

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 756 of 2017****Reserved on 24.04.2019**
Pronounced on 10.05.2019

- Banti Saluja (Real Name Amarjeet Saluja) S/o Surendra Singh Saluja, Aged About 44 Years R/o Champa, Tehsil Champa, District Janjgir- Champa, Chhattisgarh.

---- Appellant**Versus**

- Smt. Madulika W/o Anil Kumar Saraf, Aged About 48 Years R/o Champa, Tehsil Champa, District Janjgir- Champa, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Vishnu Koshta with Shri Shobhit Koshta, Advocate.
For Respondent	:	Shri F.S.Khare, Advocate

Hon'ble Shri Justice Sanjay Agrawal**C.A.V. Order/Judgment**

1. This is the second appeal preferred by defendant under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) by questioning the legality, validity and propriety of the judgment and decree dated 24.07.2017 passed in Civil Appeal No.67-A/2016 by the District Judge, Janjgir-Champa, by which, the lower appellate Court, while affirming the judgment and decree dated 30.09.2016 passed by the Civil Judge Class-1, Janjgir-Champa in Civil Suit No.38-A/2012, has dismissed the appeal.

2. Briefly stated the facts of the case are that plaintiff instituted a suit claiming declaration and injunction to the effect that she is entitled to use the suit passage which is of 15 feet width, marked in red colour in plaint schedule 'A', on the basis of the registered deed of sale dated 29.03.2000, purported to have been executed in her favour by defendant's father Surendra Singh in relation to the land bearing Kh.No. 48/2 admeasuring 0.010 hectares (New number is 48/10). According to the

plaintiff, the alleged suit passage, which is situated at northern side of her land, is being used by her as passage since the date of execution of the alleged sale. It is pleaded further in the plaint that defendant's father had divided the said land in several holdings and sold it to the different persons, namely, Hiralal Swarnkar, Vishwanath Soni etc. and the alleged suit passage has been left vacant by him for all the purchasers so that it can be used as passage by them. It is pleaded further that after the death of said Surendra Singh, the defendant has started obstructing from utilisation of the suit passage and has not only demolished the pavement of 3' x 3' dimension forcefully but has also closed the door and windows of the plaintiff's house by raising wall resulting in interruption of the flow of air and light to her house. The plaintiff has, therefore, been constrained to lodge the report to the concerned Police Station, however, no action was taken on that as it was the dispute of civil nature, giving rise to the institution of the suit in the instant nature, instituted on 13.06.2012.

3. While denying the aforesaid claim of the plaintiff, it is pleaded by the defendant that when the plaintiff had purchased the land bearing Kh.No.48/2 from his father, it was adjacent to the Barpali to Tehsil Road and as such, the plaintiff was never permitted to utilise the alleged suit passage nor such right was provided to her by virtue of the alleged sale. It is contested further on the ground that the suit passage belongs to him and the plaintiff has not acquired the easementary right over it and pleaded further that the suit as framed is barred by time.

4. In support, the plaintiff has submitted the registered deed of sales marked as Ex.P.1 to Ex.P.4, which were executed by the defendant's father late Surendra Singh in relation to the part of same land to different persons and has also produced the consent letter (Ex.P.5) executed by said Surendra Singh in presence of attesting witnesses in order to show that it is a thoroughfare, while none of the documents was produced by the defendant.

5. After considering the aforesaid documentary evidence, vis-a-vis, oral evidence adduced by the parties, it is held by the trial Court that the plaintiff has acquired her right of passage based upon the sale (Ex.P.1) as there is a mention of "main entrance road" in the northern side of it, coupled with the declaration of suit passage as a thoroughfare by said Surendra Singh in his consent letter (Ex.P.5). In consequence, the trial Court has decreed the plaintiff's claim by its judgment and decree dated 30.09.2016.

6. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an appeal preferred by the defendant.

