

In the High Court of Punjab and Haryana at Chandigarh

RSA- 3567 of 2011(O&M)
Date of Decision: 4.12.2018

Jasvir Kaur and others

---Appellants

versus

Gobinder Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Madan Sandhu, Advocate
for the appellants**

**Mr. S.S.Sahu, Advocate,
for respondents No. 1 and 3**

**Mr. Vishal Sodhi, Advocate
for respondent No. 2**

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for specific performance of agreement to sell dated 14.6.2000 in respect of 1/10th share in land measuring 236 kanal 4 marlas, detailed in head note of the plaint, purported to be executed by Jasvir Kaur, appellant-defendant No. 1 on behalf of minors Rinku @ Gurjant Singh and Rimpny @ Rimmi, children of Jasvir Kaur and in the alternative, prayer for recovery of Rs. 77,000/- and permanent injunction restraining the appellants-defendants from taking forcible possession of suit land was decreed by the trial court vide judgment and decree dated 13.10.2010. The appeal preferred by unsuccessful

defendants came to be dismissed by the Additional District Judge, Mansa and as a consequence, findings recorded by the trial court were affirmed without any variance.

The operative part of the decree passed by the trial court, reads as follows:-

“.....It is ordered that the suit filed by the plaintiffs for a decree of specific performance on the basis of agreement to sell Ex. P1 is accepted and the defendant No. 1 is directed to get the sale deed executed and registered in favour of the plaintiffs as per the terms and conditions of the agreement to sell Ex. P1 after obtaining the requisite permission of the court as per the provisions of law. The suit is decreed with costs.”

The plea of the respondents-plaintiffs is that defendant No. 1 and Baldev Kaur sold their 1/10th share out of land measuring 236 kanal 4 marlas vide sale deed dated 22.6.2000 in favour of Kamaljit son of Gobinder Singh, plaintiff No. 1, Amar Singh son of Lilu Singh plaintiff No. 2 Gagandeep Singh plaintiff No. 3 and Amandeep Singh brother of plaintiff No. 3 and delivered possession of the same. Jasvir Kaur being mother and guardian of defendants No. 2 and 3, for benefit of the minors entered into agreement to sell qua land measuring 23 kanal 12 marlas in favour of plaintiffs @ Rs. 1,50,000/- per killa and received Rs. 50,000/- as earnest money at the time of execution of agreement to sell, scribed by Santosh Kumar Deed Writer and attested by the witnesses. Defendant No. 1 delivered possession of suit land to the plaintiffs. She agreed to execute the sale deed within a period of two months after taking permission from the

court to sell land of the minors. Defendant No. 1 did not take permission from the Court despite repeated requests of the plaintiffs and eventually refused to take permission from the court. It is averred that plaintiffs always remained ready and willing to perform their part of the contract as per terms and conditions of agreement to sell. Hence the suit.

Defendants filed the written statement and in turn, raised preliminary objections inter alia non-maintainability of the suit; suit being without cause of action, locus standi to file the suit and concealment of true and material facts etc. On merits, they have denied that defendant No. 1 executed agreement to sell the suit property in favour of plaintiffs or received earnest money with the averments that agreement to sell is a forged and fabricated document without consideration. On 14.6.2000, defendant No. 1 executed an agreement to sell her own share in favour of Kamaljit etc. on the basis whereof she had already executed/ registered sale deed in their favour. By taking undue advantage of illiteracy of defendant No. 1, the plaintiffs might have obtained her thumb impressions on some papers. In case, she had to sell the suit land, there was no need to execute a separate agreement to sell. All other material averments of the plaint have been denied with prayer for dismissal of the suit.

The pleadings led to framing of issues, reproduced in para 3 of judgment of the trial court. The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial court accepted plea of the respondents-plaintiffs that Jasvir Kaur executed agreement to sell dated 14.6.2000 on behalf of minor defendants No. 2 and 3 and the plaintiffs

always remained ready and willing to perform their part of the agreement, therefore, they are entitle to specific performance of agreement to sell, in terms noticed hereinbefore. The appeal preferred by unsuccessful defendants-appellants did not find favour with the Additional District Judge, Mansa.

