

2025:PHHC:109576



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

**RSA No. 4870 of 2018 (O&M)
Reserved On: 05.08.2025
Pronounced On: 21.08.2025**

Sahab Ram and another

..... Appellants

Versus

Rakesh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Argued By:- Mr. P.K. Ganga, Advocate
for the appellants-defendant Nos. 1 & 14.

Mr. Subhash Kumar, Advocate
for contesting respondent Nos. 1 & 2-plaintiffs.

HARKESH MANUJA, J.

By way of present appeal, challenge has been laid to the judgment and decree dated 30.04.2018 passed by the Court of learned Additional District Judge, Sirsa (**hereinafter to be referred as “First Appellate Court”**), whereby an appeal filed at the instance of appellants-defendant Nos. 1 & 14 against the judgment and decree dated 04.12.2017 passed by the Court of learned Civil Judge (Junior Division), Dabwali (**hereinafter to be referred as “trial Court”**), decreeing the suit for declaration and mandatory injunction, instituted at the instance of respondent Nos. 1 & 2-plaintiffs, was dismissed; thereby affirming the judgment and decree passed by the learned trial Court.

[2] For convenience, the parties shall be referred to in the same status, as was given to them by learned trial Court.

[3] Briefly stating, respondent Nos. 1 & 2-plaintiffs (Rakesh Kumar & Chottu Ram respectively) filed a suit for declaration while claiming / alleging right of easement of necessity of the passage of 11 feet in width, on the eastern dol of Killa No. 23, Rect. No. 370, Khewat No. 2740, Khatoni No. 3097, shown in red colour in the rough Akshijra to have an access to their (plaintiffs) land measuring 68 Kanal 12 Marlas comprised in Khewat No. 3154, Khatoni No. 3577, Rect. No. 370, Killa No. 8 (8-0), 9 (8-0), 10 (8-0), 11 (8-0), 12 (8-0), 13 (8-0), 18 (8-0), 19 (8-0), 20/2 (4-12), situated in Village Chautala, Tehsil Dabwali, District Sirsa and further for direction to defendant Nos. 7 to 10, who were tenant, for leaving path in question by way of mandatory injunction. It was alleged that the land measuring 68 Kanals 12 Marlas was owned and possessed by Sahab Ram, Om Parkash, Pirthi Raj sons of Nihal son of Khyali Ram and Bakhtwari wife of Nihal being big land-owners and it was declared surplus under the Haryana Ceilings of Land Holdings Act, 1972 (**hereinafter referred to as “the Act of 1972”**). Mutation No. 4185 dated 30.12.1981 was entered and attested in favour of State of Haryana, which later allotted the same to one Sh. Diwana son of Lekh Ram son of Ram Saroop and Mutation No. 4295 dated 30.09.1982 was sanctioned in his favour. It was further submitted that the said Diwana died in the year 1990 and Mutation No. 5614 of his inheritance qua land measuring 68 Kanals 12 Marlas was sanctioned in favour of his son-Lakshmi Narayan being legal heir. It was further alleged that plaintiff-Rakesh purchased the land measuring 68 Kanal 12 Marlas from Lakshmi Narayan vide registered sale deed No. 1315 dated 28.06.2002 for a sale consideration of Rs. 9,44,000/- and

Mutation No. 7513 dated 10.09.2002 was sanctioned in his favour. It was further alleged that when State of Haryana allotted the land measuring 68 Kanal 12 Marlas to Diwana, no passage was given to him, but at that time, Bakhtawri and others allowed Diwana to have access to his land through 11 feet path towards eastern side of Killa No. 23 Rect. No. 370; after the death of said Diwana, his son-Lakshmi Narayan used to pass through the passage in question. It was also pleaded that after purchasing of the land measuring 68 Kanal 12 Marlas in the year 2009, the defendants asked the plaintiffs to sell their land but plaintiffs refused to it. Upon this, defendants did not allow the plaintiffs to use the passage in question. Thereafter, the plaintiffs filed an application under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (**hereinafter referred to as “the Act of 1948”**); but the Consolidation Officer rejected the same on the ground of jurisdiction, which was upheld even upto Hon’ble Supreme Court. Hence, the suit was filed.

[4] Upon notice, defendant Nos. 1, 2 & 10 to 15 filed their joint written statement while submitting that the suit was not maintainable as the same was barred by *res judicata* on account of dismissal of application under Section 42 of the Act of 1948 filed at the instance of respondent Nos. 1 & 2-plaintiffs for the same cause.

[5] Replication was not filed. On the basis of pleadings of the parties, the trial Court framed the following issues:-

“1. Whether the plaintiff is entitled to relief of declaration, as prayed for? OPP

2. *Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for? OPD*
3. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
4. *Whether the plaintiff has no cause of action and has no locus standi to file the present suit? OPD*
5. *Relief. ”*

[6] The trial Court, vide its judgment and decree dated 04.12.2017, decreed the suit of respondent Nos. 1 & 2-plaintiffs while declaring that the plaintiffs have a right of easement of necessity of path, 11 feet wide, on the eastern side of Killa No. 23 of rectangle No. 370, Khewat No. 2740, Khatauni No. 3097 to have access to their lands.

[7] Aggrieved thereof, the appellants-defendant Nos. 1 & 14 filed the first appeal, which came to be dismissed with costs vide judgment and decree dated 30.04.2018 passed by the First Appellate Court. Hence, the present appeal.

[8] Impugning the aforementioned judgments and decrees dated 30.04.2018 & 04.12.2017, learned counsel for the appellants-defendant Nos. 1 & 14 submitted that the Courts below went wrong while decreeing the suit filed at the instance of respondent Nos. 1 & 2-plaintiffs for permitting them to use 11 feet wide path on the Eastern dol on Killa No.23 Rect. No. 370 so as to have access to their land measuring 68 Kanal 12 Marlas forming part of different khasra numbers of Rect. No. 370. It has been submitted that in the absence of any findings been recorded by the Courts below to the effect that the above-mentioned land measuring 68 Kanal 12 Marlas owned by respondent Nos. 1 & 2-plaintiffs, was

previously servient tenement to the property owned by the appellants-defendants being the dominant tenement and both the tenements were earlier a single unit and in the absence of aforesaid findings, the appeal was required to be allowed.

[9] On the other hand, learned counsel appearing on behalf of respondent Nos. 1 & 2-plaintiffs submitted that from the evidence available on record, it was duly established that the land measuring 68 Kanal 12 Marlas forming part of various khasra numbers of Rect. No. 370 situated at Village Chautala, Tehsil Dabwali, District Sirsa was purchased from Lakshmi Narayan, who inherited the same from his father-Diwana by virtue of natural succession and the said Diwana in turn happen to be an allottee from the State of Haryana; the same been declared as surplus under the Act of 1972 from the holdings of big landowners, namely, Sahab Ram, Om Parkash and Pirthi Raj sons of Nihal and Bakhtawari wife of Nihal, i.e. the family of defendants themselves vide Mutation No. 4295 dated 30.09.1982 and thus, it was duly established on record that both the tenements i.e. servient tenement, now owned by the appellants-defendants and the dominant tenement i.e. the land left with the appellants-defendants were previously a single unit and as such, the impugned judgments and decrees call for no interference, there being sufficient evidence available on record that there was no other passage available with respondent Nos. 1 & 2-plaintiffs to have access to their land measuring 68 Kanals 12 Marlas.

No other argument has been raised on behalf of the appellants-defendants as well as respondent Nos. 1 & 2-plaintiffs.

[10] Having heard learned counsel for the parties and gone through the paper-book / records, I am unable to find substance in the submission(s) made on behalf of the appellant-defendant Nos. 1 & 14.

[11] Before proceeding further, at this stage, it is necessary to recapitulate the provisions of Section 13 of The Indian Easements Act, 1882 (for short “the Act of 1882), which reads as under:-

“ 13. Easements of necessity and quasi-easements

Where one person transfers or bequeaths immovable property to another,

- (a) if an easement in other immovable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement; or*
- (b) if such an easement is apparent and continuous and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or legatee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement; or*
- (c) if an easement in the subject of the transfer or bequest is necessary, for enjoying other immovable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement; or*
- (d) if such an easement is apparent and continuous and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect, the transferor, or the legal representative of the testator, shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.*

Where a partition is made of the joint property of several persons,

- (e) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement, or*
- (f) if such an easement is apparent and continuous and necessary for enjoying the share of the latter as it was enjoyed when the partition took effect, he shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.*

The easements mentioned in this section, clauses (a), (c) and (e), are called easements of necessity.

