(2014) 04 RAJ CK 0126

Rajasthan High Court

Case No: Civil Second Appeal No. 845/2011

Hema and Others		APPELLANT
	Vs	
Nanu and Others		RESPONDENT

Date of Decision: April 29, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100
- Easements Act, 1882 - Section 41

Hon'ble Judges: Arun Bhansali, J

Bench: Single Bench

Advocate: Deelip Kawadia, Advocate for the Appellant; R.R. Kanwar, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Arun Bhansali, J.

This second appeal u/s 100 CPC is directed against judgment and decree dated 30.07.2011 passed by Additional District Judge No. 1, Bhilwara, whereby, the appeal filed by the appellants-plaintiffs has been dismissed affirming the judgment and decree dated 10.08.2009 passed by Civil Judge (Senior Division), Gangapur.

2. The facts in brief may be noticed thus: the appellants-plaintiffs filed a suit for mandatory and permanent injunction and for compensation of Rs. 20,000/- against the defendants, inter alia, with the averments that at village Pitha Ka Khera the plaintiffs have land comprising in Araji Nos. 467 and 468; for ingress and egress a old way is situated from the land of defendants comprising in Araji Nos. 478, 480 and 481, which way goes on to join the government road; the way has been indicated in the revenue record by doted lines; the plaintiffs have been using this way for a long time and the plaintiffs have no alternative way for going to their fields; the defendants have obstructed the way; on account of their such obstruction the plaintiffs have suffered loss of Rs. 20,000/-, therefore, mandatory injunction was

sought seeking the defendants to remove the obstruction and seeking a decree against the defendants not to obstruct the way.

3. A written statement was filed and it was submitted that the plaintiffs were not using the way from Araji Nos. 478 and 480 and 481 and the way to their fields was from the Abadi land of village Pitha Ka Khera, which is in existence for years which is being used by them; the disputed way has not been used by the plaintiffs; the suit has wrongly been filed; it was prayed that the suit be dismissed.

4. The trial court framed eight issues; on behalf of the plaintiffs four witnesses were examined and 24 documents were exhibited; on behalf of the defendants three witnesses were examined and nine documents were exhibited.

5. After hearing the parties, the trial court came to the conclusion that earlier the way from the defendants'' field was existing as indicated in the revenue record by doted lines, however, for over 45 years after construction of metal road from Pitha Ka Khera to Raipur the said way has been closed and all the khatedars were using the said way and decided the issues in favour of the defendants and dismissed the suit filed by the plaintiffs.

6. Feeling aggrieved, the appellants filed first appeal, which was transferred to the Court of Additional District Judge, Bhilwara, who after hearing the parties, concurred with the findings recorded by the trial court and dismissed the appeal filed by the appellants.

7. It was submitted by the learned counsel for the appellants that both the courts fell in error in coming to the conclusion that the alternative way sought to be suggested by the defendant was reason enough for the defendants to stop the plaintiffs from using the way from their fields, which was indicated in the revenue record by doted lines; it was submitted that admittedly the alternative way suggested is not only longer but the same is not convenient and, therefore, it could not even be called an alternative way therefore the courts below were not justified in dismissing the suit and the appeal filed by the plaintiffs.

8. Reliance was placed on judgment of this Court in Mangu Ram v. Kishan: S.B. Civil Second Appeal No. 54/1984 decided on 30.05.2005.

9. Per contra, learned counsel for the respondents submitted that both the courts have concurrently found that the plaintiffs have an alternative way and the alleged way has not been used for over 40 years and, therefore, the appellants have no cause and, consequently, the appeal has no substance and the same deserves to be dismissed.

10. I have considered the rival submissions advanced by learned counsel for the parties and have gone through the judgments of both the courts below as well as of the record.

11. The entire emphasis of learned counsel for the appellants has been that the way from the defendants'' field has been indicated in the revenue record and merely because the alternative way is said to be available, which is not only longer but inconvenient also, cannot form the basis for denying the decree for mandatory and permanent injunction against the defendants to remove the obstruction from the existing way.

12. Admittedly, the so called doted way in the revenue record has been indicated from the fields owned by the defendants-respondents and this is the case of the appellants that they have easementary right to use the said way for ingress and egress from their fields; from the submissions of learned counsel for the appellants, it is apparent that though a alternative way does exists, the same is claimed to be inconvenient.

13. The easement of necessity stands extinguished when the necessity comes to an end in terms of Section 41 of the Easements Act, 1882. The fact that the right of way was being enjoyed by the plaintiffs as easement of necessity and the plaintiffs'' fields have become accessible by public road, though the means of excess is not so convenient, still the easement of necessity cannot be claimed by the plaintiffs and the same stands extinguished as soon as the alternative way was available.

14. Besides the above legal aspect of the matter, both the courts below have concurrently found against the appellants regarding the user of the suit way by them for a long time, which finding apparently cannot be said to be perverse so as to require interference of this Court in second appellate jurisdiction.

15. So far as judgment of this Court in Mangu Ram (supra) cited by learned counsel for the appellant is concerned, in the said judgment this Court came to the conclusion that for denying a way to agricultural field, a positive finding of existence of specific alternative way becomes necessary and the alleged alternative way has to be such which could be used as a matter of right. The said judgment reiterates the principles of Section 41 of the Act. In the present case, the alternative way is a government road, which can be used by the appellants as a matter of right and, therefore, it cannot be said that they can still have easement of necessity from defendants'' field.

16. In view of the above discussion, there is no substance in the appeal and the same is, therefore, dismissed. No costs.