

**In The Court of Ravipal Singh,
Civil Judge (Junior Division), Phagwara.
(UID No.PB-0410)**

CNR No.PBKPA00001342018
Case Registration No.CS/57/2018
Date of Institution:01.03.2018
Date of Decision:01.07.2019

Malagar Singh s/o Mangal Singh, r/o V.P.O. Narur, Tehsil Phagwara,
District Kapurthala.

Plaintiff

Versus

Bahadur Singh s/o Mangal Singh, r/o V.P.O. Narur, Tehsil Phagwara,
District Kapurthala.

Defendant

Suit for Recovery of ₹10,000/- as damages for removing the
plants from the roots from the land of the plaintiff.

Present: Sh.Sardha Ram Advocate, counsel for plaintiff.
Sh.M.K.Sareen Advocate, counsel for defendant.

JUDGMENT

1. Through the present suit, plaintiff Malagar Singh has sought for recovery of ₹10,000/- as damages from his brother Bahadur Singh i.e. defendant for alleged removal of Popular Plants, 85 in number, which plaintiff has alleged that defendant removed from the land fallen to his share.

2. Briefly, plaintiff has submitted that he, defendant and other brother Sher Singh purchased land in Village Panchhat comprised in Khasra

No.107//22/1/1-12, 107//22/2/1-4, 107//22/3/5-4, 107//23/8-0 as entered in jamabandi for the year 2014-15. Further, on 13.03.2016, an agreement was alleged to be executed between them, whereby land on Northern side was given to plaintiff along with his wife, land on Southern side was given to Bahadur Singh along with his wife and land in between was given to Sher Singh along with his wife. Further, an amount of ₹30,000/- was to be paid by plaintiff to his brother Sher Singh and defendant Bahadur Singh against the Bore installed in the share of plaintiff of value of ₹90,000/-. As per plaintiff, defendant had planted 85 Popular Trees in the land fallen to the share of plaintiff and in pursuance of above said agreement, defendant received ₹10,000/- as cost of those plants from plaintiff. As per further case of plaintiff, defendant resiled from admitting/abide by the conditions of said agreement and removed those Popular Trees/Plants in the absence of plaintiff as well as his attorney in the month of April, 2016. Since, defendant did not pay damages of those removed plants, plaintiff filed the present suit seeking recovery of the same about.

3. In pursuance to the notice of the present suit, defendant appeared through counsel and filed written statement by raising preliminary objections on the maintainability of the suit and challenging locus standi as well as cause of action to file it. The defendant pleaded concealment of true facts on the part of the plaintiff and submitted on merits that although the said property was purchased by plaintiff, defendant and Sher Singh, but he denied to uproot any plant. As per his stand, the said agreement dated 13.03.2016 was not acted upon although it was executed. Specific denial was made to the effect that said agreement was relied upon by the parties as

defendant has taken further plea that those plants were damaged for want of irrigation. While denying remaining contents of the plaint on merits also, prayer was made to dismiss the suit.

4. Replication was not filed. From the pleadings of the parties, following Issues were framed:-

1. Whether the plaintiff is entitled for relief of recovery as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable? OPD
3. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
4. Whether the plaintiff has not come to the Court with clean hands? OPD
5. Relief.

5. In order to prove his case, plaintiff himself examined as PW-1 and also examined Jasvir Kaur as PW-2, Harjit Kaur as PW-3 and placed on record documents agreement dated 13.03.2016 Ex.P-1, affidavit dated 15.03.2017 Ex.P-2. Thereafter, learned counsel for plaintiff closed evidence after tendering certified copy of order dated 27.02.2019 Ex.PY and jamabandi for the year 2014-15 Ex.PX.

6. On the other hand, defendant Bahadur Singh and placed on record photocopy of affidavit dated 27.03.2017 Mark-A. Thereafter evidence of defendant was closed by order.

7. No rebuttal evidence was produced and learned counsel for the plaintiff closed the rebuttal evidence of the plaintiff.

8. During the course of arguments, counsel for the plaintiff has vehemently argued that plaintiff has proved that in the joint land, Popular Trees were planted by the defendant and the same were fallen to the share of plaintiff in pursuance of agreement dated 13.03.2016 Ex.P-1. It was further argued that defendant Bahadur Singh illegally removed those plants, 85 in numbers in the month of April 2016 and caused loss of ₹10,000/- to plaintiff. Further, submission was made that defendant has admitted planting of those Popular plants and case of plaintiff is proved. With such arguments, prayer was made to decree the suit.

9. On the other hand, learned counsel for defendant has opposed all these arguments while arguing that present suit is not maintainable being filed without cause of action, locus standi and by concealing true facts. It was specifically argued that plaintiff failed to show that defendant damaged those plants, whereas no evidence is brought by the plaintiff about condition of those plants. With such submission, prayer was made to dismiss the suit.

10. This Court has heard and considered the rival arguments of learned counsels and with their able assistance, judicial file has been perused. Issue-wise finding of the Court is as under :-

Issues No.1 and 3:-

- # *Whether the plaintiff is entitled for relief of recovery as prayed for? OPP*
- # *Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD*

11. Both these Issues are taken together, being inter-connected and need joint discussion to avoid undue repetition of facts and evidence as well as for the purpose of brevity. Onus to prove Issue No.1 was on the plaintiff, whereas similar onus was on the defendant to prove Issue No.3.

12. Now through the present suit, plaintiff has sought for recovery of ₹10,000/- from his brother i.e. defendant for alleged damage of 85 Popular Plants, which plaintiff has claimed to be his ownership in pursuance of one agreement dated 13.03.2016 Ex.P-1. On the other hand, defendant has denied to damage or uproot those plants and further alleged that plaintiff has failed to show any ownership of those plants and his evidence is deficient about status of said plants, for which plaintiff has sought for recovery of ₹10,000/-. This Court has gone through the evidence led by both the parties and it is clearly established that plaintiff has certainly failed to show as to what was the condition of those plants and how he is claiming damages for alleged uprooting of the plants in the absence of strict proof of the same. So, plaintiff is not entitled for any recovery as alleged. How this Court has come to this conclusion is discussed in coming paras.

13. Firstly, it is relevant to see that except oral evidence of plaintiff himself as PW-1, PW-2 Jasbir Kaur and PW-3 Harjit Kaur, plaintiff has brought no documentary proof to show that those plants were ever fallen to his share. The plaintiff has solely relied upon alleged agreement dated 13.03.2016 Ex.P-1 to strengthen his claim. However, defendant has denied to act upon the condition of the said agreement. Yet, from perusal of Ex.P-1, it is clear that nothing is mentioned about the alleged Popular Plants in the said document. The plaintiff has also placed on record one un-attested affidavit

of his wife Harjit Kaur as Ex.P-2, which is useless being unilateral document as it was executed by Harjit Kaur i.e. wife of plaintiff. It is strange that had defendant received cost of those Popular Plants from plaintiff in pursuance of said agreement dated 13.03.2016, what no receipt was taken from the defendant.

14. At the same time, during his cross-examination, plaintiff as PW-1 has admitted that suit property was joint and he failed an application for partition before Revenue Court. Plaintiff has cleared to mention this fact in alleged agreement dated 13.03.2016, which is wrong. Rather, he as admitted that another writing was prepared on 27.03.2017. Now it is clear from certified copy of order dated 27.02.2019, placed on record by plaintiff himself as Ex.PY that the suit property/land purchased by plaintiff, his brother Sher Singh and other brother i.e. defendant Bahadur Singh was partitioned recently while keeping intact the possession. So, how plaintiff can claim to have specific right over those plants prior to passing of partition order as per law. Moreover, how plaintiff has ascertained value of those trees as ₹10,000/- is not explained by the plaintiff. Similarly, in the absence of specific proof of the fact that only defendant removed or damaged those plants in April 2016, how any right in favour of plaintiff can be held for alleged damage. Here, the admission made by wife of plaintiff namely Harjit Kaur PW-3 during cross-examination are relevant where she admitted that those plants were planted by defendant, but she does not know from which nursery, the same were purchased. So, evidence led by the plaintiff was brittle and shaky to hold him entitled for any recovery for alleged damage. The Court does not find it fit to refer the evidence of defendant in these

circumstances, where plaintiff himself has failed to show his entitlement for alleged recovery. Accordingly, issue No.1 and 3 are decided against the plaintiff and in favour of defendant.

Issues No.2 and 4:-

Whether the suit of the plaintiff is not maintainable? OPD

Whether the plaintiff has not come to the Court with clean hands? OPD

15. Both these Issues are taken together, being inter-connected and need joint discussion to avoid undue repetition of facts and evidence as well as for brevity. Onus to prove these Issues was on defendant. These Issues were not pressed by learned counsel the defendant at the time of arguments. Hence, all these Issues are decided against the defendant and in favour of the plaintiff.

Issue No.5 (Relief):-

16. As a repercussion of discussion and finding on the above Issues, the present suit is hereby dismissed with costs. Application pending, if any, is disposed off being not pressed. Un-exhibited documents be returned to the party concerned, against proper receipt, if required. Decree sheet be drawn accordingly. File be consigned to Record Room.

Pronounced in open Court:

Dated:01.07.2019.

Rajeev Kumar

(Ravipal Singh)
Civil Judge(Junior Division),
Phagwara. (UID PB-0410)