

RSA-4156-1999 (O&M)
Date of decision : 02.09.2024

Versus

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Mr. Abhishek Sharma, Advocate for
Mr. Vishal Gupta, Advocate and
Mr. Vikram Dhakla, Advocate for the respondents.

State is in appeal against the judgment and decree passed by District Judge, Karnal dated 7th of April, 1999 affirming the judgment and decree passed by the Civil Judge (Junior Division), Karnal dated 7th of April, 1998 whereby the suit filed by respondent/plaintiff was decreed.

4. Suit was contested by the State denying the ownership as well



as possession of the plaintiff/Gram Panchayat. It was claimed by the State that land on both sides of the Habri Branch river vests in Canal Department. The same was transferred to Forest Department for the purpose of forestation vide notification dated 3rd of March, 1972. The defendants/State have planted the trees and have every right to cut the same.

5. On the basis of the pleading of the parties, following issues were framed:

- “1. Whether the plaintiff is owner of the trees standing in the suit land, as detailed in para No.2 of the plaint ? OPP
2. If issue No.1 is proved, whether the plaintiffs is entitled for injunction, as prayed for ? OPD.
3. Whether the suit is not maintainable ? OPD.
4. Whether the plaintiff is estopped from filing the present suit by their own act and conduct ? OPD.
5. Relief”

6. Trial Court after analyzing the evidence on record came to the conclusion that the defendants could not prove that they planted the trees over the suit land i.e. Khasra No.127/2 or that the land was ever transferred to the Forest Department vide notification dated 3rd of March, 1972 or that the land in dispute is included in the sides of Habri river. Trial Court thus passed the decree of permanent injunction restraining the State from cutting trees from the suit land admeasuring 83 Kanals 9 Marlas.

7. In appeal, the findings stand affirmed by the Appellate Court dismissing the appeal.

8. Ld. State Counsel has drawn attention of this Court to the orders



passed by Supreme Court in Civil Appeal No.939 of 1999 which also pertains to dispute between Panchayat and the State and the defence of the State is based upon Notification dated 3rd of March, 1972. He submits that in that case Apex Court found that since notification does not specify the land to which the notification relates, the appeal filed by the State was dismissed. He has produced copy of the notification dated 3rd of March, 1972 and relies upon Entry No.51 which reads as under:

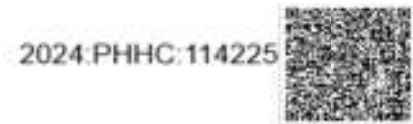
“51 Habari Branch”

9. Per contra, Counsel for the respondent submits that the matter is fully covered by the orders passed by the Supreme Court. Both the Courts below concurrently found that the land was not relatable to notification dated 3rd of March, 1972 and thus the suit filed by the plaintiff/Panchayat was ordered to be decreed.

10. I have heard counsel for the parties and have gone through records of the case.

11. Order passed by the Apex Court in Civil Appeal No.939 of 1999 reads as under:

“Heard learned counsel for the appellants on merits. We do not find any error in the findings of fact recorded by the Trial Court and the First Appellate Court that the ownership of the land in question vests in Gram Panchayat, the plaintiff-respondent. The defendant-appellant claims to have planted certain trees on the land after declaring the land to be protected forest vide Notification dated 3.3.1972. The First Appellate Court has found that the Notification in question does not specify the land to which the Notification relates and therefore it cannot be positively held that



the Notification relates to the suit land. Moreover, we are also not satisfied to hold that the State Government having planted trees on the land of Gram Panchayat has an unrestricted right to cut the trees and take-away the timber.

For the foregoing reasons, we do not find any fault with the High Court having refused to entertain the second appeal against the concurrent findings of facts recorded by the two courts below. Accordingly, this appeal fails and is dismissed. No costs.”

12. Counsel for the State is not in position to dispute that at Item No.51 the detail mentioned is only “Habri Branch”. There is no detail of the land transferred to the forest department.

13. In view of above, this Court finds that in the absence of any detail w.r.t. land given in notification dated 3rd of March, 1972 both the Courts below have rightly found that the defendant failed to prove defence and cannot be allowed to relied upon notification dated 3rd of March, 1972 to claim right upon the trees standing upon the suit land.

14. Keeping in view the fact that there is no infirmity in the finding recorded by the Appellate Court, this Court finds that the issue would be squarely covered by the orders passed by the Supreme Court in Civil Appeal No.939 of 1999 (supra).

15. In view of above, the present appeal is dismissed.

16. Pending application(s), if any, shall also stand disposed off.

September 02, 2024
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes