present appeal has been directed against the judgment and
decree dated 28.04.2015 passed by the learned Additional District Judge,
Bhiwani, whereby the appeal filed by the appellant-plaintiff against the

judgment and decree dated 01.08.2013 passed by the learned Addl. Civil Judge (Sr. Division), Charkhi Dadri, has been dismissed.

2. Appellant-plaintiff has filed the suit for damages to the tune of Rs. 72,000/- on account of the destruction caused to his Kharif 2003 crops.

3. As per averments in the plaint, the agriculture land of the plaintiff falls in outlet R.D. No. 4955, to the left of Sanjarwas Minor. On 10.11.2002, Warabandi of the fields of the plaintiff was ordered, but the same was not implemented by the respondents. Due to said lapse, he could not sow his paddy crops. Due to overflow of the water in August 2003 in the Canal as well as outlet No.21, huge quantity of water overflowed into the fields of the plaintiff which remained stagnated for long. Due to which the standing crops of the plaintiff were destroyed. The crops of the plaintiff have been damaged due to negligence of the respondents. The plaintiff had sown Cotton in eight Kanals, Jawar in about nine Kanals, Gaware in about six Kanals and Bajra in about sixteen Kanals of land, which were damaged due to stagnation of water in his fields. Hence the suit.

4. The defendants-respondents contested the suit on the grounds inter alia that the land of the plaintiff had outlet no.4955/L Sanjarwas minor. On the application of the plaintiff, order for affixation of new Warabandi was passed on 29.10.2002. Khewat of the plaintiff was also got separated from the earlier co-sharers. There was no overflow of the canal water through outlet no.21 resulting into stagnation of the water in the fields of the plaintiff and destruction of his crops. With these pleas, respondents-defendants pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 08.06.2010:-

1. Whether the plaintiff is entitled to receive damages from the

defendants on account of destruction of his Kharif crops for the year 2003 sown in his land in village Bound Kalan due to negligence of the defendants resulting in overflow of water from Canal No. RD4955/L left Sanjarwas minor along with interest as prayed for?OPP

2. Whether the suit is not maintainable in the present for?OPD
3. Whether the plaintiff has no cause of action to file the present suit? OPD
4. Relief.

6. On appreciation of the evidence and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit of the plaintiff with costs vide impugned judgment and decree dated 01.08.2013.

7. Aggrieved with the aforesaid judgment and decree, the appellant-plaintiff preferred the appeal. The same has also been dismissed by the learned Additional District Judge, Bhiwani, vide impugned judgment and decree dated 28.04.2015. Hence this Regular Second Appeal.

8. I have heard Mr. Jajpat Sharma, Advocate, learned counsel for the appellant and have carefully gone through the record of the case.

9. Initiating the arguments, learned counsel for the appellant contended that the order regarding new Warabandi was not implemented by the respondent-Canal Authorities in time, so plaintiff could not sow the paddy crops. He further contended that the water had overflowed and stagnated in the fields of the appellant from the Canal and the outlet no.21 which is established from the statement of the plaintiff as well as the testimony of PW-2 Puran Chand. The fact that the new Warabandi was not implemented is proved from the statement of PW-3 Mange Ram, Supervisor. He further contended that the damage to the crops of the plaintiff is not a disputed fact. The plaintiff has approached the defendants-respondents to compensate him for the damage caused to his crops to the tune of ₹ 72,000/-, but they did not pay any heed. He further contended that

the suit filed by the appellant has been erroneously dismissed by the learned Courts below. Once, it was proved that the crops of the plaintiff has been damaged due to stagnation of the Canal water due to negligence of the respondents, he was entitled for compensation/damages.

10. I have duly considered the aforesaid contentions.

11. It is an admitted fact that the agriculture land of the appellant-plaintiff is being irrigated through outlet R.D. No. 4955/L, Sanjarwas minor. It is alleged that in the month of August 2008, the canal water overflowed in his fields from the Canal as well as outlet no.21. Due to that his standing crops were damaged. Appellant-plaintiff has alleged that on his application, a new Warabandi was fixed vide order dated 10.11.2012, but the said Warabandi was not implemented and due to that reason he could not sow the paddy crops. But, this plea of the appellant-plaintiff has no substance as the learned First Appellate Court has observed that till the implementation of the new Warabandi, the plaintiff was informed that he will be entitled to get half share of canal water from Rajbir, Ramesh and Suresh etc. as per the provisions of Haryana Canal and Drainage Act. Thus, the canal water was available to the plaintiff-appellant for sowing the paddy crops. The sufficient arrangements were made by the respondents to provide him the canal water till the implementation of new Warabandi. So, if he has not availed that opportunity and did not opt to sow the paddy crops. The defendants-respondents cannot be held at fault for that.

12. As per the case of the appellant-plaintiff, the water has overflowed in his fields from the Outlet no.21. But, the plaintiff has not placed on file any site plan to show the distance between his land and the said outlet. In the absence thereof, it cannot be inferred that the water can

overflow in his fields from this outlet. It can only happen if outlet no.21 was just adjacent to the land of the plaintiff. But, no such evidence has been adduced. Rather, DW-1-Satyavir Singh, SDO, Dadri Water Services, Sub-Division, Charkhi Dadri, has categorically deposed that the land of the plaintiff is situated far away from the outlet R.D. No. 21/R of Unn/Baund Distributory.

13. Appellant-plaintiff has heavily relied upon the statement of PW-2-Puran Chand. The learned First Appellate Court has mentioned that said witness of the plaintiff has admitted in the cross-examination that on account of heavy rain, the water has stagnated into the fields of the plaintiff up to the height of 4 feet. It is also not disputed that the month of August is the rainy season in this part of the Country and sometime the heavy rain falls in this month. Thus, the appellant-plaintiff has not been able to establish that the damage to his crops has been caused due to overflow of the canal water from outlet no.21/R. Hence, he cannot claim any damages from the respondents-defendants for destruction of his crops.

14. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned Courts below.

15. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

16. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

(DARSHAN SINGH)
JUDGE

05.12.2016

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No