

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

153

CR No.8711 of 2017
Date of decision: 12.12.2017

Kaka Singh

..... Petitioner

Versus

Parvinder Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Hemant Sarin, Advocate
for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-petitioner is in the revision petition against the order dismissing the application under Order 39 Rule 1 and 2 for grant of temporary injunction as also against the order passed by the learned First Appellate Court dismissing the appeal.

It is not in dispute that the plaintiff and defendants are neighbours. The plaintiff has constructed a multi-storey house whereas the efforts of the plaintiff is to stall the construction started by the neighbour to construct upper stories. It is not in dispute that there is a small street in between the houses.

Plaintiff claims that he has an easementary right of natural flow of sun light and natural air which will be blocked. The plaintiff has not filed a suit for declaration under Section 15 of the Easement Act. It is not the case of the plaintiff-petitioner that he is perfected his right of easement as per Section 15 of the Easements Act, 1882. Section 15 of the Easements

Act reads as under:-

“15. Acquisition by prescription – Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years,

and where support from one person's land, or things affixed thereto, has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement, without interruption, and for twenty years,

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, support, or other easement, shall be absolute.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation I – Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

Explanation II – Nothing is an interruption within the meaning of this section unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof, and of the person making or authorising the same to be made.

Explanation III – Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

Explanation IV – In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage.

When the property over which a right is claimed under this section belongs to [Government], this section shall be read as if, for the words “twenty years” the words “[thirty] years” were substituted.”

Learned counsel for the petitioner has further submitted that the defendants are raising construction without sanction of the building plan from the Municipal Corporation. I am afraid that such argument cannot be entertained because before the First Appellate Court, the appellant did not take up this point. In the revision petition, the petitioner cannot be permitted to raise the argument which was not raised before the Courts below. Further, it is not disputed that the property is situated within the Abadi of Village Nada Sahib. No doubt, the streets are narrow, however, on that ground, owner cannot be stopped from constructing a multi-storied house.

In view of what has been discussed above, there is no ground to interfere with the orders passed by the Courts below.

Revision petition is dismissed.

12.12.2017
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No