Counsel for the appellants has submitted that Jasvir Kaur did not enter into agreement of sale for alienating land of minors and the agreement propounded by respondents-plaintiffs is the result of forgery and fabrication. It is further argued that in case findings of the courts with regard to agreement to sell are affirmed, no decree for specific performance of agreement can be passed without permission by a competent court in law under Section 8(2) of the Hindu Minority and Guardianship Act, 1956 (in short “the Act”). Further argued that in case Jasvir Kaur is compelled to execute the sale deed in terms of the decree passed by the courts without necessary permission, the sale can be avoided by the minors by taking recourse to remedy in law and the same would lead to multiplicity of proceedings between the parties. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court **Saroj vs. Sunder Singh and others 2014(1) RCR (Civil) 227**. Further reference has been made to judgment of this Court **Mahender Singh vs. Vir Bhan and others 2016(1) L.A.R. 481**.

Counsel representing the respondents have supported consistent findings recorded by the courts with the submissions that the same do not suffer from an error much less perversity, warranting intervention in regular second appeal. It is further argued that as property owned by minors cannot

be alienated without necessary permission being obtained from the Court as has even been envisaged in the agreement of sale, the Courts have rightly directed Jasvir Kaur to obtain necessary permission from the Court and thereafter execute the sale deed in favour of the plaintiffs-respondents. In support of their contention, they have relied upon Division Bench judgment of the Calcutta High Court **Biswanath Charit vs. Damodar Patra and others 1982 AIHLR 296**. Reference has also been made to judgment of Hon'ble the Supreme Court **Mrs. Chandnee Vidya Vati Madden vs. Dr. C.L. Katial and others AIR 1964 SC 978** relied upon by the Calcutta High Court. Counsel have also relied upon judgments of Hon'ble the Supreme Court **Nirmala Anand vs. Advent Corporation Private Limited and others 2002(2) RCR (Civil) 815** and **Manik Chand and another vs. Ramchandra 1980 (3) SCR 1104**.

I have heard counsel for the parties, perused the paper book and records.

Indisputably, on consideration of evidence adduced by the respondents-plaintiffs consisting of testimony of Lilu Singh, plaintiff No. 2, Maru Singh PW2 attesting witness of the agreement and Santosh Kumar, Deed Writer/scribe of the agreement and bald statement of Jasvir Kaur appellant-defendant No. 1, it has been held that agreement to sell was executed by Jasvir Kaur for sale of land measuring 23 kanal 12 marals owned by the minors, in her capacity of guardian of the minors. Counsel for the appellants has failed to advance any arguments much less meaningful to assail findings of the courts with regard to agreement to sell having been executed by Jasvir Kaur as guardian of minors Rinku @ Gurjant Singh and

Rimpy @ Rimmi, son and daughter of Jasvir Kaur widow of late Sh. Jit Singh (father of minors).

The only question that falls for consideration is, whether in the circumstances on record, the courts have rightly exercised their discretion allowing specific performance of agreement of sale with a direction to Jasvir Kaur to obtain previous permission of the Court under Section 8(2) of the Act.

Counsel for the respondents have relied upon Division Bench judgment of the Calcutta High Court in **Biswanath Charit's case (supra)** to support conclusions of the Courts in this regard. In **Biswanath Charit's case (supra)**, the Division Bench has held in para 9, quoted thus:-

