

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

RSA-180-2012 (O&M)

Date of Decision:02.03.2017

State of Haryana and another

.....Appellants

Versus

Bhim Singh

.....Respondent

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

**Present: Mr.Manoj Kumar Sangwan, D.A.G., Haryana,
for the appellants.**

**Mr.S.P.Chahar, Advocate,
for the respondent.**

RAMESHWAR SINGH MALIK, J.(Oral)

Unsuccessful defendants are in regular second appeal against both the judgments and decrees passed by the learned Courts below, whereby suit for declaration and possession of the plaintiff-respondent, was decreed.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of its impugned judgment, are that plaintiff was co-sharer up to the extent of 1/8th share in the agricultural land, fully detailed and described in para No.1 of the plaint; that the defendant No.1 acquired this land for a public purpose i.e. to drain out the flood water for a drain namely Kultana drain in the year 1978 vide notification No.824/1-LO Rohtak and award No.300 dt. 31.3.1978 and mutation No.368 was sanctioned that the defendant No.2 illegally and hurriedly dug out the said drain over khasra

not been paid by compensation; that plaintiff came to know about this illegal encroachment on 11.9.2004 when the demarcation was got conducted on 11.9.2004 through Halqa Girdwar; that the plaintiff requested the defendants to admit his claim but to no use.

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

- “1. Whether the plaintiff is owner in possession of the land fully detailed in para No.3 of the plaint and mutation No.368 is illegal up to that extent?OPP*
- 2. Whether the plaintiff is entitled to the decree of possession as prayed for?OPP*
- 3. Whether the plaintiff is entitled to the compensation for the land illegally occupied by the defendants according to the prevail and market value along with interest at the rate of 18% per annum as an alternative relief?OPP*
- 4. Whether the suit is bad for want of notice under section 80 CPC?OPD*
- 5. Whether the suit is not maintainable in the present form and plaintiff has no locus standi to file present suit?OPD*
- 6. Whether the plaintiff has no cause of action to file the present suit?OPD*
- 7. Relief.”*

In order to substantiate their respective stands taken, both the parties produced their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff has duly proved his case by leading cogent and convincing evidence.

Accordingly, suit of the plaintiff was decreed vide impugned judgment and

decree dated 25.09.2009.

Feeling aggrieved, defendants filed their first appeal which also came to be dismissed by the learned first appellate Court vide its impugned judgment and decree dated 17.05.2010. Hence, this regular second appeal, at the hands of the defendants.

Heard learned counsel for the parties.

It has gone undisputed before this Court that authorities of the appellant-State of Haryana utilized the land of the plaintiff-respondent more than what was acquired. The excess area utilized by the authorities of the State was measuring 2 kanal 17 marla, which is again not in dispute. Absolute ownership of plaintiff who was in possession of excess area of 2 kanal 17 marla was also not in dispute. It had never been either pleaded or argued on behalf of the State of Haryana that the amount of compensation was either assessed or paid to the plaintiff-landowner, for the land measuring 2 kanal 17 marla. It goes without saying that without acquiring the land in accordance with law, authorities of the appellant-State had no power to utilize the excess area of the plaintiff. In view of these undisputed facts and circumstances of the case obtaining on record, learned Courts below were well within their jurisdiction to decree the suit of the plaintiff and the impugned judgments and decrees deserve to be upheld.

Before arriving at a just conclusion, learned first appellate Court re-considered and re-appreciated the factual as well as legal aspect of the matter. Cogent findings recorded by the learned first appellate Court in para 12 of its impugned judgment, which deserves to be noticed here, read as under:-

“After hearing the rival contentions of both the sides and going through the material available on record, I am of the

view that the appellants/defendants failed to establish that plaintiff verbally requested the department for change of alignment of the drain as per his convenience and his own interest at the time of excavation of the drain and that the drain is running smoothly since, 1978 and now the plaintiff has raised the objection after the gap of 27 years and thus plaintiff is not entitled for any compensation. It is well established that in case land of any of the party is acquired by the Govt. for any purpose, then the party whose land is acquired, is entitled for compensation and he/she can not be deprived of from the same. Plaintiff has fully proved his case by adducing evidence, whereas defendants have failed to prove their case by adducing cogent and convincing evidence and further more Mr.K.L.Budhiraja SDO while appeared in the court as DW1 has admitted in his examination in chief in his duly sworn in affidavit Ex.DW1/A that the said land was acquired for excavation of kultana, Chuddani Bupania drain which has been excavated at site. Admission is the best evidence. Thus it appears that learned lower court has not fell into any error while passing the impugned judgment and decree.”

During the course of hearing, learned counsel for the appellant-State could not point out any patent illegality or perversity in either of the impugned judgments and decrees passed by the Courts below, in recording concurrent findings of facts. He also could not refer to any question of law much less substantial question of law, 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 judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus**

Purshottam Tiwari, 2001 (3) SCC 179.

No other argument was raised.

Having said that, this Court feels no hesitation to conclude that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld. It is so said because in view of abovesaid undisputed fact situation followed by concurrent findings of facts recorded by the learned courts below, there has been found no scope to interfere.

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 wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

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

March 02, 2017
seema

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No