

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2754 of 1996 (O&M)

Date of decision : 30.1.2023

...

Ram Sarup and others

.....Appellants

vs.

The State of Punjab and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: None for the appellants

Ms. Guramrit Kaur, Deputy Advocate General, Punjab

...

H. S. Madaan, J.

1. Briefly stated, facts of the case are that plaintiffs – Ram Sarup, Vijay Kumar – sons and Smt. Janak Rani – wife of Krishan Kumar, all residents of village Baghian, Tehsil Jagraon, District Ludhiana, residing at House No. EG-871, Mohalla Govindgarh, Jalandhar City, had brought a suit against defendants – State of Punjab through Secretary, Revenue Department, Civil Secretariat, Chandigarh as well as its officers, seeking a decree for grant of mandatory injunction directing the defendants to allot land in lieu of their land which was rendered useless by the defective construction and breach of Dhusi Bandh, in the area of village Baghian, Tehsil Jagraon, District Ludhiana.

2. On getting notice, the defendants appeared. Defendants

No. 1 to 4 filed a joint written statement contesting the suit, raising various legal objections to wit that no notice under Section 80 CPC had been served upon the defendants before filing of the suit, therefore, the plaint was liable to be rejected under Order 7 Rule 11 CPC; the suit was barred by the principle of res judicata; the suit was not maintainable; the suit was time barred and it was not properly valued for the purpose of court fee and jurisdiction. On merits, such defendants contended that the plaintiffs had purchased the land, which was situated in the river bed, fully knowing about the possibility of the same being eroded at the time of flow of river water. The defendants denied that the land of the plaintiff was eroded on account of any negligence on the part of the State Government. According to the defendants, the Dhusi Bandh was already in existence at the time of purchase of land by the plaintiffs and no loss has been caused to the land of the plaintiffs on account of any breach or seepage from the Dhusi Bandh. The request for grant of compensation, by the plaintiffs was considered by the 'State Government and the same was rejected. According to the defendants, no case was there to grant any relief to the plaintiffs. They prayed for dismissal of the suit.

3. Defendant No.6 had filed a separate written statement pleading on the similar lines as that of defendants No. 1 to 4.

4. Plaintiffs filed replication controverting the allegations in the written statement and reiterating the averments made in the plaint. From the pleadings of the parties, following issues were framed :-

- 1) Whether the plaintiffs are entitled to the mandatory injunction directing the defendants to allot land in lieu of the land rendered useless by the defective construction and breach of Dhusi – Bandh owned and possessed by the plaintiffs? OPP
 - 2) Whether the the suit is not maintainable for want of notice under Section 80 CPC? OPD
 - 3) Whether the suit is barred by the principles of res judicata ? OPD
 - 4) Whether the suit is barred by limitation ? OPD
 - 5) Whether no cause of action has arisen to the plaintiffs to file the present suit? OPD
 - 6) Whether the plaintiffs are estopped to file the present suit by their act and conduct? OPD
 - 7) Whether the suit is not properly valued for purposes of court fee and jurisdiction? OPD
 - 8) Whether the suit is not maintainable in the present form ? OPD
 - 9) Relief.
5. Parties were afforded adequate opportunities to lead evidence in support of their respective claims.
6. After hearing the arguments, the trial Court of Additional Senior Sub Judge, Jagraon, decided issue No.1 against the plaintiffs and in favour of the defendants, holding that there was no cogent and convincing evidence adduced by the plaintiffs to show that the designing and construction of Dhusi Bandh was faulty or

that on account of breach in Dhusi Bandh, land of the plaintiff was eroded. Therefore, no case for grant of equitable relief of mandatory injunction to the plaintiff was made out.

7. Issue No.2 was decided holding that the plaintiffs had served a valid notice under Section 80 CPC upon the defendants for filing of the suit.

8. Issue No.3 was decided in favour of the plaintiffs observing that though the High Court of Punjab and Haryana at the first instance had rejected the writ petition of the plaintiffs and the SLP filed was dismissed by the Apex Court, however, the plaintiffs were not debarred from seeking the relief by way of filing a civil suit, which they had sought in the High Court and before Supreme Court. In that way, the suit was not not barred by the principles of res judicata. Issue No.4 was decided in favour of the plaintiffs and against the defendants, holding that the suit was within limitation. Issues No. 5, 6, 7 and 8 were decided as not pressed by the defendants.

9. As a cumulative effect of findings on the issues, the trial Court of Additional Senior Sub Judge, Jagraon, vide judgment and decree dated 25.11.1993, dismissed the suit of the plaintiffs, without costs.

10. Feeling aggrieved, by the said judgment and decree passed by the trial Court, the plaintiffs had filed an appeal before the District Judge, Ludhiana, which was assigned to Additional District Judge, Ludhiana, who vide judgment and decree dated 6.5.1996, affirmed the judgment and decree passed by the trial

Court and dismissed the appeal, with no order as to costs.

11. Still feeling aggrieved, the plaintiffs have approached this Court by way of filing the present regular second appeal, notice of which was given to the respondents, who have appeared through State counsel.

12. There has not been any representation on behalf of the appellants. Since the case relates to the year 1996, as such I do not find it proper to adjourn it any further, therefore, I proceed to decide the same, with the assistance of learned State counsel and after going through the record.

13. In this case, onus was heavy upon the plaintiffs to establish that on account of some defect in designing and construction of Dhusi Bandh or any leakage had been taking place from it, eroding the soil from the agricultural land of the plaintiffs located nearby and for that reason, the plaintiffs are entitled to be allotted that much land by the defendant – State in lieu of such land allegedly having been rendered useless. However, the plaintiffs have failed to prove these assertions, by bringing enough cogent and convincing evidence on record. Therefore, the suit of the plaintiffs was dismissed by the trial Court, finding that the plaintiffs are not entitled to the decree of mandatory injunction as prayed for. The Ist Appellate Court of Additional District Judge, Ludhiana, has affirmed such judgment and decree passed by the trial Court.

14. I find that the impugned judgments passed by the Courts below are quite detailed and well reasoned based upon proper

appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein which might have prompted me to interfere with such judgments, while hearing regular second appeal. As a matter of fact, no substantial question of law arises in the present appeal.

15. The appeal is found to be without any merit and the same stands dismissed accordingly.

30.1.2023
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(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No