

**RSA No. 1000 of 1999 (O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**RSA No. 1000 of 1999 (O&M)**

**Date of Decision: August 13, 2019**

Risal and others

..... Appellant(s)

**Versus**

Alam Chand (deceased) through LRs

..... Respondent(s)

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. C.B. Goel, Advocate  
for the appellants.

Mr. M.L. Sarin, Senior Advocate with  
Ms. Hemani Sarin, Advocate  
for the respondent.

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**LISA GILL, J.**

Appellants-defendants are aggrieved of judgment and decree dated 18.02.1999, passed by the learned District Judge, Gurugram whereby suit filed by the plaintiff/respondent seeking specific performance of agreement to sell dated 02.06.1978 has been decreed. Appellants are also aggrieved of the judgment and decree dated 20.02.1998, passed by the learned Addl. Civil Judge (Sr. Division), Ferozepur Jhirka. Learned trial Court while declining the relief of specific performance of agreement to sell dated 02.06.1978, ordered recovery of the amount of Rs.7,000/- with interest @ 18% per annum from 06.02.1978 till realization. Learned District Judge, however, while allowing the appeal of the plaintiff/respondent and dismissing that of the present appellants-defendants, granted the decree for specific performance of the agreement to sell. Aggrieved therefrom present appeal has been filed.

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Brief facts necessary for the adjudication of the case are that suit for specific performance of agreement dated 02.06.1978 was filed by the plaintiff/respondent Alam Chand (now represented by his legal heirs) while pleading that defendant Suleman @ Salla (now represented by his legal heirs/the present appellants) entered into an agreement to sell his land measuring 50 Kanals 12 Marlas, situated in the revenue estate of village Reeghar as detailed in the plaint, for a sum of Rs.20,000/-. Suit property was also under mortgage with its possession with Naresh Kumar etc. for a sum of Rs.12,000/-. It was agreed between the parties that the plaintiff would be responsible for payment of the mortgage amount and the said amount of Rs.12,000/- shall be adjusted in the sale consideration. Accordingly, a sum of Rs.7,000/- was claimed to have been paid to Suleman at the time of execution of the agreement, after adjustment of the amount of Rs.12,000/- (mortgage amount). Balance of Rs.1,000/- was payable at the time of execution and registration of the sale deed, which was agreed to be executed on 24.08.1979. Plaintiff claimed to be ready and willing to perform his part of the obligation but the defendant-Suleman did not come forward. Plaintiff appeared before the Sub-Registrar on 24.08.1979 along with the remaining consideration amount, besides the requisite amount for the stamp and registration charges. However, the defendant did not turn up on the stipulated date. An application for getting his presence marked was moved by the plaintiff on 24.08.1979. Registered notice was issued to to the defendant for execution of the sale deed but defendant refused to accept the notice. In the meantime, defendant passed away but his successors in interest also did not honour the agreement. Hence, the suit was filed.

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At this juncture, it is relevant to note that the present suit filed on 06.02.1980 at the first instance was decreed in favour of the plaintiff while proceeding *ex-parte* against the defendant on 30.04.1980 by the Senior Subordinate Judge, Gurugram. An application under Order 9 Rule 13, read with Section 151 CPC for setting aside *ex-parte* decree filed by the defendant was dismissed by the learned Trial Court on 21.08.1984. Appeal preferred by the defendant was also dismissed by the learned District Judge, Gurugram vide judgment dated 28.11.1984. Civil Revision No.105 of 1985 filed by legal representatives of Suleman was allowed by this Court on 14.05.1992. The parties were directed to appear before the Senior Sub Judge, Gurugram on 17.07.1992. It was further directed that the suit be decided expeditiously, preferably within six months. The said order dated 14.05.1992 was challenged by the respondents before the Hon'ble Supreme Court in SLP (Civil) No. 11729 of 1992. Further proceedings before the learned Trial Court were stayed by the Hon'ble Supreme Court on 21.09.1992. However, SLP (Civil) No.11729 of 1992 was ultimately dismissed by the Hon'ble Supreme Court on 19.04.1996. Thereafter, the matter proceeded before the learned trial Court.

