



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-3416-2011 (O&M)

Date of decision: 09.03.2026

**Executive Engineer, Eastern Canal Colony, Ferozepur
and another**

...Appellant(s)

Vs.

Harbans Singh and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Manmeet Singh Teji, A.A.G., Punjab.

Mr. C.M.Munjal, Advocate
for the respondents.

NIDHI GUPTA, J.

CM-9524-C-2011

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 348 days in filing the accompanying appeal.

2. Heard.

3. For the reasons mentioned in the application which is duly supported by an affidavit of the applicant/appellant No.1, the same is allowed and delay of 348 days in filing the appeal is condoned.

RSA-3416-2011 (O&M)

Present Second Appeal has been filed by the defendants against the judgment of reversal dated 24.05.2010 passed by the learned Additional District Judge, Ferozepur; whereby suit filed by the plaintiff/LRs



of the deceased plaintiff Jagir Singh, for mandatory injunction, has been decreed by learned First Appellate Court.

2. Brief facts of the case are that the plaintiff had filed the instant civil suit seeking decree of mandatory injunction against the appellants/defendants to pay compensation amount to the plaintiff; or in the alternative, relief directing the defendants to handover the vacant possession of the suit land measuring 5K 16M as described in the plaint to the plaintiff. The case as pleaded by the plaintiff was that plaintiff had been in possession of the suit land for the last almost 35 years. Prior to acquisition, ownership of the land was with the Provincial Government. On the basis of the possession, suit land had been transferred in the name of the plaintiff in the year 1981 as per Jamabandi for the year 1995-1996. Thus, plaintiff was owner of the suit land. On 10.07.2001, it had come to the notice of the plaintiff that land measuring 4K 16M had been acquired for the construction of Mamdot Distributory. As per provisions of Land Acquisition Act, the plaintiff being interested person, was entitled to compensation of the suit land. It was averred that as suit land had been acquired by the defendants for the construction of the said Mamdot Distributory in the year 1976; and since then, the possession of the land is with the defendants, plaintiff was entitled to compensation. Plaintiff had made several requests to defendants to make payment of the compensation for the said period. Plaintiff had even served legal notice dated 30.08.2001 but to no effect. Hence, present suit was filed on 03.05.2002.



3. Upon appraisal of the pleadings and the evidence led by the parties, the Additional Civil Judge, Senior Division, Ferozepur had dismissed the suit of the plaintiff with costs vide judgment and decree dated 13.11.2007. However, the Civil Appeal filed by the plaintiff was accepted by the learned Additional District Judge, Ferozepur vide judgment and decree dated 24.05.2010. Hence, present second appeal by the defendants.

4. It is *inter alia* submitted by learned counsel for the appellants that jurisdiction of Civil Court is barred by statute. Section 30-G of the Northern India Canal & Drainage Act, 1873 expressly bars the jurisdiction of civil courts to entertain or decide any question relating to construction of a minor/distributory. The suit itself was not maintainable before the civil court, and both courts below erred in not addressing this fundamental objection. It is contended that the entire suit should have been dismissed in limine on this jurisdictional ground alone.

5. It is further submitted by learned counsel for the appellants/defendants that the learned Appellate Court has erred in interpreting the written statement filed by the present appellant during the proceeding of the civil suit before the trial court. The appellant is neither the owner of the suit property nor they have acquired the same. There is nothing wrong in the written statement as the Provincial Govt. is the owner of the suit land and the appellant never acquired the suit land. Further, the Appellate Court has held that DW1 has gone beyond pleading during cross-examination by stating the appellant is in possession of the



suit land. The above facts have been unnecessarily highlighted in such a way as to give adverse inference whereas the plaintiff has himself admitted that the appellant is in possession of the suit land since 1975-76 and the revenue record shows that the ownership is of the Provincial Govt. uptill 1981 (it was allotted to the respondent/plaintiff in the year 1981) so the averments made in the written statement are correct as the appellant did not acquire the land nor it was so required and further consent of the respondents was also not required as the land is the ownership of the Provincial Govt. on which the Mamdot Distributory was constructed.

6. Learned counsel for the appellants further submits that the patwari report regarding demarcation of suit land also shows that the land beneath the Distributory in question is the suit land. So, under these circumstances, the respondents/plaintiff are not entitled to any relief.

7. It is accordingly prayed that the present Appeal be allowed; and the impugned judgment and decrees dated 24.05.2010 passed by learned Additional District Judge, Ferozepur be set aside.

