

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

RSA-4915-2014(O&M)

Date of decision:-5.2.2019

General Manager, Aqua Power Ltd. Company and another

...Appellants

Versus

Surjit Kaur and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.M.L.Saggar, Senior Advocate with
Ms.Armaan Saggar, Advocate
for the appellants.

Mr.Binderjit Singh, Advocate
for the respondents.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Beant Singh had brought a suit against defendants Punjab State Chandigarh through Chief Secretary, Punjab State; Collector, District Bathinda; General Manager, Aqua Power Limited Company and Aqua Power Limited Company through its duly authorized signatory Mr.Vivek Bakshi seeking recovery of Rs.5,43,245/- as compensation for the

loss caused to his crops standing in 129 kanals 15 marlas of land in village Harnam Singh Wala as per the jamabandi for the year 2000-01. He had claimed interest @ 18% per annum on the said amount.

According to the plaintiff, he and his brothers had a joint *khata* but on the basis of family arrangement, he had been in possession of 129 kanals 15 marlas of land comprised in specific khasra numbers for the purpose of cultivation; that he had grown potato crop in 87 kanals 5 marlas, wheat crop in 36 kanals 10 marlas and jawi crop in land measuring 36 kanals 16 marlas and barseen crop in land measuring 2 kanals 4 marlas, out of the total land of 129 kanals 15 marlas in his possession during HARHI season; that he had spent a substantial amount in purchasing good quality seeds and sprinkling fertilizer besides putting in lot of efforts for tending to his crops; that Bathinda Branch of Sirhind Canal passes adjoining to his land; that in the year 2007, Government of Punjab started work of installation of Hydro Electric Power Project on Bathinda Branch of Sirhind Canal at Sidhana Gharat; that work was entrusted to Aqua Power Ltd. Company (defendant No.4); that such company was expected to raise the level of embankments before installation of the project; that the embankments were required to be strengthened so that they could stop the flow of water, however defendants used sand for raising level of embankments by pressing the same; the defendant No.4 without taking necessary safeguards started flow of water in the

canal, resultantly there was breach in the embankments of the canal and the HARHI 2007 crop growing in the land of plaintiff was seriously damaged; that the Government of Punjab had got a girdawari prepared from the revenue officials to assess the loss to the crops of the affected persons including the plaintiff; that with regard to the plaintiff loss to his crops was assessed at between 76% to 100%. According to the plaintiff that loss was caused to him on account of failure of the defendants to properly execute the work and due to their negligence. The plaintiff contends that he had submitted an application to Tehsildar, Rampura Phul, who had prepared 'Goshwara Miyar Paidavar' i.e. assessment of estimated price of produce of the effected land of plaintiff for HARHI 2007 season. As per the application of the plaintiff though he suffered a loss of Rs.5,43,245/-, the Government of Punjab had granted him relief of Rs.27,644/- only vide cheque dated 16.3.2007 and he had received that payment under protest. The plaintiff served a legal notice upon the defendants before filing of the suit but to no effect, therefore, for redressal of his grievance, the plaintiff knocked at the door of the Court by filing the suit in question.

Notice of the suit was given to defendants, who were duly served. The defendants No.1 and 2 did not appear to offer a contest, as such they were proceeded against ex-parte.

Defendants No.3 and 4 filed separate written statement

contesting the suit contending that no cause of action arose to the plaintiff to bring the suit; that there was no privity of contract between the plaintiff and defendant No.4, therefore suit filed against defendant No.4 is without any basis, though allotment of work of installation of micro hydel project at Sidhana by the Punjab Energy Development Agency (PEDA) with installed capacity of 1.2 MW on B.O.O. basis was admitted contending that the power so produced was to be sold to PSEB; that the existing fall at Balloke was required to be shifted down stream near the fall at Sidhana, therefore there was necessity of raising of canal banks in the reach from Balloke to Sidhana; that utmost care was taken in preparing the specifications/design of raising the banks and other structures, which was so done as per the prevailing practices and standards of structures prepared by the Irrigation Department of Government of Punjab; that the execution of work was done strictly as per the specifications; that the unfortunate incident resulting in breach of canal and damage to crops of plaintiff took place not on account of technical lapse in the forming of the specifications or any shortcoming in the execution of the work but for the reason beyond control of the answering defendants; that the Deputy Commissioner, Bathinda had conducted an inquiry and assessed the loss suffered by land owners to the extent of Rs.37,77,500/- and that amount was deposited by the answering defendants with the Deputy

Commissioner, Bathinda in the form of bank draft and it was disbursed amongst the affected farmers. According to the answering defendants, the plaintiff did not suffer any irreparable loss on account of breach of the canal since the land of the plaintiff is situated far away from the site in question. In the end, those defendants prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether plaintiffs are entitled to recover the sum of Rs.5,43,245/- from the defendants as compensation for the loss/damage caused to his crops by the breach at Sidhana of the Bathinda Branch of the Sirhind Canal in 2007? OPP.
2. Whether the plaintiff is entitled to interest as claimed? OPP.
3. Whether the plaintiffs have no cause of action to file this suit? OPD.
4. Whether the plaintiff is estopped from filing this suit by his own acts and conduct? OPD
5. Relief.

Both the parties led evidence in respect of their claims.

During the course of his evidence, the plaintiff examined

Avtar Singh, Halka Patwari of village Harnam Singh Wala as PW1. The plaintiff got his own statement recorded as PW2 repeating on oath his case as given in his pleadings. However, before the plaintiff could be cross-examined, he expired and his legal representatives were brought on record. Nirmal Singh one of the legal representatives of the plaintiff had got his statement recorded as PW3. The legal representatives of plaintiff further examined Ranjit Singh, Kanungo in the office of Tehsildar, Rampura Phul as PW4, Gurmail Singh, Jr. Assistant, office of the Tehsildar, Rampura Phul as PW5. After tendering some documents, the evidence of the plaintiff stood closed.

On the other hand, the defendants examined Lachhman Dass as DW1 and Hardeep Singh as DW2. With that the evidence of the defendants stood closed.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 in favour of the plaintiff against the defendants, issue No.2 in favour of the plaintiff against the defendants, issue No.3 against the defendants and in favour of the plaintiff and issue No.4 against the defendants and in favour of the plaintiff. Resultantly suit of the plaintiff was decreed and a decree for recovery of Rs.5,15,600/- (after reducing the amount of Rs.27,644/- received by plaintiff) with interest @ 9% per annum from 1.1.2007 till date of decree and 6% per annum from the date of decree till date

of actual realization as compensation/damages for the loss caused to the crops of the plaintiff by the breach of the Bathinda Branch of the Sirhind Canal at villahge Sidhana, which was directly attributable to the acts of the defendants No.3 and 4 was passed in favour of the plaintiff and against the defendants No.3 and 4 vide judgment and decree dated 17.3.2012.

Defendants No.3 and 4 were aggrieved by the said judgment and decree and they had filed an appeal before the Court of District Judge, Bathinda, which was assigned to Additional District Judge (Fast Track Court), Bathinda, who vide judgment and decree dated 12.5.2014 dismissed the appeal.

Still feeling dissatisfied with the judgments and decrees passed by the Courts below, defendants No.3 and 4 had filed the present regular second appeal before this Court, notice of which was issued to the respondents, who appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the appeal.

The Courts below in light of facts and circumstances of the case, on appreciation of the evidence adduced by the parties, by correctly applying the law, had come to the conclusion that the crops standing in 129 kanals 15 marlas of land belonging to plaintiff had been damaged, as a result of being flooded with water on account of

breach in the canal passing nearby. Though the khata had been joint between the plaintiff and his other brothers but the plaintiff by bringing cogent and convincing evidence on record has been able to show that he has been in possession of 129 kanals 15 marlas of land, where he had grown various crops during HARHI, 2007. The damage to these crops on account of the water coming from canal and entering the fields of plaintiff is also proved on record. The plaintiff had brought enough cogent and convincing evidence to prove his case. The plaintiff Beant Singh had stepped into the witness-box as PW2. However, before his cross-examination could be conducted, he had expired. His son and legal representative Nirmal Singh appeared as PW3 and repeated on oath case of the plaintiff as given in his pleadings. The damage to the crops was proved by PW4 Ranjit Singh posted as Kanungo in the office of Tehsildar, Rampura Phul on 3.10.2007. PW5 Gurmail Singh, Junior Assistant in the office of Tehsildar, Rampura Phul also corroborated the version of the plaintiff. The very fact that the damage to the crops of various persons was got assessed by the Punjab Government including that of the plaintiff, though he was given compensation of Rs.27,644/- only in the form of bank draft, which he had accepted under protest, that means damage to the crops of plaintiff was admitted by the defendants otherwise there was no occasion to give any compensation to the plaintiff. Avtar Singh, Halqa Patwari of

village Harnam Singh Wala appearing as PW1 had proved jamabandi for the year 2000-01 as Ex.P18 and Ex.P19 showing the land holding of plaintiff and khasra girdawari prepared to assess loss to the crops of the plaintiff as Ex.P10 and Ex.P11 stating that as per girdawari damage to crops of the plaintiff was to the extent of 76% to 100%. Ranjit Singh, Halqa Patwari appearing as PW4 proved 'Goshwara Miyar Paidawar' prepared by him under orders of Tehsildar, Rampura Phul. Vide that document, he had assessed the value of the crops grown in the land of the plaintiff. PW5 Gurmail Singh, Junior Assistant office of Tehsildar, Rampura Phul had proved the relevant entry in the record showing payment of compensation to the tune of Rs.27,644/- to the plaintiff.

Though the defendants have tried to show that they were not at fault in breach of the canal and flooding of fields of the plaintiff, but then they were required to observe due care and caution in execution of the work allotted to them and to ensure that no damage was caused to the neighbouring owners for want of care and caution on their part. From 'Goshwara Miyar Paidawar' prepared by PW4 Ranjit Singh, Daftar Kanungo, the total damage to the crops of plaintiff had been assessed to be Rs.5,43,245/-. The Courts below have rightly observed that the damage had been caused on account of negligence on the part of the defendants and they are liable to compensate the plaintiff for the loss incurred by him on account of

their wrongful acts and further the compensation paid to plaintiff to the tune of Rs.27,644/- was inadequate though it was kept in mind while decreeing the suit of the plaintiff.

Learned counsel for the appellant had argued that the Courts below have wrongly decreed the suit of plaintiff for Rs.5,43,245/- (5,15,600 + 27,644) and as per normal practice, the plaintiff would at best be entitled to get $\frac{1}{3}^{\text{rd}}$ of that amount and since he had $\frac{1}{3}^{\text{rd}}$ share in the land at the maximum, he can claim compensation of Rs.60,360/-, out of which a sum of Rs.27,644/- has been received by him leaving balance of Rs.32,716/-.

Whereas this contention was repelled by learned counsel for the respondent stating that the other co-sharers in the land had filed their separate suits and plaintiff is entitled to get damages to the crops standing in 129 kanals 15 marlas of which he has in exclusive possession as a co-sharer on the basis of family arrangement. Since there was no relationship of landlord and tenant between the parties, the plaintiff is entitled to be compensated for the entire loss suffered by him to his crops and not to $\frac{1}{9}^{\text{th}}$ of the decretal amount as contended by learned counsel for the appellant.

After hearing the rival contentions of learned counsel for the parties, I find that the argument advanced by learned counsel for the appellant lacks force. Neither any such plea had been raised by defendants in the written statement nor evidence in that regard was

led or such plea put forward before the Courts below. The plaintiff is definitely entitled to claim the amount for damages to his crops standing in his entire land, which was in his possession and not to 1/9th of the amount as put forward by learned counsel for the appellant. As it comes out from the revenue record i.e. jamabandis Ex.P18 and Ex.P19, the total land happened to be 337 kanals 30 marlas of three brothers including the plaintiff, in that way share of the plaintiff comes to 129 kanals 15 marlas. He had filed the suit regarding his share only and not of his other two brothers.

No substantial questions of law arises.

Thus I do not find any illegality or infirmity in the judgments passed by the Courts below. Rather the same are based upon proper appraisal and appreciation of evidence and correct interpretation of law.

Finding no merit in the appeal, the same stands dismissed.

5.2.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No