

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

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**CM-10804-C-2016 in/and
RSA-4198-2016 (O&M)
Date of Decision : 28.08.2018**

Ajit Singh and another

..... Appellants

Versus

Mangat and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Akshay Jindal, Advocate
for the applicants-appellants.

AJAY TEWARI, J. (Oral)

CM-10804-C-2016

For the reasons recorded, the application is allowed. Delay of 3 days in filing the appeal is condoned.

RSA-4198-2016 (O&M)

This appeal has been filed against the concurrent judgments of the courts below dismissing a suit for permanent injunction filed by the appellants.

The case of the appellants was that the respondents had started working of Hadda Rori (skinning of dead animals) and in the year 2003 had started the work of Tannery which was causing pollution.

The case of the respondents on the other hand was that they had been doing the work since the year 1980; that they had taken reasonable

precautions to make sure that the work was being done in a safe and scientific manner – by constructing boundary wall of 5½ feet in height and 20 feet high chimney; that there were two similar units which had also been authorized by the Panchayat in the same vicinity and that another villager who had filed an identical suit in the year 2003 did not succeed.

Both the courts below came to the finding that the assertions made by the respondents were correct and dismissed the suit. Hence, the present appeal.

Counsel for the appellants has argued that the courts below erred in placing the onus on the appellants. As per him, in a case of nuisance, it is for the defendants-respondents to prove that they are not creating a nuisance.

In my opinion, the argument of the counsel for the appellants cannot be accepted. The precautionary principle was enumerated for the first time in the matter of *Rylands vs. Fletcher*, (1868) LR 3 HL 330. In that case the defendants employed independent contractors to construct a reservoir on their land. The contractors found disused mines when digging but failed to seal them properly. They filled the reservoir with water. As a result, water flooded through the mineshafts into the plaintiff's mines on the adjoining property. The plaintiff secured a verdict at Liverpool Assizes. The Court of Exchequer Chamber held the defendant liable and the House of Lords affirmed their decision. The House of Lords laid down that the thing brought onto the land must be something likely to do mischief if it escapes. Further, there must be an escape of the dangerous substance from the land. Further, the requirement is that there must be a non-natural use of the land.

The issue here is whether the work of Hadda Rori can be

termed as 'non-natural use of land' as laid down in the above said judgment. In my opinion, it is a common profession and may in a sense be rather taken to be a healthy profession because otherwise dead bodies of animals would be left to rot.

In the totality of circumstances, I am not persuaded that the findings recorded by the courts below are either based on no evidence or based on such a perverse misreading of evidence so as to justify the interference of this Court in second appeal.

Appeal is dismissed. No costs.

Since the main cases have been decided, the pending civil miscellaneous application, if any, also stands disposed of.

August 28, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No