

Reserved on:-07.08.2026

Delivered on:-20.08.2026

HIGH COURT OF UTTARAKHAND AT NAINITAL

First Appeal No. 157 of 2024

Subhash Chand Arora and Another

.....Appellants

Versus

Pal Singh Kashyap and Others

.....Respondents

Present:-

Mr. Arvind Vashistha, Senior Advocate assisted by Mr. K.R. Gazi,
Advocate for the appellants.

Mr. Piyush Garg, Advocate for the respondents.

JUDGMENT

Hon'ble Ravindra Maithani, J.

The present first appeal is preferred against the judgment and decree dated 30.07.2024, passed in the Original Suit No.178 of 2015, Pal Singh Kashyap and others v. Subhash Chand Arora and another ("the suit"), by the court of I Additional Civil Judge (Senior Division), Haridwar. By it, a suit filed by the respondents for mandatory injunction and damages has been decreed.

2. The respondents filed the suit, *inter alia*, on the ground that Smt. Rameshwari Devi *alias* Ramesho Devi was the owner of the land on which Vinayak Hotel, situated at Ranipur Mor, Haridwar, has been constructed. Smt. Rameshwari Devi was the wife of the respondent no., Pal Singh Kashyap, and the mother of the respondent nos. 2 to 4. In the year 1993-94, Smt. Rameshwari Devi and the respondent no.1, Pal Singh Kashyap, planned to construct a hotel on the land. The hotel was constructed in the year 1994. The appellant no.1, Subhash Chand Arora, was a friend of the respondent no.1, Pal Singh Kashyap, and his wife Smt. Rameshwari Devi. The respondent no.1, Pal Singh Kashyap, and his wife

Smt. Rameshwari Devi were in need of money. Therefore, the appellant no.1, Subhash Chand Arora, helped them by giving them Rs. 3,95,000/-. In Vinayak Hotel, on the ground floor, a restaurant and a shop were constructed ("the shop"). The appellant no.1, Subhash Chand Arora, asked the respondent no.1, Pal Singh Kashyap, and his wife Smt. Rameshwari Devi, for giving the shop for his employment. In view of the good relations and also keeping in view the fact that the appellant no.1, Subhash Chand Arora, had helped the respondent no.1, Pal Singh Kashyap and his wife Smt. Rameshwari Devi with Rs. 3,95,000/-, they gave the shop to the appellant no.1, Subhash Chand Arora, as licensee with Rs. 10,000/- as license fee, and it was decided that the money that was advanced by the appellant no.1, Subhash Chand Arora, would be set off in the license fee. The appellant no.1, Subhash Chand Arora, got possession of the shop in the Year 1995 as licensee, and started his business in the name and style of "Cambridge Book Depot". Now, the shop is being run by his son, the appellant no.2, Ajay Kumar Arora.

3. It is further the case of the respondents in the suit that Smt. Rameshwari Devi died in the Year 2010. After her death, the respondents became the owner of the Hotel and the shop, and the appellants became their licensee. The amount, which was advanced by the appellants, had been set off on the license fees long back, but due to good relationship, the respondents did not insist the appellants for vacating the shop. But, thereafter, the respondents asked the appellants to vacate the shop, to which the appellants were not agreeable. Finally, a notice was given, but the appellants did not hand over the possession of the shop. With these and other averments, the respondents filed the suit seeking mandatory injunction for possession

of the shop as well as for damages for use and occupation of the shop by the appellants.

4. The appellants filed their written statements in the suit. Construction of the Hotel and the shop has been admitted by the appellants. The appellants also admitted that in the shop, they run their business in the name and style of “Cambridge Book Depot”. According to the appellants, Smt. Rameshwari Devi had taken a lot of loan while constructing the Hotel. Therefore, she wanted to sell the shop, and she sold the shop to the appellant no.1, Subhash Chand Arora, in the Year 1993 for Rs. 3,95,000/-, and, thereafter, the appellant no.1, Subhash Chand Arora, came in possession of the shop. The appellants have also taken the plea that the respondents have not disclosed as to when they gave the shop on license to the appellants. No date has been disclosed. Therefore, no cause of action arises in the matter and the suit is liable to be dismissed under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (“the CPC”).

5. It has further been the case of the appellants that on 01.02.1995, the respondent no.1, Pal Singh Kashyap, and his wife Smt. Rameshwari Devi, executed an agreement to sale of the shop in favour of Sanjay, who happens to be the son of appellant no.1, Subhash Chand Arora, and the brother of the appellant no.2, Ajay Kumar Arora. Post execution of the agreement, possession was also delivered. Therefore, the possession and title of the appellants is absolute under Section 53-A of the Transfer of Property Act, 1882 (“the T.P. Act”).

6. Based on the pleadings of the parties, on 02.03.2016, the following issues were framed:-

- 1) Whether the shop in question was given by the plaintiff no.1 and Smt. Rameshwari Devi, to the defendant no.1, as licensee in the Year 1995? If so, its effects?
- 2) Whether the defendant no.1 had agreed to pay license fees of Rs.10,000/- per month?
- 3) Whether the plaintiffs had terminated the license of the defendants on 15.04.2015? If so, its effects?
- 4) Whether license fees is due against the defendants since 01.04.1998, and the plaintiffs are entitled to get the license fees of Rs.3,60,000/- from 01.07.2012 to 30.06.2015?
- 5) Whether the plaintiffs, during the pendency of suit, are entitled to get compensation at the rate of Rs. 30,000/- per month.
- 6) Whether the suit of the plaintiffs for injunction is not legally maintainable?
- 7) Whether Smt. Rameshwari Devi or the plaintiffs are owners in possession of the disputed property?
- 8) Whether the suit is undervalued?
- 9) Whether the court fee paid is deficient?
- 10) Reliefs?

7. Further, on 31.03.2016, issue no.11 was additionally framed as follows:-

- 11) Whether the suit is barred by Order 7 Rule 11 CPC?

8. In evidence, on behalf of the respondents, two witnesses, namely, PW1, Pal Singh Kashyap and PW2, Sudesh Chanchal, were

examined. The respondents have submitted the papers, as per lists 7^{C1}, 50^{C1} and 161^{C1}.

