

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

RSA-209-2016 (O&M)

Date of decision: 21.01.2016

Budh Ram and another

...Appellant(s)

Versus

Balbir Singh and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Vikas Mohan Gupta, Advocate for the appellant(s).

JITENDRA CHAUHAN, J.

The instant regular second appeal has been preferred against the judgment and decree dated 29.09.2012, passed by the learned Civil Judge (Junior Division), Palwal (for short, 'the trial Court'), whereby, the suit of the plaintiff-appellant has been decreed; and judgment and decree dated 05.11.2015, passed by the learned Additional District Judge, Palwal (for short, the first Appellate Court), whereby, the appeals preferred by both the parties against each other against the impugned judgment and decree dated 29.09.2012, of the trial Court, have been dismissed.

The plaintiff filed suit for declaration and permanent

injunction as a consequential relief, which was decreed to the effect that the plaintiff has acquired easementary right of access to the suit property through the passage in dispute shown in red colour in the site plan Annexure A and the defendants were restrained from causing any obstruction in the use and enjoyment of the passage in dispute by the plaintiff and further directed to remove the obstacles/construction raised by them in order to cause obstacles to the plaintiff from using the said passage to go to his fields.

The learned first Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record and dismissed the appeals of both sides vide impugned judgment and decree dated 05.11.2015.

Hence, this appeal at the behest of the defendants.

Learned counsel for the appellants has submitted that the finding returned by the learned Courts below to the effect that plaintiff was having easementary rights of the path in dispute since 20 years, is not supported by any evidence on record. The learned Courts below have wrongly relied upon the report of the Local Commissioner, exhibited as Ex.PW-4/A, as the same has not been prepared as per the rules. The said report does not even reveal that

there exists any path on the disputed part of the land belonging to the defendant. The report is also contrary to the site plan prepared by the Local Commissioner. It is further argued that the structures stated to be newly constructed were in fact the Samadh of the predecessor in interest of the defendants. The existence of old trees at that point would prove that no path, as alleged, existed on the spot. If there had been any path in existence as alleged by the plaintiff, the same would have been reflected in the revenue records. Moreover, it is the admitted case of the plaintiff that they were having occupancy rights of title from the predecessor in interest of the defendants in the year 1976. There is no reference of the path in question in the documents of title prepared at the time of creating occupancy rights in favour of the plaintiff.

I have heard learned counsel for the appellant and gone through the case file.

In the present case, the plaintiff claimed that the predecessor in interest of the plaintiff were inducted as tenant over the suit property under the predecessor in interest of the defendant. Thereafter, in the year 1976, the plaintiff became full-fledged owner of the suit property by acquisition of occupancy rights and the same is reflected in the jamabandi for the year 1976-77 (Ex.P-13). The only passage available to them was the passage in

question coming from Mandkol, Bedram Village through agricultural land bearing Khasra no.25/1 and 16 of mustatil no.27. Thus, the plaintiff had been using the passage in question continuously for the last more than 20 years, and was entitled to easementary rights. The Local Commissioner appointed by the learned trial Court, submitted the report, Ex.PW-4/A, wherein, he had specifically mentioned that killa No.16 and 25/1 stand merged with each other and there is no DOLL (demarcation) in between. Similarly, killa No.20 and 21/1 were also merged with each other without there being any DOLL in between. The area of above killa numbers was paralleled and in the similar condition and it also appeared to have been harvested recently. The report further revealed that there were 17 Neem and Shisham trees at various points between killa Nos.16 and 20 and also between 25/1 and 21/1, as reflected in the site plan. There also existed a newly constructed and recently whitewashed structures at point 'C' of killa No.25/1 and at point 'D' of killa No.21/1 as shown in the site plan.

Thus, from the perusal of the report of Local Commissioner, it is clear that the defendants merged killa No.16 and 25/1 with each other and there is no DOLL between these two killa numbers. Similar is the position with regard to killa Nos.20

and 21/1. Furthermore, as per the statement of PW-1, Sumer Singh, Draftsman, who visited the spot just a few days before the visit of the Local Commissioner, there existed a three-karam wide passage through killa Nos.16 and 25/1 of Rect. No.27, which duly corroborates the report of the Local Commissioner. No objection with regard to the report of the Local Commissioner was raised by the defendant/appellant during the pendency of the suit. Only at the time of arguments, he took the objection that the Local Commissioner, being an Advocate, was not having the expertise to ascertain the age of the structures in question. The defendant could have moved an application for appointment of new local commissioner. Therefore, the learned trial Court rightly relied upon the report of the Local Commissioner to hold that the construction at point 'C' in killa No.25 and at point 'D' in killa No.25/1 was newly raised and recently whitewashed.

As far as the easementary rights to the plaintiff are concerned, the present suit was filed in the year 2009. Even if the defendants became owner in possession of the suit property in the year 1973, the requirement of a period of 20 years under Section 15 of the Easement Act is fulfilled.

In view of the above discussion, this Court does not find any perversity with the findings returned by the learned Courts

below, which call for any interference by this Court. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed in limine.

21.01.2016

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(JITENDRA CHAUHAN)
JUDGE