

HIGH COURT OF UTTARAKHAND AT NAINITAL

Hon'ble Justice Sri Rakesh Thapliyal

15th DECEMBER 2025

First Appeal No. 04 of 2025

Pankaj Singh Appellant

Vs.

Smt. Shandhya Sharma & Another.....Respondents

Counsel for the Appellant: Mr. Pooran Singh Rawat, learned counsel.

Counsel Respondents: Mr. J.C. Belwal, learned counsel for respondents.

(Sri Rakesh Thapliyal, J.)

The instant first appeal is preferred by the appellant/defendant against the judgment and decree dated 28.11.2019/05.12.2019 passed by learned Civil Judge (Senior Division) Haldwani, District Nainital in Civil Suit No. 06 of 2017 "Smt. Sandhya Sharma vs. Pankaj Singh and another".

2. This is an admitted appeal. The trial court record was also summoned. The paper book is also supplied to the learned counsel for the parties.

3. The brief facts of the case are that a suit for eviction/damages was filed by the respondent/defendant against the appellant/defendant in respect of property bearing Municipal No. 09/131 which was originally owned by one Anil Kumar. The description of the property is described in para 2 of the plaint. The said property was purchased by the respondent/plaintiff by a registered sale deed dated 19.11.2015 by paying full consideration. As per the plaintiff the appellants/defendants were residing in this property as a licensee of the actual owner Mr. Anil Kumar

who executed an agreement to sale on 01.02.2010 in favour of the mother of the defendant, with this stipulation that the sale deed be executed and registered on or before 31.04.2010. As per the agreement, the total consideration as agreed was Rs. 9,50,000/- out of which, while executing the agreement to sale, an advance money of Rs. 4,00,000/- was paid. It is specifically pleaded in the plaint that within the period as stipulated in the agreement to sale, no sale deed was executed and subsequently the mother of the defendant namely Smt. Poonam Devi died on 25.08.2014 and unfortunately after two days on 26.08.2014 the father of the defendant also died. In between before the death of the defendant's mother Smt. Poonam Devi executed a Will on 14.07.2024 in favour of her daughter. A specific averment has been made in para-9 of the plaint that since no sale deed was executed in favour of the mother of the defendant or in favour of her legal heir pursuant to the agreement to sale deed dated 01.02.2010 then the amount paid in advance at the time of execution of agreement to sale was refunded back to the sister of the defendant since she was the actual legal heir by virtue of the Will dated 14.07.2024 executed by the mother of the defendant. The contention of the plaintiff before the trial court was that no sale deed was executed within the period as stipulated in the agreement to sale deed dated 01.02.2010 and not only even no suit for specific performance was filed by late Smt. Poonam Devi and her legal heir, though under the provision of Limitation Act, three years period is provided to file a suit for specific performance.

4. The written statement was filed denying all the averments in the plaint as well as the fact the amount paid in advance was refunded.

5. The trial court framed as many as six issues and after dealing with all the issues decreed the suit of the plaintiff and now being aggrieved with the judgment and decree passed by the trial court the instant first appeal has been preferred.

6. It is contended by the learned counsel for the appellant that no benefit of proviso to Section 53 of Transfer of Property Act can be given to the respondent/plaintiff since it was very well in the knowledge of the plaintiff that there is an agreement to sale in favour of the mother of the defendant. He further submits that the sale deed executed in favour of the plaintiff is in fact not the sale deed in the eyes of law since the possession was with the defendants. He further argued that the foundation of the suit is based upon the false statement, therefore, the trial court committed a manifest illegality by decreeing the suit. He further argued that there are great contradictions in the statement of the plaintiff.

7. On the other side, Mr. J.C. Belwal, learned counsel for the respondents/plaintiff submits that by virtue of Section 54 of the Transfer of Properties Act, the agreement to sale does not confer any right upon the defendant. He argued that admittedly the agreement to sale was executed on 01.02.2010 and there was a stipulation that the sale deed has to be executed on or before 31.04.2010 and admittedly the sale deed was not executed therefore, the trial court rightly decreed the suit. Apart from this, he submits that there is a three years limitation to file a suit for specific performance even then no such attempt was made by the mother of the defendant or her legal heirs to file a suit for specific performance, therefore, no right is conferred upon the defendant to claim over the property in question.

8. After hearing the learned counsel for the parties the following points for determination, in the present appeal are being framed (i) whether the respondent/plaintiff is the actual owner of the property in question which he has derived by virtue of registered sale deed dated 19.11.2015; (ii) Whether any right is conferred upon the respondent/defendant to claim over the property in question despite the fact that no sale deed was executed; and (iii) on what capacity the respondent/defendant is residing in the property in question.

9. Admittedly, the respondent/plaintiff got the ownership right over the property in question pursuant to a registered sale deed dated 19.11.2015 and there is no dispute on this and even there is no challenge to the said sale deed. Therefore, admittedly the respondent/plaintiff is the actual owner of the property in question.

10. So far as the rights of the defendants are concerned, to some extent it derived pursuant to agreement to sale dated 01.02.2010 but admittedly there was stipulation of time limit for execution of the sale deed on or before 31.04.2010 and admittedly no such sale deed was executed within the aforesaid period. Therefore, merely on the basis of the agreement to sale dated 01.02.2010, no right is conferred upon the defendant to claim any right over the property in question. Apart from this, admittedly no such suit for specific performance was filed by the defendant against the actual owner for performance of agreement to sale within the prescribed period of limitation therefore no right is accrued in favour of defendant to raise any claim.

11. So far as the arguments of learned counsel for the appellant with regard to proviso to Section 53A of

Transfer of Property Act is concerned, no doubt the respondent/defendant was residing in the property in question but not as an owner, rather, he was residing only as an unauthorized occupant since no sale deed was executed pursuant to agreement to sale dated 01.02.2010. therefore, their status is of a licensee of the actual owner of the property.

12. The trial court after dealing all the issues have examined all these aspects by holding that no right is accrued in favour of the appellant/defendant to claim any right over the property in question, that too by agreement to sale dated 01.02.2010 which was never been act upon. Thus this Court does not find any illegality and perversity to the judgment and decree passed by the trial court.

13. Thus, I do not find any merit in the instant appeal and the same is dismissed being devoid of merit. Consequently the judgment and decree passed by trial court dated 28.11.2019/05.12.2019 is confirmed.

14. Trial Court Record is remitted back to the trial court.

(Rakesh Thapliyal, J.)

15.12.2025

Nahid