

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

RSA No.2469 of 2013 (O&M)

Date of Order: 14.09.2018

Sukhdarshan Kumar @ Sukhdarshan Lal and another

..Appellants

Versus

Jaswant Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.R.Dhawan, Advocate,
for the appellants.

Mr. R.S.Chauhan, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Plaintiffs-appellants are in the regular second appeal against the judgment passed by the learned first appellate court modifying the judgment passed by the trial court and declining the relief of passage through the defendants' land.

It may be noticed that Charan Dass, grand father of the plaintiffs was owner of the large chunk of land. He sold 88 kanals and 16 marlas of land to the defendants. In the sale deed vendor-Charan Dass had only reserved rights to have a water channel.

Plaintiffs claim their right of passage on the basis that they have got land from their father and they have been using a passage for last many years.

Learned first appellate court has found that father of the plaintiffs is owner of the adjoining land which has a passage.

Learned counsel for the appellant time and again argued that the plaintiffs have got easement of necessity. However, learned first appellate court has found after examining of the record that the plaintiffs have a shorter passage to approach the main passage by passing through the land of their father. First appellate court has further found that the plaintiffs and their father are residing in one house and they are joint in mess and cultivation. Easement of necessity is available only when there is no passage available. Once there is a close relationship and the plaintiffs have got land through Tarsem Lal, if the plaintiffs wish to take any independent passage it is only through the land of Tarsem Lal (father of the plaintiffs).

Hence, this court does not find any good ground to interfere with the findings of fact arrived at by the learned first appellate court.

The regular second appeal is dismissed.

September 14, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No