

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

RSA No.3060 of 2014 (O&M).
Decided on:-March 24, 2017.

Badan Singh and others

.....Appellants.

Versus

State of Haryana and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. P.R. Yadav, Advocate
for the applicants-appellants.

HARI PAL VERMA, J.

CM-7292-C-2014

Prayer in this application filed under Section 151 CPC is for condonation of delay of 48 days in re-filing the present regular second appeal.

For the reasons stated in the application, the same is allowed and the delay of 48 days in re-filing the instant appeal is condoned.

CM-7293-C-2014

This is an application under Chapter 1-C, Volume V, Punjab and Haryana High Court Rules & Orders and Order XXII Rule 3 CPC seeking permission to file the present appeal on behalf of legal heirs of deceased Ved Ram.

It is averred in the application that appellant Ved Ram son of Mani Ram has expired on 14.07.2013 and he is survived by his four sons, namely, Vijay, Pappu, Sander and Kallan, who are impleaded as appellants No.6 to 9 in the present appeal. The right to sue still survives in favour of the applicants No.6 to 9 and in case they are not brought on record as legal heirs of their deceased father Ved Ram, they would suffer an irreparable loss and injury.

In view of these facts and circumstances, the present application is allowed and the applicants-appellants No.6 to 9 are permitted to file the present regular second appeal as legal heirs of deceased Ved Ram.

RSA-3060-2014

Appellants-plaintiffs have filed the present regular second appeal against the judgment and decree dated 23.10.2013 passed by learned Additional District Judge, Gurgaon whereby their appeal against the judgment and decree dated 10.04.2013 passed by learned Civil Judge (Junior Division), Gurgaon, was dismissed.

Briefly stated, the appellants-plaintiffs have filed a suit for permanent injunction restraining the respondents-defendants from constructing walls on both sides of the road, as shown in red colour in the site plan. The plaintiffs have submitted that in case the defendants have succeeded in raising any sort of construction on the side of the road, in that situation, a decree of mandatory injunction be also passed directing the

defendants for demolishing the constructions on the sides of the road and to keep the road open for the plaintiffs and other villagers of village Kadarapur and Naya Gaon.

The plaintiffs claiming themselves to be the agriculturists by profession have submitted in their claim that they are owners of the agricultural land, as detailed in the plaint, situated within the revenue estate of village Bhondsi, Tehsil Sohna, District Gurgaon, as shown in the Jamabandi for the year 2000-01. The State of Haryana has acquired some land for constructing a road leading to the police training school and Indian Reserve Battalion (IRB), Bhondsi. The acquired land has duly been shown in the site plan in 'red colour'. The acquisition has been made in such a manner that the land of the plaintiffs and other villages got separated on both sides of the road and the defendants have threatened to construct walls on both sides of the road which would completely block the passage to the land of the plaintiffs and other villagers. Therefore, the suit.

The respondents-defendants have contested the suit. It has been averred that the plaintiffs No.3 and 4, namely, Tek Chand and Tulsi had earlier also filed a suit for the same cause of action seeking similar relief. The application for ad-interim injunction was dismissed on 24.12.2007 and even the appeal against the said order was dismissed. Therefore, the suit is barred under Section 10 CPC. Various objections have been taken including the civil Court has got no jurisdiction to try the suit, maintainability, locus standi, cause of action and the suit not properly valued for the purpose of court fee. The suit is also bad for non-joinder and mis-joinder of the parties.

It has further been pleaded that 18 acres 1 Kanal 5 Marlas land was acquired for the passage of Recruits Training Centre vide notification dated 16.09.2002. From the security point of view, it was essential for the defendants to make such passage.

On the basis of pleadings of the parties, the following issues were framed by the trial Court:

1. Whether the plaintiff is entitle to decree for permanent injunction on the alleged ground? OPP
2. Whether the suit of the plaintiff is barred under Section 10 of CPC? OPD
3. Whether the civil Court has no jurisdiction to try and decide the present suit? OPD
4. Whether the suit of the plaintiff is not maintainable? OPD
5. Whether the plaintiff has no locus standi and no cause of action to file the present suit? OPD
6. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
7. Whether the plaintiff is estopped from filing the present suit from their own act and conduct, commission and omission? OPD
8. Whether the plaintiff has concealed the material facts from the Court? OPD
9. Relief.

