

**RSA No.5792 of 2019(O&M)
and other connected case -1-**

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

**RSA No.5792 of 2019(O&M)
Reserved On: 25.01.2024
Date of Order:30.01.2024**

Sukhdev Singh
Versus
.Appellant

Manish Agarwal and others
..Respondents

RSA No.566 of 2020(O&M)

Jaswant Singh and another
Versus
.Appellant

Munish Aggarwal and others
..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Vijay Kumar Jindal, Senior Advocate, with
Mr. Akshay Jindal, Advocate
Mr. Sukhdeep Singh Sidhu, Advocate
Mr. Pankaj Gautam, Advocate
for the appellant (in RSA-566 of 2020)
for respondent no.2((in RSA-5792 of 2019)**

**Mr. Sumeet Mahajan, Senior Advocate, with
Mr. Saksham Mahajan, Advocate
for the respondent no.1
(in RSA-5792 of 2019 and RSA-566-2020)**

**Mr. Atul Aggarwal, Advocate
for the appellant (in RSA-5792 of 2019)
for respondent-Sukhdev Singh (In RSA-566-2020).**

ANIL KSHETARPAL, J.

1. With the consent of the learned counsel representing the parties,

two connected second appeals arising from the plaintiff's (respondent's) suit

for possession by way of specific performance of the agreement to sell passed by the courts below shall stand disposed of by this common judgment.

2. In the considered opinion of the Court, the following two issues arise for consideration:-

- (1) Whether the statement of witness in judicial proceedings, which does not fall within the scope of Section 33 of the Indian Evidence Act, 1872, is a relevant piece of evidence in subsequent suit or judicial proceedings?
- (2) If the concurrent findings of fact arrived at by the courts are based on inadmissible and irrelevant evidence resulting in perversity, whether in second appeal filed under Section 41 of the Punjab Courts Act, 1918, the High Court is debarred from re-appreciating the evidence?

3. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

FACTS

4. Respondent-Munish Aggarwal (plaintiff) filed a suit for possession by way of specific performance of the agreement to sell while claiming that on 06.10.2005, defendant no.2-Smt. Ranjit Kaur and Sh. Kulwant Singh, the brother of defendant no.1 showed him the suit property for the purpose of selling. He while agreeing to purchase, paid Rs.1,50,000/- as token money and its receipt was reduced into writing. The suit property is jointly owned by Sh. Jaswant Singh and his mother Smt.

Ranjit Kaur. It is his case that on 26.10.2005, defendants no.1 and 2 entered into a proper agreement to sell on receipt of additional payment of Rs.28,50,000/-. Wherein it was provided that another payment of Rs.20,00,000/- shall be payable on or before 25.04.2006, whereas the remaining amount shall be paid on 26.10.2006, the date of execution and registration of the sale deed. On 23.04.2006, he approached defendant nos.1 and 2 for payment of second installment, however, they refused to receive the same. On 25.04.2006, he went to the office of Tehsildar and after waiting for the defendants no.1 and 2, got his presence marked but the defendants no.1 and 2 failed to come. Defendants no.1 and 2 in a pre planned conspiracy made a telephone call and asked him to come for payment of additional amount of Rs.20,00,000/- to their house. When he along with his brother and Sh. Sat Pal went to the house of defendants no.1 and 2, along with the amount, the same was received by the defendant no.1. Thereafter, the endorsement at the back of the first page was signed by defendant no.1. The document (agreement to sell) was taken to another room by defendant no.1 for getting the thumb impression of Smt. Ranjit Kaur, who was allegedly feeling shy and therefor appended her thumb impressions in another room. After some time, the document was returned to the plaintiff but the same was allegedly a fake and forged document. He immediately went to the nearest Police Station and lodged FIR No.199, dated 23.06.2006. On 26.10.2006, once again he visited the office of the Sub-Registrar along with the balance sale consideration, however, defendants no.1 and 2 did not turn up. On 18.06.2007, the plaintiff filed the suit. During the pendency of the suit, defendants no.1 and 2 sold the

property in favour of defendant no.5 by executing two different sale deeds.

5. The defendants while contesting the suit claimed that on 06.10.2005, neither any receipt was executed, nor any agreement to sell was executed and signed on 26.10.2005. They also vehemently denied the alleged incident of 23.06.2006 and claimed that there was no transaction between defendants and the plaintiff.

6. The plaintiff in order to prove his case, examined the following witnesses:-

- (1) PW1-Pawan Kumar, marginal witness of receipt dated 06.10.2005,
- (2) PW2-Satpal, marginal witness of the agreement to sell as well as the endorsement dated 04.04.2006,
- (3) PW3-Munish Aggarwal, the plaintiff and
- (4) PW4-Navdeep Gupta, Handwriting and Fingerprint Expert.

7. On the other hand, the defendant No.1 himself appeared in evidence and examined as many as eight other following witnesses.

- (1) DW2-Navdeep Singh
- (2) DW3-Baldev Singh, Manager
- (3) DW4-Amrik Singh
- (4) DW5-Paramjit Singh
- (5) DW6-Jaspal Singh
- (6) DW7-Vijay Kumar
- (7) DW8-Sukhdev Singh.

8. In the meantime, in the criminal case arising from FIR

registered by the plaintiff, Sh. Jaswant Singh, defendant no.1 and Sh. Kuljit Singh were convicted of the offence of forgery by replacing the original agreement to sell vide judgment dated 14.05.2015, which in appeal has been upheld on 14.09.2016, by the Additional Sessions Judge, Ludhiana. However, Crl. Revision No.4193 of 2016 is pending in the High Court. Thereafter, the suit filed by the plaintiff was decreed which in appeal has been affirmed by the First Appellate Court.

9. This Bench has heard the learned senior counsel representing the parties at length and with their able assistance perused the original requisitioned lower court record along with their written arguments and synopsis submitted.

ARGUMENTS OF LEARNED COUNSEL REPRESENTING THE PARTIES

10. Apart from the oral arguments, the written arguments submitted by the learned counsel representing the appellant reads as under:-

“2. That the suit preferred by the respondent Munish Aggarwal for possession by way of specific performance of agreement sale dated 26.10.2005 allegedly executed appellants in favour by the the of respondents/plaintiff in respect of measuring 46 Kanals 7 Marlas is based upon 3 documents which are all photo state copies i.e. Ex.P copy of writing dated 06.10.2005 regardin receipt of Rs.1.5 lacs, Ex. P2 copy agreement dated 26.10.2005 and Ex.P3 copy of the receipt dated 24.04.2006. There are two witnesses which are being examined by the plaintiff to prove said documents apart from himself as PW3. PW1 is Pawan Kumar witness to writing dated 06.10.2005 and PW2 Satpal witness to Ex.P1, Ex.P2 and Ex.P3.

