IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

206 **RSA-1087-2011 (O&M)**
Date of decision: 02.08.2025

Mangat Ram and others **...Appellant(s)**

Vs.

Karnail Singh and another **...Respondent(s)**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Neha Jain, Advocate
for the appellants.

Mr. Deepak Verma, Advocate
for respondent No.2 (through V.C.)

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NIDHI GUPTA, J.

The plaintiffs are in Second Appeal against the concurrent judgments and decrees of the Courts below; whereby the suit filed by the appellants for recovery of Rs.1,00,000/-along with interest @ 18% per annum, has been dismissed by both the Courts below.

2. Brief facts of the case are that the appellants had filed a suit claiming to be owners in possession of suit land as described in the plaint. It was pleaded that 20 big Kikkar trees were standing in the said land which were more than 30 yers old and were valued at more than Rs. 2 lacs. It was alleged that in November 1998, defendants had forcibly cut the said trees from the said land despite the fact that the plaintiffs had tried to stop them. Panchayat was convened and it was agreed that the suit land be demarcated, pursuant to which plaintiffs moved an

application dated 03.12.1998 before the Tehsildar for demarcation of the suit land. The suit land was demarcated on 27.08.1999 and it was found that trees have been cut from Khasra No. 175 belonging to the plaintiffs. Thereafter despite repeated efforts, defendants refused to make the payment. As such, plaintiffs instituted the present suit on 06.04.2000.

3. Upon notice, defendants had appeared and resisted the suit by filing written statement. It was pleaded by the defendants that there were no Kikkar trees growing in Khasra No.175. As such, question of cutting and removing of trees by the defendants did not arise. It was also denied that defendants had ever cut and removed any tree from the land of the plaintiffs comprising in Khasra No. 175. All averments in the plaint were denied and dismissal of the suit was prayed for.

4. Replication was not filed.

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

> *"1) Whether defendants cut and removed the standing trees from the land of the plaintiff in November, 1998 and agreed to repay Rs.1 Lac, if after demarcation the land from which trees were cut, found to be owned by the plaintiffs? OPP*
> *2. Whether in demarcation dated 27.8.1999 trees were found to be cut from the land owned by the plaintiff? OPP*
> *3. Whether plaintiffs are entitled to recover the suit amount? OPP*
> *4. Whether plaintiffs are estopped from filing the suit by their own act, conduct and admission? OPD*
> *5. Relief."*

6. Upon appraisal of the pleadings and the evidence led by the parties, ld. trial Court, vide judgment and decree dated 01.06.2009, dismissed the suit of the plaintiffs. The appeal filed by the plaintiffs was dismissed with costs by the ld. lower appellate Court vide judgment and decree dated 08.10.2010. Hence, present Second Appeal by the plaintiffs.

7. It is *inter alia* submitted by learned counsel for the appellants/plaintiffs that both the learned Courts below have gravely erred in coming to the conclusion that the appellants have failed to prove on record the removal of the trees. In the Judgments, it has been observed that PW1 Rehmat Ali has deposed that he has not seen the respondents cutting and removing the trees. Therefore, on the statement of the said witness, the Suit filed by the appellants has been dismissed. However, the statement of said witness has been mis-interpreted and erroneously taken as admission especially when he has categorically mentioned that he knows the parties and Khangi Panchayat was convened wherein the respondent party agreed to make the payment of the amount. Moreover, the material witness PW2 Niranjan Singh has clearly deposed that the respondents were cutting trees, and he informed Mangat Ram/PW3. In his cross-examination, he has further deposed that when he enquired from them with regard to the cutting, it was intimated that they are cutting from their own land. Keeping in view the statement of PW2 and PW3, it was proved that the respondents have cut the trees from land belonging to the appellants.

8. It is further submitted by learned counsel for the appellants that both the Learned Courts below have gone wrong in not considering that the respondents appeared in the Panchayat and agreed that demarcation of the land be done and after demarcation in case, the trees which were cut would fall in the land belonging the appellants, then a sum of Rs. 1 Lac will be paid. Resultantly, as per the Agreement, an application was given on 3.12.1998 to the Tehsildar for the purpose of measuring Khasra No. 175 (30K-9M) and ultimately the demarcation had taken place on 27.8.1999 and during the demarcation, the land from where the trees were cut and removed came to the share and ownership of the present appellants. The demarcation report has already been proved on record by Satnam Singh Patwari Halqa. He has clearly mentioned that he was directed by the Tehsildar, Garshankar to conduct the measurement at Village Lasara and as per the direction of the Tehsildar, he conducted the measurement on 27.8.1999 and submitted its Report. In the cross-examination, he has clearly mentioned that in Khasra No. 175, there were only 2-3 Kikkar trees standing and 23 Kikkar trees had been cut, which was visible at the spot. Keeping in view the statement of PW4 as well as the Report Ex. P1, it was amply clear that the trees were cut from the land of the appellants, yet they have not been given the value of the trees.

9. Learned counsel further submits that both the Courts below have gone wrong in not taking into consideration that except the self serving statements of the respondents, there exists no evidence on record, which can revert the demarcation report as well as the statement

of the PWs, which clearly points out that the respondents have removed the trees from the land in question.

10. It is accordingly prayed that the impugned judgments and decrees be set aside, and the suit be decreed in favour of the appellants.

11. *Per contra,* learned counsel for the respondents/defendants opposes submissions made on behalf of the plaintiffs and submits that the impugned judgments and decrees suffer from no error apparent. There is no infirmity in the procedure of law. As such, jurisdiction of this Court to interfere in the concurrent findings of the fact returned by the learned Courts below, is not exercisable in the present appeal.

12. On merits, it is submitted that Report of Halqa Patwari cannot be relied upon as the same was procured. It is pointed out that the application of the plaintiffs was only for demarcation of the suit land. As such, Halqa Patwari was not required to, or asked to submit report in respect of trees. Halqa Patwari has therefore gone beyond the application, which proved that the said report is procured.

13. It is further submitted by learned counsel for the defendants that the present Civil Suit filed by the plaintiffs is a counterblast to the application moved by the defendants to the concerned authorities as Plaintiffs were doing illegal mining in Khasra No. 318 in which plaintiffs were not even the co-sharers. In the said case, injunction was issued against the plaintiffs qua Khasra No. 318 and other Khasra Nos. as well, which has led to filing of the present malafide litigation against the defendants. It is accordingly prayed that the present appeal be dismissed.

14. In rebuttal, it is submitted by learned counsel for the plaintiffs that DW1 has admitted that land of the defendants is adjacent to the land of the plaintiff. It is submitted that therefore, it is proved that defendant had cut the trees on the land of the plaintiffs.

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

16. I have heard learned counsel and perused the case file and the lower Court records in minute detail. I find no merit in the submissions advanced on behalf of the plaintiffs.

17. It has firstly been submitted on behalf of the plaintiffs that 20 big Kikkar trees which were standing on the land of the plaintiffs, have been cut by the defendants. However, admittedly, initially there was a boundary dispute between the parties. Consequently, upon an application dated 3.12.1998 made by the plaintiffs, demarcation was conducted by Halqa Patwari on 27.08.1999. From the Demarcation Report Ex.P-1, it stands established that trees were standing in Khasra No. 175. However, in order to prove that any encroachment or cutting of trees was done by the defendants, it was necessary for the plaintiffs to establish that Khasra No. 175 was in any close proximity of the land of the defendants. As per the concurrent findings returned by both the Courts below, the plaintiffs were not able to prove the said fact. It was found by both the Courts below that the plaintiffs had failed to discharge their onus to show that any specific land of the defendants was adjoining Khasra No. 175. Admittedly, no site plan was produced by the plaintiffs which could indicate that Khasra No. 175 was adjoining the land of the defendants, which could show any

encroachment by the defendants or that they had entered upon the land of the plaintiffs to cut the trees. Even no pleading, let alone any evidence was led by the plaintiffs in this regard.

18. Further, even nothing has been stated as to how many trees were standing on the land and how many Kikkar trees were left after the alleged cutting of trees by the defendants. Perusal of the plaint shows that even number of Kikkar trees which were growing in Khasra No. 175 in 1998, have not been mentioned. It has only been stated in the plaint that "*Twenty Kikkar trees of the plaintiffs were standing in the said land.*"

19. Further, as per the Report (Ex.D3) of the Local Commissioner, 20 Kikkar trees were still standing in Khasra No. 175. Plaintiffs were unable to dispute the said report. Instead, they have placed reliance upon Report of Halqa Patwari Ex.P1. However, the said Report Ex. P1 does not inspire confidence of this Court for the reason that defendants were not associated with the said proceedings. In the proceedings conducted by Halqa Patwari, the defendants had not participated, neither any summons were issued to them. Whereas, in the Local Commissioner proceedings, plaintiffs had very much participated. Moreover, Local Commissioner was appointed by Court albeit on the application of the defendants and his report is therefore, reliable. Further, the Order of Tehsildar to Halqa Patwari was only to demarcate the Khasra No. 175. No Report was sought regarding the trees. Therefore, Halqa Patwari went beyond the direction of Tehsildar, and reported on the trees which was not asked of him. It would therefore appear that there is some merit in the argument of the

respondent/defendant that the said report was procured by the appellant/plaintiffs.

20. It has also been admitted by PW3/plaintiff No.1 that no complaint was made by the plaintiffs before the police or to the Gram Panchayat in regard to the 20 big Kikkar trees allegedly cut by the defendants in November 1998. There are also discrepancies in the statements made by the plaintiffs in their evidence. In this regard reference made to the evidence of the plaintiffs by the learned trial Court in the judgment dated 01.06.2009 is relevant, which reads as under: -

> *"17..... PW-2 Niranjan Singh claims that he saw the defendants cutting the trees and he informed the plaintiff No.1 Mangat Ram. Mangat Ram, PW-3 claims that he went to the field alone and he tried to stop the defendants. The defendants have proved Fard Jamabandi Ex.D4 regarding the land of Faquir Mohammad defendant No.4. The said land as is clear from the site plan Ex. D1, adjoins Khasra No.175. PW-3 admits this fact and he states that the houses of Faquir Mohammad and his family are located on the hill over-seeing Khasra No.175. Faquir Mohammad is one of the co-owners of Khasra No.175. In case the trees were cut by defendants, he would have naturally seen them. The cross-examination of PW-3 Mangat Ram in the present case is very revealing. He states that he does not know in how many days, the 20 Kikkar trees were cut by the defendants. But, he claims that he came to know about it only on the last day. PW-3 claims that when he reached the spot, the cut logs of wood were being loaded into the Tractor Trolley, but he does not know the registration number of the Tractor. He also does not know the makes of the Tractor. PW-3 Admits that he did not*

know any of the said 10/12 persons. He also did not know the name of the tractor driver. He also states that the defendants were not present at the time demarcation of Khasra No.175 and land of defendants does not adjoin the suit property. PW-3 also does not know regarding the sizes of the logs of wood, which were cut by the defendants. PW-3 states that he only came to know on the last day when wood was being loaded in the tractor Trolley. The PW-3 does not state that the wood of 20 big Kikker trees can be loaded into one Tractor Trolley. The PW-3 in his cross-examination states that in the first meeting of the Khangi Panchayat, the defendants stated that first land should be demarcated and only then, they would talk about anything else. At the time of second Khangi Panchayat which held after the demarcation, the defendants demanded more time. PW-3 admits that at the second Khangi Panchayt, there was no talk regarding the money. In these circumstances, I am of the considered view that there is no documentary evidence or clinching oral evidence to show that the defendants ever admitted the liability to make payment of Rs.1,00,000/-to the plaintiffs for the trees, allegedly cut from the land of the plaintiffs.

21. Relevant findings of the learned lower appellate Court are contained in para 18 of the judgment dated 08.10.2010, which are as under:-

"18. The perusal of the evidence on record reveals that the plaintiffs have failed to show which land of the plaintiffs adjoins to the land of the defendants. The onus was on the plaintiffs to show specific land of the defendants adjoining to Khasra No.175 and to show the specific spot with the help of a site plan, from which, the trees were cut. The plaintiffs also did not show with the help of site plan, the specific spot, from

which, the trees were cut. The plaintiffs have not placed on record any site plan showing the points where the trees were standing which were allegedly cut and removed by the defendants. The plaintiffs further railed to show that how many kikkar trees were in Khasra No.175, prior to November, 1998. The perusal of report of local commissioner reveals that 20 kikkar trees are still standing in Khasra No.175. The plaintiffs allege that trees were cut by the defendants about 1 feet above the earth level and stocks of trees were left standing. The plaintiffs have failed to get the Local Commissioner appointed to inspect the spot and to give his report regarding the stocks of the kikkar trees in order to prove that trees had actually been cut from Khasra No.175. The plaintiffs have relied upon the demarcation report of halqa Patwari who conducted the demarcation on 27.8.1999 and he was directed to demarcate Khasra No.175, but he was not and required to report regarding standing trees or cut trees from Khasra No. 175. The plaintiffs have only relied upon the testimony of PW-4 halqa Patwari who has deposed that he conducted the demarcation of the land comprised in different Khasra numbers reported that trees were cut and removed from the land whereas he was never authorized by the Tehsildar to make such a report s per his own testimony. The order of Tehsildar was only demarcate Khasra No.175. So, the report of Local Commissioner Ex.P1 cannot be relied upon."

22. The appellant-plaintiff has not been able to satisfactorily dispute or controvert the above said concurrent findings of the Courts below. Even otherwise, the present second appeal is liable to be rejected as this Court in Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. The

Hon'ble Supreme Court in ***M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559;*** has held as under: -

> *"14. This Court, in the case of **Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71,** after considering the scope of interference under the old section 100 of the Civil Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:*
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> > *"15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact."*
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> *15. It could thus be seen that this Court has held that, even when a court exercises jurisdiction under Section 41 of the Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force."*
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> (Emphasis added)

23. I find no error or defect in law and procedure in the present case. Therefore, too, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below.

24. The present Regular Second Appeal is hereby **dismissed.**

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

02.08.2025 **(NIDHI GUPTA)**
Divyanshi **JUDGE**

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