

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

CR 6457/2018

Date of decision: 06.12.2022

Angrej Singh and others

.....Petitioners

Vs.

State of Haryana and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Akshay Kumar Jindal, Advocate for the
petitioners/plaintiffs
Mr. Arun Kumar, AAG Haryana for respondents/defendants

Nidhi Gupta, J.

Prayer in the present revision petition is for setting aside the order dated 4.9.2018 (Annexure P-12) passed by Additional District Judge, Kurukshetra whereby the application filed by respondents/defendants for permission for leading additional evidence has been allowed at the appellate stage.

Brief facts of the case are that the petitioners/plaintiffs instituted a civil suit dated 16.1.2013 for permanent injunction restraining the respondents/defendant nos. 1 and 2 from cutting and removing any trees from the land mentioned in para 1 of the plaint which is stated to be in the ownership and possession of the petitioners/plaintiffs. Vide judgment and decree dated 19.5.2015 (Annexure P-5) the said suit was decreed in favour of the petitioners/plaintiffs. Respondents filed C.A.No.316/2015 under Section 96 CPC against the said judgment and decree dated 19.5.2015, which is pending.

During pendency of this Civil Appeal, the respondents first filed application dated 22.9.2015 for appointment of Local Commissioner. However, vide statement dated 27.8.2018 the respondents withdrew this application. In the meantime, the respondents filed the present application dated 2.11.2015 for permission to lead additional evidence. It is this application which has been allowed vide impugned order dated 4.9.2018, whereby the Tehsildar, Shahbad (M) has been appointed as Local Commissioner to give a report specifically “*as to whether the disputed trees are standing in the suit land owned by plaintiffs or the same are standing in the land of road owned by PWD Government.*” Hence, present revision petition.

It is submitted by the learned counsel for the petitioners/plaintiffs that first and foremost, the respondents’ prayer to lead additional evidence cannot be allowed at the appellate stage, and their application having been filed at the appellate stage was not maintainable.

Learned counsel further refers to plaint to state that it has been the plaintiffs’ positive averment in the plaint/ stand throughout, that father of plaintiff no.1 and grandfather of plaintiffs no. 2 and 3 namely Kartara Ram had planted Safeda trees along the Shahbad-Barara road “*in his land*”, as detailed in para 1 of the plaint. On an application moved by the plaintiffs for demarcation of their land, Tehsildar, Shahbad, had appointed Local Commissioner vide order dated 19.5.2012 namely Mr. Jagdish Chand, Halka Kanungo Shahbad(M) who gave notice to respondent/defendant department as well as PWD and SDO, PWD Shahbad, and vide demarcation report dated 2.1.2013 (Ex. P1/ Annexure P-3) reported that 181 Safeda trees and 1 Kikkar tree were found standing in the land owned and possessed by plaintiff no.1. It is further submitted that this report was passed in the presence of officials of the respondent department including

Satpal Patwari and Ashok Kumar Rana Daroga of the Forest Department, however, they had refused to put their signatures on the memo of appearance. Further, despite the categorical finding recorded in report dated 2.1.2013, respondents/defendants were bent upon cutting the standing trees from the petitioners' land and accordingly petitioners filed civil suit dated 16.1.2013. Prayer in the civil suit was for permanent injunction restraining the defendants from cutting and removing any trees from the land owned and possessed by the plaintiffs forcibly and illegally which was decreed by trial Court vide judgment and decree dated 19.5.2015.

Learned counsel also refers to para 2 of the written statement filed by respondents in the suit and submitted that it has nowhere been stated by the respondents that the suit land is in their 'ownership'. In fact, in reply to the categorical assertion on behalf of the petitioners/ plaintiffs in this regard in para 2 of the plaint, the respondents have only replied that "*the trees and the land where the disputed trees are standing are in possession of the answering defendants since the time of plantation*". Accordingly, it is not the respondents own case that the suit land is owned by them. It has further been stated in para 2 that vide Notification No.S.O.41 C.A. 16/27/S. 29/72 dated 3.3.1972 the Shahabad Barara Road, and vide Notification No. S.O.82/C.A.16/27/S.29/79 dated 6.7.1979 Dedlu road have been declared as protected forest by Haryana Government. However, it has never been the respondents' case that they are owners in possession of the suit land. It is submitted that accordingly the impugned direction of court below is contrary to the record and prima facie incorrect.

