

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Regular Second Appeal No.1582 of 1990
Date of Decision: 29.4.2015.

Rajinder Singh and others ..Appellants

versus

Ranpat Singh and others ..Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA

Present: Mr. S.S.Rana, Advocate, for the appellants.

Mr. J.L.Malhotra, Advocate, for respondent no.1.

RAJIVE BHALLA, J. (ORAL)

The appellants challenge judgment and decree dated 22.5.1990 passed by Additional District Judge, Sonapat, reversing judgment and decree dated 11.8.1986 passed by Senior Sub Judge, Sonapat and as a consequence, decreeing the suit filed by plaintiff-respondent no.1.

Counsel for the appellants submits that as there is no evidence of an easement of necessity, much less is there any evidence of the existence of a passage to the plot, in possession of plaintiff-respondent no.1 The first appellate court has, therefore, wrongly decreed the suit. A perusal of the evidence on record also reveals that an application filed by the plaintiff for providing a path was dismissed by the Additional Director Consolidation by holding that the plaintiff was not provided a path during consolidation, thereby proving that no path is in existence. The finding recorded by

the first appellate court that the disputed passage was being used by the plaintiff since 1954, is, therefore, illegal as it is not based on any evidence, much less any cogent evidence. The finding recorded by the trial court that the appellant can access his plot from the 'phirni', has been wrongly reversed by the first appellate court. The 'phirni' of a village is a circular path that encircles a village and land that abuts a 'phirni', can be accessed from the phirni.

Counsel for the plaintiff-respondent no.1 submits that there was an exchange of a plot between respondent no.1 and Niadar Singh in 1954. Niadar Singh was using the passage but as the passage was blocked by the appellants, respondent no.1 had no option but to file the present suit which has rightly been decreed by the Additional District Judge, Sonapat. The findings of fact recorded by the first appellate court do not suffer from any error of jurisdiction or of law and may, therefore, be affirmed.

I have heard counsel for the appellants, perused the impugned judgment and am not inclined to grant any relief.

The trial court dismissed the suit filed by respondent no.1, by holding that the path in dispute was not allotted to respondent No.1 and even otherwise, an alternative path is available from the 'phirni' of the village. The first appellate court has, after due consideration of the pleadings and evidence on record, reversed this finding and decreed the suit by holding as follows:-

“19 To conclude I am of the opinion that the circumstances of the case clearly go to show that the plaintiff had the disputed passage in use for going to his

plot since the time he got the plot in question in exchange from Niadar, i.e., since 1954 because according to Rajinder DW himself the plaintiff got the said plot in exchange in 1954. Except bare denial of the defendants about the existence of the disputed passage through their land, there is no other evidence on record that the plaintiff had not been using the passage for going to his plot, so one can safely presume that the plaintiff has acquired a right of easement because he has been using the said passage for the last more than 20 years without any interruption. The assertion of the defendants that the plaintiff has been coming to his plot from the side of the firni stands negatived by the simple fact that there is admittedly plot of one Puran in between the firni and plot of the plaintiff. When the two plots one belongs to the plaintiff and the other belonging to Mange Ram predecessor-in-interest of defendant No.1 to 5 were one of the same person namely Niadar, then as already observed above, Niadar must be using the passage in dispute for going to the area now forming part of plot No.142 after exchanging the area forming part of plot No.143 in 1952 with Mange Ram aforesaid because he had exchanged the area now forming part of plot No.142 with the plaintiff in 1954 i.e., after exchanging the land with Mange Ram predecessor-in-interest of defendants

No.1 to 5.

20. Even if the matter is viewed from different angle since the evidence on record clearly goes to show that on all sides of the plot of the plaintiff there are houses/ghair of various persons, so also he has a right of easement by way of necessity through the plots of the defendants because at one time the area under plots No.142 and 143 which admittedly adjoins the area of plot No.141 was of one person namely Niadar. As the evidence on record shows that the plaintiff has no other passage except the passage in dispute for going over to his plot so also he has a right of easement by way of necessity because he cannot enjoy his own plot without exercise of certain privilege or burden on the plots belongs to the defendants.

21 In result, I feel that there did exist the passage in dispute through the plots of the defendants for going over to the plot of the plaintiff, and defendants have now closed down that passage by raising a pucca wall. The learned trial court, as such, appears to have wrongly held that there did not exist any such passage through the plots of the defendants and that the plaintiff had not been using the said passage for going to his plot and that he has not acquired any right of easement from over the said plot or that he has no right of easement even by way of necessity.”

A perusal of the aforesaid findings reveals that the first appellate court has held that after the plaintiff received the plot in exchange, he was using the disputed passage for going to his plot but the appellants have blocked this passage. The first appellate court has also dealt with the rejection of the plaintiff's claim for allotment of a passage, by pointing out that the application filed before the Additional Director of Consolidation was dismissed on the ground that it was highly belated. The first appellate court has also held that even if the aforesaid facts are disregarded, the appellant has an easementary right of necessity and is, therefore, entitled to access his plot through the adjoining land. The first appellate court has duly considered all relevant facts and recorded an opinion that is neither perverse nor arbitrary nor contrary to the evidence so as to invite interference or to give rise to a substantial question of law. The findings of fact recorded by the first appellate court are affirmed and the appeal is dismissed, but with no orders as to costs.

29.4.2015
VK

(RAJIVE BHALLA)
JUDGE