Before Amol Rattan Singh, J.

SMT. SUKHCHAIN KAUR—*Appellant*

versus

JAGAT SINGH AND OTHERS—*Respondents*

RSA No.2402 of 1988

July 10, 2020

Indian Contract Act, 1872—Ss. 2, 4, 8, 10—Regular Second Appeal against a Judgment of reversal—Suit for possession with a decree for specific performance—Agreement to sell was dated 01.09.1981 regarding about one acre of land between appellant/ plaintiff and defendant/respondent no.1—Part consideration paid—Sale deed was to be executed by 30.05.1982, before that land sold to defendants/respondents no.s 2 and 3, who got sale deed dated 24.02.1982 executed in their favour, which was also sought to be declared null and void in the suit—no written statement filed by respondent no.1, who was proceeded against ex-parte before the trial court—Held, challenge to validity of the agreement to sell is rightly declined by the trial court since other than attesting witness, the plaintiff herself testified in its favour—finger prints of defendant no.1 also attached, and finding to that effect recorded by the first appellate court also—Further held, once the agreement and the contents thereof are found to have been thumb marked by the prospective vendor/owner, with the recitals stating that he was willing to sell the land and had received part consideration, the offer of acceptance made by the prospective vendee/plaintiff stood accepted at the stage itself by the owner—every promise backed by consideration towards fulfillment of that promise, is an agreement as per S.2 (e), and as per S.10 all agreements are contracts if made of fee consent, for lawful consideration with a lawful object—as per S.8 acceptance of any consideration for a reciprocal promise amounts to acceptance of that proposal—Suit decreed.

Held, that having considered the judgments of the learned courts below, as also the arguments raised by counsel on both sides, as regards the 1st issue framed by the trial court, I agree with the contentions of learned counsel for the appellant on that question (on the validity of the agreement), with even the first appellate court having held the agreement, Ex.P1, to have been duly entered into between the

appellant-plaintiff and respondent no.1, Jagat Singh.

The agreement would, in my opinion too, need to be accepted to be valid by this court also, in view of the fact that other than an attesting witness thereto and the plaintiff herself having testified in its favour, the first appellate court even examined the finger prints of respondent Jagat Singh on the said agreement, as also on the sale deed Ex.D1, and recorded a finding after looking at the nuances of such prints, that they belonged to the same person, with the finger print expert from the (Government) Finger Prints Bureau, Madhuban, in any case having opined to that effect.

(Para 47)

Further held, that coming next to Mr. Mittals' arguments that even the appellant-plaintiff (prospective vendee) did not know anything much about the agreement entered into and even her signatures/thumb impressions on the said agreement were not proved, and therefore no valid contract could be held to have been entered into in terms of Sections 2, 4 and 10 of the Indian Contract Act, 1872, it is held by this court that once the agreement and the contents thereof are found to have been thumb marked by the prospective vendor (the owner of the land), with the recitals in the agreement stating that he was willing to sell the land to the prospective vendee and had received part consideration of Rs.11,250/- (at the time of entering into the agreement), with the remaining amount of the total sale consideration of Rs.35,000/- to be paid at the time of execution of the sale deed, the offer of acceptance made by the appellant-plaintiff (prospective vendee) stood accepted at that stage itself by respondent no.1, i.e. the owner of the land (Jagat Singh).

In fact, Section 10 hereinabove, read with Section 2 (a) to (e) of the said Act, would, in the opinion of this court, operate in favour of the appellant and not against her, inasmuch as, every promise 'backed' by consideration towards the fulfillment of that promise, is an agreement (as per Section 2(e)); and as per Section 10 all agreements are contracts if they are made of the free consent of the parties thereto, for a lawful consideration, with a lawful object.

Further, as per Section 8, acceptance of any consideration for a reciprocal promise, or performance of any condition of a proposal (which would include acceptance of consideration qua that proposal), amounts to acceptance of the proposal.

Hence, once the prospective vendor, i.e. respondent no.1 herein,

admitted as per the agreement Ex.P1, to having received a part of the consideration settled for the sale of the suit land, then the contract factually had been entered into by both parties, and simply because the signature of the prospective vendee (the appellant-plaintiff), was not fully proved, that would make no difference to the existence of a valid contract.

(Para 49)

H.S. Bhullar, Advocate, *for the appellant.*

None for respondent no. 1.

Avnish Mittal, Advocate, for Respondents no. 2 and 3.

AMOL RATTAN SINGH, J.

(1) This appeal, pending since the year 1988, has been filed by the plaintiff in a suit seeking possession of the suit property, with a decree of specific performance initially having been issued in her favour by the trial court, in respect of an agreement stated to have been entered into between her and respondent-defendant no.1, Jagat Singh, on 01.09.1981 (Ex.P1 before the trial court), the suit land being almost one acre (7 kanals and 19 marlas) out of a holding of 15 kanals and 18 marlas of land, as fully described in the plaint. That decree, however, was reversed by the 1st appellate court, consequent upon which she instituted the present appeal.

The total sale consideration, as per the agreement dated 01.09.1981, was contended to be Rs.35,000/-, out of which the plaintiff claimed that she had paid a sum of Rs.11,250/- to respondent no.1 at the time that the agreement was entered into, with the sale deed agreed to be executed by 30.05.1982.

The appellant-plaintiff further contended that in terms of the said agreement, upon any default by respondent Jagat Singh, she had a right to get the sale executed and registered by process of the court, or by way of recovery of double the amount of the earnest money.

Conversely, on account of any default by her, the earnest money paid by her was to stand forfeited to respondent no.1.

As is usual in such cases, her contention was that she had always been ready and willing to purchase the suit land in terms of the agreement but respondent-defendant no.1 sold it to respondent-defendants no.2 and 3 vide a sale deed dated 24.02.1982 (Ex.D1), without any notice given to the appellant-plaintiff.

(2) It was next contended that as regards respondents no.2 and 3, they were fully aware of the agreement dated 01.09.1981 but despite that they got a sale deed executed in their own favour, with malafide intention, in collusion with defendant no.1, he in fact being their uncle (fathers' brother).

Hence, vide the suit in the present *lis*, she further sought a decree to the effect that the sale deed dated 24.02.1982 executed in favour of respondents no.2 and 3, be declared to be null and void and not binding upon her.

(3) Upon notice issued in the suit, respondent-defendant no.1, Jagat Singh, did not put in an appearance before the trial court and was proceeded against *ex parte;* but respondents no.2 and 3 filed a written statement, denying completely the agreement relied upon by the appellant-plaintiff, further contending in fact that it was attested by a close relative of the plaintiff, which pointed to the fact that it was a 'fictitious one'.

Hence, respondents no.2 and 3 also denied payment of any earnest money by the appellant to respondent no.1, further contending that the suit land was already in their own possession, it having been mortgaged to them by respondent no.1 (prior to their purchase of the land), and therefore in any case even if any agreement had been entered into, it should have been with notice to them. Yet further, they contended that they were bonafide purchasers of the land, for valuable consideration, and consequently, the appellant-plaintiff was not entitled to any relief from the court.

Upon a replication filed by the appellant-plaintiff to that written statement, the following issues were framed by the learned Senior Sub-Judge, Kurukshetra:-

> "1. Whether the defendant executed the agreement for sale dated 1.9.1981 after receiving Rs.11250/- as earnest money? OPP
>
> 2. Whether the plaintiff was always ready and willing to perform his part of the contract? OPP
>
> 3. Whether the plaintiff has no locus-standi to file the suit? OPD
>
> 4. Whether the plaintiff is estopped by his own act and conduct from filing the suit? OPD

4A. Whether the defendants no.2 and 3 were aware of agreement dated 1.9.1981 and executed the sale deed malafide and its effect? OPP

4B. Whether the defendants no.2 and 3 are bonafide purchasers of the suit land for consideration without notice of the impugned agreement? If so, to what effect? OPD

4C. Whether the suit has not been properly valued? OPD

5. Relief."

(4) Upon a perusal of the judgment of that court, it is seen that the appellant-plaintiff examined herself, the scribe to the agreement, one attesting witness thereto and two finger print experts, as PWs1 to 5 respectively, with respondents no.2 and 3 also having examined five witnesses, though only the testimonies of their father, DW4, Hakam Singh, and of one finger print expert (DW5), have been referred to by the learned courts below.

Yet, even though this is a second appeal, it was considered appropriate to examine the records, especially with the appeal having remained pending since the year 1988, to determine as to who the other witnesses examined were, with it seen that the first three witnesses who were examined by respondents no.2 and 3 herein were:-

Satpal Singh	DW1
Etwari Ram, Numberdar	DW2
Roshan Lal	DW3

(5) The learned trial court first observed that in fact the evidence led by the plaintiff stood practically unrebutted, though DW4 being the father of defendants no.2 and 3, supported their stand as taken in the written statement.

However, it was further observed by that court that he was obviously not present at the time that the agreement was entered into and therefore he could have no personal knowledge of it.

On the other hand, the evidence led by the appellant-plaintiff was held to inspire confidence because apart from examining herself, she had duly examined the scribe of the agreement as also one of the attesting witnesses thereto, who had all supported her stand.

(6) It was further observed by the trial court that respondent-

defendants no.2 and 3 "did not dare to examine defendant no.1" (their uncle, who had entered into the agreement) to prove that the impugned agreement had not been executed by him, and that therefore a very adverse inference was to be drawn against the defendants on that count.

An argument having been raised before that court in that context, that actually it was the plaintiff who should have examined defendant no.1 to prove the execution of the agreement, that argument was rejected by the court, on the ground that the plaintiff could not be expected to examine "a rival party".

(7) The contention that the attesting witnesses were both close relatives of the appellant-plaintiff and therefore the agreement could not be believed, was also rejected by that court, on the ground that simply because she had got her relatives to attest the agreement so that she could rely upon them to testify if the need arose, did not affect the genuineness of the document.

(8) Another argument seen to be raised before the learned Sub Judge was that though the appellant in her testimony had stated that respondent-defendant no.1, Jagat Singh, alongwith one of the attesting witnesses to the agreement, i.e. PW3 Jagir Singh, had come to her one day prior to the agreement being signed; however, Jagir Singh in his own testimony had stated that he had not gone to the plaintiff one day prior to the agreement.

That argument was also rejected by the trial court on the ground that two and half years having elapsed since the agreement was entered into (at the time of the testimony), the witness could have forgotten such a thing and consequently the contradiction was held to be a minor one.

(9) It was next recorded by the trial court that one finger print expert, PW4, had stated that the disputed thumb impressions on the agreement were of respondent Jagat Singh, when compared with his admitted thumb impressions on the sale deed executed in favour of respondents no.2 and 3 on 24.02.1982.

However, that opinion had been refuted by the finger print expert examined by the said defendants, i.e. DW5, and consequently the plaintiff had thereafter obtained the opinion of a finger print expert from the Finger Prints Bureau, Madhuban, who had also opined that the agreement Ex.P1, carried the same thumb impressions as the sale deed, Ex.D1.

Hence, giving credence to the opinion of a Government Expert, the thumb impressions on both documents were held to be those of respondent- defendant no.1, Jagat Singh.

(10) An argument raised on behalf of the respondent-defendants that even the plaintiffs' thumb impressions on the agreement Ex.P1 were not actually hers, that too was rejected, on the ground that she herself admitted the thumb impression to be hers and had also contended that she had paid earnest money, which she stood to lose if it was proved that she had not executed her part of the contract (implying that therefore she would not have filed the suit relying on the agreement).

(11) Last, recording that in fact respondent-defendants nos.2 and 3 themselves had chosen not to testify in court and instead had asked their father to do so, an adverse inference had to be taken against them.

Consequently, as regards issue no.1, it was held that the agreement in question had been executed between the plaintiff and respondent-defendant no.1, upon which the latter had also received earnest money of an amount of Rs.11,250/- from the plaintiff. Hence, that issue was decided in the present appellants' (plaintiffs') favour.

(12) Next, holding that no evidence was led to show that the plaintiff had not been willing to perform her part of the contract, that issue (no.2), was also decided in her favour, as were issues no.3 and 4.

On issue no.2, it was held that the plaintiff had stated that she was always ready and willing to perform her part of contract, with no rebuttal made to that statement. It was further held that the plaintiff could not possibly have led any other evidence in that regard because she was not supposed to attend the office of the Sub-Registrar on the date fixed for execution of the sale deed (as per the agreement), because much prior to that stipulated date, defendant no.1 (Jagat Singh) had already sold the suit land to defendants no.2 and 3.

Hence, on that reasoning, the said issue was decided in favour of the appellants-plaintiffs.

(13) On issues no.4-A and 4-B, i.e. as to whether respondent-defendants no.2 and 3 were aware of the agreement dated 01.09.1981 and had got executed the sale deed in their favour (on 24.02.1982) with a malafide intention, and whether or not they were bonafide purchasers of the suit land for consideration without notice of the agreement Ex.P1, it was held that they could not be held to be bonafide purchasers.

To hold that, it was first recorded by the trial court that the plaintiff had stated that she had in fact informed defendants no.2 and 3 about the agreement before it was executed, which evidence would be acceptable because defendants n.2 and 3 themselves did not stand in the witness box to refute it.

Their father, DW4, was also found to have simply stated that defendant no.1 (his brother, Jagat Singh) had not told him about the agreement but he too did not state that his daughters (defendants no.2 and 3) were not aware of it or that the plaintiff had not told them about it.

Hence, it was held that even in terms of Section 19(b) of the Specific Relief Act, 1963, the said defendants were bound by the agreement, they being only subsequent transferees of the land, who were not covered by the exception carved out in the said provision, with them not having proved that they had no notice of the original contract.

It was further held that in fact the onus to prove that they had no notice of the agreement, Ex.P1, was upon defendants no.2 and 3, which they had not discharged; and therefore, even though payment of sale consideration by them to respondent-defendant no.1 stood proved, they could not be held to be bonafide purchasers.

(14) The suit not having been valued properly for the purpose of court fee not being an issue on which arguments were addressed (as per the trial court), that issue (no.4C) was also decided in favour of the appellant- plaintiff.

(15) Consequently, the suit of the appellant was decreed in her favour by that court, with the defendants directed to get a sale deed registered in her favour upon payment of the balance sale consideration of Rs.23,750/-, of which amount respondent-defendants no.2 and 3 were held entitled to receive only Rs.21750/-, that being the amount paid by them to defendant no.1 (as per 'their' sale deed, Ex.D1), with the balance amount of Rs.2000/- held to be payable to respondent-defendant no.1, Jagat Singh.

One months' time was granted to the respondent-defendants to get the sale deed executed in the aforesaid manner.

(16) Respondent-defendants no.2 and 3 filed an appeal against that judgment and decree, with them also having filed an appeal against the judgment and decree issued by the trial court in favour of the husband of the present appellant-plaintiff, in a separate suit filed by

him.

It is important to notice here that learned counsel for the parties are *ad idem* that that suit was qua a separate piece of land, but with Mr. Mittal, learned counsel for the respondents, herein submitting that the agreement in respect of that piece of land was also entered into on the same date as the suit land involved in the present *lis* and that with the 2nd appeal filed by the present appellants' husband before this court having been allowed to be dismissed, in default of prosecution thereof, the appellant herein cannot be seen to be actually seriously interested in the suit land.

A perusal of the judgment of the learned first appellate court shows that though both those appeals were decided by that court together on the same date, by a common judgment; however, the suit filed by the present appellants' husband (one Kuldip Singh), was decided by a different Additional Senior Sub-Judge on 12.12.1986, the suit in the present *lis* having been decided by a different court on 29.04.1988.

(17) Both the appeals came to be accepted by the Additional District Judge, Kurukshetra, vide the impugned judgment and decree dated 29.04.1988, to the extent that the suits seeking specific performance of the agreements of sale were dismissed but with the appellant-plaintiff herein held entitled to recover the earnest money of Rs.11250/-, from respondent- defendant no.1, Jagat Singh.

(18) Even while doing so, as regards issue no.1 however (on whether or not the agreement of sale had been executed between the appellant and respondent no.1 on 01.09.1981), the learned first appellate court accepted the document to have been validly executed.

That finding of the trial court on issue no.1 has been specifically affirmed in paragraph 20 of the judgment of the first appellate court, holding that, firstly, respondent Jagat Singh had not come forward to challenge the agreement itself; and further, even his thumb impressions, upon a closer scrutiny thereof, were seen to be the same (obviously on the agreement Ex.P-1 and the sale deed, Ex.D-1). In fact that court has gone on, to a certain extent, to discuss the details of the finger prints in that paragraph.

The findings of the trial court on issues no.4B, 4A and 2, were reversed, with the findings on the "usual issues", i.e. issues no.3, 4 and 4C, affirmed. (Those issues pertain to locus standi, estoppel and valuation of the suit for the purpose of court fee).

The judgment of the first appellate court, affirming the finding of the trial court on issues no.1, 3, 4 and 4C, has not been challenged by the respondent-defendants before this court.

(19) Coming therefore to the reasoning given by the first appellate court for reversing the findings of the trial court on issue no.2, 4A and 4B.

(a) The learned Additional District Judge has held that, firstly, once respondent-defendant nos.2 and 3 were known to be mortgagees of the suit land, it was the duty of the appellant-plaintiff to inform them of the agreement entered into by her with respondent-defendant no.1 and further, simply because the said respondent was the brother of Hakam Singh (father of respondents no.2 and 3), no inference could be taken that respondents no.2 and 3 were aware of the agreement entered into by Jagat Singh with the appellant-plaintiff.

(b) It was next held that even if respondent Jagat Singh did not step into the witness box on behalf of the defendants, he could have been produced as a witness by the plaintiff herself but she made no serious efforts to do so, with the trial court itself also having enough jurisdiction to summon him if it considered that necessary.

(c) Next, dealing with an argument that actually the land was agreed to be sold to the appellant at a higher rate than it was actually sold to the respondents-defendants no.2 and 3, the first appellate court has held that there was no evidence on record to show that the rate of land was not the one at which it was sold to defendants no.2 and 3.

In fact an argument on behalf of the said defendants (appellants before that court) to the effect that if they were to collude with Jagat Singh after knowledge of the agreement entered into by him with the plaintiff, then they would have mentioned the same price of the land as was mentioned in the agreement or a price more than that, was also noticed by that court, with the conclusion drawn eventually that respondents no.2 and 3 herein had therefore no knowledge of such agreement.

(20) Hence, on the aforesaid findings, it was held that since respondents no.2 and 3 herein did not have knowledge of the agreement entered into by the appellant-plaintiff with respondent no.1 on 01.09.1981, they had to be considered to be *bona fide* purchasers of the suit land vide the sale deed in their favour.

It was further observed by that court that the plaintiff did not

make any effort to get the sale deed executed between the date of the agreement, i.e. 01.09.1981, and the dates by which the sale deeds were to be executed as per that agreement, i.e. 30.05.1982.

Thus, though it has not been stated in so many words by that court, the inference that seems to have been taken is that she had not been ready and willing to execute her part of the contract, which also would be the reason why even issue no.2 has been decided in favour of the defendants and against the plaintiff (at the end of paragraph 19 of the judgment of that court).

(21) Consequently, on those findings, holding that, firstly, the plaintiff had not made any efforts to get the sale deed executed and therefore she was not found to be ready and willing to perform her part of the contract, and secondly, that respondents no.2 and 3 were *bona fide* purchasers, the judgment of the trial court was reversed and the suit of the plaintiff, seeking specific performance of the contract, was dismissed by the first appellate court, with her however held entitled to refund of the earnest money paid by her to respondent Jagat Singh at the time that the agreement of sale was entered into with him.

(22) Therefore, this appeal has come to be filed by the plaintiff, challenging the judgment and decree issued by the first appellate court, praying therein that the said judgment and decree be set aside, with that issued by the trial court, restored.

(23) It is to be noticed here that vide an order recorded on 24.04.1996, this court had made an observation that respondent no.1 had not filed any written statement before the trial court and was proceeded against *ex parte*, which of course is a correct observation but with it also having been recorded that he had been proceeded against *ex parte* before the first appellate court he not having put in an appearance there.

However, it is noticed that, in fact it is not seen to be recorded in the judgment of the first appellate court to that effect, but with learned counsel for the appellant before this court having made a statement on that date (24.04.1996), that service upon respondent no.1 may be dispensed with in terms of Order 41, Rule 14 of the Code of Civil Procedure (as applicable to this court).

In fact, this court had actually accepted that contention, with no application filed since that date by either respondent no.1, or even respondents no.2 & 3, seeking a review or modification of that order.

Be that as it may, even in terms of sub-rule (3) of Rule 14 of Order 41 (as applicable to this court), there would be no reason to now issue notice of this appeal to the 1st respondent, (24 years after that order was passed), with respondent no.1 in any case having neither challenged the finding of the 1st appellate court holding him entitled to receive only Rs.2000/- of the consideration amount to be paid by the appellant-plaintiff, nor he having ever stepped into the witness box even before the trial court, or even having filed a written statement to the suit.

(24) It is also necessary to notice here that an application bearing CM no.12882-C of 2010, was filed by the appellant, seeking to frame substantial questions of law to be considered by this court before decision of the appeal.

That application, vide an order dated November 19, 2010, was simply ordered to be heard alongwith the main case.

For the record, the following substantial questions of law have been raised therein:-

> "i) When in the written statement no plea was raised by the defendants that no notice was served to them regarding the agreement to sell in favour of appellants, whether in such circumstances the learned Lower Court was justified in holding that the defendants were bonafide purchasers?
>
> ii) When defendants no.2 and 3 had not appeared in the witness box to rebut the statement of the plaintiff to the effect that she had told defendants no.2 and 3 about the impugned agreement to sell, whether in such circumstances, the Lower Court was justified in holding that the defendants were not aware of agreement to sell?
>
> iii) Whether material evidence regarding knowledge about agreement on record was erroneously ignored from consideration?
>
> iv) Whether the learned Lower Appellate Court misinterpreted the evidence on record and also misread the evidence?"

(25) As a matter of fact, in the opinion of this court, the above questions of law need to be re-framed as under, with arguments addressed by learned counsel accordingly:-

i) Whether the learned first appellate court wholly erred in interpreting the evidence as regards the readiness and willingness of the appellant to execute her part of the contract?

ii) Whether that court again wholly erred in interpreting the evidence as regards knowledge of respondents no.2 and 3 qua execution of an agreement of sale by respondent no.1 in favour of the appellant on 01.09.1981, and whether therefore they can be held to be bonafide purchasers of the suit land vide the sale deed dated 24.02.1982?

Other than the above, two more questions which need to be framed as questions of law in view of the arguments that learned counsel for respondents no.2 and 3 raised, are:-

(iii) As to whether the finding of both the learned courts below, on the agreement dated 01.09.1981 being a valid agreement is wholly a perverse finding and if so, can this court, in a second appeal not filed by respondents no.2 and 3, reverse that finding if, on the merits of the case, it comes to the conclusion that the agreement is not a legally valid one?

(iv) If this court comes to the conclusion that questions no.(i) to (iii) framed hereinabove are to be answered in favour of the appellant, then is the decree issued by the trial court to be implemented on the same terms and conditions, or should a sale deed be ordered to be executed in favour of the appellant only upon the present market rates of the suit land being paid by her to the respondents/any of them?

(26) Hence, having settled the aforesaid four questions of law that are to be answered by this court, the arguments raised by both learned counsel before this court, are to be noticed in detail.

Mr. H.S. Bhullar, learned counsel for the appellant-plaintiff, after drawing attention to the basic facts, as have already been reproduced hereinabove, submitted that both the courts below, including the first appellate court which has reversed the judgment of the trial court to dismiss the suit of the appellant-plaintiff, have held that the agreement of sale dated 01.09.1981 was a genuinely executed document between the appellant and respondent-defendant no.1, and

consequently, with that issue having been decided in favour of the appellant, that court wholly erred in reversing the findings of the trial court on issues no. 2, 4-A and 4-B.

(27) Learned counsel next submitted that the said finding of even the first appellate court, upholding the validity and genuineness of the agreement of sale, not having been challenged by way of any appeal by the respondents herein, in any case that finding has become final, with the respondents therefore having no right (in an appeal which they have not filed), to raise an issue that the agreement itself is not valid.

(28) Mr. Bhullar next submitted that the sale by respondent no.1 in favour of his nieces, i.e. respondents no.2 and 3, was only to defeat the agreement with the appellant, respondents no. 2 and 3 being the daughters of the brother of respondent no. 1.

Next, Mr. Bhullar referred to paragraph 19 of the judgment of the first appellate court to submit that the finding to the effect that since the appellant did not inform respondents no. 2 and 3 of the fact that she was going to purchase the land occupied by them by virtue of being mortgagees therein, and therefore the respondents were not bound by the agreement, Ex.P1, is a wholly perverse finding, in view of the fact that there is no legal requirement whatsoever of informing the occupants of the land that the owner thereof was selling it to any person who was purchasing it.

Learned counsel in fact submitted that the owner being their uncle, they would be deemed, or at least presumed, to be having due knowledge of the factum of the agreement entered into by him.

(29) Mr. Bhullars' next argument was that all the specific findings of the trial court not having been dealt with at all by the appellate court, the judgment of the latter court deserves to be set aside on that ground alone, in support of which he relied upon two judgments, the first of a co-ordinate Bench of this court and the other of the Supreme Court, which are as follows:-

1. ***Shadi Lal and others*** *versus* ***Dewan Chand and others***[1]and
2. ***Nicholas V. Menezes*** *versus* ***Joseph M. Menezes and others***[2].

Specifically, he submitted that the finding on the testimony of

[1] 1990 PLJ 1
[2] 2009 (3) RCR (Civil) 200

the appellant-plaintiff having gone unrebutted, as regards having informed the 2nd & 3rd respondent of her intention to buy the land from their uncle, has not been dealt with by the 1st appellate court.

(30) Per contra, Mr. Avnish Mittal, learned counsel for respondents no. 2 and 3, first submitted that the agreement of sale has no signatures of the appellant-plaintiff, and therefore has no binding force, as Sections 2 and 4 of the Indian Contract Act, 1872, stipulate that where there is no acceptance of the proposal, there is no valid agreement entered into.

Further making an argument on that issue raised by him, Mr. Mittal submitted that since respondent no.1, Jagat Singh, never even filed a written statement to the plaint and never testified to having accepted the proposal of the appellant-plaintiff to purchase the suit land, it is evident that the offer of purchase was never actually accepted by him.

Learned counsel also referred to Section 10 of the Contract Act to try and support the aforesaid argument.

(31) Mr. Mittals' next argument was that though the first appellate court has correctly held that there was neither readiness nor willingness on the part of the appellant to execute the sale, yet, even if her readiness (by way of possibly having the money with her to pay the remaining sale consideration), is accepted (though denied by respondents no.2 & 3), there was actually no willingness on her part to execute the deed because the suit was filed five months after her having acquired knowledge of the sale in favour of respondents no. 2 and 3, and she could not prove that she had ever thereafter asked respondent no. 1 to execute the sale deed in her favour.

He next pointed to the cross-examination of the plaintiff, PW1 Sukhchain Kaur, to submit that though she stated that Jagat Singh and Jagir Singh (attesting witness to the agreement), came to meet her with the proposal of the sale one day prior to the agreement being executed, however, Jagir Singh, as PW3, in his cross-examination stated that he had met the plaintiff only on the date that the agreement was executed.

Therefore, his argument was that there are suspicious circumstances to the agreement having ever been executed.

He next pointed out from her cross-examination (at page 214 of the lower courts' record) that in fact she admitted that she had not signed the agreement but her husband had thumb marked it.

Mr. Mittal also referred to the cross-examination to submit that the witnesses to the agreement were all admitted to be relatives of the appellant plaintiff and therefore, it was a 'fictitious document'.

