



2026:AHC:96071

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 287 of 2026

Devendra Kumar Maurya

.....Appellant(s)

Versus

Tanvez Alvi And 3 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Nitin Kumar Agrawal
Counsel for Respondent(s)	:	

Court No. - 39

HON'BLE ABDUL SHAHID, J.

1. Heard learned counsel for the appellant/plaintiff. Perused the record.
2. The present FAFO has been preferred against the impugned judgment and order dated 14.1.2026 passed by the Civil Judge (Senior Division), Aligarh, by which Application Paper No. 7C filed by the appellant/plaintiff to grant the temporary injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure has been rejected filed in Suit No. 240 of 2024.
3. Learned counsel for the appellant/plaintiff has submitted that the appellant had filed Original Suit No. 240 of 2024 before the learned Trial Court. The appellant's application for a temporary injunction was rejected by the learned Trial Court on incorrect grounds.
4. Learned counsel for the appellant relied on the relevant agreement executed between the appellant/plaintiff, Devendra Kumar, as tenant, and respondent no. 2, Subhash Chandra Agarwal, who is now deceased and represented by his legal heirs, 2/1 Sushma Agarwal and 2/2 Shobhit Jindal. He further referred to paragraph no. 30 of the said agreement dated 5.6.1998, wherein the first party, Subhash Chandra Agarwal, had taken an amount of Rs. 2,20,000/- as security, which was to be repaid to Devendra Kumar at the time of vacation of the alleged shop. The agreement was to stand discharged on 1.6.1998. Learned counsel submitted that the said amount constituted the sale consideration; however, despite the existence of the agreement, respondent no. 2, Subhash Chandra Agarwal, had executed a registered sale deed in favor of respondent no. 1/defendant no. 1, Tanvez Alvi, on 29.1.2013.
5. Learned counsel for the appellant next submitted that the appellant had filed Original Suit No. 249 of 2024, Devendra Kumar Maurya/plaintiff/appellant vs. Tanvez Alvi/defendant no. 1/respondent no. 1 (purchaser of the property) and defendant no. 2, Subhash Chandra Agarwal (since deceased) through his legal heirs, 2/1 Sushma Agarwal and 2/2 Shobhit Jindal. In the said suit, the appellant prayed that the registered sale deed executed by Subhash Chandra Agarwal in favor of Tanvez Alvi/respondent no. 1, registered at the Registrar Office of the Sub-Registrar, Aligarh, on 29.1.2013, be declared null and void, and that he be declared the owner/tenant in possession of the said premises on the basis of the relevant agreement dated 5.6.1998 and the verbal agreement to sell dated 20.5.2012. The appellant further sought relief that the defendants be permanently restrained from taking possession or interfering with the peaceful possession and use of the said premises based on the registered sale deed dated 29.1.2013.

6. Learned counsel for the appellant argued that defendant no. 1/respondent no. 1, Tanvez Alvi, is not a bona fide purchaser or owner of the premises in question. He relied on paragraph no. 3 of the plaint, which states that he was the tenant of the alleged shop with effect from 5.6.1998 and became the owner after making a payment of Rs. 3 lakhs on 20.5.2012 before witnesses. The appellant/plaintiff, Devendra Kumar, consistently requested respondent no. 2, Subhash Chandra Agarwal, to execute the sale deed in his favor, but he allegedly refused despite receiving the payment. The appellant has been in possession of the premises, which respondent no. 1 is now demanding. Learned counsel also relied on the Amin Report dated 29.3.2024, which confirms that the appellant is in actual possession of the premises. He contended that his suit is covered under Section 53A of the Transfer of Property Act, 1882, and further protected under Section 23 of the Provincial Small Causes Courts Act, 1887.

7. For the sake of brevity, the Transfer of Property Act, 1882 will hereinafter be referred to as "the Act, 1882," and the Provincial Small Causes Courts Act, 1887 will be referred to as "the Act, 1887."

8. Section 23 of the Act, 1887 is as follows:

"23. Return of plaints in suits involving questions of title.—(1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immovable property or other title which such a Court cannot finally determine, the Court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title.

(2) When a Court returns a plaint under sub-section (1), it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure (14 of 1882) and make such order with respect to costs as it deems just, and the Court shall, for the purposes of the 1 Indian Limitation Act, 1877 (15 of 1877), be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction."

9. The said provisions of Section 23 of the Act, 1887, could be invoked only in cases pending before the Small Causes Court. This section does not provide any assistance in the present suit, which has been filed by the appellant/plaintiff himself.

