

(2022) 07 CHH CK 0038
In the Chhattisgarh High Court
Case No : First Appeal No. 184 Of 2006

State Of Chhattisgarh

APPELLANT

Vs

Arjunram Sinha

RESPONDENT

Date of Decision : 19-07-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 96

Citation : (2022) 07 CHH CK 0038

Hon'ble Judges : Narendra Kumar Vyas, J

Bench : Single Bench

Advocate : Vimlesh Bajpai, Jitendra Gupta

Final Decision : Dismissed

Judgement

1. This First Appeal under Section 96 of Civil Procedure Code, has been filed by the appellants/State against the judgment and decree dated 03.03.2006 passed by 5th Additional District Judge, Dhamtari, District Dhamtari in Civil Suit No. 6-B/2004, by which the suit filed by the plaintiffs has been decreed and the trial Court had directed the defendants No. 1 and 2 to pay Rs. 51,000/- as compensation towards loss sustained by the plaintiff on account of negligence committed by the defendants.

2. For the sake of convenience, the parties shall be referred to in terms of their status shown in Civil Suit No. 6-B 2004.

3. The plaint averments in brief are that plaintiffs have filed the Civil Suit before the trial Court on 20.09.2000 mainly contending that the plaintiffs are the farmers and title holders of the suit property situated at village Piperchhedhi, P.H. No. 41, Tahsil and District Dhamtari. The plaintiffs are in possession of 20 acres of land in which khasra No. 230, area 4.11 hectares which will be treated as suit property. According to the plaintiffs, the suit land is an agricultural land which yielded two crops every year providing 120 bags of paddy and also getting paddy of Rs. 3000/-. It is further contended that the plaintiffs started growing Kharif

crops and sowed varieties of rice RI 36 seeds in the agricultural land. While the paddy crop was ripe for harvesting, all of a sudden, the defendant No. 5 to 9 have decided to fillup the pond of village Piperchhedi through the canal in the first week of May 2000. The plaintiffs have requested them not to flow water in his field otherwise standing crops will be destroyed. It is further contended that the plaintiffs have sought one week time for harvesting the standing crops but the defendant No. 5 to 9 did not consider the request made by the plaintiff. Thereafter, the plaintiff made a representation before Collector Dhamtari on 09.05.2000 to make an alternative arrangement for filling up the pond. The Collector, Dhamtari directed respondent No.2 to inspect the spot and submit his report. On 09.05.2000 Sub Engineer inspected the spot and suggested for alternative arrangement but the defendant No. 5 to 7 have made a complaint before police on 11.05.2000 alleging that the plaintiffs are stopping the flow of water from canal. Subsequently, defendant No. 5 to 9 have forcefully flown the water in the agricultural field of plaintiffs which caused loss to him of 120 bags of paddy and husk of Rs. 3000/- total valued at Rs. 48,000/- due to act of the defendants, the plaintiff has suffered financial loss. It is further contended that before filing of the suit, he has issued notice to the defendants on 01.07.2000 but no loss was repaid to him, on the basis of the aforesaid pleading, the plaintiffs have prayed that defendants be kindly directed to pay Rs. 51,000/- as compensation jointly and severally along with interest for the loss sustained by him on account of negligence of defendants.

4. Defendants No. 1, 2, 3 and 4 have filed their written statement denying the averments made in the plaint contending that on 29.3.2000, the Sarpanch of the Village has submitted the application before SDO Water Resources Department for filling up of the pond through drainage. In pursuance of representation, SDO Mahanadi has forwarded the matter to SDO-1 Rudri for further action on 14.04.2000. Thereafter, on 09.05.2000 one Arjunram Sinha has submitted an application before Collector Dhamtari for filling up the pond. It is not in dispute that the plaintiffs have made the representation to the Collector Dhamtari for making alternative arrangement otherwise his standing crops may be destroyed and thereafter SDO-1 Rudri has also suggested that since level of path is above 1 feet of the drainage, if the path is dug one foot then the water can easily destroy the crops of the plaintiffs. It is also admitted that in pursuance of direction of Collector Dhamtari, SDO-1 Rudri and Sub Engineer inspected the agricultural field of the plaintiffs and found that the crop of the plaintiffs has already been harvested from the field and drainage was constructed which was three feet width and two feet depth total length of drainage was 180 feet. It has also been stated that the crop was harvested and same was taken away by the plaintiff and would pray for dismissal of the suit.

5. Defendant No. 5, 6, 7, 8 and 9 have filed separate written statement denying the allegation made in the plaint, contending that the plaintiffs suggested way for flowing the water was not acceptable. It has been further admitted that after harvesting crop, drainage has been constructed which has not caused damage to

the crops of the plaintiffs. It is admitted that the land of other farmers is also situated there but they have not raised any objection and on account of political consideration the present suit has been filed by the plaintiffs, which deserves to be dismissed by this Court.

6. On the pleadings of the parties, trial Court has framed as many as five issues. The plaintiffs to substantiate their case have examined Deviprasad Sinha (PW-1), Dwijram Sauri (PW-2), Bhagwan Sahu (PW-3) and has exhibited documents B-1 Kistabandi (Ex.P-1), Khasra panchshala (Ex.P-2), notice (Ex.P-3), Postal Receipts and acknowledgement (Ex.P-4 to Ex.P-21), Letter dated 09.05.2000 (Ex.P-22) and Map (Ex.P-23). The Defendants to substantiate their case has examined Lalit Kumar Sinha (DW-1), Alakhram Sahu (DW-2), Mahendra Kumar (DW-3), Premlal Sahu (DW-4) and has exhibited documents Map (ExD-1), Map (ExD-2), records related to irrigation Ex.D-3), khasra (Ex.D-4), Letter written by Sarpanch (Ex.D-5), Minutes of meeting (Ex.D-6), Khasra Panchshala (Ex.D-7), Notice (Ex.D-8), Postal receipt (Ex.D-9), Map (Ex.D-10) and Khasra Panchshala (Ex.D-11).

