



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 15<sup>th</sup> January, 2026*

*Pronounced on: 10<sup>th</sup> April, 2026*

+ **RFA No. 528/2022, CM APPL. 46714/2022 (stay) & CM APPL. 27245/2025**

**SMT. SUMITRA DEVI**

W/o Sh. Bal Kishan

R/o Village Tikri Kalan,

Delhi-110041

....Appellant

Through: Mr. Rajesh Pathak, Ms. Ritika Tawar  
and Ms. Prachi Patwal, Advocates.

versus

1. **Shri Ajeet Singh**

S/o Shri Harkaish

R/o H. No. 227, Plot No. 37,

Village Tikri Kalan,

Delhi-110041

....Respondent No.1

2. **Shri Bal Kishan**

S/o Shri Mange Ram Prajapat

R/o Village Tikri Kalan,

Delhi-110041

....Respondent No.2

Through: Mr. Brijendra Pratap Singh, and Mr.  
Anubhav, Advocates.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**



1. The present Regular First Appeal under Section 96 read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*), has been preferred on behalf of the Appellant/Defendant No.2 assailing the Judgment and Decree dated 08.07.2022, whereby the learned District Judge-03 Delhi, **decreed the Suit** of the Respondent No.1/Plaintiff for Damages *in the sum of Rs.3,50,000/- along with the pendente lite and future interest @10% p.a.*, against the Appellant/Defendant No.2. No Decree has been passed against Defendant No.1, who is arrayed as Respondent No.2 in the present Appeal, as he is only a formal party.

2. The **Brief facts** are that the Plaintiff/Respondent No.1, Ajeet Singh, is the owner of property bearing house No.227, Plot No.37, Village, Tikri Kalan, Delhi-110041, ad-measuring about 100 square yards having construction on the ground floor and partly on the first floor (*hereinafter referred to as the 'Suit property'*).

3. The **Defendant No.2/Appellant**, Sumitra Devi, wife of Defendant No.1/Respondent No.2, Shri Bal Kishan, were residing in the adjacent property and had started reconstruction of their property in October, 2014. The Defendants excavated their plot negligently without take the requisite precautions to safeguard the Suit Property of the Plaintiff/Respondent No.1 from suffering any damage. As a result, various cracks developed and the flooring of the ground floor and roof of the building of the Plaintiff/Respondent No.1, got severely damaged and became uninhabitable.

4. The Plaintiffs claimed that they had requested the Defendants on several occasions, to take requisite precautions and safety measures during the construction of their property, but they failed to pay any heed to these requests of the Plaintiff. This led the Plaintiff to file a complaint dated



04.12.2014 *vide* DD No. 33B at Police Station Mundka, Delhi, but no action was taken.

5. The Plaintiff got the damages assessed from a Government-approved Architect/ Engineer and Valuer, who valued the damage to the tune of Rs.3,50,000/-.

6. The Plaintiff thereafter, issued a Legal Notice dated 15.12.2014 to the Defendants, to which a reply dated 22.12.2014 was given, denying any liability to pay the damages.

7. ***Hence, the Plaintiff filed the Suit for recovery of damages in the sum of Rs.3,50,000/- along with interest @10% p.a.***

8. The ***Defendant No. 1/Respondent No.2***, in his *Written Statement*, took the preliminary objection that the Plaintiff did not disclose any cause of action and was also bad for misjoinder and non-joinder of parties. It was further asserted that the Defendant No.1/Respondent No.2 was neither the owner of the adjacent property nor had he carried out any construction causing damage to the Plaintiff's property. The Suit is, therefore, liable to be dismissed as being false, frivolous and concocted, having been filed with the sole motive to harass the Defendants and to extort money.

9. It was further asserted that the construction of the Suit Property of the Plaintiff was very old and was already in damaged condition. The Plaintiff is misusing the process of law and wants to repair his property, at the cost of the Defendant.

