

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

309-1

RSA No.513 of 2003
Reserved on: 22.09.2023
Date of Pronouncement 06.10.2023

BANARSI DASS
..... Appellant
Versus
MUKESH KUMAR AND OTHERS
..... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present : Mr. Satinder Khanna, Advocate for the appellant.

Mr. Deepak Gupta, Advocate for respondents No.1 and 4.

None for respondents No.2 and 3.

Service of respondents No.5 and 6 dispensed with
vide order dated 10.05.2023.

MANISHA BATRA, J.

1. The instant appeal has been filed by the appellant-defendant No.1 challenging the judgment and decree dated 11.09.2002 passed in regular civil appeal No.13 of 2000 titled as Rakesh Bhardwaj (deceased and represented by Legal Representatives) vs. Banarsi Dass and another, by learned First Appellate Court, Jalandhar whereby the judgment and decree passed by learned trial Court had been modified.
2. For the sake of convenience, the parties shall be referred to hereinafter as per the original nomenclature as given in the suit.
3. The plaintiff-Rakesh Bhardwaj (who had died during the pendency of the suit and was represented by his legal representatives), had filed the aforementioned suit on the averments that he along with his brothers was co-owner in possession of a house bearing No. B-IV/97 situated in

Mohalla Mishran, Village Noormahal, Teh. Phillaur. The house of defendant No.1 bearing No.B-IV/96 was existing in the northern side of the house of the plaintiff. This house was in occupation of defendants No.2 and 3 as tenants of defendant No.1. It was alleged that defendant No.1 had constructed a temporary soaking pit which was shown to be existing at point marked as 'X' in the site plan annexed with the plaint, in front of his house and in the street existing towards the eastern side of his house. It was alleged that the said soaking pit had been constructed illegally for drainage of sullage water without knowledge and consent of the plaintiff and without seeking approval from the municipal authorities. This drainage water had seeped into the house of the plaintiff thereby, making huge cracks in the walls and floors of his house and causing serious damage to the same. The damage so caused by this leakage was irreparable one and could be cured only by demolition of the damaged portions. The plaintiff got assessed the cause and extent of the damage from a qualified architect who inspected the site on 13.10.1993 and submitted report that the damage was caused due to seepage of sullage water from the sewerage system/pit constructed by the defendants and who assessed the damage to the tune of Rs.4,00,750/-. The plaintiff requested the defendants to compensate him so that he could make re-construction on the damaged parts of his house but in vain. Therefore, he prayed for passing a decree for recovery of a sum of Rs.4 lacs as damages being caused by the defendants.

4. Defendants No.2 and 3 failed to appear in response to the notice and were proceeded against *ex parte*. The suit was contested by defendant No.1 who filed written statement raising preliminary objections as to maintainability, *locus standi*, mis-joinder and non-joinder of the parties and on the ground that the suit had not been properly valued for the purposes of Court

fees and jurisdiction. On merits, it was denied that any pit had been constructed by defendant No.1 and it was asserted that defendants No.2 and 3 had constructed a soaking pit without his permission and knowledge in February 1993. It was asserted that the water pipes installed in the area by the municipality were also leaking since long and had formed a pit of water. Complaint in this regard was submitted to the municipal authorities and it was found that it was the water pipe of an adjoining house belonging to one Laxmi Nasem that was causing leakage. It was alleged that the plaintiff himself had constructed septic tank in the middle of the street in an unauthorised manner and because of leakage from the said septic tank, damage had been caused to the house of defendant No.1 and it was also submitted that there was a pond having stagnated water existing on the back side of the house of the plaintiff and that could also because of damage in his house. While controverting the remaining averments, dismissal of the suit had been prayed for.

5. The plaintiff filed replication controverting the pleas taken in the written statement and re-asserting those of the plaint. On the pleadings of the parties, the following issues were settled by the learned trial Court:-

1. Whether the plaintiff is entitled to recover Rs.4,00,000/- as damages on the grounds as mentioned in the plaint? OPP
2. Whether the plaintiff has got no locus standi to file the present suit? OPD
3. Whether the suit is not maintainable in the present form as mentioned in para No.B of the preliminary objections? OPD
4. Whether the suit is bad for non-joinder and mis-joinder of necessary parties?

