

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**RSA No. 210 of 2002 alongwith  
Cross-Objection No. 386 of 2002.**

**Judgment Reserved on : 30.4.2012**

**Date of Decision : 31.5.2012**

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1. State of Himachal Pradesh through Secretary, H.P.Public Works Department, Shimla.
2. The Executive Engineer, HPPWD, Division No.II, Shimla.

**Appellants/Non-Objectors.**

***Versus***

- 1(a) Smt. Kaushalya Devi, Wd/o ]  
1(b) Smt. Nirmala Devi D/o ]  
1(c ) Smt. Bimla Devi D/o ]  
1(d) Smt. Satya Devi, D/o ] late Sh. Shonk Ram.  
1(e) Kumari Sheela D/o ]  
1(f) Sh. Monah Lal S/o ]

2. Sh. Amar Singh ]  
3. Sh. Tej Singh ]  
4. Sh. Roop Singh ]  
5. Sh. Shyam Lal ]  
6. Sh. Padam Chand ] Sons and daughters of late Sh.Jai Ram,  
7. Sh. Med Ram ]  
8. Smt. Kamla Devi ]  
9. Smt. Kala Devi. ]

All residents of House No.35, Station View Kareru, Chakkar,  
Shimla-171005, H.P.

**...Respondents/Objectors**

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**Coram**

**The Hon'ble Mr. Justice Kuldip Singh, Judge.**

**Whether approved for reporting ?<sup>1</sup> No**

**For the Appellants / : Mr. J.S.Rana, Assistant Advocate  
Non-Objectors General.**

**For the Respondents / : Mr. G.D.Verma, Senior Advocate with  
Objectors Mr. B.C.Verma, Advocate.**

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**Kuldip Singh, Judge**

This judgment shall dispose of RSA No. 210 of 2002 and Cross-Objection No. 386 of 2002. The judgment, decree dated 3.10.2000 passed by learned District Judge, Shimla in Civil Appeal No. 48-S/13 of 1998 and in Cross-Objection No. 107-S/13 of 1998 has been assailed by the appellants in the second appeal. The parties in the judgment are referred to as plaintiffs and defendants.

**2.** The facts in brief are that Shonk Ram, predecessor-in-interest of respondents No. 1(a) to 1(f), Jai Ram predecessor-in-interest of respondents No. 3 to 9 and Amar Singh respondent No.2 filed Civil Case No. 308/1 of 1994 against the appellants for recovery of ₹ 1,50,000/- on account of damages caused to their properties. The further case of the plaintiffs is that they are owners in possession of house No. 35, Station View, Kareru (Chakkar), Shimla. The plaintiffs are residing in the said house alongwith their families. The road known as

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<sup>1</sup> Whether reporters of Local Papers may be allowed to see the Judgment ?yes

'Boileauganj Bye-Pass' is above the house of the plaintiffs. The defendant No.2 in rash and negligent manner had constructed a retaining wall 14 feet in height and 100 feet in length about 10 months prior to issuance of notice under Section 80 CPC. The material used for construction of retaining wall was poor. It was also not as per the technical requirement.

3. On 2.8.1993 in the evening a portion of the said retaining wall collapsed and came down on the house of the plaintiffs totally damaging two rooms worth ₹ 50,000/-. The house-hold articles more than ₹ 50,000/- lying in the two rooms were badly damaged. The plaintiffs provided pucca retaining wall giving support to road in order to save their properties and have spent ₹ 25,000/- for the construction of supporting retaining wall. The plaintiffs spent ₹ 10,000/- for removal of debris. The plaintiffs have claimed ₹ 15,000/- on account of special damages. In this way, a total sum of ₹ 1,50,000/- was claimed as damages from the defendants.

4. The suit was contested by the defendants by filing written statement. The preliminary objections of locus-standi, non-joinder of necessary parties, limitation and estoppel were taken. On merits, it was admitted that the retaining wall 7 mtrs. in length and 1.80 mtrs. in height was constructed by the defendants and maintained by them. The length and height of the retaining wall as claimed by the plaintiffs was denied. It was denied that the retaining wall was damaged due to poor specifications or poor quality of material. The defendants denied any technical defect in the retaining wall. The loss and damage to the house and house-hold articles alleged by the plaintiffs were denied. The defendants prayed for dismissal of the suit.

**5.** The plaintiffs filed replication. On the pleadings of the parties, the following issues were framed:-

1. Whether the plaintiff is entitled to the amount claimed? OPP
2. Whether the plaintiff has no locus standi? OPD
3. Whether the suit is bad for non-joinder of necessary parties?  
OPD
4. Whether the suit is barred by limitation? OPD
5. Whether the plaintiff is estopped to file the suit as alleged?  
OPD
6. Relief.

