

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-2287-2001 (O&M)****Reserved on 09.10.2025****Date of decision: 13.10.2025****Amar Nath****...Appellant**

Versus

Smt. Naino Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by: Mr. Anish Setia, Advocate and
Mr. Swrinder Singh, Advocate
for the appellant.

Mr. Baljinder Singh, Advocate
for respondents No.1 to 4 and 7 to 10.

DEEPAK GUPTA, J. (ORAL)

This Regular Second Appeal has been filed by the defendant against the concurrent findings of the Courts below, inasmuch as the suit for possession instituted by the plaintiffs – Smt. Naino Devi and others (*contesting respondents N: 1 to 10 herein*) in respect of the property in dispute was decreed by the learned trial Court on 26.08.1995, and the appeal preferred by the defendant-appellant was dismissed by the learned First Appellate Court on 02.05.2001, thereby affirming the judgment and decree of the trial Court.

2. To obviate confusion, the parties shall hereinafter be referred to as per their status before the trial Court.

3. Admittedly, the property in dispute was owned by Gurmukh Singh, predecessor-in-interest of the plaintiffs, who had purchased it in an open auction from the Department of Rehabilitation. As per the plaintiffs' case, their predecessor Gurmukh Singh had leased out the suit property to defendant No.1 – Amar Nath (*appellant herein*), at a monthly rent of ₹125/,



who in turn gave a portion thereof to defendant No.2 Mulkh Raj. It was alleged that no rent was ever paid to the landlord. An ejectment petition filed in the year 1986 came to be dismissed by the learned Rent Controller on the ground that tenancy was not proved. Consequently, the plaintiffs instituted the present suit seeking possession of the suit property on the basis of ownership, alleging that the defendants were in illegal occupation, and further claiming mesne profits at the rate of ₹500/- per month.

4. In the written statement, the defendants pleaded that Gurmukh Singh, after purchasing the suit property from the Department of Rehabilitation, had agreed to sell the same to defendant No.1 and Hans Raj (*predecessor-in-interest of defendants No.2 to 4 – per forma respondents herein*) for a total sale consideration of ₹725/- vide an agreement to sell dated 07.05.1963. It was averred that an amount of ₹525/- was paid as earnest money, with the balance of ₹200/- to be paid at the time of execution of the sale deed, which was to be executed after Gurmukh Singh obtained the conveyance deed from the Rehabilitation Department. It was further stated that Gurmukh Singh had undertaken to remove the debris (*malba*) from the property within two months. According to the defendants, the balance consideration of ₹200/- was duly paid to Gurmukh Singh, as evidenced by receipt dated 15.09.1963. Thereafter, defendant No.1 and Hans Raj submitted a site plan to the erstwhile Municipal Committee, Jalandhar, which was sanctioned in 1963, whereupon they raised construction and have been residing therein ever since. They contended that their possession, being open, continuous and to the knowledge of Gurmukh Singh and the plaintiffs, had matured into ownership by way of adverse possession. Alternatively, they asserted readiness and willingness to perform their part of the contract but claimed that they were never informed about the issuance of the conveyance deed in favour of Gurmukh Singh. They had even instituted a suit for specific performance. The defendants, therefore, sought dismissal of the suit and protection of their possession under Section 53A of the Transfer of Property Act, 1882.



5. Upon framing of the necessary issues and appreciation of evidence, the learned trial Court decreed the suit for possession on 26.08.1995.

6. In appeal, the defendants produced the agreement to sell dated 07.05.1963 (Ex.DZ) and receipt dated 15.09.1963 (Ex.DZ/1) by way of additional evidence. The learned First Appellate Court held that both documents stood duly proved on record. However, it concluded that the defendants had failed to satisfy the essential requirements of Section 53A of the Transfer of Property Act to claim protection of possession and, accordingly, dismissed the appeal vide judgment dated 02.05.2001.

7. Assailing the concurrent findings, learned counsel for the appellant-defendant contended that the possession of the defendants over the suit property was in pursuance of the agreement to sell and, therefore, they are entitled to protection under Section 53A of the Transfer of Property Act, even if the said agreement was unregistered. Reliance was placed upon the judgment of the Hon'ble Supreme Court in ***Ghanshyam v. Yogendra Rathi, (2023) 7 SCC 361.***

8. Per contra, learned counsel for the respondents-plaintiffs argued that the agreement to sell (Ex.DZ) relied upon by the defendants does not record delivery of possession pursuant thereto. It was further submitted that as per the findings of both Courts below, possession was taken by the defendants nearly 6–7 years after execution of the said agreement. Hence, the essential conditions contemplated under Section 53A of the Transfer of Property Act for retaining possession are not fulfilled. It was also pointed out that the suit for specific performance filed by the defendants has already been dismissed. Reliance is placed upon ***Mohan Lal (Deceased) through LRs v. Mirza Abdul Gaffar and Another, AIR 1996 SC 910;*** and ***Nathulal v. Phoolchand, AIR 1970 SC 546.***

9. Learned counsel for the appellant-defendant does not dispute the fact that the suit for specific performance instituted by the defendants has already been dismissed.



10. This Court has considered the submissions of both the sides and appraised the record carefully.

11. The agreement to sell (Ex.DZ) dated 07.05.1963 was executed by Gurmukh Singh, predecessor-in-interest of the plaintiffs, in favour of Amar Nath (appellant) and Hans Raj (predecessor-in-interest of the pro-forma respondents). A perusal of the document shows that the total sale consideration was ₹725/-, of which ₹525/- was paid as earnest money and the balance ₹200/- was to be paid at the time of execution of the sale deed. The agreement further recites that after removal of the debris (kothas) from the property and vacating the land, possession was to be delivered to the vendees within one month. However, there is no stipulation in the agreement that the sale deed was to be executed only after Gurmukh Singh obtained the conveyance deed from the Rehabilitation Department.

12. It is evident from the terms of the agreement that possession was not handed over to the vendees at the time of execution of the agreement dated 07.05.1963. Even the subsequent receipt dated 15.09.1963 (Ex-.DZ/1), though acknowledging payment of the balance ₹200/- and stating that the vendor had no objection to the registration of the sale deed or commencement of construction by the vendees, merely permitted them to take possession as per their will, indicating that possession still remained with Gurmukh Singh on that date.

13. The evidence on record, as noticed by the First Appellate Court, further shows that the debris was actually removed by Gurmukh Singh about six to seven years after execution of the agreement, a fact admitted by Amar Nath (defendant No.1) during cross-examination. It thus stands established that the defendants entered into possession only thereafter and not in pursuance of the agreement to sell (Ex.DZ). The finding of the First Appellate Court to that effect, therefore, calls for no interference.

14. In *Nathulal v. Phoolchand (supra)*, while interpreting Section 53A of the Transfer of Property Act, 1882, the Hon'ble Supreme Court laid



down the essential conditions required to invoke the doctrine of part performance. The Court held that the defence under Section 53A is available only when:

“(1) The transferor has contracted to transfer for consideration any immovable property by a written instrument signed by him or on his behalf, from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty;

(2) The transferee has, in part performance of the contract, taken possession of the property or any part thereof, or being already in possession, continues in possession in part performance of the contract;

(3) The transferee has done some act in furtherance of the contract; and

(4) The transferee has performed or is willing to perform his part of the contract.”

The Court further clarified that only when these cumulative conditions are satisfied, can the transferee resist eviction by the transferor, notwithstanding that the contract is unregistered or the transfer is incomplete in law.

15. In ***Mohan Lal (Deceased) through LRs v. Mirza Abdul Gaffar and Another (supra)***, the Hon’ble Supreme Court held that a person who claims possession under an agreement to sell cannot simultaneously plead adverse possession, as such possession is lawful only under the contract. It was further held that once a suit for specific performance is dismissed, the right to invoke Section 53A automatically ceases, as the doctrine operates only as a shield to protect lawful possession during the subsistence of the contract. The Court observed that the equitable protection under Section 53A is conditional upon the transferee’s continuous readiness and willingness to perform his part of the contract, and that mere possession without fulfilment of these requirements does not create any right, title or interest in the property.

16. Applying the settled principles to the present case, it is evident that the defendants–appellants have failed to prove that possession of the



suit property was taken by them or continued in part performance of the agreement to sell dated 07.05.1963. As already discussed, possession was admittedly delivered several years after the execution of the agreement and not contemporaneously with it. Moreover, there is no credible evidence on record demonstrating the appellants' readiness and willingness to perform their part of the contract in terms of Section 53A of the Transfer of Property Act or Section 16(c) of the Specific Relief Act, 1963. Once the suit for specific performance filed by the defendants stood dismissed, the very foundation for invoking Section 53A ceased to exist. The protection available under the said provision being purely defensive in nature, cannot be extended to sustain possession after extinguishment of contractual rights.

17. As regards the reliance placed by learned counsel for the appellants on ***Ghanshyam v. Yogendra Rathi (supra)***, it is no doubt held therein that possessory rights of a transferee in possession under an agreement to sell cannot be interfered with by the transferor or persons claiming through him. However, the ratio of that decision is applicable only when the transferee satisfies all statutory requirements under Section 53A — namely, possession in part performance and continuous readiness and willingness to perform the contract. In the present case, neither of these conditions is fulfilled; hence, the appellants cannot derive any benefit from the said authority.

18. It is a well-settled principle that concurrent findings of fact recorded by the Courts below, when based on proper appreciation of evidence and sound reasoning, are not liable to be interfered with in second appeal, unless shown to be perverse, contrary to record, or vitiated by a substantial question of law. No such infirmity or perversity has been demonstrated in the present case. The findings of both Courts are fully supported by documentary evidence, namely the agreement (Ex.DZ) and receipt (Ex.DZ/1), as well as by the admission of the appellant himself regarding delayed possession.



19. In view of the foregoing discussion and the consistent findings of the Courts below, this Court finds no ground to interfere in the concurrent judgments. The appeal being devoid of merit is accordingly dismissed, with no order as to costs.

13.10.2025

Yogesh

**(DEEPAK GUPTA)
JUDGE**

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