“The point raised by Mr. Banerjee appears to us to be of some importance. It must be remembered that the decision of the Privy Council in the case of Mr. Sarwarjan vs. Fakhruddin 39 Indian Appeals 1 stands revised to a great extent by the view expressed by the Privy Council in the later decision in the case of [Subrahmanyam v. Subba Rao](#), 75 Indian Appeals 115 where the Privy Council approved the following principle enunciated by Pollock and Mulla, namely, "It is, however, different with regard to contracts entered into on behalf of a minor by his guardian or by a manager of his estate. In such a case it has been held by the High Courts of India, in cases which arose subsequent to the governing decision of the Privy Council that the contract can be specifically enforced by or against the minor, if the contract is one which is within the competence of the guardian to enter into on his behalf so as to bind him by it, and, further if it is for the benefit of the minor. But if either of these two conditions is wanting the contract cannot be specifically enforced at all." One must, however, remember that such was the principle enunciated and approved by the Privy Council at a time when under the Hindu Law the natural guardian of a Hindu minor had power in the management of his estate to mortgage or sell any part thereof in case of necessity or

for the benefit of the estate. At that time, the limitations enacted in [Section 29](#) of the Guardians and [Wards Act](#), 1890, were applicable to a guardian appointed or declared by the court and not to a natural guardian. But there has been a material change in the law in this regard introduced by the Hindu Minority and [Guardianship Act](#), 1956. [Section 8](#) of the said Act has rendered the powers of the natural guardian substantially the same and subject to the same limitations as are imposed on the powers of a guardian declared or appointed by a court under the Guardians and [Wards Act](#). Sub-section (2) has taken away the independent power of alienation originally possessed by the natural guardian under the Hindu Law and forbids mortgage or charge or transfer by sale, gift, exchange or otherwise or even lease for a term exceeding 5 years or for a term extending one year beyond the date on which the minor will attain majority, any part of the immovable property of the minor except with the previous permission of the court. Reflex of such a change on a claim of specific performance of a contract of any transfer coming within that Sub-section appears not to have been considered by the courts below. We feel no hesitation in agreeing with and accepting the view that it was competent for the natural guardian to enter into and execute an agreement for sale as in the present case for the benefit of the minors and such an agreement will not be void altogether but only voidable at the instance of the minor if it can be shown to be not for his benefit. But in our view the mere fact that the agreement is not void would not by itself render it straightway specifically enforceable at the instance of the purchaser by the natural guardian. It could have been so enforceable if, as the law stood before, the natural guardian himself could have fulfilled the contract by executing the conveyance. But the power has since been made subject to the previous permission of the court. Complying with a decree for specific performance as made in the present case would constitute contravention on the part of the natural guardian of Sub-section (2) of [Section 8](#) of the Hindu Minority and [Guardianship Act](#), and it is settled principle that no court should compel a person to contravene the law. The matter can be looked at from another angle, namely, that even where the court grants such a decree and the natural guardian, executes the conveyance in terms of that decree, that transfer

can be set at naught at the Instance of the minor merely on the ground that such transfer is in contravention of Sub-section (2). No court is expected to pass such an infructuous decree. But the question still remains what would happen to such an agreement, particularly when as has been found in the present case the agreement is within the competence of the natural guardian and is for the benefit of the minor. Would it remain an agreement not enforceable in law? In our view the legal position is that such an agreement is enforceable but only upon a previous permission being obtained from the court. Where the natural guardian in exercise of his powers under Sub-section (1) of [Section 8](#) of the said Act enters into such an agreement for the benefit of the minor he by necessary implication enjoins himself to take the necessary permission from the court and then execute the conveyance which would not contravene in any manner Sub-section (2) thereof. The decree in such a case, therefore, should be in terms similar to the one as the Supreme Court indicated in the case of Messrs. [Chandnee Widyavati Madden v. Dr. C.L. Katial](#), AIR 1964 SC 1978. The decree must direct the natural guardian to seek the necessary permission from the court as contemplated by Sub-section (6) of [Section 8](#) and such permission being obtained to effect the conveyance.”

Perusal of the aforesaid extract makes it evident that contract can specifically be enforced by or against the minor if the contract is one which is within the competence of the guardian to enter into on his behalf so as to bind him by it, and further it is for benefit of the minor but if either of these two conditions is wanting, the contract cannot specifically be enforced at all.

