

RSA No. 5398 of 2017(O&M)

Date of Decision: 30.7.2018

Jagdish

---Appellant

versus

Darshan and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Sumit Sangwan, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for recovery of Rs. 2 lakhs on account of damages caused to house situated in village Noswa, Tehsil Charkhi Dadri, District Bhiwani, marked as ABCD in the site plan Ex. P1 due to leakage of water pipe line of respondent-defendant No. 1 and mandatory injunction for directing the respondents-defendants to repair the water pipe line shown in yellow as 'EF' in the site plan Ex. P1 was dismissed by the Additional Civil Judge (Senior Division), Charkhi Dadri (hereinafter to be referred to as “the trial court”) vide judgment and decree dated 23.12.2014 and appeal preferred by unsuccessful appellant-plaintiff did not find favour with the Additional District Judge, Bhiwani.

Both the courts have consistently held that the appellant-plaintiff has failed to substantiate his plea that any damage has been caused to his house because of fault attributable to defendant/respondent No. 1, therefore, appellant is neither entitled to press his claim for recovery of any

amount nor an injunction in the form of a mandate against the respondents.

Counsel for the appellant has failed to point out any materials on record in order to substantiate his plea that judgments passed by the courts suffer from perversity or raise a question of law that needs determination in the regular second appeal. There cannot be any dispute about the settled position in law that it is not open for the court in second appeal to re-appreciate the evidence for recording a finding different from what has been consistently held by the courts.

Finding no merit, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

30.7.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No