

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

Date of decision: 03.05.2017

1. RSA No.1787 of 1991 (O&M)

State of Punjab and another

... Appellants

Vs.

M/s Sham Lal Duggal and Co.

... Respondent

2. RSA No.1788 of 1991 (O&M)

State of Punjab and another

... Appellants

Vs.

M/s Kehar Singh Nahar and Co.

... Respondent

3. RSA No.1789 of 1991 (O&M)

State of Punjab and another

... Appellants

Vs.

M/s Shanti Parkash and Co.

... Respondent

4. RSA No.1790 of 1991 (O&M)

State of Punjab and another

... Appellants

Vs.

M/s Sardari Lal Soni and Brothers

... Respondent

5. RSA No.2479 of 1991 (O&M)

State of Punjab and another

... Appellants

Vs.

M/s Milkhi Ram Chuni Lal

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

**Present: Mr. Baljinder Singh Sra, Addl. AG, Punjab
for the appellants.**

RAMESHWAR SINGH MALIK, J. (ORAL)

These five identical regular second appeals bearing RSA No.1787 to 1790 and 2479 of 1991, at the hands of defendant-State of Punjab, are being decided vide this common order, with the consent of learned counsel for the State, because all the appeals are arising out of similar facts and circumstances. However, for the facility of reference, facts are being culled out from RSA No.1787 of 1991 (State of Punjab and another Vs. M/s Sham Lal Duggal and Co.).

Unsuccessful defendants are in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby five identical suits for permanent injunction filed by different plaintiffs, were decreed against State of Punjab and five similar first appeals filed by the State of Punjab were also dismissed by the learned first appellate Court.

Brief facts of the case, as noticed by the learned first appellate

Court in para 2 of its impugned judgment, are that the plaintiff a partnership firm was carrying on a business of a brick kiln under the name and style of M/s Sham Lal Duggal and Co. The plaintiff had taken on lease from private owners the land in suit situated in the revenue estate of Khiranwali and had installed a brick kiln on a portion of it. From the land adjoining the brick kiln, which is also forming a part of the leasehold, plaintiff was excavating earth for moulding bricks since Govt. had no concern with the ownership of the land in suit, according to plaintiff, it had no legal authority to levy any royalty on the brick-earth to be used by the plaintiff for manufacturing of bricks. According to plaintiff, brick-earth was not a mining mineral and as such under no circumstances, the same can be subjected to the imposition of any royalty. Lastly, plaintiff pleaded that even if brick-earth be treated as a miner mineral, the defendants cannot levy any royalty in the absence of a contract in this regard. Yet another plea was advanced to challenge the right of the defendants to levy royalty on the brick-earth by placing reliance on the entry in the Wajab-Ul-Arz of the revenue estate of Village Khiranwali, where the land in suit was situated. According to plaintiff, the Wajab-Ul-Arz provides that brick-earth vests in the owner of the land and not in the Govt.

Having been served in the suit, defendants put appearance and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed its replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the notice u/s 80 C.P.C. is essential to be served on the defendants before the filing of the present suit as alleged, if so, its effect? OPD.

2. Whether the suit in the present form is not maintainable? OPD.
3. Whether the plaintiff is entitled to the injunction prayed for? OPP.
4. Relief.

In order to prove their respective pleaded cases, both the parties brought on record their documentary as well as oral evidence. After going through the evidence brought on record and hearing learned counsel for the parties, learned trial Court came to the conclusion that plaintiff has duly proved the case. Accordingly, suit of the plaintiff for permanent injunction was decreed, restraining the defendants from recovering the royalty from the plaintiff for the brick-earth, excavated by the plaintiff for brick kiln from the land mentioned in the head note of the plaint, vide impugned judgment and decree dated 14.10.1988. Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed by the learned District Judge, vide impugned judgment and decree dated 23.10.1989. Hence these five identical regular second appeals at the hands of defendants. Four appeals were admitted for regular hearing vide common order dated 12.09.1991, whereas RSA No.2479 of 1991 was admitted vide order dated 15.01.1992 and was ordered to be heard with RSA No.1790 of 1991. That is how, this Court is seized of the matter.

Heard learned counsel for the State.

During the course of hearing, it has transpired that all these five regular second appeals filed by State of Punjab are covered against it by the judgment of the Hon'ble Supreme Court in **State of Punjab Vs. M/s Vishkarma and Co. and others, 1993 Supp (3) SCC 62** and also by two

orders passed by this Court in **RSA No.821 of 1988 (State of Punjab Vs. M/s Balwant Singh)** decided on 22.11.2010 and **RSA No.918 of 1986 (Punjab State through Secretary to Government Punjab and others Vs. Naresh Kumar)**, decided on 18.02.2014. When confronted with this material fact situation and to point out, whether all these five cases are squarely covered against the State of Punjab by abovesaid judgments of the Hon'ble Supreme Court as well as this Court, learned counsel for the State had no answer and rightly so, it being a matter of record.

The observations made by this Court in **Naresh Kumar's** case (supra), which were, in turn, based on the law laid down by the Hon'ble Supreme Court in **M/s Vishkarma and Co.'s** case (supra), can be gainfully followed in the present set of cases, are as under: -

*“Similar controversy fell for consideration of the Hon'ble Supreme Court, in the case of **State of Punjab v. M/s Vishkarma and Co. Etc. JT 1993 (1) SC 448**, which came to be followed by this Court in **RSA No. 821 of 1988 (State of Punjab v. M/s Balwant Singh)** decided on 22.11.2010. The relevant observations in the aforesaid RSA, which can be gainfully followed in this case, read as under:-*

*“The controversy raised in this appeal stands settled long ago by the authoritative pronouncement of Hon'ble Apex Court in **State of Punjab v. M/s Vishkarma and Co. etc., JT 1993 (1) SC 448**, wherein Sections 31, 41 and 42 of the Punjab Land Revenue Act, 1887 were considered and it was held as under:-*

“7. Brick-earth with which we are concerned in the present appeals, is a minor mineral was not disputed, although it is

not any of the mines or minerals covered by section 41 of the Revenue Act as would make it become the property of the State. if the owner of such brick-earth is the State of Punjab, liability to pay royalty for removal of such brick-earth and to obtain permit or licence for such removal necessarily arises because of the operation of the Act and the Rules. But the courts below have concurrently found that the present appeals have arisen was in lands which formed the estates of the private owners and as such the same belonged to such land-owners. It is so found on their reading of the entries in Wajib-ul-arz pending to, the concerned estates. Wajibul-arz is a document included in the record-of-rights cannot be disputed since it contains the statements on matters envisaged under clauses (a) and (b) of subsection (2) of section 31 of the Act. According to the courts below Wajib-ul-arz document being record-of-rights of estates completed after 18th day of November, 1871, and there being nothing expressly stated in them that the forest or quarry or land or interest in the estates belong to the Government, the lands in such estates including brick-earth in them shall be presumed to belong to the concerned land-owners as is declared in sub-section (2) of section 42 of the Revenue Act.

After considering the detailed legal position, their Lordships concluded as under:-

“9. In our view, when all the courts below have concurrently recorded findings to the effect that the ownership of the brick-earth belong to land-owners and not to the State on a correct appreciation of all evidence adduced in the case and on a proper application of the law governing the same, there could be no justification to interfere with such findings in these appeals. We are also not shown any valid reason as to why we should set aside the lower courts judgments and decrees and send the matters to the Courts of first instance with a direction to permit the State to adduce rebuttal evidence as regards entries in record-of-rights.”

During the course of hearing, learned counsel for the State failed to point out any jurisdictional error or patent illegality apparent on the record of the case in the impugned judgments and decrees passed by both the learned Courts below. He also failed to put into service any substantive argument, so as to convince this Court to take a different view than the one taken by the learned Courts below. Further, no question of law, much less substantial question of law has been found involved in the present case, which is sine qua non for entertaining any 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 law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that all these five regular second appeals having been found wholly misconceived, bereft of merit and without any substance, must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, all the abovesaid five regular second appeals stand dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

03.05.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No