The learned trial Court held that plaintiffs are entitled to damages ₹ 25,000/- on account of cost of retaining wall, ₹ 10,000/- for removal of debris and ₹ 15,000/- special damages, total ₹ 50,000/-. It has been held that the suit is partly bad for non-joinder of necessary parties i.e. owners of the house. The plaintiffs have also no locus standi to claim damages regarding the said accommodation due to collapsing of the retaining wall. The learned Senior Sub Judge, Shimla partly decreed the suit on 19.12.1997. The defendants filed Civil Appeal No. 48-S/13 of 1998 against judgment, decree dated 19.12.1997. The plaintiffs filed Cross-Objection No. 107-S/13 of 1998 in Civil Appeal No. 48-S/13 of 1998. The appeal and cross-objections were decided by the learned District Judge, Shimla by common judgment, decree dated 3.10.2000, which has been assailed in second appeal being RSA No. 210 of 2002, the plaintiffs have filed Cross-Objection No. 386 of 2002 in the second appeal.

**6.** The appeal has been admitted on the following substantial questions of law:-

1. Whether the suit of the plaintiffs was barred by limitation under Article 79 of the Limitation Act ?
2. Whether a tenant can claim damages on account of any damage caused to the property of the true owner or not ?

The plaintiffs have filed the cross-objection. In the cross-objection, it has been stated that the suit was filed for recovery of ₹ 1,50,000/-. The trial Court had decreed the suit for ₹ 50,000/-. In the cross-objection filed by the plaintiffs in the first Appellate Court, they claimed additional amount of ₹ 50,000/-. Thus, in first Appellate Court the total claim of the plaintiffs was confined to ₹ 1,00,000/-. The learned first Appellate Court has allowed the claim of the plaintiffs only to the extent of ₹ 28,400/-. The plaintiffs in the cross-objections in second appeal have thus additionally claimed ₹ 71,600/- alongwith interest at the rate of 12% per annum from the date of filing of the suit till payment.

7. Heard and perused the record. The learned Assistant Advocate General on behalf of the defendants has submitted that the suit of the plaintiffs is barred under Article 79 of the Limitation Act. It has been submitted that the plaintiffs were at the most tenants, they are not entitled to claim damages on account of loss or damage to the property of the owner. On behalf of the plaintiffs, it has been submitted that in addition to ₹ 28,400/- decreed by the learned first Appellate Court, the plaintiffs are entitled to further amount of ₹ 71,600/- alongwith interest at the rate of 12%.

8. The substantial question of law No.1 is taken up first for determination. The issue No.4 is of limitation. The case of the plaintiffs is that the retaining wall collapsed on 2.8.1993 which caused damage to the property of the plaintiffs. The other connected loss or damage has been

alleged after collapse of the retaining wall on 2.8.1993. The suit was filed on 3.6.1994. The Article 79 provides limitation of one year for compensation from the date of distress. The damage as per the allegations of the plaintiffs was caused to the plaintiffs on or after 2.8.1993 due to collapse of the retaining wall. The trial Court under issue No.4 has returned the finding that no arguments were advanced by the Government pleader how the suit of the plaintiffs is barred by limitation. The trial Court held that the suit is within limitation. In the grounds of appeal before the first Appellate Court the defendants have not specifically assailed the findings of the trial Court on issue No.4. In view of pleaded case of the plaintiffs, it has not been pointed out how the suit of the plaintiffs is not within limitation. On the contrary suit of the plaintiffs is within limitation. The substantial question of law No.1 is decided against the appellants.

**9.** The substantial questions of law No.2 is now taken up for consideration alongwith the question whether the plaintiffs are entitled to additional amount of ₹ 71,600/- alongwith 12% interest from the date of filing of the suit till final payment as asserted in the cross-objection. The claim of the plaintiffs is as follows:-

(i)	Market value of two rooms	=	₹ 50,000/-
(ii)	Damage to house hold articles	=	₹ 50,000/-
(iii)	Cost of pucca retaining wall given by plaintiffs to support the road	=	₹ 25,000/-
(iv)	Cost of removal of debris	=	₹ 10,000/-
(v)	Special damages	=	<u>₹ 15,000/-</u>
	Total	=	<u>₹ 1,50,000/-</u>

**10.** The plaintiffs in the plaint have pleaded that they are owners in possession of the house No.35, Station View, Kareru, Shimla-5. This has been denied by the defendants in the written statement. Ex.PW-13/K is the Missal Hakiyat Bandobast Jadid showing Shiv Dev, Atma Dev, Om Dev in equal half shares and Rama Nand in half share as owners and tenants in column of possession. Ex.PW-12/A is the technical report dated 31.6.1994 of R.B.Saksena. Ex.PW-5/A to Ex.PW-5/H, Ex. PW-5/J, Ex.PW-6/A, Ex.PW-6/B, Ex.PW-7/A, Ex.PW-9/A, Ex.PW-1/A to Ex.PW-1/H, Ex.PW-1/J to Ex.PW-1/L, Ex.PW-3/A, Ex.PW-10/A, Ex.PW-10/B and Ex.PW-11/A are the receipts of labour charges and cost of other construction materials. Ex.PW-2/A is rapat No. 370 dated 2.8.1993.

