

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

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2023:PHHC:057697-DB

**CM-6306-CWP-2023 in/and
CWP-6945-2023 (O & M)
Date of Decision: 24.04.2023**

Mahender Singh and another

.....Petitioner(s)

Versus

Canfin Homes Ltd. and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Manu Sachdeva, Advocate,
for Mr. Abhimanyu Singh, Advocate,
for the petitioners.

Mr. Harsh Chopra, Advocate,
for respondent No.1.

G.S.SANDHAWALIA, J. (Oral)

1. Challenge in the present writ petition filed under Articles 226 and 227 of the Constitution of India is for handing over the possession of the respective house to the present petitioners which they had purchased vide sale deed dated 01.01.2019 (Annexure P-1). The averments made in the writ petition is that they had purchased the house after paying the requisite amount to Mahesh Kumar Gautam-respondent No.2, who has cheated them.

2. On 10.04.2023, the following order was passed:-

“Counsel for the petitioners prays for time to verify whether the petitioners have the original of the sale deed dated 29.07.2016 which was in favour of respondent Nos.2 and 3, who had sold the 8 marlas of land, which is built up, to the petitioners and which is stated to be mortgaged with respondent No.1.

Adjourned to 17.04.2023.”

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3. Now, CM-6306-CWP-2023 has been filed that a DDR has been lodged regarding the loss of the original transfer deed by the said respondent. A perusal of the sale deed in favour of the private respondent would go on to show that house was sold to Mahesh Kumar Gautam by his mother Shiv Devi on 29.07.2016 (Annexure P-19) and the DDR was lodged on 28.09.2019 stating that the original title deed was lost which is subsequent to the sale deed executed in favour of the petitioner. Thus, it is apparent that the petitioners cannot be termed as a *bona fide* purchaser *prima facie* since the original title deeds dated 29.07.2016 were never taken into custody at the time of the sale deed dated 01.01.2019. The possession has also already been taken by the financial institution and the prayer as such is for handing over the possession.

4. We are of the considered opinion that disputed questions would arise which cannot be settled in writ jurisdiction. It is also brought to our notice that the seller as such, the private respondent had also taken a loan and has also initiated litigation.

5. Thus, keeping view the settled principle that disputed questions cannot be settled under Articles 226 and 227 of the Constitution of India, we relegate the petitioners to avail their efficacious and alternative remedy before the appropriate Forum.

6. Disposed of with the aforesaid liberty.

(G.S. SANDHAWALIA)
JUDGE

24.04.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
No