

(2011) 04 SHI CK 0053

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 232 of 2007

Oil and Natural Gas Corporation and Another

APPELLANT

Vs

Maya Devi and Others

RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2011) 04 SHI CK 0053

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—This Regular Second Appeal is directed against the judgment and decree dated 01.09.2006, passed by the learned District Judge, Mandi in Civil Appeal No. 21 of 2006.

2. Material facts necessary for adjudication of this Regular Second Appeal, are that the Respondents-Plaintiffs (hereinafter referred to as "the Plaintiffs" for convenience sake), instituted a suit for recovery of damages to the tune of Rs. 4,96,444/- with the averments that the land comprised in Khewat Khatauni No. 17 min/19 min, Khasra No. 210, measuring 3-2-9 bighas, situated in Muhal Malhanu, Illaqua Balh, Tehsil Sadar, District Mandi was recorded in the ownership and possession of predecessor in interest of the Plaintiffs and other co-owners. Shri Beser Singh during his life time constructed a two storeyed house consisting of six rooms and two verandahs etc. over part of the suit land measuring 0-1-16 bigha comprised in Khasra No. 210/1 in the year 1984 by spending more than Rs. 4/- lacs. According to the Plaintiffs, Geophysical Party No. 83 of the Appellants-Defendants (hereinafter referred to as "the Defendants" for convenience sake) came in village Ratti and they were doing research work (seismic survey) at village Patyani and during the course of survey, they also made blasting on the adjoining land and house of the Plaintiffs and due to that blasting, deep, long and big sized crakes appeared on three walls of the aforesaid

house of the Plaintiffs from foundation upto roof. There were also many short deep cracks on all the walls of the damaged house. Even the foundation of the house was damaged. According to the Plaintiff, the building could collapse at any time. According to them, the damage has been caused due to carelessness/negligence of Geophysical party No. 83 which was camping at that time. Plaintiffs also moved an application on 13.02.1996 to the S.D.M. Sadar, Mandi for awarding compensation. The S.D.M. vide order dated 19.03.1997, sanctioned an amount of Rs. 30,000/-. Plaintiffs refused to accept this amount. Plaintiffs requested the Defendants for award of compensation and a legal notice was also issued u/s 80 of the CPC on 16.07.1997.

3. The suit was contested by the Defendants by filing separate written statements. Defendant No. 1 has taken the plea of sovereign function. On merits, the Defendant denied the averments contained in paragraphs 1 to 7 for want of knowledge and also alleged that the Plaintiffs be put to strict proof. According to them, the damage has not been caused due to the activities of Defendants. The Defendant No. 2 has denied that any blasting was done adjoining to the house of the Plaintiffs. According to Defendant No. 2, there was no negligence or carelessness on the part of his officials and the case of the Plaintiff was fabricated. According to them, they have carried out seismic survey in a deep nallah of about 70-80 meters deep and about 1500 meters away from the houses of the villagers. The issues were framed by the trial Court on 03.10.2001. The trial Court dismissed the suit on 15.12.2005. The Plaintiffs filed an appeal before the learned District Judge, Mandi. The same was allowed and the suit of the Plaintiffs for recovery of Rs. 2 lacs with 6% interest from the date of filing the suit till realization along costs throughout was decreed.

4. Mr. Anand Sharma, learned Counsel for the Appellants has supported the judgment of learned Civil Judge (Senior Division), Mandi on 15.12.2005. According to him, the learned District Judge has mis-read and mis-appreciated the oral and documentary evidence. According to him, no damage has been caused by the Defendants to the house of the Plaintiffs.

5. Mr. G.R. Palsra, learned Counsel for Respondents No. 1 to 3 has supported the judgment and decree passed by the learned District Judge on 01.09.2006.

6. This Regular Second Appeal was admitted on the following substantial question of law on 10.03.2008:

Whether there has been mis-reading and mis-appreciation of evidence oral as well as documentary by learned first Appellate Court?

