

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No.40 of 2015

Govind Chandra Pradhan S/o Vrindavan Pradhan Aged About 54 Years R/o
Sharda Niwas Housing Board Colony, Devrikhurd, Bilaspur Tahsil And Distt.
Bilaspur C.G.

---- **Petitioner**

Versus

1. Asim Kurrey S/o Sukhnandan Kurrey R/o Near Shiv Mandir, Vidya Upnagar,
Bilaspur, Tahsil And Distt. Bilaspur C.G.
2. Praveen Kurre S/o Sukhnandan Kurre R/o Near Shiv Mandir, Vidya Upnagar,
Bilaspur Tahsil And Distt. Bilaspur C.G.
3. Parmanand Bajaj S/o Late Sevaram Bajaj R/o Dhan Mandi Road Torwa,
Bilaspur C.G.
4. S.S. Narayana S/o Late Apal Suri, R/o Behind Punjabi Bhojnalaya, Torwa Naka
Tahsil And Distt. Bilaspur C.G.

---- **Respondent**

For Appellants : Shri Sanjay Patel, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

28/01/2016

This appeal is directed against the impugned judgment and decree dated 03-11-2014, by which, the learned lower appellate Court affirmed the judgment passed by the learned trial Court and dismissed the suit.

2. Learned counsel for the appellant argued that the learned trial Court dismissed the suit holding that the description of road abutting the plot of the plaintiff is towards north as per pleadings whereas the sale deed contains a map, in which, road has been shown on the west side of the plot.

The appellate Court did not examine this issue at all but had recorded a finding with regard to absence of pleading and proof of requirement of 20 years of peaceful

enjoyment of easementary right as per requirement of Section 4 & 15 of Indian Easement Act, 1982 (In short “the Act”) whereas in the present case, provision under Section 13 of the Act would be applicable.

3. From the pleadings of the plaintiff, it is found that the plaintiff claimed easementary right of enjoyment of road towards north of his plot on the basis that he had purchased the land and was entitled to enjoy easementary right which existed on the date of purchase of the plot. However, even according to the sale deed relied upon by the plaintiff, road has been shown on west. Thus, the documentary evidence and location of plot of the plaintiff as pleaded by he himself is variance with his pleadings.

4. In order to succeed in the claim of easementary right in so far as enjoyment of right on north-east is concerned, the plaintiff was required to lead evidence to fulfill the ingredients of Section 4 & 15 of the Act. There is nothing in pleading nor in the evidence that there exist road on north, which has been enjoyed peacefully for 20 years or more.

5. In the result, no substantial question of law arises for consideration in this appeal. Accordingly, the appeal is dismissed.

Sd/-
Manindra Mohan Shrivastava
Judge