Vide judgment and decree dated 10.04.2013, the trial Court dismissed the suit of the plaintiffs and had observed that as the land was acquired by the State of Haryana by adhering to the process of law for which the adequate compensation has been awarded to the claimants. The trial

Court has further observed that the land was acquired for a very sensitive purpose i.e. for carrying away the arms and ammunition. The relevant paragraph No.9 of the impugned judgment passed by the trial Court reads as under:

“In the present case, only plaintiff No.1 has been got examined as PW1 and none of the other plaintiffs who were interested in the present case, being the remaining plaintiffs, have been examined. PW1 in his cross examination has himself admitted that the said land was acquired by the Haryana State for Training Center. In the present case the main point involved is that the plaintiffs have alleged that on account of acquisition of land by the State of Haryana, the land of the plaintiffs and other land owners was divided into two parts and therefore the plaintiffs contended that due to the construction of said road there was no rasta left for reaching to the other part/portion of their land as one part of the land now fell on one side of the road and the other part on the other side of the road. The plaintiffs have sought restraining order against the defendants thereby restraining them from constructing the wall on both sides of the road as by such construction of wall, the plaintiffs as well as all the land owners shall be deprived of their rights to use their land that fell on the other side of the road. In the present case the plaintiff No.1 who stepped into the witness box has himself admitted the fact that the land was acquired for construction of road to be used for Police Training School and IRB. Moreover, none of the other plaintiffs have been got examined by the plaintiff in order to corroborate his claim though suit was filed in representative capacity. The learned GP for the State has argued that since arms and ammunition would be carried through this passage, it is very essential to make this

passage safe through security point of view. Since, the land was acquired by State of Haryana by following due process of law, for which the compensation has already been disbursed and since the land was acquired for a very sensitive purpose i.e. for carrying away of arms and ammunition, the fact which has been already admitted by the plaintiff in his cross-examination. Moreover, merely on account of allegation put forth by the plaintiffs where there is no evidence of any construction being recorded. There is no merit in the case of the plaintiff. Hence, this issue is decided against the plaintiffs and in favour of the defendants.”

Aggrieved with the aforesaid judgment and decree dated 10.04.2013 passed by the trial Court, the appellants-plaintiffs preferred an appeal before the lower appellate Court, but the same has been dismissed by learned Additional District Judge, Gurgaon vide judgment and decree dated 23.10.2013.

Still aggrieved, the appellants-plaintiffs have approached this Court by way of present regular second appeal.

Following substantial questions of law have been raised by the appellants-plaintiffs:

- (i) Whether the learned Courts below erred in holding that no passage was existing there even before the laying of the road?
- (ii) Whether the suit of the appellant-plaintiff is not maintainable?
- (iii) Whether the villagers have no right of passage for cultivating their fields in the land compulsorily acquired for a public purpose namely for passage to IRB Bhondsi?

Learned counsel for the appellants-plaintiffs has argued that the Courts below have erred in holding that the plaintiffs have failed to prove or even suggest that there was some passage to their land through the road. The land was acquired for the public purpose and the road was carved out from the agricultural land. Even after acquisition, land of the appellants-plaintiffs was left out for which a passage is necessary. On both sides of the road, there is agricultural land of the agriculturists.

He has further argued that so far as plea of the respondents-defendants that the land was acquired for a sensitive purpose i.e. for carrying away arms and ammunitions is concerned, such like ammunition is always carried with high security and is being brought from different stations i.e. Madhuban, Panchkula and Mewat to the Recruits Training Centre, Bhondsi and police security persons are always deployed for security and, therefore, even if wall is to be constructed, still passage should have been given to the appellants-plaintiffs. The observations given by the lower appellate Court that the plaintiffs have not approached the Court with clean hands, is contrary to record as the earlier suit was filed by the plaintiffs No.3 and 4 in individual capacity and, therefore, the present suit is not hit under Section 10 CPC.

I have heard learned counsel for the appellants-plaintiffs.

There is no dispute that the land in question was acquired by the State of Haryana by adhering to the provisions of the Land Acquisition Act, 1894. The very purpose of acquisition of the land was to construct a road leading to the police training school and Indian Reserve Battalion (IRB),

Bhondsi. Through the instant suit, the plaintiffs have prayed for permanent injunction against the defendants restraining them from constructing walls on both sides of the road, because in case the walls are allowed to be constructed, the land owners would be deprived to use their land which fell on the other side of the road. This plea of the appellants-plaintiffs cannot be accepted for the simple reason that the very purpose of the acquisition of the land is quite sensitive. At different times and occasions, arms and ammunition are being carried out from different places for police training school and IRB. So the sensitivity never subsides.

Even otherwise, the suit filed by the appellants-plaintiffs is hit by Section 10 CPC as the plaintiffs No.3 and 4 have already instituted a suit for similar relief and by not disclosing the factum of earlier suit, it can lead to a conclusion that the appellants-plaintiffs have concealed the material facts. The law is well settled that those who approach the Court with unclean hands have no right to be heard on merits at all.

The appellants-plaintiffs cannot claim the passage as a matter of right more particularly when their land has been acquired by adhering to the provision of the Land Acquisition Act, 1894 for which they have duly been compensated. Even otherwise, the respondents-defendants intend to construct a wall for the security reasons for flow and safe passage to carry arms and ammunition. Therefore, there is no illegality in the impugned judgments and decrees passed by the Courts below.

In view of the above, no ground to interfere with the concurrent findings recorded by the Courts below is made out.

No other point was argued.

No substantial question of law arises in the present regular second appeal.

Thus, affirming the impugned judgment and decree dated 10.04.2013 passed by the trial Court as well as judgment and decree dated 23.10.2013 passed by the lower appellate Court, the instant regular second appeal, being devoid of any merit, is dismissed.

March 24, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No