



IN THE HIGH COURT OF ORISSA AT CUTTACK

RVWPET No. 318 of 2022

(In the matter of an application for review of the Order dated 16.03.2022 passed in RSA No.59 of 2020)

***Narasingh Charan Rath @
Nrusingha Charan Rath & Anr. Petitioner***

-Versus-

Surendra Kumar Mohapatra & Ors. Opposite Parties

Advocate(s) appeared in this case:-

For Petitioners : Mr. S.P.Mishra, Sr.Advocate

For Opposite Parties : Mr. B.C.Panda, Advocate

CORAM : JUSTICE B.P. ROUTRAY

**JUDGMENT
19th August 2025**

B.P. Routray,J.

1. Heard Mr. S.P.Mishra, learned Senior Counsel for the Petitioners and Mr. B.C.Panda, learned counsel for Opposite Parties.

2. Present review is sought for in respect of order dated 16th March 2022 passed in RSA No. 59 of 2020, wherein the appeal was



dismissed on the ground that no substantial question is found in the appeal.

3. Mr. Mishra, learned Senior Counsel for the Petitioners submits that initially the right of passage over the disputed property was created in favour of the Defendants as a matter of necessity and thus the same was decreed in the earlier suit without there being any other alternative passage. But subsequently, when alternative passage was found in favour of the Defendants, the right of passage out of necessity has become extinguished, and this is what the learned Trial Court and 1st Appellate Court have failed to appreciate. According to Mr. Mishra, learned Senior Counsel, the substantial question involved is that, whether the right of passage of the Defendants over the suit land is by grant or by necessity.

4. Mr. Panda, learned counsel appearing for the Opposite Parties submits in reply that the findings of the Trial Court as well as the 1st Appellate Court are clear to the effect that such prayer of the Plaintiffs is barred by the doctrine of *res judicata* in view of the decree passed in the earlier suit. The Defendants are admittedly enjoining the right of passage over the disputed land since the time of their forefathers and the earlier suit was filed in the year 1934. Thus,



what is claimed now in the review petition was not the pleading in the suit and the substantial question as mentioned in the review petition is with regard to availability of alternative passage in favour of the Defendants to extinguish their right as such.

5. It is true that the right of easement by necessity is acquired and enjoyed as per the principles explained in section 13 and 14 of the Indian Easement Act, 1882. In ***Manisha Mahendra Gala & Ors. Vs. Shalini Bhagwan Avatramani & Ors., (2024) 6 SCC 130***, Hon'ble apex court have observed as follows:-

19. "Easement" is defined under Section 4 of the Easements Act, 1882 (hereinafter referred to as "the Act" for short) to mean a right which the owner or occupier of a land possesses for the beneficial enjoyment of his land on the other land which is not owned by him, to do and continue to do something or to prevent and continue to prevent something being done on the said land. It may be pertinent to mention here that the land which is to be enjoyed by the beneficiary is called "dominant heritage" and the land on which the easement is claimed is called "servient heritage". The easementary right, therefore, is essentially a right claimed by the owner of a land upon another land owned by someone else so that he may enjoy his property in the most beneficial manner.

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22. Section 15 of the Act categorically provides that for acquiring any easementary right by prescription, the said right must have been peaceably enjoyed in respect of the servient heritage without any interruption for over 20 years. In the plaint, neither the original plaintiff Joki Woler Ruzer nor the Galas have specifically claimed that they or their predecessor-in-interest were enjoying easementary right of use of the said *rasta* for over 20 years. They simply alleged that they have been using and managing the same since “last many years”. The use of the term “last many years” is not sufficient to mean that they have been enjoying the same for the last 20 years. Last many years would indicate use of the said *rasta* for more than a year prior to the suit or for some years but certainly would not mean a period of 20 or more years. Therefore, their pleadings fall short of meeting out the legal requirement of acquiring easementary right through prescription.

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32. The easementary right by necessity could be acquired only in accordance with Section 13 of the Act which provides that such easementary right would arise if it is necessary for enjoying the dominant heritage. In the instant case, findings have been returned not only by the appellate courts but even by the trial court that there is an alternative way to access the dominant heritage, which may be a little far away or longer which demolishes the easement of necessity. There is no justification to go into those findings of fact returned by the courts below.



6. In *Dr. S.Kumar & Ors. Vs. S.Ramalingam, (2020) 16 SCC*

553, it is observed as follows:-

16. The argument that right of easement stands extinguished once the easement of necessity comes to an end is not applicable to the facts of the present case. The argument is based on the fact that right, title and interest of both the defendants now stand merged in one person after the death of both the defendants. The rights of the parties arise out of document of title in the year 1976. Still further, the rights of the parties have to be adjudicated upon as they exist on the date of filing of the suit. The subsequent events of inheritance vesting the property in the same person will not take away the right of the defendants to use the passage adjacent to their land only because Defendant 2 has gifted part of land to Defendant 1 or that after the death of both the defendants, the common legal heirs inherited the property.

7. The case of the Plaintiffs in the present case is that the right created in favour of the Defendants for passage over the suit land was never granted in their favour and it was always a matter of necessity for them. But according to the earlier decree passed in favour of the Defendants, said right of easement of the passage over the suit land has been declared in favour of the Defendants in the earlier suit i.e. C.S. No.333 of 1934. When said right was declared in favour of the



Defendants and confirmed in appeal, the question arose that, whether such a declaration granted in favour of the Defendants by the competent Civil Court would be treated as a right of necessity after availability of the alternative passage subsequently. Section 13 of the Easement's Act, 1882 gives the right by necessity and Section 15 gives the right by prescription. While considering the question of easement by necessity, the conduct of parties in continuation of the right over the dominant heritage is an important consideration. The rule for acquirement of right by prescription in terms of Section 15 requires the claim by prescription to be proved for continuing period for more than 20 years and the fact of actual enjoyment by the party is also necessary consideration for the purpose. In this context taking note of the admission of the Plaintiffs with regard to enjoyment of such right of passage by the Defendants over the disputed land and the declaration of such right in favour of the Defendants in the earlier suit, the same cannot be said as extinguished subsequently after availability of the alternative passage. Therefore, the right of passage as exercised by the Defendants over the suit land could be considered in the light of the declaration granted by the competent Civil Court and thus cannot be extinguished taking as a right of necessity.



8. As such, no merit is seen in the review petition to disturb the earlier order of this Court dated 16th March 2022 passed in RSA No. 59 of 2020.

9. In the result, the review petition is dismissed.

(B.P. Routray)
Judge

S.Das, Sr.Steno