

(2009) 08 SHI CK 0048
In the High Court Of Himachal Pradesh

Mohinder Singh and Others

APPELLANT

Vs

State of HP and Others

RESPONDENT

Date of Decision : 11-08-2009

Acts Referred:

Citation : (2009) 08 SHI CK 0048

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Ahuja, J.—This is an appeal filed by the appellants against the judgment and decree dated 23rd December, 1999 vide which the suit filed by the appellants as plaintiffs for recovery of Rs. 2,05,000/- as damages as well as for mandatory injunction was dismissed by the learned District Judge, Sirmaur at Nahan.

2. Briefly stated, the facts of the case are that plaintiffs had filed a suit for damages and mandatory injunction as against the respondents, who were impleaded as defendants. It was alleged by the plaintiffs that they are owners in possession of the land measuring 20-16 bighas and 40-15 bighas in Mauza Maryog, out of Whether the reporters of Local Papers may be allowed to see the judgment? Yes which land measuring 20-16 bighas was irrigated through a Kuhal. It was alleged that the Kuhal originates from Dali-Ka-Khala and reaches village Maryog through RCC pipes underneath Solan-Rajgarh road since 1977. It was further alleged that in February, 1994 the defendants started widening Solan-Rajgarh road and used heavy machineries for the purpose. It was further alleged that RCC pipes of the Kuhal underneath the road in question were broken and the Kuhal was damaged to a great extent and flow of water from it was completely blocked. Thus the water of the Kuhal did not reach the land of the plaintiffs. The plaintiffs made complaints to the authorities to restore the Kuhal to its original position.

3. It was further alleged that the plaintiffs had been cultivating the off season

vegetables and other cash crops in the irrigated land and was earning Rs. 1,00,000/- per year but due to blockage of the Kuhl, the water did not reach their land and they could earn only Rs. 15,000/- per annum. It was also alleged that while widening the road Public Works Department threw the debris in their adjoining land and their land became unfit for cultivation and there were 100 trees and the plaintiffs were put to a wrongful loss of Rs.45,000/-. Accordingly, the plaintiffs filed a suit for recovery of Rs.2,05,000/- as damages as detailed above and also prayed for issuance of mandatory injunction directing the defendants to remove the debris from their land and to restore the Kuhl to its original position.

4. The defendants did not dispute that the land of the plaintiffs is situated in village Maryog and the Kuhl had been passing through RCC pipes. They pleaded that the irrigation scheme was completed in the year 1981-82 and no damage was caused due to widening of the road. It was alleged that the damage was caused due to heavy rains and local mischief and the Kuhl became dry due to natural calamities in the year 1993 and it became non-functional. It was also denied that any debris was thrown in the land of the plaintiffs or it had become uncultivable. It was also denied that fruit plants of the plaintiffs were damaged or destroyed due to widening of the road and as such they prayed for dismissal of the suit.

5. On the pleadings of the parties, the following issues were settled by the learned trial Court:

1. Whether the plaintiffs are entitled for a decree of permanent injunction, as alleged? OPP.

2. Whether the plaintiffs are entitled for the recovery of Rs.2,05,000/- in lieu of damages as alleged? OPP.

3. Relief.

Parties led their evidence and learned trial Court vide its impugned judgment decided all the issues as against the plaintiffs and in favour of the defendants and consequently dismissed the suit of the plaintiff in full.

6. I have heard learned Counsel for the parties and have gone through the record.

7. The submissions made by the learned Counsel for the appellants were that the plaintiffs had written a letter Ex.P.3 dated 8th November, 1994 to the defendants who admitted that the Kuhl will be got repaired, but the same was not done. It was also submitted that there is a statement of the expert which applies to the private land also and it proves the extent of loss. Since there was a recurring loss to the plaintiffs and debris were fallen in the land of the plaintiffs, the plaintiffs are entitled to all the reliefs claimed by them in the suit, i.e. for getting the Kuhl repaired, for damages as well as for mandatory injunction and permanent injunction and as such the findings of the learned trial Court to the contrary are

liable to be reversed.