9. On behalf of the appellants, the DW1, appellant no.2, Ajay Kumar Arora, was examined as witness. The appellants have submitted the papers, as per lists 26^{C1/1 to 2}, 74^{C1}, 88^{C1} and 123^{C1}.

10. Issue nos. 1, 3 and 7 were decided together, and it was held that the appellants are in possession of the shop as licensees, and the respondents have a right to revoke the license and regain the possession of the shop. Smt. Rameshwari Devi was the owner of the shop and after her death, the respondents are the owner of the shop. The respondents have revoked the license by giving a notice dated 29.04.2015.

11. Issue nos. 2, 4 and 5 were decided together, and it was held that the license fee was Rs. 10,000/-, and the appellants had to pay Rs. 3,90,000/- as license fee with effect from 01.07.2012 to 30.06.2015, and from 01.05.2015, till possession is given to the respondents, the respondents are entitled to get Rs.10,000/- per month as damages for use and occupation of the shop.

12. On issue no.6, it was held that the appellants could not clarify as to how the suit is not maintainable. The issue no.6 was decided accordingly.

13. Issue no.8 was decided on 23.03.2017, and the court held that the valuation is to be done as per the Amin report, which was subsequently done by the respondents.

14. On issue no.9, which is with regard to the insufficient court fees, the court held that the suit is valued at Rs.23,33,184/-, and accordingly, the court fee has been paid.

15. Issue no.11 was framed on 31.03.2016 to the effect as to whether the suit is barred by Order 7 Rule 11 CPC. On 02.08.2016, in the suit, it was ordered that this issue would be decided after the evidence is lead, but Para 36 of the impugned judgment records that the appellant did not clarify as to how the provisions of Order 7 Rule 11 CPC are attracted in the suit. Accordingly, it was decided.

16. Having made discussion on all the issues framed in the suit, on issue no.10, the impugned judgment recorded that the suit is liable to be decreed, and it was decreed accordingly.

17. Heard learned counsel for the parties and perused the record.

18. After hearing the parties, two points for determination arise for decision of this Court, which are as follows:-

- 1) Whether the suit is barred by limitation, and accordingly, the plaint is liable to be rejected under Order 7 Rule 11 CPC?
- 2) Whether the appellants are entitled to get the benefit of Section 53-A of the Transfer of Property Act, 1882?

19. Point No.1:-

This point is with regard to limitation, and accordingly barred by Order 7 Rule 11 CPC. The point is as follows:-

Whether the suit is barred by limitation, and accordingly, the plaintiff is liable to be rejected under Order 7 Rule 11 CPC?

Before proceeding further, it would be apt to reproduce Order 7 Rule 11 CPC. It reads as below:-

“11. Rejection of plaintiff.— The plaintiff shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaintiff is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaintiff to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

20. Learned Senior Counsel appearing for the appellants submits that in a civil suit, plaintiff has to prove its case independently. He submits that in the instant case, according to the respondents, they had taken Rs. 3,95,000/- from the appellants, and, thereafter, the shop was given on license. It is argued that the license fee was fixed as Rs.10,000/-, which means that the license was for 39 months. Therefore, in view of Section 62(c) of the Easements Act, 1882 (“the Easements Act”), the license has been deemed revoked by the efflux of time, and, thereafter, as per the Limitation Act, 1963 (“the Limitation Act”), suit ought to have been filed within limitation, which

was not filed. Therefore, the suit is barred by limitation, and, accordingly, it was liable to be rejected under Order 7 Rule 11 CPC. He further submits that even if plea of limitation is not taken up by the appellants, it was the duty of the court concerned under Section 3 of the Limitation Act to see that the suit is filed within limitation; the court below has wrongly observed in Para No.36 of the impugned judgment that the appellants could not clarify as to how the suit is barred by Order 7 Rule 11 CPC.

21. While arguing on that aspect, learned Senior Counsel for the appellants has referred to Para Nos. 4, 5, 7 of the plaint, as well as the statement of PW1, Pal Singh Kashyap.

22. In support of his contention, learned Senior Counsel for the appellants has placed reliance on the principles of law, as laid down by the Hon'ble Supreme Court in the cases of Draupadi Devi and others v. Union of India and Others (2004) 11 SCC 425, State of Gujarat v. Kothari and Associates (2016) 14 SCC 761, Nusli Neville Wadia v. Ivory Properties and Others (2020) 6 SCC 557 and Dahiben v. Arvindbhai Kalyanji Bhanushali (Gajra) DEAD Through Legal Representatives and others (2020) 7 SCC 366.

23. In the case of Draupadi Devi (*supra*), the Hon'ble Supreme Court, *inter alia*, held that, **“the plaintiff was bound to plead in the plaint when the cause of action arose.”** In Para No.73 of the judgment, the Hon'ble Supreme Court observed as hereunder:-

“73. We may notice here that under the Code of Civil Procedure, Order 7 Rule 1(e) requires a plaint to state “the facts constituting the cause of action and when it arose”. The plaintiff was bound to plead in the plaint when the cause of action arose. If he did not, then irrespective of what the defendants may plead in the written statement, the court would be bound by the mandate of Section 3 of the Limitation Act, 1908 to dismiss the suit, if it found

that on the plaintiff's own pleading his suit is barred by limitation. In the instant case, the plaint does not plead clearly as to when the cause of action arose. In the absence of such pleadings, the defendants pleaded nothing on the issue. However, when the facts were ascertained by evidence, it was clear that the decision of the Government of India not to recognise the suit property as private property of the Maharaja was taken sometime in the year 1951, whether in March or May. Dewan Jarmani Dass, the plaintiff and the Maharaja were very much aware of this decision. Yet, the suit was filed only on 11-5-1960."

24. In the case of Kothari and Associates (*supra*), the Hon'ble Supreme Court, while interpreting the provisions of Section 3 of the Limitation Act, observed that, **"It is thus incumbent upon the court to satisfy itself that the suit is not barred by limitation, regardless of whether such a plea has been raised by the parties."** (Para No.8)

25. In the case of Nusli Neville Wadia (*supra*), the Hon'ble Supreme Court held that the plaint can be rejected as barred by limitation.

