



**RSA-244-1992 (O&M) and
RSA-245-1992 (O&M)**

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

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**Reserved on:-17.09.2025
Pronounced on : 19.09.2025**

1. RSA-244-1992 (O&M)

Mela Singh (deceased) through LRs Appellant

VERSUS

Ram Krishan (deceased)
through LRs and Others Respondents

2. RSA-245-1992 (O&M)

Mela Singh (deceased) through LRs Appellants

VERSUS

Ramesh Chand & Others Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: **In RSA-244-1992**

Mr. J.S.Bhandohal, Advocate for the appellant.

Mr. S.S.Sarwara, Advocate for respondent No.2 (a).

Mr. M.S.Bhatt, Advocate for respondents No.1, 3 and 4.

In RSA-245-1992

Mr. J.S.Bhandohal, Advocate for the appellant.

Mr. S.S.Sarwara, Advocate for respondent No.2 (a).

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MANDEEP PANNU, J.

1. RSA No. 244 of 1992 and RSA No. 245 of 1992 have been filed by appellant Mela Singh challenging the concurrent findings recorded by both the Courts below, i.e. the judgment and decree dated 25.08.1990 passed by the learned Sub Judge First Class, Khanna, and the judgment and decree dated 09.10.1991 passed by the learned Additional District Judge, Ludhiana. Both the Regular Second Appeals arisen out of connected suits decided by common judgment of Lower Appellate Court, between the same parties and relating to the same subject-matter and are, therefore, being disposed of together by this common judgment.

Brief Facts

2. The facts giving rise to the litigation are that Mela Singh filed Civil Suit No. 318 of 24.05.1988 against Ramesh Chand and Kaushalya Devi seeking a decree for declaration to the effect that he is the owner in possession of land measuring 0 Bigha 14 Biswa 6 Biswansi as fully described in the headnote of the plaint, and for permanent injunction restraining the defendants from alienating or dispossessing him from the suit property. The case set up by the plaintiff was that the defendants had sold the suit land to him for a consideration of ₹6,000/- vide a writing dated 25.06.1978 and delivered possession. He claimed that since that date, he is the owner in possession and the defendants had no right or title left in the property. The plaintiff further alleged that defendant no. 2 Kaushalya Devi was shown as a co-sharer in the revenue record only because the mutation on the basis of the writing dated 25.06.1978 had not been sanctioned. Taking advantage of such wrong entries, the defendants were threatening to alienate the suit property and to dispossess him, hence the necessity for filing the suit.



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3. The defendants contested the claim by filing written statement, denying the sale and asserting that defendant no. 1 Ramesh Chand had only borrowed a sum of ₹3,950/- from the plaintiff. It was their plea that the plaintiff had been delivered possession of the suit land only in lieu of interest on the loan, and that the writing dated 25.06.1978 was not a valid sale deed, nor was it a registered instrument capable of conferring ownership rights.

4. Replication was filed by the plaintiff reiterating his stand.

5. On the basis of pleadings, the following issues were framed:

1. Whether the plaintiff is the owner in possession of the land in dispute? OPP
2. Whether the plaintiff is entitled to injunction as prayed for? OPP
3. Relief.

6. During the pendency of the above suit, Ram Krishan @ Ram Kishan and others, who were co-sharers in the land, filed Civil Suit No. 495 of 25.07.1988 against Mela Singh for possession of land measuring 0 Bigha 14 Biswa comprised in Khasra No. 131, claiming to be owners thereof. The case set up by Ram Krishan @ Ram Kishan and others was that they had become exclusive owners after the death of other co-sharers mentioned in the revenue record. They alleged that about ten years earlier, Ramesh Chand, son of Kaushalya Devi, had borrowed ₹3,950/- from the defendant Mela Singh and had delivered possession of the land in lieu of interest, but he had no right to do so as he was neither owner nor entitled to transfer possession. It was their case that when called upon to vacate, Mela Singh



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not only declined but filed a separate suit for injunction against them. They prayed for a decree for possession against Mela Singh.

7. Mela Singh contested this suit also, reiterating his plea that Ramesh Chand and his mother Kaushalya Devi had sold the land to him for ₹6,000/- vide the writing dated 25.06.1978 and that he had since been in possession as owner.