10. The Defendant No. 2, Ms. Sumitra Devi, wife of Defendant No.1, was impleaded thereafter, who, in ***her Written Statement***, took a defence similar to that of Defendant No. 1. **On merits**, it was admitted that the Defendant No. 2 was the owner of the adjacent property, but it was claimed that some



minor repairs and plaster work were done by her in her Property and that there was no question of any damage being caused to the Suit Property of the Plaintiff.

11. The Issues on the pleadings were framed on 27.03.2015, which are as under:-

(i) *Whether the Plaintiff is entitled for damages for a sum of Rs.3,50,000/- as claimed for? OPP*

(ii) *Whether the Plaintiff is entitled for interest @18% as claimed for? OPP*

(iii) *Relief*

12. **The Plaintiff, in support of his case, examined himself as PW-1,** and reiterated the averments made in the Plaint. He also examined **PW-2, HC Sandeep,** Police Station Mundka, who proved DD No. 33B dated 04.12.2014 as Ex.PW-1/2.

13. The Plaintiff further examined, **PW-3, Mr. Jatinder Gandhi,** Government-approved Architect and Registered Valuer, who proved his report as Ex. PW-2/1. (*The said witness has been inadvertently referred to as PW-2 in certain parts of the record.*)

14. The **Defendant No.2/Appellant, Ms. Sumitra Devi** examined herself as **DW-2/1** and proved her affidavit of evidence Ex.DW-2/1A. She reiterated her defence as taken in the Written Statement. **DW-3, Mr. Anil Kumar Sharma, Architect,** proved his Report as Ex.DW-3/A.

15. The **learned District Judge** considered the evidence led by both the parties and concluded that there was a *clear and categorical admission* on the part of Defendant No. 2 that she had carried out construction in her



property, which is adjacent to the Suit Property of the Plaintiff, without taking necessary precautions. It was duly proved that the construction was carried out by her in a negligent manner. The learned District Judge referred to the Government Valuer's Report *Ex.PW-2/1* and accepted that the damages to the tune of Rs.3,50,000/- had been caused. *Consequently, the Suit of the Plaintiff for the sum of Rs.3,50,000/- along with the pendente lite and future interest @10% p.a., was decreed against the Appellant/Defendant No.2.*

16. Aggrieved by the said Judgment, the present Appeal has been preferred by the Appellant/Defendant No.2.

17. The ***grounds of challenge*** are that the testimony of DW-2 has not been appreciated, in the correct perspective. Her testimony clearly proves that the Suit Property of the Plaintiff/Respondent No.1 was constructed about 54 years back and was damaged due to heavy rains. No damage was caused on account of the construction carried out by the Appellant, in her property.

18. It was further stated the Judgment is based on surmises and conjectures, as well as assumptions and presumptions. *Hence, a prayer is made that the Impugned Judgment be set aside and that the Suit of the Plaintiff/Respondent No.1, be dismissed.*

19. ***Written Submissions were also filed on behalf of the Plaintiff/Respondent No.1***, who essentially contended that the averments made by the Appellant, are not supported by any evidence. The learned District Judge has rightly considered the report of PW-3, the Valuer examined on behalf of the Plaintiff *Ex. PW-2/1*, as well as the report *Ex. DW-3/A* of DW-3, the Valuer examined on behalf of the Appellant. There is



no infirmity in the impugned Judgment and the Appeal is liable to be dismissed.

**Submissions heard and record perused.**

20. It is the case of the Plaintiff/Respondent No.1 that the Defendant No. 2, who is admittedly the owner of the adjoining plot, had raised construction without taking due precautions, resulting in damage to the Suit Property of the Plaintiff.

21. The Defendant No. 2, Ms. Sumitra Devi, in her cross-examination, has admitted that her house was adjacent to that of the Plaintiff and that she had constructed her building up to three floors in the year 2014. She also stated that she had to dig the basement of the building. Her assertion that only '*minor repairs*' had been carried out in her property, is clearly belied by her own admissions.

