

In the Court of Smt. Vipindeep Kaur, Addl. Civil Judge (Senior Division), Tarn Taran.

Case No.	: 178
CS No.	:0001731/13
Date of Institution	:11.8.2010
Date of decision	: 10.10.2014.

Sukhdev Singh age 50 years son of S.Shangara Singh son of S.Sohan Singh,
Caste Jat, resident of village Sarhali Khurd, Tehsil and District Tarn Taran

.....plaintiff.

Versus

1.Satnam Singh;
2.Manjit Siungh;
3.Harjinder Singh sons of Balbir Singh;
4.Gura Singh;
5.Jagroop Singh sons of Satnam Singh,
all residents of village Sarhali Khurd, Tehsil and District Tarn Taran.

..... Defendants.

**Suit for issue of permanent injunction restraining the
defendants for ever from digging water course from
land measuring 2K-8M vide Khata No.131 Khatuni
No.422, Khasra No.28//5/2(2-8), as mentioned in the
Jamabandi for the year 2007-2008 situated in the area
of village Sarhali Khurd, Tehsil and District Tarn**

**Taran, forcibly illegally and otherwise than in due
course of law.**

Present: Sh. JL Sood,.Advocate, counsel for plaintiff.
Defendants exparte.

JUDGMENT:

1. The brief facts of the case are that the plaintiff is owner in possession in respect of land measuring 2k_8M bearing Khasra No.28//5/2, Khata no.131, Khatuni No.422 as mentioned in the Jamabandi for the year 2007-08, situated in the area of village Sarhali Khurd, Tehsil and District Tarn Taran, as detailed in the head note of the plaint. It is further averred that plaintiff purchased this land from Kashmir Singh, vide registered sale deed dated 30.5.1995 and since then he is in possession of the land as owner. There is no water course passing through this Khasra Number as is evident from the Jamabandi as well as Khara Girdawaries entries of the land. There is no sanctioned water course going through this Khasra number. The defendants in connivance with the police and political persons are threatening to dig out a water course forcibly from this land from point A shown in the Shajra Aks. The defendants have no right to pass water through this khasra number forcibly. Hence this suit.

2. Upon notice, the defendants put their appearance and filed the written statement by taking preliminary objections that the suit is not maintainable; that the plaintiff has not approached the Court with clean hands; that the plaintiff has suppressed the material facts from the Court; that the plaintiff is estopped from his act and conduct from filing the present suit. On merits, it is denied that there is no water course. There is a Khal for the last more than 25/30 years and the same is running at the spot. The plaintiff wants to demolish the said khal forcibly and illegally. The water course is already existing there and the same is also mentioned in the revenue record. All other averments mentioned in the plaint are denied and a prayer has been made for dismissal of the suit.

3. Replication was filed, wherein all the averments mentioned in the written statement were denied and reiterated those mentioned in the plaint. From the pleadings of the parties, following issues were framed on 6.8.2011:-

- 1) Whether the plaintiff is entitled to permanent injunction restraining the defendants for ever from digging water course in the suit land?OPP.
- 2) Whether the present suit is not maintainable in the present form?OPD
- 3) Whether the plaintiff has suppressed the material facts?OPD.

- 4) Whether the plaintiff is estopped from his act and conduct from filing the present suit?OPD.
- 5) Relief.

4. In order to prove his case, the plaintiff Sukhdev Singh himself stepped into the witness box as PW1 and also examined Suba Singh as PW2. However, when none has come forward to cross-examine these witnesses, the cross-examination of the said witnesses were ordered to be treated as nil and the plaintiff closed his evidence.

5. When the case was fixed for evidence of the defendants, neither the defendants nor any body else appeared on behalf of the defendants and as such they were proceeded against exparte, on 9.4.2014.