Legal representatives of Suleman filed a written statement, resisting the plaintiff's claim while raising various preliminary objections including that of maintainability, locus standi, fraud, concealment and limitation. Appellants-defendants claimed the alleged agreement and receipt dated 02.06.1978 to be false, fabricated, bogus and fake documents while stating that Suleman had never agreed to sell the suit property to the plaintiff

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and neither had he ever thumb marked any agreement to sell or receipt nor received any earnest money. It is stated that the Suleman was an illiterate agriculturist having good relations with the plaintiff. Suleman used to borrow money from the plaintiff as and when required and it is due to good faith which Suleman had on the plaintiff, that thumb impressions of the defendant-Suleman were obtained on blank papers and the agreement to sell was drawn up fraudulently by the plaintiff in collusion with the scribe and the witnesses. It is further pleaded that the suit property is ancestral and parties are governed by custom, therefore, Suleman had no right to alienate the ancestral property without legal necessity and consideration. The agreement thus in any case, could not be enforced against them. It is further stated that there was tampering with the agreement in as much as the date of the execution of the sale deed was changed from 02.06.1978 to 24.08.1979, so as to bring it in consonance with the case set up by plaintiff of showing his presence before the Sub-Registrar, in order to prove his readiness and willingness to perform his part of the agreement. It is stated that in case the agreement is proved to be executed, the defendants were ready to deposit the alleged earnest money with interest. Therefore, the suit should not be decreed.

Replication to the written statement was filed by the plaintiff controverting the pleas taken by the defendant.

Following issues were framed by the learned trial Court on the basis of the pleadings:-

- i) Whether there was a valid and subsisting agreement dated 2.6.1978 between plaintiff and Suleman if so its effect?OPP.

- ii) Whether plaintiff was always ready and willing to perform his part of obligation under the agreement if so its effect? OPP
- iii) Whether plaintiff is entitled to get the aforesaid agreement specifically enforced? OPP.
- iv) Whether the suit is not maintainable in the present form if so its effect? OPD
- v) Whether the suit is time barred? OPD
- vi) Whether suit land was ancestral in the hands of Suleman if so its effect? OPD.
- vii) Whether alleged agreement is bad for want of necessity and consideration? OPD
- viii) Relief.

Evidence was led by both the parties in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, facts and circumstances of the case concluded that the plaintiff had successfully proved the execution of a valid agreement between the plaintiff Alam Chand and defendant Suleman. However, while observing that there is a change in the figure of the month of the execution of the sale deed in as much as figure '8' is superimposed later. The date of execution of the sale deed, it is observed, could not have been '24.08.1979'. The tampering, it is observed, is visible to the naked eye and is material, which proves that the plaintiff was not ready and willing to perform his part of the obligation. The said issue was thus decided against the plaintiff. It is further concluded that the suit property was ancestral but it is established on record that Suleman was a

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tuberculoses patient and required money for his treatment and had also sold part of his agricultural land to different persons, which was admitted by DW-1, his son Risal. While denying the relief of specific performance of agreement to sell, the suit was decreed ordering recovery of the amount of Rs.7,000/- with interest @ 18%.

Appeals were preferred by both the plaintiff as well as the defendant. Learned District Judge, Gurugram vide the impugned judgment and decree dated 18.02.1999, reversed finding of the learned trial Court regarding readiness and willingness of the plaintiff being absent. Learned Ist Appellate Court concluded that readiness and the willingness of the plaintiff to perform his part of the agreement was duly proved by the evidence on record. The plaintiff had been litigating right from February 1980. Learned District Judge accordingly directed specific performance of the agreement to sell while decreeing the suit of the plaintiff with cost. Aggrieved therefrom, present appeal has been filed by the defendant.

Learned counsel for the appellants-defendants vehemently argues that the plaintiff miserably failed to prove the execution of the agreement to sell dated 02.06.1978. O.P. Mangla, Advocate (PW-3) the son of the scribe and one of the attesting witnesses Padam Chand (PW-2) admittedly could not even read Urdu. Mere attestation of a document is not sufficient proof of its execution. Defendants have specifically pleaded that there were financial dealings between the deceased Suleman and the plaintiff Alam Chand and it is in the course of these dealings that thumb impressions of Suleman were taken by the plaintiff and the papers in question were

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misused. It is further contended by learned counsel for the appellants that the finding regarding tampering of the document has not been set aside. In this view of the matter discretion should not have been exercised by the Court to grant a decree of specific performance of agreement to sell. Discretion of the Court under Section 20 of the Specific Relief Act, it is submitted, has been exercised incorrectly. Moreover, the prices of the land had sky rocketed in the intervening period and the sale consideration was highly inadequate.

The following questions of law, it is submitted, arise for consideration of this Court in this appeal:-

1. Whether the discretionary relief of specific performance of the agreement dated 02.06.1978 has been rightly granted by the learned District Judge, Gurugram vide judgment and decree dated 18.02.1999?
2. Whether the relief of specific performance should have been denied, when tampering of the agreement stands established?
3. Whether learned District Judge, Gurugram has misread the evidence on record and ignored relevant evidence while granting decree of specific performance of the agreement to sell dated 02.06.1978?

It is submitted that the learned District Judge, Gurugram has grossly erred in directing specific performance of the agreement to sell dated 02.06.1978. Learned trial Court had erred in directing recovery of the sum of Rs.7,000/-. It is thus prayed that this appeal be allowed and judgments

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and decrees of both the Courts below be set aside. Consequently, suit filed by the plaintiff/respondent be dismissed throughout.

Per contra, learned counsel for the respondent refuted the above said arguments. It is submitted that the agreement to sell dated 02.06.1978 is duly proved by positive evidence led by the plaintiff. Furthermore, the readiness and willingness of the plaintiff to carry out his part of the obligation is also proved on record. The entire consideration amount amount except a sum of Rs.1,000/- stood paid to the defendant Suleman. Registered notice dated 02.04.1980 was duly sent to Suleman, who refused to accept the same. At the initial stage, the defendant—Suleman chose not to associate himself with the proceedings before the learned trial Court and the suit of the plaintiff was decreed *ex-parte*. Thereafter, the matter was ultimately decided by the trial Court on 20.02.1998 after remand and learned District Judge, Gurugram decided the appeal on 18.02.1999. The present second appeal was admitted on 14.12.2000. Therefore, the appellants are not entitled to any relief on the ground of efflux of time as the plaintiff should not be penalised for no fault on his part. In respect to the alleged tampering with the date of execution of the sale deed, it is submitted that first and foremost, it is not proved on record that the tampering, if any, was carried out by the plaintiff and that too after the execution of the agreement to sell. Moreover, the same is irrelevant for the reason that the appellants in any case have denied the execution of the agreement to sell. It is not the case of the appellants/defendants that agreement to sell was executed for a particular date and it is thereafter, that the same has been changed or that on

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the relevant date agreed upon for execution of the sale deed, the defendant-Suleman was ready and willing and it was the plaintiff who did not come forward. Moreover, there is no pleading on behalf of the defendants in respect to any hardship. Learned Senior counsel, thus, prays that this appeal be dismissed and the judgment and decree dated 18.02.1999, passed by the learned District Judge, Gurugram be upheld.

I have heard learned counsel for the parties at length and have gone through the record with their able assistance.

The plaintiff in order to prove the execution of the agreement to sell dated 02.06.1978 has produced PW-3, O.P. Mangla, Advocate, who is the son of the scribe of this agreement and was examined, as the scribe namely Nanwa Ram, had admittedly passed away. Padam Chand, PW-2, one of the attesting witnesses was also examined to prove the agreement. The plaintiff himself testified as PW-4. PW-3 categorically deposed that his father was a deed writer who died in 1995 and that PW-3 used to see his father's writing and could thus identify the same. Ex.P-3 the agreement and Ex.P-4 the receipt, were stated to be in the handwriting of his father who had also appended his signatures thereon. PW-3 stated that he could not produce the deed writer's register for the year 1977-1978 as the same was not traceable after such long years. The monetary transaction is duly incorporated in the receipt Ex. P-4 and the agreement Ex. P-3. O.P. Mangla, Advocate (PW-3) further stated that he sent the notice Ex. P-5 to Suleman on 28.08.1979 through registered A.D., which was received back undelivered as Ex.P-6 and Ex.P-7. Ex.P-3 and Ex.P-4 were written in Urdu language which he did not understand. Presence of an overwriting in the date (i.e. the numeral denoting the month) of execution of

