

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

**RSA-2215-2011 (O&M)
Date of decision : 3.4.2018**

Lila and others

.....Appellants.

Versus

Nanu Ram and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.K.Agnihotri, Advocate for the appellants.

Mr. Sandeep Goyal, Advocate for the respondents.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Appellants are aggrieved by the judgment dated 31.1.2011 passed by learned Additional District Judge, Karnal affirming the judgment and decree dated 31.07.2008 passed by learned Additional Civil Judge (Junior Division), Karnal whereby suit filed by the plaintiffs was dismissed with costs.

Plaintiffs have filed a suit for permanent and mandatory injunction directing the defendants to remove the earth from Killa No. 24/2 and further from interfering or dismantling and any type of obstruction in water course for smooth running of water in khal from the common well to the fields of plaintiffs with consequential relief of mandatory injunction directing the defendants to remove all obstruction and obstacles and form khal and not to put any hindrance in the water course i.e. khal, as detailed in *Sizra-aks, site plan and Shartwaj-ul-urj*.

The case of the plaintiffs before the trial Court was that there is *one cammi* (common well) in Killa No. 20 bearing Khatoni No. 2333 rectan. No. 246. The said well is used for irrigation purposes by all the co-sharers as shown in *ak-sizra*. As per the *shartwaj-ul-urj*, all the co-sharers have a right to irrigate their fields from this well without any interruption and obstruction from any co-sharer. It was further stated that the water course runs from North to South i.e., Killa line of Killa No. 16 & 20 and then it turns to Western Side on Killa line between Killa No. 16 & 25 and then Killa line of Killa No. 17, 24/2 and 24/1. The well is being used by the co-sharers from the time of consolidation and settlement. Plaintiffs have got the right of easement by way of prescription. Plaintiffs have further claimed that presently they have installed a tubewell in Killa No. 25 and are using its water for irrigation. On other hand, defendants took the stand that plaintiff No. 4-Kala is not a co-sharer in Khewat No. 1017 and the *cammi* (common well) in *rectangle No. 246 khasra No. 26* is not in use and there is no well in existence for the last so many years. Therefore, all the co-sharers have installed their own tubewell for cultivation. It was denied that plaintiffs are drawing water from this well to irrigate the field. The resistance of water course as alleged was also denied.

From the pleadings following issues were framed: -

- i) whether the plaintiffs is entitled to a decree for permanent injunction restraining the defendants from removing the earth from Killa No. 24/2 and further from interfere and dismantling and any type of obstruction in water course for smooth running of water in khal from the common well to the fields of plaintiff, if yes to what effect? OPP.

- ii) If issue No. 1 is decided in favour of the plaintiffs, whether the plaintiffs is further entitled with a consequential relief of mandatory injunction directing the defendants to remove all the obstruction and obstacles and from khaal and not to put any hindrance in water course i.e. khaal, detailed in Sizra-Aks, if yes to what effect? OPP.
- iii) whether the suit of plaintiffs is not maintainable in the present form? OPD
- iv) Whether the suit of plaintiff is bad for misjoinder and non-joinder of proper parties? OPD
- v) Whether the plaintiffs have no locus-standi to file and maintain the suit? OPD
- vi) Relief.

The trial Court after examining the evidence of both the parties came to the conclusion that as per *Shart-wazib-ul-urz*, the co-sharers could take the water and for this purpose, they could construct the water course on the killa line of the co-sharers. Learned trial Court recorded the finding that all the co-sharers have now installed separate tubewells and that plaintiffs are not the co-sharer in the particular Khewat as referred to by them. Therefore, they cannot claim the water course in Killa No. 24/2.

Heard.

After going through the judgments of both the Courts below and examining the record, this Court is of the view that at the first instance, findings have been recorded that though at the time of settlement (*cammi common well*) was in existence but now with the changed circumstances, the well is not in existence and has become redundant. Plaintiffs themselves have stated that they have installed tubewell in Killa No. 25 and are using its water which itself shows that plaintiffs are not drawing water from the said well, that is why they have installed their own tubewell to irrigate their land.

Moreover, finding of facts have been recorded that plaintiffs are not the co-sharers in Killa No. 24/2. Even as per the *Shartwaj-ul-urj*, they can made a water course on the killa line of the joint holding of the co-sharers and not from the other land.

There are concurrent findings of facts recorded by both the Courts below have been recorded and no law point is involved in the present appeal. I do not find any ground to interfere in the judgments of both the Courts below.

Dismissed.

Since, the main appeal is dismissed, the misc. application pending, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

3.4.2018
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No