

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1713-1992 (O&M)

Parhlad Singh

.....Appellant

Vs.

Vidya Dhar

.....Respondent

Reserved On.: 22.03.2024
Pronounced On: 03.04.2024

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By: Mr. Mani Ram Verma, Advocate
for the appellant.

Ms. Himani Sharma, Advocate for
Mr. Ashish Kapoor, Advocate for
the respondent.

DEEPAK GUPTA, J.

Suit filed by the plaintiff Parhlad Singh (*appellant herein*) seeking a decree for permanent injunction against defendant Vidya Dhar (*respondent herein*) was decreed by the trial Court on 15.01.1992 but the said judgment has been reversed by the Appellate Court on 07.08.1992 on the appeal filed by the defendant and the suit was dismissed. It is against the judgment dated 07.08.1992 of the first Appellate Court that plaintiff has approached this Court by way of present Regular Second Appeal.

2. Trial Court record was called and the same has been perused. In order to avoid any confusion, parties shall be referred as per their status before the trial Court.

3. There is a *Pukhta Kuan* (well) on the land comprised in Khasra

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No.202/27, on which plaintiff along with his brother had installed a motor and taken an electricity meter. Through the said well, plaintiff irrigates his land comprised in Rectangle number 155, Khasra No.22; and Rectangle number 172, Khasra No.2, 9 & 12 of Khewat No.92/102 as per Jamabandi for the year 1977-78, situated in Village Ranila, as detailed in para no.2 of the plaint. As per plaintiff, he has been cultivating his land through the aforesaid well for the last 20 years and prior to the electricity motor, he was using a diesel engine. It was pleaded further that in order to connect his land with the well fitted with electricity motor, plaintiff had laid underground pipelines, which passes through the village Phirni comprised in Khasra No.410 & 411; and the land comprised in Khasra No.18 & 24 of Rectangle No.172 owned by Gram Panchayat. The said pipeline has been shown from point 'A' to 'B' in red colour in the said plaint (Ex.PW-2/A), connecting the land of plaintiff with the well. It was alleged that defendant wanted to demolish the underground pipelines without having any right to do so. With these averments, plaintiff prayed for a decree of permanent injunction to restrain the defendant from removing the pipelines, through which the plaintiff is irrigating his land for the last more than 20 years.

4. In the written statement, defendant simply stated that the pleadings of the plaintiff were wrong and denied, without making any specific admission or denial.

5. Following issues were settled for adjudication:-

1. Whether water pipe-line of the plaintiff is lying underneath the suit land as alleged in the plaint and the plaintiff is irrigating his land through this pipeline for the last more than 20 years. ? OPP

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2. If issue N: 1 is proved, whether the plaintiff is entitled for the injunction as prayed for? OPP

3. Whether the suit is false and frivolous and defendant is entitled to special costs ?

4. Whether the plaintiff has no locus standi to file the present suit? OPD

5. Relief.

6. After taking evidence produced by the parties and hearing both the sides, learned trial Court decided issues No.1 & 2 in favour of the plaintiff. It was found that plaintiff had been irrigating his fields through the pipelines passing through the suit land for the last more than 20 years and that defendant had no right to tamper with or interfere in the said pipelines. Suit was accordingly decreed based on these findings. However, the Appellate Court did not dispute the factual position that pipelines had been laid in the suit land through which the plaintiff was irrigating his land but on the basis of admission of the plaintiff to the effect that electricity motor was installed in the year 1983, came to the conclusion that period of 20 years had not elapsed and so, easementary rights had not been vested in favour of the plaintiff. It was further found that the land through which the pipelines had been laid, belonged to the Panchayat and there was no evidence that any permission had been taken from the Panchayat for laying down the said pipelines and so, the discretionary relief of injunction could not be granted. With these observations, the finding of the trial Court was reversed and the suit was dismissed.

7. After filing of the present Regular Second Appeal, at the time of issuing notice of motion on 28.08.1992, status quo was directed to be maintained till further orders.

8. Assailing the findings of the first Appellate Court, it is contended

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by Ld. Counsel for the appellant – plaintiff that existence of the pipelines in the suit property for the last more than 20 years has not been specifically disputed by the defendant, either in his written statement or even in his cross-examination. It is further contended that Gram Panchayat never raised any objection in laying of the underground pipelines by the appellant - plaintiff and as such, judgment of the first Appellate Court is based upon conjectures and surmises by relying upon the inadmissible evidence. Learned counsel further contends that learned Appellate Court adapted erroneous approach by commenting upon the non-joinder of the necessary parties i.e. Gram Panchayat because it is only the defendant, who was interfering in the rights of the plaintiff to use the pipelines laid underground in the suit land. No interference was ever caused by the Gram Panchayat and therefore, it is only the defendant, creating interference, who was the necessary party.

9. On the other hand, learned counsel for the respondent defended the judgment of the first Appellate Court.

10. After hearing counsel for both the sides, this Court finds that this appeal deserves to succeed. No doubt that plaintiff had pleaded that his underground pipelines has been laid for more than 20 years in the suit land, through which he was irrigating his fields from the well fitted with electricity motor but he never claimed easementary rights and so, the first Appellate Court, at its own, discussed the issue, as if it was a case of easementary rights. It was a simplicitor suit for permanent injunction. The finding of the trial Court to the effect that pipelines had been laid underground, was not disputed even by the first Appellate Court. Said pleading of the plaintiff was not even

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specifically disputed by the plaintiff. Learned trial Court also referred to the statement of defendant, who disclosed that pipeline may be in existence for the last 25 years. He nowhere specifically denied the existence of the pipelines passing through the suit land. Once the existence of pipelines was not disputed, and it is only the defendant who was causing interference in the usage of the said pipelines by the plaintiff, the plaintiff deserved to be given the decree of permanent injunction, as defendant neither pleaded nor proved on record his any right in the suit land, through which the pipelines had been laid. It is the Gram Panchayat, who is the owner of the land in question through which the pipelines are laid. Said Gram Panchayat did not cause any interference in the rights of the plaintiff. Even otherwise, Gram Panchayat is not a party to this suit for permanent injunction and therefore, cannot be bound by this judgment.

11. Consequently, the judgment dated 07.08.1992 of the first Appellate Court is hereby set aside; and the judgment of the trial Court dated 15.01.1992 is hereby restored, passing the decree of permanent injunction restraining defendant- respondent from interfering in the pipelines of the plaintiff passing through the land in dispute.

Present appeal is allowed accordingly.

(DEEPAK GUPTA)
JUDGE

April 03, 2024

Neetika Tuteja

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No