
(2014) 01 P&H CK 0123
In the Punjab And Haryana At Chandigarh
Case No : RSA No. 2563 of 1994

Shamsher Singh

APPELLANT

Vs

Gurtek Singh

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, 35
Penal Code, 1860 (IPC) — Section 307

Citation : (2014) 175 PLR 283

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : P.N. Aggarwal, Advocate for the Appellant; Mohinder Singh Bedi, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The plaintiff is in second appeal aggrieved against the judgment and decree passed by the learned first Appellate Court holding that the suit filed by the plaintiff-appellant is barred by limitation. The plaintiff initially filed a suit for permanent injunction restraining the defendants from the use of path for the flow of water as an outlet from the hand-pump to the pond. The said suit was dismissed on 19.10.1987, but the appeal was accepted on 29.08.1988. The plaintiff claimed that the defendants demolished the wall on 10.10.1986. The plaintiff also made a grievance that when he proceeding towards the Police Station, he was assaulted for which FIR No. 339 dated 11.10.1986 u/s 307 IPC was lodged and such trial has resulted into conviction. Thereafter, the defendants have also filed a suit, which was dismissed as withdrawn on 22.12.1989. For these acts, the plaintiff filed the suit for damages claiming a sum of Rs. 8500/- on the following heads:

2. After considering the evidence as well as documents on record, the learned trial Court decreed the suit granting a sum of Rs. 1000/- towards damages for mental worry; Rs. 500/- for costs of material for the construction of wall and Rs.

1000/- for obstruction of water i.e. total amounting to Rs. 2500/-with future interest @ 6% till its realization. However, in appeal, the learned first Appellate Court set aside the judgment and decree holding that the suit is barred by limitation inasmuch as the cause of action has arisen to the plaintiff on 10.10.1986, when the wall was demolished, whereas the suit has been filed on 02.02.1990 i.e. beyond three years of cause of action having arisen in terms of Article 113 of the Limitation Act.

3. Before this Court, the appellant has claimed the following substantial question of law:

Whether the pleadings and the evidence have been misread and misinterpreted by the Courts below and thereby conclusions arrived at are not sustainable in law?

4. After hearing teamed counsel for the parties, I find that no question of law much less substantial question of law arises for consideration by this Court. The claim of the plaintiff-appellant in respect of head Nos. (i) & (iii) is the cost incurred in civil litigation. In terms of Section 35 of the Code of Civil Procedure, the Court which is seized of the civil dispute has the full power to determine by whom or out of what property and to what extent such costs are to be paid. Section 35 further contemplates the fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers. Since there is no order of costs in the civil suit initiated by the appellant or by the defendants, which was withdrawn, a separate suit for recovery of costs of such litigation is not maintainable. The costs have to be claimed and/or granted in such suit alone.

5. In respect of claim of Rs. 3000/- in respect of cost of criminal litigation, the statement of PW-8 plaintiff is that he spent Rs. 3000/- in criminal litigation. There is no evidence that the plaintiff has engaged any other counsel apart from the Public Prosecutor. Thus, the claim of the plaintiff for Rs. 3000/- in respect of criminal litigation is bald statement without any details. Such expenses are untenable for the reason that it was a State case. Thus, the claim for Rs. 3000/- is again not sustainable.

6. The plaintiff has also claimed Rs. 1000/- as damages for mental worry and agony etc. It is not explained that the mental worry and agony is on what account i.e. civil or criminal litigation or independent of it. The cost of civil litigation could not be claimed in a separate suit, whereas, the criminal litigation was prosecuted by the Public Prosecutor. The claim for damages for causing mental worry or agony are not said to be independent of civil and criminal litigation. Thus, once the claim of costs of civil and criminal litigation has remained unsuccessful, the plaintiff cannot claim any amount of damages for mental agony or worry.

7. Learned counsel for the appellant has sought to argue that the appellant while appearing as PW-8 has deposed that he lost his son Sarvjit Singh due to mental pressure given by the defendants; his eyes got weak due to such litigations and

that he had to go to Fazilka, Ferozepur and Chandigarh and, thus, he is entitled to damages for such sufferings. The plaintiff has not led any foundation of claiming damages on these counts in the plaint. The statement in evidence is sweeping in nature and is self-serving. No amount of damages could, thus, be awarded to the plaintiff on the basis of alleged mental worry and agony.

8. In respect of claim of material, the plaintiff earlier filed a suit for injunction. Learned counsel for the plaintiff could not give the date of filing of the suit for injunction, which was dismissed on 19.10.1987. In any case, the wall stood demolished during the pendency of the said suit, but the plaintiff has not claimed any damages for demolition of wall towards the cost of construction material in the said suit. Even no such claim was lodged in appeal filed against the said judgment. Having failed to claim such benefit in the previously instituted suit, the claim of the plaintiff would be hit by Order 2 Rule 2 of the Code of Civil Procedure. In fact, learned counsel for the appellant stated that he does not press the claim of Rs. 500/-.

9. The last claim is in respect of damages for obstruction of water.

Again the damages for obstruction of water was a subject matter of suit for injunction, which was initially dismissed, but decreed in appeal. Any consequence of damage on account of obstruction of water had to be claimed in the said suit in terms of Order 2 Rule 2 of the Code of Civil Procedure, as the cause of action was available in the said suit.

10. Having said so, now the stage is set to examine the reasoning given by the learned first Appellate Court holding the suit as barred by limitation. The claim of the plaintiff revolves around obstruction of water and demolition of wall on 10.10.1986. The obstruction of water must have started at least before 10.10.1986. Thus, the cause of action to claim damages arose when the plaintiff filed earlier suit for injunction and on 10.10.1986 i.e. when the wall was demolished. However, the present suit was filed in February, 1990. There is no specific provision to deal with the suit for damages such like suit for damages instituted by the plaintiff. Therefore, it will be Article 113 of the Limitation Act, which prescribes that the limitation for any such suit shall on the day cause of action arises. Since the right to claim damages on account of obstruction of water arose, when the same was obstructed prior to the filing of suit, the suit is clearly barred by limitation. In view of the above, I do not find any illegality or irregularity in the findings recorded by the learned first Appellate Court, which may give rise to any substantial question of law. The question claimed by the plaintiff does not arise for consideration.

Dismissed.