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**RSA-5742-2014**

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

RSA-5742-2014 (O&M)  
Date of Decision: 15.09.2025

YADBINDER SINGH AND ANR.

....Appellants

Versus

RACHHPAL SINGH AND ORS.

...Respondents

**CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL**

Present: Mr. Amandeep Soni, Advocate  
for the appellants.

Ms. Jyotika Behl, Advocate for  
Mr. Satbir Rathore, Advocate  
for respondents No.1 to 3.

Mr. Puru Jarewal, DAG, Punjab.

**Parmod Goyal, J. (Oral)**

Unsuccessful appellants/plaintiffs being aggrieved by dismissal of their suit for permanent injunction restraining the defendants from digging khal/nala through their lands vide impugned judgment and decree dated 15.03.2011 and 18.07.2014, passed by the Court of learned Civil Judge (Junior Division) Mukerian and learned Additional District Judge, Hoshiarpur, respectively, have approached this Court by way of Regular Second Appeal.

2. Appellants/plaintiffs had filed a suit for permanent injunction restraining the defendants from forcibly digging khal/nala through the land measuring 51 kanal 13 marlas comprised in Khata No.77/160, bearing

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Khasra No.5//2/1, 19, 22, 23, 24//1, 2, 3, 9/1, 10/1 situated in Village Tangralian H.B. No.276 Tehsil Mukerian, District Hoshiarpur. Plaintiffs/appellants had asserted that they are owner in possession of the land described in head note of plaint and said land had fallen to their share after partition duly recorded vide Mutation No.1625. It is asserted that land of defendants No.1 to 4 adjoins the land of plaintiffs/appellants. Scheme nala which falls in Khasra No.43, 44/2 exist and defendants are irrigating their land from said existing nala, however, defendants No.1 to 4 in connivance with defendants No.5 to 7 are trying to divert and dig out channel / course for irrigation through the land of plaintiffs without having any right or authority. Accordingly, permanent injunction was sought by plaintiffs/appellants against defendants from doing so.

3. On notice, apart from taking preliminary objections as regards to maintainability, suit being bad for non-joinder of necessary parties, jurisdiction, plaintiff having not approached the Court with clean hands and plaintiff having no cause of action, on merits, it was asserted that land owned by plaintiffs is a joint land and they are co-sharers. It was denied that defendants were irrigating their land through scheme nala falling in Khasra No.43, 44/2. Fact that land of defendants adjoins suit property of plaintiffs/appellants was admitted. It was asserted that water channel exist through the land of plaintiffs for the last 50 years and defendants No.1 to 4 are irrigating their fields continuously from said channel for the last 50 years. That plaintiffs had purchased some share about 11 years back. It was asserted that plaintiffs had tried to demolish the channel earlier which was

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restored and criminal proceedings under Sections 107 and 151 Cr.P.C. were initiated in the matter. Dismissal of suit was prayed for.

4. Defendants No.5 to 7 also took similar preliminary objections as was taken by other defendants. It was asserted that khal/watercourse is in existence over the suit property for the purposes of irrigation and proper scheme nala/watercourse does not exist, rather passage is shown at the spot in revenue records. It is asserted that land is being irrigated through non-scheme khal/watercourse which is running for the last 10-15 years and passes through Khasra No.5//23, 14R/3, 8 and 13. It was further asserted that plaintiffs and defendants No.1 to 4 are irrigating their land through said watercourse. That abiana was being collected from plaintiffs and defendants for irrigation purposes till 2002, when it was abolished by the State. It was asserted that plaintiffs have earlier demolished khal/watercourse, however, the same was restored by irrigation department. It was asserted that plaintiffs are only wanting to harass defendants No.1 to 4. It was also asserted that under Canal and Drainage Act 1873, khal/watercourse which commands the area for continuous period of six months, same cannot be demolished. That matter regarding channel as raised by defendants No.1 to 4 is still pending with the Division Canal Officer, Shah Nehar, Head Works, Division Talwara Township. Directions have been given by competent authority to both the parties, not to interfere in smooth running of non-scheme khal. Dismissal of suit was accordingly prayed for.

5. Following issues were framed from the pleadings of parties:-

1. Whether the plaintiffs are entitled for relief of permanent injunction as prayed for? OPP

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2. Whether suit is not maintainable in the present form?  
OPP
3. Whether suit is bad for non-joinder of all co-sharer of suit land? OPD
4. Whether jurisdiction of civil court is barred U/S 30(G) of Northern India Canal and Drainage Act ? OPD
5. Whether plaintiffs have not come to the court with clean hand? OPD
6. Whether no cause of action accrued to plaintiff for filing the present suit? OPD
7. Whether no legal notice under section 80 CPC served upon defendant? OPD
8. Relief.

