



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 379 of 2008

Reserved on: 16.04.2026

Date of Decision: 01.06.2026

Udham Singh & Anr. ...Appellants

Versus

Leela Devi & others ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No

For the Appellants : Mr Atharv Sharma, Advocate.

For respondents : Ms Salochna Rana, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 05.06.2008 passed by learned District Judge Kangra at Dharamshala (learned Appellate Court) vide which the judgment and decree dated 13.06.2006 passed by learned Civil Judge (Senior Division) Indora, District Kangra (learned Trial Court) were upheld. *(The parties shall hereinafter be referred to in*

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.



the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiffs filed a civil suit before the learned Trial Court against the defendant for seeking a permanent prohibitory injunction restraining the defendant from interfering with their possession of the suit land described in the headnote of the plaint. It was asserted that the plaintiffs are co-owners in possession of the suit land. The defendant is a stranger and is not entitled to acquire the land in Himachal. The defendant represented himself to be a Himachali, set up an agreement in his favour, and started interfering with the suit land. The plaintiff requested the defendant not to do so, but in vain. Hence, the suit was filed to seek the relief mentioned above.

3. The suit was opposed by the defendant by filing a written statement taking preliminary objections regarding lack of maintainability and cause of action, the plaintiffs being estopped from filing the present suit due to their act and conduct, and the plaintiffs having not come to the Court with



clean hands. The contents of the plaint were admitted to the extent that the plaintiffs are the owners of the suit land. It was asserted that plaintiff No.1 entered into an agreement with the defendant on 27.04.1991 and agreed to sell 10 Marlas of land to the defendant for a consideration of ₹2000/-. The defendant paid the consideration of ₹2000/- to the plaintiff No.1 on the spot, and the plaintiff delivered the possession of the suit land to the defendant. The defendant has been in actual possession of the suit land since then. The plaintiffs have suppressed these material facts from the Court. The defendant had also constructed Pucca khad posh, two rooms with a verandah and one kachha cowshed by spending ₹70,000/-. The plaintiffs removed the cowshed with the help of a tractor on the intervening night of 31.12.1997 and 01.01.1998. An FIR No. 2 of 1998 was registered against the plaintiffs. The suit was filed without any basis. Hence, it was prayed that the suit be dismissed.

4. The following issues were framed by the learned Trial Court on 12.10.1998 and an additional issues on 03.05.2000 & 23.05.2006:



1. Whether the plaintiffs are entitled for the relief of permanent prohibitory injunction, as prayed for? OPP
 - 1a. Whether the plaintiffs are entitled for the possession of the suit land, as prayed for? OPP
 2. Whether the suit is not maintainable? OPD
 - 2a. Whether the plaintiffs are estopped by filing the present suit by their act and conduct?
 - 2b. Whether the plaintiffs have no cause of action to file the present suit?
 - 2c. Whether the plaintiffs have not come to the Court with clean hands as alleged?
 3. Relief.
5. The parties were called upon to produce the evidence, and plaintiff No.1 examined himself (PW1) and Puran Chand (PW2). The defendant examined Sawroop Singh (DW1), Kishan Singh (DW2), Kishnu (DW3), Ranjit Singh (DW4), Yashpal (DW5), Updesh Singh (DW6), Manjit Singh (DW7) and himself (DW8).
6. The learned Trial Court held that the plaintiffs claimed to be the owner in possession of the suit land. However, plaintiff no. 1 had executed an agreement to sell in favour of the defendant. He delivered the possession to the defendant, and the defendant constructed a house over the suit land. The defendant was continuously coming into possession of the suit land. The plaintiff's plea that the defendant started interfering with the



suit land in January 1998 was not proved. The plaintiffs had interfered with the defendant's possession. The plaintiffs suppressed the material facts from the Court and were not entitled to the discretionary relief from the Court. Hence, the learned Trial Court answered issue No.1 and 1(a) in the negative, issue No.2, 2(a), 2(b) and 2(c) in the affirmative and dismissed the suit.