"68. In our opinion, it cannot be laid down as proposition of law under Order 7 Rule 11(d) that the plaint cannot be rejected as barred by limitation. It can be said that it is permissible to do so mainly in a case where the plaint averment itself indicates the cause of action to be barred by limitation and no further evidence is required to adjudicate the issue."

26. In the case of Dahiben (*supra*), the Hon'ble Supreme Court, In Para No.23.13, observed as hereunder:-

"23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC."

27. Learned Senior Counsel appearing for the appellants, while arguing, has also placed reliance on the principles of law, as laid down by the Hon'ble Supreme Court in the cases of Associated Hotels of India Ltd. v. R.N. Kapoor 1959 SCC OnLine SC 62, and Mrs. M.N.

Clubwala and another v. Fida Hussain Saheb and others, 1964 SCC OnLine SC 134.

28. In the case of R.N. Kapoor (*supra*), the Hon’ble Supreme Court has occasion to make distinction between the lease and license. In Para No.28 of the judgment, the Hon’ble Supreme Court observed as follows:-

“28. There is a marked distinction between a lease and a license. Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised. Under Section 108 of the said Act, the lessee is entitled to be put in possession of the property. A lease is therefore a transfer of an interest in land. The interest transferred is called leasehold interest. The lessor parts with his right to enjoy the property during the term of the lease, and it follows from it that the lessee gets that right to the exclusion of the lessor. Whereas Section 52 of the Indian Easements Act defines a licence thus:

“Where one person grants to another, or to a definite number of other persons, a right to do or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.”

.....

.....

.....”

29. In the case of Mrs. M.N. Clubwala (*supra*), also, the Hon’ble Supreme Court interpreted the scope of license and in Para No.12, observed as follows:-

“12. While it is true that the essence of a licence is that it is revocable at the will of the grantor the provision in the licence that the licensee would be entitled to a notice before being required to vacate is not inconsistent with a licence. In England it has been held that a contractual licence may be revocable or irrevocable according to the express or implied terms of the contract between the parties. It has further been held that if the licensee under a revocable licence has brought property on to the land, he is entitled to notice of revocation and to a reasonable time for removing his property, and in which to make arrangements to carry on his business elsewhere. (See Halsbury's Laws of England 3rd edn. vol. 23, p. 431). Thus the mere necessity of giving a notice to a licensee requiring him to vacate the licensed premises would not indicate that the transaction was a lease. Indeed, Section 62(c) of the Indian Easements Act. 1882 itself provides that a licence is deemed to be revoked where it has been either granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires, or the condition is fulfilled. In

the agreements in question the requirement of a notice is a condition and if that condition is fulfilled the licence will be deemed to be revoked under Section. 62. It would seem that it is this particular requirement in the agreements which has gone a long way to influence the High Court's finding that the transaction was a lease. Whether an agreement creates between the parties the relationship of landlord and tenant or merely that of licensor and licensee the decisive consideration is the intention of the parties. This intention has to be ascertained on a consideration of all the relevant provisions in the agreement. In the absence, however, of a formal document the intention of the parties must be inferred from the circumstances and conduct of the parties.....”

30. Learned counsel for the respondents submits that in a civil suit, generally, dilatory tactics are adopted by the litigants, who are wrongdoers. He would refer to the judgment passed by the Hon’ble Supreme Court in the case of Ramrameshwari Devi and Others v. Nirmala Devi and Others, (2011) 8 SCC 249. In Para Nos. 36, 37 and 49 of the judgment in the case of Ramrameshwari Devi (*supra*), the Hon’ble Supreme Court observed as follows:-

“Profits for the wrongdoer

36. According to the learned amicus curiae, every lease on its expiry, or a licence on its revocation cannot be converted itself into litigation. Unfortunately, our courts are flooded with these cases because there is an inherent profit for the wrongdoers in our system. It is a matter of common knowledge that domestic servants, gardeners, watchmen, caretakers or security men employed in a premises, whose status is that of a licensee indiscriminately file suits for injunction not to be dispossessed by making all kinds of averments and may be even filing a forged document, and then demand a chunk of money for withdrawing the suit. It is happening because it is the general impression that even if ultimately the unauthorised person is thrown out of the premises the court would not ordinarily punish the unauthorised person by awarding realistic and actual mesne profits, imposing costs or ordering prosecution.”

“37. It is a matter of common knowledge that lakhs of flats and houses are kept locked for years, particularly in big cities and metropolitan cities, because owners are not certain that even after expiry of lease or licence period, the house, flat or the apartment would be vacated or not. It takes decades for final determination of the controversy and wrongdoers are never adequately punished. Pragmatic approach of the courts would partly solve the housing problem of this country.”

“49. The learned amicus articulated the common man's general impression about litigation in following words:

“Make any false averment, conceal any fact, raise any plea, produce any false document, deny any genuine document, it will successfully stall the litigation, and in any case, delay the matter endlessly. The other party will be coerced into a

settlement which will be profitable for me and the probability of the court ordering prosecution for perjury is less than that of meeting with an accident while crossing the road.”

31. Learned counsel for the respondents further submits that it is not a case of deemed revocation of license. He would raise the following points in his submission:-

- i) The appellants were not given shop as licensee for a limited period.
- ii) The appellant no.1, Subhash Chand Arora, was given the shop for his employment, and since he had advanced Rs. 3,95,000/- to the respondent no.1, Pal Singh Kashyap, and his wife Smt. Rameshwari Devi, it was decided that that amount shall be set off in the license fee. It is argued that it does not make license for a limited period. He would refer to the averments of Para 4 of the plaint.
- iii) The suit is not barred by limitation.

32. Undoubtedly, a plaintiff has to succeed on his own legs. He cannot take advantage of any weakness of the defendants. This is the settled legal position.

33. It has been the consistent case of the respondents that the shop was given as license to the appellant no.1, Subhash Chand Arora, for which Rs. 10,000/- was license fee. It was further stipulated as per the respondents that Rs. 3,95,000/-, which the appellant no.1, Subhash Chand Arora, had advanced to the respondent no.1, Pal Singh Kashyap, and Smt. Rameshwari Devi, shall be set off in the license fee. Para Nos. 4, 5, 6 and 7 of the plaint nowhere stipulate that the license was given for 39 months.

