

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

RSA No.3828 of 2012 (O&M)
Date of decision : 09.02.2016

Ranjit Singh

...Appellant

Versus

Mohinder Singh and another

...Respondents

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. Vivek K. Thakur, Advocate for the appellant.

Mr. Rajeev Joshi, Advocate for respondent No.1.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the dismissal of the suit by both the Courts below.

Mr. Thakur, learned counsel appearing on behalf of appellant submits that both the Courts below have gravely erred in dismissing the suit for recovery and mandatory injunction by raising construction of common wall of the existing house. Cracks have come in common wall, much less, expert has been examined in this regard also. A sum of ₹1,11,060/- was paid on the same and thus the said expenditure was claimed as damages. Both the Courts below have committed illegality and perversity in not granting the

relief and thus substantial question of law arises for determination by this Court.

He further submits that Courts below have non-suited the appellant on the ground that negative of the photographs have not been placed on record. He submits that now a days digital camera does not have any negative. This aspect has not been taken into consideration. Thus, there is total misreading of the report of the expert examined on behalf of the plaintiff.

Mr. Rajeev Joshi, learned counsel appearing on behalf of respondent-defendant submits that plaintiff had miserably failed to prove the age of the crack whether it was existing prior to the construction or thereafter. It has come in the testimony of the plaintiff witness that the plaintiff is not residing in the house and staying in Kapurthala. The construction has not been raised with common wall but by erecting another wall by which thickness of the wall in dispute increased to 13” and is also supported by the column. The statement of witnesses of plaintiff are vague in essence it reveals that there will be no threat to the existing building and thus prays for dismissal of the appeal as no substantial question of law arises for determination by this Court.

I have heard learned counsel for the parties and appraised the paper book and of the view that appeal deserves to be dismissed on the ground that appellant-plaintiff has not been able to prove the age and life of the cracks. Vis-a-vis findings rendered by the trial Court of not proving photographs in the absence of negatives, such finding is not correct. These days, digital camera is being used which does not have negative. The expert

of the defendant as submitted that separate wall had been raised along with adjoining common wall and the construction has not been raised on the adjoining common wall. Both the parties are not making sincere effort to live happily but litigating the matter.

I do not intend to differ with the findings rendered by Courts below, much less, no substantial question of law arises for determination by this Court.

Accordingly, appeal is dismissed.

09.02.2016

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**(AMIT RAWAL)
JUDGE**