

R.S.A. No. 3665 of 2017 (O&M)

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

R.S.A. No. 3665 of 2017 (O&M)

Date of Decision:30.11.2017

Krishan Kumar Sihag and others

.....Appellants

Versus

Dulla Ram and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sunny Bhardwaj, Advocate for
Mr. J.K. Sehrawat, Advocate
for the appellants.

AVNEESH JHINGAN, J.

The present regular second appeal is at the behest of defendants No. 6,8 to 12 being aggrieved of the concurrent judgments and decrees passed by the learned Courts below decreeing the suit for permanent injunction filed by the plaintiffs.

The parties for the sake of convenience are being referred to as per their status in the original suit.

The plaintiffs preferred a suit for permanent injunction to the effect that defendants No. 1 to 5 be restrained from digging and constructing water works in Khewat No. 922 min, Khatauni No.1139 in Khasra No. 118//4-7 situated at village Chuli Bagriyan. A direction was sought that defendants No. 4 to 12 be directed to remove the tubewells installed in Khewat No. 922 min, Khatauni No.1139, from Killa No. 118/3, 118/7, 118/8, 118/9, 118/14 as these tubewells pump out most of the water from the water works which is meant for drinking.

The facts as averred by the plaintiffs are that they are residents

of Village Chuli Bagariyan, Tehsil Adampur, District Hisar. Water works was installed in the said village by defendants No. 1 to 5. Defendants No. 6 to 12 installed 16 tubewells in Khewat No. 922 min, killa numbers as mentioned in the suit. It was averred that the said tubewells are without legal sanction. The villagers at large are facing water problem as most of the water is pumped out of the tubewells and the drinking water supply to the village is reduced. It was averred that the Gram Panchayat and BDPO passed a resolution to construct a new water course adjoining the old one. It was alleged that the said resolution was illegal and without sanction. Hence, the suit was filed.

Upon notice, defendants No. 1 to 3 filed a joint written statement. Defendants No. 6, 8 to 12 filed their joint written statement raising various preliminary objections and on merits it was pleaded that there is no scarcity of water in the village and that the tubewells have been legally installed as per law.

Learned trial Court framed the following issues:

1. Whether the defendants No.1 to 5 can be restrained from digging and constructing water works in the suit property and whether defendants No. 4 to 12 can be directed to remove the tubewells installed in Khewat No. 922 min, Khatauni No. 1139 from killa No. 118/3, 118/7, 118/8, 118/9, 118/14 situated at village Chulibagriyan as per jamabandi of the year 2006-07?OPP
2. Whether the villagers at large are suffering great inconvenience, scarcity and hardship due to short supply of drinking water? OPP
3. Whether plaintiffs have no locus standi to file the present suit? OPD
4. Whether plaintiffs have no cause of action to file the

present suit? OPD

5. Whether plaintiffs are estopped from filing the present suit by their own act and conduct? OPD
6. Whether the plaintiffs have not come to the Court with clean hands/ OPD
7. Whether suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties?OPD
8. Whether suit of the plaintiff is false, frivolous and vexatious?OPD
9. Whether suit of the plaintiff is bad on account of non-serving of notice under Section 80 CPC? OPD
10. Relief.

In order to support their suit, plaintiff-Dulla Ram himself deposed as PW1 and Hari Singh appeared as PW2. Application moved in various forum and their postal receipts were exhibited as Ex.P1 to Ex.P6.

In order to rebut the suit, the defendants examined Kamal Kumar Jain SDE as DW1 and defendant No. 10 appeared as DW2. Resolution, electricity bills, receipt of payment of electricity bills and details of works etc, were exhibited as Ex.D1 to D8.

Learned trial Court after appreciating the facts of the case and on considering the evidence produced, decided Issue No.1 partly being infructuous and partly in favour of the plaintiffs. Issue No.2 was decided in favour of plaintiffs. Issue No.3 and 4 were decided against the defendants. Issues No. 5 to 9 were not pressed. The net result was that vide judgment and decree dated 25.7.2013, it was held that since the water works have been constructed, the suit to that extent stands disposed of as infructuous. Further, defendants No. 6 and 8 to 12 were directed to remove their tubewells from the suit land as these were installed without lawful permission.

Being aggrieved of the judgment and decree of trial Court, the first appeal was filed. Learned Additional District Judge, Hisar, vide judgment and decree dated 8.5.2017 dismissed the appeal. Hence, the present regular second appeal.

In the present appeal though six substantial questions of law were framed, but the counsel at the time of arguments instead of addressing arguments on questions of law framed, only raised one issue that the tubewells were legally installed with the consent of Gram Panchayat and after taking permission.

No other issue was raised.

It would be important to note at this stage that Kamal Kumar Jain SDE who appeared as DW1 and filed his affidavit Ex.DW1/A, admitted that as per the Log Book, the water is being supplied on alternative day. He also admitted that outside the boundary of water works lot of tubewells have been installed. Madan Lal, defendant No.10, has admitted that he had installed tubewells near the land of water works upon the village land with the consent of the Panchayat though he admitted that there is no written consent.

The plaintiffs Dulla Ram and Hari Singh appeared as PW1 and PW2 respectively, supported the plaint. In their cross-examinations they stated that villagers had installed illegally tubewells in collusion with the Panchayat.

From the above discussed evidence, it was proved that there were tubewells outside the boundary wall of the water works. It is further evident that there is a scarcity of drinking water as DW1 himself admitted that water is being supply on alternative day.

Two aspects are required to be considered firstly that these tubewells had been installed legally after obtaining due permission or not. Defendants though stated that the tubewells had been installed with the consent of the Panchayat and were legal. But defendant No. 10 admitted that there was no written consent in this regard.

Even during the argument of the present appeal, the counsel was specifically asked if he had some written permission, he candidly stated that there is no written consent or permission with them.

From this, it is evident that the tubewells installed are illegal.

The second aspect to be considered is "whether these tubewells are on village land or on a private property?".

The defendants had not produced even an iota of evidence to suggest that the land was a private property. Rather defendants No. 10 admitted that the tubewells are on village land. In such circumstance, the defendants have no right to make any grievance regarding direction of removal of these illegal tubewells.

The plaintiffs had duly proved that there was shortage of supply of drinking water. The scarcity of water is result of the illegal tubewells having been bored adjoining the water works as a result of which the water meant for all the villagers is pumped out by the defendants. It is an easy way found by the defendants that on a water strip marked for water works, the said source of water had been illegally tapped plunging the entire village into water scarcity.

In such circumstance, no fault can be found in the judgments and decrees passed by learned Courts below.

No other argument was raised.

Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any substance, thus it must fail.

Resultantly, the instant Regular Second Appeal is dismissed, however, with no order as to costs.

30.11.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No