

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.19 of 2018**

Mohan Lal Shrivastava, aged about 54 years, son of Late Shree Deenanath Shrivastava, R/o Balco Nagar, Tahsil and District Korba (CG)

---- Appellant

Versus

1. Gulab Chandra Chourasia, aged about 70 years, son of Jagannath Chourasia,
2. Hariram Chourasia, aged about 45 years, son of Gulab Chandra Chourasia,
3. Radheshyam Chourasia, aged about 41 years, son of Gulab Chandra Chourasia,
4. Abdul Kalam, aged about 53 years, son of Noor Mohammad

All 1 to 4 R/o village Padimar, Near Sada Colony, Balco Nagar, Tahsil and District-Korba (CG)

5. Babulal Matrri, aged about 47 years, son of Dharam Lal Maitrri R/o Qt. No.1005/7, Sector-05, Balco Nagar, Tahsil and Distt. Korba (CG)
6. State of Chhattisgarh, through Collector-Korba, District Korba (CG)

---- Respondents

For Appellant/Plaintiff	:	Mr.Ashok Swarnkar, Advocate
For Respondent No.6	:	Ms. K. Tripti Rao, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****01/03/2019**

1. Heard on the question of admission and formation of substantial question of law of second appeal preferred by the appellant/plaintiff under Section 100 of the Code of Civil Procedure, 1908.
2. The plaintiff's suit claiming easementary right over the suit land held by the State Government was dismissed by the trial Court and on appeal being preferred by the plaintiff it was upheld by the First Appellate Court, against which, this second appeal has been

preferred.

3. Mr.Ashok Swarnkar, learned counsel for the appellant/plaintiff, would submit that both the Courts below are concurrently unjustified in holding that the plaintiff has failed to establish his easementary right over the suit land in terms of Section 15 of the Indian Easements Act, 1882 (hereinafter called as “the Act of 1882”) by recording a finding, which is not only perverse but also contrary to record and therefore, the appeal involves substantial question of law for determination.
4. The plaintiff filed a suit for easementary right based under Section 15 of the Act of 1882. The suit land is part of khasra No.86/7 area 2 acres, which is admittedly government land known and recorded as '*Bade Jhad Ka Jungle*'. The plaintiff purchased the land adjoining the suit land on 6.9.1999 and filed the suit on 20.2.2009, in which the trial Court has held that statutory period of 30 years for claiming easementary right over the government land under Section 15 of the Act of 1882 has not completed and therefore, he is not entitled for relief of easementary right over the suit land, which the First Appellate Court has accepted that finding and dismissed the appeal.
5. It is well-settled law that a right of easement is a precarious and special right claimed over the land of another. A party claiming or relying on easement should plead the nature of title thereto as to clearly show the origin of right, whether it arises by statutory prescription etc. and whenever a right of easement is claimed. Pleading should be precise and clear and it should not be vague, as right of easement is one which a person claims over a land which is

not his own.

6. Since the plaintiff himself has admitted that he has purchased the land adjoining the suit land on 6.9.1999 and has filed the suit on 20.2.2009, he has not completed statutory period of 30 years as per his own showing and therefore, both the Courts below have rightly held that the plaintiff has failed to establish his easementary right over the suit land.

7. In the matter of Justiniano Antao and others Vs. Bernadette B. Pereira (Smt.)¹, the Supreme Court held that in order to establish a right by way of prescription, there should be specific pleading and categorical evidence in general and specifically that since what date to which date one is using the access for last 20 years. It held thus:-

“9. We have gone through the three judgments, i.e., Trial Court, First Appellate Court and that of the High Court. We have gone through the evidence adduced. From this, it is more than clear that there is no specific averment in the plaint or in the statement of the witnesses showing that this access from the land of the defendants was used as of right for the last 20 years. The evidence very categorically shows that the plaintiff has an access on the south-east side and this was being used by her for a long time. It was pointed out that only in the year 1984, the plaintiff has started using the access through the property of the defendants. It is also admitted that the defendants were during that time on board of ship and as soon as they came and saw the use of their land by the plaintiff, they put obstructions to it. Therefore, it is clear that it is not the case that the plaintiff has been using the access as of right through the property of the defendants for more than 20 years. Since the plaintiff has an access through the southern side of her property we see no reason why the property of other persons be used as an access to her house. If the plaintiff had no access to her house except through that of the property of the defendants, then perhaps, we would have considered appreciating as easement of necessity. But

1 (2005) 1 SCC 471

in order to establish a right by way of prescription, one has to show that the incumbent has been using the land as of right peacefully and openly and without any interruption for the last 20 years. There should be categorical pleadings that since what date to which date one is using the access for the last 20 years. In order to establish the right of prescription to the detriment of the other party, one has to aver specific pleadings and categorical evidence. In the present case, after going through the pleadings as well as the statement of the witnesses it is more than clear that the plaintiff has failed to establish that she has been using the access peacefully, openly as of right for the last 20 years. More so, we find that material placed on record and especially the photographs, which have been exhibited and marked as Exh. D.W. 3-A in the Court that there are two pillars showing the existence of a gate in southern side, but it has been closed down by rubble stones. The defendants have put up a strong case that the plaintiff has an opening in the southern side and it is amply established that there exist two pillars showing the existence of a gate, which has been covered by rubble stones in the southern side. It was also pleaded that the plaintiff was using the same and it is only after 1984 she got the gate constructed through the land of the defendants. Therefore, on the basis of the evidence and statement of the witnesses, we are satisfied that the First Appellate Court has correctly approached the matter and the view taken by the High Court as well as the Trial Court does not appear to be based on correct appreciation of facts.”

8. Concurrent finding recorded by two Courts below holding that the plaintiff has failed to prove his easementary right based under Section 15 of the Act of 1882 over the suit land is a finding of fact based on evidence available on record, which is neither perverse nor contrary to record. Even otherwise, the suit land is government land known as '*Bade Jhad Ka Jungle*', which is covered by the Forest (Conservation) Act, 1980 (hereinafter called as “the Act of 1980”) and therefore, by virtue of Section 2(ii) of the Act of 1980, it cannot be used for non-forest purpose without prior approval of the Central Government. I do not find any perversity or illegality in the said

finding. Even I do not find any substantial question of law for determination of this second appeal.

- 9.** Their Lordships of the Supreme Court have held that it is not permissible for the High Court to interfere with the concurrent finding of fact recorded by two courts below unless findings are perverse. {See : Aftaruddin (Dead) represented through legal representatives v. Ramkrishna Datta alias Babul Datta and others² and Rajkumari and another v. Ravinder Kumar (deceased) through legal representatives and others³}.

- 10.** Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in *limine*, without notice to other side. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-

² (2018) 11 SCC 77

³ (2018) 12 SCC 681