

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

115

RSA No.5551 of 2017 (O & M)  
Date of Decision:28.11.2017

Bakshish Singh and another

...Appellants

Versus

Harinder Singh and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. D.S. Gurna, Advocate  
for the appellants.

**ANIL KSHETARPAL, J.(Oral)**

**CM No.14675-C-2017**

For the reasons stated in the application, which is duly supported by an affidavit, delay of 408 days in re-filing the appeal is condoned.

Application is allowed.

**CM No.14677-C-2017**

For the reasons stated in the application, which is duly supported by an affidavit, delay of 11 days in filing the appeal is condoned.

Application is allowed.

**CM No.14676-C-2017**

Allowed as prayed for.

**Main Case**

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Decreeing the suit filed by the plaintiffs for mandatory injunction directed the defendants to restore the mud, soil and earth near the eastern side bank (corner) of plaintiffs agricultural land.

Plaintiffs and defendants are owners of the adjoining land. Plaintiffs filed a suit claiming that the defendants are carrying out mining by removing soil, mud and earth, which has resulted into removal of lateral support of the earth to the paril of the plaintiff.

Learned trial Court after appreciating the evidence available on the file, decreed the suit filed by the plaintiffs.

Defendants filed first appeal. In the grounds of appeal, it was pleaded as under:-

*“7. That the Ld. Trial Court have also failed to appreciate the fact that the digging of land was not a job of a day of two but was a job of not once but year or years and the respondent/plaintiff did not raise any objection during the digging of the land to the depth of 12'-14' as has been alleged in the suit. The plaintiff/respondent decided to remain silent for such a long period and let the appellants/defendants dig the land and remove the earth.*

*8. That the Ld. Court have also ignored the fact that the appellants/defendants have to spend lacs of rupees in filling up the soil as has been ordered by the court and further that the same will amount to a punishment to the appellants/defendants and that too for no fault of the appellants/defendant but that of respondents/plaintiffs, who intentionally kept mum during the digging the land and removing of the earth from the land in question. Moreover, the*

*appellants/defendants have leveled their own fields and have not done anything illegal.”*

Learned First Appellate Court also after re-appreciating the evidence available on the file, dismissed the appeal with slight modification directing the defendants to construct two walls also.

I have heard learned counsel for the appellants and with his able assistance gone through the judgments passed by both the Courts below.

Learned counsel for the appellants has tried to impress upon this Court that it was due to river action that there was a difference of 12 feet between the land of the plaintiffs and defendants which were adjoining. However, the arguments of learned counsel cannot be accepted. Due to river action, the difference in level can only be one or two feet and not 12 feet. It has been found by the Courts that defendants have carried out digging to the extent of 12 to 14 feet.

Still further, a reading of the grounds of appeal filed before the learned First Appellate Court shows that the defendants have admitted that they had removed mud, earth and other material continuously over the years.

In these circumstances, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Hence, this regular second appeal is dismissed.

28.11.2017  
*sheetal*

**(ANIL KSHETARPAL)**  
**JUDGE**