It is further submitted that during pendency of the suit, the respondents upon application to the Tehsildar had also got appointed a local commissioner who vide Ex. DW1/B – Annexure P4 dated 13.2.2015 had

reported that the trees were “*standing on the government land of PWD*”. Learned counsel has referred to the finding of the trial Court where both the demarcation reports have been considered and the Trial Court has returned the finding that the trees are standing in the land owned and possessed by plaintiffs. Demarcation report dated 2.1.2013/ Ex. P1/ Annexure P3 further specifies that total 182 trees are standing on the land of the plaintiffs. The said report was duly proved by PW-2, who conducted the demarcation and stated that the demarcation was conducted after giving notices Ex. P5 to Ex.P7 to both the parties and also proved the site plan Ex. P4. Thus, the report read with Jamabandi and khasra girdwari Ex. P8, P9, P-12 and P-13 reveals that the trees are standing in the land owned and possessed by the plaintiffs. On the other hand, the demarcation got conducted by the defendants by retired Field Kanungo vide report Ex. DW1/B, the trial Court upon considering the same found that the said report as well as deposition of DW3 nowhere mentioned the fact that the disputed trees are standing either on the land of the plaintiffs or on the land of defendants. Moreover, no notice was served upon the plaintiffs nor the demarcation was conducted in their presence. Accordingly, the demarcation report submitted by the defendants was rejected by the trial court. Therefore, in view of the above findings the suit was decreed in favour of the petitioners as follows:-

“It is ordered that the suit of the plaintiff succeeds and the same is decreed with costs. A decree for permanent injunction restraining defendants from cutting and removing 182 trees (181 Safeda trees and 1 Kikker tree) that is 17 trees in Khasra No.184/2, 23 trees in Khasra No.185/2, 21 trees in Khasra No.206/2, 23 Safeda trees and 1 kikker tree in Khasra No.177/2, 15 trees in Khasra No.178, 40 trees in Khasra no.180/2, 33 trees in Khasra no.181/2 and 9 trees in Khasra No.246, standing in the suit land owned and possessed by the plaintiffs as discussed in issue no.1 is passed in favour of the plaintiffs”.

Thereafter, the respondents filed appeal wherein on 22.9.2015

they moved an application for appointment of Local Commissioner which is at

Annexure P-7. However, the respondents withdrew this application vide order dated 27.8.2018 (Annexure P-9). Meanwhile on 2.11.2015, the respondents also filed the present application for permission for leading additional evidence (Annexure P-10). Vide impugned order this application was allowed by the Appellate court.

Learned counsel for the petitioners reiterates that it has nowhere been the case of the defendants that the land on which the trees are standing belongs to them. It is further submitted that even if it is their case that the suit land belongs to them, then clearly the present application has been filed for filling up lacuna, and at a highly belated/ at the appellate stage and is therefore, not maintainable.

Per contra, learned counsel for the respondents/ defendants submits that as per demarcation report of Krishan Lal, Kanungo, Ex. DW1/B, it has been reported that *“as per demarcation report it has been found that the Safeda trees are standing on the Government land of PWD”*. It is further submitted that the trees in question were planted by them in the year 1982-83 in the berm of Shahbad Barara road which has been declared as protected forest by the Haryana Government vide its aforementioned notifications dated 3.3.1972 and 6.7.1979. It is further submitted that the demarcation conducted by the petitioners was not as per instructions of the competent authority and there are no signatures of the defendants on the demarcation report.