8. *Per contra*, learned counsel for the plaintiff/respondents opposes submissions made on behalf of the appellant-State and submits that it is clear finding of the learned First Appellate Court that plaintiff was in possession of the suit land when it was acquired by the appellants in the year 1975-1976. In this regard, learned counsel refers to the reasoning of learned First Appellate Court in **para 12** of the impugned judgment dated 24.05.2010, which reads as follows: -



“12. Even defendants' case in the written statement is that they are neither owner of the suit property nor they have acquired the same. When their representative turned in the witness box as DW1, namely, Rajiv Kumar Goyal, he has stated that suit land was under the ownership of Provincial Government and as such at the time of construction of Mamdot Distributory the question does not arise for its acquirement. It means that indirectly DW1 has admitted that they are in possession of the suit land and since the suit land was ownership of the State, so it was not necessary to make payment. In a way DW1 has gone beyond pleading and when we go through his cross examination, the entire matter stands clear when he said that he was not posted in the said division at the time of construction of Mamdot Distributory in the year 1976 and he cannot identify the signatures on written statement of the defendant. It is contended that no notice under section 80 CPC was served upon the defendant, but this fact is falsified from document EX.P2 and letter EX.P7. EX.P2 is the copy of notice dated 20.8.2001 and in pursuance of this notice letter EX.P7 was written by the land Acquisition Office to the Executive Engineer on 3.9.2001 and, therefore, issuance of notice is proved; whereas, denial made by DW1 is false and incorrect.”

9. He accordingly prays that the present appeal be dismissed; and the judgment and decree dated 24.05.2010 passed by learned Additional District Judge, Ferozepur be upheld.

10. No other argument is raised by learned counsel for the parties. I have heard Id. counsel and perused the case file in detail. I find



merit in the submissions advanced on behalf of Id. counsel for the appellants.

11. It is admitted fact on record that the Provincial Government was the original owner of the suit land measuring 4K 16M comprised in Rect. No. 75 killa No. 8/1 and 9/1 situated at village Dhandi Kadim, Tehsil Jalalabad, District Ferozepur. The said land had been acquired by the Canal Department for construction of Mamdot Distributory (also known as Laxman Distributory) in the year 1975-1976. It is also admitted fact on record that at the time of acquisition of the suit land in the year 1975-1976, plaintiff was not owner of the suit property; and it was the Provincial Government, which was the owner. It is the own admitted case of the plaintiff as stated in para 2 of the plaint that the land was transferred in the name of the plaintiff only in the year 1981 on the basis of possession on which date, the Canal already stood constructed.

12. Thus, from the above facts, it is clear that land the belonging to the plaintiff was never acquired, at any stage. At the time of construction of Mamdot Distributory in the year 1975-1976, plaintiff was not the owner of the suit land as, admittedly, Provincial Government was the owner of the suit land. This fact is further proven from the Jamabandi for the year 1975-1976 Ex.D1 which shows that Provincial Government has been recorded as owner of the suit land. Thus, once it is proved on record that Provincial Government was owner of the suit land at the relevant time of 1975-1976; therefore, question of payment of compensation to the plaintiff does not arise. In fact, it is a misnomer to



see that the suit land was 'acquired'. It is to be seen that question of 'acquiring' the said land, does not arise as the appellant/Department is also a Government concern. Therefore, in fact, it would be inter se transfer between two departments of the government.

13. However, the learned First Appellate Court has set aside the judgment of dismissal of the learned Trial Court on the ground that as per the Rapat Roznamcha dated 19.01.2004 Ex.P4 placed on record by PW2 Mangat Ram, Halqa Patwari, 5K 10M of land had fallen under the Canal. Learned First Appellate Court had also taken into account that as per khasra girdawari Ex.P9, 4K and 16M of land was under the Canal. Learned First Appellate Court has also taken note of the fact that as per letter dated 03.09.2001 Ex.P7 written by the Land Acquisition Officer Patiala to Executive Engineer Eastern Canal Ferozepur, the Land Acquisition Officer has acknowledged the demand of the plaintiff for compensation.

14. However, in this regard, the learned First Appellate Court has ignored that land of the plaintiff was never acquired. Hence, no compensation was payable to the plaintiff. Moreover, reliance of the learned First Appellate Court upon Rapat Roznamcha dated 19.01.2004 Ex.P4 and testimony of PW2 Mangat Ram Halqa Patwari with regard to demarcation, is ill-founded as PW2 has categorically admitted in his cross-examination that *"At the time of demarcation, I am not halqa patwari. I have no record which shows that department was summoned at the time of demarcation. It is correct that at the time of demarcation the department should be summoned."* Admittedly, the concerned Patwari



who had conducted demarcation, has not been examined. Thus, the only evidence relied upon by the plaintiff viz Ex.P4 is not convincing. There is discrepancy even in Ex.P4 as, as per the Rapat Roznamcha , the area under canal was found to be 5K 10M; whereas as per khasra girdawari Ex.P9 area under canal was 4K 16M.

