

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**RSA 244 of 2000.**

**Decided on July 30, 2010**

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**Kanti Saroop (deceased) through his LRs Satya  
Devi and others ...Appellants/Plaintiffs.**

**Versus**

**Nand Lal and another...Respondents-Defendants.**

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***Coram***

**The Hon'ble Mr. Justice Surjit Singh, Judge.**

**Whether approved for reporting?<sup>1</sup>**

**For the Appellants Mr. R.K.Bawa, Senior  
Advocate, with M/S  
M.S.Thakur and Inderjit  
Singh, Advocates.**

**For the respondents Mr. Ajay Kumar, Advocate.**

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**Surjit Singh, J. (Oral)**

This appeal by the plaintiffs is directed against the judgment and decree, dated 14.1.2000, of learned District Judge, Solan, by which, accepting appeal of respondents-defendants against the judgment and decree of the trial Court, appellants-plaintiffs' suit has been dismissed and cross objections filed by them in respect of some findings/ observation, appearing in the judgment of trial Court, have been dismissed.

2. Appeal was admitted on the following substantial question of law:

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<sup>1</sup> Whether reporters of Local Papers may be allowed to see the Judgment?

“Whether the learned courts below have totally mis-interpreted and mis-construed the evidence on the record of the case which has resulted into the grave injustice to the appellants/plaintiffs?”

3. Appellants-plaintiffs are owners in possession of land, bearing Khasra Nos. 277/264/1. They filed a suit that there is a Kuhal (water channel), source of which is Ashwani Khad, at a considerable distance from the above described land and that the said Kuhal, not only irrigates their land, bearing the aforesaid Khasra number, but also feeds a water mill, existing on a portion of that land. It was alleged that respondents-defendants, without any right, title or interest in the water of the Kuhal, had been interfering in the flow of water, by damaging the Kuhal.

4. Respondents-defendants claimed that earlier the Kuhal existed elsewhere and that it had been washed away in the floods of 1971 and after that with their consent, plaintiffs re-located their Ghrat (water mill) at the present site and also, re-located the Kuhal, by connecting it with their (defendants) existing Kuhal. They claimed that existing Kuhal of theirs, not only irrigated their land, bearing Khasra No. 217, but also fed their own Ghrat (water mill), existing on a portion of Khasra No. 217.

5. Replication was filed, in which it was denied that there existed any Ghrat (water mill) of defendants, on Khasra No. 217, or that Kuhal had been re-located. It was stated that Kuhal existed, even prior to the floods, where it exists now and it was only re-constructed, after having been washed away in the floods of 1971.

6. Trial Court framed various issues, based on the pleadings of the parties, and came to the conclusion that plaintiffs had the right to irrigate their land, described in the plaint, and also to run water mill by the water of the Kuhal. At the same time, it was concluded that plaintiffs had not been successful in proving that there had been any interruption in the flow of water in the Kuhal. Also, it was concluded that defendants had their Ghrat on a portion of Khasra No. 217, which was fed by the water of the Kuhal in question. With these findings, trial Court passed the following decree:

“19. In view of my aforesaid discussion and findings, suit of the plaintiffs succeeds and partly decreed with costs. A decree for permanent prohibitory injunction is passed in favour of the plaintiffs and against the defendants restraining the defendants from interfering/disrupting the flow of water i.e. Kuhal going to the Ghrat of the plaintiffs and their lands in any manner from Ashwani Khad. Decree sheet be prepared...”

7. Defendants filed appeal in the Court of District Judge, challenging the aforesaid decree of permanent prohibitory injunction. Appellants-plaintiffs filed cross objections, challenging the finding that defendants also had the right to feed their Ghrat (water mill) by water of the Kuhal. Learned appellate Court, vide impugned judgment, has accepted appeal of the defendants, dismissed cross objections of the appellants-plaintiffs, set aside the judgment and decree of the trial Court and dismissed the suit, in its entirety.

8. I have heard learned counsel for the parties and gone through the record.

9. Both the Courts have returned concurrent findings that there is Kuhal on the spot, which irrigates suit land and also feeds the water mill of the plaintiffs, existing on a portion of the suit land. Also, two Courts have concluded that there is a Ghrat on Khasra No. 217, belonging to respondents-defendants, which is fed by the water of Kuhal and the Kuhal also irrigates land comprised in Khasra No. 217, belonging to the respondents-defendants. Finding of the two Courts below that there exists Ghrat on Khasra No. 217 is shown to be correct, even by the site plan, proved by the appellants-plaintiffs. The same is Ex.PW-3/A. In this site plan, Ghrat is shown in the land of the respondents-defendants, which is on the lower side of Kuhal. This plan, not only,

gives a lie to appellants-plaintiffs' denial about the Ghrat of the respondents-defendants, but also falsifies their allegation that the land of the defendants is on the upper side of the Kuhal and hence, question of Kuhal, irrigating land of the defendants, or feeding their Ghrat, does not arise. Lands of both the parties, as per site plan Ex.PW-3/A, are situated on the same side of the Kuhal. There is no evidence, suggesting that respondents-defendants caused any damage to the Kuhal, which carries water to the plaintiffs' land and also feeds their Ghrat.

10. It appears that appellants-plaintiffs are aggrieved by utilization of water of the Kuhal by respondents-defendants, for irrigating their land and feeding their Ghrat, which lies ahead of their own land, that is, the suit land, because, after irrigating respondents-defendants land and feeding their Ghrat, it is quite likely that quantity of water in the Kuhal is diminished. But, they have not pleaded such a case. Their case is that respondents-defendants are strangers. They do not have any land in the village and during the course of evidence, they stated that their land is situated above the Kuhal. Evidence, on record, shows that defendants have their land in the village, which is on the lower side of the Kuhal and the Kuhal approaches their land first before reaching land of appellants-plaintiffs. If that is so, it cannot be said that the respondents-

defendants have no right to use water of the Kuhal to run their own Ghrat, or to irrigate their land, comprised in Khasra No. 217, which is adjacent to the Kuhal and is situated on its lower side.

11. For the foregoing reasons, substantial question of law, on which appeal was admitted, is answered against the appellants –plaintiffs and consequently, appeal is dismissed.

July 30, 2010 (PC).

(Surjit Singh), J.