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

**RSA No.1999 of 2012 (O&M)
Date of decision : 03.11.2016**

Surinder Singh

... Appellant

Versus

Gram Panchayat of Village Rurki Khas

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sarju Puri, Advocate
for the appellant.

None for the respondent.

AMIT RAWAL, J. (ORAL)

The appellant-defendant is aggrieved of the concurrent findings of fact, whereby the suit for permanent injunction seeking restraint order against him and his agents or anybody else from raising any sort of construction in the site marked as A, B, C, D, E. F. F-1, F-2 & F-3 shown red in the colour in the attached site plan measuring 18 kanals 3 marlas bearing Khata Nos.354/623-624-625-629, Khasra Nos.2897/939-1003 (0-12), 2896/1002-2003 (0-11), 2906/999-1001 (12-7), 2895/1001-1003 (0-9), 2924/1035-1036 (4-8), as per jamabandi 1996-97 situated in the area of Village Rurki Khas, Tehsil Garhshankar and as well as the restraint order from cutting and removing Safaida, Toot, Jamun and Beri trees, has been decreed by both the Courts below.

Mr. Sarju Puri, learned counsel appearing on behalf of the appellant-defendant submits that the suit aforementioned for permanent

injunction was filed on 27.05.2002 on the premise that the trees were planted by the Gram Panchayat and the appellant-defendant had threatened to cut the same. In this regard, the Court below had with the consent of both the parties appointed Local Commissioner who had prepared his report (Ex.P-3), but did not appear in the witness-box and therefore, the appellant-defendant had been prevented from ascertaining the question in cross-examination, in essence, the respondent-plaintiff has failed to discharge the onus. The report is not only vague, but inconclusive as there is no head and tail for the purpose of measurement and the Local Commissioner had taken the assistance of nylon rope for the purpose of demarcation, in essence, it is not in accordance with the High Court Rules and Orders. In support of his contentions, he has drawn the attention of this Court to the notice of motion order dated 10.10.2014 and the judgment referred to therein, thus, urges this Court for setting aside the findings under challenge as there is gross illegality and perversity.

There is no representation on behalf of the respondent-Gram Panchayat despite service and accordingly, I proceed to decide the appeal on merits.

I have heard the learned counsel for the appellant-defendant and appraised the paper book and of the view that the cross-examination of the appellant-defendant reveals that he did not deny the plantation of trees on the land of the plaintiff-Gram Panchayat. Moreover, he did not dispute the report/measurement effected by the Local Commissioner. For the sake of brevity, the relevant portion of the cross-examination of DW-1 Surinder Singh reads thus:-

“It is correct that the Local Commissioner had visited the

spot for effecting the measurement. He visited the village for the said purpose for thrice. The Local Commissioner conducted the measurement from Eastern, Northern and southern side. I had not got recorded my statement with the Local Commissioner for effecting the measurement at the spot. I had not made any objection with the Local Commissioner in writing regarding his measurement. I have gone through the report submitted by the Local Commissioner. It is correct that the said report of the Local Commissioner is as per measurement effected by him at the spot. The consolidation of holding took place in my village in the year 1940. It is correct that at the time of starting consolidation first of all the consolidation staff reserved the land for common purposes i.e. Shamshan Ghat, Toba, Gurudwara etc., at the spot. It is also correct that the land in dispute of the Gram Panchayat, mentioned above, were determined first by the consolidation staff at the spot and thereafter other land was divided by the consolidation staff with the proprietor. I cannot say if the trees shown in the site plan Ex.P2 were found to be in the land of plaintiff. The trees which are in the land of the plaintiff are the ownership of the Gram Panchayat in Ex.P2 i.e. in khasra No.2906. It is incorrect to suggest that middle portion of the khasra No.2924 is in depth than the corner of that khasra number. I have no tree of mine in khasra No.2924. It is incorrect to suggest that trees standing in the khasra No.2924 are in the Panchayat. I never planted any tree in the land of the plaintiff. The trees in the land of the plaintiff had its own growth and were not planted by anybody. My father had also been the Sarpanch of the Gram Panchayat. It is incorrect to suggest that I have deposed falsely.”

On perusal of the cross-examination, aforementioned, I am of the view that the case of the respondent-plaintiff has duly been proved.

There is another aspect of the matter, when the report (Ex.P-3)

was tendered through the testimony of PW-1, the same was not objected to, at the time of the initiation of the cross-examination. Keeping in view aforementioned facts, I am of the view that such plea cannot be taken for the first time in the present appeal.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as the same are based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration and accordingly, the second appeal is dismissed.

03.11.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned

Yes/ No

✓

Whether Reportable

Yes/ No