



RSA-3575-1998 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**RSA-3575-1998 (O&M)
Reserved on:-30.09.2025
Date of Decision : 09.10.2025**

Kanshi Ram

....Appellant

VERSUS

Krishan Lal & Others

....Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. R.A.Sheoran, Advocate for the appellant.

Mr. Akinchan Aggarwal, Advocate for respondent No.1.

Service of respondents No.2 to 4 dispensed with.

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MANDEEP PANNU, J.

1. The present Regular Second Appeal has been filed by Kanshi Ram, defendant no. 4/appellant, challenging the judgment and decree dated 20.02.1998 passed by the learned Lower Appellate Court, whereby the appeal of the plaintiff–Krishan Lal was allowed, reversing the judgment and decree dated 10.02.1995 passed by the learned Trial Court, which had dismissed the suit of the plaintiff.

Brief Facts

2. The case set up by the plaintiff was that he is owner in possession of a plot, marked as Bara, ABCD shown in red colour in the site plan, situated in village Bakhra, Tehsil and District Bhiwani. It was pleaded that about four years prior to the institution of the suit, the plaintiff had constructed a well at a cost of ₹30,000/- on the suit land, which is owned and possessed by him. The well had been constructed to provide drinking water to the inhabitants of the village. The



grievance of the plaintiff was that due to political rivalry, the defendants, particularly Om Prakash, Sarpanch of the Gram Panchayat, who had no concern with the disputed well, threatened to remove the same. It was alleged that the defendants had no right to do so, and thus, the plaintiff prayed for a decree of permanent injunction restraining the defendants from damaging or removing the well.

3. The defendants contested the suit by filing a written statement wherein it was pleaded that the plaintiff had no locus standi to file the suit as he was neither the owner nor in possession of the land in question. According to the defendants, the plaintiff had encroached upon a thoroughfare and constructed the well therein. It was stated that Gram Panchayat had earlier filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act before the SDM, Bhiwani, who inspected the spot, demarcated the land, and passed an order dated 02.04.1992 holding that the well in dispute was situated in the thoroughfare (phirni). It was further pleaded that the plaintiff had even agreed to remove the well at that stage, but by concealing these facts, he filed the present suit with a mala fide intention to grab the Panchayat land. The defendants, therefore, sought dismissal of the suit.

4. From the pleadings of the parties, the following issues were framed:

1. Whether the well in question has been sunk by the plaintiff on his own land? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether the plaintiff is estopped by his own act and conduct from filing the suit? OPD



4. Whether this Court has no jurisdiction to entertain and try this suit? OPD

5. Relief.

5. In support of his case, the plaintiff examined himself as PW1, besides examining Mohar Singh as PW2, Nanar Singh as PW3, and Ram Kumar as PW4, and thereafter closed his evidence.

6. On the other hand, the defendants examined Om Prakash as DW1 and Kanshi Ram (defendant no. 4) as DW2. They also tendered in evidence documents Ex. D1 (copy of plaint in earlier proceedings), Ex. D2 (copy of the judgment of the SDM, Bhiwani), and Ex. D3 (site plan). After tendering the said documents, the defendants closed their evidence.

Findings of the Trial Court

7. The learned Trial Court, on appreciation of oral and documentary evidence, observed that the plaintiff had led oral evidence to the effect that he had constructed the well on his own land at a cost of about ₹25,000/- to ₹30,000/-. It was further deposed that he tethered cattle in the Bara where the well was situated. On the other hand, the defendants placed reliance upon Exs. D1, D2, and D3. DW1 Om Prakash deposed that the land was not private property but formed part of shamlat/common land. Ex.D2, a copy of the judgment of the SDM, Bhiwani, clearly held that the land in dispute was shamlat land and that the well had been constructed in the thoroughfare (phirni). DW2 Kanshi Ram also supported the case of the defendants. Ex.D3, the site plan, showed the well situated in the common passage. Relying upon this evidence, the Trial Court held that the plaintiff failed to prove by any cogent documentary evidence that the land where the well was constructed was his ownership or in his possession. On the contrary, the defendants



had proved through documentary evidence that the land belonged to the Gram Panchayat. It was further held that the oral evidence led by the plaintiff was insufficient to displace the documentary evidence produced by the defendants. Accordingly, the suit of the plaintiff was dismissed vide judgment and decree dated 10.02.1995.

Findings of the Lower Appellate Court

8. Aggrieved, the plaintiff preferred an appeal. The learned Lower Appellate Court, after hearing both parties, observed that from the statements of the parties, it was clear that a well was indeed in existence at the spot and had been shown in the sketch plan. The only controversy was whether the land on which the well stood was a thoroughfare or the plaintiff's private plot. For deciding this, the most crucial evidence was Ex.D1, the order of the SDM, Bhiwani dated 02.04.1992, passed under Section 7 of the Punjab Village Common Lands (Regulation) Act. The said order showed that upon spot inspection and demarcation, the SDM found the well to be located in the thoroughfare (phirni) of the village. The sketch plan also confirmed this position. The Appellate Court held that since the plaintiff never challenged the SDM's order in appeal or revision, the said finding had become final and was a good piece of evidence for deciding the present controversy. It was, therefore, clear that the plaintiff was not the owner of the site where the well had been constructed.

