

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 909 of 2019****Order reserved on 05.07.2021****Order delivered on 08.07.2021**

Hussaina Begum W/o Abdul Gafur Aged About 60 Years R/o Jawahar Bada,
Sarafa Gali, Juni Line Bilaspur, District Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

Smt. Santosh Saraf W/o Chhedilal Saraf Aged About 53 Years R/o Jawahar
Bada, Sarafa Gali, Juni Line Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondent

For the Petitioner	:	Shri Badruddin Khan, Advocate.
For the Respondent	:	Shri Shobhit Koshta, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV ORDER**

Heard.

1. This petition has been brought being aggrieved by the order dated 2.8.2019 passed by the Learned Second Additional District Judge, Bilaspur in M.C.A. No. 22 of 2019, whereby the learned Court dismissed the appeal upholding the order of rejection passed by the Civil Judge, Class-II on an application under Order 39 Rule 1 and 2 of the CPC filed by the petitioner in Civil Suit No. 207-A of 2018.

2. It is submitted by counsel for the petitioner, that the claim of the petitioner is based on the right of easement of necessity. The petitioner has filed the civil suit and pleaded that she was born in the house situated in Jawahar Bada and residing continuously since then. The husband of the petitioner had entered into an agreement with Chironji Lal for the purpose of

purchasing the house, in which the petitioner and her husband were residing in the year 1994, however, that agreement was not performed. The respondent has purchased some area of Jawahar Bada in the year 2010. On 21.6.2017, the respondent has raised construction and fixed a gate on the public path which is situated in Nazul land, Street No.27, Plot No. 156 and the measuring area is 260 sq. ft. Because of the obstruction in the way of the petitioner; a complaint was given to the police on 22.6.2017. The obstruction on the path of the petitioner is still continuing because of which, the petitioner and the other tenants of Jawahar Bada are getting affected. It is pleaded that the petitioner had been using the disputed path from her childhood, therefore, the obstruction by construction is illegal and unauthorized and on that basis, relief of easementary right of way has to be restored.

3. The application under Order 39 Rule 1 & 2 of the CPC filed by the petitioner was firstly dismissed by the trial Court and then the appeal filed by the petitioner has also been dismissed by the Appellate Court in the impugned order. It is further submitted that the petitioner has the right of easement available on the basis of the easementary right and also on the basis of the necessity. Apart from that, it is also submitted that the petitioner has also acquired title over the disputed path on the basis of her continuous and adverse possession.

Reliance has been placed on the judgment of Rajasthan High Court in the case of **Birma Ram and Others vs. Teja Ram & Others** in **Civil Misc. Appeal No. 1251 of 2010** dated 1.12.2010, on the judgment of Karnataka High Court in the case of **A.S. Umeshappa and Ors. vs. C. Byrappa and**

Ors. in W.P. 16582 of 2012 dated 31.07.2012 and on the judgment of Supreme Court in the case of **Sree Swayam Prakash Ashramam and Anr. vs. G. Anandavally Amma and Ors. in Civil Appeal No. 7 of 2010** dated 05.01.2010. On the basis of these judgments, the petition be allowed and the relief be granted to the petitioner.

4. Learned counsel for the respondent opposes the submissions of the petitioner's counsel and submits that there is no proof in support of the pleading of the petitioner, that the path which was used by her was a public path. It is a clear case of landlord and tenant. The petitioner has suppressed the facts present that a suit for eviction was brought against the petitioner by her landlord and that Civil Suit No.33A of 2005 has been decreed by the judgment dated 25.1.2006 in favour of the plaintiff. The appeal preferred was dismissed then the second appeal before the High Court and the SLP before the Supreme Court, also have been dismissed. The petitioner was evicted from the suit property in execution, but the petitioner has forcefully repossessed the house of the landlord. In this connection, a criminal case was registered against the petitioner under Sections 341 and 448 of the IPC, in which she was convicted by the trial Court; her conviction was confirmed by the Sessions Court in appeal and thereafter, the criminal revision is pending before this High Court.

5. It is submitted by counsel for the respondent, that even if it is considered that the petitioner is residing in a house in Jawahar Bada and there is a requirement for her access to that house, in that case there is an alternate path present. The right to easement is neither acquired nor there is

any easement of necessity present. It is also submitted that the original owner of the property was Falitram, who sold the same to one Suman Gupta and the respondent has purchased the same by a registered sale deed on 5.10.2012, therefore, he has a valid title over the suit property, whereas, the petitioner is a trespasser, hence, the trespasser does not have any right of easement. Learned trial Court and the Appellate Court, both have rightly held that there is no *prima facie* case in favour of the petitioner in dismissing the application and the appeal. Hence, the petition also is without any substance which may be dismissed.

Reliance has been placed on the judgment of Supreme Court in the case of **Justiniano Antao and Others vs. Smt. Bernadette B. Pereira**, reported in **(2005) 1 SCC 471**, in which it has been held that in case where there is any alternative, then there cannot be any easement of necessity present.

6. In reply, it is submitted by counsel for the petitioner that the petitioner does not have any alternative path available, therefore, she is in need of easementary right.

7. Considered on the submissions. Firstly, it is clear that the petitioner has no title over the accommodation in which she is residing at present. Therefore, the first question for consideration would be whether the tenant has entitlement for right of easement. Section 4 of the Indian Easements Act, 1882 provides that the owner or occupier of certain land may have entitlement, which can be taken into consideration as support to the claim of the petitioner.

8. On perusal of the impugned order, it is found observed, that the petitioner has access to an alternative path which may be used by her. Apart from that, the pleadings in the plaint itself disclose that the construction has been raised and the gate has been fixed, hence, it clearly shows that the act of the respondent has simply obstructed the access of the petitioner over the suit property. The easement right that is claimed, does not appear to be in continuation. The interim relief which can be granted under Order 39 Rule 1 & 2 of the CPC can be only for maintaining and preserving the status-quo the party had enjoyed on the date of filing the suit or on the date the application is being decided. From the statement and the submissions of the petitioner herself, it is clear that on the date of filing and on the date the application was being decided, the petitioner was not enjoying the easementary right as claimed.

9. Further, on perusal of the copy of the plaint filed alongwith the petition and also looking to the history of litigation between the petitioner and her landlord and that the entitlement of her possession in the tenanted house has been put to question, I am of this view that the Courts below have not committed any error in passing the orders of rejection, therefore, this petition appears to be devoid of substance, which is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge