





4. As per the plaintiff, land measuring 52 Kanal 16 Marlas was purchased by his father namely Hari Singh and one person namely Chhotu. Another parcel of land measuring 10 Kanal 10 Marlas was purchased by his brother namely Jagdish Kumar vide sale deed dated 05.07.1990. The said land was transferred by Jagdish Kumar to the plaintiff and proforma defendants No.4 to 6 through decree dated 27.04.2008. After death of their father, plaintiff as well as defendant No.4 to 6 also became owners of land measuring 52 Kanal 16 Marlas. Plaintiff claims that there is no sanctioned passage and they have to go to their land through Khasra No.20//2/2-3. Passage in dispute is in existence and is being used by plaintiff and proforma defendants No.4 to 6 for last more than 50 years. Defendants No.1 to 3 purchased the land comprised in Khasra No.20//2/2-3 and are obstructing the passage of the plaintiff. Plaintiff/appellants have no other passage to approach their land and thus they are entitled to said path.

5. Suit was contested by defendants No.1 to 3, who filed a joint written statement. Existence of path through the land, was denied. It was further claimed by defendants that the original land owners, from whom father of the plaintiff and his brother purchased the land, did not provide them any path. The same was also not mentioned in the sale deed. There is no path existing on the spot.

6. On the basis of the pleadings, following issues were framed:



- “Issue No.1: Whether the defendant no.1 to 3 have every knowledge about the agricultural land of the plaintiff? OPP
- Issue No.2: Whether there exists a path on Southern doll of killa no.20//2/2-3 and plaintiff and his grandfather have been using this path since last 50 years without any obstacle in a peaceful manner? OPP
- Issue No.2-A Whether the plaintiff has acquired the easementary right over the passage in question qua the suit land, if so its effect? OPP
- Issue No.2-B Whether the defendants are liable to be restrained from causing any in-hindrance in the passage in question and from taking forcible possession of the passage in question? OPP
- Issue No.3 Whether the suit is not maintainable? OPD
- Issue No.4 Whether the plaintiffs are estopped by his own act and conduct? OPD
- Issue No.5 Whether there is no locus standi and cause of action to file the present suit? OPD
- Issue No.6 Whether the plaintiff has not come to the Court with clean hands? OPD
- Issue No.7 Whether proper court fee has not been affixed on plaint? OPD
- Issue No.8 Relief.”

7. Court of the First Instance while deciding issues No.1, 2 and 2(a) collectively, held that *Aks-shijra* has been proved on record as Exhibit P-17. Patwari Rajesh Kumar testified as PW-5. He brought on record *Aks-shijra* (Exhibit P-17) and proved the same. He nowhere stated that there is any passage existing on the Southern side of Khasra No.20//2/2-3. As per khasra *girdawari*, entire land of Khasra No.20/3 is being cultivated by the defendants. Trial Court thus found that the plaintiff having failed to prove existence of path as alleged, issues No.1, 2 & 2(a) need to be decided against the plaintiff. Trial Court thus dismissed the suit filed by the plaintiff.

8. Dissatisfied, plaintiff filed appeal.



9. Lower Appellate Court re-appreciated the evidence and came to the conclusion that there is no *pucca* sanctioned *rasta* owned by plaintiffs as per *Aks-shizra* Ex.P17 and Ex.D1. The ownership of plaintiffs *qua* the land holding is not denied. It is also not denied that there is no other *rasta* for the plaintiffs to approach their land. Plaintiffs undertook to transfer equivalent land from their adjoining land bearing Khasra No.20//1/2(1-2) on Eastern side adjacent to the land of the defendants. Relying upon Section 13(c) of Indian Easement Act, 1882, Lower Appellate Court held plaintiffs entitled to *rasta* of 2 *Karam* wide and 60 *Karam* long forming part of Khasra No.20//2/2, 3 and held that the ownership of the land being utilized as *rasta*, will remain with defendants No.1 to 3. Plaintiffs shall transfer equivalent land from their adjoining land bearing Khasra No.20//1/2 on Eastern side adjacent to the land of defendants No.1 to 3.

9. Ld. Counsel for the appellants has raised grievance against the judgment passed by the Lower Appellate Court submitting that there being no *rasta* in existence, Appellate Court ought not have invoked Section 13(c) of the Indian Easement Act, 1882 (hereinafter referred to as 'Act of 1882'). He submits that whole case of the plaintiff/respondent No.1 is based upon *Aks-shijra* (Exhibit P-17) whereas from the testimony of Rajesh Kumar, Patwari, it is evident that there is no path in existence. He thus submits that Lower Appellate Court erred in decreeing the suit filed by the plaintiff, upsetting well reasoned findings recorded by the Trial Court.



10. I have heard counsel for the parties and have carefully gone through records of the case.

11. In the considered opinion of this Court, there is no denial to the fact that there is no *rasta* carved out of Khasra No.20//2/2-3. As per *Aks-shijra* (Exhibit P17) relied upon by the plaintiff, the land is being used by them as *rasta* to approach their land. It is not the case of the plaintiffs that there already exists *rasta*. Thus, the issue is :

*“Whether the Lower Appellate Court rightly provided plaintiffs with rasta out of the land owned by defendants by compensating them with the adjoining land, out of the land owned by plaintiffs?”*

12. Counsel for the appellant is not in position to dispute that it is admitted case of the parties that there is no other *rasta* that can be utilized by the plaintiffs to approach their land.

