

Date of decision: 21.08.2023

...APPELLANT

V/S

...RESPONDENTS

Present: Mr. Pankaj Bali, Advocate for
Mr. Deepak Sharma, Advocate
for the appellant.

By way of present appeal, challenge has been made to the judgments and decrees dated 20.03.2017 and 20.02.2018 passed by the Courts below, whereby, a suit for recovery of payment against cutting of trees by the respondents from the joint land, has been dismissed.

2. Briefly stating, the appellant-plaintiff filed a suit for recovery against the defendants claiming half share in the trees which were got cut and sold by the respondents-defendants.

3. Upon notice, the respondents-defendants No.1 to 5 and 12 appeared and filed written statement while submitting that earlier also, a suit for permanent injunction was filed at the instance of appellant-plaintiff seeking permanent injunction restraining the appellant-plaintiff from alienating, cutting or removing the trees standing over the suit property, whereas, the same was dismissed vide judgment and decree dated 26.08.1993 and even, appeal against the same was also dismissed vide judgment and decree dated 29.08.1996 and thus, prayed for dismissal of the present suit as well.

4. Besides it, respondents-defendants No.6 to 11 and 13 also filed their separate written statement and contested the suit relying upon the same judgment and decree passed in the previous litigation.

5. Thereafter, trial Court vide judgment and decree dated 20.03.2017 dismissed the suit filed by the appellant-plaintiff. Aggrieved thereof, an appeal was filed which also came to be dismissed vide judgment and decree dated 20.12.2018 passed by the First Appellate Court.

6. Impugning the aforementioned judgments and decrees passed by the courts below, learned counsel for the appellant-plaintiff vehemently submits that the co-sharers of appellant-plaintiff cut the trees standing over the joint land and forcibly and illegally took away the proceeds, without the consent or wish of the appellant-plaintiff, who was thus entitled for recovery of the same, as prayed for.

7. I have heard the learned counsel for the appellant and have gone through the paper book. I am unable to find substance in the submissions made on behalf of the appellant. A perusal of plaint shows that no date, month or year has been mentioned by the appellant-plaintiff about the alleged cutting of trees by the respondents-defendants so as to make it specific as regards the cause of action for filing of the suit. Even no evidence has been led at all to prove on record that the trees were planted by appellant-plaintiff and standing over the land in question as prayed for in the plaint.

8. Moreover, on an earlier occasion, the appellant-plaintiff filed a suit for permanent injunction with a prayer for restraining the respondents-defendants from cutting and selling of the trees, but the same was dismissed by the trial Court vide judgment and decree dated 26.08.1993, upheld by the First Appellate Court on 29.08.1996, which became final between the parties.

9. A perusal of judgments and decrees passed by the Courts below shows that a concurrent finding of fact has been recorded against the appellant-plaintiff and no evidence either oral or documentary has been pointed out to show that the findings recorded by the Courts below are perverse or any evidence led by them which was admissible has either been ignored by the Courts below or has been misread or misinterpreted.

10. Resultantly, finding no merit in the present appeal, the same stands dismissed.

21.08.2023
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No