7. Being aggrieved, the defendant has preferred this appeal. Shri Vishnu Koshta with Shri Shobhit Koshta, learned counsel for the appellant submits that the judgment and decree as passed by the Courts below holding that the plaintiff has acquired her right of passage based upon the alleged registered deed of sale dated 29.03.2000 (Ex.P.1) are apparently contrary to law. According to him, in absence of such an endorsement made in the alleged sale, the Courts below ought not to have decreed the plaintiff's claim. He submits further that the alleged suit passage belongs to defendant and in absence of ingredients required under Section 15 of the Indian Easements Act, 1882, the plaintiff cannot be held to acquire such right based upon the alleged sale, particularly, when her land was adjacent to Barpali to Tahsil Road, i.e., the main road. Lastly, he submits that the alleged consent letter (Ex.P.5) is an unregistered document and no averment in this regard was made by the plaintiff in her plaint, therefore, it cannot be used even for collateral purpose.

8. I have heard learned counsel for the appellant and perused the entire record carefully.

9. A suit was instituted by the plaintiff claiming declaration and injunction in relation to suit passage, which is of 15 feet width, marked in red colour in plaint Schedule 'A' based upon the registered deed of sale dated 29.03.2000 (Ex.P.1) executed by defendant's father Surendra Singh in her favour. According to the plaintiff, the alleged suit passage has been utilising by her as a right of way since the date of execution of alleged sale. However, the defendant has created obstruction after death of his father Surendra Singh by demolishing not only her pavement of 3' x 3' dimension but has also closed the door and windows of her house by raising a wall, which led to lodging a report before the concerned Police Station. Since the dispute is of civil nature, therefore, no action was taken by the Police. Therefore, the instant suit has been filed by her. In order to establish her claim, she has submitted the registered deed of sale dated 29.03.2000 (Ex.P.1) along with sales of other purchasers, who have purchased the part of land from the same Khasra Number from defendant's father Surendra Singh. The consent letter (Ex.P.5) executed by defendant's father has also been produced by the plaintiff.

10. From perusal of the registered deed of sale (Ex.P.1), it is evident that there is mention of "main entrance road" in the northern side of her land bearing Kh.No.48/2 admeasuring 0.010 hectares (renumbered as 48/10 at the time of mutation). Ex.P.2 is the registered deed of sale executed by defendant's father Surendra Singh in favour of one Hiralal Swarnakar, which would show that on southern side of it, the vendor has left 15 feet road with an endorsement that it is for his (purchaser's) right of way. Ex.P.3 and Ex.P.4 are registered deed of sales, which also show that on northern side of purchased land, the vendor has left 15 feet road, although the endorsement as made in Ex.P.2 is not mentioned in these sale deeds.

11. Be that as it may, a combined reading of registered deed of sales (Ex.P.2 to Ex.P.4), it is evident that the vendor Surendra Singh has left 15 feet road from his

own land. Perusal of registered deed of sale (Ex.P.2) would show that the vendor has provided 15 feet road from his own land for use of purchaser Hiralal Swarnakar as right of way, though not specifically mentioned as such in the deed of sales (Ex.P.3 and Ex.P.4). Although it has not been mentioned as such but defendant Amarjeet Singh, in his cross-examination at paragraph 5, has admitted the fact that the purchasers in sale deeds (Ex.P.3 and Ex.P.4) have also been provided the said right of way. Besides, the deed of consent (Ex.P.5) executed by late Surendra Singh duly proved by its attesting witness Pratapchand Saraf (P.W.3) would reveal that there is a thoroughfare (*Aamrasta*) adjacent to the main road. It is true that this document is not registered but this can be used as a collateral purpose.

12. Thus, the Courts below, after considering the evidence, both documentary and oral, arrived at a conclusion that the plaintiff has acquired the alleged right of way based upon the alleged registered deed of sale (Ex.P.1) dated 29.03.2000, which has been obstructed by the defendant, as observed herein above. The said findings are based upon due and proper appreciation of the evidence led by the parties, therefore, deserve to be and are hereby affirmed.

13. In view of the foregoing discussions, I do not find any question of law, much less, substantial questions of law, which arise for determination in this appeal. The appeal, being devoid of merit, is liable to be and is accordingly dismissed at admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge