

102

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

**RSA No.3673 of 2017 (O&M)
Date of Decision: 05.07.2018**

Sucha Singh

.....Appellant

Vs

Pargan Singh and others

...Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Abhay Kumar Sharma, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

CM No.8913-C of 2017

For the reasons mentioned in the application, delay of
117 days in re-filing the present appeal is condoned.

Application stands disposed of.

RSA No.3673 of 2017 (O&M)

[1]. Plaintiff/appellant is in Regular Second Appeal in a suit
for permanent injunction which was dismissed concurrently by
the Courts below.

[2]. Plaintiff alleged that he is owner in possession of Chahi
land comprised in Khasra No.187/6-1, 188 min-east/14-13,
208/2/2/4-3 Khata No.199/264. Lots of improvements have been

made by the plaintiff. Defendants are the co-sharers in adjoining land comprised in Khasra No.186, Khata No.223/239 and they have threatened to dig the land and excavate the earth from khasra No.186 so as to diminish value and utility of land owned by the plaintiff. Such an effort of the defendants would make land of the plaintiff uncultivable and would be subject to uncertain loss.

[3]. In the written statement filed by the defendants, the claim regarding ownership of the plaintiff over Khasra No.187, 188, 208 Khata No.199/264 was contested. Defendants pleaded that the level of land of the defendants was higher than that of land of the plaintiff as the water used to flow towards adjoining land, therefore, in order to make level of the land at par with adjoining land, the defendants would make the level at par with the adjoining land by way of removing the earth from the land belonging to the defendants. Levelling of land by the defendants on their own land would not give any right to the plaintiff as the defendants never intended to dig land to that extent so as to cause any damage to the adjoining property of the plaintiff.

[4]. The Courts below have considered the controversy in the light of material evidence on record.

[5]. Plaintiff while appearing as PW-1 has admitted in his

cross-examination that he got the threat approximately six months prior to filing of the suit. He admitted that he did not know the khasra number of his land as well as land of the defendants. The son of defendant No.1 appeared as DW-1. Som Dutt appeared as DW-2, who fully approved the stand taken in the written statement reiterating the fact that defendants did not intend to dig or excavate the suit land more than the level of land of the plaintiff. Digging of land to some extent in order to make the level at par with adjoining land would not be prejudicial to interest of any one including the petitioner.

[6]. The finding of fact has been recorded by the trial Court that the plaintiff has not led any evidence to show apprehension caused by the defendants and the likely damage caused to him on account of intended act of the defendants. Even though the defendants have not produced any evidence to show that the level of their land is higher than that of land of plaintiff, still the plaintiff has no right to interfere in the manner of use of land by the defendants in respect of their own land. The findings of fact recorded by the Courts below are not found to be perverse in any manner, nor the same are found to be suffered with any misreading of evidence.

[7]. In view of above, no substantial question of law worth consideration is involved in the present appeal. The same is

found to be totally devoid of merits and the same is accordingly dismissed.

July 05, 2018

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No