Reverting to the case at hand, there is no dispute between the parties with regard to competence of Jasvir Kaur, guardian/mother of the minors to enter into an agreement on their behalf. The question for consideration is whether the agreement in question is for benefit of the minors. Before addressing this issue, it is pertinent to note that the Courts

have not examined this aspect of the matter much less in extenso. In the agreement, there is one recital that mother needs money for the betterment/welfare (*Behatri*) of the children.

Counsel for the respondents, in response to a query, would fairly inform that there is no evidence led by the plaintiffs that Jasvir Kaur needed money at the relevant time for benefit of children. Jasvir Kaur appeared in the witness box and was cross examined at length but no such fact has been elicited in her cross examination that in the year 2000, the money was needed for education or/and other needs of minors or by sale of property of minors, she wanted to invest the money in some better deal/venture. Except the aforesaid recital in the agreement, there is not even an iota of evidence on record that Jasvir Kaur agreed to sell land of minors for their benefit. No sooner, one of the essentials that the agreement for sale was for benefit of minors becomes missing, the contract for sale of land owned by minors cannot specifically be enforced when examined in the light of judgment in **Biswanath Charit's case (supra)**. In this view of the matter, I find merit in contention of the appellants that decree for specific performance of agreement of sale cannot be allowed to sustain on this score alone, thus, liable to be set aside.

To be fair to the respondents, they produced on record copy of order dated 26.9.2002 (Ex. P6) in the statement of Sh. V.K.Goyal, Advocate, counsel for the respondents-plaintiffs before the trial court. There was no plea raised by the plaintiffs that Jasvir Kaur earlier filed a petition under Section 8 of the Act seeking necessary permission for sale of share of minors out of land measuring 236 kanal 4 marlas. Perusal of the order dated

26.9.2002 simply shows that one petition filed under Section 8 of the Act titled 'Jasvir Kaur vs. General Public' was dismissed for non-prosecution by the Additional Civil Judge (Senior Division), Budhlada. Copy of the petition purported to be filed by Jasvir Kaur is not a part of records in order to prove that sale of land was required for benefit of the minors. Perusal of document Ex. P6 would show that the said application was presented by Sh. V.K.Goyal, Advocate, representing the respondents in the present case. It appears that this document was produced by Sh. V.K.Goyal, Advocate out of his personal knowledge. If Sh. V.K.Goyal, Advocate, who presented the petition under Section 8 of the Act is the same person who filed the present suit on behalf of the plaintiffs against Jasvir Kaur, he appears to have committed professional misconduct. This court would not refer the matter to Bar Council without providing an opportunity of being heard to Sh. V.K.Goyal, Advocate. In the given scenario, the respondents cannot derive any advantage from the document Ex. P6 to prove that agreement of sale is for benefit of minors. In view of the above, specific performance of the agreement can not be allowed, thus, findings of the courts allowing specific performance are set aside.

The Second question for consideration is whether the respondents can be allowed alternative relieve of recovery of earnest money with interest. The agreement of sale propounded by the respondents has been proved. Jasvir Kaur received Rs. 50,000/- towards earnest money. There is no challenge to findings of the courts that respondents always remained ready and willing to perform their part of the agreement as such, neither the respondents can be denied the relief of refund of earnest money

alongwith interest nor Jasvir Kaur can be allowed to enrich herself at the cost of respondents-plaintiffs. Accordingly, the respondents-plaintiffs shall be entitle to recover an amount of Rs. 50,000/- with interest @ 8% per annum from the date of agreement till the date of decree by the trial court and future interest @ 6% per annum on the sum of Rs. 50,000/-. As a consequence, judgments and decrees passed by the courts are modified in the terms indicated above.

In view of what has been discussed hereinbefore, the appeal is partly allowed. The judgments and decrees for specific performance of agreement to sell are set aside but suit of the respondents-plaintiffs is decreed for alternative relief of recovery of Rs. 50,000/- with interest, stated above with costs throughout.

(Rekha Mittal)
Judge

4.12.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No