



2026:AHC:107864

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 2364 of 2025

Satya Homes Private Limited

.....Appellant(s)

Versus

Fundan And 3 Others

.....Respondent(s)

Counsel for Appellant(s) : Nisheeth Yadav
Counsel for Respondent(s) : Anil Kumar Mehrotra, Ashwani Kumar Patel, Mehul Khare, Pragya Pandey

AFR

Reserved on 5.5.2026

Delivered on 11.5.2026

Court No. - 39

HON'BLE ABDUL SHAHID, J.

1. Heard Sri C.B. Yadav, learned Senior Advocate assisted by Sri Nisheeth Yadav, learned counsel for the plaintiff/appellant and Sri A.K. Mehrotra, learned Senior Advocate assisted by Sri A.K. Patel and Sri Srijan Mehrotra, learned counsel for defendants/respondents.

2. The present First Appeal from Order has been preferred against the impugned order dated 5.9.2025, passed by learned Civil Judge (Senior Division), Gautam Buddh Nagar in Civil Suit No. 1183 of 2023 (Satya Homes Pvt. Ltd. Vs. Fundan and others), whereby the application of the plaintiff/appellant bearing application No. 6C-2 has been rejected and objection (34-C-2) filed by defendants/respondents has been disposed of.

3. Learned Senior Counsel appearing for the plaintiff/appellant has submitted that the learned trial court has not considered the law laid down by the Supreme Court in its judgment dated 02.06.2023 in the case of **Ghanshyam Vs. Yogendra Rathi in Civil Appeal No.7527/7528 of 2012**, wherein the identical issue came that the plaintiff in whose favour an agreement to sale has been executed and he has fulfilled his part of the consideration amount would not be having any right or title to the said dispute, the Supreme Court on the contrary has observed that "Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property, but the prospective purchaser having performed his part of the contract and lawfully

in possession acquires possessory title which is liable to be protected in view of Section 53A of the Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transferor or any person claiming under him", as such the impugned order is not sustainable in the eyes of law.

4. Learned counsel for the plaintiff/appellant has further submitted that learned trial court has not considered that in terms of Section 53-A of the Act of 1988, the transferee, who happen to be the Appellant /Plaintiff / company completed his part of the contract and paid total amount of consideration i.e Rs Rs.15,21,37,274/-, the transferor/defendants /respondents or any person claiming under him is debarred from enforcing against the transferee /plaintiff / appellant and persons claiming under him any right in respect of the property which was subject matter of agreement to sale of which the transferee / plaintiff / appellant has taken and continued in possession since 02.05.2014. He has further submitted that the learned trial court has not considered that the appellant / plaintiff has got possession over the entire property measuring an area of 34600 Sq.M. out of Khasra Nos.795 and 793, which was in sole ownership of Maharchand, Fundan, Lekhraj, Mahendra and Dayachand along the execution of agreement to Sale dated 02.05.2014.

5. Learned counsel for the appellant/plaintiff has further submitted that the learned trial court has not considered the fact that as per the judgment of **Ghanshyam Vs. Yogendra Rathi (supra)**, the possessory right of the perspective purchaser, who happens to be the plaintiff/appellant herein cannot be invaded by a transferer or any person claiming under him. Learned Senior Counsel appearing for the appellant/plaintiff has further submitted that learned trial court has not taken into consideration that when the possession of the land was given by way of registered agreement to sale, then the plaintiff/appellant is not required to prove his possession rather the plaintiff /appellant has actual possession of the Property in Dispute. He has further submitted that the learned trial court has not properly adjudicated the validity of the agreement to sale dated 02.05.2014, as even the period as so referred in the agreement to sale i.e. from dated 02.05.2014 till 10.03.2015 came to end, it was mutually agreed / decided between the parties to the agreement to sale that the Land owner / First party to the agreement to sale will continue to execute the sale deed till the sale deed of entire area of total

area of 3.4600 hectare (34,600 Sq.M.) which was subject matter of agreement to sale, is not completed, therefore in continuation to the agreement to sale with possession dated 02.05.2014, out of Khasra No.793 (of bearing total area 1.2280 hectare) a sale deed was executed by Fundan, Lekhraj, Mahendra, Dayachand in favour of the company on 20.06.2015 of an area of 0.4215 hectare out of Khasra No. 793 for total consideration of Rs.1,85,33,000/-, out of the said amount of Rs.36,64,700/- was adjusted towards the earnest money and a sum of Rs. 148,78,655/- was paid to Fundan, Lekhraj, Mahendra, Dayachand. Further, Maharchand in continuation to the agreement to sale alongwith possession dated 02.05.2014 of Khasra No.795 (of bearing total area 2.2320 hectare) on 14.12.2015 executed another sale deed in in favour of the company of an area of 3372 Sq. M. out of Khasra No. 795 for total consideration of Rs. 1,95,23,700/-, out of the said amount of Rs. 32,00,000/- was adjusted towards the earnest money and a sum of Rs. 166,00,000/- was paid to Maharchand upon registry, as such, there was no date fixed for performance. Therefore, in terms of Schedule 54 read of with Section 2 (j) and Section 3 of the Limitation Act, 1963, the period of limitation for filling the suit for specific performance would start from the date, on which the performance was refused which was 30.09.2023.

