examination without any exemption or exception to the same, the judgments would not be applicable to the present case. The petitioners, failing to fulfil the said condition, cannot be held eligible for admission to the M.B.B.S. Course in the Government Medical College and Hospital, Sector 32, Chandigarh. The pleas and the grounds as raised and pressed by the petitioners cannot, thus, sustain, resulting in rejection of the same.

(13) The writ petition, therefore, stands dismissed.

S.Gupta

Before Rakesh Kumar Garg, J.

MANMOHAN SINGH AND OTHERS—*Appellants*

versus

KEWAL KRISHAN AND OTHERS—*Respondents*

RSA No. 3283 of 2013

November 14, 2013

Specific Relief Act, 1963 - S. 20 - Indian Evidence Act 1872 - Ss. 91 and 92 - Discretion as to decreeing specific performance - Respondent filed suit for possession by way of specific performance of Agreement to Sell - Appellant contested suit on ground of fraud and misrepresentation - Agreement to Sell proved on record - Now by taking a contradictory plea of fraud, appellant pleaded that document in question was created as a security for repayment of loan and loan was repaid - This plea also had been found to be false - Held, that testimony of witnesses could not be discarded only on ground that they were uneducated or known to the Plaintiff-Respondent - Once execution of Agreement to Sell stands proved on record, inadequacy of consideration cannot be a ground to deny specific performance.

Held, that the testimony of the witnesses cannot be discarded only on the ground that they were uneducated or known to the plaintiff-respondent. In fact, the appellants have taken two different stands to defend the suit which were contradictory to each other. In the first

instance, appellants have pleaded fraud but have failed to prove the same. It may further be noticed that once execution of the agreement to sell in question stands proved on record, no evidence is required to be given in proof of the terms of such contract except the document itself. In fact, on the basis of the instances, as referred to in the arguments, counsel for the appellants has made an effort before this Court to re-appreciate the evidence on record and take a different view than taken by the lower Appellate Court, with regard to its findings, which is not permissible in law. It may also be noticed that inadequacy of consideration cannot be a ground to deny the specific performance of the agreement in question. Moreover, the lower Appellate Court has recorded a finding that the appellants have also sold the land to the plaintiff-respondent on earlier occasions and the said land was having a larger front abutting the main road. It may also be noticed that in the instant case, no hardship was pleaded by the appellants in their written statement. Not only this, by taking a contradictory plea of fraud and further that their plea that the document in question was created as a security for repayment of loan, have been found to be false, the discretion exercised by the lower Appellate Court under Section 20 of the Specific Relief Act in decreeing the suit for specific performance is not liable to be interfered with in this appeal.

(Para 24)

Code of Civil Procedure, 1908 - S. 100 - Second appeal - Concurrent findings by both Courts below - It is settled law that while exercising jurisdiction in second appeal under section 100, even if another view is possible on reappraisal of evidence, High Court should not substitute its view with the view taken by the Courts below.

Held, that both the Courts below on appreciation of evidence on record have recorded a concurrent finding against the appellants. It is well settled that while exercising jurisdiction under Section 100 CPC, even if another view is possible on reappraisal of evidence, the High Court shall not substitute its view with the view taken by the Courts below.

(Para 27)

I.K. Mehta, Sr. Advocate with M.S. Kohli, Advocate *for the appellants.*

Vikas Bahl, Advocate for the respondents.

RAKESH KUMAR GARG, J.

(1) Defendant Nos.2 to 4 have filed the instant appeal challenging the judgment and decree of the trial Court dated 27.2.2009, whereby suit for possession by way of specific performance of agreement to sell dated 18.6.2001 has been decreed against them and further, their appeal against the aforesaid judgment and decree of the trial Court has been dismissed by the first Appellate Court vide judgment and decree dated 25.4.2013.

(2) Plaintiff (Respondent no.1) filed a suit for possession of the suit land by way of specific performance of agreement to sell dated 18.6.2001 initially against the appellants (defendants No.2 to 4) and respondent No.3 (defendant No.1). Respondent No.2-Upinder Kaur also moved an application for impleading her as a party which was allowed vide order dated 5.8.2004 and she was impleaded as defendant no.5.

