

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

112+114

RSA-931-2022 (O&M)  
Date of decision: 05.07.2023

RAJA RAM AND OTHERS

..Appellants

Versus

ISHWAR AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Mr. Sunil Sihag, Advocate  
for the respondents.

ANIL KSHETARPAL, J(Oral)

1. The concurrent findings of the facts arrived at by the Courts below are challenged by the defendants.

2. In substance, the dispute is with regard to the restoration of a pipeline carrying water for irrigating the fields of the farmers. It is the case of the plaintiffs that underground pipeline installed by them has been damaged by the defendants.

3. On the other hand, defendants claim that there was no underground pipeline. During the pendency of the suit, the irrigation officer was appointed as a local commissioner to inspect the site. After visiting, he reported that there is an underground pipeline available in some part of the land, whereas, in the remaining part, it does not exist. On the basis of the aforesaid report and the evidence led by the plaintiffs, both the Courts concluded that the defendants have damaged the underground pipeline and,

therefore, the plaintiffs are entitled to the restoration thereof.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

5. The appellants have also filed an application under Order 41 Rule 27 for permission to lead additional evidence as they wish to produce a copy of the order passed by the Supertending Canal Officer on 11.02.2021, which was decided on the basis of a compromise. The learned counsel representing the appellants contends that an alternative source of water has been provided to the defendants and, therefore, there is no requirement to restore the pipeline. He further submits that the Civil Court has no jurisdiction in view of Section 25 of the Haryana Canal and Drainage Act, 1974 (hereinafter referred to as the '1974 Act').

6. On the other hand, the learned counsel representing the respondents while drawing the attention of the Court to the judgment of the First Appellate Court, submits that the underground pipeline for carrying water was not a sanctioned water course and hence jurisdiction of the Civil Court is not barred. He further submits that the alternative water course provided to the defendants (respondents) is not in substitution of the water pipeline. He submits that in the order of Superintending Canal Officer itself, it has been recorded that it will have no adverse effect to the other co-sharers and the defendants were not party to the aforesaid litigation.

7. This Court has considered the submissions while evaluating the arguments of the learned counsel representing the parties.

8. As far as existence of underground water pipeline, the report of irrigation officer is available on the file which proves that the underground water pipeline did exist. The aforesaid finding is based on an appreciation of

evidence and does not require interference unless it is proved to be perverse.

While deciding a Civil Suit, the Court is required to adjudicate the cases on preponderance of evidence. On appreciation of evidence, the Court is entitled to draw certain logical inferences which are permissible. In the present case, the appellants deny the existence of the underground pipeline. Whereas, the irrigation officer has found that underground pipeline exists in some part. In such circumstances, the conclusion drawn by the Courts below is not without a basis. In fact, the stand taken by the defendants (appellant herein) has been found to be factually incorrect. In such circumstance, there is no substance in the first argument of the counsel.

9. At this stage, it would be appropriate to extract Section 24 and 25 of the 1974 Act:-

***“24. Restoration of demolished or altered etc. Watercourse-*** (1) *If a person demolishes, alters, enlarges or obstructs a watercourse or a temporary watercourse or causes any damage thereto, any person affected thereby may apply to the Sub-Divisional Canal Officer for directing the restoration of the same to its original condition.*

(2) *On receiving an application under sub-section (1) the Sub-Divisional Canal Officer may, after making such enquiry as he may deem fit, require, by a notice in writing served on the person found to be responsible for so demolishing, altering , enlarging, obstructing or causing damage, to restore, at his own cost, the watercourse or temporary watercourse to its original condition within such period not exceeding twenty-one days, as may be specified in the notice : Provided that in case of a temporary watercourse its restoration shall not be for a period exceeding one year.*

(3) *If such person fails to the satisfaction of the Sub-Divisional Canal Officer, to restore the watercourse or temporary watercourse to its original condition within the period specified in the notice served on him under sub-section (2) the Sub-Divisional Canal Officer may cause the watercourse or temporary watercourse to be restored to its original condition and recover the cost incurred in respect of such restoration from the*

*defaulting person. The Sub-Divisional Canal Officer may order recovery of a sum not exceeding Rs. 500 from the defaulting person by way of penalty. Out of this sum so recovered the Sub-Divisional Canal Officer may order any amount to be paid to the aggrieved person for the damage caused to him. In case the penalty is not paid the same shall be recoverable as arrears of land revenue.*

*(4) Any person aggrieved by the order of the Sub-Divisional Canal Officer, may prefer an appeal within fifteen days of the passing of such order to the Divisional Canal Officer, whose decision on such appeal shall be final.*

*(5) Any sum which remains unpaid within a period to be specified for this purpose by the Divisional Canal Officer may be recovered as arrears of land revenue.*

**25. Bar of jurisdiction of Civil Court-** *Notwithstanding anything contained in this Act or any other law for the time being in force, no civil court shall have jurisdiction to entertain or decide any question relating to matters falling under sections 17 to 24.”*

10. The learned First Appellate Court has held that the jurisdiction of the Civil Court is not barred because the water pipeline was not an approved water course and hence Section 24 is not applicable. The learned counsel representing the appellant though made sincere attempt, however, failed to draw the attention of the Court to any evidence to prove that the aforesaid underground pipeline was a sanctioned/approved water course. Section 25 of the 1974 Act is applicable only if the question which require adjudication falls under the scope of Section 17 to 24 of the 1974 Act. It is the case of the appellant that the dispute in the present case falls in Section 24. As already noticed, the First Appellate Court has held that Section 24 is not applicable.

11. In any case, the pipeline is stated to be 5 ft. deep from the ground level. Such pipeline is not obstructing the activities of an agriculturist. Restoration of such pipeline would help the plaintiff to have a source of irrigation.

12. Keeping in view the aforesaid facts, no ground to interfere is made out.
13. Dismissed.
14. All the pending miscellaneous applications, if any, are also disposed of.

July 05<sup>th</sup>, 2023

Ay

(ANIL KSHETARPAL)  
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No