

Sansar Chand and another Vs. Krishana Devi and others.
 CNR No.HPKA01-004172-2022.
 CIS Registration No.137/2022.

**In the court of Rajeev Bali, District Judge,
 Kangra at Dharamshala, District Kangra
 (Himachal Pradesh)**

CNR Number : HPKA01-004172-2022.
 CIS Registration No. : 137/2022.
 Civil Appeal Number : 03-D/XIII/2025/2022.
 Presented on : 23.07.2022.
 Decided on : 02.09.2025.

1. Sansar Chand son of Karimu.
 2. Raj Kumar son of Karimu.
- Residents of Tika Bhated, Mauza Tangroti, Tehsil
 Dharamshala, District Kangra (HP).

----Appellants/Defendants No.1&2

-Versus-

1. Smt. Krishana Devi, widow,
 2. Anju Bala, daughter,
 3. Ravita Devi, daughter,
 4. Meena Devi, daughter,
 5. Priyanka Devi, daughter, of Late Shri Sarup Chand
 son of Ram Chand.
- All residents of Tika Bhated, Mauza Tangroti, Tehsil
 Dharamshala, District Kangra (H.P.).

-----Respondents/Plaintiffs

6. Brij Lal son of Tulsi Ram, resident of Bhated, Mauza
 Tangroti, Tehsil Dharamshala, District Kangra (HP).

-----Respondent/Defendant No.3

Appeal under Section 96 of the
 Code of Civil Procedure against the
 judgment and decree dated
 25.06.2022 passed by the learned
 Senior Civil Judge, Dharamshala,
 District Kangra (H.P.) in Civil Suit
 No.243/2013/2010 titled as Sarup
 Chand (deceased) through LRs Vs.
 Sansar Chand and others.

Sansar Chand and another Vs. Krishana Devi and others.
CNR No.HPKA01-004172-2022.
CIS Registration No.137/2022.

For the Appellants : Shri Anand Sharma
Advocate.
For the Respondents No.1 to 5 : Shri Ankur Soni,
Advocate.
For the Respondent No.6 : Shri Rahul Gupta,
Advocate.

JUDGMENT

This appeal has been directed against the judgment and decree dated 25.06.2022 passed by the learned Senior Civil Judge, Dharamshala, District Kangra (H.P.) in Civil Suit No.243/2013/2010 titled as Sarup Chand (deceased) through LRs Vs. Sansar Chand and others vide which the suit filed by deceased plaintiff Sarup Chand, has been partly decreed.

2. The parties here-in-after shall be referred to as were before the learned Trial Court.

3. Briefly, the plaintiff Sarup Chand, who died during the pendency of the suit and his LRs were brought on record, filed suit for declaration along with consequential relief of permanent prohibitory and mandatory injunction against the defendants alleging therein that he is owner in possession of the land and house situated over Khata No.180, Khatauni No.347, Khasra Nos.852 and 1015/853, measuring 0-04-53 hectares, situated in Mohal Bhated, Mauza Tangroti, Tehsil Dharamshala, District Kangra (HP) and he had purchased this land from Rijhu on 07.03.1989. The defendants No.1 and 2 had purchased Khasra No.859, measuring 0-01-67 hectares and the defendant No.3 had also purchased the adjoining land comprising Khasra

Sansar Chand and another Vs. Krishana Devi and others.
CNR No.HPKA01-004172-2022.
CIS Registration No.137/2022.

No.1014/853, measuring 0-02-66 hectares from Rijhu who was the original owner of the entire land. There was a path measuring 2½ feet wide passing through Khasra Nos.859 and 1014/853 as shown in the site plan and this path was available to the plaintiff for egress and ingress to his land and house. The plaintiff has acquired easementary right by way of prescription over the aforesaid path since the same has been used by him for the last 20 years continuously without interruption and by way of easement of necessity as no other access is available to the plaintiff. The defendants intended to block the said path at Points 'B', 'C' and 'D' as shown in the site plan with bamboo sticks on 01.05.2010 and on 08.05.2010. The defendants were requested not to block the said path but in vain. Hence, this suit.

4. The defendants contested the lis by filing separate written statements. The defendants No.1 and 2 in their written statement have taken preliminary objections qua maintainability, cause of action, valuation, jurisdiction etc. On merits, the defendants while denying the claim of the plaintiff contended to have purchased the land comprising Khasra Nos.842, 859 and 862 from Rijhu. The defendants denied the existence of any path through their land which was used by the plaintiff. It is alleged that there was another pucca path available to the plaintiff which was constructed by the Panchayat in the year 2007 in the land of Karimu and the said path never touched the land of the defendants bearing Khasra No.859. The defendants denied the existence of the path as shown in the site plan at Points 'A' and 'B'. The defendants have denied to have blocked the

Sansar Chand and another Vs. Krishana Devi and others.
CNR No.HPKA01-004172-2022.
CIS Registration No.137/2022.

path by fixing bamboo sticks. It is alleged that the plaintiff has been using the path through the land of the defendant No.3 who is his nephew, as such, the plaintiff has no right by way of easement of necessity. The plaintiff damaged the fence of the defendants and to this effect, the matter was also reported to the police of Police Post Yol. The defendants denied the remaining averments and prayed for dismissal of the suit.

5. The defendant No.3 in his written statement has taken preliminary objections qua maintainability, cause of action, locus standi, jurisdiction, limitation etc. On merits, while denying the claim of the plaintiff, the defendant contended that he is owner in possession of the land comprising Khasra No.851 and 1014/853 which he purchased in January 1981. The plaintiff wrongly intends to carve out path through his land comprising Khasra No.1014/853 of which he has no right and title. There was no path available to the plaintiff through the said land of the defendant No.3. The site plan prepared by the plaintiff is hypothetical and is imagination. The plaintiff after filing the present suit has uprooted the barbed wire and boundary of the land of the defendant No.3 which was fenced since January 1981 and in this regard, the defendant too reported the matter to police and Local Panchayat and a case was registered against the plaintiff. The plaintiff has no easementary right by way of prescription through the land of the defendant No.3. Since there is no path in the suit land, the question to block the same does not arise. The

Sansar Chand and another Vs. Krishana Devi and others.
CNR No.HPKA01-004172-2022.
CIS Registration No.137/2022.

defendant denied the remaining averments and prayed for dismissal of the suit.

6. In replications, the plaintiff while controverting the case of the defendants has reasserted his case as set out in the plaint.

7. On the basis of above pleadings, the learned Trial Court framed the following issues on 19.06.2012 and re-framed issue No.1 on 28.05.2018:-

1. Whether the plaintiff is entitled to the right of path by way of easement of prescription through the lands of defendants comprised Khasra Nos.859, 1014/853 as alleged shown in the site plan filed by the plaintiff? OPP.
2. Whether the plaintiff is entitled to the relief of permanent injunction and in the alternative is entitled to the relief of mandatory injunction with respect to the suit property, as prayed for? OPP.
3. Whether the suit is not maintainable in the present form, as alleged? OPD.
4. Whether the plaintiff has no cause of action and locus standi to file the present suit, as alleged? OPD.
5. Whether the suit is not properly valued for purposes of court fee and jurisdiction, as alleged? OPD.
6. Whether the plaintiff is estopped by his act and conduct, to file the present suit? OPD.
7. Whether the suit is malafide and is based upon false and frivolous grounds? OPD.
8. Whether the suit is bad for non-joinder of necessary parties? OPD.

Sansar Chand and another Vs. Krishana Devi and others.
CNR No.HPKA01-004172-2022.
CIS Registration No.137/2022.

9. Whether the suit is not within time and the same is vague? OPD.
8. Relief.

8. The parties led oral as well as documentary evidence. The learned Trial Court on hearing learned counsel for the parties and perusal of the pleadings and evidence, returned the findings on issue No.1 partly in favour of the plaintiff, issue No.2 in favour of the plaintiff, issues No.3 to 6, 8 and 9 against the defendants and issue No.7 as not pressed and accordingly, partly decreed the suit.

9. The appellants/defendants No.1 and 2 on feeling aggrieved and dissatisfied with the judgment and decree passed by the learned Trial Court have challenged the same by way of present appeal. It is submitted that the learned Trial Court has erred in partly decreeing the suit of the plaintiff. The findings of the learned Trial Court on issues No.1 and 2 are wrong, incorrect and without any legal as well as documentary evidence. According to law, facts and evidence on record, the suit deserved to be dismissed. The findings of the learned Trial Court on all the issues are wrong and incorrect and are based on surmises and conjectures. There is no path existing as per revenue record. The learned Trial Court has not interpreted the relevant law of easement correctly and has come to the wrong conclusion while deciding the suit. The learned Trial Court has relied on site plan Ext.PW1/A which was not prepared in accordance with law. With these submissions, prayed for acceptance of appeal.

Sansar Chand and another Vs. Krishana Devi and others.
CNR No.HPKA01-004172-2022.
CIS Registration No.137/2022.

10. I have heard learned counsel for the parties and also perused the record.

11. The following points arise for determination:-

1. Whether the judgment and decree dated 25.06.2022 is sustainable in the eyes of law?
2. Final order.

12. For the reasons to be recorded hereinafter, while discussing the aforesaid points for determination, my findings on the same are as under:-

Point No.1 : No.

