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

RSA No. 2891 of 2010 (O&M)
Decided on: 11.09.2017

Kirpal Kaur and others **..........Appellants**

versus

Ritesh and others **........Respondents**

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Govind Chauhan, Advocate
for the appellants.

Mr. Birender Singh Rana, Senior Advocate with
Mr. Parveen Kaushik, Advocate
for respondents No. 1 and 2.

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Rajbir Sehrawat, J.(Oral)

1. This is an appeal filed by the defendants (herein after referred as 'defendants') challenging the decree passed by the learned Appellate Court for granting the relief of specific performance in favour of the respondents (herein after referred as 'plaintiffs'), by modifying decree passed by the trial Court, whereby only the relief of return of earnest money, with interest, was granted. The plaintiffs in the present case are the legal representatives of the vendee and the defendants in the case are legal representatives of the vendor, since both, the vendor and vendee, had expired before filing of the suit.

2. The brief facts of this case are that the plaintiffs filed a suit for specific performance of an agreement dated 11.02.2004, along with decree for permanent injunction restraining the defendants from alienating the land in question. It was pleaded in the plaint that the predecessor-in-interest of defendants No. 1 to 4 merely, Gurmeet Singh, was recorded as owner in possession of land measuring 8 kanals situated in Village Nilokheri, Tehsil Nilokheri District Karnal, described in the plaint. The said Gurmeet Singh executed an agreement to sell in favour of Jai Parkash, the predecessor-in-interest of plaintiffs and the performa defendants No. 5 to 7, for a sale consideration of Rs. 4.00 Lacs. A sum of Rs. 3.50 lacs was paid as earnest money to Gurmeet Singh. The target date for execution of the sale deed in favour of the vendee or his assignee was fixed as 10.02.2005, on payment of balance sale consideration. It was further agreed that if the vendor failed to perform his part of the agreement then the vendee would be entitled to the double of the earnest money or to get the sale deed executed and registered through the Court. It was further agreed that if the vendee failed to perform his part of the agreement then the earnest money would stand forfeited. It was pleaded by the plaintiffs that during his life time, Jai Parkash, the vendee, was willing to perform his part of agreement and after his death, the plaintiffs, as his legal representatives, approached the defendants to perform their part of agreement, in terms of the agreement to sell dated 11.02.2004. Since the defendants kept the matter deferring, therefore, the plaintiffs served a legal notice dated 14.01.2005 asking the defendants to appear in the office of Sub Registrar, Nilokheri on 10.02.2005 for execution of the sale deed, as per the last target date fixed in the agreement. The plaintiffs

reached the office of the Sub Registrar on 10.02.2005 with the balance sale consideration and the money required for purchase of stamp papers and other expenses. However, the defendants did not turn up till 5.00 PM. The plaintiffs got their presence marked by moving an application to the Sub Registrar, Nilokheri, who made endorsement thereon and returned the application, along with the affidavit of the plaintiff, which was attested by the Sub Registrar. It was pleaded that the plaintiffs again served registered A.D. legal notice on 18.02.2005; on the defendants asking them to execute the sale deed within 15 days; on receiving balance sale consideration. However, the defendants did not come forward. Hence, the suit was filed by the plaintiffs.

3. The defendants No. 1 to 3 contested the suit. Written statement was filed, taking routine preliminary objections and contesting the suit on merits. It was pleaded by the contesting defendants that the agreement dated 11.02.2004 was a false, fake, fabricated and fraudulent document. The same was never executed by their predecessor-in-interest, Gurmeet Singh. It was further pleaded that the said Gurmeet Singh was illiterate person addicted to vices and his thumb impressions were obtained on blank papers by Jai Parkash, who was a cloth shop owner in Nilokheri. The thumb impressions were obtained by Jai Parkash because Gurmeet Singh used to visit him to purchase cloth from his shop. Further, receipt of Rs. 3.50 Lacs was stated to be a fact; which was false, fabricated and manipulated. It was pleaded that the suit land was part of joint holding of the defendants and other co-owners. Therefore, Gurmeet Singh, the vendor, could not have delivered the possession of the specific khasra numbers to the plaintiff. It was pleaded by the defendants that they never

received the copy of the alleged notices sent by the plaintiffs. On the contrary, it was the defendants, who through their counsel, had requested the plaintiffs to send the photocopy of the agreement, receipt and other documents pertaining to the agreement. However, these documents were never sent by the plaintiffs. Hence, the dismissal of the suit was prayed for.