13. Section 13 of the Act of 1882 deals with easement of necessity and quasi-easements. The same 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;

(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.

*Illustrations*

(a) A sells B a field then used for agricultural purposes only. It is inaccessible except by passing over A's adjoining land or by trespassing on the land of a stranger. B is entitled to a right of way, for agricultural purposes only, over A's adjoining land to the field sold.

(b) A, the owner of two fields, sells one to B, and retains the other. The field retained was, at the date of the sale, used for agricultural purposes only, and



is inaccessible except by passing over the field sold to B. A is entitled to a right of way, for agricultural purposes only, over B's field to the field retained.

(c) A sells B a house with windows overlooking A's land, which A retains. The light which passes over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. B is entitled to the light, and A cannot afterwards obstruct it by building on his land.

(d) A sells B a house with windows overlooking A's land. The light passing over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. Afterwards A sells the land to C. Here C cannot obstruct the light by building on the land, for he takes it subject to the burdens to which it was subject in A's hands.

(e) A is the owner of a house and adjoining land. The house has windows overlooking the land. A simultaneously sells the house to B and the land to C. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. Here A impliedly grants B a right to the light, and C takes the land subject to the restriction that he may not build so as to obstruct such light.

(f) A is the owner of a house and adjoining land. The house has windows overlooking the land. A, retaining the house, sells the land to B, without expressly reserving any easement. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. A is entitled to the light, and B cannot build on the land so as to obstruct such light.

(g) A, the owner of a house, sells B a factory built on adjoining land. B is entitled, as against A, to pollute the air, when necessary, with smoke and vapours from the factory.

(h) A, the owner of two adjoining houses, Y and Z, sells Y to B, and retains Z. B is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Y as it was enjoyed when the sale took effect, and A is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Z as it was enjoyed when the sale took effect.

(i) A, the owner of two adjoining buildings, sells one to B retaining the other. B is entitled to a right to lateral support from A's building, and A is entitled to a right to lateral support from B's building.

(j) A, the owner of two adjoining buildings, sells one to B, and the other to C. C is entitled to lateral support from B's building, and B is entitled to lateral support from C's building.

(k) A grants lands to B for the purpose of building a house thereon. B is entitled to such amount of lateral and subjacent support from A's land as is necessary for the safety of the house.



(l) Under the Land Acquisition Act, 1870 (10 of 1870), a Railway Company compulsorily acquires a portion of B's land for the purpose of making a siding. The Company is entitled to such amount of lateral support from B's adjoining land as is essential for the safety of the siding.

(m) Owing to the partition of joint property, A becomes the owner of an upper room in a building, and B becomes the owner of the portion of the building immediately beneath it. A is entitled to such amount of vertical support from B's portion as is essential for the safety of the upper room.

(n) A lets a house and grounds to B for a particular business. B has no access to them other than by crossing A's land. B is entitled to a right of way over that land suitable to the business to be carried on by B in the house and grounds.”

13. Section 4 of the Act of 1882 defines 'easement'. The same reads as under:

**“4. “Easement” defined.**—An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.

**Dominant and servient heritages and owners.**—The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

*Explanation.*—In the first and second clauses of this section, the expression “land” includes also things permanently attached to the earth; the expression “beneficial enjoyment” includes also possible convenience, remote advantage, and even a mere amenity; and the expression “to do something” includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage or anything growing or subsisting thereon.



*Illustrations*

(a) A, as the owner of a certain house, has a right of way thither over his neighbour B's land for purposes connected with the beneficial enjoyment of the house. This is an easement.

(b) A, as the owner of a certain house, has the right to go on his neighbour B's land, and to take water for the purposes of his household out of a spring therein. This is an easement.

(c) A, as the owner of a certain house, has the right to conduct water from B's stream to supply the fountains in the garden attached to the house. This is an easement.

(d) A, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on B's field, or to take, for the purpose of being used in the house, by himself, his family, guests, lodgers and servants, water or fish out of C's tank, or timber out of D's wood, or to use, for the purpose of manuring his land, the leaves which have fallen from the trees on E's land. These are easements.

(e) A dedicates to the public the right to occupy the surface of certain land for the purpose of passing and re-passing. This right is not an easement.

(f) A is bound to cleanse a water course running through his land and keep it free from obstruction for the benefit of B, a lower riparian owner. This is not an easement."

14. From the conjoint reading of the two provisions as contained under the Act of 1882, this Court finds that both plaintiffs as well as defendants having purchased land from the same vendor, Lower Appellate Court rightly recognized easementary rights of the plaintiffs and provided them path of 2 *Karam*. At the same time, in order to compensate the defendants, Lower Appellate Court ordered plaintiffs to transfer equivalent land to the defendants from the adjoining field owned by them. By doing so, defendants have not been prejudiced in any manner. Their land has remained contiguous and composite. The measurements of the fields have



remained same as the defendants stand compensated *qua* same size of land on the other side of the field.

15. In view thereof, no fault can be found with the judgment & decree passed by the Lower Appellate Court. Resultantly, finding no merit in the instant second appeal, the same is ordered to be dismissed.

16. Pending application(s), if any, shall also stand disposed off.

**February 18, 2025**

**(Pankaj Jain)**

**Dpr**

**Judge**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No