

Dismissal of Application of the Petitioner-plaintiff Under Order Vs. Sultan Singh.petitioner.

Dismissal of Application of the Petitioner-plaintiff Under Order Vs. Sultan Singh.petitioner.

SooperKanoon Citation : sooperkanoon.com/1162699

Court : Punjab and Haryana

Decided On : Aug-20-2014

Appellant : Dismissal of Application of the Petitioner-plaintiff Under Order

Respondent : Sultan Singh.petitioner.

Judgement :

CR No.614 of 2014 -1- IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH CR No.614 of 2014 (O&M) Decided on:-20.8.2014. Sultan Singh. Petitioner. Versus Ram Sarup and others Respondents. CORAM: HONBLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON. ***** Argued by:- Mr. Sanjay Gupta, Advocate for the petitioner. Dr. Bharat Bhushan Parsoon, J.

(Oral) Dismissal of application of the petitioner-plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 CPC filed by him alongwith the suit by the civil court as also by the first Appellate Authority, has brought the petitioner-plaintiff in this Court where supervisory powers of this Court under Article 227 of the Constitution of India have been invoked.

2. The matter pertains to a water course existing in the land of the petitioner-plaintiff. The petitioner-plaintiff claims such water course to be his personal one. Injunction was sought by him against the defendants that they should not construct the water course in the land of the plaintiff and should not use the existing water

course as it was personal and private of the petitioner-plaintiff.

3. It is claimed that both the courts have recorded findings against him and thus have ignored the fact that the existent water-course being private one could not be allowed to be used by other landowners. It is also urged that no other water course can be allowed to be opened in the land of the petitioner-plaintiff for the use of neighbouring landowners. YAG DUTT201408.22 15:36 I attest to the accuracy and integrity of this document CR No.614 of 2014 -2- 4. Hearing has been provided.

5. The petitioner-plaintiff has not only made neighbouring landowners as parties as respondents No.1, 2 and 5 but has also made canal authorities viz. Divisional Canal Officer and Sub-Divisional Canal Officer concerned as respondents No.3 and 4. There is clear case of the private respondents right from the beginning that they are not raising any construction of any water-course. It is, rather, claimed that the water-course in existence is being used by them since long but the petitioner-plaintiff is obstructing user of the said water-course, whereas the said water course is not personal and private of the petitioner-plaintiff as is claimed by him.

6. There is also official version of the entire matter as well. The Canal authorities i.e. respondents No.3 and 4 have clearly put forth their stand that the water-course is in existence for the last 35 years. Impugned order of the lower court reveals that the water-course was lined up as per orders of the canal authorities in presence of father of the petitioner-plaintiff, who had raised no objection to the scheme of lining up of the said water course. The lower court has also noticed that there was an active concealment made by the petitioner-plaintiff that the Haryana State Minor Irrigation and Tubewell Corporation (HSMITC) vide its order dated 16.7.1977 had brick-lined the dismantled water course which was duly sanctioned one. It has also been noticed that sanctioned Warabandi was being validly followed for the last 35 years. Re-modelling of the water course was done once more in 2010. In short, case of the canal authorities before the lower court was that the water-course was restored for its use as was being done for the last 35 years after site inspection and verification at the actual site. It has also come to the notice of the lower court that the water-course has intentionally been dismantled by the petitioner-plaintiff which has necessitated passing of orders of restoration on 14.6.2012 and

9.11.2012 by defendant No.4 and 3 respectively. In short, it has been YAG DUTT201408.22 15:36 I attest to the accuracy and integrity of this document CR No.614 of 2014 -3- concluded by the canal authorities before the lower court that the existing water course was not personal and private of the petitioner-plaintiff as has been alleged by him.

7. When order of 16.7.1977 sanctioning the water course had been passed in terms of Section 18(2) of the Haryana Canal and Drainage Act, 1974 and had been approved for lining up under the scheme after statement of the parties and stakeholders were recorded and site was inspected earlier on 2.7.1977, there is no reason to hold it to be private and personal of the petitioner as has been claimed by him. Plea of the petitioner-plaintiff that sanctioned water-course was on the other land, no details of which have been given, is unacceptable. Relevant portion of the impugned order of the lower court is appended as below: A perusal of the order dated 16.7.77 reveals that a water course GG running between rectangle/Killa No.14/23 and 32/3 in village Jandwala has been approved for lining under the scheme. It has been recorded clearly in the above mentioned order that shareholders were present and the draft scheme was verbally explained to them with the help of relevant record and their statements were also recorded. After going through the case and statements given by the share holders, the site was inspected on 2.7.77. Thereafter, certain alignment of water courses in modified form was approved of lining under the scheme. The disputed water course is one of them. Name of share holders, who consented to the scheme, alongwith the names of their father and village, has been noted down in the above mentioned order. Now, it has also become clear that Hardyal son of Bag Ram, who is the father of plaintiff was also present there and he consented to the scheme. Moreover, it has been stated by the plaintiff that water course has been sanctioned on the other land by the canal authority, but surprisingly, no killa no./ rectangle No.has been mentioned by him where the water course had been sanctioned. Due to these reasons plea of the plaintiff that water course in question is his personal water course is not acceptable.. 8. The lower court came to a firm finding that the petitioner- plaintiff had not come to the court with clean hands but had made YAG DUTT201408.22 15:36 I attest to the accuracy and integrity of this document CR No.614 of 2014 -4- concealment of relevant facts. Regarding concealment of facts

by the petitioner-plaintiff, observation as below of the lower court are noteworthy: In the present case, this fact has been concealed from the court by the plaintiff that the disputed water course has been dismantled by him and he is not allowing the other farmers to use the said water course. Plaintiff has also concealed the fact of running of sanctioned warabandi for the last 35 years and remodelling of the water course resulting to brick lining in the year 2010 with police help. It means he has not come to the court with clean hands. It is principle of equity that one who seeks equity must do equity. But plaintiff has failed to follow this principle of equity.. 9. The Appellate Authority concurring with the findings of the lower court has clearly held that the disputed water course was approved by the canal authorities for lining under the scheme on 16.7.1977 and that too after making an inspection of the site on 2.7.1977.

10. Keeping in view the clear finding of facts recorded against the petitioner-plaintiff by both the court below where concealment made by the petitioner-plaintiff has also been vividly explained, there is no ground to interfere with the impugned orders. Sequel, affirming the same, this petition being without any merit, is dismissed. (Dr. Bharat Bhushan Parsoon) August 20, 2014 Judge Yag Dutt 1. Whether Reporters of local papers may be allowed to see the judgment?. Yes 2. Whether to be referred to the Reporters or not?. Yes 3. Whether the judgment should be reported in the Digest?. Yes YAG DUTT201408.22 15:36 I attest to the accuracy and integrity of this document

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com