

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

Date of decision:11.02.2015.

Smt.Umlesh and others

.....Appellants

v.

Deepak Sharma

.....Respondent

CORAM: HON'BLE MR.JUSTICE JASWANT SINGH

Present:- Mr.Vikram Singh,Advocate for the appellants/defendants
(vendors)

Jaswant Singh,J.(Oral)

CM 806-C/2015 has been filed for placing on record a copy of the order dated 14.6.2008 (A-1) passed by the trial Court regarding granting of permission to sell the share of minor son Jai Sharma.

CM allowed. Document A-1 taken on record.

Main Case.

Defendants/vendors are in regular second appeal primarily assailing the judgment and decree dated 13.8.2013 passed by the learned Additional District Judge, Palwal whereby the appeal of the plaintiff-Deepak Sharma was accepted and decree for possession by way of specific performance of the contract in *toto* was passed by modifying the decree dated 18.2.2012 passed by the trial court granting alternative relief of refund of earnest money alongwith interest.

Learned counsel for the appellants/defendants submits that since no prior permission qua sale of share of minor Jai Sharma was obtained from the Court prior to the execution of the agreement to sell dated 3.3.2008, decree of refund of earnest money as passed by the trial court and accepted by the appellants was the most appropriate relief to be granted to the plaintiff in order to protect the interest of the minor defendant no.2.

After hearing counsel for the appellants, this Court finds no ground to interfere with the impugned judgment and decree passed by the lower appellate Court.

It is not in dispute that an agreement to sell qua the sale of property measuring 1K7M was executed on 3.3.2008 for a total sale consideration of Rs.12,07,500/- on receipt of an amount of Rs.5 lacs as earnest money. It is also not in dispute that no target date has been specified in the light of the permission to be obtained for sale of share of the minor son Jai Sharma. It is also not in dispute that on 13.3.2008 an application was filed by the vendor-mother for seeking permission qua the said sale of share which was duly granted by the trial court vide order dated 14.6.2008(A-1). Suit for specific performance was filed on 5.9.2008. Plaintiff proved agreement to sell dated 3.3.2008 (Exhibit P1) and receipt (Exhibit P2) by examining Scribe, Rohtash Sharma(PW-1) and both the witnesses namely Azad Veer,Numberdar(PW-3) and Chandan Singh(PW-4). Payment of earnest money was further established by examining PW-2 Sh.Dwarka Parshad, Clerk, from

Syndicate Bank, Palwal whereby defendant Umlesh deposited the said amount of Rs.5 lacs in her two saving bank accounts. Defendants had taken the plea of agreement to sell to be a forged and fabricated document, however, they led no evidence by examining any Expert or other witness to disprove the agreement to sell (Ex.P1) and receipt (Ex.P2). The learned trial court on the basis of evidence adduced by the plaintiff as also by the fact that the stamp papers were purchased by defendants themselves and also the document contained photographs of defendants 1 and 3 falsified the stand of the defendants-vendors, held that the case of the plaintiffs stood proved, although granted the alternative relief on the ground that no prior permission was obtained from a Court as contemplated under Section 8(2) of the Hindu Minority and Guardianship Act, 1956 so as to safeguard the interest of the minor child. However, the learned lower Appellate court in the opinion of this Court has rightly decreed the suit in *toto* since in the facts of the case it could not be construed that the interest of the minor was not watched by the real mother of the minor. Said fact is coupled with the fact that an order dated 14.6.2008(A-1) was passed much prior to the filing of the suit whereby permission to sell the share of the minor in the projected need was duly granted. Merely because only an agreement to sell had been inked on 3.3.2008 and on that date no application for seeking permission to sell the share of the minor was pending or decided, would not provide the basis for the courts not to grant discretionary relief of specific performance, *moreso when the*

stand of the defendants has been held to be false.

In view of the above, no question of law much less substantial question of law arises for consideration in this appeal and the same is hereby dismissed.

11.02.2015
joshi

(Jaswant Singh)
Judge