

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

RSA No.4078 of 2018(O&M)
Date of decision: 30.10.2019

Gian Dev @ Gian Bhushan

... Appellant

Versus

Laxman Dass and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Parminder Singh, Advocate, for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 05.02.2018, and as even the appeal preferred against the said decree failed and was dismissed on 19.03.2018, he is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for a decree for mandatory injunction. In brief, the case set out by him was that he was owner in possession of house No.210, situated in Dayanand Colony, Model Town, Karnal. He had constructed his house and a mandir somewhere in the year 1987, which was renovated in the year 2005. Defendant happened to be owner of house No.209 that abutted the house of the plaintiff on the eastern side. Defendant had constructed his house somewhere in the year 1990, but without obtaining any sanction from the Municipal Corporation, he started constructing a basement adjacent to the wall of the plaintiff's house. Plaintiff requested the defendant to desist from digging the basement near the

adjoining wall, but no avail. As a result, cracks had occurred in the house of the plaintiff. Thus, the suit.

In the written statement filed by defendant No.1, it was admitted that plaintiff was owner of house No.210. However, the basement existed in his house from the last many years and he had even been paying house tax including the basement to the Municipal Council. Accordingly, he prayed that suit was liable to be dismissed.

In a separate written statement filed by defendants No.2 & 3, it was pleaded, *inter alia*, that they had issued notice to defendant No.1 for raising illegal construction and filling up the basement being against the building bye laws. However, it was their case that they never served any notice upon defendant No.1 though mandatory under the Haryana Municipal Corporation Act.

Upon consideration of the matter in issue and the evidence on record both the Courts concurrently concluded that houses of plaintiff and defendant No.1 were adjacent to each other. The report of Local Commissioner revealed that defendant No.1 had constructed a basement, which fact, in any case, was not denied by defendant No.1. The only plea set out by defendant No.1 was that the said basement was in existence since long and the cracks, if any, in the wall of the plaintiff had not occurred because of the basement or any construction that was carried out in the past. Undisputedly, the onus to prove that defendant No.1 had constructed the basement and as a consequence some cracks had appeared in the building was upon the plaintiff himself. Thus, he ought to have led the requisite evidence to substantiate his plea but he failed to lead any cogent evidence in this regard. Ramesh Kumar (PW2), who proved on record the photographs

of the building, admitted in his cross-examination that house number or identification of the suit property was never mentioned by him in Ex.P1 to Ex.P13. He also conceded that he prepared the photographs at the instance of the plaintiff whom he knew for the last 5-6 years. For the plaintiff to succeed, he ought to have examined some expert, who could identify the cracks on the wall of the plaintiff as also the age of those cracks and if those cracks had occurred owing to construction of a basement by the defendant. As regards construction of basement against the building bye laws, it was observed that if any construction was carried out by defendant No.1 in breach of any provision or building bye laws, the appropriate authorities were free to resort to necessary measures. That being so, the only and the inevitable conclusion that could be reached: the suit filed by the appellant was liable to be dismissed for lack of cogent evidence.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at by both the Courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the findings recorded by both the Courts.

The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

30.10.2019
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO