

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.5761 of 2015 (O & M)

Date of Decision: December 05, 2015

M/s Jai Maa Engineers & Contractors

..... APPELLANT

VERSUS

Swaran Singh & others

..... RESPONDENTS

...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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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?

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PRESENT: - Mr. Tapish Kumar Gupta, Advocate, for the appellants.

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Jaspal Singh, J

CM No.14230-C of 2015

For reasons mentioned in the application, delay of 66 days in filing the appeal is condoned.

Application is allowed.

RSA No.5761 of 2015 (O & M)

1. The instant appeal has been preferred by defendant No.3 – M/s Jai Maa Engineers & Contractors, challenging judgment and decree dated January 21, 2014 passed by the trial court as well as judgment & decree dated May 13, 2015 by passed by the lower appellate court whereby the findings recorded by the trial court have been upheld and appeal filed by

the defendant Nos.1, 2 and 3 against the judgment & decree passed by the trial court has been dismissed. Accordingly, the suit filed by plaintiffs for recovery of damages to the tune of ₹ 1 lac alongwith interest @ 12% per annum from filing the suit till realization of amount, caused to the crops and property of plaintiff, has been decreed.

2. While assailing the findings returned by the trial court on all the issues and affirmed by the lower appellate court, it has been ebulliently argued by learned counsel for the appellants that same are against the evidence available on file and settled canons of law. Mis-appreciation of evidence adduced by the plaintiff has resulted into mis-carriage of justice. Respondent No.1 – plaintiff has himself admitted in the cross examination that he has installed pipe line in 1996 but did not get incorporated the same in the revenue record with Halqa Patwari, meaning thereby, that same has been installed without following the due process of law, that too, without obtaining any permission for the same. Thus, it can safely be inferred that he illegally got installed the same. Had there been an entry in the revenue record made by the concerned authorities, the pipe line could be in the knowledge of the appellant as well as proforma respondent Nos.2 and 3. Moreover, respondent No.1 – plaintiff cannot be allowed to take the benefit of his own wrongs. Moreover, the first appellate court, while deciding the appeal preferred by the appellant and proforma respondent Nos.2 and 3, and awarded an interest @ 6% per annum over and above the compensation so awarded. Even no appeal has been preferred by respondent No.1 – plaintiff. Non-filing of appeal by respondent – plaintiff is suggestive of the fact that he has accepted the judgment in question passed by the trial court in toto, as final and conclusive. Allowing recovery of interest @ 6% on decretal

amount to the respondent – plaintiff is an additional relief granted by lower appellate court which resulted into grave injustice to the appellant.

3. Learned counsel for the appellant further contended that both the courts below have also failed to appreciate that respondent – plaintiff could not establish the actual cost of damages. During his cross examination that he has admitted that these have been prepared and placed on record before the trial court only to put pressure on the appellant – defendant. Moreover, the bills produced by him does not substantiate his claim as same do not depict any actual damage caused to respondent No.1 – plaintiff. The award of compensation to the tune of ₹ 1 lac is absolutely not justified and is based upon assumptions and presumptions. Thus, the impugned judgments & decrees passed by the courts below are not sustainable in the eyes of law and are liable to set aside by way of acceptance of the instant appeal. Consequently, suit of the plaintiff deserves dismissal in toto that too with special costs.

4. After bestowing due consideration to the aforesaid submissions made by learned counsel for the appellant and scrutinizing the impugned judgments & decrees passed by the courts below, this Court is of the considered view that submissions made by learned counsel for the appellant do not carry any legal weight in view of oral as well as documentary evidence available on file.

5. From the evidence produced on record by the parties in respect of their respective claims, it is evident that sewerage pipe lines were laid down in the agricultural land owned and possessed by the respondent – plaintiff. Undisputably, the Municipal Council handed over the charge of laying down sewerage pipe lines to the Sewerage Board, who further handed

Engineers & Contractors. It is an undisputed question that when the sewerage pipe lines are to be laid, the agricultural land has to be dug and earth is extracted. The heap of earth so extracted is generally collected on both sides of the pipe lines so laid. In the case in hand, the defendants have examined G.P. Singh, SDO, Sewerage Board, Zirakpur as DW-1, who was posted at Rajpura during the time when the pipe lines were laid in the land belonging to the respondent – plaintiff. He has categorically testified that project for laying down sewerage pipe lines was in progress in the area in question in the year 2009. The entire duty has been denied by the Municipal Council by stating that Sewerage Board never handed over the charge of laying pipe lines or that the Board has further handed over the charge to the Contractor i.e. appellant – defendant. SDO, G.P. Singh has also admitted that he used to visit the spot where the pipe lines were laid. Even a legal notice dated November 24, 2011 was also served upon Sewerage Board for causing damage to the crops but to the utter surprise, it did not fetch any reply which establishes that the respondent – plaintiff suffered damage. The respondent – plaintiff has examined the officials of revenue department as PWs 5, 6 and 8, who have testified that average quantity of the wheat and potatoes in the district Patiala which the plaintiff could have got from his agricultural land. So, the trial court has rightly concluded that the respondent – plaintiff has suffered a pecuniary loss to the tune of ₹ 1 lac due to installation of the underground pipe lines.

6. As far as, grant of interest @ 6% per annum on the amount of compensation is concerned, same also cannot be faulted with. The appeal is in continuation of the suit and even if an appeal has been filed by the defendant, plaintiff is legally competent to raise an issue with regard to the

justified to award interest, which has been granted @ 6% per annum in this case. The decree for recovery of ₹ 1 lac by way of damages/compensation can be termed to be pecuniary decree and the respondent – plaintiff is legally entitled to the interest @ 6% under Section 34 CPC. So, taking the case of the appellant from any of the angles, this Court does not find any merit in it, rather, this Court is of the considered view that impugned judgments & decrees do not call for any interference.

7. In the light of what has been discussed above, there is no infirmity, illegality and impropriety in the findings returned by the courts below. Consequently, impugned judgments & decrees passed by both the courts are upheld. Accordingly, the appeal is dismissed. However, the parties are left to bear their own costs.

December 05, 2015
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(Jaspal Singh)
Judge