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Ct. No. 04

akd

S.A.T. 219 of 2022

CAN 1 of 2022

Smt. Leena Chatterjee

Vs.

Smt. Bela Bhattacharya & Ors.

Mr. Sutirtha Das,

Mr. Sagnik Roy Chowdhury.

... for the appellant.

The plaintiff failed to prove the case of easement on necessity in respect of 6-ft. wide passage situated at northern side of the property belonging to the plaintiff/appellant in both the Courts below. The concurrent finding of facts is sought to be assailed in the instant Second Appeal taking a departure from the stand of the plaintiff.

By virtue of a deed of sale dated 14th October, 1993 the plaintiff acquired the property described in schedule 'A' to the plaint from the then erstwhile owner. The sale deed was tendered in evidence, which was duly exhibited by marking Exhibit-A, which does not indicate the existence of 6-ft wide passage on the northern side of the said property.

Though the recital of the deed contained the statement that all easementary and other rights enjoyed by the vendor is passed on to the plaintiff as purchaser, but there was no indication of specific easementary right enjoyed by the vendor/appellant. Easement on necessity though pleaded in the plaint but does not appear to be sustainable as the plaintiff has separate access to his property and could not make out a case that the only access to the property is through the said 6-ft. wide passage.

The plaintiff/appellant after getting the building plan sanctioned from the Howrah Municipal Corporation constructed the house and tried to install

rainwater pipe as well as the sewerage line beneath the said passage.

The defendants/respondents contended that there is no existence of such 6-ft wide passage, as it falls within the area purchased by the defendants and, therefore, the adjoining owner cannot be permitted to lay a sewerage line beneath the property belonged to the defendants/respondents nor can fix the rainwater pipe so that the water percolates through the said pipe and fall on the exclusive property of the defendants/respondents.

Both the Courts concurrently held that the sale deed executed in favour of the plaintiff does not reflect the existence of the passage in the schedule appended thereto nor there is any reflection in the recital of the sale deed that any easementary right was created in favour of the vendor.

At this juncture it is sought to be contended that the plaintiff/appellant may be permitted only to repair the boundary wall from the other side, for which we do not think that the appeal should be admitted, as it does not involve any substantial question of law.

The instant Second Appeal is thus dismissed.

There will be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

