

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

Ch. Muhammad Ibrahim Zia, C.J.

Civil PLA No. 58 of 2019

(Filed on 11.03.2019)

Muhammad Javed S/o Khadim Hussain Caste Butt  
R/o Khanka Katahra Tehsil Charhoi, District Kotli.

.....PETITIONER

VERSUS

Muhammad Banaras S/o Muzaffar Khan caste Butt  
R/o Khanka Katahrra Tehsil Charhoi, District Kotli.

.....RESPONDENT

[On appeal from the judgment of the High Court dated  
16.01.2018 in civil appeal No. 76 of 2015]

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FOR THE PETITIONER: Ch. Muhammad Ilyas,  
Advocate.

FOR THE RESPONDENTS: Nemo.

Date of hearing: 21.05.2019.

**ORDER:**

**Ch. Muhammad Ibrahim Zia, C.J.**– The captioned petition for leave to appeal has been filed against the judgment of the High Court dated 16.01.2018, whereby, the appeal filed by the petitioner, herein, has been dismissed.

2. The precise facts of the case are that the plaintiff-respondent, herein, filed a suit for recovery of Rs. 8,85,950/- before the Court of Additional District Judge Kotli on 18.06.2015 by averring therein that the defendant-petitioner, herein, who is a close relative of the plaintiff borrowed the money amounting to Rs. 4,50,000/- for his domestic needs through a written agreement that he will return the same amount within the period of one year and if he fails, he will transfer the land measuring 02 Kanal bearing survey No. 148 situated at mozia Khanka Katahrra in favour of the plaintiff. It was stated in the suit that the defendant also borrowed some more money on the occasion of his marriage for purchasing gold ornaments amounting of Rs. 4,35,950/-. It was averred that now the plaintiff refused to return the same, therefore, either a decree for recovery of amount of Rs. 8,95,950/- or a decree may be passed in the manner that the land measuring 2 Kanal bearing survey No. 148 situated at Mozia Khanka Kotahrra may be transferred to him in the light of agreement dated 05.01.2011 to the extent of

amount of Rs. 4,50,000/- and the remaining amount of Rs. 4,35,950/- may be paid in cash. The learned trial Court after framing issues and recoding evidence partly decreed the suit in favour of the plaintiff to the extent of 4,50,000/- as per written agreement dated 05.01.2011, while the suit to the extent of recovery of Rs. 4,35,000/- and specific performance of contract was dismissed. Feeling aggrieved from the said judgment, the defendant-respondent, herein, filed an appeal before the High Court. The learned High Court after necessary proceedings has dismissed the appeal through impugned judgment, hence, this petition for leave to appeal.

3. Ch. Muhammad Ilyas, Advocate, the learned counsel for the petitioner after narration of necessary facts seriously objected the impugned judgment on the ground that the Courts below have failed to determine that whether, the suit is for recovery of amount or specific performance which is a legal question and has not been attended and resolved by the Courts below. He further argued that the Courts below also passed

the decree against the law. The plaintiff-respondent failed to prove his suit through any legal evidence. The Courts below have also not properly appreciated the evidence produced by the parties which resulted into mis-carriage of justice. These are important propositions justifying grant of leave.

4. Despite service of notice, no one appeared on behalf of the respondent.

5. In the light of the arguments of the learned counsel for the petitioner, I have carefully examined the record made available. So far as the first argument of the learned counsel for the petitioner is concerned, it appears to be misconceived, as the plaintiff-respondent has categorically stated that the defendant-petitioner borrowed the amount from him and agreed that in case of failure to repay the same in one year, he will transfer 2 Kanal land. The trial Court after completion of due process of law only granted the decree to the extent of Rs. 4,50,000/-, whereas, the suit to the extent of other claimed amount of Rs. 4,35,995/- and specific performance was dismissed,

therefore, the question that whether, the suit is for recovery of amount or specific performance becomes irrelevant.

6. So far as the objection to the extent of granting decree is concerned, both the Courts have recorded concurrent findings of facts on this issue. The perusal of the judgment of the trial Court reveals that that the findings recorded by the trial Court are well reasoned, speaking one and based on proper appreciation of the evidence. The documentary evidence i.e. deed of agreement "Ex.PA" has been proved through cogent evidence by the production of two marginal witnesses and also the notary public who attested the same in presence of the parties. Even the sole witness appeared on behalf of the defendant-petitioner also admitted the execution of the agreement and signing the same as witness, thus, to the extent of decretal amount, the findings recorded on facts by the trial Court are unexceptional calling for no interference which does not suffer from any misreading or non-reading of evidence. The same has

rightly be upheld by the learned High Court. No question of law is involved for grant of leave.

Therefore, finding no force, this petition for leave to appeal stands dismissed.

CHIEF JUSTICE

Mirpur,  
21.05.2019