



RSA No. 489 of 2000 (O&M) 1

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

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**RSA No. 489 of 2000 (O&M)
Reserved on : 06.08.2025
Date of Pronouncement :- 08.08.2025**

Gursharan Singh and another

...Appellants

Versus

Punjab State through Collector, Amritsar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Sudeep Mahajan, Advocate with
Mr. Shir Charanjit & Ms. Saachi Mahajan, Advocates
for the appellants.

Mr. Puru Jarewal, DAG, Punjab.

VIRINDER AGGARWAL, J.

1. Appellant-plaintiffs filed this appeal against the judgment and decree dated 10.01.2000 passed by learned Additional District Judge, Amritsar in Civil Appeal No. 184 of 1998 vide which the learned Additional District Judge has reversed the judgment and decree dated 17.11.1997 passed by Additional Civil Judge (Sr. Division) Tarn Taran vide which the suit of the appellants for injunction restraining respondents from lifting and selling the sand stored in a leased property was decreed.

2. Briefly stated that appellant-plaintiffs filed suit for permanent injunction restraining the defendants from forcibly and illegally interfering in the lifting and sale of sand collected in the fields of Gian Singh in Khasra No. 48/13/2

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(6-9) as per jamabandi for the year 1991-92 in the area of village Uppal, Tehsil Tarn Taran on the grounds that Harbhajan Singh son of Ram Singh got a contract for extracting sand from the Sabran Branch in Rayya Sub-Division for the year 1992-1993 and he entered into an agreement with Gursharan Singh-plaintiff dated 13.09.1992 to the effect that plaintiff would lift and sell the sand from banks of Branch Rayya. As per agreement plaintiff collected sand in the fields of Gian Singh. Plaintiffs are legally and peacefully entitled to lift and sell the sand collected in the fields of Gian Singh. Defendants are threatening to interfere in the business of the plaintiff and are not allowing the plaintiff to lift and sell the sand collected in the land of Gian Singh etc., hence the suit.

3. Respondents-defendants appeared and filed written statement raising preliminary objections of suit being bad for non-joinder of necessary parties not properly valued and not maintainable in the present form and that Civil Court has no jurisdiction and no notice as required under Section 80 of CPC has been served upon the defendants and on merits it was pleaded that the contract was with Harbhajan Singh but as per terms of the contract Harbhajan Singh was not authorised to further sub-contract to Gursharan Singh and Gursharan Singh has no authority to lift the sand after 30.09.1993. Gursharan Singh lifted sand upto 08.04.1994 illegally and without permission of the Canal Department. Vigilance Department conducted a raid on 08.04.1994. Sand was measured and was handed over to the department and the department was directed not to allow any person to lift the sand and prayer was made for dismissal of the suit. From the pleadings of the parties, following issues were framed :-

- 1) Whether the plaintiffs are entitled to the injunction as prayed for?
OPP.
- 2) Whether the suit is bad for non-joinder of necessary parties?
OPD.



- 3) Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD.
- 4) Whether the suit is not maintainable in the present form? OPD.
- 5) Whether the plaintiffs have not served a notice before filing of the suit? OPD.
- 6) Whether the plaintiffs have got no locus standi and cause of action to file the present suit? OPD.
- 7) Whether the civil court has got no jurisdiction to try the present suit? OPD.
- 8) Relief.

4. Plaintiff examined PW1 Gian Singh, PW2 Sarup Singh, PW3 Gursharan Singh and defendants examined DW1 Daljit Singh Gulati, SDO, DW2 Daljit Singh JE, Irrigation and after hearing arguments the learned Civil Judge decided issue No. 1 in favour of appellant-plaintiffs and issues No. 2 to 7 against the respondent-defendants and decreed the suit.

5. Aggrieved by the judgment and decree so passed, First Appeal was filed in the Court of learned Additional District Judge, Amritsar, which after hearing the arguments was allowed and reversed the findings on all issues.

