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Court : Rajasthan

Decided On : Mar-03-1989

Reported in : 1989(2)WLN469

Judge : Navin Chandra Sharma, J.

Appeal No. : S.B. Civil Second Appeal No. 99 of 1977

Appellant : Jag Mal

Respondent : Devi Lal and ors.

Disposition : Appeal allowed

Judgement :

Navin Chandra Sharma, J.

1. This is an appeal by plaintiff Jagmal against the appellate decree of the Civil Judge, Ganganagar dated April 11, 1977 dismissing his appeal against the decree of Munsif Suratgarh passed in Civil Suit No. 1 of 1970 on April 20, 1972 where by his suit for permanent injunction was dismissed

2 Facts in brief are that in his above suit he alleged that he was marusidar of agricultural lands located in Chak No. 24 JRK sq. No. 246 stone Nos. 23 to 27 measuring 10 Bighas. His said agricultural fields were irrigated through sanctioned water course passing through stone Nos. 23 to 26 for last 18 years. Smt. Rama

wife of. Ramkaran and Smt. Sajna wife of Devi Lal had purchased land comprised in Square Nos. 23/247 and 24/247 in an auction conducted by Colonisation Department. It was alleged that Ramkaran, who was impleaded as defendant in the suit, made an application to Executive Engineer, Pilibanga Division, Hanumangarh that the existing water course passing through Sq. Nos. 24/247, 25/247 and 26/247 may be altered and may be passed through the agricultural lands of the plaintiff. The Executive Engineer sent his proposals to the Collector Ganganagar in this regard and the same were accepted by the Collector on October 23, 1969. The plaintiff challenged the recommendations of the Executive Engineer Hanumangarh and the order of the Collector Ganganagar dated October 23, 1969 on various grounds enumerated in para 5 of the plaint. The plaintiff prayed that a permanent injunction may be issued against Ramkaran and State of Rajasthan restraining them from shifting the existing sanctioned water course to his agricultural lands.

3. The suit was contested by the defendants. It was admitted by Ram Karan that the existing water course through Sq. Nos. 23/277 to 26/247 was a sanctioned water course. It was, however, denied that the plaintiff was irrigating his fields through this water course on the other hand, it was alleged that the plaintiff had made an illegal water course from stone No. 23/246. 5 to 26/246 5 and was irrigating his fields through this illegal water course. It was admitted that Ramkaran made an application before the Executive Engineer Pilibanga division for shifting the sanctioned water course to the plaintiff's field and that the Executive Engineer recommended in this respect to the Collector and the Collector ordered for the shifting of the watercourse. Ramkaran alleged that already there were two sanctioned water course in Sq. No.23/247 and a road also passed as a result of which his agricultural land to the extent of 10 Biswas had been affected. The State of Rajasthan in its written statement admitted the shifting of the water course by the order of the Collector.

4. The trial court framed as many as five issues. It held that the plaintiff was irrigating his fields through illegal water courses marked A to B in the site plan Ex. 1. He held that the Collector was competent under Section 23 of the Rajasthan Irrigation and Drainage Act, 1954 for shifting the water course as had been prayed

for by Ramkaran in his application to the Executive Engineer. The order of the Collector was held to be valid, Issue No. 3 was to the effect as to whether any cause of action accrued to the plaintiff against Ramkaran defendant No. 1. This issue had been framed on a plea taken by Ramkaran that Sq. Nos. 23/247 and 24/247 were in the names of Mst. Sajna and Pema and it was necessary to implead them as parties to the suit With regard to this issue the trial court held that it was Ramkaran defendant No. 1 who had made application to the Executive Engineer for shifting of the water course and, therefore, the plaintiff had cause of action against Ram Karan. In view of its findings on issue Nos. 1 and 2 as stated above, the trial court dismissed the suit of the plaintiff.

