

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

RSA-990 of 2014(O&M)

Reserved on:-18.4.2023

Date of Pronouncement:-24.4.2023

Man Singh (since deceased) through his LRs

...Appellants

Versus

Amar Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Amit Jain, Advocate
for the appellants.

Mr.Ajay Vijarania, Advocate
for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Amar Singh had brought a suit against defendant Man Singh, seeking a declaration that he is using a path of 2 karams width and 4 karams length towards northern western crossing of Khasra No854//13 comprised in Khewat No.3045 Khatoni No.3558 situated at village Barwala, Tehsil and District Hisar as per the jamabandi for the year 2008-09 (shown in red colour in the site plan attached) for the last 22 years without any interruption and intervention and that there is no other access to his fields except the

passage in question, therefore he has got a right to use the passage by way of easement of prescription and easement of necessity and defendant be restrained from closing the said passage or interfering with peaceful use of the same by the plaintiff.

2. As per the version of the plaintiff, he along with defendant and some others were joint owners of the agricultural land, which they had privately partitioned in which plaintiff got 32 kanals comprised in khasra No.853//10(8-10) and 854//6(8-0), 7(8-0) and 8(8-0); at that time the parties had orally agreed to leave a path of 4 karams on the northern-western crossing of killa No.854//13 for having access to the land of the plaintiff; the said path is in existence since then being used by the plaintiff for going to his fields by tractor-trolley, bullock cart etc.; of the late the defendant threatened to grab the passage by merging it with his remaining land to which he has no right. Feeling aggrieved, the plaintiff brought the suit in question.

3. On notice, the defendant appeared and filed a written statement contesting the suit raising various legal objections, on merits denying that previously there was joint holding of the agricultural land by the parties or that any private partition had taken place in the year 1990. The defendant denied existence of any such path as claimed by the plaintiff contending that the defendant is cultivating khasra No.854//13(6-6) since long. According to the defendant the plaintiff used to go to his fields through khasra No.854//9/1, which falls towards western side of his land bearing khasra No.854//8. Refuting the remaining assertions, the defendant prayed for dismissal of the suit.

4. On the pleadings of the parties, following issues were framed:

1. Whether there exists two karam wide path as alleged in the plaint?
OPP.
2. If issue No.1 is proved, whether the plaintiff is entitled to get injunction as prayed for?OPD.
3. Whether the suit of the plaintiff is not maintainable? OPD.
4. Whether the plaintiff has no cause of action and locus standi to file instant suit? OPD.
5. Whether the plaintiff has suppressed true and material facts from the Court, if so to what effect? OPD.
6. Whether the plaintiff is estopped by his own act and conduct from filing the suit? OPD.
7. Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties? OPD.
8. Relief.

5. The parties were afforded opportunities to lead evidence in support of their respective claims.

6. During the course of his evidence, the plaintiff got his own statement recorded as PW1 besides examining Ajeet Singh, Patwari as PW2. The plaintiff also tendered in evidence certain documents.

In rebuttal the defendant appeared as DW1 besides tendering certain documents.

7. After hearing the learned counsel for the parties, the trial Court of Civil Judge (Jr.Divn.), Hisar by giving issue-wise findings

decreed the suit of the plaintiff declaring him to have an easementary right of necessity over a path as claimed by the plaintiff, in the process restraining the defendant from interfering in the peaceful use of the plaintiff over said path and from closing the same. It was observed that easementary right of plaintiff is subject to the provisions of Section 28 of the Easement Act, 1882 and would surely cease to exist as and when plaintiff got an alternative sanction for approved path as access to his fields. This was so done vide judgment and decree dated 31.8.2013.

8. Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal in the Court of District Judge, Hisar, which was assigned to Additional District Judge, Hisar, who vide judgment and decree dated 25.10.2013 dismissed the appeal upholding the judgment and decree passed by the trial Court.

9. Being dissatisfied with the judgments and decrees passed by the Courts below, the defendant filed the present regular second appeal before this Court.

10. Notice of the appeal was given to the respondent, who had put in appearance through counsel.

11. I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the appeal.

12. Here in this case, both the courts below in view of the pleadings of the parties by properly and minutely analyzing the evidence brought on record by them, in light of the settled legal position have returned concurrent findings that earlier the parties to the suit along with

others were co-sharers in the agricultural land, which they had privately partitioned in the year 1990 and at that time path of 4 karams was left on the northern western crossing of killa No.854//13 to enable the plaintiff to have access to his agricultural land. It has further been observed that the plaintiff is using the said path continuously since long by taking tractor trolley, bullock car etc. through it and there is no other access to his fields, therefore, the plaintiff has got easementary right to use the passage by necessity. The version set up by the defendant that no such passage exists was considered and rejected. I do not see any reason to disagree with the findings recorded by the Courts below. The suit of the plaintiff was rightly decreed by the trial Court and such judgment and decree passed by the trial Court were correctly affirmed in appeal by learned Additional District Judge, Hisar.

13. With the concurrent findings having been recorded by the Courts below against the appellant/defendant, which are based on proper appraisal of evidence and correct interpretation of law and there being no illegality or infirmity with the impugned judgments and decrees passed by the Courts below, there is no ground to interfere with such impugned judgments and decrees in regular second appeal.

14. No substantial question of law arises in this appeal.

15. Finding no merit in the appeal, the same stands dismissed.

The interim order dated 2.7.2015 passed by this Court directing the Executing Court to adjourn the execution petition beyond the date given by this Court thus comes to an end.

Since the main appeal is dismissed, the miscellaneous

application(s), if any stands disposed of accordingly.

24.4.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No