34. Extensively, reference has been made to the statements of PW1, Pal Singh Kashyap and PW2, Sudesh Chanchal. PW1, Pal Singh Kashyap, has, in his examination in chief, reiterated the respondents' case, and has stated that the license was given. In Para No.6 of his affidavit, it is stated that when Rs. 3,95,000/- would be set off against Rs. 10,000/- license fee, the license would be over and the appellants would vacate the shop. This has been referred to by learned Senior Counsel for the appellants and reference has also been made to the cross examination of PW1, Pal Singh Kashyap, recorded on 04.08.2018, when in Page 4 of his statement, PW1, Pal Singh Kashyap, has stated that the appellants had to vacate the shop till March, 1998.

35. Making reference to this, it is argued that, in fact, initially, the license was given for 39 months. Learned Senior Counsel appearing for the appellants has also referred to the statements of the witnesses to argue that in the Municipal records, the name of appellant no.1, Subhash Chand Arora, is recorded. At some places, the word '*sauda*', ("transaction") has been recorded in the statement of PW1, Pal Singh Kashyap. It has also been highlighted by learned Senior Counsel appearing for the appellants.

36. PW2, Sudesh Chanchal, has also supported the statement of PW1, Pal Singh Kashyap.

37. DW1, Ajay Kumar Arora, has reiterated his version in the written statement. It would require deliberation because in his cross examination, he has not proved the agreement dated 01.02.1995, which was allegedly executed between respondent no.1, Pal Singh Kashyap and Smt. Rameshwari Devi and Sanjay Kumar, the brother of DW1, Ajay Kumar Arora.

38. Though, at two stages, PW1, Pal Singh Kashyap, has stated that after setting off of Rs. 3,92,000/-, the license was to be revoked, but it is not pleaded as such. In totality, if the statement of PW1, Pal Singh Kashyap, is read, in Para No.8 of his examination in chief, he has stated that after the death of Smt. Rameshwari Devi in the year 2010, the appellants continued as licensee, which means the license was not to be over after setting off of Rs. 3,90,000/- that was advanced by appellant no.1, Subhash Chand Arora, to the respondent no.1, Pal Singh Kashyap and Smt. Rameshwari Devi.

39. The plaint case is categorical that Rs. 3,95,000/- were given by the appellant no.1, Subhash Chand Arora, to the respondent no.1, Pal Singh Kashyap and his wife Smt. Rameshwari Devi, and he demanded the shop for his employment. According to Para No.4 of the plaint, the shop was given for some time to the appellant no.1, Subhash Chand Arora, for Rs. 10,000/-, as license fees. It does not speak of license for a limited period.

40. It is being argued on behalf of the respondents is that the appellants, in their written statements, have not pleaded that the license was for 39 months.

41. Here, it is being argued that the license has been deemed revoked under Section 62(c) of the Easements Act. Section 62(c) of the Easements Act is as follows:-

“62. License when deemed revoked.- A license is deemed to be revoked—
 (a)
 (b)
 (c) Where it has been granted for a limited period, or acquired on condition that it

shall become void on the performance or non-performance of a specified act, and the period expires, or the condition is fulfilled;
(d)
(e)
(f)
(g)
(h)
(i)"

42. In order to attract the provisions of Section 62(c) of the Easements Act, first and foremost, it has to be established that the license was granted for a limited period.

43. In the instant case, as stated hereinabove, it is not the pleaded case of the respondents in their plaint that the license was for a limited period. Instead, according to the plaint’s case, the shop was given on license to the appellant no.1, Subhash Chand Arora, for some time on Rs.10,000/- as license fee, and Rs. 3,95,000/-, which was advanced by the appellant no.1, Subhash Chand Arora, to the respondent no.1, Pal Singh Kashyap and his wife Smt. Rameshwari Devi, was to be set off in the license fee. It does not mean that the license was for 39 months. If the statement of PW1, Pal Singh Kashyap, is read in totality, it supports the version in the plaint. Moreover, as stated, it has never been the case of the appellants that they were given license for 39 months. Therefore, this Court is of the view that, in fact, the license that was given to the appellant no.1, Subhash Chand Arora, was not for limited period, and it has not been revoked by the operation of Section 62(c) of the Easements Act after 39 months of license.

44. The license of the appellant no.1, Subhash Chand Arora, was revoked on 15.04.2015, and the suit has been filed on 22.02.2016. It is not barred by limitation.

45. There is another aspect of the matter. The appellants did not take the plea of deemed revocation of the license. They also did not take the plea that the suit is barred by limitation, therefore, the plaint is liable to be rejected under Order 7 Rule 11 CPC.

46. Para 9-A was incorporated by way of amendment in the written statement by the appellants, and according to it, since the day when the license commences was not clarified by the respondents, no cause of action arises and the suit is barred by Order 7 Rule 11 CPC.

47. At the time of hearing of the suit also, on behalf of the appellants, based on the pleadings, it could not be clarified as to how the suit is barred by Order 7 Rule 11 CPC, as has been recorded in Para No.36 of the impugned judgment, and this Court is of the view that it has rightly been recorded. Therefore, this Court records the finding as follows:-

- (i) The license was not for a limited period;
- (ii) The license has not been revoked by the operation of Section 62(c) of the Easements Act;
- (iii) The suit is not barred by limitation; And;
- (iv) The suit is not barred by Order 7 Rule 11 CPC.

48. Point for determination no.1 is decided accordingly.

49. Point No.2:-

This point relates to applicability of Section 53-A of the T.P. Act. The point is as below:-

Whether the appellants are entitled to get the benefit of Section 53-A of the T.P. Act?

Before proceeding further, it would be apt to reproduce Section 53-A of the T.P. Act. It reads as below:-

“53A. Part performance.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract: Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

50. Learned Senior Counsel appearing for the appellants submits that the agreement to sale of the shop was executed in favour of Sanjay Kumar, the son of appellant no.1, Subhash Chand Arora, and the brother of appellant no.2, Ajay Kumar Arora, on 01.02.1995, and the possession was given. Therefore, the appellants are entitled to protection under Section 53-A of the T.P. Act. He submits that the application under Order 14 Rule 5 CPC and Section 151 CPC was moved by the appellants in the suit for framing of two issues relating to the agreement dated 01.02.1995, and the applicability of provisions under Section 53-A of the T.P. Act. He submits that the court below did not frame the issues and it has caused prejudice to the appellants.