He read from her cross-examination at the same page, to submit that actually she knew nothing about the manner in which the agreement was executed.

(32) On the issue of the respondent-defendants not having challenged the findings of both the learned courts below as regards the agreement of sale having been validly executed, he relied upon two judgments, one of the Supreme Court and one of this court, i.e. ***Banarsi and others*** *versus* ***Ram Phal***[3] and ***Dr. Sita Ram (dead) through his LRs*** *versus* ***Ashok Kumar (dead) through his LRS and others***[4], to submit that this court, while exercising jurisdiction under Order 41 Rule 33 of the CPC, even so can reverse those findings, if on merits it comes to the conclusion that they deserve to be reversed.

(33) He next pointed to the fact (also at page 214 of the lower courts' record) that she stated that she did not know as to where Jagat Singh went after execution of the agreement in her favour and that though she and her husband had gone to Saharanpur, they could not determine as to where he lived, there.

The argument of Mr. Mittal therefore is that once she did not know where Jagat Singh had gone, the question of her having requested him to execute the sale deed did not arise, especially when she had admitted that she had come to know of the sale deed executed in favour of respondents- defendants no.2 and 3 immediately after it was executed in January 1982.

Hence, he submitted that there being such suspicious circumstances as regards, firstly, the agreement itself having been executed at all, with the attesting witness giving a different testimony to that of the plaintiff as regards when he met the parties for the agreement to be signed, and secondly, there having been no willingness in any case on her part to execute the agreement because even after she had found that Jagat Singh was not traceable at all, no legal notice was issued and no publication in the newspapers was made, nor was any notice put up in the tehsil office, to the effect that the agreement in her favour needed to be executed, and therefore, the suit has been correctly

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[3] 2003 (2) RCR (Civil) 248
[4] 2012 (5) RCR (Civil) 164

dismissed by the 1st appellate court.

He further submitted that this would be seen from the fact that even her presence before the Sub Registrar on the date that the sale deed was to be executed (30.5.1982), was not shown to have been marked.

Thus, he submitted that once she had come to know that Jagat Singh was not honouring the agreement, she could have at least filed a suit seeking a decree of permanent injunction restraining him from alienating the suit property.

Mr. Mittal next referred to the testimony of the plaintiff to the effect that she even admitted that after the earnest money had been paid, that she had approached respondent-defendants no.2 and 3, knowing that the land stood mortgaged with them, and had asked them to redeem the mortgage, to which they had refused. Therefore, he submitted that obviously there was actually no willingness (even if readiness is presumed though not proved), to get the sale deed executed.

On the issue of how some of the parameters on which willingness and readiness of a party to the suit is to be determined, he relied upon the following judgments:-

(i) ***His Holiness Acharya Swami Ganesh Dassji*** *versus* ***Sita Ram Thapar***[5],

(ii) ***Kalawati (D) through LRS and others*** *versus* ***Rakesh Kumar and others***[6],

(iii) ***M/s J.P.Builders and another*** *versus* ***A.Ramadas Rao and another***[7],

(iv) ***Vijay Kumar and others*** *versus* ***Om Parkash***[8],

(v) ***B.Vijaya Bharathi*** *versus* ***P.Savitri and others***[9],

(vi) ***H.P. Pyarejan*** *versus* ***Dasappa (dead) by LRs and others***[10], and

(vii) ***Dheeraj Developers Private Limited*** *versus* ***Dr. Om***

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[5] AIR 1996 (SC) 2095
[6] AIR 2018 (SC) 960
[7] AIR 2011 SC (Civil) 230
[8] AIR 2018 (SC) 5098
[9] AIR 2017 (SC) 3934
[10] AIR 2006 (SC) 1144

Parkash Gupta and others[11].

(34) The contention therefore is that the readiness and willingness to execute the sale deed should be continuous and the entire circumstances would need to be seen by the court before directing specific performance of an agreement.

(35) The next argument of learned counsel for the respondents was to the effect that respondent-defendants no.2 and 3 in any case are *bona fide* purchasers for valuable consideration, with it obviously known to even the appellant-plaintiff, as per her testimony as noticed hereinabove, that they were in possession of the suit land as mortgagees even on the date of the alleged agreement entered into by her, which fact in any case finds mention in the agreement itself.

(36) Mr. Mittal then argued that qua another piece of land in respect of which also an agreement of sale had been entered into by the husband of the plaintiff, Kuldip Singh, with respondent no.1, Jagat Singh, on the same date as the agreement entered into with the plaintiff, a similar suit was dismissed, with the second appeal eventually filed by the husband of the plaintiff in the present *lis* having been dismissed in default.

His contention therefore is (as noticed earlier), that even though those were two separate pieces of land, however the agreements were entered into on the same date and with Sukhchain Kaurs' signatures not present on the agreement in question in the present *lis,* and her testimony being that in fact it was her husband who had gone along with the witnesses at the time of the execution of the agreement, both of them were actually not interested in pursuing the agreements of sale earnestly.

(37) He next submitted that even if this court eventually comes to the conclusion that a valid agreement of sale had been entered into by the plaintiff and respondent no.1, what cannot be lost sight of is that the agreement is of the year 1981, when the total sale consideration was settled to be Rs.35,000/- with Rs.11,250/- having been paid by way of earnest money, and therefore, at this belated stage, 39 years later, no specific performance of such an agreement would lie, and if at all ordered, it should be on payment of the market rates as are prevalent today.

In that context, he referred to the following judgments:-

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[11] 2016 (2) RCR (Civil) 461

(i) ***Nanjappan*** *versus* ***Ramasamy and another***[12],

(ii) ***Satya Jain (D) and others*** *versus* ***Anis Ahmed Rushdie (D) through LRs and others***[13], and

(iii) ***Swaran Singh*** *versus* ***Kamar Singh and others*** RSA no.2003 of 1990 decided on 30.11.2016.

(38) Last, he submitted that whether or not the appellant-plaintiff was a *parda nashin* or uneducated lady, is something which had never been stated in the plaint and consequently, that argument cannot in any case be raised to say that she was wishing to execute the sale deed but could not leave home to do so (though no such argument was raised by learned counsel for the plaintiff before this court).

(39) In rebuttal to the aforesaid arguments, Mr. Bhullar submitted that as regards non-acceptance of the agreement by respondent no.1 (as argued by Mr. Mittal), in fact in terms of Section 8 of the Indian Contract Act, 1872, the moment earnest money had been accepted by respondent no.1, Jagat Singh, and was paid by the appellant-plaintiff, both parties would be deemed to have accepted the terms of the agreement, thereby making it a valid contract.

(40) He next submitted that the appellant being a housewife, it was not surprising that it was her husband who actually went with the witnesses to get the agreement of sale signed, and that fact would not therefore vitiate the agreement.

(41) He then reiterated that as regards the execution of the agreement itself, a concurrent finding of fact has been arrived at by both the courts below, to the effect that it was a genuine agreement and therefore respondent-defendant no.1 not being in appeal against that finding, this court, in a second appeal, would not upset it.

Further in that context, Mr. Bhullar pointed out that such finding of fact was arrived at by both the courts below not only on the basis of all the witnesses of the plaintiff (including the plaintiff herself, and the deed writer), but also the basis of the opinion of the handwriting expert from the Govt. FSL, Madhuban. In addition to that, the learned lower appellate court, in paragraph 20 of its judgment, has specifically held that the thumb impression on the agreement of sale was found to be that of Jagat Singh, respondent-defendant no.1, when compared with his

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[12] 2015 (2) RCR (Civil) 224
[13] 2013 (3) RCR (Civil) 281

admitted thumb impression on the sale deed in favour of respondents no.2 and 3.

(42) As regards no notice etc. having been either issued or published to get the sale deed executed pursuant to the agreement, as has been contended by Mr. Mittal, Mr. Bhullar submitted that the sale deed executed in favour of respondents no.2 and 3 already being *fait accompli*, there would not have been any purpose in actually issuing notices or getting any notices published in any forum, and therefore the appellant-plaintiff instituted the suit itself on 19.7.1982, with the last date for execution of the sale deed having been given as 30.5.1982 in the agreement of sale.

He further submitted that in any case the suit having been filed well within limitation, it would also be without undue delay even after 5 months of the sale deed having been executed, as a decision to enter into litigation itself would take some time for the parties to make up their minds, (also with the possibility of a deed actually being executed in favour of the appellant-plaintiff on 30.5.82), and consequently, simply on account of the fact that it was filed 5-6 months after the execution of the sale deed took place, would not mean that the plaintiff was not ready and willing to perform her part of the agreement.

(43) As regards respondent-defendants no.2 and 3 being *bona fide* purchasers of the suit land, Mr. Bhullar submitted that they did not even step into the witness box to assert that fact, or the fact that they had no knowledge of any agreement of sale, with in fact their father (Hakam Singh) having stepped into the witness box in their place, with him in any case not being entitled to testify as regards the personal knowledge of his daughters on whether or not the agreement of sale had been entered into or not (with him not even 'carrying' a power of attorney from them).

He next again pointed to paragraph 20 of the judgment of the learned lower appellate court, to submit that the finding recorded by that court, to the effect that it cannot be presumed that the appellant had knowledge of the agreement of sale simply because Jagat Singh and Hakam Singh were brothers (thereby reversing the finding of the learned trial court on that count), is a wholly perverse finding, because actually the trial court had come to a correct conclusion on account of that relationship, as also because the specific assertion of the appellant that she had informed the 2nd & 3rd respondents of the agreement, went wholly unrebutted.

