
(1983) 08 P&H CK 0044
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 29 of 1982

Chater Bhuj Goel

APPELLANT

Vs

Gurpreet Singh

RESPONDENT

Date of Decision : 05-08-1983

Acts Referred:

Contract Act, 1872 — Section 62
Hindu Minority and Guardianship Act, 1956 — Section 8
Specific Relief Act, 1963 — Section 20

Citation : AIR 1983 P&H 406

Hon'ble Judges : J.M. Tandon, J

Bench : Single Bench

Judgement

1. Gurpreet Singh minor (respondent) owns house No. 1577. Section 18D Chandigarh. On December 18, 1978, his father Col. Sukhdev Singh moved a petition under S. 8. Hindu Minority and Guardianship Act, 1956, for the grant of permission for the sale of this house. The petition was disposed of by the Senior Subordinate Judge, Chandigarh, vide order dated April 11, 1979. The operative part of this order read :

"Thus considering the evidence on record. I am of the opinion that the sale of the house in question is for the benefit of the minor and accordingly I allow the applicant to sell the property provided he gives surety in the sum of Rs. 21/2 lacs undertaking to deposit the amount of the sale proceeds in some scheduled Bank in the name of the minor within a week from the date of sale and produce the Pass Book in the Court. It is further observed that the sale proceeds be utilised only for the welfare of the minor and for the higher education of the minor and the same be invested in the property to be purchased in the name of the minor at Delhi. It is further ordered that the sale should not be effected for less than R0 2 1/2 lacs."

2. On June 4, 1979. Col. Sukhdev Singh, as a natural guardian of the minor, entered into an agreement with C. B. Goel appellant for the sale of the house of

Rs. 2,85,000. The relevant terms of this agreement read :

"1. That the sale price of the said Kothi has been fixed at Rs. 2,85,000(Rupees two lacs eighty five thousand only).

2. That a sum of Rs. 5,000(Rupees Five thousand only) has already been paid by the purchaser to the seller on 14-5-1979 and the seller hereby acknowledges the receipt of the said amount.

3. That a sum of Rs. 35,000(Rupees Thirty-five thousand only) has been paid by the purchaser to the seller today vide Bank draft No. G-588121 dated 23-5-1979 drawn on State Bank of Patiala. Kasturba Gandhi Marg. New Delhi, and the seller hereby acknowledges the receipt of this amount also.

4. That a sum of Rs. 1,35,000(Rupees one lac thirty five thousand only) will be paid by the purchaser to the seller by the 10th July, 1979, on which date, the vacant possession of the entire house will be handed over to the purchaser and the agreement to sell will be got registered.

5. That the balance sum of Rs. 1,10,000(Rupees one lac ten thousand only) will be paid by the purchaser to the seller on or before 31st January, 1980, when the sale-deed will be executed."

3. On July 7, 1979, the appellant purchased a bank draft for Rs. 1,35,000 in the name of Gurpreet Singh (minor) through his father Col. Sukhdev Singh from the State Bank of Patiala, Chandigarh. The appellant was to take vacant possession of the entire house on July 10, 1979, on payment of Rs. 1,35,000 in terms of the agreement dated June 4, 1979. Col. Sukhdev Singh who resides at Delhi did not visit Chandigarh on that date. On that date at 10-30 p. m. the appellant sent a telegram to Col. Sukhdev Singh which reads :

"WAITING SINCE MORNING YOU DID NOT TURN UP AS PROMISED BANK DRAFT READY REPLY."

4. According to the respondent. Col. Sukhdev Singh sent a telegram to the appellant on July 7, 1979, which reads :

"REFERENCE SALE AGREEMENT 1577 18-D AWAITING INTIMATION DATE YOU WISH TO TAKE POSSESSION OF HOUSE."

5. Col. Sukhdev Singh also wrote a letter purporting to be dated July 11, 1979, which admittedly reached the appellant in Chandigarh on July 17, 1979, stating therein that he has been awaiting reply to his telegram dated July 7, 1979, and that since the appellant is not interested to honour the terms of the agreement the earnest money of Rupees 40,000 stands forfeited in terms of clause 10 of the agreement.

6. On July 16, 1979. Col. Sukhdev Singh visited Chandigarh and met the appellant at the latter's house at 9 a. m. He enquired from the appellant if he had arranged for the money to be paid. The case of the appellant is that he

showed Col. Sukhdev Singh the bank draft of Rs. 1,35,000 which he had already purchased. Col. Sukhdev Singh asked him to visit the Courts in Sector 17, Chandigarh, at 3 p. m. He went to the Courts in Sector 17, Chandigarh, but Col. Sukhdev Singh could not be located. The version given by Col. Sukhdev Singh on this point is that he visited the house of the appellant on July 16, 1979. He enquired if the money has been arranged. The appellant told him that he would be very busy in the High Court in conducting the cases and that he should meet him in the District Courts at 12 Noon. The appellant did not show the draft to him at that time. He went to the District Courts and waited till 2 p. m. The appellant did not turn up. He then left for Delhi.

7. After the last meeting of the appellant with Col. Sukhdev Singh at the former's house in the morning of 16 July, 1979, he received the latter's letter purporting to be dated July 11, 1979, on July 17, 1979, wherein his earnest money of Rs. 40,000 was stated to have been forfeited. On July 18, 1979, the appellant filed a suit for permanent injunction against the respondent restraining him from alienating the house in dispute to a third party and a criminal complaint against Col. Sukhdev Singh u/s 420, Penal Code. Col. Sukhdev Singh was discharged in the criminal complaint by the trial Court on October 31, 1979. The appellant filed Criminal Revision No. 1495 of 1979 against the order of discharge of Col. Sukhdev Singh. During the pendency of the criminal complaint the parties agreed to amicably settle the dispute. The appellant agreed to pay Rs. 2,45,000 plus interest on Rupees 1,35,000 which he had received from the bank and the rent at the rate of Rs. 1.100 per month since July 10. 1979, up-to-date. In the meantime Col. Sukhdev Singh was to obtain the sanction from the Estate Office and to execute the sale-deed. The criminal complaint and the civil suit were agreed to be withdrawn. Col. Sukhdev Singh agreed to abide by what had been stated by the appellant. The statement of Col. Sukhdev Singh reads :

"I have heard the statement of Mr. C. B. Goel petitioner. I accept his statement. I shall apply for the permission from the Estate Officer within two days from today and within 10 days from today on receipt of the whole consideration and as and when the permission as granted, within three days of that. I will get the sale-deed executed. I will also get the Income Tax clearance certificate."

8. Col. Sukhdev Singh did not faithfully abide by the terms of the compromise entered into during the proceedings of Criminal Revision No. 1495 of 1979. The revision was accepted by the High Court vide order dated February 11, 1980. The order of the trial Court discharging Col. Sukhdev Singh was set aside. Col. Sukhdev Singh then filed Criminal Appeal No. 595 of 1980 in the Supreme Court which was decided on September 2, 2, 1980. The order of the Supreme Court reads :

"We are of the view that this is a purely civil dispute and the criminal process should not have been employed for the purpose of coercing the appellant to specifically perform the contract of sale of immovable property entered into by him with the second respondent. We, therefore, allow the appeal, set aside the

judgment of the High Court and restore the order passed by the trial Magistrate. The parties, are, however, agreed that the appellant will return the sum of Rs. 40,000 being the amount of the earnest money to the second respondent on or before October 5, 1980, and in the meantime the second respondent may file a suit for specific performance of the contract against the appellant if so advised. The return of the amount of Rs. 40,000 by the appellant to the second respondent will be without prejudice to the rights and contentions of the parties, including the right of the second respondent to obtain specific performance of the contract, if he is in law otherwise so entitled."

8-A. On October 3, 1980, the appellant filed a suit for specific performance of the sale agreement dated June 4, 1979, and for profession of the same and in the alternative for recover of Rupees 2,50,000 along with future interest at the rate of 12 per cent per annum. The suit for permanent injunction already filed by the appellant against the respondent was withdrawn.