6. Learned counsel for the appellant/plaintiff has further submitted that the learned trial court has not considered that it is relevant to submit herein that the appellant/company had not provided any opportunity to rebut /contradict the alleged unregistered agreement dated 18.07.2022 by the learned trial court. He has further submitted that the learned trial court has failed to consider that by perusal of the unregistered agreement dated 18.07.2022 gives a clear picture that (1) no date is mentioned over the said agreement 18.07.2022 (2) there is no mention that Mr. Arvind Kumar Singh was ever authorized by the company to sign any such agreement dated 18.07.2022. He has further submitted that the learned trial court has not considered that when at par the company never accepted that they entered into any agreement dated 18.07.2022 as so brought on record by the respondents /defendants vide record no 36-C, as such, no such record could be relied upon by the learned trial court without verifying its authenticity and further without asking for objection or even adjudicating whether in absence of any authorization in favour Arvind Kumar Singh, any such unregistered

agreement could have been executed or can be enforced in court of law.

7. Learned counsel for the plaintiff/appellant has further submitted that the learned trial court has failed to consider this fact that there is no evidence on record that the defendants-respondents had ever been in possession of the property in suit, as property in suit is part of the Khasra No.793 & 795 after 02.5.2014, the date of execution of agreement to sale and handing over possession to the Plaintiff /Appellant. It is admitted case of the appellant/plaintiff and the respondents/defendants that there was a registered agreement to sale alongwith possession was executed by the defendants/respondents in favour of the plaintiff/appellant/company dated 2.5.2014 after receiving complete amount of sale consideration. When possession was delivered by way of registered agreement to sale, whereas the alleged agreement, if any dated 18.7.2022 is an unregistered agreement. It is also an unregistered alleged compromise entered into between the parties which is not admitted to the appellant/plaintiff.

8. Learned counsel for the plaintiff/appellant has submitted that there has been no document submitted by the respondents/defendants that when they had executed registered agreement to sale alongwith possession after receiving entire sale consideration dated 2.5.2014, then how and in what mode, they have got further possession of the said property in dispute.

9. Learned counsel for the appellant/plaintiff has relied upon the law laid down by the Supreme Court in **Gunwantbhai Mulchand Shah and others Vs. Anton Elis Farel and others; (2006)3 SCC 634** and he relied on paragraph nos. 9 and 14 of the said judgment which is as follows:-

"9. It is seen that the suit was dismissed by the trial court on the finding that the claim for the relief of specific performance was barred by limitation. The plaint contains not only a prayer for specific performance but also a prayer for perpetual injunction restraining the defendants from interfering with the possession of the plaintiffs and from creating any documents or entering into any transaction in respect of the suit property. Of course, the latter part of that prayer is directly linked to the claim for specific a performance, but the suit as regards the prayer for perpetual injunction to protect the possession of the plaintiff over the suit property on the claim that the predecessor of the plaintiffs was put in possession of the property pursuant to the agreement for sale, on a subsequent date, could not have been held to be not maintainable on any ground. Of course, the grant of the relief of injunction in a sense

is discretionary and the court ultimately might or b might not have granted the relief to the plaintiffs. The defendants could have also shown that the relief of injunction claimed is merely consequential to the relief of specific performance and was not an independent relief. But that is different from saying that the suit could be dismissed merely on a finding that the prayer for specific performance of the agreement was barred by limitation. In any event, therefore, the dismissal of the suit as a whole as not c maintainable, could not be justified or said to be correct.

14. We have already indicated that the suit insofar as it relates to the prayer for a perpetual injunction restraining the defendants from interfering b with the possession of the plaintiffs cannot be held to be barred by limitation. Whether the plaintiffs are able to prove that they are in possession of the suit property as on the date of suit and establish that they are entitled to the injunction prayed for, is a different matter. There is also the question whether the relief of injunction can be treated as being only a relief consequential to the relief of specific performance and the denial of one would automatically lead to the denial of the other, or whether it is an independent relief in itself and even if the plaintiffs are not entitled to a decree for specific performance they would still be entitled to a decree for injunction, a relief the grant of which is, of course, in the discretion of the court. It may be noticed that a suit for injunction would be governed by the residuary article, Article 113 of the d Limitation Act and the cause of action for the said relief arises when the right to sue accrues. That would depend upon the court deciding when the right accrued, on the pleadings and the evidence in the case. Therefore, the suit insofar as it relates to the prayer for a decree for perpetual injunction cannot be held to be barred by limitation at this preliminary stage."

10. Learned counsel for the appellant/plaintiff has further relied upon the law laid down by the Supreme Court in **Janardhanam Prasad Vs. Ramdas; (2007) 15 SCC 174** and he relied on paragraph no. 16 which reads as follows:-

"16. But before we advert to the said question, we may consider the effect of refusal on the part of the 2nd defendant to execute the deed of sale within 20 days from the date of entering into the said agreement for sale. We have noticed hereinbefore that father-in-law of Respondent 1 categorically stated that he, at all material times, was aware that the 2nd defendant was refusing to execute the agreement of sale. They had, therefore, the notice, that Defendant 1 had refused to perform his part of contract. The suit should have, in the aforementioned situation, been filed within three years from

the said date. We are not oblivious of the fact that performance of a contract may be dependent upon several factors. The conduct of the parties in this behalf is also relevant. The parties by their conduct or otherwise may also extend the time for performance of contract from time to time, as was noticed by this Court in Panchanan Dhara v. Monmatha Nath Maity (2006) 5 SCC 340."

11. Learned counsel for the appellant/plaintiff has submitted that the learned trial court has decided the application under Order 39 Rule 1 and 2 CPC vide impugned order dated 5.9.2025, whereas, the suit is still pending and final adjudication of the suit could be done by the learned trial court after perusing the entire evidences and fact and provisions of law. At this stage, no meticulous examination or final finding could not be adjudicated. The plaintiff/appellant was in possession consistently since execution of registered agreement to sale dated 2.5.2014 in his favour and that has not been taken back or given by the appellant/plaintiff to the defendants/respondents.

12. Learned counsel for the appellant/plaintiff has further relied on the law laid down by the Supreme Court in **Ramesh Chand (D) through LRs Vs. Suresh Chand and another; 2025 INSC 1059**. He relied on paragraph nos. 30 and 31 of the said judgment which are as follows:-

" 30. According to Section 53A of the TP Act, where there is a contract to transfer any immovable property in writing and the transferee has in part performance of the contract taken the possession of the property or part thereof, then notwithstanding that the transfer has not been completed in the manner prescribed by law, the transferor will be debarred from taking the possession of the property. The essential conditions for invoking the doctrine of part-performance as envisaged u/s 53A of TP Act have been enunciated by this Court in the case of Nathulal v. Phoolchand thus:

"9. The conditions necessary for making out the defence of part performance to an action in ejectment by the owner are:

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

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

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

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

If these conditions are fulfilled then notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him is debarred from enforcing against the transferee any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract."

31. A perusal of Section 53A of TP Act, as well as the case law on point, it is forthcoming that one of the main ingredients for taking shelter under Section 53A is the factum of possession. Unless the transferee in the instrument of agreement to sale is able to prove that he has been in possession of the suit property, no benefit u/s 53A will be given. In the instant matter, the very fact that plaintiff has filed the present suit for possession, along with other reliefs, shows that on the date of filing of the suit, plaintiff was not in possession of the entire suit property. Since there was no possession with the plaintiff, he cannot derive any benefit under the doctrine of part-possession."

13. Learned counsel for the appellant/plaintiff has further relied on the law laid down by the Supreme Court in **Ghanshyam Vs. Yogendra Rathi; 2023 INSC 575**. He relied on paragraph nos. 15 and 16 which are as follows:-

"15. Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53A of the Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transferer or any person claiming under him.

16. Notwithstanding the above as the plaintiff-respondent admittedly was settled with possessory title in part performance of the agreement to sell dated 10.04.2002 and that the defendant-appellant has lost his possession over it and had acquired the right of possession under a licence simpliciter, exhausted his right to continue in possession after the licence has been determined. Thus, the defendant-appellant parted with the possession of the suit property by putting the plaintiff-respondent in possession of it

under an agreement to sell. The plaintiff-respondent in this way came to acquire possessory title over the same. The defendant-appellant, as such, ceased to be in possession of it as an owner rather occupied it as a licensee for a fixed period which stood determined by valid notice, leaving the defendant-appellant with no subsisting right to remain in possession of the suit premises."

14. On the other hand, learned Senior Counsel, Sri A.K. Mehrotra, learned counsel for the respondents/defendants has submitted that said registered agreement to sale dated 2.5.2014 was for a fixed period and was only valid till 10.3.2015 and since appellant/plaintiff has failed to perform its obligation, hence no reliance could be placed upon the same by the appellant/plaintiff because same ceased to exist after 10.3.2015. He further submitted that the appellant/plaintiff is not entitled for any relief on the basis of registered agreement to sale.

15. It is further submitted that Power of Attorney dated 16.9.2014 was only with regard to 12650 Sq. Mts of land out of 22320 Sq. Mts of land of Khasra No. 795 and the Attorney-Holder was not entitled to take any decision in respect of the land more than or other than 12650 Sq. Mts of land. It is further submitted that the amount of Rs.7,15,00,000/- was only with respect to aforementioned area of 12650 Sq. Mts. of land of Khasra No. 795 for which, the subsequent agreement was also executed.

16. Learned counsel for the defendants/respondents has further submitted that it is evident from the perusal of the aforesaid Power-of-Attorney and the concerned Agreement executed for 12650 Sq. Mts. of land that the actual possession of the land had always been with the Defendants/respondents. He has further submitted that it is evident from the perusal of the aforementioned Power-of-Attorney alongwith subsequent agreement that the same was for an area of 12650 Sq. Mts. of land in lieu of the sum of Rs.7,15,00,000/-, i.e., @Rs.5652.17 per Sq. Mtr. whereas the earlier agreement dated 02.05.2014 was for Rs.15,21,37,274/- in respect of the land to the extent of 34600 Sq. Mtr., i.e., @Rs.4,397.031 per Sq. Mtr. (also mentioned in the agreement dated 02.05.2014 that the same was @ Rs.4400/- per Sq. Mtr), and thus, it is evident that the parties had already departed from the terms and conditions of the agreement dated 02.05.2014 as far back as at the time of the execution of the concerned Power-of-Attorney and the subsequent agreement. He has further submitted that the period of the registered agreement to sale was only till 10.3.2015 and the

appellant/plaintiff had failed to perform its obligation/duties in accordance with the said registered agreement to sale dated 2.5.2014. It is further submitted by the learned Senior Counsel that though after 10.03.2015, neither the Defendants/Respondents herein, nor Predecessor-in-Interest of the Defendants/Respondents had been liable to or could be compelled to act in pursuance to the aforesaid Agreement to sale dated 02.05.2014, however, by way of concession, the concerned Sale-Deeds were executed. It is, however, further pointed out that from the perusal of the recitals made in the said Sale-Deeds, the concerned Agreement dated 02.05.2014 could and cannot be treated to be in-operation or being effective after 10.03.2015. It is further submitted that though part of the amount, out of the previously paid amount, was adjusted in the aforementioned Sale-Deeds, however, the Sale Deeds were executed after the fresh oral settlement including with regard to the rate of the land of the concerned Sale-Deeds and not upon the same terms and conditions as agreed in the Agreement dated 02.05.2014.

