

**RSA-494-2009****1****IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-494-2009****Reserved on : 02.12.2024****Pronounced on : 16.12.2024**

Gajjan Singh and Anr

*.....Appellants**Versus*

State of Haryana and Ors

*.....Respondents***CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. R.N. Lohan, Advocate and
Mr. Ajay Kumar Yadav, Advocate for the appellants in
RSA-494-2009.

Mr. Ankur Mittal, Addl.AG, Haryana,
Mr. P.P. Chahar, Sr. DAG, Haryana,
Mr. Saurabh Mago, DAG, Haryana with
Ms. Kushaldeep K Manchanda, Advocate
for the State of Haryana.

SURESHWAR THAKUR, J

1. The plaintiffs-appellants are in regular second appeal against the verdict as recorded by learned First Appellate Court whereby the said appeal filed by them against the judgment and decree dated 10.09.2008 passed by the learned Addl. Civil Judge (Sr. Division), Ambala, thus dismissing the plaintiffs' suit, has been dismissed vide judgment and decree dated 05.12.2008 whereby the findings recorded against the plaintiffs by the learned Addl. Civil Judge, thus have been affirmed.

2. The facts, in brief, giving rise to the dispute, can be summarised as

3. Appellants-plaintiffs claiming themselves to be co-sharers in joint possession over the suit land measuring 19K-1M comprising of Killa No.4//24/1, 25, 9//4 as detailed in the head note of the plaint situated at Village Kanjala, filed a suit for permanent injunction, restraining the defendants from preventing them from cutting or removing 55 Safeda trees standing on the suit land. It was pleaded that they were owners of the suit land. Earlier, one Lekh Ram son of Shiv Narain was its owner. After the death of Lekh Ram, the suit land was inherited by his daughter Goran Wati and widow Bhagirathi Devi. After the demise of Goran Wati and Bhagirathi, the suit land was inherited by plaintiff No.2 and his brother Satpal in equal shares.

4. It is averred that 55 Safeda trees were planted and nourished over the suit land, thus by the predecessor(s) of plaintiff No.2. Satpal vide registered sale deed dated 07.04.2005, sold his share in the suit land in favour of plaintiff No.1 and his brothers, namely, Charan Singh, Bant Singh and Sewa Singh. Plaintiff No.2 & plaintiff No.1 along with his brothers became owners in possession of 1/2 share each out of the suit land. As per the plaintiffs, the land was acquired by the State Government for construction of a road, but no compensation was ever paid/granted to them. When the appellants-plaintiffs tried to cut and remove the Safeda trees standing on the suit land, which were ripe for cutting, whereupons respondents-defendants restrained them from doing the same. Repeated requests made to the respondents-defendants, to desist from illegal activities also did not yield any positive result, hence the present suit.

5. Upon notice, the suit was contested by the respondents-defendants, on the ground of maintainability, cause of action, locus standi, estoppel etc. On merits, the factum of plaintiffs being owners in possession of the land was specifically denied. As per the respondents-defendants, thus the suit land is

during the year 1977-78 and the same stand entered in their enumeration register. The area where the trees were standing, had already been declared as protected Forest vide Haryana Government Notification No.S.O.78/C.A.16/27/S/28/79 dated 06.07.1979. The matter of non-payment of compensation as averred by the plaintiffs, according to the defendants, is related to the Land Acquisition Department. While denying the other averments made in the plaint, it was requested that since the trees in question, rather are the property of the Forest Department, therebys they have every right to cut and remove the trees and thus the suit of the plaintiffs sans any merit deserves dismissal.

6. Replication was filed by the appellants-plaintiffs, thus controverting the contents supra as made by the respondents-defendants in their written statement.

7. From the pleadings of the parties, the following issues were framed by the learned trial Court:

- “1. Whether the plaintiffs are entitled to the decree for permanent injunction on the grounds made in the plaint?OPP
2. Whether the plaintiffs have no locus standi to file the suit?OPD
3. Whether the plaintiffs have concealed the material facts from the court?OPD
4. Whether the suit is not maintainable?OPD
5. Relief.”

8. In order to establish their case, both the parties led oral as well as documentary evidence and the learned trial Court on the basis of the adduced evidence, non suited the plaintiffs and the appellate Court also affirmed the verdict as became passed by the Civil Judge concerned wherebys the plaintiffs became non suited.

