

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

RSA No.3795 of 2010 (O&M)

Date of Decision: December 08, 2015

Balwant Rai

.... Appellant

vs.

Smt. Suman Rani and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Jasbir Rattan, Advocate for the appellant.

Mr. U.K. Agnihotri, Advocate for respondent No.1.

Mr. Sanjay Jain, Advocate for respondent No.5.

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh J.(Oral)

CM-11269-C-2010

There is delay of 29 days in refiling the present appeal.

For the reasons mentioned in the application,supported by an affidavit, delay of 29 days in refiling the present appeal is condoned, subject to all just exception.

Application stands disposed of.

RSA No.3795-2010

Impugned in the present regular second appeal is the judgment and decree dated 07.09.2009 passed by learned Addl. District Judge, Ambala, affirming the judgment and decree dated

31.03.2006 passed by learned Civil Judge (Sr. Divn.), Ambala, vide which the suit of the plaintiff for possession by specific performance of the agreement of sale dated 20.08.1987, was dismissed.

According to the plaintiff, defendant No.1 vide agreement to sell dated 20.08.1987 agreed to sell his 1/4th share of the plot measuring 200 sq. yards bearing previous khasra No.629, situated at Patti Mehar, Tehsil and District Ambala City for ₹60,000/-. ₹6,000/- were paid as earned money. The date of execution and registration of the sale deed was fixed for 20.08.1988. As defendant No.1 was going to alienate his share in the plot to somebody else, the plaintiff filed a suit for permanent injunction on 29.10.1997. However, the same was withdrawn on 19.10.1988 with permission to file a suit for specific performance. Accordingly, the present suit was filed.

The plaintiff claimed that he had appeared before the Sub-Registrar, Ambala City on 19.08.1998 and he was ready and willing to perform his part of the contract.

On the other hand, in the written statement, the defendant took the plea that his signatures on the alleged agreement are forged and fabricated. It was also stated that the two witnesses of the alleged agreement were already facing criminal trial for forging the said agreement.

The lower court after going through the evidence, dismissed the suit. The findings were affirmed in appeal.

I have heard learned counsel for the parties and have also carefully gone through the case file.

It comes out before the lower court that in the previous suit for permanent injunction, the original agreement was produced and expert Diwan K.S. Puri was examined, who had opined that the signatures of defendant No.1 on the alleged agreement were forged.

However, it is pleaded that the original agreement has been lost. Therefore, secondary evidence was led in the second suit. Both the parties again examined their respective experts, who gave respective reports in their favour. However, I am of the view that the report of expert, namely, Diwan K.S. Puri in previous suit based on the original agreement, is more reliable and rightly believed by the courts below.

Further, during the pendency of the suit, a compromise has taken place between the parties on 07.08.1990, under which the suit was to be withdrawn. Even in the said compromise, it was mentioned that no such agreement was executed.

It being so, the findings of the facts have been recorded by both the courts below. Therefore, there is no illegality or infirmity in the said findings. No substantial question of law arises in the present appeal.

Hence, the present regular second appeal stands dismissed.

December 08, 2015
sarita

(KULDIP SINGH)
JUDGE