

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****220****RSA-3405-2010 (O&M)****Date of decision: 10.11.2025****Joginder Singh****...Appellant(s)****Vs.****Surjit Kaur and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

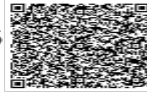
Present:- Ms. Parul Saini, Advocate for
Mr. Pritam Singh Saini, Advocate for the appellant.

Mr. Namit Gautam, Advocate for respondents
No. 3 to 5 and 7 to 9.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned Courts below, whereby suit filed by the appellant for mandatory injunction, has been dismissed by both the Courts below.

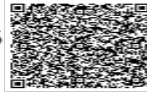
2. The pleaded case of the plaintiff is that the plaintiff had permitted defendants No.1 to 8 and their family members to look after and use the suit land as licensee. Plaintiff had permitted the said defendants to stay in the suit property as licensee on the condition that they would vacate the same as and when required by the plaintiff. The said defendants had accordingly continued to use the suit land without payment of any license fee. Plaintiff revoked the land license in February 1995 and asked defendants to vacate the same. However, the defendants



had refused to do the needful. Hence, the present suit was filed on 31.05.1995

3. Vide judgment and decree dated 08.11.2007, learned Civil Judge (Junior Division), Ludhiana had dismissed the suit of the plaintiff with costs. The appeal filed by the plaintiff was dismissed by the learned Additional District Judge, Ludhiana vide judgment and decree dated 29.03.2010 with costs. Hence, present Second Appeal by the plaintiff.

4. It is *inter alia* submitted by learned counsel for the plaintiff that learned Courts below were in error in non-suiting the appellant as they failed to appreciate that plaintiff had led sufficient evidence to prove that he had permitted the predecessor-in-interest of the defendants to live in plot as licensee. It is submitted that in the year 1971 and 1977, Agreement to Sell was executed. The defendants neither paid the sale consideration nor sought execution of the Sale Deed. As such, due to non carrying out of their part of the Agreement, the earnest money paid by the defendants was forfeited; and Agreement to Sell became non-est after lapse of more than 12 years. Yet, plaintiff had allowed the respondents to remain in possession as licensee as per their status before the execution of the said Agreement. However, defendants had taken undue advantage of the trust reposed in them by the plaintiff who permitted them to continue living in the said plot. It has been contended that act of the defendants itself is in contravention of the law laid down by Hon'ble Supreme Court. However, these facts have not been appreciated by both the Courts below.



5. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the Courts below be set aside.

6. *Per contra*, learned counsel for the respondents vehemently opposes submissions advanced on behalf of the plaintiff and submits that the plaintiff and defendant No.9 are real brothers. Plaintiff failed to prove on record any License Deed allegedly executed by him in favour of defendants No. 1 to 8. From the own case of the plaintiff, it is clear that defendants were in permissive possession of the suit property. Moreover, plaintiff in evidence has admitted Agreement to Sell dated 30.08.1971; and Agreement dated 20.06.1977 executed in favour of defendant No.7, 8 and 5. As such, defendants are protected under provisions of Section 53 of the Transfer of Property Act. Learned counsel accordingly prays for dismissal of the present appeal.

7. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in great detail. I find merit in the submissions advanced on behalf of the respondents.

8. It is the admitted case of the parties that plaintiff is owner of the suit property as evident from Jamabandi Ex.P1. The record amply bares out that the plaintiff had admitted that he had executed Agreement to Sell dated 20.06.1997 Ex.D4 and dated 30.08.1971 Ex.D5 in favour of Dayal Singh (predecessor of defendants No.7 & 8) and in favour of Surjit Singh/ defendant No.5. Plaintiff has also admitted that he had executed another Agreement to Sell dated 30.08.1971 Ex.DW3/1 in favour of Dayal



Singh/defendant No.1. As such, plea of the plaintiff, the defendants were in possession of the suit property as licensee is contradictory. Furthermore, plaintiff failed to disclose any date, month and year of the said alleged license. Nowhere in the record have any details of the alleged license been mentioned; even the terms and conditions of the alleged license as settled between the parties, have not been disclosed. Thus, defendants were clearly in permissive possession of the suit property which they had occupied in pursuance to the execution of the Agreement to Sell. The admission of the plaintiff himself belies his case that defendants were in possession of the suit property as licensee.

