

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

RSA No.2100 of 2015 (O&M)

Date of Decision: August 13, 2018

S.P.Goyal

...Appellant

Versus

Hari Dutt Dumra (deceased) through LRs

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Rajesh Garg, Senior Advocate with
Mr.Rakesh Dhiman, Advocate for
the appellant.

HARINDER SINGH SIDHU, J.

The plaintiff has filed this regular second appeal impugning the judgments of the Courts below where by his suit has been dismissed.

The plaintiff had filed a suit for possession by way of specific performance of agreement to sell dated 21.09.1987. It was his case that the defendant had agreed to sell his property built as plot No. 15 comprising of land and superstructure as detailed in the head note of the plaint situated at The Mall, Ludhiana to the plaintiff for a total sale consideration of Rs. 20 lacs. Agreement incorporating the terms and conditions was executed between the plaintiff and the defendant on 21.09.1987. Rs. 10000/-was paid as earnest money. The remaining amount of Rs.19,90,000/- was agreed to be paid at the time of execution and registration of the sale deed which was to be done latest by 31.12.1987. The agreement is reproduced below:

*“This agreement to sell is made on this 21st day of September,
1987, at Ludhiana Between Sh. Hari Dutt Dumra son of*

Sh.Bhadur Chand Dumra, resident of 15/1, The Mall, Ludhiana hereinafter referred to as the vendor (which expression shall unless repugnant to the subject or context mean and include his successors, assignees and representatives) of One Part.

AND

Sh.S.P.Goyal son of Sh.Jagat Ram Goyal resident of 5/1, The Mall, Ludhiana, hereinafter referred to as Vendee (which expression shall unless otherwise, repugnant to the subject or context mean and include his successors, assigner and representatives) of the other part;

Whereas the vendor is the absolute owner in his individual capacity of the plot No.15 including the buildings constructed over it, a the Mall, Ludhiana, District Ludhiana and bounded as under:-

East building of Mr.Raj Kumar of Ludhiana Steel Rolling Mills.

West the Mall, Ludhiana.

North M/s Mehar Singh & Co.(P) Ltd.

South Dhaulgiri Apartments.

(hereinafter referred to as said property)

AND

Whereas the vendor is desirous of selling the said property and vendee is desirous of purchasing the said property for a consideration of Rs.20 lacs (Rs.Twenty Lakhs only).

NOW THIS AGREEMENT TO SELL WITNESSETH AS UNDER:

(i) That subject to an upon the terms and condition herein contained the vendor shall sell and vendee shall purchase the said property at the price of Rs.20 Lac free from all encumbrances, mortgage or charge.

(ii) That out of the said consideration of Rs.20 Lac the vendee has paid Rs.10,000/- as earnest money.

- (iii) That the sum of Rs.19,90,000/- shall be paid by the vendee at the time of execution of the sale deed latest by December 31, 1987.*
- (iv) That immediately after today the vendor shall complete all the formalities, regarding said property so that title should pass on freely to the vendee including getting certificate under Section 230/A of the Income Tax Act, if necessary till October 31, 1987. If there is delay in completing the said formalities, the vendor would intimate about it to the vendor latest by Nov.1, 1987.*
- (v) That all rents, taxes or other assessments levelled or leviable on the said property by any authority or authorities including the electricity and water charges, Municipal charges, shall be paid by the vendor upto the date of handing over possession of the said property.*
- (vi) As the vendor will remain in possession till the execution of the sale deed, he will hand over the possession of the said property to the vendee at the time of execution of sale deed.*
- (vii) That the said property will be transferred by the vendor in favour of vendee free from all sort of an encumbrances, charges, lien at the time of registration of sale deed in favour of vendee.*
- (viii) That all the expenses of Registration of sale deed like stamp duty, registration fee shall be borne and paid by the vendee.*
- (ix) That subject to the terms and conditions forgoing if vendee fails to complete the sale transaction to get sale deed registered in favour of vendee and fails to complete necessary formalities or failed to obtain certificate if necessary as mentioned in para (4), the vendee shall be entitled to get the agreement of sale enforced through a court of law and in that event all the costs and expenses*

as may be incurred by the vendee for enforcing this agreement shall be deducted from the balance sale consideration to be paid at the time of execution of the sale deed and the vendor in no way shall object to such deduction.

In witness whereof parties herein have hereto set and subscribed these respective hands on the day month and year first written above.”