(44) Mr. Bhullar submitted that the observation of the lower appellate court, to the effect that it was for the plaintiff to produce Jagat Singh as a witness and not for Hakam Singh to do so, is again a wholly perverse finding as Jagat Singh was a defendant in the present case and the uncle of defendants no.2 and 3, and consequently if he at all had to be produced as a witness, it was for them to so produce him.

(45) As regards Mr. Mittals' argument that the second appeal of the plaintiffs' husband, Kuldip Singh (in the suit instituted by him), having been dismissed for non-prosecution and therefore this appeal cannot succeed, he submits that in any case such dismissal cannot constitute *res judicata*, the plaintiff in that case being a different person to the present plaintiff, even if he was her husband, with that *lis* being in respect of a separate agreement qua a separate piece of land, though also belonging to respondent-defendant no.1 Jagat Singh.

(46) Last, learned counsel for the appellant submitted that as regards no decree of specific performance being ordered to be issued by this court due to the time lapse between the period that the agreement was entered into up till now, in fact a decree of specific performance was issued in favour of the appellant by the trial court in the year 1986, and thereafter the litigation having remained pending for long, is not the fault of the appellant.

Consequently, he prayed for reversal of the judgment of the 1st appellate court and restoration of that of the trial court, with this court thereby again decreeing the suit of the appellant-plaintiff in her favour.

(47) Having considered the judgments of the learned courts below, as also the arguments raised by counsel on both sides, as regards the 1st issue framed by the trial court, I agree with the contentions of learned counsel for the appellant on that question (on the validity of the agreement), with even the first appellate court having held the agreement, Ex.P1, to have been duly entered into between the appellant-plaintiff and respondent no.1, Jagat Singh.

The agreement would, in my opinion too, need to be accepted to be valid by this court also, in view of the fact that other than an attesting witness thereto and the plaintiff herself having testified in its favour, the first appellate court even examined the finger prints of respondent Jagat Singh on the said agreement, as also on the sale deed Ex.D1, and recorded a finding after looking at the nuances of such prints, that they belonged to the same person, with the finger print expert from the (Government) Finger Prints Bureau, Madhuban, in any

case having opined to that effect.

(48) As regards Mr. Mittals' argument that with the attesting witness to the agreement, Jagir Singh, having testified contrary to the testimony of the appellant as regards him having met her alongwith respondent no.1 one day prior to the agreement, I find that not to be reason enough to upset the finding of the learned courts below, (to the effect that that agreement was duly entered into by both parties).

Other than the fact that the trial court has held that 2 years after the signing of the agreement (at the time of the testimony), the witnesses could have forgotten such details, in the opinion of this court, once the factum of the agreement having been entered into by respondent no.1 and the appellant has been fully established by both the courts below, by even comparing the thumb impressions of respondent no.1, whether the attesting witness had met the appellant a day prior to the agreement being signed, or on that date itself, would be wholly immaterial.

(49) Coming next to Mr. Mittals' arguments that even the appellant- plaintiff (prospective vendee) did not know anything much about the agreement entered into and even her signatures/thumb impressions on the said agreement were not proved, and therefore no valid contract could be held to have been entered into in terms of Sections 2, 4 and 10 of the Indian Contract Act, 1872, it is held by this court that once the agreement and the contents thereof are found to have been thumb marked by the prospective vendor (the owner of the land), with the recitals in the agreement stating that he was willing to sell the land to the prospective vendee and had received part consideration of Rs.11,250/- (at the time of entering into the agreement), with the remaining amount of the total sale consideration of Rs.35,000/- to be paid at the time of execution of the sale deed, the offer of acceptance made by the appellant-plaintiff (prospective vendee) stood accepted at that stage itself by respondent no.1, i.e. the owner of the land (Jagat Singh).

Even so, Sections 2, 4, 8 and 10 of the Act of 1872 are reproduced hereinbelow:-

> "**2. Interpretation-clause.—**In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—
>
> (a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to

obtaining the assent of that other to such act or abstinence, he is said to make a proposal;

(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise;

(c) The person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee";

(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

(e) Every promise and every set of promises, forming the consideration for each other, is an agreement;

(f) Promises which form the consideration or part of the consideration for each other, are called reciprocal promises;

(g) An agreement not enforceable by law is said to be void;

(h) An agreement enforceable by law is a contract;

(i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract;

(j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable."

xxxxx xxxxx xxxxx

"**4. Communication when complete.—**The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,—

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;

as against the acceptor; when it comes to the knowledge of the proposer. The communication of a revocation is

complete,-

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;

as against the person to whom it is made, when it comes to his knowledge."

xxxxx xxxxx

"**8. Acceptance by performing conditions, or receiving consideration.—**Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal."

xxxxx xxxxx

"**10. What agreements are contracts.—**All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in [India], and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents."

In fact, Section 10 hereinabove, read with Section 2 (a) to (e) of the said Act, would, in the opinion of this court, operate in favour of the appellant and not against her, inasmuch as, every promise 'backed' by consideration towards the fulfillment of that promise, is an agreement (as per Section 2(e)); and as per Section 10 all agreements are contracts if they are made of the free consent of the parties thereto, for a lawful consideration, with a lawful object.

Further, as per Section 8, acceptance of any consideration for a reciprocal promise, or performance of any condition of a proposal (which would include acceptance of consideration qua that proposal), amounts to acceptance of the proposal.

Hence, once the prospective vendor, i.e. respondent no.1 herein, admitted as per the agreement Ex.P1, to having received a part of the consideration settled for the sale of the suit land, then the contract

factually had been entered into by both parties, and simply because the signature of the prospective vendee (the appellant-plaintiff), was not fully proved, that would make no difference to the existence of a valid contract.

In this context, a judgment of the Supreme Court in ***Alka Bose*** *versus* ***Parmatma Devi and others***[14], can be cited, wherein it was held as follows:-

> "14. Certain amount of confusion is created on account of two divergent views expressed by two High Courts. In *S.M. Gopal Chetty v. Raman* a learned Single Judge held that where the agreement of sale was not signed by the purchaser, but only by the vendor, it cannot be said that there was a contract between the vendor and the purchaser; and as there was no contract, the question of specific performance of an agreement signed only by the vendor did not arise. On the other hand, in *Mohd. Mohar Ali v. Mohd. Mamud Ali* a learned Single Judge held that an agreement of sale was a unilateral contract (under which the vendor agreed to sell the immovable property to the purchaser in accordance with the terms contained in the said agreement), that such an agreement for sale did not require the signatures of both parties, and that therefore an agreement for sale signed only by the vendor was enforceable by the purchaser.
>
> xxxxx xxxxx xxxxx
>
> 16. On the other hand, the observation in *S.M. Gopal Chetty* that unless agreement is signed both by the vendor and purchaser, it is not a valid contract is also not sound. An agreement of sale comes into existence when the vendor agrees to sell and the purchaser agrees to purchase, for an agreed consideration on agreed terms. It can be oral. It can be by exchange of communications which may or may not be signed. It may be by a single document signed by both parties. It can also be by a document in two parts, each party signing one copy and then exchanging the signed copy as a consequence of which the purchaser has the copy signed by the vendor and a vendor has a copy signed by the purchaser. Or it can be by the vendor executing the document and delivering it to the purchaser who accepts it.

[14] 2009 (2) SCC 582

xxxxx xxxxx

18. xxxxx In India, an agreement of sale signed by the vendor alone and delivered to the purchaser, and accepted by the purchaser, has always been considered to be a valid contract. In the event of breach by the vendor, it can be specifically enforced by the purchaser. There is, however, no practice of purchaser alone signing an agreement of sale."

xxxxx xxxxx

(Emphasis applied by this court only)

(50) Hence, in the present case, with a valid agreement having been entered into by the appellant with respondent no.1, as has also been found by both the courts below, including the court which otherwise reversed the finding of the trial court and dismissed the suit of the appellant, I find absolutely no reason to reverse that finding, either on fact as regards the thumb impression of respondent no.1 on the agreement, or in law, as regards a valid contract having been entered into by the appellant and the said respondent.

Therefore, the judgments relied upon by learned counsel for respondents no.2 and 3 (to the effect that even if no appeal has been filed by the said respondents against the findings of the first appellate court as regards the validity of the agreement Ex.P1), would not come to their rescue, because though otherwise the said judgments (in *Banarsis'* and *Dr. Sita Rams'* cases, both supra) hold that that the appellate court can reverse the findings of any court below even in an appeal not filed by the person seeking such reversal of finding, however, on the merits itself, this court not having agreed with the contention of learned counsel for the respondents, in view of what has been held hereinabove, the question of whether or not the respondents herein are entitled to a reversal of the finding of the courts below, does not arise at all.

Consequently, I find no reason to reverse that concurrent finding of fact in this 2nd appeal, as regards the 1st issue framed by the trial court (on whether or not the agreement had been validly executed, after the 1st respondent-defendant (Jagat Singh) had received earnest money of Rs.11,250/- from the appellant-plaintiff).

Hence, the 3rd question of law framed in paragraph 25 hereinabove, is answered to the effect that the finding of both the

learned courts below, on the agreement dated 01.09.1981 being a valid agreement, is not a perverse finding in any manner and consequently the question of reversal of that finding in this appeal, even on an argument raised by learned counsel for the respondents, does not arise on the merits of that question and issue itself.

(51) As regards Mr. Mittals' argument that with the appellants' husband not having pursued his appeal (as was also filed against the same judgment as has been impugned in the present appeal), therefore this appeal also cannot succeed, because even his suit was based on an agreement executed on the same date as that by the present appellant with respondent no.1, I see absolutely no basis for that argument and it needs to be observed by this court that in fact there was no need, in my opinion, for the first appellate court to decide both the appeals together by a common judgement, when the plaintiffs were different, the pieces of land were different and in fact the judgments in the suits were given by 'different trial courts' on completely different dates (one year and about 4 months apart). Thus, simply because the plaintiff in each case was the spouse of the plaintiff in the other case, and the agreements in both cases were executed on the same date (as contended) by the same vendor, that would have been no reason to club the appeals filed in both the cases, together.

Be that as it may, the argument by learned counsel for the respondent that the appeal filed by the husband of the present appellant, before this court, against the judgement in favour of the respondents herein (by the first appellate court), having been dismissed in default, would have an adverse effect on this appeal, is a wholly misconceived argument because dismissal in default of the husbands' appeal, would obviously not bar his wife from filing and pursuing an appeal as regards her own suit, after the decree issued in her favour by the trial court, was reversed by the lower appellate court.

Hence, that argument is (equally obviously) rejected.

(52) Therefore, the only issues which this court is now required to go into are, whether the appellant-plaintiff was found ready and willing to execute her part of the contract with respondent no.1; and second, whether respondents no.2 and 3 herein can be considered to be bonafide purchasers of the suit land, who were not aware of the agreement dated 01.09.1981 entered into by the appellant and respondent no.1 (i.e. issues no.2, 4B & 4A respectively), with those issues being relatable to the 1st and 2nd questions of law framed in para 25 *supra*.

(53) Coming therefore onto the question on whether or not the appellant-plaintiff was ready and willing to perform her part of the contract, (i.e. get the sale deed executed in her favour 'from respondent no.1', in terms of the agreement Ex.P1, within the time frame given in the agreement, i.e. by 30.05.1982), I find myself unable to agree with the findings of the lower appellate court in that respect.

That is for the reason that the consideration amount was to be paid by the appellant-plaintiff by 30.05.1982, whereas respondent no.1 executed the sale deed in favour of respondents no.2 and 3 on 24.02.1982 itself, i.e. more than 3 months prior to the date settled between him and the appellant-plaintiff.

The appellant-plaintiff on the other hand, within about one and a half months of 30.05.1982, instituted the suit in the present *lis* (on 19.07.1982), upon the first respondent herein having refused to honour his part of the contract, he already having sold off the suit land earlier, and respondents no.2 & 3 also having refused to transfer the land to her.

In fact, even as per learned counsel for respondents no.2 and 3, the appellant-plaintiff, in her testimony had stated that after the agreement was entered into by her with the first respondent herein, that she had approached respondents no.2 and 3 to redeem the mortgage, which they had refused to do.

The contention of Mr. Bhullar, learned counsel for the appellant, to the effect that the appellant had also testified that she had informed respondents no.2 and 3 of the fact that she had entered into such agreement, has also not been denied by learned counsel for the respondents, and therefore, to repeat, with the said respondents never having stepped into the witness box to rebut those specific contentions of the appellant, I would uphold the finding of the trial court in that regard and further hold that in fact her willingness to execute her part of the contract, would be inferred by her aforesaid actions.

Next, on Mr. Mittals' argument that once having come to know that respondent no.1 was not honouring the agreement between them, a suit seeking permanent injunction should have been instituted by the appellant, that he be restrained from alienating the suit property, that is also an argument which is misconceived in my opinion because once he had already alienated the suit land in favour of respondents no.2 and 3, there would be no purpose in filing the suit seeking that he be restrained from doing so, and consequently the appellant did what she was

required to do, i.e. file a suit seeking specific performance of the agreement entered into between her and respondent no.1.

I also agree with the contention of learned counsel for the appellant that as regards non-issuance of any legal notice in a newspaper that the agreement of sale was required to be executed (upon not being able to find out the whereabouts of respondent no.1), such notice would have been without any purpose as the sale deed in favour of respondents no.2 & 3 had already been executed about four months prior to the date fixed for execution of a sale deed in favour of the appellant, and therefore the best option left to the appellant was to file the suit in the instant *lis.*

The above reasoning would also apply to Mr. Mittals' contention that she only instituted the suit in July 1982 despite the fact that the sale deed in favour of respondents no.2 and 3 was executed in February 1982. In my opinion, even that cannot be held against her, because once the appellant had failed in her attempt to get the respondents to come to terms and to honour the contract in her favour, then with the suit having been instituted within one and half months of the date set for execution of the sale deed (i.e. 30.05.1982), obviously the question of limitation cannot come in any manner, and there would also be no inordinate delay seen, in the institution of the suit.

Consequently, that argument also has to be rejected.

(54) Hence, I fail to understand as to how the lower appellate court held that the appellant-plaintiff not having made any efforts to get the sale deed executed, she was therefore not ready and willing to perform her part of the contract.

Actually, no finding is seen to have been recorded by that court to the effect that she gained knowledge of the sale deed dated 24.02.1982 at any time prior to 30.05.1982, but that knowledge would be presumed to be with her, in view of the fact that Mr. Mittal has argued that the appellant even asked respondents no.2 & 3 that the mortgage be redeemed, which they refused; therefore, naturally, at that stage she could not have sought execution of a sale deed in her favour by the said respondent-defendants, with her therefore having instituted a suit to seek specific performance of the contract in her favour, after the date fixed for such execution had gone by.

(55) Therefore, the finding of the lower appellate court on issue no.2, i.e. the readiness and willingness of the appellant-plaintiff to perform her part of the contract is reversed and that of the trial court is

restored and the 1st question of law framed in paragraph 25 *supra*, is answered accordingly.

(56) Coming next to the issue of respondents no.2 and 3 being bonafide purchasers of the suit land, I find myself unable to agree with even that finding of the first appellate court, despite the arguments raised by Mr. Mittal, learned counsel for the said respondents, in view of the fact (to again repeat) that admittedly respondents no.2 and 3 never stepped into the witness box to refute the contention of the appellant-plaintiff in her testimony, that she had informed them (being mortgagees in possession of the suit land), of the agreement of sale entered into by her with their uncle-respondent no.1 (original owner of the land) on 01.09.1981. Therefore, that contention of the appellant-plaintiff in support of her plaint, remained unrebutted.

In fact, the learned trial court has also recorded a specific finding that even the father of respondents no.2 and 3, while testifying as PW4 (and not as their attorney), did not also state that his daughters (respondents no.2 and 3), were aware of the agreement or that the plaintiff had not told them about it.

(57) As regards what has been held by the first appellate court on the onus of bringing respondent no. 1 to the witness box being on the appellant- plaintiff and not on respondents no. 2 and 3, though of course even the appellant-plaintiff could have done so despite the fact that the first respondent herein was a defendant in the suit, yet, that finding of the lower appellate court does not hold good in my opinion, for the simple reason that the agreement of sale has been held by even that court to be a valid and genuine document, and consequently the onus to disprove it would actually have then shifted onto respondents no.2 & 3. In any case, the stand of the appellant-plaintiff was that thereafter she was unable to locate him, even in Saharanpur (as is even submitted by counsel for the said respondents, from her testimony). Further, he did not even respond to the notice issued in the suit and was proceeded against *ex parte*. Hence, the onus to bring him as a witness to disprove the agreement, which otherwise stood proved, was upon respondents no.2 and 3.

Therefore, the said respondents not having stepped into the witness box to refute the specific contention of the appellant that she had informed them of the agreement and had asked them to allow her to redeem the mortgage in their favour, and their father (though not their attorney), also not having refuted that contention in his testimony, the onus of bringing respondent no. 1 into the witness box to testify as to

whether he had, or had not, informed them of the agreement entered into by him with the appellant- plaintiff, was upon respondents no. 2 and 3.

Consequently, I agree with the finding of the trial court to the effect that an adverse inference was to be drawn against the respondents with regard to their having due knowledge of the agreement of sale entered into between the appellant and respondent no.1, despite which they purchased the suit land from respondent no.1 within about 6 months of the agreement, before the date fixed for execution of the sale deed in favour of the appellant by respondent no.1, i.e. well before 30.05.1982.

(58) Other than the finding on fact *qua* that issue (as discussed herein above), I also find no legal basis to sustain the finding of the lower appellate court to the effect that the appellant-plaintiff was bound to inform respondents no.2 and 3 of the agreement because the latter were in possession of the suit land as mortgagees, which fact of course was in the knowledge of the appellant-plaintiff.

Undoubtedly, prudence would demand that a purchaser of land should inform the person in possession thereof that he/she was purchasing such land; however, no provision of law either from the Specific Relief Act or from Chapter IV of the Transfer of Property Act 1882 (relating to mortgages and charges), has been brought to the notice of this court, or is discernible by this court, which 'mandatorily obliges' a purchaser of any piece of mortgaged land to inform the mortgagee of such purchase, though of course as already said hereinabove, prudence would demand such information to be given.

In fact, Section 59A of the Act of 1882, reads as follows:-

> "**59A. References to mortgagors and mortgagees to include persons deriving title from them.**--Unless otherwise expressly provided, references in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively."

