
(2019) 10 SHI CK 0112

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 104 Of 2009

State Of H.P. And Others

APPELLANT

Vs

Devi Ram

RESPONDENT

Date of Decision : 24-10-2019

Acts Referred:

Citation : (2019) 10 SHI CK 0112

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Hemant Vaid, Arvind Sharma, Y.S. Thakur, Vikrant Chandel, I.S. Chandel

Final Decision : Allowed

Judgement

Sureshwar Thakur, J

1. The plaintiffs' suit, for, recovery of monetary compensation, and, for injunction, and, for rendition, of, a decree of permanent prohibitory injunction, hence, for restraining the defendants, from, installing the new proposed culverts, hence below the Dharampur-Kiartu road, and, above the land, of, the plaintiff, as comprised, in, khasra Nos 678, 679, 681, and, 695, stood dismissed, and, in an appeal carried therefrom, before the learned first appellate Court, the latter Court, awarded damages, quantified, in a sum of Rs. 40,000/-, to, the plaintiff.

2. The state of H.P. is aggrieved therefrom, and, strives to beget reversal, of, the judgment and decree, rendered by the learned first appellate Court, hence through, its, instituting, the, instant regular second appeal, before this Court.

3. The instant RSA stood admitted, on, the hereinafter extracted substantial question(s) of law:-

" Whether the plaintiff on account of his own act and conduct is competent to file the present suit for damages?

4. The learned trial Court, for want of, cogent and reliable documentary

evidence, hence discarded, the, probative vigor, of, oral evidence adduced by the plaintiffs, rather for sustaining their espousal. The afore declining, by the learned trial Judge, vis-à-vis, the afore espoused relief(s) hence made by the plaintiff, is, obviously meritworthy. However, the learned first appellate Court, has, proceeded to impute validity vis-à-vis, the adduced documentary evidence, despite, the depiction(s) therein, remaining un-supported, by, any valid demarcation, carried by a competent revenue officer concerned. Moreover, the learned first appellate Court, proceeded to, surmisingly, reduce the claim of the plaintiff, as, carried in the plaint, to, a sum of Rs. 40,000/- , and, made a money decree, in commensuration therewith, vis-à-vis, the plaintiff. Visibly, the photographic evidence, though, evidently remains unsupported by, a, valid demarcation carried, vis-à-vis, the relevant site, hence, by the revenue officer, hence it could not, at all, coax any conclusion, vis-à-vis, the site, depicted, in the photographic evidence, rather appertaining, to, the suit land. Reiteratedly, the photographic evidence, was no, substitute, vis-à-vis, a valid demarcation, of, the relevant site, becoming conducted rather by the competent revenue officer. Significantly, also, the adduced photographic evidence, was discardable, besides also the oral evidence was also discardable, as aptly done, by, the learned trial Judge. Contrarily, the meteing deference, to, the photographic evidence hence by the learned first appellate Court, is, graphically insagacious, and, warrants interference.

5. Be that as it may, the culverts, are essentially installed, for ensuring discharge of rain water, hence therefrom, (i) and the apt phase whereon, the, plaintiff rather becoming aggrieved, was the stage, whereat the defendants, were striving, to construct the culverts, (ii) whereas, at the afore stage, the plaintiff, omitted to make any apt legal recouring, and, hence he is estopped, to, contend that the discharge, of, rain water hence therefrom, and, it entering purportedly, onto his fields, rather empowering him to claim monetary damages, from, the defendants. Consequently, this Court answers, the, substantial question, of law, vis-à-vis, the aggrieved defendants/appellants, and, against the plaintiff.

6. There is merit in the appeal, and, the same is allowed. The impugned judgment rendered by the learned Additional District Judge, Shimla, on 24.10.2008, upon, Civil Appeal No. 11-s/13 of 2007, is, quashed and set aside. All the pending application(s), if any, are also disposed of. No costs.