

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

RSA No.403 of 2015 (O&M)
Date of Decision.19.09.2015

Janak Raj (now deceased) through his LRsAppellant

Versus

Sidharath Ram and othersRespondents

Present: Mr. Shiv Kumar, 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?

-. -

K. KANNAN J. (ORAL)

1. Delays of 28 days in filing and 15 days of refiling are condoned.

2. The defendant who resisted an action by the plaintiff in the suit for claiming easementary right was successful in the trial Court but suffered a reversal at the Appellate Court when the plaintiff who had challenged the correctness of the trial Court obtained a decree in his favour. The defendant is the appellant before this court.

3. The Appellate Court while reversing the decision relied essentially on the admission of the defendant witnesses. DW2 Neelam Devi admitted that a *nali* was passing through the house of the defendant. She also admitted as correct that the adjoining houses of the plaintiff Sat Parkash, Babu Ram and Darshan Kumar situate near the house of the plaintiff had their water drained through the same drain in question. She also admitted that the site plan Ex.P1 submitted by the plaintiff for giving a narration of how the water was being drained and

the location of the particular drain. Apart from that, it would appear that there had been a dispute between the parties that went upto the police where a compromise was recorded about the existing state of affairs and admitting to the existence of the drain and the discharge of water of the house of the plaintiff through the defendant's proeprty. The only point which was stated was that the plaintiff did not act as per the compromise in that he had to construct a *pucca* channel and he had allowed the water to discharge the same way as it was previously being done. The Court reasoned that this breach ought not to be taken as resulting in giving up the right to drain the water through the defendant's property. DW3 was again another witness Ashwani Kumar who admitted the correctness of the statement that waste water from the house of the plaintiff would fall into the drain through the channel claimed by the plaintiff. He had also referred the compromise that took place between the parties and how the water was required to be drained. DW4 was another witness who corroborated the correctness of the site plan in Ex.P1. In a situation where the person was making a reference to the right of easement of drain over yet another person's property and in this case, there was a contention that he had moved from the place now in Pakistan to India at the time of partition, he had been living in the present house and he was draining the water through the particular channel which was not being shown in the plan, the Court will look for an express grant or an acquisition by prescription. The Court was looking therefore any appropriate evidence as regards the existence of such channel. Every one of the witnesses brought by the defendant literally supported the plaintiff's case and before the Appellate Court found that

there was enough justification for allowing the decree in the manner canvassed by the plaintiff.

4. Learned counsel appearing on behalf of the defendant-appellant would state that the plaintiff was actually taking the water through the property of Darshan Kumar previously which was adjoining the line 'AB' out of channel shown in the plaint plan but Darshan Kumar has now constructed the house to the utmost boundary and therefore, he was literally pushed to the plaintiff's property and therefore, the plaintiff's right must be taken as having been obstructed only by Darshan Kumar but he has not been even made party. The contention also was that there is a *gali* immediately south of plaintiff's property and the water could be never drained into the *gali* and not to be taken through all the way upto the point at the *firni* which is marked as A in the plan Ex.P1. If a right obtains to a person by proof of existence of such channel and the witnesses have spoken about it, there can be no argument that there is also a yet another place where the plaintiff can let the water drain. It is also no argument that Darshan Kumar had pushed the channel to the plaintiff's property in the face of clear admissions made by the defendant about the correctness of the plan as shown by the plaintiff. The appellate Court has acted on appropriate evidence and what was seen to be plaintiff's right through the appreciation of evidence and facts would not require any intervention. The decision of the Appellate Court is sustained and the second appeal is dismissed as devoid of merits.

(K. KANNAN)
JUDGE

September 19, 2015

Pankaj*