

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

**R.S.A No.824 of 2016 (O&M)
Date of decision :29.02.2016**

**State of Haryana through its Deputy Commissioner, Palwal
..... Appellant**

Versus

**Sanjay
..... Respondent**

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Manoj Dhankar, AAG, Haryana
for the appellant.

DARSHAN SINGH,J

CM No. 2269-CII-2016

There is delay of 365 days in filing the present appeal.

Heard on the application.

In view of the reasons mentioned in the application, the application stands allowed and the delay of 365 days in filing the appeal is hereby condoned.

R.S.A No. 824 of 2016

This Regular Second Appeal has been preferred by the defendants against the judgment and decree dated 12.11.2014 passed by the learned Additional District Judge, Palwal, vide which the appeal preferred against the judgment and decree dated 04.05.2013 passed by the

learned Civil Judge (Jr. Division), Palwal has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Plaintiff-respondent has filed the suit for mandatory injunction alleging therein that the old pipeline situated near his house was having leakage at several points. The water due to the leakage has gone to the foundation of his house. Resultantly, the wall and room of his house developed several cracks. The defendants-appellants were requested several times to maintain the pipeline and to replace the same, but of no avail. The house of the plaintiff had become dilapidated in condition and may collapse at any time. The plaintiff requested the defendants to compensate him on account of the loss caused due to their negligence in repairing the pipeline. But, no action was taken. Hence the suit.

4. Appellants-defendants contested the suit on the grounds *inter alia* that the water supply pipeline was not near the house of the plaintiff. Rather, it was at a distance of about 8 to 10 feet and was in the middle of the road. Whenever, any leakage was reported, it was rectified immediately. The alleged leakage had no impact on the house of the plaintiff in any manner. The house of the plaintiff is an old construction without any columns and beams etc. and as a result thereof the cracks might have appeared due to natural wear and tear with the passage of time. There exists a drain adjacent to the house of the plaintiff to drain out the waste water of the locality. The leakage could be the outcome of the seepage of the drain water, which is maintained by Municipal

Council, Palwal and appellants-defendants have nothing to do with the said drain. So, the defendants pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to decree for mandatory injunction as prayed for?OPP
2. Whether the suit is not maintainable?OPD
3. Whether suit has not been properly valued for the purpose of court fee?OPD
4. Whether the plaintiff is stopped by his own act conduct?OPD
5. Relief.

6. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit of the plaintiff-respondent directing the defendants to repair the water supply line in front of the house of the plaintiff and to ensure that no leakage took place in future. They were also directed to pay the compensation of Rs. One lac for the damage caused to his house.

7. Aggrieved with the aforesaid judgment and decree, appellants-defendants preferred the appeal and the same was dismissed by the learned Additional District Judge, Palwal vide impugned judgment and decree dated 12.11.2014. Hence this Regular Second Appeal.

8. I have heard Mr.Manoj Dhankar, learned Assistant Advocate General, for the State of Haryana and have meticulously gone through the paper book.

9. Initiating the arguments, learned counsel for the appellant contended that no water pipeline adjoins to the house of the plaintiff. The water pipeline exists at a distance of 8 to 10 feet from the house of the

plaintiff in the middle of the road. He further contended that there exists a drain to flow the waste water of the locality adjacent to the house of the plaintiff. He contended that the seepage might be of that water. The defendants have nothing to do with said drain, which is maintained by the Municipal Council. He further contended that the report given by Patwari is against the existing position. Infact, the house of the plaintiff was old construction. It might have worn the cracks due to wear and tear with the passage of time. Thus, he contended that the learned Courts below have wrongly decreed the suit.

