

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

**RSA No. 3182 of 2016 (O&M)**

**Date of decision: 16.05.2018**

**Nanak Singh**

**.....Appellant**

**Vs.**

**Didar Singh and others**

**.....Respondents**

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,  
ACTING CHIEF JUSTICE**

Present: Mr. Amandeep Singh Manaise, Advocate the appellant.

**Ajay Kumar Mittal, (ACJ).**

1. Having remained unsuccessful before both the Courts below, the appellant-plaintiff-Nanak Singh has approached this Court by way of instant Regular Second Appeal challenging the judgment and decree dated 08.09.2015 passed by the Additional District Judge, Gurdaspur, affirming that of the Civil Judge Junior Division, Gurdaspur whereby the suit of the plaintiff for permanent injunction has been dismissed.

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-plaintiff Nanak Singh filed a suit for permanent injunction restraining the defendants/respondents from interfering in any manner in the peaceful, exclusive cultivating possession of the plaintiff over the land measuring 7 Kanals 1 Marla by forcibly and illegally carving out any water channel, through the suit land

comprised in Khewat No.1, Khatoni No.1, Rect. No.17, Killa No. 18(7-1) situated in Village Thakur Sandhu, Tehsil and District Gurdaspur as per jamabandi for the year 2006-07. It was pleaded by the plaintiff that he was in actual, physical and cultivating possession over the suit land and the defendants had no right, title or interest over the same. Upon notice, the defendants/respondents appeared and contested the suit by filing written statement. It was pleaded that earlier a water channel was in existence in the suit land, regarding which litigation was contested by the plaintiff up to this Court. The plaintiff lost the case and water channel on the suit land, was ordered to be restored. The appellant filed the present suit against the legal representatives of the persons who were party in the previous litigation. It was stated that a scheme water channel was in existence in the suit land, but it was demolished illegally by the plaintiff. Against this, Joginder Kaur (mother of defendant No.1) moved an application to Sub Divisional Officer, Canal, Madhopur Division for restoration of water channel, which was allowed vide order dated 20.05.2008 and was upheld in appeal by Superintending Engineer, UBDC Circle, Amritsar vide order dated 15.07.2008 and also by this Court in CWP No. 8322 of 2009 vide order dated 01.09.2010.

3. From the pleadings of the parties, the trial Court framed issues and after appreciation of oral as well as documentary evidence led by the parties, came to the conclusion that the water channel in the suit land had been ordered to be restored by the canals authorities and by this Court and, therefore, the present suit had been filed to create hindrance in the execution of the order passed by the canal authorities. Accordingly, the trial Court vide judgment and decree dated 03.12.2013 dismissed the suit of the plaintiff. Feeling aggrieved, the plaintiff-appellant took the matter in appeal and the

lower Appellate Court finding no illegality or informity in the findings of the trial Court dismissed the appeal vide judgment and decree dated 08.09.2015. Hence the instant regular second appeal by the appellants claiming the following substantial questions of law:-

“a). Whether the findings of the Courts below are based upon misleading of evidence?

b). Whether the impugned judgments and decrees are wrong, illegal, unjust and perverse?”

3. I have heard learned counsel for the appellant and have gone through the judgments and decrees with his assistance.

4. Learned counsel for the appellant has made an attempt to persuade this Court to re-appreciate the evidence led by the parties before the trial Court to differ with the opinion of the Courts below which is not permissible in view of the provisions of Section 100 of the Code of Civil Procedure. The Courts below had recorded a concurrent finding of fact that actually there was existing a schemee Khal in Rect. No.17 Killa No. 18 on its northern side boundary which was leading to the land of Karnail Singh through the land of Joginder Kaur and Piara Singh etc. Joginder Kaur, mother of defendant No.1 moved an application before Sub Divisional Officer, Canal, Madhopur Division, UBDC, Gurdaspur for restoration of the Khal against appellant-Nanak Singh stating that one khal which was running for the last 40-50 years for the canal irrigation purposes was demolished by Nanak Singh and due to which the cultivation of all the respective lands had been stopped. After the proper spot inspection by the Sub Divisional Officer, Canal, Madhopur Division, UBDC, Gurdaspur, order for restoration of the Khal on 20.05.2008 was passed. The appeal filed by the appellant-plaintiff Nanak Singh was dismissed by the Superintending Engineer, UBDC vide

order dated 15.07.2008. Even the writ petition filed before this Court by the appellant was also dismissed vide order dated 01.09.2010. Thus, it was concluded by the lower Appellate Court that the respondents-defendants had fully proved their case by leading cogent and reliable evidence on record.

