

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 04-02-2019

Judgment delivered on 28-02-2019

SA No. 1349 of 1999

Smt. Anant Thamos wife of Hemilton aged about 36 years,
Teacher, resident of Jarhabhata, Bilaspur, Dist. Bilaspur
(MP now CG).

---Appellants

Versus

1. Makhan Yadav, aged about 65 years, son of Ramdayal r/o.
Gairdram Sao Marg, Juna Bilaspur, Dist. Bilaspur MP now
CG (died through LR)
1(a) Ratna Yadav, Wd/o. Late Makhan Yadav, aged about
42 years, r/o. Shanti Nagar, Behind BaCHPAN School,
Bilaspur, Dist. Bilaspur (CG).
2. Santosh Kuamr Sintholiya, aged about 64 years, residentn
of Juni Line Bilaspur, Dist. Bilaspur MP now CG>

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--Respondent

For appellant : Mr. Rishi Mahobia, Advocate.

For respondents : None

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1 This second appeal is preferred under Section 100 of the
Code of Civil Procedure, 1908 against the judgment/decreed dated
4-8-1999 passed by the VIth Additional District Judge, Bilaspur,
Madhya Pradesh now CG in Civil Appeal No. 17-A/99 wherein
the said court dismissed the appeal filed by the appellant on the

basis of easementary right on the land bearing survey No. 69 which is closed to the land of the appellant bearing survey No. 110 area 4800 sq.ft., situated at Jarhabhata, Bilaspur.

2 This appeal is admitted on the following substantial question of law.

“Whether the courts below have erred in dismissing the suit of the plaintiff for permanent injunction restraining the construction being raised by the defendants particularly when the area in question is shown to be a Government land and a public way”?

3. Learned counsel for the appellant would submit as under:

- I) The trial Court has failed to consider that in fact the Western portion of the land adjacent to the land of the plaintiff was used as village road since long back, therefore, no one can be permitted to construct over the portion of the same, even easementary right does not accrue in favour of the appellant.
- ii) Respondent No.2 may be restrained on the ground of inconvenience and in

larger interest of the people.

- iii) Both the courts below ought to have considered that the appellant has purchased a corner plot only and on that basis she will get approach from two sides and her right cannot be affected.

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4. I have heard learned counsel for the appellant and perused the records of both the courts below including the judgment and decree.

5. The appellant is claiming easementary right on the land of survey No. 69 that same is used as road by her. Both court below i.e., the trial Court and the First Appellate Court have marshalled factual matrix and legal aspect of the matter and opined that the appellant is not able to establish that she used the said land of survey No. 69 for continuous period of 20 years without interruption as a matter of right and in the knowledge of all the parties who were concerned with the survey No.69. Again, from the evidence, it is clear that survey No. 69 is the Government land but nothing is pleaded and proved against the Government.

6. Admittedly, the appellant purchased the land from one Bhansilal. From the evidence it is not established that Bhansilal and appellant have used the land for continuous period of 20 years as right of prescription. There is also finding that the appellant had alternate way for moving from the house and his right to light and air is not restricted by any one. Finding of the both courts below is based on relevant material placed on record and same is not based on irrelevant or extraneous material. Pleading of the appellant is not proved before the courts below. There is no irregularity or illegality in the judgment of both courts below. It cannot be said that they have erred in dismissing the suit. Argument advanced on behalf of the appellant is not sustainable. The substantial question of law is answered in negative.

7. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Raju