**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****202****RSA-1433-1998 (O&M)****Date of decision: 03.05.2025****State of Punjab and another****...Appellant(s)****Vs.****Punjab Singh and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Manmeet Singh Teji, A.A.G., Punjab
assisted by Mr. Mohinderpal
(Forest Range Officer Lehragaga) and
Mr. Jagvir Singh (Forest Beat Incharge Khanauri),

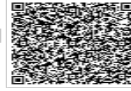
Mr. Ajay Kumar Yadav, Advocate for
respondents No.1 and 2.

NIDHI GUPTA, J.

Present appeal has been filed by the defendant-State of Punjab against the judgment of reversal whereby the suit filed by the respondents/plaintiffs seeking recovery of possession of the suit land as described in the plaint; and permanent injunction, was dismissed by the learned trial Court vide judgment and decree dated 19.03.1997. The appeal filed by the plaintiffs was partly allowed by the learned lower appellate Court vide judgment and decree dated 12.11.1997.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellants are the 'defendants'; and respondents are the 'plaintiffs'.

3. Brief facts of the case are that the plaintiffs had filed the present suit for recovery of suit land measuring 1K 12 M in killa Nos. 7//6(0-



16), 7//14(0-16), situated at Karoda river side, in which 23 trees were planted by the plaintiffs; along with injunction to restrain the defendants from cutting and removing the above said trees from the suit land illegally and forcibly. The plaintiffs have averred that they are owners of the suit land, described fully in the head note of the plaint, in which they have planted 23 trees and defendants have no concern or connection with the same. Defendants have encroached upon the suit land illegally and forcibly. In this respect, they (plaintiffs) have already got their land demarcated from Field Kanungo on 21.8.1987 and the Demarcation report is attached. Now, the defendants want to cut these trees illegally and forcibly, whereas they have no right to do so and if the defendants succeed in doing this illegal act, they will suffer irreparable loss, which will not be compensated in terms of money. Plaintiffs requested the defendants several times not to do this illegal act, but they did not bother to accede to their requests. Hence, the present suit was filed on 15.09.1994.

4. Upon notice, defendants appeared and filed joint written statement taking preliminary objection that the suit was barred by res judicata. It was averred that in respect of the same suit land and with the same grievance the plaintiffs had already filed a suit on 8.3.1982 which was dismissed on 23.10.1982. Similarly, another suit dated 8.6.88 which was instituted by the plaintiffs was also dismissed on 27.1.1993. The Photostat copies of the judgments of both the suits have also been filed as Annexure E. On merits, it was stated that disputed trees were in fact standing in khasra No. 107 which was in the ownership of Provincial Government and



the same is under the possession of Makbuja Mehkma Nehar Akash Latha as evident from jamabandi for the year 1989-90 attached with the written statement as Annexure A and B. In respect of encroachment, it was clarified that the land is in the ownership of the defendants and strictly under their possession and that the plea of encroachment of the plaintiffs is false and baseless. It was reiterated that the disputed trees are standing in the land under the ownership and possession of the Provincial Government and the same have also been recorded in numeration register Bhakra Nehar Burji Nos. 486 and 487, left side. Photocopy of the same was attached as Annexure C. Accordingly, dismissal of the suit was prayed for.

5. No replication was filed.

6. On the basis of pleadings of the parties, following issues were framed on 05.06.1995: -

- “1. Whether the plaintiffs are owners of suit land, more fully described in the cause title of the plaint? OPP.
2. Whether the plaintiffs had planted 23 trees on the suit land, more fully described in the cause title of the plaint? OPP.
3. Whether the defendants have been in unauthorised and forcible possession of the suit land?OPP.
4. Whether the plaintiffs are entitled for recovery of the possession of the suit land? OPP.
5. Whether the plaintiffs are entitled for grant of injunction, as prayed? OPP.
6. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD.
7. Whether the suit is hit by principles of res-judicata ?OPD.
- 8) Whether a valid notice u/s 80 CPC was served by the plaintiffs on the defendants before institution of the suit? OPP.

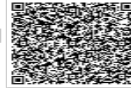


9) Relief.”

7. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issues No. 1 in favour of the plaintiffs and against the defendants; issue No. 2 in favour of the defendants and against the plaintiffs, issues No.3 and 4 in favour of defendants and against the plaintiffs; issue No. 5 against the plaintiffs and in favour of the defendants; issue No.7 in favour of the defendants and against the plaintiffs; issue No. 8 in favour of the plaintiffs and against the defendants, with respect to issue No. 6 no arguments were addressed; and accordingly, vide judgment and decree dated 19.03.1997, the learned trial Court dismissed the suit of the plaintiffs with costs.

8. The appeal filed by the plaintiffs was partly allowed by the learned District Judge, Sangrur vide judgment and decree dated 12.11.1997 to the extent that the appellants were restrained from removing the 23 trees standing on the disputed land illegally and forcibly other than in due course of law. Hence, the present second appeal by the defendants.

