UKHC010192782026

2026:UHC:9828

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal from Order No.412 of 2026

Smt. Sushila. ……Appellant.

Versus

Sh. Amandeep Singh Chandok. ……Respondent.

Present:
Mr. Rajat Mittal, learned counsel for the appellant.
Mr. Sagar Kothari, learned counsel for the caveator.

Hon'ble Mr. Justice Rakesh Thapliyal, J.

1. The instant appeal has been preferred under Section XLIII Rule 1(r) read with Section 104 of the Code of Civil Procedure, 1908, by the appellant/defendant against the order dated 16.09.2026 passed by the learned Civil Judge (Senior Division), Vikasnagar, District Dehradun in Original Suit No.175 of 2026, "Amandeep Singh Chandok Vs. Smt. Sushila" whereby the application moved by the respondent/plaintiff i.e. 6C2 was allowed by directing the defendant/appellant, herein, not to create any third party interest over the suit property.

2. The brief facts of the case are that the respondent/plaintiff filed a suit for cancellation of the sale deed executed on 31.03.2023, registered on 29.05.2023, on the ground that the entire sale consideration has not been paid, therefore, the sale deed in question is void in terms of Section 54 of the Transfer of Property Act. In the said suit, the 6C2 application was moved for seeking temporary injunction which was allowed and now being aggrieved, the instant appeal is preferred.

3. It is submitted by the learned counsel for the appellant that in fact the suit filed by the respondent/plaintiff is not maintainable in view of the law laid down by the Hon'ble Apex

Court in the case of **"Raziya Begum & others Vs. Nafisa Begum Abdul Hamid and others"** decided on 07.08.2026, wherein, the Hon'ble Apex Court dealt with all these aspects in paragraphs 10 onwards to para 14, which are being reproduced hereinasunder:-

> *"**10.** In **Vidhyadhar** (supra), it was held so in Paragraph Nos. 36, 37 and 38 with respect to Section 54 of the Transfer of Property Act, 1882:—*
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> > *"**36.** The definition indicates that in order to constitute a sale, there must be a transfer of ownership from one person to another, i.e., transfer of all rights and interests in the properties which are possessed by that person are transferred by him to another person. The transferor cannot retain any part of his interest or right in that property or else it would not be a sale. The definition further says that the transfer of ownership has to be for a "price paid or promised or part-paid and part-promised". Price thus constitutes an essential ingredient of the transaction of sale. The words "price paid or promised or part-paid and part-promised" indicate that actual payment of the whole of the price at the time of the execution of sale deed is not a sine qua non to the completion of the sale. Even if the whole of the price is not paid but the document is executed and thereafter registered, if the property is of the value of more than Rs. 100, the sale would be complete.*
> >
> > ***37.** There is a catena of decisions of various High Courts in which it has been held that even if the whole of the price is not paid, the transaction of sale will take effect and the title would pass under that transaction. To cite only a few, in Gayatri Prasad v. Board of Revenue [1973 All LJ 412] it was held that non-payment of a portion of the sale price would not affect validity of sale. It was observed that part-payment of consideration by the vendee itself proved the intention to pay the remaining amount of the sale price. To the same effect is the decision of the Madhya Pradesh High Court in Sukaloo v. Punau [AIR 1961 MP 176 : ILR 1960 MP 614].*
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> > ***38.** The real test is the intention of the parties. In order to constitute a "sale", the parties must intend to transfer the ownership of the property and they must also intend that the price would be paid either in praesenti or in future. The intention is to be gathered from the recital in the sale deed, the conduct of the parties and the evidence on record."*
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> ***11. Dahiben** (supra) also, while interpreting Section 54 of the Act, held that actual payment of entire sale price at the time of execution of sale deed is not an essential condition for completion of sale. When a sale deed is registered, even upon part payment of the sale price, title would pass to the transferee. The non-payment of remaining part of the sale price would not invalidate it and the remedy would be to recover the balance sale consideration, but not cancellation of sale deed for non-payment of balance sale consideration.*

> ***12.*** *Section 54 of the Act squarely applies to the above case. A reading of the translated sale deeds produced along with the appeal, clearly indicates that the defendant had retained Rs. 4,500/- for clearing the dues of the plaintiffs. Obviously, the same was not paid and later, by two agreements, the defendant agreed to pay the full consideration and to repay all the government loans.*
> ***13.*** *The agreements were executed in the years 1975 and 1976. The suit was filed in 1984, in which case, the question of limitation also arises. The plaintiffs, without filing a suit for recovery of money; i.e., for balance sale consideration, attempted cancellation of the sale deeds, after executing it on receipt of part consideration, agreeing for the retention of balance consideration with the defendant to satisfy the dues of the plaintiffs. The sale, hence, has become final.*
> ***14.*** *Even if we understand the High Court having not entered into a reappreciation of facts, it is clear that the conclusion on the available facts was wrong. The sale deed executed with full knowledge of the part consideration alone having been passed, cannot be rendered void or inoperative merely because the balance consideration promised to be paid, which promise was incorporated in the sale deed, had not been complied with. The right of the plaintiffs was to file for recovery of balance sale consideration and not to seek declaration that the sale deeds were null and void; which they are not."*

4. By placing reliance on the aforesaid judgment, learned counsel for the appellant submits that the respondent/plaintiff has a remedy to file a suit for recovery if the sale consideration has not been paid, but the suit for cancellation of sale deed is not maintainable. He also submits that the learned Civil Court framed as many as seven issues and one of the issues pertains to maintainability of the suit. The relevant issue i.e. Issue No.6 read as under:-

> "6) क्या वादी को वाद कारण प्राप्त न होने के कारण वाद आदेश 7 नियम 11 सि०प्र०सं० में निरस्त होने योग्य है?"

5. Learned counsel for the appellant submits that though no separate application under Order 7 Rule 11 of the CPC has been filed, but the learned Trial Court framed a specific issue in this regard, therefore, the Trial Court may be directed to decide Issue No.6 first then proceed with the matter. In addition to this, learned counsel for the appellant submits that since the appellant has not filed any separate application in reference to Issue No.6,

therefore, a liberty may also be given to the appellant to file additional affidavit in support of issue no.6.

6. Learned counsel for the respondent has no objection on such submission however he submits that if such an additional affidavit is filed by the appellant the plaintiff may also be given proper opportunity to rebut the same.

7. In view of the submissions as above since the issue has already been framed with regard to the maintainability of the suit, the instant appeal is disposed of finally by directing the concerned Civil Judge (Senior Division), Vikasnagar, Dehradun to decide the Issue no.6 first. The appellant, herein, is also given liberty to file additional affidavit, and if such an additional affidavit is filed, the respondent/plaintiff may also file the objection to this.

8. It is made clear that the learned Civil Judge decide issue no.6 as expeditiously as possible preferable within two months from the date of production of a certified copy of this order and if the Issue no.6 is answered in favour of the plaintiff only then proceed with the matter.

(Rakesh Thapliyal, J.)

29.10.2026
Nitesh/