

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

RSA No. 4258 of 2010

Date of Decision: December 08, 2015

Jasbir Singh

.... Plaintiff/Appellant

vs.

State of Haryana & another

.... Defendants/Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Ranjit Saini, Advocate
for the appellant.

Mr. Samer Vir Singh, AAG Haryana
for the respondents.

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh J.(Oral)

Impugned in the present Regular Second Appeal is the judgment and decree dated 03.06.2010 passed by Additional District Judge, Kurukshetra, modifying the judgment and decree dated 05.03.2010 passed by learned Civil Judge (Sr. Divn.), Kurukshetra.

The learned Civil Judge(Sr. Divn.) had injuncted the defendants from cutting and removing trees standing in the land of the plaintiff, mentioned in para No.1 of the plaint. However lower appellate Court, while applying the authority of the Court in **Haryana State through Collector, Karnal and others Vs. Naresh Kumar & others RSA 3137 of 1998 decided on 06.05.1999**, ordered that 30 per cent price of the trees shall be given to the plaintiff.

The case of the plaintiff was that he is owner in possession of land measuring 4 kanal 14 marlas. Father of the plaintiff had planted 16 eucalyptus trees about 25 years back. Now the defendant-Forest Department illegally and forcibly wants to cut the trees. On the other hand the defendants maintained that the trees were planted on the Berm of Babain Sangeri Mangoli Jattan road in the year 1980-81 and that the land on which trees are standing, is in possession of the defendants since the time of plantation. It has also been declared as protected forest by the Haryana Government vide notification dated 06.07.1979.

The lower Court concluded that plaintiff is proved to be owner of the suit land and the trees planted therein. The lower Court also relied upon report of the Local Commissioner whereby the disputed land was demarcated.

As stated above on the basis of the authority titled as Naresh Kumar (Supra), the decree was modified by the lower

appellate Court.

I have heard learned counsel for the parties and have gone through the case file very carefully.

A perusal of the said authority in the case of Naresh Kumar (supra) shows that in the said case the dispute was as to who planted the trees. It was found that there is nothing on record to show that PWD Department planted the trees after obtaining sanction of the plaintiffs who were owners of the land. Therefore, since it was found that the trees were planted by Department, therefore the said order was passed granting 30 per cent share of the wood or price thereof to the owner of the land.

In the present case the case is entirely different. The plaintiff claims that he is owner of the land and he had planted the trees. From the demarcation and the statement of the plaintiff, it was found that plaintiff is owner of the land and trees were planted by him. Therefore, the said authority was wrongly applied by the lower appellate Court. The defendants have failed to prove that the land on which trees are planted, is owned by the State. They have produced some documents which do not show that the trees in the suit land was planted by them.

It being so the judgment of the lower appellate Court, modifying judgment of lower Court is not sustainable in the eyes of law and same is accordingly set aside and the judgment and decree

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dated 05.03.2010, passed by learned Civil Judge(Sr. Divn.),
Kurukshetra is restored.

Appeal is accordingly allowed.

December 08, 2015
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(KULDIP SINGH)
JUDGE