

Sr. No.213

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

RSA-2613-2013 (O&M)

Date of decision: 17.05.2023

Gram Panchayat of Village Chhadauri

...Appellant

Vs.

Mohinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Raj Kumar Garg, Advocate
for the appellant.

Mr. M.S. Dhami, Advocate
for respondent No.1.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are addressed as per the recitals before Ld. Trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, defendant No.1 (appellant herein) is in second appeal before this Court assailing Ld. Trial Court judgment and decree dated 10.05.2010, as upheld by Ld. First Appellate Court vide its judgment and decree dated 09.05.2012, partly decreeing the suit filed by plaintiff/respondent No.1 and restraining defendant No.1 from discharging daily used water, as well as rainy water in the property of plaintiff, which falls in Khasra No.126. However, suit for issuance of mandatory injunction to restore the Wall at Point A to B has been dismissed.

3. Succinct facts first, as pleaded in the instant petition.

3.1. Plaintiff/respondent No.1 filed a suit against defendant/appellant herein and defendants No.2 & 3 (respondents No.2 & 3 herein) seeking relief of mandatory injunction directing the defendants to restore the Wall AB to its original position and condition and further to stop discharging the daily used and rainy water of village *abadi* in the property in question, situated in the *abadi* of village Chhadauri, Tehsil Balachaur, comprised in Khasra No.126, measuring 3 Kanals 2 Marlas, Khata No.13/ /33, as entered in Jamabandi for the year 2002-2003.

3.2. Plaintiff pleaded that he is owner in exclusive possession of suit property. Defendant Gram Panchayat, as well as, defendants nos. 2 and 3 have got no right, title or concern with the suit property of any kind whatsoever. It is exclusive ownership and in possession of plaintiff and it is residential property and plaintiff has already raised construction of foundations, as well as, boundary wall around the same. Further pleaded that there is strong party faction in the village and the Sarpanch of defendant no.1- Gram Panchayat, as well as, defendants nos.2 and 3 are inimically disposed towards plaintiff and all the defendants have started threatening to discharge the daily waste water, as well as, rainy water of the village *abadi* in the property of plaintiff, forcibly and illegally, without the consent or permission of the plaintiff, to which they have got no right. Said illegal threats of defendants have cast a cloud on the genuine rights of plaintiff. Defendants were asked time and again to admit claim of plaintiff, but they paid no heed and have finally refused to do so. Hence, the suit.

3.3. Upon notice, defendants no.2 and 3 did not contest the suit despite their service. Consequently, defendants no.2 and 3 were proceeded against *ex-parte*, whereas, defendant No.1 appeared and filed his separate written statement, thereby taking preliminary objections to the effect that plaintiff is

guilty of concealing true and material facts from the Court; he has no *locus standi* and surviving cause of action to file the present suit, suit is bad for non-joinder of necessary parties, Civil Court has no jurisdiction to try the suit, site-plan produced by the plaintiff is incorrect, plaintiff is estopped from filing the present suit and suit is barred by time.

3.4. On merits, it is submitted that village is located on semi-hilly area and natural flow of water is from village *abadi* towards agricultural land of plaintiff since times immemorial. Causing any obstruction in the natural flow of water may cause spreading of epidemic. Previously, plaintiff raised a Wall around the land on the northern side, just to cause obstruction in the free flow of water, as a consequence of which, rainy as well as daily water accumulated and it caused a small pool and was a cause of nuisance and epidemic. Inhabitants of the village moved an application/complaint before the Ld. Sub-Divisional Magistrate, Balachaur, who ordered to get demolished that Wall at Point 'M' vide order dated 25.05.2007.

3.5. It is further averred that no one has raised such walls in their agricultural land and conduct of plaintiff itself speaks that he has caused a nuisance, which has been got removed by Ld. Sub-Divisional Magistrate, Balachaur and in the garb of present suit, intention of plaintiff is to create nuisance by raising wall, to which he has got no right. Plaintiff created an obstruction earlier also and a compromise was effected on 27.11.1980 by which the plaintiff agreed not to obstruct the natural flow of water. Compromise was effected on 27.11.1980 which was acted upon. However, plaintiff along with other persons, i.e., Jasbir Singh son of Kesar Singh, Mohinder Singh son of Bachan Singh, Kashmir Singh son of Bhagat Singh, who cultivate the property of Ajit Singh, one of the executants of the agreement, caused obstruction in the natural flow of water at the behest of plaintiff and Ajit Singh. Gram Panchayat

moved an application under section 133 Cr.P.C. against the above stated persons and plaintiff. Ld. Sub-Divisional Magistrate, Balachaur summoned the parties and they made statements before the Ld. Sub-Divisional Magistrate, not to obstruct the natural flow of water and on the statements suffered by parties, obstruction raised by plaintiff and above stated persons were removed and since then, water flows in its natural course, without any obstruction and plaintiff has got no right to obstruct the natural flow of water.