17. Learned counsel for the defendants/respondents has further submitted that it is also evident from the recitals made in the said Sale-Deeds that the possession of the land demised by the said Sale-Deeds was transferred to the vendee of the Sale-Deed at the time of the execution of the said Sale-Deeds. He further made reference of the judgments of the Supreme Court passed in '**Civil Appeal No. 5200 Of 2025; Correspondence, RBANMS Educational Institution Vs. B. Gunashekhar & Anr'** arising from SLP (C) No. 13679 Of 2022 (decided on 16.04.2025 reported in: '2025 SCC OnLine SC 793')'. In view of the aforesaid Judgment, the allegations made in the paragraph no. 18 (under reply), cannot be pressed upon as well as cannot be considered. He has further relied on that it is categorically submitted that no reliance can be placed upon the alleged amount allegedly paid in cash, i.e., amount to the tune of Rs.1,91,58,619/- in view of the aforementioned judgment of the Hon'ble Apex Court passed in 'Civil Appeal No. 5200 Of 2025'(supra). It is submitted by the learned counsel for the respondents/defendants that it is absolutely wrong to allege that the sum of Rs.1,91,58,619/- was paid in cash. He further submitted that it is absolutely wrong to allege that Rs.15,21,37,274/- was paid from 14.02.2014 till 02.03.2015. It is wholly misconceived and wrong to allege in the paragraph under reply (paragraph no. 19) that Rs.15,21,37,274/- was the same amount as agreed in the registered agreement to sale dated 02.05.2014.

18. Learned counsel for the defendants/respondents has submitted that it is apparent that so far as the amount of Rs.7.15 Crores is concerned, the same was in respect of the land of Khasra No. 795 Area 1.2650 Hectare, i.e., 12650 Sq. Mtrs. It is further argued that so far as Rs. 3 Crores is concerned, the part/sum of the amount to the extent of Rs.36,54,700/- and Rs.29,23,700/-, i.e., total Rs.65,78,400/- has already been adjusted in the two Sale-Deeds. It is further submitted that so far as with the institution of the said Suit No. 1183 Of 2023 as well as the prayer made in the said Suit No. 1183 Of 2023 are concerned, the reference is craved upon the plaint of the said suit itself. He has further submitted that keeping in view the recitals made in the plaint of the said Suit No. 1183 of 2023, the reliefs sought therein could / cannot be granted particularly in view of the fact that the said suit has been instituted beyond the period of the limitation prescribed for the said purpose as well as there has not been any recital with regard to the alleged readiness and willingness of the Plaintiff of the said Suit No. 1183 of 2023 as well as in view of the lack of the specific pleadings with regard to the dates on which the alleged request was made for execution of Sale-Deed, and further, in view of the non-payment of the proper court-fees, if, the Plaintiff of the said Suit No. 1183 Of 2023 has been claiming the relief as sought in the said Suit No. 1183 of 2023 to be of the specific performance of the contract.

19. Learned Senior Counsel has further relied that the relief as sought in the form of mandatory injunction could/cannot be granted keeping in view the settled position of law. He has submitted that Suit No. 1183 of 2023 was liable to be dismissed. It is further submitted that said order dated 10.10.2023 was an exparte order as well as same was conditional order subject to condition mentioned in the said order dated 10.10.2023 itself. It is further submitted that neither on 10.10.2023 nor till now, name of plaintiff/appellant herein i.e. plaintiff of suit No. 1183 of 2023 was recorded in the concerned revenue records upon the suit property i.e. upon remaining area of 1.4363 hectares of Khasara No. 793 and 795 and thus, the plaintiff/appellant is not entitled for any relief on the basis of order dated 10.10.2023. He further submitted that Civil Suit No. 1183 of 2023 was instituted on 10.10.2023 and the interim injunction was granted on the said date itself i.e. on 10.10.2023. As such, concerned sale deed which were executed on 13.9.2023 was duly executed prior to institution of concerned

suit as well as prior to passing of interim order dated 10.10.2023. It is further submitted that it is wholly misconceived to allege that the area of 14363 Sq. Mts was subject matter of the agreement-to-sell dated 02.05.2014, which is basis of Original Suit No. 1183 of 2023 filed by the plaintiff/appellant. He further submitted that said registered agreement to sale dated 2.5.2014 was valid upto 10.03.2015 and thereafter it ceased to having any legal effect. He has further submitted that aforementioned order dated 10.10.2023 was the conditional one, and since, the name of the plaintiff/appellant of the said Suit was not recorded in the revenue records, as such, even otherwise, there has not been any restriction created by the said order dated 10.10.2023 including upon the execution of the sale-deed by the tenure-holder. He has further submitted that the Contempt Application No. 85 of 2024 is wholly misconceived and is liable to be dismissed. He submitted that neither any Impleadment Application has not been filed for impleading the persons in the concerned Suit No. 1183 Of 2023, in whose favour the concerned Sale-Deeds were executed and the concerned Contempt Application No. 85 Of 2024 has been filed, nor the said persons have been impleaded whereas, certain persons were impleaded as defendants in the subsequent '**Original Suit No. 828 Of 2024 (Nimmi Infratech Private Limited Vs. Fundan (Minor) and Others)**'. He further submitted that the plaint of the said Suit No. 828 of 2024 was rejected under Order 7 Rule 11 of CPC by order dated 16.08.2024. However, the appeal preferred against the said order dated 16.08.2024 was allowed by the Judgment and Order dated 23.01.2025 passed by this Court.

