

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

**RSA No.3831 of 2016 (O&M)**

Date of Decision: July 13, 2018

Gaurav Kumar

...Appellant

Versus

Bhushan Kumar and another

...Respondents

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

Present: Mr.Ashish Aggarwal, Sr.Advocate with  
Mr.Govind Chauhan, Advocate for  
the appellant.

\*\*\*

**HARINDER SINGH SIDHU, J.**

The plaintiff has filed this regular second appeal against the judgment and decree dated 19.5.2016 of the Additional District Judge, Karnal, whereby, the appeal of the defendants – respondents against the judgment and decree dated 28.4.2014 of Civil Judge (Senior Division), Karnal was allowed and the judgment of the trial Court decreeing the suit was set aside.

The plaintiff had filed a suit for specific performance with the averment that the defendants representing themselves as owners in possession of a three storied house measuring 190 Sq. Yards situated near Sanatan Dharam Mandir, Gharaunda, District Karnal agreed to sell the same to the plaintiff for a sum of Rs.28,00,000/-. An agreement to sell dated 21.1.2011 was entered into in favour of the plaintiff. The defendants received a sum of Rs.7,00,000/- at the time of execution of the agreement.

The agreement was attested by Dashrath Singh Advocate, Notary Public, Gharaunda. The sale deed was to be executed on 10.5.2011. Later, a supplementary agreement dated 4.2.2011 was entered into between the parties and an additional amount of Rs.3,00,000/- was received by the defendants. It was agreed that possession of the suit property would be given at the time of execution and registration of the sale-deed. The plaintiff has always been and still is ready and willing to perform his part of the agreement. In terms of the agreement, the plaintiff went to the office of Sub-Registrar, Gharaunda on 10.5.2011 with balance sale consideration of Rs.18,00,000/- and remained present there from 9 am to 5 pm, but the defendants did not turn up to perform their part of the agreement. Accordingly, he got his presence marked before the Executive Magistrate-cum-Sub-Registrar, Gharaunda. The plaintiff also sent a legal notice dated 23.5.2011 to the defendants, but received no response. It was further pleaded that the plaintiff later learnt that the defendants did not possess 190 sq. yards area in the said house, but merely owned 170 sq. yards, which had been purchased through two registered sale-deeds (i) sale-deed No.1721 dated 28.9.1995 for 67 sq. yards purchased from Maya Rani w/o Amar Nath and (ii) sale-deed No.2316 dated 1.3.2011 for 103 sq. yards, purchased by defendant No.2 from Raj Kumar s/o Mange Ram.

The defendants are husband and wife. Their case was that they are both serving in a school at Nilokheri. Defendant No.2 was suffering from breast cancer and was under treatment at Rajiv Gandhi Cancer Institute and Research Centre, Rohini, Delhi (for short “the Institute”) The defendants did not have sufficient funds for the treatment. So, they requested the

plaintiff to lend Rs.7,00,000/- for treatment of defendant No.2. It was agreed that the same would be repaid after six months. The plaintiff arranged for and lent Rs.7,00,000/- to the defendants on 1.6.2010 at fixed interest of one and half per cent per month. This was settled in the presence of Inder Lal and 2-3 other family members of the plaintiff and defendants. The defendants have paid the interest of the amount till December, 2010. The defendants requested the plaintiff for six more months to repay the loan amount. They also requested the plaintiff to lend another Rs.3,00,000/- for treatment of defendant No.2. The plaintiff lent the amount of Rs.3,00,000/- and the supplementary agreement to sell dated 4.2.2011 was executed for repayment of the loan amount. The receipt of the legal notice dated 23.5.2011 was acknowledged. No reply could be given as defendant No.2 was in a critical condition. However, the defendants requested the plaintiff not to initiate any legal proceedings as they were ready to repay the loan amount of Rs.10,00,000/- along with interest of 1.5% to the plaintiff. But the plaintiff dishonestly filed the suit basing himself on the agreements, which to his knowledge, were executed only as security for the loan amount.

