

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

CR-5864-2022

Date of decision:-13.12.2022

Bahadur Singh

...Petitioner

Versus

Harbans Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sunil Agnihotri, Advocate
for the petitioner.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Bahadur Singh had filed a suit for recovery against Harbans Singh and Gurdev Singh, who are none-else but his neighbours. Both the parties are having their houses within abadi area of village Gera.

2. As per the case of the plaintiff, defendant No.1 had dismantled his old house and re-constructed the same in February, 2016; while digging up new foundations, a gap was left between the foundations of house of the plaintiff and that of the defendants; resultant damage was caused to residential house of the plaintiff on account of dampness and masonry work being carried out during construction. The plaintiff alleges that it was so done by defendants intentionally so as to cause damage to the house of the plaintiff. Now the house of the plaintiff has developed cracks in the walls at many places and it is very risky to reside

there.

3. On getting notice of the suit, the defendants appeared and filed written statement contesting the suit denying the assertions in the plaint. The trial Court framed issues on merits and case was posted for evidence of the plaintiff, during the course of which plaintiff had examined PW2 Kuldeep Kumar Sharma, Civil Engineer Architect, a building expert hired by him, who had visited the spot and conducted investigation and he has proved his report in evidence. This PW had been cross-examined on behalf of the defendants.

4. During the course of the proceedings, the plaintiff filed an application under Order 26 Rules 9, 10-A read with Section 151 CPC to appoint a Civil Engineer or building engineer or any person having expertise and scientific knowledge with regard to buildings or any other person, which the Court deems fit as Local Commissioner to visit the spot and ascertain the damages by conducting investigation and inquiry into the matter.

5. The application was opposed on behalf of the defendants.

6. Vide order dated 10.11.2022, the said application was dismissed by Civil (Jr.Divn.), Mukerian, leaving the plaintiff aggrieved and he has approached this Court by way of filing the present revision petition praying that the impugned order be set aside and application for appointment of Local Commissioner filed by him be accepted.

7. I have heard learned counsel for the revisionist besides going through the record and I find that there is no merit in the revision petition.

8. The law is well settled that the parties to a suit are required to

prove their respective assertions by bringing evidence on record. The Court is not to collect evidence on behalf of either of the party. The plaintiff of his own had engaged a private expert, namely, Sh.Kuldeep Kumar Sharma, Civil Engineer Architect, who had visited the spot and submitted his report in the Court, which he proved while getting his statement recorded as PW2 as a witness for the plaintiff. He has been subjected to thorough cross-examination on behalf of the defendants. It seems that to plug the loopholes left as a result of cross-examination of PW2 Kuldeep Kumar Sharma, Civil Engineer Architect, the plaintiff wants to get another building expert appointed, which can certainly be not allowed as per law.

9. The order passed by the trial Court is detailed and well reasoned. It does not come out to suffer from any illegality or infirmity much less apparent on the face of it. The order is certainly not perverse or passed in an arbitrary manner. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

10. The revision petition is found to be without merit and is dismissed accordingly.

13.12.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No