



121 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO-11-2023 (O&M)

Date of decision : 25.02.2025

Zameen Singh @ Zeenu

...Appellant

Vs.

Kapil Dev and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vivek Suri, Advocate
Mr. Dushyant Godara, Advocate
Mr. Darpan Bansal, Advocate
for the appellant.

Mr. K. S. Malik-I, Advocate
for the respondents.

ANIL KSHETARPAL, J. (Oral)

1. The defendant assails the correctness of the First Appellate Court's order which in turn has reversed the trial Court's order.
2. The plaintiffs filed a suit for permanent injunction alongwith consequential relief of mandatory injunction. It was the case of the plaintiffs that there is a water course in between Killa No. 20/3/2 and 19/3 which was allotted to them during partition proceedings. The said water course is used by the plaintiff and other co-sharers for irrigating their land and the defendant has started putting the earth in the water course so as to block it. Thus, the plaintiffs prayed for the following substantive relief:-

"It is, therefore, prayed that a decree for permanent injunction restraining the defendant or his agents/servants from interfering into the peaceful ownership and possession



of plaintiffs and to encroach over the land mentioned in para no. 2 and 3 of the plaint by way of blocking the water course and by constructing the road on the spot in any manner and further pass a decree for mandatory injunction to remove the earth and other building material from the spot and to open the water course/nala at their own cost and expenses may kindly be passed in favour of the plaintiffs and against the defendants with cost."

3. The defendant filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908, for rejecting the plaint at the threshold on lack of Civil Court's jurisdiction under Section 25 of the Haryana Canal and Drainage Act, 1974, (hereinafter referred to as 'the Act') which was allowed by the trial Court. However, the First Appellate Court has found that at this stage, it would not be appropriate to form an opinion that the jurisdiction of the Civil Court is barred because it is the case of the plaintiffs that it is a private water course and the plaintiffs have only prayed for injunction.

4. The correctness of such order passed by the First Appellate Court is challenged in this appeal.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book. .

6. Learned counsel representing the appellant while referring to Section 2(15), 24 and 25 of Haryana Canal and Drainage Act, 1974, submits that restoration of demolished or altered water course exclusively lies with the authorities under the Act. He submits that in view of Section 25 of the Act, the jurisdiction of the Civil Court is excluded.

7. *Per contra*, learned counsel representing the respondents submits



that this is a private watercourse, which is sought to be blocked by the defendants. Hence, the suit for grant of decree of injunction is maintainable.

8. Before rejecting the plaint at the threshold, the Court is required to come to a final conclusion that the jurisdiction of the Civil Court is barred. For that purpose, the Court is only required to examine the contents of the plaint. In this case, the plaintiffs have not prayed for restoration of demolished or altered water course. They have only prayed for grant of decree of permanent injunction restraining the appellant from blocking the water course. Moreover, Section 2(15) of the Haryana Canal and Drainage Act, 1974, defines the term 'watercourse', which refers to any channel, including its subsidiary works, which is supplied water from a canal. From the reading of the plaint, it is not clear as to whether the water course is carrying canal water or a tube well water. Moreover, this issue can be examined by the Court only after the parties have led evidence.

9. Keeping in view the aforesaid facts, no ground to interfere is made out.

10. The appeal is dismissed.

11. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

25.02.2025

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No