
(2010) 02 SHI CK 0034
In the High Court Of Himachal Pradesh
Case No : Civil Suit No. 37 of 2000

Satya Chauhan

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 23-02-2010

Acts Referred:

Citation : (2010) 02 SHI CK 0034

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Judgement

Surjit Singh, J.—Plaintiff has filed this suit claiming damages to the tune of Rs. 10 lacs with interest against the Defendants alleging that on 22nd August, 1999, they (Defendants) damaged her house, which she had constructed on Khasra No. 347/2/1, situate in Mouza Chhakdya, Pargana Manjhola, Tehsil and District Shimla. It has been pleaded that in the year 1995, vide sale deed, dated 25.4.1995, Plaintiff purchased 4 biswas of land bearing Khasra No. 347/2/1 and after seeking permission from the concerned authorities and obtaining a clearance certificate from Gram Panchayat, Whether reporters of the local papers may be allowed to see the judgment? Chamyana, constructed a house on that land. She took a loan of Rs. 2,20,000/- from the government, being its employee. A sum of Rs. 1,00,000/- was withdrawn by her from her GPF account. Her husband, who is also a government employee, withdrew a sum of Rs. 1,50,000/- from his own GPF account. In the month of April, 1999, PWD authorities undertook the work of construction of a road from Kamla Nagar to Chakrel. The road was to pass through a slope above the house of the Plaintiff.

2. Plaintiff served a notice dated 10.4.1999 to Executive Engineer, PWD, Division No. 1, Shimla, informing him that she had constructed a house by spending more than Rs. 5 lacs and that it should be ensured that while constructing the road, no debris, generated in the course of road construction, was thrown on or towards her house. Despite such notice, road was constructed by Defendants No. 2 to 6, who are the servants of Defendant No. 1, the State of Himachal Pradesh, in a

reckless or negligent manner as a result of which debris, generated on account of operation of bulldozer, fell on the slab of the two storeyed house of the Plaintiff. Plaintiff has alleged that two storeys of the house were complete when the debris was thrown and that she had spent a huge amount of money on the construction of those storeys. She has further pleaded that besides taking loan of Rs. 2.20,000/- from the government, withdrawing Rs. 1,50,000/- from her GPF account and her husband also withdrawing Rs. 1,50,000/- from his GPF account, a sum of Rs. 57,000/- had been taken as loan from Syndicate Bank and another sum of Rs. 2,25,000/- was borrowed from relatives. It is also pleaded that savings from salaries of Plaintiff and her husband had been spent on construction of the house. Thus, according to the Plaintiff, more than sum of Rs. 8 lacs had been spent on construction of the house.

3. It is further pleaded that on account of throwing of the debris, generated by operation of bulldozer, as aforesaid, house of the Plaintiff was completely damaged and a sum of Rs. 15 lacs would be required by the Plaintiff to reconstruct the house.

4. Defendants No. 1 to 4 filed one set of written statement while the other two Defendants filed a separate joint written statement. It has been pleaded that the suit is bad for mis-joinder and non-joinder of parties. It is denied that damage was caused to the house of the Plaintiff by the PWD people. It is stated that the road at the site had been constructed much prior to May, 1999. It is denied that the house of the Plaintiff was complete when the alleged damage had been caused.

5 Following issues were framed on the pleadings of the parties, vide zimni order dated 23.7.2001:

1) Whether the Plaintiff is the owner in possession of the land and the disputed property, as alleged? OPP

2) Whether the suit is bad for mis-joinder and non-joinder of parties, as alleged? OPD 5&6.

3) Whether the house of the Plaintiff was damaged on account of the negligence of the defendants while constructing the road from Kamla Nagar to Chakrel, as alleged OPP.

4) Whether the Plaintiff is entitled to damages, if so, to what extent and against whom? OPP.

5) Whether the Plaintiff is entitled to the mandatory injunction for the restoration of the house as it existed on 22nd August, 1999, as alleged? OPP.

6) Whether the road above the land or the house of the Plaintiff, as claimed by the Plaintiff, was completed by May, 1999, if so, its effect? OPD 1 to 4.