9. It is *inter alia* submitted by learned counsel for the appellants that the learned lower appellate Court was in patent error in partly allowing the appeal of the plaintiffs by restraining the appellants from removing 23 trees standing on the disputed land except in due course of law, as it had failed to appreciate that the disputed trees are standing in khasra No. 107, which is in the ownership of Provincial Government and same is under the possession of Makbuja Mehkma Nehar Akash Latha. The learned lower Appellate Court has also failed to appreciate that the plaintiffs have not

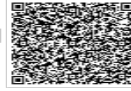


approached the Court with clean hands as previously they had filed the suit on 08.03.1982 relating to the same dispute; which was dismissed on 23.10.1982. Thereafter, the plaintiffs had filed yet another suit on 08.06.1988 relating to the same disputed property, which was also dismissed on 27.01.1993 (Ex.P7) by the Sub Judge 1st Class, Sunam, certified copies of the said judgments were placed on record as Annexure 'E'. Thus, present suit is the 3rd suit. However, these facts have not been disclosed by the plaintiffs in the plaint. It is accordingly prayed that the present appeal be allowed; and the judgment and decree of the learned lower appellate Court to the extent that it restrained the appellants from removing 23 trees standing on the disputed land be set aside. *"It is therefore, prayed that the present appeal be allowed; and the judgment and decree passed by learned lower Appellate Court be set aside and suit of the plaintiffs be dismissed by a judgment and decree of the trial Court."*

10. Learned counsel for the respondents/plaintiffs submits that the impugned judgment and decree of the learned lower appellate Court suffers from no infirmity. It is submitted that it is the clear finding of both the learned Courts below that the suit land is in ownership of the respondents. As such, appellants have no right over the same. It is accordingly prayed that the present appeal be dismissed.

11. No other argument is raised on behalf of the parties.

12. I have heard learned counsel for the parties as well as gone through the case file and lower Court record in minute detail. I have also



given my thoughtful consideration to the rival submissions made on behalf of both the parties.

13. I find merit in the submissions advanced on behalf of the appellants. Perusal of the headnote of the plaint reveals that respondents had filed *“suit for recovery of possession of land 1 kanal, 12 Marla comprised in Killa no. 7//6(0-16), 7//14(0-16), Total 1 Kanal, 12 Marla, situated at canal/river side in Village Karoda, in which plaintiffs had planted 23 trees; and suit for Permanent Injunction to the effect that defendants wanted to cut said 23 trees, unlawfully and defendants also prevent plaintiffs from cutting said trees and whereas defendants have no right to do so and defendants be restrained from doing this forever.”*

14. In para 2 of the plaint, respondents had pleaded as follows: -

“That the plaintiffs had planted, 23 tree in suit land and the plaintiffs are owner of said 23 trees and defendants has no concern with suit land and also no concern with said trees, standing in suit land.”

15. In response thereto, the appellants had filed written statement, in which, in Parawise Reply on merits to the above said para 2 of the plaint, the appellants had replied as under: -

*“That para no. 2 of plaint is wrong and not admitted, hence denied and replied that there is no tree standing, in land of plaintiffs. Disputed trees are standing in **Khasra no. 107** and **Provincial Government** and **Makboza Mehkama Nehar** is owner of said **Khasra no. 107** and of disputed trees, **Akas latha** and copy of **Jamabandi 1989-90**, attached as **Annexure A and B**, with written statement.”*



16. The relevant para No. 3 of parawise reply on merits is also reproduced hereinbelow:-

*“That para no. 3 of plaint is wrong and not admitted, hence denied and replied that land of plaintiffs is not in possession of defendants and defendants has complete possession of **Government land / Khasra no. 107** and which trees standing in **Government land / Khasra no. 107** are properly numbered and government record also maintained of said trees and copy of **numeration register of left side of Bhakra Canal Burzi no. 486,487** attached as **Annexure C** with written statement and plaintiffs had not get demarcated any demarcation, which is correct as per Kannugo.”*

17. From the perusal of the above pleadings, it is clear that it was unambiguous and categorical case of the appellants that there are no trees standing in the land of the plaintiffs viz killa No. 7//6(0-16), 7//14(0-16). It has further been stated in the written statement that the disputed trees are standing in khasra No. 107, which is in the ownership and possession of Provincial Government and Makboza Mehkama Nehar Akash Latha. Admittedly, no replication was filed by the plaintiffs. As such, said facts are taken to be admitted by the plaintiffs. Argument of the plaintiffs to the effect that the suit land was admitted to be in the ownership of the plaintiffs is misconceived, as the defendants have clearly stated that they have no concern with the suit land comprising in killa No. 7//6(0-16), 7//14(0-16). The ownership of the plaintiffs over the said land has not even been disputed or contested by the defendants. As per jamabandi for the year 1989-90 Ex.P6, plaintiffs were proven to be owners of the suit land purchased from one Aka Devi.



18. However, in respect of the disputed 23 trees learned trial Court had decided the said issue No.2 against the plaintiffs on the ground that it had been admitted by the plaintiff Punjab Singh as PW1 that he had purchased the suit land only about 10 years back and that the trees in question had been planted by his predecessor-in-interest. However, the plaintiffs had failed to produce the Sale Deed vide which they had purchased the suit land along with trees. As such, plaintiffs had withheld the best material evidence to prove their case.

19. On the other hand, the defendants had proved that the trees were planted by Forest Department/defendant No.2 in the year 1968-69. In support, defendants had produced relevant ledger Ex.DB, as per which a sum of Rs.13,367.75 was spent by them on the plantation and sundry expenses such as upkeep etc. of these trees. Subsequently, all the trees were also properly counted and allotted specific numbers under the process of numeration. The photocopy of the numeration register No. 212 L 94-95 is Ex.DA which has been proved on file by DW1 Niranjan Singh. The entire record in respect of the said trees was produced by the defendants as Ex.D8, which was proven from the evidence of DW1 Niranjan Singh.

20. As regards the issue No.3, whether the defendants have been in unauthorized possession of the suit land, it is not disputed that in the previous suits filed by the plaintiffs on dated 8.3.1982/dismissed on 23.10.1982; and second suit filed on 08.06.1988/dismissed vide judgment dated 27.01.1993 Ex.P7 no mention is made that defendants were in illegal



and unauthorized possession of the suit land. Even in the present suit no specific date of dispossession is mentioned. Merely a bald statement has been made unsupported by any evidence alleging that the defendants were in illegal and unauthorized possession of the suit land. Even in the Report of the Local Commissioner Ex.P5, there is no mention of any unauthorized possession of the defendants over the suit land. Furthermore, in view of the clear admission of the defendants that the suit land is in the ownership of the plaintiffs, the likelihood of their taking forcible possession of the suit land is nullified. As such, it was correctly held that there is no question of entitlement of the plaintiffs to recover possession of the suit land.

21. The record reveals that the plaintiffs had further relied upon Demarcation Report Ex.P5 to contend that the disputed trees were standing on the suit land. However, the said Demarcation Report was not reliable, as demarcation was not carried out in accordance with law *in-as-much* as measurement of the suit land was done only from 2 fixed points; whereas as per law, the same has to be done from at least 3 points. Regarding pucca points, it has been admitted by Hamir Singh Field Kanungo PW2 in his cross-examination that in the Demarcation Report carried out on 07.04.1990 by the Naib Tehsildar/Local Commissioner, 2 firm points were taken and that demarcation was done by Tehsildar. PW2 has further admitted that he does not know of which khasra No. demarcation was done. Reference is made to judgment of this Court fast in "**Haryana Wakf Board vs. Asha Rani and another Law Finder Doc Id # 813946**" and of Himachal Pradesh High Court in "**Sushma Devi and**



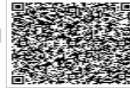
another vs. Ramesh Chand and another Law Finder Doc Id# 762710”;

wherein it is held demarcation carried out with fixing three pucca points or without recording the statement of the plaintiffs and defendants on the spot is not reliable.

22. Furthermore, even the Local Commissioner who had submitted Demarcation Report was never examined. Thus, reliance of the plaintiffs upon the Demarcation Report is misconceived.

23. Moreover, it has been admitted by the plaintiffs that previously also 2 suits were filed relating to the same dispute: the first suit filed on 08.03.1982 was dismissed on 23.10.1982. The second suit was filed by the plaintiffs on 08.06.1988 relating to the same disputed property which was also dismissed on 27.01.1993. Filing of the previous suits was admitted by plaintiff Punjab Singh as PW1 in his cross-examination as *“It is correct that I have earlier also filed Civil Suit regarding these trees and trees were planted by my father.”* As such, present suit of the plaintiffs filed on 15.9.1994 was correctly held to be barred by res judicata.

24. Learned lower appellate Court has upheld all the above findings of the learned trial court. However, the learned lower Appellate Court has modified the decree of the learned trial Court the limited extent of holding the plaintiffs to be owners of the disputed trees only on the ground that *“standing tree belongs not to the person by whom it was planted, but to the owner of the land from which it draws its support and sustenance.”* Accordingly, the learned lower appellate Court had directed



that appellants had no right to remove the said trees. However, the said reasoning of the learned lower appellate Court is flawed as it was already established that the suit of the plaintiffs was barred by res judicata. As such, the said prayer could not have been granted to the plaintiffs merely on the flimsy ground that their previous suit was dismissed vide judgment and decree dated 27.01.1993 Ex.P7 on technical ground that no notice under Section 80 CPC was issued or served upon the Punjab State before filing the suit, and therefore, would not operate as res judicata. It is my considered view that this reasoning of the Id. lower Appellate Court is misconceived as it is not denied that even prior to passing of Ex.P7, the first suit of the plaintiffs had been dismissed vide judgment and decree dated 23.10.1982.

25. In view of the above uncontroverted evidence on record, the present appeal is **allowed**. The judgment and decree dated 12.11.1997 passed by learned lower appellate Court to the extent that it restrained the appellants from removing the 23 trees standing on the disputed land is set aside; and the judgment and decree dated 19.03.1997 passed by learned trial Court dismissing the suit of the plaintiffs, is restored.

26. Pending applications, if any, stand disposed of.

03.05.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No