

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

Regular Second Appeal No.4791 of 2015 (O&M)
Date of decision:16.09.2015

Susheel Kumar Dass

... Appellant

versus

Jajan Verma

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Ms. Alka Sarin, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

CM Nos.11491-92-C of 2015

Applications are allowed, as prayed for. Annexure A-1
is taken on record.

Regular Second Appeal No.4791 of 2015

1. The appeal is brought against the decisions of the two courts below declining relief to the plaintiff for a declaration that the wall on the east belongs to the plaintiff and that the constructions made upon the wall shall be removed by a mandatory injunction. The case was rested on a plea that the wall exclusively belonged to the plaintiff. The two courts have found the wall to be a party-wall,

of which the defendant has laid his own construction in various ways: at the ground floor east of the wall and in the first floor upon the wall itself. The manner of how the rights over the party-wall have to be exercised are governed through case law and the Punjab and Haryana High Court from the days of Lahore has taken the view that a co-owner of a party-wall may do any act upon such a wall, free of obstructions from the other, so long as no prejudice is caused to the other owner exercising a right on the party-wall. This is indeed at variance with some of the views held by the other courts where a party-wall cannot be subjected to any alteration unless the other co-owner consents to the same. The prevalent view of this court following the decision of the High Court at Lahore holds that party-wall is capable of being exploited by both the co-owners and it would not require consent of other co-owner. In the decision cited by the counsel for the appellant herself in **Sardari Lal Gupta Versus Siri Krishan Aggarwal-AIR 1984 Punjab and Haryana 439**, this court has actually confronted the divergent views of various High Courts and dissented from the views expressed by Nagpur, Bombay, Mysore, Rajasthan and Madras and held that every owner of a party wall is entitled to use it in a reasonable way. In the above said judgment, it has been held as under:-

“12. If the matter is examined from this point of view, it is clear that every owner has same rights in a party-wall

and he is entitled to its user in a reasonable way. He can even raise its height provided he admits the newly erected portion of the wall, a joint property of all the co-owners. He can also support his building on the common wall if that does not cause damage to the other co-owners. However, if a co-owner wants to raise the construction on the common wall with the purpose of ousting the other co-owners the ousted co-owners are entitled to raise objection regarding the construction.”

This court has specifically observed in para 15 as follows:-

“raising of the party-wall and using it by the appellant without the consent of the respondent is permissible, if the respondent does not suffer any damage.”

The relief of mandatory injunction for construction over the party-wall cannot, therefore, be objected at all unless there is proof of damage. The learned counsel has an apprehension that if further constructions are raised at the second floor, the chimney may be blocked. A future damage of what is not immediately a matter of a dispute or a relief in the suit, I may not be able to comment upon but the relief sought in the plaint for mandatory injunction and for declaration that the wall belongs exclusively to the plaintiff cannot be granted in the manner that the two courts have dealt with.

2. While dismissing the second appeal as not involving any substantial question of law which can help the plaintiff, I still hold that the dismissal of the suit will not take away a right of the plaintiff to complain that future constructions that may be made by the defendant have portents of damages and that, therefore, there cannot be any act of the defendant that can cause damage to his own building. This right is always protected and I find nothing in the judgments of court below as containing anything to the contrary.

3. The second appeal is dismissed on the above terms.

(K.KANNAN)
JUDGE

16.09.2015
sanjeev