8. On the other hand, learned Deputy Advocate General for the respondents had submitted that the plaintiff had failed to prove that any damage was caused to the Kuhl due to the act of the defendants. It was also submitted that there was no duty of the State to supply regular water and the plaintiffs had failed to prove that they were entitled to water as a matter of right or that any loss was caused due to the act of the defendants and as such the findings of the learned trial Court do not call for any interference of this Court.

9. On reappraisal of the judgment passed by the learned trial Court, it is clear that after referring to a decision of the Apex Court the learned trial Court had rightly concluded that to obtain compensation in a suit for negligence as a tort the onus is upon the plaintiffs to prove the following ingredients:

- a) A legal duty to exercise due care;
- b) Breach of duty ; and
- c) Consequential damages.

10. The evidence led by the plaintiffs as well as by the defendants has to be appreciated in the light of the above mentioned ingredients, whether they have been proved by the plaintiffs or not.

11. To prove the first point that the widening of the road was started in February, 1994, there is a statement of PW-1, Mohinder Singh, one of the plaintiffs that the work of widening of the road was started in 1994-95 and for which heavy machinery was used. PW-1 Mohinder Singh has stated that in case the land is similar to Ex.P.1 and P.2 and there is regular water, in one bigha of land 1012 quintals peas and 35-45 quintals tomatoes can be grown. A perusal of the plaint shows that there was no mention in regard to the growing of the peas or tomatoes or how much was being grown in it. The allegations made in the plaint are in regard to the destruction of 100 Kokath and Khair trees and loss suffered to the extent of Rs.45,000/-. In the next paras, the general allegations were made that the plaintiffs are suffering loss of Rs. 85,000/- per year on account of loss from the cash crop and off season crops like peas and tomatoes, but it was not mentioned how much produce was grown and how much income was being derived from each crop separately. The only allegations made were that the plaintiffs have suffered loss of cash crops and off seasons crops but it was not spelt out in regard to different crops. There was no cogent evidence on record to show whether due to breaking of the pipes underneath the road or due to diminishing of the water in the source the water stopped flowing in the Kuhl. The copy of the letter dated 8th November, 1994 written by the XEN to the Deputy Commissioner, Sirmaur cannot be looked into since it has been marked only and has not been proved in evidence. In cross-examination plaintiff Mohinder Singh has admitted that he has not kept any account of produce of every year nor he can produce such record. PW-2, Sada Nand, has simply stated

that since the debris fallen in the Kuhl and Kuhl was destroyed, there was no irrigation. He has not stated as to what has happened to it and how much land was affected and he has gone to the spot and visited the same. PW-3, Upinder Singh Thakur, Agriculture Development Officer, has stated in general that in one bigha of land 35-40 quintals of tomatoes and 10-12 quintals of peas can be grown. He never stated that this could be grown in the land owned and possessed by the plaintiffs or that what was the quality of the land.

12. A perusal of the copies of Jamabandi Ex.P.2 and Khasra Girdwari, Ex.PD refer to by the learned trial Court, also shows that tomatoes, peas etc. had been grown in this land. During this period from Kharif, 1992 to Rabi, 1996 the areas under the above crops had been very nominal. A perusal of Ex.PD further shows that no cash crop was sown by the plaintiffs, which belies the statement of the plaintiff that they could not grow cash crop in the land due to falling of the debris.

13. From the above discussion of the evidence it is clear that it was for the plaintiffs to allege and prove as to how much loss they have suffered due to the act of the defendants and they should be granted the reliefs. In the plaint mainly the plaintiffs have claimed compensation for the destruction of 100 Kokath and Khair trees which were destroyed by throwing debris and they have not stated that they have suffered loss to their cash crops, i.e. peas and tomatoes etc. The plaintiffs have not stated as to much peas and tomatoes etc. could be grown in the land. No other witness from the village has appeared and deposed that the loss suffered by the plaintiffs was due to the falling of the debris. The plaintiffs had also failed to prove that how much income they were deriving from the agriculture land and how they are entitled to the relief of mandatory injunction or permanent injunction. Thus the findings of the learned trial Court are based on correct appreciation of evidence and these do not call for any interference by this Court.

14. In view of the above discussion, I accordingly hold that there is no merit in the appeal filed by the appellants which is dismissed accordingly. However, the parties are left to bear their own costs.