15. Even otherwise, the Demarcation Report (Ex.P4) is not cogent or convincing evidence. PW2 Mangat Ram (Halqa Patwari) who placed the Rapat Roznamcha (Ex.P4) dated 19.01.2004 on record admitted in cross-examination that he was not the Patwari at the time of the alleged demarcation. No revenue official of the Canal Department was present at the time of demarcation, violating mandatory procedural requirements. No proper site plan was prepared by the Halqa Patwari. The rapat merely mentions demarcation was conducted from a single fixing point — which does not constitute proper demarcation as per standing instructions of the Finance Commissioner, Revenue, contained in Punjab & Haryana High Court Rules. The alleged rapat (Ex.P4) mentions 5 kanals 10 marlas under canal, whereas the khasra girdawari (Ex.P9) for the first time in the year 2001 shows 4 kanals 16 marlas — a discrepancy which makes both documents unreliable. No person was examined by the plaintiff who was present when the alleged demarcation was done, rendering it inadmissible as cogent proof. The First Appellate Court has misread the deposition of DW1, who had never directly admitted that the Canal Department was in possession of the suit land — his statement that no acquisition was required, was misinterpreted as an indirect admission of



possession. The Appellate Court wrongly held that DW1 'went beyond pleadings' in cross-examination and drew adverse inferences against the appellant, when evidence of DW1 was entirely consistent with the written statement. The Appellate Court failed to consider that the Jamabandis (Ex.P5, P6, P8) which showed the plaintiff himself in full possession of both khasra numbers throughout — contradicting the alleged claim that the Canal Department had possession since 1976. The First Appellate Court erroneously relied on the High Court judgment in **R.S.A. No. 3817 of 2003 (Punjab Govt. vs. Kashmir Singh & another, decided 17.02.2006)** as the facts of the said case are different. In **Kashmir Singh's case**, the claimant was the actual owner in possession at the time the land was taken over by the Government. However, in the present case, the plaintiff was neither the owner nor in possession of the suit land at the time of construction of Mamdot Distributory in 1975-1976, making the said authority wholly inapplicable.

16. Furthermore, the learned first Appellate Court has also ignored the fact that in their written statement, the appellants categorically stated that the suit land was never acquired by the Canal Department, and the plaintiff has no concern with the suit land or its ownership. It has also been categorically stated that no proceedings under the Land Acquisition Act, 1894 were ever initiated. The appellants never took possession of the land through any formal acquisition process. The appellants' witness (DW1 Rajiv Kumar Goyal, SDO) deposed that the suit land was under Provincial Government ownership at the time of



construction of Mamdot Distributory in 1975-76, and, therefore, there was no need for formal acquisition — as the Canal Department is also a Government concern. Thus, when the suit land was owned by the Provincial Government (as proved by Jamabandi Ex.D1 for the year 1975-76), no acquisition by consent or under the Land Acquisition Act was required.

17. However, all of the above facts have been ignored by the learned first Appellate Court. The First Appellate Court has ignored that plaintiff was not owner of the land at the time of canal construction. The plaintiff (Jagir Singh) has admitted in his own testimony that Mamdot Distributory was constructed in the year 1975-76. At that time, the land was recorded as ownership of the Provincial Government (proved by Ex.D1 — Jamabandi for 1975-76). Further, plaintiff has admitted in the plaint that land was transferred to the plaintiff only in the year 1981 i.e. years after the distributory was already in existence and after the Canal Department had taken possession. Since the plaintiff was not the owner of the suit land at the time of construction or possession, no compensation can arise in his favour. Revenue records (Jamabandis for 1985-86, 1995-96, 2000-01) showed plaintiff only in cultivating possession of the whole of khasra numbers; and there is no mention of any canal running over the land, contradicting the plaintiff's claim.

18. Further, the Appellants have categorically stated in para 2 of their affidavit of evidence Ex.DW1/A as under: -



“2. That the suit land was under the ownership of Provincial government and as such at the time of construction of Mamdot Distributory, the question does not arise for its acquirement. Copy of Jamabandi for the year 1975-76 Had Bast No. 2578, Village Dhandi Qadim, Tehsil Jalalabad, Distt. Ferozepur is enclosed herewith as Annexure D-1. The land was not acquired from the plaintiff for the construction of Mamdot Disty. Thereafter the land was allotted to the cultivators and as such the question also does not arise to grant any compensation and as such the plaintiff is not entitled to get any compensation.”