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the sale deed on the first page of the agreement, at the time of his examination was admitted. PW-2 Padam Chand stated that he was called by the defendant to the office of Nanwa Ram, Deed Writer, where another attesting witness Sat Parkash was also present. Agreement to sell the land in question for a sum of Rs.20,000/- was stated to be entered into between the plaintiff and Suleman. The land already stood mortgaged for Rs.12,000/- with Naresh Kumar. PW-2 testified that Rs.7,000/- was paid by Alam Chand to Suleman in his presence and that the sale deed was to be executed 14 months later, on which date the remaining sale consideration of Rs.1,000/- was to be paid. The parties, it is stated, appended their signatures and Padam Chand also signed Ex. P-3 as a witness. Sat Parkash is also stated to have signed the agreement in his presence. PW-2 categorically stated that Suleman appended his thumb impression out of his own free will on the agreement to sell and after accepting the document to be correct. The receipt Ex.P-4, it is stated, was drawn-up by Nanwa Ram, Scribe at the asking of Suleman on 02.06.1978. Suleman is stated to have appended his thumb impression on the said receipt, after accepting the contents, which were read out to him, to be correct. Thereafter, PW-2 alongwith Sat Parkash also appended their signatures. PW-2 stated that he recognised Sat Parkash. PW-2 has, however, stated that he did not know Urdu language or the prices of land at village Reeghar. The plaintiff (PW4) has duly supported his case and denied all suggestions to the effect that the agreement to sell and receipt in question are forged, fabricated or fake documents, drawn-up in an illegal manner. It is denied that there is any unilateral alteration in the contents of the agreement.

The plaintiff also examined PW-5 Vijay Rastogi, Fingerprint and

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Handwriting Expert to compare the thumb impressions of the defendant on agreement to sell and the receipt with his standard thumb impressions, which were available on the application under Order 9 Rule 13 CPC dated 21.08.1984, moved by Suleman. PW-5 opined that the thumb impression on the agreement and receipt as well as the thumb impression on the application dated 21.08.1984 are of one and the same person.

The stand taken by the appellants/defendants is that Suleman never entered into the agreement to sell dated 02.06.1978. In the written statement filed by the legal representatives of the deceased Suleman, it is stated that there were financial transactions between Suleman and the plaintiff. Some amount had been taken as loan by Suleman from the plaintiff. It is stated that taking undue advantage of illiteracy of the defendant, plaintiff may have obtained his thumb impressions on the said agreement and blank stamp papers taken at that time were misused. Plaintiff may have obtained his thumb impressions on the said agreement.

The hollowness of this claim, however, comes to the fore from the testimony of RW-1 Risal son of the plaintiff Suleman himself, wherein he categorically states that there were no financial transactions between his father and the plaintiff, though it is mentioned that the plaintiff used to buy mustard (Sarson) in their village and had bought the said crop from them also. DW-1 has come up with a categoric stand that there were no financial transactions between his father and the plaintiff. DW-1 further stated that his father Suleman had not appended his thumb impression on any document and neither did he require any money for which he would have to enter into any

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agreement to sell his land. However, in his cross-examination DW-1 admitted that his father had sold two acres of land for a sum of Rs.3,500/- in the year 1970. DW-1 has duly narrated the details of a plot sold by his father earlier. Land in question was admittedly mortgaged by his father with one Naresh and no effort what-so-ever had ever been made by them to either challenge the said sale deed or to redeem the mortgage qua the land in question.

Learned counsel for the appellants has strenuously urged that neither the attesting witness nor the son of the scribe were conversant with Urdu language, therefore, it cannot be said that due execution of the agreement to sell has been proved. I find this argument to be devoid of any merit for the reason that an attesting witness is not required to have knowledge of the contents of the document but is to prove the due execution of the same. PW2 clearly stated regarding the due execution of the agreement to sell by the parties, besides, handing over of the earnest money and signing of the receipt in his presence. PW3, the son of the scribe has also supported the plaintiff's case. Therefore, in this situation both the learned Courts below have rightly held that execution of the agreement to sell dated 02.06.1978 is duly proved on record. There is no ground whatsoever to differ with this finding of fact returned by the said Courts.

