

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

RSA No.4564 of 2010 (O&M)

Date of decision : 26.08.2016

Atamjit Singh

...Appellant

Versus

State of Haryana and others

...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. Krishan Singh, Advocate for the appellant.

Mr. D.K. Mittal, DAG, Haryana.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit has partly been decreed but set aside by Lower Appellate Court.

Mr. Krishan Singh, learned counsel appearing on behalf of appellant-plaintiff while opening the arguments fairly conceded that the suit was not properly drafted. The trial Court on the basis of the evidence on record moulded the relief and ordered for handing over the sale consideration of trees bearing Nos.118 to 133 to the plaintiff as per the demarcation report dated 24.10.2006 conducted by the Naib Tehsildar (Accounts), Jagadhri Ex.P5 in pursuance to the order passed by the trial Court. He submits that though the claim in the suit was for share but as per the Demarcation Report, it is found that trees aforementioned were standing

in the fields of the appellant-plaintiff and, therefore, rightly so, the trial Court decreed the suit but the lower Appellate Court dismissed the suit for want of amendment in the plaint, much less, evidence. He submits that Lower Appellate Court has committed illegality and perversity in dismissing the suit as case of the appellant-plaintiff was not based upon policy of the Government as reiterated by this Court in case titled as *State of Haryana Vs. Shadi Ram, 2003 (3) PLJ 90, (P&H)* and thus urges this Court for formulation of the following substantial questions of law:-

1. Whether the Courts below while granting the relief can mould the relief than the one claimed for?
2. Whether the impugned judgment and decree of the lower Appellate Court suffers from illegality and perversity?

Mr. D.K. Mittal, DAG, Haryana, appearing on behalf of State of Haryana submits that Lower Appellate Court being the last Court of fact and law rightly declined to grant the relief as plaintiff had sought two reliefs one for claiming the damages in the trees and on the other hand, injunction from cutting the trees. Two reliefs cannot be granted together. He further submits that it is incomprehensible to assess the price of the trees as ordered by the trial Court.

He further submits that in the absence of the amendment of the plaint or evidence on contrary, share in the property could not have been granted to the plaintiff and rightly so, the lower Appellate Court has dismissed the suit.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submission of

Mr. Krishan Singh, for, Naib Tehsildar conducted the Demarcation Report in the presence of Range Forest Officer and found that trees bearing No.118 to 133 existing in the Khasra bearing No.10//24/2 belonged to the appellant-plaintiff. Though suit was in respect to the more trees but modified the relief by confining the aforementioned tress. In my view, findings rendered by the trial Court is perfectly in consonance with the Code of Civil Procedure where Court can always mould the relief than the one sought for. Lower Appellate Court has gone on hypothetical ground. The Demarcation Report Ex.P5 is also a piece of evidence and should not have been ignored while arriving at different findings. The Demarcation Report was not objected to, therefore, there is no force in the submission of Mr. Mittal, that plaintiff failed to seek amendment of the plaint.

For the foregoing reasons, judgment and decree rendered by the lower Appellate Court suffers from illegality and perversity, much less, substantial questions of law in view of the findings by me are decided in favour of appellant-plaintiff and against the respondent-defendant. Judgment and decree of the lower Appellate Court are set aside and that of the trial Court is restored.

Accordingly, present appeal is allowed.

Plaintiff shall seek the execution of the judgment and decree by paying the adequate Courts fees.

26.08.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes

Whether reportable:-

No