9. Col. Sukhdev Singh, as guardian of his minor son Gurpreet Singh (respondent) contested the claim of the appellant in the written statement filed on all possible grounds. The factual position, as narrated above, is not disputed. The case of the respondent, however, is that the appellant was not ready and willing to perform his part of the agreement, inasmuch as he could not arrange for the money by due date and/or he did not wish to purchase the house. The compromise entered into during the pendency of criminal revision No. 1495 of 1979 could not be adhered to because the Income Tax clearance certificate was not granted. Some preliminary objections were also raised.

9-A. The trial Court framed the following issues :

1. Whether the plaintiff (now appellant) is entitled to the claim of relief of specific performance of the agreement dated June 4, 1979?
2. Whether the agreement dated June 4, 1979, is not enforceable as alleged in the preliminary objections of the written statement?
3. Whether the second suit as alleged in the preliminary objection No. 3 of the written statement is barred?
4. Whether the agreement in question has been frustrated and has become impossible of performance in the eve of law, as alleged in para. 4 of the written statement?
5. Whether the plaintiff has himself failed to perform the contract on his part?
6. Whether the suit is barred by provision of O. 2, R. 2. Civil Procedure Code?
7. Whether the suit is not maintainable under S. 20 Specific Relief Act?
8. Whether the original agreement stands superseded by fresh and different agreement arrived at in the Hon"ble High Court on February 4, 1980, as alleged in the preliminary objection para No. 8 of the written statement?

9. Whether the defendant (now respondent) is entitled to recover any loss in view of the position that the house is lying vacant as alleged in para No. 9 of the written statement?

10. The trial Court vide order dated January 18, 1982, found issues 1 and 7 against the appellant and the remaining in his favour and consequently dismissed the suit leaving the parties to bear their own costs. It is against this order that the present regular first appeal is directed.

11. The trial Court has found that the breach of the agreement had taken place on the part of the guardian of the minor and not on the part of the appellant. The learned counsel for the respondent has assailed this finding. The contention of the learned counsel is that Col. Sukhdev Singh sent the telegram to the appellant on July 7, 1979, enquiring if the money was ready. He got no reply thereto. The telegram purporting to have been sent by the appellant on July 10, 1979, to Col. Sukhdev Singh did not reach the latter. On July 16, 1979, Col. Sukhdev Singh came all the way from Delhi to Chandigarh to meet the appellant. He enquired from the appellant at the latter's house at 9 A. M. on July, 16, 1979, if the money was ready. The appellant did not show him the bank draft. He was asked to wait in the Courts in Sector 17, till 12 Noon. He waited till 2 P. M. and then returned to Delhi. It should, therefore, be inferred that Col. Sukhdev Singh, as guardian of the minor, was prepared to accept Rs. 1,35,000/- from the appellant in terms of the agreement on July, 16, 1979, and to hand over the possession of the house and also to get the sale-deed registered, but it was the appellant who backed out. The contention is without merit. The circumstances leave no manner of doubt that it was Col. Sukhdev Singh who backed out and not the appellant. The appellant had parted with Rs. 40,000/- which he paid to Col. Sukhdev Singh when the agreement was executed on June 4, 1979. The appellant was to take possession of the house in terms of the agreement on July 10, 1979. He was to take possession of the house on payment of Rs. 1,35,000/- . It is obvious that on July 10, 1979, the appellant was ready with a bank draft of Rs. 1,35,000/- already purchased in the name of the minor respondent. He waited for Col. Sukhdev Singh who admittedly did not visit Chandigarh on that date. The bank draft for Rs. 1,35,000/- was still with the appellant when Col. Sukhdev Singh visited his house at Chandigarh at 9 A. M. on July 16, 1979. It is highly improbable that on enquiry by Col. Sukhdev Singh the appellant would not tell him that he had already purchased a bank draft for Rs. 1,35,000/- for purposes of making the payment. It was agreed between the appellant and Col. Sukhdev Singh in the morning of July 16, 1979, that they both will meet the same noon or afternoon in Sector 17 Chandigarh. The appellant is a practising lawyer in the High Court. He visited the Courts in Sector 17 at 3 P. M. Col. Sukhdev Singh had come to Chandigarh from Delhi to meet the application in connection with the sale transaction. It is strange that before leaving Chandigarh at 2 P. M. he did not make an attempt to enquire from the appellant as to why he had not come. It is apparent that he did not make such an enquiry because the appellant had already told him that he would visit the premises of the Courts at 3 P. M. On July