Final order : The appeal is allowed as per operative part of the judgment.

REASONS FOR FINDINGS

Point No.1.

13. The learned counsel for the appellants/defendants No.1 and 2 submitted that the judgment and decree passed by the learned Trial Court is against law and facts. The learned counsel submitted that there is no path through the land of the defendants comprising Khasra No. 859. The learned counsel submitted that since there is no path, the plaintiff has not acquired any easementary right of path by way of prescription. The learned counsel submitted that there is another pucca path available to the plaintiff which was constructed by the Gram Panchayat in the year 2007 and the said pucca path did not touch the land of the defendants comprising Khasra No.859. The learned counsel further submitted that the findings of the learned Trial Court

Sansar Chand and another Vs. Krishana Devi and others.
CNR No.HPKA01-004172-2022.
CIS Registration No.137/2022.

are based on surmises and conjectures and prayed for acceptance of the appeal.

14. The learned counsel for the respondents No.1 to 5/plaintiffs supported the judgment and decree passed by the learned Trial Court and submitted that the plaintiffs have acquired easementary right of path by way of prescription through the land of the defendants comprising Khasra No.859. The learned counsel submitted that this path is being used by the plaintiffs for the last more than 20 years continuously without any interruption. The learned counsel submitted that since the plaintiffs have acquired easementary right of path by way of prescription through the land of the defendants, as such, the defendants have no right to block the same in any manner. The learned counsel further submitted that the learned Trial Court has rightly passed the judgment and decree and as such, appeal filed by the defendants No.1 and 2 is liable to be dismissed.

15. The learned counsel for the respondent No.6/defendant No.3 submitted that since there is no path through the land of the defendant comprising Khasra No.1014/853, as such, question of alleged easement of path by way of prescription does not arise at all. The learned counsel submitted that the plaintiff has not challenged the relief given to the defendant No.3.

16. Be it stated that the fact that the plaintiff is owner in possession of the land comprising Khasra Nos. 852 and 1015/853, the defendants No.1 and 2 are owners in joint possession of the land comprising Khasra Nos.842, 859 and 862 and the defendant No.3 is owner in possession of the

Sansar Chand and another Vs. Krishana Devi and others.
CNR No.HPKA01-004172-2022.
CIS Registration No.137/2022.

land bearing Khasra Nos. 851 and 1014/853 is not in dispute, however, to substantiate so, the plaintiff has also proved on record Jamabandies of this land for the year 2007-2008 Ext.PW1/C to Ext.PW1/E. The plaintiff has also proved on record Aksh Shajra Kistwar Bandobast Jadid Ext.PW1/B and from its perusal, it is transpired that the land of the defendants No.1 and 2 comprising Khasra No.859 is situated on the northern side and the land of the defendant comprising Khasra No.1014/853 is situated on the southern side and the land of the plaintiff comprising Khasra Nos.852 and 1015/853 is situated between the land of the defendants No.1 and 2 and defendant No.3. These facts are not in dispute.

17. The plaintiff has claimed easementary right of path by way of prescription through the land of the defendants comprising Khasra Nos.859 and 1014/853 and to substantiate so, the plaintiff stepped into the witness box as PW1 and tendered his affidavit Ext.PW1/A1 in evidence thereby reiterating the facts as detailed in the plaint. During cross-examination by the learned counsel for the defendants No.1 and 2, he has admitted that the defendants No.1 and 2 have fenced their land which is abutting to his land with barbed wire and the said fence is still in existence. He has admitted that he has no path from the land of the defendants No.1 and 2. He has admitted that pucca path which is adjoining to the land of the defendants No.1 and 2 was constructed by the Panchayat on the request of Karimu and it was constructed only up to the house of defendants No.1 and 2 and Karimu. He has admitted that there is a jeepable

Sansar Chand and another Vs. Krishana Devi and others.
CNR No.HPKA01-004172-2022.
CIS Registration No.137/2022.

path towards the house of the defendant No.3 and now-a-days, he is using the said path. During cross-examination by the learned counsel for the defendant No.3, he has admitted to have purchased land from Rijhu Ram in the year 2010 and prior to him, the defendant No.3 purchased the land. He has admitted that when he purchased the land, the defendant No.3 had fenced his land with barbed wire. He has admitted that he uprooted the fence of the defendant No.3 and on this, a case was registered against him at Police Post Yol. Thus, from the evidence of the plaintiff, it is crystal clear that the Panchayat constructed pucca path up to the house of Karimu and beyond that there is no path. The plaintiff has admitted that this path was constructed on the request of Karimu, the father of the defendants No.1 and 2 only up to the house of defendants No.1 and 2 and Karimu. The plaintiff has himself admitted that there is no path from the land of the defendants No.1 and 2. Thus, the statement of the plaintiff, as discussed above, falsifies his own case qua easementary right of path by way of prescription through the land of the defendants No.1 and 2 comprising Khasra No.859.