6. The case of appellants/plaintiffs is that scheme nala is already running through Khasra No.43, 44/2 and, therefore, defendants have no right to dig a canal through the land of plaintiffs. On the other hand, the case of defendants No.1 to 4 is that the khal exist for the last 50 years and both plaintiffs and defendants are irrigating their lands from existing khal. Defendants No.5 to 7 have also asserted about existence of khal for the last 10-15 years. They have rather stated that earlier plaintiffs had demolished the same, however, it was restored by the irrigation department and both plaintiffs and defendants are irrigating their lands out of khal existing over the land of plaintiffs. It is also case of appellants/plaintiffs that scheme khal depicted in map as Y & Y1 and Z & Z1 are already in existence and the khal X and X1 through their land never existed nor carved out.

7. To prove that no khal existed and now defendants are trying to carve out a fresh khal out of land owned by plaintiffs, Sujan Singh - plaintiff himself appeared as PW-1. However, both the Courts after considering the

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evidence of plaintiffs have concluded that from the evidence led by parties, it is clearly made out that the assertions of plaintiffs that no khal existed over his land is not established, rather previous criminal and civil litigation between plaintiffs and defendants goes to show that khal existed through the land of plaintiffs. Both the Courts have duly made reference to application Mark A and Mark B made by plaintiffs as well as defendants against each other for criminal action. Courts had also found from Exhibit D-5 proceedings that in pursuance of Mark A and Mark B proceedings under Sections 107 and 151 Cr.P.C. were registered and initiated over the dispute between the parties on account of khal.

8. Further Ex.DW3, shows that Divisional Officer, Shah Nahar, UBDC, Sub Divisoin, Mukerian, competent authority under Canal and Drainage Act, 1873 had ordered restoration of khal through the land of plaintiffs and cost of Rs.1,000/- was imposed on plaintiffs for demolishing the same. From Ex.DW3 and Ex. D-5 it is, therefore, clearly made out that the khal existed prior to filing of the suit and plaintiffs have filed the suit without disclosing the factum of existence of khal. Even otherwise official-defendants/respondents who had no reasons to side either with plaintiffs or defendants have asserted existence of khal over land of plaintiffs for the last 10-15 years passing through Khasra No.5//23, 14//3, 14//8 and 13. Defendants No.5 and 7 have also asserted that both the plaintiffs and defendants No.1 to 4 had been irrigating their lands through said khal and had been paying abiana to the concerned department before it was abolished in the year 2002. Even co-sharers Ratno Devi and Parkash Chand had given

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affidavits dated 11.08.2013, regarding existence and use of khal passing through land of plaintiffs. The restoration of khal was ordered vide order dated 17.03.2004 and against said order of restoration of khal, plaintiffs had filed an appeal wherein matter was remanded back to Divisional Officer, Nahar Shah Nehar Head Works Division, Talwara and on remand vide Ex.D-3 khal was ordered to be restored. Admittedly present suit was filed after order Exhibit D-3. Learned Courts below have also recorded finding that Mutation of partition No.1625 was entered, but was not sanctioned. Therefore, plaintiffs cannot claim themselves to be exclusive owner in possession of suit land but are co-sharers till mutation is finalised.

9. Learned counsel on behalf of appellants/plaintiffs has challenged the impugned judgments and decrees passed by the Courts below on the ground, (i) that scheme nala is already available and duly depicted in the site plan and, therefore, defendants have no right to use khal through lands of plaintiffs. The conclusion drawn by both the Courts that khal existed through the land of plaintiffs even prior to filing of suit at least for more than 10 years has not been shown to be wrong and not based upon evidence led by parties.

10. On consideration, I find that findings of learned Courts below that channel existed over the suit land from which both the plaintiffs and defendants were irrigating their land. From evidence it is also proved that the channel which existed through the land of plaintiffs was demolished by plaintiffs, but was ordered to be restored by concerned canal authorities. Once it is proved that channel existed for irrigation which was being used by

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both the plaintiffs and defendants No.1 to 4, then no permanent injunction by Civil Courts can be granted. The matter regarding sanctioning of scheme of irrigation/channel exclusively falls within the domain of competent authority under Canal and Drainage Act, 1873. The issue whether any other scheme nala is already existing at the spot and can be used by defendants/plaintiffs can only be seen by the competent authority and not by the Civil Courts, keeping in view the provisions of Canal and Drainage Act 1873.

11. The learned Courts below have rightly held that plaintiffs have tried to seek discretionary relief of injunction by suppressing facts. The conclusion by learned Courts below cannot be faulted with. Plaintiffs have concealed facts regarding existing of channel through their land for at least 10 years and the fact that through the said channel both plaintiffs and defendants No.1 to 4 were irrigating their respective lands. The matter falls within the domain of competent authorities under the Canal and Drainage Act, 1873. Learned counsel for appellants/plaintiffs could not show any defect in the concurrent findings recorded by both the Courts below. No question of law arises. Appeal is accordingly dismissed.

**(PARMOD GOYAL)**  
**JUDGE**

**15.09.2025**  
chiranjeev

|                           |   |        |
|---------------------------|---|--------|
| Whether Speaking/Reasoned | : | Yes/No |
| Whether Reportable        | : | Yes/No |