6. Aggrieved by the judgment and decree so passed, the present appeal has been filed.

7. Learned counsel for the appellant has argued that the appellants are partners of Harbhajan Singh, who has a valid contract with the defendants to extract sand from the canal bed and after extracting the sand from canal bed the sand was stored in the fields of Gian Singh. Now appellant-plaintiffs were lifting that stored sand from the fields of Gian Singh and the findings recorded by the learned Additional District Judge are certainly erroneous as the learned Additional District Judge has ignored the fact that there was a contract between appellants and Harbhajan Singh and appellants were acting as agents of Harbhajan Singh and has every right to lift the sand. No document of contract signed by Harbhajan Singh was produced in evidence of the respondents. The learned Additional District



Judge ignored the testimony of DW1 where he has stated in cross-examination that he is not in possession of original agreement executed by the lessee in favour of Punjab State in respect of the auction made by them. Ex. D3 is an undated official document signed by XEN alone in which the general terms and conditions relating to auction of the sand extraction leases have been set out by the department. The same was not signed or witnessed by Harbahajn Singh or anybody. Learned Additional District Judge has over looked that there was no evidence oral or documentary to the effect that terms and conditions set out in Ex. D3 were even read over to the bidders at the time of auction or otherwise published. She further argued that even if it is assumed that terms and conditions set out in Ex. D3 are binding upon Harbhajan Singh then also as per clause 17 of Ex.D3, the penalty for violation of the terms and conditions is termination of the contract before expiry of the lease. The learned Additional District judge committed error by justifying the forfeiture of sand extracted and removed from the canal bed during the period of lease. Learned Appellate Court has ignored the fact that the appellant has fundamental right to carry on trade and occupation as per Article 19 of the Constitution and prayed that appeal be allowed and judgment and decree passed by learned First Appellate Court be set aside.

8. Learned State counsel submitted that there is no illegality or infirmity in the findings recorded by the learned Additional District Judge. Even if it is assumed that there is no contract between defendants and Harbhajan Singh then also appellant-plaintiffs has no authority to extract the sand from the river bed as sand vests in the State and only the person authorized by the State can extract the sand and sell the same. It was for the appellant-plaintiffs to prove that they were legally authorized to extract the sand and sell the same and the learned First



Appellate Court has rightly concluded that appellant-plaintiffs have no right to extract the sand and the appeal be dismissed.

9. I have heard learned counsel for the parties and gone through the record carefully.

10. A perusal of the record shows that Ex.D3 document sets out the general conditions for the lease of mines for extraction of sand and clause 14 and 17 which are relevant are reproduced as under :-

“14.The sand contractor shall not be entitled to make any charge upon or otherwise transfer/sublet in full or part of any of his rights under the lease.

17.In the event of any violation of the conditions, terms of the agreement, lease by the sand contractor, the department shall have right to terminate the lease in full or part and sand contractor shall have no right to claim compensation.”

11. It is admitted case of the parties that there was no contract between appellant-plaintiffs and respondent-defendants for extraction of sand. It is also admitted that appellant-plaintiffs were extracting the sand from canal bed and has stored in the land of Gian Singh and thereafter were selling the same when the sand was seized by the officials of the State. As per the terms and conditions set out in Ex. D3, Harbhajan Singh has no right to sub lease the extraction of sand and appellant-plaintiffs have failed to show any authority to extract the sand from the canal bed. It is admitted case that the sand was extracted by the plaintiffs from canal bed. So in the absence of any lawful authority with the appellant-plaintiffs to extract and lift the sand from canal bed, the learned First Appellate Court has rightly concluded that appellant-plaintiffs has no case made out for grant of injunction and has rightly reversed the findings recorded by learned Additional Civil Judge, Senior Division, Tarn Taran.

12. The judgment passed by the First Appellate Court is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein, which might have called for interference by this Court by way of accepting the regular second appeal.

13. The appeal stands dismissed accordingly.

14. Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

(VIRINDER AGGARWAL)
JUDGE

08.08.2025
P.Singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No