

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****236****RSA-660-2018 (O&M)****Decided on: 16.09.2025****Santokh Singh****...Appellant(s)****Vs.****Harwinder Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. A.S.Khinda, Advocate for the appellant.

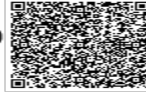
Mr. Sandeep Jain, Advocate for
respondents No.1 and 2.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the plaintiff against the judgment of reversal dated 28.09.2017 passed by the learned Additional District Judge, Kapurthala; whereby appeal filed by the defendants/respondents against the decreeing of the suit of the plaintiff by the learned Trial Court vide judgment and decree dated 29.11.2016, has been allowed, and the suit of the plaintiff has been dismissed.

2. Brief facts of the case are that the appellant/plaintiff had filed a suit for permanent and mandatory injunction directing the defendants to immediately restore some portion of the water channels/Aar in its original position, which had been illegally and forcibly damaged by them.

3. It was the pleaded case of the plaintiff that the plaintiff is owner in possession of land to the extent of his share; and that there



exists a water channel leading from the tube-well connection to the land of the plaintiff with which plaintiff irrigates his land from the said tube-well connection from where water passes through the water channel/Aar to his land without any hindrance and obstruction of any kind. It is pleaded that the said tube-well connection was exclusively owned by the plaintiff, and he had no other source of irrigation except the water through the existing water channel/Aar to the land/share of the plaintiff. However, the defendants used to pick up quarrels with the plaintiff and had threatened and were bent upon to cause damage and dismantle the existing Aar/water channel so that the plaintiff could not cultivate his land. As such, plaintiff apprehended that his land would become 'banjar' and useless. In case the defendants are not restrained, plaintiff would suffer an irreparable loss. Defendants had managed to demolish/damage some part of the existing water channel and had prevented him from getting water from the said water channel. Plaintiff had requested defendants time and again however, to no avail. With these pleadings, present suit was filed on 17.12.2014.

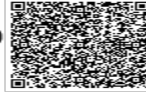
4. Upon appraisal of the pleadings and the evidence adduced by the parties, the learned Trial Court vide judgment and decree dated 29.11.2016, had decreed the suit of the plaintiff with costs. However, the Appeal filed by the defendants/respondents was allowed by the learned Additional District Judge, Kapurthala vide impugned judgment and decree dated 28.09.2017. Hence, the present Second Appeal by the plaintiff.



5. It is *inter alia* submitted by learned counsel for the appellant/plaintiff that the learned first Appellate Court was in patent error in allowing the appeal of the defendants/respondent as it failed to appreciate that it was the clear finding of fact on record that there were tube-wells of the plaintiff existing on the land. It is submitted that accordingly, in view of this admitted position, appellant could not have been non-suited. Moreover, the appellant had duly proved his ownership on tube-well connection by way of document Ex.P2 which is registration of tube-well connection pertaining to No. AP11-839-M.

6. It is submitted that the first Appellate Court was also in error in holding that plaintiff had failed to adduce any evidence by way of revenue record to prove the existence of water channel. It is submitted that plaintiff had duly brought on record Jamabandi Ex.P1. However, the first Appellate Court has totally ignored the oral as well as the documentary evidence of the plaintiff. In fact, learned Appellate Court has not taken into account the admission of the defendants and set aside the well reasoned judgment passed by learned Trial Court. It is accordingly prayed that the present Second Appeal be allowed; and the judgment and decree dated 28.09.2017 passed by first Appellate Court be set aside; and the judgment and decree dated 29.11.2016 passed by Trial Court be restored/upheld.

7. *Per contra*, learned counsel for the respondents/defendants opposes submissions made on behalf of the appellant and submits that the appellant has failed to produce any site plan to show that there was

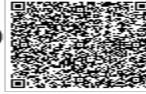


water channel existing on his land. It is submitted that even no site plan has been produced by the plaintiff to show that water channel is running through the land of the defendants. It is contended that even otherwise, the allegations made by the appellant are vague and general as no date of dismantling/demolishing of water channel by the respondents has been mentioned. Moreover, Trial Court was in error in decreeing the suit of the plaintiff on the basis of un-proven photographs which were placed on record as Mark-A to Mark-D. He accordingly prays for dismissal of the present Appeal.

8. No other argument is raised on behalf of the parties.

9. I have heard learned counsel and perused the case file in great detail. Upon giving thoughtful consideration to the rival submissions made on behalf of both the parties, I find merit in the submissions advanced on behalf of the appellant/plaintiff.