20. Learned counsel for the defendants/respondents has further submitted that the defendants/respondent of Suit No. 828 of 2024 has approached the Hon'ble Supreme Court of India against the aforementioned Judgment and Order dated 23.01.2025 passed by this Court and the matter is still pending before the Hon'ble Supreme Court of India. He has further submitted that from the reliefs sought in the concerned Contempt Application No. 85 Of 2024, it has been evident that the possession of the vendees upon the subject matter of the concerned Sale-Deeds, has been established beyond doubt. He submitted that the impugned order dated 5.9.2025 is purely legal and the appeal is liable to be dismissed.

21. He further submitted that keeping in view of the entire facts and circumstances of the case, the appellant/plaintiff are not entitled for any

relief in view of Section 53A of the Act, 1882. It is further submitted by the learned counsel for the defendants/respondents that the agreement to sale dated 2.5.2014 ceased to exist after 10.3.2015. He has further submitted that though nomenclature of the agreement to sale dated 2.5.2014 was with possession, however, the possession of the land was transferred from time-to-time, which is also evident from the recitals made in the concerned Sale-Deeds. He further submitted that so far as the suit property is concerned, the same has not been in the possession of the Plaintiff/Appellant and the reference of this Court in this regard is respectfully craved upon the subsequent agreement entered into between the tenure-holder and the Plaintiff/Appellant.

22. Learned counsel for the defendants/respondents has further submitted that the Plaintiff/Appellant has not been in possession of the suit property at the time of institution of Suit No. 1183 of 2023 which is also evident from perusal of the recital made in the subsequent agreement. It is further submitted that the sale deeds have been executed of different portion of the said property and the concerned vendee have been in possession of said portion. However, said person have not been impleaded in the concerned suit No. 1183 of 2023, though said person are proper and necessary parties since right of said person could be affected. He has further submitted that since plaintiff/appellant has not been entitled for interim relief as sought in said suit No. 1183 of 2023, as such the appellant/plaintiff is not entitled for any interim relief from this Court. He further submitted that registered agreement to sale dated 2.5.2014 ceased to exist after 10.3.2015 and said agreement to sale dated 2.5.2014 cannot be treated to have revived on account of execution of concerned sale deeds. The correct facts have been mentioned in the agreement dated 18.7.2022.

23. Learned counsel for the defendants/respondents has been submitted that the allegation with regard to the agreement dated 18.7.2022 has been made for the first time in the aforesaid appeal by the plaintiff/appellant and not before the learned trial court, hence same cannot be considered. He has further submitted that the appellant/plaintiff had the sufficient opportunity to deny the tenability of the agreement dated 18.7.2022, however, since the plaintiff/appellant had obtained the ex-parte interim order dated 10.10.2023, as such, instead of making the submission with regard to the tenability of the said agreement dated 18.7.2022 in the concerned suit, the plaintiff/appellant

had opted to remain silent, and since the said agreement dated 18.7.2022 has been the genuine one, as such, the reference has rightly been made of the same in the impugned order.

24. Learned counsel for the plaintiff/appellant has again submitted that he is consistent in actual physical possession of the property in dispute since very inception of the registered agreement to sale dated 2.5.2014 after payment of entire sale consideration which has not been denied. The possession which had been delivered by way of registered agreement to sale after receiving entire sale consideration by the defendants/respondents, it could not be treated as cancelled on the basis of any alleged unregistered agreement. He has further submitted that period of limitation as per Clause 54 of Schedule of the Limitation Act, 1963 would start from the date when plaintiff has noticed that the performance has been refused and, therefore, for the reason mentioned herein, the assertion so made in the paragraph under reply that the agreement ceased to exist after 10.3.2015 is contrary to law as well as fact.

25. Learned counsel for the appellant/plaintiff has further submitted that the appellant/plaintiff was given possession over the entire property measuring an area of 34600 sq. M out of Khasra No. 795 and 793 for which entire amount had already been paid. He has further submitted that perusal of unregistered agreement to sale dated 18.7.2022 gives clear picture that (1) no date is mentioned over the said agreement dated 18.7.2022, and (2) there is no mention that Mr. Arvind Kumar Singh was ever authorized by the company to sign any such agreement dated 18.7.2022.

26. Learned counsel for the defendants/respondents has relied on the law laid down by the Supreme Court in **Shakeel Ahmed Vs. Syed Akhaq Hussain; 2023 INSC 1016** where, it is held that having considered the submissions at the outset, it is to be emphasized that irrespective of what was decided in the case of Suraj Lamps and Industries (supra) the fact remains that no title could be transferred with respect to immovable properties on the basis of an unregistered Agreement to Sell or on the basis of an unregistered General Power of Attorney. The Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right, much less a legally enforceable right to approach a Court of Law on its basis. Even if these documents i.e. the Agreement to Sell and the Power of Attorney were registered, still it could not be said that the respondent would have acquired title over the property in question. At best,

on the basis of the registered agreement to sell, he could have claimed relief of specific performance in appropriate proceedings. In this regard, reference may be made to sections 17 and 49 of the Registration Act and section 54 of the Transfer of Property Act, 1882.

27. He further relied on the law laid down by the Supreme Court in **Suraj Lamp and Industries Pvt. Ltd Vs. State of Haryana and others; MANU/SC/1222/2011**, where it is held that a SA/GPA/Will transaction does not convey any title nor create any interest in an immovable property. He also relied on **Ahmadsahab Abdul Mulla Vs. Bibijan and others; (2009) 5 SCC 462** that the Supreme Court is held that the expression "date fixed for the performance" is a crystallised notion. This is clear from the fact that the second part "time from which period beings to run" refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on "when the plaintiff has notice that performance is refused". Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates.

