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SA-438-2001

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

SECOND APPEAL No. 438 of 2001

CNR No.: MPHC030091142001

*KILEDAR SINGH (DECEASED) THROUGH LRS 1) KALYAN SINGH
AND OTHERS*

*Versus**ANIL KUMAR AND OTHERS*

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Appearance:

Shri Avadhesh Parashar - Advocate for the appellants.

Shri Rajendra Jain - Government Advocate for respondent No.3/ State.

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Reserved on : 06.10.2026

Delivered on : 23.10.2026

JUDGMENT

The appellants have filed this appeal challenging the judgment and decree dated 28.09.2001 passed by Additional District Judge, Gohad, District-Bhind in Civil Appeal No.8-A/2001 whereby the judgment and decree dated 18.01.2001 passed by Civil Judge Class-I Gohad, District-Bhind in Civil Suit No.1-A/1996 has been affirmed and the suit filed by the respondent no.1/plaintiff has been decreed.

2. For purposes of convenience, respondent no.1 shall be referred to as 'plaintiff' while appellant and respondent no.2 to 7 shall be referred to as 'defendants', as per their respective status in the civil suit. Further, the suit property in this appeal would mean 0.158 hectare land out of total 0.549



hectare of land of Survey No.1712 situated in village Gohad, District-Bhind.

3. Plaintiff filed the present suit *inter-alia* on the ground that the suit land was initially owned and possessed by father of defendant no.1 namely- Hargovind and her uncle namely Devilal. After death of Hargovind, plaintiff and his brothers- Phool Singh, Badan Singh and his mother Smt. Sita Bai became the owners of half share of Hargovind in the suit land. Their names were accordingly mutated in the revenue records. It is averred that defendant no.1 got 0.068 Are (आरे) as his share in the suit property. Plaintiff further averred that Devilal also died without leaving any legal heirs. Accordingly, defendant no.1 and his brothers were his legal representatives. Proceeding for mutation of name of defendant no.1 and his brothers was going on. It is the case of plaintiff that defendant no.1 got 0.90 hectare of the land out of share of Devilal. Thus, defendant no.1 got total 0.158 hectares of the land, which is disputed in this case.

4. Plaintiff further averred that defendant no.1 agreed to sell the suit land to him for a sum of Rs.33,000/- out of which, Rs.5200/- was paid as advance money before the witnesses. As per plaintiff, possession of the suit land was also given to him. An agreement dated 27.12.1989 was executed between the plaintiff and defendant no.1. It was agreed that the sale deed would be executed as and when, name of defendant no.1 is mutated over the share of Devilal. Alleging that defendant no.1 was negotiating with certain other persons for sale of the suit land on 04.07.1990, the plaintiff filed the present suit on 13.07.1990 claiming following reliefs:

"(अ) सर्वे नं० 1712 रकबा .549 है०, वाके मौजा गोहद के मिन रकबा .158 है०



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को प्रतिवादी क्र० 1 अन्य किसी को विक्रय करने का अधिकारी नहीं है यह घोषित किया जावे।

(ब) वादी के हक में प्रतिवादी के विरुद्ध स्थायी निषेधाज्ञा इस आशय की जारी की जावे कि वाद भूमि को प्रति० क्र० 1 अन्य किसी व्यक्ति को अन्तरण न करें।

(स) अन्य सहायता जो वादी के हक में न्यायसंगत हो दिलाई जावे।

(द) वाद व्यय वादी को प्रतिवादी क्र० 1 से दिलाया जावे।

(इ) यह कि प्रतिवादी लाखन ने वादग्रस्त भूमि का जो वयनामा दिनांक 10.10.91 को प्रतिवादी नम्बर 4 किलेदार सिंह के हक में सम्पादित किया है वह वादी के मुकाबले मूलतः व्यर्थ होकर प्रभावहीन है।"

5. Plaintiff further averred that after filing of the suit, defendant no.1 along with his brothers sold the suit property to defendant no.4 vide sale deed dated 10.10.1991. The same was accordingly challenged by plaintiff by amending the plaint on the ground that the defendant no.1 was not competent to sell the suit land as the same was sold to him vide agreement dated 27.12.1989.

6. The defendant no.1 to 4 filed their common written statement denying the plaintiff's claim. For the purpose of decision of this case, defense taken by them is not relevant and is thus not dealt with in detail.

7. The Trial Court as also the First Appellate Court have decreed the plaintiff's suit. It has been held by the Courts below that the registered agreement dated 27.12.1989 was executed by defendant no.1 in favor of plaintiff and therefore, plaintiff acquired title and possession over the suit land. It has been held that since the agreement was executed prior in time than the sale deed executed by defendant no.1 in favor of defendant no.4, therefore, subsequent sale deed, is null and void. Defendant no.1 has been



restrained from selling the suit property to any other person. Challenging the judgments and decree passed by the Courts below, present appeal has been filed by defendant no.4/appellant, who is the purchaser of the suit land from defendant no.1 and his brothers.

8 . This Court vide order dated 18.08.2008 admitted this appeal on following substantial questions of law:

"(i) Whether both the courts below have committed an error of law in granting decree of declaration and permanent injunction on the basis of Ex.P/1, an agreement to sale.

(ii) Whether both the courts below were right to granting a decree of declaration in view of Ex.P/1 declaring the sale-deed dated 10.10.1991 as ineffective when on ad valorem court fees on ExP/1 has been filed, declaring sale-deed as void."

9 . Learned counsel for the appellant submitted that the plaintiff claimed ownership based upon agreement for sale alone. It is his submission that agreement to sale does not convey any title in favor of the plaintiff and so long the claim for specific performance of agreement dated 27.12.1989 is concerned, no decree could have been passed in favour of the plaintiff. In support of his submission, learned counsel relied upon judgment passed by the Apex Court in the case of *Suraj Lamp & Industries (P) Ltd. Tr. Dir Vs. State Of Haryana & Anr.* reported in (2012)1 SCC 656 and the judgment passed by this Court in *S.A. No.1725/2024 (Prem Bai & Others Vs. Smt. Neelam & Others)* as also in *M.P. No.1771/2024 (Nehal Shah Vs. Jameet Singh Kachhwahe & Others)*. Learned counsel thus, prayed for setting aside



impugned judgments and decrees passed by the Courts below and prayed for dismissal of the suit.

10. No one appeared on behalf of the respondent/plaintiff despite service of notice.

11. Considered the submissions and perused the record.

12. From the pleadings made in the plaint, it became evident that the plaintiff asserted his title over the suit property solely based upon the registered agreement to sell dated 27.12.1989. As per this agreement, an amount of Rs.5200/- was paid as advance out of the total sale consideration of Rs.33,000/- and possession of the suit land stated to have been given to the plaintiff. It was agreed that the sale deed would be executed as and when mutation of name of defendant no.1 is made in the revenue records. Thus, it is evident that the parties only agreed to sell the suit land, but title of the land was not conveyed in favour of the plaintiff. Plaintiff's assertion of acquiring title over the suit land based upon the agreement to sale dated 27.12.1989, was thus, not acceptable.

13. The Apex Court considered the similar issue in the case of *Suraj Lamp & Industries (P) Ltd. (supra)*, holding as under:

Scope of an agreement of sale

16. Section 54 of the TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in Narandas Karsondas v. S.A. Kamtam [(1977) 3 SCC 247] observed: (SCC pp. 254-55, paras 32-33 & 37)



“32. A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. (See Ram Baran Prasad v. Ram Mohit Hazra [AIR 1967 SC 744 : (1967) 1 SCR 293] .) The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein.

33. In India, the word ‘transfer’ is defined with reference to the word ‘convey’. ... The word ‘conveys’ in Section 5 of the Transfer of Property Act is used in the wider sense of conveying ownership.

37. ... that only on execution of conveyance, ownership passes from one party to another....”

17. In Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra [(2004) 8 SCC 614] this Court held: (SCC p. 619, para 10)

“10. Protection provided under Section 53-A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed into service against a third party.”



18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter."

14. This Court also considered the issue in the case of *Prem Bai (supra)*, holding as under:-

"10. The moot question for consideration is as to whether, the agreement to sell would result in transfer of title or create interest in property in favour of intending purchaser or not?

11. The question is no more res integra.

12. The Supreme Court in the case of Indian Overseas Bank Vs. M.A.S Subramanian and Ors. by judgment dated 07.01.2025



passed in Diary No.38616/2018 has held as under:-

“6. It is well settled that an agreement for sale in respect of an immovable property does not transfer title in favour of the purchaser under the agreement. In view of Section 54 of the Transfer of Property Act, 1882, an agreement for sale does not create any interest in the property. The only mode by which an immovable property worth more than Rs.100/- (Rupees one hundred) can be sold is by a sale deed duly registered in accordance with the Indian Registration Act, 1908.”

Thus, it is clear that the agreement to sell does not create any interest or transfers any title in the property. However, the intending purchaser can always protect his possession in the light of Section 53-A of Transfer of Property Act provided he was ready and willing to perform his part of contract or has performed his part of contract. It is not the case of the appellants that they are entitled to protect their possession by virtue of Section 53-A of Transfer of Property Act. Therefore, even otherwise the appellants are not entitled to protect their possession for the simple reason that they have failed to prove the basic ingredients before taking advantage of Section 53-A of Transfer of Property Act.”

15. Similarly, in the case of *Nehal Shah (supra)*, this Court held as under:-

“9. For the purpose of considering as to whether plaintiff has prima facie case in his favour, it would firstly be necessary to consider whether the suit instituted by him is legally maintainable. From a reading of the Page 6 of 8 prayer clause of the plaint, it is



seen that plaintiff has claimed declaration of his title to the suit land under the agreement to sale dated 20.03.1994 and has further sought permanent injunction. He has not sought for the relief of specific performance of contract dated 20.03.1994. It is well settled in law that a mere agreement to sale by itself is wholly incapable of conferring title in the land and that such title can be conferred only by way of execution of a registered document. Since there is only an agreement to sale in favour of plaintiff, prima facie he does not have any title to the suit land. His relief of declaration of title to the suit land hence has to be excluded from consideration. Consequently, his suit has to be considered as one wherein relief of permanent injunction alone has been claimed.

*10. Plaintiff is claiming under the agreement to sale dated 20.03.1994 but has not claimed relief of specific performance of contract. This is a relief which he could have and ought to have claimed but has omitted to do so and has sought relief of permanent injunction alone which would be a negative injunction since the same has been sought for without claiming specific performance of the contract. In this regard, reliance may profitably be placed on the decision of this Court in *Ajay Narang (supra)* in which it has been held that a suit for mere negative injunction without claiming specific performance is not maintainable. Thus, apparently, the suit of plaintiff itself is not maintainable hence it cannot be held that he is having any prima facie case in his*



favour."

16. More recently, the Apex Court again dealt with similar issue in the case of *Correspondence, RBANMS Educational Institution vs. B. Gunashekar & another* reported in *2025 SCC Online SC 793*. The Court held thus:

"15.1. Undoubtedly, a sale deed, which amounts to conveyance, has to be a registered document, as mandated under Section 17 of the Registration Act, 1908. On the other hand, an agreement for sale, which also requires to be registered, does not amount to a conveyance as it is merely a contractual document, by which one party, namely the vendor, agrees or assures or promises to convey the property described in the schedule of such agreement to the other party, namely the purchaser, upon the latter performing his part of the obligation under the agreement fully and in time. Section 54 of the Transfer of Property Act, 1882 explicitly lays down that a contract for sale will not confer any right or interest. Section 53-A of the Transfer of Property Act, 1882 offers protection only to a proposed transferee who has part performed his part of the promise and has been put into possession, against the actions of transferor, acting against the interest of the transferee. For the proposed transferee to seek any protection against the transferor, he must have either performed his part of obligation in full or in part. The applicability of Section 53-A of the Transfer of Property Act, 1882 is subject to certain



conditions viz., (a) the agreement must be in writing with the owner of the property or in other words, the transferor must be either the owner or his authorised representative, (b) the transferee must have been put into possession or must have acted in furtherance of the agreement and made some developments, (c) the protection under Section 53-A is not an exemption to Section 52 of the Transfer of Property Act, 1881 or in other words, a transferee, put into possession with the knowledge of a pending lis, is not entitled to any protection, (d) the transferee must be in possession when the lis is initiated against his transferor and must be willing to perform the remaining part of his obligation, (e) the transferee must be entitled to seek specific performance or in other words, must not be barred by any of the provisions of the Specific Relief Act, 1963 from seeking such performance. The protection under Section 53-A is not available against a third party who may have an adversarial claim against the vendor. Therefore, unless and until the sale deed is executed, the purchaser is not vested with any right, title or interest in the property except to the limited extent of seeking specific performance from his vendor. An agreement for sale does not confer any right to the purchaser to file a suit against a third party who is either the owner or in possession, or who claims to be the owner and to be in possession. In such cases, the vendor will have to approach the court and not the proposed transferee.



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15.2.4. Further, the respondents are not in possession of the property. Whereas, the appellant's possession since 1905 is admitted in the plaint itself. In such circumstances, where the plaintiffs are not in possession and the defendant is in settled possession for over a century, a suit for bare injunction by a proposed transferee is clearly not maintainable. Section 41(j) of the Specific Relief Act, 1963 prohibits grant of injunction when the plaintiff has no personal interest in the matter. In the present case, the respondents, being mere agreement holders, have no personal interest in the suit schedule property that can be enforced against third parties. The "personal interest" is to be understood in the context of a legally enforceable right, as when there is a bar in law, the mere existence of an interest in the outcome cannot give a right to sue. As held by us above, no declaratory relief has been sought as contemplated under Section 34 of the Specific Relief Act, 1963. This principle was clearly established in Jharkhand State Housing Board (supra), in which, this Court emphasized that where title is in dispute, a mere suit for injunction is not maintainable. The relevant portion of the said judgment is reproduced hereunder:—

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17. Thus, solely based upon the agreement to sell dated 27.12.1989, plaintiff could not claim to have acquired title over the suit land. Further, the



plaintiff was required to claim specific performance of the agreement dated 27.12.1989, but same was not claimed. He only claimed declaration that defendant no.1 was not entitled to sell the suit land to anyone else and also sought a decree of permanent injunction restraining defendant no.1 from alienating the suit property to anyone else. The plaintiff also challenged the sale deed dated 10.10.1991 executed by defendant no.1 in favour of defendant no.4. Thus, in absence of any relief for specific performance of agreement to sell, there is no chance of plaintiff's acquiring title over the suit property. Further, without having title over the property, the plaintiff was not entitled to a decree of permanent injunction also. Thus, the declaration sought by the plaintiff only to the effect that the defendant shall not alienate his property to anyone else and the permanent injunction to restrain him from alienating the property, was not permissible in law. No decree therefore could have been granted by the Courts below.

18. The, substantial question of law no.1 is answered holding that the Courts below have committed an error of law in granting decree of declaration and permanent injunction in plaintiff's favour on the basis of agreement to sell Ex. P/1.

19. So far as the question of payment of ad-valorem court fee is concerned, since the plaintiff was not a party to the sale deed dated 10.10.1991, he was not required to pay *ad-valorem* court fee for seeking a declaration that the said sale deed dated 10.10.1991 was null and void.

20. The Apex Court in the case of *Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors.* reported in (2010)12 SCC 112, has held in paragraph



7 as under:-

"7. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid/void and non est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If A, the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration stated in the sale deed. If B, who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of the Second Schedule of the Act. But if B, a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to



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pay an ad valorem court fee as provided under Section 7(iv)(c) of the Act."

21. Accordingly, substantial question of law no.2 is answered holding that the plaintiff was not required to pay *ad-valorem* court fee on the relief of declaration that the sale deed dated 10.10.1991 was null and void. However, in view of the answer to substantial question of law no.1, the answer to this question is inconsequential.

22. In view of the aforesaid discussion, the judgment and decree dated 28.09.2001 passed by Additional District Judge, Gohad, District-Bhind in Civil Appeal No.8-A/2001 and the judgment and decree dated 18.01.2001 passed by Civil Judge Class-I Gohad, District-Bhind in Civil Suit No.1-A/1996 are set aside. The suit filed by the respondent no.1/plaintiff is dismissed.

23. The appeal is accordingly, **allowed**. Plaintiff/respondent no.1 shall bear the cost of this appeal.

(ASHISH SHROTI)
JUDGE

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