

**RSA No. 60 of 1989 (O&M)**

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

**RSA No. 60 of 1989 (O&M)**

**Date of Decision: 28.2.2017**

State of Punjab and another

.....Appellants

Vs.

Virsa Singh and another

.....Respondents

**CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK**

Present : Mr. Baljinder Singh Sra, Additional A.G. Punjab  
for the appellants.

None for the respondents.

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**RAMESHWAR SINGH MALIK J. (ORAL)**

Feeling aggrieved against the impugned judgment and decree dated 25.7.1988 passed by the learned Additional District Judge, whereby first appeal of the plaintiff-respondent No.1 herein, was allowed, setting aside the judgment and decree dated 2.9.1987 of the learned trial court, dismissing the suit for permanent injunction, defendant-State of Punjab has approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by learned first appellate court in para 2 of its impugned judgment, are that Virsa Singh-plaintiff filed a suit

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for permanent injunction restraining the defendants from digging the sem nala through the land measuring 14 kanals 8 marlas, fully described in the heading of the plaint, on the allegations that the plaintiff was the owner of the suit land, as shown in the jamanbandi for the year 1976-77 and he was in cultivating possession of the land in suit. It was next contended that the plaintiff had sown the wheat crops in the suit land. Defendants threatened him to dig sem nala through the suit land whereas previously the survey of the sem nala had been done through the village Dholewal which was far away from this village. Moreover, there was no sem nala existing in the revenue record. It was also pleaded that defendants were trying to dig the sem nala without acquiring the land for this purpose and without paying any compensation of the suit land. It was further contended that the defendants, through their officials, were likely to start this work of digging the nala and only two days back, an official made the survey and threatened the plaintiff for digging the sem nala through suit land by all means. It was asserted that plaintiff had a legal right to protect this property and he would suffer an irreparable loss and injury if the defendants were not restrained from digging the sem nala through the suit land belonging to the plaintiff

Having been served, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial court framed the following issues.

1. Whether the plaintiff is in possession of the suit land?  
OPP
2. Whether the plaintiff is entitled to the injunction prayed for?OPP
3. Whether the defendants are digging the sem nala

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through the land of plaintiff?OPP

4. Whether the suit is deserved to be dismissed on the ground that notice u/s 80 CPC is not served?OPD

5. Whether the suit is not maintainable?OPD

6. Whether sem nala is in existence since 1970 in village Bajেকে?OPP

7. Whether digging of the sem nala was done on the request of the inhabitants of village?OPD

8. Whether the villagers have given the land for sem nala to the Government on their own account?OPD

9. Relief.

With a view to prove their respective stands taken, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has failed to prove his case. Accordingly, suit was dismissed by learned trial court vide judgment and decree dated 2.9.1987. Dissatisfied, plaintiff filed his first appeal, which came to be allowed by the learned first appellate court vide its impugned judgment and decree dated 25.7.1988. Hence this regular second appeal, at the hands of the defendants.

Appeal was admitted for regular hearing vide order dated 24.2.1989. That is how, this Court is seized of the matter.

Heard learned counsel for the appellants.

The basis for suit for permanent injunction filed by the plaintiff-respondent was that he was owner in possession of the suit land and the authorities of the State of Punjab were intending to dig a drain through his land without acquiring the same. It has gone undisputed before this Court that land of the plaintiff, as a matter of fact, was never acquired by the State for the purpose of digging the drain through it. Having said that, this Court

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feels no hesitation to conclude that learned first appellate court was well within its jurisdiction to pass the impugned judgment and the same deserves to be upheld.

Once as per own pleaded case of the appellant-State of Punjab, land of the plaintiff was never acquired after following due procedure of law, they would have no authority to dig a drain, through the land of plaintiff. Further, it seems that there was some serious communication gap amongst the authorities of the State, because the drain was going through village Bajেকে, whereas the suit land was situated in village Musewala, Tehsil, Zira, as noticed by the learned first appellate court.

Ownership and possession of the plaintiff was not in dispute. It was also corroborated from the statement of PW1-Sham Singh Patwari, who deposed before the Court that suit land was in cultivating possession of the plaintiff and there was no “Sem Nala” running through the suit land. In this view of the matter, it can be safely concluded that learned Additional District Judge committed no error of law, while passing the impugned judgment and the same deserves to be upheld, for this reason also.

Before arriving at his judicious conclusion, learned first appellate court re-considered and re-appreciated the factual as well as legal aspect of the matter, in the correct perspective. Cogent findings recorded by the learned first appellate court in para 12 and 13 of its impugned judgment, which deserve to be noticed here, read as under:-

*“Village Bajেকে is different from the village of the plaintiff where the suit land is situated and if sem nala is in existence in village Bajেকে since 1970. It has no effect on the suit land. If digging of the sem nala on the request of the inhabitant of the villages, and the villagers gave*

*land for the sem nala to the Government on their own accord. It does not prove that the plaintiff allowed sem nala to be dug from the suit land and the sem nala was dug from the suit land and the same is running from the suit land. It may be mentioned here, that on DWs has mentioned the khasra numbers through which sem nala is passing. In copy of Shaja Aksh Ex.P4 a drain is shown at a distance from the suit land but it is no way can lead to the conclusion that part of that drain or sem nala is passing through the suit land.*

*In view of what is discussed above, the appeal is accepted, the impugned judgment and decree are set aside and the suit of the plaintiff is decreed for permanent injunction restraining the defendants from digging the sem nala through the land measuring 14 kanals 8 marlas bearing khasra No. 12 M 1 (8-0) ,2(6-8) as entered in the jamabandi for the year 1976-77 without due course.....”*

During the course of hearing, learned counsel for the appellants-State of Punjab could not point out any patent illegality or perversity in the abovesaid cogent findings recorded by the learned first appellate court. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon’ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

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Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

**(RAMESHWAR SINGH MALIK)**  
**JUDGE**

28.2.2017  
*Ak Sharma*

*Whether speaking/reasoned Yes/No*  
*Whether reportable: Yes/No*