

**imami Vs. Musammat Kallo**

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**SooperKanoon Citation :** [sooperkanoon.com/458102](http://sooperkanoon.com/458102)

**Court :** Allahabad

**Decided On :** May-02-1916

**Reported in :** (1916)ILR38All433

**Judge :** Pramada Charan Banerji and; Piggott, JJ.

**Appellant :** imami

**Respondent :** Musammat Kallo

**Judgement :**

**Pramada Charan Banerji and Piggott, JJ.**

1. This appeal arises out of a suit for specific performance of an alleged contract of sale in respect of a house. The plaintiff also asks for a declaration that he has become the absolute owner of the house. The facts are these. The house in question belongs to the minor defendant Musammat Kallo. One Shahzada was appointed guardian of the minor under the orders of the District Judge of Allahabad. The guardian Shahzada applied to the District Judge for permission to sell the house in question for the payment of debts due by the minor. The District Judge ordered the property to be sold by auction to the highest bidder. The highest bid made was by the present plaintiff Imami, who offered to pay Rs. 1,300 for the property. On the 8th of July, 1912, the District Judge made an order to the effect that Shahzada, the guardian of the minor, was permitted to execute a sale-deed in favour of Imami, the draft being put up before the court for approval prior

to the execution of the sale-deed. A draft was submitted and the District Judge made certain alterations in it. Imami, however, refused to purchase the property on the ground that the alterations in the draft which he believed had been made by or on behalf of the guardian did not meet with his approval. This is clear from the notice which he issued to the brother of the guardian in February, 1912, in which his pleader distinctly stated that he had refused to purchase the property. Subsequently it seems he consented to accept the purchase, but nothing was done for a long time. Meanwhile other persons had offered to purchase the property for a larger value and on the 25th of November, 1913, the learned District Judge granted permission to the guardian to sell the property for Rs. 2,000 to another party. Thereupon the present suit was brought by the plaintiff on the 3rd. of February, 1914. He stated in the plaint that he had by reason of the sanction given by the District Judge to sell the property to him, acquired the ownership of the property and that he was entitled to obtain a sale-deed of it from the guardian. As we have stated above, Shahzada was the guardian appointed by the District Judge, but Shahzada is no party to the present suit. When the suit was instituted he was named as the guardian of the minor, but he refused to act as guardian and thereupon another person, namely Mata Ghulam, was appointed guardian ad litem. Shahzada was not impleaded in his own person as a defendant. It would therefore be difficult, if the claim were allowed, to order Shahzada, who is no party to the suit, but who is the certificated guardian of the minor, to execute a sale-deed in the plaintiffs favour. The court below has dismissed the claim on the ground that the sale to the plaintiff would be detrimental to the interests of the minor. There can be no doubt that in a suit for specific performance it is in the discretion of the court to decree specific performance or not and in no case would the court be justified in enforcing performance against a minor 'when such enforcement would be to his detriment.' This was held by this Court in *Chittar Mal v. Jaganath Prasad* (1907) I.L.R. 29 All. 213. In the present case it is clear that there being a purchaser who has offered more than Rs. 2,000 for the property and for a sale to whom the learned District Judge has granted permission to the guardian, the sale to the plaintiff would surely not be to the benefit of the minor. On this ground alone the court would be justified in refusing to grant a decree to the plaintiff. Furthermore, there are in this case circumstances which would make it

unreasonable to grant the plaintiffs prayer. The original permission for the sale of the property was given so far back as July, 1912. In September of that year the court said that if the draft approved by the court was accepted, a sale-deed might be executed in the plaintiff's favour. Apparently the plaintiff did not accept the draft, and as his own notice to which we have referred above shows, he refused to purchase the property. It was not until other purchasers offered larger sums of money for the property that the plaintiff expressed his willingness to accept the terms offered. Under these circumstances we think the plaintiff is not entitled to the decree asked for. It is clear that he has not acquired any interest in the ownership of the property as he asserted in his plaint. We dismiss the appeal with costs.

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