3. That both the Ld. Lower Courts have totally misread

the entire evidence and have relied upon the photocopies as well as the story put forwarded by the plaintiff which is both improbable and unbelievable. Further, the Ld. Lower Courts have decided in favour of the respondent/plaintiff mere presumption without considering that the plaintiff has miserably failed to prove his case as not only the witnesses are giving discrepant statements but also not are believable and reliable. PW1 Pawan Kumar in his examination in chief has given an affidavit which Ex.PA. However, during cross examination the said witness has clearly stated "I do not know the contents of my affidavit Ex. PA. I do not know from where or from whom said affidavit Ex. PA was scribed." Further, in Ex. PA it is stated that "I have seen photocopy of initial agreement dated 06.10.2005." Whereas, during cross examination it is stated by the said witness "Ex. P1 which is placed on record is the original copy of the document it is wrong to suggest that it is photocopy and not the original." Further in cross examination he talks about some dispute regarding shop of the appellants in somewhere he talks about the land in dispute. Even the said witness does not know who has put signature first of all upon Ex. P1 and he further states that appellant Jaswant Singh was present when the said document was executed, however Jaswant Singh has not put signatures on the same. Money was received by Kulwant Singh. Further from the perusal of the Ex. P1 it can be made out that there is mention of 3 payments to be made by the plaintiff to the appellants first which is allegedly made on the date execution of Ex. P1 i.e. Rs.1.5 lacs on 06.10.2005, second Rs.30 lacs to be paid within 15 days and remaining Rs.20 lacs to be paid within 6 months. So, total amount mentioned in Ex. P1 is Rs.51.5 lacs, whereas, per acre amount is mentioned Rs.16.35

lacs The land settled to be sold is 6 Killas, therefore even the consideration amount to be paid does not match with the actual amount of the land. Furthermore, the appellant Jaswant Singh has not signed the said documents and the Kulwant Singh who signed have no right on the said land. Furthermore, the same is a photocopy and not original document, therefore even the thumb impression of appellant Ranjit Kaur have no legal value.

4. PW2 Satpal, who has signed Ex. P1, Ex. P2 and Ex.P3 as an witness has been examined as a plaintiff witness PW2 he has furnished affidavit Ex. PB in his examination in chief in which he has mentioned about the fact that Ex. P2 the said agreement was type by typist Raju at Jagraon Complex and Ex. P3 endorsement dated 24.04.2006 was also type by typist Raju. During cross examination the said witness has stated that all Ex. P1 to Ex.P3 are the photocopies of the original and he does not know where the Ex. Pl. He has stated that Jaswant Singh appellant was asked to put signature on Ex. Pl but he did not put his signature on Ex. P1 he further states that he do not know the name of the deed writer of Ex. P2 dated 26.10.2005 and further said "On 26.10.2005 I put my signature as witness on two places. One signature out of that my signature put on agreement dated 26.10.2005 at page No.2, whereas second other signature was put on the backside of the first page of the agreement." "It is also correct that writing Ex.P3 endorsement was scribed on the same day on 26.10.2005." Further it is stated by the witness Ex.P2 "Ex.P3 was scribed at Court Complex Jagraon but I cannot the name of deed writer who scribed/type the same." It is worthwhile to mention here that the contents of the Ex. PB has been not known to him and he is made to sign the said Ex.PB without having any knowledge of the contents of the same. In Ex. PB he

mentioned about the name of the typist. During his cross examination he does not name the typist scribe Ex. P2 and ExP3. Further he stated that on 26.10.2005 itself he has signed at two places i.e. Ex. P2 and Ex.P3. Ex.P3 is dated 24.04.2006 whereas, Ex. P2 is dated 26.10.2005 so it is quite clear that plaintiff has already prepared antedated documents Ex.P3 to establish his case whereas, no consideration has exchange the hands and the entire story put forwarded by the plaintiff is false and fabricated and was around witnesses who are neither reliable nor trustworthy.

5. That plaintiff who has himself examined as PW3 has further brought forward improbable story which is outcome of a clever mind, when the remaining agreement Rs.20 lacs as settled in the was not paid on 24.04.2006 then there is no extension of date of the said agreement, but the plaintiff respondent without any reasoning on 25.04.2006 when to court premises to mark his presence though nothing settled was executed or appearance for that day but he to pointed be to create evidence. Further, he concocted story that on dated 23.06.2006 he alongwith his brother went to the house of the appellants and there he made payment of Rs.20 lacs to appellant Jaswant Singh and Kulwant Singh who counted the same. Thereafter, plaintiff told them to sign the endorsement (Ex.P3) appended on the reverse of the first page. However, appellant No.1 and said Kulwant Singh at the instance of some invisible hands took the original agreement from the deponent on the pretext Ranjit that Kaur (appellant) was felling shy and her thumb impression would be affixed on the endorsement in the room where she was sitting and on this pretext took the original agreement went inside the room and they kept the original with them and handed over falsely prepared

forged agreement, which the appellants have already prepared fabricated at the instance of some invisible hands. Thereafter, he immediately realized regarding same and got the FIR registered against the appellants Kulwant Singh, Kuljeet Singh and Manjit Kaur under section 420, 406 of IPC. It is worthwhile to mention here that no such duplicate agreement has been placed on record. Further the entire story is a concocted story having no basis as the plaintiff is a preplanned way without paying any amount as false documents consideration and preparing have based its case by colluding with the above witnesses procured by him. It is further not out of place to mention here that on the date of execution of the sale deed on 26.10.2006 the plaintiff was quite aware that Jaswant Singh is in custody in the above said false and fabricated FIR lodged by him and therefore, he cannot come present in the Tehsil Complex Jagraon for the execution of the said forged and fabricated agreement. Despite of that he himself appeared and not sent any notice or made any application to any competent authority/court seeking presence of the Jaswant Singh who was in judicial custody on 26.10.2006, regarding which the plaintiff/respondent have full knowledge. The Ld. Lower Court has failed to take into consideration that the plaintiff respondent since 26.10.2005 have not paid single penny/brought forward upto 2021. Therefore, readiness of the payment at the ends of the respondent Munish Aggarwal is neither expressed not proved not brought forth.

6. That the Ld. Lower Court has relied upon statement under section 313 Cr.P.C. of a one Kuljeet Singh to presume that the documents Ex. P1, Ex. P2 and Ex.P3 was executed as he took stand that he was broker.

However, the said fact in a criminal matter does not leave to firm any conclusion in favour of the plaintiff for civil proceeding matter question framed in the civil suit the test is totally distinct in civil The Ld. matters. Lower Courts have failed to take into consideration the said Kuljeet Singh is not a reliable person as he has put his signature on Ex.P3 as a witness i.e. endorsement regarding the payment Rs.20 lacs made to of the appellants on 24.04.2006 whereas, none of the appellant have signed the said endorsement but the said witnesses have signed regarding appellants presence and the money has been paid to the appellants. Therefore, it can be presumed that the Kuljeet Singh is hand in glove with the plaintiff and on the saying of the plaintiff he has signed on the forged and fabricated document as Ex. P3 as no prudent person will sign such document. Further, in the proceedings in fabrication/illegalities respondents were the ends raised and themselves delinquent in the report of conclusive photocopies. the as handwritten the same civil of rather suit the are matter. The is expert is not based upon

7. That the grounds taken in the main appeal be also part taken and parcel of these arguments/written submissions and the judgment and decrees before the Ld. Lower Courts may kindly be set aside.”

11. On the other hand, the learned senior counsel representing the plaintiff (respondent herein) has made the following submissions:-

- (1) The re-appreciation of evidence is not permissible in view of the concurrent findings of fact arrived at by the courts below.
- (2) The standard of proof required for proving a criminal case is higher than standard of proof required for proving

a civil case. While submitting that conclusively the courts have held that the original agreement to sell was forged by the defendants no.1 and 2, therefore, the suit has been correctly decreed.

(3) The execution of the agreement to sell has been proved by Sh. Munish Aggarwal, Sh. Satpal and Sh. Pawan Kumar and the plaintiff has already paid Rs.50,00,000/- to the defendants.

(4) The defendants no.1 and 2 have in collusion with defendant no.5 have transferred the property in order to defeat the plaintiff's right.

DISCUSSION

12. This court has analyzed, evaluated and critically appraised the arguments of the learned counsel representing the parties and is of the view that the judgments passed by the courts below are result of total non-application of mind and the findings of fact have been arrived at by relying upon irrelevant evidence and material and the findings rendered outrageously defy logic.

13. First of all, the scope of interference in regular second appeal is required to be examined. In the States of Punjab, Haryana and Union Territory Chandigarh, the filing of Regular Second Appeals is governed by Section 41 of the Punjab Courts Act, 1918, which reads as under:-

“41. Second appeals—

(1) An appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the following grounds, namely :
(a) the decision being contrary to law or to some custom

or usage having the force of law :

(b) the decision having failed to determine some material issue of law or custom or usage having the force of law :

(c) a substantial error or defect in the procedure provided by the Code of Civil Procedure 1908 [V of 1908], or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits;

Explanation—A question relating to the existence or validity of a custom or usage shall be deemed to be a question of law within the meaning of his section:]

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) [Repealed by Section 2B of Punjab Act 6 of 1941] ”

14. While interpreting Section 100 of the Code of Civil Procedure (hereinafter referred to as 'CPC'), the Hon'ble Supreme Court has consistently held that there is no prohibition in entertaining a second appeal provided the Court is satisfied that a finding of fact stand vitiated by non-consideration of material evidence or erroneous approach. Reliance in this regard can be placed on the judgment passed in **Municipal Committee, Hoshiarpur, vs. Punjab State Electricity Board and others, 2011 (1) CCC 1.** In **Vidhyadhar vs. Manikrao and another, (1999) 3 SCC 573**, the Supreme Court held that perverse finding based on no evidence is liable to be interfered with. In **Easwari vs. Parvathi and others, (2014) 15 SCC 255**, it was held that when the finding is not supported by evidence due to mis-application of evidence, interference in second appeal is permissible. Similarly, in **Shri Hafzat Hussain vs. Abdul Majeed, (2001) 7 SCC 189**, the Supreme Court held that non-interference in the finding of fact is not an absolute rule. In **Yadarao Dajiba Shrawane (dead) by LRs vs. Nani Lal Harakchand Shah (Dead) and others, (2002) 6 SCC 404**, the Court held as under:-

“31. From the discussions in the judgment it is clear that the High Court has based its findings on the documentary evidence placed on record and statements made by some witnesses which can be construed as admissions or conclusions. The position is well settled that when the judgment of the final Court of fact is based on mis-interpretation of documentary evidence or on consideration of inadmissible evidence or ignoring material evidence the High Court in second appeal is entitled to interfere with the judgment. The position is also well settled that admission of parties or their witnesses are relevant pieces of evidence and should be given due weightage by Courts. A finding of fact ignoring such admissions or concessions is vitiated in law and can be interfered with by the High Court in second appeal. Since the parties have been in litigating terms for several decades the records are voluminous. The High Court as it appears from the judgment has discussed the documentary evidence threadbare in the light of law relating to their admissibility and relevance.”

15. Under Section 41 of the Punjab Courts Act, 1918, the scope of interference in the regular second appeal is wider when compared with Section 100 CPC. On careful reading of the three sub clauses of Section 41(1) of the Punjab Courts Act, 1918, it is evident that the decision which is contrary to law or the decision which failed to determine some material issue of law as also a substantial error or defect in the procedure provided under the Code of Civil Procedure or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case, are amenable to interference in second appeal. Sub-clause No.(c) of Section 41 (1) of the Punjab Courts Act, 1918, enables the High Court for

the States of Punjab, Haryana and Union Territory, Chandigarh, to re-appreciate the evidence, if the decision is suffering from substantial error or defect resulting in defect in the decision of the case. Consequently, it is permissible for the Court while deciding second appeal to re-appreciate the evidence if the decisions of the Courts suffer from perversity. However, it is not permissible to interfere if two views are possible. The interference in the second appeal has to be restricted to rare and exceptional cases where the court finds that the findings of fact stand vitiated by erroneous approach based on miss application of evidence or reliance on inadmissible evidence.

