

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-5443-2016 (O&M)

Date of decision: January 16, 2023

Mange Ram

....Appellant

versus

Haryana State through Collector, Kaithal and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Raj Kapoor Malik, Advocate for the appellant.

Ms. Ambika Luthra, Advocate for respondents No.1 to 3.

Mr. Surender Dhull, Advocate for respondent No.4.

ARUN MONGA, J. (ORAL)

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

2. Having suffered concurrent adverse findings by the two Courts below, the appellant-plaintiff is in second appeal before this Court assailing the trial Court judgment and decree dated 20.08.2016, as upheld by learned First Appellate Court vide its judgment and decree dated 04.10.2016 dismissing his suit for declaration and injunction.

3. Briefly stated, facts, as noticed by Courts below, are that plaintiff-appellant is owner in possession of 1/6th share out of the total land measuring 100 Kanals 10 Marlas comprised in khewat No.1066/937 min, Khatoni No.1453, Rect. No.139, Killa No.19, 20, 21, 22, Rect. No.140, Killa No.16, 17, 18, 19/1, 22/1, 23, 24, 25, Rect. No.141, Killa No.2/2, 3, 4, 5/1, kittas-16, situated within the revenue estate of village Keorak Tehsil and

District Kaithal, vide jamabandi for the year 2008-09. He used to irrigate his agricultural land with canal water from the outlet RD No.21600/L Deora Minor village Keorak, Tehsil and District Kaithal. On the application of Mohinder Singh, respondent No.4, for shifting of the head of the out-let from RD 21600/L to 21850/L, Deora Minor, the scheme was got drafted by respondent/defendant No.2 on the orders of respondent/defendant No.3 under Sections 17 and 18 of Haryana Canal and Drainage Act. Respondent/defendant No.3 sanctioned the scheme for shifting the head of the outlet RD 21600/L to 21850/L Deora Minor, on 08.10.2012.

4. Upon notice, defendants appeared and defendant No.4 filed separate written statement raising preliminary objections with regard to *locus standi*, jurisdiction and suppression of true and material facts. On merits, it was averred that earlier there was an outlet at RDNo.21600/L Deora Minor at village Keorak but now outlet is provided at RD No.21850/L adjacent to the land of plaintiff. Plaintiff refused to receive the notice, so the *Halqa* Patwari reported as such. It was further averred that there is no collusion between respondent/defendant No.4, respondents/defendants No.1 to 3 and *Halqa* Patwari.

4.1 Respondents/ defendants No.1 to 3 appeared and filed separate written statement raising similar preliminary objections as that of respondent/defendant No.4. On merits, it was averred that the order passed by the DCO was perfectly legal and as per the provisions of Haryana Canal and Drainage Act. With these submissions, dismissal of the suit was prayed for.

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

“1. *Whether the plaintiff is entitled to a decree for declaration as prayed for?OPP.*

2. *Whether the suit of the plaintiff is not maintainable in its present form?OPD.*
3. *Whether the plaintiff has no locus-stand to file the present suit?OPD*
4. *Whether this court has no jurisdiction to entertain and try the present suit?OPD.*
5. *Whether the plaintiff has not complied with the mandatory provisions of law under Section 80 of CPC?OPD.*
6. *Whether the plaintiff has not come to the Court with clean hands and is suppressing true and material facts from the court?OPD*
7. *Relief.”*

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

7. On appraisal of evidence vis-à-vis pleadings, trial Court decided issues No.1 against the plaintiff. Issues No.2 to 6 were decided against the defendants being not pressed. Consequently, learned trial Court dismissed the suit of the plaintiff vide impugned judgment and decree dated 20.08.2016.

8. Feeling aggrieved against the said judgment and decree dated 20.08.2016, the plaintiff-appellant preferred first appeal.

9. Learned First Appellate Court also dismissed the appeal, resulting in Regular Second Appeal before this Court.

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

“22. *It is case of plaintiff that he is a co-sharer in land mentioned in para no. I of plaint. He irrigates it with canal water. He gets this canal water from outlet situated at RDNo.21600/L. Now, this outlet has been changed to RD No.21850/-L. According to him, he was never informed about this change or scheme. Defendants have denied it and relied upon notice Ex.D3 and order Ex.D2. According to plaintiff, a wrong report of refusal has been given by Patwari but he failed to disclose any reason for Patwari to submit a false report that is too when other co-sharers have accepted this notice and append their signatures. During proceedings, statements of all other*

farmers were also recorded. There again he refused to appear. In such situation, it cannot be said that he was not informed about the scheme and order.

23. *As per section 17(c), if an outlet is to be changed then a scheme is to be prepared and published and it should be notified to the share-holders. In the present case, as already seen DCO has followed all the procedure as provided under Rule 7, in such situation plaintiff's claim that he was not informed, cannot be believed and this order, therefore, cannot be challenged before Civil Court.*

24. *There is one more aspect that plaintiff himself appeared in witness box as PWI. In his cross-examination, he stated that distance between outlet RD No.21600/L and new RD 21850/L was one acre. He stated that place where new outlet had been sanctioned also falls in his land. He failed to show any loss so as to come to court. On the other hand, it is specific case of defendant that it was not possible to irrigate entire command area of 307 acres from RD No.21600/L. It is claimed by plaintiff that level of his land is higher than level of land at new outlet i.e. RD No.21850/L. But there is no such pleading and there is no such evidence. In such situation, he cannot be believed. So I do not find any illegality in impugned judgment passed by lower court.*

25. *No other point was urged before me by learned counsel for parties.*

26. *For reasons foregoing, appeal filed by appellant-plaintiff is dismissed with costs. Judgment passed by learned trial court is upheld. Decree-sheet be prepared. A copy of this judgment along with lower court records be remitted back to it. Appeal file be consigned to record room after compliance."*

11. Shorn of unnecessary details, the submissions in this Regular Second Appeal are that the judgments passed by the Courts below are contrary to law and evidence on record, according to which the scheme for shifting of canal water outlet was illegal and was not published in advance.

12. Having perused the impugned judgments, my considered opinion is that the same submissions made before the Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same.

There seems no substance in the said submissions reiterated in present RSA.

13. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

14. There seems no 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. In this second appeal, no fresh ground worthy of interference is made out.

15. 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 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

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

17. Pending application(s), if any, shall also stand disposed of.

18. No order as to costs.

(ARUN MONGA)
JUDGE

January 16, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No