

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

RSA No.5149 of 2018 (O&M)

Date of Decision: 11.09.2018

Snesh Devi

.....Appellant

Versus

Bhawani Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. P.R. Yadav, Advocate for the appellant.

TEJINDER SINGH DHINDSA J.

CM No.14082-C-2018

in view of the averments made in the application, prayer is allowed. The delay of 32 days in re-filing the accompanying appeal is condoned.

Application disposed of.

Main Case

Plaintiff Bhawani Singh, filed a suit for declaration to the effect that he was entitled to easementary right of passage through the portion as shown in red colour in the site plan attached with the plaint, being part of Killa no.8 of Rectangle number 39 situated within the abadi of village Gangaicha Jat, Tehsil and District Rewari. Consequential relief of permanent injunction was prayed to restrain the defendants from raising any sort of construction over the suit property as shown in red colour in the site plan. Suit was decreed in favour of the plaintiff by the Trial Court on 28.09.2015. Defendant No.2, Snesh Devi filed civil appeal and the same had been dismissed vide impugned judgment dated 16.02.2018 passed by

the learned Additional District Judge, Rewari and thereby affirming the judgement and decree passed by the Trial Court.

Resultantly, defendant/appellant Snesh Devi is in second appeal before this court.

Briefly noticed, suit had been filed by the plaintiff/respondent herein on the averments that he is owner in possession of a residential house shown in blue colour in the site plan which has been constructed towards the side of Killa number 13/A of Rectangle 39 situated within the abadi of village Gangaicha Jat. It was claimed that plaintiff/respondent alongwith his family was permanently residing in the said house since the year 1970 and electricity/water's connection had been obtained by him since last many years. Plaintiff/respondent asserted that there exists land of Gram Panchayat, comprised in Rectangle no.39, Killa No.8 towards northern side of Killa no.13/A and which had been reserved for being used as common latrine in the revenue record. As per plaintiff the land had never been used for such common purpose for which it was reserved during consolidation. It was asserted that the same was lying vacant and was being used as a common rasta. Case of the plaintiff was that the portion of Killa No.8 which lies just in front of his house is being used by him as a passage/rasta for ingress and egress to his house for the last more than 40 years and without any obstruction and to the knowledge of the Gram Panchayat. It was claimed that he has accordingly acquired easementary right to the passage through the portion of Killa No.8 as shown in red colour in the site plan. Defendant No.2 (appellant herein) being Sarpanch of Gram Panchayat, was adamant to occupy the entire portion of Killa no.08 and under such circumstances the suit had been instituted.

Suit was contested by the defendants by taking a plea that the

land comprising in Killa No.8 of Rectangle No.39, vests in the Gram Panchayat of the village and which has been reserved for being used as common latrine by the inhabitants of the village. It was further stated that the plaintiff has encroached upon the eastern portion of Killa No.8. It was further denied that any portion of land comprising in Killa no.8 was being used by the plaintiff as a rasta/passage.

As has been noticed herein above, suit of the plaintiff was decreed. Civil appeal preferred by defendant no.2 Snesh Devi stands dismissed by the lower Appellate Court.

Learned counsel representing the appellant has argued that the judgments and decree passed by both the Courts below suffer from a misreading of evidence and as such cannot sustain. It is urged that the suit filed by the plaintiff/respondent ought to have been dismissed as he had encroached upon the property belonging to the Gram Panchayat and by constructing ramps in front of his house. Counsel further contends that the plaintiff/respondent had not acquired any easmentary right to use the land comprised in Killa no.8 of Rectangle no.39 as a passage for ingress and egress to his house. Further contended that the plaintiff/respondent had not led any evidence to prove that the portion shown in red colour in the site plan was being enjoyed by him as a passage without interruption for a period of more than 20 years.

Having heard counsel for the appellant at length and having perused the pleadings on record, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

Admittedly, it is not the case of the Gram Panchayat of the village in question that any part of the land comprising in Killa No.8 of

Rectangle no.39, has been encroached upon by the plaintiff/respondent herein. Even if that was the case, an efficacious remedy is available with the Gram Panchayat in terms of initiating proceedings under the relevant provisions of Punjab Village Common Lands Act for removal of any encroachment.

The Courts below have taken note of the deposition of the appellant herein Snesh Devi who while appearing as DW1 admitted that the property situated in front of the house of the plaintiff/respondent is shown in red colour in the site plan and is being used by him for ingress and egress to his house. She further admitted that the plaintiff/respondent as also his family members had not supported her during the Panchayat elections. DW2 Durga Parshad, also did not deny that some portion of the land in between the residential house of the plaintiff and the phirni is lying vacant and is being used by him for ingress and egress to his house. A concurrent finding of fact upon due appreciation of evidence has been recorded by the Courts below with regard to the plaintiff/respondent using portion of the land in Killa No.8 of Rectangle No.39 for purposes of passage/rasta.

The Courts below have rightfully taken a view that the Easementary Rights under Section 13 and Section 15 of the Easement Act, are parallel rights and even if easement of necessity under Section 13 is not available, the right of easement by way of prescription under Section 15 would be available.

A crucial factor that has weighed with this Court in declining to interfere in the present case is that against the judgment and decree passed by the Trial Court in favour of the plaintiff/respondent, no appeal had been filed before the lower Appellate Court by defendant No.1 i.e. the Gram Panchayat of the village in question. No decree had been passed

against defendant No.2 i.e. Snesh Devi, in her individual capacity. She had been arrayed as party defendant in the suit on account of being Sarpanch of the village. The Courts below have rightfully drawn an inference based upon the oral deposition of the appellant/defendant Snesh Devi DW1 that she nurses a grudge against the plaintiff/respondent as he alongwith his family members had not supported her during the Panchayat election.

This Court does not find any infirmity in the impugned judgments which are based on due appreciation of evidence.

The appeal does not raise any question of law.

Dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

11.09.2018

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No