51. In support of his contention, learned Senior Counsel for the appellants has placed reliance on the principles of law, as laid down in the cases of A. Shanmugam v. Ariya Kshatriya Rajakula

Vamsathu Madalaya Nandhavana Paripalanai Sangam Represented by its President and others, (2012) 6 SCC 430 and Vasanthi v. Venugopal (Dead) through Legal Representatives, (2017) 4 SCC 723.

52. In the case of A. Shanmugam (*supra*), the Hon'ble Supreme Court, *inter alia*, observed that framing of issue is a very important stage of a civil trial, and if issues are properly framed, controversy can be clearly focused. In Para Nos.30 and 32 of the judgment, the Hon'ble Supreme Court observed as follows:-

“30. Framing of issues is a very important stage of a civil trial. It is imperative for a Judge to critically examine the pleadings of the parties before framing of issues. Rule 2 of Order 10 CPC enables the court, in its search for the truth, to go to the core of the matter and narrow down, or even eliminate the controversy. Rule 2 of Order 10 reads as under:

“2.Oral examination of party, or companion of party.—(1)

At the first hearing of the suit, the court—

(a) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in court, as it deems fit; and

(b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in court or his pleader is accompanied.

(2)-(3)***”

It is a useful procedural device and must be regularly pressed into service.”

“32. If issues are properly framed, the controversy in the case can be clearly focused and documents can be properly appreciated in that light. The relevant evidence can also be carefully examined. Careful framing of issues also helps in proper examination and cross-examination of the witnesses and final arguments in the case.”

53. In the case of Vasanthi (*supra*), the Hon'ble Supreme Court referred to the earlier judgments, and observed as follows:-

“25. This Court in Shrimant Shamrao Suryavanshi v. Pralhad Bhairoba Suryavanshi, (2002) 3 SCC 676 : 2002 SCC (Cri) 469, while tracing the incorporation of Section 53-A in the TP Act, vide 1929 Act, acting on the recommendations of the Special Committee on the issue, had ruled that mere expiration of the period of limitation for bringing a suit for specific performance would not debar a person in possession of an immovable property by way of part-performance from setting up a plea, as contemplated therein in defence to protect his possession of the property involved. It was however underlined that if the conditions precedent, as enumerated, in Section 53-A of the Act, are complied with, the law of limitation would not come in

the way of the said person to avail the benefit of the protection to his possession as extended thereby even though a suit for specific performance of a contract by him had gone barred by limitation. Explicitly therefore, though mere expiry of the period of limitation for a suit for specific performance may not be a bar for a person in possession of an immovable property in part-performance of a contract for transfer thereof for consideration to assert the shield of Section 53-A of the TP Act, it is nevertheless imperative that to avail the benefit of such protection, all the essential prerequisites therefor would have to be obligatorily complied with.

26. In *A. Lewis v. M.T. Ramamurthy*, (2007) 14 SCC 87, it was propounded that the right to claim protection under Section 53-A of the TP Act would not be available, if the transferee remains passive without taking effective steps and abstains from performing his part of the contract or conveying his readiness and willingness to that effect.”

54. Learned Senior Counsel for the appellants submits that failure to framing issues is not an omission. In fact, it has affected the defence of the appellants because had the issue been framed, the appellants would have been in a position to know as to what they have to prove.

55. On the other hand, learned counsel for the respondents submits that it is true that the appellants had filed an application in the suit for framing two additional issues, including one relating to Section 53-A of the T.P. Act, but he submits that the court did not deny framing of the issue, as such. Instead, in its order dated 03.09.2022, the court held that the issues relating to the agreement dated 01.02.1995, and application of Section 53-A of the T.P. Act are covered under issue No.7, which is to the effect as to whether Smt. Rameshwari Devi or the respondents are owner in possession of the disputed shop. It is argued that the court, on 03.09.2022, in the suit, observed that the additional issues proposed by the appellants could be considered under issue no.7 already framed.

56. Learned counsel for the respondents further submits that post order dated 03.09.2022, PW1, Pal Singh Kashyap, was further

cross examined by the appellants, and it is only thereafter, they led evidence. Therefore, it is argued that the appellants knew that they had to prove the agreement dated 01.02.1995 as well as the applicability of Section 53-A of the T.P. Act. Therefore, it is argued that if separate issue with regard to applicability/benefit of Section 53-A of the T.P. Act has not been made, it does not prejudice, in any manner, the rights of the appellants.

57. In support of his contentions, learned counsel for the respondents has relied on the principles of law, as laid down by the Hon'ble Supreme Court, in the cases of P. Purushottam Reddy and another v. Pratap Steels Ltd., (2002) 2 SCC 685, Kattukandi Edathil Krishnan and Others v. Kattukandi Edathil Valsan and Others (2006) 9 SCC 166, and Bachahan Devi and Another v. Nagar Nigam Gorakhpur and Another (2008) 12 SCC 372.

58. In the case of P. Purushottam Reddy (*supra*), the Hon'ble Supreme Court, in Para No.12, observed as hereunder:-

"12. Assuming that there was any deficiency in the pleadings and also an omission on the part of the trial court to frame a specific issue, the present one is a case where the applicability of the law laid down by this Court in Nagubai Ammal v. R. Shama Rao [AIR 1956 SC 593] was squarely attracted. In Nagubai case [AIR 1956 SC 593] this Court was called upon to examine if the plea of lis pendens was not open to the plaintiff on the ground that it had not been raised in the pleadings. Neither the plaint nor the reply statement of the plaintiff contained any averment that the sale was affected by the rule of lis pendens. There was no specific issue directed to that question. However, evidence was adduced by the plaintiff on the plea of lis pendens and not objected to by the defendants. The question was argued and tested by taking into consideration the evidence that the proceedings were collusive in character with a view to avoid operation of Section 52 of the TP Act. This Court felt satisfied that the defendants went to trial with full knowledge that the question of lis pendens was in issue, had ample opportunity to adduce their evidence thereon and fully availed themselves of the opportunity. This Court formed the opinion that in the circumstances of the case, absence of a specific pleading on the question was a mere irregularity which resulted in no prejudice to the defendants. After having noticed the rule of pleadings as applicable to civil law that "no amount of evidence can be looked into upon a plea which was never put forward", this Court held: (AIR p. 598, para 12)

“The true scope of this rule is that evidence let in on issues on which the parties actually went to trial should not be made the foundation for decision of another and different issue, which was not present in the minds of the parties and on which they had no opportunity of adducing evidence. But that rule has no application to a case where parties go to trial with knowledge that a particular question is in issue, though no specific issue has been framed thereon, and adduce evidence relating thereto.”

