

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

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**RSA-5836-2019 (O&M)**  
**Date of decision: 26.07.2022**

Roshan Lal and others

.....Appellants

Versus

Hukam Chand and others

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. Namit Khurana, Advocate for the appellants.

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**MANJARI NEHRU KAUL, J. (ORAL)**

**CM-16696-C-2019**

For the reasons mentioned in the application, the same is allowed and delay of 39 days in re-filing the appeal is condoned.

**RSA-5836-2019 (O&M)**

Suit filed by the appellants/plaintiffs was dismissed vide judgment and decree dated 12.01.2015. The appeal preferred against the aforementioned decree also failed and was dismissed on 09.07.2019 by the first appellate Court. The plaintiffs are now before this Court in Regular Second Appeal.

Parties to the *lis* hereinafter shall be referred to by their original positions in the suit.

The plaintiffs while filing the suit in question, prayed for permanent injunction to restrain the defendants from blocking the passage/gohar of the plaintiffs existing in the area measuring 40K-0M bearing Khewat No.109 min/107, Khatauni No.239, Khasra No.95, 96, 97, 98, 99 situated at Village Radauri HB No.44, Sub Tehsil Radaur, Tehsil Jagadhri, District Yamuna Nagar (hereinafter referred to as 'the

suit property'). They thus sought declaration to the effect that they had easementary right over the suit property.

In brief, the case as set out by the plaintiffs was that they were inhabitants of village Radauri and they had been using the passage/gohar for ingress and egress to their fields adjoining the suit property, even though pits had been dug on it. The suit property had been left as a passage for ingress and egress of the plaintiffs to their fields by the Gram Panchayat almost 40 years ago and no restoration of the passage had been carried on account of the huge expenditure involved. The plaintiffs had been using the suit property for ingress and egress to their fields ever since then. Still further, a portion of the said passage had been brick paved by the Gram Panchayat and now the plaintiffs had easementary right, by way of necessity, over the passage/gohar in dispute. It was alleged that the Gram Panchayat, had, with an ulterior motive carved out residential plots over the suit property and were now threatening to block the passage of the plaintiffs to their fields. It was also prayed that in case the plots/barras which had been carved out, were actually required there was nothing which prevented the Gram Panchayat from using other land for the same which was available in the village.

In the written statement filed by defendant No.3, it was denied that the suit property had ever been left as a passage for ingress or egress of the inhabitants of the village much less plaintiffs. It was denied that the passage had been ever brick paved by them. It was further submitted that as per the Haryana Government Policy the suit property had been earmarked for allotment of plots to the weaker

section of society and after registration etc., demarcation proceedings had also been carried out by the authorities over the suit property. Defendants No.4 to 63 in their written statement adopted and supported the stand taken by defendant No.3, and also prayed for dismissal of the suit.

Upon consideration of the material and other evidence led, both the Courts concurrently concluded that the plaintiffs had failed to prove the essential ingredients of easementary right. The Courts observed though the plaintiffs were seeking declaration to the effect that they had easementary right of necessity over the suit property and had been using the suit property for access to their fields, however, strangely the plaint was completely silent about the khasra numbers of the properties, moreso, when it was the case of the plaintiffs that except for the suit land there was no other passage for access to their properties. Hence, it was all the more incumbent upon them to identify the khasra numbers of their property and also to place on record the aksajra of the exact location of their properties so as to prove that the access to the land was only through the suit property.

Learned counsel for the appellants/plaintiffs vehemently argued that the Courts below had failed to appreciate the evidence and material led in the right perspective. The counsel reiterated the averments made in the plaint and prayed for acceptance of the appeal.

I have heard learned counsel and perused the relevant material on record.

The plaintiffs failed to bring to the notice of this Court to substantiate their plea that the Gram Panchayat had left the suit

property as a passage/gohar or that the plaintiffs and other villagers had been using the said passage out of necessity or by prescription for more than 20 years. It was for the plaintiffs and the plaintiffs alone to lead some cogent evidence to prove their easementary right which admittedly they failed to do so. The Courts below rightly observed that merely because the passage had been dug up into pits would not be a ground for the plaintiffs to seek easementary right over the suit property. Still further, the claim of the plaintiffs that they had no other alternate passage to their fields stood belied from the report of the Local Commissioner who was appointed by the Court as admittedly there was a rasta on the eastern side of the suit property and another passage/gohar on the western side of the suit property. The documentary evidence adduced before the Courts below including the report of the patwari halqa clearly proved that there was indeed an alternate passage for access to the fields of the plaintiffs. It is a matter of record that the Gram Panchayat has carved out plots for the weaker sections and those plots already stand allotted to them vide allotment letters vide Ex.D1 to D10. The said allotment was made much prior to the filing of the suit in question on 16.12.2008. Gram Panchayat being the owner of the suit land was well within its rights to utilize the same for the benefit of the village. The plaintiffs cannot be permitted to object to the same only because the allotment of plots seemingly is inconvenient to them and on account of construction being raised on the passage, the plaintiffs would now have to take an alternate passage for going to their fields.

On being pointedly asked, learned counsel for the

appellants/plaintiffs failed to bring to the notice of this Court anything on record to show that the conclusions arrived at by both the Courts below were either contrary to record or suffered from any material illegality. In the circumstances, this Court does not find any error in the concurrent findings recorded by both the Courts. The appeal being devoid of merit is accordingly dismissed.

26.07.2022

Vinay

(MANJARI NEHRU KAUL)  
JUDGE

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No