16. Hence, the court proceeds to re-appreciate the evidence led by the parties.

17. The primary evidence of all the three documents, namely, the receipt dated 06.10.2005, agreement to sell dated 26.10.2005 and endorsement dated 24.04.2006, has not been produced in evidence. The Ex.P1 is a photocopy of the writing dated 06.10.2005. It is allegedly signed by Sh. Kulwant Singh apart from Sh. Pawan, Sh. Satpal and Sh. Munish Aggarwal and thumb marked by Smt. Ranjit Kaur. Admittedly, Sh. Kulwant Singh was not the owner of any part of the suit property. He is the brother of defendant no.1 (Jaswant Singh) who owns 2/3rd share in the suit property. It is recorded in Ex.P1, that Sh. Kulwant Singh, Sh. Jaswant Singh and Smt. Ranjit Kaur have agreed to sell the land measuring approximately 6 acres @ Rs.16.35/-lacs per acre on receipt of taken money as Rs.1,50,000/-, whereas the remaining earnest money of Rs.30,00,000/- shall be paid on execution of the regular agreement to sell within a period of 15 days and further amount of Rs.20,00,000/- shall be paid within six months and the sale deed would be

registered within six months therefrom. The Ex.P2 is stated to be a regular agreement to sell. Again its photocopy has been produced in evidence. It has been scribed on a plain paper with as many as 15 (fifteen) adhesive stamps of Rs.20/- each. It is stated to have been issued by a stamp vendor, namely, Sh. Iqbal Singh. The agreement to sell is with respect to land measuring 46 kanals and 17 marlas. It is stated that the defendants have already received Rs.30,00,000/- as earnest money today itself and the plaintiff would pay another amount of Rs.20,00,000/- on 25.04.2006 and the sale deed would be executed and registered on 26.10.2006 on payment of the remaining amount. On the back of the first page of the agreement to sell, there is an endorsement dated 24.04.2006 in token of another sum of Rs.20,00,000/-. This endorsement is neither thumb marked by Smt. Ranjit Kaur nor signed by Sh. Jaswant Singh, both the alleged vendors (owners of the suit property).

18. The endorsement dated 25.04.2006, is Ex.P3, scribed on the back side of page No.1 of the alleged fabricated agreement to sell on payment and receipt of additional payment of Rs.20,00,000/-. It is again allegedly signed by Sh. Jaswant Singh and thumb marked by Smt. Ranjit Kaur. It is not the plaintiff's case that on 25.04.2006, another amount of Rs.20,00,000/- was paid to defendants no.1 and 2.

ORAL EVIDENCE

19. PW1-Pawan Kumar is a signatory of the receipt dated 06.10.2005. He states that on 06.10.2005, the receipt was written in the house of Sh. Jaswant Singh in the presence of Sh.Kulwant Singh, Sh. Manish Goyal, Sh. Satpal and Smt. Ranjit Kaur and Sh. Kuljit Singh, the

broker. He admits that Sh. Jaswant Singh did not sign the aforesaid writing.

20. PW2-Sh. Satpal, states that the agreement to sell dated 26.10.2004 and receipt dated 24.04.2006 was typed by the same typist, who has a office in Tehsil Complex, Jagraon. He states that Rs.1,50,000/- was paid to Sh. Kulwant Singh and Smt. Ranjit Kaur whereas despite request Sh. Jaswant Singh refused to sign receipt Ex.P1, although he was present. On 24.04.2006, an endorsement was appended to the back of first page of the agreement to sell. On the instance of Sh. Kuljit Singh, Sh. Munish Aggarwal and Sh. Satpal pre-signed the receipt in anticipation of obtaining signatures from defendants no.1 and 2. He does not know the name of the scribe, who was a Sikh Gentleman. He entered the contents of the agreement to sell in his note book maintained by him. On 26.10.2004, Rs.28,50,000/-was paid in the currency notes of denomination of Rs.1000/- and Rs.500/- He admits his acquaintance with the plaintiff for the last 15 to 20 years. He is also a witness in the another agreement to sell in favour of the plaintiff's father. On 26.10.2005, he appended two signatures, one on the 2nd page of the agreement to sell and second on the endorsement, which is printed on back of the first page. He goes on to states that Ex.P2 and Ex.P3 (agreement to sell and endorsement) of receipt of Rs.20,00,000/- were scribed on 26.10.2005, the same day. He is also scrap dealer, who is dealing in old ball bearings, similar to the plaintiff. He is also a property broker and has executed two agreements to sell, one with respect to the house and second with respect to the land. He further states that twenty five licensed scribe are available in Jagraon Tehsil complex.

21. PW3-Sh Manish Kumar (the plaintiff-respondent herein) has

stated that Sh. Jaswant Singh was not present when the receipt dated 06.10.2005 was signed and Sh. Kulwant Singh is not the owner of any part of the suit property. He states that the agreement to sell was scribed by a professional scribe, who never made any entry in the note book. He further states that the forged agreement to sell has been produced in the criminal case.

22. PW4 Sh. Navdeep Gupta is Handwriting and Finger Print Expert. He has submitted his report after comparing the signatures of Sh. Jaswant Singh on Ex.P2, Ex.P3 and standard signatures of Sh. Jaswant Singh in the court proceedings. He admits that he had compared the signatures of Sh. Jaswant Singh from photocopy of Ex.P2 and Ex.P3.

23. During the pendency of the suit the file of criminal case was received by the trial Court on 22.09.2016, whereas the deposition of all the plaintiff's witnesses was recorded in the years 2013 and 2014.

24. In the trial court, the plaintiff's counsel tendered the following documents in his statement which reads as under:-

“I tender into evidence the original duly affidavit dated 25.04.2006 Ex.P-4, Original Application dated .10.2006 moved to Sub Registrar Jagraon Ex.P-4/A with endorsement of Sub Registrar EX. P - 4 / B on the same, Duly tested affidavit dated 26.10.2006 Ex .p-5 , Certified copy of Le Judgment titled 'State Vs Ranjit Kaur and others' passed by e court of Sh. Jaapinder Singh, SDJM, Jagraon dated 14.05.2015 Ex.P-6, certified copy of the FIR no.199/2006 PS Jagraon City Ex. P-7, Certified copy of the statement of Iqbal ingh Stamp Vendor in case 'State Vs Ranjit Kaur and others' Ex.P-8, certified copy of statement of Kuljeet Singh u/s 313 Cr.P.C. in the case

