

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

R.S.A. No.649 of 2011 (O&M)

Date of decision: 21.01.2016

Ramji Lal and ors.

...Appellants

Versus

Ved Prakash and anr.

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Pritam Saini, Advocate for the appellants.

Mr. R. S. Budhwar, Advocate for the respondent No.1.

Mr. R. S. Manhas, Advocate for the respondent No.2.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 17.12.2010, passed by the learned Additional District Judge, Kurukshetra, (for short, the 'first Appellate Court') whereby, the appeal filed by the appellants-defendants, against the judgment and decree dated 28.01.2010, passed by the learned Civil Judge, Jr. Divn., Kurukshetra, (for short, the 'trial

Court'), has been dismissed.

The learned counsel for the appellants-defendants contends that the learned Courts below have erroneously ignored the fact that neither any demarcation report nor any masavi had been placed on the record to prove that the trees are standing on the land owned by the villagers or by the respondents-plaintiffs. He further states that the land of the appellants is abutting/adjoining river Saraswati, therefore, the trees in question belong to them. It is further asserted that it is the duty of the respondents-plaintiffs to prove the ownership over the trees, thus, in not considering aforementioned facts, the learned Courts below have illegally passed the impugned judgments and decrees on the ground that the appellants-defendants had failed to prove the ownership over the same. Thus, the impugned judgments and decrees are liable to be set aside.

The learned counsel further cites **State of Madhya Pradesh Vs. Nomi Singh and another**, 2015 AIR (SCW) 2850 and **Bhagwan Dass Vs. Sultan and others**, passed in RSA No.488 of 2009.

The learned counsel for the respondents state that the land on which the alleged trees have been standing, is a public property and reserved for the river Saraswati and vests in the Gram Panchayat. He further refers to Jamabandi for the year 2001-02

Ex.P1 showing suit land as gair mumkin river. These trees were planted by Gram Panchayat with the assistance of the Forest Department. Lastly, he submits that the appellants have no concern with the suit land so they cannot fell and remove the trees.

I have heard the rival contentions of both the parties and carefully gone through the entire record on file.

In the considered opinion of this Court, the learned Courts below have rightly passed the judgments and decrees as the appellants have failed to prove their ownership over the suit land whereon the trees have been standing. It is to be seen that the appellants have laid their claim over the trees but have not brought on record any evidence such as demarcation report to show that the land over which the trees have been standing is part of their holding. It is also to be noticed that the appellants are claiming that trees have been standing over the land, owned by them. However, the appellants have failed to refer to any evidence that the trees in question either planted by them or by their forefather over their land, whereas, there is overwhelming evidence on record that the land is on the bank of river Saraswati, which vests in Gram Panchayat. Therefore, this Court feels that no question of law is involved in the present appeal.

In **Kashmir Singh Vs. Harnam Singh and another**, 2008 (2) RCR (Civil) 688, it has been held that the general rule is

that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof.

On consideration, this Court finds that the contentions raised by the learned counsel for the appellants have no merit as these only relate to the appreciation of evidence. No evidence has been shown which has been ignored from consideration, nor there is any misreading of evidence. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

21.01.2016

ashok

(JITENDRA CHAUHAN)
JUDGE