9. Plea of the defendants that they were rendered owners of the suit property by way of adverse possession, was rejected by both the Courts below as permissive possession howsoever long cannot ripen into ownership, and defendants had failed to prove their possession over the suit property was hostile. Plaintiff himself has admitted in his replication that defendants had come in possession of the suit property on the basis of and in pursuance to the Agreement to Sell. Plaintiff has also admitted in his cross-examination that he had entered into Agreement to Sell with the defendants for about 24 years back; and that possession was delivered to the defendants on the basis of Agreement to Sell.

10. Learned Courts below have also found that the plea of the plaintiff that full and final sale consideration was not paid, to be false. Learned Courts below have correctly reasoned that if this was so, then there was no reason or occasion for the plaintiff to keep silent before filing



the instant suit. Plaintiff is also unable to explain that if the defendants had not paid full and final sale consideration then why he had not filed suit for specific performance of the Agreement for more than 24 years.

11. It has also come on record that the plaintiff has not objected to the construction raised by the defendants over the suit property after demolishing the old construction. As such, plaintiff is estopped of his own act and conduct from filing the present suit. Moreover, rights of the defendants are protected under Section 53 of the Transfer of Property Act. Where a Contract of sale is not merely an Agreement to Sell but more than that because practically the transaction was complete in all respects except the execution of regular sale deed and registration of sale deed. Such contract of sale definitely creates an interest in the property and the same is protected under Section 53A of the Transfer of Property Act. In this regard, reference may be made to a judgment passed by Hon'ble Supreme Court in **Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra (dead) through Lrs., (SC) : Law Finder Doc Id # 76872**; wherein it is held as under:-

“A. Transfer of Property Act, Section 53A - Part performance - Protection of possession delivered in part performance of agreement to sell - Equity of part performance as it developed in England has been incorporated in Section 53A - It is an equitable doctrine which creates a bar of estoppel in favour of the transferee against the transferor who tries to back out of the agreement and tries to get possession back - For attracting the principle of Section 53A, the transaction must satisfy certain necessary conditions - Once the



conditions (stated) are satisfied, Section 53A will apply even though a registered deed conveying title is not executed as proposed by the agreement.

The relevant para of this judgment is as under:-

*“8. It is seen that many a times a transferee takes possession of the property in part performance of the contract and he is willing to perform his part of the contract. However, the transferor some how or the other does not complete the transaction by executing a registered deed in favour of the transferee, which is required under the law. At times, he tries to get back the possession of the property. In equity the Courts in England held that it would be unfair to allow the transferor to take advantage of his own fault and evict the transferee from the property. The doctrine of part performance aims at protecting the possession of such transferee provided certain conditions contemplated by Section 53A are fulfilled. The essential conditions which are required to be fulfilled if a transferee wants to defend or protect his possession under Section 53A of the Act have been culled out by this Court in **Shrimant Shamrao Suryavanshi and another v. Pralhad Bhairoba Suryavanshi, 2002(1) RCR (Rent) 302 : 2002(3) SCC 676**, are :*

“(1) There must be a contract to transfer for consideration of any immovable property;

(2) the contract must be in writing, signed by the transferor, or by someone on his behalf;

(3) the writing must be in such words from which the terms necessary to construe the transfer can be ascertained;

(4) the transferee must in part performance of the contract take possession of the property, or of any part thereof;

(5) the transferee must have done some act in furtherance of the contract; and



(6) the transferee must have performed or be willing to perform his part of the contract."

If these conditions are fulfilled then in a given case there is an equity in favour of the proposed transferee who can protect his possession against the proposed transferor even though a registered deed conveying the title is not executed by the proposed transferor. In such a situation equitable doctrine of part performance provided under Section 53A comes into play and provides that "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."

12. The above said view of the Hon'ble Supreme Court has been followed by Madhya Pradesh High Court in **M/s Chetak Constructions Limited v. Om Prakash and Others, (M.P.) : Law Finder Doc Id # 137054**, and by Kerala High Court in **St. John's Welfare Centre v. Eastern Province of Sisters of St. Charles (Kerala)(DB) : Law Finder Doc Id # 700209**.

13. The above said view has also been taken by the Hon'ble Supreme Court itself in **Mool Chand Bakhru v. Rohan, (SC) : Law Finder Doc Id#5964** and **Shrimant Shamrao Suryavanshi v. Pralhad Bhairoba Suryavanshi, (SC) : Law Finder Doc Id # 3142**.

14. Learned counsel for the appellant is unable to controvert or dispute the factual and legal position as noted above.

15. In view of the above, I find no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.
16. Pending applications, if any, stand disposed of.

10.11.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:Yes/No

Whether reportable:Yes/No