The defendant failed to perform his part of the agreement and the plaintiff sent a telephonic notice dated 30.12.1987 calling upon him to execute the agreement. The plaintiff got a banker's cheque dated 29.12.1987 issued from the Indian Overseas Bank, Ludhiana for an amount of Rs. 19,90,000/-. For performing his part of the agreement the plaintiff appeared before the Sub-Registrar, Ludhiana on 31.12.1987 along with the banker's cheque and an additional amount of Rs. 3 lakh for meeting other expenses. But the defendant did not turn up. The plaintiff got his presence recorded before the Sub-Registrar, Ludhiana on that day. The plaintiff again issued notice dated 22.4.1988 through Regd. A.D. calling upon the defendant to execute the sale deed, but without success. Hence the suit.

The case of the defendant was that he had never entered into the agreement to sell with the plaintiff and the same was a fabricated document. He denied that he had received Rs. 10,000/- as alleged. It was pleaded that as the value of the house was Rs. 40 lakhs the question of its sale for Rs. 20 lacs did not arise. Moreover the house in question was the only residential house of the defendant. If specific performance is granted he would suffer extreme hardship.

During the pendency of the suit the defendant died and his LRs

were brought on record.

The following issues were framed by the Ld. Trial Court.

- “1. Whether the defendant executed an agreement to sell dated 21.8.1987 with terms and conditions contained therein? *OPP*
2. Whether the plaintiff had advanced Rs.10000/- as earnest money. If so its effect? *OPP*
3. Whether the plaintiff has always been ready and willing to perform his part of the contract? *OPP*
4. Whether the agreement to sell is forged and fabricated document? *OPD*
5. Whether the plaintiff is entitled to the relief of specific performance. If so on what terms and conditions? *OPP*
6. Relief.”

In order to prove the case, plaintiff examined PW-1 P.S.Rawat, Record Keeper Indian Overseas Bank, Katchery Road, Ludhiana and PW 3 Rajinder Pal Gupta, the marginal witness of agreement. The Plaintiff appeared as PW2.

The defendant on the other hand examined as many as ten witnesses: DW-1 Mandeep Parbhakar, Civil Engineer was examined to prove Ex.P8, site plan of Mall Road, Ludhiana; DW-2 Surinder Sharma, Property Dealer to prove the prevailing rates of Property at The Mall, Ludhiana in the year 1987-88; DW-3 Avinash Khosla, Architect to prove the value of property in dispute. Hari Dutt Dumra-appeared as DW-4; Deepak Dumra son of defendant appeared as DW-5. DW-6 Sh.Balwinder Singh Bhandal, Deputy Director Documents, Forensic Science Laboratory

Chandigarh was examined to prove his report dt.10.2.2006 on signatures of the defendant; DW-7 Vikram Raj Singh Chauhan, Handwriting and Finger Print Expert to prove his report dt. 2.4.2005 regarding signatures of the defendant; DW-8 Pankaj, AAO of M/s Geetanjali Express, New Delhi to prove Air Ticket No.6291809 issued on 7.9.1987 by his company; DW-9 M.R.Jindal Assistant Manager, Commercial, Indian Airlines, Chandigarh, proved the Air Ticket Ex.DX-2 bearing No.4457040 issued by Indian Airlines in the name of defendant- Hari Dutt Dumra; DW-10 Dr.S.K.Jain, Deputy Director, National Institute of Criminology and Forensic Science, New Delhi proved his report Ex.DW10/C of the voice analysis conducted by him at CFSL Chandigarh of the cassettes containing the voice of Rajinder Pal Gupta.

S.P.Goyal plaintiff appearing as PW2 deposed on the lines of the plaint. He stated that he knew the defendant for last 20/25 years. He deposed about the execution of agreement to sell dated 21.9.1987 and that Rs.10,000/- was paid as earnest money and all the terms and conditions were reduced into writing in the form of agreement Ex.P3 which was signed by him and the defendant. Rajinder Pal and Naresh Aggarwal witnessed the document as marginal witnesses. The agreement was read by the parties and after admitting its contents as correct it was signed by them in the presence of witnesses who also signed in their presence. He stated that stamp paper was purchased by the defendant himself. He also deposed regarding the issuance of notice, preparation of banker's cheque, appearance before Sub Registrar along with balance money. In his cross-examination he stated that

