

(2015) 06 SHI CK 0100

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 218 of 2015

Urmila Devi

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 26-06-2015

Acts Referred:

Citation : (2015) 2 ShimLC 1151

Hon'ble Judges : Dharam Chand Chaudhary, J.

Bench : Single Bench

Advocate : Pritam Singh Chandel, Advocate, for the Appellant; D.S. Nainta, Virender Verma, Additional Advocate Generals and Pushpinder Jaswal, Deputy Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Dharam Chand Chaudhary, J.—Plaintiff is in second appeal, as she is aggrieved by the judgment and decree passed by learned Additional District Judge-III, Kangra at Dharamshala in Civil Appeal No. 24-B/XIII/13/12. It is borne out from the record available at this stage that she preferred a suit for recovery of Rs. 1,00,000/- as damages with consequential relief of permanent prohibitory injunction on the ground that the respondents-defendants while constructing a road to Bheth have caused damage to the foundation of her house. She resisted and objected to the construction of the road. The defendants allegedly agreed to construct retaining wall so that her house can be saved from further damage, but of no avail. According to her, now cracks have developed in the house and she has suffered huge loss. The defendants have resisted the suit. They denied any loss or damage having been caused to the house of the plaintiff. Also that, no assurance was ever given to the plaintiff with regard to construction of retaining wall, as according to them the level of the road and that of the house of the plaintiff is same. Learned trial Court has framed the following issues.

1. Whether the plaintiff is entitled for the recovery of Rs. 1,00,000/- as damages from the defendants, as prayed for? OPP.

2. Whether the suit is not maintainable? OPD.

3. Whether the plaintiff has concealed the material facts from this Court, as alleged? OPD.

3-A. Whether the plaintiff is entitled for the relief of injunction as prayed for? OPP.

4. Relief.

2. After holding full trial, learned Court below has decreed the suit partly for the relief of permanent prohibitory injunction, restraining thereby the respondents-defendants from raising construction of drain through land measuring 0-50-77 Hectares, entered in Khata No. 430 min, Khatoni No. 954 min bearing Khasra No. 564 situated there i.e. Mauza Avri, Tehsil Baijnath, District Kangra, adjacent to the house of the plaintiff without her consent. The suit for recovery of damages to the tune of Rs. 1,00,000/-, however, has been dismissed. Learned lower appellate Court has dismissed the appeal she preferred and affirmed the judgment and decree passed by learned trial Court.

3. She has assailed the legality and validity of the judgment and decree passed by learned trial Court on several grounds, however, mainly that both Courts below while dismissing the suit for the recovery of damages had not appreciated the facts and circumstances and also the evidence available on record in its right perspective. It has, therefore, been urged that on account of mis-appreciation and mis-construction of the evidence available on record, the judgment and decree under challenge is vitiated and the same is not legally sustainable.

4. On hearing learned Counsel on both sides and also going through the trial Court record, it is not the case of the plaintiff that the level of her house is up as compared to the road. The stand of the respondents-defendants, on the other hand, is categorical and specific that the level of the road and the house of the plaintiff is the same. The plaintiff while in the witness box as PW-1 has not uttered even a single word that her house is on higher side, whereas, the road on lower side. In her cross-examination also, she has admitted the suggestion that the level of the house and the road is the same, no doubt, said voluntarily that her house is above the road. This single sentence that too having come by way of her voluntarily statement in cross-examination is not sufficient to arrive at a conclusion that the level of her house is high as compared to the road, particularly when she has admitted the level of her house and the road same. Sh. Jethu, PW-2 she examined also tells us that level of the house of the plaintiff and the road is same. Therefore, when own evidence of the plaintiff substantiates the case of the respondents-defendants that level of the house of the plaintiff and road is the same, there is no question of the construction of retaining wall. Otherwise also, the house, as per own evidence produced by the plaintiff is hundred years old. The same is of mud bricks. The cracks, if any, developed in the house are due to its age and also construction material used i.e. mud-bricks. There is no legal and acceptable evidence to believe that such cracks have been developed on account of construction of road and plying vehicles

thereon. Although, the case she has set up in the plaint is that the construction of the road was resisted and objected to by her and while in the witness box she has stated that she objected to the construction of road when constructed in the year 1994-95, however, when cross-examined, admitted that at the time of construction of the road in the year 1994-95, she neither made any application nor lodged any complaint. Therefore, her own contradictory stand while in the witness box belies this part of her case, as pleaded in the plaint. There is again no evidence to show that the respondents-defendants had made assurance to her qua construction of retaining wall. I, therefore, find the present a case where both Courts below have appreciated the given facts and circumstances and evidence available on record in its right perspective and not misread, mis-constructed or mis-appreciated the same. Therefore, no legal question needs adjudication by this Court has arisen in the present appeal. On the other hand, the judgment and decree under challenge is legally and factually sustainable, hence deserves to be upheld. In view of what has been said hereinabove, this appeal fails and the same is accordingly dismissed. Pending application(s), if any, shall also stand disposed of.