

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

Sr. No.101

RSA No.1113 of 2014 (O&M)

Date of decision: 10.08.2017

Sukhwinder Singh

....Appellant

versus

The State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Munish Kumar Garg, Advocate
for the appellant.

* * *

DEEPAK SIBAL, J. (Oral)

C.M. No.2552-C of 2014

Through this application filed under Section 151 of CPC,
condonation of delay of 01 day in re-filing of the appeal, is prayed for.

After going through the contents of the application and hearing
learned counsel for the applicant/appellant, the application is allowed and
the delay of 01 day in re-filing of the appeal is condoned.

C.M. No.2763-C of 2016

Through the present application, demarcation report is sought
to be placed on the record as Annexure A-1.

Allowed as prayed for.

CM stands disposed of.

RSA No.1113 of 2014

The appellant who was the plaintiff before the Trial Court had preferred a suit seeking therein the grant of mandatory injunction to the effect that the respondents be directed to acquire the adjoining land of rasta or passage in Khasra No.136, village Kudni to restore the width of the rasta or alternatively the respondents be directed to demolish the permanent water course in Khasra No.136, village Kudni alleging the same to be an encroachment upon the afore-referred rasta or passage.

The case set up by the appellant before the Trial Court was that he was owner in possession of land comprised in Khewat No.48, Khasra No.33//10/1, 10/2, 11 and 22, 33//20, 34//16, 15, 25/1, 34//6, situated in village Kudni, Tehsil Tohana, District Fatehabad, which was adjacent to a passage (Rasta) comprised in Khasra No.136. He was using the passage for ingress and egress to his fields. As per the revenue record, the passage was 3 Karams wide. However, since such passage was adjacent to a water course, the respondents while strengthening the water course with concrete had in fact encroached upon the passage as a result of which the appellant was finding it difficult to reach his fields on his tractor/combine harvester etc. It is in these circumstances that the appellant had approached the Trial Court seeking the above reliefs.

The respondents appeared before the Trial Court and submitted that the water course in question, which was earlier temporary, had been in existence for the last several decades and in the year 1983 the same had been made permanent by the Haryana State Minor Irrigation and Tubewell Corporation Limited (for short the 'Corporation') by use of concrete. In the

water course had been done. Since the suit had been instituted in the year 2010, objections with regard to acquiescence and limitation were also raised on the ground that such permanent water course was in existence since the year 1983.

The Trial Court finding no merit in the case set up by the appellant dismissed his suit. The appellant's appeal against the dismissal of his suit by the Trial Court also met the same fate at the hands of the Appellate Court giving him a cause to approach this Court through the present second appeal.

Learned counsel for the appellant has submitted that both the Courts below erred by not considering the report of the Local Commissioner which had categorically opined that the permanent water course was encroaching upon the passage and that the water course in question which was earlier temporary had been made permanent only in the recent past and therefore, the suit of the appellant could not have been rejected on the ground of delay.

The above submissions are not found worthy of acceptance.

In the year 2009, the appellant had filed a civil suit through which he had sought the relief of permanent injunction to restrain the respondents from making the temporary water course permanent. That suit was withdrawn by him on 15.12.2009 on the ground that during the pendency of the suit the construction had already been made. Thereafter, the present suit for mandatory injunction was filed. Having withdrawn his first suit, it was incumbent upon the appellant to prove that the water course in question was earlier temporary and had been made permanent only during the pendency of his earlier suit. However, no such evidence was led by him.

It is not disputed that the water course in question had been made permanent by a statutory Corporation which is controlled by the Government of Haryana and therefore, to prove as to when the water course was made permanent, the appellant could have easily produced evidence with regard to calling of tenders and execution thereof for the works to make the water course permanent. No such evidence was also produced. Rather, his own witness PW-6-Sukhwinder Singh had deposed on 14.02.2011 that about 20-22 years prior to his deposition, the water course in question had been made which, at that time was permanent and recently only repairs to the same had been done. In the absence of any evidence, as also in view of the statement of the appellant's own witness, the case set up by the appellant gets demolished. Once his own witness has stated that the water course in question was made permanent about 20-22 years prior to the year 2011, the suit filed by the appellant in the year 2010, being hopelessly time barred has rightly been dismissed on that ground by both the Trial Court as also the Appellate Court.

The water course in question is there to benefit a large number of land owners whose land is irrigated through the water that reaches their land through the same. None of the other landowners except the appellant have objected to the action of the respondents which, as established on the record, was merely to repair the water course which had been made permanent way back in the year 1983. Thus, the relief claimed by the appellant, if so granted, would also be against public interest.

The reliance of the learned counsel for the appellant on the report of the Local Commissioner dated 12.11.2009 would also lend no support to his case as the report nowhere brings the case of the appellant

within limitation as it is no where stated therein that the water course had been made permanent only in the year 2009.

In view of the above, both the Trial Court as also the Appellate Court have concurrently arrived at findings favouring the respondents which are found to be plausible, thus not perverse, warranting no interference. The present appeal also does not raise any question of law, much less a substantial question of law.

Dismissed.

(DEEPAK SIBAL)
JUDGE

August 10, 2017
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>