

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.56 of 2015
Date of decision:9.5.2017**

Vinay Kumar

...Appellant

Versus

SDO Public Health, Mohindergarh No.2 and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Mukesh Yadav, Advocate for the appellant.

None for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned judgment and decree dated 7.9.2013 passed by the learned District Judge, whereby his first appeal was dismissed, upholding the impugned judgment and decree dated 23.5.2013 of the learned trial Court, dismissing his suit for permanent injunction, plaintiff has approached this Court by way of instant regular second appeal.

Brief facts of the case, as noticed by the learned District Judge in para 2 of the impugned judgment, are that plaintiff was given right to supply water to the local inhabitants with the consent of defendants No.1 to 3 and for that purpose plaintiff never took any salary etc., but he used to do this work for the purpose of the trust and for self-satisfaction. It had been further pleaded that till the date of filing the suit, the supply of water was being done by the plaintiff continuously but, now defendants in collusion

with each other, wanted to give this right to their loved ones on the basis of political rivalry with him. It had been further pleaded that defendants were not entitled to do so and he requested the defendants that he be allowed to continue his work as he was doing before and the defendants be restrained from appointing any person in his place for the work of supplying the water to the inhabitants of the village but despite requests, defendants were not paying any heed.

Having been put to notice, defendants appeared and filed their contesting written statement. Replication was filed by the plaintiff. On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether plaintiff has a right against the defendants to continue to discharge work of supply of water and operate the tubewell? OPP
2. Whether plaintiff has a cause of action from the illegal acts of defendants? OPD
3. Whether suit is not maintainable in the present form? OPD
4. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has failed to prove his case. Accordingly, the suit for injunction, seeking a restraint order against the respondents-defendants not to terminate his services as Pump Operator, was dismissed by the learned trial Court, vide its impugned judgment and decree dated 23.5.2013. Dissatisfied, plaintiff filed his first appeal, which also came to be dismissed by the learned District

Judge, vide his impugned judgment and decree dated 7.9.2013. Hence this regular second appeal, at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

It has gone undisputed before this Court that appellant is no more in service. No appointment letter is there on record. Appellant was engaged by the Gram Panchayat. It is also a matter of record that water tubewell for water supply to the residents of village was taken over by the Government Department of Public Health. Services of the appellant were not absorbed. Thus, there was no master and servant relationship with the plaintiff and and Department of Public Health of the State Government. Learned counsel for the appellant has also contended that appellant is no more in service and he did not even challenge his removal from service. Under these undisputed facts and circumstances of the case, no fault can be found with the impugned judgments and decrees passed by the learned courts below and the same deserve to be upheld.

In fact, plaintiff has been changing his stand as per his own suitability from time to time. It was his own pleaded case that he was not being paid for supplying the water to the inhabitants of village. He also took a stand in his plaint that he used to supply water for his self satisfaction. He being the plaintiff, onus was on him to prove his case by leading cogent and convincing evidence. However, plaintiff-appellant failed to do so. There was no material on record which may even remotely suggest that appellant was ever appointed by the competent authority, in accordance with law.

He also admitted in his cross-examination that he was assigned the work of supplying the water to the inhabitants of village on his oral

request. Even his witnesses including PW-1 and PW-2 admitted before the learned trial Court that the plaintiff-appellant was never authorised by the Government for supplying the water to the inhabitants of the village. Plaintiff could not produce on record any such evidence, which may prove his pleaded case. Thus, it was a case of no evidence. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned District Judge rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned District Judge court in para 13 of his impugned judgment, which deserve to be noticed here, read as under:-

“Now, the case of the plaintiff is that he was given a right to supply the water to the local inhabitants of village Aghiyar. Now, this is the case of the plaintiff himself that he was not paid for supplying water to the inhabitants of village Aghiyar. He has in his plaint taken the stand that he used to supply water for self-satisfaction and being keen in service of others. Now, nothing has come on the file that the plaintiff was given right to supply water to inhabitants of village Aghiyar with the consents of defendant No.1–S.D.O., Public Health Department, Mohindergarh No.2, defendant No.2 – Xen, Public Health Department, Mohindergarh and defendant No.3 – Sarpanch, Gram Panchayat, Aghiyar, Tehsil and District Mohindergarh. Rather, he has admitted that he was assigned the work of

supplying the water to the inhabitants of village Aghiyar on the oral request made to the concerned S.D.O. Moreover, the witnesses produced by the plaintiff Vinay Kumar namely, PW1 Lila Singh, Ex-Sarpanch and PW2 Rati Ram have admitted that plaintiff was never authorised by the Government for supplying the water to the inhabitants of village Aghiyar. The plaintiff has also not produced any authorisation letter. Unless on the file it is established that a right was created in favour of plaintiff to supply water to the inhabitants of village Aghiyar, the plaintiff cannot claim and get relief of restraining the defendants from assigning the work of supply of water from tubewell to the local inhabitants of the village Aghiyar.”

In the absence of any relevant material available on record, learned counsel for the appellant, despite making his best efforts, could not make out a case for interference, at the hands of this Court and rightly so, it being a matter of record. A combined reading of both the impugned judgments and decrees passed by the learned courts below would make it clear that there was hardly any evidence which might be of any help to the appellant. In fact, plaintiff failed to discharge his initial onus to prove his pleaded case. In such a situation, plaintiff-appellant himself was responsible for passing of both the impugned judgments and decrees, which cannot be said to be suffering from any patent illegality or perversity and the same deserve to be upheld, for this reason as well.

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question

of law has been found involved in the present appeal, 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 view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in *Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286* and *Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179*.

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 the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

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

9.5.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No