

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

104

RSA-2119 of 1990 (O&M)  
Date of decision: 15.12.2022

Anup Singh

..Appellant

Versus

Kartar Singh and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Rajeshwar Singh Thakur, Advocate, for the appellant.

**ANIL KSHETARPAL, J(Oral)**

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) through LRs vs. Chandrika and others, (2016) 6 SCC 157.**
2. While assailing the concurrent findings of fact arrived at by the courts below, the plaintiff has filed the present Regular Second Appeal. His suit for grant of decree of specific performance of the agreement to sell has been partly decreed by granting alternative relief of refund of earnest money.
3. Both the courts have found that the suit property was allotted to a person belonging to the Schedule Caste and the same was not alienable for a period of 20 years. It has also come on record that the defendants' father was serving as a servant of the plaintiff.
4. In the aforesaid circumstances, the courts have refused to grant the relief of specific performance while exercising their discretion.
5. This Bench has heard the learned counsels representing the appellant at length and with his able assistance perused the paper book.

6. The learned counsel representing the appellant contends that once both the courts have found that an agreement to sell was entered between the parties on payment of earnest money and the possession is already with the plaintiff, then, the relief of specific performance should have been granted.

7. This court has considered the submissions and analyzed the argument of the learned counsel representing the appellant.

8. Prior to the amendment of Specific relief Act, 1963 by Act no.18 of 2018, Section 20 of the unamended Act gave discretion to the courts to grant or refuse the relief of specific performance. However, such discretion was required to be exercised on sound and reasonable basis guided by the judicial principles. In the present case, both the courts have exercised their discretion which, in the opinion of this court, does not require any interference by the Court of second appeal.

9. Hence, dismissed.

10. All the pending miscellaneous applications, if any, are also disposed of.

**December 15, 2022**

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**(ANIL KSHETARPAL)**  
**JUDGE**

*Whether speaking/reasoned* : *Yes/No*  
*Whether reportable* : *Yes/No*