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KIRPAL KAUR AND ANOTHER

v.

RITESH AND OTHERS

(Civil Appeal No. 1991 of 2022)

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MARCH 22, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Specific Relief Act, 1963: s.20 – Applicability of – Specific performance – Concurrent findings of facts recorded by all the courts below on the execution of agreement to sell and on the payment of part sale consideration of Rs.3,50,000/- by the original plaintiff-vendee to the original defendant-vendor – Merely because in the document the purpose of sale of the property was stated to be for the marriage expenses, the document which otherwise can be said to be an agreement to sell, will not become a loan agreement and/or security document – Once the execution of the agreement to sell for a sale consideration has been believed and it has been found that plaintiffs were always ready and willing to perform their part under the agreement, they were entitled to decree for specific performance – In the facts and circumstances, clauses (a) and (c) of s.20 of the Specific Relief Act shall not be applicable – However, to do the complete justice between the parties and in exercise of powers under Art.142 of the Constitution of India, the original plaintiffs are directed to pay additional Rs.3,50,000/- to the original defendants, over and above the balance sale consideration of Rs.50,000/- – On such payment, the original defendants shall execute the sale deed in favour of original plaintiffs – Constitution of India – Art.142.

Dismissing the appeal, the Court

HELD: 1. There were concurrent findings of facts recorded by all the courts below on the execution of agreement dated 11.02.2004 and on the payment of part sale consideration of Rs.3,50,000/- by the vendee to the vendor. The trial Court refused to grant the relief of specific performance solely on the ground that the agreement might have been executed as a security document for repayment of loan. However, even the trial Court also specifically held that the agreement was validly executed for

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a sale consideration. The plaintiffs preferred the appeal before the first appellate Court against refusal to pass a decree for specific performance. The defendants did not prefer any appeal before the first appellate Court against the findings recorded by the trial Court on execution of the agreement and on payment of part sale consideration. Therefore, the findings recorded by the trial Court that the agreement was validly executed for a sale consideration has attained finality. [Para 5][804-F-H; 805-A-B]

2. Merely because in the document the purpose of sale of the property was stated to be for the marriage expenses, the document which otherwise can be said to be an agreement to sell, will not become a loan agreement and/or security document. If the agreement as a whole is read, it is an agreement to sell. Both, the first appellate Court and the High Court rightly not accepted the case on behalf of the defendants that the agreement is a loan agreement and/or security document. It was never the case on behalf of the defendants before the trial Court that the agreement is a loan agreement and/or security document. Before the trial Court, the defendants denied totally the very execution of the agreement and receipt of Rs.3,50,000/-, which was rightly disbelieved even by the trial Court. Before the first appellate Court, for the first time, the defendants came out with a case that the agreement was a loan agreement and/or security document. [Para 6][805-D-F]

3. Once the execution of the agreement to sell for a sale consideration was believed and it was found that the vendee and thereafter, the original plaintiffs were always ready and willing to perform their part under the agreement and in fact they remained present before the Sub Registrar on 10.02.2005, which was established and proved, the decree for specific performance was rightly passed by the first appellate Court, which is rightly confirmed by the High Court. In the facts and circumstances, clauses (a) & (c) of Section 20 of the Specific Relief Act shall not be applicable and/or attracted. However, at the same time to do the complete justice between the parties and in exercise of powers under Article 142 of the Constitution of India, the original plaintiffs are directed to pay additional Rs.3,50,000/- to the

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A **appellants-original defendants, over and above the balance sale consideration of Rs.50,000/-. It is further directed that on such payment the original defendants-appellants shall execute the sale deed in favour of respondents- original plaintiffs. [Para 7][805-F-H; 806-A-B]**

B CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1991 of 2022.

From the Judgment and Order dated 11.09.2017 of the High Court of Punjab and Haryana at Chandigarh in RSA No.2891 of 2010.

Tarun Gupta, Adv. for the Appellants.