7. Being aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiffs filed an appeal, which was decided by the learned District Judge, Kangra at Dharamshala (learned Appellate Court). The Appellate Court concurred with the findings recorded by the learned Trial Court that plaintiff No.1 had executed an agreement to sell in favour of the defendant. The plaintiff No.1 had delivered the possession of the suit land to the defendant, and the defendant had raised a construction of the house over the suit land. The plaintiffs had suppressed the material facts from the Court, and they could not take the law into their own hands to dispossess the defendant. There was no infirmity in the judgments and decree passed by the learned Trial Court. Hence, the appeal filed by the plaintiff was dismissed.



8. Being aggrieved that the judgment and decree passed by the learned Trial Court, the plaintiff filed the present appeal, which was admitted on the following substantial questions of law vide order dated 12.03.2009: -

1. Whether the agreement dated 24.01.1991, being void, could not have been looked at by the Courts below, but contrary findings as arrived at by the Courts below vitiated the impugned judgments and decree?
2. Whether agreement in question being contrary to the provisions of Section 118 of the HP Tenancy and Land Reforms Act, and Courts below having not adverted to this aspect of the matter despite there being specific pleading for the purpose, thus, impugned judgments and decrees stand vitiated and liable to be quashed and set aside?

9. I have heard Mr Atharv Sharma, learned counsel for the appellants and Ms Salochana Rana, learned counsel for the respondents.

10. Mr Atharv Sharma, learned counsel for the appellants, submitted that the learned Courts below erred in dismissing the suit. An agreement to sell does not confer any right upon a person, and learned Courts below erred in holding that the agreement was sufficient to non-suit the plaintiff. He relied upon the judgments in *Shakeel Ahmed v. Syed Akhlaq Hussain*, (2023) 20 SCC 655, *R. Nagaraj v. Rajmani*, 2025 SCC



OnLine SC 762, and *Kishundeo Rout v. Govind Rao, 2025 SCC OnLine SC 1665*, in support of his submissions.

11. Ms Salochana Rana, learned counsel for the respondent, submitted that both the learned Courts below have rightly held that the defendant is in possession of the suit land. The defendant is entitled to protect his possession, and he cannot be dispossessed by the plaintiffs. There is no infirmity in the judgments and decrees passed by learned Courts below. Hence, she prayed that the present appeal be dismissed.

12. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

Substantial Question of Law Nos. 1 and 2:

13. Both these substantial questions of law, being interconnected, are being taken up together for consideration.

14. Mr Atharv Sharma, learned counsel for the appellants, vehemently submitted that the agreement to sell in favour of the defendant is void and does not confer any right upon the defendant. This submission cannot be accepted. It was laid down by this Court in *Rahul Bhargava vs. Vinod Kohli and others, 2008 (1) Shim. LC 385* that an agreement to sell executed



in favour of a non-agriculturist is not void because a permission can be obtained by such non-agriculturist in terms of Section 118 of the H.P. Tenancy and Land Reforms Act. It was observed:

“15. On the point of alienation/transfer of land after permission, Section 3 of the J&K Act noticed above, and Section 118 of the Act in substance are similar. There is no absolute prohibition under Section 118 of the Act on the transfer of land to a non-agriculturist, and transfer can be made in favour of a non-agriculturist with permission of the Government under Section 118 of the Act. This question at the most will arise at the time of execution of the sale deed on the basis of a decree for specific performance. Section 118 of the Act does not bar the maintainability of the suit for specific performance and injunction on the basis of an agreement. The respondent No. 1 had earlier obtained permission from the State Government for purchasing the property vide permission Ex. PW 3/A.”

