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Court : Delhi

Decided On : Aug-01-2011

Judge : V.K. Jain, J.

Acts : Specific Relief Act - Sections 10, 13; Hindu Minority and Guardianship Act, 1956 - Section 8(2)

Appeal No. : CS(OS) No. 1208/2011

Appellant : Braham Singh

Respondent : Sumitra and ors

Advocate for Def. : Mr Sandeep Sethi; Mr D.K. Devesh, Advs.

Advocate for Pet/Ap. : Mr. Pankaj Vivek; Mr. Atul Tripathi, Advs.

Judgement :

1. This is a suit for specific performance of an agreement to sell dated 20th September, 2006, alleged to have been executed by defendant No. 1 in favour of the plaintiff. Late Shri Kude Ram, father-in-law of defendant No. 1, and grandfather of defendants No. 2 to 4, whose agricultural land in village Kakrola of Delhi was acquired for planned development of Delhi, applied for allotment of an alternative plot under the scheme of Government for allotting such plots to those whose land is acquired for planned development of Delhi. Late Shri Kude Ram, however, died before any plot of land could be allotted to him though a file had been opened by

Land & Building Department of Delhi Government in his lifetime. This is also the case of the plaintiff that sometime in October, 2004, Shri Rambir, husband of defendant No. 1 and father of defendants No. 2 to 4, alongwith other sons of late Shri Kude Ram, offered to sell yet to be allotted plot to him for a consideration of Rs 12 lac and the cost of allotment. Some legal heirs of Shri Kude Ram executed a relinquishment deed in favour of Shri Rambir Singh, who executed a receipt-cum-agreement in favour of the plaintiff on 25 th May, 2005, after taking the sale consideration of Rs 12 lac from him. Shri Rambir expired on 11th August, 2005 and thereafter other legal heirs of late Shri Kude Ram executed the relinquishment deed in favour of the defendants, thereby entitling them to obtain allotment in their favour. On August 17, 2006, Land & Building Department recommended allotment of a plot of 250 square yards to the defendants. Defendant No. 1 then approached the plaintiff and sought increase of the sale consideration. The parties, therefore, agreed to a total sale consideration of Rs.12 lac and a fresh agreement was executed by defendant No.1 in favour of the plaintiff on 20th September, 2006 after taking a sum of Rs 2 lac from him. The original recommendation letter was handed over by her to the plaintiff. Another sum of Rs 3 lac was paid by the plaintiff to defendant No 1. On 06th October, 2009. Plot bearing No. 61 in Pocket-9, Block- B, Sector 23 of Dwarka, measuring 250 square yards, was allotted to the defendants in a draw of lots. The plaintiff paid another sum of Rs 50,000/- to defendant No. 1 on 22nd February, 2010 and she handed over demand-cum-allotment letter to him in July, 2010. The plaintiff deposited a sum of Rs. 3,93,200/- with DDA on 22nd July, 2010 and another sum of Rs 9,83,000/- on 21st August, 2010. According to the plaintiff, the defendants, thereafter, turned dishonest and filed a suit for injunction claiming that the agreement was obtained by fraud and that she had never signed or delivered any blank documents to the plaintiffs. After filing of the aforesaid suit, the plaintiff paid the remaining cost of plot on 21st December, 2010. The plaintiff has now sought execution of the sale deed in his favour, after converting the aforesaid plot into freehold. In the alternative, the plaintiff has sought a decree for Rs 3,53,24,000/-. IA 8087/2011 has been filed seeking interim injunction against creation of third party rights in the aforesaid plot.

2. The suit has been contested and the application was opposed by the defendants.

3. The plaintiff in the suit is seeking specific performance of the agreement to sell dated 20th September, 2006, alleged to have been executed by defendant No. 1 Smt. Sumitra on her behalf as well as on behalf of defendants No. 2 to 4, who are here minor children. It is an admitted case that no specific plot of land had been allotted to the defendants by the time this agreement purports to have been executed, though a recommendation had been made by Delhi Government to DDA on 17 th August, 2006 for allotment of a plot measuring 250 square yards to them against acquisition of agricultural land in Kakrola. The plot in question was allotted jointly to the defendants, vide allotment letter dated 15.06.2010/25.06.2010.

4. Some of the essential ingredients of an Agreement to Sell an immovable property are (i) identity of vendor and purchaser (ii) complete description of the property subject matter of the agreement (iii) amount of consideration to be paid by the purchaser to the seller (iv) time within which the agreement is to be performed and (v) earnest money if any paid to the vendor, if one of these essential ingredients are missing, the agreement between the parties would not amount to concluded contract. A Division Bench of this Court in Mirahul Enterprises & Ors. v. Mrs. Vijaya Srivastava AIR 2003 Delhi 15 referring to the provisions contained in Section 10 of Specific Relief Act, observed that a true contract requires the agreement of the parties, freely made with full knowledge and without any feeling of restraint and the parties must be ad-idem on the essential terms of the contract and in case it is an Agreement to Sell of immovable property, the law requires that it must certainly identify the property agreed to be sold and the price fixed as consideration paid or agreed to paid.

