

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**Regular Second Appeal No.95 of 1991
Date of Decision: 18.02.2015**

Bakshi		Appellant
	Versus	
Smt. Ratni and others		Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA

Present: Mr. Siddharth Sharma, Advocate for the appellant.

None for the respondents.

RAJIVE BHALLA, J (ORAL)

The appellant, prays that judgments and decrees dated 24.09.1990 and 31.01.1986 recorded by the Additional District Judge, Jalandhar and Sub Judge 1st Class, Phillaur, District Jalandhar, may be set aside.

Counsel for the appellant submits that the appellant made two fold prayers namely for restoration of EFG, a part of the water course ABCDEFG running through khasra No.1073/2, 1071, which has been demolished by the respondents and as his two parcels of land are divided by a parcel of land owned by the respondents, he is entitled as an easement of necessity to claim a water course through the land belonging to the respondents. The Courts below, have not considered the question of necessity and with respect to demolition of the water course have recorded findings that the existence of the water course has not been proved, by disregarding the evidence on record. Counsel for the

appellant further submits that before the first appellate Court the appellant filed an application for amendment of the plaint by pleading his right as a co-sharer. The application was wrongly dismissed without assigning any clear and cogent reasons. It is prayed that as the impugned judgments and decrees are illegal and void, the appeal may be allowed, judgments and decrees passed by the Courts below may be set aside and the suit may be decreed.

No one is present on behalf of the respondents.

I have heard counsel for the appellant, perused the impugned judgments and decrees as well as the entire record.

The appellant filed a suit for mandatory injunction, praying that the respondents be directed to restore EFG, a part of water course ABCDEFG, as shown in the site plan. In support of his prayer for a mandatory injunction, the appellant asserted an easementary right acquired by prescription for the last 20 years, as he had been irrigating his land through a parcel of land owned by the respondents, but the respondents have demolished this water course and are, therefore, obliged to restore the water course. The appellant also pleaded an easement of necessity by asserting that no other water course is available to irrigate his land. The respondents/defendants put in appearance and filed a written

statement denying the existence of any such water course or an easementary right perfected by prescription or an easementary right of necessity. Upon consideration of the pleadings, the trial Court framed the following issues:-

- “1. Whether the plaintiffs have acquitted right of easement by prescription through the water channel ABCDEFG as shown in the site plan to irrigate their disputed land? OPP.*
- 1-A. Whether the plaintiffs have a right of easement of necessity as alleged? OPP.*
- 2. If issue No.1 is proved, whether the plaintiffs are entitled to the mandatory injunction for the restoration of the part EFG of the water course, ABCDEFG? OPP.*
- 3. Whether the plaintiffs are entitled to the permanent injunction prayed for? OPP.*
- 4. Whether the plaintiffs are barred by their acts and conduct from filing the present suit? OPD.*
- 5. Whether the suit is barred u/o 2 rule 2 CPC? OPD.*
- 6. Relief.”*

A perusal of the issues reveals that the issue No.1 and 1-A, pertain to an easementary right acquired by prescription, issue No.2 pertains to the easement of necessity and issue No.3 pertains to restoration of the alleged water course.

The trial Court called upon parties to adduce evidence and after considering the pleadings and evidence, dismissed the suit by holding that the appellant has failed to

adduce any evidence to prove the existence of the water course allegedly demolished by the respondents, whether by reference to any clear and cogent oral evidence or by reference to the revenue record particularly the sajra aks Ex.P2 and P3, which does not record the existence of a water course. The trial Court also relied upon the deposition by PW4, the Halqa Patwari who admitted in his cross-examination that no water course passes through the land of the respondents. The trial Court also held that the appellant has admitted that he purchased the land from Amro and Charno, by a sale deed and that Amro and Charno were irrigating their land from the "Badi Wala Well", a relevant extract from the order passed by the trial Court reads as follows:-

"..... I have considered all these contentions of the counsel for the plaintiff but do not find any substance in it. The first thing to be seen is whether there was in existence any water channel at points B-C-D-E-F-G and if so whether the lands at point B belonging to the plaintiffs was being irrigating through the said channel. In this connection the revenue record which is already on the file does not disclose that there was any channel at the disputed point. For this purpose, the sajra aks prepared by the halqa patwari exhibited as P-2 and P-3 are referred to in which this channel has not been shown. Secondly the plaintiffs have also examined the halqa patwari Balbir Singh PW4 and he stated in the cross examination that no such water channel passes through the lands of the defendants as contended by the plaintiffs. Thirdly, the plaintiffs Bakshi has appeared as

PW1 and he has stated that he has purchased the land at point B from Charno and Amro. He has not produced the sale deed on record but has admitted that before the purchase of this land, Amaro and Charno were irrigating it from "Badi Wala Well". This admission made by the plaintiffs shows that the land of the plaintiffs at point B was not being irrigated by them from the well at point A, but it was being irrigated by the well known as "Badi Wala Well". The plaintiffs also further admitted in his statement that at the time of partition of the said land with Amro and Charno he was allotted the water channel attached with the well known as "Badi Wala Khuh" to irrigate the land in dispute. He has further admitted that 8 years have elapsed since the partition has taken place. This means that the land of the plaintiffs at point B were required to be irrigated by the plaintiffs from the aforesaid well, which fell in their share during partition and there was no occasion for the plaintiffs to get water for their lands at point B from the well at point A."

The first appellate Court, considered the evidence as well as findings recorded by the trial Court and affirmed the findings of fact, that the appellant has not been able to prove the existence of a water course thereby disentitling him to any relief based upon an easement by prescription and also held that as the appellant has admitted that the land he had purchased from Amro and Charno was irrigated by the "Badi Wala Well", negates the plea of an easement of necessity. The first appellate Court also dismissed an application for amendment of the plaint, giving up the plea of an easement by prescription or by necessity and raising a plea that he is a

co-sharer with the respondents.

A perusal of findings recorded by Courts below reveals that both Courts are concurrent in the opinion that the appellant has failed to prove the existence of a water course or its demolition. The relevant revenue record does not indicate the existence of a water course passing through the land of the respondents thereby negating the plea of an easementary right by prescription. The right of an easement of necessity, has been rightly rejected by holding that the land purchased by the appellant was irrigated by his vendors through a well. The findings of fact, are based upon a considered appraisal of the pleadings and evidence and as counsel for the appellant is unable to point out any misreading of evidence or error of law, the impugned judgements do not call for interference. The argument that the appellant's easementary right of necessity has not been considered is factually incorrect as this plea was specifically considered and rejected.

Consequently, finding no merit in the appeal, much less any substantial question of law, concurrent findings of facts recorded by the Courts below, are affirmed and the appeal is dismissed.

18.02.2015
Vinay

[RAJIVE BHALLA]
JUDGE