

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

RSA No.969 of 2015 (O&M)
Date of Decision.18.12.2015

Chhindo widow of Jit Singh and othersAppellants

Vs.

Balkar SinghRespondent

Present: Mr. Prateek Pandi, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. Delay of 649 days in filing and 265 days in refiling the appeal is condoned.

2. The appeal is by the defendant against whom the suit for specific performance was filed to enforce the agreement dated 8.8.2000. The contention was that the relationship between the plaintiff and the defendant was only as a lender and borrower and there had been several transactions in the past in relation to the very same property from the year 1996, 1997, 1998 before it was written for the year 2000. The Court accepted the defendant's contention in part and finding that the property was also an ancestral land, an enforcement by specific performance would not be appropriate remedy and granted only the relief for recovery of money.

3. The learned counsel states that the agreement recites an advance of ₹4,45,000/- as paid out of total consideration of ₹4,71,625/-

but actually only an amount of ₹60,000/- had been advanced to him. Even if it were to be true that there had been persistent loans and repayments by the respective parties, if the defendant were to contend that the consideration as stated and the amount as having been received under the document was not actually received but only an amount of 1/8th what was stated was only paid, there must be positive proof of such assertion, for the defendant was attempting to give evidence against the terms and tenor of the document. The Courts below were not impressed nor am I.

4. There is no basis for intervention in the second appeal. The judgments are confirmed and the second appeal is dismissed.

(K. KANNAN)
JUDGE

December 18, 2015
Pankaj*