Thus, upon a mortgagor alienating the mortgaged land in favour of another person by way of a sale thereof, the new owner of that land steps into the shoes of the previous owner, as a mortgagor thereof, in respect of the persons to whom it has been so mortgaged, i.e. the mortgagees.

In the present case of course, the mortgagees having purchased

the land from their mortgagor (from respondent no.1), prior the agreement entered into by respondent no.1 being honoured by him, the mortgage obviously stood extinguished, as has been discussed further in paragraph 66 hereinafter.

In fact, a person purchasing any piece of land which stands mortgaged, with possession thereof being with the mortgagee, obviously knows that he would not be able to get immediate possession even upon such purchase, and that the mortgage would have to be redeemed prior to possession being actually handed over to the new purchaser standing in the place of the original owner, and consequently information of such imminent purchase may normally be prudent to be given to the mortgagee; however, the onus of informing the mortgagees in possession of the suit land of the intended purchase of the suit land by another party, in my opinion, cannot be held to be mandatorily cast upon the purchaser in the absence of any statutory provision to that effect seen to be existing, with no such provision even pointed out by learned counsel for respondents no.2 and 3; and therefore what has been held to that effect by the lower appellate court would not be sustainable.

In any case, that question is rendered to be academic, it already having been held hereinabove that the contention of the appellant-plaintiff, to the effect that she had informed respondents no.2 and 3 of her intention to purchase the suit land, was a contention not refuted by way of the testimony of respondents no.2 and 3 themselves, or even by their father who stood as DW4. Therefore, the finding of the trial court, holding that respondents no.2 and 3 had due knowledge of such agreement, is to be upheld as has been done hereinabove, especially seen with the fact that respondent no.1 is the uncle of respondents no.2 and 3, their father being his brother.

Further, it has not been pointed out from any part of the testimony of the witnesses, by counsel for respondents no.2 and 3, that the finding of the learned trial court is a perverse finding, to the effect that their father, DW4, was not present at the time that the agreement Ex.P1 was entered into, and that he could not have any personal knowledge of it.

No doubt, as has been correctly observed by the learned first appellate court, simply by virtue of being the nieces of respondent no.1, knowledge of respondents no.2 and 3 of the agreement entered into by their uncle with the plaintiff, cannot be presumed; but seen with the fact that they did not testify to refute the specific contention of the appellant

that she had informed them of the factum of the agreement entered into by her, and had asked that the mortgage be redeemed, coupled with the fact that respondent no.1 was their uncle, in my opinion, they cannot be held to be bonafide purchasers who had no knowledge of the agreement between appellant and respondent no.1. Thus, despite such knowledge, they purchased the land in their possession as mortgagees, from respondent no.1.

Hence, the finding of the trial court to the effect that even clause (b) of Section 19 of the Specific Relief Act, 1963, does not operate in their favour is again a finding which is upheld by this court, with that provision reading as follows:-

> "**19. Relief against parties and persons claiming under them by subsequent title.--**
>
> (a) xxxxx xxxxx xxxxx
>
> "(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money inn good faith and without notice of the original contract;
>
> xxxxx xxxxx xxxxx"

Consequently, the 2nd question of law framed in paragraph 25 hereinabove, is answered to the effect that with respondents no.2 and 3 never having rebutted the testimony of the appellant-plaintiff in support of her contention that she had duly informed them of the agreement dated 01.09.1981 and had even asked them to get the mortgage redeemed, they are held to have had knowledge of that agreement and consequently they are held *not to be* bonafide purchasers of the suit land, as has been correctly held by the trial court.

(59) Next coming to the question as to whether, after 39 years have gone by from the time when the agreement was entered into by the appellant with respondent no.1, discretion should be exercised by this court in favour of the plaintiff in terms of Section 20 of the Act of 1963, or not.

Though otherwise, especially with respondents no.2 and 3 being in possession of the suit property, originally as mortgagees, this court may not have exercised discretion in favour of the appellant; however, what cannot be ignored is the fact that actually the trial court decreed the suit in favour of the appellant-plaintiff on 16.05.1986, after

which the first appeal instituted came to be decided against her on April 29, 1988, with her having thereafter instituted the present second appeal on 23.08.1988.

Hence, in my opinion, pendency of this appeal for almost 32 long years, should not 'work against' the appellant-plaintiff, for no fault of hers.

(60) Having said that, the question then is as to whether the decree to be issued in favour of the appellant-plaintiff, should be wholly in terms of the decree issued by the learned trial court, by which it had been directed that upon the plaintiff paying the remaining sale consideration of Rs.23,750/-, as also the legal expenses towards execution and registration of the sale deed in her favour, the defendants be directed to immediately execute that sale deed qua the suit land, or whether in view of the fact that 38 years have elapsed since the date that the sale deed was originally to be executed, i.e. since 30.05.1982, any higher consideration should be ordered to be paid by the appellant-plaintiff to the respondents, subject only to which the sale deed can be executed in her favour by them?

In this context, though there are many judgments holding one way or the other, the judgment of the Supreme Court cited by Mr. Mittal in *Satya Jains'* case (supra) can be referred to, in which the law on the subject has been referred to in detail by their Lordships.

Hence, the following paragraphs from that judgment are being reproduced hereinbelow:-

> "**27.** The ultimate question that has now to be considered is whether the plaintiff should be held to be entitled to a decree for specific performance of the agreement of 22.12.1970. The long efflux of time (over 40 years) that has occurred and the galloping value of real estate in the meantime are the twin inhibiting factors in this regard. The same, however, have to be balanced with the fact that the plaintiffs are in no way responsible for the delay that has occurred and their keen participation in the proceedings till date show the live interest on the part of the plaintiffs to have the agreement enforced in law.
>
> 28. The discretion to direct specific performance of an agreement and that too after elapse of a long period of time, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles. The parameters for the

exercise of discretion vested by Section 20 of the Specific Relief Act, 1963 cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the experienced judicial mind can perceive without any real difficulty. It must however be emphasized that efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance. Such a view has been consistently adopted by this Court. By way of illustration opinions rendered in ***P.S. Ranakrishna Reddy v. M.K. Bhagyalakshmi*** and more recently in ***Narinderjit Singh v. North Star Estate Promoters Ltd.*** may be usefully recapitulated.

29. The twin inhibiting factors identified above if are to be read as a bar to the grant of a decree of specific performance would amount to penalizing the plaintiffs for no fault on their part; to deny them the real fruits of a protracted litigation wherein the issues arising are being answered in their favour. From another perspective it may also indicate the inadequacies of the law to deal with the long delays that, at times, occur while rendering the final verdict in a given case. The aforesaid two features, at best, may justify award of additional compensation to the vendor by grant of a price higher than what had been stipulated in the agreement which price, in a given case, may even be the market price as on date of the order of the final Court.

30. Having given our anxious consideration to all relevant aspects of the case we are of the view that the ends of justice would require this court to intervene and set aside the findings and conclusions recorded by the High Court of Delhi in R.F. A. No.11/1984 and to decree the suit of the plaintiffs for specific performance of the agreement dated 22.12.1970. We are of the further view that the sale deed that will now have to be executed by the defendants in favour of the plaintiffs will be for the market price of the suit property as on the date of the present order. As no material, whatsoever is available to enable us to make a

> correct assessment of the market value of the suit property as on date we request the learned trial judge of the High Court of Delhi to undertake the said exercise with such expedition as may be possible in the prevailing facts and circumstances.
>
> 31. All the appeals shall accordingly stand allowed in terms of our above conclusions and directions."

(61) Obviously, in that case their Lordships had directed that the suit for specific performance would stand decreed in favour of the plaintiffs upon them paying market value of the suit land, the agreement of sale being of the year 1970 (in that case).

The ratio of the judgment however, in the opinion of this court, as is contained in paragraph 28 reproduced hereinabove, is contained in the following lines:-

> "The parameters for the exercise of discretion vested by Section 20 of the Specific Relief Act, 1963 cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the experienced judicial mind can perceive without any real difficulty. It must however be emphasized that efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance. Such a view has been consistently adopted by this Court."

Thus, it is the principles of fairness and reasonableness as are applicable to any particular case, that are to be the guiding principles for any court to exercise discretion in terms of Section 20 of the Act of 1963.

(62) Though obviously even in the present case, as already said earlier, 38 years have gone by since 1982, yet what this court cannot lose sight of is that, for those 38 years, respondents no.2 and 3 enjoyed the fruits of the suit land, with nothing brought to the notice of this court that they have disposed of the land. In fact, an order has been recorded on 13.07.2015 by this court (on a statement made by learned counsel for the said respondents), that they were not planning to sell the suit property, upon which the application filed (obviously seeking an

injunction to that effect), was disposed of.

Therefore, quantification of the market value of the land in question, and the value of the fruits thereof enjoyed by respondents no.2 and 3 for the last almost four decades, would first need to be assessed by this court (at least by approximation), though I would obviously not venture to attempt reaching any exact figures in that regard, because market values of land are dependent upon various factors including location of any property and the kind of development that has taken place there, as also the fertility of the land (in case of agricultural land).

However, with this court not unaware of either general land prices in this part of the country, or income from agricultural land, it needs to be noticed that in the mid 1980s', ordinarily fertile agricultural land gave a return of approximately Rs.2000/- to 2500/- per acre, with that amount having increased to anything between Rs.40,000/- to Rs.65,000/- per acre, as of today.