7) Relief.

6. Parties went to trial. Plaintiff examined 15 witnesses, including herself and also proved certain documents to substantiate her case. Defendants examined three witnesses, all of whom are the employees of Public Works Department, to disprove the Plaintiff's claim.

7. Parties have been heard and pleadings and evidence perused.

8. My findings on the aforesaid issues are as under:

Issue No.1 = Yes. Issue No.2= No. Issue No.3= No. Issue No.4= No. Issue No.5= No. Issue No.6= No. Relief = Suit dismissed, per operative part of the judgment..

Issue No. 1

9. It has not been disputed by the Defendants in their written statements that the site on which the Plaintiff claims to have constructed her house is owned and possessed by her. During the course of hearing also, learned Counsel for the Defendants have not denied that the site belongs to the Plaintiff. Hence, the issue is decided in favour of the Plaintiff.

Issue No. 2

10. Suit is alleged to be bad for mis-joinder of Defendants No. 5 and 6, who are the employees of Public Works Department and who were allegedly among the persons, who caused damage to the house. Therefore, it cannot be said that they are not necessary party and have been mis-joined. The issue is decided against the Defendants.

Issue No. 3 and 4

11. Finding qua issue No. 4 being dependent upon the finding of issue No. 3, both the issues are taken up together for discussion and determination.

12. Plaintiff has very categorically stated in the plaint that she had constructed the house by spending a sum of Rs. 8 lacs and that the money had been arranged by her partly by raising house construction loan from the State Government of which she is an employee, partly by raising loan from Syndicate Bank, partly by withdrawal of money from her own GPF account and also from GPF account of her husband, who also happens to be a government employee and partly from the savings of her own and her husband's salary. However, the documentary evidence on record suggests that out of a loan of Rs. 2,20,000/-, sanctioned by the government in favour of the Plaintiff, only a sum of Rs. 44,000/- had been withdrawn prior to the alleged incident of damage to the house. This amount was withdrawn on 31st March, 1999. As per loan sanction order, copy Ext. PW8/A, first instalment, equivalent to 20% of the total loan amount, i.e. Rs. 44,000/-, was to be released for starting the construction work of the house and the next instalment of equal amount was to be released after the plinth work was complete. This next instalment was released in September, 1999, i.e. after the alleged incident of debris throwing on the roof top. Remaining

instalments were released subsequently and the last one as late as in October, 2000. The fact is borne out from the statement of PW-8 SI Moti Lal, an employee of S.P. Office, Shimla, in which office Plaintiff had been employed at the relevant time. Loan from Syndicate Bank was raised by two transactions. One transaction pertained to loan of Rs. 37,000/-, which was taken in April, 1999 and the second loan was raised in 2001. Amount of second loan was Rs. 47,000/-.

13. There is no evidence as to when withdrawals from GPF accounts of the Plaintiff and her husband were made for the construction of the house. There are some papers (Exts. PW5/A to PW5/Q) regarding withdrawal of money by the husband of the Plaintiff from his GPF account. As per these papers, withdrawals were made during the years 1997 and 1998. These withdrawals were not for the purpose of construction of the house of the Plaintiff, but for repair of some unspecified house. There is no document with regard to the withdrawal of any money by the Plaintiff from her own GPF account. A witness, namely PW-11 Balraj, examined by the Plaintiff herself, stated that he inspected the house in the year 2001 and found that construction of the house was not complete and only framed structure existed on the spot.

14. Thus, from the evidence of the Plaintiff it cannot be made out whether the construction of the house, as alleged in the plaint, was complete in August, 1999, when the alleged damage was done.