4. Parties led their respective evidence.

5. After appreciating the evidence and hearing the parties, the trial Court held that the agreement was validly executed between Gurmeet Singh and Jai Parkash, for a sale consideration. It was further held that the amount of Rs. 3.50 Lacs was paid by the vendee to the vendor. However, while considering the question of relief to be granted to the plaintiffs, the trial Court recorded that it appears that the agreement, Ex.P2, may have been executed as a security document for repayment of loan. Therefore, instead of granting the relief of specific performance, the trial Court passed a decree for return of earnest money, along with interest at the rate of 6%. Aggrieved of this judgment and decree, the plaintiffs filed an appeal before the lower Appellate Court to claim a decree for execution of the sale deed. However, it deserves to be mentioned here that the defendants did not file any further appeal challenging the judgment and decree passed by the trial Court. Therefore, they accepted the finding of the trial Court regarding the agreement having been duly executed and the earnest money having been paid to them.

6. While considering the appeal filed by the plaintiffs, the lower Appellate Court held that since the agreement in question had been duly proved and the defendants had failed to bring their case in the exceptions created

under Section 20 of the Specific Reliefs Act, therefore, relief of execution of the sale deed by way of a decree of specific performance, is the proper relief to be granted to the plaintiffs. Accordingly, the lower Appellate Court decreed the suit filed by the plaintiffs in toto. While passing this decree, the lower Appellate Court duly considered the argument raised by the defendants that the agreement in question was executed as a security document for securing the loan which was taken by the vendor to perform the marriage of his daughter. However, this plea was rejected by the lower Appellate Court. The lower Appellate Court recorded a finding that there was no plea taken by the defendants in their written statement that agreement in question was a security document, nor was it claimed that vendor-Gurmeet Singh had borrowed the said money from vendee-Jai Parkash to meet out the expenses of his daughter's marriage. On the contrary, the plea taken by the defendants was that the agreement dated 11.02.2004 was a fraudulent document, fabricated by the plaintiffs on the blank papers on which the thumb impressions of Gurmeet Singh were obtained by the vendee, by taking advantage of illiteracy and addiction of vices of vendor-Gurmeet Singh. Still further, it was held by the lower Appellate Court that even in the notice, Ex.P11, the defendants never stated that Gurmeet Singh had borrowed money from Jai Parkash; nor was it claimed that the agreement was a document of security. It was held by the lower Appellate Court that once the plea of fraud is taken by the defendants then they could have succeeded only by proving the fraud. Still further, it was recorded by the lower Appellate Court that mere fact that the agreement, Ex. P2, contains recital that possession was delivered to the vendee but the plaintiffs admitted that the possession was with the defendants; is not sufficient for the Court to come to the conclusion that the document of agreement was executed as security. It was further held that the plaintiffs had been fair enough to say that they are not in possession of the property and their fairness cannot be made a ground to cast doubt over the nature of an agreement, which otherwise stands proved on record. Assailing these findings, the present appeal has been filed by the defendants.

7. While arguing the case the learned Senior counsel for the appellants has submitted that the case of the appellants/defendants is covered by Clause (a) and (c) of Section 20 of the Specific Reliefs Act. The nature of the transaction shows that the vendor was in such a situation that he had to sign the agreement to secure the money which he was taking for marriage of his daughter. Learned counsel further argues that this fact is shown by the fact that 90% of the sale consideration was already paid in the first instance and still the date for execution of the sale deed is shown to be after one year of the execution of the said agreement. It is further submission that even the witnesses examined by the plaintiffs have indicated it to be a loan agreement. Still further, it is argued by him that the vendor was so constrained in the circumstances that he had gone to the extent of agreeing to a recital in the said agreement to say that possession has been delivered to the vendee, although, the plaintiffs have admitted that the possession of the property is still with the defendants. To support his argument, learned counsel for the appellants relies upon the judgments reported in ***1996(1) Civil Court Cases 9*** titled as ***Gurbax Singh Versus Labhu Ram*** and ***1995 (2) Civil Court Cases 1*** titled as ***S.Rangaraju Naidu Versus S. Thiruvarakkarasu***. Learned counsel