8. Replication was filed by the plaintiff- Ram Krishan @ Ram Kishan.

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

1. Whether the plaintiffs are the owners of the suit land? OPP
2. Whether the plaintiffs have no locus standi to file the present suit? OPD
3. Whether the present suit is liable to be stayed under Section 10 CPC? OPD
4. Whether Ramesh Chand and Kaushalya Devi sold the suit property to defendant Mela Singh vide writing dated 25.06.1978? If so, its effect? OPD
5. Relief.

10. Both suits were consolidated vide order dated 17.04.1990 passed by the learned Sub Judge, Khanna. Civil Suit No. 318 of 1988, titled Mela Singh v. Ramesh Chand & another, being the earlier suit, was treated as the main case. For convenience, in the consolidated proceedings, Mela Singh was referred to as plaintiff and Ramesh Chand and others as defendants. It is pertinent to note that in Civil Suit No. 318 of 1988, the defendants were Ramesh Chand and Kaushalya Devi, while in the connected suit Ram Krishan @ Ram Kishan and others were



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plaintiffs, who included Kaushalya Devi along with Parkash and Bhim (sons of Tej Bhan), whereas Ramesh Chand was not a party to the second suit.

11. In support of his case, Mela Singh examined himself as PW1, Mukhtiar Singh (Sarpanch) as PW2, and Sher Singh (Nambardar) as PW3, both of whom were attesting witnesses to the writing dated 25.06.1978. He also tendered into evidence copy of Jamabandi Ex. P2 and copies of Khasra Girdawaris Ex. P3 and Ex. P4.

12. On the other hand, the defendants examined Kaushalya Devi as DW1, Ram Krishan @ Ram Kishan as DW2, Chiranji Lal (scribe of another writing) as DW3, and Piara Singh as DW4. The defendants also tendered in evidence copy of another writing as Ex. DW3/A, claiming that it represented the true transaction of loan.

Findings of the trial Court

13. The learned trial Court, after appreciating the entire evidence, recorded a categorical finding that it was an admitted case of the parties that the plaintiff Mela Singh was in possession of the suit land. Jamabandi Ex. P2 established that Kaushalya Devi, Parkash, Bhim and Ram Krishan @ Ram Kishan were co-owners of the land along with some others. The execution of the writing dated 25.06.1978 (Ex. P1) by Ramesh Chand was proved through the testimony of PW2 Mukhtiar Singh and PW3 Sher Singh, though the body of the writing mentioned only Ramesh Chand as the executant while Kaushalya Devi merely appended her signatures. The Court, however, held that Ex. P1 could not be treated as a valid sale deed, as it was not a registered document, and no title in immovable



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property worth more than ₹100/- could pass except by way of a registered instrument. Thus, the writing Ex. P1 could not confer ownership upon the plaintiff.

14. As regards the plea of the defendants that the transaction was only of loan, evidenced by Ex. DW3/A, the trial Court held that the said writing had not been proved in accordance with law, as it was only a photocopy and no permission for leading secondary evidence had been obtained. Moreover, DW3 Chiranji Lal, the scribe, admitted in his cross-examination that he had no knowledge of any sale transaction between Ramesh Chand and Mela Singh and had merely written what was told to him. The Court, therefore, rejected the plea of loan.

15. In consequence, the trial Court held that though Mela Singh was in possession, he had acquired no ownership rights in the suit land under Ex. P1. The defendants being co-sharers were entitled to seek possession from him. The suit filed by Mela Singh for declaration and injunction was accordingly dismissed, while the connected suit filed by Ram Krishan @ Ram Kishan and others was decreed for possession, subject to payment of ₹6,000/- by Kaushalya Devi to Mela Singh, as she had signed Ex. P1 and thereby incurred liability to return the consideration received.

Findings of the Lower Appellate Court

16. Learned appellate Court observed that Ex. P-1 requires close scrutiny. The Court recorded that Ex. P-1 bears signatures of Ramesh Chand and Kaushalya Devi and, on a plain reading of its recital, the document manifestly records a transfer in the nature of a sale, it recites the consideration of ₹6,000/-, contains words indicating that no right or interest was to remain with the vendors and even carries the descriptive particulars of the land on its face. The appellate Court



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accordingly held that the instrument, though not registered, is in form and substance a sale deed and not merely an agreement to sell; the appellate Court further noted the contemporaneous admissions made by DW-1 (Kaushalya Devi) in cross-examination that the sum of ₹6,000/- was received. On those findings the appellate Court concluded that the document prima facie denotes a completed transaction in form and substance and that the vendors had by their conduct and the recital in the instrument manifested the intention that no right should remain with them.