7. I have heard the learned Counsel for the parties and gone through the pleadings carefully.

8. P.W. 1 Dinesh Kumar has testified that his father has died on 20.07.1996. According to him, it was on 11.01.1996 that team of O.N.G.C. carried blasting at a distance of 16 meters from the house. The house developed big cracks in the

walls from foundation up to the roof level after blasting. According to him, the house become unfit and unsafe for human habitation and his father also made a representation Ex. P.W. 1/C to O.N.G.C. for compensation. Plaintiffs have also examined Harinder Kumar as P.W. 3. He visited the site on the request of the Plaintiff Baser Singh in June, 1997 in village Patyani. According to him, the house of the Plaintiffs was made of stones and cement and covered with slates. He has noticed big cracks on the walls of the Plaintiffs right from the foundation up to the roof. He prepared the report Ex. P.W. 3/C. According to him, the cost of the dismantled house was Rs. 40,279/-.

9. Shri Halayoudh (P.W. 4) was the Patwari during the year 1994 to 1999. In June 1996, the Naib Tehsildar Amarnath visited the spot, i.e. house of the Plaintiffs on the direction of the S.D.M. He was also present on the spot. He had no personal knowledge regarding cause of damage, however, he was apprised of the same by the Plaintiff.

10. P.W. 5 is Shri Amar Nath. According to him, on 11.01.1996, O.N.G.C. has undertaken blasting, as a result of which, the house of the Plaintiff was damaged. He visited the spot on the direction of the S.D.M. He noticed the cracks on the walls and according to him, the house had become unsafe and unfit for human habitation. He submitted the report Ex. P.W. 5/A to the S.D.M. He admitted that no engineer accompanied him when he visited the spot. He was only accompanied by Patwari.

11. The Defendants have examined Trilok singh Aswal, Superintendent Geophysicist, Dehradun as D.W. 1. He deposed that he remained in Mandi till March 1996. He has deposed that he has gone on the spot with one Sehgal and Bhaswani, who had retired from service. He visited the spot on the orders of his superior officers. According to him, there were only minor cracks in the window and joints of the house of the Plaintiffs, which were old. This is the evidence led by the parties.

12. What emerges from the statements of P.W. 1, P.W. 3 and P.W. 5 is that the house of the Plaintiff has developed cracks and had become un-safe for human habitation. These witnesses have deposed that the house has been damaged due to the blasting undertaken by the Defendants in an unscientific manner. According to the report Ex. P.W. 3/C, the cost of reconstruction would be Rs. 4,56,165/-. Similarly, P.W. 5 in his report Ex. P.W. 5/A has mentioned about the damage caused to the house of the Plaintiffs by the blasting undertaken by the Defendants. The blasting has taken place on 11.01.1996. Even, D.W. 1 Shri Trilok Singh Aswal has deposed that he has noticed minor cracks on the walls and windows of the house. He could not tell the age of the cracks. According to the report of the expert, i.e. P.W. 3, the cracks were developed approximately in the months of April and May, 1997. Plaintiffs were also offered a sum of Rs. 30,000/- by the S.D.M., but they have not accepted the same and have chosen to file a suit to claim the damages.

13. The Defendants ought to have undertaken the blasting by taking all the precautions. The negligence on the part of the Defendants has resulted in causing damage to the house of the Plaintiffs, rendering it un-safe for human habitation. The 1st Appellate Court has rightly relied upon The State of Rajasthan Vs. Mst. Vidhyawati and Another, , Rudul Sah Vs. State of Bihar and Another, , N. Nagendra Rao and Co. Vs. State of Andhra Pradesh, and M.C. Mehta and another Vs. Union of India and others, . The Defendants were liable for the torturous acts of their Officers/officials for undertaking the blastings in an unscientific manner. The blasting is required to be undertaken by taking all the precautions. The learned 1st Appellate Court has correctly appreciated the oral as well as documentary evidence led by the parties.

14. Accordingly, in view of the observations and discussions made hereinabove, there is no merit in this Regular Second Appeal and the same is dismissed. No costs.