

In the High Court of Punjab and Haryana at Chandigarh

RSA- 4525 of 2017(O&M)

Date of Decision:29.1.2018

Darshan Singh

---Appellant

vs.

Inder Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. A.S.Manaise, Advocate
for the appellant

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts below whereby suit filed by the respondent/plaintiff for recovery of Rs. 50,000/- on account of damages for mental and physical harassment caused by the appellant and Harjit Singh ASI (defendant No. 4) and loss caused due to removal of 80 trees was decreed by the trial court and appeal preferred by the appellant did not find favour with the first appellate court.

In short, the respondent/plaintiff has alleged that he is owner in possession of land measuring 8 kanals comprised in Rect. No. 20 killa Nos. 3/2/2/2 (1-11) and 3/2/2/1 (0-10), Khewat No. 183 Khatauni No. 304. Defendant No. 3/appellant is his real brother and wanted to remove the

trees sown by the plaintiff in his land, 10 years ago. The appellant in connivance with respondent No. 4 sent the respondent/plaintiff in judicial lock up for four days by preparing false Kalandra under Sections 107 and 151 of the Criminal Procedure Code. When the respondent/plaintiff was in judicial custody, appellant in connivance with respondent No. 4 removed 80 trees from land of the respondent/plaintiff. Wife of the respondent/plaintiff requested the appellant and respondent No. 4 not to cut the trees but they threatened her with dire consequences if she tried to interfere. Respondent/plaintiff served legal notice dated 4.1.2011 to defendants No. 3 and 4 for payment of compensation of Rs. 2,00,000/- but they refused to pay compensation.

The sole submission made by counsel for the appellant is that findings recorded by the courts below that the appellant removed 80 trees of the respondent/plaintiff sown in khasra numbers in question is the result of mis-interpretation of statement of the appellant as the courts have held that the appellant in his testimony has admitted the factum of removal of trees from the said khasra numbers. To bring home his contention, it is argued that the appellant in his examination in chief has referred to 10 trees sown in land measuring 2 kanals 17 marlas comprised in Rect. No. 12, Killa No. 24/4(1-12), Rect. 20, Killas No. 4/3/2/1 (1-5) owned and possessed by his wife Smt. Harbhajan Kaur. In addition, it is argued that respondent/plaintiff Inder Singh in his cross examination has admitted that 8 kanals of land is a part of three killas of land received by way of inheritance and there is no partition amongst the brothers and khata is joint meaning thereby that the respondent/plaintiff is not the exclusive owner of said 8 kanals of land.

First of all, it is not within the scope of regular second appeal to appreciate and re-appreciate the evidence for setting aside concurrent findings recorded by the courts below merely because a different view is possible in the given circumstances. The regular second appeal can be allowed if the same gives rise to a question of law which can be answered in favour of the appellant.

The respondent/plaintiff appeared in the witness box and reiterated his version. There is no challenge to his testimony on the issue of existence of trees in the khasra numbers in question and its removal.

The appellant in his cross examination has admitted that the respondent/plaintiff did not allow him to cut and remove the above said trees from the above said land. In the opening lines of his cross examination, there is reference to 80 *safeda* and popular trees in Rect. No. 20 killa Nos. 3/2/2/2 measuring 1 kanal 11 marlas and 3/2/2/1 measuring 10 marlas situated in the revenue estate of village Amipur Tehsil and District Gurdaspur. In the later part of his cross examination, he has admitted that trees were cut and removed by him before the plaintiff remained in judicial lock up. He did not know when he cut and remove the trees from the above said land. In examination in chief of appellant Darshan Singh, though there is reference to 10 trees of *safeda* having been grown in land measuring 2 kanals 17 marlas owned and possessed by his wife but it has nowhere been mentioned that he had cut and removed the trees from the said land. Under the circumstances, the appellant cannot be heard to say that the fact of cutting and removing the trees, admitted in cross examination pertains to 10 *safeda* trees which were stated to be grown in the land owned and possessed

by his wife. In this view of the matter, I do not find merit in contention of the appellant that findings recorded by the courts below are the result of mis-appreciation of evidence/alleged admission by the appellant.

So far as contention that land of khasra numbers in which the trees were alleged to be planted by the respondent/plaintiff being joint, the appellant in his cross examination has admitted to the following effect:-

“It is correct that I have no right, title or interest with the land comprised in Rect. No. 20, killa no. 3/2/2/2, 1 kanal 11 marlas and 3/2/2/1, 10 marlas, which is owned and possessed by the plaintiff.”

The courts below have rightly appreciated the evidence on record particularly the facts elicited in cross examination of the appellant to record a finding that the appellant cut and removed 80 trees grown by the respondent/plaintiff in the land of aforesaid khasra numbers by taking advantage of absence of the respondent/plaintiff who was kept in confinement in proceedings under Sections 107 and 151 of the Criminal Procedure Code.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

29.1.2018
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No