

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

117

RSA-1291-2016 (O & M)
Date of Decision:23.10.2018

Ram Kumar

...Appellant

Versus

Hawa Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: None.

ANIL KSHETARPAL, J.(Oral)

The case has been called thrice. However, learned counsel for the appellant has not chosen to appear. This Court has gone through the judgments passed by both the Courts below.

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the Courts below.

Plaintiff filed a suit seeking direction to the defendant to remove his water tank constructed adjacent to the common wall.

Both the Courts after examining the evidence have found that the plaintiff has failed to prove any damage caused to the property of the plaintiff because of the water tank. Rather counter claim filed by the plaintiff has been decreed. It has been found that the plaintiff had obstructed free flow of water from the drain by constructing a ramp in front of his house. On going through the grounds of appeal, it is found that neither any perversity nor any misreading or non-reading of substantive evidence has been pointed out.

The following questions of law has been proposed:-

*“(I) Whether the report of Local Commissioner
Ex.PW2/A has no legal value in the Court of Law?*

*(II) Whether the findings of both the learned
Courts below are perverse?”*

With regard to question No.1, it may be mentioned that a report submitted by a Local Commissioner is a piece of evidence and the same has been considered by both the Courts below as the same would be clear from the findings in Para 17 of the learned trial Court judgment. However, the Court has found that the Local Commissioner has not reported that the cracks in the wall have occurred due to seepage of water from the tank. Still further, no photograph of the actual damage to the wall or factual position of the wall has been produced. Rather the defendant has produced photograph Ex.DW-4/C, which shows that the defendant has its own separate wall and had there been any seepage from the water tank that could be seen from the back side of the wall also but there is no evidence to that effect.

With regard to second question, no perversity in the judgment has been pointed out.

Hence, there is no ground to interfere.

Regular second appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

23.10.2018
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(ANIL KSHETARPAL)
JUDGE