'state Vs Ranjit Kaur and others', certified copy of ground of Appeal of the criminal case titled Jaswant Singh Vs State of Punjab' Ex. P-10, certified copy of the judgment of the Appellate court dated 14.09.2016 titled Jaswant Singh Vs State of Punjab Ex. P-11, Certified copy of ground of Appeal of the criminal Case 'titled Kuljeet Singh Vs State of Punjab Ex. P-12, certified copy of the appellate court of the order dated 14.09.2016 of the titled appeal Kuljeet ingh Vs State of Punjab Ex .P-13, Certified copy of the sale deed bearing Vasika No.3123 dated 24.10.2007 Ex. P-14, Certified copy of the sale deed bearing Vasika no.3124 dated 24.10.2007, Ex.P-15, certified copy of the jamabandi for the year 2009-10 Ex.P-16, certified copy for the year 2009-10 Ex. P-17 , certified copy of the jamabandi for the year 2004-05 Ex.P-18, certified copy of the jamabandi for the year 1999-2000 Ex.P-19, certified copies of jimni orders of FIR No.74/2000, PS Model Town, Ludhiana (21 pages) Ex.P-20, certified copy of the said FIR EX.P-21, Certified copy of Cr.Misc. No.44572-M/2006 titled Kulwant Singh Vs State of Punjab in the Hon'ble High Court dated 28.07.2006, certified copy of order in CRM-No.44572-5/2006 titled Kulwant Singh Vs State of Punjab dated 16.10.2006 Ex. P-22, Certified copy of CRM-4588-M/2007 titled Kuljeet Singh Vs State of Punjab in High Court Ex.P-23 (29 pages), certified copy of order dated 08.02.2007 in Crl.M.4588-M/2007 in titled case Kuljeet Singh Vs State of Punjab Ex. P-24, Certified copy of order dated 30.01.2007 in the said Crl Ex.P-25, certified copy of Ledger of the account books of the plaintiff's Firm Munish Steels for the year 2006-2007 Ex.P-26, Certified copy of the ITR for the assessment year 2007-08 Ex.P-27 (6 Pages), Certified copy of the ITR for the assessment year 2006-07 Ex.P- 28 (9 pages), Copy of the

forged document forged by the defendants Mark-A, photostat copy of the metric certificate of Jaswant Singh Mark-B and closed the evidence of the plaintiff.”

ANALYSIS OF DOCUMENTARY EVIDENCE

25. On a careful perusal of photocopy of the alleged agreement to sell produced by the plaintiff along with the plaint which is available at pages 319 and 320 of the trial Court's record, it is evident that it is a photocopy of the agreement to sell. It is scribed on a plain paper with fifteen adhesive stamps of Rs.20/- each. On the left hand margin of the first page, Sh. Jaswant Singh had allegedly signed in English, whereas Smt. Ranjit Kaur is alleged to have thumb marked it. Sh. Munish has appended three signatures on the first page. At the back of the first page, there is an endorsement dated 24.04.2006, for payment of additional amount of Rs.20,00,000/-. It is signed by the marginal witness, Sh. Satpal, property broker Sh. Kuljit Singh and the plaintiff Sh. Munish Aggarwal. However, neither Sh. Jaswant Singh had signed nor Smt. Ranjit Kaur had put her thumb impression. Page No.2 of the agreement to sell is allegedly signed by Sh. Satpal and Sh. Kuljit Singh as marginal witnesses, Sh. Jaswant Singh, one of the defendant no.1 and thumb marked by Smt. Ranjit Kaur apart from Sh. Munish Aggarwal. On comparing the thumb impression of Smt. Ranjit Kaur on receipt dated 06.10.2005 and the alleged photocopy of the agreement to sell produced with the plaint, it is evident from the naked eye that the thumb impressions of Smt. Ranjit Kaur are different from each other.

26. Mark-A is another photocopy produced by the plaintiff which

is stated to be uncertified copy of the alleged fabricated agreement to sell which is part of the record of criminal case issued by the copying branch of District and Sessions Judge, Court. On 25.01.2024, with the consent of the learned counsel representing the parties, the original lower court record of the criminal case was requisitioned. In the criminal case, the aforesaid agreement to sell is Mark-A. Stamp paper on which fabricated agreement is scribed was sold by Sh. Iqbal Singh, Stamp Vendor, Jagraon. Fifteen revenue special adhesive stamps of Rs.20/- each have been pasted on the plain paper in order to convert it into a stamp paper. On careful perusal of the reverse side of the first page, it becomes evident that at the time of its purchase, Sh. Jaswant Singh did not sign. Moreover, it has been issued on 25.10.2005 vide Sr.No.4826. It contains a recital, "today received Rs.20,00,000/-" just above the signatures and seal of the stamp vendor. It contains an endorsement dated 25.04.2006, acknowledging receipt of Rs.20,00,000/-. The contents of the endorsement at the back of first page of the alleged fabricated agreement to sell are different from the receipt dated 24.04.2006, available on the reverse side of the first page of Ex.P2. After taking permission to lead secondary evidence, the photocopy of the original agreement to sell is produced in evidence as Ex.P2. The second paper of the alleged fabricated agreement to sell is a plain white paper whereas the first page is of green colour. After careful examination of keeping the documents Mark-A, with Ex.P2 side by side, it becomes evident that the recitals in the agreement to sell have been scanned or photocopied. It is also evident that on the first page of Ex.P2, Sh. Munish Aggarwal had signed thrice over, once on the left hand margin and twice at the bottom of the page. Whereas

page 1 of Mark-A shows that Sh. Munish Aggarwal has appended two signatures, one on left hand margin and the second at bottom. From naked eye, it is evident that the thumb impression of Smt. Ranjit Kaur on page one of Mark-A and Ex.P2 are quite different in size as well as in shape from each other. On Ex.P2, the thumb impression is bigger and more wide whereas the thumb impression on Mark-A shows slimmer and longer thumb impression. Furthermore, page no.2 of Mark-A also bears a similar dissimilarity in the thumb impressions of Smt. Ranjit Kaur. Similar thumb impression has been appended on the reverse of the first page of document Mark-A where endorsement dated 25.04.2006, has been typed. Mark-A and Ex.P2, are typed on a manual typewriter in Gurmukhi (Punjabi) language. However, it becomes evident that those are exact copies of the same document except signatures and thumb impressions are different. It is also evident that on the reverse side of Ex.P2, there is no endorsement allegedly by Sh. Iqbal Singh with respect to receipt of Rs.20,00,000/-. Sh. Jaswant Singh has also not allegedly signed at the time of purchase of this document. When confronted during cross-examination, Sh. Munish Aggarwal admits that both the thumb impressions of Smt. Ranjit Kaur on the receipt dated 06.10.2005 is different from the thumb impressions on Mark-A. It is also evident that the signatures of Sh. Jaswant Singh, Defendant no.1 on Ex.P2, are different from the signatures appended by Sh. Jaswant Singh upon Mark-A in the record of the criminal case. It appears that efforts have been made to interpolate the same while using digital imaging with the help of computer and scanners. The signatures of Sh. Satpal, the attesting witness, on both the documents, namely, Mark-A and Ex.P2, are also different.

