

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

Regular Second Appeal No.4795 of 2015 (O&M)

Date of decision:13.10.2015

Soran Singh (deceased, through LRs)

... Appellant

versus

Devender

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Gurmail Singh Duhan, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

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K.Kannan, J. (Oral)

CM No.11509-C of 2015

For the reasons stated in the application, delay of 50 days in filing the appeal is condoned.

Application stands disposed of.

Regular Second Appeal No.4795 of 2015 (O&M)

1. Documents filed in court as Annexures A1 to A4 are taken on record.
2. In the suit, the plaintiff held agreement of sale in his favour on 01.02.2006 and was seeking for a return of the advance paid of ₹ 3 lacs under the document on a plea that the defendant was

unable to substantiate his own title to the property and since there was a cloud on title, he was only seeking for rescission of the contract and for return of the sale consideration. At the time when the suit was instituted, the defendant had actually sold the property to yet another third party on 06.08.2007 and that aggravated the situation for the plaintiff that it was not possible any longer to avail benefit of a transaction of sale pursuant to the agreement.

3. The issue that was relevant was whether the plaintiff was only picking up a lame excuse for non-performance and whether he was justified in seeking for rescission of contract and for refund of the advance money. There was admittedly no document of title produced by the defendant except his own transaction of sale which was subsequent to the agreement dated 01.02.2006. The court found that the plaintiff was justified in the rescission and entitled to the benefit of the refund of the advance money. The appellate Court confirmed the judgment.

4. At a previous hearing, after hearing the counsel at some length, I had directed the plaintiff to prove that there was any revenue entry in relation to the property that stood in the name of the defendant before the date stipulated for sale, namely, on 15.04.2006. The counsel has produced before me the sale deed which was effected subsequent to the agreement and the reference to the defendant as an owner, according to the counsel, will constitute

proof of his title. I must observe that the reference to the sale deed executed subsequently describing himself as a vendor can hardly prove title and if there was nothing brought on record at the trial to show that the defendant held ownership of the property on the date of the agreement or before the date when the sale was to be executed, then the plaintiff was justified in seeking for rescission and for refund of the money. The two courts below approached the issue correctly and I find nothing substantial for consideration in second appeal. Second appeal is devoid of merits and it is dismissed.

(K.KANNAN)
JUDGE

13.10.2015
sanjeev