As regards the value of land, the market value of one acre of agricultural land, (unless it abuts upon a main highway) ranged from between Rs. 10/12 lacs per acre last year, going upto even Rs.25 lacs per acre, though presently, due to the current pandemic in the past 3 months, those figures may not be accurate. However, even that would eventually not matter, in terms of the view taken in paragraph 64 hereinafter.

As regards the income that could be derived from agricultural land over a period of 38 years, by respondents no.2 and 3, if a calculation is made as per investment calculators, the total income derived by the said respondents could be said to amount to be, in the opinion of this court, anything between Rs.2000/- per acre in the early 1980s, going upto about Rs.40,000/- per acre (conservatively) since the past about 8-10 years. Therefore, factoring those values in, as also by factoring in variable rates of bank interest (starting from approximately 11% per annum in the year 1982 and going down to 6% per annum for the past 6-7 years), the income value derived over the past 38 years by the 2nd and 3rd respondents, would be approximately Rs.20 to 25 lakhs (give or take Rs.2 lacs to Rs.3 lacs either way), if the land in question is agricultural land, which of course has not been specifically stated by either counsel.

The above income has been derived by this court by 'feeding in' the yearly income (starting with Rs.2000/- in the year 1982, going upto Rs.40,000/- for the last 4 years), as also by 'feeding in' decreasing

yearly interest rates (starting with 11% in 1982-1988, going down to 6% per annum for the last 6-7 years); into a computer software developed for the purpose of projecting incomes for different periods of time at different interest rates, depending on what the base income/investment was.

Thus, the computer software into which the above data was filled in, is one that calculates the value of investments made for a period of time, at compound interest rates, with the income being fed in for each year, also filling in the number of years for which the calculation is to be made, as also the interest rate (into the software programme, for each particular period).

The software also specifically caters to fluctuations in interest rate over the period of years for which the calculation is to be made, and therefore, after filling in the interest rate for the base year (i.e. for the year in which the income accrued to the person who would make the investment), the fluctuation in interest rate to the lowest level over those number of years, is to be given; and upon those parameters having been filled in, the amount that the said income/investment would have derived over the years, is calculated.

For example, taking it that in the year 1982, the income derived from the suit property by respondents no.2 and 3 was Rs.2000/-, and the normal bank interest in that year was 11% per annum, with it going down to 6% per annum presently (for the past 6-7 years), the following parameters were fed into the software:-

Income/investment in1982	Rs.2000/-
Interest rate in 1982	11%
Fluctuation in interest rate	5% (11% minus 6%) (Between 1982 till today)

Numbers of years for which the calculation is made 38 years (from 1982 to 2020)

Thus, the value of the income earned by respondents no.2 and 3 in the year 1982 (i.e. Rs.2000/-), after 38 years, comes to Rs.1,05,512/- today, with the interest rates going down from 11% to 6% during the said period.

Similarly, an approximated increasing income was fed in for each year, by obviously decreasing the number of years, each year, from 1982 till the present (i.e. 38 years, 37, 36 -- -- --), as also by

decreasing interest rates (with therefore lesser fluctuation for each successive year); after which the total amount was added, for each of the 38 years, which comes to approximately Rs.20 to 25 lacs, the approximation being in view of the fact that the income earned in each year, and the drop in interest rates, may not have been exactly as was fed in to the calculator for each successive year (though having some knowledge of approximate agricultural income over these years, the income was taken accordingly for each year, as an 'approximation').

It may be noticed here that the investment software /calculator taken by this court was from the website www.investor.gov., which though gives the results in US Dollars, however the numerals fed in and the results thereof, are equally applicable to rupees (or any other currency) because the result is in terms of the numbers fed in, with such numbers/figures (of annual income and interest etc.) obviously being in terms of rupees in the present case.

(63) Therefore, in the opinion of this court, if the land in question is found to be agricultural land, then the market value thereof, as of today, would be approximately the same as todays' value of the income derived thereof by respondents no.2 and 3 over the past 38 years.

Of course, if in the meanwhile, the land has come to be located at a 'prime location' due to any development that has taken place, naturally the market value may be exponentially higher than what this court has approximately assessed hereinabove, (i.e. Rs.20-25 lakhs for almost one acre of agricultural land).

(64) Even in that case, in my opinion, with the respondents herein actually having held on to the land which was legally to be transferred to the plaintiff in the year 1982, it should be the plaintiff who should derive the benefit of any increased market value of the land, whether by normal efflux of time, or even with such efflux of time added to factors of development etc. in the years gone by in between, because it is not her fault that her appeal has remained pending for 32 years.

Thus, the 'bottom line' is that whether the land is agricultural land or not, it should have legally been transferred to the appellant-plaintiff by 30.05.1982 as per the agreement Ex.P1, and therefore with this court having agreed with the trial court that respondents no.2 and 3 had due knowledge of the said agreement of the appellant with respondent no.1, and they are therefore not bonafide

purchasers, any benefit of the increased value of the suit land after the date of the agreement (01.09.1981), would legally be the right of the appellant.

Hence, even the approximate calculation made hereinabove is only to determine the comparison of income with the market value of land by normal standards; but in any case, wholly regardless of that, the benefit of increased market value, whether by normal progression or exponentially, needs to go to the person who has had a legal right to ownership of that land for almost four decades now, i.e. the appellant-plaintiff, with respondents no.2 and 3 in any case having enjoyed the fruits of the land during that period.

(65) Coming then, next, to the interest lost/gained by both sides on what was paid by the appellant to respondent no.1 as earnest money (Rs.11,250/-) in 1981, and what was to be paid by her to respondents no.2 and 3 in terms of the decree issued by the learned trial court (Rs.21,750/-).

Naturally, the said respondents have lost interest on that amount since the year 1982, or at least since the date of decision of the trial court, i.e. on 12.12.1986.

That amount comes to approximately Rs.6,00,000/-, with the calculation having been made by way of the same investment table software, taking the 'base year' to be 1986, and taking the bank interest rate in that year to be 10% per annum, with current bank interest rate to be 6% per annum.

Hence, in my opinion, this appeal having been filed by the appellant-plaintiff, respondents no.2 and 3 would be entitled to that amount from her and not just Rs.21,750/- as was ordered by the trial court, but are not entitled to the market value of the land as it may stand today, in view of the detailed discussion on that issue in paragraphs 62 to 64 hereinabove.

Therefore, the only extra compensation that the respondents no.2 and 3 deserve to be paid by the appellant, is todays' value of Rs.21,750/- as was to be paid to them, i.e. the balance consideration money out of the total amount of Rs.35,000/- settled in the agreement.

Similarly, respondent no.1 (though he has never come to defend/pursue the litigation at any stage), would be entitled to todays' value of Rs.2000/- which was to be paid to him in terms of the decree of the trial court, by the appellant, which amounts to (vide the same

calculation method), Rs.51,095/- (rounded off Rs.51,000/-).

(66) Next, though that issue actually does not need find mention here, yet, simply for the sake of clarification, it is to be observed by this court that with respondents no.2 and 3, i.e. mortgagees of the suit land, having purchased it from respondent no.1, i.e. the owner and mortgagor, vide the sale deed Ex.D1, obviously the mortgage stood redeemed by adjustment of the mortgage amount in the consideration amount qua the sale of the land and consequently, with respondents no.2 and 3 having become owners of the land, (with them having been in possession thereof as mortgagees earlier), but with this court having upheld the decree of the trial court as regards the validity of the agreement of sale, Ex.P1, and the appellants' right to get a sale deed in fact executed in her favour in terms of the said agreement, naturally upon payment of the consideration as has been directed hereinabove (Rs.6,00,000/-), and registration charges and stamp duty, respondents no.2 and 3 would execute a sale deed in favour of the appellant and hand over possession of the suit land to her immediately thereafter.

(67) Consequently, on the reasoning given hereinabove, nothing more than todays' approximate value of what was settled as the consideration for the suit land between the appellant and respondent no.1 needs to be paid by her to the 2nd and 3rd respondents (in terms of what was decreed by the trial court), which, alongwith the interest thereupon amounts to Rs.6,00,000/-, for execution of a sale deed in her favour.

(68) Hence, this appeal is allowed in the aforesaid terms, with respondents no.2 to 3 directed to execute a sale deed qua the suit land in favour of the appellant-plaintiff within a period of 3 months from the date of receipt of a certified copy of this judgment and order, upon the appellant paying a sum of Rs.6,00,000/- to them, alongwith payment of stamp duty and registration charges, failing which payment, the appeal would be deemed to have been dismissed.

Upon payment of the aforesaid amounts and upon execution of the sale deed, the said respondents would immediately hand over the possession of the suit land to the appellant-plaintiff.

If respondent no.1 chooses to file a claim by way of, or in any, execution proceedings qua what was decreed in his favour by the trial court, he would be entitled to file such claim for receiving todays' value of Rs.2000/-, i.e. an amount of Rs.51,000/-, from the appellant, but the execution of the sale deed by respondents no.2 to 3 in favour of the

appellant herein would not be dependent upon payment of Rs.51,000/- to respondent no.1, if he does not come forward to stake that claim.

(69) Though the appellant would otherwise be also entitled to exemplary costs for having been put to litigation for almost 40 years, on account of the agreement in her favour not being honoured by the respondents, yet costs limited to Rs.20,000/- are imposed, to be paid by the respondents to the appellant, in equal shares.

A decree sheet be drawn up accordingly.

Dr. Sumati Jund