Where immovable property passes by operation of law, the persons from and to whom it so passes are, for the purpose of this section, to be deemed, respectively, the transferor and transferee. ”

[11.1] From the close perusal of the aforesaid provisions and the law enunciated vide different decisions, it is apparent that to establish an easement right under Section 13 of the Act of 1882, one must plead and prove that the suit property is a servient tenement to the property owned by the other side as the dominant tenement. Additionally, the plaintiff must plead and prove to establish that both tenements were previously held together, and a single tenement's severance into parts has impliedly granted, or necessitated the plaintiff's enjoyment of a portion of the severed property. The burden of proof for these claims rests with the plaintiff.

[11.2] It is crucial to note that an easement of necessity must be an absolute necessity and not merely a convenient mode of property

enjoyment. An easement of necessity cannot be granted solely on the ground of convenience or advantage; whether absolute necessity exists or not needs to be determined based on the specific circumstances and environment of each case. One has to establish that by disposition, the tenement was disintegrated, either through transfer, bequest, or partition and as a result of such disintegration, there is an impossibility of enjoying one of the tenements while relying on the usage of the other tenement. Mere pleading that there is no alternative way to enter the property, is insufficient to establish an easement of necessity. An easement of necessity arises through severance and can be either expressed or implied. The foundation upon which the statute recognizes an easement of necessity is the unity of title of a property and its subsequent disintegration. Therefore, when a property is held together under one title and later divided either by partition or alienation, the statute declares that an easement of necessity will arise to sustain the advantage of any portion of the land that was disadvantaged due to division.

[12] In the given facts and upon perusal of the judgments and decrees passed by the Courts below as well as records, it has been established that the land measuring 68 Kanal 12 Marlas, which presently is owned by respondent Nos. 1 & 2-plaintiffs, was previously owned and possessed by Sahab Ram, Om Parkash and Pirthi Raj son of Nihal and Bakhtawari wife of Nihal. Later, the same was declared surplus and Mutation No. 4185 dated 30.12.1981 was entered and sanctioned in favour of State of Haryana and the same was allotted to one Sh. Diwana son of Lekh Ram, followed by Mutation No. 4295 dated 30.09.1982 in his

favour. After the death of Diwana, the above mentioned land was inherited by Sh. Lakshmi Narayan, who later sold it to respondent No. 1-Rakesh (plaintiff) vide registered sale deed No. 1315 dated 28.06.2002 and Mutation No. 7513 dated 10.09.2002 was sanctioned in pursuance thereof.. Thus, it was proved on record that the land measuring 68 Kanal 12 Marlas purchased by respondent No. 1-plaintiff (Rakesh) from Lakshmi Narayan previously formed part of the land owned by the predecessors-in-interest of appellants-defendants. However, it became a servient tenement upon its declaration as surplus area followed by allotment to Diwana, who happen to be the father of Lakshmi Narayan. Concurrently, it has also been found that respondent Nos. 1 & 2-plaintiffs have no other passage except the passage in question to access their land measuring 68 Kanal 12 Marlas. In view of the aforesaid, all the essentials required for invoking the right of easement based on necessity were fully established and therefore, the findings recorded by the Courts below called for no interference.

[13] Further, in addition to findings / observations recorded by the learned First Appellate Court in para-18 of its judgment dated 30.04.2018, whereby the plaintiffs were directed to pay market value to the owners / appellants-defendants upon being assessed by the competent authority, in the humble opinion of this Court, the balance of equity shall be maintained in case the value of land to be utilized as 11 feet wide passage is calculated at the current market price within one month from the date of receipt of certified copy of this order in terms of the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, 2013 and the same is immediately released in favour of the defendants. It is also directed that unless the compensation amount is released to appellants-defendants, neither mutation, on the basis of judgments and decrees by the Courts below, be entered regarding “Rasta” nor even the “Rasta” be provided.

[14] Accordingly, in view of the discussion made hereinabove, finding no illegality or perversity with the concurrent findings of fact recorded by the Courts below and there being no misreading or misinterpretation of either the pleadings or the evidence available on record; the present appeal, being devoid of merits, is hereby **dismissed**.

[15] Since, the main appeal has been decided / dismissed, no orders are required to be passed in the pending application(s) and the same shall stand disposed off.

August 21, 2025
'dk kamra'

(HARKESH MANUJA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>