further relies upon the judgment reported in ***2017 (2) RCR Civil 104*** titled as ***Jayakantham and others Versus Abaykumar*** and judgment reported in ***2015 (4) RCR (Civil) 259*** titled as ***K.Nanjappa (Dead) by LRs Versus R.A.Hameed alias Ameersab (Dead) by LRs and another***; to contend that in the similar situation, where there was a recital regarding handing over possession to the vendee and it was found that possession was, in fact, not delivered in the transaction, therefore, the Court granted the alternate relief of return of money and not the decree of specific performance regarding the execution of the sale deed. Still further, he relies upon the judgment reported in ***2013 (1) RCR (Civil) 503*** titled as ***Suresh Singla Versus Smt. Phool Pati and another***; to support his arguments that where the target date for execution of the sale deed is set after a long duration and 90% of the sale consideration is claimed to have been paid as earnest money then the inference would be that the agreement was a security document for securing the loan. The next argument raised by the learned Senior counsel for the appellants is that once the parties are alive to controversy, led the evidence, then the Court can decide an issue in favour of the defendant, even if the plea is not taken. To support his contention learned counsel relied upon the judgment of this Court in ***AIR 1981 Punjab and Haryana High Court 397*** titled as ***Ram Niwas and another Versus Rakesh Kumar and others***. It is his further submission that, it is the witness examined by the plaintiffs themselves who is supporting the claim of the defendants qua the plea of loan, therefore, no prejudice would be caused to the plaintiffs in case the decree for only return of earnest money is passed by denying the decree for specific performance qua execution of the sale deed. To support his argument learned Senior counsel for the appellant relied upon the judgment reported in ***AIR 1956 SC 593*** titled as ***Nagubai Ammal and others Versus B.Shama Rao and others*** and the judgment reported in ***2002 (1) PLJ 390*** titled as ***Purushottam Reddy Versus M/s Pratap Steels***.

8. On the other hand, learned counsel for the respondents/plaintiffs argued that the appellants/defendants had taken a categoric plea of fraud alleging that thumb impressions of the vendor were obtained by the predecessor of the plaintiffs on blank papers, by taking advantage of his illiteracy and bad habits. Therefore, they cannot turn around and take a plea that the agreement in question was a loan agreement. These are mutually destructive and inconsistent plea. It is further argued by the learned Senior counsel for the respondents that the witness of the plaintiffs never admitted that the agreement in question was intended to secure any loan or that there was any loan transaction between the parties. Rather PW5, has admitted that he was called to Tehsil by Gurmeet Singh, vendor and the money was paid in Tehsil. He has denied involvement of any loan transaction in the matter and he denied the fraud. Although this witness had admitted that there was marriage of vendor's daughter, fixed after some days of the alleged agreement, however, he had specifically denied that money was taken as any loan by the vendor. It is further argued by learned counsel for the appellant that the defendant-Gurdev Singh as DW2, while appearing before the Court has not even talked of any loan or the transaction being any security transaction. It is his argument that despite having full knowledge of evidence already led by the plaintiffs in the case, this witness, while appearing as DW2, has not

