

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

RSA No.4460 of 2015 (O&M)

Date of Decision.01.08.2016

District Forest Officer, Sonapat and othersAppellants

Vs.

Janak Raj and othersRespondents

2. RSA No.4614 of 2015 (O&M)

State of Haryana and othersAppellants

Vs.

Satinder Kumar Tyagi (since deceased) through LRs and others
.....Respondents

Present: Mr. Ashok Singla, Addl. A.G., Haryana
for the appellants.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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

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AMIT RAWAL J. (ORAL)

C.M. No.10697-C & 14140-C of 2015 in RSA No.4460 of 2015

For the reasons stated in the applications, delay of 141 days in filing the appeal is condoned.

Applications are allowed.

C.M. No.11173-C of 2015 and 14145-C of 2015 in RSA No.4614 of 2015

For the reasons stated in the applications, delay of 137 days in filing the appeal is condoned.

Application are allowed.

RSA Nos. 4460 & 4614 of 2015

This order of mine shall dispose of both the regular second

appeals filed against the judgments and decrees passed by both the Courts below whereby the Civil Suit bearing No.148 of 2009 titled as "Satinder Kumar etc. Vs. State of Haryana etc." claiming possession and another Civil Suit bearing No.73 of 2008 titled as "Janak Raj etc. Vs. District Forest Officer etc." claiming injunction, in view of the consolidation of the same, have been decreed in favour of the plaintiffs.

Mr. Ashok Singla, Addl. A.G, Haryana appearing on behalf of the appellants-defendants submits that both the decrees are not in consonance with the claim in the plaint. The defence of the appellants-defendants before the Courts below was that area of Ganaur minor is a protected forest as the same had been protected by notification dated 06.03.1972 and the earth work for plantation purpose was also complete. As per the Forest Conservation Act, 1980, no other activity than forest activity was to be permitted. The respondents-plaintiffs are none else but the encroachers of the land situated along with the said minor and they had no right, title or interest. It was, however, the case before the Courts below that the Irrigation Department had already acquired the land and the compensation had already been awarded vide Award No.26 dated 18.03.1960 by the office of Land Acquisition Officer and Mutation No.490 in this regard had already been effected. The plaintiffs are miserably failed to belie the stand of the appellants-defendants rather the Courts below did not appreciate the fact that the suit was not maintainable, as no such action can be challenged in the Civil Court. The trial Court failed to take into consideration the fact that the Ganaur minor is running/functioning for the last more than 50 years at the site and various repairs were conducted. All these factors have gone unnoticed.

He further submits that the ownership of the Irrigation Department was undisputed, undisturbed, specific, constant, uninterrupted, hostile and possession of the appellants-defendants stood fructified by provisions of Section 27 of the Limitation Act. In essence, the plaintiffs have extinguished their right, title and interest in the property and thus, urges this Court for setting aside the judgments and decrees passed by the Courts below by formulating the substantial questions of law carved out in the memorandum of appeals.

I have heard learned counsel for the appellants-defendants, appraised the paper book and of the view that there is no merit and force in the submission of Mr. Singla, Addl. A.G., Haryana, for, the appellants-defendants have miserably failed to prove on record Award No.26 dated 18.03.1960, much less, copy of the alleged notification vide which the land was acquired.

On the contrary, the Courts below had an occasion to ponder upon the evidence by holding that once the defendants had set up a plea of adverse possession, the title of the plaintiffs is deemed to be admitted. Partap Singh, retired Kanungo, appeared as PW2 and deposed that he was appointed as local commissioner by the Court as per the order dated 10.04.2008 and demarcated the suit land on 6th, 7th, 9th and 10th June, 2008 and the area owned by the plaintiffs was found in possession of the defendants and copy of the site plan has been proved on record as Ex.P12. All the witnesses have been thoroughly examined and the defendants could not cause any dent in the testimony/demeanor. On the contrary, the defendants have failed to prove the ownership of the Irrigation Department. Even otherwise, the decree passed, in my view, is the most innocuous as the

Courts below had noticed that in case, the defendants had to plant the saplings and trees to have the forest cover, they should have adhered to the Forest Conservation Act, 1980 which provides the use of land belonging to the private individual by the Forest Department by resorting to the provisions of Land Acquisition Act, in essence, by promulgating the notification and payment of compensation. For the sake of brevity, the operative part of judgment culminating into decree is reproduced as under:-

"As a sequel to the findings on the issues No.1 to 3 of main suit No.148 of 2009, the suit filed by the plaintiffs is decreed to the effect that the defendants shall either acquire the suit land encroached upon by them as shown in report Ex.P7 or would hand over the vacant physical possession thereof to the plaintiffs within a period of three months from today. Accordingly, civil suit No.73 of 2008 is decreed to the effect that the defendants are restrained from planting saplings/trees over the suit land. Decree sheets be prepared accordingly. File be consigned to records after due compliance."

Nothing prevents the appellants-defendants to undertake the exercise as noticed above, particularly, when they had taken the plea of adverse possession. In my view, the appellants-defendants have unnecessarily been agitating the cause despite the fact that they failed to prove the ownership. No person can be deprived of his land save by authority of law in view of the provisions of Article 300A of the Constitution of India.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as the

findings rendered by both the Courts below are based on correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. Both the second appeals are dismissed.

(AMIT RAWAL)
JUDGE

August 01, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes