

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2621 of 2012
Date of decision: 24.09.2015

Bharat Kumar

... Appellant

Versus

Subhash Daal and Oil Mill, Mohalla Rao Ka Narnaul

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. MS Randhawa, Advocate for the appellant.
Ms. Nimrata Shergil, Advocate for the respondent.

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

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was decreed by the trial court vide judgment and decree dated 02.09.2009. In an appeal preferred against the said decree by the defendant, the judgment rendered by the trial court was set aside and the suit was dismissed. That is how, plaintiff is before this court in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In a suit filed by the plaintiff, he prayed for a decree for injunction simpliciter, restraining the defendant from running the flour and dal mill, that was installed in Mohalla Rao Ka Narnaul, and shown in the site plan appended with the plaint in the red colour and marked as ABCD.

In defence, it was pleaded, inter alia, that the mill was installed about twenty years ago and the defendant had even obtained a licence from the Sales Tax department on 10.07.1983. So much so, the mill registered as a Small Scale Industry with the Industries Department of the State of Haryana. And, was also licensed by the Food and Supply Department. Thus, the suit was wholly frivolous.

On a consideration of the matter in issue, learned trial court decreed the suit and injuncted the defendant from running the flour and dal mill.

First appellate court reviewed the matter in issue, evidence on record, and on an analysis thereof, arrived at a conclusion that the defendant had set up the mill long time ago and it was the plaintiff, who had constructed a house adjacent to the mill much later in point of time. Therefore, the plaintiff was estopped by his act and conduct to plead any nuisance. The mill in question was in operation for the past 30 years and the plaintiff being fully conscious of its site and operation, constructed a house in the vicinity much later. Report submitted by the Local Commissioner proved that as a consequence of running of the mill or its operation, neither did the building of the plaintiff suffer any damage nor developed any cracks. Thus, institution of the present suit was just a case of neighbour's prejudice. It has not been denied by the plaintiff that the mill was registered as a Small Scale Industry

with the State's Industries Department and defendant had also obtained a licence in this regard from the Sales Tax Department as back as on 10.07.1983.

Learned counsel for the appellant could not point out as to how the conclusion arrived at by the first appellate court was either contrary to the position on record or suffered from any material illegality. No other argument was advanced.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is accordingly dismissed.

September 24, 2015
Rajan

(Arun Palli)
Judge