

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

RSA-270-2019 (O&M)
Date of decision : 23.01.2020

Rajinder Pal

...Appellant

Versus

Pooja and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Kumar Kansal, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM-597-C-2019

For the reasons stated in the application, which is duly supported by an affidavit, delay of 6 days in filing the present appeal is condoned.

Application is allowed.

Main case

Defendant-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below, decreeing the suit for recovery of ₹2,50,000/-, an amount of earnest money paid by late Sh. Sanjay Mittal under an agreement to sell.

The defendant, on the basis of agreement to sell in his favour from Parveen Kumar, had agreed to sell the property to late Sh. Sanjay Mittal.

Both the Courts have recorded that Parveen Kumar was not the owner in the record. The property was recorded in the name of Smt. Shanti Devi. Thus, the plaintiffs (legal heirs) of Sanjay Mittal has right to claim refund on the ground that the original vendor does not have clear title. Both the Courts, as noticed above, have decreed the suit.

Learned counsel for the appellant has submitted that the plaintiffs were not ready and willing to perform their part of the contract and, therefore, the Court erred in ordering refund. This Court has considered the submissions.

Both the Courts, on appreciation of evidence, have found that the plaintiffs were ready and willing to perform their part of the contract. However, since the original vendor had no clear title, therefore, they sought refund. Still further, amount of ₹2,50,000/- was paid by late Sh. Sanjay Mittal, who died on 28.08.2011. His legal heirs have been held entitled to decree for refund of the amount paid alongwith interest at the rate of 6% per annum.

Keeping in view the facts of the case, this Court does not find it to be a fit case to interfere in the second appeal.

Accordingly, the present appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

23.01.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

**Whether speaking/reasoned:-
Whether reportable:-**

**Yes/No
Yes/No**