

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

113)

RSA no.6556 of 2018 (O&M)

Date of Decision: 21.01.2020

Devi Ram

...Appellant

Versus

Balbir and another

....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Manoj Kaushik, Advocate, for the appellant.

Amol Rattan Singh, J. (Oral)

By this appeal, the appellant (plaintiff in the suit in question) challenges the judgments and decrees of the learned courts below, by which his suit was dismissed, it being one seeking a decree of permanent injunction restraining the respondent-defendants from raising illegal construction over a particular path (*rasta*) and from closing the same.

After extensive discussion of the evidence led by the parties, including a resolution passed by the Gram Panchayat, the learned trial court came to the conclusion that in fact the said resolution was not in respect of the passage in question but pertained to a different passage in the village and initially in fact the Sarpanch had given two contradictory certificates, one stating that it was a common passage (*gali*), and the other saying that it was not a common passage, but was only a private passage.

The Sarpanch having been summoned by the trial court and put under threat of proceedings against him as per the law for issuing two contradictory certificates, eventually, even the Gram Panchayat was impleaded as a necessary party to the suit by that court and it was found

that the resolution was indeed pertaining to a different passage/*gali* altogether, whereas the passage in question actually belonged to respondent-defendant no.1.

Thus the suit was dismissed, with the counter claim filed by respondent-defendant no.1, seeking a decree of mandatory injunction to the effect that the plaintiff be directed to demolish the illegal projection (*chhajja*) constructed on the wall of his house, as was projecting onto the said street decreed.

The present appellant-plaintiff having appealed against that judgment and decree, the learned first appellate court came to the same conclusion as had the trial court, as regards the passage in question being the private property of respondent defendant no.1; but as regards his counter claim, the decree passed by the learned trial court in his favour was reversed by holding that as regards the projection and the ventilator/window opening from the appellants' house onto the said street, that was an easementary right to which he was entitled.

No appeal as may have been filed by the respondent-defendant no.1 against that judgment/decreed, has been brought to the notice of this court so far.

In this appeal in any case, as regards the appellant-plaintiff, his grievance is that the passage in question is not a common passage.

Learned counsel for the appellant submits that in view of the fact that even in the cross-examination of respondent no.1, he had admitted

that the passage was being used by the predecessors-in-interest of the appellant-plaintiff, i.e. the persons from whom he had purchased his house, the passage was obviously one which was a common passage and therefore, the learned courts below have come to a wholly erroneous finding.

He further submits that since a partial easement right has been given to the appellant, it would further show that the persons who are living around that house, an easementary right even to the extent of using the passage, should have been recognized by the courts below.

Having considered the matter, it is to be noticed again that upon impleadment by the trial court, of the Gram Panchayat as a necessary party, a written statement was filed on behalf of the Panchayat (respondent no.2 herein), wherein it was categorically stated that in fact the certificate issued by the Sarpanch as regards a particular lane being public property on which even paving had been got done at the expense of the Gram Panchayat, that was a wholly different passage and not the one in question, which actually is in the ownership of respondent-defendant no.1.

No document other than that which has been rejected by the courts below, i.e. the certificates issued by the Panchayat, having been led by way of evidence by the appellant, to show that the passage was a common passage, I see no reason to interfere with the concurrent finding of fact on that issue as has been arrived at by the learned courts below, with even the testimony of the Sarpanch being that the passage in question was not a public passage.

As regards granting of a partial easementary right to the appellant, it is to be again noticed that such easementary right is only with regard to ventilation to his house, in the form of a ventilator/window opening from the appellant house onto the street, with the projection made by them over such ventilator ordered to be protected, with the lower appellate court obviously inferring that it was a necessary easement for proper lighting/oxygen etc. in the residential area of the appellant.

Upon specific query to learned counsel, he very fairly does not deny that other than the passage in question, there are other passages also available to access the entry gate to the house of the appellant.

That being so, obviously there is no easement of necessity arising on the basis of which the said passage, even though it belongs to respondent no.1, can be held to be a necessary easement to which the appellant is entitled by way of usage, so as to access his house.

That being so, I see no reason to interfere with the findings of the learned courts below and consequently finding no question of law to be decided in this appeal, the findings of fact are affirmed, with the appeal dismissed.

21.01.2020
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: Yes