

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

105

RSA No.6880 of 2016 (O & M)  
Date of Decision:10.07.2018

Kusum Devi and another

...Appellants

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. R.S. Mamli, Advocate  
for the appellants.

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**ANIL KSHETARPAL, J.(Oral)**

**CM-17884-C-2016**

For the reasons stated in the application, which is duly supported by an affidavit, delay of 641 days in re-filing the appeal is condoned.

Application is allowed.

**CM-17885-C-2016**

Application for impleadment of legal heirs is allowed.

**CM-17886-C-2016**

Application under Order 44 Rule 1 of the Code of Civil Procedure for permitting to file the appeal as an indigent person is also allowed.

**Main Case**

Plaintiffs-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

No doubt, it is an unfortunate case where the plaintiffs lost their two sons when they went in the well dug for supply of water for repairing a fan installed deep in the well. The case set up by the plaintiffs is that they had taken 4 acres of land on lease from defendant No.3 - Gram Panchayat for the year 2008-2009. It is further pleaded that it was the duty of the Gram Panchayat to get tubewell motor and fan repaired. However, since defendant No.3 did not perform its part of the contract, therefore, in order to repair the tubewell motor and fan themselves, initially Mukesh Kumar, who was aged about 21 years went inside the well. There was poisonous gas accumulated in the well and hence he did not return then another son of the plaintiffs Suresh Kumar also went inside the well he also did not return. Plaintiffs filed a suit claiming damages on account of death of these two sons.

Both the Courts after examining the evidence have found that defendant No.3 cannot fastened with the liability as the lease deed only provided that Gram Panchayat would provide necessary instruments like fan, engine, motor etc. for running the tubewell.

Courts have further found that the plaintiffs have not led any evidence to prove that these instruments were not provided. It is the case of the plaintiffs that the fan, which was installed deep inside the well was not working and, therefore, in order to repair that and find out reason why it was not working two sons of the plaintiffs went inside the tubewell. Apart from the reasons given by the learned Courts below, this Court is of the opinion that the suit filed by the plaintiffs cannot be decreed for two additional reasons:-

before going inside the well took necessary precautions;

(ii) even if the argument of learned counsel for the appellants that it was the duty of the Gram Panchayat to repair and hand over the instruments in running condition is accepted, still sons of the plaintiffs or the plaintiffs could at the most sue the Gram Panchayat claiming damages for violation of the contract. However, there was no justification for going inside a deep well, which was likely to have poisonous gas. This fact is known to everybody in the farmer community.

In view thereof, there is no scope for interference.

Regular second appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

10.07.2018  
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**(ANIL KSHETARPAL)**  
**JUDGE**

Whether Speaking/Reasoned: Yes/No  
Whether Reportable : Yes/No