raised any plea regarding any loan transaction between the vendee and the vendor. He, as a witness also, stressed upon the plea of the defendants regarding the fraud and fabrication involved in the agreement. Even the receipt of the money was denied by these witnesses. So far as the marriage of the daughter of the vendor is concerned, this witness, despite being a son of the vendor, has stated that he did not know how much money was spent on the marriage of his sister. He has further contradicted his plea taken in written statement regarding vices of his father, by admitting in cross examination that his father was a good and religious person and that he had no vices. Further, learned Senior counsel for the respondents submits that it is only DW1 Harbhajan Singh, who for the first time, introduced the theory of loan being taken by the vendor and the transaction being a security transaction, although executed as an agreement to sell. Learned counsel submits that after the examination of this witness as DW1, the DW2, Gurdev Singh who was the son of the vendor was examined. Even he had not supported the statement made by DW1 regarding any loan transaction. Still further, it is the argument of the learned counsel for the respondents that DW1, Harbhajan Singh who introduced the element of loan in the agreement was not even a witness to the agreement to sell. He is otherwise uncle of the defendants who has contradicted himself, by also taking a plea of fraud involved in the case, as claimed by the defendants in the written statement. Learned counsel for the respondents further relied upon the judgment reported in ***2007 (2) RCR(Civil) 290*** titled as ***P.S.Ranakrishna Reddy Versus M.K. Bagyalakshmi and another***; to contend that the intention of the parties in the agreement to sell is to be gathered from the document and its clauses.

It is his further submission that in the present case the default clause included in the agreement, defines even the consequences of breach which were agreed to by the parties. Hence, the agreement clearly laid down the rights of the parties without any ambiguity. Therefore, there is no scope of introduction of element of loan in execution of the agreement to sell. He further relied upon the judgment reported in ***1998 (2) RCR (Civil) 642*** titled as ***Ram Dass Versus Ram Lubhaya***; to contend that jurisdiction under Section 20 is the Jurisdiction of equity. This section defines the scope of discretion to be exercised by the Court and that the Court would exercise the discretion under Section 20, only in those cases where the conscience of Court is pricked. However, in the present case, the defendants had positively claimed fraud in execution of the agreement. The defendants had not even pleaded the aspect relating to any loan being taken by vendor. Therefore, the relief cannot be denied to the plaintiffs merely on vague and unsubstantiated plea, which is not supported by any cogent evidence on file. Still further, it is his argument that the fact that the vendor might have needed some money justifies the sale of land through the agreement to sell. Hence, even the need of the vendor, though not proved on record, would support the validity of the agreement to sell in favour of the plaintiffs.

9. After having heard the learned counsel for the parties and perusing the record available on the file; with the able assistance of the learned counsel for the parties, this Court is of the considered view that the lower Appellate Court has not committed any illegality while passing the impugned judgment and decree. The arguments raised by the learned counsel for the appellants are not found to be sustainable in law. There is

no dispute with the proposition of law contained in the judgments cited by the learned counsel for the appellants. However, the same are distinguishable on the facts of the present case. So far as the validity of agreement in question in the present case is concerned, the same has already been held to be in favour of the plaintiffs by the trial Court. The present appellants did not file any appeal challenging that finding. Hence, having accepted the finding of the trial Court, the defendants cannot be permitted to take a somersault and start questioning the validity of the sale deed in a disguised form. Hence, the agreement in question cannot be discarded only because the defendants had chosen to introduce the plea of loan at the fag end of their evidence without even pleading the same in their written statement or any other pleadings.

10. Mere fact that the major part of the consideration money has already been paid and parties to the agreement have chosen to fix a longer date for execution of the sale deed; does not lead to inference that terms included in the agreement were not intended or that the transaction was for some other purpose, like securing the loan, which might be claimed to have been availed by vendor. The parties to the agreement are free to agree on any terms and to reduce the same in writing as part of the agreement. The Court is not required to attach intentions to the terms agreed to between the parties. If any intention, other than what is recorded in the agreement, is to be claimed by the party to the agreement then that intention has to be proved, as a matter of fact, by leading positive evidence on this point. If there is no other evidence claimed and proved on file, then the terms of agreement, as proved by the plaintiffs have to be accepted by the Court and the relief has to be granted

according to the claim made by the plaintiffs.