10. The learned first Appellate Court vide judgment and decree dated 28.09.2017 set aside the well reasoned judgment and decree passed by the learned Trial Court on the ground that the appellant failed to prove the documentary evidence i.e. Jamabandi of the land in dispute from where the water channel is passing through; and no specific date was mentioned when the alleged water channel was demolished by the respondent. Learned first Appellate Court has set aside the judgment of the learned Trial Court for the reasons as recorded in para 17 of the judgment dated 28.09.2017, which read as follows:-



“17. The careful perusal of file goes to show that no jamabandi of his land, where the alleged water channel/Aar has/had been running through the same, has been placed on file. Whereas the jamabandi of his land could be the conclusion proof of the existence of any such water channel on the spot. Moreso, the respondent/plaintiff has not even bothered to disclose any particulars of the water channel. He did not disclose anywhere either in his plaint or in his evidence as to from what point to what point, alleged water channel/Aar is/was running. No khasra number of the land through which the water channel/Aar is/was running, has been mentioned anywhere. He has utterly failed to mention the exact points or khasra numbers of the land where the demolition of the alleged water channel/Aar took place. The respondent/plaintiff has even failed to report the matter of the demolition of the alleged water channel/Aar to any authority i.e. Sarpanch or any other respectable of the village, the concerned department or even the police which clearly means that no water channel/Aar as alleged by him ever existed there. He did not even move any application before the department concerned for the restoration of the same.”(Emphasis added)

11. The abovesaid reasoning of the learned first Appellate Court is on the face of it incorrect as the plaintiff had duly placed on record the Jamabandi Ex.P-1, which clearly records that plaintiff has two tube wells on his land. The learned first Appellate Court has also ignored the fact that the existence of tube-wells upon the land of the plaintiff has been admitted by DW1/Attorney of the defendants. Thus, the impugned judgment is based on a patent misreading of the evidence on record.



12. Therefore, it is the admitted case of the parties that there are two tube-wells existing on the land of the plaintiff. Needless to say, to use the water from the said tube wells, and to irrigate his land, plaintiff has made water channels. It is the case of the respondents as also the findings of the learned first Appellate Court that plaintiff has been unable to prove existence of water channel to his land. I find the said argument/reasoning to be illogical in view of the fact that once existence of tube-wells on the land is admitted, naturally land would be irrigated from the water of the said tube-wells by creating water channels. In fact, the plaintiff has clearly averred in his plaint that *“There exists a water channel/Aar leading from the tube-well connection to the share/land of the plaintiff and the plaintiff irrigates his land from the said tube-well connection from where water passes through the water channel/Aar to his land without any hindrance and obstruction of any kind.”* It is not the case of the respondents that they said tube wells are lying dry; and therefore, water channels cannot and do not exist on the land of the plaintiff. Thus, the reasoning of the learned first Appellate Court that existence of water channel on the land of the plaintiff is not proved as there was no Jamabandi of his land, is incorrect.

13. The other arguments of the respondents to the effect that the plaintiff had not specifically mentioned the date of damage/dismantling of water channel, or that exact Khasra Nos. are not mentioned, is demolished from the following clear findings of the Trial



Court in this regard, contained in para 11 of the judgment dated 29.11.2016, which reads as follows: -

“11. In order to prove its case the plaintiff examined himself as PW1 and also put on record the documentary evidence in support of his claim and also in his cross-examination the plaintiff stated that the aar/water channels were damaged by the defendants in the first week of December, 2014 and though earlier he stated he had not filed any application to the effect in the police but thereafter stated that he had filed an application before the police and the matter was compromised in the police station. DW1 i.e. the attorney of the defendants then entered into the witness box although to rebut the claim of the plaintiff but rather ended up admitting the entire claim of the plaintiff. He admitted it to be correct that there are two tube-wells installed in the land in dispute. He then admitted it to be correct that there are two motor-connections in the name of the plaintiff. He further went on to admit it to be correct that the plaintiff used the said tube-well for irrigation of his land and thereafter admitted that the share of the land of the plaintiff fell in the middle of the share of both the brothers finally admitting that the plaintiff irrigated his land and that the water directly flows to the land of the plaintiff from his own channel. DW1 then concluded his cross-examination by feigning ignorance from identifying the photographs placed on record i.e. Mark-A to Mark-D. The documentary evidence placed on record by the plaintiff himself in the shape of Ex. P2 evinces the name of the plaintiff as the owner of the tube-well connection pertaining to no. AP11-839-M besides the reflection in the jamabandi Ex. P1 as per which the plaintiff had got land in 'Virasat' from his father. The plaintiff also



placed on record Ex. P3 i.e. the judgment of the order of this Court in which the suit for permanent injunction was dismissed against the defendant no. 2 as against the 'transfer of a tube-well installed in khasra no. 34//4/7-3 khata no. 927/925 in the joint land situated at village Ranipur, Tehsil Phagwara whereby it was held that the defendants no. 2 to 4 in that case had categorically admitted that the connection in dispute was in the name of Santokh Singh (plaintiff) and was already shifted by Santokh Singh (plaintiff) in his adjoining killa meaning thereby that the plaintiff irrigated his land out of the same. The plaintiff had further placed on record photographs Mark-A to mark-D evincing the tube-well and the Aar which was shown to be damaged in Mark-C and in view of the entire evidence on record both oral and documentary the defendants failed to rebut the claim of the plaintiff at all. Thus, in the given set of circumstances, both these issues are decided in favour of the plaintiff and against the defendants."

14. Therefore, in view of these admitted facts, I find the judgment and decree dated 28.09.2017 passed by learned Additional District Judge, Kapurthala to be unsustainable. Accordingly, the present Second Appeal is **allowed**. The impugned judgment and decree dated 28.09.2017 passed by learned Additional District Judge, Kapurthala is set aside; and the judgment and decree dated 29.11.2016 passed by learned Trial Court is restored. Resultantly, the suit of the plaintiff stands decreed.

15. Pending applications, if any, stand(s) disposed of.

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Divyanshi

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

JUDGE