

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3116 of 2018 (O&M)

Date of Decision: 09.12.2022

Amrit Lal Puri

... Appellant(s)

Versus

Subhash Chander Bajaj and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. K.B.Raheja, Advocate
for the appellant(s).

Mr. Mandeep K. Sajjan, Advocate
for the respondent No.1.

Mr. Sandeep Chopra, Deputy Advocate General,
Punjab, for the respondent No.2 to 5.

Mr. H.S.Jalal, Advocate
for the respondent No.6.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. The defendant No.6, in a suit for mandatory injunction, is the appellant herein. Though, the trial Court has dismissed the suit filed by the plaintiff, however, the First Appellate Court has directed the appellant to remove the construction of the projection and bathroom. The plaintiff and

the appellant (defendant No.6 in the suit) are neighbours. The plaintiff has

filed a suit for grant of decree of mandatory injunction to demolish the illegal projection, toilet and bathroom constructed by him. It was alleged that the defendant No.6 while constructing the first floor, despite undertaking, did not leave the front set back as required by the said undertaking.

3. The First Appellate Court, as noticed, has directed the removal of the constructed projection and bathroom.

4. In the regular second appeal, the Municipal Council, Ferozepur, was directed to file an affidavit of a respectable officer. The Executive Officer, Municipal Council, Ferozepur, has filed his affidavit dated 13.11.2019. It has been pointed that the construction of the bathroom in the present case is shown in yellow and whereas red colour is as per the sanctioned site plan (Ex.P1). However, the learned counsel representing the respondent No.6 submits that the construction of the projection beyond the boundary of the plot is permissible, however, there cannot be any wall on the aforesaid projection. Such projection can only be in the shape of a “sun shade”.

5. The learned counsel representing the appellant undertakes to remove the wall which has been constructed over and above the roof of the second floor.

6. Keeping in view the aforesaid stand of the learned counsel representing the parties, the appeal is disposed of with the observations that the appellant shall carry out the remedial steps within a period of two months, positively, from today. The Municipal Council, Ferozepur, shall be entitled to inspect the same and draw the attention of the appellant to any

improvement or further steps required to be taken at his end.

7. The judgment passed by the First Appellate Court shall stand modified, accordingly.

8. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

December 09, 2022
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No