

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1084 of 2020

Date of decision : September 09, 2021

Sohan Lal

.....Appellant

Versus

State of Haryana and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. P.K. Ganga, Advocate for the appellant.

LISA GILL, J.

Appellant-plaintiff has filed this regular second appeal challenging judgment and decree dated 13.03.2019 passed by the learned Civil Judge (Junior Division), Sirsa as well as judgment and decree dated 08.01.2020 passed by learned District Judge, Sirsa. Plaintiff – appellant filed a suit for permanent injunction restraining official defendants from interfering into ownership and physical possession of the plaintiff and proforma defendants over land as described in the plaint and from ousting them from the suit property in any manner and also from creating any water course through the suit property and carrying out any act which may amount to interference in the ownership and physical possession of the plaintiff and proforma defendants. Said suit was dismissed by the learned trial Court and plaintiff's appeal was dismissed as well.

Brief facts as stated in the plaint are that the plaintiff and proforma defendants are owners in possession of the suit property and that they never surrendered possession thereof in favour of any person and are in cultivating possession. It is further pleaded that official defendants wanted to carve out a water course over the suit property illegally, forcibly, without any legal right or authority

and that too without awarding any compensation to the plaintiff and proforma defendants. No prior information or notice thereof was ever sent to them. When despite request, said defendants refused to admit the claim of the plaintiff, suit was filed.

Suit was contested by the official defendants No. 1 to 3. Various preliminary objections were taken in the written statement. Land in question was admitted to be owned and possessed by the plaintiff and proforma defendants. It is stated that the said defendants were only re-modelling/repairing the already existing and running water course in a part of land in killa No. 24 and 25 of Square No. 34 situated in village Panniwala Mota, Tehsil and District Sirsa. It is stated that the running water course was carved out many years ago on specific request/demand of landowners, including predecessor-in-interest of the plaintiff. Water course is stated to have been running and in existence for last over twenty years and it falls within the definition of the permanent water course. Water course falls in Chak of outlet RD 91095/LMMK distributory and the same is duly reflected in the site plan maintained by the department. Due to lapse of time, condition of water course deteriorated, therefore, existing repair and re-modelling of the same is necessary for better irrigation and in the interest of the farmers. It is denied that there is any attempt to encroach upon the land of the plaintiff and proforma defendants or that any new water course is being carved out or dug. Jurisdiction of the civil Court to entertain and decide the case was also disputed. Proforma defendants No. 4 to 9 did not appear and were proceeded exparte.

Following issues were framed on the basis of the pleadings:-

1. Whether the plaintiff is entitled for the relief of permanent injunction, as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form?OPD

3. Whether the plaintiff has no cause of action to file the present suit?
OPD
4. Whether this court has no jurisdiction to entertain and try the present suit? OPD
5. Whether plaintiff is estopped by his own act and conduct from filing the present suit? OPD
6. Whether the suit of the plaintiff is based on false and frivolous ground?OPD
7. Relief.

Evidence was led by both the parties to establish their case.

Learned trial court after considering the evidence on record concluded that water course was running and is in existence for more than twenty years, therefore, pleading of the plaintiff regarding carving out of new water course was found to be incorrect. Suit filed by the appellant – plaintiff was partly decreed to the extent of restraining the official defendants from interfering in the ownership and possession of the plaintiff over the suit property, however, it was held that the plaintiff was not entitled for permanent injunction regarding water course and that in case the plaintiff is aggrieved of any act of the defendants regarding alteration, extension or alignment of the water course, his remedy would lie under the Haryana Canal and Drainage Act, 1974 (for short – ‘the Act’). Appeal filed by the present appellant – plaintiff was dismissed by the learned District Judge, Sirsa vide impugned judgment and decree dated 08.01.2020. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that both the learned courts below have grossly erred in partly decreeing the suit filed by the plaintiff – appellant. It is contended that jurisdiction of the civil Court to interfere in the matter is not barred in any way and both the learned courts below have failed to appreciate the controversy in its correct perspective. He relies upon judgment of

this Court in State of Haryana and another versus Punjab Singh and others

2014 (9) RCR (Civil) 65. It is, thus, prayed that judgment and decree dated 13.03.2019 passed by the learned Civil Judge (Junior Division), Sirsa as well as judgment and decree dated 08.01.2020 passed by the learned District Judge, Sirsa be set aside.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

It is a matter of record that both the learned courts below on appreciation of evidence on record have returned concurrent findings of fact that the water course in question is running at the spot for more than twenty years prior to filing of the suit. Ex.D1 is the copy of order under Section 18(2) of the Act regarding alignment and lining of watercourse. Exs. D7 and D8 Khakha plan reflecting existence of the water course is on record as well. Learned trial Court has duly referred to statements of the parties reflecting that water course was carved out at the request/demand of the averments whose land was situated there. Learned counsel for the appellant is unable to deny that Bahadar Ram father of the plaintiff – appellant was a signatory to the request upon which order Ex.D1 was passed.

In this view of the matter, judgment in the case of Punjab Singh (supra) is not applicable to the facts and circumstances of the case. It has been specifically held by the learned trial Court that in case the plaintiff – appellant is aggrieved of any act of the official defendants regarding alteration, extension, alignment of the water course or re-alignment of the existing watercourse, his remedy would lie under the Act.

Keeping in view the facts and circumstances, there is no question of law, much less a substantial question of law, which is involved for consideration in this regular second appeal.

No other argument has been addressed.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 13.03.2019 passed by the learned Civil Judge (Junior Division), Sirsa as well as judgment and decree dated 08.01.2020 passed by learned District Judge, Sirsa, which calls for any interference by this Court in second appeal.

Accordingly, this appeal is dismissed with no order as to costs.

September 09, 2021

Rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No