



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**RSA No. 1571 of 1998 (O&M)
Date of Decision: 02.07.2025**

State of Punjab and others

..... Appellants

Versus

Shiv Chand

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Gunjan Mehta, Additional Advocate General, Punjab
for the appellants-defendants.

Mr. Ashok Paul Batra, Advocate
for the respondent-plaintiff.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgment and decree dated 06.05.1997 passed by the Court of learned District Judge, Faridkot (**hereinafter to be referred as “First Appellate Court”**), whereby an appeal filed at the instance of appellants-defendants against the judgment and decree dated 29.04.1994 passed by the Court of Senior Sub Judge, Faridkot (**hereinafter to be referred as “trial Court”**), partly decreeing the suit for recovery instituted at the instance of respondent-plaintiff for grant of compensation towards use and occupation of his land measuring 3 Kanals bearing khasra No. 828, Khewat No. 3525 and Khatoni No. 6046 situated within the revenue limits of Muktsar, was modified to the disadvantage of the appellants-defendants.

[2] Briefly stating, the case set up by the plaintiff-respondent (Shiv Chand) was that he owned 26 Kanals 11 Marlas of land situated in Khasra No. 828 (3-0) Khewat No. 3525, Khatauni No. 6046 within the revenue limits of Muktsar; out of which, 23 Kanals 11 Marlas was acquired by the Govt. of Punjab for the extension of water works on 31.12.1970, however, the remaining 3 Kanals was also utilized by the Public Health Department having constructed a water tank thereupon. It was further pleaded that previously a Civil Suit No. 439 dated 16.12.1980, titled “Shiv Chand Versus Punjab State” for possession was filed *qua* 3 Kanals of un-acquired land situated in Khasra No. 828 which came to be decreed vide judgment and decree dated 10.11.1981 (Ex. P-11 & P-12), however, in the extension proceedings, only symbolic possession was delivered as a water tank was existing over the said land and was being used for public at large. Besides, it was also pleaded that for compensation towards use and occupation of the said 3 Kanals of land, the plaintiff-respondent also filed Civil Suit No. 364 of 10.12.1985, titled “Shiv Chand Versus Punjab State” and same came to be decreed vide judgment and decree dated 20.08.1997 (Exhibits P-9 & P-10) to the extent of Rs. 1,06,500/- as *mesne profits* with future interest @ 6% per annum. It was also submitted that though the said *mesne profits* were released in favour of the respondent-plaintiff, however, since December 1985, no compensation towards use and occupation was granted in favour of respondent-plaintiff. Hence the present suit for recovery of Rs. 2,89,965/- as compensation for use and occupation of land measuring 3 Kanals owned by the respondent-plaintiff was filed for the period post December 1985 till the date of filing of suit.

[2.1] Upon notice, the appellants-defendants appeared and contested the version set-up in the plaint, while stating that the land in question was utilized wayback in the year 1961 thus, the claim of the plaintiff-respondent was barred by law of limitation. It was further pleaded that the appellants took charge and possession of the water works including the water tank in the year 1971 from the Municipal Council and, therefore, no claim was made out against them.

[3] On the basis of pleadings of the parties, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to any compensation ?
If so, to what amount ? OPP*
- 2. Whether the suit is not maintainable ? OPD*
- 3. Whether claim is time barred ? OPD*
- 4. Whether plaintiff is estopped to file this suit by his act and conduct ? OPD*
- 5. Whether the suit is bad for non-joinder of necessary parties ? OPD*
- 6. Whether the suit is bad for valid notice under Section 80 CPC ? OPD*
- 7. Relief. ”*

[4] The trial Court, vide its judgment and decree dated 29.04.1994, partly decreed the suit, filed at the instance of respondent-plaintiff. Relevant para-14 thereof is extracted hereunder:-

“ Issue No. 7.

