

## Inderjit Kaur Vs Gurdev Chadha

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** July 31, 2014

**Acts Referred:** Civil Procedure Code, 1908 (CPC) – Order 1 Rule 10, Order 23 Rule 1, 103, 96

**Hon'ble Judges:** Rakesh Garg, J

**Bench:** Single Bench

**Advocate:** Puneet Jindal, Senior Advocate and Karambir Singh, Advocate for the Appellant; Sanjiv Bansal, Advocate for the Respondent

**Final Decision:** Dismissed

### Judgement

Rakesh Garg, J.

This is plaintiffs second appeal challenging the judgment and decree dated 18.03.1997 of the Sub Judge (First Class),

Chandigarh dismissing her suit for possession of the suit property by way of specific performance of the agreement to sell in question holding that

the plaintiff-appellant was entitled to refund of Rs. 50,000 along with interest. Further challenge has been made to the judgment and decree dated

05.01.2002 whereby the lower appellate Court affirmed the findings of the trial Court and dismissed the appeal of the plaintiff.

2. As per the averments made in the plaint, Plot No. 2183, Sector 35-C, Chandigarh, measuring 475.32 square yards, was allotted in favour of

K.L. Chadha on 02.06.1967. K.L. Chadha expired on 05.02.1980 leaving behind his wife Sushila Chadha, son Gurdev Chadha and two

daughters namely Sudarshan Kohli and Promila Malhotra. Defendant No. 1-Sushila Chadha executed an agreement to sell in favour of the plaintiff-

appellant with regard to the aforesaid Plot No. 2183, Sector 35-C, Chandigarh for a total sale consideration of Rs. 8.00 lakh and received 50,000

as earnest money. On the said date of execution of the agreement to sell, the plot was still standing in the name of K.L. Chadha. According to the

appellant, detailed terms and conditions were incorporated in the agreement to sell and according to those terms and conditions, the plaintiff-

appellant was entitled to get the sale deed executed in her name or in the name of her nominee. All the expenses were agreed to be borne by the

appellant and the balance amount was to be paid at the time of execution of the transfer deed and its registration before the Sub-Registrar,

Chandigarh.

3. As per the further averments, the defendant assured that the property was free from sale, gift, litigation etc. The plaintiff was still ready and

willing to get the sale deed executed and was even now ready to perform her part of the contract; however, she came to know that a registered

notice dated 02.07.1989 was sent to M/s. Shakti Property Dealers cancelling the agreement. The plaintiff-appellant served a registered notice

upon defendant No. 1 to transfer the property in her name by accepting the balance amount and by completing other formalities; however, the

defendant did not come forward to do so, rather a reply to the notice was received in which defendant stated wrong facts. According to the

appellant, it was known to the defendant from the very beginning that the plaintiffs husband was entering into the agreement on her behalf, thus, she

was entitled to a decree of specific performance of the agreement to sell and for execution and registration of the sale deed by defendant Sushila

Chadha.

4. In the alternative, the plaintiff-appellant claimed a sum of Rs. 8.00 lakh as loss. The appellant further prayed that defendant be restrained from

alienating the suit property during the pendency of the suit.

5. Upon notice, defendant No. 1 appeared and filed written statement raising various preliminary objections stating that the suit was based on

misrepresentation and suppression of material facts and the same was not maintainable in view of the Clause mentioned in para No. 2 of the

agreement to sell and the plaintiff-appellant had willfully withheld the Clause according to which in case any of the legal heirs of K.L. Chadha was

not interested in selling the plot the bargain shall stand cancelled without any penalty. According to defendant No. 1, the aforesaid Clause was

inserted by the plaintiff-appellant and in view of the aforesaid Clause, there was no privity of contract, as one of the co-owners namely Sudharshan

Kohli, the step daughter of defendant No. 1, had filed a suit and obtained stay orders and the said fact was in the knowledge of the plaintiff-

appellant. It was further stated that the suit was based on an agreement to sell which was executed by defendant No. 1 without having any

authority on behalf of the other co-owners and the same cannot bind the other co-owners. The rider was put in the agreement and the plaintiff as

well as her Property Dealer was informed of the fact. Not only this, a legal notice dated 01.07.1989 was served upon the plaintiff as well as M/s.

