

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-2409-2011(O&M)

Date of decision : 21.04.2017

Rajinder Parshad and another

... Appellants

Versus

Shivji Ram

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Parminder Singh-I, Advocate
for the appellants.

Mr.M.J.S.Bedi, Advocate
for the respondent.

AMOL RATTAN SINGH, J.(ORAL)

1. This is the second appeal of the defendants after the suit of the respondent-plaintiff was decreed in his favour by the learned Civil Judge (Junior Division), Phul and the first appeal filed by the present appellants was dismissed by the learned District Judge, Bathinda, vide the judgments and decrees challenged herein.

2. In the suit seeking permanent injunction against the present appellants, the plaintiff had contended that he is the sole owner in possession of land measuring 94 kanals and 3 marlas, fully described in the plaint, situated in the revenue estate of Phul, Tehsil Phul, District Bathinda and that the two defendants had no right, title or interest in the land.

It was further contended that there exists a water course for irrigating the suit land, which water course was in existence since the time

of consolidation of land holdings. It was further averred that the plaintiff had been consistently using the water course for irrigating his water fields, to which the defendants had never objected. However, before the filing of the suit, they were preventing him from extracting the water from the water course and had further threatened to demolish it. Hence, with the defendants refusing to back off from their threat, the suit was instituted on 08.07.2005.

Upon notice issued to the present appellants-defendants, they appeared and filed a written statement to the effect that actually no water course runs through the land of the plaintiff since the time of consolidation holdings and that therefore the question of the plaintiff extracting water from it did not arise. It was further contended that defendant no.2 had no concern whatsoever with any water course. Further, as none existed adjoining to or running through the land of the plaintiff, as such the question of its demolition would not arise.

3. The plaintiff having filed a replication reiterating the contents of the plaint and denying those in the written statement, the following issues were framed by the learned Civil Judge:-

“1. Whether the plaintiff is entitled to permanent injunction as prayed for?OPP

2 Whether the suit is not maintainable?OPD

3. Whether the plaintiff has no locus standi or cause of action to file the present suit?OPD

4. Relief.”

4. To prove his case, the plaintiff examined himself, Amarjit Singh and Jagtar Singh as PWs 1 to 3 respectively and also tendered into evidence a copy of the jamabandi, a copy of a register and an order dated

some other documentary evidence.

The defendants examined defendant no.1 and tendered by way of documentary evidence a copy of a summons, Ex.D1 and a copy of an order passed by the Superintending Canal Officer, Ludhiana, as Ex.D2.

5. Upon appraising evidence and pleadings before him, the learned lower Court first observed that the plaintiff had also filed an application under Section 30-B(2) of the Northern India Canal and Drainage Act, 1873, seeking sanction of a water course running to the southern boundary of field no.245//25 and the western boundary of field no.257//1/1. The Divisional Canal Officer, Bathinda, on the basis of a report of the Zileदार had sanctioned the said water course and a copy of the said order, dated 14.06.2006, had been duly exhibited as Ex.P6.

However, the defendants had appealed against the said order before the Superintending Canal Officer who had passed an order on 27.08.2009 (Ex.D2), by which it was observed that the water course is a personal water course of the appellant-defendant no.1 and if the opposite party (plaintiff in the present lis) needed any water course he could get it sanctioned by moving an application.

With the aforesaid observation, the matter had been remanded to the Divisional Canal Officer, with a direction that if an application is moved by the respondent-plaintiff herein, it may be sanctioned as a paid water course as per rules.

6. Noticing the above, the learned Civil Judge held that the existence of the water course was duly proved by the orders of the Divisional Canal Officer, Ex.P6, but the defendants had not been able to prove that it was actually their personal water course running through their

own land, by in fact, outrightly denying its existence altogether.

That Court further noticed that even the order of the SCO, Ex.D2, did not deny the existence of the water course in question.

7. On the aforesaid finding, the learned trial Court had held that with the existence of the water course duly proved, the defendants-appellants have no right to dismantle it illegally or forcibly and therefore restrained them from doing so, in perpetuity.

The main issue thus having been decided in favour of the plaintiff, the other two issues with regard to the maintainability of the suit and lack of locus of the plaintiff were held to have not been proved by any convincing evidence and those issues were also, therefore, decided in favour of the plaintiff.

8. Consequently, the suit of the plaintiff was decreed, restraining the appellants-defendants, in perpetuity, from demolishing the water course illegally and forcibly and from preventing the plaintiff from extracting water to irrigate his fields.

9. The present appellants having filed a first appeal, the learned District Judge, after noticing the pleadings, the issues framed and appraising the evidence led before the lower Court, as also the arguments raised before him, further specifically referred to an argument on the jurisdiction of the Civil Court being barred to entertain the suit.

Noticing that the site plan had been duly proved by PW Amarjit Singh and a photograph, Ex.PW3/F, had also been duly proved by the photographer, Jagtar Singh PW3, read with the orders of the canal authorities, Exs.P6 and D2, passed by the DCO and SCO respectively, the first appellate Court also came to the same conclusion, that the existence of

the water course, though sought to be denied by the appellants-defendants, stood duly established.

10. On the aforesaid finding it was held that forcible dismantling of the water course would create a hardship to the respondent-plaintiff and as such, the learned lower Court had not erred in perpetually injunctioning the appellants from demolishing it.

11. As regards the issue of jurisdiction, it was held that neither had the canal department been made a party to the suit, nor was any injunction sought against that department and therefore, the jurisdiction of the Civil Court could not be held to be barred.

Recording the aforesaid findings, the first appeal was dismissed.

12. In the second appeal before this Court, Mr.Parminder Singh, learned counsel for the appellants, submitted that the Superintending Canal Officer having given a categoric finding that the water course in question was not a sanctioned water course by the Canal authorities and that the respondent-plaintiff would be at liberty to apply for a sanctioned water course to the said authorities, the Civil Courts' jurisdiction was wholly barred, especially as the water course in question runs through the land of the appellants, accepted to be a private water course in their land, as held by the canal authorities.

13. In response to the aforesaid argument, Mr.M.J.S. Bedi, learned counsel for the respondent-plaintiff, only submitted that he has not been able to obtain instructions as to whether the plaintiff has actually approached the concerned authorities for sanctioning of the water course.

14. That apart, the question of law to be primarily decided by this

Court in this second appeal, is as to whether the Civil Court had any jurisdiction to entertain the suit, in the face of the bar contained in Section 67 of the Northern India Canal and Drainage Act, 1873.

The said provision reads as follows:-

“67. Jurisdiction under this Act of Civil Court. – Except where herein otherwise provided, all claims against the State Government in respect of anything done under this Act may be tried by the Civil Courts but no such Court shall in any case pass an order as to the supply of canal water to any crop sown or growing at the time of such order.”

A perusal of the aforesaid provision shows that there is no bar on the jurisdiction of Civil Court even in respect of claims against the State Government, except on specific issues as contained in the Act and to that extent, therefore, the learned lower appellate Court did not err in holding that with no claim raised (in any case) against the canal authorities, and the State not having been made a party to the lis, the jurisdiction of the Civil Court cannot be held to be barred.

However, it is further seen that in the aforesaid provision of the Act, there is a bar on the issuance of an order pertaining to the supply of canal water, to any crop sown or growing at the time of such order. Thus, with crops in todays time almost perpetually either sown or growing, except for a fallow period of perhaps 15 to 20 days between 2 crops, the bar would exist with regard to directions by a Civil Court on the supply of canal water.

15. In the present case, though there is no direction by the Courts below specifically with regard to any supply of canal water through the water course in question; however, permanently restraining the appellants-

defendants from stopping the respondent-plaintiff from extracting water

from the water course, would amount to an order passed on the supply of such water, in the opinion of this Court.

It is to be noticed that though there is no specific reference to whether the water running through the water course in question is being supplied by a canal or a tubewell, neither of the learned counsel for the parties, raised disputed on that fact and therefore, obviously the water course supplies canal water.

16. Therefore, upon a consideration of the factual situation, as above, it is obvious that a Civil Court can neither direct the stoppage nor continuance of supply of canal water to fields on which crops are growing or have been sown, at the time when the order is passed. Though no evidence in that regard has been led whatsoever, it is seen that the order of the learned Civil Judge is dated 26.08.2010, which is not usually a period when the land is lying uncultivated, nor is it so on the date of the decision of the first appellate Court, i.e. 24.02.2011.

Consequently, with it not having been denied even by counsel for the respondent-plaintiff, that the water course is actually running through the land owned by the appellants-defendants, hence, the finding of the canal authorities that it is a private water course, would hold to be a correct finding. Thus, though otherwise the appellants could not have been restrained from demolishing a non-sanctioned water course running through their own fields, i.e. not sanctioned by the canal authorities, but as the said water course is accepted to be carrying canal water to the fields of the respondent-plaintiff, no civil Court can order that the supply of water be disrupted during the time that crops are sown or growing, subject to any other order passed by the canal authorities.

17. Hence, on principle it is held that unless it is specifically shown that a water course is not carrying canal water, or at the specific time of the passing of the order of a Civil Court, the land in question is lying fallow, jurisdiction of a Civil Court would be barred to pass any order pertaining to water conveying canal water to agricultural fields.

18. Having held as above, in the present case, the following directions is given:-

The respondent-plaintiff would be at liberty to apply to the canal authorities as already held by the Superintending Canal Officer vide his order dated 27.08.2009, (Ex.D2 before the learned trial Court), for sanction of a water course to irrigate his fields, provided he does so within a period of 3 months from the date of issuance of a certified copy of this judgment and order. Till then, the appellants-defendants are restrained from demolishing the water course in question and if the respondent-plaintiff does not apply within 3 months to the canal authorities for sanction of a water course to irrigate his fields, then the appellants-defendants shall be at liberty to demolish such water course, it already having been held to be a private water course and not a government sanctioned one, provided such demolition is only done at a time when the fields of the respondent-plaintiff, to which the water is being supplied by the said water course, are lying fallow, i.e. neither has any crop been sown in the said fields nor it is growing as a consequence thereof.

Upon an application being made to the canal authorities by the respondent-plaintiff/ his successor in interest (as he is stated to have died in the meanwhile), naturally, the question of granting of alternative source of water to the respondent-plaintiff, would be decided by those authorities

within a wholly reasonable period.

The appeal of the appellants is thus partly allowed and the judgments and decrees of the Courts below are modified to the aforesaid extent. A decree sheet be drawn up accordingly.

No order as to costs.

(AMOL RATTAN SINGH)
JUDGE

April 21, 2017.
Davinder Kumar

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