

of settlement outside the court. The provisions have been held to be mandatory. It is not that only the plaintiff had not appeared in the court, rather, the defendants had also not appeared.

(23) In the present case, the learned court below did not follow the procedure provided under Order 10 CPC and simply recorded that as the parties did not appear, the consequences under Order 10 Rule 4 CPC follow and the suit was dismissed. The order, being totally in violation of the provisions of law, deserves to be set aside. Ordered accordingly.

(24) The learned court below is directed to proceed further strictly in terms of the provisions of law, as have been interpreted in the judgments, referred to above.

(25) The parties through their counsels are directed to appear before the court below on 4.2.2012.

(26) The petition stands disposed of.

A.K. Jain

Before Tejinder Singh Dhindsa, J.

MOHINDER SINGH,—Appellant

versus

SURMUKH SINGH AND OTHERS,—Respondents

RSA No.3554 of 2011

2nd February, 2012

Code of Civil Procedure, 1908 - S. 91 & 100 - Punjab Village Common Lands (Regulation) Act, 1961 - S. 13 - Appellant/ defendant had got four houses and these houses were corner houses in the intersection of 2 streets - He interconnected routes of these houses and covered the street - Trolleys and trucks which used to earlier pass through the street faced obstruction - Plaintiff/respondents filed suit u/s 91 CPC - Suit decreed by trial Court - Appeal filed by appellant/defendant dismissed - Second Appeal filed -Contention that special procedure was laid down u/s 91 CPC in cases of public nuisance which had not been followed - RSA dismissed holding that section 91(1) CPC has enlarged scope of locus standi to file suit.

Held, That section 91 of the Code of Civil Procedure is an enabling provision. Under Section 91(1) of the Code of Civil Procedure, the scope of locus standi to file a suit has, in fact, been enlarged. Even persons to whom special damage has been caused on account of a wrongful act or public nuisance may institute a suit upon complying with the conditions stipulated in Section 91(1) of the Code of Civil Procedure. However, such provisions cannot be construed to restrict the right of a person to file a suit in view of a wrong cause independently of such provision.

(Para 9)

Further held, That in the present case, the fact of the houses of the plaintiff/respondents being adjacent to the houses of the defendant-appellant is not in dispute. It would go without saying that if the neighbour covers the street by constructing a roof, the obvious consequence thereof would be that the flow of natural light and air to the adjoining premises would be diminished. As such, the conclusion of both the Courts below to the effect that construction raised by the defendant-appellant has caused special damage to the plaintiffs is well-founded. Accordingly, I hold that the suit was not barred by Section 91 of the Code of Civil Procedure and was very much maintainable.

(Para 10)

Puran Singh Rana, Advocate, *for the appellant.*

TEJINDER SINGH DHINDSA, J.

(1) The defendant-appellant is in second appeal before this Court.

(2) Briefly stated, the plaintiff-respondents instituted a suit for mandatory injunction directing the defendant to remove the roof put on street 'S-S1' and 'Y-Y1' whereby he had connected the first floors of his houses and thereby covered the public street. It was pleaded that the defendant had got four houses and these houses were corner houses in the intersection of two streets running from East to West and the other running from North to South. The defendant had covered the street by constructing roof in such a manner that the roof of all his houses was interconnected. As per site plan produced on the file as Exhibit P1, it was shown that the house of plaintiff, Lal Singh, is adjacent to one of the houses of the defendant

and the house of plaintiff, Ajaib Singh, adjoins the other house of the defendant. The said roof that had been constructed by the defendant was at a level of 10' and accordingly, the trucks/trolleys loaded with 'Toori' upto the height of 15', which earlier used to pass through the streets without any obstruction, now faced the apparent obstruction. It was pleaded that the defendant had constructed such roof in terms of connecting the roof of his four houses and thereby covering a public street by taking advantage of his proximity with the Sarpanch of the Gram Panchayat. It was further pleaded that since the houses of the plaintiffs adjoin the houses of the defendant and by virtue of such construction of roof, it has resulted not only in the obstruction of the loaded vehicles passing through the street but had also impaired the free flow of light into their respective houses. Repeated requests have been made to the defendant to remove such construction and even the Gram Panchayat had been requested to take suitable corrective action but having evoked no response, accordingly, the suit had been filed.

(3) The suit was contested by the defendant by setting up a preliminary objection as regards maintainability of the suit by asserting that it was hit by the provisions of Section 91 of the Code of Civil Procedure. On merits, it was pleaded that plaintiff No.2 had not been residing in the village for the last four years and, in fact, he was residing at village Tewar. Likewise, it was pleaded that even plaintiff No.1 was, in fact, residing at village Cholta and a school was being run by a tenant in a part of the house and certain other tenants were residing in the remaining part of the said house. The defendant, however, did not deny the fact of raising the construction and having covered the street so as to interconnect the roof of his houses. Defendant also set up a plea that since no objection had been raised at the time of construction, the plaintiffs would now be estopped in law from filing the suit. The defendant also gave various instances of the villagers having constructed the roof over the street and stated that such was the practice in the village.

