

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.4348 of 2012 (O&M)

Date of Decision: February 20, 2018

Badamo Devi

...Appellant

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Tara Chand Dhanwal, Advocate,
for the appellant.

Mr.Rajbir Singh, AAG, Haryana,
for the State.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is in Regular Second Appeal against the judgment and decree dated 10.3.2011 of the Lower Appellate Court, whereby the judgment and decree of the trial Court decreeing the suit by issuing directions to the respondent-defendants to repair the house of the plaintiff through concerned department at their own costs within a period of three months from the date of the order, has been set-aside.

Appellant-plaintiff instituted the suit for compensation of ₹5,16,000/- on account of the damage occurred in her house due to the leakage of the water from the main pipeline of the defendants alongwith interest @ 18% per annum. She owns House bearing No.534/9, Gali Udmi Ram Thekedar, Nirmal Nursing Home, Lal Sarak Hansi. Towards the eastern side of the house, there was a water pipeline. Owing to the mismanagement of the officials of the defendants, the aforementioned

pipeline in front of the house of the plaintiff perforated and as a result thereof, the water seeped into the house of the plaintiff and several cracks and crevices appeared in the walls of the house. The plaintiff appointed one Shri B.D.Singh, Senior Civil Engineer and Valuer, who inspected the house on 30.7.2008 and prepared the report dated 2.8.2008. Even the photography of the house was also conducted. The plaintiff submitted a report to the department for the purpose of damages or causing repair, but not acceded to. Even legal notice dated 11.8.2008 was submitted, but of no effect.

The aforementioned suit was contested by the defendants. They denied the leakage of the pipeline. It was stated that the house of the plaintiff is constructed over a sandy plot towards the other side of fort, i.e., at a very low level/altitude and during rainy season, water accumulated around the house of the plaintiff. As a result of seepage of water, the house of the plaintiff must have been damaged, but denied any negligence on the part of the department.

Since both the parties were at variance, the trial Court framed the following issues:-

- 1) Whether the plaintiff is entitled for compensation (as damages) to the tune of Rs.5,16,000/- from the defendants, as prayed for? OPP
- 2) Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
- 3) Whether the suit is not maintainable in the present form? OPD
- 4) Whether the plaintiff is estopped to file the suit by her own act and conduct? OPD

5) Whether the plaintiff has not come to the court with clean hands and has suppressed the true and material facts from the court? OPD

6) Relief.

Plaintiff, in support of her case, examined B.D.Singh, Building Expert as PW-1, who proved his report Ex.P1 and tendered attendance-sheet Ex.P2, site plan Ex.P3, photographs with negatives as Ex.P4 to Ex.P33 and receipt Ex.P34, Surender Sharma PW2, Om Parkash Neighbourer PW-3 and plaintiff herself appeared as PW-4. On the other hand, the defendants examined B.P.Sharma, Sub Divisional Engineer No.1, Public Health, Hansi, District Hisar and tendered in his examination-in-chief affidavit Ex.DW1/A.

The trial Court, on the basis of the evidence, decreed the suit by issuing directions to the defendants to repair the house of the plaintiff through the concerned department at their own costs within a period of three months. The aforementioned judgment and decree was assailed by the respondent-defendants by filing appeal and the same was allowed by reversing the judgment and decree of the trial Court.

Mr.Tara Chand Dhanwal, learned counsel representing the appellant-plaintiff submits that the judgment and decree of the Lower Appellate Court is illegal and erroneous. There is a categorical admission of the defendants qua the leakage of the pipe. The report Ex.P1 has gone un-rebutted. The department ought to have examined the surveyor/expert, but having failed to do so, the trial Court rightly decreed the suit. The Lower Appellate Court has not assigned any reasons in reversing the well reasoned judgment and decree. Om Parkash PW-3 categorically stated that the house of the appellant had been damaged on account of the leakage of the water,

i.e., bursting of the pipe, resulting into cracks and damage to the house and, thus, urges this Court for formulating the substantial questions of law as drawn in the memorandum of appeal.

Mr.Rajbir Singh, learned Assistant Advocate General, Haryana representing the State submits that the appellant-plaintiff miserably failed to discharge the onus as envisaged under Section 101 of the Indian Evidence Act. The report Ex.P1 was silent with regard to the age of the cracks, much less construction. There was no admission of the witness of the department with regard to the leakage of pipe. The photographs placed on record did not show any leakage of the pipe and, thus, urges this Court for maintaining the judgment and decree of the Lower Appellate Court.

I have heard the learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that there is no force and merit in the submissions of the learned counsel for the appellant, for, it was incumbent upon the appellant-plaintiff to prove the case by leading direct and cogent evidence. The report Ex.P1 of the expert does not envisage the age of the cracks, much less the building.

The photographs placed on record are only of cracks, but not of the leakage of the pipe. Even Om Parkash, the neighbour, was not able to answer the specific question in the cross-examination as to how much expenses were incurred for repairing the house. For claiming compensation, there has to be direct evidence, but I am afraid the appellant-plaintiff has failed to discharge the onus. On the contrary, the defendants' stand is that they have regularly been checking the water supply lines and there was no fault of the department. It was on account of the location of the house, which was at low altitude where, during rainy seasons, water accumulated in

front of the house of the plaintiff causing seepage to the foundation. The Lower Appellate Court, being the last Court of fact and law, in my view, has rightly discharged the obligation as per Section 96 of the Civil Procedure Code by examining the oral and documentary evidence.

For the reasons stated above, I do not find any illegality or perversity in the impugned judgment and decree. No ground for interference is made out, much less any substantial question of law. Resultantly, the appeal is dismissed.

February 20, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No