18, 1979, the appellant filed a suit for permanent injunction against the minor respondent, Col. Sukhdev Singh, as guardian of the minor respondent, Col. Sukhdev Singh was sincerely ready to get the payment of Rs. 1,35,000 towards the sale price of the house on July 16, 1979, then why did not agree to get the same on August 1, 1970. Col. Sukhdev Singh did not agree to accept the money on that date because he had already changed his mind. This change of mind on his part had taken place before July 16, 1979, and not necessarily thereafter. The trial Court has rightly observed that the evidence led on the file as also the circumstances are suggestive that Col. Sukhdev Singh had been finding out an excuse to wriggle out of the agreement on one pretext or the other whereas the appellant was dead serious to have the sale-deed executed. The observations are justifiable and correct. The finding of the trial Court that the breach of agreement had taken place on the part of Col. Sukhdev Singh guardian of the minor, respondent and not on the part of the appellant is upheld.

12. The learned counsel for the respondent has also assailed the finding of the trial Court in favour of the appellant that the suit for specific performance is not barred by the provisions of O. 2, R. 2. Civil P. C. The contention of the learned counsel is that the appellant should have sought the relief for specific performance in the suit for permanent injunction which he filed against the respondent on July 18, 1979. In view of the fact that he did not claim this relief, the suit for specific performance is barred under O. 2, R. 2. Civil P. C. The contention is without merit.

13. The terms of the agreement dated June 4, 1979, are suggestive that time was not the essence of the agreement. It is admitted that the amount of Rs. 1,35,000 which was agreed to be paid by the appellant on July 10, 1979, could be paid even on July 16, 1979. The last payment of Rs. 1,10,000 was to be made by the appellant on or before January 31, 1980. The trial Court has rightly found that the suit for specific performance of the agreement to sell was not competent by the appellant on July 18, 1979, when the suit for permanent injunction was filed and further if suit for specific performance had been filed on that date it would have been premature. It has, therefore, been rightly held that the suit for specific performance is not barred under O. 2, R. 2. Civil P. C.

14. The learned counsel for the respondent has argued that the agreement dated June 4, 1979, stood superseded by a fresh and different agreement arrived at between the parties during the pendency of Criminal Revision No. 1495 of 1979, in the High Court on February 4, 1980. The agreement dated June 4m 1979, therefore, cannot be specifically enforced under S. 62, Contract Act. The finding of the trial Court on this point in favour of the appellant is liable to be reversed. This contention is also devoid of force. The trial Court has rightly held that the statements made in the High Court by the appellant and Col. Sukhdev Singh, guardian of the minor. On February 4, 1980, did not result in the rescission of the agreement dated June 4, 1979, or novation thereof. The appellant and Col. Sukhdev Singh made statements to give effect to the earlier agreement. There is

hardly any scope to hold that the finding of the trial Court is not correct. The agreement dated June 4, 1979, remained intact and the statements made by the parties on February 4, 1980, did not have the effect of rescission thereof.

15. The learned counsel for the respondent has argued that the contract between the parties stands frustrated having become impossible of performance because the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976(hereafter the Act) has not granted permission to the respondent to sell the house. This contention is fallacious and has been rightly repelled by the High Court. Col. Sukhdev Singh submitted his affidavit dated July 12, 1980, wherein he gave the list of urban properties held by him, his wife and his son Gurpreet Singh (minor) respondent. In the list of properties the houses situate at Nebha is not covered by the Act. The properties detailed in the affidavit are built up houses and shops in Delhi and Chandigarh. S. 3 of the Act reads :

" " Except as otherwise provided in this Act, on and from the commencement of this Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit, in the territories to which this Act applies under sub-section (2) of S. 1."

