

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1541-1987 (O&M)

RAM KISHAN (SINCE DECEASED) THROUGH HIS LRS & OTHERS

.....APPELLANTS

VERSUS

ANAG PAL & ORS.

....RESPONDENTS

1.	The date when the judgment is reserved	20.03.2026
2.	The date when the judgment is pronounced	29.05.2026
3.	The date when the judgment is uploaded	01.06.2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5.	The delay, if any of the pronouncement of full judgment and reason thereof.	Not applicable

CORAM: HON’BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Ritesh Aggarwal, Advocate for the appellants.
Mr. Alok Jain, Advocate
Mr. Kapil Kumar, Advocate
Mr. Mohit Chadha, Advocate for respondent No.1.
Mr. Kulbhushan Sharma, Advocate for the applicant
in CM-65-C-2014 and CM-11891-C-2014.

SANDEEP MOUDGIL, J

1. The present Regular Second Appeal has been preferred by the appellants-plaintiff for setting aside the judgment and decree dated 24.12.1986 passed by learned Additional District Judge-II, Faridabad and also to restore the judgment and decree dated 06.12.1985 passed by the learned Sub Judge Ist Class,

Faridabad declaring the perpetual lease deed dated 20.12.1976 (Ex.P26) and the transfer deed dated 17.09.1981 (Ex.P27) as sham, bogus, ineffective and not binding upon the rights of the appellants/plaintiff.

2. Brief Facts of the Case

The present Regular Second Appeal arises out of a suit for declaration and permanent injunction regarding land measuring 53 Kanals 10 Marlas situated in District Faridabad. The plaintiffs/appellants, namely Sahib Dayal, Ram Kishan and Thakar Dass, claimed themselves to be owners in possession of the suit land after partition of joint holdings. The land, however, was under cultivation and possession of tenants against whom ejectment proceedings had already been initiated by the plaintiffs.

On 20.12.1976, Piarey Lal, acting as General Power of Attorney of the plaintiffs, executed a perpetual lease deed (Ex.P26) in favour of Takhat Shah Singh and Vijay Kumar. Thereafter, on 17.09.1981, Takhat Shah Singh transferred alleged leasehold rights in favour of defendant No.3/respondent No.1 Anang Pal vide registered deed Ex.P27. The plaintiffs challenged both transactions by filing the present suit on 30.09.1981, pleading that the lease deed and subsequent transfer were sham, bogus and paper transactions never intended to be acted upon, as possession of the land remained throughout with the tenants and no actual possession was ever delivered to the lessees.

The Trial Court, vide judgment dated 06.12.1985, decreed the suit and held that:

- the lease deed Ex.P26 was a sham and bogus transaction;
- the transfer deed Ex.P27 in favour of Anang Pal was ineffective;
- the defendants had failed to prove delivery of possession;

- the revenue record and ejectment proceedings clearly established continued possession of tenants under the plaintiffs.

The Trial Court further observed that the defendants could not derive any legal right from a transaction which was never acted upon and consequently restrained the defendants from interfering in the plaintiffs' possession.

Aggrieved against the said decree, Anang Pal preferred an appeal. The Lower Appellate Court partly reversed the findings of the Trial Court. Although it substantially accepted that the lease transaction appeared sham and that respondent No.1 was not in possession, it held that the declaratory relief had abated due to death of plaintiff Sahib Dayal and further treated Anang Pal as a *bona fide* purchaser of leasehold rights entitled to seek possession in due course of law.

Feeling aggrieved by the said judgment and decree of the Lower Appellate Court, the plaintiffs/appellants filed the present Regular Second Appeal before this Court.

I have heard learned counsel for the parties at length and have carefully gone through the pleadings, documentary evidence, judgments and decrees passed by the learned Trial Court as well as the learned Lower Appellate Court, along with the various Civil Miscellaneous Applications filed during the pendency of the present appeal. I have also considered the submissions advanced on behalf of the parties and examined the entire record of the case in detail.

The principal issue involved in the present Regular Second Appeal is:

“Whether the perpetual lease deed dated 20.12.1976/24.12.1976 (Ex.P26) executed by Pyare Lal, acting as General Power of Attorney of the plaintiffs, in favour of defendants No.1 and 2, and the subsequent transfer deed dated 17.09.1981 (Ex.P27) executed in favour of respondent No.1/Anang Pal, were sham, bogus and ineffective transactions not binding upon the rights of

the plaintiffs/appellants, and whether the learned Lower Appellate Court was justified in reversing the findings recorded by the learned Trial Court on Issue No.1?”

ANALYSIS AND FINDINGS

The suit out of which the present appeal arises was instituted on 30.09.1981 by the plaintiffs/appellants seeking declaration that the perpetual lease deed Ex.P26 dated 20.12.1976 registered on 24.12.1976 and the transfer deed Ex.P27 dated 17.09.1981 were sham, bogus and ineffective transactions not binding upon their rights, along with consequential relief of permanent injunction.

Issue No.1 was framed on 08.10.1982 by the court below to determine whether the Pattanama/lease deed dated 24.12.1976 executed by Pyare Lal, acting as General Power of Attorney of the plaintiffs, was liable to be set aside on the grounds pleaded in the plaint. While examining the said issue, it emerges from the judgment dated 06.12.1985 that the real controversy was not merely regarding the authority of the GPA holder to execute the document, but whether the transaction embodied in Ex.P26 dated 20.12.1976 registered on 24.12.1976 was genuine and intended to be acted upon or whether it was merely a paper arrangement created to defeat the rights of the plaintiffs.

From the evidence Ex.P1 to Ex.P28, comprising partition proceedings, ejectment decrees, revisions, execution petitions, jamabandis and khasra girdawaris, it clearly stood established that the possession of the suit land continuously remained with the tenants under the plaintiffs and was never transferred to the alleged lessees. The record further reveals that on the date of execution of Ex.P26 i.e. 20.12.1976, the tenants were already in settled possession and ejectment proceedings against them were actively pending. Significantly, even subsequent to execution and registration of the alleged lease deed, the very same

GPA holder, namely Pyare Lal, continued prosecuting ejectment proceedings on behalf of the plaintiffs against the tenants. This circumstance, by itself, completely demolishes the defence set up by the respondents that possession had ever been delivered pursuant to Ex.P26.

The evidence on record also demonstrated complete absence of proof regarding delivery of possession. Rather, the consistent revenue entries reflected continuous possession of tenants under the plaintiffs. It was in this backdrop that the findings dated 06.12.1985 concluded that Ex.P26 “could not have been acted upon and was never acted upon” and was merely a sham and paper transaction.

An equally important circumstance noticed from the lower court record was the stand of defendant No.2 Vijay Kumar, son of Pyare Lal, who virtually disowned the transaction by pleading that he neither signed the lease deed nor paid any consideration nor had knowledge regarding the same. Such admission materially weakened the defence and reinforced the plaintiffs’ case that the transaction was nominal and collusive in nature.

Consequently, the findings recorded on 06.12.1985 rightly held Ex.P26 dated 20.12.1976/24.12.1976 to be sham, bogus and ineffective and further held that Ex.P27 dated 17.09.1981 executed in favour of respondent No.1/Anang Pal could not confer any valid right, title or interest, the same being founded upon a void and non-existent transaction.

However, while reversing the aforesaid findings vide judgment dated 24.12.1986, the Lower Appellate Court primarily proceeded on technical considerations arising from abatement of declaratory relief consequent upon the death of Sahib Dayal. Significantly, the Appellate Court did not upset the core factual findings regarding continuous possession of tenants, absence of delivery of

possession, pendency of ejectment proceedings and absence of evidence showing implementation of Ex.P26. Despite this, respondent No.1/Anang Pal was still treated as a bona fide purchaser entitled to seek possession in due course of law.

Such reasoning, in the considered opinion of this Court, suffers from patent inconsistency and perversity. Once the foundational transaction Ex.P26 itself stood proved to be sham, nominal and never acted upon, no lawful right could flow from Ex.P27 dated 17.09.1981.

It is a settled principle of law that a transferee cannot derive a better title than that possessed by the transferor himself, and where the root transaction is void, all consequential transactions automatically fall to the ground. Reference in this regard may be made to the well-established doctrine of *nemo dat quod non habet*, meaning thereby that no person can transfer a better title than he himself possesses. Therefore, once Ex.P26 dated 20.12.1976/24.12.1976 itself stood proved to be sham, bogus and never acted upon, the subsequent transfer deed Ex.P27 dated 17.09.1981 executed in favour of respondent No.1 could not legally confer any enforceable right, title or interest.

Applying the aforesaid settled principles to the facts of the present case, this Court is satisfied that the findings recorded on 06.12.1985 were based upon proper appreciation of oral and documentary evidence and did not suffer from any illegality or perversity warranting interference. On the contrary, the reversal dated 24.12.1986 overlooked the material evidence available on record and indeed proceeded on internally contradictory findings.

Accordingly, the findings on Issue No.1 holding Ex.P26 and Ex.P27 to be sham, bogus and ineffective transactions deserve to be restored and are hereby upheld.

Appeal stands allowed.

(SANDEEP MOUDGIL)
JUDGE

29.05.2026

anuradha

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