HIGH COURT OF JUDICATURE AT ALLAHABAD

SECOND APPEAL No. - 674 of 2026

Smt Rani

.....Appellant(s)

Versus

Rajesh Verma And Another

.....Respondent(s)

Counsel for Appellant(s) : Deepak Kumar Kulshrestha, Virendra Singh Patel

Counsel for Respondent(s) :

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Deepak Kumar Kulshrestha, learned counsel for the appellant.

2. Impugned in the present proceedings under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as CPC) at the instance of defendant/appellant is the judgment and decree dated 30.05.2026 passed by Additional District Judge / Special Judge (DAA), Jhansi in Civil Appeal No. 119 of 2025, *Rajesh Verma vs. Kharge and others*, whereby the suit so instituted by the plaintiff / respondent being O.S. No.583 of 2020 for cancellation / for declaring the sale deed dated 16.08.2010 so executed by the defendant / respondent in favour of the defendant / appellant came to be decreed.

3. Broadly, the facts of the case are that the plaintiff / respondent instituted O.S. No. 583 of 2020 before the Court of Civil Judge (Senior Division), Jhansi, verified on 22.12.2020 with an allegation that there happened to be Arazi No. 804, Rakba 0.2690 hectare situated at Mauja Ambabay, Jhansi, Pargana and District Jhansi, which was owned by the defendant / respondent herein, Kharge S/o Ram Nath. An agreement to sell stood executed between the defendant / respondent and one Vrindavan on 15.05.2006 for a total sale consideration of Rs. 40,000/-. Since Vrindavan, with whom the owner of the land being Kharge had agreed and an agreement to sell stood executed, was not getting the sale deed executed and registered, Vrindavan had no option but to institute

O.S. No. 258 of 2009, *Vrindavan vs. Kharge* before the Court of Civil Judge (Senior Division), Jhansi. The said suit was for specific performance and the same came to be decreed by the Court of Civil Judge (Senior Division) on 01.03.2011. Thereafter, despite the fact that the suit so instituted by Vrindavan against the defendant / respondent Kharge came to be decreed on 01.03.2011, the sale deed was not executed, therefore, Vrindavan was compelled to institute Execution Case being Execution Case No. 25 of 2011, *Vrindavan vs. Kharge*. The said execution case came to be decided in favour of Vrindavan and a sale deed was executed by Kharge in favour of Vrindavan on 25.09.2012, which was registered before the Registrar on 27.09.2012 by the Civil Judge, Senior Division, Jhansi. In the meantime, on 16.08.2010, the defendant / respondent, Kharge S/o Ram Nath, executed a sale deed in favour of the defendant / appellant. As per the pleadings set out in the plaint in O.S. No. 583 of 2020, the plaintiff / respondent purchased the said piece of land from Vrindavan through a registered sale deed dated 21.02.2015. However, when proceedings were initiated for getting the name recorded, then the plaintiff / respondent gathered knowledge on 30.10.2020 that already a sale deed dated 16.08.2010 had been executed by the defendant / respondent in favour of the defendant / appellant, which constrained the plaintiff / respondent to institute O.S. No. 583 of 2020 before the Court of Civil Judge (Senior Division), Jhansi for declaring the sale deed dated 16.08.2010 as void. The trial court, by virtue of the judgment and decree dated 05.11.2025, dismissed the suit, which led to filing of Civil Appeal No. 119 of 2025 by the plaintiff / respondent before the Court of Additional District Judge / Special Judge (DAA), Jhansi, *Rajesh Verma Vs Kharge*.

4. In the said suit, the following issues were framed:-

A. Whether the registered sale deed dated 16.08.2010 executed by the defendant / respondent Kharge S/o Ram Nath in favour of the defendant / appellant Smt. Rani is liable to be declared void?

B. Whether the suit is maintainable?

C. As to what relief is to be accorded to the plaintiff / respondent?

5. The lower appellate court, by virtue of the judgment and decree dated 30.05.2026, decreed the suit while allowing the civil appeal.

6. Questioning the judgment and decree dated 30.05.2026 passed by the Additional District Judge / Special Judge (DAA), Jhansi in Civil Appeal No. 119 of 2025, the present appeal has been preferred.

7. The following substantial questions of law have been framed in the appeal:-

"*I. Whether a decree affecting land or property can bind a person who purchased the property before the decree was passed, but was not made a party to the case or given an opportunity of being heard, particularly when the decree affects his ownership and possession?*

II. Whether mere execution of the agreement to sale between the parties itself create any interest in or charge on such property.

III. Whether a suit for seeking a declaration that the sale deed is null and void is maintainable instead of filing a suit for cancellation of the sale deed.

IV. Whether the plaintiff in Original Suit No. 258 of 2009 was required to implead the appellant as a necessary party under Order I Rule 10(2) CPC, since the appellant had purchased an interest in the disputed property before the decree was passed?

V. Whether the judgment and decree of the first appellate court are legally sustainable in absence of consideration of material evidence, including the appellant's sale deed, her possession since 2010, and the revenue entries for Fasli years 1429-1434?"

8. Learned counsel for the defendant / appellant has sought to argue that the judgment and decree of the lower Appellate Court cannot be sustained even for a single moment. Elaborating the said submission, it is contended that once the defendant / appellant possesses a registered sale deed dated 16.08.2010 in its favour by its actual owner, i.e. Kharge S/o Ram Nath, defendant / respondent, then the suit for declaring the sale deed dated 16.08.2010 itself was not maintainable, being time-barred, in view of the fact that the limitation of the suit for declaring the sale deed as void is three years and here, the suit came to be instituted by the plaintiff / respondent on 22.12.2020, much beyond limitation. Further submission is

that even otherwise, the principle so enshrined under Section 52 of the Transfer of Property Act, 1882 would not apply, particularly when the defendant / appellant happens to be a bonafide purchaser in that regard, who had purchased the property after paying the adequate sale consideration in that regard. It is also contended that Original Suit No. 258 of 2009 instituted by Vrindavan against the defendant / respondent Kharge S/o Ram Nath was not maintainable as it was hit by the doctrine of non-joinder of necessary and proper party as by the time the said suit came to be instituted, rights had accrued upon the defendant / appellant as the defendant / appellant had purchased the said land / property from Kharge, who was the defendant in the said suit. Thus it is prayed that the judgment and decree of the lower appellate court be set aside and the appeal be allowed *in toto*.

9. I have heard the submissions so made across the Bar and perused the record carefully.

10. Facts are not in issue. It is not in dispute that there happened to be a property being land being Arazi No. 804, Rakba 0.2690 hectare, which was owned by defendant / respondent Kharge S/o Ram Nath. It is also not in dispute that on 15.05.2006 a registered agreement to sell stood executed between the defendant / respondent herein and one Vrindavan for the total sale consideration of Rs. 40,000/-. Since according to Vrindavan, the sale deed was not being executed despite constant efforts, Vrindavan instituted O.S. No. 258 of 2009 before the Court of Civil Judge (Senior Division), Jhansi seeking specific performance of the contract and during the pendency of the said suit on 16.08.2010 Kharge, who was the defendant in the said suit and defendant / respondent herein, executed and registered a sale deed in favour of the defendant / appellant herein. Since the sale deed was not being executed by Kharge S/o Ram Nath, defendant / respondent in favour of Vrindavan, so an Execution Case No. 25 of 2011 came to be preferred under the orders of the Civil Judge, Senior Division, Jhansi, a sale deed came to be executed in favour of Vrindavan on 25.09.2012, which was also registered on 27.09.2012. The plaintiff/respondent herein thereafter purchased the said piece of land on 21.02.2015 from Vrindavan through a registered sale deed. The trial court, by virtue of the judgment and decree dated 05.11.2025, dismissed

the suit and the suit came to be decreed by the lower Appellate Court.