agreement to sell. Earlier negotiations had started three years ago but were dropped. A month prior to the execution of the agreement negotiations started again at the instance of the defendant who indicated his intention to sell the property. He stated that no broker was involved. It was also stated that in second meeting which took place 5 to 7 days before the execution of Ex.P 3 negotiations were settled between them and on that day he along with his family members went to see the property. He further stated that he had seen the Kothi several times but on that day he had seen it with a view to purchase it. He disclosed that at the time of settlement his son Sanjeev was also present. He agreed to purchase the property for a sum of Rs.20 lacs. During cross-examination he stated he had been given only a plan of the lower portion of the property. He explained that he had not placed the said plan on the file of the court as the same was incomplete. He admitted that agreement was not entered in the register of the petition writer. He also stated that he did not know the name of the scribe of the agreement Ex.P-3. He also did not know where the document was scribed. He stated that he did not know who prepared the draft of Ex.P-3 if any. In his later cross-examination conducted on 19.05.1992 he stated that the agreement was drafted by the defendant. Regarding presence of marginal witnesses at the time of execution of agreement he stated that Rajinder Pal Gupta PW 3 had come with the defendant and N.K.Aggarwal was already at his residence. He stated that N.K.Aggarwal had come to his place in routine. Initially he stated that he was introduced to Rajinder Pal by the defendant at the time of execution of the agreement. Then he also recollected that he had known him

defendant had been fabricated by him. He further stated that one copy of the agreement was also signed and that copy was on plain paper. It was a carbon copy of the original agreement. It was also signed by all who had signed Ex.P3. He admitted that in Ex.P3 the stamp paper does not bear the signature of any of the parties. He stated that N.K.Aggarwal, one of the attesting witness was his lawyer but the other witness was brought by defendant-Hari Dutt Dumra.

PW3 Rajinder Pal deposed about the execution of the Agreement by the defendant in his presence and of N.K.Aggarwal. He stated that he had signed the agreement in the Kothi of the plaintiff. When the signatures were appended he, N.K.Aggarwal, plaintiff and the defendant were present. He stated that he did not know who had drafted the agreement. He also did not know who had typed the agreement. He did not know how many copies of the agreement were prepared. He deposed that the agreement was already typed when he reached the place to sign it. He stated that the plaintiff paid Rs.10,000/- in cash. He did not remember if the particulars of the property agreed to be sold were mentioned in this agreement. He did not know as to when the terms and conditions were settled in between the parties but stated that they were not settled in his presence. He admitted that he knew plaintiff as well as defendant for last 40 years.

During the cross examination of PW3 the defendant brought on record two cassettes alleged to be in the voice of PW3. These allegedly contained a conversation between PW 3 and the son of the defendant Deepak Dumra wherein PW3 admitted that the agreement had been forged

considered as evidence on the ground that they had not been pleaded in the written statement. However considering the fact that the alleged conversation had taken place after the filing of the written statement and relying on Order VIII Rule 1 (4) and Order XIII Rule 3 (a) of the Code of Civil Procedure, the Trial Court held that the tapes could not be totally discarded and could be used in cross examination to impeach the credibility of the witness. Their authenticity was held to have been proved by the defendant by examining DW-10 S.K. Jain, Deputy Director National Institute of Criminology and Forensic Science, New Delhi who compared the sample audio voice of PW3 with the voice recorded in the audio cassette. In his report he opined that both the voices were probably of the same person.

During the pendency of the suit an FIR No. 94 dated 1.04.2006 under Sections 420, 467, 48, 471, 120-B IPC PS Division No. 5 Ludhiana was lodged against the plaintiff and the attesting witnesses. N.K. Aggarwal the second attesting witness, who is an Income Tax Lawyer got recorded his statement under Section 164 Cr.P.C to the effect that the plaintiff was his client since 1969 and that he had come to his office accompanied by PW 3 Rajinder Pal Gupta and the plaintiff asked him to identify their signatures. He stated that he never identified the defendant- Hari Dutt Dumra and in fact he did not know Hari Dutt Dumra and he had not signed in his presence. This statement was produced on record as additional evidence on 13.12.2011 as Ex DZ 14. The Trial Court overruled the objections of the plaintiff regarding the admissibility of this evidence.

The defendant was examined as DW 4 and deposed on the lines of

the written statement. He denied that any agreement had been entered into with the plaintiff. As the defendant was an aged person his cross examination was recorded at his residence through a Local Commissioner.

The defendant examined Vikram Raj Chauhan, Handwriting Expert as DW 7 who in his report stated that the signatures on the agreement to sell did not tally with the admitted signatures of the defendant.