10. The next submission of the learned counsel for the appellant is that the suit of the appellant/plaintiff is covered under Section 53A of the Act, 1882, which is as follows:

"53A. Part performance.—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, **notwithstanding that** 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."

11. In the said case, the plaintiff/appellant relied on the relevant agreement, which could not be considered an agreement to sell. There has been no valid and effective contract or agreement to sell, duly registered, between respondent no. 2 and the appellant/plaintiff. There has been no transfer of possession pursuant to any registered agreement to sell between the parties, i.e., the plaintiff/appellant and respondent no. 2. The averments made by the appellant/plaintiff regarding the payment of security money of Rs. 2,20,000/- at the time of the initiation of the tenancy in the year 1988, and the alleged verbal statements about such payment, do not amount to a valid sale consideration in continuation of or in furtherance to a registered sale deed or registered agreement to sell.

12. In view thereof, the appellant/plaintiff is not entitled to any rights under Section 53A of the Act, 1882, although the final determination will be made by the learned Trial Court after the completion and appreciation of evidence. Prima facie, neither Section 23 of the Act, 1887, nor Section 53A of the Act, 1882, provides any legal protection that would safeguard the interests of the appellant/plaintiff.

13. Learned counsel for the appellant relied upon the law laid down by the Hon'ble Supreme Court in **Anathula Sudhakar vs. P. Buchi Reddy (Dead) by LRs & Ors., 2008 AIR (SC) 2033**, wherein the subject matter involved two registered sale deeds. Therefore, the decision is not favorable to the appellant/plaintiff.

14. Learned counsel for the appellant has further relied on the law laid down by the Hon'ble Supreme Court in **A. Subramanian and another Vs. R. Pannarselvam; 2021 AIR (SC) 821**, wherein important points have been decided:

- (1) Possession is good against all but true owner.
- (2) Plaintiff who has proved his right over property as well as possession over suit property, he is entitled for decree of injunction.
- (3) Even trespasser who is in established possession of property could obtain injunction.

15. Whereas in the facts and circumstances of the said case, the appellant had entered into the premises in question on the basis of the relevant agreement. Hence his possession is good against all but true owner. Previously true was respondent no. 2/Subhash Chandra Agarwal and when he has transferred the said premises by way of registered sale deed in favour of respondent no. 1/Tanvez Alvi then he became entered into the issues of defendant no. 2/respondent no. 2/Subhash Chandra Agarwal and he is bonafide purchaser and owner of the property in question. Hence the said ruling does not provide any favour to the appellant/plaintiff.

16. He has also relied on the law laid down by the Hon'ble Supreme Court in **Balkrishna Dattatraya Galande vs. Balkrishna Rambharose Gupta and Another, 2019 AIR (SC) 933**, wherein the facts of that case are entirely different. In the present case, no suit has been filed by the defendants, who are the true owners and, as of now, continue to be the lawful owners.

17. Learned counsel has next relied on the law laid down by the Hon'ble Supreme Court in **R.K. Mohammed Ubaidullah vs. Hajee C. Abdul Wahab (Dead) by LRs., 2001 AIR (SC) 1658**. He submitted that, as per Section 3 of the Act, 1882 and Section 19(b) of the Specific Relief Act, 1963, a bona fide purchaser is required to make proper enquiries. A person in possession is deemed to have some title or interest in the property; therefore, a prospective purchaser is obliged to make due enquiry regarding

the status of such person in possession and any lease, agreement, or deed executed by the owner in his favour. If such enquiry is not made, the purchaser is deemed to have notice of the existing affairs and cannot claim to be a bona fide purchaser if there is any encumbrance on the title of the property on the date of purchase or agreement to purchase.

18. This is essentially a question of fact. Prima facie, respondent no. 1 appears to be a bona fide purchaser. There is no dispute regarding the title of the seller. Defendant no. 1/respondent no. 1 has not disputed the ownership rights of defendant no. 2/respondent no. 2, Subhash Chandra Agarwal, who is now deceased and represented in the present suit through his legal heirs. Prima facie, no case is made out, nor is there any balance of convenience in favour of the appellant/plaintiff. There is also no document evidencing ownership of the premises in question in favour of the appellant.

19. It is well-settled law that an injunction can be granted only if the appellant/plaintiff establishes a prima facie case.

20. In view of the aforesaid facts, reasons, and circumstances, there is neither any illegality, irregularity, nor perversity in the impugned order dated 14.1.2026 passed by the Civil Judge (Senior Division), Aligarh. The FAFO is liable to be dismissed and is dismissed accordingly.

April 27, 2026
M. Tarik

(Abdul Shahid,J.)