27. The following reasons have been recorded by the first appellate court while dismissing the two separate appeals filed by the defendants:-

- (1) The agreement to sell has been proved by the testimonies of PW1-Pawan Kumar and PW2-Satpal.
- (2) The discrepancies pointed out by the learned counsel representing the defendants were minor and insignificant.
- (3) The defendants have failed to examine any Fingerprint and Handwriting Expert to counter the evidence of the expert examined by the plaintiff.
- (4) Ex.P9, the statement of Sh. Kuldeep Singh under Section 313 Cr.P.C. recorded in a criminal case proves that the agreement to sell was entered into.
- (5) Prompt steps were taken by the plaintiff while getting the FIR registered.
- (6) Sh. Jaswant Singh, defendant no.1, did not lodge any complaint with any competent authority till date.
- (7) The plaintiff's failure to examine the scribe is not fatal to result of the suit.

CONCLUSION ON RE-APPRECIATION OF EVIDENCE

(1) Now the position is that there are two documents before the court, one Ex.P2, which is stated to be a photocopy of the original agreement to sell between the parties and the second Mark-A which is stated to have been fabricated by the defendants no.1 and 2. If Mark-A has been fabricated by the defendants no.1 and 2, the plaintiff was required to prove that his signatures on the document Mark-A, the alleged fabricated agreement to sell

are result of tracing or copying or forgery. On the first page of Mark-A, the plaintiff has signed at two places, one in the left hand margin and second at the bottom of the first page. Similarly, on the reverse side of the first page, the plaintiff has appended his signatures. Same is the position on page no.2. However, it is not even plaintiff's case that those signatures were not appended by him. Either in the plaint or in his deposition, he does not even claim that the aforesaid signatures on Mark-A were not appended by him. The plaintiff has examined Sh. Navdeep Gupta, Handwriting and Finger Print Expert. However, the plaintiff did not get a report about his own signatures. Both the courts have overlooked this very significant aspect of the case. The plaintiff wants the court to believe that Mark-A is a fabricated document by defendants no.1 and 2. It is the case of the plaintiff that on 23.06.2006, he along with his brother and Sh. Satpal went to the village where defendants no.1 and 2 reside. It is the case of the plaintiff that on the pretext of getting the thumb impression of Smt. Ranjit Kaur, defendant no.1 and his brother Sh. Kulwant Singh took the aforesaid document to another room and changed the document. It may be noted here that on one hand the plaintiff is residing in the town whereas the defendants no.1 and 2 are residing in the village. The plaintiff is dealing in old ball bearing which are sold in scrap. He is also regularly purchasing the properties. Sh. Satpal, his stock witness, is in the business of property dealing and sale and purchase of old ball bearings. Whereas defendants no.1 and 2 are expected to be comparatively simpler and rustic villagers. It is not believable that defendants no.1 and 2 within a period of short time fabricated/prepared another agreement to sell which is somewhat similar to the agreement to

sell having fifteen revenue stamps of Rs.20/- each with the seal of Sh. Iqbal Singh, Stamp vendor. There is no evidence to prove that in the village a typewriter of Gurmukhi (Punjabi) language was available permitting defendants to fabricate the agreement to sell because document Mark-A is typed one. There is no explanation how the signature of Sh. Iqbal Singh was appended on the back of the first page where it was issued on 25.10.2005. No effort has been made by the plaintiff to prove that signature of Sh. Iqbal Singh scribe on alleged forged document (Mark-A) is also forged. As already noticed, Sh. Iqbal Singh has not been examined in evidence in this case.

(2) If the plaintiff does not dispute the correctness of his four signatures appended on Mark-A, the alleged fabricated agreement to sell, then the obvious conclusion is that the fabrication is on the part of the plaintiff and not on the part of defendants no.1 and 2. There is no explanation as to why Sh. Jaswant Singh refused to sign the receipt on 06.10.2005. If Sh. Jaswant Singh was not willing to enter into an agreement to sell on 06.10.2005, there is no reason as to why there was any change in his decision on 26.10.2005, the day regular agreement to sell was allegedly executed. Moreover, it is the admitted case of the plaintiff that Sh. Kulwant Singh is not a co-owner of the property. Hence, the signatures of Sh. Kulwant Singh in token of having signed the receipt Ex.P1 itself is suspicious particularly when defendant no.1 has alleged that Sh. Kulwant Singh is colluded with the plaintiff. The plaintiff, who is a businessman and regular in purchasing property is not expected to part with the sum of Rs.1,50,000/- without getting the signatures and thumb impression of Sh.

Jaswant Singh who was owner to the extent of 2/3rd share in the property. In any case, no effort has been made by the plaintiff to prove that thumb impression of Smt. Ranjit Kaur exists on any of the document.

(3). It is evident that through Mark-A, the plaintiff had tried to prove that Rs.20,00,000/-was paid on 25.04.2006, which is contrary to his pleaded case in the plaint, wherein it has been pleaded that the additional payment of Rs.20,00,000/- was paid on 23.06.2006. Hence, the genuiness of agreement to sell as well as receipt become doubtful.

(4). It is not the plaintiff's case that any alleged payment out of three different payments made on 06.10.2005, 26.10.2005 and 23.06.2006, was through bank transactions or paid in cash after withdrawal from the bank account.

(5) It is not the plaintiff's case that a photocopy of the agreement to sell along with pre-typed endorsement dated 25.04.2006 with signatures of Sh. Satpal, Sh. Kuljit Singh and Sh. Munish Aggarwal, (the plaintiff), was already handed over to the defendants to enable them to prepare a fake/forged copy within a very short time, on 23.06.2006, when he along with his brother and Sh. Satpal visited the house of Sh. Jaswant Singh in the village.

(6) Sh. Kuljit Singh and Sh. Satpal are not reliable witnesses as they signed endorsement dated 24.04.2006 without evidencing payment of Rs.20,00,000/- and without signatures and thumb impressions of defendants no.1 and 2.

(7) Even otherwise, the story of the plaintiff is not believable because it is his case in the plaint that Smt. Ranjit Kaur and Sh Kulwant

Singh showed him the suit land and received Rs.1,50,000/- as token money.

Hence, Smt. Ranjit Kaur was not a pardanashin lady. No effort has been made to confront Sh. Jaswant Singh with the documents when he appeared in evidence. The file of the criminal case was requisitioned and brought before the Civil Court only on 22.09.2016.

