

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.274 of 2016 (O&M)
Date of decision:26.07.2016

Balwinder Singh

... Appellant

Vs.

Sukhram Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Surinder Sharma, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

Appellant-plaintiff is aggrieved of the concurrent findings of facts and law, whereby, suit seeking restraint order by way of permanent injunction against the defendant-respondents obstructing the passage being used by the plaintiff since purchase of the property, i.e. 1979, has been dismissed by both the Courts below.

Mr. Surinder Sharma, learned counsel appearing on behalf of the appellant-plaintiff submits that as per the provisions of Section 4 of Easements Act, 1882 (hereinafter referred to as "1882 Act"), every person has to be provided passage to the house. The grandfather of the plaintiff purchased the house from father of defendant No.1. Though in the sale deed, there is no recital to the passage, it was mutual arrangement between

vendor and vendee for using the passage which was being used since time memorial.

The cause of action to file the suit arose when the defendants started obstructing the passage. The site plan, Ex.P1 shows that there is no other passage to the house of the appellant-plaintiff. There is violation of provisions of Section 4 of 1882 Act. Even aks-sijra, does not mention any other passage, in essence, revenue record does not show any passage. The Courts below should not have strictly gone according to the sale deed and aks-sijra while non-suiting the appellant-plaintiff and thus, urges this Court that there is illegality and perversity in the judgments and decrees of both the Courts below, much less, substantial question of law arises for adjudication of the present appeal.

I have heard learned counsel for the appellant-plaintiff and appraised the judgments and decrees of the Courts below.

The aspect of having alternative passage has been examined by the trial Court in paragraphs 12 and 13. The same read thus:-

“12. That aforementioned provisions of law specifically brings to light that even if Isher Singh, the vendor of the property had allowed some right to passage to the grandfather of the plaintiff at the time of a sale i.e., 18.1.1979, the said right cannot be termed to be a right of easement as the case of the plaintiff himself is that the passage was not the ownership of Isher Singh and rather it was an independent site. Therefore, the assertion on the plaintiff regarding the right of using the

passage being an easement of necessity is not convincing one. Moreover, it has been specifically laid down by Hon'ble Supreme Court of India in 'Sree Swayam Prakash Ashramm and another vs. G. Anandayally Amma and others (supra) that in case of easement of necessity where there exists any other way then there cannot be an easementary right in respect of pathway. Now the question which falls for consideration is as to whether there exists any other passage to the use of the plaintiff. For this purpose it is necessary to allude to the cross-examination of witness of plaintiff. PW1 Gurdas Singh is specifically admitting that towards the eastern side of house of Harbans Singh a street situated and that the gate of the house has been opened towards the eastern side.

13. *Further PW6 Bhag Singh is also deposing that towards the eastern side of the property purchased by Sham Singh from Isher Singh, there lies a passage and that the gate of the house also opened towards the eastern side. Further the case of the defendant that there is property of Kartar Singh on the eastern side of the house is admitted by plaintiff himself as PW7 in his cross examination. It is also admitted by him that there exists a street on the eastern side of khasra no.254. It is also admitted by him that the gate of the house constructed in khasra no.254 abutts the street on the eastern side. Therefore the witness of the plaintiff themselves admit the existence of the street on the*

eastern side alongwith door of the house of the plaintiff is also in fact admitting the existence of the eastern door of his house in the replication. Accordingly the plaintiff cannot claim easement of necessity as there already exists a pathway for his house.”

In view of the aforementioned facts, it is irresistibly concluded that there is another passage/street towards the eastern side of the house of Isher Singh, though it cannot be believed that there is no other passage to approach the house of the appellant-plaintiff and thus, there is no violation of the provisions of Section 4 of 1882 Act.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

July 26, 2016

savita

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No