11.Scope of Section 20 of the Act is not wild and wide open to include every possible reason to deny specific performance qua execution of sale deed. The discretion which can be exercised by the Court under Section 20 of the Act is circumscribed by the factors mentioned in this Section. The Court has to adhere strictly to those factors, while exercising the discretion to deny to the plaintiff the relief of specific performance. The Court cannot create any ground, beyond what is prescribed in the Act, to deny the relief of specific performance to the plaintiff. Applying the Section 20 of the Act, in the present case, the defendants could have shown to the Court that the conduct and circumstances of the parties at the time of agreement were such, which gave the vendee an undue influence advantage over the vendor. However, there is no pleading regarding any undue influence or the compelling circumstances, existing at the time of entering into the agreement, pleaded or proved by the defendants. There is no pleading by the defendants that the vendor was so hard pressed that he had to enter into an agreement to sell, just to arrange for money which was required by him for the marriage of his daughter. There is not even any assertion in the statement made before the Court by the defendants while appearing as DW2 that their father required money for marriage of their sister and therefore, he was put under compelling circumstances at the time of the execution of the agreement. Hence, neither there is any plea nor the evidence regarding the existence of any conduct or compelling circumstances at the time of execution of the agreement to bring the case within the scope of Section 20 of the Act.

12.The contention of the learned counsel for the appellants that the witness of the plaintiffs itself has admitted, regarding the money being advanced as loan, is factually incorrect. There is no such admission by any witness. Rather PW5 has specifically denied any fraud in the execution of the agreement and also the averment that the money advanced in the transaction was advanced as loan to the vendor. Even DW1, who was not even the witness to the transaction and who alone introduced this element of loan in the transaction, have also admitted in cross examination that no money was taken by the vendor for the marriage of his daughter. Therefore, even this witness has contradicted himself on the fact of money being advanced to the vendor as loan for the marriage of the daughter of the vendor. Hence, the plea of loan is not even proved by the witness who tried to introduce this plea.

13.The contention of the learned counsel for the appellants that the agreement contains the stipulation that possession has been delivered but, in fact, the plaintiffs have admitted the possession to be with defendants and, therefore, the presumption has to be raised that it was a loan transaction; is to be noticed only to be rejected. As is observed above, the agreement entered into between the parties only tells as to what terms the parties agreed upon. Any recital in the agreement, in itself, is not the proof of the fact contained in that recital. Facts mentioned in the agreement also has to be proved by leading evidence to seek the specific performance of the agreement. Mere fact that the plaintiffs have fairly admitted that possession is not with them, does not mean that the essential facts regarding agreement to sell, passing of consideration is not proved by the plaintiffs. It is well settled law that a recital regarding possession, contained even in a registered sale deed, is not the conclusive proof of the factum of handing over of the possession, as recorded in the sale deed. Even in that situation, this fact is to be independently proved. As compared to finalised registered contract of sale of property, the agreement to sell shall stand at much lower footing. Therefore, merely because a recital, regarding the possession as recorded in the agreement, is not found to be correct, that does not mean that the agreement is falsified. The vendee becomes entitled to specific performance of the agreement, the moment he shows the execution of the agreement, the passing of consideration and the capacity of the person to enter into the agreement. The fact that, a recital regarding possession having been delivered is wrongly included in such an agreement; is of no consequences, so far as the suit for specific performance is concerned.

14.This Court finds substance in the arguments raised by the learned counsel for the respondents that the jurisdiction under Section 20 of the Act is a jurisdiction of equity; and it can be availed in favour of the person who shows the existence of and by proving the factors as provided in Section 20 of the Act. His argument, that since the defendants, in their attempt to grab the property illegally, has gone to the extent of vilifying even their own father in the pleadings and they could not prove those allegations, shows that equity cannot be invoked by these persons, is worth sustaining. The defendants had taken positive plea of fraud by leveling allegations against even their own father. They failed to prove either the fraud in the matter, the allegations against their own father or even the fact that their father was so stressed by the circumstance, at the time of execution of the agreement, that he had to put his signatures on the agreement to sell to come out of the stressing circumstances. Hence, the case for exercising of discretion in favour of the defendants under Section 20 of the Act is not made out. There is no illegality or infirmity or perversity in the conclusion so arrived, at in this regard, by the lower Appellate Court.

15.No other argument was raised by the learned counsel for the parties.

16.In view of the above, the present appeal is dismissed being devoid of any merits.

11th September, 2017 **[RAJBIR SEHRAWAT]**
shabha **JUDGE**

Whether speaking/reasoned - Yes
Whether reportable - Yes