

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

RSA No.3967 of 2013 (O&M)

Date of Decision: December 03, 2015

Jodh Singh

.... Appellant

vs.

Sumanjit Kaur and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Binderjit Singh, Advocate for the appellant.

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)

Impugned in the present regular second appeal is the judgment and decree dated 15.04.2013 passed by learned Addl. District Judge, Chandigarh, affirming the judgment and decree dated 17.08.2009 passed by learned Addl. Civil Judge (Sr. Divn.) Chandigarh, vide which the suit of the plaintiff for specific performance was dismissed with no order as to costs.

The plaintiff claims that defendant along with her two daughters, namely, Sumanjit Kaur and Sukhranjan Kaur, entered into an agreement to sell their respective shares in the disputed house No.1120, Sector 21-B, Chandigarh in favour of the plaintiff. Later on, all the three vendors executed separate agreement in suppression of earlier agreement to sell dated 05.07.1991. The vacant possession of the portion of the house was also handed over to the plaintiff in part

performance of the contract. It is stated that ₹50,000/- were paid to the defendants as a part of earnest money. The sale was agreed to be executed on or before 31.07.1992. However, on 22.10.1992, with the mutual consent of both the parties, the date of the sale was extended to 28.02.1995. The plaintiff paid another sum of ₹21,000/- to the defendants and remaining amount of Rs.14,000/- was to be paid by the plaintiff at the time of execution and registration of the sale deed.

There are other allegations that Jasbir Kaur, Bhupinder Kaur, Surjit Kaur, Dharamjit Kaur and Charanjit Kaur had filed a suit against the plaintiff, defendant and her two daughters, namely Sumanjit Kaur and Sukhranjan Kaur and Sh. D.K. Talwar for permanent injunction, which was ultimately withdrawn on 29.05.1996.

In the written statement, the defendant had taken the stand that her signatures were obtained on certain papers and the agreement was forged. The endorsement was also forged and the suit filed on 18.02.1998 is time barred.

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

Before the lower court, the agreement was proved. However, there is a dispute regarding the endorsement stated to be of 22.10.1992, vide which the date of execution of the sale deed was extended to 28.02.1995.

A perusal of the said endorsement shows that on the left margin, it is recorded that with mutual consent of both the parties, the

date of the execution of the sale deed was extended from 31.07.1992 to 28.02.1995 and also a sum of ₹21,000/- was received by Jaswant Kaur-defendant from Jodh Singh. It was signed by Jaswant Kaur-defendant in 'Gurumukhi' scribed with date '22-10'. The year is missing from the date. The signature shows that Jaswant Kaur appears to be semi-literate. The endorsement is in English. It is apparent in the endorsement that the date '28.02.1995' bears over writing. The year '1993' is apparently corrected as year '1995' by overwriting digit '3'. The said over writing does not bear the signature of the defendant by way of the attestation of the over writing.

Learned counsel for the appellant has argued that as per his own expert, the overwriting was made on the same day with the same pen.

I am of the view that once the overwriting is there, it is to be attested by the executant. There is no name of the scribe as mentioned in the said endorsement to signify as to who had scribed it. Therefore, if somebody corrected it, the same cannot be believed. There is apparent overwriting. This endorsement is stated to have been made after the expiry of the date of the sale of the agreement, which was fixed for 31.07.1992. There is no reason why the defendant did not mention the year in the said endorsement. Once, the endorsement seems to be forged one, no reliance can be placed upon the same. From the year 1993, the present suit filed in the year 1998, is apparently time barred.

There are concurrent findings of both the courts below. Only the findings of the facts have been recorded by both the courts below. No substantial question of law arises in the present appeal.

Learned counsel has requested that the earnest money paid by the plaintiff may be ordered to be refunded.

Once the endorsement is found to be forged, which includes payment of additional money of ₹21,000/-, the plaintiff is left where he is.

Hence, the present regular second appeal stands dismissed.

December 03, 2015
sarita

(KULDIP SINGH)
JUDGE