

2026:PHHC:063901



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

206

**RSA-1356-1996 (O&M)
Date of decision :27.04.2026**

BRIJ BHUSHAN SHARMA

... APPELLANT

VERSUS

MAHESH KUMAR

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Manish Kumar Singla, Advocate and
Ms. Bhoomika, Advocate
for the appellant.

Mr. Sherry K. Singla, Advocate
for the respondent.

PARMOD GOYAL, J. (ORAL)

1. Present Regular Second Appeal has been preferred by appellant–defendant being aggrieved by the judgment and decree dated 09.09.1993 passed by the learned Additional Senior Sub Judge, Patiala whereby suit for recovery of Rs. 10,000/- preferred by respondent-plaintiff was decreed along with interest @ 12% per annum. Appellant-defendant is also challenging the judgment and decree dated 04.12.1995 passed by the learned Additional District Judge, Patiala, vide which first appeal preferred by the appellant–defendant was dismissed.
2. It is the case of respondent–plaintiff that, in pursuance of an agreement to sell a plot dated 03.06.1989, the appellant–defendant had received ₹10,000/- as earnest money and had duly acknowledged the same vide Ex. P-1.

approached the defendant for execution of the sale deed, he refused to do so. Consequently, the respondent–plaintiff sought recovery of the earnest money from the defendant.

3. *Per contra*, the appellant-defendant categorically denied having executed any agreement to sell dated 03.06.1989 or having acknowledged Rs.10,000/- as earnest money. It was also asserted that Ex. P-1 was forged and fabricated document. It was his stand that no amount had ever been received by him and appellant-defendant accordingly sought dismissal of the suit.

4. In order to prove the due execution of Ex. P-1, the respondent-plaintiff examined one of the attesting witnesses to the agreement namely Jagdish Kumar, who appeared as PW-2 and supported the plaintiff's case and deposed regarding the execution of the agreement as well as the signatures of the appellant-defendant thereon. It is also an admitted position that both parties examined handwriting experts in support of their respective stands.

5. The learned trial Court placed reliance upon the testimony of Diwan K.S. Puri, handwriting expert examined by the respondent-plaintiff or PW-4 and found the same to be cogent and reliable. The evidence of the appellant-defendant's expert (DW-1) was, however, rejected. The trial Court also took note of the conduct of the appellant-defendant in varying and concealing his natural handwriting while signing the written statement, the power of attorney and the specimen signatures given in Court.

6. The learned First Appellate Court, upon reappreciation of the entire evidence, affirmed the findings of the trial Court. It was noticed that the respondent-plaintiff had issued a legal notice calling upon the appellant-defendant to execute the sale deed, but no reply thereto was ever given. The

appellant-defendant neither produced any reply in evidence nor had placed the same on record by way of additional evidence before First Appellate Court. The Appellate Court also reappreciated the testimony of PW-2, the attesting witness, and concurred with the trial Court that merely because the witness was known to the respondent-plaintiff was no ground to discard otherwise credible and reliable testimony. Further, the Appellate Court had examined the expert evidence in detail and considered the report of PW-4, who after comparing the disputed signatures on the agreement with the specimen signatures given in Court, as well as the signatures on the written statement and vakalatnama, opined that the disputed signatures were genuine and that the specimen signatures appeared to have been deliberately varied to avoid identification. This opinion was accepted by the Appellate Court.

7. The learned Court below also considered the evidence of the handwriting expert examined by the appellant-defendant, who had opined that the disputed signatures did not tally with the specimen signatures. However, upon comparative evaluation of the expert evidence, the Appellate Court preferred the opinion of PW-4 and concluded that the signatures of the defendant on Ex. P-1 were genuine.

8. On consideration, I do not find any error in the appreciation of evidence by both the Courts below. Both the Courts below have evaluated the evidence led by the parties in a proper and comprehensive manner and have arrived at a conclusion which is plausible on the touchstone of “preponderance of probabilities”. No error or perversity has been pointed out by learned counsel for the defendant-appellant. The finding that the conduct of the appellant-defendant was not above board, inasmuch as he attempted to suppress or vary

his handwriting, is based on the opinion of PW-4 and has not been shown to be erroneous.

9. Further, the fact that the legal notice issued by the respondent-plaintiff was not replied by the appellant-defendant lends corroboration to the plaintiff's case regarding the execution of the agreement to sell and receipt of ₹10,000/- as earnest money.

10. Faced with the above conclusion, learned counsel for the appellant-defendant has referred to the application (CM-3440-C-1996) filed under Order XLI Rule 27 CPC, 1908 seeking to produce additional evidence before this Court to prove the legal notice.

11. On consideration, I do not find any justification to allow the application under Order XLI Rule 27 CPC, 1908 at this stage. The application is filed at highly belated stage and, in fact, travels beyond the pleadings taken by the appellant-defendant in the written statement. Perusal of the written statement shows that receipt of the legal notice issued by the respondent-plaintiff was admitted, and it was merely asserted that the same had been duly replied to. However, no date of such alleged reply was mentioned in the written statement, nor any evidence was led either before the learned trial Court or before the learned First Appellate Court to prove the issuance of any reply to the said notice.

12. In these circumstances, the present application seeking to lead additional evidence appears to be an attempt on the part of the appellant to fill up lacunae and create evidence at belated stage. The same being beyond the pleadings cannot be permitted.

13. Accordingly, the application (CM-3440-C-1996) under Order XLI

Rule 27 CPC is dismissed.

14. On consideration, I do not find any error in the concurrent findings of fact recorded by the learned Courts below.

15. Faced with the above conclusion, learned counsel for the appellant-defendant has contended that the rate of interest awarded by the learned trial Court @ 12% per annum is contrary to the provisions of the CPC, as no rate of interest had been agreed upon between the parties. I find merit in the said contention raised by the learned counsel for appellant-defendant. In the present case, since there was no agreement between the parties regarding payment of interest, future interest ought to have been awarded @ 6% per annum.

16. Learned counsel for the appellant-defendant has further submitted that a sum of ₹5,000/- had been deposited before the learned First Appellate Court. Let this fact be verified by the Executing Court, and in case it is found that the appellant-defendant had indeed deposited ₹5,000/-, the same shall be adjusted towards the interest component payable by the appellant-defendant, with the remaining amount to be paid in terms of the decree passed by the Courts below, with 6% interest instead of 12% interest.

17. The appeal is accordingly disposed of in the above terms.

18. Pending miscellaneous application(s), if any, also stand(s) disposed of accordingly.

27.04.2026
manoj

(PARMOD GOYAL)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No