9. Learned counsel for the appellants contends, that the findings recorded by both the courts below in dismissing the suit are patently illegal and

the same are liable to be set aside. Both the courts below have failed to take into consideration evidence, that has a material bearing on the adjudication of the warring claims of the parties, whereupon thus erroneous and perverse findings, thus, have been concurrently recorded by both the learned courts below.

9 (i). He has referred to Ex.PW2/A and Ex.PW3/A as adduced by the plaintiffs Gajjan Singh and Yash Pal. Besides, he makes an allusion to the Jamabandi and Khasra girdawari, thus to contend that the predecessor in interest of plaintiff No.2 had planted the Safeda trees on the suit land owned by the plaintiffs.

9 (ii). Counsel for the present appellants also contends that the said planted Safeda trees over the suit land were also nourished by them. Furthermore, counsel for the plaintiffs also contends that the suit land became demarcated by a revenue Officer, who in his demarcation report found the defendants to be holding illegal and unauthorized possession over some portion of the suit land. In addition, since no compensation in respect of any land acquisition proceedings was ever paid to the owners of the suit land by the Government Department. Cumulatively, on the supra grounds, it is contended that the plaintiffs being the recorded owners of the suit land, thus become entitled to cut and remove the safeda trees as exist over the suit land, wherebys they contend that the impugned verdict requires interference.

10. Per contra, the learned counsel for the defendants-respondents submits, that well made reasonings, thus occur in the impugned concurrently passed judgments and decrees by both the courts below, especially when there is tangible evidence in display that the safeda trees were planted and nourished by the Forest Department. As the said fact becomes further established from the Enumeration register prepared by the Forest Department, to which Ex.DW1/B becomes assigned. Therefore, he contends that since there is also further tangible evidence, which displays that the trees along the Jolly Kanjala road were planted

by the Forest Department after incurring huge expenditure, besides were so pleaded in terms of the Policy of the Haryana Government, thus envisaging that the trees were to be planted along with public road, canals, bandhs hence, for the protection and purifying of the environment. Therefore, when through a Notification becoming issued by the Forest Department in the year 1979, whereby the area along Jolly Kanjala Road became declared to be a protected Forest Area, besides with the said Notification covering the suit land, thereby plaintiffs are not entitled to cut and remove the trees nor they are enabled to claim the rendition of the espoused decree.

11. We have heard the learned counsel for the parties and with their able assistance have fully appraised the entire record.

12. Before proceeding to render a decision on the instant RSA, it is necessary to hereinafter extract the substantial question of law which became formulated on 10.09.2009, thus for thereons a decision becoming rendered by this Court.

“Whether the trees planted by the defendants on the land of the plaintiff-appellants can be permitted to be felled in terms of Section 35 of the Forest Act, 1927 and Section 2 of the Forest (Conservation) Act, 1980?”

13. Thereafter, a formulation of the supra substantial question of law which is to be normally formulated by an RSA Court and which has been so done, thereafter the learned Single Judge proceeded to refer the matter for an authoritative decision thereons becoming made by a Larger Bench, whereafter the papers of the RSA were asked to be put up before Hon’ble the Chief Justice for the constitution of Larger Bench. Since thereafter, the instant RSA has been referred to this Division Bench qua renditions of answer(s) vis-a-vis the hereinabove

extracted formulated substantial question of law. Resultantly, since the rendition

of answer to the supra substantial question of law also, incidentally requires delving into the entire adduced evidence besides requires the making of a decision over the merits of the lis. Therebys, this Court proceeds to both delve into the merits of the lis and also proceeds to make an adjudication thereovers.

14. The plaintiffs filed a suit seeking a decree of permanent injunction, thus restraining the defendants from preventing them from cutting the thee supra. Though the Revenue records prima facie detail that the plaintiffs owned the suit land whereovers safeda trees became purportedly planted by them.

15. However, the issue which fell for consideration related to whether the safeda trees became planted, on the suit land purportedly owned by the plaintiffs respectively, rather by the plaintiffs or by the defendants, besides related to whether plaintiffs or the defendants, thus subsequently nourishing the said planted safeda trees. The plaintiffs adduced only oral evidence to support that the safeda trees as exist over the suit land, purportedly owned by them, thus became planted by them over the suit land besides, adduced oral evidence to the effect, that the said planted safeda trees were also subsequently groomed and nourished by them.

16. Therefore, the tenacity of the adduced oral evidence is to be adjudged. Though both the learned courts below on evaluating the said adduced oral evidence concluded that therebys the plaintiffs are required to be non suited, however, yet the validity of the supra recorded findings are yet to the adjudged by this Court.

17. In the said regard, since both PW2 and PW3 in their respective cross examinations, openly acquiesced to the suggestion(s) that the respondents-defendants had in fact planted safeda trees along Jolly Kanjala Road. Likewise, when PW1 Hari Chand also admitted the said fact, therefore, the consequent effect of the said admissions as made by the witnesses in their respective cross examination, but is that, qua therebys the plaintiffs-appellants herein becoming

estopped to contend that the safeda trees were planted by them over the suit land. Besides, they also are concomitantly estopped to contend that they did nourish and groom them. Further, the sequel of the said estoppel working against the present appellants, is that, they are further estopped to claim any right whatsoever vis-a-vis the safeda trees, even if they purportedly exist over the suit land, and even if the present plaintiffs are purportedly the owners of the suit land. Naturally therebys the plaintiffs are estopped to seek a decree that they are entitled to fell safeda trees.

18. Fortified vigour to the said inference is borrowed from the Enumeration Register-Ex.DW1/B with the clear displays therein, that the safeda trees were planted over the khasra number, therebys but obviously it has to be concluded that rather than the plaintiffs-appellants planting the safeda trees over the suit land, thus the defendants-respondents not only planting them but also subsequently grooming them. Though the effect of said estoppel does not completely bar the present appellants to yet contend that they have a right to fell the safeda trees. Moreover, though they depend on demarcation report to contend that there has been an Illegal occupation of the suit land at the instance of the respondents-defendants. However, the plaintiffs can draw no benefit from the said demarcation report, as it has been declared in the concurrent verdicts, pronounced respectively by the Civil Judge concerned and by the first Appellate Court, that no evidentiary value can be assigned to said demarcation report, as the said demarcation report, was prepared behind the back of the respondents. Resultantly when therebys, there is breach caused to the principles of natural justice besides when there is also a breach to the cannon relating to be carrying out of a valid demarcation of the disputed khasra numbers, especially when the demarcating officer is required to issue notice to all the persons concerned for seeking their participations in the demarcation proceedings. However, since there existed no

evidence on record, to display, that prior to the demarcating proceeding being embarked upon qua the disputed site, rather the demarcating officer making an apposite intimation to the defendants-respondents concerned. Consequently therebys, it is to be concluded that the demarcation report is fallible as it became prepared behind back of the respondents. Furthermore, the further effect thereof is that, the supra demarcation report does not assign any privilege to the present appellant to contend, that the decrees rendered against them by both the courts below are required to be interfered with.

19. Now having delved into the merits of the case and also having for above stated reasons, drawn a conclusion which is but required to be so drawn, that the concurrently made decrees against the present appellants rather do not suffer from any infirmity. Nonetheless fact which has an utmost besides an overriding importance rather for this Court declining the espoused decree to the plaintiffs, thus becomes grooved in the hereinafter rendered answers to the substantial question of law supra, as became formulated by this Court.

20. In case, this Court ultimately concludes that Notification supra wherebys the suit land, where over the safeda trees become planted, thus was declared to be a protected forest, thus has the request curtailing effects qua the espoused decree, therebys obviously the consequent thereto statutory effects, would but naturally ultimately override the rights, if any, of the plaintiffs to claim that they have any right to fell safeda trees as exist over the suit land. The Notification supra, became tendered into evidence by the official of the defendants-respondents and thereto became made an untested exhibition mark i.e. Ex.DW1/D. The sequel of an untested exhibition mark becoming made on the Notification supra, but is that, the plaintiffs acquiescing to the factum that the suit land also became covered within the Notification supra.

21. Now the statutory effectivity of the declaration made in the supra Notification, that the suit land is a protected forest, is to be gauged, from the provisions which occur in Section 35 of the Indian Forest Act, 1927 (for brevity “the Act”) provisions whereof are extracted hereinafter.

