

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

**(1) RSA No.4333 of 2015 (O&M)
Date of Order:25.02.2020**

Harbans Singh

..Appellant

Versus

The Executive Engineer and others

..Respondents

**(2) XOBJJS No.15-C-2017 in
RSA No.4333 of 2015**

Harbans Singh

..Appellant

Versus

The Executive Engineer and others

..Respondents

(3) RSA No.508 of 2016 (O&M)

Waryam Singh

...Appellant

Versus

Harbans Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Satbir Rathore, Advocate,
for the appellant (in RSA No.4333-2015) and
for respondent no.1(in RSA No.508 of 2016)**

**Mr. Akash Singla, Advocate,
for respondent no.3/cross-objector
(in RSA No.4333 of 2015) and
for the appellant (in RSA No.508 of 2016).**

ANIL KSHETARPAL, J(Oral)

**By this order, RSA Nos.4333 of 2015, 508 of 2016 and cross
objection no.15-C of 2017 shall stand disposed of.**

**Regular Second Appeal No.4333 of 2015 has been filed by
plaintiff No.1, whereas Regular Second Appeal No.508 of 2016 as well as**

cross objections have been filed by the defendants.

The plaintiffs filed a suit for grant of permanent injunction restraining the defendants from digging/constructing water course/channel and from interfering in their peaceful possession with respect to land comprised in Khewat No.75, Khatoni No.149-152, khasra no.387(12-0), 388 (8-0), 383 (10-0), 395(4-0), situated in Village Changarwan, H.B.No.601, Tehsil Mukerian, District Hoshiarpur. They further prayed for grant of decree of mandatory injunction directing defendant no.1 and 2 to remove the plugs of underground supply pipe installed to ensure supply of water to irrigate the agricultural land of the plaintiffs.

The plaintiffs claim that they are owners in possession of the suit land. For the purpose of irrigation, they claim to be drawing water from Changarwan Shah Canal. It is pleaded case of the plaintiffs that the water supply has been stopped by plugging the pipes installed/laid to carry water supply.

The defendants contested the suit by filing two separate written statements. Officials defendants claim that the plaintiffs are guilty of demolishing a water course/channel for supply of water to the fields of defendant no.3 and 4. Defendant no.3 and 4 also took similar stand and pleaded that Divisional Canal Officer vide order dated 14.12.2005 has ordered restoration of the demolished water channel/course.

During the pendency of the suit the relief of mandatory injunction was given up as defendant no.1 and 2 had removed the plugs put on the pipes meant for supply of water and restored water supply to the fields of the plaintiffs.

The trial court on appreciation of evidence decreed the suit filed by the plaintiffs while observing as under:-

“In view of the findings on above issues the suit of the plaintiffs succeeds and same is hereby decreed restraining the defendants from digging/raising any water course khal/Nala and from interfering in peaceful possession of the plaintiff of the land comprised in khasra no.387(12-0), 388(8-0), 383 (10-0), 395(4-0) Khewat No.75, Khatoni No.149-152, situated in Village Changarwan, H.B.No.601, Tehsil Mukerian, District Hoshiarpur except in due course of law. Decree-sheet be prepared. File be consigned to the record room.”

Defendant no.3 filed first appeal. Learned first appellate court has modified the decree while observing a finding as under:-

“Resultantly, the appeal is partly accepted with the modification that the suit of the plaintiffs is decreed for permanently restraining the defendants no.3 and 4 from digging, raising any water course/khal/Nala from the suit land and from interfering in the peaceful possession of the plaintiffs over the suit land as detailed in the heading of the plaint except in due course of law. The suit against defendants no.1 and 2 is, however, dismissed with no order as to costs. Decree sheet be prepared. Trial court record be returned along with copy of judgment and appeal file be consigned to the record room.”

This court has heard the learned counsels for the parties at length and with their able assistance, gone through the judgments passed by the courts below.

Learned counsel for the appellants submitted that the suit filed by the plaintiffs against defendant nos.1 and 2 has been dismissed on the ground that State of Punjab has not been properly impleaded as defendant. He, however, submitted that officials are already represented and therefore, irregularity, if any, should be ignored.

On the other hand, the learned counsel for the private defendants has contended that without challenging correctness of order

dated 14.12.2005, ordering restoration of the demolished water channel/course passed by a competent authority i.e. Divisional Canal Officer, the suit filed by the plaintiffs is not maintainable. He further expressed apprehension that in view of the judgment and decree passed, the authorities would not implement the order passed by Divisional Canal Officer dated 14.12.2005.

On consideration of the matter, this court is of the considered view that these two appeals and cross objections do not have any substance.

Section 79 of the Code of Civil Procedure lays down the procedure for filing suit by or against government which is extracted as under:-

“Section 79 of Code of Civil Procedure 1908 "Suits by or against Government”

In a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be-

(a) in the case of a suit by or against the Central Government, the Union of India, and

(b) in the case of a suit by or against a State Government, the State.”

In the present case, the plaintiffs while filing the suit did not implead State government as party-defendant. The plaintiffs only choose to implead certain officials in their official capacity as defendant no.1 and 2. The memo of parties of the suit with respect to defendant no.1 and 2 reads as under:-

“1. The Executive Engineer, Shah Nagar, Head Works Division, Talwara, Township.

2. SDO Shah Nehar Works Division, Mukerian, Tehsil Mukerian, Distt. Hoshiarpur.”

The State Government is required to be impleaded through Secretary of the department or the District Collector in accordance with Section 79 of the Code of Civil Procedure.

Further a careful reading of the provision of Rule 5-A of Order 27 of the Code of Civil Procedure, it is clear that impleadment of the government in a suit filed against a public officer with respect to any act alleged to have been done by him in his official capacity is mandatory.

Keeping in view the aforesaid facts, there is no error in the order passed by the learned first appellate court with respect to dismissal of the suit qua defendant no.1 and 2.

Now let us examine the cross-objections and the appeal filed by the defendants.

Learned trial court as well as first appellate court have only granted limited injunction restraining the defendants from digging/raising any water course and from interfering in the peaceful possession of the plaintiffs except in due course of law. Obviously, there is no restraint from taking action in accordance with law.

In view thereof, the apprehension expressed by learned counsel for the defendants has also found to be without substance.

Accordingly, two appeals and the cross objections are disposed of.

February 25, 2020
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No