

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

225

RSA-4334-2014 (O&M)

Date of decision: 01.09.2025

Chander Kala

...Appellant(s)

Vs.

Krishan Lal and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Shweta Beniwal, Advocate for
Mr. Aman Pal, Advocate for the appellant.

NIDHI GUPTA, J.

CM-10043-C-2014

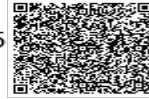
Prayer in this application filed under Section 151 CPC is for condonation of delay of 44 days in refiling the accompanying appeal.

2. For the reasons mentioned in the application which is duly supported by an affidavit of the applicant/appellant, the same is allowed and delay of 44 days in refiling the appeal is condoned.

CM-10044-C-2014

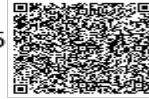
Prayer in this application filed under Section 5 of Limitation Act is for condonation of delay of 6 days in filing the accompanying appeal.

2. For the reasons mentioned in the application which is duly supported by an affidavit of the applicant/appellant the same is allowed and delay of 6 days in filing the appeal is condoned.

**RSA-4334-2014 (O&M)**

Present Regular Second Appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned Courts below; whereby the suit filed by the plaintiff for perpetual injunction, has been dismissed with costs by both the Courts below.

2. Brief facts of the case are that the appellant had filed a suit for perpetual injunction to restrain the defendants/respondents herein, from interfering in her peaceful possession over the suit property; as well as to restrain the defendants from demolishing the construction. It is the own pleaded case of the plaintiff/appellant that the defendant No.1 is the actual owner of the suit property as mentioned in para 1 of the plaint. Defendant no.1 had executed an Agreement to Sell dated 26.04.2000 in favour of defendant No.2 and consideration amount of Rs.2 lacs was stated to have been paid to defendant No.1 by defendant No.2 and possession of suit property is also handed over to defendant No.2. Thereafter, Defendant No.2, representing himself to be owner of the suit property, had entered into an Agreement to Sell dated 06.04.2005 with the plaintiff for a total sale consideration of Rs.2 lacs which was paid fully and finally in which receipt was also issued. No date for execution of Sale Deed qua the suit property was fixed. Possession of suit property was handed over to the plaintiff by defendant No.2 on 06.04.2025 itself; whereafter plaintiff is in possession of suit property on which, she has raised the construction of double storey as described in the site plan dated 28.10.2006. However, the defendants had threatened to demolish

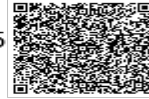


the said construction and were interfering in her possession. Hence, present suit was filed on 30.11.2006.

3. Vide judgment and decree dated 18.03.2011, the Additional Civil Judge (Senior Division), Kaithal had dismissed the suit of the plaintiff with costs. The Civil Appeal filed by the plaintiff was also dismissed with costs by the learned Additional District Judge, Kaithal vide judgment and decree dated 14.01.2014. Hence, present Second Appeal by the plaintiff.

4. It is *inter alia* submitted by learned counsel for the plaintiff that the learned Courts below were in patent error in non-suiting the plaintiff as they failed to appreciate that pursuant to the Agreement to Sell dated 06.04.2005, plaintiff had paid valuable sale consideration of Rs.2 lacs to the defendant No.2 against which receipt was also issued to the plaintiff. It is contended that therefore, full and final payment had been made in favour of defendant No.2. Only then possession was handed over to the plaintiff. It is submitted that thereafter, plaintiff has been in possession of the suit property. Moreover, it has been proved in the learned trial Court that construction had been made in the suit property by the plaintiff according to site plan dated 28.10.2006 in which plaintiff has been residing with her family. The plaintiff had also got the marriage of her daughters solemnized in the said house. However, these factors have not been considered by the learned Courts below. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

5. No other argument is raised on behalf of the appellant.



6. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions made on behalf of the appellant.

7. On a Court query, it has been candidly admitted by learned counsel for the plaintiff that in pursuance to the alleged Agreement to Sell dated 06.04.2005 Ex.P4, no Sale Deed was executed in favour of the appellant. It is admitted position in law that no right accrues from a mere Agreement to Sell. In fact, it is also admitted that defendant No.2 himself was not competent to execute the Agreement to Sell as he was not owner of the suit property; as no Sale Deed had been executed in his favour by defendant No.1. In the Agreement to Sell dated 06.04.2005 Ex.P4 itself, it is clearly mentioned that defendant No.2 is not owner of the suit property; and it is clearly described in the said Agreement that defendant No1 had only executed Agreement to Sell dated 26.04.2000 in favour of defendant No.2. Despite that plaintiff had entered into Agreement to sell with defendant No.2. Therefore, no right could accrue to the plaintiff merely on the basis of Agreement to Sell date 6.4.2005; and especially in the absence of title in favour of her vendor/defendant No.2.

8. Even otherwise, the Agreement Ex.P4 does not bear the signature of the purchaser/plaintiff; and bears signatures of only defendant No.2 and attesting witness. On this ground itself, suit was not maintainable.

9. In view of the above facts, the remedy available to the plaintiff was to file suit for specific performance against defendant No.2 to enforce Agreement dated 06.04.2005 Ex.P4 as plaintiff had no privity of contract with defendant No.1, who is registered owner of the suit property.



10. It has further been correctly held by learned Courts below that the plaintiff is not a transferee within the meaning of Section 53-A of the Transfer of Property Act. As such, plaintiff could not invoke equitable doctrine of part performance to protect her possession against the defendant No.1. In actual fact, possession of plaintiff over the suit property was that of a trespasser; and, therefore, she was not entitled for grant of injunction.

11. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.

12. The present Regular Second Appeal is hereby **dismissed**.

13. Pending applications, if any, stand disposed of.

01.09.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No