

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****210****RSA-3802-2013 (O&M)****Date of decision: 14.11.2025****Abhey Ram****...Appellant(s)****Vs.****Miyan Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- None for the appellant.

Mr. Raj Kapoor Malik, Advocate
for respondents No. 2 to 6.

Mr. Naveen Kumar Sheoran, A.A.G., Haryana.

NIDHI GUPTA, J.

Plaintiff is in Second Appeal against the concurrent judgments and decrees of the Id. Courts below, whereby suit filed by the appellant for declaration and consequential relief of mandatory injunction, has been dismissed by both the Courts below.

2. The present Appeal pertains to the year 2013. Order sheets reveal that the matter has been repeatedly adjourned either at request of, or due to non-appearance on behalf of the appellant. Even on the last date of hearing i.e. 03.03.2025, matter was adjourned at request of learned proxy counsel for the appellant. Today also, none has appeared on behalf of the appellant. Accordingly, the matter being of such an old vintage, is being heard and decided in the absence of Id. counsel for the appellant.



3. The case as pleaded by the appellant in the plaint was that he was owner in possession of agricultural land measuring 23K 1M. The plaintiff had previously filed Civil Suit which was dismissed as withdrawn. It was the case of the plaintiff that a water course had been sanctioned for irrigating the land of the share holders vide outlet No. RD-17510/L Titram Minor but share holders had constructed water course through outlet No. 20425/L Titram Minor which is passing through the land of the plaintiff. It was averred that plaintiff had made request for demolition of the said water course but to not avail. Accordingly, present suit was filed on 16.07.2003.

4. On notice, defendants No.1,2,7and 8 appeared and contested this suit. Defendants had filed their written statement but in pursuance of the amended plaint, they had filed the amended written statement. By way of amended written statement, defendants No.1 & 2 had challenged the suit on the grounds of maintainability, jurisdiction and concealment of true facts etc. It was alleged that the land of the plaintiff and defendants falls within the chak of outlet RD No.20425/L Titram Distributory and the co-sharers used to irrigate their land through the water course coming from rect. No.30 Killa No.17 & 18 since the last 35-40 years. The plaintiff had demolished the said water course with malafide intention on which the defendants had taken the lawful course and had approached the canal authorities who had ordered restoration of the water course demolished by the plaintiff. The plaintiff had filed an appeal against the said order but the D.C.O had dismissed the appeal of the present plaintiff and since 80%



share holders had been deprived of the Canal irrigation, he had ordered for restoration of the Water course on 6.7.2003 permanently from the Killa line of Killa No.17 and 17 rect. No.30. As such, it was alleged that the plaintiff has no locus standi to file this suit and accordingly a prayer for dismissal of the suit has been made. Defendants No.7 & 8 had filed a separate written statement and have denied the pleas taken by the plaintiff.

5. Vide the impugned order/judgments and decrees the suit of the plaintiff has been dismissed. Hence, present Second Appeal.

6. It is *inter alia* submitted by learned counsel for the respondent that the suit of the plaintiff was dismissed under Order 17 Rule 3 CPC as he had failed to lead any evidence in support of his contentions. Against the dismissal of his suit, appellant had filed an application for restoration of suit which was not maintainable as he was required to file a Civil Appeal. Vide the impugned judgment and decree dated 24.01.2013, the learned Additional District Judge, Kaithal has even dismissed the Civil Appeal. It is submitted that therefore, the impugned judgments and decrees suffer from no error as the appellant has failed to establish his case by leading any evidence. He accordingly, prays for dismissal of the present Appeal.

7. Heard.

8. The record bears out the correctness of the submissions made on behalf of the respondent. The learned Trial Court has dismissed the suit of the plaintiff on the reasoning that, mere pleadings cannot take



place of proof, or prove the averments made by the plaintiff. The plaintiff was duty bound to lead some evidence to prove that the orders dated 30.12.2002 and 08.07.2003 passed by defendants No. 7 and 8 are illegal, null and void and not binding on the rights of the plaintiff and the defendants were liable to demolish water course constructed through rect. No.30 Killa No.17 & 18. Needless to say, by merely making bald statements in his pleadings, plaintiff cannot seek to disprove the case of the defendants. The record further reveals that numerous opportunities were granted to the plaintiff to substantiate his contentions. However, plaintiff failed to lead and conclude his evidence to prove his case. Plaintiff has not led an iota of evidence in support of his case. Accordingly, suit of the plaintiff was correctly dismissed by the Trial Court under Order 17 Rule 3 CPC vide judgment dated 01.08.2006.

9. Thereafter, the plaintiff had preferred an application for restoration of the Civil Suit; which was not maintainable; as the plaintiff was required to file Civil Appeal or Revision as per appropriate relief. Accordingly, the said Restoration application filed by the plaintiff was correctly dismissed by the learned Additional Civil Judge (Senior Division), Kaithal vide order dated 04.06.2010.

10. Record further reveals that subsequently appellant had filed Civil Appeal against the Trial Court judgment dated 01.08.2006 and the order dated 04.06.2010 on the ground that learned Trial Court had not applied its judicious mind and no opportunity was afforded by Trial Court to the appellant to lead evidence. The learned First Appellate Court vide



judgment dated 24.01.2013 has correctly held that said grounds were not available to the appellant as “.....*for the sake of arguments, once a decree is wrong, in spite of the fact that the suit was dismissed under Order 17 Rule 3 of the CPC, it requires for filing a regular appeal which was not opted by the appellant for the reasons best know to him. There is no provision for filing the application for restoration of the suit which was dismissed under Order 17 Rule 3 of the CPC.....*”

11. The suit of the plaintiff was correctly dismissed under Order 17 Rule 3 CPC as it has been held by the Hon’ble Supreme Court in landmark judgment of **Shiv Cotex v. Tirgun Auto Plast P. Ltd. (SC) : Law Finder Doc Id # 271160**; that if the plaintiff did not produce evidence despite grant of numerous opportunities, then the suit of the plaintiff be dismissed. The Hon’ble Supreme Court has further held that: -

“C. Civil Procedure Code, Order 17, Rule 1 - Grant of adjournments during pendency of suit - Adjournments have grown like cancer corroding the entire body of justice delivery system - It is sad, but true, that the litigants seek and the courts grant adjournments at the drop of hat - Though provisions of Order 17 Rule 1 of C.P.C. are not mandatory, but adjournments beyond three may be granted for justifiable cause - Justifiable cause means a cause which is not only sufficient cause as contemplated under Order 17 Rule 1 of C.P.C., but unavoidable and sort of compelling necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc. in the area where any of these persons reside; an accident involving the litigant or the witness or the lawyer on way to the Court and



such like cause - The list is only illustrative and not exhaustive."

The relevant para of the said judgment is as under:-

"7. Thereafter, the suit was fixed for the evidence of the plaintiff on November 1, 2006. However, no evidence was let in on that day. The matter was then adjourned for the evidence of the plaintiff on March 2, 2007. On that day also the plaintiff did not produce evidence and the matter was adjourned to May 10, 2007. On May 10, 2007 again plaintiff did not produce any evidence. The trial court was, thus, constrained to proceed under Order 17 Rule 3(a) of the Civil Procedure Code, 1908 (for short, 'CPC') and passed the following order :

"Matter is fixed for conclusion of the plaintiff's evidence being last opportunity. No plaintiff's witness is present and neither any cogent reason has been put forth for such failure fully knowing the fact that today is the third effective opportunity for conclusion of plaintiff's evidence. Hence, matter is ordered to be proceeded under Order 17, Rule 3(a) C.P.C. and plaintiff's evidence is deemed to be closed. Heard. To come up after lunch for orders."

12. In view of the above, present Regular Second Appeal is hereby **dismissed**.

13. Pending applications, if any, stand disposed of.

14.11.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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