15. It was held in *Geeta Devi v. State of H.P., 2016 SCC OnLine HP 3712*, that there was no prohibition for entering into an agreement to sell before 22.3.1995. It was observed:

“17. Perusal of the aforesaid amendment, which came into force on 22.3.1995, suggests that after the amendment, no transfer of land could be made by way of Special or General Power of Attorney or by an agreement with the intention to put a non-agriculturist in possession of the land and allow him to deal with the land in like manner as if he were the real owner of that land.

18. Perusal of the aforesaid explanation, which came into force on 22.3.1995, certainly suggests that after 22.3.1995, no transfer of land could be made by way of agreement also.



19. But in the present case, as clearly emerged, that alleged agreement to sell was entered into by the petitioner herein with J.P. Shah in the year 1990, i.e. admittedly before coming into operation of H.P. Tenancy and Land Reforms (Amendment) Act, 1994, wherein transfer of land was made prohibited even by way of agreement.

20. Hence, in view of the aforesaid, this Court sees substantial force in the contention put forth on behalf of the counsel representing the petitioner. This Court, after perusing the aforesaid amendment as well as the case law referred by the petitioner before the Commissioner, i.e. *Smt. Santosh Mahlotra v. State of H.P.*, 2003 (3) Shim. L.C. 342 has no hesitation to conclude that the learned Financial Commissioner has fallen into a grave error while concluding that *“the amendments to the Act carried out in 1994 (and valid from 4.4.1995) do not come into play; the transaction between the petitioner took place around 1990, and the provisions incorporated by the 1987 amendments (valid from 14.4.1988 onwards) would cover the case fully. Section 118(3) of the amended Act provides for the vesting of the land and structures/buildings in the State.* Had the Financial Commissioner (Appeals), while examining the revision petition preferred on behalf of the petitioner herein, bothered/cared to take into consideration the law referred to by the petitioner in *Santosh Mahlotra's case supra*, he would not have passed the order which is impugned before this Court by way of the present petition.

22. Careful perusal of the aforesaid judgment passed by this Court in *Santosh Mahlotra's case*, *Supra* clearly suggest that provisions incorporated in the principal Act by the Amendment Act 1994, which came into force on 22.3.1995, could not be made applicable in the cases which pertained to years prior to the amendment carried



out on 22.3.1995. Hence, this Court has no hesitation to conclude that revenue authorities have passed impugned orders against the petitioner herein, contrary to the provisions of Section 118 of the 1988 Act, because the Amendment Act, which came into force on 22.3.1995, could not be made applicable retrospectively in the present case."

16. A Division Bench of this Court also held in *Roshan Lal (deceased) through his LRs vs. State of H.P. and others 2025 STPL 10085 HP* that a non-agriculturist can always obtain permission from the State, and the agreement to sell cannot be held to be bad. It was observed:

12. It is not disputed that the permission can be sought from the State Government by the non-agriculturist who intends to purchase the land, and it is thus the case of the petitioner that the necessary permission had been applied for, and without the possession being transferred, the findings recorded by the authorities as such were not justified.

17. In the present case, the agreement was executed before the commencement of the Amendment Act and cannot be held to be void. Therefore, the learned Courts below had rightly relied upon the agreement.

18. In *Shakeel Ahmed* (supra), the Hon'ble Supreme Court held that an unregistered agreement to sell does not confer any right upon the person. In the present case, the defendant is not claiming any right on the basis of the



agreement to sell but is seeking the protection of his possession. *R. Nagaraj* (supra) and *Kishundeo Rout* (supra) deal with adverse possession. Hence, the cited judgments do not apply to the present case.

19. Therefore, the agreement dated 24.01.1991 cannot be said to be void or contrary to the provisions of Section 118 of the HP Tenancy and Land Reforms Act, and, these substantial questions of law are answered accordingly.

Final Order:

20. In view of the above, the present appeal fails, and it is dismissed

21. Pending application(s), if any, also stand(s) disposed of.

22. Records of the learned Courts below be sent down forthwith.

(Rakesh Kainthla)
Judge

1st June, 2026
(Nikita)