

RSA No. 6481 of 2014 (O&M)

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

**RSA No. 6481 of 2014 (O&M)
Date of Decision: 11.7.2017**

Hargopal Singh

.....Appellant

Vs.

Punjab State Tubewell Corporation and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Naresh Jain, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful plaintiff is in regular second appeal, against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for mandatory injunction was dismissed by the learned trial court and his first appeal was also dismissed by the learned first appellate court.

Brief facts of the case, as recorded by the learned trial court in para 2 of the impugned judgment, are that plaintiff was owner in possession of land measuring 50 K 17 marlas, including the suit land comprised of khewat No. 338, khatauni No. 981 as per copy of jamabandi for the year 2002-2003 situated in village Peori. The plaintiff sowed mustered crop in the suit land wheat crop in the remaining land. Mustered crop had ripened and was ready for harvesting. Defendants No.4 and 5 were mighty persons and they belong to ruling party. They owned land of killa No.22 of Rect.

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No. 47, on the Western side of the suit land comprised of Rect. No. 47, killa No. 22/3 (1 K-8 Marlas). Defendants No. 4 and 5, in connivance with defendants No. 1 to 3, with the help of Illaqa police, constructed a pucca water course in killa No. 22/3 of Rect. No. 47 in the evening time on 22.3.2009, illegally, forcibly and without any right by bringing 15/16 labourers. The said water course was built in 36 karam in length of 2/2-1/2 Karam in width on the Western side of killa No. 22/3. On that date, plaintiff was not present in the village, as he had gone to meet his relations.

When the plaintiff returned home on the next day, he was told by the family members that defendants have constructed a pucca water course before one day from filing of the suit in the evening, because the police informed the family members not to visit the fields, as they would be implicated in a false case. On becoming aware about illegal construction of the water course by the defendants in the suit land, plaintiff went to suit land and astonished to see that the defendants have constructed water course illegally at his back. Thereafter, the plaintiff approached defendants No.4 and 5, by taking some persons from the village and enquired from them that as to when they have illegally constructed the water course. Upon that, defendants revealed that the watercourse had been constructed by the Punjab Tubewell Corporation Authorities at Bathinda. Thereafter, plaintiff approached defendants No.1 to 3 in their office and enquired from them as to why they had constructed the water course without acquiring his land and without compensation. Therefore, they should demolish the same immediately, but these defendants showed their inability to do so, because defendants No. 4 and 5 had great saying in the ruling party in Punjab and hence refused to admit the claim of the plaintiff.

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Having been put to notice, defendants put appearance and filed their contesting written statement, raising more than one preliminary objections. Plaintiff did not file any replication. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is entitled to mandatory injunction directing the defendants to demolish watercourse illegally built by the defendant in the suit land as fully detailed in the head note of the plaint, as prayed for? OPP
2. Whether the suit is not maintainable? OPD
3. Whether the suit is bad for non-joinder of necessary parties? OPD
4. Whether the plaintiff is debarred to file the present suit by his own act and conduct ? OPD
5. Relief

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has failed to prove his case, by leading cogent and convincing evidence. Accordingly, his suit for mandatory injunction, directing the defendants to demolish water course on the killa No. 22/3, was dismissed by the learned trial court vide impugned judgment and decree dated 20.12.2013. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 15.9.2014. Hence this regular second appeal at the hands of plaintiff.

Heard learned counsel for the appellant.

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The only argument raised by learned counsel for the appellant was that the watercourse in question, as depicted in the site plan (Ex. P3) at page 152 of the lower court record, should have been kept intact and there was no occasion for the defendants, including official defendants-respondents to construct this watercourse through the land of the appellant out of killa No. 22/3. However, when the learned counsel for the appellant was asked to refer to any other material available on record, including any other site plan, to show that the watercourse was dug through the land in killa No. 22/3 at a later point of time, he was unable to refer to any such material and rightly so, it being a matter of record. There is no such evidence available on record or referred by the learned counsel for the appellant, which might show that either the canal authorities or the private defendants committed any factual or legal error at the site, while digging the watercourse in question. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It goes without saying that appellant being plaintiff, onus was on him to prove his pleaded case by leading cogent and convincing evidence, however, he failed to do so, for the reasons best known to him. It is a settled proposition of law that pleadings alone would not be sufficient to decree the suit, unless assertions taken by either of the parties in their pleadings are proved by leading relevant evidence, in accordance with law. No presumption can be drawn in favour of the plaintiff-appellant in the absence of relevant evidence. Under these facts and circumstances of the case, it can be safely concluded that the learned courts below committed no