“35. Protection of forests for special purposes. - (1) The [State Government] may, by notification in the Official Gazette, regulate or prohibit in any forest or waste-land-

(a)the breaking up or clearing of land for cultivation;

(b)the pasturing of cattle; or

(c)the firing or clearing of the vegetation;

when such regulation or prohibition appears necessary for any of the following purposes:

(i) for protection against storms, winds, rolling stones, floods and avalanches;

(ii) for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of land-slips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;

(iii) for the maintenance of a water-supply in springs, rivers and tanks;

(iv) for the protection of roads, bridges, railways and other lines of communication;

(v) for the preservation of the public health;

(2)*The [State Government] may, for any such purpose, construct at its own expense, in or upon any forest or waste-land, such work as it thinks fit.*

(3)*No notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue of a notice to the owner of such forest or land calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the [State Government].”*

22. The supra statutory prohibitions are required to be fully potentialized as thereupons the thereunders spelt spellings, thus would cause the well ensual of the concomitant theretos, thus beneficent effects to the environment. As such, when through supra provisions, thus the felling of trees as exist over the suit land rather becomes statutorily barred, thus for bestowing the beneficent effects theretos vis-a-vis the environment, besides, when the notification supra does, also undo the ill effects of ecological imbalances, as may arise on the supra statutorily prohibited acts being permitted to be done over the suit land. Resultantly, the statutorily prohibited acts cannot be permitted to be indulged into by the present appellants over the suit land as therebys the holistic disaster management mechanism as pronounced in the supra provisions rather would becomes completely jeopardised.

23. In consequence, supra substantial question of law is to be answered in favour of the respondents-defendants and against the plaintiffs, whereby even if assumingly the plaintiffs are owners of the suit land, yet therebys they cannot be permitted to fell the trees, as thereupons there would be an imminent cascading ill effect on the environment, whereas, for preservation thereof Section 35 supra has been incorporated in the 1927 Act.

24. Now since the supra substantial question of law also embodies the effectivity of the provisions as carried in Section 2 of the Forest (Conservation) Act, 1980 (in short “the Act of 1980”) therefore it is necessary to also extract the said provision, which reads as under:

“2. Restriction on the dereservation of forests or use of forest land for non-forest purpose- Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-

- (i) that any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;*
- (ii) that any forest land or any portion thereof may be used for any non-forest purpose;*
- (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;*
- (iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.]*

Explanation.- For the purposes of this section “non-forest purpose” means the breaking up or clearing of any forest land or portion thereof for-

- (a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;*
- (b) any purpose other than reafforestation,*
but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridgeworks and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.]”

25. A reading of the supra provision clearly indicates that upon any area becoming declared to be a forest area, through a Notification being made, in terms of Section 35 of the Act, yet the statutory effects thereto yet can be well undone through a notification becoming issued in terms of Section 2 of the Act of 1980. However, till the said de-reservation of the presently declared protected forest, which covers the suit land, rather is made, thus there upto, the present appellants cannot proceed to seek any decree for restraining the defendants from prohibiting them from felling the safeda trees as exist over the suit land and which may be purportedly owned by them.

26. Be that as it may, since the cause of action for the filing of a suit for permanent prohibitory injunction, rather is a recurring cause of action, thereby and importantly also when a fresh cause of action may arise vis-a-vis plaintiffs-appellants, thus on the issuance of a Notification, in terms of Section 2 of the Act of 1980, whereby the instant protected forest may become de-reserved. Therefore, on the making of the said Notification, the plaintiffs may proceed to institute a fresh suit.

27. Bearing in mind all the above stated reasons and after answering the substantial question of law supra in favour of the defendants-respondents, this Court at this stage, thus affirms the concurrently made judgments and decrees, thus rendered by both the learned courts below, whereby the plaintiffs have been non-suited vis-a-vis their claim for the rendition of decree of permanent prohibitory injunction for restraining the defendants from precluding them from felling the safeda trees. As a natural sequel thereto, the instant appeal is dismissed with the liberty supra. No costs.

Decree sheet be accordingly drawn.

(SURESHWAR THAKUR)
JUDGE

16.12.2024
manoj

(SUDEEPTI SHARMA)
JUDGE

- 1. Whether speaking/ reasoned : Yes /No
- 2. Whether reportable : Yes /No