- 14. Keeping in view my findings on issues No. 1 to 6 above, a decree for the recovery of Rs. 1,09,000/- plus interest amounting to Rs. 20,000/- total Rs. 1,29,000/, with proportionate costs of the suit and future interest at the rate of 12% per annum from the date of the suit i.e. 13.8.91 to the date of decree and at the rate of 6%*

per annum thereafter till realization of the amount due on the principal amount of Rs. 1,09,000/-, is passed in favour of the plaintiff and against the defendants. ”

[5] Aggrieved thereof, the appellant-defendants filed first appeal, which came to be partly allowed vide judgment and decree dated 06.05.1997 passed by the First Appellate Court, while modifying the decree passed by the trial Court. Relevant para-9 of the judgment passed by the First Appellate Court is re-produced hereunder:-

“ Issue No. 7.

9. *In view of my findings on issue No. 1 above, I modify the decree passed by the trial Court regarding the recovery of interest and allow interest on the amount of Rs. 109000/- at the rate of 6% P.A. from the date of filing of the suit till the date of payment. The amount of Rs. 20,000/- allowed on account of interest shall be recoverable by the plaintiff regarding the period before the filing of the suit. Except the above said modification, the decree passed by the trial Court is affirmed. Keeping in view the part success of the appeal, the parties are left to bear their own costs. Decree sheet be prepared. The file be consigned to the record room. ”*

[6] Impugning the aforesaid judgments and decrees dated 06.05.1997 and 29.04.1994, learned counsel for the appellants-defendants submits that no construction over the suit land measuring 3 Kanals falling in Khasra No. 828 was ever raised by the appellants as the water tank was already in existence when the water works was taken over from the Municipal Council and thus, the appellants were not liable to pay any

amount towards use and occupation of the suit property and, therefore, the suit was liable to be dismissed.

No other argument has been raised on behalf of the appellants-defendants.

[7] On the other hand, learned counsel for the respondent-plaintiff submits that previously in Civil Suit No. 439 of 16.12.1980, it was decided in favour of the respondent-plaintiff vide judgment and decree dated 10.11.1981 that the plaintiff being owner of 3 Kanals of land in Khasra No. 828 was entitled for grant of its possession. Further, *mesne profits* were awarded in his favour @ 100 per day vide judgment and decree dated 20.08.1997 passed in Civil Suit No. 364 of 10.12.1985. He also submits that since the aforementioned judgments and decrees became final *inter se* between the parties, thus, the present suit for *mesne profits* relating to the subsequent period was rightly decreed in favour of the plaintiff-respondent and hence, the present appeal is liable to be dismissed.

[8] After hearing learned counsel for the parties and having gone through the paper-book / records, I am unable to find substance in the submission(s) made on behalf of the appellants-defendants.

[9] Admittedly, on an earlier occasion the respondent-plaintiff filed a suit for possession *qua* the same land i.e. 3 Kanals falling in Khasra No. 828 (3-0) while claiming himself to be its owner and the said Civil Suit No.439 of 16.12.1980 was decreed in his favour vide judgment and decree dated 10.11.1981 (Exhibits P-11 & P-12 respectively). As a matter of record, though a decree for possession *qua* the suit land was passed in favour of the respondent-plaintiff, yet its actual physical possession could not be

delivered in his favour as a water tank existed thereupon and only a symbolic possession was handed over to him, while considering the public utility of the user. It is also matter of record that in earlier Civil Suit No. 364 of 10.12.1985, which was decreed on 20.08.1997 (Ex.P-9), the respondent-plaintiff was awarded compensation towards use and occupation of the aforementioned 3 Kanals of land forming part of Khasra No. 828 (3-0).

[10] In the aforesaid circumstances, the humble opinion of this Court, once the title of suit land vested with the respondent-plaintiff and the aforementioned two judgments and decrees were final *inter se* between the parties; no illegality or perversity can be found with the reasoning recorded by the Courts below while decreeing the suit, thereby granting compensation for use and occupation to the respondent-plaintiff. There being no misreading of either of the pleadings or the evidence available on record; thus, present appeal, being devoid of merits, is hereby **dismissed**.

[11] Since, the main appeal has been decided / dismissed, no orders are required to be passed in the pending application(s) and the same shall stand disposed off.

July 02, 2025

'dk kamra'

**(HARKESH MANUJA)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>