
(2009) 05 RAJ CK 0108
In the Rajasthan High Court

Brij Lal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-05-2009

Acts Referred:

Citation : (2009) 3 WLN 271

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. The plaintiff is aggrieved against the order passed by the two Courts below, one rejecting petitioner's injunction application by order dt. 06.08.2008 and another dismissing his appeal preferred against the order of the trial Court dt. 06.08.2008 vide order dt. 21.11.2008.

3. The respondent was directed to file the affidavit before this Court to disclose the width of the Khala/canal/water course whatever, which is moving through the agricultural field of the petitioner. In response to that, the respondents submitted affidavit of the concerned Executive Engineer. The petitioner also submitted his affidavit to counter the affidavit of the said Executive Engineer.

4. I considered the submissions of learned Counsel for the parties and perused the facts of the case.

5. The plaintiff's own case as pleaded in the plaint was that the plaintiff is Khatedar-tenant of the land referred in the plaint and according to him, no water course/Khala or the canal was passing through his agricultural field and he stated that LLW canal is passing just adjoining to the land of the plaintiff-petitioner. It is submitted that without acquiring the land of the petitioner, the respondents wanted to raise a canal in the field of the petitioner. With these averments, suit was filed and application was submitted for ad-interim relief. The written

statement was filed by the respondent-State stating therein that the respondents are making the Kuchi Nahar into Pakki Nahar (permanent canal) by construction. It is also submitted that Chack No. 49 LNW has 88" wide canal and the construction work is going on to make it permanent canal. The said canal is running since last 50 years. The respondents are not changing the water course/canal in any manner.

6. The trial Court dismissed the injunction application of the plaintiff after observing that the respondents are constructing the permanent canal at the place where the temporary canal was already in existence. The trial Court also observed that the permanent canal is constructed in the canal area of 88" and the said canal, which was running through the agricultural field of the plaintiff? petitioner was running since last 50 years.

7. The appellate Court was also of the view that since the said canal is already in existence and the respondents can construct the permanent canal to the width of 88", therefore, the trial Court has rightly rejected the injunction application.

8. Learned Counsel for the petitioner vehemently submitted that in fact no canal was passing through the agricultural field of the petitioner and it was only a Khala, which had total width of 4". It is submitted that it is admitted case that petitioner is Khatedar?tenant of the land in question from where the respondents want to construct the permanent canal. It is also submitted that to start the permanent canal, the respondents will need additional land and they will therefore waste the petitioner?s-plaintiff?s 88" wide land to the full extend of the length of the canal passing through the petitioner?s agricultural field. It is submitted that petitioner?s Khatedari land cannot be used, utilized without acquiring the land by the respondents.

9. Learned Counsel for the respondents vehemently submitted that the petitioner?s plaint and application clearly show that petitioner came out with the case that there was no canal passing through the land, but now the petitioner has admitted that canal is passing through his land. It is also submitted that petitioner did not disclose that the canal was passing through his land since 50 years and thereby he has suppressed the material facts. So far as canal or Khala was of 4" in width and was passing through the plaintiff?s agricultural land is concerned, that is not the fact pleaded by the plaintiff?petitioner in the application. Therefore, the two Courts below rightly held that since the Nahar in question is running through the petitioner?s agricultural field since last 50 years, therefore, if the respondents are constructing the canal as permanent canal, the respondents are not going any act which may violate any right of the plaintiff? petitioner.

10. I considered the submissions of learned Counsel for the parties and perused the facts of the case.

11. The fact which goes to the root of the case and relevant for the purpose of deciding prima facie case is that the land in question ? the agricultural land is the

Khatedari land of the petitioner-plaintiff. The two Courts below concurrently held that the one canal is passing through the plaintiff's agricultural land and it is since last 50 years. There is no evidence on record to show that what was the width of that canal and that was the most important and crucial fact because of the reason that any right if accrued to the respondents because of long use of the land of the petitioner's Khatedari land that extend to the extent of the length and width of the land, which was in use as passing through the water by the respondents. If the petitioner has allowed and gave consent to construct the Khala/Nala/canal to the respondents of a particular width of canal then that does not mean that the plaintiff is bound to give more land to the defendants ? respondents merely because the respondents needs more land to give effect to their any scheme. The land which is in Khatedari land of the plaintiff can be taken only by due process of law and that is by acquisition or by agreement. The respondents, therefore, cannot have any justification in demanding more land from the plaintiff then which was in fact given by the plaintiff to the respondents for constructing Khala/Nala/water course or even canal.

12. In view of the above reasons and particularly in view of admission of the defendants in the written statement that the respondents-defendants want to construct canal within the area of the canal itself, cannot demand more land from the petitioner-plaintiff to increase the width of the land from 4" to 88" or may it be from 8" to 88" or even from 40" to 88". The maximum claim of the defendants?respondents is that the canal at present is of 40" passing from the land of the plaintiff. In additional affidavit it has been said that at present the total width of the disputed portion of the LLW Distributory is 88 feet including banks and berms.

13. Since there is dispute with respect to the exact width of the canal running through the land of the plaintiff?petitioner, therefore, the order passed by the two Courts below cannot be sustained refusing injunction for the land, which is of the plaintiff and from where the water course is not passing through.

14. In view of the above reasons, the writ petition of the petitioner is allowed. The order of the appellate Court dt. 21.11.2008 and the order of the trial Court dt. 06.08.2008 are set aside. The respondents are directed not to increase the width of the water course/canal which is running through the plaintiff's agricultural field. The trial Court is directed to appoint the Commissioner to measure the length and width of the canal/Nala/Khala passing through the land of the petitioner, which shall be kept on record and the respondents shall not use the petitioner's any land beyond the width of the canal which is in fact, and actually running from the land of the plaintiff. The trial Court shall appoint the Commissioner after giving due notice to both the parties and the Commissioner shall inspect the site in the presence of the plaintiff and the defendants or their representatives. The trial Court shall appoint the Commissioner within a period of 10 days from today and shall fix the date not less than 7 days thereafter.

The status quo be maintained by both the parties, which exists today till the

Commissioner's report received.