

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106

RSA No.2503 of 2016
Date of decision: 04.07.2018

Suresh and another

..... Appellants

Versus

The Executive Engineer, Irrigation Department
Water Works, Rai Division, Sonapat and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. S.S. Khurana, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-appellants are in the regular second appeal against the judgment passed by the learned First Appellate Court dismissing the suit filed by the plaintiffs seeking declaration and relief of recovery of damages.

Plaintiffs-appellants claimed that they are cultivating 15 acres of land partially as owners and partially after taking it on rent. For supply of water, there was a pucca khal (drainage) which was demolished by Joginder Singh and Jagminder Singh. On the complaint made, FIR was got registered by the authorities. The compensation has been claimed on account of damage to the crop due to shortage of water supply. Learned trial Court decreed the suit by awarding a decree of Rs.60,000/- which has been reversed by the learned First Appellate Court.

This Court has heard learned counsel for the appellants at length and with his able assistance gone through the judgments passed by the Courts below and the provisions of the Haryana Canal and Drainage Act, 1974. In the considered opinion of this Court, no relief can be granted in the present

appeal to the appellants for two reasons:-

1. Admittedly, persons who demolished the drainage i.e. Joginder Singh and Jagminder Singh have not been impleaded as respondents.

2. In view of provisions of Section 24 and Section 25 of the Haryana Canal and Drainage Act, 1974, the appellants were required to approach the authorities under the Act for not only restoration of the water course, but also for damages and penalty. Section 24 and 25 of the Act are extracted as under:-

“24. Restoration of demolished or altered etc. watercourses -

(1) If a person demolishes, alters, enlarges or obstructs a watercourse or a temporary watercourse or causes any damage thereto, any person affected thereby may apply to the Sub-Divisional Canal Officer for directing the restoration of the same to its original condition.

(2) On receiving an application under sub-section (1) the Sub-Divisional Canal Officer may after making such enquiry as he may deem fit, require by a notice in writing served on the person found to be responsible for so demolishing, altering, enlarging, obstructing or causing damage, to restore, at his own cost, the watercourse or temporary watercourse to its original condition within such period not exceeding twenty-one days, as may be specified in the notice:

Provided that in case of a temporary watercourse its restoration shall not be for a period exceeding one year.

(3) If such person fails to the satisfaction of the Sub-Divisional Canal Officer, to restore the watercourse or temporary watercourse to its original condition within the period specified in the notice served on him under sub-section (2) the Sub Divisional Canal Officer may cause the watercourse or temporary watercourse to be restored to its original condition and recover the cost incurred in respect of such restoration from the defaulting person. The Sub-Divisional Canal Officer may order recovery of a sum not exceeding Rs. 500 from the defaulting person by way of penalty. Out of this sum so recovered the Sub-Divisional Canal officer may order any

amount to be paid to the aggrieved person for the damage caused to him. In case the penalty is not paid the same shall be recoverable as arrears of land revenue.

(4) Any person aggrieved by the order of the Sub-Divisional Canal Officer, may prefer an appeal within fifteen days of the passing of such order to the Divisional Canal Officer, whose decision on such appeal shall be final.

(5) Any sum which remains unpaid within a period to be specified for this purpose by the Divisional Canal Officer may be recovered as arrears of land revenue.”

“25. Bar of Jurisdiction of Civil Court. - *Notwithstanding anything contained in this Act or any other law for the time being in force, no Civil Court shall have jurisdiction to entertain or decide any question relating to matters falling under Sections 17 to 24.”*

Still further, from the reading of Section 25, it is apparent that the jurisdiction of the Civil Court is barred to decide any questions relating to any matter falling under Sections 17 to 24.

In view of the aforesaid, this Court is of the considered view that the suit filed by the plaintiffs was mis-conceived. Hence, while upholding the judgment passed by the learned First Appellate Court for entirely different reasons, the appellants are granted liberty to move an application before the appropriate authorities who shall decide the same in accordance with law.

Needless to say that any observations made by the Courts while deciding the suit would not in any way influence the authorities under the Act.

Appeal is disposed of.

**(ANIL KSHETARPAL)
JUDGE**

04.07.2018
Dinesh Bansal

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No