

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

RSA No.3564 of 2017 (O&M)

Date of decision : 11.07.2017

Sat Pal

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Jitender S. Chahal, Advocate for the appellant.

ANIL KSHETARPAL, J. (Oral)

CM No.8592-C of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 372 days in refiling the present appeal is condoned.

Application stands allowed.

Main case

The appellant-plaintiff is in regular second appeal against the judgment dated 05.04.2016 passed by the learned first Appellate Court.

In brief, the facts are that the plaintiff filed suit for permanent injunction claiming that he is in cultivating possession of the land measuring 6 kanals 17 marlas detailed in the headnote of the plaint situated in Village Ibrahimpur, Tehsil Chhachhrauli, District Yamunanagar. It was claimed that the plaintiff is in actual, physical and cultivating possession

over the suit land for the last more than 40 years as tenant gair marusi without any payment of the rent or batai. The plaintiff further claimed that he had planted trees which are standing on the suit land. It was further pleaded that the defendants were threatening to dispossess the plaintiff and to cut and remove the trees and hence he has apprehension. With these pleadings, plaintiff filed the present suit. The learned trial Court decreed the suit filed by the plaintiff vide judgment dated 23.01.2013.

The State of Haryana filed an appeal which has been accepted by the learned District Judge vide judgment dated 05.04.2016. The learned First Appellate Court has recorded that in the revenue record, the State of Haryana is recorded as owner. The learned First Appellate Court further recorded that it is the case of the appellant that he is in possession of the suit land as tenant gair marusi without payment of any rent or batai and since plaintiff claims to be in unauthorized possession, therefore, no injunction can be granted against the true owner of the land.

I have heard learned counsel for the appellant and have carefully perused the judgment of both the Courts which are part of the paper book.

The learned First Appellate Court has examined the evidence available on the file. It is not in dispute that State Government is owner of the land. The appellant claims to be in possession of the property. However, appellant has failed to prove any right in the land. The appellant has failed to prove that there exists any tenancy between State and him. The appellant has further failed to prove that there was any contract which is sine qua non for creation of the tenancy.

The appellant only claims that he is in possession without payment of any rent to anyone. The only conclusion which is possible is that the appellant claims that he is in unauthorized possession. The person who is in unauthorized possession cannot claim protection of law. It is admitted fact that land is under plantation of Eucalyptus trees. It is the case of the respondent State that Forest Department had planted the trees over the suit land and it is part of protected forest vide notification dated 05.06.1956 issued by the Punjab Government and Notification dated 13.09.1974 issued by the Haryana Government subsequently in continuation of earlier notification. The Notification dated 13.09.1974 is Ex.D1 on the file. Once the land in question is part of protected forest, in my opinion appellant cannot be granted injunction.

As per the latest judgment of Constitution Bench reported as *Pankajakshi (Dead) through LRs. Vs. Chandrika and others, 2016(6) SCC 157*, substantial question of law are not required to be framed in view of Section 41 of the Punjab Courts Act.

Therefore, finding no merit in the present appeal, the same is hereby dismissed.

11.07.2017

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No