

DIVISIONAL FOREST OFFICER AND ORS. ...Appellants

Versus

DHEERAJ SINGHRespondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Satish Singla, AAG, Haryana.

B.S. Walia, J. (Oral)

[1] Challenge in the instant Regular Second Appeal is to the judgment and decree passed by the learned District Judge, Yamunanagar at Jagadhri in Civil Appeal No.543 of 2016 dated 17.11.2017 in case titled as Dheeraj Singh vs Divisional Forest Officer and others, allowing the appeal and modifying the judgment and decree dated 24.10.2016 passed by the learned Civil Judge (Jr. Div.) Sub-Division, Bilaspur in Civil Suit No.722 of 2016 ID No.CS/0001160/2014 titled as Dheeraj Singh vs Divisional Forest Officer etc. The appeal is accompanied with an application for condonation of delay of 416 days in late filing of the Appeal.

[2] Sole argument of learned AAG is that the impugned judgment and decree is legally unsustainable as the trees in question were planted by the Forest Department on Government land.

[3] A perusal of the judgment of the learned Civil Judge (Jr. Div.), Sub-Division Bilaspur reveals that on the pleadings of the parties, the following issues were framed:-

1. *Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*

2. *If issue No.1 is proved then, whether the plaintiff is entitled for mandatory injunction? OPP*
3. *Whether the suit of the plaintiff is not maintainable? OPD*
4. *Whether the plaintiff is stopped from filing the present suit by her own act and conduct? OPD*
5. *Whether the plaintiff has no cause of action to file the present suit? OPD*
6. *Whether the suit is liable to be dismissed with special costs under Section 35-A of CPC? OPD*
7. *Relief.*

Thereafter, on the basis of evidence led by the parties and submissions made, issue No.1 was partly decided in favour of the respondent / plaintiff, issue No.2 was decided against the respondent / plaintiff while issue Nos. 3 to 7 were decided against the appellants / defendants being not pressed and the suit filed by the respondent/plaintiff regarding permanent injunction was partly decreed while the suit for mandatory injunction was dismissed by holding that the respondent/plaintiff was entitled to 50% share of the sale proceeds of the trees at the time of their felling/cutting.

[4] The judgment and decree passed by the learned Civil Judge (Jr. Div.), Sub-Division Bilaspur was modified by the learned District Judge, Yamuna Nagar at Jagadhari in Civil Appeal No.543 of 2016 vide judgment and decree dated 17.11.2017 by relying on the decision of this Court in the **State of Punjab and another vs Tara Singh and another-2012 (3) RCR (Civil) 120** on the ground that even if a person plants trees on the land belonging to another, the trees come to vest in the landowner and cannot be removed by a person, by whom they were planted, as trees upon the land are part of it and the right to cut down and sell those trees, is incidental to the proprietorship rights of the land and not otherwise. Relevant extract of the aforesaid

16. Therefore, it follows as a corollary that even if a person plants a tree in the land of another, the owner of the land becomes owner also of the tree. To put it in a slightly different manner, standing trees belong not to the person by whom these were planted, but belong to the owner of the land, from which it draw its support and sustenance. The trees upon the land are part of it and the right to cut down and sell those trees, is incidental to the proprietorship rights of the land and not otherwise. Even if the timber/trees planted by any person/lessee/tenant on the land, still those would belong to landowner, on whose land these were planted and not to the planters of the trees. If the trees are standing in the land of the landowner, then it cannot possibly be said that they have inferior ownership rights in the trees, but full proprietor rights in the land, in which, they have planted the trees. Therefore, the rights of the landowner in the trees standing in his land merge completely in his ownership rights of the land. Thus, it emerges that even if a person plants the trees on the land belonging to another, the trees come to vest in the landowner and cannot be removed by a person, by whom they were planted.

17. There is a strong logic behind it. Possibly, no one can dispute that Eucalyptus trees draw their energy from the fertile land, on which these are planted and adversely(deeply) affect its fertility. It is not a matter of dispute, rather matter of common knowledge that with the passage of time, not only that, the quality of fertility of that very land, is decreased on which Eucalyptus trees are planted, but it also affects the growth/fertility of the adjoining land as well, culminating in the huge losses of crops, standing in it. Sometimes, the fertile land become somewhat barren on account of growing of Eucalyptus trees. In this manner, the landowner must be held entitled to be compensated in this relevant connection and is the legal owner of the trees standing in his land.