28. Learned counsel for the defendants/respondents has also relied on **Smt. Katta Sujatha Reddy and another Vs. Siddamsetty Infra Projects Pvt. Ltd and others; 2022 LiveLaw (SC) 712**. Learned counsel for the respondents/defendants has pressed on paragraph no. 37, where it is observed that "we may note that Article 54 of the Limitation Act provides for two consequences based on the presence of fixed time period of performance. It is only in a case where the time period for performance is not fixed that the purchaser can take recourse to the notices issued and the vendors' reply thereto. In the case at hand, the aforesaid circumstances do not come into play as a fixed time period was clearly mandated by Clause 3 read with Clause 23 of the agreements to sell, as explained above.

29. Learned counsel for the defendants/respondents has relied on the law laid down by the Supreme Court in **Usha Devi and others Vs. Ram Kumar Singh and others; 2024 SCC OnLine SC 1915**, where he has pressed that the validity of the agreement is something different and does not change the date of performance. What was the reason for incorporating this clause of validating the agreement for five years is not spelled out in the agreement, but in any case, it does not change the date fixed for the performance. He further relied on the law laid down by the Supreme Court in **Atma Ram Vs.**

Charanjit Singh; (2020) 3 SCC 311 and he relied upon that conduct of a plaintiff is very crucial in a suit for specific performance. A person who issues a legal notice on 12.11.1996 claiming readiness and willingness, but who has instituted a suit only on 13.10.1999 and that too only with a prayer for a mandatory injunction carrying a fixed court fee relatable only to the said relief, will not be entitled to the discretionary relief of specific performance. Learned counsel for the defendants/respondents has also relied on law laid down by the Supreme Court in **Nikhila Divyang Mehta and another Vs. Hitesh P. Sanghvi and others; 2025 LiveLaw (SC) 428**, where subject matter was an application under Order 7 Rule 11 CPC. In the said suit, the Will and Codicil was pressed to be null and void. The relief of declaration claimed in the suit does not fall under Article 56 and 57 and, therefore, by necessary implication, Article 58 would stand attracted which provides for a limitation period of three years to obtain any other declaration other than that mentioned under Articles 56 and 57. It provides that for such a declaration, the limitation is three years from the date when the right to sue first accrues. Learned counsel for defendants/respondents has relied on paragraph no. 29 of the said judgement (supra) where it is held that lastly, the first appellate Court has ruled that in the suit, the plaintiff has claimed different reliefs and even if the plaint is barred by limitation in respect of one of the reliefs, it cannot be rejected in toto. The aforesaid submission is also without substance as upon the plain reading of the prayers made in the plaint, it is apparent that the primary relief claimed therein is to declare the Will and the Codicil to be null and void and also all subsequent proceedings thereto. In addition to it, the plaintiff has claimed permanent injunction. The other reliefs are dependent upon the first relief and cannot be granted until and unless the plaintiff succeeds in the first relief. Therefore, once the plaint or the suit in respect of the main relief stands barred by time, the other ancillary relief claimed therein also falls down.

30. Learned counsel for the respondents/defendants has further relied on the law laid down by the Supreme Court in **Padhiyar Prahladi Chenaji (deceased) through L.Rs. Vs. Maniben Jagmalbhai (deceased) through L.R.s and others; 2022 LiveLaw (SC) 241** and he relied on paragraph no. 11 of the said judgment which reads as under:-

"11. From the impugned judgment and order passed by the High Court, it appears that the High Court has not properly appreciated the distinction between a substantive

relief and a consequential relief. The High Court has observed that in the instant case the relief of permanent injunction can be said to be a substantive relief, which is clearly an erroneous view. It is to be noted that the main reliefs sought by the plaintiff in the suit were cancellation of the sale deed and declaration and the prayer of permanent injunction restraining defendant No.1 from disturbing her possession can be said to be a consequential relief. Therefore, the title to the property was the basis of the relief of possession. If that be so, in the present case, the relief for permanent injunction can be said to be a consequential relief and not a substantive relief as observed and held by the High Court. Therefore, once the plaintiff has failed to get any substantive relief of cancellation of the sale deed and failed to get any declaratory relief, and as observed hereinabove, relief of injunction can be said to be a consequential relief. Therefore, the prayer for permanent injunction must fail. In the instant case as the plaintiff cannot be said to be in lawful possession of the suit land, i.e., the possession of the plaintiff is "not legal or authorised by the law", the plaintiff shall not be entitled to any permanent injunction."

31. Learned counsel has also relied on **Sucha Singh Sodhi Vs. Baldev Raj Walia and another; (2018) 6 SCC 733** to contend that the cause of action to claim temporary/permanent injunction against the defendants from interfering in the plaintiff's possession over the suit premises accrues when Defendant 1 threatens the plaintiff to dispossess him from the suit premises or otherwise cause injury to the plaintiff in relation to the suit premises. It is governed by Order 39 Rule 1(c) of the Code which deals with the grant of injunction. The limitation to file such suit is three years from the date of obstruction caused by the defendant to the plaintiff (see Part VII Articles 85, 86 and 87 of the Limitation Act). On the other hand, the cause of action to file a suit for claiming specific performance of agreement arises from the date fixed for the performance or when no such date is fixed, when the plaintiff has noticed that performance is refused by the defendant. The limitation to file such suit is three years from such date (see Part II Article 54 of the Limitation Act).

