



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

234

RSA-665-2016 (O&M)
Date of decision : 12.09.2024

Tej Singh Appellants

versus

Gurmail Singh and another Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Binderjit Singh, Advocate
for the appellants.

Mr. Deepak Aggarwal, Advocate
for the respondents.

PANKAJ JAIN, J. (Oral)

1. Plaintiff is in appeal.
2. Suit was filed seeking decree of permanent injunction in form of restrained against the defendants from demolishing khal i.e. running water course. Detailed in the head note of the plaint has depicted in the site plan.
3. It was claimed by the plaintiff that he is co-sharer in khasra Nos.3653 min and 3654, situated within the revenue estate of village Patti Mehna, District Bathinda. The suit was resisted by the defendants claiming that the land already stands partitioned. Plaintiff was the owner to the extent of 1/9th share only. Water course as depicted by the plaintiff at point A, E and B is situated at the land of the defendants and barbed wire fencing has also been made by erecting pucca pillars in order to facilitate irrigation to the fields and the plaintiff has no concern with the same. Rather the defendants pleaded that it is the plaintiff who



dismantled the same mischievously.

4. On the basis of the pleadings, the suit filed by the plaintiff was put to trail by framing following issues:-

- “1. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
2. Whether suit of plaintiff is not maintainable in the present form? OPD
3. Whether the suit land in which the water canal is running has already been partitioned ? OPD
4. Relief.”

5. Trial Court dismissed the suit holding issue No.1 against the plaintiff on the ground that he failed to prove that the defendants tried to demolish any khal.

6. In appeal preferred by the appellant, Lower Appellate Court has affirmed the findings recorded by the Trial Court holding that there is no cogent evidence on record to show that the description of the water course given by the plaintiff in the head note of the plaint tallies with the revenue record. Plaintiff having failed to give khasra numbers to which the khal was running, was not entitled for decree of permanent injunction.

7. Counsel for the appellant while assailing the impugned judgement and decree passed by the Courts below submits that once the defendants themselves admitted that there was a water course running through the land and that the defendants had erected pacca pillars and barbed wire on the sides of the said water course, the Courts below ought to have decreed the suit and should not have non-suited the plaintiff merely for the reason that he did not describe the same by giving khasra numbers.



8. *Per contra*, counsel for the respondents submits that both the Courts below have rightly found that there was no threat to the water course as claimed by the plaintiff and thus he was not entitled for decree of permanent injunction.

9. I have heard counsel for the parties and have carefully gone through the records of the case.

10. Para 13 of the judgment passed by Additional District Judge, Bathinda i.e. Lower Appellate Court reads as under:-

“13. On appraisal of the oral as well as documentary evidence available on the file and weighing the submissions of the learned counsel for the parties, it is found that the assertions made by the learned counsel for the plaintiff, are found to be misconceived. The claim of the plaintiff is that the water course in question, which is intended to be demolished by the defendants, so as to disrupt the irrigation of the fields of the plaintiff, is very much in existence and the same runs from Point G to Point C, as depicted in the site land in red colour and further it is claim of the plaintiff that the said water course is partly brick paved and some part thereof is kachha. But, perusal of the plaint, reveals that the plaintiff has nowhere disclosed that in which khasra number the said water course falls. Though, in order to convince the court, the plaintiff has made futile attempt by leading voluminous evidence on record by getting examined officials of the revenue department as well as bringing on record revenue record i.e. jamabandies, but the plaintiff has failed to connect the said revenue record with the pleadings as well as evidence brought on record. There is no cogent evidence on record to believe the claim of the



plaintiff that the description of the water course as given in the head note of the plant, tallies with the revenue record, brought on record. Thus, in the absence of any convincing evidence regarding the description of the water course in question, as asserted by the plaintiff, cannot be believed. On the other hand, there is concrete evidence led by the defendant that they have raised construction of pillars and have laid barbed fencing by the side of the water course and this fact also stands proved from the photographs brought on record, as has been admitted by the witnesses, examined by the plaintiff, whereby they have demolished the case of the plaintiff. It is well settled proposition of law that the plaintiff has to stand at his own legs and he is required to prove his case by leading cogent and convincing evidence. Moreover, there is no evidence brought on record by the plaintiff that the defendants made any attempt to demolish the alleged water course. Thus, this court has no hitch to hold that the averments raised by the plaintiff in his plaint, have not been substantiated by leading any evidence, for which, the suit of the plaintiff has rightly been dismissed by the court below.”

11. From above, it is evident that so far as existence of water course is concerned, it is not denied by either of the parties. Thus, in the considered opinion of this Court, the Courts below erred in non-suiting the plaintiff holding that he failed to prove existence of water course. Rather the defendants themselves pleaded that it was the plaintiff who mischievously tried to demolish the water course.

12. In view of above, finding recorded by the Courts below are hereby set aside. It being admitted case of the defendants that there is a



water course running through the land which is being utilized for the proper irrigation of the land, suit of the plaintiff is decreed. Defendants are restrained from demolishing the khal.

13. Resultantly, the present appeal is disposed off.
14. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

12.09.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No