

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

RSA No. 5024 of 2017 (O & M)

Date of decision: 15.03.2018

Maninder Pal

....Petitioner(s)

Versus

Kulwant Singh

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. J.S. Mahal, Advocate,
for the appellant.

G.S.SANDHAWALIA, J. (Oral)

The present appeal preferred by the defendant is directed against the concurrent findings recorded by the Courts below whereby, the appellant has been restrained from cutting down 480 (Safeda) Eucalyptus and Popular trees standing on the land measuring 27 kanals and 18 marlas situated in the revenue estate of village Qila Nathu Singh, H.B. No. 135, Tehsil and District Gurdaspur.

The case of the plaintiff/respondent was that the land was falling in his share in the partition case decided on 22.12.2008 by the Assistant Collector and it is on such account he had approached the Trial Court seeking injunction against the appellant-defendant. The Trial Court has noticed that the plaintiff/respondent was given the share to the extent of the land measuring 27 kanals 18 marlas and the appeal of the appellant had been dismissed vide Ex.P-2. The case of the plaintiff was that he had given the suit land on contract basis to one Sucha Singh and the defendant-appellant has no concern on the suit land. The revenue entry as such in the name of Jasbir Kaur wife of the defendant of 5 kanals 16 marlas in Killa No.

27R/24 on the strength of an order dated 26.09.2014 passed by the Assistant Collector Ist Grade, Gurdaspur was also noticed which was during the pendency of the civil suit which had been filed on 04.09.2012. It is in such circumstances the injunction was granted from cutting the trees.

The Lower Appellate Court while upholding the order on 18.04.2017 has noticed that the land was originally in the name of Zail Singh measuring 135 kanals 2 marlas and the property had been inherited by his five sons, who had partitioned the suit land as per their respective shares. The defendant-appellant had purchased 1/10th share from Raj Singh and 1/5th share from Jodh Singh son of Zail Singh vide sale deed dated 16.01.1998. The partition order as such had been challenged by the appellant and, therefore, it has been held that the appellant has no right to change the nature of the suit land and cut the trees standing on the same. It was accordingly held that every co-sharer has a right to seek permanent injunction if the other co-sharers are changing the nature of the land and removing the trees from the property which is detrimental to the interest of the other co-sharers.

Counsel for the appellant has also submitted that partition proceedings as such are still pending before the Financial Commissioner against the ex parte partition order. It is, thus, in such circumstances apparent that the shares of the parties as such are yet to be finalized and as to which portion they shall be entitled out of the joint land. The Courts below have only restrained the appellant/defendant from cutting the trees in order to protect the interest of the co-sharers.

In such circumstances, no fault can be found in the orders impugned as the specific shares of the parties are yet to be ascertained

before the Revenue Courts. In case the appellant is successful before the Revenue Courts regarding the land which is subject matter of dispute and it eventually falls to his share, he will be entitled to the benefit of trees standing therein and, therefore, by virtue of the injunction granted, the interest of both the sides has been protected.

Accordingly, no case is made out for interference with the orders of the Courts below and the present appeal is dismissed in limine.

15.03.2018 shivani	(G.S. SANDHAWALIA) JUDGE
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Whether reasoned/speaking	Yes/No
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Whether reportable	Yes/No
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