Shakti Property Dealer. The plaintiff was offered refund of Rs. 50,000 which she refused to accept. It was further pleaded that the agreement was

not enforceable as all the parties have not signed the agreement nor have they agreed to sell the property. It was further stated that the agreement

was executed through M/s. Shakti Property Dealer who never allowed the defendant to meet the appellant. It was further averred that at the time

of execution of the agreement, it was made clear to M/s. Shakti Property Dealer that the agreement was to be cancelled if either of the co-owners

do not agree to sell or is not interested to sell the property, which was promptly informed on filing of the suit by defendant No. 2-Sudarshan Kohli.

The other allegations were denied and dismissal of the suit was prayed for.

6. Sudarshan Kohli, step daughter of defendant No. 1-Sushila Chadha, was impleaded as defendant No. 2 in the suit on an application made by

her under Order I Rule 10 CPC vide order dated 04.12.1991. She filed a separate written statement raising preliminary objections that defendant

No. 1 had no right to transact a sale of her share of the property and the suit was liable to be dismissed for mis-joinder and non-joinder of the

necessary parties and all the co-owners of the plot were not impleaded. The other allegations were denied as defendant No. 2 never agreed to sell

her share. She further denied the Will dated 08.11.1962 in favour of Sushila Chadha executed by K.L. Chadha. It was further averred that there

was no privity of contract between the parties and thus, the suit was liable to be dismissed.

7. For the sake of straightening the records, it may be noticed that Sushila Chadha died during the pendency of the suit and her son and daughter

namely Gurdev Chadha, Promila Malhotra, and defendant No. 2 who was already on record, were brought on record as her Legal

Representatives. It may further be noticed that even Gurdev Chadha had died and according to his Will, Promila Malhotra and Sudarshan Kohli

are his Legal Representatives, who are already on record.

8. The plaintiff filed replication to the written statement of defendant No. 1 only, controverting the pleas taken therein and reiterating the averments

made in the plaint. However, no replication was filed to controvert the pleas taken by defendant No. 2 in her written statement. Even in the

replication to the written statement of defendant No. 1, the plaintiff, except controverting the pleas of the written statement and reiterating the

averments made in plaint generally, has not specifically controverted any of the pleas taken by defendant No. 1.

9. From the pleadings of the parties, the following issues were framed:

1. Whether the plaintiff is entitled for specific performance of agreement to sell dated 24.4.1989? OPP

2. Whether the plaintiff is entitled for possession in respect of plot No. 2183, Sector 35-C, Chandigarh? OPP

3. Whether in the alternative the plaintiff is entitled for recovery of Rs. 8.00 lacs by way of damages including the earnest money of Rs. 50,000?

OPP

4. Whether the plaintiff is entitled for permanent injunction? OPP

5. Whether the suit is not maintainable in view of the clause mentioned in para No. 2 of the agreement? OPD

6. Whether the suit is bad for mis-joinder of parties? OPD

7. Whether the suit is bad for non-joinder of necessary parties? OPD

8. Whether the agreement to sell stands cancelled as alleged? OPD

9. Whether there is no privity of contract between the parties? OPD

10. Whether the plaintiff has been and is willing to perform her part of the contract? OPP

11. Whether the defendant has committed the breach of the contract? OPP

12. Relief.

10. Further additional issues were framed by the trial Court vide its order dated 26.11.1992 to the following effect:

Issue No. 11(a): Whether Shri K.L. Chadha executed Will dated 08.11.1962 in favour of defendant No. 1? OPP

Issue No. 11(b): Whether the defendant No. 2 is bound by agreement dated 24.4.1989? OPP

11. Parties adduced evidence in support of their respective case. After considering the evidence on record and hearing learned counsel for the

parties, the trial Court vide its judgment and decree dated 18.03.1997 held that in view of the Clause in the agreement, there was no valid

agreement to sell in force and the agreement to sell in question was not enforceable even for the share of defendant No. 1, as fragmentation of the

plot for the purpose of sale was not permissible in Chandigarh. However, the trial Court found that the appellant was entitled to a refund of Rs.

50,000.