16. It is obvious that this Act applies to urban land and not to urban built up houses and shops. It is evident that Col. Sukhdev Singh gave details of properties wrongly in his affidavit dated July 12, 1980, to the authorities under the Act for procuring the convenient order dated July 23, 1980, refusing permission for the sale of the house in dispute to defeat the right of the appellant. The trial Court has rightly held that no permission of the authority under the Act is required for the sale of the house in dispute in favour of the appellant and the refusal of the competent authority to grant such permission has no effect upon the agreement between the parties.

17. Another point argued is regarding the non-compliance of the provisions contained in O. 32, R. 3. Civil P. C. Gurpreet Singh respondent is the son of Col. Sukhdev Singh and is a minor. On December 18, 1978, Col. Sukhdev Singh sought to permission of the Court u/s 8. Hindu Minority and Guardianship Act, for the sale of the house in dispute owned by the minor. Col. Sukhdev Singh as a guardian (natural) was permitted to sell the house for a price not less than Rs. 21½ lacs. On October 3, 1980, the appellants filed a suit for specific performance against Gurpreet Singh minor son of Col. Sukhdev Singh, through his natural guardian and father Col. Sukhdev Singh. In the heading of the plaint it is further added that Col. Sukhdev Singh in the written statement filed by him admitted that on June 4, 1979, he as a guardian of his minor son had entered into an agreement with the appellant for the sale of the house in dispute for a sum of Rs. 2,85,000, Col. Sukhdev Singh acted as a true guardian of his minor son during the pendency of the suit and contested the claim of the appellant on all possible grounds and with full vigour. There is no allegation whatsoever of negligence however remote on the part of Col. Sukhdev Singh in the matter of conduct of suit filed by the appellant, it is true that no formal application for appointment of

Col. Sukhdev Singh as the guardian ad litem of his minor son in terms of O. 32, R. 3, Civil P. C. was made nor did the Court pass a formal order for his such appointment. The contention of the learned counsel for the respondent is that the omission to secure an order of the Court in terms of O. 32, R. 3, Civil P. C. for the appointment of Col. Sukhdev Singh as the guardian of his minor son renders the proceedings conducted in the suit filed by the appellant a nullity because it shall be assumed that the minor was not legally represented therein. The learned counsel for the appellant has argued that the omission in this regard will not render the proceedings in the civil suit a nullity inasmuch as the minor was factually and effectively represented by his natural guardian Col. Sukhdev Singh. This point was also raised before the trial Court who has held that Col. Sukhdev Singh being not a guardian appointed by the Court is not competent to defend the suit on behalf of the minor.

18. Order 32, Rule 3, Civil Procedure Code, reads :

"(1) Where the defendant is a minor, the Court, on behalf satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

....."

19. In Ram Chandra Arya Vs. Man Singh and Another, , a decree had been obtained against a lunatic without appointment of his guardian. It was held that the decree was passed in contravention of the provisions of O. 32, R. 15, Civil P. C. and it is well settled that if a decree is passed against a minor without appointment of a guardian it is nullity and is void and not merely voidable.

20. In Nirmal Chandra Ray and Others Vs. Khandu Ghose and Others, , the following principles were laid :

(1) Where a proper person had been appointed, with the sanction of the Court and in compliance with the mandatory provisions of law to act as guardian ad litem in a suit, the decree passed in such suit cannot be challenged on the ground of mere irregularity in the matter of appointment of such person as guardian ad litem, not causing any prejudice, such as the absence of a formal order of appointment by reason of the doctrine of effective representation.

(2) The foregoing doctrine has no application where the Court has not considered any proposal for the appointment of a guardian-ad-litem.

(3) The provisions of sub-rule (4) of R. 3 and sub-rule (3) of R. 4 of O. 32, are mandatory and a decree obtained against a minor in complete disregard of these

provisions is without jurisdiction and void ab initio.

20-A. Banerjee, J., one of the learned Judges constituting the Bench, further observed :--

"The doctrine of substantial representation is a matter of substance and not of form. Where a minor was effectively represented in a suit by a guardian, although not formally appointed, and suffered no prejudice on account of the informality, the absence of a following order of appointment of guardian is not fatal to the suit."

