

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 345 of 2012**

Rameshwar S/o Lacchan, Aged about 39 years, Caste Kalar R/o Jaijaipur, Distt. Janjgir-Champa, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. Shyam Bai W/o Ratanlal, Aged about 58 years.

2. Daras S/o Ratan Lal, Aged about 42 years.

Both by caste Chandra R/o Jaijaipur, Distt. Janjgir-Champa, Chhattisgarh.

3. State of Chhattisgarh, Through the Collector, Distt. Janjgir-Champa, Chhattisgarh.

--- Respondents/Defendants

For Appellant :- Mr. Ishwar Jaiswal, Advocate
For State :- Mr. Sunil Otwani, Addl. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board (Through Video Conferencing)

08/07/2021

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/plaintiff under Section 100 of CPC against the impugned judgment and decree passed by the first

appellate Court affirming the judgment and decree by which trial Court dismissed the suit filed by the plaintiff for permanent injunction based on easementary rights.

2. Mr. Ishwar Jaiswal, learned counsel for the appellant/plaintiff, would submit that the concurrent finding recorded by both the Courts below is perverse and contrary to the record. Both the Courts below ought to have held that plaintiff is entitled to have easementary right over the suit land, being Government land, bearing Khasra No. 5970 area 0.14 acre, therefore, the appeal deserves to be admitted by formulating substantial question of law in this regard.

3. Plaintiff purchased the land bearing Khasra No. 5918/2 area 0.13 acre and Khasra No. 5918/3 area 0.14 admeasuring 0.27 acre in total situated at Village Jaijaipur, District Janjgir-Champa from husband of defendant No. 1 and father of defendant No. 2 namely Ratanlal by registered sale deed dated 29/11/2002 (Ex. P/1) and filed the instant suit on 03/03/2008 claiming easementary right over the suit land adjoining to his land bearing Khasra No. 5970 area 0.14

acre averring that he uses the said suit land to access to his house which is being interfered with by defendants No. 1 and 2, therefore, decree for permanent injunction be granted in his favour.

4. Learned trial Court, upon appreciation of oral and documentary evidence on record, did not accept the pleadings of the plaintiff and dismissed the suit which was also affirmed by the first appellate Court in the appeal preferred by the plaintiff against the judgment and decree of the trial Court.

5. Both the Courts below have concurrently recorded a finding that the suit land bearing Khasra No. 5970 area 0.14 acre is a Government land and neither any document has been filed by the plaintiff to establish his claim nor any specific area has been mentioned by the plaintiff which he uses for access to his house.

6. Plaintiff has simply claimed easementary right over the suit land whereas he has only purchased the land bearing Khasra No. 5918/2 area 0.13 acre and Khasra No. 5918/3 area 0.14 by registered sale deed dated 29/11/2002 (Ex. P/1) and thus, he has also not met the requirement of

peaceably enjoying the access to his house by way of suit land without any interruption for 20 years as mandated under Section 15 of Indian Easements Act, 1882. Even on the face of record, the plaintiff has been in possession of his land adjoining to the suit land only for 6 years from the date of purchasing his land by sale deed dated 29/11/2002 (Ex. P/1) and thereafter, the instant suit has been filed by him on 03/03/2008, as such, the statutory period of 20 years has not been completed by the plaintiff. Even otherwise, Ratanlal, the erstwhile owner of plaintiff's land bearing Khasra Nos. 5918/2 and 5918/3 has also been examined but nowhere he has stated that he has been using the suit land for easementary right for the last 20 years.

7. Thus, plaintiff has failed to prove his easementary right over the suit land bearing Khasra No. 5970 area 0.14 acre in terms of Section 15 of the Indian Easements Act, 1882, therefore, he is not entitled for decree for permanent injunction, which has rightly been held by the two Courts below. I do not find any substantial question of law for admission of the appeal.

8. The second appeal being devoid of merits deserves to be and is accordingly dismissed in limine without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet