

**(2008) 12 P&H CK 0173**  
**In the Punjab And Haryana At Chandigarh**

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|-----------------------------|----|------------|
| State of Haryana and Others | Vs | APPELLANT  |
| Dharam Singh and Others     |    | RESPONDENT |

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**Date of Decision :** 19-12-2008

**Acts Referred:**

**Citation :** (2009) 3 PLR 550

**Hon'ble Judges :** Rakesh Kumar Garg, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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### Judgement

Rakesh Kumar Garg, J.—This is defendants' second appeal challenging the judgment and decrees of the Courts below whereby the suit of the plaintiff-respondents for declaration with consequential relief of permanent injunction has been decreed whereby the plaintiffs have been declared to be the owners of 30 Eucalyptus trees standing over the land of the plaintiff-respondents and the defendants are restrained from cutting away these disputed trees in any manner.

2. It is the case of the plaintiffs that the land in dispute is owned and possessed by them and the defendants have nothing to do with it. They had planted a number of trees in the land in question. They planted 30 Eucalyptus trees in Khasra No. 23, killa Nos. 18/2 and 23/2 within three feet from the "Dol". Now, those trees are fully grown up and the defendants without any right, title or interest have not only put number on those trees but are also claiming the same. The cause of action for filing the present suit accrued when the defendants tried to cut away the trees illegally and forcibly.

3. The defendants contested the suit by taking various legal objections. On merits, it was stated that the disputed trees were planted, nourished and protected by the Forest Department by incurring huge expenditure. These trees were planted in the months of June and July, 1984 in augmentation canal which has now been declared as protected forest vide Haryana Government Notification No. S.O. 49 C.A. 16/27.S.29/79 dated 27.4.1979. The defendants are competent

to cut away the grown up trees. They have prayed for dismissal of the suit with exemplary costs.

4. After evaluating the evidence and hearing the learned Counsel for the parties, the trial Court vide judgment and decree dated 7.3.2008 decreed the suit of the plaintiffs.

5. Aggrieved against the judgment and decree of trial Court, the defendants filed an appeal which was dismissed by the Lower Appellate Court vide impugned judgment and decree dated 17.9.2008. While dismissing the appeal filed by the defendants, the learned Lower Appellate Court observed as under:

From the copy of the jamabandi Ex.P1 for the year 1999-2000, it is crystal clear that all the respondents namely Dharam Singh son of Lakhpat Singh, Joginder Singh, Jasmer Singh and Satbir Singh sons of Dharam Singh son of Lakhpat Singh are owners in possession of the land comprised in Khasra No. 23/18/2 and 23/23/2. As per the demarcation reports Mark-A and Ex.PW4/A, the Eucalyptus trees are standing in the land owned and possessed by the respondents. In the report Ex.PW4/A, it has been specifically mentioned that 30 Eucalyptus trees which are standing in the Khasra No. 23/18/2 and 23/2 are three feet inside the Dol and the land comprised in Khasra No. 23/18/2 and 23/2, is admittedly owned by the respondents. Apart from the documentary evidence referred to above, there is the admission of DW1 and DW2, in their cross-examination that as per the demarcation reports Mark-A and Ex.PW4/A, the trees are standing three feet inside the land belonging to the respondents. In case Panni Lal v. Med Singh 1987 RRR 6 (P&H), our own Hon"ble High Court has held that once it is found that the trees are planted on the land belonging to the plaintiff, then the trees belong to the owner and not to the planter.

6. Still not satisfied, the defendant-appellants have filed this appeal on the ground that the trees in question were planted by the Forest Department in the year 1984 and at that time no objection was raised by the respondents. The trees in question were planted by the Forest Department in Augmentation Canal and the said canal has been declared as protected forest vide Govt. notification dated 27.4.1979 and therefore, the defendants are fully competent to cut and remove the trees.

7. I have heard learned Counsel for the appellant and perused the record.

8. I find no merit in the contentions raised by the learned Counsel for the appellants. The fact that the plaintiff-respondents are owners in possession of the land on which the disputed trees are standing is not disputed. No doubt the plaintiff-respondents have claimed that the disputed trees were planted and nurtured by the appellant-Department and being looked after as a protected forest area but such exercise will not vest any right in the Department because the trees belong to the owner of the soil in which they are affixed. The settled law on the point is that a tree belongs to the owner of the land and not to the planter. I am supported by a judgment of this Court in the case of Ghasi Ram Vs.

Arun Kumar, for taking the above view.

9. For the reasons recorded above, I find no illegality or infirmity in the findings recorded by the Courts below. No substantial question of law arises in the present appeal.

Dismissed.