

(2001) 08 P&H CK 0204

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1113 of 1999

Mangat and others

APPELLANT

Vs

Tek Chand and others

RESPONDENT

Date of Decision: Aug. 30, 2001

Citation: (2003) 1 LJR 757 : (2002) 1 PLJ 88 : (2002) 2 PLR 516 : (2002) 3 RCR(Civil) 496

Hon'ble Judges: V.K.Jhanji, J

Advocate: Mr. C.B. Goel, Advocate. Mr. Sudeep Mahajan, Advocate., Advocates for appearing Parties

Judgement

V.K. Jhanji, J.

This is defendants second appeal directed against the judgment and decree of the Courts below decreeing the suit of the plaintiffs.

2. Plaintiff filed suit for permanent injunction restraining the defendants from demolishing Khal AB or by depriving the plaintiffs from the enjoyment of the same. As set out in the plaint, the case of the plaintiffs was that they purchased land measuring 69 Kanals vide registered sale deed dated 27.5.1983 from Surjit Singh son of Karam Singh. The said land was being irrigated prior to purchase and is still being irrigated that the said Khal is an authorised Khal. They further alleged that after the land was purchased by them, defendants also purchased the remaining area of Surjit Singh and threatened to demolish the Khal. They also alleged that the Khal in question has been in existence for the last more than 30 years.

3. Upon notice of the suit, defendants filed written statement wherein they admitted the fact of purchase of land. The, denied that the Khal is a sanctioned and authorised or was running for the last more than 30 years. Defendants submitted that the land of the plaintiff was never irrigated through the alleged Khal AB. Defendants also denied that the Civil Court had no jurisdiction to entertain the suit as the remedy of the plaintiffs is before the Canal Authorities.

4. Trial Court on the pleadings of the parties framed necessary issues and one of the issues was whether the Civil Court has got no jurisdiction to try the suit. Trial Court held that The Haryana Canal and Drainage Act, 1974 (for short the Act) does not provide any remedy to a person to restrain another person from preventing him from demolishing the Khal and, therefore, the Civil Court has the jurisdiction to entertain the suit. On merits, trial Court found that the Khal is not a sanctioned or authorised Khal as the plaintiffs were not able to produce any order or document showing it to be a sanctioned authorised one. Trial Court, on finding that the Khal was in existence for more than 30 years, restrained the defendants, from demolishing the same. On appeal, first Appellate Court has affirmed the judgment and decree of the trial Court. Hence this second appeal.

5. The submission made on behalf of the defendants is that the Courts below have erroneously held that the Civil Court has the jurisdiction to entertain the suit. It is contended that Section 24 of the Act provides not only for restoration of watercourse but also gives power to the Divisional Canal Officer to give a direction in case a person obstructs the water course. or temporary watercourse. Section 24 of the Act reads as under :

24. "Restoration of demolished or altered etc. watercourses.

(1) If a person demolishes, alters, enlarges or obstructs a watercourse or a temporary watercourse or causes any damage thereto, any person affected there may apply to the SubDivisional Canal Officer for directing the restoration of the same to its original condition.

(2) On receiving an application under subsection (1) the SubDivisional Canal Officer may after making such enquiry as he may deem fit require by a notice in writing served on the person found to be responsible for so demolishing, altering, enlarging, obstructing or causing damage to restore at his own cost the watercourse or temporary watercourse to its original condition within such period not exceeding twentyone days, as may be specified in the notice :

Provided that in case of a temporary watercourse, its restoration shall not be for a period exceeding one year.

(3) If such person falls to the satisfaction of the SubDivisional Canal Officer to restore the watercourse or temporary watercourse to its original condition within the period specified in the notice served on him under sub section (2), the SubDivisional Canal Officer may cause the watercourse or temporary to be restored to its original condition and recover the cost incurred in respect of such restoration from the defaulting person. The Sub Divisional Canal Officer may order any amount to be paid to the aggrieved person to the damage caused to him. In case the penalty is not paid, the same shall be recoverable as arrears of land revenue.

(4) Any person aggrieved by the order of the SubDivisional Canal Officer may prefer an appeal within fifteen days of the passing of such order to the Divisional Canal Officer whose decision on such appeal shall be final.

(5) Any sum which remains unpaid within a period to be specified for this purpose by the Divisional Canal Officer may be recovered as arrears of land revenue."

6. Reading of Section 24 of the Act shows that only the dismantled watercourse can be ordered to be restored but Divisional Canal Officer, on enquiry can also prevent a person from obstructing the watercourse. Subclause (4) to Section 24 of the Act further provides that any person aggrieved by the order of the SubDivisional Canal Officer may prefer an appeal within fifteen days of the passing of such order to the Divisional Canal Officer whose decision on such appeal shall be final. Section 25 of the Act determines the jurisdiction of Civil Court. It provides that notwithstanding anything contained in the Act or any other law for the time being in force, no Civil Court shall have jurisdiction to entertain or decide any question relating to matters falling under Sections 17 to 24.

7. Faced with this situation, learned counsel appearing on behalf of the plaintiffs contended that the plaintiffs have a good case on merits and suit should not be dismissed on the ground that Civil Court has no jurisdiction to entertain the same. I am not going into the merits of the case because jurisdiction of Civil Court is barred. It is only the Authority under the Act who is competent to pass order after following the procedure. Orders passed by the Authority too cannot be questioned in Civil Court unless such orders are passed without following the requirement of law.

8. In these circumstances, present appeal is allowed and the judgment and decree of the Courts below are set aside and the suit of the plaintiffs is dismissed being not maintainable before the Civil Court. It is, however made clear that the plaintiffs shall be at liberty to seek their remedy before the Sub Divisional Canal Officers provided under Section 24 of the Act. Since the suit has been pending for a long time, it will be in the interest of justice to direct the parties to maintain status quo regarding Khal AB as on today for a period of two months so as to enable the plaintiffs to seek their remedy before the appropriate authorities.