

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

RSA-2254-2018 (O&M)
Date of decision : 20.01.2020

Ram Singh

...Appellant

Versus

Mukesh Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jai Singh Yadav, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM-6072-C-2018

For the reasons stated in the application, which is duly supported by an affidavit, delay of 5 days in refiling the present appeal is condoned.

Application is allowed.

Main case

Defendant-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below while passing a decree for recovery of damages amounting to ₹1,94,200/- on account of damage to the wall of the house of the plaintiffs by the defendants.

Learned First Appellate Court, while assessing the damages, has found as under:-

“Assessment of loss/damage:

- i). *the length of the damaged/broken wall A to D =49'*
Height of the damaged wall
 a) *the average height of the wall above floor level*
 $= (8+10)/2 + 9'$
 b). *Depth of foundation =5'*
Hence total height of damaged wall = 9+5=14'
Surface area of damaged wall =49x14=686
sq.ft.
Loss to the wall @ 200/- per sq.ft.
of surface area of damaged wall = 686 x 200
 $=137200/-$
- ii) *Loss of Iron gate with support and hinges = 30,000/-*
- iii) *Loss of iron railing 30' long x 2.5' high @ 200 per*
sq.ft.of surface area = 30x2.5x200=15,000/-
- iv) *Surface area of tiles on both pillars, (2=2=2) x*
 $10 \times 2 = 120 \text{sq.ft.}$
Loss of tiles @ 100/- per sq.ft of surface area
 $= 120 \times 100 = 12,000/-$
Total loss of the wall =(i)=(ii)+(iii)=(iv)=1,94,200/-
(Rs. One lac, ninety four thousand and two hundred)''

It is the case of the plaintiffs that defendant No.2 is Sarpanch of the village and involved in illegal mining. Plaintiff No.1 had made the complaint against him and hence, he was annoyed. Thus, with the use of the truck, the defendants caused damage to the wall of his residential house.

The defendants contested the suit by pleading that the suit has been filed on account of political rivalry. It has come in evidence that on account of the aforesaid incident, FIR No.168 dated 28.07.2013 under Sections 323, 427, 506 IPC has also been registered.

On appreciation of evidence, both the Courts below have decreed the suit.

This Court has heard learned counsel for the appellant at length. Learned counsel for the appellant has submitted that Mukesh-respondent No.1 was driving the vehicle and, therefore, no decree could be passed against the appellant-Ram Singh.

On a pointed Court question, he admitted that this argument was never raised before the Courts below.

At the stage of Regular Second Appeal, the defendant-appellant cannot be permitted to take a new defence, which is required to be decided, on appreciation of evidence. Hence, there is no ground to interfere.

Accordingly, the present appeal is dismissed.

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

20.01.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No