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

**RSA-4469-2010 (O&M)
Date of decision : 18.02.2016**

Hem Chander

...Appellant

Versus

Suresh Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Jain, Senior Advocate with
Mr. Amit Jain, Advocate
for the appellant.

Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for the respondent.

1. Whether reporters of local papers 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?

AMIT RAWAL, J. (ORAL)

The appellant-defendant is in regular second appeal against the concurrent findings of fact, whereby the suit for specific performance of agreement to sell dated 28.05.2004, has been decreed.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Amit Jain, learned counsel appearing on behalf of the appellant-defendant submits that the ex parte proceedings initiated against

the appellant-defendant were based upon the procured report, in fact there was no service upon the appellant-defendant which resulted into passing of the ex parte decree dated 26.03.2010. He further submits that neither the scribe, stamp vendor or the register of stamp vendor have been examined. There is a cutting on the agreement by putting the date of 29.05.2004 and the target date has been scored off by writing 28.05.2004. The initial on the cutting still raises a doubt, viz-a-viz the execution of the agreement except oral testimony of the attesting witnesses, no other documentary evidence seen the light of the day. The aforementioned property, has been, sold to Madhu Rohilla vide sale deed dated 26.06.2006. The *munadi* allegedly effected and noticed from the zimini orders extracted in memorandum of appeal, does not show the recording of the satisfaction of the trial Court. Since, the vendor was not staying with the family, and therefore, information provided by his daughter-in-law with regard to vendor's whereabouts, was not authenticated, thus, prays for setting aside of the judgment and decree of both the Courts below, much less, formulation of the substantial questions of law.

Mr. Akshay Bhan, learned Senior Counsel assisted by Mr. Santosh Sharma, learned counsel appearing on behalf of the respondent-plaintiff submits, that the lower Appellate Court has noticed the fact that after having proceeded ex parte in the suit, an application under Order 9 Rule 7 of the Code of Civil Procedure (hereinafter called 'CPC') was filed and the same was dismissed on

merits as the address given in the application is the same on which the *Munadi* was effected. It is clear cut willful attempt to prolong the execution of the judgment and decree. The appellant-defendant had not been fair to the respondent-plaintiff, much less, the third party Madhu Rohilla. No appeal at the instance of the subsequent vendee has been preferred. As regards the execution of agreement to sell and umpteen number of documents of evidence has been brought on record to prove the same, thus, prays for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and am of the view that there is no merit in the appeal, for the reason, that once the appellant had acquired the knowledge of suit by moving an application under Order 9 Rule 7 CPC, nothing prevented him to file the appeal and pursue the matter diligently. The application under Order 9 Rule 7 CPC was filed after expiry of four years of the ex parte judgment and decree. The statement of the attesting witness had gone un-rebutted, much less, unchanged. No effort had been made during the appellate stage to move an application for additional evidence for cross-examination of the aforementioned witnesses, much less, leading of any fresh evidence. On the other side, the respondent-plaintiff proved the execution of the agreement to sell, much less, readiness and willingness. The argument with regard to the satisfaction of the Court is meaningless and in view of the fact, an application under Order 9 Rule 7 CPC was filed for setting aside the ex parte

proceedings.

Keeping in view the aforementioned facts, there is no illegality and perversity in the judgment and decree, much less, no substantial questions of law arises to be determined by this Court.

Accordingly, the appeal is dismissed.

18.02.2016
yogesh

(AMIT RAWAL)
JUDGE