

Item-29. 16-05-2023

sg Ct. 8

SAT 422 of 2015

Merry Bright Club and People of Mouza and
Village Nasigram, represented by
Jayanta Chatterjee & Ors.
Versus
Mamata Mondal & Ors.

Mrs. Sulekha Mitra, Adv.
Mr. Manas Kumar Das, Adv.
Mr. Aritra Kumar Thokdar, Adv.
...for the appellants.

The decree for reversal is the subject matter of challenge in this second appeal. The plaintiffs filed a suit for declaration of title and permanent and mandatory injunction.

The plaintiffs claimed that they have purchased 'ka' schedule property by a registered deed of sale on 5th July, 1995 and raised pucca construction with the permission of the local Panchayat and it is described as 'ka1' of the plaint. However, due to financial crunch, the plaintiffs could not complete the construction of their residential house. The plaintiffs have kept the 'ka2' schedule land vacant for future construction. The Burdwan-Kalna road situated to the east of the 'ka' schedule property is the approach road into the house of the plaintiffs through which, the house of the plaintiffs could be access. There are many other houses to the north-west of the plaintiffs' house and there is one 8 ft. wide passage to the north of 'ka' schedule property to approach those houses. But there is no other approach road for entering into the garage of the plaintiffs, excepting the Burdwan-Kalna road that has been described in schedule 'kha' of the plaint. In between the 'ka' schedule property and 'kha' schedule Rasta, there is one side-space which is described in 'kha1' schedule of the plaint and

the plaintiffs state that this 'khal' schedule is the subject matter of the suit.

The plaintiffs alleged that taking advantage of the non-completion of the house, the defendant nos. 1(ka) to 1(gha) have caused construction of a club room on 10th January, 2005 on the 'khal' schedule property and have fenced the 'khal' schedule property to obstruct the entrance of the plaintiffs by their car into their house and garage through 'khal' schedule property. the State of West Bengal and the PWD is the owner of the 'kha' schedule Rasta (road) and 'khal' schedule side-space. The defendants contested the said proceeding by filing written statement denying all the materials allegations. It was claimed in the written statement that PWD road-side space ('khal' schedule property) was lying vacant and was being misused by the antisocial people. Thereafter, the vacant space in between the 'kha' schedule Rasta has been transformed into a clubroom and children's park as well as a space for observing various festivals including Durga Puja. The members of the club are the local people. On behalf of the plaintiffs, the husband of the plaintiff no.1, the Commissioner for local inspection and another person deposed. Whereas on behalf of the defendants, DW-1 deposed. The original deed of sale, the LR information slip, the government rent receipt, Panchayat tax receipt and report of the learned Commissioner for local inspection were marked as plaintiffs' exhibits. The learned Trial Court dismissed the suit on the ground that the plaintiffs were keen to get into the 'ka' schedule property through 'khal' schedule property and it is quite discernable that a garage room can be approached very easily through the north by the 8th ft. wife

passage by piercing a door to the north wall of the garage, if that is not existing till date. The existence of pathway adjacent to the north of the 'ka' schedule property shows the existence of only pathway of the plaintiffs which is neither interrupted nor obstructed by anybody and therefore, the claim of the plaintiffs for easementary right does not hold good. It was not a claim of easementary right of necessity over the 'kha' schedule property and consequently, they are not entitled to any such injunction.

The First Appellate Court reversed the said judgment on the ground that the evidence of PW-1 read with the other evidences would clearly show that the approach of the plaintiffs to its use in the Kalna road is blocked by reason of construction being raised by the club. The first appellate court has also considered Section 42(a) of the West Bengal Panchayat Act, 1973 whereby the public street is vested in Gram Panchayat. The first appellate court accordingly allowed the appeal and decreed the suit by holding that the plaintiffs have right over the said 'kha1' schedule of land as a public for having use and access to the highway and a decree restraining the respondents from obstructing the same in future. This decree of reversal is under challenge.

The learned counsel for the club has submitted that the sketch map annexed to the schedule of the plaint would show that in the western side of the house of the plaintiffs/appellants, there is a open drain and which is beside that a strip of land belonged to PWD between the owners, the highway is intervened by drain as well as a strip of land. The claim of the plaintiffs that their house is situated adjacent to the highway is unbelievable.

The First Appellate Court, in fact, has relied upon the

evidence of O.P.W.1, a member of the club, to reverse the finding of the trial court. The evidence of O.P.W.1 was not considered by the learned trial judge in considering the claim of the plaintiffs. The learned First Appellate Court has summarized the evidence of O.P.W.1., which, thus, reads as follows:

“From the evidenced of O.P.W.1 who is one of member of Mary Bright Club and presently in-charge of President it is seen that he admits in his cross examination that they have bounded certain land by the side of the road with bamboo fencing for the users of the club members and similarly on the other side of Kalna road there is bamboo fencing around the house of its owner. He further admitted that the southern vacant portion of the plaintiff’s land can only be approached for the purpose of construction through the other portion of the plaintiff itself and if the bamboo fences raised by the club be removed the house of the plaintiff can directly re-approached from Kalna road. From the pleadings also we can see that the Appellant specifically stated that because of fund crunch they could not complete the construction of the house and when admittedly the available passage is of 8 ft only it can be safely presumed that during the construction the appellant used the adjacent side land which has now been obstructed by Respondent no.1. In fact the door as shown by the appellant situated on the western side also supports such contention.”

The right to immediate access from the private property to the public highway is a private right available to the owners of the premises by reason of the existence of the said property adjoining the highway and such right is distinct from the right of owners of that property to use highway as a member of the public. This, in fact, was reiterated by the Madras High Court in *Bharat Mata Desiya Sangam vs. Rosa Sundaram & Ors.* reported in *AIR 1987 Madras 183*. The Madras High Court has reiterated that the right

of access is not limited to the right of passage from the premises to the highway and vis-à-vis to include the rights to access to a wall on the boundary of the premises.

The First Appellate Court has also relied upon the decision of *Mandakinee Debee vs. Basantakumaree Debee* reported in *AIR 1933 Calcutta 884*, where it is observed that a member of the public can maintain a suit for removal of obstruction of a public highway if his right of passage is obstructed without proof of special damage.

The plaintiffs have claimed that they could not use the public street or the said land to the obstruction raised by the respondent no.1 which was allowed by the respondent no.4. The defendants could not show that they were permitted to raise any such contraction on the land which has caused by obstruction. That the access to the public road is being obstructed for reason of the construction of the club is quite evident from the evidence of O.P.W.1. In view of the consideration of the aforesaid factors, we feel that the learned First Appellate Court has on proper appreciation of evidence of law decreed the suit in favour of the plaintiffs.

Under such circumstances, we do not find any reason to interfere with the judgment and decree passed by the learned First Appellate Court.

The second appeal stands dismissed. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)