

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

**Regular Second Appeal No.2874 of 1988
Date of Decision: 01.07.2015**

Punjab State & othersAppellants

Versus

Bharpur Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA

Present: Mr. Inder Pal Goyat, Addl. A.G., Punjab
for the appellants.

None for the respondents.

RAJIVE BHALLA, J (ORAL)

The State of Punjab challenges judgment and decree dated 06.08.1988, passed by the Additional District Judge, Bathinda allowing an appeal filed by respondents No.1 and 2, by setting aside judgment and decree dated 14.08.1987 passed by the Sub Judge 1st Class, Phul and as a consequence decreeing the suit for permanent injunction, filed by respondents No.1 and 2.

Counsel for the appellants submits that the question that required an answer was not whether respondents No.1 and 2 were owners of the land in dispute, but whether the trees on the land had been planted by the Forest Department. The trial Court recorded a finding that the trees were planted by the State but the first appellate Court has reversed this finding by simply relying upon the fact that

the land in dispute is owned by respondents No.1 and 2. The first appellate Court has ignored the report Ex.CA, prepared by Kishan Chand, Tehsildar that the trees were planted by the Forest Department.

No one is present on behalf of the respondents.

I have heard counsel for the appellants, perused the impugned judgment and decree as well judgment and decree passed by the Sub Judge 1st Class, Phul, the pleadings and the record but express my inability to hold that findings recorded by the first appellate Court are perverse, arbitrary, contrary to the record or give rise to a substantial question of law.

The plaintiffs/respondents No.1 and 2 filed a suit for permanent injunction to restrain the defendants/appellants from felling trees growing on their land, measuring 61 kanals 18 marlas. The appellants/defendants put in appearance and filed a reply that the land is a part of a canal and belongs to the State and as trees were planted by the Forest Department, the suit may be dismissed.

The trial Court, after considering the pleadings, framed the following issues:-

- “1. Whether the plaintiffs are the owners of the disputed trees? OPP.*
- 2. Whether the plaintiffs are entitled to the injunction prayed for? OPP.*
- 3. Relief.”*

After parties adduced their respective evidence, the trial Court held that though the land belongs to the respondents, but as the trees were planted and nurtured by the Forest Department the prayer for grant of an injunction cannot be decreed.

Aggrieved by this judgment and decree, respondents No.1 and 2 filed an appeal. The Additional District Judge, Bathinda, vide judgment and decree, dated 06.08.1988, allowed the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit by restraining the appellants from felling the trees growing on the land belonging to the respondents. A relevant extract from the judgment and decree passed by the first appellate Court reads as follows:-

“11. The crux of the problem is who is the owner of the land on which the trees are standing? The evidence produced by the plaintiff-appellant particularly the reports of the Local Commissioners Exhs. PA, CA and Mark A establishes that the land is not owned by the Forest Department. In the year 1982 revenue Qanungo who took the measurement in his report mark A clearly mentioned that these trees are beyond the boundary line of the distributary and the trees are not owned by the Forest Department. Pal Singh Naib-Tehsildar in his report Exh. PA dated 13.11.84 too mentioned that these trees are not belonging to the department. Even Kishan Chand Tehsildar Phul in his report Exh. CA mentioned that these trees according to the prevalent revenue record do not belong to the forest department and the land is owned by the plaintiff-appellant. The

learned trial Court on the basis of this evidence rightly came to the conclusion that the land is owned by the plaintiff-appellant. Since Kishan Chand exceeded his authority to refer in his report that the trees belongs to the forest department as they were grown by the department taking the land to be that of the Govt. to that extent was not accepted. Since the Local Commissioner was required to indicate whether the trees are standing in the land of the plaintiff-appellant, so he has no authority to find out, who was the owner of the trees. The objections on the report were, therefore, rejected of the defendant-respondents.”

A perusal of the aforesaid extract reveals that reports prepared by the Local Commissioners prove that the land is not owned by the respondent and not by the appellants. A report prepared by the Revenue Kanungo in 1982 records that the trees are beyond the boundary line of the distributary/canal and the trees are not owned by the Forest Department. Kishan Chand the Naib Tehsildar, in his report, dated 13.11.1984, has also recorded a finding that the trees are growing in the land owned by the respondents, but also recorded that the trees belong to the Forest Department. The first appellate Court has after relying upon these reports held that as trees are attached to the land owned by the respondents, the trees also belong to the respondents. The report prepared by Krishan Chand mentioning therein that though the land belongs to the respondents but the trees belong to the Forest Department, has been rightly rejected as

Krishan Chand was only asked to demarcate the land.

The findings recorded by the first appellate Court are not only plausible but the only conclusions that could have been recorded on the basis of pleadings and the evidence on record. Finding no reason whether in fact or in law to hold that these findings, recorded after appraisal of the pleadings and all relevant evidence are in any manner perverse or arbitrary or give rise to any substantial question of law, the appeal is dismissed, but with no order as to costs.

01.07.2015
Vinay

[RAJIVE BHALLA]
JUDGE