15. Now coming to the vital issue as to whether the alleged damage to the house was caused on account of reckless or negligent operation of the bulldozer by the employees of Defendant No. 1, suffice it to say that the evidence led by the Plaintiff is not only at variance with the pleaded version, but also self contradictory. Damage is alleged to have been caused by throwing debris on the house on 22nd August, 1999. A report was lodged with the police on the next following day by the Plaintiff herself. Copy of the FIR is Ext. PW7/A. As per this FIR, bulldozer was operated on 22nd August, 1999 to construct the road on a slope above the house of the Plaintiff and the debris generated in the course was being thrown towards the house of the Plaintiff. On coming to know about the operation of the bulldozer, the Plaintiff, as per FIR Ext. PW7/A, went to the spot and asked the JE and the bulldozer driver not to operate the dozer and stop throwing the debris at her house, upon which the JE stopped the operation. Plaintiff further reported that on the next day, i.e. 23rd August, 1999, when she went to the spot to get the photographs of the debris on the roof top clicked, she found that her house had been damaged. Its brick walls, windows, doors and also the pillars had been damaged and that she suspected that mischief had been committed in the course of the night by some named and unnamed persons, including the Junior Engineer and the driver of the bulldozer, impleaded as Defendants No. 5 and 6. Other named persons numbering nine have not been impleaded. FIR gives the impression that the damage to the house was not done on account of throwing of the debris, but by an act of mischief committed in the course of night by the nine persons, named in the FIR and some unnamed

persons as also the JE and the driver of the bulldozer, impleaded as Defendants No. 5 and 6.

16. Plaintiff herself appeared in the witness box as PW-15. In the examination-in-chief she stated that she went to the spot on 22nd August, 1999 and when on seeing that the debris, generated on account of operation of bulldozer, was being thrown on her house, she asked the JE as to why the debris was being thrown towards her house, he told that he was asked by his superiors to do so. She also proclaimed that there was a Gypsy at the site and the driver of the said Gypsy said that she (the Plaintiff) be also buried under the debris. However, in the cross-examination she stated that she did not go to the site on 22nd August, 1999, but went there only on 23rd August, 1999, on coming to know that her house had been damaged.

17. Other witnesses examined by the Plaintiff have also made contradictory statements. PW-2 Mathoo Ram stated that damage to the house of the Plaintiff was done around 10.30 or 11 in the night. He stated that on hearing the noise of a bulldozer, he went to the spot and saw PWD people demolishing the pillar of the house of Plaintiff and also throwing earth on it.

18. PW-3 Bansi Lal stated that on 22nd August, 2000, at 9 a.m., when he was passing by the site, he saw a bulldozer being operated and the debris being thrown at the house of the Plaintiff and that when he intervened, the men at work started quarrelling with him. The witness does not say that any damage had been caused to the house of the Plaintiff on account of the throwing of the debris towards it, though he stated that next day when he went to the spot, he saw that the entire house had been damaged.

19. PW-4 Balbir Singh stated that one day when he was going to his sister's place after taking his dinner, he heard the noise of a machine and went to the spot and saw that several people had collected and they were demolishing the house of the Plaintiff. He stated that there were about 20-25 persons, who were damaging the house. He did not say that any damage was caused to the house of the Plaintiff by throwing debris, generated on account of operation of bulldozer. He even contradicted his statement regarding operation of bulldozer by stating in cross-examination that it was parked on the road at a point below Plaintiff's house, when he went to the spot. Statement of this witness is in line with the earliest version, which was given to the police by the Plaintiff, vide FIR Ext. PW7/A, that damage to her house had been caused in the night by nine named persons (named in the FIR) and some unnamed persons, a JE and driver of a bulldozer of Public Works Department.

20. Aforesaid evidence of the Plaintiff not only does not prove the allegation that damage was caused to the house by throwing debris generated on account of the operation of bulldozer, but also disproves it.

21. For the foregoing reasons, both the issues are found against the Plaintiff.

Issue No. 5

22. In view of the evidence discussed while dealing with issues No. 3 and 4 and the finding under the said issues that no damage was done to the house on account of throwing of debris generated while operating the bulldozer, this issue is also found against the Plaintiff.

Issue No. 6

23. Though some measurement books have been proved by Defendants No. 1 to 4, indicating that some work of road construction was carried out in April, 1999, there is no positive evidence, indicating that the said work was done at the site, in question. Hence, this issue is found against Defendants No. 1 to 4.

Relief

24. As a result of my findings on issues No. 3, 4 and 5 above, suit of the Plaintiff is dismissed with no order as to costs.