

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

R.S.A. No. 3439 of 2008  
Date of decision: 31.03.2009

Jai Devi

....appellant

versus

State of Haryana and others

....respondents

**CORAM: HON'BLE MR. JUSTICE VINOD K. SHARMA**

Present: - Mr. S.N. Saini, Advocate,  
for the appellant.

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**VINOD K. SHARMA, J. (ORAL)**

This regular second appeal is directed against the judgment and decree dated 7.4.2008 passed by the learned Courts below vide which the suit filed by the plaintiff/appellant for mandatory injunction and in the alternative for damages to the tune of Rs.1,88,000/- along with interest, has been ordered to be dismissed.

The plaintiff brought a suit on the pleadings that she was owner of house in question to which damage was caused on account of some pipeline laid by the defendants. It was further claimed that due to the laying of pipes, cracks had developed in her house, and it was likely to fall down, furthermore the tenants have left the premises, which has resulted in loss of income to the plaintiff/appellant.

The suit was contested on the plea that the suit was not

maintainable. Title of the plaintiff was denied for want of knowledge. It was clarified in the written statement that sewerage work was carried out in public interest and no damage was caused to any of the buildings in the vicinity. It was also pleaded that sewerage lines were laid down after adopting proper procedure and putting up supports by shuttering etc. The trenches were refilled after the work was over, the shuttering was removed and the street was restored to the original level and opened for public use.

On the pleadings of the parties, the learned trial Court was pleased to frame the following issues: -

- “1. Whether the plaintiff is entitled for mandatory injunction as prayed for? OPP*
- 2. Whether the plaintiff is entitled for Rs.1,88,000/- as damages and further damages of Rs.16,500/- as rent along with the interest at the rate of 24% per annum from 9.12.1999 till its realization? OPP*
- 3. Whether the plaintiff is entitled for mesne profit at the rate of Rs.3,000/- per month? OPP*
- 4. Whether the suit of the plaintiff is not maintainable? OPD*
- 5. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 6. Whether the plaintiff has no locus standi to file the present suit as alleged in para No. 3 of the additional pleas? OPD*
- 7. Whether the defendant is entitled to special costs under Section 35A CPC? OPD*
- 8. Relief.”*

The learned Courts below on appreciation of evidence have recorded a concurrent finding of fact that plaintiff/appellant failed to

prove that any damage was caused to her house on account of sewerage laid by the defendants. Even PW-2 i.e. neighbour of the appellant, who appeared on behalf of the plaintiff, stated that no damage was caused to the common wall, and also that he had not taken any action against the defendants. The learned Courts below also did not accept the assertions that it was due to the seepage of water that the walls had been spoiled, as it was not monsoon period.

The learned Courts below, thus, held that no negligence could be attributed to the defendant/respondents to decree the suit.

The learned counsel for the appellant in response to the question as to how the suit for mandatory injunction was maintainable to claim relief of damages, relied upon the Full Bench judgment of this Court in *Niranjan Kaur Vs. Nirbigan Kaur, 1981 P.L.J. 423*, wherein Full Bench of this Court has been pleased to lay down that for determining the Court fee payable, the Court had to see the relief sought in substance and not the frame of the suit.

The contention of the learned counsel for the appellant, therefore, is that the damages was only an alternative relief whereas the main relief was for mandatory injunction for repair of the house, thus, the suit for mandatory injunction was competent without payment of ad valorem Court fee.

The contention of the learned Counsel for the appellant cannot be accepted. The plaintiff by way of alternative relief had claimed specific amount as damages along with interest and it could not be said that the relief of damages was mere consequential relief. The reliance on the Full Bench judgment of this Court in *Niranjan Kaur Vs. Nirbigan*

***Kaur*** (supra) is, thus, totally misconceived. The suit without payment of ad valorem Court fee was not competent.

Even otherwise, it may be noticed that the learned Courts below have recorded a concurrent finding of fact that negligence on the part of the defendant/respondents has not been proved. The concurrent finding of fact recorded on appreciation of evidence cannot be a subject matter to challenge in regular second appeal. The appeal raises no substantial question of law for determination in appeal.

No merit.

Dismissed.

**(Vinod K. Sharma)**  
**Judge**

**March 31, 2009**  
R.S.