

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

RSA No.94 of 2016 (O&M)

Date of Order: 05.12.2017

Ram Lal

..Appellant

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Kaushik, Advocate,
for the appellant.

Mr. Sharad Kumar Yadav, DAG, Haryana

ANIL KSHETARPAL, J (Oral)

C.M.No.296-C-2016

Prayer in this application is for condonation of delay of 78 days
in filing the appeal.

For reasons mentioned in the application, which is supported by
an affidavit, the delay of 78 days in filing the appeal is condoned.

Application is allowed.

RSA No.94 of 2016

Plaintiff-appellant is in regular second appeal against the
judgment and decree passed by the learned Additional District Judge, Jind,
accepting the appeal filed by State of Haryana, and dismissing the suit filed
by the plaintiff.

Plaintiff filed a suit for permanent injunction claiming
easementary right of passage over the land marked as a passage shown in
green colour in the attached site plan.

Plaintiff claimed that he along with his brother had purchased

the plot vide sale deed dated 05.07.2001 and constructed a shop thereon. It was further pleaded that plaintiff has been using the land lying on one side as a passage.

On the other hand, defendants appeared and contested the suit. It was pleaded that for the purpose of residence of employees of Irrigation Department belonging to Class-III and IV, a Canal colony has been carved out and there is no passage as is being claimed by the plaintiff. It was pleaded that the land belongs to State of Haryana and is being used for the purpose of residence of the employees. It was further pleaded that the plaintiff had made an illegal opening towards the land of the defendants.

Learned first appellate court after considering the fact that the plaintiff himself has purchased the property on 05.07.2001 and filed a suit on 20.02.2010, held that the plaintiff has not acquired easementary right by way of prescription. The Court further found that there is no public passage as is claimed by the plaintiff.

I have heard counsel for the parties and with their able assistance gone through the judgments passed by the courts below.

Learned counsel for the appellant has submitted that the learned trial court had relied upon the statement of Hari Om, Sub Divisional Officer where he admitted that the land was lying abandoned and, therefore, everybody was using the piece of land for passage. Learned counsel submits that once the existence of passage is admitted, therefore, the judgment passed by the first appellate Court is erroneous.

I have considered the submission and also carefully read paragraph 20 of the judgment by the trial Court, in which this fact has been noticed.

In the considered opinion of this Court, mere use of abandoned land as a passage would not create a right of easement unless he is able to prove that he has acquired the right of easement by way of prescription. If a vacant piece of land belonging to the Government is lying abandoned and is being used for ingress and egress that itself would not convert that piece of land in to a public passage.

The right of easement is governed by Indian Easement Act, 1882 (hereinafter referred to as 'the Act'). Plaintiff was required to fulfill the requirements as provided in the Act before claiming any right of easement. In this case, plaintiff has failed to fulfill the aforesaid requirements.

For the reasons recorded above, this Court does not find any good ground to interfere with the order passed by the learned first appellate Court. The regular second appeal is dismissed.

December 05, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No