21. The propositions laid in Nirmal Chandra Ray's case (supra) were taken notice of in Amrik Singh v. Karnail Singh AIR 1974 P&Har 315 and it was held that the ratio thereof is that it is only where a minor is not at all represented, in fact or in law, that the decision rendered against him will be void. But where there is substantial representation of the minor the decision will not become void, unless the minor has suffered prejudice by non-compliance of the provisions of O. 32, R. 3. It was further held :--

" "The crux of the matter is that it has to be seen whether the minor was effectively represented in the litigation. If he was, then the non-compliance with the provisions of O. 32, R. 3, which are mandatory, would not render the decision void. But if the non-compliance has caused prejudice to the minor or he was not effectively represented, the decision will be void, i. e., the minor can either ignore it or avoid it. This approach is in consonance with justice because where the matter has been properly contested and no prejudice has been caused to the minor, it will be sheer injustice to the other side to re-open the matter again."

22. The learned counsel for the respondent has argued that the observations made in Amrik Singh's case (supra) shall aptly apply where a guardian ad litem of the minor is appointed by the Court under O. 32, R. 3, Civil P. C. but some irregularity has been committed in making such appointment. The argument proceeds that the ratio of this authority will not apply to the case where no order regarding the appointment of a guardian ad litem of the minor under O. 32, R. 3, has been passed. The contention is without merit. There is nothing to indicate in the Full Bench decision that the ratio thereof is restricted to a case where a guardian ad litem is in fact appointed under O. 32, R. 3, Civil P. C. It is rather clear that the ratio of this judgment will be applicable to a case where no guardian ad litem under O. 32, R. 3 is appointed, but factually the guardian of the minor has represented him throughout and further the minor has not suffered any prejudice by non-compliance of the provisions of O. 32, R. 3, Civil P. C. It may be noted that the doctrine of effective representation of a minor was made applicable by their Lordships of the Privy Council even in the absence of any order of formal appointment of a guardian ad litem in *Walian v. Banke Behari Pershad Singh* ILR (1903)Cal 1021. In that case the mother of certain minor defendants appeared throughout the proceedings in a suit as their guardian. The Court admitted the plaint in which she was described as guardian, and in the

decree and execution proceedings the Court so described her. Their Lordships observed:--

"Their Lordships are unable to concur in the conclusion at which the learned Judges arrived. The present plaintiffs were substantially sued in the former suit, and the alleged fraud has been negatived. It appears to their Lordships that they were effectively represented in that suit by their mother, and with the sanction of the Court: and for the reasons given by the first Court their Lordships attach no importance to the certificate of Durga Dutt. There is nothing to suggest that their interests were not duly protected. The only defects which can be pointed out are that no formal order appointing the mother of the now plaintiffs to be their guardian ad litem is shown to have been drawn up: and that it is not definitely shown that any attempt was made to serve the summons in the former suit upon the infants personally, or upon their mother, a purdanashin lady before serving it upon Gajadhur, the only adult male member and the Karta of the family. It has not been shown that the alleged irregularities caused any prejudice to the present plaintiffs; nor indeed could there well be any, since it has been found that the original debt was one for which the present plaintiffs were liable."

23. The ratio of this authority is squarely applicable to the facts of the instant case. The minor was sued through his natural guardian Col. Sukhdev Singh who had obtained the requisite permission for the sale of the house in dispute under S. 8. Hindu Minority and Guardianship Act. The Court admitted the plaint and allowed Col. Sukhdev Singh to contest the suit on behalf of his minor son throughout. It is thus obvious that Gurpreet Singh minor was effectively represented in the suit by his father Col. Sukhdev Singh and with the implied sanction of the Court.

24. Gurpreet Singh minor was effectively represented in the suit by his father Col. Sukhdev Singh. The omission in the matter of formal appointment of Col. Sukhdev Singh as guardian ad litem of the minor has not caused any prejudice to the latter. It is, therefore, difficult to hold that non-compliance with the provisions of O. 32, R. 3 Civil P. C. in this case would render the proceedings in the suit filed by the appellant a nullity. The finding of the trial Court on this point adverse to the appellant is reversed.

