

In the High Court of Punjab and Haryana at Chandigarh

**RSA No. 3278 of 2011(O&M)
Date of Decision: 5.9.2018**

State of Haryana and another

---Appellants

versus

Harbans Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.Indresh Goyal Addl. A.G., Haryana
for the appellant**

None for the respondents

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for permanent injunction filed by the respondents-plaintiffs was decreed by the trial court on 30.3.2010 and appeal preferred by the appellants (unsuccessful defendants) did not find favour with the Additional District Judge, Yamuna Nagar at Jagadhari.

The respondents-plaintiffs claimed that Harbans Singh-plaintiff No. 1 purchased land comprised in khasra No. 125//25, 126/20, 21, 131//1 and 132//4, 5, 6/1, 7, 8, 12, 13, 14/1 alongwith other land from its previous owner Garib Dass vide sale deed dated 6.10.2006. Manjit Kaur-plaintiff No. 2 purchased land bearing khasra No. 132//19, 20, 21, 133//25 and

137//1/1 alongwith other land vide sale deed dated 3.10.2005 from Baishakhi Ram. The respondents staked their claim for grant of permanent injunction restraining the appellants-defendants from cutting and removing the trees standing on the said land.

The appellants filed the written statement and raised preliminary objections inter alia that the plaintiffs have no cause of action; the suit is bad for want of notice under Section 80 of the Code of Civil Procedure and that the plaintiffs have come to the court with uncleaned hands. On merits, it was pleaded that the land in question was previously owned by the Custodian/Haryana Government. Vide notification dated 11.6.1951, the same was given to defendant No. 2 for planting trees and pursuant thereto, various kinds of trees were planted which are now standing on the spot. Defendant No. 2 being owner in possession has the right to cut and remove the trees.

The Court in Appeal has held that from documents Ex. D8 and D9, relied upon by the defendants-appellants, it is evident that Baisakhi Ram and Garib Dass purchased the property in restricted auction held on 27.10.1993 and the same was confirmed on 2.3.1995. Baisakhi Ram and Garib Dass sold the land to the respondents-plaintiffs which fact is borne out from mutations Ex. P1 and P2, respectively. By relying upon judgment **Hakim Hari Ram vs. Santa Ram 1955 PLR 6**, it is held that it is immaterial as to who had planted and nourished the trees. What matters the most is the ownership of the land and since the respondents-plaintiffs are the owners, no fault can be found in the judgment of the trial court. However, the court has examined notification No. S.O. 65/C.A.-16/27/S. 29/71 dated 11.6.1971 with regard to restriction on felling of trees without

prior approval of the Government of India under the provisions of Forest Conservation Act, 1980. In the concluding lines of para 13 of the judgment, it has been held that only those strips on either side of the roads mentioned in the notification were declared to be protected forest which were owned by the Government. The notification cannot be construed to mean that even the strips of lands under private ownership on the sides of the road were declared protected forest.

Counsel for the appellants has not disputed correctness of factual findings recorded by the Courts qua land underneath the trees in question being owned by the respondents-plaintiffs on the basis of sale deeds executed by Baisakhi Ram and Garib Dass, who purchased the land in restricted auction held on 27.10.1993. Counsel also did not make reference to notification dated 11.6.1971 to contend that the notification also covers the land in question being a protected forest, thus, requiring prior approval of the Government of India under the Forest Conservation Act, 1980 before cutting the trees in question.

To be fair to the appellants, counsel has referred to judgment of Hon'ble the Supreme Court **Sri Ram Saha vs. State of West Bangal and others (2004) 11 Supreme Court Cases 497** but has not made any submissions as to how the cited authority has got any bearing on the facts of the case in hand in order to say that consistent findings recorded by the courts suffer from perversity or raise a question of law that needs determination in regular second appeal.

For the foregoing reasons, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs. As the appeal has

been decided on merits, application for condonation of delay is of academic
relevance only.

(Rekha Mittal)
Judge

5.9.2018
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No