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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment pronounced on 4th April, 2011

+ RFA NO. 480/2010

LAXMI DEVI

..... Appellant
Through: Mr. SP Aggarwal, Mr. Sandeep Vishnu
and Mr. KK Thakur, Advocates

versus

INDER PAL SINGH

..... Respondent
Through: Mr. Nasimuddin, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

G.S.SISTANI, J.

1. The present appeal has been filed by the appellant under section 96 of the Code of Civil Procedure against the judgment and decree dated 31.03.2010 passed by the trial court decreeing the suit for recovery of money against the appellant.
2. The brief facts necessary to be noticed for disposal of the present appeal are that the appellant is stated to be the owner of the built up area property bearing no. 13/221, built on a plot admeasuring 62 Sq. Yds. along with super structure, comprising of two rooms set on ground floor, two rooms set on first floor and two rooms set

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physical file have been compared and
the digital data is as per the physical
file and no page is missing.

on second floor duly fitted with electricity and water connection, with further right to construct upto the last storey situated at Geeta Colony, New Delhi -110031 (hereinafter referred to as "suit property"). As per the plaint, the appellant had entered into an Agreement to Sell dated 07.04.2001 with the respondent for sale of the suit property for a total sale consideration of Rs. 10.5 lakhs out of which Rs 2 lakhs was paid as earnest money, by the respondent to the appellant. At the time of the execution of the said agreement, the appellant had handed over the physical possession of the second floor portion of the said property to the respondent. As per the appellant's, the appellant had secured a loan against the suit property from Central Bank of India, Karol Bagh Branch and had assured the respondent that after clearing the said loan, she would hand over the possession of the remaining portion of the property to the respondent and the respondent would pay the balance sale consideration after the said loan was cleared and a clearance letter/settlement letter along with an NOC was obtained from the Central Bank of India, Karol Bagh Branch. Despite repeated reminders by respondent, appellant failed to handover the possession of the remaining portion to the respondent. On 29.09.2003, the respondent was shocked to learn that some third person was in the possession of

the suit property and was raising construction on the same. The belongings of the respondent were missing and therefore, the respondent filed a police complaint to this effect. Upon inquiries it was revealed that the appellant had transferred the suit property to a third person despite having entered into an Agreement to Sell with the respondent. The respondent, thus, filed a suit for recovery of a sum of Rs. 4 lacs along with interest @ 18 % per annum since as per the terms of the said Agreement to Sell, in case the appellant failed to comply with the terms of the said Agreement, she would be liable to repay the amount received by her along with penalty of an equal amount.

3. Before the trial court, the respondent plaintiff examined two witnesses and the appellant examined herself. It would be relevant to reproduce the evidence of the witnesses. PW-1, Sh. Inder Pal Dua stated in his evidence by way of affidavit as under:

"I say that as per the terms of the said Agreement to Sell, the total sale consideration amount, in respect of the aforementioned property was fixed at Rs. 10,50,000/-.

I say that in terms of the said Agreement to Sell, the Deponent paid a sum of Rs.2,00,000/-, as earnest money, towards the sale consideration, to the Defendant, in terms of the said Agreement to Sell dated 07.04.2001. The said amount was duly received by the Defendant and she acknowledged the receipt of the same, in writing. It is worth mentioning here that at the time of execution of the said Agreement to Sell between the Deponent and Defendant, Defendant had handed over the physical possession of the

second floor portion of the said property, to the Deponent. The said Agreement to Sell dated 07.04.2001 bearing signatures of the Defendant at Point 'A', executed in my presence and in the presence of the witnesses Sh. Gopal Krishan Arora and Sh. Tilak Raj Dhawan shall be marked in the Court as Exhibit-PW1/1.

I say that the Defendant, as per her own representation, had obtained a loan on the basis of the said property from Central Bank of India, Karol Bagh Branch, Delhi. The Defendant further assured to the deponent that she would clear the said loan and would thereafter, hand over the possession of the remaining part of the said property, to the deponent. It was clearly stipulated that the balance sale consideration amount would be paid by the deponent, after the said loan was cleared by the defendant and a clearance letter/settlement letter alongwith an NOC was obtained from the Bank.

