

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

**R.S.A.No.3380 of 2009**

Date of Decision : 18.09..2009

Chand Singh etc.

...Appellants

Versus

Chanan Singh etc.

...Respondents

**CORAM:HON'BLE MR. JUSTICE HEMANT GUPTA**

Present: Mr. S.P.Soi, Advocate,  
for the appellants.

**HEMANT GUPTA, J. (ORAL)**

The plaintiffs are in second appeal aggrieved against the judgment and decree passed by the learned first Appellate Court, whereby the suit filed by the plaintiffs was dismissed in appeal.

The plaintiffs have claimed decree for permanent injunction restraining the defendants from blocking the water of the houses of the plaintiffs, flowing into the pond/chhapper by making any construction towards the Western side of the house of Dawinder Pal Singh, in any manner. The defendants denied the existence of the pond. In fact, it has been pointed out that Dawinder Pal Singh is not even reflected as the owner in the site plan produced by the plaintiffs.

Learned trial Court decreed the suit relying upon Jamabandi Ex.DX, which shows the existence of chhapper in khasra Nos.217 and 220 and that site plan Ex.D-1 does not reflect the pond though as per the defendants there exists a pond on the northern side. But the learned first Appellate Court reversed the findings recorded by the learned trial Court. It was found that there are two ponds in khasra Nos.217 and 220 beyond

the abdi of Village Sajjanwal. In the aks-shajra Ex.DY, there is no mention of village pond in the abadi of Village Sajjanwal. Therefore, reflection of a pond in site plan Ex.P-1 is not sufficient evidence to prove existence of a pond, as the same was not prepared after visiting the disputed pond.

Learned counsel for the appellants has vehemently argued that the defendants have admitted the existence of the pond in the written statement and therefore, the findings recorded by the learned first Appellate Court are contradictory to the admission of the defendants.

Learned counsel for the appellants has relied upon the words in para 2 of the written statement on merits "The distance mentioned from the houses as per site plan in between the pond and the house is 3 feet wide" to assert that the defendants have admitted the existence of pond and the house.

The said line in the written statement cannot be read in isolation. The written statement is to be read as a whole. In the written statement, there is denial of existence of pond. In fact, in reply the defendants have stated that there is khasra number of pond is not available. In view of the said facts, it cannot be said that the defendants have admitted the existence of the pond in the village.

It is admitted by the learned counsel for the appellants that the pond, which is disputed in the present suit is situated in the abadi of the village. Aks-shajra Ex.DY does not reflect any point in the abadi. The two ponds having Khasra Nos.217 and 220 are not part of the abadi. Therefore, the plaintiffs have been rightly declined injunction as the existence of the pond is not proved by the plaintiffs. The alleged

admission of the defendants is not clear and categorical, which can be made base to decree the suit. In fact, what is stated in the written statement is that there is no mention from where the construction has been raised or nothing has been mentioned or depicted in the site plan. The plaintiffs has mentioned one Dawinder Pal Singh in the plaint, but name of Dawinder Pal Singh has not been mentioned in the site plan. In para 7 of the preliminary objections, it has been pleaded by the defendants that khasra number of the ponds have not been mentioned. No direction of the drain, its length or width has been mentioned by the plaintiffs. In para 2 of reply on merits, it is pointed out that no number of khasra number of the pond is given in the plaint. No length and width of the house has also been given.

In view of the above, I do not find any patent illegality or irregularity in the findings recorded by the learned first Appellate Court, which may give rise to any substantial question of law for consideration of this Court in second appeal.

Dismissed.

18.09.2009  
Vimal

(HEMANT GUPTA)  
JUDGE