

2024:PHHC:129781



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-1881-2018 (O&M)
Date of decision: 30.09.2024

Rajender and another

...Appellants

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Simranpreet Singh, Advocate for
Mr. Sandeep K. Sharma, Advocate for the appellants.

VIKAS SURI, J.

1. This regular second appeal has been preferred by the plaintiff-appellants aggrieved by the judgment and decree dated 17.02.2017, affirming the judgment and decree dated 25.01.2016 passed by the trial Court, whereby the suit for declaration and permanent injunction was dismissed with costs.

2. The facts in brief leading to filing of instant regular second appeal are that the plaintiffs and other co-sharers are joint owners of agricultural land measuring 239K-6M situated in village Brahmanwas, Teshil and District Rohtak. The land of the plaintiffs measuring 12K-5M out of the aforesaid land was acquired for widening of road, i.e. National Highway No.71-A. Earlier also, the land of the plaintiffs was acquired, vide award dated 28.02.2011, for the same purpose. The acquired land was alleged to have been handed over to the Forest Department, which



intended to use the same for plantation of eucalyptus trees, also known as *safeda*. The act of handing over the acquired land to District Forest Officer had been challenged through the present civil suit. Consequential relief of injunction had also been prayed for.

2.1 Upon notice of the suit, the defendants opposed the same by filing separate written statements on behalf of National Highways Authority of India and the Forest Department. The National Highways Authority of India had pleaded that national highway does not mean only the metalled portion of the highway, but also includes the sand embankments on either side of the tarmac. It was also pleaded that afforestation along the National Highways is an essential part of its maintenance and plays a significant role in reducing pollution. For the said purpose plantation work along the national highways is done by the Forest Department by way of planting trees only. The written statement filed by the District Forest Officer was on similar lines, wherein it was additionally averred that widening of National Highway is of public importance and its utility is paramount and supreme.

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

1. Whether the plaintiffs are entitled to the relief of declaration as prayed for? OPP.
2. If issue no.1 is proved, whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?OPP
3. Whether the suit of the plaintiffs is not maintainable in the present form?OPD



4. Whether the plaintiffs have no cause of action or locus standi to file the present suit?OPD
5. Whether the plaintiffs have not come to the court with clean hands and suppressed the true and material facts from the court?OPD
6. Whether the civil court has no jurisdiction to entertain and try the present suit? OPD
7. Whether the plaintiffs have not affixed proper court fee on the plaint?OPD
8. Whether the plaintiffs have not served mandatory notice under section 80 CPC
9. Relief.

4. On appraisal of the pleadings and evidence led by the parties, the trial Court dismissed the suit with costs. Aggrieved thereagainst, the plaintiff-appellants preferred statutory first appeal, which was also dismissed vide judgment and decree dated 17.02.2017, recording concurrent findings. Still aggrieved, the plaintiff-appellants have carried the matter to this Court through the present regular second appeal.

5. Learned counsel for the appellants has argued that eucalyptus (*safeda*) trees are known to consume lot of water and thereby deplete the water table. The said plantation also affects the fertility of the surrounding land and on account of the same, the land of the plaintiffs abutting the land in question, may get adversely affected.

6. I have heard learned counsel for the appellants and with his able assistance, perused the record.

7. Admittedly, the land in question stands acquired by the



National Highways Authority of India for widening of the National Highway No.71/A. The plaintiffs/land owners have also received the compensation with regard to the acquired land. The land in question vests with the Government, free from all encumbrances, and the defendant-respondents are the lawful owners of the suit land. During the course of hearing, learned counsel for the appellants was not in a position to dispute the law laid down by the Apex Court in ***Premji Ratansey Shah vs. Union of India, (1994) 5 SCC 547***, wherein it has been held that injunction cannot be issued against the true owner.

7.1 It is also not disputed that on acquisition of the suit land, the plaintiffs have lost all right, title or interest therein and therefore, handing over of the acquired land to the Forest Department for plantation of trees along the highway, cannot be called in question by the erstwhile owners. Thus, the plaintiff-appellants have no locus standi to maintain the suit on that ground.

7.2 The first appellate Court also observed that the plaintiff-appellants have failed to produce any documentary evidence to show the land in dispute has been transferred to the Forest Department. Even before this Court, no material from the record has been referred, to dispel the said finding of fact. It is not denied by the defendant-respondents that only trees are being planted by the Forest Department alongside the highway. Moreover, the acquisition of the suit land is not in question before civil Court and therefore, handing over the land in question to the Forest Department for afforestation, cannot be



legitimately challenged at the hands of the erstwhile owners, and such an ill-conceived action deserves to fail.

7.3 The other concern of the plaintiffs with regard to depravity of fertility of their adjoining land has also been dealt with in detail by the first appellate Court, which reasoning is approved by this Court. The mechanism of claiming compensation is already in place, in case of land owners whose lands come within ten feet of the plantation of *safeda* trees. The relevant Rules have not been impugned. It would be apposite to reproduce the relevant discussion in that regard and the same reads thus:-

“Further, the plaintiffs are claiming that the plantation of trees, safeda etc. would deprive them from enjoying fertility of their lands. The plaintiffs in para 6 of the plaint have nowhere mentioned that the defendants are planting only safeda trees. Rather, it has been mentioned that the Forest Department intends to use forest land for plantation of trees of safeda etc. The plaintiffs have not been able to lead any evidence to show that plantation of trees on the land in dispute would in any way adversely affect the productivity or fertility of the adjoining land. Mohinder Singh, Deputy Ranger, DW1, in his cross-examination no doubt has admitted that safeda trees adversely affect the productivity of soil. However, he has explained that owners of land coming within 10 ft. of the plantation of safeda trees can take 50% of the value of said trees. Thus, if ever, the plaintiffs get adversely affected with the plantation of safeda trees in the land in dispute, they can take advantage of taking compensation from the department as per Rules. However, plaintiffs have



no right to restrain the defendants from planting trees on the land in dispute. Still considering the statement of Mohinder Singh, DW1, the defendants can consider planting other trees except safeda trees on the land in dispute, if possible. With these observations, the findings of learned lower court stand modified to that extent only. However, no grounds are made out to allow this appeal. Thus, the same stands dismissed. Decree-sheet be prepared. Trial Court record along with a copy of this judgment be sent back to the quarter concerned and appeal-file be consigned to the record-room after due compliance.”

8. During the course of hearing, learned counsel for the appellants has failed to point out any illegality or perversity in the impugned judgments rendered by learned courts below. The concurrent findings of facts recorded by both the learned Courts below, have been found to be legally justified and based on sound reasoning.

9. No other issue has been raised.

10. On a conspectus of the peculiar facts and circumstances of the case, this Court finds that no substantial question of law arises for consideration. The findings of the trial Court and the first Appellate Court do not warrant interference in second appeal. Moreover, the appellate jurisdiction under Section 100 of the Code of Civil Procedure can only be invoked if such a question arises. Accordingly, the present appeal being bereft of merit, deserves to fail as no case for interference is made out.

11. Resultantly, the instant regular second appeal is dismissed.

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12. No order as to costs.

September 30, 2024
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned :	Yes / No
Whether Reportable :	Yes / No