I say that the deponent regularly followed up with the defendant, calling upon her time and again to tender the requisite No Objection Certificate from the said Bank, and thereafter, accept the balance sale consideration amount and simultaneous thereto, hand over the possession of the remaining portion of the said property. But, the defendant, avoided the same, on one pretext or the other.

I say that on 29.09.2003, the deponent went to the aforementioned premises, but was shocked to find that the defendant was no longer in possession of the same and in fact, the same was in the possession of some other person, who was raising construction on the same. It is pertinent to point out here that the belongings of the Complainant, lying on the said second floor of the said premises were missing and in fact, the deponent had been illegally and unauthorisedly dispossessed from the said premises. A police complaint in this regard, was made by the deponent, on the same date. Upon enquiries it has been revealed to the deponent that the defendant, despite having entered into an Agreement to Sell dated 07.04.2001, has transferred/sold the said property, to a third person.

It was specifically agreed that in case the defendant failed to comply with the terms of the said agreement, then in that

event, she shall be liable to repay the amount received by her, from the deponent, alongwith equal penalty. The defendant has neither tendered the clearance letter/settlement letter, which was to be obtained from Central Bank of India, Karol Bagh Branch, nor she had handed over the No Objection Certificate, which was to be issued by the said Bank, in respect of the aforementioned property. A period of almost three years has since elapsed and all requests and demands made by the deponent, in this regard, have proved futile. It is pertinent to mention here that the deponent has always been willing to pay the balance sale consideration amount of Rs.8,50,000/-. Accordingly, the defendant has rendered herself liable to pay a sum of Rs.4, 00,000/- being the double of the earnest money, paid by the deponent, to defendant, in terms of the Agreement to Sell dated 07.04.2001. To add to the Deponent's agony, the defendant has unwarrantedly, sold/transferred/alienated the said property, in favour of third party, and the defendant, besides illegally dispossessing the deponent, has also usurped the belongings of the deponent, which were lying on the second floor portion of the said property, in connivance with third persons."

4. In his cross-examination by counsel for appellant, PW-1, Sh Inder Pal Dua has deposed as under:

"I came in contact with Smt. Laxmi Devi through Sh. Gopal Kishan @ Bali but I was not interested in purchasing this property.

The stamp paper for the document, Ex.PW-1/1 was purchased by Sh. Tilak Raj, s/o defendant. The same was typed in my presence. It was typed by Shri Ramesh Grover who has office-cum-residence in Block 13 of Geeta Colony. It may also be correct that his signatures may not appear on Ex.PW-1/1. The entire Ex.PW-1/1 was signed in my presence at the residence of the defendant. The said document was also signed by Shri Tilak Raj s/o defendant. The signatures of Tilak Raj appears at point X. It may be correct that

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signatures at point X may not be of Sh. Tilak Raj. It is wrong to suggest that Ex.PW-1/1 is not signed by Smt. Laxmi Devi. It is wrong to suggest that Smt. Laxmi Devi was not in Delhi on that day.

There is no receipt regarding the consideration Vol. Agreement to Sell itself shows that. It was paid in cash. The same was counted by Tilak Raj Dhawan in presence of Smt. Laxmi Devi.

Q. I put it to you that upto what time you were in possession of second floor of property No. 13/221?

A. I came to know that I was no longer in possession only when I saw some labourers working and I immediately reported the matter as Ex. PW-1/2.

I know one Sh. Joginder Pal who is a property dealer. He is running business under the name and style of Jagga Properties. It is wrong to suggest that I acted as a mediator for selling the suit property to Shri Joginder Pal of Jagga Properties by the defendant. Yes, it is correct that Joginder Pal made the payment of the loan amount of the defendant to Central Bank of India in my presence. Vol. I neither got the property nor the payment.

I had not taken action against the defendant after payment of loan by Sh. Joginder Pal to the Central Bank as I was being promised by the defendant that she will execute the document in my favour. I am not related to Sh. Joginder. It is wrong to suggest that second floor is in occupation of my relative since 2002 and it is in my knowledge."

5. PW-2, Sh. Gopal Krishan Arora deposed in his examination-in-chief as under:

"I know both the parties. I have been shown agreement to sell, Ex.PW-1/1 and it was executed in my presence and it bears my signatures at point A. Agreement was also signed by both the parties in my presence. Tilak Raj is elder son of Laxmi Devi and he also signed as attesting witness."

