

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.575 of 2012 (O&M)
Date of Decision.25.08.2015

Jeewan Ram Sanghi

.....Appellant

Versus

The Mahendergarh Central Cooperative Bank Limited and others

.....Respondents

Present: Mr. Amit Jain, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The plaintiff's appeal is against the dismissal of his suit claiming a right of easement for allowing the windows to be opened into a *gali* which was claimed by the defendant as belonging to him. The plaintiff relied on the fact that the defendant had filed a suit in the year 1981 for an injunction restraining the plaintiff and his brother from opening any window in the southern wall and allowed the suit to be dismissed for default. He had himself purchased the property from his brother in the year 1995 and then he filed the suit for declaration that he had an easement. He was required to prove his continued enjoyment of a right of such easement for a period of not less than 20 years which 20 years should conclude with two years next prior to his institution of a suit. The Court found that the plaintiff was himself a purchaser only in the year 1995 and he had not proved 25 years possession. I will find that

if he was a purchaser in the year 1995, he was entitled to tack on any right which his vendor had. If the vendor had a right which had commenced 20 years prior to the institution of suit then it should be possible for him to prove that he had prescribed right of easement in the manner provided under Easement Act. However, in this case, the suit filed by the defendant which was dismissed was for an injunction to restrain the plaintiff from opening the windows and not for a mandatory injunction for closure of any window that had already been opened. It was imperative for the plaintiff to prove that he had or his predecessor had already opened the window and had enjoyed the right of easement for 20 years prior to the institution of suit. Such a proof was not available and the suit was dismissed, although referring to number of years for prescription incorrectly.

2. On re-appreciation of what was brought through evidence, I find that the plaintiff had still not proved his prescriptive right of easement and I find no substantial question for consideration in the second and therefore, I proceed to dismiss the second appeal.

(K. KANNAN)
JUDGE

August 25, 2015
Pankaj*