C Aditya Singh, Tathagat Harsh Vardhan, Shubham Singh, Adv. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

D 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 11.09.2017 passed by the High Court of Punjab & Haryana at Chandigarh in R.S.A. No. 2891 of 2010, by which the High Court has dismissed the said second appeal and has confirmed the judgment and decree passed by the first appellate Court, granting the relief of specific performance of the agreement to sell dated 11.02.2004, the original defendants have preferred the present appeal.

E 2. The facts leading to the present appeal in a nutshell are as under:

F That one Gurmeet Singh, predecessor-in-interest of the defendants (husband of defendant no.1 and father of defendant no.2 to 4) was the owner and in possession of land admeasuring 8 kanals situated in village Nilokheri, District Karnal. That the said Gurmeet Singh executed an agreement to sell dated 11.02.2004 in favour of one Jai Parkash, predecessor-in-interest of the plaintiffs for a sale consideration of Rupees

G Four Lakhs. That a sum of Rupees Three Lakhs and Fifty Thousand was paid as an earnest money to the said 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. In the agreement, it was also stated that if the vendor fails to perform his part of the agreement, then the vendee would be entitled to double the

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earnest money or in the alternative, to get the sale deed executed and registered through the Court. A

2.1 According to the plaintiffs, during his life time, the vendee Jai Parkash was willing to perform his part of the agreement and after his death, the plaintiffs, as his legal representatives had to perform. According to the plaintiffs, they approached the defendants to perform their part of the agreement, in terms of agreement to sell dated 11.02.2004, however, the defendants kept on deferring the matter. 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, which was the target date fixed in the agreement. According to the plaintiffs, they reached the office of Sub Registrar, Nilokheri 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 at the Sub Registrar's office. The plaintiffs got their presence marked by moving an application before the Sub Registrar, Nilokheri, who made an endorsement thereon and returned the application, along with the affidavit of the plaintiffs, which were attested by Sub Registrar. Thereafter the plaintiffs again served registered legal notice on 18.02.2005. In reply to the said notice, the defendants totally denied the execution of the agreement to sell dated 11.02.2004 by Gurmeet Singh. They also denied having received an amount of Rs.3,50,000/- mentioned in the agreement to sell. Hence, the plaintiffs instituted the suit, being Civil Suit No. 681 of 2005 in the Court of Additional Civil Judge (Senior Division), Karnal for specific performance and for possession along with consequential relief of permanent injunction. B
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2.2 The suit was resisted by the defendants by filing their written statement. In the written statement, the original defendants denied execution of the agreement to sell dated 11.02.2004. It was the case on behalf of the defendants that Gurmeet Singh was an 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 defendants also denied receipt of Rs.3.50,000/- by Gurmeet Singh from the plaintiffs. Both the parties led their evidence. F
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2.3 On appreciation of the evidence on record and on hearing the parties, the learned trial Court, though held that the agreement was validly executed between Gurmeet Singh and Jai Parkash, for a sale consideration and though held that Rs.3,50,000/- was indeed paid by Jai Prakash to H

A Gurmeet Singh, nevertheless denied the relief of specific performance by observing that the agreement, Ex. P2, may have been executed as a security document for repayment of a loan. Therefore, instead of granting the relief of specific performance, the learned trial Court passed a decree for return of earnest money along with interest at the rate of 6% per annum by way of an alternative relief.

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2.4 Feeling aggrieved and dissatisfied with the judgment and decree passed by the learned trial Court, refusing to grant the relief of specific performance, the original plaintiffs preferred an appeal before the first appellate Court. The first appellate Court allowed the appeal and set aside the judgment and decree passed by the learned trial Court refusing to pass a decree for specific performance by categorically observing that the agreement to sell dated 11.02.2004 cannot be said to be a loan agreement and/or security document for repayment of a loan.

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2.5 Feeling aggrieved and dissatisfied with the judgment and order passed by the first appellate Court granting relief of specific performance of the agreement to sell dated 11.02.2004, the appellants – defendants preferred regular second appeal before the High Court. By the impugned judgment and order, the High Court has dismissed the said second appeal, which has given rise to the present appeal.

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3. Shri Tarun Gupta, learned counsel appearing on behalf of the appellants – original defendants has vehemently submitted that in the facts and circumstances of the case, both, the first appellate Court as well as the High Court have committed a grave error in holding that the agreement to sell dated 11.02.2004 is not a security document/loan agreement.

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3.1 Shri Tarun Gupta, learned counsel for the appellants has taken us to the agreement dated 11.02.2004. It is submitted that in the agreement itself, it has been specifically mentioned that as there was a marriage of the daughter of Gurmeet Singh, the amount was required and therefore Rs. 3,50,000/- was taken as a loan towards the expenses of his daughter's marriage. It is submitted therefore that, as such, agreement dated 11.02.2004 was a loan agreement/security document.

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3.2 It is further submitted by learned counsel appearing on behalf of the appellants – original defendants that against the sale consideration of Rs. 4,00,000/- mentioned in the agreement, Rs. 3,50,000/- was alleged to have been paid by Jai Parkash, vendee. It is submitted that therefore

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when the substantial amount was alleged to have been paid without any possession, the agreement be treated as a security document/loan agreement. A

3.3 It is further contended by learned counsel appearing on behalf of the appellants – original defendants that though in the agreement, it was stated that the possession is handed over to the vendee, the defendants continued to be in possession and the possession was never handed over to the vendee and/or his legal heirs. It is submitted that all the aforesaid circumstances would go to show that the agreement dated 11.02.2004 was a loan agreement/security document. B

3.4 It is urged by the learned counsel appearing on behalf of the appellants – original defendants that the suit land is an agricultural land and the only source of income of the defendants and their family members and therefore considering Section 20 of the Specific Relief Act and when the grant of specific performance is a discretionary relief, the said discretion may be exercised in favour of the defendants. It is submitted that the valuable property has been sought to be purchased by the plaintiffs for a meagre sum of Rs. 4,00,000/- only. C D

3.5 Making the above submissions, it is prayed to allow the present appeal and restore the judgment and decree passed by the learned trial Court.

4. The present appeal is vehemently opposed by Shri Tathagat Harsh Vardhan, learned counsel appearing on behalf of the original plaintiffs. E

4.1 It is submitted that as such there are concurrent findings of facts recorded by all the courts below on the execution of the agreement executed by Gurmeet Singh in favour of Jai Parkash. It is submitted that all the courts below have also believed the payment of sale consideration by the vendee to the vendor. It is contended that the said findings of facts recorded by all the courts below are not required to be interfered with by this Court, in exercise of powers under Article 136 of the Constitution of India. F G

4.2 It is further contended that, as such, it was never the case on behalf of the defendants before the trial Court that agreement dated 11.02.2004 was a loan agreement/security document. It is submitted that before the trial Court, the defendants totally denied the execution of the agreement dated 11.02.2004 by Gurmeet Singh and receipt of H

- A Rs.3,50,000/-. That for the first time before the first appellate Court, it was the case on behalf of the defendants that agreement dated 11.02.2004 was a loan agreement/security document.

- 4.3 It is further submitted by learned counsel appearing on behalf of the respondents – original plaintiffs that even the trial Court also held that the agreement was validly executed between Gurmeet Singh and Jai Parkash for a valuable consideration. However, the trial Court refused to pass a decree for specific performance solely on the ground that the agreement might have been executed as a security document for repayment of a loan. Therefore, the trial Court, instead of granting the relief of specific performance, passed a decree for return of earnest money. It is contended that the defendants did not prefer any appeal before the first appellate Court against the findings recorded by the trial Court on the execution of the agreement dated 11.02.2004 between Gurmeet Singh and Jai Parkash and on the payment of Rs. 3,50,000/- paid by vendee to the vendor. That, in fact, the original plaintiffs preferred the appeal before the first appellate Court against refusal of the decree for specific performance.

- 4.4 It is urged that, both, the first appellate Court as well as the High Court have rightly observed and held that agreement dated 11.02.2004 cannot be said to be a loan agreement and/or security document. Therefore, the first appellate Court rightly passed a decree of specific performance which is rightly confirmed by the High Court.

4.5 Making the above submissions, it is prayed to dismiss the present appeal.

5. We have heard learned counsel for the respective parties at length.

- At the outset, it is required to be noted that as such there are concurrent findings of facts recorded by all the courts below on the execution of the agreement dated 11.02.2004 by Gurmeet Singh in favour of Jai Parkash. There are concurrent findings of fact recorded by all the courts below on the payment of part sale consideration of Rs.3,50,000/- by the vendee to the vendor. The trial Court refused to grant the relief of specific performance solely on the ground that the agreement might have been executed as a security document for repayment of loan. However, as observed hereinabove, even the trial Court also specifically held that the agreement was validly executed between Gurmeet Singh

and Jai Parkash for a sale consideration. The plaintiffs preferred the appeal before the first appellate Court against refusal to pass a decree for specific performance. The defendants did not prefer any appeal before the first appellate Court against the findings recorded by the trial Court on execution of the agreement and on payment of part sale consideration. Therefore, the findings recorded by the trial Court that the agreement was validly executed for a sale consideration has attained finality.

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6. On a careful consideration of the agreement dated 11.02.2004, the first appellate Court and the High Court have observed and held that the agreement dated 11.02.2004 cannot be said to be a loan agreement and/or security document, as alleged by the defendants. We have also gone through and considered the agreement dated 11.02.2004. On reading the entire agreement, it cannot be said that the agreement dated 11.02.2004 can be said to be a loan agreement and/or security document. Merely because in the document the purpose of sale of the property was stated to be for the marriage expenses, the document which otherwise can be said to be an agreement to sell, will not become a loan agreement and/or security document. If the agreement as a whole is read, we find that it is an agreement to sell. Both, the first appellate Court and the High Court have rightly not accepted the case on behalf of the defendants that the agreement is a loan agreement and/or security document. At this stage, it is required to be noted that as such it was never the case on behalf of the defendants before the trial Court that the agreement is a loan agreement and/or security document. Before the trial Court, the defendants denied totally the very execution of the agreement and receipt of Rs.3,50,000/-, which has been rightly disbelieved even by the trial Court. It appears that before the first appellate Court, for the first time, the defendants came out with a case that the agreement is a loan agreement and/or security document.

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7. Once the execution of the agreement to sell for a sale consideration has been believed and it has been found that Jai Parkash and thereafter, the original plaintiffs were always ready and willing to perform their part under the agreement and in fact they remained present before the Sub Registrar, Nilokheri on 10.02.2005, which has been established and proved, the decree for specific performance is rightly passed by the first appellate Court, which is rightly confirmed by the High Court. In the facts and circumstances, clauses (a) & (c) of Section 20 of the Specific Relief Act shall not be applicable and/or attracted. We

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- A are in complete agreement with the view taken by the first appellate Court and the High Court. However, at the same time to do the complete justice between the parties and in exercise of powers under Article 142 of the Constitution of India, we direct the original plaintiffs to pay additional Rs.3,50,000/- to the appellants - original defendants, over and above the balance sale consideration of Rs.50,000/- (Rs.50,000/- to be paid with 6% interest from the date of execution of the Agreement to Sell i.e., 11.02.2004 to actual payment). It is further directed that on such payment the original defendants – appellants herein shall execute the sale deed in favour of respondents herein – original plaintiffs.
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- C 8. In view of the above and for the reasons stated above, the present appeal fails and deserves to be dismissed and is accordingly dismissed. No order as to costs.

Devika Gujral

Appeal dismissed.