

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

RSA No.4678 of 2014 (O&M)

Date of Decision.23.03.2018

Jaswant Ram

Vs

.....Appellant

Karnail Singh

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. V.P. Arora, Advocate
for the appellant.

Mr. Gurnam Singh, Advocate
for the respondent.

-.-

AMIT RAWAL J.(ORAL)

C.M. No.10907-C of 2014

For the reasons stated in the application, delay of 3 days in
filing the appeal is condoned.

Application is allowed.

RSA No.4678 of 2014

The appellant-plaintiff is aggrieved of the judgment and decree
dated 28.03.2014 whereby the appeal preferred by the respondent-defendant
against the judgment and decree dated 25.03.2013 decreeing the suit of the
appellant-plaintiff seeking specific performance of the agreement to sell
dated 24.3.2005, had been set aside.

The appellant-plaintiff instituted the suit on 23.05.2006 seeking
specific performance of agreement to sell dated 24.3.2005 in respect of the
suit land on payment of earnest money of ₹2,42,000/- against total sale
consideration of ₹2,50,000/-. The stipulated date for execution and
registration of the sale deed was 25.11.2005. The suit aforementioned was

preceded by legal notice Ex.P4 and receipt Ex.P5. Since the defendant, as

per the averment made in the plaint, did not come forward for execution and registration of the sale deed, the suit aforementioned was filed.

On notice, the defendant appeared and filed the written statement, denied the contents of the agreement to sell but averred that it was a loan transaction i.e. the friendly loan of ₹65,000/- from the plaintiff about three years ago but the defendant could not repay the said amount due to family problem. The plaintiff by extending threats and undue influence got executed the agreement to sell dated 24.03.2005 which was only as a security for the payment of the loan amount of ₹65,000/-.

The trial Court on the basis of pleadings framed the following issues:-

- “1. Whether the plaintiff is entitled to possession of house in suit by way of specific performance of agreement dated 24.3.2005? OPP*
- 2. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*
- 3. Whether in alternative the plaintiff entitled to recovery of Rs.2,50,000/- along with interest @18% PA? OPP.*
- 4. Whether defendant is entitled for compensatory costs under Section 35A CPC? OPD*
- 5. Relief.”*

In support of plaint, the plaintiff examined PW-1 Ravel Singh, plaintiff himself as PW-2, Sheetal Ram Numberdar of the village Saidkheri as PW3, PW-4 Charanjiv Kumar Stamp Vendor and closed the evidence, whereas, the defendant examined himself as DW1, DW2 Brij Mohan and closed the evidence.

suit on the premise that the agreement to sell had been proved. In appeal, the lower Appellate Court set aside the aforementioned judgment and decree of the trial Court by giving the observation as under:-

“.....The perusal of Ex.P1 shows that the same was witnessed by Ravel Singh son of Kartar Singh and Brij Mohan son of Deen Dial and per agreement to sell a sum of Rs.2,42,000/- is stated to have been received by Karnail Singh. The plaintiff in order to prove his case examination in chief he deposed as per version of the plaintiff but in the cross-examination he deposed that he is labourer by profession and he does not know the contents of his affidavit Ex.PE1/A which he has submitted by way of examination in chief. He deposed that Ex.P1 was written in his presence and the same was scribed by Deen Dial deed writer and he had also put his signatures. He has further admitted that the plaintiff has given the loan of Rs.50,000/- to the defendant and this amount was paid by the plaintiff of the defendant in the court premises at Rajpura. He further deposed that no writing was executed between the plaintiff and the defendant and only agreement to sell was executed. He further admitted to be correct that agreement to sell was executed on the same day when loan amount of Rs.50,000/- was given by the plaintiff to the defendant.”

Mr. Arora, learned counsel appearing on behalf of the appellant has drawn attention of the Court to the cross-examination of Jaswant Ram, which, according to him, had erroneously been misread and misinterpreted wherein there is not an iota of whisper with regard to the alleged admission

of extension of loan or his avocation being a labourer, therefore, submitted that the finding of the lower Appellate Court was perverse, as on the one hand it found that the agreement to sell had been proved but on the other confined the relief only to the refund of the money by declining the discretionary relief.

Mr. Gurnam Singh, learned counsel appearing on behalf of the respondent-defendant submitted that the finding of fact arrived at by the lower Appellate Court is perfectly legal and justified and does not call for interference, for, it was a loan transaction. The plaintiff has miserably failed to prove that the parties to agreement at any point of time intended to enter into sale and purchase of land.

