

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

RSA No.3339 of 2011 (O&M)
Date of decision : 23.02.2016

Jagroop Singh

...Appellant

Versus

Nagar Council, Sunam

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Parveen Kumar Garg, Advocate for the appellant.

Mr. Jaspreet Singh, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the judgment and decree of the lower Appellate Court, whereby suit for damages/compensation and mandatory injunction had been dismissed, in essence, judgment and decree rendered by the trial Court decreeing the suit, has been reversed.

Mr. Parveen Kumar Garg, learned counsel appearing on behalf of appellant submits that owing to the leakage of the underground pipe, damage had been caused to the building of the appellant-plaintiff. An application in the shape of complaint was submitted to the Office of Municipal Committee in this regard. On the basis of the aforementioned

complaint, matter was referred to SDM Sunam who inspected the site and found that there was leakage in the underground pipe. Thereafter, the Municipal Council had laid down overhead pipe and disconnected the water connection to underground pipe. However, on the basis of the SDM report, report of the local commissioner, SDO and Chief Engineer, PW4, the trial Court decreed the suit, whereas lower Appellate Court heavily relied upon the order dated 21.05.2010 of the Municipal Committee vis-a-vis the subsequent Act i.e. overheard of the pipe and set aside the judgment and decree of the trial Court, thus, submits that such judgment and decree is not sustainable and suffers from illegality and perversity and urges this Court to form following substantial question of law for adjudication of the present appeal:-

1. Whether the Ld. Lower Appellate Court is justified in upsetting the well reasoned and detailed judgment and decree passed by the Ld. Trial Court?
2. Whether the impugned judgment and decree passed by the Ld. Lower Appellate Court is patently illegal, perverse, without considering the pleadings of the parties and the evidence led, without correct perusal of the record, in utter violation of the well settled law and the provisions of the law and as such, the same is not sustainable in law and is liable to be set aside?
3. Whether the Ld. Lower Appellate Court has erred in law in treating a document proved only on the basis of fact that the same has been exhibited at the evidence stage

and without going into the question of admissibility of the document as per provisions of the Indian Evidence Act and the method adopted by the respondent for the proving the same.

4. Whether the Ld. Lower Appellate Court has erred in law in accepting the reasons alleged by the respondents without any evidence to the prove the same.

Mr. Jaspreet Singh, learned counsel appearing on behalf of respondent submits that no independent evidence has been led to prove the damages. The order dated 21.05.2010 clearly envisages the leakage of overhead of the pipe, therefore, cause of action for claiming of the damages becomes extinct and rightly so, the same has been declined by the Lower Appellate Court and urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is merit in the appeal for the reasons that order dated 21.05.2010 is subsequent to the filing of the suit which was filed in the month of August 2005. In order to prove the case of damages, plaintiff examined SDO as Local Commissioner and Chief Engineer as PW4, who unequivocally reported, that owing to the leakage of underground pipe, damage has been caused to the foundation of the building of the appellant. Even SDO, Sunam, after inspection gave the report in the same terms. The lower Appellate Court could not have relied upon the order dated 21.05.2010 Ex.DW1/E as it was subsequent to the filing of the suit which basically pertains to stoppage of the alleged damage which had been recurring before filing of the suit, till filing of the suit, much less, before

passing of the order. However, damages already occurred could not have been swept under the carpet.

Keeping in view the aforementioned facts and circumstances, judgment and decree of the lower Appellate Court is set aside and that of trial Court is restored. Substantial question of law as noticed above are answered in favour of appellant-plaintiff and against respondent-defendant.

Suit is decreed.

Decree-sheet be prepared.

Appeal stands allowed.

23.02.2016

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**(AMIT RAWAL)
JUDGE**