

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

R.S.A. No. 1515 of 2012 (O&M)

Date of Decision:- 25.05.2015

Ram Lubhaya

.....Appellant

Versus

Sukhdev Chand

.....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Amit Verma, Advocate,
for the appellant.

Mr. Munish Gupta, Advocate
for the respondent.

SHEKHER DHAWAN, J.

Present Regular Second Appeal against the concurrent findings of both the Courts below whereby the suit for mandatory injunction filed at the instance of plaintiff was decreed and appeal filed by the defendant was dismissed.

2. For the sake of convenience, the parties are being referred to

as per their status before the Court of first instance.

3. The detailed facts of the case have already been recaptured in the judgments of both the Courts below. However, relevant facts for the purpose of decision of present Regular Second Appeal that plaintiff filed suit of mandatory injunction for issuance of direction to defendant to close the '*parnala*' & remove the water pipe fixed at point 'X' through which defendant discharged the rainy as well as dirty water of latrine of his house constructed by the defendant on second floor at point 'Y' as shown in the site plan and relief of mandatory injunction was also sought for issuance of direction to the defendant to close the window mark 'Z' of the room site plan constructed on the 1st floor. As per plaintiff, he is exclusive owner in possession of the property shown red in colour measuring 1 kanal 14 marlas. The defendant is having residential house towards west of property of plaintiff and daily use water of his house is falling into the street situated towards its western side. The defendant raised construction on the first floor of his house and opened a window of the eastern room towards the property of plaintiff despite objections having been raised by the plaintiff. Defendant constructed a latrine on second floor and put the rainy as well as water of latrine through the pipe. Defendant refused to admit the claim and as such necessity of suit.

4. Defendant contested the suit taking the plea that residential house of the defendant does not fall on the west of property of plaintiff and outlet of kitchen of defendant is only towards west through which daily water of kitchen falls in the western street. The construction on the

ground floor was raised by defendant since long and defendant raised construction on the first floor of his house since 8 months back and at that time no objection was raised. There is a window on the eastern room of his house and the same exists on the spot from so many years. No latrine exists on the second floor. Defendant constructed bathroom long back. Large number of residents of the area have already opened their windows towards eastern side including ventilators. Rainy as well as dirty water of drains of village also falls into the said property from last many years, which is a *khai* (toba). No nuisance was caused by the defendant and suit without any merit and same be dismissed.

5. On these facts, the Court of first instance settled the following issues: -

1. Whether plaintiff is entitled to decree for mandatory injunction as prayed for? OPP.
2. Whether plaintiff has no locus standi and cause of action to file the present suit? OPD
3. Whether suit is not maintainable in the present from? OPD.
4. Whether plaintiff is estopped from filing the suit by his own act, conduct and admission? OPD.
5. Whether land bearing khasra No.47 is Toba and is being used for dirty water as alleged? OPD
6. Relief.

6. The Court of first instance after appreciating the oral as well as documentary evidence decreed the suit of plaintiff. Defendant preferred the first appeal before the first appeal but remained unsuccessful. Hence, the present regular second appeal before this Court.

7. At the time of arguments, Mr. Amit Vema, Advocate, learned counsel for the appellant took the plea that property regarding which relief is being claimed is a *khai* (toba) and there cannot be any nuisance as alleged by the plaintiff. The construction was raised by defendant long back. Plaintiff has got no locus standi for seeking injunction against defendant. The Courts below have not appreciated the controversy in its correct perspective and said findings are liable to be reversed.

8. While arguing on this point, Mr. Munish Gupta, learned counsel for the defendant took the plea that as per *jamabandi* Ex.P2, suit land measuring 1 kanal 4 marlas has been shown to be *khai* (toba). The entire case of the plaintiff has been admitted by defendant himself. DW1 Ram Lubhaya has deposed in cross examination that plaintiff has a right to throw the water wherever he wants though he has got no right to throw dirty water. Testimony of DW2 Ashok Kumar is also on the same line. The Courts below have already appreciated the evidence and issued injunction, as defendant had been causing nuisance by throwing the dirty water towards the residential house of the plaintiff and the said findings do not call for any interference and the same be confirmed and appeal be dismissed.

9. Having considered the rival contentions, this Court is of the considered view that most of the facts are not disputed because the nature of the suit is *khai* (Toba), as shown in *jamabandi* (Ex.P2). The cross examination of defendant Ram Lubhaya as DW1 and cross examination

of DW2 established on the file that defendant are bent upon causing nuisance to the plaintiff as well as his family members though defendant has got no right. The entire case of the plaintiff has been admitted by the defendant and the Courts below have rightly appreciated the oral as well as documentary evidence available on file. There is no substantial question of law involved in this case, calling interference by this Court by way of present Regular Second Appeal. Hence, the present Regular Second Appeal stands dismissed being devoid of any merit.

May 25, 2015
naresh.k

(SHEKHER DHAWAN)
Judge