

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

CR No. 108 of 2016

Date of Decision: 12.2.2020

Harbhajan Singh

...Petitioner

Vs.

Des Raj and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sanjeev Pandit, Advocate
for the petitioner.

Mr. Satbir Rathore, Advocate
for the respondents.

RAJIV NARAIN RAINA, J. (Oral)

1. Heard. This petition is disposed of with the liberty to the plaintiff-petitioner to challenge the order dated 3.10.2015 passed in the application seeking permission of the trial court to get the signatures of respondent/defendant Des Raj on the original agreement of sale dated 24.11.1994 executed between Des Raj [proposed vendor] and petitioner Harbhajan Singh [which did not mature into a sale deed] compared with the signatures of Des Raj on his written statement filed in the suit, to which the petitioner was not a party. By this the petitioner wants to prove his sale agreement dated 24.11.1994 to enforce it against Des Raj through the suit from which this revision arises. This impugned order was passed under remand directions of this Court dated 11.12.2008 in CR No. 2970 of 2006.

2. The application has been rejected by the trial court on the ground that the plaintiff cannot be permitted to fill up the lacuna in the evidence led by him in the affirmative, in order to prove the issue, the onus of proving which was upon him.

3. The report called for has been submitted by the trial Court at Mukerian to the first Appellate Court in challenge to this order, impugned in the present petition, the petitioner would be at liberty to raise all his pleas as are available to him in law urges that the order is erroneous and deserves to be set aside and the application allowed. But this now can be considered in the first appellate court where today an appeal is pending. The impugned order of 03.10.2015 has merged with final judgment in the suit which has been appealed against. The appeal was filed in the year 2016.

4. If this is the position, then this petition is rendered infructuous with the liberty to the petitioner to press his challenge to the report before the first appellate court by taking all pleas as are available in law.

5. The petitioner is free to move an application before the lower appellate court for the learned Judge to pass appropriate orders thereon after hearing the parties to decide the application with the main appeal. The appeal has been pending since 2011 and would may fall in the action plan of old cases, therefore, an endeavour would be made to decide the appeal as soon as practicable.

6. With this liberty, the petition is disposed of.

(RAJIV NARAIN RAINA)
JUDGE

12.2.2020
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Whether speaking/reasoned : *Yes*
Whether reportable : *Yes/No*