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6. In his cross-examination by counsel for appellant, PW-2 deposed as under:

"I had signed Ex.PW-1/1 at 13/221, Geeta Colony, Delhi at Second floor. Said portion was with Laxmi Devi and her son Tilak Raj. It is wrong to suggest that Laxmi Devi never signed Ex.PW-1/1 in my presence. I cannot tell as to who whether Laxmi Devi or Inder Pal signed first on such agreement. It is wrong to suggest that signature of Laxmi Devi on agreement to sell are forged and fabricated. Documents were typed in my presence. There is one typist with the name of Grover in Block No.13 and there only it was typed out. Typing was not done in the presence of Laxmi Devi. It is correct that since Laxmi Devi was not present, it can be said that whatever was typed was not as per her instructions (Vol. However, her son Tilak Raj was present and typing was done in his presence). Stamp paper was purchased by Inder Pal and it was purchased from same Sh. Grover. I cannot say whether Tilak Raj had signed before me or after me. It is wrong to suggest that I am deposing falsely at the instance of plaintiff."

7. DW1- Smt. Laxmi Devi stated in her evidence by way of affidavit as under:

"That no agreement to sell was ever entered by the Deponent with the Plaintiff as alleged and the signatures of the Deponent on the alleged agreement to sell are forged.

That as a matter of fact, the Plaintiff is a property dealer and acted as a middle man for the sale of the property by the Defendant to Shri Joginder Pal on 1/9/2001 and no Agreement to Sell was ever entered by the Deponent with the Plaintiff.

That no earnest money was ever paid by the plaintiff to the deponent and hence the deponent is not liable to return the same along with the any penalty as alleged.

That the Agreement to Sell dated 7/4/01 is a forged document forged by the plaintiff for ulterior and mala fide

motive to harass the deponent in this old age as the plaintiff himself acted as a middle man for the sale of the property."

8. In her cross-examination, DW-1, Smt. Laxmi Devi deposed as under:

"I have good relations with my son Tilak Raj. Tilak Raj cannot come to depose (Vol. He is in jail.) I can, however, identify my signatures.

Witness has reaffirmed her signatures on her affidavit Ex.D-1. Witness has also identified her signatures on written statement at points A. Witness has admitted her signatures as appearing in red in Ex.PW1/1. She has denied her signatures in blue in agreement Ex.PW1/1. Witness has denied her signatures on vakalatnama which has now been encircled and has given number at points A. Witness has again being confronted with her signatures in red in Ex.PW1/1 and now she has claimed that signatures in red on Ex.PW1/1 are not her signatures. She has admitted her signatures on affidavit in support of her written statement at points A.

I had mortgaged my property with the bank and availed loan. I do not remember or know whether there was any agreement to sell the suit property. Again said I have not entered into any such agreement and I am not sure in this regard whether my children had entered into such agreement or not. I have not entered into any agreement with plaintiff. It is wrong to suggest that plaintiff has given me a sum of Rs.2lacs in presence of my son Tilak Raj. It is wrong to suggest that I had entered into an agreement with the plaintiff and I had also handed over the possession to the plaintiff. It is wrong to suggest that I had sold the property to someone else and that plaintiff had been dispossessed. It is wrong to suggest that I am liable to pay the double of the earnest amount to the plaintiff as per agreement. It is wrong to suggest that I am deposing falsely."

9. After considering the entire evidence on record, the learned trial court decreed the suit in favour of the respondent in the sum of Rs. 4 lakhs along with interest @6% per annum from 07.04.2001 till its realization. This has led to filing of the present appeal.
10. At the outset, counsel for appellant submits that Agreement to Sell is a forged and fabricated document as no Agreement to Sell was entered into between the appellant and the respondent or that any earnest money was ever received by the appellant from the respondent. It is further submitted by counsel for the appellant that respondent is a property dealer who acted as a middleman for the sale of the suit property to one Shri Joginder Pal on 1.09.2001 and it is only with an ulterior motive to harass the appellant that the respondent has filed a false suit against the appellant.
11. Mr. Aggarwal, counsel for appellant, contends that the trial court has erred in holding that the suit is not barred by limitation when admittedly the court fees was affixed on 08.04.2004 as per endorsement on the file while the limitation period expired on 6.04.2004. The counsel further contends though the suit was filed on 06.04.2004, but it was improperly instituted with an inherent defect of deficient court fees and any statement of a court clerk

that court fees was properly affixed on 08.04.2004 is of no consequence and the suit deserved dismissal.

12. The counsel for appellant submits that the learned trial court has failed to appreciate the fact that the suit for recovery is misconceived since the respondent himself has alleged that he was put in possession of the second floor of the suit property in furtherance of the Agreement to Sell dated 07.04.2001 and he could only file a suit for specific performance of the said Agreement to Sell and that he was supposed to protect his possession.
13. The counsel for appellant next submits that the said Agreement to Sell is forged and fabricated and that the learned trial court has misinterpreted the CFSL Report. It is further submitted by the counsel that the appellant had denied his signatures on the said Agreement to Sell and the CFSL report is also not in the favour of the respondent as the report simply states that it is not possible to express any opinion regarding authorship of the signatures due to non-familiarity of Gurmukhi script. The counsel contends that the trial court ought to have referred the signatures to another CFSL expert before passing the impugned judgment. It is further submitted that the respondent has failed to prove the payment of earnest money of Rs. 2 lakhs as no receipt has been placed on

record nor has the respondent mentioned as to how he made the alleged payment of the earnest money to the appellant.

14. Lastly, it has been contended by counsel for appellant that the learned trial court has lost sight of the fact that the witnesses who appeared on behalf of the respondent have made contradictory statements on oath giving an irresistible conclusion that the suit initiated by respondent is false. Pointing out the discrepancies, the counsel urged that while PW-1, Sh. Inder Pal Dua deposed in his cross-examination that the stamp paper was purchased by Tilak Raj; PW-2, Sh. Gopal Krishan Arora deposed in his cross-examination that the stamp paper was purchased by PW-1, Sh. Inder Pal Dua. Further in his cross-examination, PW-2 has also deposed that the said Agreement to Sell exhibited as Ex. PW-1/1 was not typed in the presence of appellant Smt Laxmi Devi and that whatever was typed was not as per her instructions.
15. The counsel for respondent contends that there is no infirmity in the judgment of the learned trial court and the suit has been decreed after duly appreciating the evidence led by both the parties. It is further submitted by counsel for respondent that the suit was within the period of limitation as it was filed on 06.04.2004 along with an application for extension of time to file

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court fee and the court fees was duly affixed on 08.04.2004 as is evident from the order of the learned trial court dated 08.04.2004.

16. It is next submitted by counsel for respondent that the respondent has duly proved the Agreement to Sell dated 07.04.2001 which was executed in the presence of Gopal Krishna Arora (PW-2), an independent witness, and Tilak Raj Dhawan, the son of the appellant. It is further submitted that respondent has also proved the receipt of the earnest money of Rs. 2 lakhs paid by the respondent to the appellant as well as his complaint to the police authorities which is exhibited as Ex. PW-1/2.

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17. As far as the authorship of the signatures in question is concerned, placing reliance on Section 73 of the Indian Evidence Act counsel for respondent submits that it can be easily seen from the naked eye that signatures in dispute and the admitted signatures of the appellant are by one and the same person.

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18. I have heard the counsel for the parties and have perused the entire evidence on record. PW-1 Inder Pal Dua, the respondent herein, in his evidence has deposed that as per the terms of the said Agreement to Sell, the total sale consideration was fixed at Rs.10.5 lakhs and a sum of Rs. 2 lakhs was paid to the appellant as the earnest money which was duly received by the appellant and she also acknowledged the receipt of the same. He further

deposed that at the time of execution of the said Agreement to Sell, the appellant had handed over the physical possession of the second floor of the suit property to the respondent and that the said agreement was executed in the presence of PW-2 Sh Gopal Krishna Arora and Sh. Tilak Raj Dhawan who is the son of the appellant. It was further deposed by PW-1 that the appellant had obtained a loan from Central Bank of India, Karol Bagh Branch against the suit property and it was clearly stipulated that the possession of the remaining portion of the suit property and the balance sale consideration amount would be paid after the appellant clears the loan and obtains a clearance letter/settlement letter along with an NOC from the Bank. But on 29.09.2003 when the respondent went to the suit premises, he was shocked to learn that the property is in possession of some third person who was raising construction on the same. The belongings of the respondent were missing and upon inquiries it was revealed that the appellant has transferred the property to a third person. It is further stated by PW-1 that respondent was always willing to pay the balance sale consideration amount of Rs. 8.5 lakhs but the appellant has illegally dispossessed the respondent from the suit property and has usurped his belongings.

