

(1992) 09 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1539 of 1979

Gajja Singh

APPELLANT

Vs

Mohinder Singh and Others

RESPONDENT

Date of Decision : 17-09-1992

Acts Referred:

Specific Relief Act, 1963 — Section 38

Citation : (1993) Supp CivCC 325 : (1993) 103 PLR 496

Hon'ble Judges : A.L. Bahri, J

Bench : Single Bench

Advocate : Satish Bhanot, for the Appellant;

Final Decision : Dismissed

Judgement

A.L. Bahri, J.—This Second Appeal is by plaintiff Gajja Singh, whose suit was dismissed by both the Courts below. He filed a suit for grant of permanent injunction restraining Mohinder Singh and others from digging earth from their land just upto the land of the plaintiff. The plaintiff claimed to be owner in cultivating possession of land comprising killa Nos. 4, 5, 6/1 and 7/1 in village Barsalpur, district Ropar. The land of defendant Nos. 2 to 12 adjoins his land. Mohinder Singh defendant No. 1 was running a brick-kiln in killa Nos. 6/2, 15 and 16/1, which are adjoining towards south the fields of the plaintiff. Mohinder Singh had taken the land from defendant Nos. 2 to 12 for the purpose of digging earth for moulding the bricks. The defendants were intending to dig earth upto the depth of 5 to 6 feet, which was likely to cause irreparable loss to the fields of the plaintiff.

2. The defendants contested the suit. Defendant Nos. 2 to 12 claimed to be owners of the adjoining land and having given the same on lease to defendant No. 1, who was to dig earth for manufacturing bricks. The brick-kiln was installed about seven years ago and there was no objection to the installation thereof. The plaintiff was, thus, estopped to object to the working of the same. No damage was caused to the plaintiff's land by the digging of earth. The plaintiff did not

disclose the nature of the damage. The defendant, owner of the brick kiln also took land from one Jaimal Singh of village Despura and dug earth upto the last inch. The land of Jaimal Singh aforesaid adjoins the other land of the plaintiff. Defendant No. 1 also contested the suit, inter-alia, alleging that the owners of the adjoining land cannot be restrained from making use of the land in any manner, which suited them. The suit was barred by res judicata.

3. The following issues were framed on the pleadings :-

(1) Whether the plaintiff is entitled to the injunction prayed for on the facts alleged in the plaint ? OPP.

(2) Relief.

4. The trial Court decided issue No. 1 against the plaintiff, inter-alia, holding that the plaintiff had failed to prove any loss by digging of the earth from the adjoining fields and, thus he was not entitled to the injunction prayed. The lower appellate Court affirmed the finding aforesaid and dismissed the appeal.

5. Learned counsel for the appellant has argued that there is an inherent right to protect his land from being wasted by the acts of owners of the adjoining land and the plaintiff was entitled to the relief asked for, as by digging earth upto the last inch the land of the plaintiff would give-way and rich soil would flow towards the land of the defendants, where digging operations were going-on. In support of this contention reliance has been placed on two decisions of the Calcutta High Court :-- Krishna Lal Saha Choudhury and Others Vs. Radhika Mohan Das and Others, . and Tamluk Trading and Manufacturing Co. Ltd., v. Nabadwipchandra Nandi A. I. R. 1931 Cal. 542. On going through the facts and the ratio of the decisions aforesaid, I am afraid no benefit can be derived by the appellant therefrom. In Krishna Lal Saha's case, the position was entirely different. The question related to measure of damages caused by a trespasser that it was observed as under :--

"It is only where no adequate compensation could otherwise be given that a decree for restoration should be passed, especially in a case where the cost of restoration is much more than the depreciation in the value of the land."

In Tamluk Trading & Manufacturing Company's case to some extent the question involved was identical with respect to the owner's right to support his land and the matter was discussed. It was observed as under :--

"An owner's right to support will be protected by an injunction when the interference with the right is of a substantial nature even though the pecuniary loss actually resulting from the defendant's wrongful acts is small. The Court will also interfere by injunction before subsidence has actually taken place if satisfied that injury is imminent and certain to result from the defendant's act, also when the defendant claims the right to do acts which must inevitably cause a subsidence. No occurrence of actual damages, therefore, is not a ground for challenging the maintainability of a suit for injunction."

6. Even if ratio of the decisions, aforesaid, is taken into consideration, the plaintiff's suit in the present case cannot be decreed As per finding recorded by the trial Court, there was no imminent danger to the land of the plaintiff, even if earth was dug upto last inch. This finding was given keeping in view the nature of the soil which is required for manufacturing bricks. No evidence was produced with regard to damages, if any, or extent thereof in the suit by the plaintiff.

7. There is no bar that the plaintiff cannot protect his own land" by doing any act which is necessary either by raising a supporting: wall or just by raising a mound around his own " land. As the plaintiff is entitled to use his own land in any manner he wants, likewise similar right vests in the owners of the adjoining land. In the absence of evidence of causing any damage by digging earth in the adjoining land, the plaintiff is not entitled to any relief.

8. For the reasons recorded above, this appeal fails and is dismissed. There will be no order as to costs.