

CR-704-2026 (O&M)

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**123 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-704-2026 (O&M)

Reserved on : 22.05.2026

Pronounced on : 09.07.2026

Uploaded on : 09.07.2026

Whether only operative part of the judgment is pronounced? No

Whether full judgment is pronounced? Yes

Gajjan Singh @ Gurbachan Singh and another ...Petitioners

Versus

Jogender SinghRespondent

Coram : **HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Ms. Kushaldeep Kaur, Advocate,
Mr. Ashn Singh, Advocate and
Ms. Sharvi Dadhwal, Advocate
for the petitioners.

Mr. R.S. Mamli, Advocate
for the respondent.

PANKAJ JAIN, J.

Petitioners in the present revision petition are aggrieved of order dated 3.11.2025, passed by Additional District Judge, Fatehabad and order dated 8.7.2021, passed by Civil Judge (Senior Division), Fatehabad, whereby application filed by respondent/plaintiff seeking temporary injunction under Order XXXIX Rules 1 and 2 CPC has been allowed.



2. Respondent/Plaintiff instituted suit seeking decree of permanent injunction claiming himself to be in possession of suit land measuring 59 kanals 3 marlas as detailed out in the head note of the plaint. As prospective vendee under oral agreement to sell dated 11.7.2005 followed by written agreement of sale dated 20.4.2010 and deed of mutual settlement dated 20.4.2010 read with agreement of sale dated 8.8.2020. The pleadings raised in the plaint read as under:-

“2. That the defendant no. 1 is family member of the plaintiff, he is son of maternal uncle of Sh. Rattan Singh father of the plaintiff, there was relation of faith and trust, the defendant was in need of money, no other was ready to purchase his aforesaid land being litigation was pending, on that junction of his need, the father of plaintiff came to his help and become ready to purchase the 1/2 share of his aforesaid land at the rate of Rs. 1,50,000/- per acre, at prevailing rate of land at that time, in this regard an oral agreement of sale was made on the basis of aforesaid allotment and Rapat Roj Namcha No. 285 dated 08.04.1971.

3. That as mentioned above, the defendant no.1 by striking a bargain which is 1/2 orally to sell his aforesaid land measuring 64 kanal share of aforesaid land measuring 128 kanal, on 11.07.2005, with Sh. Ratan Singh father of the plaintiff for a consideration of Rs. 1,50,000/- per acre, the defendant no. 1 delivered the possession of aforesaid land measuring 64 kanal to Sh. Ratan Singh father of plaintiff after receiving total consideration of Rs.12,00,000/-, in presence of his son defendant no. 2.

4. That in this regard the defendant no. 1 has also get written an agreement of sale dated 20.04.2010 and executed the same in presence of his son Iqbal Singh impleaded as defendant no. 2 and in presence of other witnesses Sh. Inder Singh Sihag,

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Advocate, Fatehabad, Sh. Sant Lal s/o Sh. Dharam Chand resident of village Bhodia Khera and plaintiff, by settling the terms and conditions mentioned in agreement of sale dated 20.04.2010, copy of which is attached herewith, may kindly be read as part of this plaint.

5. That because the sale deed could not be made and executed on 20.04.2010 due to pendency of litigation on behalf of big land owner, to avoid any complication, a mutual settlement deed was also made and executed by the parties being litigation regarding aforesaid land measuring 128 kanal was pending in Court, to make it clear that all the expenditure in aforesaid litigation and for development of aforesaid land will be incurred by both the parties in equal share. It was also settled that the father of the plaintiff and the defendant no. 1 will cultivate the aforesaid land measuring 128 kanal in equal share jointly.

6. That for better irrigation, in the meantime a tubewell was installed in aforesaid land measuring 128 kanal by taking electricity connection bearing account no. H41-SK54-3089 by incurring expenditure in equal share and the father of plaintiff and the defendant no. 1 used this tubewell for irrigation of aforesaid 128 kanal land by incurring equal expenditure in maintaining the tubewell and for paying the electricity bill.

7. That Sh. Ratan Singh father of plaintiff was expired on 27.05.2011, after death of his father the plaintiff cultivated the aforesaid land jointly with the defendant, being the aforesaid litigation was not over, there was some difficulties in joint cultivation of aforesaid land, to partition the aforesaid land for better cultivation, a new agreement of sale was made and executed by the defendant no.1 in favour of plaintiff on 08.08.2020 in presence of Sh. Darbara Singh son of Surjan Singh resident of village Chando Kalan, Tehsil Ratia, Distt. Fatehabad and aforesaid Sant Lal witness, thereby the

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defendant no.1 reiterated the terms and conditions of oral agreement of sale dated 11.07.2005 and written agreement dated 20.04.2010 in favour of plaintiff, whereby the land measuring 59 kanal 3 marla bearing khasra no. 142//15(8-15), 16(8-0), 17(3-16), 24(6-12), 25(8-0), 141//11(8-0), 20(8-0), 21(8-0), situated at village Fatehabad, Tehsil and Distt. Fatehabad, was came to the share of plaintiff, of which separate possession was to be taken by the plaintiff after harvesting the crop of rabi-2021, after harvesting the crops of rabi-2021, after taking separate possession on aforesaid 59 kanal land, in 10 kanal narma crop has already been sown.”

3. Plaintiff further claims that he always remained ready and willing to perform his part under oral agreement to sell dated 11.7.2005 followed by written agreement of sale dated 20.4.2010 and deed of mutual settlement dated 20.4.2010 read with agreement of sale dated 8.8.2020. Along with the plaint, respondent/plaintiff filed an application under Order XXXIX Rules 1 and 2 CPC seeking temporary injunction during the pendency of the suit.

4. Suit is being contested by defendants. Defendants filed written statement denying agreement to sell propounded by plaintiff. The trial Court vide order dated 8.7.2021 found that plaintiff has a prima-facie case in his favour. The trial Court held that agreement to sell having been executed almost 11 years ago and the sale consideration having been received by defendants, balance of convenience lies in favour of plaintiff. Plaintiff shall suffer irreparable loss and injury, if the defendant is not restrained from interfering in his possession and allowed the application.



5. Dissatisfied by the order passed by the trial Court, defendants filed an appeal. The Lower Appellate Court vide impugned order dated 03.11.2025 has affirmed the findings recorded by the trial Court, dismissing the appeal.

6. Counsel appearing for petitioners has assailed the orders passed by the Courts below. She contends that the Courts below erred in granting injunction in a suit, which is not maintainable. She submits that by way of present suit, the plaintiff seeks injunction against the defendants and wants to protect his possession on the basis of unregistered documents. It has been contended that the present suit is not maintainable in terms of Section 17 of the Registration Act, 1908.

7. *Per contra*, Mr. Mamli submits that plaintiff has propounded agreement to sell executed by defendants in his favor. Defendants have denied execution of agreement to sell and have played fraud. The plea raised by defendants being matter of evidence, the Courts below have rightly granted injunction in favor of plaintiff.

8. I have heard counsel for the parties and have carefully gone through records of the case.

9. By way of present suit, plaintiff seeks protection of his possession on the basis of agreement to sell, claiming that he continues to be ready and willing to perform his part of contract. Section 53A of Transfer of Property Act, 1882 reads as under:-

“53A. Part performance.—Where any person contracts to transfer for consideration any immoveable 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,

and 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 and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that, 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 shall be debarred from enforcing against the transferee and persons claiming under him 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:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

10. Thus, plaintiff, by way of present suit, wants to invoke Section 53A of Transfer of Property Act, 1882. By way of Amendment Act of 2001, Section 17 of Registration Act, 1908 stands amended and the same reads as under:-

“Section 17. Documents of which registration is compulsory-

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:--

(a) instruments of gift of immovable property;

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(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to--

(i) any composition deed; or

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- (ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or*
- (iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or*
- (iv) any endorsement upon or transfer of any debenture issued by any such Company; or*
- (v) any document other than the documents specified in subsection (1A) not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or*
- (vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or*
- (vii) any grant of immovable property by Government; or*
- (viii) any instrument of partition made by a Revenue-Officer; or*
- (ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or*
- (x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or*
- (xa) any order made under the Charitable Endowments Act,*

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1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

Explanation.--A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.”

11. In view of provision contained under Section 17(1A) of Registration Act, 1908, in order to invoke Section 53A of Transfer of Property Act, 1882, the agreement to sell needs to be registered. As per the provisions, in the absence of registration, the agreement to sell shall have no effect for the purpose of Section 53A of Transfer of Property Act.

12. This Court finds that the courts below ignored this vital aspect and wrongly recorded findings *qua prima facie* case in favour of plaintiff. Once unregistered agreement to sell does not confer any right and is of no consequence as per law, the plaintiff cannot claim *prima facie* case in his favour invoking Section 53A of Transfer of Property Act.

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13. Resultantly, this Court finds that the impugned order passed by the Courts below cannot be sustained. The same are hereby set aside. The application filed by plaintiff under Order XXXIX Rules 1 and 2 CPC is hereby dismissed.

14. Revision petition stands *allowed*.

15. All pending miscellaneous application(s), if any, stands *disposed off*.

July 09, 2026
ashish

(PANKAJ JAIN)
JUDGE

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