

**IN THE HIGH COURT OF JUDICATURE
FOR THE STATES OF PUNJAB AND HARYANA, AT
CHANDIGARH**

Regular Second Appeal No. 3778 of 2013(O&M)

Date of Decision: February 05, 2015

State of Haryana & another

....Appellants

Versus

Ashok Kumar & another

....Respondents

CORAM: HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN.

Present: Mr. Sharad Kumar Yadav, Deputy Advocate General, Haryana
for the appellants.

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

Mahavir S. Chauhan, J.

In this classic case of Government apathy towards unnecessary and avoidable litigation involving wastage of precious court time, public money and official manpower, State of Haryana and Divisional Forest Officer (T), Yamuna Nagar, two of the defeated defendants (here-in-after referred to as 'the appellants') are in regular second appeal to assail correctness of concurrent findings of fact recorded by learned Civil Judge (Junior Division), Yamuna Nagar at Jagadhari (here-in-after referred to as 'the trial court') vide judgment/decreed dated August 19, 2011 and by learned District Judge, Yamuna Nagar at Jagadhari (here-in-after referred to as 'the first appellate court') vide judgment/decreed dated March 20, 2013 decreeing plaintiff's suit for declaration that he is owner in possession of the suit land and for perpetual prohibitory injunction restraining the appellants and their co-defendant from interfering in his possession over the suit land

and from felling and removing the *Eucalyptus* trees standing thereon.

02. Stated as concisely as one may plaintiff's case before the learned trial court was that he is owner in possession of land measuring 07 Bighas 13 Biswas comprised of Khasra No. 92(04-14) & 93/1 (03-09) situated in village Khanpur tehsil Jagadhari, district Yamuna Nagar (herein-after referred to as 'the suit land') whereupon he had planted *Eucalyptus* trees about ten years ago and seventy such trees had survived and were ready for harvesting but the appellants and respondent No. 02, who have their land towards west of the suit land, were attempting to fell and remove those trees and had constructed a drain in part of the suit land without acquiring it and without payment of compensation therefor to the plaintiff. This forced him to seek a decree of declaration to the effect that he is owner in possession of the suit land and a decree of perpetual prohibitory injunction to restrain the appellants and their co-defendant from interfering in his possession over the suit land and from felling and removing the *Eucalyptus* trees therefrom.

03. Appellants (defendants No. 01 & 02 before the learned trial court) filed a joint written statement and their co-defendant (defendant No. 03 before the learned trial court and respondent No. 02 herein) filed his written statement separately but both the written statements proceeded on the premises that an area of land, including the suit land, has been declared by State of Haryana as notified forest vide notification dated July 06, 1979 and Chetaang drain passing through the suit land was constructed by the State Government on the request of people of the area so as to save their fields from excess flow of water during rainy season and, as such, there was no question of the land being acquired and compensation being paid

therefor. It was also pleaded by them that fifty four *Eucalyptus* trees were planted by the Forest Department of Haryana on two sides of Chetaang drain.

04. Parties were put to trial on following issues:

01. Whether the plaintiff is entitled for a decree for a decree for declaration and permanent injunction as prayed for?OPP

02. Whether this Court has no jurisdiction to try the present suit?OPD

03. Whether suit of the plaintiff is time barred?OPD

04. Whether the plaintiff has concealed true and material facts from the court?OPD

05. Relief.

05. After evidence on both the sides was complete, learned trial court appraised it in the light of the submissions made at the bar and having reached a conclusion that the suit land belonged to the plaintiff and was never acquired, decided issue No. 01 in favour of the plaintiff and decided issues No. 02 to 04 against the appellants and their co-defendant because they did not press these issues. Plaintiff's suit was accordingly decreed with no order as to costs vide judgment/decreed dated August 19, 2011. Appellants and respondent No. 02 preferred Civil Appeals No. 144 of 2011 and 152 of 2011/2013 to impugn judgment/decreed dated August 19, 2011 which, after contest, have been dismissed by the learned first appellate court vide judgment/decreed dated March 20, 2013.

06. I have examined the impugned judgments/decrees besides hearing learned Deputy Advocate General, Haryana appearing on behalf of the appellants.

07. Appellants' learned counsel argues that in the evidence available on record it is sufficiently proved that suit land is part of the area

which has been declared by State of Haryana as notified forest vide notification dated July 06, 1979 and that fifty four *Eucalyptus* trees were planted by the Forest Department of Haryana on two sides of Chetaang drain which was constructed after acquisition of the suit land but the learned courts below have failed to take note thereof.