9. However, the Court also observed that the plaintiff himself had pleaded and admitted that the well was constructed for providing drinking water to the public and not for his exclusive use. Thus, it was evident that the well had been sunk for the welfare of the public, though on common land. The Appellate Court further noticed that as per the SDM's order dated 02.04.1992, the Gram Panchayat



was permitted to remove the well but with a specific rider that before doing so, it must reconstruct or dig a fresh well at the same place in the southern side of the phirni. The Appellate Court held that until the Gram Panchayat complied with this condition, it could not remove the existing well constructed by the plaintiff. On this basis, the Lower Appellate Court concluded that though the plaintiff was not the owner of the land, he had incurred expenditure and constructed the well for public benefit, and in such circumstances, the defendants could not be permitted to dismantle it without first constructing a new well in terms of the SDM's directions. Consequently, the appeal was allowed, the judgment of the Trial Court was set aside, and the suit of the plaintiff was decreed for permanent injunction restraining the defendants from removing the existing well until compliance with the order dated 02.04.1992

10. Feeling aggrieved, defendant No.4 – Kanshi Ram has preferred the present Regular Second Appeal.

11. Upon notice, respondent No.1, who is only contested respondent appeared and contested the appeal. Service of respondents No.2 to 4 was dispensed with.

Submissions of Learned Counsel for the Appellant

12. Learned counsel for the appellant/defendant no.4 Kanshi Ram submitted that the judgment and decree passed by the learned Lower Appellate Court is contrary to law and facts on the record. It stands established that the respondent/plaintiff had constructed the well on a common passage (rasta), which belongs to the Gram Panchayat. Once this fact was proved, the learned Lower Appellate Court ought to have dismissed the appeal of the plaintiff. Instead, the Court, despite observing that the well did not exist on the land of the plaintiff and



was situated in the rasta, illegally decreed the suit of the plaintiff by granting permanent injunction. The judgment of the Trial Court, which was based on proper appreciation of evidence, was set aside without recording any cogent reason or finding.

13. It was further argued that the Lower Appellate Court acted without jurisdiction in restraining the defendants from removing the well unless a new well was constructed by the Gram Panchayat. Such a direction, according to learned counsel, was wholly illegal, as the plaintiff, having no right, title, or interest in the rasta, could not claim protection of his illegal act. By constructing the well on the common passage, the right of the villagers to use the thoroughfare has been obstructed, and the Lower Appellate Court's finding virtually sanctions an encroachment upon public land.

14. Learned counsel also submitted that the suit was bad for non-joinder of necessary party, as the Gram Panchayat, being the owner of the land in dispute, was not impleaded. In its absence, no decree for permanent injunction could have been passed. The judgment and decree of the Lower Appellate Court are, therefore, unsustainable, being based on conjectures and surmises, and liable to be set aside, restoring the well-reasoned judgment of the learned Trial Court.

Submissions of Learned Counsel for Respondent No.1

15. Learned counsel for respondent no.1/plaintiff supported the judgment of the Lower Appellate Court and reiterated the submissions made before the courts below. It was argued that the plaintiff had in fact constructed the well at his own expense for the welfare of the villagers, and the defendants, out of political rivalry, were bent upon dismantling it. It was further submitted that the Lower Appellate Court had rightly protected the well till such time as the Gram Panchayat



constructed a fresh well in compliance with the earlier order of the SDM dated 02.04.1992. Learned counsel thus prayed for dismissal of the present appeal.

Findings of this Court

16. I have heard learned counsel for the parties and carefully examined the record. The core controversy is whether the plaintiff could claim permanent injunction to protect a well admittedly constructed on a common passage (rasta) belonging to the Gram Panchayat.

17. From the evidence on record, particularly the order of the SDM dated 02.04.1992 (Ex.D2) and the sketch plan (Ex.D3), it clearly emerges that the well in question is situated not on any private plot of the plaintiff, but in the thoroughfare of the village. The plaintiff has not produced any documentary evidence of ownership or possession over the disputed site. On the contrary, the official record and the order of the SDM conclusively establish that the land forms part of shamlat/common passage of the village. Once this finding is in place, the plaintiff cannot claim any legal right to protect his unauthorised construction by way of permanent injunction.

18. The reasoning of the Lower Appellate Court is self-contradictory. While holding that the well is not on the land of the plaintiff but in the thoroughfare, the Court nonetheless decreed the suit in his favour. Further, the direction that the well cannot be removed until another well is constructed is beyond the jurisdiction of a civil court. Such a condition amounts to compelling the Gram Panchayat to act in a particular manner despite the plaintiff's encroachment. No injunction can be granted to protect an illegality, particularly when public rights are being obstructed.

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19. The learned Trial Court had rightly appreciated the oral and documentary evidence and dismissed the suit, holding that the plaintiff had no ownership or possession over the site of the well. The Lower Appellate Court reversed this finding without any cogent reasoning and by travelling beyond its jurisdiction. The plaintiff's act of constructing the well may have been for public welfare, but that does not vest him with any legal right over shamlat land. The remedy, if any, lies with the Gram Panchayat, which alone is the lawful owner and custodian of the property.

Conclusion

20. In view of the above discussion, I am of the considered opinion that the judgment and decree dated 20.02.1998 passed by the learned Lower Appellate Court cannot be sustained. The same is accordingly set aside, and the judgment and decree dated 10.02.1995 of the learned Trial Court dismissing the plaintiff's suit are restored. The appeal is, accordingly, allowed.

21. Pending application(s), if any, also stands disposed of.

October 09, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No.