

Sr. No.107

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

**CM-9917-C-2022 in/and
RSA-2903-2022 (O&M)
Date of decision: 13.02.2023**

State of Punjab and others

...Appellants

Vs.

Jaswant Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Jaswinder Singh Arora, Deputy Advocate General, Punjab.

ARUN MONGA, J. (ORAL)

CM-9917-C-2022

For the reasons stated, the application is allowed subject to all just exceptions. Delay of 341 days in filing the appeal is condoned.

RSA-2903-2022

For convenience, parties herein are addressed as per the recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, defendants (appellants herein) are in second appeal before this Court assailing learned trial Court judgment and decree dated 25.02.2016, as upheld by learned First Appellate Court vide its judgment and decree dated 24.09.2019.

3. Briefly stated, facts as noticed by Courts below are that plaintiffs sought permanent injunction, restraining the defendants from cutting or removing the trees from the suit land situated adjoining the Sutlej River. In order to protect the land from erosion, 180 eucalyptus trees had been planted during the last many years. Those trees belong to plaintiffs. On 15.09.2013, due to wind storm, fifteen

trees got uprooted and fell. Defendants tried to remove those trees and also attempted to cut some trees illegally.

4. Upon notice, defendant-appellants appeared and filed written statement taking preliminary objection qua maintainability of suit on the ground that the department had planted eucalyptus trees. Same were nursed by department and therefore the plaintiffs were not the owners of those trees.

5. Based on the rival pleadings, following issues were framed:

1. Whether the plaintiffs are entitled to the relief of permanent injunction?
OPP
2. Whether the suit of the plaintiffs is not maintainable? OPD
3. Relief.

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, issue Nos.1& 2 were decided in favour of plaintiffs and consequently, the suit of the plaintiffs was decreed with costs by trial court.

8. Aggrieved, defendant-appellants preferred first appeal which was dismissed by learned First Appellate Court.

9. Learned First Appellate Court below dismissed the appeal, resulting in instant Regular Second Appeal before this Court.

10. In its judgment, learned First Appellate Court, *inter alia*, observed, as under:

“XXXX

17. From the case set up by the appellant, it is apparent that they are not the owners of the land where the involved trees were planted. Even DW1 Arvinder Singh, Range Officer also during his cross examination conceded that he has not brought any record regarding plantation and nursing of trees in question. This witness feigned ignorance about the previous litigation between the parties but the respondents No.1 and 2 have placed on record documents Mark A and

Mark B which suggest that earlier also the respondents No. 1 and 2 had to file suit for permanent injunction restraining the appellant and others from removing the trees, which suit was decreed vide judgement dated 10.5.2000. DWI could not deny this fact. Jamabandies Ex P1 to Ex.P3 placed on record by respondent No.1 also show that the respondents No.1 and 2 are the owners of the suit property. In these circumstances, when the appellant has admitted the factum of standing of trees in the land of respondents No.1 and 2, they cannot not claim ownership of those trees belonging to the respondents No.1 and 2 and the Ld. Lower court has rightly relied upon judicial pronouncement State of Haryana &Ors. Vs. Roop Chand, 2014(3) Civil Court Cases 240 (P&H) wherein it has been held that that the trees always belong to the land owners and not the planters and has rightly observed that appellant cannot take away, cut or remove the trees standing on the land of the respondent No.1 and 2. The findings, therefore, were rightly returned by the Ld. Lower Court that the respondent No.1 and 2 are entitled to the decree as prayed for and these findings consequently being legal one do not warrant interference in this appeal.

XXXX

XXXX

XXXX

XXXX”

11. The mainstay of the appellants’ case is that the trees are growing/standing on Dhussi Bandh adjoining Sutlej River and not in the land of the owners, these were planted about thirty years ago and nourished by the appellants with the consent and for the welfare and safety of the general public; the trees belong to the appellants; the plaintiff-respondents were not the exclusive owners of the property; the suit was time barred and was not maintainable for want of service of prior statutory notice under section 80 CPC. I find no merit in the aforesaid contentions.

12. Perusal of the impugned judgments does not show if the appellants had pleaded or otherwise raised any contentions before the learned Courts below to the effect that the plaintiff-respondents were not the exclusive owners of the property or that the trees were not planted on their land; the suit was time barred and was not maintainable for want of service of prior statutory notice under section 80 CPC. These new pleas cannot, therefore, be entertained in the instant second appeal. Furthermore, section 80(2)CPC provides that a suit to obtain an urgent

relief against the Government or any public officer in respect of any act purporting to be done by such public officer in his official capacity may be instituted, with the leave of the Court, without serving any notice. It is not shown what prejudice, if any, has been caused to the appellants by the clubbing of issues No. 1 and 2.

13. On appraisal of record, the two learned Courts recorded a well considered and reasoned finding that the plaintiff/respondents are the owners of the land where the trees are growing/standing. I am inclined to agree with the same.

14. Assuming, as contended herein, that the trees had been planted and nourished by the appellants with the consent and for the welfare and safety of the general public, does not mean that they are owned by them. Once it is found that the plaintiff/respondents are the owners of the land it follows that the trees growing/standing thereon belong to them.

15. Having perused the impugned judgments, my considered opinion is that the submissions made before the Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

16. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

17. Resultantly, no fault can be found with the findings rendered by learned trial Court, as affirmed by learned First Appellate Court, since the same were based on cogent evidence adduced by plaintiffs. The contentions raised in this second appeal are thus liable to be rejected.

18. In the premise, there seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings.

19. Furthermore, no question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

20. As an upshot of my preceding discussion, this appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

21. Pending application/s, if any, shall also stands disposed of.

22. No order as to costs.

(ARUN MONGA)
JUDGE

February 13, 2023
ashish

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