(3) In the plaint, plaintiff-respondent no.1 averred that one Keshwant Singh son of Heera Singh, father of the appellants, who was the owner of the land in dispute, which is fully described in the head note of the plaint, executed an agreement to sell in his favour on 18.6.2001 regarding the suit land for a consideration of ₹5,00,000 per acre and received ₹16,00,000 in cash from him on the day of agreement to sell being the earnest money. Said Keshwant Singh executed the agreement to sell and received the earnest money on 18.6.2001 after admitting the contents of the agreement to sell and receipt in the presence of attesting witnesses. Last date for execution of the sale deed was stipulated as 18.6.2002. After the death of Keshwant Singh, appellants and other defendants succeeded his estate which included the land in dispute. The said legal heirs of Keshwant Singh are bound by the terms and conditions of the agreement to sell. It was further averred that Keshwant Singh further received an amount of ₹2,27,000 on 01.02.2002 and thereafter, received a sum of ₹1,65,000 on 17.6.2002

i.e. one day prior to the execution of the sale deed and time of the agreement to sell was extended upto 18.9.2002. It was further averred that two receipts and endorsement regarding extension of time were also executed by Keshwant Singh. Respondent No.1 remained present in the office of Sub-Registrar on 18.9.2002 during the working hours along with balance sale consideration and other charges required for the purpose of sale deed, but the defendants did not turn up to execute the sale deed in his favour. He got his presence attested from the office of Sub Registrar, Nawanshahr in the shape of an affidavit that he was still ready and willing to perform his part of the agreement to sell, of which the defendants had notice. He asked the defendants to admit his claim but they flatly refused to admit his claim two days ago and thus necessity arose to file the present suit.

(4) At this stage, it may be noticed that the suit was filed on 12.11.2002. Upon notice, respondent No.3 (defendant no.1-Alam Singh) did not appear in the Court and was proceeded against *ex-parte*. The appellants i.e. defendants No.2 to 4 filed a joint written statement on 30.5.2005, raising various preliminary objections. On merits, it was stated that the agreement to sell and receipts produced in Court are the result of fraud and misrepresentation. The said documents were not signed by Keshwant Singh and they are not binding upon them and were without consideration. It was further pleaded that Keshwant Singh was the owner of the suit property and after him, defendants No.1 and 2 (*i.e.* respondent no.3 and appellant No.1) are the owners of the suit property. The alleged agreement to sell and receipts and the endorsements for extension of time are forged and fabricated documents. No earnest money was received by Keshwant Singh, nor the agreement to sell and receipts were signed by him. Other allegations were denied and dismissal of the suit was prayed.

(5) It is worthwhile to mention at this stage that defendant no. 4-Charanjeev Kaur (now appellant No. 2) filed an application for amendment of the written statement filed on her behalf. The said application was allowed. In the amended written statement, a plea was taken that the agreement to sell and receipts are the result of fraud and misrepresentation and the same are not signed by Keshwant Singh. It was further pleaded that Keshwant Singh was the owner of the property

and now, defendants No.1 and 2 (now respondent No.3 and appellant No.1) were the owners of the said property. Respondent No.3 has not succeeded to the estate of Keshwant Singh. The property in dispute is worth crores of rupees and nobody could dream of purchasing the same for such a meager amount. Even the rate of government for the purpose of registration is much more than the alleged consideration of the sale. It was further averred that the agreement to sell dated 18.6.2001 regarding land measuring 73 kanal 10 marlas at the rate of ₹5,00,000 per acre and receipt of ₹16,00,000 are contrary to the true facts. The sale deed alleged to be executed by 18.6.2001 which was extended to 18.9.2002 was incorrect. In fact, the said writing was executed to secure repayment of loan advanced by the plaintiff to Keshwant Singh. According to further averments, an amount of ₹7,00,000 was taken as loan in June, 2000 and rate of interest was fixed at ₹3 per month. The said loan was to be returned on 18.6.2001. The amount to be returned was ₹9,50,000. It was further pleaded that in January, 2001, another sum of ₹2,20,000 was taken by Keshwant Singh and the said amount was also to be returned on 18.6.2002. However, Keshwant Singh failed to return the amount so borrowed. The amount swelled to ₹16,00,000 which was to be returned. In February, 2002, another sum of ₹2,00,000 was taken, which after including the interest became ₹2,27,000. Thus, loans were taken by Keshwant Singh to secure the running of poultry business by Manmohan Singh, which at that time was running at losses. The sale consideration fixed @ ₹5,00,000 per acre was inadequate and the same could not have been fixed keeping in view the prevailing market price which was about ₹10,00,000 per acre. Manmohan Singh had sold 10 kanals 6 marlas of land @ ₹10.5 lacs per acre in Village Saloh. The said land is only half kilometer away from the land in dispute. Moreover, the land in dispute was the subject matter of mortgage with Primary Co-operative Land Mortgage Bank, Nawanshahr for an amount of ₹15,00,000 for the loans taken by Keshwant Singh, Manmohan Singh and Charanjeev Kaur. It was further pleaded that Keshwant Singh died on 7.7.2002. He left behind a registered Will bequeathing all his property in favour of his sons Alam Singh and Manmohan Singh excluding his two daughters. The plaintiff was a money-lender who gave loans to people at exorbitant

rates which is not permissible by law. Other allegations were denied and dismissal of the suit was prayed.

(6) Defendant no.5 (now respondent No.2) filed a separate written statement submitting that the suit was filed by the plaintiff in connivance with defendants No.1 to 4 to grab the estate of Keshwant Singh. The alleged agreement was forged and fabricated document. A further plea was taken that Keshwant Singh never executed any agreement and receipts. The facts that the plaintiff alleged to have paid ₹19,92,000 as earnest money on 18.6.2001 and Gurmail Singh alleged to have paid ₹8,00,000 as earnest money, on 22.3.2001 are wrong. Keshwant Singh had no money in his bank account when he died on 7.7.2002. He was not keeping well since 1980 and was incapable of executing any document. Due to old age and poor vision, he had lost his senses. Thus, the defendant denied the allegations on merits and dismissal of the suit was prayed.

(7) The plaintiff filed replications to the written statement filed on behalf of the defendants, in which he denied the averments made in the written statements. From the pleadings of the parties, following issues were framed:-

"1. Whether Keshwant Singh son of Heera Singh executed an agreement to sell dated 18.06.2001 to sell the land in dispute, in favour of plaintiff? OPP.

1-A. Whether the above agreement is the result of fraud and mis-representation as alleged? OPD.

1-B. Whether the agreement is not specifically enforceable? OPD

1-C Whether the sale consideration by way of alleged payment of ₹16 lacs, 2 lacs and ₹2,27,000 has not been made by the plaintiff? OPD.

2. If issue no. 1 is proved, whether plaintiff is entitled for specific performance of the said agreement to sell? OPP.

3. Whether in the alternative, plaintiff is entitled for recovery of ₹45,94,000 as prayed for? OPP.

4. *Whether suit is time barred? OPD*
5. *Whether plaintiff has no locus standi to file this suit? OPD*
6. *Whether suit is bad for mis-joinder and non-joinder of parties? OPD*
7. *Relief."*

(8) The trial Court after hearing counsel for the parties decreed the suit. Feeling aggrieved by the aforesaid judgment and decree, defendants No.2 to 4 (i.e. the appellants) filed an appeal before the first Appellate Court, which was also dismissed. It is relevant to mention here that no appeal was filed by defendant nos.5 and 1 (i.e. respondents No.2 and 3 respectively) against the judgment and decree of the trial Court.

(9) Still not satisfied, defendants No. 2 to 4 have filed the instant appeal, challenging the judgments and decrees of the Courts below. In the appeal, following substantial questions of law said to be arising out of the impugned judgments and decrees, have been framed for consideration of this Court:-

"(i) Whether the learned lower appellate Court wrongly refused to invoke Section 20 of Specific Relief Act in view of circumstances surrounding the agreement to sell as well as receipts of amounts from time to time?

(ii) Whether the learned lower courts in error in not comprehending the alleged agreement to sell was merely a loan amount and to ensure its return all the documents were created by the plaintiff-respondent.

(iii) Whether the learned lower courts have failed to appreciate that no reason was forthcoming why an odd amount of ₹2,27,000 was allegedly paid on 1.2.2002 and an amount of ₹1,65,000 was paid on 17.6.2002. This was towards interest as alleged by appellants-defendants. If the plaintiff was ready and willing to execute the sale deed, there was no occasion to extend the time of execution of sale deed to 15.9.2002?

(iv) Whether the learned lower appellate court acted contrary to law in proceeding on assumption that since the documents were thumb marked and signed the same was enough to prove the contents of the documents?

(v) Whether the defendants having denied execution of documents on ground of fraud and misrepresentation, the burden was on the plaintiff to prove the due execution of the documents. The approach of the learned lower courts that the party who alleges fraud has to establish the same in contrary to law?

(vi) Whether there is the practice of the Aarhtias/ money lenders to have an agreement to sell executed from the agriculturist when some loan is advanced to them. In fact the agreement and the receipt of the amount is by way of security and not any transaction of agreement to sell in its true sense?

(vii) Whether the recital in the agreement to sell that the possession of the land had been delivered to the vendee on 18.6.2001 and it is further mentioned in the same recital that in case the agreement to sell is not executed by the date fixed then the vendee shall be at liberty to have the possession through the court of law. These two recitals are contradictory by themselves. It leaves no manner of doubt that the recital in the agreement was not according to the true facts and it is a made up document and handy work of Kulwant Singh, Deed Writer, who appears by his conduct no scruples and could go to any extent. Therefore this clause regarding delivery of possession having been found to be wrong and whole transaction is vitiated?"

(10) At this stage, it will be appropriate to notice that the appellants have moved an application i.e. CM No. 11521-C of 2013 for bringing on record further developments during the pendency of the appeal for sympathetic consideration. However, no argument was raised on the basis of the facts averred in the said application and

counsel for the appellant has confined his arguments with regard to the question, as raised and noticed above.

(11) During the course of arguments, learned counsel for the appellants has confined his arguments only to the following extent:-

> *"The Courts below have erred while considering the documents in question, as in fact, the agreement and the receipts of the amount were executed by way of security for repayment of the loan raised and not as a transaction of agreement to sell in its true sense?"*

(12) To elaborate the argument, as raised before this Court, learned counsel for the appellants has referred to the following facts which have come on record of the case:-

(i) That there is a recital in the agreement in question that possession of the land had been delivered to the vendee on the date of alleged agreement dated 18.6.2001. However, the aforesaid recital has been found to be wrong and incorrect, as even Kulwant Singh, Deed Writer, has stated in his statement that the possession was to be delivered at the time of registration and execution of the sale deed and the plaintiff-respondent has not supported the explanation offered by the said witness during his examination. Thus, in view of Sections 91 and 92 of the Indian Evidence Act, the Courts below could not have relied upon such an inadmissible evidence, as in case, the recital in the agreement with regard to delivery of the possession was correctly recorded, there was no occasion for the plaintiff-respondent to seek possession of the suit land in the suit.

(ii) That admittedly, the plaintiff-respondent was a barber, as per his own statement and had closed down his shop. He used to sit in the shop of his son who was running a Chemist shop. The plaintiff-respondent had not maintained any account of the amounts which were allegedly paid in cash to Keshwant Singh in pursuance of the agreement to sell and the alleged receipts executed.

(iii) That Keshwant Singh was an educated person and had retired from Army and thereafter, he worked in Civil Secretariat, Chandigarh and settled after his retirement at Chandigarh. He was drawing pension and did not require any money.

(iv) Keshwant Singh was under pressure because his son appellant-Manmohan Singh had suffered losses in poultry business and for this purpose, his land was mortgaged with the bank for nearly 16 lacs. The receipts for repayment of the amount, for which the land was mortgaged, are Ex.DW1/3, DW1/4 and DW1/5 which are on record, which clearly proves that Keshwant Singh who was under pressure was compelled to take loan from the plaintiff-respondent.

(v) That the scribe of the document in question had no valid licence to practice as Deed Writer and he went out to favour the plaintiff-respondent by not producing his register, which clearly shows that he was deposing to favour the plaintiff-respondent.

(vi) That on 17.6.2002, the total sum of ₹19,92,000 was alleged to be paid to the appellants but strangely, the vendee got nothing except the alleged agreement.

(vii) That the appellants have produced on record the collector rates applicable with effective from 1.7.2000 relating to the agricultural land which were ₹10 lacs per acre. Therefore, the fact that ₹5 lacs per acre was allegedly agreed upon, is wholly unsustainable. Not only this, the *Aks Shajra* of the land in dispute Ex.DW1/10 clearly shows that the land is of a regular shape and abutting to the road leading to Malsian and thus, the consideration for the alleged agreement to sell was wholly inadequate.

(13) According to learned Senior Counsel, all these facts clearly establish that the transaction was of loan only and a fraud was perpetuated upon Keshwant Singh and others by the plaintiff-respondent while

converting the said document into an agreement to sell, which is the handy work of the Deed Writer Kulwant Singh against whom an FIR stood registered. According to counsel for the appellant, in view of all these facts established on record, the onus had shifted upon the plaintiff-respondent to prove that the document in question was intended to be a transaction to sell the agricultural land by the appellants. The plaintiff-respondent having failed to prove the due execution of the document in question and repell the suspicion as raised by the appellants, it has to be taken that the document in question was nothing but created as a security to repay the loan raised by the appellants from the plaintiff-respondent.

(14) Further, an attempt has been made on behalf of the appellants to say that the agreement to sell in question has not been proved on record. According to counsel for the appellants, mere statement of the Deed Writer will not prove the contents of the agreement in question because, admittedly, Kewal Krishan, plaintiff-respondent was an illiterate person and the witnesses to prove the said document have also admitted that they were not educated enough to accept the contents of the document and thus, the lower Appellate Court has wrongly proceeded to base its findings on the statements of witnesses.

(15) Learned counsel for the appellants has further argued that the relief of specific performance is purely an equitable relief. The grant of decree of specific performance would cause undue hardship to the appellants, whereas the plaintiff-respondent would not suffer any loss because he can be adequately compensated by granting alternative relief of damages, as prayed by him.

(16) Counsel for the appellants has also relied upon a judgment of this Court in the case of ***Prem Singh v. Mangu Ram(1)*** to contend that once the recital with regard to possession of the land has been found to be false, the document has to be taken as a money transaction to secure back the amount given. Further, reliance has also been placed upon a judgment of the Kerala High Court in the case of ***Lalithambika v. M.O. Varghese(2)*** wherein the defendant needed money to save her

(1) 2004(3) PLR 29

(2) 2005(1) RCR (Civil) 604

husband from conviction. The transaction was taken to be a loan transaction and not an ordinary case of agreement to sell. Counsel for the appellant further relied upon a judgment of the Hon'ble Supreme Court in the case of ***Thiruvengada Pillai v. Navaneethammal & anr.(3)*** to contend that once various circumstances taken together create a doubt about the genuineness of an agreement, burden to prove that defendant had executed the agreement would be on the plaintiff and not on the defendant to prove in the negative.

(17) On the basis of the aforesaid arguments raised, it has been submitted that the substantial questions of law, as railed, be answered in favour of the appellants and the impugned judgments and decrees of the Courts below be set aside and suit of the plaintiff-respondent be dismissed.

(18) On the other hand, learned counsel for the caveator/plaintiff-respondent has vehemently supported the impugned judgments and decrees of the Courts below.

(19) Learned counsel for the plaintiff-respondent while referring to various paragraphs of the judgment of the lower Appellate Court has argued that the execution of the document in question has been admitted by the appellants and a perusal of the document in question would itself show that the same is a transaction for sale of land in question and cannot be termed as a document for securing loan. Moreover, according to learned counsel for the plaintiff-respondent, by taking a contradictory stands in the joint written statements filed on behalf of the appellants and further by filing an amended written statement by the appellant no.3, the case of the respondent stood proved and therefore, no fault can be found with the findings recorded by the Courts below and the appeal was liable to be dismissed.

(20) I have heard learned counsel for the parties and perused the impugned judgments and decrees of the Courts below.

(21) At this stage, it is relevant to refer to the findings of the first Appellate Court, which read thus:-

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(3) AIR 2008 SC 1541

"35. The onus to prove the agreement to sell dated 18.06.2001 is on the plaintiff to prove the agreement to sell which is Ex.P1 on the file. The plaintiff has examined Kulwant Singh, deed writer as PW-1. The perusal of papers of the agreement to sell shows that the stamp papers were purchased by Keshwant Singh on 18.06.2001. The plaintiff has also produced on the file the copy of jamabandi Ex.P-7 on the file. The said jamabandi was issued by the Patwari to Keshwant Singh son of Hira Singh. Kulwant Singh PW-1 has proved the execution of the agreement to sell on the file. Though he was not a licenced deed writer but no benefit of this aspect can be given to the appellants as he has specifically stated in his examination-in-chief that he wrote the agreement to sell at the instructions of Keshwant Singh in favour of Kewal Krishan. The earnest money of ₹16,00,000 has paid by Kewal Krishan to Keshwant Singh. The receipt of payment of ₹16,00,000 (Ex. P-2) on the file. The said receipt was thumb marked and signed twice by Keshwant Singh. The said receipt was attested by Vijay Kumar and Paramjit Singh as witnesses and also singed by Manmohan Singh son of Keshwant Singh. I find no force in the contention of learned counsel for appellants that the said receipt was signed by Keshwant Singh twice, therefore, it creates a suspicion. Keshwant Singh has signed and thumb marked on the receipt and then he signed and thumb marked at the second time on the revenue stamp. This fact has been proved on file by the statement of Kulwant Singh PW-1. Further the original agreement to sell was thumb marked and signed by Keshwant Singh and Manmohan Singh. The said agreement to sell was not thumb marked by the purchaser or by the attesting witnesses of the agreement to sell. The learned counsel for appellants has argued that why the thumb impression of attesting witnesses and purchaser were not taken it creates a suspicion. I find no force in this contention. Keshwant Singh is the owner of the land and Manmohan Singh is the son of Keshwant Singh. Keshwant Singh and his son Manmohan Singh agreed to sell the land owned by Keshwant Singh in favour of Kewal Krishan. The agreement to sell was executed on 18.06.2001. If the

purchaser got the thumb impression and signatures of the seller and his son to assure himself then no benefit of this aspect can be given to the appellants. Manmohan Singh while appearing in the witness box as DW-1 has admitted his signatures on the agreement to sell and receipt Ex. P2. He also admitted the fact in his cross-examination that the poultry farm existing on the suit land was lying abandoned since the last 8 years. The said cross-examination of Manmohan Singh DW was got conducted on 07.11.2008. The agreement to sell was got executed on 18.06.2001. Therefore, the poultry farm was lying abandoned for the year 2000 and it was not in a operational condition at the time when the agreement to sell was executed. Therefore, there was no mention of the poultry farm in the agreement to sell. Therefore, I find no force in the contention of learned counsel for appellant that there was poultry farm on the suit land and the value of the suit land was enhanced due to the existence of poultry farm. There was no poultry farm on the land in dispute when the agreement to sell was executed. Further Vijay Kumar who is one of the attesting witnesses has proved the execution of the agreement to sell while appearing in the witness box as PW-4. No benefit of this aspect can be given to the appellants that he is known to Kewal Krishan. Kewal Krishan was entering into an agreement to sell with Keshwant Singh and it was natural for him to get the agreement to sell witnessed by the person who is known to him. Therefore, the testimony of Vijay Kumar cannot be discarded only on this ground that he is known to Kewal Krishan. Manmohan Singh and Satinder Kaur have pleaded in their written statement that agreement to sell and receipt Ex. P2 are result of fraud but Manmohan Singh admitted his signatures on the agreement to sell and receipt. No fraud which was perpetuated on Manmohan Singh and Satinder Kaur is proved on the file. Charanjeev Kaur pleaded in the written statement filed by her after the amendment of the application filed by her that the alleged agreement was executed on 18.06.2001. She admitted the execution of the agreement to sell but she stated that the agreement to sell was got execution for the return of loan amounts which were taken

by Keshwant Singh and his children. Charanjeev Kaur DW-2 has stated in her cross-examination that she does not know about the loan receipts. The loans were not incurred in her presence. Kewal Krishan who appeared in the witness box as PW-7 also proved the execution of the agreement to sell and receipt Ex. P2. I find no force in the contention of learned counsel for the appellant that Vijay Kumar PW-4 and Kewal Krishan PW-7 have stated that they are not literate. Therefore, the execution of the agreement to sell is not proved on the file because the execution of the agreement to sell is proved on the file by the statements of Kulwant Singh, Vijay Kumar, plaintiff and other circumstances. Further if Vijay Kumar and Kewal Krishan are not literate, then the said fact alone cannot be taken to prove the fact that the agreement to sell is not proved. Manmohan Singh who is signatory to the agreement to sell and receipt Ex. P2 has admitted his signatures. The plea of Manmohan Singh of fraud is not proved on the file. Therefore, there is no force in the said contention of learned counsel for the appellants. Therefore, from the above discussion of execution of agreement to sell and receipt Ex. P2 is proved on the file. The statements of Kulwant Singh PW-1 and Vijay Kumar also proved that Keshwant Singh received an additional amount of ₹2,27,000 on 01.02.2002. I find no force in the contention of learned counsel for appellants that amount of ₹2,27,000 is an odd amount and this odd amount also create a suspicion regarding the receipt Ex. P3. I find no force in this contention. The receipt Ex. P3 bears the thumb impressions and signatures of Keshwant Singh. The appellant had not led any evidence to prove the fact that the receipt was not thumb marked and signed by Keshwnt Singh. Therefore, the execution of the receipt Ex. P3 is proved on the file.

36. Perusal of the agreement to sell that the sale deed was to be got executed before or on 18.06.2002. However, on 17.06.2002 the time was extended up to 18.09.2002 and endorsement Ex. P5 was executed. Keshwant Singh singed and thumb marked the said endorsement. The said endorsement

was also signed and thumb marked by Charanjeev Kaur. The said endorsement was signed by Kewal Krishan and Vijay Kumar. Charanjeev Kaur has stated in her statement that Kewal Krishan along with Vijay Kumar and two other persons came to their residence and got the thumb impressions and signatures of Keshwant Singh and her by force. The said statement of Charanjeev Kaur DW-2 is beyond the pleadings. She has stated in her cross-examination that she has not filed any complaint against Kewal Krishan and the persons accompanying him that the signatures and thumb impression of Keshwant Singh and herself was taken by force. The said endorsement was got executed by Manoj Kumar deed writer and the said fact is proved on the file by the statement of Ashok Kumar Kapoor PW3 who proved the execution of the endorsement Ex. P5. There was no occasion for Manoj Kumar to connive with Kewal Krishan. Therefore, the alleged story that Kewal Krishan along with Vijay Kumar went to the house of Keshwant Singh cannot be believed. The receipt Ex. P4 was also got executed on 17.06.2002 and it was also scribed by Manoj Kumar. It was also thumb marked and signed by Keshwant Singh and Charanjeev Kaur. Charanjeev Kaur admitted her signatures and thumb impression on receipt Ex. P4. Though there was to mention in this receipt that a separate endorsement for the extension of the time was executed on the same day but no benefit of that aspect can be given to the appellants. The endorsement is generally executed on the agreement to sell itself. Therefore, it was got executed on the back side of the agreement to sell Ex. P1. Therefore, this Court is of the considered opinion that the execution of the agreement to sell and receipts are fully proved on the file. Facing with this situation, learned counsel for appellants has argued that there was a recital in the agreement to sell that the possession was delivered to Kewal Krishan. Therefore, the agreement to sell require registration. He further argued that Kewal Krishan has stated that possession was not delivered to him. Therefore, it also creates a suspicion. I find no force in this contention that

there was a recital in the agreement to sell that the possession was delivered. Kewal Krishan has specifically stated the possession was not delivered to him. The agreement to sell cannot be thrown only on this ground that there was a recital in the agreement to sell that the possession was delivered but the possession was not delivered. I am supported on this point by case titled as ***Badri Ram v. Prithvi Raj*** *reported in* ***2003(1) Latest Judicial Reports page 760*** *in support of this contention. Further, I find no force in this contention of the learned counsel for appellants that the agreement to sell required registration as the possession was not delivered. The authority titled as* ***Avinash Kumar Chauhan v. Vijay Krishna Mishra (Supra)*** *is not applicable to the facts of the present case and is quite distinguishable as the possession was not delivered. I find no force in the contention of learned counsel for appellants that the suit is a valuable piece of land. It is worth crores of rupees and no sane person can think of selling the suit property at five lac rupees per acre. Manmohan Singh has stated in his cross-examination that the land in dispute is less front. Further no benefit of sale deeds executed by Manmohan Singh to the sons of respondent No.1 can be given to the appellants because the land sold by Manmohan Singh earlier to the respondent No.1 or his children has much front. Further if the agreement to sell is proved on the file, it cannot be thrown away on the ground of inadequacy of consideration. Therefore, I find no force in the contention of learned counsel for appellants that price of suit property is inadequate. Further it was not proved on the file that agreement to sell was executed to secure the payment of loan transaction. The agreement to sell and receipts are fully proved on the file. Therefore, the authorities titled as* ***Prem Singh v. Mangu Ram (Supra) and Lalithambika v. M.O. Varghese_(Supra)*** *are not applicable to the facts of present case and are quite distinguishable. The plaintiff has proved the execution of the agreement to sell on the file. The plaintiff has discharged the onus placed upon him. The defendants took the plea that the agreement to sell is a forged and fabricated document but they have failed to prove the fraud. Therefore,*

the authority titled as ***Thiruvengada Pillai v. Navaneethammal & Anr. (Supra)*** *is not applicable to the facts of present case and is quite distinguishable. The alleged story of Charanjeev Kaur that receipt executed by her and her father as executed by force is devoid of merits. In view of discussion discussed above, therefore the authority titled as* ***Munusamy v. Nava Pillai (Supra)*** *is also not applicable to the facts of present case. The authorities cited as* ***Nand Kishore v. Hem Raj and Ors. (Supra) and Ranganayakamma and another v. K.S. Prakash (D) by L₹ And others (supra)*** *are also not applicable to the facts of present case and are quite distinguishable."*

(22) From the perusal of various paragraphs, as noticed above, it may be noticed that the agreement to sell in question stood duly proved from the evidence on record. Plaintiff-respondent had examined Kulwant Singh, Deed Writer, who has proved the execution of the agreement to sell on the file and has stated that the agreement to sell was written at the instructions of Keshwant Singh in favour of Kewal Krishan and the earnest money was paid by respondent no.1 to Keshwant Singh vide receipt (Ex.P2) which was thumb-marked and signed twice by Keshwant Singh. It was further stated that the said receipt was attested by Vijay Kumar and Paramjit Singh, as witnesses and also signed by Manmohan Singh, the appellant. Further, the said agreement to sell was also proved by marginal witness Vijay Kumar who was produced as PW-4 and plaintiff-respondent Kewal Krishan (PW-7). Furthermore, Manmohan Singh (DW-1), appellant, who is the signatory of the agreement, admitted his signatures on the agreement and receipt in question. Not only this, by taking the plea of fraud, misrepresentation and that the document in question was in fact a security for repayment of loan, the appellants have themselves admitted the due execution of the document in question.

(23) It may be noticed that in the first written statement filed on behalf of the appellants, a specific plea has been taken that the document in question is the result of fraud and misrepresentation and there is no mention with regard to the loan transaction, whereas in the amended written statement filed on behalf of defendant no.4, it has been stated that the document in question has been created as a security

for the loan amount raised from the plaintiff-respondent. The plea of the defendant that the agreement to sell is a forged and fabricated document has not been proved. Not an iota of evidence has been placed on record to prove fraud alleged by the appellants. Charanjeev Kaur, one of the appellants had also appeared as a witness as DW-2 and has stated that she is a graduate. She has admitted that she does not know about the loan receipts. She further stated that the alleged loans were taken in her presence about which she made reference in her examination-in-chief. Even Manmohan Singh while appearing as DW-1 has admitted that he did not disclose to his counsel that the agreement to sell was in lieu of the loan transaction. He has further admitted that the land earlier sold by him to the plaintiff and his family was having a much larger front. He has also admitted that he did not lodge any complaint before any authority about the fact that the signatures of his father and sister were taken under coercion. It has also been stated that the poultry farm is lying abandoned for the last eight years.

(24) The testimony of the witnesses cannot be discarded only on the ground that they were uneducated or known to the plaintiff-respondent. In fact, the appellants have taken two different stands to defend the suit which were contradictory to each other. In the first instance, appellants have pleaded fraud but have failed to prove the same. It may further be noticed that once execution of the agreement to sell in question stands proved on record, no evidence is required to be given in proof of the terms of such contract except the document itself. In fact, on the basis of the instances, as referred to in the arguments, counsel for the appellants has made an effort before this Court to re-appreciate the evidence on record and take a different view than taken by the lower Appellate Court, with regard to its findings, which is not permissible in law. It may also be noticed that inadequacy of consideration cannot be a ground to deny the specific performance of the agreement in question. Moreover, the lower Appellate Court has recorded a finding that the appellants have also sold the land to the plaintiff-respondent on earlier occasions and the said land was having a larger front abutting the main road. It may also be noticed that in the instant case, no hardship was pleaded by the appellants in their written statement. Not only this, by taking a contradictory plea of fraud and further that their plea that the document in question was created

as a security for repayment of loan, have been found to be false, the discretion exercised by the lower Appellate Court under Section 20 of the Specific Relief Act in decreeing the suit for specific performance is not liable to be interfered with in this appeal.

(25) Thus, the aforesaid admissions on the part of the appellants falsify the stand taken on their behalf. In fact, there is sufficient evidence on record to prove the execution of the agreement to sell in question and the receipts of earnest money received by the Keshwant Singh, father of the appellants. The alleged fraud has not been proved. Neither the appellants have been successful in proving the fact that the document in question was in fact a transaction for repayment of loan.

(26) The judgments cited by the appellants are not applicable in the facts and circumstances of the case as the execution of agreement to sell and receipts have been proved and appellants have failed to prove that blank papers were got executed from Keshwant Singh and a fraud has been committed by the respondents by converting them into an agreement to sell. Further, the appellants have also failed to prove that the documents were created as security for repayment of loan. The circumstances, as mentioned by the appellants, to establish their case about genuineness of the document in question is doubtful and therefore, the same is the result of fraud and misrepresentation and is to be taken as a security for loan transaction, cannot be sustained in view of the contradictory stand taken by the appellants in their written statements.

(27) Both the Courts below on appreciation of evidence on record have recorded a concurrent finding against the appellants. It is well settled that while exercising jurisdiction under Section 100 CPC, even if another view is possible on reappraisal of evidence, the High Court shall not substitute its view with the view taken by the Courts below.

(28) Thus, in these circumstances, question, as raised, does not arise in this appeal and has to be answered against the appellants.

(29) No other argument has been raised.

(30) Dismissed.

S. Gupta