

were thus, evidenced by mutation. Mutation under such situation admittedly, did not pass title but were evidence towards an oral sale and under Section 30 of the Punjab Pre-emption Act, 1913 would be starting point of limitation.

10. Article 10 of the second schedule of the Indian Limitation Act provides a period of 1 year to enforce a right of pre-emption from the date, when the purchaser takes under a sale sought to be pre-empted physical possession of the whole of the property, sold or where the subject of the sale does not admit of physical possession. Such date would be instrument of sale registered. In the facts of the present case, the suit land in possession of the tenants i.e. the present appellants were incapable of physical possession and therefore, the *terminus-a-quo* would be the date of registration of the sale deed. Section 30 of the Punjab Pre-emption Act, 1913 would have no applicability to the facts of the present case.

11. For the reasons recorded above, I find no infirmity in the impugned judgments and decrees of the Courts below in holding the suit to be time barred as the same has been filed only on 18.01.2005, whereas, the starting point of limitation was the registration of the sale deed i.e. 23.06.1999. The second appeal must fail as it does not raise any question of law much less substantial question of law.

12. For the reasons recorded above, the present second appeal is dismissed.

13. For the same reasons RSA No.4152 of 2011 & RSA No.4153 of 2011 are also dismissed.

14. Ordered accordingly.

15. A photocopy of this judgment be placed on the record of connected cases.

Appeals dismissed.

PUNJAB AND HARYANA HIGH COURT

Before: Daya Chaudhary, J.

RSA No.4604 of 2009(O&M)

Decided on: 25.01.2013

State of Haryana and another

Appellants

Versus

Punjab Singh and others

Respondents

Present: Mr.Pradeep Virk, Deputy Advocate General, Haryana for the appellant.

Mr.V.S.Punia, Advocate for the plaintiff-respondent.

Haryana Canal and Drainage Act, 1974 (29 of 1974), Section 17-24, 25 – Suit for permanent injunction – Jurisdiction of civil court – Plaintiff had approached the Civil Court only for restraining the defendants from closing or removing any pipe or outlet – Plaintiff has not challenged any order passed under Section 18(2) of the Act, therefore, Section 25 of the Act is not attracted which stipulates bar in approaching the Civil Court

relating to the matters falling under Sections 17 to 24 of the Act.

(Para 11)

JUDGMENT

DAYA CHAUDHARY, J. –

1. Defendant Nos.1 and 2 are appellants before this Court. They are aggrieved by the concurrent findings recorded by the Courts below.

2. The plaintiff filed a suit for injunction restraining the defendants from closing or removing a pipe of outlet in khasra No.215 comprising khewat/khata No.727/875. The land measuring 43 kanals was purchased by the plaintiff and Rohtash and Ram Niwas, defendant Nos.3 and 4 from Canal Department. It was stipulated in the sale deed that all the rights relating to canal water would be with the purchaser. There was no other source for irrigating the land. The defendant-appellants wanted to remove the outlet in question. The repeated requests fell flat and hence the suit.

3. The suit was contested by the defendant-appellants on various grounds. It was specifically claimed that the Civil Court has no jurisdiction under Section 25 of the Haryana Canal & Drainage Act, 1974.

4. On appraisal of evidence, the trial Court came to the conclusion that the defendant Nos.1 and 2 are restrained from closing running outlet in question till there being any supply from outlet RD811/L Dhakal minor is allowed to the plaintiff. In case any supply is allowed to the plaintiff, defendant Nos.1 and 2 shall have a right to close temporary pipe as no special outlet for small piece of land could be provided, as per rules. Accordingly, the suit of the plaintiff was decreed.

5. Defendant Nos.1 and 2 preferred an appeal against the judgment and decree of the trial Court which was also dismissed.

6. On re-appraisal of evidence, the First Appellate Court came to the conclusion that since there is no challenge to the order passed under Section 18(2) of the Act, provision of Section 25 is not applicable, inasmuch as, it relates to bar of civil Court in case matter falling under Section 17 to 24. It also came to the conclusion that it is a simplicitor suit for permanent injunction restraining the defendant Nos.1 and 2 from closing or removing any pipe of outlet in khasra No.215 comprising in khewat No.727/875, therefore, application of section 25 of the Act does not arise.

7. Mr.Pradeep Virk, learned Deputy Advocate General, Haryana appearing for the appellants submits that both the Courts below have wrongly given the findings in favour of the plaintiff, inasmuch as, he has no right to claim the facility of outlet for irrigating the small piece of land. Even the plaintiff has no right to approach the Civil Court as there is bar under the Act. On that basis, it has been argued that the suit of the plaintiff may be dismissed.

8. Mr.V.S.Punia, learned counsel appearing for the plaintiff submits that the Courts below have rightly decreed the suit.

9. After hearing learned counsel for the parties, I find no merit in the present appeal.

10. The Courts below have restrained the appellants from closing running

outlet till any supply being made through outlet RD 811/L to the plaintiff. If any supply would be made from the aforesaid outlet, the appellants would be entitled to remove or close the temporary pipe. Learned counsel for the appellants has not been able to show that any supply has been made from the aforesaid outlet till now and, therefore, the findings recorded by the Courts below are legal and valid.

11. Coming to the second argument that the Civil Court has no jurisdiction to try such type of matters has no merit. The plaintiff had approached the Civil Court only for restraining the defendant Nos.1 and 2 from closing or removing any pipe of outlet. He has not challenged any order passed under Section 18(2) of the Act, therefore, Section 25 of the Act is not attracted which stipulates bar in approaching the Civil Court relating to the matters falling under Sections 17 to 24 of the Act.

12. Nothing has been shown that the findings recorded by both the Courts below suffer from any illegality and impropriety which requires interference by this Court.

13. No question of law, much less any substantial question of law, arises for consideration in the present appeal.

14. In view of the aforesaid discussion, the present appeal is dismissed.

15. Since the appeal has been dismissed on merits, there is no need to pass any order on the application for condoning the delay in filing the appeal.

Appeal dismissed.

PUNJAB AND HARYANA HIGH COURT

Before: Jaswant Singh, J.

CR No.6117 of 2008(O&M)

Decided on: 02.07.2013

Sikander Lal

Petitioner

Versus

Mehar Singh & Ors.

Respondents

Present: Mr. Arun Jain Senior Advocate with Mr. Harkesh Manuja,
Advocate for the Petitioner(tenant).

Mr. Deepak Sibal, Advocate for the respondents(landlords).

A. Haryana Urban (Control of Rent and Eviction) Act, 1973 (11 of 1973), Section 13 -- Bonafide need to start business -- Age factor -- Landlords are retired and are absolutely idle -- Age is no bar for any person to start any business and court is no body to impose its own opinion regarding the ability of any person to work at any stage.

(Para 10)

B. Haryana Urban (Control of Rent and Eviction) Act, 1973 (11 of 1973), Section 13 -- Ejectment petition -- Res-judicata -- Previous ejectment application was filed only on the ground of material impairment and subletting, whereas the present eviction application is on the ground of personal necessity also -- Thus, cause of action of personal necessity