

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

RSA No.1182 of 2015 (O&M)
Date of decision : 21.01.2019

Jagdish

...Appellant

Versus

Dalbir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S. Kharb, Advocate for the appellant.

Mr. Gaurav Deep Goel, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Question which needs consideration is “whether in the absence of prayer, refund of earnest money can be ordered or not?”

Section 22 of the Specific Relief Act, 1963 specifically deals with the situation and provides that no relief under Clause (a) or (b) of Sub-Section 1 shall be granted by the Court unless it is specifically claimed. Section 22 of the Specific Relief Act, 1963 is extracted as under:-

“22. Power to grant relief for possession, partition, refund of earnest money, etc.—(1) Notwithstanding anything to the contrary contained in the Code of Civil

Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for-

(a) possession, or partition and separate possession, of the property in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or [made by] him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provident that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.”

The prayer made in the suit is extracted as under:-

“Claim for a decree for possession by way of specific performance for agreement to sell dated 2.9.2005 executed by defendant in favour of the plaintiff of agricultural land comprised in khewat no.11/7 Khatoni no.11 rect No.51 Killa No.6(7-8) situated within the revenue estate of village Atta Tehsil Samalkha District Panipat vide jamabandi for the year 2001-2002 after paying Rs.7,76,625/- as remaining balance sale consideration (the plaintiff is ready to pay the stamp charges and registration charges etc) with consequential

relief of permanent injunction restraining the defendant from alienating the above described agricultural land in any manner whatsoever to anybody else.”

Learned counsel for the respondent has admitted that there is no prayer for refund of the earnest money.

Keeping in view the mandate of Section 22 of the Specific Relief Act, 1963, the judgment ordering refund of the earnest money cannot be sustained and same is set aside.

Accordingly, Regular Second Appeal is allowed.

21.01.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No