

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 4719 of 2015 (O&M)

Date of decision: December 21,2015

JOGINDER SINGH

.....Appellant

Vs.

AJIT SINGH

.....Respondent

CORAM: HON'BLE MR.JUSTICE K.KANNAN

Present: Mr. K.R.Dhawan, Advocate
for the petitioner.

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?

(K.KANNAN),J (Oral)

1. The plaintiff whose suit for specific performance was decreed only for the alternative relief of the advance money paid is the appellant before this Court. The plaintiff's relief was declined on the ground that the defendant was a grantee from the government that imposed restriction of alienation for a period of 20 years and the agreement of sale breached that condition.
2. The learned counsel for the appellant contends that the defendant who entered into an agreement of sale cannot rely on any restriction, for, he would be barred from setting up want of title himself. I discard this argument and hold that the plea in defence ought not be taken as a plea of denying of his own title but a plea constituting a fetter under a grant which the vendor obtains and which is

statutorily protected and excepted under Government Grants Act and under similar enactments allowing for restriction against alienation. A Court that grants a decree for specific performance exercises discretion to examine whether the transaction is fair and proper and Section 20 of the Specific Relief Act specifically lays down that the Court shall not specifically lay down that it shall not extend the relief merely because it is lawful to do so. The circumstance to deny such a discretion would be when there is a conditional grant but a decree would mean a court's assistance to breach a condition imposed by the State. It will be inequitable for a Court to lend itself to act which is barred by law or the condition of grant.

3. This Court has had an occasion to consider the law on the subject in *Rachpal Singh vs. Swaran Kaur and others* 2010(7) RCR (Civil) 2982 and has held that an agreement to sell Nazool land where the original grant contained restriction against alienation cannot be specifically enforced. The ruling has been by reference to Section 56 of the Contract Act that voids an agreement to do an impossible Act and by treating it as exception to Section 10 of Transfer of Property Act. The ratio of the decision is also applied to this case.

4. The approach made by the courts below denying relief of specific performance was, under the circumstances, justified and there is no error for interference in second appeal.

5. The Regular Second Appeal is dismissed.

DECEMBER 21, 2015

Rajeev

(K.KANNAN)
JUDGE