11. The first and the foremost question, which would arise would be as to what is the status of the defendant / appellant, who happens to have purchased the said piece of land through a registered sale deed dated 16.08.2010 from the defendant / respondent, Kharge S/o Ram Nath.

12. As a matter of fact, a suit seeking specific performance of the contract dated 15.05.2006 came to be instituted in the year 2009, that is O.S. No. 258 of 2009 before the Court of Civil Judge, Senior Division, Jhansi by Vrindavan being *Vrindavan Vs Kharge*. During the pendency of the said suit, the sale deed dated 16.08.2010 came to be executed by the defendant / respondent, Kharge S/o Ram Nath in favour of the defendant / appellant. It is not a case wherein the defendant / respondent, Kharge S/o Ram Nath was unaware about the institution of O.S. No. 258 of 2009. Thus, the provisions contained under Section 52 of the Transfer of Property Act, 1882 shall stand attracted. Section 52 of the Transfer of Property Act, 1882 reads as under:-

"***52. Transfer of property pending suit relating thereto.—***

During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose."

13. A bare look of the said provision would reveal that during the pendency of the suit which is not collusive and in which any right to immovable property is directly and specifically in question, then the property cannot be transferred or otherwise dealt with by any of the party in the suit or the proceedings so as to affect the rights of the other party in that regard. Here in the case in hand the land / property is the subject matter of the suit as well as also the registered sale deed dated 16.08.2010 executed by the defendant / respondent in favour of the defendant /

appellant is same and one.

14. Importantly, the said suit came to be decreed in favour of Vrindavan and in the execution proceedings being Execution Case No. 25 of 2011 so instituted by Vrindavan, the sale deed came to be executed and registered on 27.09.2012 in favour of Vrindavan. Thus it becomes apparently clear that the instrument dated / the registered sale deed dated 16.08.2010 executed between Kharge S/o Ram Nath, defendant / respondent and the defendant / appellant was clearly hit by the provisions of Section 52 of the Transfer of Property Act, 1882. As regards the another facet relating to question of limitation is concerned, though it seems to be attractive at the first blush but it may not detain the Court any further particularly when though the suit instituted by the plaintiff / respondent was dismissed ex-parte but before the Appellate Court the defendant / appellant had put in appearance and had contested the suit but no issue pertaining to limitation was framed and no arguments were raised in that regard.

15. As a matter of fact, the question of limitation is a mixed question of fact and law, and unless an issue is framed and arguments are made based upon the evidence, documentary or oral, no exception can be carved out. Nonetheless, the plaintiff / respondent had taken a specific ground that post purchase of the land from Vrindavan, the plaintiff / respondent had undertaken proceedings for mutation, then he came to know that already a sale deed had been executed by the defendant / respondent, Kharge S/o Ram Nath, in favour of the defendant / appellant. Apart from the same, the issue can also be seen from another point of angle that in order to create a cause of action, a particular date is to be specified and here cause of action has been shown to be from October 2020, and once there is no issue framed and no evidence led, then this Court is not required at this stage to delve into these said aspects. As regards the submission raised by the learned counsel for the defendant / appellant that O.S. No. 258 of 2009 seeking specific performance so instituted by the predecessor-in-interest of the plaintiff / respondent, i.e. Vrindavan, against Kharge S/o Ram Nath, defendant / respondent, is concerned, which was defective on account of non-joinder of party is concerned, this Court in the present proceedings is not required to delve into the same, particularly when the remedy lies elsewhere, as the same could have been subject matter of

challenge at the instance of the defendant / appellant.

16. Considering the case from the four corners of law and bestowing consideration upon each and every aspect of the matter, the Court does not find the case to be a fit case to warrant interference.

17. Accordingly, the appeal is **dismissed**.

(Vikas Budhwar,J.)

October 29, 2026
N.S.Rathour

Digitally signed by :-
NIPENDRA SINGH RATHOUR
High Court of Judicature at Allahabad