

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 432 of 2007**

1. Krishna Kumar Amrohit, S/o Birij Lal @ Brijlal Yadav, aged about 41 years, R/o Village Bhejamaidani, Tahsil Guru, Distt- Durg (C.G.)
2. Ramadhar Amrohit, S/o Birij Lal @ Brijlal Yadav, aged about 48 years, R/o Village Dongargaon, Tahsil Dongargaon, District Rajnandgaon (C.G.)
3. Rukmani Bai, D/o Birijlal @ Brijlal Yadav, W/o Murlidhar Yadav, Aged about 50 years, R/o Village Ranbirpur, Tahsil Lohara, District Kawardha (C.G.)
4. Yasoda Bai, widow of Devkishan Yadav, aged about 51 years, R/o Village Bhejamaidani, Tahsil Gurur, District Durg (C.G.)
5. Yamini Bai, D/o Devkishan Yadav, wife of Yogiraj Yadav, aged about 30 years, R/o Village Kohangatola, Tahsil Baold, District Durg (C.G.)
6. Romesh Kumar, S/o Devkishan Yadav, aged about 29 years, R/o Village Bhejamaidani, Tahsil Gurur, District Durg (C.G.)
7. Hemlata, D/o Devkishan Yadav, aged about 26 years, R/o Village Bhejamaidani, Tahsil Gurur, District Durg (C.G.)
8. Snehlata, D/o Devkishan Yadav, Aged about 24 years, R/o Village Bhejamaidani, Tahsil Gurur, District Durg (C.G.)

----Appellants/plaintiffs**Versus**

1. Smt. Tohfabee, W/o Bermat Ali, aged about 46 years, R/o Village Bhejamaidani, Tahsil Gurur, District Durg (C.G.)
2. State of Chhattisgarh, Through the Collector, Durg (C.G.)

---- Respondents/Defendants.

For Appellants : Shri Vishnu Koshta, Advocate.
 For Respondents : None as appeal yet not admitted.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****14/03/2019**

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

2. Original plaintiff – Birijlal Yadav filed a suit for declaration that he has right of easement on the suit path owned by defendant No.1, which was dismissed by the trial Court and on an appeal being preferred, the first appellate Court has affirmed the judgment & decree of the trial Court, against which second appeal has been preferred.

3. Shri Vishnu Koshta, learned counsel appearing for the appellants/plaintiffs would submit that concurrent finding recorded by both the courts below are perverse and contrary to the record, as such, plaintiff has right of easement over the suit path owned by defendant No. 1.

4. The trial Court has clearly recorded a finding that though suit path is still available only it has been narrowed by defendant No. 1; and further recorded a finding that the plaintiff has also alternative way for approaching his land / *Kothar* and dismissed the suit, which has been upheld by the first appellate Court.

5. 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.

6. In **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

¹ (2005) 1 SCC 471

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 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.”

5. The concurrent finding recorded by both the courts below that suit path is still available for plaintiff's use and there is also an alternative way to approach his land /Kothar is a finding of fact based on material available on record and 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.

6. 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 and contrary to law. {See : **Aftaruddin (dead) represented through Legal representatives Vs. Ram Krishna Dutta alias Babul Datta and others² & Raj Kumari and another Vs. Ravinder Kumar (deceased) through legal representatives & others³**}

7. Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine* without noticing to the other side.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

² (2018) 11 SCC 77

³ (2018) 12 SCC 681