12. Aggrieved from the aforesaid judgment and decree of the trial Court, the plaintiff filed an appeal before the first appellate Court, which was

also dismissed vide impugned judgment and decree dated 05.01.2002. The relevant part of the aforesaid judgment and decree of the first appellate

Court reads thus:

8. The entire case of both the parties revolves around the agreement Ex. P1 dated 24.4.1989 and through this agreement the said consideration

was fixed as Rs. 2.00 lacs. The payment of earnest amount of Rs. 50,000/- is admitted by the parties. All this shows that the execution of the

agreement is not disputed. After having gone through the statement of PW-1 Sudhir Mohan, I find that at his instance the agreement was executed

and the conditions were incorporated with the consent of the parties. He has categorically admitted that it was told to the parties at the time of the

execution of the agreement Ex. P1 that the executant has two daughters and one son and a clause was inserted in this agreement that the agreement

would be cancelled if any of the co-owners did not agree to the same. Similarly, PW-2 Kamaljeet Bhinder has also admitted that at the time of the

execution of the agreement, all the family members of Sudershan Kohli were not present. He has also admitted that he did not contact them after

the execution of the agreement. It is further admitted by him that he did not obtain the consent of respondent No. 2 for the sale of the plot and has

categorically admitted that a clause for cancellation was incorporated. All this shows that the clause of cancellation has been admitted by the

witnesses examined by the appellants. After having gone through the agreement Ex. P1 I find that the clause of cancellation was inserted as under:-

Whereas the plot No. 2183, Sector 35-C, Chandigarh is allotted to Mr. K.L. Chadha and now it is being transferred in favour of his legal heirs, in

case, any of legal heirs is not interested in selling the plot the bargain shall stand cancelled without any penalty.

The clause clearly spells out that in case of any of the legal heirs not interested in selling the plot then the bargain shall stand cancelled and the

respondents through a notice Ex. P2 informed that the LR namely Sudarshan Kohli has refused to sell the plot, which is her joint property and

similarly Smt. Promila Malhotra, the other daughter of respondent No. 1 opposed the sale of the property and has not consented for the sale of the

same. The clause in the agreement further disentitles the appellant to claim any damages and this clause has also been accepted by the appellant.

Since I find that a clause has been specifically inserted in the agreement that the bargain shall stand cancelled without any penalty and in such like

circumstances I find that there is no valid agreement and the question of any specific performance does not arise. Moreover, the plot cannot be

partitioned for the purpose of enforcement of an agreement and the same was allotted by the Chandigarh Administration and in such like

circumstances the agreement is not enforceable.

9. In view of the terms and conditions contained in the agreement the appellant is not entitled to any damages, particularly when the LRs of the

respondent have refused for the specific performance of the agreement and in view of the clause reproduced above, the agreement stands

cancelled and the question of any penalty does not arise. In such like circumstances, I find that the plot in question is the ownership of the

respondent and the appellant is not entitled to any decree of permanent injunction.

10. Issues No. 6, 7, 11-A and 11-B were not pressed either before this Court or before the learned lower Court, therefore, no finding is required

to be returned under these issues.

13. Still not satisfied, the plaintiff has filed the instant appeal submitting in the grounds of appeal that the following important law points are involved

in the instant appeal:

i) Whether an important point/document which has a vital bearing regarding the decision of the case would be ignored by the Ld. Lower Appellate

Court?

ii) Whether the "Will" will debar the defence of the defendant regarding the cancellation of the agreement?

iii) Whether a vital point/document which goes to the root of the matter could be ignored and that also in spite of the fact that the Ld. Lower

appellate Court has dealt with it and it is in the Grounds of Appeal and vehemently argued before the Ld. Lower appellate Court?

14. However, initiating the arguments, learned counsel for the appellant has submitted that the following substantial questions of law arise for

consideration of this Court in the instant appeal:

1. Whether the judgments and decrees of both the courts below are vitiated for non-consideration of material documents on record, such as, Will

Ex. PA/6 duly executed by Maj. K.L. Chadha in favour of Smt. Sushila Chadha, and documents Ex. PA-2 and Ex. PA-3 and Ex. PA-4 Letter of

Def. No. 1?

2. Whether the interpretation rendered by the courts below in respect of recital in agreement to sell Ex. P1 is sustainable when the same was duly

witnessed by Respondent No. 1 thereby acknowledging and accepting Will Ex. PA/6?