Learned trial Court while dealing with the issue of readiness and willingness of the plaintiff to perform his part of the obligation and that whether the plaintiff is entitled to get the said agreement enforced concluded that readiness and willingness of the plaintiff was not proved on record, on

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the ground that there is an alteration in the date of execution of the sale deed. In my considered opinion, learned District Judge, Gurugram has rightly set aside this finding as this argument has no legs to stand on. In the present case, almost the entire consideration amount, except a sum of Rs.1,000/- had been given by the plaintiff to the defendant. It was agreed that the mortgage amount of Rs.12,000/- would be deducted from the total consideration of Rs.20,000/-. Registered notice is proved to have been sent to Suleman though the same was received back un-delivered on refusal. A perusal of the record reveals that the alteration is in the figure of the month of the date. It is mentioned that the date of execution of the sale deed is 24.08.1979. The change is in the figure '8'. There is no merit in the argument raised by learned counsel for the appellants that the agreement to sell was tampered with primarily to bring it in line with the pleading of the plaintiff that he was present before the Sub-Registrar on the said date in order to prove his readiness and willingness to carry out his part of the obligations. This is so for the reason that once the execution of the agreement to sell itself has been disputed by the defendants, there is no question of the plaintiff gaining anything by alteration in the date of execution of the sale deed. It is not the case of the defendants that the agreement to sell was entered into between the parties and it is thereafter, that it has been tampered with unilaterally by the plaintiff and without the consent of the appellants, which is, thus, sufficient to non-suit them.

The argument that tampering of the document by itself has rendered the same to be null and void is also devoid of any merit. The

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evidence on record does not in any manner prove that the so called tampering was carried out by the plaintiff or at his behest. No such suggestion regarding tampering of the document was put to Padam Chand PW-2, the attesting witness of the agreement. No suggestion to this effect has been put to the said witness regarding the circumstance under which the digit '8' was written in the agreement. Though a suggestion was put to PW-3, O.P. Mangla, Advocate that the altered month/numeral '8' did not bear the signatures of either Suleman or the scribe. Learned District Judge, Gurugram has rightly dealt with this aspect of the matter. Similarly, absence of the signatures of the plaintiff on the application dated 24.08.1979 cannot detract from the case of the plaintiff. PW-1 Jaan Mohd., who produced the record with regard to the application dated 24.08.1979, stated that the record was destroyed after expiry of five years. Therefore, it is the copies of the application and order issued by the Sub-Registrar, which were produced as Ex.P-1 and Ex.P-2. This issue has been correctly decided by the learned District Judge.

Learned counsel for the appellants has vehemently argued that there is an escalation of the prices during the pendency of the proceedings, therefore, grave hardship shall be caused to the defendant, in case the decree of specific performance granted to the plaintiff is upheld.

Doubtlessly, the matter has been hanging fire for such long years. Agreement to sell was entered in the year 1978. Suit for specific performance was filed by the plaintiff on 04.02.1980. It is a matter of record that the defendant was proceeded ex-parte, when he did not join the proceedings and said suit for specific performance was decreed in favour of

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the plaintiff on 30.04.1980 by the learned Senior Subordinate Judge, Gurugram. Application under Order 9 Rule 13, read with Section 151 CPC was dismissed on 21.08.1984. Appeal preferred by the present appellants was dismissed by the learned District Judge, Gurugram on 28.11.1984. This Court in CR No.105 of 1985, however, set aside the rejection of the application under Order 9 Rule 13, read with Section 151 CPC primarily on the ground that it is only a copy of the summons without a copy of the plaint which was delivered to Suleman in the presence of the plaintiff. It is observed in order dated 14.05.1992, passed in CR No. 105 of 1985 that as the summons were not accompanied with a copy of the plaint, it cannot be said that the defendant was duly served and it could not be inferred that he had knowledge of the nature of the claim in the suit against him. Thus while concluding that the exact nature of the claim was not known to the defendant, it was held that he was not duly served. Therefore, the matter was remanded for a decision afresh. SLP No. 11729/1992 was ultimately dismissed on 19.04.1996 and it is, thereafter, that the trial commenced. The matter was decided by the learned trial Court on 20.02.1998 and by the learned District Judge, Gurugram on 18.02.1999. The present appeal was admitted on 14.12.2000. The operation of the decree against the appellants was stayed.