Submissions of learned counsel for the parties

17. Learned counsel for the appellant, Mela Singh, urged before this Court that the true character of Ex. P-1 is that of an agreement to sell and not a completed sale; he submitted that even if the document be treated as unregistered it would nevertheless entitle the plaintiff to protection under Section 53A of the Transfer of Property Act by reason of his possession having been delivered in part performance and by reason of the payment of the consideration. It was contended that the plaintiff had performed his part of the contract and that equity and the doctrine of part-performance require that he be protected against dispossession. Learned counsel pointed out that the trial Court itself found execution of Ex. P-1 and that the plaintiff had been placed in possession upon payment of the price; hence the facts fall squarely within the protective ambit of Section 53A.

18. Learned counsel for the respondents, on the other hand, supported the conclusions of the Courts below. It was urged that Ex. P-1, by reason of its own language and recitals, must be treated as a deed of sale and that such a transaction, being one by which an immovable property is purportedly transferred for



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consideration exceeding the statutory threshold, required compulsory registration under the Registration Act; non-registration therefore rendered the instrument ineffective to pass title. It was further urged that Section 53A is a defensive provision and does not operate to clothe the transferee with title; moreover, where the instrument is in form a conveyance which should have been registered, an unregistered document cannot be allowed to effect what statutory registration was intended to accomplish and the protection under Section 53A is not available to validate and convert an unregistered sale into conveyance.

Findings

19. The questions which require determination are (i) whether Ex. P-1 is in substance a sale deed or an agreement to sell; (ii) what is the legal effect of non-registration of Ex. P-1; and (iii) whether, on the facts, the appellant can derive any benefit under Section 53A of the Transfer of Property Act, 1882. For ease of reference the statutory provision may be noticed in substance, Section 53A embodies the doctrine of part-performance and protects a person who has contracted to transfer immovable property by a writing signed by the transferor, provided the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has taken possession and has performed or is willing to perform his part of the contract then in such circumstances the transferor is precluded from enforcing his legal title so as to defeat the transferee's possession.

20. On the first question, the relevant facts and the recital of Ex. P-1 must be examined together. The recital in Ex. P-1, the admitted receipt of ₹6,000/- as recorded in the evidence and conceded in cross-examination by DW-1, and the



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express language that no right or interest remained in the vendors, indicate an intention to vest proprietary rights in the purchaser. Such recitals, when read with the conduct of the parties i.e. payment and delivery of possession, render the document one which in form and substance operates as a sale. The characterisation of the instrument as an agreement to sell or as a deed of sale depends upon the terms of instrument and the surrounding circumstances. A document which contains the essentials of a transfer and manifests an intention to part with all rights cannot be reduced to a mere pre-contract. In the present case the material placed before the Courts below i.e the document itself, the evidence of attesting witnesses viz. PW-2 and PW-3, and the contemporaneous conduct support the conclusion that Ex. P-1 is of the nature of a sale instrument. The appellate Court's conclusion to that effect is thus borne out by the record.

21. On the second question regarding the effect of non-registration, the law is settled that a transaction which, by law, requires registration cannot operate to transfer title unless the statutory formalities are complied with, non-registration of an instrument which is required to be registered prevents it from operating as a conveyance to pass the title of immovable property. The Supreme Court and High Courts have repeatedly emphasised that registration is a mandatory statutory formality for a conveyance of immovable property. It is equally established that the mere character of admissibility of an unregistered document in evidence for example, in a suit for specific performance does not and cannot have the effect of validating an unregistered instrument as a mode of transfer of title in contravention of the Registration Act. Thus, while an unregistered agreement may in appropriate circumstances be received in evidence in proceedings for specific performance, the



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effect of such reception is circumscribed and does not obliterate the statutory requirement of registration for acts of conveyance.

22. The third and determinative question is the scope and applicability of Section 53A on the facts of this case. Section 53A is remedial in nature. It protects a transferee in possession from summary dispossession by the transferor where the transferee has performed or is willing to perform his part of a contract that is evidenced by a writing signed by the transferor and wherein the terms necessary to constitute the transfer are ascertainable. The doctrine is essentially one of equity and is available as a shield to the transferee in possession. It does not operate as a substitute for registration and does not itself confer title. It merely bars the transferor from setting up his legal title against a transferee who is in possession pursuant to a binding contract and who has acted in furtherance of that contract.

23. However, the protection of Section 53A of the Transfer of Property Act, 1882 is not unbounded. Where the instrument relied upon is in substance a conveyance which, by law, ought to have been registered, the courts have been cautious in allowing an unregistered instrument to be invoked so as to nullify the effect of the statutory obligation of registration. The jurisprudence has developed to distinguish between (a) an unregistered document which is prima facie an agreement to sell and (b) an instrument which, by its terms and recitals, is intended to operate as a conveyance of title and therefore triggers the requirement of registration. In the latter category, courts have held that the transferee cannot plead shelter under Section 53A to convert an unregistered conveyance into a valid transfer of title. The statutory policy of making certain transactions public by registration cannot be circumvented by the equitable doctrine of part-performance.



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Recent judicial pronouncements have accordingly held that admissibility of an unregistered agreement for specific performance does not ipso facto entitle a person to invoke Section 53A where the document is in the nature of a registered instrument and the Registration Act requires registration. Reliance in this regard has been placed on *Arun Kumar Tandon v. Akash Telecom Pvt. Ltd., 2010 SCC Online Del 918*, wherein it was held that in order to give benefits of Section 53A of Transfer of Property Act, the document relied upon must be a registered document.

24. Applying these principles to the facts before us, Ex. P-1, as already noticed, is in form and substance a transfer in the nature of a sale and not a mere preliminary agreement to sell. The omission of registration is fatal to its efficacy as a conveyance. While the appellant did indeed obtain possession on the basis of that instrument and paid the price, the statutory scheme requires that a completed sale of immovable property be effected by a registered instrument. The non-registration of Ex. P-1 prevents it from operating as a valid conveyance which could defeat the rights of co-owners or third persons whose rights are recorded in the revenue entries. Section 53A of the Transfer of Property Act, 1882, even if the appellant's possession is treated as taken in part performance, is essentially a defensive shield available against the transferor, and it does not enable the transferee to claim an indefeasible title by overriding the statutory requirement of registration where the instrument is in essence a conveyance. In short, Ex. P-1 cannot be allowed to operate as a sale deed to transfer title and at best it is evidence of a transaction which entitles the appellant to restitution or compensation from those who received the price and the Courts below have rightly held Kaushalya Devi is liable to repay



and awarded compensation, but it does not impart upon him a title capable of ousting the true co-owners in whose names the revenue record stands.

25. In the result, and for the reasons stated above, this Court concurs with the conclusions reached by the Courts below. Ex.P-1, on the material before the trial Court and the appellate Court, is in substance a sale instrument. Its non-registration prevents it from operating as a valid conveyance so as to transfer title. The protection available under Section 53A is limited to shielding possession in appropriate circumstances and cannot be invoked to validate an unregistered conveyance so as to defeat the rights of co-owners. The trial Court was therefore justified in holding that the plaintiff had not derived title under Ex. P-1 and that the defendants (co-sharers) were entitled to recover possession subject to restitution of the price and award of compensation against the signatory who had received the amount. The appellate Court's modification of the decree ordering Kaushalya Devi to repay the proved ₹6,000/- and awarding further compensation is in accordance with the equitable reliefs available on the facts and does not call for interference. Any unregistered document cannot be looked into by the Court and cannot be relied upon or taken into evidence in view of Section 17 (1A) read with Section 49 of the Registration Act. Thus, benefit of Section 53A could have been given to the respondent if and only if the alleged Agreement to Sell cum receipt satisfied the provisions of Section 17(1)A of the Registration Act.

26. Accordingly, the submissions of learned counsel for the appellant are repelled and the concurrent findings of the Courts below on the character of Ex. P-1, the effect of its non-registration and the inapplicability of Section 53A of the



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Transfer of Property Act, 1882 to validate it as a mode of transfer are affirmed.
Both the above-mentioned Regular Second Appeals fail and stand dismissed.

27. Pending application(s), if any, also stands disposed of.

September 19, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes