

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1284 of 2019 (O&M)

Date of Decision: 31.10.2022

State of Haryana and Others

... Appellant(s)

Versus

D.R.Lakhani and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Jaspal Singh Pannu, Assistant Advocate General,
Haryana, for the appellant(s).

Mr. Sudhir Aggarwal, Advocate
for the respondents.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in ***Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157.***

2. Challenging the correctness of findings of facts arrived at by both the Courts below, the defendants have filed the present appeal.

3. The plaintiffs are owners of the land abutting the water channel which has been constructed by the State of Haryana to take the sweet drinking water to Gurugram. The plaintiffs have filed the suit claiming that on account of damage in the water channel while renovating it, there is a leakage resulting in stagnation of water in their fields/agricultural land. An official from the department was examined in evidence. He denied the knowledge of the fact that during the repair of the water channel with the help of JCB machines, the brick-lining work of the water channel was damaged. The plaintiffs proved the stagnation of the water and damage to their crops and consequently, a decree was passed in their favour which was

confirmed by the First Appellate Court. The trial Court held that the respondent No.1 to 14 and 17 to 29 (plaintiffs in the suit) are entitled to compensation @ ₹ 35,000/- per acre, per annum. It has also come in evidence that the water channel is at the height of around 8 to 10 feet when compared with the fields of the plaintiffs.

4. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book as well as the record of both the Courts below, which was requisitioned.

5. The learned counsel representing the appellants contends that both the Courts below have erred in decreeing the suit because today, there is no stagnation of water. Per contra, the learned counsel representing the respondents contends that as on today, the water is still stagnating in the fields of the respondents and there is no improvement.

6. This Court has considered the submissions and analyzed the arguments of the learned counsel representing the parties. There is a concurrent findings of fact arrived at by both the Courts below. Such findings can be interfered with only if there is a material error or irregularity or non-appreciation of material evidence. It is evident that the official representing the department, on being cross-questioned, feigned ignorance of the fact that the brick-lining of water channel has been damaged by the JCB machines used by the department. The respondents, in order to prove their case, have examined as many as ten witnesses. They have also proved the reports of the Local Commissioner appointed by the Courts from time to time. Moreover, the trial Court has during the judgment on the basis of the situation prevailing at the institution of the suit and its pendency. Any subsequent change during the pendency of the second appeal, if any, shall not impact the result of the suit.

7. The learned counsel representing the respondents has pointed out that the trial Court has erred in observing that the damages shall be payable from the date of judgment. He submits that it has to be from the date of filing of the suit unless there are some specific reasons. It is evident that the trial Court has not recorded any specific reason for awarding damages from the date of judgment instead of awarding the damages from the date of filing of the suit. The suit remained pending for a period of four years.

8. In view of the above, this Court opts to exercise the powers under Order XLI Rule 33 of the Code of Civil Procedure, 1908, in order to rectify the aforesaid mistake of the Court below which is not only apparent, but patently erroneous.

9. Keeping in view the aforesaid facts, the judgment passed by the trial Court shall stand modified. The plaintiff No.1 to 14 and 18 to 20 shall be entitled to damages @ ₹ 35,000/- per acre per annum with interest @ 6% per annum from the date of filing of the suit till the date of trial Court's judgment.

10. With the observations made above, the present appeal is disposed of.

11. The miscellaneous application(s) pending, if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

October 31, 2022

"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No