

CASE NO.:
Appeal (civil) 5237 of 2007

PETITIONER:
Gurdev Singh

RESPONDENT:
Narain Singh

DATE OF JUDGMENT: 12/11/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
JUDGMENT

ORDER

Leave granted.

Respondent herein filed a suit for permanent injunction against the appellant. The suit was marked as Civil Suit No. 226 of 1987. A decree for permanent injunction was passed by the learned trial Judge on 19.1.1989, the operative portion whereof reads as under:

"This suit comes today before me (Balbir Singh PCS, Addl. Senior Sub Judge Jagraon) for final disposal, in the presence of the counsel for the parties, it is ordered that:-_____ (illegible) the suit of the plaintiff is decreed against the defendant for a permanent injunction restraining the defendant from planting tree on the Khasra No. 17/2 on the one side and Khasra No. 218/1 and 17/1 on the other side situate in the area of village Abbupura Tehsil, Jagraon, District Ludhiana peculiar circumstances of the case, the parties are left to their own costs."

The decree holder filed an application for execution of the decree praying, inter alia, for removal of the tree from the lands in question. A Commissioner was appointed. He submitted a report stating as under:

- (i) I compared the site plan with the situation of the disputed property where tree of Bohar exists.
- (ii) I measured the distance of Bohar tree from the common butt of Khasra Nos. 17/2 and 218/1 with the help of a measurement tape. The centre point of Butt upto the centre point of radius of Bohar tree is 11 feet i.e. 2 karams.
- (iii) The branches of Bohar tree comes across the common Butt into Khasra No. 218/1 approximately 6/7 feet.
- (iv) I prepared a rough site plan at the spot, which is also attached herewith. According to my observation the half portion of the Bohar tree falls within two karams from the common Butt of properties of the parties."

The learned Commissioner in his report did not state that the Bohar tree was planted after passing of the decree.

The executing Court relying on or the basis of the said report as also some decisions of this Court while holding that the executing Court has the requisite jurisdiction to construe a decree, opined as under:

" Now applying ratio of the above said cases this Court has to see what was spirit of the decree which was under execution and clear

that the plain meaning of the decree is that there should no tree within two karams on either side of the common boundary of the parties and if it is there, the executing court can very well order its removal in order to give effect to the spirit of the decree. In the present case, it has been reported by the Local Commissioner that the tree is within 2 karams. Moreover, J.D. does not plead any claim over that tree. Rather he pleads it to be a naturally grown tree. So, in these circumstances direction is given to the J.D. to remove the trees which is standing within 2 karams of the common butt within a period of one month from today."

By reason of the impugned judgment the High Court has affirmed the said order.

Mr. Swarup Singh, learned senior counsel appearing on behalf of the appellant would submit that the executing Court as also the High Court committed a manifest error in interpreting the decree.

We agree with the said contention. A bare perusal of the decree in question would clearly demonstrate that the appellant herein was restrained by a permanent injunction from planting any tree on khasra Nos. 17/2 on the one side and khasra No. 218/1 and 17/1 on the other side. The decree did not speak of removal of any tree which had already been planted. The executing Court, as noticed hereinbefore, while interpreting the said decree proceeded completely on a wrong premise to hold that there should not be any tree within two karams on either side of the common boundary of the parties. Such an interpretation evidently is not in consonance with the tenor of the decree. A jurisdictional error, thus, has been committed by the High Court.

It is well stated that executing Court cannot go behind the decree. As the decree did not clothe the decree holder to pray for execution of the decree by way of removal of the trees, the same could not have been directed by the learned executing Court in the name of construing the spirit of the decree under execution.

We, therefore, set aside the impugned judgment and remit the matter to the executing Court for determination of the question as to whether the Bohar tree in question was in existence prior to passing of the decree or not. The executing Court thereafter may proceed with the matter in accordance with law.

The appeal is allowed. No costs.