

Sr. No. 102

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

**RSA No. 1721 of 2015(O&M)
Decided on: 7.09.2017**

Asia Spintex Limited and another

.....Appellants

versus

M/s Rainbow Denim Limited

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

**Present: Mr. S.K.Singla, Advocate
for the appellants.**

Rajbir Sehrawat, J.(Oral)

This is an appeal filed by the defendants against the concurrent findings recorded by both the Courts below.

The facts of this case are that the plaintiff; which is a business company; filed the present suit that it is having factory over the land measuring 195 Bighas 2 Biswas comprised in Khasra No. 231 to 277 situated within the revenue estate of Village Chaundheri, Tehsil Dera Bassi, District Patiala. There is a road leading from the factory premises of the plaintiff to main Ambala-Chandigarh road. The plaintiff; in order to reach the Ambala-Chandigarh road from the factory premises; has to come through the metaled road situated towards southern side of the factory premises. The plaintiff has to pass through the road as mentioned in the plaint as ABCD. It was further pleaded that this factory was constructed on a land purchased through the sale deed from some other persons and the plaintiff has been using the road in question since the year 1997, prior to that the predecessors-in-interest of the plaintiff were using this road.

Therefore, as per the claim of the plaintiff, they have been using the road for a period of more than 25 years without any obstruction from the defendant company and its predecessors-in-interest. It was further claimed that the defendants now have been threatening to obstruct peaceful use and enjoyment of the road by the plaintiff as thoroughfare in the portion mentioned as ABCD in the plaint; which was part of the bigger road mentioned as EFGH in the plaint and leading from main Ambala-Chandigarh road. Therefore, an injunction was prayed for against the defendants restraining them from interfering with the usage of the passage by the company in any manner.

The defendant/appellant herein contested the suit on the ground that the plaintiff has not got any easementary right to use the said road. It was further pleaded that an alternative passage for in-gress and e-gress from the factory premises of the plaintiff is available in Khasra No. 354 which was provided by the Revenue authorities at the time of consolidation. Therefore, it was claimed by the defendants/appellant herein that the plaintiffs have no right to use the present road which exists in Khasra No. 381 and 383 and which is owned by the defendant.

Parties led their evidence.

In the evidence, the plaintiff led evidence by examining the witnesses, including the Sarpanch and Nambardar of the village. The defendant, inter-alia, examined the Patwari Halqa as DW1 to show the existence of an alternative passage in revenue record in Khasra No. 354.

After appreciating the evidence led by the parties, the Trial Court decreed the suit holding that the road in question is a public road having been constructed way back in the year 1973, as per the testimony

which has come on record. This road was constructed in the year 1973 by PWD-Punjab. Later on this was taken over by the Punjab Mandi Board for re-metaling and improving the same.

Aggrieved against the judgment and decree passed by the Trial Court, the appellant herein filed an appeal. However, the lower Appellate Court did not agree with the appellant and dismissed the appeal filed by it.

While dismissing the appeal, filed by the present appellant the lower Appellate Court recorded a finding that the existence of the road is not disputed even by the appellant. Further, it was recorded as finding that the existence of alternative passage have not been proved by producing any relevant records. Still further it was held that even the physical existence of the passage in Khasra No. 354, has not been proved. Therefore, the plaintiff/respondent has got right to use the road as claimant in the suit in the form of easementary right.

While arguing the present appeal, learned counsel for the appellant has submitted that although the road is in existence as claimed by plaintiff but plaintiff/respondent herein cannot claim easementary right for usage of the same since an alternative passage has been provided by the revenue authorities. Still further it is argued by learned counsel for the appellant that the plaintiff claimed to have purchased the land under his factory only in the year 1997, therefore, upto the date of filing the suit it does not complete 20 years of usage of this road which is required to acquire the right by way of prescription under the Indian Easements Act, 1882.

After hearing learned counsel for the appellants and perusing the available record, this Court is of the view that there is nothing wrong,

illegal or perverse in the findings recorded by both the Courts below. It is not disputed even by learned counsel for the appellant herein that the road in question exists on the spot. Although he claims that as per the revenue record an alternative passage is available through Khasra No.354, however, no evidence has been led by the appellants to prove that as a matter of fact this passage physically exists on the spot through Khasra No. 354.

The next contention of learned counsel for the appellant that the plaintiff/respondent herein has not completed 20 years of usage of the passage to create easementary right in its favour, has also to be noticed only to be rejected. It has come in evidence from the testimony of the Sarpanch and Nambardar of the village that the road in question was constructed way back in the year, 1973 and the Punjab Mandi Board had only taken over this road for re-metalling and its improvement. This is pleading of the plaintiff that before the present plaintiff its predecessors-in-interest have been using it. Otherwise, also its a public passage and everybody has a right to use it. Therefore, claim of the plaintiff that he has been using it for more than 25 years is duly proved on the record.

One more aspect in the matter deserves to be noticed. Learned counsel for the appellant has admitted that this is a metaled road. However, he submits that the road is illegally constructed through land of the appellant. Once a road is constructed by investment of public money and its a public road then the appellant herein cannot claim to stop anybody from using that road. It may be open to the appellant herein to question the legality of the road constructed over its land and to claim some kind of compensation or the alternate land in lieu of the land used for road, however, in law, he cannot restrain anybody from using this road as a public

road. The appellant has not even challenged the legality of the road so far before any Court of law.

No other argument was raised by learned counsel for the appellant.

In view of the above, the present appeal fails. The judgment and decree passed by the learned Courts below and their findings are upheld. Hence, the present appeal is dismissed being devoid of the merit.

7th September, 2017
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned *Yes*

Whether Reportable *No*