59. In the case of Kattukandi Edathil Krishnan (*supra*), the Hon’ble Supreme Court, in Para No.4, observed as follows:-

“4.
.....
.....
The High Court did not itself come to the conclusion that there was no proof of marriage but was of the view that on the aspect of long cohabitation, it was necessary to remand the matter back to the trial court so as to enable the parties to “raise appropriate pleas” and to adduce additional evidence in the matter. The parties were also granted the liberty to amend the pleadings, if necessary.”

60. In the case of Bachahan Devi (*supra*), the Hon’ble Supreme Court, in Para No.11, observed as follows:-

“11.
.....
.....
In order to bring in application of Order 41 Rule 25 the appellate court must come to a conclusion that the lower court has omitted to frame issues and/or has failed to determine any question of fact which in the opinion of the appellate court are essential for the right decision of the suit on merits. Once the appellate court comes to such a conclusion it may, if necessary, frame the issues and refer the same to the trial court. In other words there is no compulsion on the part of the appellate court to do so. This is clear from the use of the expression “may”. But the further question that arises is whether in such a case the appellate court is bound to direct the trial court to take additional evidence required. This is a mandatory requirement as is evident from the provision itself because it provides that the lower court shall proceed to try such case and shall return the evidence to the appellate court together with the findings therein and the reasons therefor. As noted above, the provision becomes operative when the appellate court comes to the conclusion about the omission on the part of the lower court to frame or try any issue. Once the appellate court directs the lower court to do so, it is incumbent upon the trial court to take additional evidence required. As has been rightly contended by learned counsel for the appellant, there may be cases where additional evidence may not be required. But where the additional evidence is required, then the lower court has to return the evidence so recorded to the appellate court together with the findings thereon and the reasons therefor.”

61. First and foremost, the question that falls for consideration is as to whether any prejudice has been caused to the rights of the appellants by not framing the issues with regard to the agreement dated 01.02.1995, and with regard to application of Section 53-A of the T.P. Act? At this stage only, it may be noted that in their written statement filed in the suit, the appellants have, by way of amendment, incorporated Para 6-A in their written statements. By this paragraph, the appellants averred that the respondent no.1, Pal Singh Kashyap, and his wife Smt. Rameshwari Devi executed an agreement to sale in favour of Sanjay, son of appellant no.1, Subhash Chand Arora and the brother of appellant no.2, Ajay Kumar Arora, on 01.02.1995, and the possession was delivered. Therefore the ownership and possession of the appellants is complete and final, by virtue of Section 53-A of the T.P. Act.

62. It is also a fact that an application under Order 14 Rule 5 CPC and Section 151 CPC was filed by the appellants in the suit for framing the following additional issues:-

1. Whether the plaintiff no.1 and his wife Smt. Rameshwari Devi had executed a written, signed, and notarised agreement to sale along with possession dated 01.02.1995, in favour of Sanjay, son of Subhash Chand Arora, who is son of the defendant no.1 and the brother of defendant no.2.
2. Whether due to the possession and ownership of the defendants on the disputed property having attained finality under Section 53-A of the Transfer of Property Act, the defendants are owners in possession of the disputed property?

63. The issues were not framed by the court. The court observed that issue no.7 covers these issues, and under issue no.7, the issues raised by the appellants could be decided, and for this purpose, framing of separate issues is not necessary. It makes two things clear, viz., (i) The appellants were taking benefit of agreement dated 01.02.1995, and also shelter of Section 53-A of the T.P. Act. And; (ii) The appellants wanted to have two more issues framed on those aspects. What is important is that although the Court did not frame these issues, but observed that these issues are covered under issue No.7, which is with regard to ownership and possession of the respondents over the shop, which means that the appellants were aware that they had to lead evidence with regard to the agreement dated 01.02.1995, as well as their rights under Section 53-A of the T.P. Act. It is after 03.09.2022 that the appellants did adduce their evidence. Therefore, this Court is of the view that the appellants knew the existence and validity of agreement dated 01.02.1995, and benefit of Section 53-A of the T.P. Act, which the appellants wanted to take shelter, was covered under issue no.7 framed in the suit, and, accordingly, the appellants were required to adduce evidence. This Court is of the further view that on 03.09.2022, when in the suit, separate issues on those aspects were not framed, it did not prejudice any of the rights of the appellants.

64. This is one aspect of the matter. The next aspect is with regard to benefit of Section 53-A of the T.P. Act.

65. It has been the case of the appellants that the respondent no.1, Pal Singh Kashyap, and Smt. Rameshwari Devi executed an agreement to sale in favour of Sanjay Kumar on

01.02.1995, and possession given. Hence, the appellants are entitled to the benefit of Section 53-A of the T.P. Act.

66. On the other hand, learned counsel for the respondents submits that in the instant case, the appellants cannot take benefit of Section 53-A of the T.P. Act. He submits that first and foremost, the appellants were required to prove the agreement, and, thereafter, they were further required to prove that they were ready and willing to perform their part under the agreement. It is submitted that there is no pleading with regard to readiness and willingness to perform the part of appellants in the agreement dated 01.02.1995.

67. In support of his contention, learned counsel for the respondents has placed reliance on the principles of law, as laid down by the Hon'ble Supreme Court in the case of V.R. Sudhakara Rao and Others v. T.V. Kameswari, (2007) 6 SCC 650.

68. In the case of V.R. Sudhakara Rao (*supra*), the Hon'ble Supreme Court discussed the effect of Section 53-A of the T.P. Act, and in Para Nos. 15 and 16, observed as follows:-

“**15.** First it would be necessary to deal with the effect of Section 53-A of the TP Act. It is fairly accepted that in the case of an oral agreement of sale the defence under Section 53-A of the TP Act is not available to a party who alleges to be in possession of the property.”

“**16.** The High Court has rightly concluded that there is no clear proof relating to the other terms of condition. The relief of specific performance is discretionary relief and except the oral evidence, there is no clear evidence to prove several of the essential terms which have been taken note of by the High Court. The High Court, on analysing the evidence, has come to hold that except Exhibit B-1 and the oral evidence of DW 1 and DW 2, there is no other clear proof relating to the other terms and conditions of the contract which can be termed as essential conditions like delivery of possession and also the obtaining of permission from the Urban Land Ceiling Authorities and therefore, it cannot be said that all the essential terms and conditions of a well-concluded contract had been established in the case at hand.”

69. Learned counsel for the respondents also submitted that the agreement dated 01.02.1995 is not stamped properly, hence, it cannot be read into evidence. In support of his contention, he would refer to the principles of law, as laid down by the Hon'ble Supreme Court in the case of Avinash Kumar Chauhan v. Vijay Krishna Mishra, (2009) 2 SCC 532.

70. In the case of Avinash Kumar Chauhan (*supra*), the Hon'ble Supreme Court discussed the scope of Section 35 of the Stamp Act, 1899, and in Para No.25 observed as follows:-

“25. Section 35 of the Act, however, rules out applicability of such provision as it is categorically provided therein that a document of this nature shall not be admitted for any purpose whatsoever. If all purposes for which the document is sought to be brought in evidence are excluded, we fail to see any reason as to how the document would be admissible for collateral purposes.”

71. It is also submitted by learned counsel or the respondents that on the one hand, the appellants have taken plea of adverse possession in para no.9 of their written statements, and on the other hand, they have sought protection of Section 53-A of the T.P. Act by virtue of incorporating Para No.6-A in their written statements. But, it is argued that both these pleas are self destructive. In support of his contention, learned counsel for the respondents has placed reliance on the principles of law, as laid down by the Hon'ble Supreme Court in the case of Roop Singh (Dead) v. Ram Singh (Dead) (2000) 3 SCC 708.

72. In the case of Roop Singh (*supra*), the Hon'ble Supreme Court, in Para No.9 of the judgment, observed that, “...It is also to be stated that the pleas of adverse possession and retaining the possession by operation of Section 53-A of the Transfer of Property Act are inconsistent with each other. Once it

is admitted by implication that the plaintiff came into possession of the land lawfully under the agreement and continued to remain in possession till the date of the suit, the plea of adverse possession would not be available to the defendant unless it has been asserted and pointed out hostile animus of retaining possession as an owner after getting in possession of the land.”

73. Learned counsel for the respondents further submitted that initially, the respondents were the owners of the shop. It is admitted to the appellants. They claimed that in the Year 1993, it was purchased by them for Rs. 3,95,000/-, and, subsequently, a case has been developed by the appellants that on 01.02.1995, the respondent no.1, Pal Singh Kashyap, and Smt. Rameshwari Devi executed an agreement to sale along with possession in favour of Sanjay Kumar, who happens to be the son of appellant no.1, Subhash Chand Arora and the brother of appellant no.2, Ajay Kumar Arora. It is argued that in order to take benefit of Section 53-A of the T.P. Act, it was incumbent upon the appellants to plead that they came in possession of the shop pursuant to the agreement. It is not pleaded. It is argued that if the appellants were in possession of the shop prior to the agreement dated 01.02.1995, they should have stated that after execution of agreement to sale on 01.02.1995, their possession changed. In support of his contention, learned counsel has placed reliance on the principles of law as laid down by the Hon'ble Supreme Court in the case of Nanjegowda and another v. Gangamma and Others, (2011) 13 SCC 232, Mool Chand Bakhru and another v. Rohan and Others, (2002) 2 SCC 612, and D.S. Parvathamma v. A. Srinivasam, (2003) 4 SCC 705.

74. In the case of Nanjegowda (*supra*), the Hon'ble Supreme Court discussed the scope of Section 53-A of the T.P. Act. In Para No.9 of the judgment, the Hon'ble Supreme Court observed as follows:-

“9. From a plain reading of the aforesaid provision, it is evident that a party can take shelter behind this provision only when the following conditions are fulfilled. They are:

- (i) The contract should have been in writing signed by or on behalf of the transferor;
- (ii) The transferee should have got possession of the immovable property covered by the contract;
- (iii) The transferee should have done some act in furtherance of the contract; and
- (iv) The transferee has either performed his part of the contract or is willing to perform his part of the contract.

A party can take advantage of this provision only when it satisfies all the conditions aforesaid. All the postulates are sine qua non and a party cannot derive benefit by fulfilling one or more conditions.”

75. In the case of Mool Chand Bakhru (*supra*), the Hon'ble Supreme Court further discussed the scope of Section 53-A of the T.P. Act, and in Para Nos. 11 and 12 observed as follows:-

“11. Section 53-A provides that where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty and the transferee has, in part-performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part-performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract then he is entitled to protect his possession in respect of the property of which he was put in possession in part-performance of the agreement to sell.

12. This Court in Nathulal v. Phoolchand, (1969) 3 SCC 120 while interpreting Section 53-A culled out the following conditions to be fulfilled for making out the defence of part-performance to an action in ejectment by the owner, as under: (SCC p. 123, para 9)

- “9. (1) that the transferor has contracted to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty;
- (2) that the transferee has, in part-performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession continues in possession in part-performance of the contract;
 - (3) that the transferee has done some act in furtherance of the contract; and
 - (4) that the transferee has performed or is willing to perform his part of the contract.”

After culling out the aforesaid conditions, it was held: (SCC p. 123, para 9)

“If these conditions are fulfilled then notwithstanding that the contract, though required to be registered, has not been registered,

or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him is debarred from enforcing against the transferee any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract.”

76. In Para No.15 of the judgment in the case of Mool Chand Bakhru (*supra*), the Hon’ble Supreme Court further observed that, **“ ...Written agreement has to precede the putting of the proposed vendee in possession of the property...”**

77. In the case of D.S. Parvathamma (*supra*), the Hon’ble Supreme Court, *inter alia*, observed that, **“...When a person already in possession of the property in some other capacity enters into a contract to purchase the property, to confer the benefit of protecting possession under the plea of part-performance, his act effective from that day must be consistent with the contract alleged and also such as cannot be referred to the preceding title...”**

78. Learned Senior Counsel for the appellants has also argued that the trial court did not record any finding with regard to Section 53-A of the T.P. Act.

79. To it, learned counsel for the respondents replied that there is finding with regard to Section 53-A of the T.P. Act. He submits that if it has not been categorically recorded, this Court, being the first appellate court, may correct any mistake that has been made.

80. The appellants have filed an agreement to sale dated 01.02.1995 along with List 88^{C1}. It is 89^{A1} on record. It is an agreement to sale. Has it been proved?

81. On behalf of the appellants, Ajay Kumar Arora has been examined as DW1. In Para No.15 of his examination in chief, DW1, Ajay Kumar Arora, has stated that the respondent no.1, Pal Singh Kashyap, and his wife Smt. Rameshwari Devi, executed an agreement to sale with possession on 01.02.1995 in favour of Sanjay Kumar, who is the son of appellant no.1, Subhash Chand Arora and the brother of appellant no.2, Ajay Kumar Arora, and, accordingly, possession was given. He has identified signature of the respondent no.1, Pal Singh Kashyap, on the agreement to sale.

82. What is the basis of this identification? DW1, Ajay Kumar Arora, has not stated that he has ever seen the respondent no.1, Pal Singh Kashyap, writing and signing before him. The document was not executed before DW1, Ajay Kumar Arora.

83. In his cross examination, DW1, Ajay Kumar Arora, has stated that the agreement to sale was not executed in his presence. It was notarized by Advocate Ramesh Chand. He could not reveal the name of the witnesses. In the first paragraph of his cross examination dated 22.05.2023, he could not reveal much about the agreement. In the second paragraph of his cross examination dated 22.05.2023, DW1, Ajay Kumar Arora, has further stated that pursuant to the agreement dated 01.02.1995, the sale deed was not executed in favour of the appellant no.1, Subhash Chand Arora, and the appellant no.1, Subhash Chand Arora, did not pursue any remedy in the competent court for execution of the sale deed by the respondent no.1, Pal Singh Kashyap and his wife Smt. Rameshwari Devi. In the same cross examination, in paragraph no.3, DW1, Ajay Kumar Arora, says that, in fact, they had received possession in the Year 1993.

84. The person, in whose favour the agreement to sale was executed, is reported to have died in the Year 2011. Who prepared this agreement? Who were its witnesses? It has not been proved by the appellants. In fact, this agreement to sale dated 01.02.1995 is not proved. It cannot be read into evidence.

85. It has been the case of the appellants that in the year 1993, the respondent no.1, Pal Singh Kashyap and his wife Smt. Rameshwari Devi, had sold the shop to the appellant no.1, Subhash Chand Arora, for Rs. 3,95,000/-, and possession was given. If it is so, how, by virtue of agreement dated 01.02.1995, possession of the shop was again given to Sanjay Kumar? It is change of possession. Sanjay Kumar is a different person. Though, he is son of the appellant no.1, Subhash Chand Arora and the brother of the appellant no.2, Ajay Kumar Arora, but he had a distinct identity. It does not record that pursuant to the agreement dated 01.02.1995, the appellants or any of them did get possession, or/and it also does not record that the appellants were already into the possession of the shop, and they continued in the possession of the shop after execution of agreement to sale dated 01.02.1995. Although, as stated, the agreement to sale dated 01.02.1995 is not in favour of the appellants. It is in favour of Sanjay Kumar, who is a distinct person.

86. The appellants did not prove the agreement to sale. Secondly, the agreement to sale was not in favour of the appellants or any of them. It was in favour of one Sanjay Kumar, who is a distinct person, though stated to be not alive now.

87. In the impugned judgment, in Para Nos. 18, 19 and 20, discussion has been made with regard to agreement to sale and applicability of Section 53-A of the T.P. Act. In Para 19 of the impugned judgment, it is recorded that the agreement to sale dated 01.02.1995 is unregistered. Discussion has been made with regard to Section 53-A of the T.P. Act, and agreement dated 01.02.1995.

88. In view of the foregoing discussion, this Court concludes as follows:-

- (i) On 03.09.2022, when in the suit separate issues on the agreement dated 01.02.1995, and applicability of Section 53-A of the T.P. Act were not framed, it did not prejudice any of the rights of the appellants.
- (ii) The agreement to sale dated 01.02.1995 has not been proved.
- (iii) Even for the sake of arguments, if agreement dated 01.02.1995 is read into evidence, it is not in favour of the appellants or any of them. It is in favour of one Sanjay Kumar, who was a distinct person in his own capacity.
- (iv) The agreement to sale dated 01.02.1995 does not record that the appellants were already in the possession of the shop and pursuant to the agreement to sale dated 01.02.1995, they further continued the possession of the shop. This is important because as per the agreement to sale dated 01.02.1995, the possession was given to Sanjay Kumar, and not to the appellants or any of them.

(v) The appellants could not even establish that they were even ready and willing to perform their part of the agreement dated 01.02.1995. In fact, the appellants are not party to the agreement dated 01.02.1995.

(vi) The trial court has discussed the agreement to sale.

89. Therefore, on the basis of analysis made above, this Court is of the view that the appellants are not entitled to get the benefit of Section 53-A of the T.P. Act.

90. Accordingly, the Point for determination no.2 is decided.

91. The court below has framed distinct issues; after having discussed the oral evidence as well as documents filed by the plaintiff, finding on each issue has been made.

92. This Court has already concluded that the suit filed by the respondents was not barred by the provisions of Order 7 Rule 11 of CPC and that the appellants are not entitled to get the benefit of Section 53-A of the T.P. Act, therefore, this Court is of the considered view that the trial court has not committed any error in decreeing the suit filed by the respondents. The judgment and decree passed by the trial court does not require any interference. Accordingly, the first appeal deserves to be dismissed being devoid of merit.

93. The first appeal is dismissed.

94. The judgment and decree dated 30.07.2024, passed by the court below in Original Suit No.178 of 2015, Pal Singh Kashyap and others v. Subhash Chand Arora and another, is affirmed.

(Ravindra Maithani, J)
20.08.2026

Ravi Bisht