

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

RSA No.2055 of 2013 (O&M)

Date of Decision: February 21, 2017

Bimla Devi and others

..Appellant(s)

Versus

Darshna Devi and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Madan Pal, Advocate
for the appellants.

Mr. P.K. Longia, Advocate
for respondents No.1 to 4, 8 to 10, 13 to 15, 17 & 18.

ANITA CHAUDHRY, J.

This is the defendants' appeal against the reversal of the judgment and decree passed by the lower Court.

It is necessary to recapitulate the facts first. The dispute in the present case pertains to a rasta. The plaintiffs Rameshwar Dass and Khazan Chand sons of Ram Chander filed a suit pleading that they were owners in possession of land comprised in Killa No.17/2 and 24, situated within the revenue estate of village Gumto in district Karnal. Sultana @ Multana and Ran Singh, the predecessors in interest of the defendants were recorded to be owners of the land comprised in Killa No.14 and 17/1 and a passage existed up to Killa no.24 of rectangle no.2. The plaintiffs own land in the adjacent village Kamalpur Godian.

Multana and Ran Singh needed a passage for ingress to their land comprised in Killa No.17/1 and 14 comprised in rectangle no.2. Multana and Ran Singh exchanged their lands to carve out a rasta out of Killa No.14 & 17/1 and Killa No.24 and 17/2 and the agreement was reduced in writing on 23.07.1960 by a deed writer. Inadvertently, the rasta was not incorporated in the Girdawari but it was shown in Killa No.15, 16 and 25 of rectangle no.2. However, the rasta existed in Killa No.24, 17/1 and 14 on the spot. The plaintiffs as well as the defendants were using the rasta and had easementary right and it was being used for the last 30 years without any interruption from any side as well as by the inhabitants of the village. Sultana @ Multana and Ran Singh died 10 – 15 years prior to the filing of the suit. It was claimed that the plaintiffs and the defendants used the same rasta peacefully and continuously even after the deaths of Sultana and Ran Singh. Pirthi son of Ran Singh also died leaving behind his widow and children. The dispute arose when the defendants wanted to demolish the rasta existing in Killa no.14 & 17/1 and on 20.11.1997, the defendants with the help of the bad elements demolished the rasta. The plaintiffs sought a decree for permanent injunction and mandatory injunction directing the defendants to restore the rasta.

The claim was resisted by the defendants and they took legal objections and pleaded that their predecessors did not need any rasta to enter their property and there was 2 Karam wide rasta through Killa no.24 and 17/2 and the plaintiffs and defendants were coming to

their fields through the rasta on the Eastern side of the Killa no.24 & 25 and the rasta along with Killa no.24 and 17/2 and this right had ripened into the right to easement because of lapse of time and the plaintiffs wanted to demolish this rasta taking undue advantage of the interim injunction.

The parties went to trial on the following issues:-

1. Whether the predecessor in interest of defendant voluntarily executed exchange deed dated 23.7.1960? OPP.
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2. Whether the plaintiffs have any easementary right over the passage in question? OPP
3. Whether the suit is not maintainable? OPD.
4. Whether the plaintiff has suppressed the material facts from the Court? OPD
5. Whether the suit is bad for misjoinder of necessary parties and cause of action? OPD
6. Whether the suit is bad for non joinder of necessary parties and cause of action? OPD
7. Whether the suit is not properly signed and verified ? OPD
8. Relief.

Para no.17 of the judgment reads as under:-

“17. In this case a perusal of order Ex.D1 copy of order dated 28.1.999 passed by the Director, Consolidation, Haryana in application no.261/98, instituted on 15.10.1998, titled as Nirmal Devi Versus Rameshwar etc. makes it ample clear that during the Consolidation no passage was provided to the defendants for approaching their land comprising in rectangle no.2, killa no.14 and

17/1. The said mistake was rectified by the Director, Consolidation by passing the said order Ex.D1 vide which a passage was provided to the defendants through plaintiff's land comprising in rectangle no.2, killa no. 24. As per the order Ex.D1, it is further ample clear that no agriculturist can claim a passage as a matter of right for his land situated in neighboring village. Therefore, the passage was a matter of right for the defendants but the same was not so for the plaintiff. The plaintiffs have though proved on record the execution of alleged agreement by the predecessors in interest of the defendants but they have failed to show by adducing any cogent evidence as to whether the alleged agreement was ever acted upon or not. The said agreement was also produced before the Director, Consolidation who after going through the material placed before him observed that the said agreement cannot be implemented on the ground. A perusal of above referred order makes it ample clear that at time of arguments learned counsel appearing on behalf of the plaintiffs had contended that a passage be given to the plaintiffs through the defendants land as well, so that the plaintiffs may approach their land in village Kamalpur Gadiyan. At that time also it was not the case of the plaintiffs that the said agreement has already been acted upon and the mutual passage carved out by the consent be affirmed. Therefore, also it is ample clear that the said agreement was never acted upon on the ground. In view of the foregoing discussions this court has come to the conclusion that though agreement dated 23.7.1960 was executed between the parties but the same was never acted upon and since no such passage was ever carved out therefore, plaintiffs have not obtained any easementary right.”

The trial Court held that the plaintiffs had no locus standi to maintain the suit and dismissed the suit holding that the plaintiffs could approach the appropriate authorities for relief.

Aggrieved by the judgment an appeal was preferred by the plaintiffs and a finding was recorded that the plaintiffs had successfully proved the execution of the exchange deed Ex.P1 and the lower Court had wrongly dismissed the suit and the finding recorded by the lower Court was self-contradictory as on one hand a finding was given that the execution of the exchange deed-cum-agreement had been proved but it chose to give a finding against them. The appellate Court set aside the judgment of the lower Court and decreed the suit holding that the passage existed in the land owned by both the parties on the Eastern boundary and that rasta was leading to the land of the plaintiffs situated in village Kamalpur Gadian.

I have heard both the counsels at great length and with their assistance have gone through the record.

The dispute in the present *lis* is regarding the Rasta which lies on the Southern side of plot no.17/2 and 24. The plaintiffs had approached the Court with a plea that the defendants who were neighbours had agreed to leave a Rasta on the Southern side of their properties and the plaintiffs could have access through that Rasta to enter their lands which adjoined the land of the defendants on the Northern side, though that property was of another village. The predecessors of the parties entered into a written agreement in 1960.

The agreement Ex.P2 was proved by examining the son of the scribe. A handwriting expert was examined who compared the signatures of Multana and Ran Singh. Their signatures were lifted by the Expert from another litigation where Ran Singh and Multana had signed the pleadings. The lower Court held that the plaintiff had been able to prove the execution but denied the relief on the ground that the agreement had not been acted upon. The reasoning given was that the same agreement was produced before the Consolidation Officer with respect to the Rasta which was disbelieved.

The Appellate Court reversed the finding of the trial Court holding that the execution had been proved and the plaintiffs had been going to their property through the same Rasta for the last 2 – 3 decades and noted that the dispute had arisen only in the later years when the legal heirs of Ran Singh and Multana developed differences. The Appellate Court also found that an entry regarding the Rasta had been shown in the revenue record but wrongly in the other khasra numbers, which were owned by Prithvi son of Ran Singh which adjoined the land of the plaintiff on the Southern side.

The execution of the agreement had been proved by the plaintiffs. It appears that only on account of the strained relations between the parties that the dispute arose 27 years after the agreement was entered into. The plaintiff has been using this passage from going to the property lying on the Northern side of the plaintiff's land. The plaintiffs had been able to prove their user for the statutory period of 20

years. There was a permissive user which could not be denied by the defendants later on and the plaintiffs were entitled to the relief and the defendants were bound by the agreement entered into by their predecessors. The plaintiffs had a right of way and the Rasta was in existence since 1960 and the plaintiffs had been using it for more than 30 years and had acquired a right of way. I find no infirmity on the findings recorded by the Additional District Judge and are affirmed.

The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

February 21, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No