

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

**RSA No.730 of 1989 (O&M)
Date of decision:21.04.2016**

Sh. Dharam Pal and others ... Appellants

Vs.

The Punjab State and others ... Respondents

RSA No.731 of 1989 (O&M)

Bikram Singh ... Appellant

Vs.

The Punjab State and others ... Respondents

RSA No.2471 of 1993 (O&M)

Harbans Singh and others ... Appellants

Vs.

The Punjab State and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. G.S.Bhatia, Advocate
for the appellants.

Ms. Lavanya Paul, Addl.A.G. Punjab.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of three Regular Second
Appeals bearing Nos.730, 731 of 1989 and 2471 of 1993.

C.M.No.12946-C-2015 in RSA No.730 of 1989

For the reasons stated in the application, duly accompanied by an affidavit, order dated 30.09.2015 is recalled and the appeal is restored to its original number.

C.M. stands allowed.

With the consent of counsel for the parties, main appeal is taken on board for hearing today.

C.M.No.12937-C-2015 in RSA No.731 of 1989

For the reasons stated in the application, duly accompanied by an affidavit, order dated 30.09.2015 is recalled and the appeal is restored to its original number.

C.M. stands allowed.

With the consent of counsel for the parties, main appeal is taken on board for hearing today.

C.M.No.12948-C-2015 in RSA No.2471 of 1993

For the reasons stated in the application, duly accompanied by an affidavit, order dated 30.09.2015 is recalled and the appeal is restored to its original number.

C.M. stands allowed.

With the consent of counsel for the parties, main appeal is taken on board for hearing today.

Main Appeals

The appellant-plaintiffs are aggrieved of the judgment and decree of the Lower Appellate Court, whereby, the judgment and

decree rendered by the trial Court granting the injunction in a suit for permanent injunction, has been set aside, in essence, the suit has been dismissed.

Mr. G.S.Bhatia, learned counsel appearing on behalf of the appellant-plaintiffs submits that injunction was sought against the respondent-defendants on the ground that they are owners and cultivating in possession of the suit land described in the plaint, i.e., measuring 25 kanals 6 marlas, bearing khasra Nos.21, 22 and 23 of rect.no.21, situated in village Bhaini Milwan as per the jamabandi for the year 1981-82 and the trees planted on the land and therefore, the Forest Department has no right to cut and remove the eucalyptus and kikar trees standing on the said land. He further submits that this fact has been proved through the testimony of plaintiff as PW1, Ghasita Ram and Girdhari Lal as PW3 and PW4 respectively. As per jamabandi, Ex.P1 and khasra girdawari, Ex.P2 and aks sijra Ex.P3, the plaintiffs have been shown in cultivating possession of the land in dispute as owners and the revenue record does not reflect any ownership or possession of defendants. The trial Court on the basis of the aforementioned facts, decreed the suit but however, the Lower Appellate Court reversed the findings and dismissed the suit by relying upon the report APW1 prepared by Joginder Singh Patwari-PW2 that eucalyptus and kikar trees have been planted on the side of Dhussi Bandh in order to prevent the soil erosion and the factum of Dhussi Bandh had been admitted by the appellant-plaintiffs.

In support of his aforementioned contentions, he relies upon the judgment rendered by this Court in **Ghasi Ram vs. Arun Kumar 2006(1) R.C.R. (Civil) 751** to contend that trees erected on land are part of the land and the right to cut down and sell those trees is incidental to the proprietorship of the land. He further submits that the aforementioned finding has been rendered by taking into consideration the various other case laws. He also relies upon the judgment dated **18.03.2016 rendered by this Court in RSA No.5084 of 2010 titled as Bahadur Singh and others vs. State of Haryana and others**. He, thus, urges this Court to formulate the following substantial questions of law which read thus:-

- “i) Whether the appellant-plaintiffs are entitled to injunction as prayed for?*
- ii) Whether the judgment and decree of the Lower Appellate Court is erroneous, much less, perverse and against the principle settled law?”*

Ms. Lavanya Paul, learned Additional Advocate General, Punjab appearing on behalf of the respondents-State submits that vide notification dated 03.05.1958, all the plantation on the Bandh was declared as protected forest and vide notification bearing No.1196 of even date, such forests were declared to be reserved and in view of such notification, the plaintiffs cannot take any claim on the trees erected on the land. Moreover, the trees were planted in the year 1971-72, whereas, the Bandh was erected in the year 1959-60

and therefore, *aks sijra* did not reflect the existence of Dhusi Bandh. As per the report of Joginder Singh, Patwari, 2 to 4 feet thick eucalyptus and kikar trees were erected on the land in dispute. As per the stand taken in the written statement, the defendants had become owners by way of adverse possession and therefore, the plaintiffs did not have right and title in the property. She further submits that there is no illegality and perversity in the judgment and decree rendered by the Lower Appellate Court and thus, urges this Court for affirming the same.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below and of the view that there is force and substance in the submissions of Mr. Bhatia, for, once the defendants have taken plea of adverse possession, the title of plaintiffs deemed to have been admitted. The question arises whether the trees planted on the suit land belonging to the plaintiffs would be incidental to the proprietorship of the land or not. The aforementioned question came for debate before this Court in Ghasi Ram's case (*supra*) and following ratio has been culled out:-

“After analyzing various judgments on the issue, the learned Chief Justice has held that two propositions emerge from the case law namely:-

i) that if a person plants trees on the land belonging to another, the trees come to vest in the landlord and could not be removed by the person by whom they are planted

and

ii) that when in the course of partition proceedings, a question arises whether land on which the trees are standing should be allotted to one co-sharer or the another the question falls within the ambit of the expression “the mode of making the partition” and must be decided by Revenue Officer and not by the Civil Court. When the principle laid down by the Chief Justice Bhandari in the Division Bench judgment of this Court in Hakim Hari Ram's case (supra) are applied to the facts of the present case then no doubt is left that the defendant-appellant being merely a tenant and not the owner is not entitled to claim the trees which are appurtenant to the land owned by the plaintiff-respondent. Therefore, the trees would also follow of the title and will belong to the plaintiff-respondent. Same view has been followed by this Court in Panni Lal's case (supra).”

The aforementioned view has been reiterated by this Court in the judgment dated 18.03.2016 rendered in RSA No.5084 of 2010. The respondent-defendants have not been able to lead any evidence to produce on record the register with regard to marking of trees. In the absence of same, they cannot take any claim qua ownership, whereas, the factum of the plantation of trees on the land of the plaintiffs is not in dispute.

Keeping in view the aforementioned facts, the judgment and decree rendered by the Lower Appellate Court is hereby set aside and that of the trial Court is restored. The substantial questions of law as noticed above are answered in favour of the appellant-plaintiffs and against the respondent-defendants.

Accordingly, the appeals are allowed.

(AMIT RAWAL)
JUDGE

April 21, 2016
savita