

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

RSA No. 6547 of 2018 (O&M)

Date of decision:13.12.2018

Forest Range Officer (Ranger), District Barnala

..... Appellant.

Versus

Kuldeep Singh through his Lrs and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.S.S.Deol, DAG., Punjab
for the applicant-appellant.

LISA GILL,J.

Appellant-defendant no.1 is aggrieved of judgment and decree dated 10.08.2016, passed by the learned Civil Judge (Jr. Division), Barnala, as well as judgment and decree dated 23.07.2018, passed by the learned Additional District Judge, Barnala.

Brief facts necessary for the adjudication of the case are that the respondent-plaintiff filed a suit for permanent injunction for restraining the defendants i.e., the present appellant and respondents no.2 and 3 in this appeal to the extent that they have no concern over the three trees as detailed in the plaint, standing over the land belonging to the plaintiff and that they have no right or entitlement to cut the said trees. It was further pleaded that the defendants had cut down one teak tree on 10.12.2012 and tried to remove it illegally. Such effort of the defendants was however foiled by the plaintiff. Despite request, they were not restraining from their illegal acts. Hence the suit was filed.

Defendant no.1 (appellant) and defendant no.2, represented

by Government pleader filed their written statement raising various preliminary objections. Averments on merits, were denied. It was denied that the plaintiff was the owner of the suit property while pleading that Khatoni No. 1721 and 1722 were recorded under the ownership of Sirhind Canal Bathinda Branch. Possession of the same was claimed by the defendants wherein plantation had been illegally carried out by the plaintiff. It was stated that as per government notification dated 03.05.1958, all the property abutting the sides of Canals and roads, is in the ownership of the Forest Range in which defendant-department had sown trees. As and when the trees dried down, they are felled by the defendant-department. The tree in question were bearing no. 43, 44 and 62. The tree alleged to have been cut by the defendants had in-fact fallen due to a storm. Dismissal of the suit was prayed.

Replication was filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to relief of permanent injunction as prayed for?OPP
2. Whether the trees in question are owned and possessed by the plaintiff?OPP
3. Whether the plaintiff has got no cause of action and locus-standi to file the present suit?OPD
4. Whether the plaint is not maintainable in the present form?OPD
5. Whether the plaintiff is estopped by his own act and conduct?OPD
6. Whether the plaintiff has not come to the Court with clean hands and has concealed material facts?OPD
7. Relief.

Both the parties led evidence in support of their respective claims.

Learned trial Court on considering the facts and

circumstances of the case concluded that the plaintiff had proved his case on the basis of the evidence on record. Suit filed by the plaintiff was accordingly decreed.

Appeal against the said judgement and decree filed by the present appellant-defendant no.1 and defendant no.2 (respondent no.3) was dismissed by the learned Additional District Judge, Barnala, vide judgement and decree dated 23.07.2018.

Aggrieved therefrom, present appeal has been filed by the appellant-defendant no.1.

Learned counsel for the applicant-appellant argues that reliance by both the learned Courts below on the demarcation report (Ex.P-3) submitted by Jagsir Singh, Field Kanungo, is clearly misplaced and the same was not proved in accordance with law as Jagsir Singh, Field Kanungo, was not examined. The applicant-appellant, department, it is urged, led positive evidence to show that all the three trees were numbered by the department and belonged to it. The numerated register (Ex.D-2) and the marking list (Ex.D-3) along with possession receipt (Ex.D-4) and Jamabandi (Ex.D-5), were duly proved on record. Learned counsel for the appellant relies upon the judgments in **M/s D.N.Metal Industries Vs. Chaman Lal 2003(1) R.C.R (Rent) 551**, **Karnail Singh Vs. M/s Kalra Brothers, Sirsa, 2009(2) R.C.R (Civil) 380**, **Vithal Ramrao Ingale (Patil) Vs. Navalbai Digambar Deshmukh 2003(1) R.C.R (Civil) 508** and **Gouri Chakraborty Vs. Nilima Bose 2001(2) R.C.R (Rent) 457**. It is thus prayed that this appeal be allowed and both the impugned judgements and decrees dated 10.08.2016 and 23.07.2018

be set aside. Consequently, suit filed by the plaintiff be dismissed throughout.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

The controversy in this case revolves around the question whether the three trees are standing upon the land of the plaintiff or that of the appellant. As per the case set up by the plaintiff, the said trees were standing on land comprised in khasra no. 44//3(4-10). It is a matter of record that local commissioner-Jagsir Singh, Field Kanungo, was appointed by the learned trial Court. Demarcation report (Ex.P-3) submitted by the said local commissioner is on record. As per this report (Ex.P-3), the trees in question are standing on the land belonging to the plaintiff. Argument raised by learned counsel for the appellant that this report submitted by Jagsir Singh, Field Kanungo, has not been proved in accordance with law, is clearly devoid of any merit. Jagsir Singh, Field Kanungo, was appointed as a local commissioner under orders of the learned trial Court. Learned counsel for the appellant is unable to deny that no objections were filed in respect to the said report at the instance of the present appellant. There is no evidence on record to discredit or doubt the veracity of the report Ex.P-3, submitted by the field Kanungo. Report Ex.P-3 has been rightly relied upon by the learned Courts below. There is thus no merit in the argument raised by learned counsel for the appellant that the report of the Local Commissioner appointed by the Court should be discarded as the Local Commissioner was not examined. Said argument is therefore rejected.

Furthermore, it is not disputed that both DW-1-Ajit Singh and DW-2-Malkit Singh, Forest Guard, have admitted the correctness of this report. DW-3-Din Dyal, SDO of the defendant-department, admitted in his cross-examination that roots of the uprooted tree were very much present in the land owned by the plaintiff. DW-2-Malkit Singh, specifically stated that when numbering of the trees is carried out, owners of the adjoining land are not called to the spot nor intimated, neither is their consent obtained at the time of marking the trees. It is thus rightly held by the learned Additional District Judge, Barnala that marking of the trees in question cannot be of any benefit to the department in the present factual matrix of the case. Judgements relied upon by learned counsel for the appellant, are not applicable to the peculiar facts and circumstances of the case.

Learned counsel for the appellant-defendant no.1 is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgements and decree dated 10.08.2016 and 23.07.2018 passed by the learned Civil Judge (Jr. Division) Barnala and learned Additional District Judge, Barnala, respectively, are upheld.

There is a delay of four days (04) days in filing of this appeal. Keeping in view the fact that the matter has been decided on

merits, the question of delay in filing of this appeal has been rendered academic. Application is accordingly disposed of.

Present appeal is, consequently, dismissed with no order as to cost.

13.12.2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No