18. The defendant No.1 Sansar Chand stepped into the witness box as DW1 and tendered his affidavit Ext.DW1/A in evidence. He has also stated that after purchasing the land, the defendants No.1 and 2 fenced the same and there is no path to the house of the plaintiff from their land. The Panchayat constructed the path in the year 2006-2007 up to the house of Karimu. Thus, it is crystal clear from the evidence on record that the path which the

Sansar Chand and another Vs. Krishana Devi and others.
CNR No.HPKA01-004172-2022.
CIS Registration No.137/2022.

plaintiff is claiming from the land of the defendants No.1 and 2 was constructed only up to the house of defendants No.1 and 2 and Karimu in the year 2006-2007 and beyond that there is no path to the house of the plaintiff. In view of such evidence, the site plan Ext.RPW1/A is of no relevance. Even perusal of this site plan reveals that there is no reference of Khasra Number over which the alleged path A to D exists. RPW1 Rakesh Kumar prepared this site plan and during his cross-examination, he has admitted that he has prepared this site plan at the instance of plaintiff. Admittedly while preparing this site plan he did not consult Patwari concerned. He prepared this site plan in his office and not on the spot. Thus, this site plan loses its significance in view of the evidence as discussed above.

19. Be it stated that the plaintiff has admitted that there exists a jeepable path towards the house of the defendant No.3 and now-a-days, he is using the said path. This fact has further been fortified by PW2 Mehar Chand, who has also admitted during his cross-examination that there exists a cemented path leading to the land of the defendant No.3 and the said path connects with PWD Road. As per this witness, this path was constructed under MNREGA Scheme. The defendant No.3 has also admitted this fact that there is a jeepable path near his house which connects with PWD Road. Even during the construction of the house of the plaintiff, the water was brought for the said purpose by using this path from the land of the defendant No.3. DW6 Budhi Singh who was engaged by the plaintiff during the construction of his house has also admitted that

Sansar Chand and another Vs. Krishana Devi and others.
CNR No.HPKA01-004172-2022.
CIS Registration No.137/2022.

at that time he had brought water by using the path in the land of the defendant No.3. He has also admitted that the plaintiff is using the said path since he has purchased land without any interference. Though DW6 Bidhi Singh has been examined by the defendant No.3 but he had also worked during the construction work of the house of the plaintiff and he has deposed in no unequivocal words that during construction and thereafter the plaintiff used the path that is there in the land of the defendant No.3. Thus, it is crystal clear that there is a cemented path which is available to the plaintiff through the land of the defendant No.3 which further connects with PWD Road. This fact negates the easementary right of path by way of necessity.

20. The plaintiff has sought easementary right of path by way of prescription through the land of the defendants No.1 and 2 comprising Khasra No.859 and also through the land of the defendant No.3 comprising Khasra No.1014/853. The learned Trial Court declined such easementary right of path by way of prescription through the land of the defendant No.3 comprising Khasra No.1014/853, but the plaintiff has not challenged such findings of the learned Trial Court by way of appeal.

21. In view of the above discussion, it is concluded that the learned Trial Court has wrongly decreed the suit of the plaintiff to the effect that he has right of user of path from points B to A as shown in the site plan Ext.RPW1/A through the land of the defendants No.1 and 2 comprising Khasra No.859. Therefore, the judgment and decree passed by the learned Trial Court is perverse and is not sustainable in the

Sansar Chand and another Vs. Krishana Devi and others.
CNR No.HPKA01-004172-2022.
CIS Registration No.137/2022.

eyes of law. Thus, the point under discussion is answered in the negative and is decided in favour of the appellants.

Final order.

22. In view of the findings on point No.1 above, the appeal is allowed and the judgment and decree dated 25.06.2022 passed by the learned Senior Civil Judge, Dharamshala, District Kangra (H.P.) in Civil Suit No.243/2013/2010 titled as Sarup Chand (deceased) through LRs Vs. Sansar Chand and others is set aside and consequently, the suit of the plaintiff is dismissed. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. Decree sheet be drawn accordingly. The record of the learned Trial Court along with a copy of this judgment be returned and the file of this court after due completion be consigned to the record room.

Announced and signed in the Open Court on this
02nd day of September, 2025.

Sd/-
(Rajeev Bali)
District Judge,
Kangra at Dharamshala,
District Kangra (HP).