

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

RSA No. 2624 of 2016 (O&M)

Date of decision: 14.05.2018

Gurbachan Kaur

.. Appellant

vs.

State of Haryana and ors.

.. Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Mr. Rakesh Gupta, Advocate
for the appellant.

Mr. Pawan Kumar, AAG, Haryana

Mr. D.K. Singal, Advocate
for NHAI.

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Harinder Singh Sidhu, J.

CM-3616-C-2018

Allowed as prayed for.

The National Highways Authority of India is impleaded as respondent No.4 in the array of the respondents.

Main Case

The plaintiff-appellant has filed the present appeal impugning the orders of the Courts below whereby her suit for permanent injunction for restraining the respondent-State from removing the standing eucalyptus trees from the suit land has been dismissed.

The plaintiff claims to be owner of the land comprised in khewat No. 101, Khatoni No. 347, Khasra No. 187, Killa No. 1,2,3/2, 10, Khewat No. 897, Khatoni No 1563, Khasra No. 187, Killa No. 9 situated within the revenue estate of village Gumthala Garhu, Tehsil Pehowa, District Kurukshetra where the eucalyptus trees were standing, which the defendants were threatening to cut.

The case of the defendant-State was that the Public Works Department of Haryana is the absolute owner of the land on which the trees had been planted, that the strips of Government Forest land or waste lands whether under tree growth or not on either side of the metaled surface of Ambala Hisar road had been declared as Protected Forest area vide notification dated 3.3.1972. It was further their case that for cutting the trees standing on the Protected Forest area, permission was required from Government of India. The plantation had been done by the Forest Department in the year 1990-91. Thereafter, the department has been nurturing and looking after the trees which were in their possession.

A Local Commissioner was appointed by the learned trial Court to ascertain the fact as to whether 60 eucalyptus trees were standing on the land of the plaintiff-appellant as claimed by him and denied by the defendant. In its report it was indicated that the trees were standing in the land of the plaintiff. Learned Trial Court, however, did not rely on the report of the Local Commissioner on the ground that the Local Commissioner had not been examined and merely producing the report on record does not amount to proof thereof. Accordingly, the suit of the plaintiff was dismissed.

Learned Lower Appellate Court, however, disagreed, with the view of learned Trial Court and held that as the Local Commissioner had been appointed by the Trial Court, his report would have to be taken into consideration even if it had been exhibited by the appellant in her evidence and it is not necessary that the Local Commissioner should appear in the Court for proving the same. However, in view of the fact that the plaintiff had not been able to show that she had incurred any expense for planting the

trees and had taken care of them, and that the area wherein trees were planted was declared as Protected Forest area by the Forest Department 26 years ago, the appeal of the plaintiff was dismissed.

The parties are agreed that the land subject matter of the present suit where the trees have been planted has been acquired by the State Government and transferred to the National Highways Authority of India for widening the National Highway passing through that area.

Learned counsel for the appellant relies on two decisions of this Court in *Divisional Forest Officer vs. Mohd. Hanif 2009(2) RCR (Civil) 527 and Ghasi Ram vs. Arun Kumar 2006(1) RCR (Civil) 751* to contend that even where the land had been declared as Protected Forest area and even though the forest department has planted or nurtured the trees, the department does not become the owner thereof. The trees continue to belong to the owner of the soil on which they were planted. The State cannot assert any right to cut and remove the trees. This proposition has not been disputed by learned counsel for the respondent-State.

Learned counsel for the NHAI states that the project of widening the National Highway No. 65 has been held up because of the inter-se dispute between the plaintiff-appellant and the respondent-State pertaining to the right to cut the trees. He pleads that the trees be cut at the earliest so that the project may be completed.

In view of the above, this appeal is allowed. The judgment and decree of the Courts below are set aside. It is held that the appellant being the owner of land would have a right to cut the trees and sell/appropriate the same for his own use.

Considering the urgency of the situation and as fairly states by learned counsel for the appellant, the appellant may cut the trees within two weeks and make available the vacant land of the NHAI.

Needless to add that as the trees would be cut by the appellant, she would not be entitled to any compensation from the State or from the National Highways Authorities of India in respect of the trees.

14.05.2018
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(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No