[5] Learned lower appellate court in paragraph Nos.11 and 12 of its judgment held that the notifications Ex. D1 & Ex. D2 issued on 06.07.1979 and 03.05.1958 respectively declaring Government Forest and Fallow Lands on both sides of the roads, canals, dams etc as protected forests for being managed by the Forest Department and the strips of Government forest and waste lands, whether under tree growth or not on either side of all roads, canals and railways in the State of Punjab, except those in the Patiala Division to be protected forests, could not be extended to the land of private owners and further that once the trees were held as belonging to the soil, the question as to who planted them became irrelevant, therefore, allowed the appeal in favour of the respondent plaintiff by reversing the finding of the learned trial Court, of the respondent / plaintiff being entitled to only fifty percent share in the sale proceeds of the trees at the time of felling in terms of letter No.186 dated 03.04.2000 issued by the Chairman, Forest Conservation, Haryana. Resultantly, the Appellants / Defendants were restrained from interfering in the ownership and possession of the respondent / plaintiff over the suit land and also from cutting and removing the trees standing on the land of the respondent / plaintiff. *Despite query, learned AAG has not pointed out any evidence that the trees in question were planted on Government land.*

[6] Apart from the above, the application for condonation of delay of 416 days in late filing of the appeal mentions of legal opinion having been sought qua the impugned judgment and decree dated 17.11.2017 passed by the learned District Judge, Yamuna Nagar in Civil Appeal No.543 of 2016 in case titled as Dheeraj Singh vs Divisional Forest Officer, Forest Department, Yamuna Nagar and others as to whether the case was fit for filing appeal or not and after receiving legal opinion, the competent

authority was requested to seek sanction from the Government to file the case on Government expense which was granted on 01.01.2018 and after receiving sanction, the appeal was drafted and filed. However, in the process, there was a delay of 416 days in filing the appeal.

[7] A perusal of memo No.35/Co.31(220)2016 dated, Chandigarh 01.01.2018, issued by the Legal Remembrancer and Administrative Secretary to Govt. of Haryana to the DFO, Yamuna Nagar, mentions that there was no use in filing a regular second appeal before the High Court in view of the well settled position that trees belong to the soil and the question as to who had planted them was irrelevant. Relevant extract of said communication is reproduced hereunder :-

“In this connection it is stated that it is well settled rule that the trees belong to the soil, the question as to who planted them become irrelevant, hence, observation in para No.21 is fair enough no use to go for RSA before the Hon’ble High Court.

However, if concerned department want to go for file RSA then send the sanction of Financial Commissioner concerned for filing RSA in view of under para 20.4 (C) of the LDM.”

[8] A perusal of the said communication reveals that despite the aforementioned communication dated 01.01.2018 from the Legal Remembrancer and Administrative Secretary to Govt. of Haryana, the appeal was filed after a delay of 416 days for which no explanation whatsoever has been given except a bald statement that the delay in filing the appeal was neither intentional nor willful and the delay was occasioned due to exchange of correspondence between one office and movement of the

file from one table to the other. In connection with the aforementioned stand, reference is made to Section 2(h) of the Limitation Act, 1963 as per which nothing is deemed to be done in good faith if the same is not done with due care and attention. Section 2(h) of the Limitation Act, 1963 is reproduced as under:-

(h) “good faith”— nothing shall be deemed to be done in good faith which is not done with due care and attention;

[9] Accordingly, in the absence of due care and attention having been observed while processing the case, the indifference negates good faith, more so, when the only explanation put forth is that the file was moving from one table to another table and from one office to another and that too without mentioning the details as to on which date the file was sent for what purpose and from which office to which office. It needs no mention here that the law assists those who are vigilant and not those who sleep over their rights as is evident from the maxim, “ **Vigilantibus Non Dormientibus Jura Subvenient** ” The applicant has failed to substantiate existence of sufficient cause for invoking the jurisdiction of this Court to seek condonation of 416 days delay in late filing of the Regular Second Appeal.

[10] Accordingly, finding no merit in the application seeking condonation of 416 days’ delay in late filing of the appeal within the stipulated period of time, the same is dismissed. Resultantly, the Regular Second Appeal is also dismissed.

(B.S. Walia)
Judge

24.01.2023
‘Amit’

Whether speaking/ reasoned : Yes/No
Whether reportable : Yes/No