7. Learned trial court after appreciating the evidence, material on record decreed the suit filed by the plaintiff and directed the defendant No. 1 and 2 to pay Rs. 51,000/- as damages to the crops. Learned trial Court has considered the statement of Patwari Dwijram Sauri (PW-2) who has prepared the map and inspection report which was prepared by him and in pursuance of direction of Nayab Tahsildar. Learned trial Court has also recorded the finding that water was flowing from the disputed land, earlier it was flowing from different way and also considered the map Ex.P-3, according to which the water was flown after digging the drainage to fill up the canal. Learned trial Court after appreciating the material on record has recorded a finding that the water was flown by the defendants on the field of the plaintiffs which has caused damage to the standing crops and has recorded a finding that the water of canal can flow from other way but due to negligence on the part of the defendants the water has been flown on the field of plaintiff has caused damages to the crop. Learned trial Court has also appreciated the evidence of defendant witnesses and has recorded the findings that the defendants have stated that the crop was harvested and the plaintiff has taken back the crops but the defendant has not produced any document to establish that the crop was harvested and the plaintiffs have taken back the same. Learned trial Court has also recorded the finding that the defendants have not taken any objection on the report submitted by the Patwari by challenging the correctness of the contents of the inspection report, therefore, it is established that the crops sustained damage due to negligence of the defendants and decreed the suit.

8. Being aggrieved by the judgment and decree passed by the trial court on 03.03.2006 the defendants have filed First Appeal under Section 96 CPC before this Court.

9. Learned State counsel has informed that during pendency of the appeal in

compliance of the judgment and decree, the amount of compensation as directed by the trial Court has already been paid to the legal heirs of the plaintiff No.1 as during pendency of the appeal, the plaintiff No.1 has died. This Court vide order dated 28.08.2010 has observed that during pendency of the appeal the decree has been executed, therefore, prayer for grant of stay has thus become infructuous.

10. Learned counsel for the appellant would submit that the trial Court erred in relying the report Ex.P-23 prepared by Patwari. However, it ought to have seen that the alleged report was not only prepared by him unauthorisedly, but has provided the same to the plaintiff Arjun as evident from para-4 of his statement, therefore, reliance on Ex.P-23 is totally unwarranted and learned trial Court should have rejected the claim filed by the plaintiff. He would further submit that by way of agreement executed in favour of Gram Panchayat Peperchhedi the Panchayat has been authorized him for supply of water from the canal, therefore, liability ought not to have been fastened upon the appellants. He would further submit that the trial Court erred in holding that the water resources department cannot be exonerated from its liability merely on the ground that the alleged flow of water from the canal was without their knowledge of department, in consequence, no liability ought to have been fastened upon the Water Resources Department and would submit that the judgment and decree passed by the trial Court may kindly be set aside.

11. On the other hand, learned counsel for the respondent No. 2 to 4 would submit that the judgment and decree passed by the learned trial Court is legal, justified and not liable to interfere by this Court.

12. I have heard learned counsel for the parties, perused the document with utmost satisfaction.

13. From bare perusal of the evidence of plaintiffs witness Deviprasad Sinha (PW-1) who has clearly deposed before the trial Court that the flow of water has been diverted to their field through other ways which are available by the defendant No. 5 to 9. This witness was cross-examined by the defendants, he denied the suggestion made by them. On the contrary there was no rebuttal to the evidence adduced by the plaintiff with regard to the fact that the plaintiff suffered loss on account of negligence on the part of the defendants. This witness was further cross-examined by the Government Advocate, wherein he has denied that prior to year 1998-99 the water was flowing on the pond through the same way. The other witness Dwijram Sauri (PW-2) Patwari who has done inspection and prepared inspection report and Map (Ex.P-23) has been examined before the trial Court. This witness has denied that when he has gone to prepare map at that time the crops was harvested but this fact has not been mentioned. He has again denied that on 26.05.2000 crop was not standing, he has clarified that the crop was standing on the field and was not harvested. He has denied that there is collusion between him and the plaintiff. The witness Bhagwan Sahu (PW-3) was examined before the Court below, he has supported the case of the

plaintiff. He has denied that when the drainage was constructed for flowing the water, the crop was already harvested from the field.

14. Defendant witness Lalit Kumar Sinha was cross-examined by the plaintiff, he has also admitted that before digging drainage no permission in writing was obtained from the plaintiff. He has also stated that whether the crop was harvested or not in this regard he has not taken any information from the Patwari. He has also admitted that with regard to application submitted by the plaintiff to the Collector and has admitted that he was aware of the application. He has also admitted that after giving application, Irrigation Officer has inspected the plaintiff land and he was not present at the time of inspection.

15. Further contention of the defendants that the land belongs to Sukhram and Birbal and not to the plaintiff but to substantiate their stand the defendants have not examined any witnesses before the trial Court. The trial Court has considered the evidence of plaintiff and defendant and thereafter, passed the judgment and decree by recording the finding that due to negligence of the defendants, the plaintiffs have suffered loss, therefore, the plaintiffs are entitled to get compensation, this finding was neither perverse nor contrary to record which warrants any interference by this Court. The judgment and decree passed by the trial Court is inconformity with the evidence, material on record and does not warrant any interference by this Court. Consequently, the appeal filed by the State deserves to be and is accordingly dismissed. No order as to costs.

16. A decree be drawn-up accordingly.