3. Whether framing of issues and findings recorded by the courts below in respect of Issue No. 11A is sustainable in view of admission of

defendant?

4. Whether in the face of specific ground raised in the memorandum of Appeal, the Ld. Lower appellate Court could have brushed aside

discussions on issue No. 11A as not pressed, especially when the impugned judgment does not record any of the contentions raised before them?

5. Whether the judgment of lower appellate Court is illegal as no issue-wise findings were given?

6. Whether in the given facts and circumstances, the Ld. Courts below ought to have granted partial decree for Specific Performance to the extent

of the share of Smt. Sushila Chadha and Gurdev Chadha in favour of the plaintiff/appellant in the alternative?

15. Learned counsel for the appellant has vehemently argued that the plaintiff-appellant had entered into an agreement dated 24.04.1989 with

defendant No. 1 in respect of the property in dispute and had paid Rs. 50,000 as earnest money upon assurance of defendant No. 1 and showing

the Will dated 08.11.1962 (Ex. PA/6) duly executed by late Major K.L. Chadha and even defendant No. 1 failed to specifically deny the

execution of said Will by K.L. Chadha in her favour and it was subsequently, after framing of the issues that Sudarshan Kohli was impleaded on

04.12.1991, who in her separate written statement denied execution of the Will dated 08.11.1962 by K.L. Chadha in favour of Sushila Chadha,

and who had no right or locus-standi to deny execution of the Will in view of the fact that she had filed a suit challenging the said Will and the suit

was dismissed as withdrawn without any further liberty as envisaged under Order XXIII Rule 1 CPC. The pleadings of the said suit filed by

defendant No. 2 against defendant No. 1 and other Legal Representatives of K.L. Chadha are on record as Ex. PA/1 to Ex. PA/3, wherein she

has reproduced the entire text of the Will dated 08.11.1962 while relying upon the said Will. Even defendant No. 1 had written a letter dated

10.05.1989 (Ex. PA/4) to defendant No. 2 immediately after execution of the agreement to sell in favour of the appellant asking her to fill the

proforma/affidavit (Ex. PA/5) so that the plot in question could be mutated in her favour on the basis of said Will and since the defendant-

respondents failed to produce the original Will despite making an application in this regard before the trial Court, an adverse inference ought to

have been drawn against them and in fact, the existence and execution of the Will dated 08.11.1962 is further supported by the fact that though the

other Legal Representatives of K.L. Chadha set up another subsequent Will in their favour excluding defendant No. 2, but failed to prove any such

Will and in view thereof, an adverse inference is to be drawn against defendant-respondents with regard to the Will dated 08.11.1962.

16. According to learned counsel for the appellant, the courts below have failed to see that initially the defendants wanted to execute the sale deed

in favour of the plaintiff-appellant but because of rise in prices of real estate they got greedy and dishonest and therefore, colluded with defendant

No. 2, which is apparent from the record that injunction suit was initially contested by defendant No. 1 and others, however, later-on with the rise

in prices suit was withdrawn and thus, the other Legal Representatives of K.L. Chadha sided with defendant No. 2 with an object to defeat the

rights of the appellant to get more money out of the suit property.

17. Learned counsel for the appellant has further argued that decision of the lower appellate Court does not conform to the requirement of Section

96 CPC as according to first appellate Court, it was the duty of the District Judge to deal with all issues and the entire evidence led by the parties

before recording its findings, and the lower appellate Court failed to discharge its obligation. The impugned judgment dated 05.01.2002 is totally

cryptic and the material evidence and documents have not been noticed. It was for the lower appellate Court to have addressed itself to all the

issues of law and facts and decide the same by giving reasons in support of the findings. In support of his case, learned counsel for the appellant

has placed reliance upon Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., ; Madhukar and Others Vs. Sangram and Others, ; Mrs. Vijaya

Shrivastava Vs. Mirahul Enterprises and Others, and Smt. Harjit Grewal and Others Vs. Dr. Vinod Kumar Batra and Others,

18. Learned counsel for the appellant has also argued that in any case the courts below have committed a grave error in failing to grant a decree

for specific performance in part. Admittedly, the agreement to sell (Ex. P1) was executed by Sushila Chadha, which was duly witnessed by her son

Gurdev Chadha; meaning thereby that even if the Will dated 08.11.1962 is to be ignored, even then 50% share in the plot has to be specifically in

force in favour of the plaintiff-appellant and it has been wrongly denied on the ground that property cannot be divided.

19. On the basis of the aforesaid submissions made, learned counsel for the appellant has vehemently argued that the substantial questions of law,

as raised, do arise in this appeal and the impugned judgments and decrees of the courts below are liable to be set aside and the appellant is entitled

to the decree as prayed for.

20. On the other hand, learned counsel representing the respondents has vehemently opposed the arguments raised on behalf of the appellant. He

has submitted before this Court that there was a specific Clause incorporated by the plaintiff-appellant himself, according to which in case any of

the legal heirs of K.L. Chadha was not interested in selling the plot, the bargain shall stand cancelled without any penalty. Learned counsel for the

respondents has further brought to the notice of this Court that Sushila Chadha always wanted to execute the sale deed in favour of the appellant

and did her best to do the needful, as is evident from the draft affidavit/proforma (Ex. PA/4) sent to the legal heirs and in particular defendant No.

2 requiring her "No Objection" for transfer of the property in her own name to facilitate the sale. However, in the injunction suit (Ex. PA/1) dated

18.05.1989, defendant No. 2 Sudarshan Kohli has raised an objection to the authority of defendant No. 1 to execute the agreement to sell in

question being sole owner of the property in dispute on the basis of Will dated 08.11.1962 submitting that the said Will does not give any absolute

right to defendant No. 1 in the property in question and vide said Will K.L. Chadha has given only right of enjoyment in favour of defendant No. 1.

In these circumstances, Sushila Chadha duly sent a notice dated 01.07.1989 (Ex. P2) to the plaintiff-appellant and her Property Dealer, informing

that the legal heirs of K.L. Chadha have not consented to the sale of the plot in question and the agreement stood cancelled, which was duly

received as is evident from the reply of the plaintiff-appellant to the said notice vide Ex. P4 dated 26.07.1989 and in view of the aforesaid notice,



the suit has been rightly dismissed and the agreement to sell in question stood cancelled on raising objection by the defendant No. 2 as per the

Clause inserted in the agreement.

21. Learned counsel for the respondents has further argued that the Will dated 08.11.1962 does not confer absolute right in the property in

question upon defendant No. 1 alone and the said Will was executed by K.L. Chadha as per requirements of the Army and even according to the

said Will, Sushila Chadha was given a limited right of enjoyment of the suit property. Thus, according to the learned counsel for the respondents,

the appeal is liable to be dismissed.

22. I have heard learned counsel for the parties and perused the record.

23. Facts of the case are not in dispute. In the instant case, it is not in dispute that K.L. Chadha was allotted the plot in question on 02.06.1967

and he expired on 05.02.1980 leaving behind his wife Sushila Chadha, son Gurdev Chadha and two daughters namely Sudershan Kohli and

Promila Malhotra. Further it is not in dispute that Sushila Chadha executed an agreement to sell in favour of the plaintiff-appellant with regard to the

suit property for a sale consideration of Rs. 8.00 lakh and received a sum of Rs. 50,000 as earnest money. The said agreement to sell was

specifically made conditional by incorporating a Clause to the following effect:

Whereas the plot No. 2183, Sector 35-C, Chandigarh is allotted to Mr. K.L. Chadha and now it is being transferred in favour of his legal heirs, in

case, any of legal heirs is not interested in selling the plot the bargain shall stand cancelled without any penalty.

24. The aforesaid Clause of the agreement clearly demonstrates that the plot in question was being transferred in favour of legal heirs of K.L.

Chadha and in case any of the legal heirs was not interested in selling the plot, the bargain shall stand cancelled without any penalty. The appellant

has not raised any dispute to the interpretation or incorporation of this Clause in the agreement.

25. However, the argument raised on behalf of the appellant is that defendant No. 1 was absolute owner of the suit property on the basis of Will

dated 08.11.1962 executed by K.L. Chadha in her favour, and therefore, in view of the aforesaid Will, existence of which is not in dispute,

objection raised by defendant No. 2 is of no help to the respondents and appellant is entitled to specific performance of the agreement to sell in

question. However, the argument as raised cannot be accepted, as admittedly the said Will was in the knowledge of the plaintiff-appellant before

execution of the agreement to sell in question and there was no need for the appellant and defendant No. 1 to incorporate the aforesaid Clause (for

repudiating the agreement to sell on the basis of an objection of any of the Legal Representatives) in that eventuality. In fact, the aforesaid Clause

clearly demonstrates that it was to the knowledge of the appellant that the plot in question was being transferred in favour of Legal Heirs of K.L.

Chadha and not in favour of defendant No. 1 alone and it does not lie in appellant's mouth to seek enforcement of the agreement to sell in question

to which objection has been raised by defendant No. 2, who admittedly is one of the legal heirs of K.L. Chadha. It is further not in dispute that

defendant No. 2, from the very beginning, has raised an objection to the aforesaid bargain and has in fact questioned authority of defendant No. 1

to execute the agreement to sell in question on her behalf, and in view of the aforesaid admitted Clause in the agreement to sell in question and the

objection raised by defendant No. 2 who is one of the Legal Representatives of K.L. Chadha, appellant possibly cannot seek specific

performance of the agreement to sell in question.

26. The argument raised on behalf of the appellant that execution of the Will dated 08.11.1962 in favour of defendant No. 1 has been admitted by

the defendants and therefore they are bound by the same, is also of no help to the appellant. In fact, defendant No. 2 has not accepted the said

Will giving absolute right in favour of defendant No. 1 with regard to the suit property. In the suit for permanent injunction filed on her behalf, it has

been claimed by defendant No. 2 that Will in question entitles all the legal heirs to inherit the properties of late K.L. Chadha in equal share and

does not authorize defendant No. 1 alone to alienate or transfer the suit property as she was not given right of ownership by the said Will. In the

written statement filed by Sushila Chadha and others, a defence was taken by setting up a subsequent Will in their favour, excluding Sudarshan

Kohli-defendant No. 2, by K.L. Chadha. The withdrawal of the aforesaid suit by defendant No. 2 against other Legal Representatives of K.L.

Chadha is of no help to draw an inference in favour of the appellant to the effect that the aforesaid Will stood proved and defendant No. 1 had

become sole owner of the suit property.

27. At this stage, Will dated 08.11.1962 be perused which reads thus:

This is the last Will and Testament of me Major K.L. Chadha (IC-11304). I hereby revoke all Wills and testamentary dispositions by me

heretofore made.

I hereby give and bequeath to my wife Sushila Chadha, her heirs, executors or administrators, for her use and benefit, absolutely and for ever all

my property, both movable and immovable, whatsoever, wheresoever, and of what nature and quality so ever, and I hereby appoint her the said

Sushila Chadha sole executrix of this my Will.

In witness whereof, I, the said Major K.L. Chadha (IC-11304) have thereto signed (or, set my signature, or, put my hand) at Agra Cantt, this

Eighth day of Nov. 1962.

Signature Sd/-

(IC-11304 Major K.L. Chadha)

DOT TUG No. 16 (Scaling)

COD Agra

Signed by the said Major K.L. Chadha in the presence of us, present at the same time, who in his presence and in the presence of each other, sign

as witnesses hereto.

1. Witness: Major TS Kalsi Sd/-

2. Witness: Major ND Bhasin Sd/-

Note: The number of attesting witnesses should be two or more in accordance with Section 63 Clause (C) of the Indian Evidence Act, 1925.

28. A perusal of the aforesaid Will would further show that even Sushila Chadha defendant No. 1 was not bequeathed exclusive rights in her

favour of the properties of K.L. Chadha existing on the date of execution of the said Will, as by the aforesaid Will she was merely appointed as an

Executrix of the said Will, i.e. to manage the estate of K.L. Chadha for the benefit of his Legal Representatives.

29. A further fact may be noticed at this stage that a perusal of the Will dated 08.11.1962, which is the sole basis of the suit of the appellant,

would show that the same was executed on 08.11.1962, whereas the property in question i.e. Plot No. 2183, Sector 35-C, Chandigarh, which

was agreed to be sold vide agreement to sell in question, was acquired by K.L. Chadha only on 02.06.1967 i.e. after execution of the said Will.

30. Assuming for the sake of arguments, that the Will in question confers absolute right in defendant No. 1-Sushila Chadha with regard to the

properties of K.L. Chadha (though not accepted), even then the said Will cannot confer any right qua a property which was admittedly acquired

by him after execution of the said Will, as in the aforesaid Will K.L. Chadha has not mentioned specifically that he also intends to bequeath in

favour of Sushila Chadha any moveable or immovable property to be acquired by him in future, and thus, the said Will can be said to be applicable

only qua the properties which K.L. Chadha was holding on the date of execution of said Will.

31. It may further be noticed that the prayer of the appellant that the agreement to sell in question be enforced qua the shares of Sushila Chadha

and her son Gurdev Chadha, who was a witness to the agreement to sell in question, is also liable to be rejected as the plaintiff-appellant has never

sought enforcement of the agreement to sell in question against Gurdev Chadha by joining him as a necessary party in the suit alleging that he was

bound by the agreement to sell in question. The said Gurdev Chadha had come on record only in the capacity of Legal Representative of

defendant No. 1 along with other Legal Representative of defendant No. 1-Sushila Chadha for the purpose of determining rights and liability of the

appellant vis-a-vis defendant No. 1. Moreover, Promila Malhotra, other daughter of K.L. Chadha, being his Legal Representative was also a

necessary party in the suit and no relief was claimed against her.

32. At this stage, it may further be noticed that in a suit for specific performance of the agreement to sell, the Court has discretion not to grant a

decree for specific performance of the agreement to sell in question, even if it is lawful to do so, and therefore, in view of the dispute herein in the

instant suit with regard to the interpretation of the Will dated 08.11.1962 and non-joining of other Legal Representatives of K.L. Chadha in the

suit, as noticed in the foregoing paragraphs of this judgment and the Clause in the agreement for repudiating the agreement to sell in question, the

appellant is not entitled to the relief claimed.

33. No doubt, in view of Smt. Harnam Kaur and others Vs. Jagtar Singh, as followed in Jeet Singh alias Jeetan Deceased Th. L.Rs. Vs. Daulat

Ram and Others, vendee can always ask for performance of a part of the contract. However, in the instant case, defendant No. 1 who executed

the agreement to sell in favour of the appellant had no authority from other Legal Representatives of K.L. Chadha to make an agreement and

moreover, as observed in the foregoing paragraphs, in view of the Clause inserted in the agreement on raising an objection by defendant No. 2

(one of the Legal Representatives of K.L. Chadha), the agreement stood cancelled and thus, even defendant No. 1 was not obliged to execute the

sale deed qua her share. Moreover, learned counsel for the appellant has not raised any argument against the findings of the lower appellate Court

to the effect that fragmentation of plot is not allowed in Chandigarh.

34. At this stage, it may further be noticed that the trial Court framed specific issues i.e. issue No. 11(a) and issue No. 11(b) to the following effect:

Issue No. 11(a): Whether Shri K.L. Chadha executed Will dated 08.11.1962 in favour of defendant No. 1? OPP

Issue No. 11(b): Whether the defendant No. 2 is bound by agreement dated 24.4.1989? OPP

35. The onus to prove the aforesaid issues was upon the appellant, however, she failed to lead any evidence to prove the aforesaid issues. In fact,

it may be noticed that before the trial Court as well as before the lower appellate Court, these issues were not pressed by the appellant. It may

further be noticed at this stage that even before this Court, learned counsel for the appellant has not raised any argument with regard to issue No.

11(a). Though, a substantial question of law has been raised in this regard, yet it may be noticed that no material has been brought on record of this

case to show that such an argument was raised before the trial Court or the lower appellate Court and the observations given by both the Courts

below on these issues ""to the effect that the same were not pressed"", are wrong.

36. Lastly, the argument of learned counsel for the appellant that the judgment and decree of the first appellate Court does not conform to the

requirement of Section 96 CPC, is noticed to be rejected only, as u/s 103 CPC this Court has vast power to determine any issue necessary for

disposal of this appeal, which has either not been determined or has been wrongly determined by the courts below and moreover the issues, as

raised before this Court by the appellant, have been determined by this Court after considering the pleadings, evidence and the arguments raised.

37. No other point has been raised.

38. In view of the aforesaid, the substantial questions of law, as framed in the instant appeal by learned counsel for the appellant, do not arise.

39. Dismissed.