25. The trial Court while dealing with the matter of exercise of discretion to grant a decree for specific performance of the appellant in terms of S. 20. Specific Relief Act, has observed that the Court while granting permission for the sale of the house under S. 8. Hindu Minority and Guardianship Act, had ordered that the sale proceeds would be utilised only for the purpose of welfare of the minor and for his higher education and would be invested in the property to be purchased in the name of the minor at Delhi. There is no evidence that the guardian of the minor had made any agreement at Delhi at purchase any property in the name of the minor at the time the agreement to sell the house in dispute was made on June 4, 1979, or made any arrangement for his higher education. More than 21/2 years have elapsed since the agreement to sell was entered into. During

this period, the prices of the real estate have touched the sky. With the sale consideration of Rs. 2,85,000/- the minor will be able to purchase not even a fraction of the property now held by him and in dispute. While considering the question of allowing specific performance of the contract, the Court has to take into account the effect thereof on the interest of the innocent minor. His guardian cannot be permitted to play with his property. It was further observed that the permission of the Court under S. 8(2). Hindu Minority and Guardianship Act, obtained by Col. Sukhdev Singh on April 11, 1979, has become meaningless with the passage the time, change of circumstances and conduct of the guardian. The minor cannot be penalised for the wrongs committed by the guardian. The welfare of the minor is of paramount importance and has to be kept in mind while exercising the discretion under S. 20, Specific Relief Act.

26. The learned counsel for the appellant has argued that the welfare of the minor was taken into consideration by the Court while granting permission for the sale of the house in dispute u/s 3(2). Hindu Minority and Guardianship Act, on April 11, 1979. Apart from the fact that there is no material on the record to justify the finding of the trial Court that the prices of the real estate have touched the sky after June 4, 1979, it was not within the competency of the trial Court to decline the relief of specific performance on this ground when the guardian of the minor entered into an agreement to sell with the appellant on June 4, 1979, after obtaining requisite permission from the learned counsel for the respondent is that the trial Court has rightly exercised the discretion against the appellant under S. 20. Specific Relief Act, by keeping in view the benefit of the minor in spite of Col. Sukhdev Singh having obtained permission of the competent Court to sell the house in dispute on April 11, 1979. Reliance has been placed on *Vedakattu Suryaprakasam v. Ake Gangaraju* AIR 1956 AP 33.

27. It was held in *Dull Singh v. Tilla*, 1978 Pun LJ 208 that it is true that the relief of specific performance is discretionary, but the discretion is to be exercised in a judicious manner. In *Madamsetty Satyanarayana Vs. G. Yelloji Rao and Others*, , it was held that it is not possible or desirable to lay down the circumstances under which a Court can exercise its discretion against the plaintiff. But they must be such that the representation by or the conduct or neglect of the plaintiff is directly responsible in inducing the defendant to change his position of his prejudice or such as to bring about a situation when it would be inequitable to give him such a relief.

28. In *Vedakattu Suryaprakasam's* case AIR 1956 AP 33(FB)(supra) it was held that a contract entered into by a guardian of a Hindu minor for sale or for purchase of immovable property is specifically enforceable against the minor. But the exercise of a valid and enforceable contract cannot in itself deprive the Court of its discretionary power to refuse to enforce the contract, if the supervening circumstances obviously effect the interests of the minor. In all transactions affecting a minor, a paramount duty rests upon a Court not to put its seal on transactions affecting his interests. Therefore, though the contract might be valid

and otherwise enforceable, if at the time the Court was asked to enforce it, it transpires that the circumstances have so changed that it would obviously be unjust and detrimental to the interest of the minor to enforce it, the Court may well in the exercise of its discretion refuse to give a decree for specific performance.

29. The Hindu Minority and Guardianship Act, 1956, came into force in 1956. Section 8 thereof deals with the powers of natural guardian of a minor. The relevant part of this section reads :

"(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate but the guardian can in no case bind the minor by personal covenant.

(2) the natural guardian shall not, without the previous permission of the Court.--

(a) mortgage, or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor, or

(b)

(3) Any disposal of immovable property by a natural guardian in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

(4) No Court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor....."