DW 6 Balwinder Bhandal, Deputy Director Documents, Forensic Science Laboratory, Punjab gave his opinion about the documents referred by SSP Ludhiana in FIR No. 94 dated 1.4.2006 under Sections 420, 467, 471 registered against the plaintiff and opined that the disputed signatures of the defendant did not tally with his admitted signatures.

The Ld. Trial Court noticed that though the plaintiff had laboured hard to point out various discrepancies in the report of DW 7 Vikram Chauhan Handwriting Expert and DW 6 Balwinder Singh Bhandal regarding the disputed signatures of the defendant not tallying with his admitted signatures, but he had deliberately not examined any handwriting expert to support his plea though he had every opportunity to do so. In this regard it was noticed that the plaintiff had moved an application dated 20.05.1992 for examination of P.S. Ahuja Handwriting Expert and he had also taken photographs from the original agreement to sell but those photographs were never developed. No report based on the said photographs was ever produced in Court. Thereafter, plaintiff again filed application dated 9.6.1995 for allowing the Expert N.K. Jain to take photographs despite the fact that such an application had already been allowed by the Court. Later

take the photographs was filed by the plaintiff. The application was dismissed vide order dated 11.03.2000 with the observations that permission had already been granted on 13.8.1992 but he had slept over the matter and not examined any handwriting expert and another application for examination by a different handwriting expert was not maintainable. Plaintiff filed Civil Revision against the order which was dismissed. His SLP was also dismissed. Thereafter the evidence of the plaintiff was closed by court order dated 4.1.2003.

Then there was a significant development. The signature of defendant- Hari Dutt Dumra from agreement to sell Ex.P3 attached with the Court file, were found erased. This was noticed on 17.03.2005. On the direction of Ld. District and Sessions Judge, the document Ex.P3 was reconstructed from its photocopy which was already on record.

The plaintiff later again moved application on 26.03.007 to allow him to take the signatures of the defendant from the reconstructed agreement. This application was allowed by the Trial Court vide order dated 28.3.2007. The defendant assailed this order before this Court. The Civil Revision was allowed. The order of the Trial Court was set aside. The High Court made some very pertinent observations reflecting on the conduct of the plaintiff. The observations in the order dated 30.4.2007 are reproduced in the order of the Trial Court as under:

“... The circumstances as indicated wherein the petitioner (petitioner means S.P.Goyal) had moved different applications from the year 1992 till his prayer was declined in 2003 for examination of document by Handwriting expert and not taking these to logical

conclusion would show that he may be attributed with the move for erasing signatures from the document. He would have no explanation to offer as to why he did not pursue his application for bringing on record the evidence of handwriting expert in regard to disputed agreement....”

The relevant observations in the order dated 21.1.2008 have been extracted by the Trial Court as under:

“.....Once the permission sought by him (him means S.P. Goyal) to take photographs of original document was declined there cannot be any justification for granting him permission to take photographs of the reconstructed document. No doubt the Court had through order Annexure R-7 granted permission to reconstruct the document but that would not change any factual position in regard to the aspect of denial to the respondent (respondent means S.P.Goyal) to take photographs of the document. The accusing finger for tampering of documents is tilting more towards the respondent and he is accused of an offence in this regard.....”

In addition to the highly suspect and baffling conduct of the plaintiff in not availing the opportunity to examine the handwriting expert despite an order enabling him to do so, yet persisting with multiple applications for the same purpose, which conduct was also not appreciated by the High Court as per the observations extracted above, the Trial Court referred to multiple other circumstances which cast a doubt upon the version of the plaintiff. One of them being that the agreement was not signed on all the pages. The Trial Court while being fully conscious of that fact that it was not necessary for all the pages of an agreement to be signed, observed

of the case, was a material factor casting doubt about the agreement. Other considerations noticed by the Court were that the plaintiff had not examined the stamp vendor from whom the stamp papers for execution of the alleged agreement to sell were purchased in order to prove the entry in the Register of the Stamp Vendor; the document was not scribed by a deed-writer; one of the two attesting witnesses to the agreement to sell namely Mr.N.K.Aggarwal was not examined by the plaintiff despite his statement under Section 164 CrPC raising an inference that he was not present at the time of execution of agreement to sell. The other attesting witness Rajinder Pal (PW3) was a childhood friend of the plaintiff. They had known each other for the last 30-40 year. He would be inclined to depose in favour of the plaintiff; there was no evidence on the file regarding passing of earnest money to the defendant. PW3 Rajinder Pal deposed that the money was passed in a packet. He did not depose that the said packet contained Rs.10,000/-; the plaintiff did not examine the Handwriting Expert despite permission of the Court and his Expert having taken photographs from the original document. The Trial Court held that all these factors collectively raise adverse inference against the plaintiff. He had miserably failed to prove that the defendant had executed the agreement to sell in his favour.

