

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

RSA No.4744 of 2013

Date of Decision : 26.09.2017

Ram Karan Aggarwal

....Appellant

versus

U.H.B.V.N Ltd. and Ors.

....Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Arun Singal, Advocate
for the appellant.

Mr. Pardeep S. Poonia, Advocate
for the respondents.

RAJBIR SEHRAWAT, JUDGE (ORAL)

This is a second appeal filed by the plaintiff against the concurrent findings given by both the Courts below.

The pleaded case of the plaintiff-appellant herein is that he is the owner in possession of agricultural land measuring 20 Kanals 14 Marlas and he had constructed a boundary wall on his land and is also having a gate towards G.T. Road. He also pleaded that he is using the Gair Mumkin Khal which starts from the G.T. Road and goes upto village Machhrauli after crossing his land. Although he also pleaded that after crossing the land of the plaintiff, the khal has been unauthorizedly dismantled by the owners of the factory named M/s Kapoor Industries existing towards eastern side of his land. The owners of the factory has changed the nature of the land and has merged the land of khal into his factory. It is the pleading of the plaintiff that some time ago in his absence, defendant No.3/respondent No.3 illegally installed electric line over his land. He requested the respondents to reinstall electric line along with killa line but they refused to do so. It is

further pleaded that on 28.01.2010, respondent No.2 and 3 came to his land

and started raising construction with bricks for path in between his land. Defendants were requested not to do so but they refused and raised threat to forcibly occupy the suit land by destroying khal and to construct a *pucca* path by dismantling the khal. Therefore, the suit was filed for permanent injunction restraining the respondents from changing the nature of the land which is recorded as khal/ water-course in the revenue record.

On notice, the defendants appeared and filed written statement and they denied that the plaintiff was using *gair mumkin* khal to irrigate his land. They further pleaded that about two-three months back the plaintiff merged the said khal into his own land and has sown wheat crops in the same. The Power House of the defendants is situated at the back of the land and the plaintiff and defendant No.3 used this land of khal to go to the Power House. The plaintiff wants to grab this land and therefore, the plaintiff has installed barbed wire blocking even the land which is under the khal.

The parties led their evidence.

After hearing the parties and perusing the record, the trial Court dismissed the suit of the appellant by recording a finding that the Jamabandi Ex. P-2 shows that the Gram Panchayat is the owner in possession of the land recorded as *gair mumkin* khal bearing khasra No.117. It is further recorded by the trial Court that the khal is no more in existence and it does not go towards village Machhroli and that there is not even other land which is being irrigated by this khal beyond the land of the plaintiff. It was further recorded by the trial Court that the physical existence of the khal is not proved on the record. Still further, it was recorded that the plaintiff has

failed to prove that the defendants have illegally installed the electric line. It was further recorded that even the plaintiff is given power from this very line. Except the plaintiff himself no other witness has been examined by him to prove his pleadings. It was further held that since plaintiff has failed to prove that the khal, in fact, is being used for irrigation purpose, therefore the suit for permanent injunction was dismissed.

Learned lower Appellate Court besides following the reasoning given by the trial Court; also recorded that although the defendants have no right to convert the land of the water-course into public passage, however the plaintiff had also no right to dismantle/close the water-course by raising a boundary wall. The lower appellate Court also held that the Gram Panchayat, who is the owner of the water course was a necessary party. However, the same has not been arrayed as a defendant in the case, therefore, the suit filed by the plaintiff is bad for non-joinder of necessary party.

Feeling aggrieved of this, the present appellant has filed the second appeal before this Court.

Learned counsel for appellant while arguing the case submitted that once the lower Appellate Court has recorded a finding that the defendants have no right to convert the land of the water course into a public passage; then his suit should have been decreed as a necessary consequence of this observation of the lower Appellate Court. However, this argument is noted only to be rejected. Plaintiff has to stand on his legs to succeed in his case. Once the case of the plaintiff is that he was using this water-course to irrigate the land, it was necessary for him to establish

by leading cogent evidence that the water-course, in fact, physically exists on the spot and that it was being used by him for the purpose of irrigation. However, admittedly no such evidence has been led on file. Nothing has been produced or proved on the case file as to whether any water has been allotted to this water-course or whether the plaintiff has got any share in any water meant for this water-course. In view of this there is nothing wrong in the finding recorded by the Courts below that since the Khal itself has not been found to be physically existing on the spot, therefore, the suit for injunction filed by the plaintiff does not deserve to be decreed.

Next argument raised by the learned counsel for the appellant is that Gram Panchyat was not a necessary party since he was not claiming any relief against the Gram Panchyat. Therefore his suit could not have been dismissed on the ground that the Gram Panchayat was not impleaded as a party.

Second arguments of the learned counsel for the appellant is also liable to be rejected. Admittedly the land under the khal is recorded in the revenue record as Gair Mumkin Khal under the ownership of Gram Panchayat. Any order passed by the Court or claim suffered by the parties in the proceeding was, necessarily, bound to affect the rights of the Gram Panchayat qua the land, the effect of decree may be any. Therefore, the Gram Panchyat was also a necessary party. Hence there is nothing wrong in the finding recorded by the courts below on this point as well. Although this finding may not be sufficient to deny the relief itself. But the suit is definitely bad for non-joinder of necessary party.

Third argument raised by the learned counsel for the appellant

is that the lower Appellate court has wrongly written that M/s Kapoor Industry is situated on the western side of the land of the plaintiff and therefore it is situated before the land of the plaintiff, is factually incorrect. Hence, it is his argument that the conclusion arrived by the lower Appellate Court that since M/s Kapoor Industry is not a party in the suit hence, the existence of the khal before the land of the plaintiff has not been proved, is not sustainable. The boundaries mentioned by the plaintiff, which could not be disputed by the defendants, in fact, show that the land of the plaintiff falls on the eastern side of the GT road and also it is admitted that the land of the M/s Kapoor Industry is situated behind the land of the plaintiff and not before it. However, despite this fact the fate of this case, on merits, is not affected to any extent because even if this plea is accepted then also the existence of khal beyond the land of the plaintiff is not proved because the plaintiff himself has admitted that the khal is dismantled in the area under occupation of M/s Kapoor Industry. So this fact is not relevant for the purpose of the suit of the plaintiff. He was required to prove that the Khal is in existence over his land and he is irrigating the same with that khal.

No other point is argued.

In view of the above, findings recorded by the Courts below and the judgement and decree passed by them are affirmed.

The present appeal is dismissed being devoid of any merit.

26th September, 2017

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**(RAJBIR SEHRAWAT)
JUDGE**

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