

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

**Regular Second Appeal No.2685 of 2012 (O&M)
Date of decision: 03.03.2015**

Brij Lal

.....Appellant

Versus

Brij Bhan and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Santosh Sharma, Advocate,
for the appellant.

Ritu Bahri, J.

Plaintiff-appellant has come up in regular second appeal against the judgment dated 27.02.2012 passed by the District Judge, Yamuna Nagar at Jagadhri, whereby he has partly accepted his (plaintiff's) appeal against the judgment and decree dated 08.09.2009 passed by the Civil Judge (Junior Divison), Yamuna Nagar at Jagadhri.

Brij Lal-plaintiff (appellant) filed a suit for permanent injunction restraining the defendants-respondents from cutting and removing the trees standing in the land fully detailed and described in the head note of the plaint as well as Jamabandi for the year 1998-99 and also restraining them from alienating or taking any loan on any specific portion of Khasra number thereof.

As per plaintiff-appellant, the suit land was owned and possessed by Bishna, father of the plaintiff as well as defendant Nos. 1 to 3, grandfather of defendant Nos. 4 & 5 and husband of defendant No.6. His

father had executed a registered Will dated 28.03.1990 in favour of defendant Nos. 1 to 3, father of defendant No.4 and defendant Nos. 5 and 6. This Will was challenged by the plaintiff-appellant in the civil court. Vide judgment dated 19.02.1999, passed by the Civil Judge (Junior Division), Jagadhri, the aforesaid Will was held to be a valid and genuine document. Appeal against the said judgment was dismissed by the Additional District Judge, Jagadhri on 13.11.2000. The plaintiff was held entitled to inherit the property of Bishna to the extent of 1/7 share. Mutation No.415 was sanctioned accordingly. During the lifetime of Bishna, some eucalyptus, Poplar, Shisham, Mango trees were planted, which were standing in the suit land. The plaintiff is claiming his right over those trees to the extent of 1/7 share. The defendants-respondents wanted to cut and remove those trees. They also wanted to take loan on specific portion and Khasra number of the suit land. Hence, he filed this suit.

As per the defendants-respondents, plaintiff was serving in the Military and he was a man of vices. His father had given his share to his son-Nirmal Singh. Appeal against the judgment passed by the Additional District Judge, Jagadhri was pending before the High Court. The share of the plaintiff devolved upon his son-Nirmal Singh.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the defendants can be restrained from cutting and removing the trees and from alienating the suit property? OPP
2. Whether the suit is maintainable in the present form? OPP
3. Whether the suit is bad for mis-joinder of the parties? OPD
4. Whether the suit is liable to be dismissed being false and frivolous? OPD

5. Relief.

The trial Court, after going through the evidence led by the parties, held that the plaintiff was not entitled to get the relief of permanent injunction to restrain the defendants from cutting and removing the trees standing over the suit land. However, he being a co-sharer was held entitled to the relief of injunction restraining the defendants from alienating or taking loan over any specific Khasra number thereof. Ultimately, the suit was partly decreed.

On appeal, the lower appellate Court observed that the plaintiff was having 1/7th share out of the total land measuring 178 Kanals 8 Marlas, which comes to 25 Kanals 10 Marlas. This fact has been admitted by the defendants-respondents by producing the release deed dated 20.03.2003, Ex.D2, pertaining to 19 Kanals 10 Marlas out of his 25 Kanals 10 Marlas, executed by him in favour of his son Nirmal Singh. On the basis of the said release deed, mutation No.139 dated 15.05.2003 (Ex.D1) was sanctioned in favour of Nirmal Singh. After execution of the release deed, the plaintiff remained owner of 6 Kanals out of the suit land measuring 178 Kanals 8 Marlas. As per the report (Ex.P1) of the Range Forest Officer, Jagadhri Range, the value of the standing trees in the suit land was assessed as Rs.33,144/- and share of the plaintiff, out of the said amount, comes to Rs.1115/-. With these observations, the lower appellate Court partly accepted the appeal of the plaintiff and he was held entitled to recover his share in the value of trees grown in the suit land, which came to Rs.1115/- pertaining to his share i.e. 6 Kanals along with interest at the rate of 6% w.e.f. 04.11.2003 till the date of recovery.

After going through the impugned judgments passed by the Courts

20.03.2003, Ex.D2, executed by him in favour of his son-Nirmal Singh, whereby he had given him land measuring 19 Kanals 10 Marlas, out of 25 Kanals 10 Marlas. Hence, he was left with 6 Kanals of land instead of 25 Kanals. This finding of fact has been recorded by both the Courts below after going through the relevant evidence led by the parties.

Having examined the impugned judgments, no illegality, much less perversity has been found therein, warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

03.03.2015
ajp

(RITU BAHRI)
JUDGE