

(1978) 03 KAR CK 0014
In the Karnataka High Court
Case No : RSA.907 of 1973

Mamtaj Begum and Otheres

APPELLANT

Vs

Mohammad Hassan Issoor and Otheres

RESPONDENT

Date of Decision : 09-03-1978

Acts Referred:

Easements Act, 1882 — Section 16

Citation : (1978) 2 KarLJ 64

Hon'ble Judges : Jagannatha Shetty, J

Judgement

1. This appeal by the defendants raises a short but interesting question as to the scope of the right of passage reserved to the plaintiffs under the agreement Ext.P1 dated 6th June, 1961.

2. Under the agreement entered into between the plaintiffs 1 to 3 and defendant-1 with some others, a pathway of 7 feet wide was exclusively reserved for the passage of "men and cattle also" "Jana Januvaru saha". The pathway is an access to the plaintiffs' house from the nearby public road. The pathway was also meant for the flow of rain water.

3. When the plaintiffs started taking carts and other vehicles, the defendants objected by stating that the passage was meant only for cattle and men and not for carts or cars. The defendants also removed one of the stone slabs over the drain causing inconvenience to the plaintiffs. The plaintiffs therefore brought a suit for permanent injunction to restrain the defendants from obstructing their right of way to vehicular traffic and also mandatory injunction to restore the slabs. The trial Court decreed the suit. The appellate Court affirmed the decree with a slight modification. Both the Courts have proceeded on the assumption that the words "Java januvaru Saha" mean in addition to men and cattle, the vehicle also, as the word "Saha" means "also".

Hence, the defendants have appealed to this Court.

4. At the outset, I may point out that the decision in the case does not depend

much on the scope of the words "jana janavaru Saha". It turns primarily on the scope of the agreement and the purpose for which the passage was reserved. The first term in the agreement provides) that the passage was to be used; "by men and cattle" of both the parties without obstruction from the other party. The 2nd term provides that the parties should not alter or damage the path and make it unclean while using the same. The next term relates to the flow of water through a sluice to be kept by defendant-1 in the "pagara" to be constructed by her. Defendant-1 was allowed to divert water freely to the passage. The last term provides that both the parties have no other right except those mentioned in the agreement. It is clear from these terms that the parties reserved 7 feet wide passage for their common use and their cattle and also to allow the rain water. It was intended to be an access from the house to the public road. The plaintiffs have no other access to public road.

5. Relying on these terms, it was contended for the defendants that the passage was intended to be a footway and not a driftway and it did not confer a right on the parties to transport burdens. The case of the plaintiffs, on the other hand, was that there was no warrant for such restriction as the right of way includes every right to take carts and other vehicles in the absence of any such restriction imposed in the agreement.

6. The principles which should, govern a case of this nature have been succinctly stated by Jessel, M.R. in *Cannon v. Villars*, (1878) 8 Ch.D.415, 421,

"Prima facie the grant of a right of way is the grant of a right of way having regard to the nature of the road over which it is granted and the purpose for which it is intended to be used; and both those circumstances may be legitimately called in aid in determining whether it is a general right of way, or a right of way restricted to foot-passengers, or restricted to foot-passengers and horsemen or cattle, which is generally called a drift way, or a general right of way for carts, horses, carriages and everything else."

The learned Judge has referred to some examples by way of illustration. He has observed at page 420:

"Where you find a road constructed so as to be fit for carriages and of the requisite width, leading up to a dwelling-house, and there is a grant of a right of way to that dwelling-house, it would be a grant of a right of way for all reasonable purposes required for the dwelling-house, and would include, therefore, the right to the user of carriages by the occupant of the dwelling-house if he wanted to take the air, or the right to have a waggon drawn up to the door when the waggon was to bring coals for the use of the dwelling-house. Again, if the road is not to a dwelling-house but to a factory, or a place used for business purposes which would require heavy weights to be brought to it, or to a wool warehouse which would require bags or packages of wool to be brought to it, then a grant of right of way would include a right to use it for reasonable purposes, sufficient for the purposes of the business, which would include the

right of bringing up carts and waggon at reasonable times for the purpose of the business."

7. Applying the above principles to the present case, I must say that having regard to the nature of the passage reserved, the locus in qua over which it is granted and the purpose for which it was intended to be used, no narrow interpretation as suggested by the defendants should be put. The passage is about 7 feet in width. That is an access from the dwelling-house of the plaintiffs to the public road nearby. It was, therefore, intended to be a grant of a general right of way for all reasonable purposes required for the dwelling-house. If it was intended only to be used as a footway, there was no necessity for the parties to reserve 7 feet wide passage. A smaller width of 3 feet would have been more than sufficient for the purpose of a footway either by the persons or by the cattle. The very fact that the parties reserved 7 feet wide passage for the residents of the house to go to the public road, it must be understood that the parties intend to use the passage for all reasonable purposes required for the dwelling-house. They may use it for carrying all the requirements of the dwelling-house either by cart or by any other vehicle which could conveniently pass through within the said passage.

8. This takes me to the cross-objections filed by the plaintiffs. They are aggrieved by the direction issued by the appellate Court. The plot of the plaintiffs is on a higher level. It is about 11/2 feet above the ground level of the passage. The learned Judge has declared that the plaintiffs are entitled to make a slope in their own plot at the southern end of the suit pathway without in any way obstructing the flow of rain water through the sluice at the south-west corner of the defendants' property. The grievance of the plaintiffs is that there is no place in their compound to make a slope so as to have any easy access for the vehicles and a slope could conveniently be made in the passage itself by raising its level without disturbing the flow of rain water through the sluice in question.

9. It seems to me that the contention is well founded. Having regard to the facts proved I see no justification to limit the slope portion only in the compound of the plaintiffs. They could raise the level of the passage without disturbing the free flow of rain water through the sluice in question. No harm would be caused to defendants if the plaintiffs are given that liberty to do so.

10. In the result and for the reasons stated above, the appeal fails and is dismissed and the cross-objection to the extent indicated above is allowed.

11. In the circumstances, I make no order as to costs.