

SAO-8-2024(O&M)
Date of decision :03.04.2024

...Appellants

...Respondents

Present: Mr. Amit Arora, Advocate
for the appellants.

1. This appeal against the First Appellate Court's order remanding the case back to the trial Court for deciding afresh after impleading National Highway Authority of India and Executive Engineer Punjab, Mandi Board, Tarn Taran has been filed by the defendants.

2. In order to comprehend the issue involved in the present case relevant facts in brief are required to be to be noticed.

3. The plaintiffs filed a suit for the grant of permanent injunction. They claimed to be owner in exclusive possession of land measuring 52 Kanals and 17 marlas agricultural land. It is their case that defendants No. 1 to 7 have illegally and enforceably installed the underground pipes in the suit land for draining out waste water in the parcel of land of the plaintiffs without any permission from the concerned authorities.

4. The defendants contested the suit, which was dismissed by the

trial Court. It was observed by the trial Court that there is a special Court of Irrigation Department for dealing with such matters at Jalandhar and therefore, the suit of the plaintiff is not maintainable. The trial Court also observed that National Highway Authority of India and Punjab Mandi Board have not been impleaded as party.

5. The First Appellate Court re-examined the matter and found that National Highway Authority of India and Punjab Mandi Board are proper parties. The First Appellate Court also held that the dispute is with regard to the public passage and the Court being custodian of the public property is required to decide the case in a holistic manner. The First Appellate Court remanded the matter back to the trial Court for deciding a fresh after granting opportunity to the plaintiffs to seek relief of mandatory injunction.

6. Heard the learned counsel representing the appellant at length and with his able assistance perused the paper-book.

7. Learned counsel representing the appellant has made the following submissions:-

1. The plaintiffs previously filed a similar suit, which was withdrawn with liberty to file a fresh one.
2. The plaintiffs did not pray for the grant of mandatory injunction while filing the suit.
3. The First Appellate Court has erred in remanding the case back to the trial Court without setting aside the judgment of the trial Court while critically analyzing the reasons given therein.

4. The order of remand in a civil case is permissible only if the suit is decided on a preliminary point, which was set aside by the Appellate Court.
8. This Court has considered the submissions of learned counsel for the appellant.
9. In these cases, the Court is required to take a holistic view of the matter while taking a pragmatic approach. The plaintiffs are farmers. They are complaining of discharge of waste water in their fields through underground pipes, which have been led resulting in damage to their crops. It is their case that such underground pipes are being used to drain out wastage water in their land and this has been taken without permission from the concerned authorities.
10. No doubt, they file a previous suit, however, the same was permitted to be withdrawn with liberty to file a fresh one. In the second round, they prayed for decree of permanent injunction. The First Appellate Court found that the trial Court has erred in dismissing the suit on technical objection. In these circumstances, the First Appellate Court has chosen to remand the case back to the trial Court.
11. The first submission need no elaborate discussion particularly when the Court in the previous suit granted permission to the plaintiffs to file a fresh one on same cause of action. With respect to argument No.2, it will be noted that the First Appellate Court has itself observed that the plaintiffs can file an application for permission to amend the plaint in order to incorporate the relief of mandatory injunction. With respect to submission No.3, it will be

noted that the plaintiffs suit was only for decree of permanent injunction. The trial Court gave various reasons, which are in the nature of technical defects. The First Appellate Court considered it appropriate to grant opportunity to the plaintiffs to amend the plaint so as to implead National Highway Authority of India and Punjab Mandi Board as necessary parties in order to comprehensively decided the suit. Hence, in the facts of the present case, it would not be appropriate for this Court to interfere with the remand order passed by the First Appellate Court. With respect to submission No.4, it will be noted that Order 41 Rule 23-A of the Code of Civil Procedure, 1908 do enable the Appellate Court to remand the matter back to the Lower Court, if the re-trial of the case is considered necessary.

12. Keeping in view the aforesaid facts, no ground for interference is made out.
13. Dismissed.

03.04.2024		(ANIL KSHETARPAL)	
neeraj		JUDGE	
	Whether speaking/reasoned :	Yes	No
	Whether Reportable :	Yes	No