5. In Aggarwal Hotels (P) Ltd. vs. Focus Properties (P) Ltd., 63(1996) Delhi Law Times 52, this Court, inter alia, observed as under:

> **"The four ingredients necessary to make an agreement to sell are: (i) particulars of consideration; (ii) certainty as to party i.e. the vendor and the vendee; (iii) certainty as to the property to be sold; and (iv) certainty as to other terms relating to probable cost of conveyance to be borne by the parties, time, etc. If these**

ingredients are lacking in the agreement, the obligations contemplated under Section 16 for specific performance for Immovable property would not arise. It is in this background that the receipt dated June 17, 1995 has to be examined."

This judgment was relied upon by this Court in CS(OS) No. 82/1997, Sardar Gurbachan Singh and Ors. vs. Sardar Avtar Singh and Ors. while deciding IA No. 5955/2004.

6. The agreement, alleged to have been executed by defendant No. 1 in favour of the plaintiff on 20 th September, 2006, does not identify and in fact could not have identified the property subject matter of the agreement for the simple reason that no plot of land had been allotted to the defendants by that time. At the time this agreement is alleged to have been executed in favour of the plaintiff, it was not known in which colony plot would be allotted to the defendants, when the allotment would take place what would be the size of the plot and which particular plot would be allotted to the defendants. Therefore, the property, subject matter of the agreement, was incapable of identification at the time the agreement is alleged to have been executed. It is, therefore, difficult to deny that the agreement dated 20 th September, 2006, does not constitute a valid and concluded contract for sale of an immovable property to the plaintiff.

7. The learned Counsel for the plaintiff has relied upon the provisions of Section 13 of Specific Relief Act, which deal with right of purchaser or lessee against a person, who at the time of contract has no title or has an imperfect title but subsequently acquires an interest in the property. The reliance on this provision is wholly misplaced since in the case before this Court there was no valid agreement to sell in favour of the plaintiff as at the time, the agreement is alleged to have executed. The learned Counsel has also relied upon Pundlik Daryaji v. Jainarayan Maliram Shop & Ors AIR 1949 Nag 83, Round The Clock Stores Ltd. v. Aggarwal Entertainment Private Limited MANU/DE/2147/2008 and Indraraj Singh v. Chaitram & Anr. AIR 1929 Nag 194. None of these judgments deal with the issue involved in this case and therefore these judgments are of no help.

8. It was also contended by the learned counsel for the defendants that defendant No. 1, despite being natural guardian of defendants No. 2 to 4 was not competent in law to enter into an agreement to sell their immovable property, without prior permission of the Court. In support of his contention, he has relied upon Section 8(2) of Hindu Minority and Guardianship Act, 1956, which, to the extent relevant, provides that the natural guardian of a Hindu minor shall not, without previous permission of the Court, mortgage, charge or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor and any disposal of immovable property in contravention of this requirement, would be voidable at the instance of the minor or any person claiming under him.

9. In my view, entering into an agreement to sell an immovable property does not constitute mortgage, charge or transfer of the property by sale, gift, exchange or otherwise and therefore, is not covered without the prohibition contained in Section 8(2) of Hindu Minority and Guardianship Act. An agreement to sell, by itself, does not transfer ownership in the immovable property. It only gives a right to the purchaser to obtain execution of a sale deed of the immovable property in his favour. But, there is no sale or transfer as such till the sale deed is actually executed in favour of the purchaser. It also cannot be said that entering into an agreement to sell an immovable property amounts to a mortgage or a charge. In my view, it is within the competence of the natural guardian of Hindu minor to enter into an agreement to sell the immovable property of the minor provided the transaction is for the benefit of the minor or in the realization, protection or benefit of his estate, but, the guardian cannot execute a sale deed in favour of the purchaser, without prior permission of the Court. Of course, such an agreement if entered into by the guardian on behalf of the minor would be voidable at the instance of minor, who will be entitled to show that the contract was not for his benefit but it is difficult to accept that a guardian cannot enter into an agreement to sell the immovable property of the minor even if such a transaction is for the benefit of the minor or in the realization, protection or benefit of his estate.

10. In Biswanath Charit v. Damodar Patra & Ors. AIR 1982 Cal199, the plaintiff/respondent instituted the suit on the allegation that defendant No.1, the mother and as such natural guardian of minor defendant Nos. 2 to 7 entered into

an agreement with the plaintiff for self and on behalf of the minors to sell the suit property to meet certain antecedent debts during the last illness of her deceased husband, the father of defendants No. 2 to 7. Later on the defendants suffered a collusive compromise decree purporting to surrender possession of the suit land in favour of defendant No. 8 for defeating the right of the plaintiff. Defendants No. 1 to 7 not only refused to execute the sale deed but defendant No.8 threatened to disturb plaintiff's possession of the suit land. Hence the plaintiff sued for specific performance of the contract for sale and for injunction restraining the defendant No.8 from interfering with his possession of the suit property. The suit was contested by defendant No.8 who not only denied the agreement but further pleaded that such an agreement being contingent upon permission of the Court and being otherwise invalid and void is not enforceable. He further claimed that in any event such an agreement is not enforceable against him. The two Courts on evidence concurrently found that defendant Nos. 1 to 7 did execute and register the agreement for sale which was for legal necessity and for the benefit of the minors and that the plaintiff was put into possession of the suit property on the basis of a settlement. Both the Courts overruled the plea that the defendant No.8 was a bona fide transferee for consideration without notice. The trial Court found the decree which was entered into a few days after the plaintiff's agreement to be collusive. So far as the contract was concerned, the two Courts held that it was competent for the natural guardian mother to enter into such a contract, made for the benefit of the minors and though it may be voidable at the instance of the minors, it is not otherwise void or invalid and is specifically enforceable when the minors are not coming forward to avoid it. It was contended before the Division Bench of the High Court that Hindu Minority and Guardianship Act, 1956, having introduced material change by way of restricting the powers of the natural guardian to effect any mortgage or charge or transfer by sale, gift, exchange or otherwise the immovable property of the minor, no court could specifically enforce an agreement for sale said to have been executed by the natural guardian for and on behalf of the minor. The Division Bench took the following view in the matter.

"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. 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 that 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, MANU/SC/0257/1963 : [1964]2SCR495 .

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."

11. In Darbara Singh v. Karminder Singh and Ors. AIR 1979 Punjab & Haryana 215, a judgment relied upon by the defendant, the Court referring to the provisions of sub- Section 8(1) of Hindu Minority and Guardianship Act, which provides that the guardian can, in no case, bind the minor by a personal covenant, inter alia, observed as under:

"The provision of sub-section (1) of Section 8 of the Act makes it expressly clear in unqualified terms that no personal covenant

> **of the guardian shall be binding on the minor. It means only this that, when looked from the stand point that the aforesaid interdiction is added at the fag-end of Section 8(1) by way of proviso to the clause that preceded it, a guardian though well within his right to enter into a contract for the benefit of the minor, but the said contract would not be enforceable against the minor even when it was entered for his benefit and would be voidable at his instance. Learned counsel for the appellant also placed reliance on a Single Bench decision of this Court reported in Paras Ram v. Bhal Singh 1973 RLR 37.**
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> **The decision in Paras Ram's case does not go any farther than this that the provision of sub-section (1) of Section 8 of the Act does not prevent a guardian to enter into a contract regarding the property of a minor for his benefit without the prior permission of the Court but that is not the same thing as saying that such a contract would be binding upon the respondent. That was a case in which the decree was sought against the guardian and not against the minor and the decree was not the decree for specific performance but for the return of earnest money received by the guardian and damages envisaged in the contract, in the failure of the contracting party to fulfill its own part of the contract."**

This judgment does not support the proposition that in no case can a guardian enter into an agreement to sell the immovable property belonging to the minor. There is no legal bar to the guardian entering into such a transaction provided it is for the benefit of the minor though he cannot complete the transaction by executing a sale deed/transfer deed in favour of the purchaser, without permission of the Court. Of course, such a contract being voidable at the instance of the minor, it would be open to him to show that the contract was not for his benefit and therefore does not bind him.

12. The learned Counsel for the plaintiff has referred to Roomal & Ors. v. Siri Niwas AIR 1985 Delhi 153, Sri Narayan Bal & Ors. v. Sridhar Sutar & Ors. AIR 1996 SC 2371 and Ansal Properties & Industries Pvt. Ltd. v. Anand Nath & Ors. ILR 1992 Delhi 540. In Roomal & Ors. (supra), the Court held that the guardian of a minor is competent to enter into an agreement to purchase property on his behalf and his authority and competence can be challenged only by the minor and not by the vendor, who is not the keeper of the minor. In Sri Narayan Bal (supra), it was held that Hindu joint family being a separate entity can dispose of the family property including undivided interest of the minor in it. In Ansal Properties & Industries Pvt. Ltd. (supra), the Court was not required to deal with the power of a natural guardian to transfer the immovable property belonging to the minor. The Court in this case was of the view that Hindu Minority and Guardianship Act, 1956 does not extend to the administration of an undivided interest of a minor in a joint family which can continue to be administered by a de facto guardian. This judgment also does not help the plaintiff in any manner.

13. For the reasons given in the preceding paragraphs I am of the view that since prima facie there was no valid and concluded contract between the parties, no case for grant of injunction against creation of third party interest in the suit property is made out. The application is accordingly dismissed. The observations made and the view taken in this order will not affect the final decision of the suit on merit.