5. Whether the suit of the plaintiff is not properly valued; for the purpose of court fee and jurisdiction? OPD

6. Relief.

6. The parties adduced oral as well as documentary evidence in support of their respective assertions. The plaintiff examined as many as 3 witnesses namely, PW-1 Parmodh Bhardwaj, PW-2 Gurmit Singh, PW-3 Surrender Kumar and Danesh Kumar, Power of Attorney holder of legal representatives the deceased-plaintiff appeared as PW-4. Whereas, the defendant No.1 himself appeared as DW-6 and examined 6 more witnesses namely, DW-1 Jiwan Dass, DW-2 Nirdhol, DW-3 Madan Lal, DW-4 Joginder Pal, DW-5 Jarnail Kaur and DW-7 Ram Murti Chauhan.

7. On appraising the evidence produced on record and considering the contentions raised by both the sides, learned trial Court vide judgment and decree dated 29.11.1999, partly decreed the suit with proportionate cost thereby holding the plaintiff entitled to recover an amount of Rs.20,000/- as damages caused to his house. All the defendants were jointly held liable to pay the same.

8. Feeling dissatisfied from the quantum of the amount which was awarded by learned trial Court by way of damages, the legal representatives of the deceased-plaintiff preferred appeal before the First Appellate Court, whereas, no appeal had been filed by either of the defendants. The question before the First Appellate Court was restricted as to the extent of damages caused by the acts of the defendants and the sufficiency of the amount awarded by learned trial Court as damages. The learned First Appellate Court partly allowed the appeal by modifying the judgment and decree passed by learned trial Court and by holding the plaintiff entitled to a sum of Rs.50,000/- with

proportionate costs. Feeling aggrieved, the defendant No.1/appellant approached this Court by filing the instant appeal.

9. Learned counsel for the appellant-defendant No.1 argued that the findings given by learned First Appellate Court thereby, enhancing the amount of damages from Rs.20,000/- to Rs.50,000/- were not sustainable as no justification whatsoever, had been given by learned First Appellate Court for granting the same and a non-speaking order had been passed. Hence, He argued that the appeal deserved to be accepted and the judgment and decree of learned First Appellate Court was liable to be set aside.

10. Per contra, it was argued by learned counsel for the respondents/legal representatives of deceased plaintiff that learned First Appellate Court had rightly enhanced the amount of damages and order so passed being well reasoned did not require any interference. He also argued that no substantial question of law had arisen and urged that the appeal was liable to be dismissed.

11. This Court has heard learned counsel for both the sides at length.

12. It will be relevant to mention at the outset that the arguments by the appellant's side restricted to the extent to which the amount of damages was enhanced by learned First Appellate Court and not on the question as to whether the respondents were entitled to damages or not?

13. A perusal of trial Court's record reveals that both the parties had examined expert witnesses to prove their respective claims with regard to the amount which was required to be spent for effecting repair in the property of the respondents which had been damaged due to drainage of sullage water leaking through the seepage tank erected by the appellant. As according to the witness of the respondent an amount of Rs.4,00,750/- was required to be spent

whereas, according to the witness of the appellant only a sum of Rs.16,000/- to Rs.20,000/- was required to be spent. The trial Court had assessed the damages to the tune of Rs.20,000/- and learned First Appellate Court while noticing that there was a big difference in the amount so estimated by expert witnesses of both the parties, had modified the judgment and decree of learned trial Court and had enhanced this amount to Rs.50,000/-. No substantial question of law arises for consideration in this case and the dispute remains only with regard to enhancement of an amount of Rs.30,000/- as ordered by learned First Appellate Court. In the considered opinion of this Court, no intervention in the order passed by learned First Appellate Court is required at all keeping in view the fact that neither the trial Court nor learned First Appellate Court had awarded any interest to the respondents/plaintiffs on the amount of damages, which in the present time is a meager amount. The suit by the respondents was filed in the year 1993. Judgment of learned First Appellate Court was passed in the year 2002 and for the last more than 23 years from the date of passing of decree of the learned trial Court, even a single penny has been paid by the appellant to the respondents.

14. Taking into consideration all the peculiar facts and circumstances of the case including the fact that the appellant did not challenge the judgments and decrees passed by the Courts below on merits and prayer had been restricted only to the extent of modification in the amount of damages which does not amount to a substantial question of law, no ground has been made out to allow this appeal and accordingly, the same is dismissed and judgment and decree passed by learned First Appellate Court is affirmed. The appellant is directed to pay the above said amount to the legal representatives of the deceased plaintiff within a period of 2 months after receipt of copy of this

order, otherwise he would be liable to pay interest @ 6% per annum from the date of filing of this appeal till the date of realization.

No order as to costs.

06.10.2023
Jyoti-IV

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned:	Yes/No.
Whether reportable :	Yes/No