30. After the coming into force of Hindu Minority and Guardianship Act, the natural guardian of a minor can make an effective sale of the property of the minor not voidable at the latter's instance with the permission of the Court under S. 8(2) thereof. The Court can give permission for the sale of the minor's property only after holding that the same is for necessity or for his benefit in terms of sub-section (4). The Court is debarred from granting permission for the sale of the minor's property which is not required by way of necessity or is not for his benefit.

31. In the present case, Col. Sukhdev Singh father and natural guardian of the minor obtained permission of the Court on April 11, 1979, under S. 8(2). Hindu Minority and Guardianship Act, for the sale of the house in dispute for a price not less than Rs. 21/2 lacs. The Court by granting such permission certified that the proposed sale of the house for a price not less than Rs. 21/2 lacs is for the benefit of the minor. Col. Sukhdev Singh was armed with the requisite permission in terms of S. 8(2) of the Act when he entered into an agreement for the sale of the house in dispute with the appellant on June 4, 1979, for Rupees 2,85,000. It is not disputed that the price at which the bargain was struck was fair. It has already been held above that the breach of agreement had taken

place on the part of Col. Sukhdev Singh, guardian of the minor, and not on the part of the appellant. The appellant was thus compelled to file a suit for specific performance of the agreement of sale dated June 4, 1979. Assuming that during the pendency of the suit filed by the appellant the prices of real estate increased, the fact remains that the appellant has not contributed the least in delaying the payment. The guardian of payment in terms of the agreement of sale obviously for the benefit of the minor which in turn necessitated the filing of the suit for specific performance. The issue regarding the benefit of the minor was examined by the Court while granting permission for the sale of the house under S. 8(2). Hindu Minority and Guardianship Act, on April 11, 1979. There is hardly any justification to reopen this issue in the context of exercise of discretion under S. 20. Specific Relief Act. The rise in prices of real estate during the pendency of the suit for specific performance filed by the appellant is rather irrelevant in the present case.

32. Col. Sukhdev Singh having taken permission from the Court under S. 8(2). Hindu Minority and Guardianship Act, for effecting the sale of the house of the minor the latter cannot avoid the sale transaction having taken place in pursuance thereof after attaining majority even on the ground that during the pendency of the suit for specific performance the prices of the real estate had increased and the sale made in pursuance of the decree passed therein was not for his benefit. If the provisions of S. 8 of the Act debars the minor to take such plea after he attains majority how can such a plea raised by the guardian of the minor in the suit for specific performance be allowed to prevail. Under these circumstances, it would be wrong to hold that the discretion under S. 20. Specific Relief Act, should be exercised the minor on account of the rise in the prices of real estate during the pendency of the suit for specific performance.

33. In D.K. Aswathanarayanaiah Vs. Nallapula Sanjeeviah, the natural guardian of the minors had agreed to sell the property of the minors before the coming into force of Hindu Minority and Guardianship Act, 1956. No permission of the Court in terms of S. 8(2) of the said Act was, therefore, necessary nor had it been obtained in that case by the guardian of the minors before agreeing to sell the property. The Court, therefore, did not certify before the agreement of sale had been entered into that it was for the benefit of the minors. The observations made in Vedakattu Suryaprakasam's case (supra), therefore, cannot be made applicable to the instant case for the reason that Col. Sukhdev Singh had obtained the permission of the Court under S. 8(2) of the said Act before he entered into an agreement of sale with the appellant.

34. In view of discussion above, the trial Court has wrongly exercised the discretion against the appellant on the ground that the price of the real estate have increased during the pendency of the suit. The assumed increase in the prices of real estate during the pendency of the suit being irrelevant the appellant is entitled to a decree for specific performance of the agreement of sale dated June 4, 1979.

35. No other point has been argued.

36. In the result, the appeal is accepted and the impugned order of the trial Court set aside. The appellant is granted a decree for possession of the house in dispute by specific performance of the agreement of sale dated June 4, 1979. The appellant is allowed two months" two to deposit the sale price in Court. The guardian of the minor shall execute the sale-deed of the house in dispute in favour of the appellant within one month thereafter. Should the guardian of the minor fail to execute the sale-deed, the appellant will be entitled to get the same executed through Court. The appellant will be entitled to possession of the house after the execution of the sale-deed. The parties are left to bear their own costs.

37. Appeal allowed.