To prove his case, the plaintiff examined Mahavir Gupta, Stamp Vendor as PW1. He deposed that as per record, there is entry at Sr.No.4904 dated 21.1.2011 regarding the agreement executed by Bhushan Kumar s/o Chander Bhan with his signatures against that entry. He further deposed that he had scribed the agreement at the instructions of Bhushan Kumar and Deepika – defendants No.1 and 2 in favour of Gaurav Kumar for selling three-storied house, total measuring 190 sq. yards for a sum of Rs.28,00,000/-. Rs.7,00,000/- were paid as earnest money and 10.5.2011

was the date for execution of the sale-deed. He proved the original agreement to sell as Ex.PW1/B. PW2 Joginder Singh, Registration Clerk from the office of Sub-Registrar, Gharaunda proved the affidavit Ex.PW2/A of the plaintiff attested by Shri Inder Singh Tehsildar-cum-Executive Magistrate, Gharaunda and the relevant entry in the Register Ex.PW2/B. PW3 Dashrath Singh, Advocate, Notary Public Gharaunda deposed that on 21.1.2011, he had attested the agreement to sell Ex.PW1/B at the instance of the parties and proved entry in this regard made at Sr.No.655 in the Register as Ex.PW3/A. PW4 Gaurav Kumar, plaintiff in his deposition reiterated the contents of plaint. PW5 Pushpender Sharma, Agriculture Officer, OBC, Nilokheri proved the computer generated joint account of defendants as Ex.PW5/A. PW6 Rajesh Kumar, attesting witness supported the claim of the plaintiff. PW7 Karambir Registration Clerk office of Sub-Registrar, Nilokheri brought the summoned record of sale deeds bearing No.2060/1 and 2061/1 dated 3.2.2011 and proved their certified copies. He also brought the summoned record pertaining to lease deed No.947 dated 10.07.2012 and proved its certified copy Ex. PW 7/C. PW8 Rajbir Singh, Assistant, Sub-Treasury Office, Gharaunda deposed that as per entry of Register dated 10.5.2011, the plaintiff had filled up a challan for purchasing stamp paper of Rs.1,96,000/- and proved the photocopy of the Register Ex.PW8/A.

On behalf of the defendants, defendant No.2 appeared as DW2 and her father Inder Lal appeared as DW1. DW3 Pushpender Sharma, AO, OBC, Nilokheri produced the statement of account of defendant No.1 as Ex.DW3/A. He deposed that a cheque of Rs.10,00,000/- bearing No.519466 was deposited in the account. DW4 K.S.Rana, Manager, Medical Records,

of the Institute produced the medical record of defendant No.2. He deposed that as per record, defendant No.2 first visited the OPD on 7.6.2010. She continuously remained under treatment and last visited the OPD on 10.12.2013. He proved the discharge summary Ex.DW4/A. DW5 Vikas Kumar, Clerk, SBOP, Nilokheri deposed that a cheque of Rs.10,00,000/- dated 21.12.2011 was issued by Krishan Lal in favour of Bhushan Kumar - defendant No.1 and it was cleared on the same day. He proved the attested copy of the account of Krishan Lal Ex.DW5/A and an attested copy of the statement of accounts Ex.DW5/C.

On the basis of the aforesaid evidence, the Ld.Trial Court held that the execution of the agreement to sell dated 21.1.2011 and the supplementary agreement dated 4.2.2011 had been duly proved by the plaintiff. Moreover, the defendants had admitted the agreement Ex.PW1/B and also admitted the receipt of Rs.7,00,000/-. However they have not been able to prove their contention that the agreement was executed only as a security for the loan taken by the defendants from the plaintiff. It was further concluded that from Ex.PW7/A and Ex.PW7/B, it was evident that defendant No.2 and her brother had purchased property in Nilokheri on 3.2.2011, which was leased out to OBC on monthly rent of Rs.40,700/- vide Ex.PW7/C. Ex.DW5/A revealed that Rs.10,00,000/- were deposited in the account of defendant No.1 on 21.12.2011 by Krishan Lal, which according to the Trial Court falsified the claim of the defendants that they were unable to repay the loan. The agreement to sell having been proved, the plaintiff was also able to prove that he was ready and willing to perform

on 10.5.2011 and got his presence marked. Accordingly, the suit was decreed.

The Ld. Lower Appellate Court however found merit in the contention of the defendants that the agreement to sell was executed as a security for repayment of the loan raised by the defendants for the treatment of defendant No.2 at the Institute. Its conclusion was fortified by the consideration that at the time of the agreement to sell the defendants had clear title only qua 67 sq. yards, which they had purchased in the year 1995. The defendants had entered into an agreement to sell in respect of 103 sq. yards with Raj Kumar s/o Mange Ram, full payment whereof had been made. The plaintiff had signed the agreement to sell knowing fully well that the defendants did not have title of the property. Possession also was not delivered to the defendants on the day of the execution of the agreement. The agreement to sell clearly mentioned that “*Kahja Registry Ke Waqt Diya Jayega*”.