19. At the risk of some repetition, it is reiterated that in decreeing the suit of the plaintiff, learned First Appellate Court has lost sight of the fundamental fact that at the relevant time i.e. 1975-1976, Provincial Government was the owner of the suit land; and as admitted by the plaintiff in para 2 of the plaint, it was only in the year 1981 that the suit land was transferred in his favour in view of his possession. Thus, reliance of the learned First Appellate Court on the revenue record comprising of Jamabandi for the year 2000-2001 Ex.P5, 1995-1996 Ex.P6, 1985-1986 Ex.P8, khasra girdawari Ex.P9 and Ex.P10 holding the plaintiff to be owner of the suit property, is blatant misreading of the evidence on record; as, as per relevant Jamabandi for the year 1975-1976 Ex.D1, Provincial Government was the owner of the suit property at that time. Reasoning of the learned First Appellate Court is based on conjectures and surmises, which cannot be upheld.



20. Relevant findings of the Additional Civil Judge, Senior Division, Ferozepur as contained in judgment dated 13.11.2007 are as under: -

“15. Now the question remains with regard to the fact that whether testimony of PW2 and copy of rapat roznamcha i.e. Ex.P4 is convincing evidence to prove the demarcation. PW2 in his testimony categorically stated that he was not posted as Patwari at the time of alleged demarcation. No record pertaining to demarcation brought on the file. Only in the alleged rapat, copy of which is Ex.P4 fact with regard to conducting of demarcation stated to have been mentioned by the Halqa Patwari. Even careful perusal of copy of rapat roznamcha Ex.P4 shows that demarcation of khasra no.75M 8&9 cannot be said to have been made according to the standing instructions of the Finance Commissioner, Revenue, contained in Punjab & Haryana High Court Rules. Though scrutiny of copy of rapat Ex. P4 shows that simply from one fixing point, demarcation stated to have been made and boundary line of killa no.75 M 8&9 stated to have been marked and then this fact mentioned that land measuring 5 kanals 10 marlas out of both the khasra numbers found under Canal and the detail of demarcation of existing length of sides of the khasra numbers 1.e.75M 849 no where mentioned. No site plan prepared by the Halqa Patwari at that time. Further more important is that no person has been examined by the plaintiff in whose presence the alleged demarcation stated to have been made. The only evidence of the plaintiff with regard to the fact that suit land is lying under canal department is the alleged rapat, copy of which is Ex. P4 and same cannot be said to be cogent and convincing evidence to prove. the above said pleader of the plaintiff.



Further more important is that from careful perusal of copy of jamabandi Ex. P5 for the year 2000-01 shows that khasra no.75M/8 measuring 9 kanals 9 marlas and 75M/9 measuring 6 kanals 15 marlas has been shown in possession of plaintiff. No fact with regard to existence of Mamdot Distributry on any part of the land of above said khasra numbers depicted in the above said copy of jamabandi. Similarly, in the copy of Jamabandi 1995-96 which is Ex. P6, the plaintiff has been shown in cultivating possession of whole land of both the above said khasra numbers. Similarly, in copy of jamabandi for the year 1985-86, the plaintiff has been shown in possession of land of both the khasra numbers 75M 8&9 even plaintiff has shown that he has mortgaged whole area of both the above said khasra numbers in favour of the bank by way of simple mortgage. The perusal of copy of khasra girdawari Ex. P9 shows that for the first time in the year 2001, out of khasra no.75M/8(1-17) and out of khasra no. 75M/9(2-19) area shown under Canal, this total area comes to the tune of 4 kanals 16 marlas but in the alleged copy of rapatroznamcha Ex. P4 the area under Canal found out of both the above said khasra numbers described as 5 kanals 10 marlas. Though, nothing has been mentioned in Ex. P4 how much area is out of khasra no.75M/8 and how much out of which khasra number 75M/9.”

21. Learned counsel for the plaintiff/respondents is unable to dispute or controvert the above said facts and findings.

22. Given the above admitted facts, I **allow** the present Appeal; and set aside the judgment and decree dated 24.05.2010 passed by the learned Additional District Judge, Ferozpur; and restore the judgment and

decree dated 13.11.2007 passed by the learned Additional Civil Judge
Senior Division, Ferozepur.

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

09.03.2026

Divyanshi

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(NIDHI GUPTA)
JUDGE