

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 5969 of 2016(o&m)
Date of Decision:20.7.2018

Ram Narayan and others

---Appellants

vs.

Prabhu and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Atul Yadav, Advocate
for the appellants

Rekha Mittal, J.

CM No. 15723-C of 2016

Prayer in this application is for condoning delay of 46 days in filing the appeal.

In view of averments made in the application and arguments advanced by counsel for the applicants, application is allowed and delay of 46 days in filing the appeal stands condoned.

Disposed of accordingly.

RSA No. 5969 of 2016

Challenge in the present appeal has been directed against the judgment and decree dated 11.3.2016 passed by the Additional District Judge, Gurgaon whereby the judgment and decree dated 28.2.2014 passed

by the Civil Judge (Junior Division) Gurgaon have been set aside and suit filed by the appellants/plaintiffs seeking permanent/mandatory injunction has been dismissed.

The appellants-plaintiffs sought permanent injunction restraining the respondents-defendants from encroaching upon any land of pond or public path or public land. Further prayer has been made for issuance of direction to the respondents to properly channelize flow of water from their fields so that it does not enter houses of the plaintiffs or of other villagers and thereby causing trouble to the villagers on account of spreading of diseases.

After arguing for sometime, counsel for the appellants would fairly inform that he does not press the suit qua relief of injunction restraining the respondents from encroaching upon land of pond, public path or any other public land. This apart, though the appellants have sought permanent injunction restraining the respondents from encroaching upon land but they themselves have admitted that the respondents are in possession of the land in respect of which permanent injunction has been sought to be obtained. Counsel for the appellants has failed to advance any arguments much less meaningful as to how the civil court has jurisdiction to issue mandatory injunction directing the respondents to vacate the land in their possession because even if respondents-defendants have illegally encroached upon land falling within the definition of *Shamlat Deh* under Section 2(g) of the Punjab Village Common Lands Act, 1961 (applicable to the State of Haryana) (in short “the Act”), remedy available to the appellants is to seek their eviction by invoking the relevant provisions of the Act.

Counsel for the appellants would urge that the trial court rightly decreed suit of the plaintiffs that the respondents-defendants have an obligation in law to channelize the water flowing from their fields or they cannot allow the water to enter houses of villagers and cause trouble to them. It is further argued that the appellants sent certain communication to various authorities for redressal of their grievance with regard to illegal discharge of water from fields of the respondents causing spread of diseases.

The Court in Appeal has noticed that the appellants failed to lead cogent evidence as to how the water used by the respondents has damaged their walls or foundation of the houses. It is held that besides self serving statement of the plaintiffs, there is no report of any building expert or technical expert to prove as to how water released by the defendants is causing damage to the plaintiffs' property. There is no evidence of any government agency or local panchayat to prove that alleged unchannelized discharge of water is becoming health hazard.

Counsel for the appellants has failed to point out any materials on record to substantiate their plea in this regard. It appears to the court that as the appellants were aggrieved with the alleged encroachment made by the respondents, they have sought intervention of the court but actually failed to substantiate their claim that any water is illegally being discharged by the respondents much less the same has caused damage to properties of the appellants or otherwise. In this view of the matter, I do not find an error much less illegality in findings recorded by the Court in Appeal, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly
dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

20.7.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No