

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4879-2016(O&M)
Date of decision: 14.01.2020

Hardev Singh and others

.....Appellants

Versus

Karamjit Kaur

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. S.S.Salar, Advocate for the appellants

ANIL KSHETARPAL, J.

Plaintiffs-appellants are in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below while dismissing the suit filed by the plaintiffs for declaration that the plaintiffs are owners in possession of 46 Eucalyptus trees and have right to cut and sell those trees. It is the case of the plaintiffs that they had purchased the land from Ajit Singh and Jasbir Singh in the year 2005 and the Eucalyptus trees were already in existence in the land owned by the plaintiffs. In the written statement, defendant contested the suit and pleaded that she planted these trees on her land after having purchased the same from Jagtar Singh. On appreciation of evidence, the Trial Court has found that the plaintiffs failed to lead reliable evidence to establish that the trees in dispute were located in the land purchased by the plaintiffs. The Courts further noticed that vendor of the plaintiffs have

appeared in evidence as DW3 and has supported the case of the defendant. He has stated that defendant had planted the trees 3 feet inside her boundary.

This Court has heard learned counsel for the appellants at length and with his able assistance has gone through the judgments passed by the Courts below.

Learned counsel for the appellants has submitted that since the dispute is with regard to ownership of the Eucalyptus trees which were planted on a common boundary, therefore, the Court ought to have declared plaintiffs and defendant to be joint owners of the Eucalyptus trees, entitled to equal share. He further submitted that in dispute of such a nature, it was incumbent on the Court to appoint a Local Commissioner.

This Court has considered submissions. It may be noted here that the plaintiffs had filed the present suit claiming that the Eucalyptus trees are standing/located in the land owned by them, not on common boundary. Still further on appreciation of evidence, particularly, the statement of vendor of the plaintiffs DW3-Jasbir Singh has found that trees were planted by the defendant in her own land. In these circumstances, there is no force in the first submission of the learned counsel for the appellants.

With regard to the second argument of the learned counsel for the appellants, it may be noted that the suit was instituted on 11.10.2012 and learned counsel for the appellants failed to draw attention of the Court to any application or request made either to the Trial Court or to the first Appellate Court for appointing a Local Commissioner.

Learned counsel for the appellants has submitted that High Court Rules and Orders make a provision for appointment of a Local Commissioner in order to carry out demarcation/ local investigation. He submits that the Courts below ought to have exercised such power.

High Court Rules and Orders are only to explain, what has been provided under Order 26 Rule 9 CPC which provides for appointment of a Local Commissioner. Depending upon the facts of the case or the request made by the party, the Court is required to decide whether it is necessary to get the local investigation carried out in the facts of the case. In the present case, undisputedly no such application was moved. Both the Courts, thought it appropriate, to decide the suit in absence thereof.

Prayer made by the learned counsel for the appellants for appointment of Local Commissioner for the first time at the stage of Regular Second Appeal cannot be accepted. Hence, no ground to interfere is made out.

Dismissed.

14.01.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No