

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1363-2023 (O&M)
Date of Decision: 20.03.2023Gourav Gambhir
Vs.

..... Appellant(s)

General Public

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGOREPresent: Mr. G.S. Bhatia, Advocate
for the appellant.

LISA GILL, J.

This appeal had been filed by the appellant-father challenging order dated 03.02.2021, passed by learned Civil Judge (Senior Division), Amritsar, whereby his application under Section 8 of the Hindu Minority and Guardianship Act, 1956, for permission to sell share of the property in question in the name of the minor son, has been dismissed.

Brief facts necessary for adjudication of the matter are that the appellant is father of the minor namely Kanishk Gambhir. Property measuring 83 square yards, situated at Amritsar Sub-Urban, Abadi Gopal Nagar, Tehsil and District Amritsar, as detailed and described in the plaint, it is stated, was purchased in the name of Suman Gambhir (mother of the appellant) to the extent of 1/2 share, 1/4th share in the name of the appellant and 1/4th share in the name of Pooja Gambhir i.e. wife of the appellant, who has since passed away. Plot in question measuring 83 square yards, it is stated, was purchased for a sum of ₹20,00,000/- vide registered sale deed dated 29.12.2015. Appellant's wife namely Pooja Gambhir passed away on 01.04.2017 and her share in the property in question has been inherited by the appellant and the minor son in equal shares. It is further pleaded that

appellant entered into an agreement for purchase of a plot measuring 90 square yards situated at Sub-Urban Abadi, Bhawani Nagar, Tehsil and District Amritsar, for a total consideration of ₹50,50,000/-. Earnest money of ₹8,00,000/-, it is stated, has been deposited. As the appellant was short of sufficient funds to purchase the property, he sought to sell the property in question. Agreement to sell dated 27.06.2019 is stated to have been entered into for sale of property in question, for a sum of ₹14,00,000/- out of which appellant received ₹2,00,000/- as earnest money. It is pleaded that property sought to be purchased is bigger in size and appellant seeks to provide all modern facilities, other amenities and better atmosphere for upbringing of his minor son. It is further stated that appellant undertakes not to use the money received qua share of minor and the same would be deposited in his favour in a nationalized bank. Transaction it is stated is not adverse to interest of the minor.

None had appeared from the General Public to contest the matter. Appellant in order to prove his case testified as AW1 and also examined his mother namely Suman Gambhir as AW2 and Manish Arora as AW3. Learned Civil Judge (Senior Division), Amritsar, on perusal of the evidence on record, facts and circumstances, concluded that no ground was made out for affording permission to the appellant for sale of share of the minor. It is observed that property in question was purchased in the year 2015 for a sum of ₹20,00,000/- but there is no explanation as to why it is being sought to be sold for a sum of ₹14,00,000/- as per agreement dated 27.06.2019. It is observed that appellant failed to bring any evidence on record to prove that sale of property is for benefit of the minor. Aggrieved therefrom this appeal has been filed.

We have heard learned counsel for the appellant and have gone through copy of the application as well as the testimonies of appellant, Suman Gambhir and Manish Arora as furnished in Court by learned counsel for the appellant.

It is apparent from a perusal of relevant record that appellant after demise of his wife – Pooja Gambhir has remarried with one Pallavi i.e. his second wife. Agreement to purchase house/plot measuring 90 square yards has been executed with sellers of the same in favour of the appellant, his mother Suman Gambhir and his second wife Pallavi Gambhir. Learned counsel for the appellant is unable to point out any evidence on record to indicate as to why plot measuring 83 square yards is being sold for a lesser price of ₹14,00,000/- in the year 2019 though admittedly said plot was purchased for ₹20,00,000/- in the year 2015. There is not an iota of evidence much less cogent evidence to indicate that value of property in question has decreased in these years. Perusal of the application reveals that in fact there is no pleading to this effect. It is to be noted that there is no share of the minor in the property to be purchased. In the given circumstances, plea of appellant that he would deposit the proceeds qua share of minor by way of an FDR, is not relevant.

Learned Civil Judge (Senior Division), Amritsar has correctly held that no evidence has been placed on record to conclude that sale of property in question is for benefit of minor.

Learned counsel for the appellant is unable to point out any infirmity, irregularity or perversity in impugned order dated 03.02.2021, passed by learned Civil Judge (Senior Division), Amritsar, which calls for any interference by this Court.

No other argument has been addressed.

There is a delay of 284 days in filing of this appeal, which is clearly rendered academic in view of the decision as above. Application is disposed of accordingly.

Appeal is accordingly dismissed.

Pending miscellaneous applications, if any, stand disposed of accordingly as well.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

20.03.2023
Sunil

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