The relevant findings recorded by the lower Appellate Court read thus:-

“After hearing the respective contentions of both the sides and having gone through the oral as well as documentary evidences on record, I have of this considerable view that the contentions raised by the learned counsel for the appellant/plaintiff found to be without any merit. The learned counsel for the appellant/plaintiff vehemently contended that the appellant/plaintiff is in cultivating possession over the suit land measuring 7 kanals 1 marla and the respondent/defendant be restrained from interfering forcibly and illegally through the land in suit. From the perusal of record it come into my notice that the present suit filed by the appellant/plaintiff while suppressing material facts from the court by stating that the defendants/respondents are utter stranger to the suit land, but the fact of the matter is that appellant/plaintiff has not approached the court with clean hands by filing the present suit. Actually there was existing a scheme khal in Rect. No.17 killa No.18 on its northern eastern boundary which was leading to the land of Karnail Singh through the land of Joginder Kaur and Piara Singh etc, since the holding of consolidation which fully depict in the revenue record also. In this regard the said Joginder Kaur who is the mother of defendant No.1 Didar Singh moved an application before the Sub Divisional Officer Canal Madhopur Division UBDC, Gurdaspur for the restoration of the Khal. In that application which was moved by namely Rattan Singh, Jaswant Singh, Atma Singh, Joginder Kaur, Satnam Singh and Sukhwinder Singh against the appellant/plaintiff Nanak Singh in which it was mentioned that one Khal which was running from the last 40/50 years for the canal irrigation purposes was demolished by the present appellant/plaintiff Nanak Singh and

due to which the cultivation of all the respective lands had been stopped. After the proper spot inspection by the Sub Divisional Officer Canal Madhopur Division, UBDC, Gurdaspur passed the order for the restoration of the khal on dated 20.05.2008 vide Ex.D-2 for restoration of scheme khal on northern eastern boundary of the said land was passed. Against that order Nanak Singh present appellant/plaintiff filed an appeal before the Superintending Engineer, UBDC Circle, Amritsar which was dismissed vide order dated 15.07.2008 vide Ex. D-3. Afterwards the appellant/plaintiff again filed the Civil Writ Petition No. 8322 of 2009 before the Hon'ble Punjab & Haryana High Court against both the orders vide dated 30.05.2008 and 17.05.2008. The same was dismissed by Hon'ble Mr. Justice Rajive Bhalla, Judge, Punjab & Haryana High Court, Chandigarh vide order dated 01.09.2010 Ex.D-1 with the observations that, "The Divisional Canal Officer has recorded a firm finding of fact, that the water course 'ABCDEF' has been demolished at point 'BDE'. The argument that the water course 'ABCDEF' is neither a sanctioned watercourse nor a watercourse excavated by prescription or agreement cannot be accepted as the petitioner is himself drawing water from this watercourse. As the alignment of the sanctioned water course is defective, the private respondents' fields cannot be irrigated from the sanctioned water course. Thus, the findings recorded by the canal authorities do not call for any interference; the writ petition is dismissed with no order as to costs." In the present case all these material facts have been suppressed by the appellant/plaintiff in the present case. Thus, the contention raised by learned counsel for the appellant/plaintiff regard the interference of the respondent/defendant upon the suit land is found to be without any merit. Further more, learned counsel for the appellant/plaintiff contended that the order of Hon'ble High Court is not related to the present suit in question as that order was not between the same parties, but from the perusal of Ex. D-1 it has fully established this fact that the matter discussed in the order dated 01.09.2010 passed by the Hon'ble Punjab &

Haryana High Court, Chandigarh is based on same cause of action which has been filed by the present appellant/plaintiff in the present case. It is also pertinent to mention here that the said Joginder Kaur is the mother of the defendant No.1 who had moved the application before the Sub Divisional Officer Canal for restoration of the khal is very much depicted in the orders of Ex.D-1, Ex. D-2, Ex. D-3. The plea taken by the appellant/plaintiff that the present respondents/defendants have no concern with that orders or suit land is also found to be without any merit as with the change of name of the parties' cause of action nature is not going to be changed by concealing material facts from the court. Thus, this contention of the learned counsel for the appellant/plaintiff is also found to be without any merit. Moreover, the present suit has also seems to be frustrated due to lack of cause of action on the part of appellant/plaintiff. From the perusal of record Ex. P-4 fully shows that the orders vide Ex. P-1, Ex. P-2, Ex. P-3 have been fully implemented by the Sub Divisional Officer Sathiali on dated 13.06.2011 in the presence of police/government officials and members of Gram Panchayat. It is also pertinent to mention here that at the time of implementation of the order inspite of full information Nanak Singh had got himself absented from the spot and in the absence of any appeal/stay order regarding any objection, the khal was re-instated by the concerned authorities in amicable way. Thus, the respondents/defendants have fully proved their case by leading the cogent and convincing evidence on record. Therefore, the present appeal is found to be without meritorious, liable to be dismissed.”

No misreading of evidence on record by the Courts below had been shown by the learned counsel warranting interference by this Court in the regular second appeal.

5. No question of law, much less a substantial question of law arises in this appeal for consideration of this Court.

6. In view of the above, since the appeal has been dismissed on merits, therefore, no further orders are required to be passed in the application for condonation of delay in filing the appeal.

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| <b>May 16, 2018</b>       | <b>(Ajay Kumar Mittal)</b>  |
| <b>‘gs’</b>               | <b>Acting Chief Justice</b> |
| Whether speaking/reasoned | <b>Yes</b>                  |
| Whether reportable        | <b>Yes</b>                  |