

RSA-1225-2004 (O&M),  
RSA-1226-2004 (O&M) and  
RSA-1228-2004 (O&M)

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

1. RSA-1225-2004 (O&M)  
Date of decision : 19.02.2020

Mehanga Ram (since deceased) through his LRs

...Appellant(s)

Versus

Kapil Vij (since deceased) through his LRs and others

...Respondents

2. RSA-1226-2004 (O&M)  
Date of decision : 19.02.2020

Mohna Ram (since deceased) through his LRs

...Appellant(s)

Versus

Kapil Vij (since deceased) through his LRs and others

...Respondents

3. RSA-1228-2004 (O&M)  
Date of decision : 19.02.2020

Karam Chand (since deceased) through his LRs

...Appellant(s)

Versus

Kapil Vij (since deceased) through his LRs and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.**

Present: Mr. L.N. Verma, Advocate for the appellant(s)  
(In all the appeals)

RSA-1225-2004 (O&M),  
RSA-1226-2004 (O&M) and  
RSA-1228-2004 (O&M)

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Mr. Arun Jain, Sr. Advocate with  
Mr. Amit Jain, Advocate for respondent No.1  
(In all the appeals)

Mr. Sandeep Punchhi, Advocate for newly added respondents  
(In all the appeals)

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**ANIL KSHETARPAL, J.**

**CM-16643-C-2019 in RSA-1225-2004**

Application is allowed.

Subsequent purchaser is impleaded as respondent No.6.

Amended memo of parties is taken on record.

**CM-16636-C-2019 in RSA-1226-2004**

Application is allowed.

Subsequent purchaser is impleaded as respondent No.6.

Amended memo of parties is taken on record.

**CM-16637-C-2019 in RSA-1228-2004**

Application is allowed.

Subsequent purchaser is impleaded as respondent No.6.

Amended memo of parties is taken on record.

**Main cases**

This judgment shall dispose of three connected appeals bearing  
RSA Nos.1225, 1226 and 1228 of 2004.

Learned trial Court had disposed of 8 identical suits by a  
common judgment and the learned First Appellate Court also dismissed all  
the appeals by a common judgment.

The defendants-appellants have filed these three appeals against

the concurrent findings of fact arrived at by the Courts below while decreeing the suit filed by the plaintiffs for possession of the immovable property on the basis of title.

The defendants contested the respective suits by pleading that, previously, they were tenants in possession of the land and subsequently their possession is pursuant to the agreement to sell dated 27.03.1978.

Both the Courts below, on appreciation of evidence, have found that the defendants have failed to prove their defence, hence the plaintiffs are entitled to the possession of the suit property.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel appearing for the appellants has submitted that the plaintiffs had filed the present suit by concealing the fact of agreement to sell dated 27.03.1978. He further submitted that the plaintiffs have paid the amounts on various occasions and since the plaintiffs were at fault and did not perform their part of the contract, therefore, the suit filed by the plaintiffs could not be decreed. He submitted that the defendants-appellants are entitled to protect their possession in accordance with Section 53-A of the Transfer of Property Act, 1882 (hereinafter to be referred as “the 1882 Act”).

On the other hand, learned counsel for the respondents has submitted that the defendants have failed to prove that their possession is with reference to the agreement to sell. He, while reading a copy of the agreement to sell, has submitted that as per the agreement to sell, the

possession was to be delivered at the time of registration of the sale deed. He further submitted that the defendants have also failed to prove that they were already in possession as the tenants. He further submitted that in the written statement, the defendants have not pleaded that the plaintiffs had not performed their part of the contract. He further contended that the defendants have never filed the suit for specific performance of the agreement to sell. Hence, he argued that the protection under Section 53-A of the 1882 Act would not be applicable to the appellants.

This Court has analyzed the arguments of learned counsel for the parties.

On careful reading of the agreement to sell, it is apparent that the possession of the defendants-appellants is not with reference to the agreement to sell. In the agreement to sell, neither it is recited that the possession of the land agreed to be sold has been delivered to the defendants nor it has been acknowledged that the defendants who are already in possession would continue in possession. Thus, Section 53-A of the 1882 Act would not be applicable. Still further, it is the positive case of the plaintiffs that the defendants entered into forcible possession of the property.

The present suit has been filed on the basis of title. It is apparent that the defendants-appellants have failed to prove any right, title or interest in the property or they have any right to continue in possession. Once, the possession of the plaintiffs is not pursuant to the agreement to sell, Section 53-A of the 1882 Act would not be applicable. Undisputedly, the defendants did not file a suit for specific performance of the agreement to sell.

The arguments of learned counsel for the appellants that the suit filed by the plaintiffs is liable to be dismissed on the ground of concealment of fact, is to be appreciated in proper perspective. The plaintiffs had filed a simplicitor suit for possession on the basis of title. The plaintiffs had pleaded that the defendants have forcibly entered into possession of the land owned by them. It was further pleaded that the defendants have failed to perform their part of the contract, therefore, it cannot be said that the plaintiffs had concealed the material facts.

Once the suit filed by the plaintiffs was based on their entitlement to possession on the basis of title and the defendants failed to prove their entitlement to continue in possession, therefore, the Courts have correctly passed a decree for possession.

Hence, there is no ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Accordingly, all the three abovementioned Regular Second Appeals are dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

**19.02.2020**

*Pawan*

**(ANIL KSHETARPAL)**  
**JUDGE**

**Whether speaking/reasoned:- Yes/No**

**Whether reportable:- Yes/No**