

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 29-08-2017

Judgment delivered on 13 -09-2017

First Appeal No. 82 of 2001

Dr. Vijay Singh Gupta, S/o. Late Bahadur Singh Gupta, R/o. Apapura
Durg, Tehsil and District Durg (C.G.)

---- Appellant

Versus

- 1) Harshveer Singh, Aged about 36 years,
- 2) Yashveer Singh, Aged about 32 years,
- 3) Jayveer Singh, Aged about 28 years,

All S/o. Late Dr. Mahaveer Singh Gupta and All R/o. Shivpara, Durg,
Tahsil and District Durg (C.G.)

---- Respondents

For Appellant	:	Mr. P.R. Patankar and Mr. Utsav Mahiswar, Advocates.
For Respondents	:	Mr. Anand Kumar Gupta, Advocate.

S.B.:- Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

- 1) This First Appeal is preferred against the judgment/decreed passed by the District Judge/Civil District Durg, Chhattisgarh (for short trial Court) in Civil Suit No. 116-B/1999 dated 30.03.2001, wherein the

trial Court decreed the suit of the respondents/plaintiffs against the appellant/defendant for damages for cutting of various trees on the land of respondents for Rs. 12,150/- with interest.

- 2) As per the appellant, respondents have filed a suit before the Trial Court for recovery of Rs. 20,000/- as damages for cutting of Mandi and Kahawa trees which were standing on the land bearing khasra No. 732, area 0.603 hectare. As per the appellant demarcation of survey No.732 was not done and there is no evidence to establish that the land from which trees were said to be cut actually belongs to respondents. Patwari Tribhuvan Singh Verma (DW-1) had stated before the trial Court that in the revenue papers there is no entry of any trees on the land bearing khasra No. 732. Jaiveer Singh Gupta (PW-1) and Chhanulal (PW-2) admitted before the trial Court that they have no personal knowledge as to who has cut the trees and taken them away. From their evidence, it was not established that the trees were cut by the appellant or on his behalf. Respondents have not adduced any evidence in respect of valuation of 22 trees even then the trial Court opined that the price of trees was Rs. 12,000/- as the findings of the trial Court is not based on any legal evidence the same is liable to be set aside.
- 3) Heard learned counsel for the parties at length and perused the record.
- 4) Jaiveer Singh Gupta (PW-1) and Chhanulal (PW-2) deposed before the trial Court that the land bearing survey No. 732, area 0.603 hectare is owned by the respondents, Kahawa and Mandi trees were standing on the same land; 12 trees of Kahawa and 10 trees

of Mandi were cut by the respondents in the month of January 1991.

- 5) Dr. Vijay Singh Gupta (DW-2) himself admitted in Para-12 that he had written letter to father of respondents Dr. Mahaveer on 11.02.1991 (Ex.P-3) to the effect that trees should be kept in the same place and after demarcation whosoever will be the owner to sell or take tree. From admission of the appellant, it is clear that trees were cut and kept in the same field and the respondents established the same fact.
- 6) From the evidence of both sides, it is established that the trees were cut upon the direction of the appellant and from the records the appellant was not in a position to establish that the trees were standing in any other land. When it is established by the respondents that the trees were standing in survey No. 732 and same trees were cut the appellant was under obligation to prove that the trees were standing in the land of some other survey number as mentioned in his return statement.
- 7) It is contended on behalf of the appellant that as per the map of survey No. 732, no trees were shown, therefore, it is not established that trees were standing on the said land. In view of this Court, when there is direct evidence regarding cutting of trees and appellant himself admitted that he had written a letter that trees should be kept in said place till demarcation it can not be said that no trees were standing on the survey no. 732. No Revenue Authority stated before the trial Court that after visiting the spot in the month of January 1991 the map was prepared, therefore, the

map filed in the record is not a real document regarding standing of trees in the field.

- 8) It is not a case of boundary dispute of two survey numbers for which demarcation was essential as per Section 129 of the Chhattisgarh Land Revenue Code 1959, when the respondents have ascertained and adduced the evidence regarding standing of trees on the said survey numbers and there is no record to rebut the same and the demarcation was not necessary for deciding the issue and the same is decided by the trial Court on the basis of oral and documentary evidence adduced by both sides and this Court is in agreement with the trial Court.
- 9) Cutting of trees standing on others land is an act of wilful interference without lawful justification with right of others, in the case on hand, cutting of trees itself is injury to the respondents and they are entitled for compensation of the same. From the evidence it is established that 22 trees were cut and the respondents claimed Rs. 1000/- for each tree and granting of compensation is not only value of trees but compensation with regard to disturbance of mental peace is recoverable. The principle to be borne in mind is that the injured party should be placed as far as money can do in the same position as he would have been but for act of the appellant. Looking to all aspects of matter, trial Court awarded compensation of Rs. 600/- on an average for one tree and the same cannot be termed as unjust or excessive and the same is not liable to be interfered.

- 10) For the foregoing, the appeal fails and it is dismissed with cost. The appellant to bear the cost of the respondents. Accordingly, decree be drawn up.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Santosh