32. Learned counsel for the respondents/defendants has further placed reliance on the law laid down by Supreme Court in **Dahiben Vs. Arvindbhai Kalyanji Bhanusali and others in Civil Appeal No. 9519 of 2019 decided on July 9,2020**, where he relied on **T. Arvindandam Vs. T.V. Satyapal and another; (1977) 4 SCC 467**, the Court held that while considering an application under Order VII Rule 11 CPC what is required to

be decided is whether the plaint discloses a real cause of action, or something purely illusory. He further relied on page 18 of this judgment that subsequently, in **I.T.C. Ltd. Vs. Debt Recovery Appellate Tribunal; (1998) 2 SCC 170** this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint. He further pressed that if, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in **Madanuri Sri Ramachandra Murthy Vs. Syed Jalal; (2017) 13 SCC 174** held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage.

33. Learned counsel for the defendants/respondents further relied on the law laid down by the Supreme Court in **Ramisetty Venkatanna and another Vs. Nasyam Jamal Saheb and others; 2023 SCC OnLine SC 521** which is also based on the aforesaid judgement already referred in **T. Arvindandam (supra)**. Learned counsel has further relied on **Shri Mukund Bhavan Trust and others Vs. Shrimant Chhatrapati Udyan Raje Pratapsinh Maharaj Bhonsle and another; 2024 SCC OnLine SC 3844**, where he pressed about mixed question of fact and law and relied that the spirit and intention of Order VII Rule 11(d) CPC is only for the courts to nip at its bud when any litigation ex facie appears to be a clear abuse of process. He further relied on the law laid down by the Supreme Court in **Jharkhand State Housing Board Vs. Didar Singh and others; MANU/SC/1202/2018** that when the defendants disputes the title of the plaintiff, it is not necessary that in all those cases, plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction.

34. Learned counsel has further relied on the law laid down by this Court in **Mahendra Singh and others Vs. Senior citizen Home Complex Welfare society and others; MANU/UP/2701/2011**, where basic ingredient for granting of temporary injunction has been discussed as under:-

- (1) Prima facie case of the plaintiff.
- (2) Balance of convenience, and
- (3) Irreparable loss/injury.

35. Learned counsel for the defendants/respondents has further relied on the law laid down by the Supreme Court in **Ambalal Sarabhai Enterprise Limited Vs. KS Infraspac LLP Limited and another; (2020) 5 SCC 410**, where he has pressed a plaintiff seeking temporary injunction in a suit for specific performance will therefore, have to establish a strong prima facie case on basis of undisputed facts and he has further relied that point of limitation has to be also seen. He also relied on the law laid down by the Supreme Court in **Kishore Kumar Khaitan and others Vs. Praveen Kumar Singh; MANU/SC/0940/2006** and he relied that an interim mandatory injunction is not a remedy that is easily granted. He further relied that interim mandatory injunction is passed only in circumstances which are clear and the prima facie materials clearly justify a finding that the status quo has been altered by one of the parties to the litigation and the interest of justice demanded that the status quo ante be restored by way of an interim mandatory injunction.

36. Learned counsel for the defendants/respondents has also placed reliance on **D. Albert Vs. Lalitha and others; MANU/TN/0205/1989** decided by High Court of Madras that where petitioner claimed to be in possession and respondents filed a counter affidavit that he is in possession. In the circumstances, status quo should continue till the disposal of the appeal. It is obvious that such orders should not be passed by any court, high or low. Whenever a Court passes an order directing the preservation of 'status quo' it should by the same order state in unequivocal terms what the 'status quo' is. Otherwise, the court will be failing to do its duty.

37. Learned counsel appearing for the defendants/respondents has also relied on the law laid down by the Supreme Court in **The Correspondence, RBANMS Educational Institution Vs. B. Gunashekar and another; 2025 (5) SCR 94**. He relied on merit of transaction if made in cash and he relied that it is pertinent to recall that Section 269ST of the Income Tax Act, was introduced to curb black money by digitalising the transactions above Rs. 2 lacs and contemplating equal amount of penalty under Section 271DA of the Act.

38. From perusal of the record, it is evident and pertinent to mention over here that Original Suit No. 1183 of 2023 which is still pending before the learned trial court and it has to be decided on its merit. Learned trial court has simply decided an application 6C-2 under Order 39 Rule 1 and 2 CPC,

where prima facie case, balance of convenience and irreparable loss and injury has to be seen. It is undisputed that registered agreement to sale alongwith possession after payment of entire sale consideration by the plaintiff/appellant to the defendants/respondents has been executed alongwith possession on 2.5.2014.

39. Learned counsel for the defendants/respondents has very vehemently submitted that said registered agreement to sale dated 2.5.2014 had a fixed validity and that was expired on 10.3.2015, hence the present original suit is barred by time because there is a specific time has been assigned. There has been neither any willingness nor readiness has been shown by the plaintiff/appellant, where cause of action which has been shown and referred will simply does not enforce in law and he has submitted that these kind of plaint shall be rejected in limine under Order VII Rule 11, whereas learned counsel for the appellant/plaintiff has relied that complete possession of the property in dispute had already been delivered to the appellant/plaintiff by way of registered agreement to sale dated 2.5.2014 and the appellant/plaintiff has paid the entire sale consideration and he is in actual physical possession over there. The agreement dated 18.7.2022 is stated to be a compromise between the parties whereas the plaintiff/appellant has denied it specifically. The defendants/respondents, prima facie, failed to prove that such agreement or compromise, if any, has been registered. The said agreement or compromise dated 18.7.2022 is an un-registered agreement which is denied by the appellant/plaintiff. The cause of action as shown by the plaintiff/appellant is a mixed question of fact and law, and it should not be decided prima facie, and the plaint shall not be thrown out at the very initial stage without going into merits of the case. The original suit is still pending.

