

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2076 of 2014 (O&M)

Date of Decision : 02.06.2016

Surjit Singh (deceased) through Vijay Kumar

....Appellant

Versus

Sukhraj Panch and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. K.S. Dadwal, Advocate
for the appellant.

Surinder Gupta, J.

CM No. 2773-C of 2016

This is application to place on record amended memo of parties as per title of Civil Suit. Plaintiff-Surjit Singh had died during pendency of suit. Appeal was filed by Vijay Kumar in his individual capacity and not as legal heir of Surjit Singh. He has now rectified the error.

Application is allowed and amended memo of parties is taken on record.

RSA No. 2076 of 2014

This is regular second appeal against the judgment and decree passed by Civil Judge (Senior Division), Hoshiarpur, dismissing the suit of plaintiff seeking relief of permanent injunction to restrain the defendants from raising any sort of construction over the property shown with red colour in site plan (Ex. PA) situated in village Mukho Majara, Tehsil Garhshankar, District Hoshiarpur.

2. Case of plaintiff-Surjit Singh (since deceased now represented by his legal heirs), in brief, is that suit property shown in red and green colours in the site plan was owned and possessed by him. There was a *pipal*

tree over disputed site planted by ancestors of plaintiff which became so

wide that its branches were causing hindrance to inhabitants of the area, who approached plaintiff and requested him to cut and remove *pipal* tree. Being Hindu, plaintiff denied to cut the same. *Gram Panchayat* of the village agreed to cut this tree and after cutting the same its wood was sold away but price was not paid to plaintiff. *Panchayat* has now started claiming that they would construct *thara* (platform) over the site and have threatened to interfere in the peaceful possession of plaintiff and to raise construction of platform at the site of tree.

3. Defendants contested claim of plaintiff *inter alia* pleading that *pipal* tree was very old one and its branches had become very wide and causing damage to nearby houses. The property over which this tree existed, was owned by *gram panchayat*, which has also constructed platform around the tree. Inhabitants of the locality including plaintiff approached the *gram panchayat* to cut and remove the said tree. *Gram Panchayat* got the tree cut down and sold the wood. Price of the wood was deposited in the *panchayat* fund. Platform around the tree was dismantled at the time of cutting the tree and its boundaries falling towards the property of plaintiff were removed by him illegally and forcibly. Inhabitants of the village were utilizing this property and *gram panchayat* also used it for its meetings. On the request of villagers and public at large, *gram panchayat* was going to construct a platform again at the disputed site and passed resolution dated 13.07.2004, which was sent to BDPO, Mahilpur with the request to provide police help for construction of the platform. Plaintiff filed the present suit on the same day with ulterior motive to harass the defendants. There is street towards northern side of the disputed site and after that there exists platform of *Nag Devta*. People of the village worship

Nag Devta and annual function is also celebrated under the supervision of *gram panchayat* and this property is used for celebration of function by the public at large.

4. Learned Civil Judge (Senior Division), Hoshiarpur dismissed the suit of plaintiff with the observation that platform was existing at the spot even prior to filing of the suit. If there was no platform earlier around the suit property then there was no question of existence of foundation which existed at the site and it was nowhere the case of plaintiff that he had raised construction of platform around the suit property. Learned Civil Judge (Senior Division) also took note of the fact that application for removal of the tree was moved by residents of the village including plaintiff before *gram panchayat* and he has admitted his signatures on the application. In the application, it was stated that *pipal* tree is standing in the property of *gram panchayat*, which is causing inconvenience to inhabitants and it was the duty of *gram panchayat* to get it cut down. Admittedly, the tree was got removed by *gram panchayat*. Plaintiff had admitted that in summer season, village people used to sit under *pipal* tree and play cards. On this admission, learned Civil Judge (Senior Division) inferred that had property been the part of courtyard of property of plaintiff, he would not have allowed the people to sit there in summer season. Even the local commissioner found the existence of foundation over the area, where earlier there was *platform* around the *pipal* tree. Both the Courts below on the basis of detailed discussion of evidence on record have concluded that the site where *pipal* tree was existing had a platform around the tree, which was being used by residents of the village.

5. Learned counsel for the appellant has argued that *pipal* tree was

planted by forefathers of plaintiff and the site where *pipal* tree was existing, was owned and possessed by plaintiff. However, he could not point out any evidence produced by plaintiff in this regard. He has argued that no documentary evidence is available with plaintiff because the disputed site is in *abadi deh*. Plaintiff had filed the suit seeking the relief of permanent injunction but failed to produce any evidence to show that the site in question was exclusively in his possession. His plea that the suit property was owned and possessed by him stood eroded with his admission that residents of the village used to sit at the disputed site on the platform and play cards. The existence of platform around the tree was also proved.

6. Learned counsel for the appellant could not point out that the findings of fact recorded by both the Courts below are based on misreading of evidence or any vital evidence produced by the appellant has been ignored.

7. On perusal of paper-book and judgments of both the Courts below, I find no legal or factual infirmity therein calling for any interference. No substantial question of law requiring determination arises in this appeal, which has no merit.

Dismissed.

June 02, 2016
jk

(SURINDER GUPTA)
JUDGE