

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

RSA No. 2600 of 2015 (O&M)
Date of decision: October 29, 2015

Babu Lal

...Appellant
Versus

Sukhrampal and others

...Respondents

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?**

Present: Mr. Sushil Bhardwaj, Advocate,
for the appellant.

K. KANNAN, J. (Oral)

1. The defendant is the appellant before this court. A suit was filed for declaration that the passage marked ABCDE and BEGC, as denoted in the plaint plan, is the necessary for the plaintiffs to reach their property in Killa No. 17 and 18. The plaintiffs were making reference to the sale deed which contained an expressed recital that the vendor undertook to create a passage to secure an access to the property 17 and 18. The defendant's contention was that the first portion of the passage for ABCDE existed along side the road but the passage BEGC would really bisect the property in Killa 13 and 14, which shall be grossly inconvenient and, if at all, the passage could be carved out on the eastern side of Killa No. 14, the defendants would make reference to even an averment in the plaint that the

passage did not exist between Killa 13 and 14 but the passage was on the east of Killa 14.

2. The courts below referred to the fact that if there was unity of ownership with respect to several items of properties, in one or more persons and if there was a transaction of sale of one portion, the accesses to which could be only through the property retained by the vendor, a right of way has to be provided as a quasi easement in the manner spelt out under Section 13 of the Indian Easement Act. The plaintiffs brought evidence through witnesses about the existence of the passage in the manner drawn in the plaint plan. The trial court granted the decree making reference to the recitals of the sale deed and the obligation of the defendant to provide such passage. It also made reference to the fact that the defendant has no contention to make that there was any other manner of access to the plaintiff's property in Killa No. 17 and 18 other than the passage demarcated in the plaint plan. The trial court decision was confirmed by the lower appellate court decreeing the plaintiffs' suit.

3. Learned counsel appearing on behalf of the defendant/appellant states that the passage which the plaintiffs would seek between Killa No. 13 and 14 would create a gross prejudice to him and even the plaintiffs' averments in the plaint required a passage to be given only on the east of Killa No. 14. The averments in the plaint had been sought to be explained through a plan attached with it. The plan makes definite reference to the location of the passage and demarcates the course of such a passage with notation in the English alphabets. The witnesses have spoken about the existence of the passage in the manner referred to in the plaint plan. The

necessity of creating such a right of passage was also seen as sanctioned by law under Section 13 of the Easement Act. The issue on facts and law were correctly dealt with and I find no justification for dislodging the same. There is no case made for intervention on any point of law. The judgments of the courts below are confirmed and the second appeal is dismissed.

October 29, 2015
prem

(K.KANNAN)
JUDGE