40. It is evident, prima facie, that defendants/respondents has failed to submit any registered document by which or by any other mode by which he had got back the possession of the property in dispute which was subject matter of registered agreement to sale dated 2.5.2014, whereas the defendants/respondents has also stated that even after expiry of the aforesaid registered agreement to sale dated 2.5.2014, he has executed sale deeds in favour of the plaintiff/appellant. This shows their concession. It may be considered as implicit continuance of physical possession and continuation of terms and condition settled by way of registered agreement to sale dated

2.5.2014 between the parties to the suit which is very basis of the said suit.

41. Learned counsel for the defendants/respondents has submitted that the sale deeds which had been executed after expiry of period of registered agreement to sale dated 2.5.2014, for which possession has also been delivered to the plaintiff/appellant, if they had not in possession, how it could be transferred, whereas, the defendants/respondents failed to submit any document by which he had re-got the possession which he already delivered to the plaintiff/appellant after receiving entire sale consideration and admitted in the said registered agreement to sale dated 2.5.2014. The said delivery of possession in post sale deed could be considered as constructive delivery of possession at this stage.

42. Learned counsel for the respondents/defendants has vehemently relied on that the revenue entries, that they were consistently in the name of the transferor at the time of registered agreement to sale dated 2.5.2014 in his favour and thereafter also in favour of defendants/respondents. At no point of time, neither mutation nor any entries in the revenue record has ever in the name of plaintiff/appellant. When it is the case of the plaintiff/appellant that the defendant/respondents has executed registered agreement to sale alongwith possession after receiving entire sale consideration, but no sale deed has been executed in his favour. Hence, it is very much natural that revenue entries was in the name of defendants/respondents and it could not give any edge to the defendants/respondents.

43. Learned counsel for the plaintiff/appellant has relied that he is claiming the possessory title including possession which he has got in the property in dispute on the basis of said registered agreement to sale dated 2.5.2014 and he is in continuous possession over the said property. On the contrary, learned counsel for the defendants/respondents has failed to submit any registered document which may show that possession had been re-transferred by the plaintiff/appellant to the defendants/respondents or by any other valid document executed between the parties. The alleged compromise or agreement dated 18.7.2022 which is an unregistered document and vehemently denied by the plaintiff/appellant, it could not be considered as valid document by which delivery of possession by the plaintiff/appellant in favour of defendants/respondents was made. The original suit No. 1183 of 2023 has been filed by the plaintiff/appellant/Satya Homes Pvt. Ltd against the defendants/ respondents for permanent injunction and for declaration of

ownership on the basis of its possessory title on the basis of registered agreement to sale dated 2.5.2014 and for mandatory injunction.

44. Learned counsel for the defendants/respondents has relied that main relief could not be granted, hence, ancillary relief of permanent injunction could also not be granted. He further submitted that when permanent relief may not be granted, then temporary injunction relief also may not be granted. It is undisputed that the registered agreement to sale dated 2.5.2014 has been executed by the defendants/respondents in favour of the plaintiff/appellant after receiving the entire sale consideration and also delivered possession of the suit property and said possession has not been taken back or by any other mode has been re-transferred by the plaintiff/appellant to the defendants/respondents or obtained by the defendants/respondents. Whereas, the matter is at the level of application under Order 39 Rule 1 and 2 read with Section 151 CPC and the temporary injunction has been rejected by the learned trial court by the impugned order dated 5.9.2025, whereas, the entire civil suit has to be decided on its own merits. All the questions of fact and law which has been raised by the defendants/respondents at this stage that has to be considered by the learned trial court during trial. At this stage, only prima facie case, balance of convenience and irreparable loss and injury has to be seen. The possession over the property in dispute which had been granted by the defendants/respondents after receipt of entire sale consideration in execution of registered agreement to sale dated 2.5.2014 in favour of the plaintiff/appellant is appeared to be undisturbed, prima facie, till this stage. That has to be protected, failing which the appellants/plaintiff would suffer irreparable loss and injury and also it involves multiplicity of proceedings.

45. In view thereof, prima facie case, balance of convenience and irreparable loss and injury is in favour of the plaintiff/appellant. Hence, the impugned order dated 5.9.2025, passed by the learned Civil Judge (Senior Division), Gautam Buddh Nagar in Civil Suit No. 1183 of 2023 (Satya Homes Pvt. Ltd. Vs. Fundan and others), is, hereby **set aside**. The defendants/respondents are restrained from making any interference into the peaceful possession of the plaintiff/appellant over the property in dispute on the basis of registered agreement to sale dated 2.5.2014 and further, they are also restrained from changing nature of the property in dispute during the pendency of the suit.

46. In view thereof, and for the reasons mentioned herein above, the appeal

is entitled to be allowed and it is, accordingly, **allowed**.

Order on Impleadment Application.

1. An impleadment application has been filed by Diksha Nijhawan/applicant/ third party. The third party has claimed that the defendants/respondents has executed a registered sale deed and also delivered possession to her of the land in question, hence she is necessary party and her impleadment application be allowed.
2. Considering the facts and circumstances of the case, the third party/applicant is granted liberty to file her impleadment application before the learned trial court that has to be decided by the learned trial court in accordance with law in view of the right alleged by the third party and in view of the facts and circumstances of the case in accordance with law.
3. With these observations and findings, the impleadment application is disposed of.

(Abdul Shahid,J.)

May 11, 2026

sfa/