**11.** The trial Court had allowed the claim of the plaintiffs of ₹ 25,000/- on account of cost of retaining wall, ₹ 10,000/- for removal of debris and ₹ 15,000/- as special damages, total amounting to ₹ 50,000/- alongwith future interest at the rate of 6% per annum from the date of filing of the suit with proportionate costs. The lower appellate Court has allowed ₹ 10,000/- to the plaintiffs to make their structure habitable or to set the damage right. The plaintiffs have been allowed ₹ 8,400/- on account of cost of construction of retaining wall and an amount of ₹10,000/- was allowed for removal of debris, total amounting to ₹ 28,400/- alongwith interest at the rate of 10% per annum. The plaintiffs have failed to prove their ownership of the house. The house was damaged on 2.8.1993 according to the plaintiffs, the expert of the plaintiffs visited the site on 18.6.1994 as per Ex.PW-12/A technical report. He has given an estimate of ₹ 99,960/- for damage caused to the owners of the house.

The plaintiffs have failed to prove their ownership of the house, therefore, the plaintiffs cannot take any help from report Ex.PW-12/A.

**12.** The plaintiffs have proved that they were residing in the house when the retaining wall collapsed. The plaintiffs have also proved that the retaining wall collapsed on 2.8.1993 due to the negligence of the defendants. The learned District Judge has allowed ₹ 10,000/- for removal of debris which necessitated due to collapsing of the retaining wall over the house where the plaintiffs were residing. The plaintiffs even as tenants were not expected to live in the house alongwith debris. The plaintiffs removed the debris when defendants did not remove the debris. The amount of ₹ 10,000/- allowed by the learned District Judge for removal of debris is reasonable and cannot be termed excessive.

**13.** The learned District Judge has allowed of ₹ 8,400/- for construction of retaining wall to give self protection to the plaintiffs to avoid further damage to their house. The plaintiffs were not expected to live under perpetual threat of another fall of damaged retaining wall on their left over house. In Ex.PW-12/B the expert of plaintiffs has opined that ₹ 8393/- was required for construction of retaining wall. Therefore, the claim of ₹ 8,400/- allowed by the learned District Judge to give self protection to the plaintiffs to avoid further damage to the house is justified and cannot be said to be excessive.

**14.** The learned District Judge has allowed ₹ 10,000/- to the plaintiffs for making their house habitable or to set the damage at right. The plaintiffs have failed to prove their ownership of the house. Therefore, the plaintiffs are not entitled to claim damages for making the house habitable or to set the damage at right. But it cannot be said that the plaintiffs have suffered no damage to their house-hold articles lying in



the house. It is reasonable to infer that every house-hold has normal house-hold articles as per the status of the persons residing in the house. The house-hold articles are collected by the occupier of the house bit by bit and it is too much to expect the occupier to prove each article by supporting voucher.

**15.** It has been proved that two rooms of plaintiffs with house hold articles were crushed by the retaining wall which fell on 2.8.1993. Therefore, it is reasonable to infer that the plaintiffs must have suffered loss of articles atleast to the extent of ₹ 10,000/- when their two rooms were crushed by the retaining wall which fell on the rooms. The plaintiffs are thus entitled to ₹ 10,000/- on account of loss of their house-hold articles as a result of crushing of their house by the retaining wall on 2.8.1993. The plaintiffs are not entitled to any amount for making their house habitable or to set the damage at right as held by learned District Judge. The learned District Judge has held that in the plaint nothing has been claimed on account of mental agony, inconvenience and discomfort. Therefore, the plaintiffs are not entitled to any amount under this head. The plaintiffs have already been given ₹ 3,000/- compensation by State. The plaintiffs are not entitled to any other amount.

**16.** In view of above discussion, the plaintiffs are entitled to total amount of ₹ 28,400/- as discussed above. The plaintiffs are also entitled to interest on ₹ 28,400/- as allowed by the learned District Judge. The plaintiffs have failed to prove any other loss, damage to the house over and above as held above. The substantial question of law No. 2 is thus answered accordingly alongwith claim of the plaintiffs in cross-objection.

**17.** The result of above discussion, the appeal and cross-objection are dismissed as held above with no order as to costs.

***May 31, 2012***  
***(GR)***

***( Kuldip Singh ),***  
***Judge.***