

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

RSA No.6342 of 2014 (O&M)

Date of Order: 07.09.2018

Mauji Ram

..Appellant

Versus

Om Parkash @ Parkash

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Narender Kumar Vashist, Advocate,
for the appellant.

Mr. R.S.Sailani, Advocate,
for the respondent

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant (Respondent in the counter claim) has filed a regular second appeal against the concurrent findings of fact arrived at by the courts below.

Plaintiff had filed a suit for possession, whereas defendant-counter claimant, namely, Om Parkash @ Parkash had filed counter claim for specific performance of the agreement to sell dated 14.03.2003. It was claimed that major part of the amount was paid and sale deed was to be registered on 31.10.2003. However, there was some restriction by the officials on the execution of the sale deeds. It was further pleaded that possession was delivered and counter claimant i.e. Om Parkash @ Parkash has raised construction. It was further pleaded that on 31.10.2003, further payment was made. Appellant-Mauji Ram who was respondent in the

counter claim, defended the suit by claiming that there was an agreement to sell but plaintiff was not ready and willing to perform his part of the contract.

Both the courts after examining the evidence found that due to temporary restriction on account of a notification issued by the Town and Country Planning Department, there was restriction on the execution and registration of the sale deeds and therefore, Om Parkash @ Parkash respondent herein is entitled to specific performance of the agreement to sell. The courts further found that Om Parkash @ Parkash has already raised construction and paid major amount out of total sale consideration.

Learned counsel for the appellant has submitted that since both the parties were under a mistake of fact, therefore, the agreement is void. Reference has been made to Section 20 of the Contract Act.

However, on being asked to read the notification, he admitted that the notification neither bars execution of the agreement to sell nor the sale deed. The notification only provides that certain area was declared as an urban area.

Still further even after coming to know of the restriction of the sale deed, which was not on account of any statutory prohibition as defined in Section 23 of the Contract Act, accepted the additional payment and delivered possession. As per Section 13 of the Specific Relief Act, purchaser or a lessee has a right to specifically enforce the contract against a person who has no title or imperfect title. This is what has also been provided in the Transfer of Property Act. Even, if there was some restriction on the sale of the property, that admittedly is now over.

In view of the aforesaid position, this court does not find any

substance in the argument of learned counsel for the appellant.

The regular second appeal is dismissed.

September 07, 2018
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(ANIL KSHETARPAL)
JUDGE

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