6. I have heard the argument of learned counsel for the plaintiff and have gone through the judicial file very carefully. My issue wise findings are as under:-

ISSUE NO.1

7. The onus to prove this issue was on the plaintiff. Present suit has been filed by the plaintiff seeking a decree for permanent injunction thereby restraining the defendants from digging the water course from the land, as detailed in the head note of the plaint. As per the Jamabandi placed on record, the land measuring 2K-8M bearing Khasra no.28//5/2 as

mentioned in the Jamabandi for the year 2007-2008, situated in the area of village Sarhali Khurd, Tehsil and District Tarn Tarran, is the ownership of the plaintiff. It is alleged by the plaintiff that there is no water-course in the said land. However, the defendants are threatening to dig out the water course forcibly. The defendants on the other hand have put forth a case that the water course is in existence for the last 25 to 30 years which has been demolished by the plaintiff. However, at the time of leading evidence, the defendants did not examine any witness in support of this plea. Rather, the defendants even failed to cross-examine the plaintiff on his evidence. The ownership of the plaintiff over the suit land has been duly established on the basis of revenue documents. Further, there is a copy of Shzra Aksh, which is mark A on record, which does not show the existence of any water course, nor any such water course has been mentioned in the revenue record. The plaintiff has purchased the property vide sale deed dated 20.5.1995. Even the said sale deed does not depict about the existence of any water course.

8. As such, from the oral as well as documentary evidence, it is clear that there does not exist any water course and it is the defendants who want to create the water course in the suit property for their own benefits.

In such circumstances, this issue stands decided in favour of the plaintiff and against the defendants.

ISSUE NO.2;-

9. The onus to prove this issue was on the defendants. No evidence has been led by the defendants in support of this issue, as they have been proceeded against exparte. However, from the perusal of the pleadings available on judicial file, there does not appear to be any reason which can challenge the maintainability of the present suit. Therefore, I am of the firm view that the present suit is perfectly maintainable in view of the relief claimed by the plaintiff. Accordingly, this issue is decided against the defendants and in favour of the plaintiff.

ISSUES No.3 & 4.

10. The onus to prove these issues was on the defendants. As the defendants have been proceeded against exparte, so these issues were not pressed. Accordingly, these issues are decided in favour of the plaintiff and against the defendants.

Relief:-

11. In view of my findings as recorded on issues above, the suit stands decree exparte with costs. The defendants are restrained from digging out the water course from the land measuring 2k-8M as detailed in

the head note of the plaint, forcibly and illegally except in due course of law. Decree sheet be prepared and file be consigned to the record room.

**Pronounced:
10.10.2014.**

**(Vipindeep Kaur)
Additional Civil Judge(Sr. Division),
Tarn Taran.**

Sukhdev Singh versus Satnam Singh and others.

Present: Sh. JL Sood,.Advocate, counsel for plaintiffs.
Defendants exparte.

Arguments heard. Vide my separate judgment of even date, the suit filed by the plaintiff stands decreed exparte, with costs. Decree sheet be prepared and file be consigned to the record room.

Pronounced:
10.10.2014.

(Vipindeep Kaur)
Additional Civil Judge(Sr. Division)
Tarn Taran.

Plaint presented to _____

This suit on _____ coming up before me (Vipindeep Kaur, Additional Civil Judge (Senior Division), Tarn Taran, for final disposal on _____ in the presence of Sh. _____ Advocate, counsel for the plaintiff and Sh. _____ Advocate, counsel for the defendant.

It is ordered that the defendants are restrained from digging out the water course from the land measuring 2k-8M as detailed in the head note of the plaint, forcibly and illegally except in due course of law and accordingly, the suit of the plaintiff stands decreed ex parte, with costs

Plaintiff
Defendant

Costs of suit

1. Stamp for plaint.
 2. Stamp for Power
 3. Pleadings fee
 4. Subscription for witnesses
 5. Stamp for process
 6. Misc
 - Total:
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Given under my hand and seal of the court of this _____ day of 2014.

(Vipindeep Kaur)
Additional Civil Judge (Sr. Division)
Tarn Taran.