

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 418 of 2008**

Parmanand Dubey, aged 58 years, son of Shri Raghunandan, resident of Sarkanda, tehsil and District Bilaspur (C.G.)

----Appellant/Plaintiff

Versus

1. State of Chhattisgarh, through the District Collector, Bilaspur, District Bilaspur.
2. Sub Divisional Officer (Revenue) Shri Ashok Tiwari, Office of the Sub Divisional Officer (Revenue) Bilaspur, opposite Chhattisgarh Bhavan, Bilaspur (C.G.)
3. Tahsildar Rajendra Gupta, Officer of the Tahsildar, Opposite Chhattisgarh Bhavan, Bilaspur (C.G.)
4. Halka Patwari, Sarkanda, P.C. No. 2, Meman (full name not known) office of the Tahsildar, Opposite Chhattisgarh Bhavan, Bilaspur (C.G.)
5. Nand Kishore, aged 52 years, son of Shri Kanhaiya, tahsil and District Bilaspur (C.G.)

----Respondents/Defendants

For Appellant : Mr. Somnath Verma, Advocate.
 For Respondents No. 1 to 3/ State : Mr. Mateen Siddiqui, Dy. Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

03/09/2019

(1) Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by plaintiff under Section 100 of the Code of Civil Procedure, 1908.

(2) Learned counsel appearing for the appellant/plaintiff would submit that both the courts below have concurrently erred in not granting decree in favour of the plaintiff holding

that he has no easementary right over the land held by defendant No.5 by recording a finding which is perverse and contrary to the record. He further submits that the trial Court ought to have framed issue on the easementary right claimed by the plaintiff, which was not framed, as such, the finding recorded by both the courts below is perverse and contrary to the record.

(3) The plaintiff filed a suit stating that he has easementary right over the suit path, as such, declaration be granted in his favour and the wall erected by defendant No. 5 on government land be demolished and he be provided right to way over the suit path.

(4) Trial Court, after appreciating the oral and documentary evidence on record, came to the specific conclusion that the suit land, which is alleged to be the land of State (Khasra No. 748, area 60 decimal) is owned by defendant No. 5 and, therefore, the plaintiff is not entitled for decree in his favour. Plaintiff preferred first appeal there-against. The first appellate court, on re-appreciation of evidence, dismissed the appeal. Hence, this second appeal.

(5) The plaintiff has claimed easementary right over the suit land in terms of Section 15 of the Indian Easements Act, 1882 (henceforth, 'the Act of 1882').

(6) The term "Easement" has been defined in Section 4 of the Act of 1882. The definition runs thus:--

4. "*Easement*" defined.--An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.

Dominant and servient heritages and owners.--The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage,

and the owner or occupier thereof the servient owner.

*Explanation:--*In the first and second clauses of this section, the expression 'land' includes also things permanently attached to the earth; the expression 'beneficial enjoyment' includes also possible convenience, remote advantage, and even a mere amenity; and the expression 'to do something' includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage, or anything growing or subsisting thereon."

(7) Section 15 of the Act of 1882 provides for acquisition by medicine as under:--

*"15. Acquisition by prescription.--*Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years,

and where support from one person's land, or things affixed thereto, has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement, without interruption, and for twenty years,

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, support or other easement shall be absolute.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

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*Explanation IV:--*In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage.

When the property over which a right is claimed under this section belongs to the Government, this section shall be read as if, for the words 'twenty years' the words 'thirty years' were substituted.

(8) A close reading of Section 15 of the Act of 1882 would show that a right to way or any other easement can be acquired by prescription under Section 15 of the Act of 1882 provided the right to access/way has been enjoyed:-

- (i) peaceably,
- (ii) openly,
- (iii) as an easement,
- (iv) as of right,
- (v) without interruption, and
- (vi) for last 20 years.

(9) Section 19 of the Act of 1882 speaks about passing of easement on account of transfer of dominant heritage. Section 19 reads as under:--

“19. Transfer of dominant heritage passes easement.--Where the dominant heritage is transferred or devolves, by act of parties or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed to pass the easement to the person in whose favour the transfer or devolution takes place.”

(10) The purpose of elucidating the law contemplated in Sections 4, 15 and 19 of the Act of 1882 is that whether in the given case the plaintiff is having easementary right and whether he has acquired such right by prescription.

(11) There cannot be any doubt that easement is a right and the same is not a mercy. If a plaintiff is having an easementary right, certainly he can establish it and continue to exercise it by filing a suit if the defendant obstructs him to exercise it. If an easementary right is in respect of a way on the servient heritage to approach the dominant heritage, the plaintiff is bound to prove his case on the foregoing tests in order to bring his case within the purview of Section 15 of the Act of 1882.

(12) It is a 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.

(13) Gale on Easements (15th Edition; Pages 3 and 4) states the precise nature of an easement as under:--

“It is of the essence of an easement that, as between two pieces of land, there is a shift in the equilibrium of natural rights incident to their ownership, a diminution in the natural rights of one being accompanied by a corresponding artificial addition to the natural rights of the other; the result being that a conveyance of either operate automatically, and can only operate, as a transfer of natural rights diminished, or of natural rights plus an additionally acquired right.”

At Page 415 of the book, the learned author states thus:--

“Under the present system of pleading, it is conceived that, whether the section be brought against the servient owner or a stranger, a party cannot safely allege his right to an easement generally, but should state specifically the manner in which he claims title to the easement, whether by grant (actual or lost), prescription at common law, or under the Prescription Act, and in many cases it is advisable to plead, alternatively, a title by all three methods.”

(14) In **Justiniano Antao Antao and others v. Bernadette B. Pereira (Smt.)**¹, their Lordships have held that there should be categorical pleadings that since what date to which date one is using the access for the last 20 years. It has been further held that in order to establish an easement by way of prescription to the detriment of the other party, one has to aver specific pleadings and lead categorical evidence.

(15) Reverting to the facts of the case in light of aforesaid legal position noticed hereinabove, it is quite vivid that the plaintiff, in paragraph 2 of the plaint, has only averred that he is using the suit land from the year 1972 and it was interfered with

¹ (2005) 1 SCC 471

by the defendants and on account of which, the plaintiff filed an application before the Sub Divisional Officer, Bilaspur and the SDO, Bilaspur by order dated 22.04.2004 rejected the said application holding that the suit land is not the government land whereas it is the land held by defendant No. 5 (private person) and, therefore, no right of way can be provided to the plaintiff. In my considered opinion, the plaintiff has failed to establish the ingredients of Section 15 of the Act of 1882, as such, both the courts below are absolutely justified in not granting decree in favour of the plaintiff by holding that the suit path is the land owned by defendant No. 5 and plaintiff has no easementary right over the same. I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

(16) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine*. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