08. The contention that the suit land was acquired by the State Government to construct Chetaang drain is not available to the appellants because it runs contrary to their plea in the written statement wherein very specific and firm plea of the appellants is that Chetaang drain passing through the suit land was constructed by the State Government on the request of the people of the area so as to save their fields from excess flow of water during rainy season and, as such, there was no question of the land being acquired and compensation being paid therefor. Pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are of great help to the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that “as a rule relief not founded on the pleadings should not be granted”. A decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. Absence of pleadings on a particular point put the adversary to grave prejudice in so far as he is denied an opportunity to know the case he has to meet at the trial and to bring evidence to rebut it. Be that as it may, no evidence has been brought by the appellants to establish that the suit land

was acquired by the State Government. To the contrary a witness of the appellants, namely Dilbagh Singh (DW1) has admitted in his cross-examination that the suit land was never acquired by the State Government. Before the learned trial court appellants placed on record copies of Government Gazette and award of Land Acquisition Collector by way of additional evidence to show that the suit land was acquired by the State Government but the learned courts below have recorded a very definite finding that these documents do not refer to the Khasra numbers of the land acquired and no evidence has been adduced by the appellants to connect these documents with the suit land. Even before this Court no document showing acquisition of the suit land could be shown on behalf of the appellants.

09. Appellants' plea that suit land is part of the area which has been declared by State of Haryana as notified forest vide notification dated July 06, 1979 and that fifty four *Eucalyptus* trees were planted by the Forest Department of Haryana on two sides of Chetaang drain also lacks merit because the notification dated July 06, 1979 (Exhibit D1), as noted by the learned courts below, does not specify the land it pertains to. Dilbagh Singh, Divisional Forest Officer (DW1) is shown to have stated that trees standing on the land comprised in Khasra Nos. 92 and 93/1 were not planted by Forest Department of Haryana. A similar revelation is shown to have been made by Ranveer Singh (DW3).

10. *Per Contra*, Local Commision's report, Exhibit P2, clearly indicates that on the land comprised in Khasra Nos. 92min and 93/1min fifty seven *Eucalyptus* trees are standing and as per Jamabandi, Exhibit P1, this land is ownership of the plaintiff. Presumption of correctness attaches

to jamabandi entries under Section 44 of the Punjab Land Revenue Act, 1887. The presumption though is rebuttable but there is no material to show that the presumption of correctness attached to the Jamabandi entries in Exhibit P1 stands rebutted. Further, even if the trees are assumed to be planted by the appellants, though arguendo, it is a well known maxim that whatever is affixed to the soil becomes in contemplation of law a part of it and is subjected to the same rights of property as the soil itself. It follows as a corollary that if a person plants a tree in the land of another the owner of the soil becomes owner also of the tree. To put in a slightly different language, a standing tree belongs not to the person by whom it was planted but to the owner of the land from which it draws its support and sustenance (per *Hakim Hari Ram v. Santa Ram*, (1955) 57 PLR 6) and trees upon land being part of the land, right to cut down and sell those trees is incidental to the proprietorship of the land (per *Ruttonji Edulji Shet v. The Collector of Tenna*, (1867) 11 MIA 295 (Privy Council)).

11. In view of the above, findings recorded by the learned courts below that the suit land and the *Eucalyptus* trees standing thereon belong to the plaintiff and the appellants and respondent No. 02 cannot be allowed to fell and remove those trees, cannot be interfered with.

12. The appeal, even otherwise, is not shown to involve a question of law, muchless a substantial one.

13. Further, State of Haryana, in my view, is one entity. Therefore, two appeals on behalf of the State, to challenge judgment/decreed passed by the learned trial court, were not maintainable before the learned first appellate court. Even before this court State of Haryana has filed two appeals, viz. the one under adjudication (which has been filed by State of

Haryana through Collector, Yamuna Nagar and Divisional Forest Officer (T), Yamuna Nagar) and the other registered as Regular Second Appeal No. 3682 of 2013 (filed by State of Haryana through Collector, Yamuna Nagar and Executive Engineer, Canal & Drainage Department, Yamuna Nagar now known as Water Services Division, Jagadhari, Canal Colony, Jagadhari) which has been dismissed by a co-ordinate bench vide judgment dated September 19, 2013. Such a callous approach not only amounts to wastage of public money and official manpower but also eats upon precious court time besides bringing to the fore lack of co-ordination amongst various limbs of the Government. Not only this, Even after dismissal of Regular Second Appeal No. 3682 of 2013 vide judgment dated September 19, 2013, the appellants did not think it proper to withdraw the instant appeal or to apprise this court of dismissal of afore-stated regular second appeal.

14. For the reasons recorded above, the appeal is found to lack in merit and, as such, I regret my disinclination to entertain it. The appeal, therefore, is dismissed in limine with symbolic costs amounting to Rs. 20,000/- to be recovered from the officer(s) found responsible for filing two appeals before the learned District Judge and then before this Court, and to be deposited with Haryana State Legal Services Authority.

Civil Miscellaneous No. 10178-C of 2013:

15. As a consequence of dismissal of the main appeal, this miscellaneous application seeking stay of proceedings of the impugned judgment/decreed is rendered infructuous and is disposed of as such.

[Mahavir S. Chauhan]
Judge

February 05, 2015
adhikari

