

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

-.-

RSA 2079 of 2018 (O&M)

Date of decision: 19.02.2020

Maman

.....*Appellant*

Versus

Mahabir and another

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Chanderhas Yadav, Advocate
for the appellant

-.-

Rekha Mittal, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for permanent injunction restraining the respondents from interfering in peaceful use of *rasta* marked 'JKCL' with red colour in the site plan on the eastern side of rect. No. 45 Killa No. 6/3 and 15 out of land mentioned in para 2 of judgment of the trial Court by claiming easement of necessity and prescription, was dismissed by the trial Court vide judgment and decree dated 31.10.2015 that came to be affirmed in appeal by the Additional District Judge, Jhajjar.

The appellate Court in paras 15-16 of the judgment has held, quoted, thus:-

"15 The most important document of the present case is the Aks sizra Ex.D1. It clearly reveals that a

rasta of 2 karams in width runs from east to west of the killa Nos.36//6 and 7/1 and then extends towards southern side, along the western edges of the killa Nos. 36//7/1, 14/1, 14/3,17/1,24/2 and 24/3. Vide para No. 7 of the plaint, the appellant/plaintiff had himself admitted that the land bearing Killa No. 36/24/3 also fall to his share along with the other land bearing Kills Nos. 36//25/2, 45//4, 5 and 6/1. Meaning thereby that, the above mentioned rasta is apparently attached with the land bearing Killa No. 36//24/3. All other land of the share of the plaintiff is closely attached to the land of Killa No. 36//24/3 above, which can also be easily made out through the Aks sizra Ex.D1.

16. *With regard to the right to use the alleged rasta in question, the plaintiff was required to prove that a rasta of 2 karams in width had been actually in existence along with the eastern edge of the land bearing killa No. 45//6/3 and 15. But neither the Aks sizra put forth by the plaintiff i.e. Ex P2, nor the Aks sizra Ex.D1 put forth by the defendants show the existence of any such rasta through the said killa Nos. Cat is out of bag from the own admission of the plaintiff (as PW1) during his cross examination, where he states that he had approached the defendants approximately one year ago (from the date of deposition i.e. 03.04.2015) to obtain rasta through their land and that he was even ready to deliver equal area of land from the land of his killa No. 45//6/2. If such rasta was in existence, then what was the occasion*

for the plaintiff to obtain 'a rasta' through the land of the defendants and if he had a right of easement or a right of prescription, then what was the logic behind the readiness and handing over of equivalent area of land from his own killa No. 45//6/2. Meaning thereby that, the facts are amply clear to reveal that there had never been any rasta through the killa No. 45//6/3 and 15.

Counsel for the appellant would argue that since land bearing Killa No. 36//24/3 has been sold by the appellant, in view of the facts elicited in his cross examination, 2 karams rasta on the western side of killa number aforesaid is no longer available to the appellant for having access to his land comprised in other killa numbers, reference whereto has been made in para 15 of the judgment.

Perusal of *Aks sizra* Ex. D1 and P2 makes it evident that as has been so held by the Court in appeal that there is no such rasta on the eastern edge of killa No. 6/3 and 15, as claimed by the appellant/plaintiff, to be used by him. No doubt, the appellant has stated in his cross examination that he had sold the land comprised in khasra No. 24/3 but no sale deed in respect of said sale was brought on record. Even otherwise, the appellant cannot take advantage of his own wrong by sale of land of khasra number 24/3 and thereafter keeping an eye on some other rasta to have access to his land. This apart, the appellant claimed easement of necessity and prescription in respect of rasta on eastern side of killa No. 6/3 and 15 but as per *Aks Sizra*, no rasta exists on eastern edge of aforesaid khasra numbers.

In this view of the matter, I do not find an error much less infirmity in the

judgments impugned nor the appellant can claim any relief on equitable consideration.

For the foregoing reasons, finding no merit, the appeal fails and is dismissed *in limine*. As the appeal has been decided on merits, application for condonation of delay in refiling the appeal is of academic relevance.

(Rekha Mittal)
Judge

19.02.2020

Mohan Bimbra

Whether speaking/reasoned: Yes/No

Whether reportable : Yes/No