

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

RSA No.4984 of 2011 (O&M)
Date of decision : 22.09.2016

Dilbag Singh and others

...Appellants

Versus

Rajbir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Sanjiv Gupta, Advocate for the appellants.

Ms. Rupinder Kaur Thind, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellants-defendant is aggrieved of the concurrent findings of fact, whereby the plaintiff has been held entitled to recover the earnest money of Rs.4,70,000/- from the defendant along with interest at the rate of 6% p.a. within a period of one month.

Mr. Sanjiv Gupta, learned counsel appearing on behalf of appellants-defendant submits that plaint did not envisage any relief of refund of the earnest money and, therefore, in view of embargo envisaged under Section 22 of the Specific Relief Act, 1963, Courts below ought not to have granted the alternative relief. In support of his contention, he has relied upon judgment rendered by this Court in *Lavinder Kumar Sharma*,

Vs. Parmod Kumar, 2011 (1) RCR (Civil) 678.

He further submits that no doubt Section 22 envisages the situation where the Court at any stage of the case/proceeding permit the plaintiff to amend the plaint but the present Regular Second Appeal cannot be said to be in continuation as plaintiff did not assail the aforementioned findings by filing the statutory appeal under Section 96 of the Code of Civil Procedure and thus urges this Court for setting aside of the judgment and decree under challenge.

Ms. Rupinder Kaur Thind, learned counsel appearing on behalf of respondent-plaintiff submits that averments in the plaint would embrace the relief as indicated in Section 22 of the Act. Both the Courts below have found that no doubt it was not agreement to sell but it was an agreement of security, therefore, ordered for refund of the same. The plaintiff accepted the aforementioned findings and it is in this background of the matter, did not file the statutory appeal and thus urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book.

For the sake of brevity, prayer clause in the suit reads thus:-

“It is, therefore, prayed that a decree for possession through specific performance of the contract/sale agreement dated 5.9.2001 executed by defendant in favour of the plaintiff, in respect of sale of agricultural land measuring 37 kanals 09 marlas being 749/2973 share of 148 kanals 13 marlas comprised in khewat No.315, Khatauni No.646, square No.40 killa No.8(6-12) 9 to 12 (32-0) 13/1 (3-0), Square No.41, Killa No.6 (8-0) 7/2 (4-

18) 8/1 (3-1), 11/1 (1-8), 13 (6-8), 14-15 (16-0), 18(4-4), 19 min (5-8), 20 (8-0), 21 (3-18), 22 min (4-0), 23 (4-19), square No.42, Killa No.14 to 17 (32-0), 24/2 (2-7), 25 (3-2), Khasra No.174 (0-6), 587 (0-2), Kittas 25, alongwith $\frac{1}{4}$ share of the tubewell, with electricity connection, in working order/position, situated in the revenue estate of the village Patlidabar, tehsil and district Sirsa, with all rights pertaining thereto including right in the passage, canal water turn, trees etc. etc., to the plaintiff, at the rate of Rs.1,40,000/- per acre, on payment of Rs.185375/- (after deducting the amount of Rs.4,70,000/- paid as earnest money) or on payment of any other amount to be determined by this Hon'ble Court, and as a consequential relief for permanent injunction restraining the defendant from selling/alienating/transferring the above said land to any one ignoring the above said agreement and from interferring in any manner into the possession of the plaintiff over the specific killa numbers of the land comprised in square No.42, killa No.14 to 17 (32-0), 24/2 (2-7) 25(3-2) situated in Village Patlidabar, tehsil and district Sirsa (being part of the above said land, which was delivered to the plaintiff, in lieu of the share of the total land), may kindly be passed in favour of the plaintiff and against the defendant with costs of the suit, in view of the facts and submissions made above, in the interest of justice. Any other relief, in addition to the above, to which the plaintiff may be found entitled to, be also kindly granted to the plaintiff.”

On reading of the aforementioned prayer clause, it ex facie reveals that plaintiff had sought the indulgence of the Civil Court for claiming the alternative relief. In one of the matter, situation arose before the Hon'ble Supreme Court where agreement to sell did not envisage the

relief of specific performance through the assistance of the Court except the liquidated damages as per Section 23 of 1963 Act and it was held in the judgment rendered by Hon'ble Supreme Court in case *Dadarao Vs. Ramrao, 1999(8) SCC 416*, that in the absence of such relief, plaintiff cannot seek prime relief for specific performance. The aforementioned view has been held to be of per incuriam in view of judgment rendered by Hon'ble Supreme Court in case *P.D'Souza Vs. Shondrilo Naidu, 2004 (6) SCC 649*. The same proposition would apply to the present case too. No doubt there is no specific relief sought in the plaint but the relief as indicated above is sufficient requirement of law in accordance with the provision of Order 6 Rule 1 of Code of Civil Procedure as averments in the plaint have to be in brief and concise. Thus keeping in view the aforementioned ratio decidendi and the provisions of law, there is no force in the submission of Mr. Gupta, and is hereby repelled.

Keeping in view aforementioned, I do not intend to agree with the findings rendered by both the Courts below. Same are hereby affirmed, much less, no substantial question of law arises for determination.

Appeal stands dismissed.

22.09.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No