19. In his cross-examination, PW-1 has deposed that he came in contact with the appellant Laxmi Devi through PW-2 S. Gopal Krishna @Bali and that the said Agreement to Sell was signed in his presence at the residence of the appellant. The said Agreement was also signed by Sh. Tilak Raj who is the son of the appellant. It has been admitted by PW-1 that there is no receipt of the earnest money paid but the Agreement to Sell itself shows that it was paid in cash and the same was counted by Tilak Raj in the presence of appellant. He has further admitted that Joginder Pal made the payment of loan amount of the appellant to the Bank in his presence but has negated the suggestion that he acted as a mediator for selling the suit property to Joginder Pal. He further negated the suggestion that the signatures of appellant on the said Agreement to Sell are forged and fabricated or that he has filed a false case. The evidence of the respondent (plaintiff) was remained unshaken during the cross-examination.

20. I find that the statement of PW-1, Sh. Inder Pal is duly corroborated by the evidence of PW-2, Sh. Gopal Krishna Arora who has signed the said Agreement to Sell as an attesting witness. In his examination-in-chief, PW-2 deposed that he knows both the parties and the said Agreement to Sell was executed in his presence. Corroborating the stand of PW-1, PW-2 states that

the said Agreement was signed by both the parties in his presence and that Tilak Raj, who is the elder son of the appellant, had also signed the said Agreement as an attesting witness. In his cross-examination, he has reiterated that the said Agreement was signed at the residence of the appellant and has further negated the suggestion that the signatures of appellant on the said Agreement to Sell are forged and fabricated. He has also conceded that since Laxmi Devi was not present so it can be said that whatever was typed was not as per her instructions, however her son Tilak Raj was present and typing was done in his presence. The evidence of PW-2, Sh. Gopal Krishan Arora, remains unrebutted.

21. It is contended by counsel for appellant that the signatures of the appellant on the said Agreement to Sell are forged and fabricated. In her evidence by way of affidavit, DW-1, Smt. Laxmi Devi has denied that any Agreement to Sell was entered into between her and the respondent and has reiterated her stand in the written statement that the respondent has acted as a middleman for the sale of the suit property to Joginder Pal Singh. During her cross-examination by counsel for respondent, the appellant has admitted her signatures on her affidavit Ex D-1 and has also identified her signatures on the written statement at points A as

well as on the affidavit filed along with the written statement but has denied her signatures on the Vakalatnama. In her cross-examination, DW-1 who is the appellant herein has admitted that the suit property was mortgaged with the bank to avail a loan.

22. No evidence has been led by the appellant to impeach the creditworthiness of PW-1 and PW-2. The appellant has also failed to bring in the witness box, Sh. Tilak Raj Dhawan, who is the son of the appellant and the attesting witness to the said Agreement to Sell. The argument of the counsel for appellant that Tilak Raj Dhawan could not be produced as witness since he was in prison is devoid of any merit as the respondent could have taken recourse to Order XVI A of the Code of Civil Procedure to bring Tilak Raj Dhawan in the witness box to testify and corroborate the stand of the appellant. More so, in case the Agreement to Sell is a fabricated document, the respondent would not have had the document attested by the son of the appellant.

23. The counsel for respondent has placed reliance on section 73 of the Indian Evidence Act and submitted that from the naked eye, it can be easily made out that the signatures of the appellant on admitted documents and the signatures on the said Agreement to Sell are of one and the same person. It would be relevant to

reproduce Section 73 of the Indian Evidence Act, 1872 which reads as under:

"73. Comparison of signature, writing or seal with others admitted or proved- In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

This section applies also with any necessary modifications, to finger-impressions."