(4) Upon the pleadings of the parties, the following issues were struck by the trial Court:

1. Whether the plaintiff is entitled to mandatory injunction as prayed for? OPP

2. Whether the suit is barred by provision of section 91 CPC?
OPD
3. Whether the suit is not maintainable?OPD
4. Relief.

(5) The suit of the plaintiffs was decreed in their favour and against the defendant for the relief of mandatory injunction directing the defendant to remove the roof as shown in the site plan, Exhibit P1, on the street mark as 'S-S1' and 'Y-Y1' within the abadi of village Kumbra.

(6) Aggrieved of the same, the defendant-appellant filed a civil appeal and vide impugned judgment dated 4.3.2011 passed by the Additional District Judge, SAS Nagar Mohali, the appeal has been dismissed.

(7) I have heard Mr.Puran Singh Rana, Advocate for the appellant at length.

(8) Learned counsel has strenuously argued that the said construction, admittedly, raised by the defendant-appellant has not caused any special damage to the plaintiff-respondents. Accordingly, the primary and the sole argument raised before me is that the suit itself was not maintainable as there had been no compliance of the provisions of Section 91 of the Code of Civil Procedure. Learned counsel would contend that the suit filed by the plaintiff-respondents would at best be relatable to public nuisance and would be barred by Section 91(1) of the Code of Civil Procedure which stipulates that a suit relating to public nuisance may be filed either by the Advocate General or with the leave of the Court by two or more persons, whereas in the instant case, the leave of the Court was not sought for filing the suit.

(9) I have given my thoughtful consideration to the submission advanced on behalf of the defendant-appellant. Section 91 of the Code of Civil Procedure is an enabling provision. Under Section 91(1) of the Code of Civil Procedure, the scope of locus standi to file a suit has, in fact, been enlarged. Even persons to whom special damage has been caused on account of a wrongful act or public nuisance may institute a suit upon

complying with the conditions stipulated in Section 91(1) of the Code of Civil Procedure. However, such provisions cannot be construed to restrict the right of a person to file a suit in view of a wrong cause independently of such provision. The scope of Section 91 of the Code of Civil Procedure has been considered by this Court in **Satnam Singh versus Smt.Jondo (1)** and it was held as under:

“I have carefully considered the aforesaid contention, but find no merit therein, although apparently the contention sounds very forceful. Section 91(1) CPC is an enabling provision and it has enlarged the scope of locus standi to file a suit. Normal rule of law is that a person, having right or being effected by a wrongful act of the opposite party, has locus standi to file the suit. However, under Section 91(1) CPC, even persons to whom no special damage has been caused by the public nuisance or other wrongful act, may also file the suit by complying with the conditions stipulated in Section 91(1) CPC. However, this provision does not, in any manner, restrict the right of a person, who independently of this provision, has right or locus standi to file the suit in view of wrong caused to him. This fact is made further clear by Section 91(2) CPC, which provides that nothing in this Section shall be deemed to limit or otherwise affect any right of suit, which may exist independently of its provisions. The net result of Section 91 CPC is that a person otherwise having right to file a suit may do so and nothing in Section 91 CPC would affect his said right. However, in the case of public nuisance, two or more persons, with the leave of the Court, may also file suit, although no special damage has been caused to them by the public nuisance or other wrongful act. Thus, Section 91 CPC is an enabling provision enlarging the scope of locus standi to file the suit, but it does not, in any manner, inhibit or restrict the right or locus standi of a person to file the suit, which exists independently of the provisions of Section 91 CPC.”

(1) 2011(1) Civil Court Cases 86

(10) In the present case, the fact of the houses of the plaintiff respondents being adjacent to the houses of the defendant-appellant is not in dispute. It would go without saying that if the neighbour covers the street by constructing a roof, the obvious consequence thereof would be that the flow of natural light and air to the adjoining premises would be diminished. As such, the conclusion of both the Courts below to the effect that construction raised by the defendant-appellant has caused special damage to the plaintiffs is well-founded. Accordingly, I hold that the suit was not barred by Section 91 of the Code of Civil Procedure and was very much maintainable.

(11) Mr.Rana, learned counsel for the appellant, has also raised a submission to the effect that the ownership of the street vested in the Gram Panchayat and it was only the Gram Panchayat that could have initiated proceedings against the defendant-appellant under the Punjab Village Common Land (Regulation) Act, 1961. Even on such count, it was contended that the jurisdiction of the civil court would be barred under Section 13 of the said Act. Even such submission is being noticed only to be rejected. There was no question or issue in the present case regarding ownership of the land in dispute. A suit for mandatory injunction in respect to a construction raised by the defendant-appellant which, in fact, caused a special damage to the plaintiff-respondents was within the jurisdiction of the civil court to adjudicate upon.

(12) The concurrent findings by both the Courts below are wellreasoned and do not warrant any interference. Learned counsel for the appellant has not been able to show any perversity in the same.

(13) The present appeal must fail as it does not raise any question of law, much less substantial question of law and is, accordingly, dismissed.

14. Appeal dismissed.

J.S. Mehndiratta