

IN THE SUPREME COURT FOR ZAMBIA

Appeal No. 19 of 1994

HOLDEN AT LUSAKA

SCZ/8/121/1993

(Civil Jurisdiction)

BETWEEN:

Delinder Singh Sabarwal

Appellant

and

Mathew Chanda

Respondent

Coram: Gardner, Chaila and Chirwa JJS.,
27th September, 1994

K. Maketo of Christopher Russel Cook and Co. for the appellant.

K.M. Simbao of Mulungushi Chambers for the respondent.

JUDGMENT

Gardner J.S. delivered the judgment of the court.

In this case it was not sufficient in the court below for the learned trial judge to say that, because the contract was illegal, no order would be made by the court. The application for leave to issue a writ of possession should have been either granted or refused and dismissed.

It is obvious that in this case the parties require to know the position of the property as a result of the illegality of the performance of the contract of sale. For the avoidance of unnecessary litigation in the future the parties should agree what are the terms of dispute between them and apply to the court below, to whom we are sending back this case, to resolve the issues and make an appropriate order.

We suggest that the issues to be resolved are whether the contract of sale is still in existence apart from the illegal agreement as to the performance, if so, whether specific performance namely, to sign a deed of assignment can be ordered, and if so, on what terms, if any. The appeal is allowed. The case is sent back for retrial by another judge of the High Court.

Costs in the cause.

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B. T. Gardner
SUPREME COURT JUDGE

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M. S. Chaita
SUPREME COURT JUDGE

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D. K. Charna
SUPREME COURT JUDGE