(8) As many as 15 adhesive revenue stamps of Rs.20/- each has been pasted on first page of the plain paper in order to convert it into a revenue stamp paper for execution of the agreement to sell. It is alleged to have been issued by Sh. Iqbal Singh, stamp vendor to Sh. Jaswant Singh, who has not been examined. No effort has been made to produce the note book of stamp vendor Sh. Iqbal Singh to prove that Sh. Jaswant Singh had allegedly purchased the stamp paper.

(9) Moreover, though the agreement to sell was allegedly scribed in the tehsil complex where 25 licenced regular scribes have their offices, however, no effort has been made to prove that this agreement to sell was scribed by licenced scribe after making entry in his note book with signatures of the vendors and vendees which is regularly checked by the authority issuing the licences to the scribes. Sh. Satpal states in his deposition that the agreement to sell was scribed by a regular scribe who was a Sikh Gentleman. He also made entry in his note book, however, when Munish Aggarwal, the plaintiff, appeared in evidence, he claimed that though the agreement to sell was scribed by a regular scribe but no entry was made in the notebook. No effort has been made by the plaintiff to prove that it was scribed by a regular scribe. The agreement does not bear any note to prove that a regular scibe had scribed the same.

(10) PW2-Sh.Satpal has deposed that the endorsement/receipt dated 24.04.2006, was typed by the same typist at the time of typing the agreement to sell on 26.10.2005, which proves that the endorsement dated 24.04.2006 was typed and signed by him along with Sh. Kuljit Singh and Sh. Munish Aggarwal on 26.10.2005.

(11) Moreover, in para 1 of the plaint, the plaintiff claims that Rs.30,00,000/- was payable within a period of 15 days in addition to Rs.1,50,000/- already paid on 06.10.2015. Whereas, in para 2 of the plaint, the plaintiff claims that the amount of Rs.28.05 lacs was paid on 26.10.2005 after adjusting Rs.1,50,000/- already paid on 06.10.2005.

(12) In para 3 of the plaint, the plaintiff claims that the endorsement of receipt of Rs.20,00,000/- was typed on 24.04.2006. Whereas Sh. Satpal states that it was typed on 26.10.2005 by the same typist.

(13) It is the plaintiff's case that endorsement on the back of first page was scribed at the residence of defendants which located in the village but there is no explanation about the presence of the typist/scribe. Moreover, it is evident that Sh. Vijay Kumar Bansal, the learned counsel representing the plaintiff in the trial court tendered a large number of documents including copy of the FIR, certified copy of the statement of stamp vendor recorded in the criminal case as also the certified copy of the statement of Sh. Kuljit Singh recorded under Section 313 Cr.P.C as also the grounds of appeal have been produced in evidence. Sh. Iqbal Singh and Sh. Kuljit Singh have not been examined in the above case. Section 32 and 33 of the Indian Evidence Act, 1872, regulates the relevancy of such evidence given by a witness in some other judicial proceedings, which are extracted as under:-

“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

— Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:—

(1) When it relates to cause of death.—When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person’s death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) or is made in course of business.—When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

(3) or against interest of maker.—When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a

suit for damages.

(4) or gives opinion as to public right or custom, or matters of general interest.—When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen. (5) or relates to existence of relationship.—When the statement relates to the existence of any relationship 1 [by blood, marriage or adoption] between persons as to whose relationship 1 [by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6) or is made in will or deed relating to family affairs.—When the statement relates to the existence of any relationship 1 [by blood, marriage or adoption] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7) or in document relating to transaction mentioned in section 13, clause (a).—When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (a).

(8) or is made by several persons and expresses feelings relevant to matter in question.—When the statement was made by a number of persons, and expressed feelings or

impressions on their part relevant to the matter in question.”

33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.—Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable: *Provided — that the proceeding was between the same parties or their representatives in interest; that the adverse party in the first proceeding had the right and opportunity to cross-examine; that the questions in issue were substantially the same in the first as in the second proceeding.* *Explanation.*—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.”

13.1 It is evident from careful reading of Section 33 of the Indian Evidence Act, 1872, that the testimony of a witness in judicial proceedings or before any person authorised by law to take it is relevant for the purpose of proving in subsequent judicial proceedings, the truth of the facts it states when the witness is dead or cannot be found or is incapable of giving evidence or is kept out of the way by the adverse party or if his presence cannot be obtained without an amount of delay or an expense, which the court considers unreasonable. As per proviso to Section 33 of the Indian

Evidence Act, 1872, there are certain exceptions. The proviso provides that if the proceedings were between the same parties or their representatives in interest and the adverse party in the first proceeding had the right an opportunity to cross examine and that the question in issue were substantially the same in the first and second proceedings, then such evidence is relevant. However, as per explanation added to Section 33, a criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused. Unless and until, all the three conditions required are fulfilled, the testimony of a witness in a previous judicial proceedings is not relevant. In **Batuk Lal's** commentary on the law of evidence, 6th Edition reprint 2013, after analyzing the requirements of the proviso to Section 33 of the Indian Evidence Act, 1872, the following conditions were identified which must necessarily be fulfilled before the testimony of a witness in the previous statement is admitted in evidence:-

“Thus, the previous deposition of a witness is admissible in a subsequent judicial proceeding in proof of truth of the fact stated therein, where all the following conditions are fulfilled:

(1) that the evidence was given in a judicial proceeding or before any person authorized by law to take it;

(2) that the proceeding was between the same parties or their representatives-in-interest;

(3) that the parties against whom the deposition is tendered had right and full opportunity of cross-examining the deponent, when the deposition was taken in the previous proceeding;

(4) that the issues involved are the same or substantially the same in both proceedings;

(5) that the witness is dead or cannot be found or has

become incapable of giving evidence or is kept out of the way by the adverse party or his presence cannot be obtained without an unreasonable amount of delay and expenses.”

13.2 The Supreme Court in **Sashi Jena and others vs. Khadal Swain and another, (2004) 4 SCC 236**, has held that before testimony of a witness in a previous case is admitted, all the three conditions required to be fulfilled.

13.3 In this case, certified copies of the testimony of Sh. Iqbal Chand and Sh. Kuljeet Singh recorded in the criminal case would not be relevant in the civil suit because of the following reasons:-

- (a) The trial from criminal case was not arising between the same parties or their representative in interest;
- (b) The questions in issue were not substantially the same in the criminal trial as in the civil case because in the criminal case the State was to prove that the document Mark-A has been forged by the defendants, whereas in the present case the pivotal issue is with regard to execution of the agreement to sell Ex-P2;
- (c) As per explanation to Section 33 of the Indian Evidence Act, 1872, a criminal trial or inquiry shall be deemed to be proceedings between the prosecutor and the accused. Hence, both the courts have erred in relying upon the testimony of both the witnesses. Moreover, while recording statement of the accused under Section 313 Cr.P.C., the opportunity to cross examine the witness is

not granted.