I have heard learned counsel for the parties and appraised the paper book. The cross-examination of PW2, Jaswant Ram reads as under:-

“xxxxx examination by Sh. K. K. Sammi, Adv. counsel for the defendant.

I am doing the business of sale purchase of pigs. I am having 12 bighas of land at village Saidkheri. We are three brothers. I am sole owner of this land. I have five children i.e. 3 daughters and two sons. My daughters are unmarried but my one son is married. My elder son is named as Satwinder Singh. He is having his own shop in the city. My younger son is named as Ram Kumar. He is under middle pass. My elder son is 10th class pass. I do not know the name of the school from where he has passed his matriculation. I do not know if he was studying in Govt. N.T.C. Sr. Secondary School, Rajpura, District Patiala. Name of my son is Sukhwinder Singh who is matriculate. The alleged writing written on the

back side of the photocopy of the matriculation certificate of Sukhwinder Singh my son is not in the hand of my son Sukhwinder Singh. It is wrong to suggest that this writing has been prepared by my son on my instructions. The alleged writing is Mark DA. It is wrong to suggest that Karnail Singh borrowed a sum of ₹65,000/- from me in the month of March, 2002. It is wrong to suggest that by calculating the principle and interest we calculated the amount to the tune of ₹2,34,578/-. It is wrong to suggest that by putting pressure and by coercive methods, I got the signatures at the defendant on some blank stamp papers. It is wrong to suggest that I have converted the said stamp paper into an agreement to sell in my favour in connivance with its attesting witnesses. The alleged writing Ex.P1 was scribed by one Deen Dayal son of Mai Dita of village Saidkheri. Witness Brij Mohan is the son of Deen Dayal. The alleged amount of earnest money of ₹2,42,000/- was lying in my house. I have not withdrawn that amount from any bank or some other institution. I handed over this amount of ₹2,42,000/- to the defendant in village Saidkheri. I had seen the document of ownership of the defendant regarding the suit property. I cannot tell the Khasra No. of the disputed property. There are three rooms in the house in dispute, the remaining land is vacant. I also look into the document of Atta Chakki in the name of Karnail Singh defendant. The suit property is shamlat land. The alleged land has been purchased by Karnail Singh from one Khushala Ram. This land was allotted to

Ex.Military man. I served a notice on the defendant before filing the present suit. I am illiterate. I do not know what has been written in my affidavit Ex.PW2/A. I do not know English language. It is wrong to suggest that I have not appeared before Sub Registrar/Executive Magistrate Rajpura on 10.5.2006. I appeared before Executive Magistrate/Sub Registrar Rajpura at about 10/11 AM on 10.5.2006. Shital Dass was with me. We remained present there till 5 PM. It is wrong to suggest that I have not paid any amount of ₹2,42,000/- as earnest money to the defendant Karnail Singh. It is wrong to suggest that defendant Karnail Singh never entered into an agreement to sell in respect of the suit land in my favour. It is wrong to suggest that defendant only borrowed a sum of ₹65,000/- in the month of March 2002. It is further wrong to suggest that I have calculated the amount of ₹2,42,000/- by calculating the heavy interest on it and by putting pressure and using coercive method. It is further wrong to suggest that I had got the signature of Karnail Singh on the stamp paper on which I have converted the same into agreement to sell. It is wrong to suggest that I am deposing falsely.

RO&AC

ACJ/30.01.2012”

On going through the aforementioned evidence, there is not an iota of whisper with regard to admission of extending the loan to the respondent-defendant, much less, his avocation as labourer. In fact, it has come on record that he was engaged in business of sale and purchase of

pigs, rather there was a suggestion of having obtained a sum of ₹65,000/-, which had been denied. The entire focus of the lower Appellate Court had been only on the aforementioned fact which had not been controverted through the testimony of the witnesses. Having failed to do so as per Section 63 of the Indian Evidence Act, it is a fit case where the matter is required to be revisited afresh. Resultantly, the judgment and decree passed by the lower Appellate Court is set aside and the matter is remitted to the lower Appellate Court to decide the same by referring all the evidence on record in accordance with law, as expeditiously as possible and preferably within a period of six months from date of appearance of parties before it.

The regular second appeal is allowed in the aforementioned terms. The parties through their counsel are ordered to be present before the Court on 16.04.2018.

(AMIT RAWAL)
JUDGE

March 23, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No