

(1985) 10 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 574 of 1977

Jatinderpal Singh

APPELLANT

Vs

Nachhattar Singh and Others

RESPONDENT

Date of Decision : 11-10-1985

Acts Referred:

Citation : (1985) 10 P&H CK 0068

Hon'ble Judges : Gokal Chand Mital, J

Bench : Single Bench

Advocate : H.L. Sarin and Mr. A.S. Grewal, for the Appellant; D.S. Keer, for the Respondent

Judgement

G.C. Mital, J.—On 3rd August, 1971, vide Exhibit P1, Mohinder Singh and Smt Dalip Kaur agreed to sell the house along with land measuring 126 square yards for Rs 8000/to Jatinderpal Singh and took Rs. 7000/ as earnest money Since the property belongad to their minor son Nachhattar Singh, they agreed with the vendee to obtain permission from Guardian Court Mohinder Singh filed an application before the Guardian Court for grant of- permission to sell plot measuring 126 aquare yards. The mother of the minor was also impleaded as one of the Respondents. In that application no mention was made about the residential house, which was constructed thereon. Vide order dated 21 st April, 1973 (Exhibit P-2), the Guardian Court granted permission to sell the plot subject to the following conditions:-

(i) the plot shall not be sold at less than Rs. 6300/-.

(it) the intended sale shall be got approved from the Court;

(iii) the sale proceeds of the plot shall be deposited in State Bank of India, Ludhiana, in the name of the minor through this Court;

(iv) the amount so deposited shall be spent on the education of the minor and the amount to be withdrawn from the bank shall be withdrawn with prior

permission of the Court.

(v) the applicant shall furnish security in the amount of Rs. 7000/- to abide by the conditions mentioned above.

Since the guardian of the minor did not execute the sale deed, Jatinderpal Singh gave notice on 31st May 1974, Exhibit P6 to them for getting the sale deed executed as he was ready and willing to perform his part of the contract. Since notice was not honored, he filed a suit for specific performance of contract on 2nd August, 1974. Nachhattar Singh and his parents were impleaded as the defendants. They denied the execution of sale besides taking other pleas. On the evidence led in the case, the trial Court by judgment and decree dated 2nd August, 1975 decreed the suit for specific performance of contract as per agreement Exhibit P-1, after recording findings that the agreement to sell was duly executed and since permission was granted by the Court, the Plaintiff was entitled to the decree as he was and has been willing to perform his part of the contract.

2. On Defendants' appeal, the learned Additional District Judge, disposed of the matter by taking notice of two matters, one that the permission was obtained to sell the plot, whereas the agreement was in respect of residential house along with plot; and two that the sale could take place subject to the approval of the Court, which was one of the conditions imposed while granting permission. In view of the above two matters, the appeal was allowed and the suit was dismissed by judgment and decree dated 22nd September, 1976. This is Plaintiff's appeal.

3. After hearing the learned Counsel for the parties and on perusal of the record, I am of the view that the lower appellate Court was justified in not decreeing the suit for specific performance of contract. A reading of the order of the Court granting permission to sell (Exhibit P-2), shows that permission was granted only to sell plot measuring 126 square yards shown red in the plan attached in these proceedings, and it was not mentioned that permission was either sought or granted for selling residential house constructed thereon. Therefore, permission was only granted for sale of the plot and not for the house; whereas agreement Exhibit P-1 regarding the sale of the residential house along with the plot measuring 126 yards. If permission is not granted to sell the residential house, suit for specific performance of agreement of sale in regard to the residential house would not be competent. On this important ground, the lower appellate Court was right in dismissing the suit for specific performance of contract.

4. The other ground taken by the lower appellate Court is also of substance because while granting permission the Court specifically mentioned that the approval of the Court would be taken for the intended sale. No such approval was ever sought without which sale could not take place.

5. For the reasons recorded above, the lower appellate Court was right in not decreeing the suit for specific performance.

6. Faced with this situation, Sh. H.L. Sarin, Senior Advocate, appearing for the Plaintiff has argued that the trial Court had given a clear finding that the agreement of sale was duly executed between the parties and since that finding was not challenged before the lower appellate Court, even if decree for specific performance is not to be granted, since the Plaintiff had paid Rs. 2000/- as earnest money to the parents of the minor, he is entitled to a decree for the return of Rs. 2000/- alongwith interest. I find merit in this contention. From a reading of the evidence on record, it is clearly established that the agreement was duly executed and it was so found by the trial Court, which finding was not challenged by the Defendants in appeal. Since Plaintiff had paid Rs 2000/- to the parents of the minor i.e. Mohinder Singh and Smt. Dalip Kaur, he is entitled to return of the same. The learned Counsel is also right in asking for the interest on that amount.

7. For the reasons recorded above, this appeal is allowed to the limited extent that a decree for Rs. 2000/- is passed against Mohinder Singh and Smt. Dalip Kaur Defendants Nos. 2 and 3 alongwith interest at the rate of 6 per cent per annum for date of institution of the suit i.e. 31st July, 1974 till realization. The parties are left to bear their own costs.