24. Section 73 of the Indian Evidence Act gives express authority to the court to compare handwritings and signatures. The court cannot accept the expert evidence mechanically and is competent to apply its mind and compare the admitted signature with the disputed signatures for deciding the question if the signatures are of the same person. In *Ajit Savant Majagvai v. State of Karnataka* reported at (1997) 7 SCC 110, the Apex Court observed as under:

"36. The original records were also placed before us and we have perused those records. Since the learned counsel for the appellant contended that the appellant had not stayed in "Ashoka Lodge", we looked into the "Register of Lodgers". It contains the relevant entry

against which the signature of the appellant also appears. His signature also appears on the "vakalatnama" filed by him in this appeal. In the presence of the learned counsel for the parties, we compared the signature of the appellant on the "vakalatnama" with the signature in the "Register of Lodgers". A mere look at the signatures was enough to indicate the similarity which was so apparent that it required no expert evidence. This comparison was done by us having regard to the provisions of Section 73 of the Evidence Act, 1872 which provides as under:

*"73. Comparison of signature, writing or seal with others admitted or proved.—*In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

The court may direct any person present in court to write any words or figures for the purpose of enabling the court to compare the words or figures so written with any words or figures alleged to have been written by such person."

37. This section consists of two parts. While the first part provides for comparison of signature, finger impression, writing etc. allegedly written or made by a person with signature or writing etc. admitted or proved to the satisfaction of the Court to have been written by the same person, the second part empowers the Court to direct any person including an accused, present in court, to give his specimen writing or fingerprints for the purpose of enabling the Court to compare it with the writing or signature allegedly made by that person. The section does not specify by whom the comparison shall be made. However, looking to the other provisions of the Act, it is clear that such comparison may either be made by a handwriting expert under Section 45 or by anyone

familiar with the handwriting of the person concerned as provided by Section 47 or by the Court itself.

38. As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of the slightest doubt, leave the matter to the wisdom of experts. But this does not mean that the Court has not the power to compare the disputed signature with the admitted signature as this power is clearly available under Section 73 of the Act. [See: *State (Delhi Admn.) v. Pali Ram*¹.]

25. I have carefully examined the signatures of the appellant on the said Agreement to Sell dated 07.04.2001 as well as the admitted signatures of the appellant on the written statement; affidavit filed along with the written statement as well as Ex. D-1. The appellant has also tendered her Will dated 01.09.2001 for the purpose of rendering her specimen signatures to the court. After a careful perusal and comparison of the signatures on the said Agreement to Sell and the admitted signatures of the appellant, I concur with the view of the learned trial court that it can easily be inferred from the naked eye that the disputed signatures and the admitted signatures are by one and the same person, who in the present case is the appellant. Further, PW-2 has also deposed in his examination-in-chief that both the parties to the present case had signed the said Agreement to Sell in his presence and has

¹ (1979)2 SCC 158
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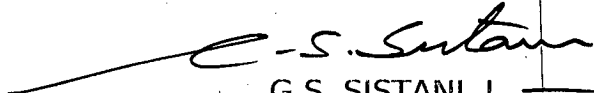
reiterated the same in his cross-examination by counsel for appellant.

26. The counsel for respondent has duly proved the Agreement to Sell dated 07.04.2000. From a bare reading of the said Agreement, it becomes clear that a sum of Rs. 2 lakhs was paid by the respondent to the appellant as earnest money at the time of the execution of the said Agreement to Sell which was acknowledged by the appellant in the Agreement to Sell itself and there is no requirement of a separate receipt. As per the terms of the Agreement, it was agreed between the parties that if the appellant fails to comply with the terms of the said agreement, she shall be liable to refund the earnest money along with penalty of an equal amount to the respondent.

27. A faint argument has been advanced by the counsel for appellant that the suit filed by the respondent was barred by limitation and was improperly instituted as the same was filed without court fees. A perusal of the trial court record shows that the suit was filed on 06.04.2004 along with an application under section 148 read with section 151 CPC seeking extension of time to file court fees which was granted by the learned trial court. The court fee was duly affixed on 08.04.2004 as is apparent from the order dated 08.04.2004 passed by the learned Additional District Judge,

which has attained finality and no objection was raised by the appellant during the pendency of the suit. Accordingly, the argument of counsel for appellant is devoid of any merit.

28. I find no infirmity in the judgment and decree passed by the learned trial court. Accordingly, the appeal stand dismissed.


G.S. SISTANI, J.

April 4th, 2011
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