

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 243 of 2016

1. Rajendra Prasad Shukla S/o Late Devi Prasad Shukla, Aged about 59 Years,
2. Ashish Shukla S/o Shri Rajendra Prasad, Aged About 33 Years,
3. Yatish Shukla S/o Shri Rajendra Shukla, Aged About 29 Years,
All R/o 2/66-C, Devendra Nagar, Raipur, Tahsil & Dist. Raipur,
(Chhattisgarh), Civil & Revenue District Raipur,(Plaintiffs)

---- Appellants

Versus

1. State Of Chhattisgarh , Through The District Collector, Raipur,
(Chhattisgarh)
2. Akhil Bhartiya Peeth Parishad, Aditya Vahini, Anand Vahini,
Through Jagdish Prasad Agrawal, Nand Bhawan, Behind B.T.I.
College, Shankar Nagar, Raipur, (Chhattisgarh)(Defendants)

---- Respondents

For Appellants	:	Shri B.P. Sharma & Ms. Prachi Agrawal, Advocate
For Respondent No.1/State	:	O.P. Sahu, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

02/09/2016

Heard.

2. The plaintiffs herein filed a suit for declaration of title and permanent injunction and claimed easementary right over the land shown in the plaint. The trial Court dismissed the suit holding that the plaintiffs have failed to plead and establish that they are using the suit land for the last 30 years as prescribed in Section 15 of the Indian Easement Act, 1982 (for short 'the Act'). The appellants filed an

appeal against the judgement and decree of the trial Court before the First Appellate Court. The First Appellate Court dismissed the appeal against which Second Appeal under Section 100 of the CPC has been preferred.

3. Mr. B.P. Sharma & Ms. Prachi Agrawal, learned counsel appearing for the appellants have vehemently submit that concurrent findings recorded by two Courts below held that the plaintiffs have failed to plead and establish that easementary right over the suit land is perverse finding and gives rise to substantial question of law for admission of appeal.

4. A careful perusal of the plaint would show that the plaintiffs have failed to plead that since what date to which date plaintiffs are using the land and also failed to plead that they are using the land for last 30 years against the State/defendant. They have only pleaded that they are using suit land for last 12 years. The Supreme Court in the matter of **Justiniano Antao and others v. Bernadette B. Pereira (Smt.)**¹, has clearly held that in order to establish a right by way of prescription, there should be specific pleading and categorical evidence in general and specifically held in para 9 of the judgement as under:

“9. We have gone through the three judgments i.e. trial court, first appellate court and that of the High Court. We have gone through the evidence adduced. From this, it is

¹. (2005) 1 SCC 471

more than clear that there is no specific averment in the plaint or in the statement of the witnesses showing that this access from the land of the defendants was used as of right for the last 20 years. The evidence very categorically shows that the plaintiff has an access on the south east side and this was being used by her for a long time. It was pointed out that only in the year 1984 the plaintiff has started using the access through the property of the defendants. It is also admitted that the defendants were during that time on board of ship and as soon as they came and saw the use of their land by the plaintiff, they put obstructions to it. Therefore, it is clear that it is not the case that the plaintiff has been using the access as of right through the property of the defendants for more than 20 years. Since the plaintiff has an access through the southern side of her property we see no reason why the property of other persons be used as an access to her house. If the plaintiff had no access to her house except through that of the property of the defendants then perhaps we would have considered appreciating as easement of necessity. But in order to establish a right by way of prescription one has to show that the incumbent has been using the land as of right peacefully and openly and without any interruption for the last 20 years. There should be categorical pleadings that since what date to which date one is using the access for the last 20 years. In order to establish the right of prescription to the detriment of the other party, one has to aver specific pleadings and categorical evidence. In the present case, after going through the pleadings as well as the statement of the witnesses it is more than clear that the plaintiff has failed to establish that she has been using the access peacefully, openly as of right for the last 20 years. More so we find that material placed on record and especially the photographs which have been exhibited and marked as Ext. D.W.3/A in the court that there are two pillars showing the existence of a gate in southern side but it has been closed down by rubble stones. The defendants have put up a strong case that the plaintiff has an opening in the southern side and it is amply established that there exist two pillars showing the existence of a gate which has been covered by rubble stones in the southern side. It was also pleaded that the plaintiff was using the same and it is only after 1984 she got the gate constructed through the land of the defendants. Therefore, on the basis of the evidence and statement of the witnesses, we are satisfied that the first appellate court has correctly approached the matter and the view taken by the High Court as well as the trial court does not appear to be based on correct appreciation of facts.

5. In the above referred to decision, their Lordships have held that there should be categorical pleadings that since what date to which date one is using the access for the last 20 years. In order to establish an easement by way of prescription to the detriment of the other party, one has to aver specific pleadings and lead categorical evidence.

6. Both the Courts below concurrently held that the plaintiffs failed to plead and prove the necessary ingredients to establish the right of easement as required by Section 15 of the Indian Easement Act and keeping in view the ratio of law laid down by the Supreme Court in the aforesaid case, the concurrent finding of fact recorded by both the Courts below is based on evidence available on record and it is neither perverse nor contrary to the record. No substantial question of law is involved in this second appeal.

7. Recently, the Supreme Court in the case of **Vishwanath Agrawal, S/o Sitaram Agrawal Vs. Sarla Vishwanath Agrawal**², has held that High Court should not disturb the concurrent finding of fact, unless finding recorded is perverse being based on no evidence. Paras-36 & 37 of report as under:-

“36. In **Major Singh Vs. Rattan Singh**³ it has been observed that when the Courts below had rejected and

² (2012) 7 SCC 288

³ (1997) 3 SCC 546 : AIR 1997 SC 1906

disbelieved the evidence on unacceptable grounds, it is the duty of the High Court to consider whether the reasons given by the Courts below are sustainable in law while hearing an appeal under Section 100 of the Code of Civil Procedure.

37. In **Vidhyadhan Vs. Manikrao**⁴ it has been ruled that the High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the Courts below are perverse being based on no evidence or that on the evidence on record no reasonable person could have come to that conclusion. We may note here that solely because another view is possible on the basis of the evidence, the High Court would not be entitled to exercise the jurisdictions under Section 100 of the Code of Civil Procedure. This view of ours has been fortified by the decisions of this Court in **Abdul Raheem V. Karnataka Electricity Board**⁵.

8. Accordingly, the appeal deserves to be and is hereby dismissed at the motion stage.

Sd/-
(**Sanjay K. Agrawal**)
JUDGE

⁴ (1999) 3 SCC 573

⁵ (2007) 14 SCC 138 : AIR 2008 SC 956