In rebuttal, learned counsel for the petitioners refers to the written statement of the respondents/defendants to submit that no doubt the land in question has been declared as protected forest by the Haryana Government, however, defendants cannot be held to be owners of the suit land on the basis of said notifications or even on the basis of the report of the Local Commissioner

Ex.DW1/B; and therefore, it is not open to the defendants to rely upon demarcation report Ex. DW1/B and thus, it is not open for the defendants to claim ownership of the suit land or to claim that the suit land is Government land on the basis of demarcation report Ex. DW1/B. It is further pertinent that even if the Forest Department claims that they had planted the disputed trees and the area is declared as protected forest area, however, this does not vest any right in the department as the trees belong to the owner of the soil where they have been planted. Ld. Counsel took support from judgment rendered in case of **Ghasi Ram v Arun Kumar 2006(1) RCR (Civil) 751** wherein it has been held that a standing tree belongs not to a person who plants it but to the owner of the land from which it draws its support and sustenance. It was further held that trees upon the land are part of the land and that the right to cut down and sell those trees is incidental to the proprietorship of the land.

I have heard learned counsel for the parties.

No doubt comprehensive arguments on the merits of the matter have been addressed by the learned counsel for the parties. However, since Appeal is pending, the only question that requires adjudication by this Court at this stage is whether the respondents' application for additional evidence was correctly allowed by the Id. Lower Appellate Court or not.

A perusal of the record of the case reveals that two applications were filed by the respondents almost simultaneously on 22.9.2015 and 2.11.2015 - one for appointment of local commissioner and the other for additional evidence. Although the 2nd/present application was for permission to lead additional evidence yet, the relief sought therein is also for appointment of local commissioner. In my view, once the first application seeking appointment of local commissioner had been withdrawn by the respondents, the same relief via

second application under garb of additional evidence could not have been granted to them. It clearly shows that this was a ploy on part of the respondents to fill the lacuna in their case.

Moreover, the application for leading additional evidence has been filed by the respondents at the appellate stage. As per law laid down by this court in **Rani v Raksha Rani and others, 2015(8) RCR (Civil) 478** “.....additional evidence cannot be allowed to be used as a handle or a tool by a party to fill up the lacuna in his evidence particularly when rights of the parties have been adjudicated and the applicant/defendant is already in appeal before the first appellate court..... when evidence of the defendant no.4 had been closed by order of the court and the said order had never been challenged in any court of law, application for adducing additional evidence in the appellate court is not maintainable”.

Again in **Smt. Krishna v Magha Ram and another, Law Find Doc Id# 207679**, this Court in a case where the appellant filed an appeal before the first appellate court and along with the appeal also filed an application under Order 41 Rule 27 CPC for permission to lead additional evidence, this Court upheld the dismissal of the application by the lower appellate court, holding that the appellant could not be permitted to fill in lacuna in her case by seeking to lead additional evidence. Accordingly, essence of the aforesaid judgments is that application for additional evidence should not be allowed to fill in lacuna and should be allowed very rarely.

Further, prayer in the present application filed by the respondents was for permission “to produce additional evidence by way of appointment of some local commissioner to demarcate the land and the trees in dispute and to whom they belong in the interest of justice”. In the present case there are already

two contradictory reports of Local Commissioners on record. It is not clear how a third report in the present case will help resolve the issue especially in view of the fact that it has never been the respondents' case that they are owners in possession of the suit land. However, abovesaid reports were in pursuance to application made on behalf of the parties, and not in pursuance to any order passed by the Courts. It is to be noted that as per law laid down by two Division Benches of this Court in **Harvinder Kaur and another vs Godha Ram and another, 1979 PLJ 562**; and **Pritam Singh and another v Sunder Lal and others, 1990(2) PLR 191**, it has been held that the parties are required to prove their case by leading their own evidence and the Court is not to collect evidence for the parties and will not assist in the appointment of Local Commissioner.

For the reasons stated above, this revision petition is allowed and the impugned order dated 4.9.2018 (Annexure P-12) passed by Additional District Judge, Kurukshetra is set aside.

Application(s), if any, also stand disposed of.

(Nidhi Gupta)
Judge

06.12.2022
Joshi

Whether speaking/reasoned
Whether reportable

Yes
Yes/No