

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

RSA No.687 of 2016 (O&M)

Date of decision : 06.04.2016

Parshant Kapoor and others

.....Appellants

Versus

Rajesh

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes*
- 2. To be referred to the Reporters or not ? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Present: Mr. Pankaj Bali, Advocate for appellants.

DARSHAN SINGH, J.

CM-4058-C-2016

By way of instant application, the applicants-appellants have prayed for preponing the hearing of the main appeal.

Heard on the application.

In view of the reasons mentioned in the application, same is hereby allowed and the main appeal is taken up today itself for hearing.

RSA No.687 of 2016

The present appeal has been preferred by the appellants-defendants against the judgment and decree dated 17.10.2015 passed by

the learned Additional District Judge, Karnal, whereby the appeal filed by them against the judgment and decree dated 16.01.2012 passed by the learned Civil Judge (Junior Division), Karnal has been dismissed.

2. For the sake of convenience, the status of the parties shall be mentioned as per their status in the original suit.

3. Respondent-plaintiff Rajesh filed a suit against the appellants-defendants for grant of compensation on account of damages caused to his house by the appellants-defendants while demolishing their house, which was adjoining to the house of the respondent-plaintiff. It was alleged that the lintel of both the houses was joint, which was laid by the previous owner. The appellants-defendants started demolishing the lintel of the front portion of the house by using the hammer instead of electric cutter, which resulted in the cracks in the lintel and walls of the plaintiff's house. Hence the suit.

4. The appellants-defendants contested the suit by filing the written statement wherein they denied that they had used the hammer rather they had used the electric cutter detaching the lintel from their house. They also denied that the cracks appeared in the lintel and walls of the house of the plaintiff due to detaching and demolishing of the lintel. All the demolition work was carried out in the presence of the plaintiff and at that time he had not raised any objection. It is further pleaded that there is a public drain passing in front of the house of the plaintiff and the defendants. The house of the plaintiff has developed the cracks because of sinking of the foundation. Thus, they pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues

were framed by the learned trial Court vide order dated 07.02.2011 :-

1. Whether the plaintiff is entitled to permanent injunction restraining the defendants from using hammer in demolishing their house and not to cause any damage to the house of the plaintiff? OPP
2. Whether the plaintiff is entitled to mandatory injunction directing the defendants to get repaired or to give compensation to the plaintiff, in case any damage has been caused to the house of the plaintiff? OPP
3. Whether the plaintiff has no *locus standi* to file and maintain the present suit? OPD
4. Whether the suit of the plaintiffs is not maintainable? OPD
5. Relief.

6. On appreciation of evidence on record and contentions raised by learned counsel for the parties, the learned trial Court decreed the suit filed by the respondent-plaintiff and appellants-defendants were directed to pay a compensation of Rs.1,00,000/- to the plaintiff within two months from the date of passing of the order, failing which, they were made liable to pay the interest @ of 8% per annum till realisation of the decretal amount.

7. Aggrieved with the aforesaid judgment and decree, the appellant-defendants preferred the appeal, which was also dismissed by learned Additional District Judge, Karnal vide impugned judgment and decree dated 17.10.2015. Hence, this regular second appeal.

8. I have heard learned counsel for the parties and carefully gone through the paper-book.

9. Initiating the arguments, learned counsel for the appellants-defendants contended that the cracks in the house of the plaintiff had developed due to seepage from the public drain in the

foundation of the house and dumpness. He contended that lintel was detached and demolished by the defendants by using the scientific method i.e. electric cutter. No hammer was used. The learned courts below have decided the case against the appellants-defendants simply on the ground that the contractor who was engaged by the defendants to demolish the house has not been examined, which cannot be a ground to return the findings against the defendants. He further contended that the report of the Local Commissioner cannot be taken into consideration as the same has been prepared by the Local Commissioner in the absence of defendants. Thus, he contended that the plaintiff has not been able to establish that the cracks in his house have developed due to the act of the defendants and they cannot be made liable for payment of the amount of compensation.

10. I have duly considered the aforesaid contentions.

11. It is admitted case of the parties that the houses of both the parties are adjoining to each other having joint lintel. It is also not disputed that the demolition work of the portion of the appellants-defendants had taken place. It is also admitted fact that there existed cracks in the lintel as well as the walls of the house of the respondent-plaintiff Rajesh. The plaintiff has alleged that the cracks have developed due to negligent act of defendants using the hammer while demolishing their portion of the building. The appellants-defendants had pleaded that these cracks have developed in the portion of the plaintiff due to seepage from the drain and old age of the building.

12. Once the appellants-defendants have admitted in the

pleadings as well as the evidence that the cracks have developed in the building of the plaintiffs, the onus has shifted upon the defendants to establish that they were not negligent for causing these cracks and the cracks have developed due to old age of the building and due to seepage in the foundation from the drain following outside the house of the parties. But the appellants-defendants have not examined any expert witness to prove the age of the building and that the cracks were result of the seepage from the water drain into the foundation/walls of the house of the plaintiff.

13. The appellants-defendants have also taken the plea that the hammer was not used for demolishing work rather the lintel was cut with the help of electric cutter. He has engaged one Raju contractor for this purpose. He was the best witness to prove this fact but he has not been examined by the defendants which raises the adverse interference against the appellants-defendants.

14. On the other hand, plaintiff has examined PW-2 Tarsem Lal Garg J.E., PWD (B&R) Karnal, who was appointed as Local Commissioner by the trial Court. He has proved his report Ex.P2 and has given the opinion that the cracks have developed due to vibration/thrust of hammer used. His statement carries considerable weight. He being the expert witness. Thus, there is no reason to differ with the findings recorded by learned courts below that the cracks in the building of the plaintiff had occurred due to use of the hammer by the appellants-defendants at the time of the demolition of their portion of the building.

15. The plaintiff has also examined PW3 Shashi Sharma,

Architect, who has assessed the total loss to the tune of Rs.4,65,000/-.
However, the learned trial Court has awarded compensation only to the tune Rs.1,00,000/- to the plaintiff.

16. Consequently, I do not find any illegality in the concurrent findings recorded by learned courts below and the same does not call for any interference by this Court.

17. Resultantly, there is no merits in the present appeal and the same is hereby dismissed in *limine* with no order as to costs.

06.04.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**