
(2013) 05 P&H CK 0114

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 464 of 1987

Sardara Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 21-05-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 100, 80

Citation : (2013) 171 PLR 235

Hon'ble Judges : Tej Pratap Singh Mann, J

Bench : Single Bench

Advocate : R.K. Joshi, for the Appellant; S.S. Chaudhary, D.A.G., Punjab for Respondent Nos. 1 to 3 and Mr. H.S. Bajwa for Respondent Nos. 4 to 7, for the Respondent

Final Decision : Dismissed

Judgement

Tej Pratap Singh Mann, J.—Suit tiled by the appellants for mandatory injunction was dismissed by Sub Judge, 1st Class, Dasuya on 14.11.1984. Aggrieved of the same, they filed first appeal which was dismissed by District Judge, Hoshiarpur on 13.8.1986. Still not satisfied, they filed the present second appeal. The case of the appellants, as set up in their plaint, was that they were owners in possession of the suit land falling in villages Ghallian and Godhara. There was an old pond towards the South of the suit land. The surplus water of village Godhara used to fall in the aforementioned pond through the drain. However, the Punjab Drainage Department forcibly and unlawfully dug a three karams wide drain through the fields of the appellants. The Department did not acquire the land of the appellants for the said purpose nor paid them any compensation. Instead, they unlawfully and illegally diverted the original flow of the water through the land of the appellants.

2. The officials of the Department while filing written statement took the stand that the water of the village Godhara never flowed into the pond of the village Ghallian. Instead, the surplus water of villages Ghallian and Godhara flowed in

the Ghallian drain which had been in existence since the year 1976. The villagers of Ghallian and Godhara submitted their written application representing to the Department that the existing Ghallian drain had filled up and as a result thereof, water logging was occurring in their fields. The Drainage Department took stock of the situation and started desilting the drain. No formalities were required to be attended to by the Department while carrying out the operation of de-silting of existing drain and no new drain as alleged by the appellants was dug out. It was also alleged that no valid or legal notice u/s 80 CPC was served upon the official defendants.

3. After hearing counsel for the parties and going through the evidence brought on record, the trial Court held that the drain in question was in existence since prior to Kharif, 1974. The site plan showing the drain in green colour was prepared by the appellants after 21.4.1981 i.e. subsequent to the dismissal of their previous suit. Whatever steps were taken by the Department in the year 1979-80 were to clear the drain in dispute and not to create a drain as claimed by the appellants. Further, no notice as required u/s 80 CPC was served upon the official defendants before the institution of suit. Accordingly, the suit was dismissed and as mentioned above, first appeal filed by the appellants also came to be dismissed.

4. Learned counsel for the parties have been heard and the record perused with their able assistance.

5. As per report Ex.P.4 of the Local Commissioner, drain shown as red in the site plan Ex.P.1 passed through the land belonging to the appellants. This drain was in existence prior to Kharif 1974. On 7.6.1979, the Gram Panchayat passed resolution Ex.DW-4/1 and resolved that the drain was full of silt and the Drainage Department should carry out desilting operations. Necessary steps were taken by the Drainage Department and desilting was completed in the same year. Therefore, it cannot be said that the drain had been constructed by the Department for the first time through the land of the appellants.

6. It is not in dispute that the appellants filed the suit on 5.8.1982. They did not serve any advance notice u/s 80 CPC upon the official defendants. Up-till that point of time, only Executive Engineer and Sub Divisional Officer of the Drainage Department, alongwith four private individuals stood arrayed as defendants. The application under Order 1 Rule 10 CPC was allowed on 19.9.1983 and as a result thereof, State of Punjab was also impleaded as a defendant. Realizing that an objection was likely to be raised regarding non-issuance of notice u/s 80 CPC, the appellants did submit a notice u/s 80 CPC on 15.4.1983 which was received by the Chief Secretary on 26.4.1983. However, admittedly when the suit was filed on 5.8.1982, no such notice u/s 80 CPC had been served. Subsequent service of notice u/s 80 CPC would not cure the basic defect in the suit of there being no advance notice u/s 80 CPC having been issued and served upon the official defendants. In view of the above, no case is made out for any interference in the judgments passed by the Courts below whereby the suit filed

by the appellants stands dismissed. Even otherwise, second appeal can be filed only u/s 100 CPC and that too, if some substantial question of law is involved and not otherwise. Till date no substantial question of law has been formulated. Even otherwise after hearing learned counsel for the parties, this Court is of the view that no substantial question of law arises for determination.

The appeal is devoid of any merit and, therefore, dismissed. No costs.