

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

**RSA No.4930 of 2017 (O&M)
Date of Decision:15.02.2018**

Ran Singh (Deceased) through LRs Appellants

Vs.

State of Haryana and others Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Shalender Mohan, Advocate for the appellants.

RAMENDRA JAIN, J. (Oral)

Appellant- plaintiff has assailed judgments and decree of the trial Court dated 24.03.2014 and of the First Appellate Court as well dated 12.09.2017 dismissing his suit and appeal.

Put pithily, respondent No.4 upon an application of respondent No.5 ordered for restoration of a water-course passing through Killa No.142//11 (8-0) at Village Shiswal Tehsil Adampur District Hisar vide order dated 14.01.2011. Appeal and revision filed by the appellant against the said order before respondents No.3 and 2 resulted into dismissal vide order dated 23.02.2011 and 18.05.2011 respectively. Civil Writ Petition No.7528 of 2012 against all the aforesaid orders filed by the appellant was also dismissed by this Court vide order dated 25.04.2012.

Thereafter, the appellant approached Civil Court to declare the aforesaid orders passed by respondents No.1 to 4 as illegal, null and void, without jurisdiction and having no binding effect upon his rights.

The trial Court after holding trial, dismissed the suit vide judgment and decree dated 24.03.2014. First appeal of the appellant was also dismissed by the First Appellate Court vide judgment and decree dated 12.09.2017.

Learned counsel for the appellant contends that both the Courts below have failed to appreciate that respondent No.4 was required to give a specific finding under Section 30-ff of the Haryana Canal and Drainage Act, 1974 (for short, 'the Act') and under Section 24 of the Act (i) as to whether the watercourse in question was sanctioned by law and; (ii) sanctioned by agreement between the parties or was running on the spot having acquired the right of easement. In the absence of any such specific finding, the order of the Canal Authorities Ex.D1 to D3 were liable to be set aside. In support of his arguments, learned counsel for the appellant placed reliance upon judgments of this Court in cases, **Gram Panchayat Lakho Wali v. Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur and others**, 2013(1) PLJ 479; **Sukhdev Singh and another v. Sub Divisional Canal Officer Bani W.S. Sub Division Sirsa and others**, 2001(2) PLJ 457 and **Balbir Singh v. The Divisional Canal Officer and others**, 1983 PLJ 244.

Having given considerable thoughts to submissions made by learned counsel for the appellant, this Court finds the regular second appeal completely devoid of any merit for the reasons to follow:

Perusal of order Ex.D1 passed by respondent No.4 shows that the same is well speaking and reasoned order inasmuch as respondent No.4 has specifically mentioned that the watercourse in question was sanctioned

vide site plan dated 17.05.1988 and warabandi was fixed thereupon vide order dated 06.04.1989. That apart, respondent No.4 also visited the spot and found signs of dismantled water course in question. Since the water course in question falls within Category-I i.e. sanctioned water course, therefore, it does not lie in the mouth of the appellant- plaintiff though water course in question was a sanctioned water course, but since it was never used on the spot for irrigation by respondent No.5, therefore, no order of its restoration could have been passed by the canal authorities.

Further perusal of file of the lower Court record shows that the site plan Ex.D5 qua the water course in question and warabandi Ex.D6 were produced by the respondents. The appellant did not lead any documentary evidence in support of his assertion that the same was never used at spot, therefore, his oral evidence cannot be given any preference and looked into over the documentary evidence led by the respondents.

Admittedly the appellant- plaintiff exhausted his legal remedy before the canal authorities by filing appeal and revision and then approached this Court by way of Civil Revision Petition, but remained unsuccessful. Therefore, he cannot be permitted to re-agitate the same dispute in Civil Court, more particularly, when its jurisdiction is barred under Section 25 of the Act. The facts and circumstances of the **Balbir Singh's case (supra)**, **Sukhdev Singh's case (supra)** and **Gram Panchayat Lakho Wali's case (supra)** referred by learned counsel for the appellant are not identical to the facts of the present case, therefore, no benefit of the same can be given to him.

No question of law much less substantial question of law arises

in this appeal.

I have gone through the impugned judgment and decree of both the Courts below and find no illegality in the same. Therefore, this regular second appeal is dismissed.

February 15, 2018
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(RAMENDRA JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No