

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

132

2024:PHHC:037636

SAO-14-2024 (O&M)
Date of decision: 15.03.2024

RAM CHANDER

..Appellant

Versus

STATE OF HARYANA & ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rakesh Gupta, Advocate
and Mr. Karan Gupta, Advocate
for the appellant.

Mr. J.S. Pannu, AAG, Haryana.

ANIL KSHETARPAL, J(Oral)

1. This is plaintiff's second appeal against First Appellate Court's order remanding the case back to the trial Court for fresh decision after allowing application filed by Sh. Sharwan Kumar as a necessary party.
2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.
3. The plaintiff claims that he is owner of land located on both sides of water channel. He has put an underground pipeline under water channel in order to irrigate his land located on the other side of the water channel from his tubewell, which is located on one side. The plaintiff filed a suit that the defendant should be restrained from removing the underground pipeline against the State of Haryana and its officials, which was decreed.
4. During the pendency of the first appeal filed by the State of Haryana, Sh. Sharwan Kumar filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908, alleging that on account of underground pipeline, the entire water flowing in the water channel seeps in the pipeline,

depriving him of irrigation facility. Thus, the First Appellate Court remitted the matter back to the trial Court.

6. The learned counsel representing the appellant submits that the First Appellate Court should have sought report instead of remanding the case back to the trial Court.

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

8. Sh. Sharwan Kumar has been found to be necessary party. He is required to be given opportunity to file written statement and cross-examine the witnesses produced by the plaintiff apart from leading his own evidence. Hence, re-trial of the suit is necessary.

9. Consequently, finding no merit in the appeal.

10. Dismissed accordingly.

11. All the pending miscellaneous applications, if any, are also disposed of.

March 15th, 2024

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*