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error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Cogent findings recorded by the learned first appellate court in para 16 to 18 of its impugned judgment, which deserve to be noticed here, read as under:-

“Keeping in view of above discussion and evidence brought by both the parties, it is clear that the plaintiff alleged that defendants have raised illegal construction of watercourse in his land, but defendants have taken the plea that the watercourse was already in existence, which has been made Pakka. Admission on the part of plaintiff and defendants with the help of oral as well documentary evidence have been able to establish the fact that the Kacha Khal was already in existence, which has been made Pakka one by defendants no.1 to 3 under the scheme notified by the Punjab State. Plaintiff was well aware about the existence of watercourse, which has been left during the consolidation, but all these facts have been concealed by the plaintiff, rather he has brought the suit in a misconceived manner.

During arguments, learned counsel for the appellant mainly challenged the construction of watercourse on the basis of demarcation, but the demarcation has not been conducted as per Punjab Land Record Manual, therefore contention raised by the learned counsel for the appellant on this account does not carry an weight. Moreover, admission on the part of plaintiff and his witnesses proves that fact that the watercourses were already in existence. Defendants with the help of documentary evidence further proved the fact

that proper notice was given to the plaintiff by way of announcement in the speaker of Gurdwara Sahib, which is permissible u/s 30 (B) and 30 (C). Plaintiff has neither raised any objection and nor challenged the scheme before the competent authority or even before this court through the present suit. On the other hand, defendants no.1 to 3 have constructed the Khal/water channel as per scheme under the Act after giving due notice to the plaintiff. As such, defendants No.1 to 3 have right to construct the Khal Pakka one as per scheme and u/s 30 (F) (F) of the Northern India Canal and Drainage Act. Moreover, plaintiff was also having remedy, if any injury was caused to him under this provision, but he has neither preferred any appeal or revision and nor challenged the scheme in the present case, rather he has brought the suit without challenging the scheme. Accordingly, learned lower court has rightly appreciated and evaluated the material evidence brought by both the parties. In view of above discussion and evidence, it is clear that the law referred by the learned counsel for the appellant in Pritam Singh vs. Executive Engineer, Punjab State Tubewell Corporation Ltd, Abohar and others 2002(3) Recent Civil Reports 43 and Kunhammad v. Ahamad Haji 2001(2) Recent Civil Reports 33 neither covers to the matter in controversy and nor applicable to the facts and evidence on record, whereas, on the other hand, the law referred by learned counsel for the respondents in Brij Lal vs. State of Punjab 1985 RRR 76, Civil Writ no. 1908 of 1973 Kartar Singh vs. The Superintending Canal Officer, Jagar Singh vs. Superintending Canal Officer and others 1972 P.L.J. 147, Malkiat Singh vs. Bachittar Singh and others 1998(1) PLJ 669 fully covers to the stand of the respondents. Due to these reasons, learned lower court

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has rightly appreciated the legal position and found that the Khal has only been made Pakka one, which was previously in existence. Consequently, plaintiff has failed to establish his stand with any cogent and convincing evidence on record, therefore, he is not entitled for any relief of mandatory injunction as sought by him. Resultantly, findings on issue no.1 are found to be well reasoned and legal, which is hereby affirmed.

Learned lower court also given the observation that suit of the plaintiff is not maintainable in the present form, because all the co- sharers have not been impleaded as party and no evidence has been led by the parties. After hearing their respective submissions and perusal of record revealed the fact that learned lower court has rightly held the fact that the suit is not maintainable, because other co-sharers who were necessary parties have not been impleaded by the plaintiff. As such, findings on Issues no.2 to 4 are also on the basis of legal reasoning given by learned lower court are hereby upheld.”

It was also not the pleaded or argued case on behalf of the plaintiff-appellant that private defendants were having any other separate or independent watercourse for irrigating their land. Watercourse in question was carved out by the Canal Authorities, in accordance with the provisions of law contained in Northern Canal and Drainage Act, 1873. Learned counsel for the appellant also could not point out as to how and in what manner any relevant provision of law was violated by the Canal Authorities. Under these circumstances, no fault can be found with the impugned judgments and the same deserve to be upheld, for this reason also.

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the

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impugned judgments passed by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a 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 law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. 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 present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

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

11.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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