IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.4462 of 2016 (O&M)
Date of decision:16.05.2018

Jarnail Singh ... Appellant

Vs.

Gurbachan Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sherry K. Singla, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-defendant No.4 is aggrieved of the concurrent findings of facts and law, whereby, suit at the instance of the plaintiff/respondent No.1 seeking permanent injunction qua forcible dispossession in respect of land measuring 36 kanals 11 marlas, has been decreed and the counter claim set by the appellant-defendant seeking restraint order against respondent No.1-plaintiff from causing obstruction in the construction has been dismissed.

Mr. Sherry K. Singla, learned counsel appearing on behalf of the appellant-defendant No.4 submits that plaintiff instituted the suit claiming aforementioned relief on the premise that he had been planting the cotton crop and irrigating the land through a water channel which was connected with Moga No.62833/R Branch Ram Tirath Jagga and the water turn was fixed by Canal Department. The plaintiff had been taking water

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turn at Nakka No.275/25, 292/5 and giving the water turn at Nakka No.275/232 and 229/4. A water channel was duly sanctioned through the partition proceedings and had been in existence since long. A water pipe was also running under the said khal which was installed by him by spending a huge amount and the same was being used for the purpose of irrigation of the land. The defendants were having grudge with the plaintiff and they threatened him to interfere into the suit property, necessity arose to file the suit.

The appellant-defendant No.4 contested the suit by raising plea of maintainability and locus standi. It was alleged that land of plaintiff was situated in Moga and turn of water was in respect of land comprised in khasra no.275//23 and 292//4 and not of 229/4 as stated in the plaint. The counter claim in this regard was also filed restraining the plaintiff from interfering into the demarcation proceedings qua land measuring 27 kanals situated at village, ibid as the plaintiff was desperate person and quite stranger to the suit land, therefore, he had no right or interest for obstructing the demarcation process.

It was next contended that both the parties led evidence. The defendants brought on record Ex.D1 to Ex.D6. The photocopy of demarcation application dated 20.03.2014 has also been placed on record as Mark DD. All the aforementioned facts and documents have been ignored by the trial Court and the Lower Appellate Court being the last Court of facts and law in granting the injunction and also swayed away by the alleged cross-examination of the plaintiff, though the same was against the

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sanctioned water channel and therefore, it could not have been read against appellant-defendant No.4 and thus, urges this Court for setting aside the findings under challenge.

I have heard the learned counsel for appellant/defendant No.4, appraised the judgments and decrees of the Courts below and of the view that there is no illegality and perversity in the findings arrived at by the Courts below, for, the Lower Appellate Court being the last Court of facts and law appreciated the evidence threadbare. The trial Court found that water course as projected by the plaintiff was admitted by appellant/defendant No.4 in cross-examination, i.e., point A to B as shown in map Ex.P1, much less irrigation of land through the said water channel. The existence of the water channel has not been denied by defendant No.4/appellant. To a specific question in cross-examination, appellant/defendant No.4 admitted that he brought 4000 bricks for making it a pakka khal. It is in that background, necessity arose to seek injunction and appellant/defendant No.4 in cross-examination belied the stand taken in the written statement and spilled the beans entitling respondent No.1/plaintiff to seek injunction.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees of the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

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Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

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Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No

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