

(1955) 09 AHC CK 0022

Allahabad High Court (Lucknow Bench)

Case No: Second Appeal No. 271 of 1949

Ram Bachan

APPELLANT

Vs

Khulbad and Others

RESPONDENT

Date of Decision: Sept. 19, 1955

Acts Referred:

- Easements Act, 1882 - Section 15

Citation: AIR 1956 All 334

Hon'ble Judges: H.S. Chaturvedi, J

Bench: Single Bench

Advocate: R.N. Shukla and Rajva Narain Shukla, for the Appellant; R.B. Chaudhri, for the Respondent

Final Decision: Dismissed

Judgement

H.S. Chaturvedi, J.

This is a second appeal by the defendant arising out of a declaratory suit.

2. The respondents are the inhabitants of village Murtiha Khurd, a hamlet of Krishnapur, in the district of Bahraich. This village was admittedly owned by the taluqdar of Bhinga estate. The plaintiffs filed the suit in a representative capacity for the benefit of the entire body of agriculturists and riyayas residing in village Murtiha Khurd. It was alleged by the plaintiffs that plot No. 925 which measures 2.210 acres has been used as Khalian by the inhabitants of the village for over 30 years.

It was further alleged that the appellant Ram Bachan was claiming the plot in suit as a tenant under a lease said to have been executed by the taluqdar of Bhinga and in order to prevent him from interfering with the right of the plaintiffs to use the land in suit as Khalian, the suit was filed. The plaintiffs also claimed for issue of a permanent injunction to the effect that the defendant be restrained from interfering with the enjoyment and use of the disputed land by the plaintiffs.

3. Although the taluqdar of Bhinga was also made a party, the suit was contested by the appellant alone, who denied the allegations made in the plaint that the land in suit was being used by the inhabitants of the village as khalian.

4. The learned Munsif held that the disputed, land had been used by the cultivators of the village as their khalian for more than 30 years and as such the plaintiffs had acquired, prescriptive right of easement. The learned Munsif accordingly declared that the plaintiffs-respondents, that is tenants and ryots of village Murtiha Khurd, have acquired an easement by prescription over the land in suit for using it as their khalian. The learned Munsif issued a permanent injunction also restraining the defendant from interfering with the enjoyment of the land in suit by the plaintiffs as their khalian.

5. The matter was taken up in appeal, which was heard by the first Civil Judge of Bahraich. The lower appellate Court also came to the conclusion that the land in suit had been used by the tenants of the village as their khalian for over 30 years. He concurred with the learned Munsif in decreeing the suit.

6. In this second appeal, the learned counsel for the appellant has contended that the lower Courts were in error in holding that the plaintiffs had acquired a right of easement by prescription. His contention is that the tenants, of the village were at best only licencees and it was within the competence of the taluqdar to revoke the licence at will. I do not think that this contention has any force.

7. Both the Courts below have found it as a fact that the disputed plot had been used by the tenants as of right for the purpose of storing, their crop, i.e., for using the land as khalian. This long user by the plaintiffs does show that they were using the land in suit as a matter of right. Such a mode of acquisition of a right by long user has been recognised u/s 15, Easements Act.

The taluqdar was the owner of the village and this long user continuously as a matter of right by the tenants of the village leads to the inference that even the taluqdar had recognised the right of the plaintiffs to use the land in suit as khalian. Section 15 has been divided into three parts the first part deals with the right to the access and use of light or air, the second part relates to the right of support from one person's land or things affixed thereto; and the third part of the Section which deals with the easement in general runs thus:

""and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years, the right to such easement shall be absolute."

Both the courts have held that the right to the enjoyment of the land as khalian by the cultivators of the village has been enjoyed for over 30 years as a right of easement peaceably, openly and without any interruption. All the necessary

ingredients of Section 1-5 are present in the present case and I find no reason why the right to use the plot of land as their khalian by the members of the village community stands on a different footing than their right to use a particular plot as their right of way.

It is a matter of common knowledge that in every village a certain piece of land is set apart so that the tenants of the village may use that piece of land for harvesting purposes and other allied purposes connected with cultivation. Having regard to the habits of the inhabitants of rural areas the use of a piece of land as khalian has always been considered as a valuable right by the cultivators of villages and u/s 15 the long user of- a land for over 20 years in the manner indicated in the Section will give rise to a right of easement to the entire village community.

8. In -- [Ram Phal Singh and Others Vs. Bachchu Ram and Another](#), Niamtullah J. pointed out that the expression "any other easement" occurring in Section 15 includes a variety of rights like pasturage, fishery, ferry and other rights of similar nature, which could be acquired by prescription. In that case also the land was claimed as a threshing floor and for storage of rubbish and cowdung cakes and it was held u/s 15 a right of easement would accrue if it was shown that the right had been exercised openly, peaceably and without interruption for over 20 years.

9. All the cultivators in the village were tenants of the taluqdar and in view of the fact that they had been using the land as khalian for over 30 years to the knowledge of the taluqdar it must be presumed the taluqdar had recognised the existence of such a right of the tenants to use the land In suit in connection with their cultivation, i.e., for its use as khalian.

10. The courts below were, therefore, right in holding that the plaintiffs had acquired a right of easement by prescription u/s 15, Easements Act. In my opinion the view taken by the two Courts below is correct.

11. The appeal is dismissed with costs.

12. Leave for special appeal is granted.