The Court further held that as at the time of the agreement to sell, the defendants did not have title of the entire 190 sq. yards agreed to be sold, the plaintiff could not enforce the agreement in view of Section 17 of the Specific Relief Act, 1963.

Further noting that the remedy of specific performance is an equitable remedy and is in the discretion of the Court which would be cautious to see that it is not used as an instrument of oppression or allow a party to take undue advantage over the other, the Court did not grant the relief of specific performance but granted the alternative relief of liability to

repay Rs.7,00,000/- plus Rs.3,00,000/- with interest @ 18% p.a. from the

date of agreement to sell dated 21.01.2011 and supplementary agreement/endorsement dated 2.4.2011, respectively, till its repayment. The appeal was allowed and the judgment of the Trial Court was set aside.

Sh. Ashish Aggarwal, Ld. Senior Counsel for the appellant has rightly contended that the Ld. Lower Appellate Court has wrongly relied on Section 17 of the Specific Relief Act to hold that as the defendants did not have title to the entire 190 sq. yards agreed to be sold, but were owners in possession of only 67 sq. yards, the agreement could not be specifically enforced by the plaintiff. In this regard, he rightly contended that Section 17 of the Specific Relief Act provides that in such a situation the contract to sell cannot be enforced in favour of the vendor or lessor. The suit having been filed by the vendee, this section had no application. The plaintiff's case would be governed by Section 13 of the Specific Relief Act as per which where a person having no title or only an imperfect title contracts to sell property, subsequently acquired any interest in the property, the purchaser may compel him to make good the contract out of such interest. In this case as before the date fixed for execution of the sale deed i.e., 10.05.2011, the defendants had purchased 103 sq. yards from Raj Kumar son of Mange Ram vide sale deed No.2316 dated 1.3.2011, the plaintiff had a right to enforce the agreement qua 69 + 103 sq. yards i.e., 170 sq. yards. .

Notwithstanding the aforesaid error in the finding of the Lower Appellate Court, the appeal of the plaintiff cannot succeed. The defendants have candidly admitted the execution of the agreement/supplementary agreement, the receipt of the money and their signatures on the agreement.

the loan of Rs.7,00,000/- and Rs.3,00,000/- taken by them from the plaintiff necessitated by the treatment for cancer that defendant No.2 was taking from the Institute. The defendants have examined DW4 K.S. Rana, Manager Medical Record, of the said Institute, who on the basis of the record stated that defendant No.2 had first come to the OPD on 07.06.2010 and for the last time on 10.12.2013. Evidently, the treatment and follow up took considerable time. When a person is diagnosed with the cancer it is not even possible to hazard a guess about the expenses involved, which certainly would be high. The immediate reaction of the family would be to pool all their resources, to have as much ready cash as they can arrange. The fact that on 21.12.2011 a cheque of Rs.10 lakh was deposited from the account of Krishan Lal in the account of defendant No.1 does not negate the version of the defendants that they had taken a loan from the plaintiff. At a time when defendant No.2 was undergoing treatment for cancer, their focus would be to have at hand ready money to meet any expense. Repayment of loan would be farthest from their mind. Moreover, if the defendants were that well off, and did not need money as is the contention of the plaintiff, there was no reason for them to have executed the agreement to sell regarding their residential house.

The fact that a plot was purchased in the joint names of defendant No.2 and her brother Parveen, which was thereafter leased out, would not go to show that defendants had spare money and did not need to raise a loan. The plaintiff has not proved any bank account of defendant No.2 to show that the sale consideration for the plot went from her account. There may be any number of reasons for a brother to buy a plot jointly with his

ailing sister.

The Ld Lower Appellate Court has rightly reversed the finding of the Trial Court and come to the conclusion that the agreements to sell dated 21.1.2011 and 4.2.2011 were executed as security for the loan raised by the defendants for the medical treatment of defendant No.2. It has also rightly held that the circumstances of this case do not warrant the grant of the relief of specific performance.

There is no infirmity in the findings of the Lower Appellate Court. No substantial question of law arises for decision in this case.

Accordingly, the appeal is dismissed.

July 13, 2018

gian

**( HARINDER SINGH SIDHU )  
JUDGE**

|                             |          |
|-----------------------------|----------|
| Whether Speaking / Reasoned | Yes      |
| Whether Reportable          | Yes / No |