3.6. It is further stated that Civil Court has got no jurisdiction to try the suit as Gram Panchayat, being a statutory body, cannot be restrained from undertaking and performing the development work for providing better sanitation to the inhabitants of village. Answering defendant has already passed resolution, but due to paucity of funds, work could not be completed and whenever adequate funds/grants are received from the Development Department, same will be completed as a statutory duty. But property was agreed to be used by answering defendant for discharge of daily and rainy water of the village *abadi* vide compromise dated 27.11.80, vide which plaintiff agreed the disposal of daily and rainy water in suit property. With these averments, contesting defendant prayed for dismissal of suit.

3.7. Replication was filed, wherein the allegations raised in written statement were denied and those of plaint were reiterated to be correct.

4. Based on the rival pleadings, following issues were framed:

- 1) Whether plaintiff is entitled to injunction prayed for? OPP
- 2) Whether plaintiff has not approached this court with clean hands and is guilty of suppressing true and material facts from the court? OPD
- 3) Whether plaintiff has no *locus standi* to file present suit? OPD
- 4) Whether suit is bad for non-joinder of necessary parties i.e. B.D. & P.O. Balachaur and SDM, Balachaur? OPD

5) Whether plaintiff is estopped from filing present suit by his own acts, conduct, admissions and acquiescence? OPD

6) Whether site plan produced by plaintiff is incorrect? If so, its effect? OPD

7) Relief.

5. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

6. On appraisal of evidence vis-à-vis pleadings, issue No.1 was partly decided in favour of plaintiff. Other issues were also decided in favour of plaintiff and against defendants and consequently, the suit of plaintiff was partly decreed vide impugned judgment and decree dated 10.05.2010.

7. Aggrieved, defendant No.1/appellant preferred first appeal, which was dismissed by Ld. First Appellate Court vide impugned judgment and decree dated 09.05.2012, resulting in instant Regular Second Appeal before this Court.

8. The gravamen of the contentions of learned counsel for appellant is that finding of Ld. Courts on issue No.1 are wholly erroneous and liable to be set aside as appellant proved on record, complaint under Section 133 Cr.P.C. (Ex.D-2/B), statement of plaintiff (Ex.D-2/C) and the order passed by Ld. SDM, Balachaur (Ex.D-2/D), from which it is abundantly clear that plaintiff himself admitted the natural flow of rainy and daily water of village into land in question owned by him. In the face of said statement of plaintiff/respondent No.1 and the compromise, plaintiff/respondent No.1 was estopped from filing the suit.

9. In its judgment, learned First Appellate Court, *inter alia*, observed, as under:

“XXXX XXXX XXXX XXXX

10. From the perusal of judicial file and contentions of the learned counsel for the parties, it came to the notice of the court that plaintiff is owner in possession of land comprised in khasra No.126 alongwith other persons. Plaintiff himself stepped into the witness box as PW2 and proved the jamabandi for the year 2002-03 Ex.P3 and Ex.P4 and Akshijra Ex.P5, khasra girdawari from the year 1989 to 1993, 1993 to 1998, 1998 to 2000, 2000 to 2002, and 2003 to 2008 Ex.P7 to Ex.P10 respectively, which reflect that plaintiff is owner in possession of the land comprised in khasra No.126 and gram panchayat has alternative source for draining out the rainy water. PW1 Amrik Singh has proved the site plans Ex.P1 and Ex.P2. Order passed on application 144 Cr.P.C. has become infructuous. There was no need to file the appeal against the order u/s 144 Cr.P.C. Mohinder Singh made statement only to the effect that during the pendency of the suit, he will not tamper with the natural flow of the water, but it does not mean that he waived of his legal right on his land. The learned trial court has rightly held that plaintiff alongwith other persons is in possession of khasra No.126 and defendants have no right to discharge the daily used water in the land of plaintiff and order passed u/s 144 Cr.P.C. came to an end and the learned trial court has rightly held that plaintiff has constructed a wall at point-A to E and the learned trial court has rightly restrained the defendants from discharging the daily used water in the property of plaintiff, which comprised in khasra No.126 and as such, suit for issue of mandatory injunction to restore the wall at point A to E was dismissed.

11. In the light of my above discussion, appeal is dismissed with costs. Decree sheet in appeal be prepared accordingly. Counsel fee is assessed as Rs.1,000/-. Lower court record be returned immediately while appeal file be consigned to the Record Room.

xxxx xxxx xxxx xxxx”

10. Having perused the impugned judgments, my considered opinion is that the submissions herein were also made before learned Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. There seems no

substance in the submissions that the impugned judgments are based on conjectures and surmises.

11. No fault can be found with the findings rendered by Ld. Trial Court, as affirmed by learned First Appellate Court, since the same were based on cogent evidence adduced by both the parties. I am thus inclined to agree with the view in this behalf taken by learned Courts below.

11.1. No new arguments have been raised by learned counsel for appellants other than reiteration of the stand taken before Ld. Courts below.

12. In the premise, there seems to be no mis-appreciation of the evidence or perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings.

13. Furthermore, no question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code.

14. As an upshot of my preceding discussion, this appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by Ld. Courts below are upheld.

15. Pending application/s, if any, shall also stand disposed of.

16. No order as to costs.

(ARUN MONGA)
JUDGE

May 17, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No