

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

RSA No.241 of 2016 (O&M)

Date of decision:26.08.2016

Arun Narang

... Appellant

Vs.

Arjun Dass Suneja

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sandeep Kumar Sharma, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.800-C of 2016

For the reasons stated in the application, duly supported by an affidavit, delay of 40 days in filing the appeal is condoned.

C.M. stands disposed of.

RSA No.241 of 2016 (O&M)

Appellant-plaintiff is aggrieved of the dismissal of the suit by the Lower Appellate Court seeking damages on account of the construction raised by the defendant-respondent.

Mr. Sandeep Kumar Sharma, learned counsel appearing on behalf of the appellant-plaintiff submits that suit for damages, aforementioned was filed as the defendant-respondent after purchasing plot

started digging foundation which caused damages to the wall, roof and as well as other wall of the house belonging to the appellant, i.e., western side of suit property. PW3 – Architect has been examined to show the report as un-shattered. On the basis of the aforementioned aspect, the trial Court decreed the suit but the Lower Appellate Court has set aside the findings on the premise that appellant-plaintiff has miserably failed to prove his case, but has not assigned any reasons while reversing the well reasoned judgment and decree of the trial Court except a passing reference which is not sufficient ground as the damages caused have been proved through the testimony of PW3 and thus, urges this Court for setting aside the judgment and decree rendered by the Lower Appellate Court.

I have heard learned counsel for the appellant-plaintiff and appraised the judgments and decrees of the Courts below and of the view that plaintiff has miserably failed to prove the level of the house 1½ feet above the level of the street. Even plot was also lying vacant towards North side of his house. The alleged report is of subsequent date and the Court below was unable to find out whether the damages caused were prior or after the construction. Once breadth of the wall is done, there could be cracks in the walls and the window owing to the age of the building of B grade. In my view, the plaintiff has miserably failed to discharge the onus as per the provisions enshrined under Section 101 of Indian Evidence Act.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by the Lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less,

no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 26, 2016
savita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No