The Hon'ble Supreme Court in **1995 AIR (SC) 1607 S.V.R., Mudaliar and others Vs. Mrs. Rajabu F. Buhari and others**, held that the relief of specific performance of a contract cannot be denied merely on the ground that price of property in question has risen during the pendency of the litigation. Similar is the view expressed in the decision titled **K. Prakash Vs.**

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***B.R. Sampath, 2015(1) SCC 597.*** A Co-ordinate Bench of this Court in **RSA-5867-2003, decided on 26.10.2010**, decreed specific performance of an agreement to sell of the year 1982, on finding that the said agreement to sell was duly proved on record. Readiness and willingness of the plaintiff to perform his part of the contract was also proved. It is specifically held therein that escalation in price cannot come to the rescue of the defendants as the plea of hardship was never pleaded and neither any issue in this regard was framed. The said decision dated 26.10.2010 has been upheld by Hon'ble Supreme Court in SLP. A perusal of the written statement in the instant case also reveals that no such plea of hardship has been raised. Therefore, in the facts and circumstances of the case, the learned District Judge, Gurugram has rightly decreed the suit for specific performance.

Last but not the least, in all fairness, another argument raised by learned counsel for the appellants is required to be dealt with. It is argued that ancestral nature of the property is proved on record. Learned counsel for the appellants has vehemently argued that ancestral nature of the property is held to be proved by the learned trial Court and the said finding has not been set aside by the learned District Judge, Gurugram and neither is it subjected to challenge by the plaintiff before this Court. Legal necessity of Suleman, it is submitted is not proved on record, thus this appeal should be allowed on this ground alone.

Though attractive at first flush, this argument is devoid of any merit. As has been discussed above, RW-1 Risal himself stated that his father Suleman had disposed of parts of the property on earlier occasions. Part of the suit property was mortgaged. The legal representatives of Suleman admittedly, at no stage had taken any steps to challenge the said alienation or creation of

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the charge of the property. Furthermore, it is a settled position that until and unless proved to be ancestral in nature, the property is to be considered as separate and self-acquired property of an individual. In the present case, appeal filed by the plaintiff had been allowed by the learned District Judge, Gurugram, consequently, decreeing his suit. In such a situation, where the plaintiff's suit has been decreed in his favour, absence of a challenge to the aforesaid finding regarding nature of the property cannot be a ground to allow this appeal. Moreover, in the given factual matrix of this case, even if the land is accepted to be ancestral, though the evidence on record may not necessarily point to the same, it is a matter of record that Suleman had been regularly disposing of his property besides creating a charge thereon for domestic purposes. It is admitted by DW-1 Risal that Suleman was suffering from tuberculoses and required money for his treatment. The legal representatives of Suleman, admittedly, never raised any objection to the disposal of the property by Suleman as above. Therefore, the same cannot be a ground to non-suit the plaintiff. In the facts and circumstances of the case, it cannot be said that the learned District Judge, Gurgaon has wrongly exercised his discretion in decreeing the suit for specific performance of agreement to sell dated 02.06.1978.

The substantial questions of law, thus, are answered in favour of the plaintiff/respondent and against the appellants.

No other argument has been raised.

Learned counsel for the appellants is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 18.02.1999, passed by the learned District Judge, Gurugram, which calls for any interference by this Court in second appeal.

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Accordingly, this appeal is dismissed. Judgment and decree dated 18.02.1999, passed by the learned District Judge, Gurugram is upheld.

As the appeal is finally decided, no separate orders are required to be passed in any pending applications, if any.

August 13 , 2019.  
Sunil

( LISA GILL )  
JUDGE

|                            |        |
|----------------------------|--------|
| Whether speaking/reasoned: | Yes/No |
| Whether reportable:        | Yes/No |