10. I have duly considered the aforesaid contentions.

11. I do not find any substance in the contentions raised by learned counsel for the appellants. The plaintiff while appearing in the witness box has deposed about the accumulation of the water leaked from the water supply line and resultant damage to his house. He has also examined PW-1-Nitin, Photographer, who has proved the photographs Ex.P-1 to Ex.P-3, which shows the damage to the house of the plaintiff due to water leakage. This fact is not even disputed by the appellants that the damage has been caused to the house of the plaintiff due to accumulation of the water. However, they have tried to shift the burden on the Municipal Council alleging that a drain adjoins the house of the plaintiff to drain out the waste water of the locality and seepage might be from that drain. But, this plea raised by the appellants is not substantiated from any evidence. The learned First Appellate Court while dealing with this issue, returned the findings as under:-

“After having heard both sides, I find no merit in any of the contentions

of the learned Government Pleader for the appellant-defendants. It is not disputed that on 28.09.2010 the respondent-plaintiff moved an application to the Deputy Commissioner, Palwal, which was marked to XEN, Public Health, Palwal and the report from the Tehsildar, Palwal was also called. Accordingly, Halqa Patwari was asked to submit his report and in his report dated 01.10.2010 he was mentioned that the damage has been caused to the house of the respondent/plaintiff due to accumulation of water in the foundation of his house. The respondent/plaintiff has also placed on file the photographs of his house showing damage to it. DW1 Faisal Ibrahim, Executive Engineer, Public Health has stated in his cross-examination that he does not know whether any application with regard to the leakage of water and causing damage to his house was moved to their department. DW2 Umesh Bhardwaj, Executive Engineer, has also stated in his cross-examination that he has not seen the house of the respondent-plaintiff. He came to know about this case and the leakage on 1.04.2011 and the leakage was repaired. Thus, it stands proved that a damage has been caused to the house of the respondent/plaintiff due to leakage of water supply pipeline maintained by the appellant/defendants. Thus, the appellant/defendants are liable to compensate the respondent/plaintiff for the damage caused to his house due to negligence of the appellant/defendants. The findings of the learned trial Court on issue no.1 thus stands affirmed.”

12. As per the findings recorded by the learned First Appellate Court from the report of Patwari dated 01.10.2010, it was found that the damage to the house of the plaintiff has been caused due to accumulation of the water. Mere this fact that the water pipeline was existing at a distance of 8 to 10 feet from the house of the plaintiff is no ground to negate that report, because that is not such a long distance that the water cannot accumulate near the house of the plaintiff on account of leakage of the pipeline resulting into the damage to the house of the plaintiff. The appellants have not led any evidence to establish that what was age of the

construction of the house of the plaintiff and the damage to his house was due to natural wear and tear with the passage of time. Thus, this Court has no reason to differ with the concurrent findings arrived at by the learned Courts below that the damage to the house of the plaintiff-respondent has been caused due to leakage in the water pipeline maintained by the appellants. So, no fault can be found with the relief granted to the plaintiff-respondent by the learned Courts below.

13. Thus, no question of law, much less, the substantial question of law as claimed by the appellant arises in the present appeal.

14. Consequently, the present appeal having, no merits, is hereby dismissed with no orders as to costs.

15. Before parting with the judgment, it is pertinent to mention that the plaintiff-respondent has been granted compensation of Rs. One lac on account of damages caused to his house. Once the amount of compensation was ascertained, the learned trial Court should have asked the plaintiff to affix the requisite court fees. Moreover, it is the relief claimed and not the form of the suit, which determines the Court fee payable. So, the learned trial Court was required to direct the plaintiff to affix the requisite Court fee for the recovery of Rs. One lac. It appears that this legal position has escaped the knowledge of learned trial Court as well as learned First Appellate Court. So, the decree shall be executable only on furnishing the requisite Court fee with the learned trial Court. The appellant-State has also not affixed any Court fees on the memorandum of appeal. It appears that the deficiency in the Court fees escaped the notice of the Registry as the suit was termed as suit for

mandatory injunction. So, the appellants are also directed to make good the deficiency in the Court fees on the memorandum of appeal within four weeks.

February 29, 2016

s.khan

(DARSHAN SINGH)
JUDGE