22. She further admitted that she did not take any precautions to save the structure of the Plaintiff's property at the time of digging the base of her property.

23. The *first* defence of the Appellant is that the damage to the Suit Property of the Plaintiff, was because of heavy rains and because it was an old construction and had been in a dilapidated condition.

24. The Defendant, in support of her assertions examined DW-3, Mr. Anil Kumar Sharma, an Architect, who proved his Report *Ex.DW-3/A*. However, in his cross-examination, admitted that he had not inspected the suit property bearing No. 227 of the Plaintiff from inside and had only viewed it from the terrace of property No. 226, which is constructed up to three and a half floors, whereas property No. 227 of the Plaintiff is constructed up to one and a half floors. He thus inspected the Plaintiff's property only from the outside



while preparing his report. Moreover, although he claimed to have taken photographs of the Suit Property, but he failed to annex the same with his Report.

25. *It is, therefore, evident that in the absence of any internal inspection, he was not in a position to give a reliable opinion on the nature and extent of damage caused to the Plaintiff's property.*

26. DW-3 further deposed that if safety measures are adopted at the time of digging of the adjoining property, no damage would be possible. However, if safety measures are not taken alongside the entire wall while digging, damages are possible. He volunteered that this would happen if the digging is more than 4 to 5 feet. He further clarified that the depth of the base/foundation required for constructing a building of three floors is about 3 feet to 4 feet and it would depend on the soil of the Property. He further stated that the building of the Defendant, had been erected on the pillars.

27. From these admissions made by DW-3 in his cross-examination, it is evident that he had not properly inspected the premises of the Plaintiff. Significantly, he was not even aware of the depth of excavation undertaken at the Defendant's property. He further admitted that in the absence of adequate safety precautions during digging, damage to the adjoining property is likely to occur. As already noted above, the Appellant/Defendant No.2, in her cross-examination, *has admitted that no such safety measures were taken.*

28. In this context, it would be pertinent to refer to the testimony of PW-1, Ajeet Singh, Plaintiff, who categorically deposed that the damage to his property was caused due to digging carried out in the adjoining plot, without taking adequate precautions. He stated that the flooring of the ground floor



as well as the roof of the building, got damaged. Since the Defendant failed to take any corrective measures despite repeated requests, he lodged a Complaint dated 04.12.2014, Ex. PW-1/2, with the Police as well.

29. The Plaintiff also examined *PW-3, Mr. Jatinder Gandhi*, a Government-approved Architect and Valuer, who inspected the premises and proved his Report Ex. PW-2/1. He also placed on record eight photographs, exhibited as Ex. PW-2/2 (colly). In his Report, he opined that the cracks which had developed were recent and were caused due to excavation of the foundation in the adjoining plot. He further noted that the floor had sunk due to seepage and additional load on the adjoining wall. ***He assessed the cost of repairs at approximately Rs. 3,50,000/-.***

30. *PW-3, Mr Jatinder Gandhi*, in his cross-examination was able to describe the construction of the Plaintiff's property in detail, thereby establishing that he had carried out a proper physical inspection. He further deposed that the suit property appeared to have been constructed about 15–20 years ago and was made of cement, with walls measuring approximately 9 inches in thickness. His Report stands duly corroborated by the photographs on record, which clearly depict the damage to the Plaintiff's property, including cracks in the flooring as well as the walls.

31. In view of the overwhelming evidence, the learned District Judge rightly relied upon the Report of *PW-3, Mr. Jatinder Gandhi*, and the testimony of the Plaintiff, to conclude that the damage to the Plaintiff's Suit Property was caused due to construction carried out by the Appellant and it would cost approximately Rs.3,50,000/-, to carry out the necessary repairs.

32. This Court finds no infirmity in the impugned Judgment warranting interference in exercise of appellate jurisdiction under Section 96 CPC.



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33. The Appeal is devoid of merit and is accordingly, dismissed. The pending Applications, if any, are also disposed of, accordingly.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**APRIL 10, 2026/RS**