On the basis of the evidence on record the Ld. Trial Court also concluded that the Statement of Account Ex P 1 of the plaintiff had been prepared in collusion and in connivance with the bank officials. The court noticed that the opening balance amount was Rs. 50386/-. Then suddenly one entry is credited to the account of the plaintiff on 29.12.1987 which was again debited to his account. The amount was shown to have been

transferred from M/s Gopal Dass Jagat Ram Pvt. Ltd. and M/s Sanjeev Engineering Industries. As per Ex P 1 on 2.1.1988 a sum of Rs. 20,32,633.83 p. was lying deposited in his account. The suit was filed on 24.5.1988. There was nothing on record as to what was the balance between 2.1.1988 and 24.5.1988. As per Ex D 1 on 2.1.1988 an amount of Rs. 19,90,000/- was debited to his account and he was left only with Rs. 49,533.33p as on 11.3.1988. Subsequently small amounts were credited to his account and were again withdrawn . Reference was made to Ex D-2 an account payee cheque for Rs. 20,000/- issued by M/s Sanjeev Engineering Industries in favour of the plaintiff on 28.12.1987, Ex D-4 a voucher showing deposit of Rs. 6,70,000/- in the account of M/s Sanjeev Engineering Industries on 29.12.1987, Ex D-5 voucher dated 28.12.1987 showing deposit of Rs. 13,30,000/- in the account of M/s Sanjeev Engineering Industries. Vide vouchers Ex D6 and Ex. D-7 amount of Rs.20 lacs was credited to the account of the plaintiff. The Ld. Trial Court concluded that these documents Ex D-1 to Ex D-27 indicated that some debit-credit entries were manipulated by the plaintiff in order to make up the amount of Rs.19,90,000/- and in fact the plaintiff never remained in possession of this amount and it was only for the purpose of creating evidence that the pay order was got prepared by collecting amount from different sources and the very next date i.e., 2.1.1988 the amount was transferred back to the account from where it had been credited.

Further noticing that an insignificant amount of 10,000/- was paid as earnest money which was 200th part of the sale consideration, the Trial

sale consideration.

The Trial Court commented that the conduct of the plaintiff was neither fair nor proper. He had tried to mislead the court. The suit was prolonged for almost two and half decades. He was, therefore held not entitled to the discretionary relief. The suit was accordingly dismissed.

The Learned Lower Appellate Court dismissed the appeal of the plaintiff. While re-appreciating the evidence it concluded that the plaintiff had not explained the genesis of the agreement to sell (Ex.P-3). Nothing in this regard had been disclosed in his pleadings as well as in his examination-in-chief. It was only in his cross-examination that he stated that negotiations had been started by the defendant about 15 days before the execution of the agreement. The price was settled between the parties about 7-8 days before the agreement. The Court then noted various contradictions in the evidence of the plaintiff -PW 2 and the attesting witness- PW 3 raising doubts about the authenticity of the agreement. As per the plaintiff the defendant had brought typed agreement to sell in the evening of 21.9.1987. The Court found it strange that the defendant had incorporated all terms and conditions in the agreement to sell which were favourable to the plaintiff. It did not contain even a penalty clause against the plaintiff if he failed to perform his part of the agreement. Payment of a meagre Rs.10,000/- as earnest money in respect of a property which was valued at lacs further creates a doubt about the veracity of the agreement. If the agreement had been got drafted by the defendant, it was inexplicable as to why only clauses favouring the plaintiff were incorporated. It was not the case of the plaintiff that the amount of earnest money to be paid had been settled prior to the agreement. If so, how

could the defendant state in the agreement that Rs.10,000/- was paid as earnest money. Other circumstances noticed by the Ld. Appellate Court and weighed with it were that though the agreement consisted of three papers (the first paper being a stamp paper and the other two papers were plain), the signature of the defendant and the witnesses were only on the third page, the name of the purchaser of stamp paper was not written on the backside of the stamp paper, the number of the house was wrongly mentioned in the agreement as 15/1, Mall Road, whereas, the house number of the defendant is 15, Mall Road, the dimensions of the suit property had not been mentioned in the agreement, the plaintiff had not produced any account books regarding payment of Rs.10,000/- as earnest money, the plaintiff did not examine any hand-writing expert to prove the signatures of the defendant on the agreement despite that fact having been denied by the defendant. There were material contradictions in the statement of PW2 and PW3. PW2 had specifically stated that PW3 had come with the defendant on 21.9.1987 whereas PW3 did not state that he had come with the defendant. The plaintiff had stated that the defendant had brought with him the agreement to sell, whereas, PW3 stated that the agreement was already typed when he reached the place where it was signed. Both of them tried to conceal their close relationship that they were childhood friends and had known each other for over forty years. It held that there was sufficient evidence to hold that PW3 is an interested witness. The conduct of PW2 and PW3 was found to be highly untrustworthy.

The learned lower Appellate Court in its consideration, however,

Singh Bhandal, DW10 Dr. S. K. Jain and the statement of Shri N.K.Aggarwal recorded under Section 164 Cr.P.C. Regarding DW7, the Court held that he had not been able to explain as to how he had taken the photographs from the photocopy available on the court file. Hence, his report could not be taken into consideration. DW6 had given his report Ex.DW6/18 on the documents referred by SSP Ludhiana in a sealed cover sent during investigation of case FIR No.94 dated 1.4.2006 registered against the plaintiff and others. DW6 in his cross-examination admitted that he had not examined Ex.P3. As the questioned signatures were not taken from the agreement to sell in the court file, reliance on the report of DW6 was held to be erroneous. The statement of N.K.Aggarwal recorded under Section 164 Cr.P.C. was discarded on the ground that such a statement is not a substantial piece of evidence by itself. It could only be used to corroborate or contradict the witness. As N. K. Aggarwal had not been summoned, no reliance could be placed on his statement under Section 164 Cr.P.C. The cassettes containing the alleged conversation between PW3 and DW5 (Deepak Dumra - son of the defendant) were not relied upon as DW10 had nowhere opined regarding the genuineness of the cassettes. Moreover these cassettes remained in the custody of the defendant for more than seven years hence there was every possibility of their contents being erased or altered. The Court concluded that even with the exclusion of this evidence, the plaintiff who has to substantiate his case on his own, and not take advantage of the weakness of the defendant's case, had not been able to establish the genuineness and validity of the agreement to sell. The findings

Ld. Sr. Counsel for the appellant has argued that once the Lower Appellate Court held the evidence of DW7 Vikram Raj Singh Chauhan, DW6 Balwinder Singh Bhandal, DW10 Dr.S.K.Jain and the statement of Shri N.K.Aggarwal recorded under Section 164 CrPC. had been wrongly relied on by the Trial Court and the Appellate Court had excluded the said evidence from its consideration, the whole substratum of the findings of the Trial Court were gone. There remained no basis for the Lower Appellate Court to affirm the findings of the Trial Court. He further argued that the Courts below have wrongly relied on the inadequacy of earnest money as a ground to hold that the agreement was not proved.

There is no merit in the arguments of the Ld. Sr. Counsel.

No doubt the Ld. Lower Appellate Court held that the Trial Court had wrongly relied on the evidence of DW7 Vikram Raj Singh Chauhan, DW6 Balwinder Singh Bhandal, DW10 Dr.S.K.Jain and the statement of Shri N.K.Aggarwal recorded under Section 164 CrPC. But while excluding the same from its consideration the Lower Appellate Court has appraised the other evidence and on that basis found that the agreement to sell Ex P -3 is shrouded in suspicious circumstances and its validity and genuineness has not been proved. The findings of the Ld. Lower Appellate Court have already been referred to above. It is clear that quite independently of the evidence it has excluded from consideration, the Appellate Court has come to the conclusion that the agreement does not appear to be genuine.

Regarding the other contention of Sr. Counsel, while inadequacy of earnest money may of itself may not be a ground to disbelieve an agreement to sell, if it is otherwise proved, but in this case there were a large

number of circumstances pointing to its not being genuine . The inadequacy of earnest money (i.e., Rs. 10,000/- for a sale consideration of Rs. 20 lacs) was only noticed as another circumstances leading to the conclusion that the agreement was not genuine. No fault can be found therewith.

Findings of fact have been recorded by the courts below. It has not been shown as to how those findings are perverse or against the evidence on record. No substantial question of law arises for decision in this case.

Accordingly, there is no merit in the appeal and the same is hereby dismissed.

(HARINDER SINGH SIDHU)
JUDGE

August 13, 2018
Atul

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No