5. Aggrieved by this decree plaintiff filed Civil First Appeal No. 35 of 1972 (new No. 42/1975) in the Court of Civil Judge, Ganganagar. The Civil Judge held that the Executive Engineer was highly specialised person and his recommendation should not be likely interfered. He observed that the plaintiff had two other sources through which the water could be taken by him and the order of the Collector was quite reasonable and was passed in order to maintain peace harmony and good behaviour between the neighbouring cultivators On the question of Mst. Pema and Mst. Sajna being necessary parties, the Civil Judge held, without giving findings on this point that no reasons were assigned as to how the application of Ramkaran before the Executive Engineer gave rise to miscarriage of justice or illegality in the whole proceedings before the Executive Engineer It was also stated that no such objection had been raised by the plaintiff before the Irrigation Authorities. He, therefore, dismissed the appeal filed by the plaintiff. The plaintiff has come in second appeal to this Court.

6. It may be mentioned that Ramkaran defendant No. 1 died during the pendency of this appeal and his legal representatives Devilal and Smt. Prema were substituted by the order of this Court dated January 15, 1988,

7. It may be stated at the out-set that it was alleged by the plaintiff Sq. No. 23/247 and 23/247 had been purchased in court auction by Smt Pema and Smt. Sajna who were respectively wife and son's wife of Ramkaran, Ramkaran had also pleaded in his written statement that the lands comprised in this square had been

purchased in the names of Smt. Pema and Smt. Sajna. Thus it was an admitted position that Sq. No. 23/247 and 24/247 through which the existing water courses passed were in the Khatedari of Smt. Pema and Smt. Sajna. Mutation entries were also produced in this respect which go to show that mutation was sanctioned in favour of Smt. Pema and Smt. Sajna. The sanctioned water courses therefore clearly passed through the agricultural fields which belonged to these two ladies.

8. Ramkaran was not a competent person to make an application to the Executive Engineer for shifting the existing water course when he had no interest in the agricultural fields through which the sanctioned water course passed. The Collector Ganganagar had no jurisdiction to pass any order for shifting water course on the application of a person who was not Khatedar tenant of the agricultural lands through which the sanctioned water course passes and who had no other interest in the land. Apart from that it may also be mentioned that neither Section 21 nor Section 23 of the Rajasthan Irrigation and Drainage Act, 1954 could have any application in the facts and circumstances of the case. Section 21 inter alia provides that any person desiring the construction of a new water course may apply in writing to the Divisional Irrigation Officer stating that he had endeavoured unsuccessfully to acquire from the owners of the land through which he desires such water course to pass a right to occupy so much of the land as will be needed for such water course that he desired the said irrigation officer to do all things necessary acquiring such right and that he is able to defray all costs involved in having such rights and constructing such water course. This section applies when an application is made for construction of a new water course by a person for the benefit of his own fields and if for that purpose he wants the new water course to pass from the fields of others. In the instant case Ramkaran did not need any new water course for his own fields. On the other hand what he wanted was to transfer or shift the existing sanctioned water course passing through the fields of Smt. Pema and Smt. Sajna for the benefit of the plaintiff to be shifted to the plaintiff field. Section 21 has no application for such a purpose. Section 23 also does not apply for the simple reason that it applies when any person desires that an existing water course should be transferred from its being owner to him. That was also not the case here. Section 53 had also no application because it only applies when a difference arises between two or more persons in regard to their mutual rights or

liabilities in respect of the use construction or maintenance of a water course No such dispute as to mutual rights or liabilities was there in the instant case. It has been held by this Court in *Shivlal v. State of Rajasthan* reported in 1976 RLW 391 that Section 53 only comes in when a party wishes to continue on the existing water course and raised a dispute about his mutual rights and liabilities and cannot apply to a case where a party calls to withdraw from the existing water course and ask for the sanction of a new one In any view of the matter, therefore, the order of the Collector Ganganagar dated October 23, 1969 (Ex 2) was illegal and without jurisdiction and the plaintiff was entitled to a decree.

9. This appeal is allowed, the judgment and decree of the Civil Judge, Ganganagar dated 11-4-1977 affirming the decree of the Munsif Suratgarh dated April 20, 1972 is set aside and the plaintiff's suit is decreed for permanent injunction restraining the defendants from shifting the existing water course from sq. Nos. 23 to 26/247 to the plaintiff's agricultural land comprised in sq.No. 23 to 27/246 located in Chak No. 24 JRK in Tehsil Suratgarh. In the circumstances of the case, I shall leave the parties to bear their own costs throughout.