13.4 Unless, such statements fall within the scope of Section 32 and 33 of the Indian Evidence Act, 1872, same are neither relevant nor admissible in evidence. Section 145 of the Indian Evidence Act, 1872, provides that if a previous statement is required to be read in evidence, then the same can only be read in evidence after confronting the witness with the previous statement. It can only be used for the purpose of corroborating or contradicting him. Reliance in this regard can be placed on *Mithu Lal vs. State of Madhya Pradesh, (1975) 3 SCC 529*, *Veenu Bhai Randodh Bhai Patel vs. Rajiv Bhai Duda Bhai Patel, (2018) 7 SCC 743* and *V.M.Mathew vs. V.S.Sharma, (1995) 6 SCC 122*.

(14) It is also evident that Sh. Navdeep Gupta, the Handwriting and Finger Print Expert has given his opinion after examining the alleged signatures of Sh. Jaswant Singh on the first and second page of document Ex.P2, which is a photocopy of the alleged genuine agreement to sell. Sh. Navdeep Gupta has compared the correctness of the aforesaid signatures along with signatures of Sh. Jaswant Singh in the Court proceedings. No effort has been made by Sh. Navdeep Gupta to compare the signatures of Sh. Jaswant Singh on Mark-A which is available on the file of the criminal case. Sh. Navdeep Gupta has also not made any attempt to compare the thumb impressions of Smt. Ranjit Kaur on Ex.P2 and Mark-A on the file of the criminal case record. Thus, the plaintiff has not made any attempt to prove that Smt. Ranjit kaur in fact did appended her thumb print on document Ex.P1, Ex.P2 and Ex.P-3.

(15) The judgment passed in a criminal case is also not relevant

because the direct and substantial issue involved in that case is with respect to the alleged forgery of Mark-A, which is not the issue involved in the present case. In the civil suit the court is required to adjudicate upon the genuineness and the validity of documents Ex.P1, Ex.P2, Ex.P3, the receipt, agreement to sell and endorsement evidencing payment of Rs.50,00,000/-. Admittedly, the primary evidence of all these three documents has not been produced. Moreover, the story put forth by the plaintiff is unbelievable. There is no reason to hand over the receipt Ex.P1 to defendants no.1 and 2. It is also equally doubtful that Rs.50,00,000/- was paid by the plaintiff without withdrawing a single penny from any bank.

ANALYSIS OF THE REASONS GIVEN BY THE FIRST APPELLATE COURT

(16) On recapitulation of the facts, it is evident that the first two reasons recorded by the first appellate court is result of its failure to deeply examine the evidence brought on record. The first appellate court is required to reappraise the evidence. However, it is evident that the first appellate court has superfluously examined it without going deep into the matter.

(17) The first appellate court has also erred in recording reason no.3. It is well settled that invariably the Handwriting and Finger Print Expert gives a favourable opinion to the person who has engaged him. Under Section 73 of the Indian Evidence Act, 1872, the Presiding Judge is not debarred from carefully comparing the signatures and finger prints on various documents. As already noticed, the plaintiff himself claims that document Mark-A is fabricated. Only the photocopies of documents Ex.P1, Ex.P2 and Ex.P3 have been produced. Moreover, report of an expert is only

an opinion which is not binding upon the court. Reference should be given to direct evidence when compared with the opinion unless the scientific test has proved credibility like DNA etc. In these circumstances, adverse inference could not be drawn against the defendants for failure to examine Handwriting and Fingerprint Expert.

(18) The fourth reason assigned by the first appellate court is erroneous. Ex.P9, the statement of Sh. Kuljit Singh under Section 313 Cr.P.C was neither relevant nor admissible in evidence as the plaintiff failed to fulfill the requirements of Section 32 and 33 of the Indian Evidence Act, 1872. In any case, Sh. Kuljit Singh only stated that he acted as a middlemen. However, he does not state that defendants no.1 and 2 forged the agreement to sell Mark-A.

(19) Reason No.5 is also without substance because it is evident that the plaintiff on 23.06.2006, itself got the FIR registered. There is no evidence that the plaintiff made a complaint to the Sarpanch of the village or any other person neither he confronted the defendants with Mark-A while alleging that defendants no.1 and 2 have replaced the agreement to sell.

(20) Similarly, reason no.6 also does not have substance because Sh. Jaswant Singh was immediately implicated in the criminal case as on 23.06.2006, FIR was registered against him, his brother and his mother.

(21) The last reason assigned by the Court is again erroneous as in order to prove that Ex.P2 was the agreement to sell executed between the parties, the examination of the regular scribe was important, however, the plaintiff failed to examine him. He has also failed to disclose his name.

At this stage, it will be appropriate to analyze the submissions

of the learned counsel representing the plaintiff(respondent herein).

(22) In this case, it is evident that both the courts have erred in relying upon inadmissible evidence, namely, the testimonies of Sh. Kuljeet Singh recorded under Section 313 Cr.P.C and Sh. Iqbal Singh, the stamp vendor in the criminal case although no efforts have been made to prove that such depositions are relevant as per Section 33 of the Indian Evidence Act, 1872. In absence thereof, it is not permissible to read the testimony recorded in another case by merely producing a certified copy thereof.

(23) The argument no.2 of the learned senior counsel representing the respondent also does not have substance because the judgment passed in a criminal case is not binding on the civil court. Moreover, in criminal case, the court concluded that document Mark-A is forged. However, in the criminal case, the alleged agreement to sell Ex.P2 is required to be proved. The plaintiff was required to prove his case independently.

(24) With reference to argument no.3, it may be noticed that on deeper analysis of evidence of Sh. Munish aggarwal, Pawan Kumar and Sh. Satpal, it becomes evident that there are material contradictions which create doubt/suspicion about the authenticity of the alleged agreement to sell.

(25) Argument no.4 is not required to be dealt with because the plaintiff has failed to make out a case for grant of decree of possession by way of specific performance of the agreement to sell.

RESULT

28. Keeping in view the aforesaid discussion, it is evident that the judgments passed by both the courts are not sustainable. Hence, set aside.

Both the appeals are allowed and the suit filed by the plaintiff shall stands

-37-

29. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

:YES/NO
:YES/NO