



2026:AHC:25601

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL No. - 29 of 2026

Smt. Zaibunisha

.....Appellant(s)

Versus

Sanjeev Kumar

.....Respondent(s)

Counsel for Appellant(s)	:	Birendra Kumar
Counsel for Respondent(s)	:	

A.F.R.

Court No. - 38

HON'BLE SANDEEP JAIN, J.

1. The instant appeal has been filed by the plaintiff under Section 96 C.P.C. against the impugned judgment and decree dated 09.10.2025 passed by J.S.C.C./Civil Judge (S.D.), Saharanpur in O.S. No.108 of 2025 (Old Original Suit No.1330 of 2024) (Smt. Zaibunisha vs. Sanjeev Kumar) whereby the plaintiff's suit for the relief of permanent injunction for restraining the defendant from interfering in her peaceful possession and encroachment of the disputed property and for restraining the defendant from alienating or transferring it, has been rejected.

2. Learned counsel for the plaintiff-appellant submitted that it was agreed upon between the plaintiff and defendant by agreement dated 16.01.2020 that the disputed property would be sold for a consideration of Rs.65,00,000/- to the plaintiff and out of that amount the plaintiff also paid Rs.5,00,000/- in cash towards earnest money to the defendant. It was also agreed that the defendant would execute the sale deed till 15.09.2022 but subsequently the defendant failed to execute the sale deed in favour of the plaintiff. It was further submitted that the defendant belongs to scheduled caste, as such, it was incumbent for the defendant to obtain permission from the competent authority for selling the disputed land and thereafter, the defendant was supposed to execute the sale deed in favour of the plaintiff, but the defendant failed to do so. It was further submitted that the plaintiff always remained ready and willing to fulfill the terms of the contract but since the defendant failed to execute the sale deed in favour of the plaintiff, as such, in order to protect her possession of the disputed property, the plaintiff was compelled to file the suit for the relief

of permanent injunction, which has been erroneously rejected by the trial court on the ground that the alleged agreement on the basis of which the plaintiff was asserting her rights in the disputed property was unregistered and unstamped, therefore, on its basis, the plaintiff cannot claim any right and interest in the disputed property. Learned counsel further submitted that the above finding of the trial court is perverse because even if the alleged agreement was unregistered even then, it was admissible for collateral purposes under Section 49 of the Registration Act, 1908 but this fact has not been considered by the trial court. With these submissions, it was prayed that the appeal be admitted for hearing.

3. I have heard the learned counsel for the appellant and perused the impugned judgment and documents submitted with the appeal.

4. The Apex Court in the case of **Balram Singh vs Kelo Devi (2024) 12 SCC 723**, wherein the plaintiffs sought relief of permanent injunction restraining the defendant from disturbing her possession in the suit property in Uttar Pradesh on the basis of unregistered agreement to sell, held as under:-

"6. At the outset, it is required to be noted that the original plaintiff instituted a suit praying for a decree of permanent injunction only, which was claimed on the basis of the agreement to sell dated 23-3-1996. However, it is required to be noted that the agreement to sell dated 23-3-1996 was an unregistered document/agreement to sell on ten rupees stamp paper. Therefore, as such, such an unregistered document/agreement to sell shall not be admissible in evidence.

7. Having been conscious of the fact that the plaintiff might not succeed in getting the relief of specific performance of such agreement to sell as the same was unregistered, the plaintiff filed a suit simpliciter for permanent injunction only. It may be true that in a given case, an unregistered document can be used and/or considered for collateral purpose. However, at the same time, the plaintiff cannot get the relief indirectly which otherwise he/she cannot get in a suit for substantive relief, namely, in the present case the relief for specific performance.

8. Therefore, the plaintiff cannot get the relief even for permanent injunction on the basis of such an unregistered document/agreement to

sell, more particularly when the defendant specifically filed the counterclaim for getting back the possession which was allowed by the learned trial court. The plaintiff cleverly prayed for a relief of permanent injunction only and did not seek for the substantive relief of specific performance of the agreement to sell as the agreement to sell was an unregistered document and therefore on such unregistered document/agreement to sell, no decree for specific performance could have been passed. The plaintiff cannot get the relief by clever drafting.

9. In view of the above and for the reasons stated above, both, the learned first appellate court and the High Court have committed a grave error in passing a decree for permanent injunction in favour of the plaintiff as against the defendant and dismissing the counterclaim filed by the original defendant."

(emphasis supplied)

5. This Court in the case of **Prem Kumar and Others vs Gurudev Singh and others 2024 SCC OnLine All 7420**, held as under:-

"Re :- First Question : - Whether a decree for specific performance based upon an unregistered for sale dated 31.05.1977 is at all sustainable?"

18. *In view of the questions framed by this Court, it is not necessary to comment upon requirement or no requirement of getting the AFS re-registered in the State of U.P. and whether the plaintiff was obliged or not obliged to do that, is irrelevant as the Court has to examine validity of the decree based upon unregistered agreement, whatever might have been the reason behind its non-registration.*

19. *As regards requirement of registration of an AFS, it is to note that the U.P. Civil Laws (Reforms and Amendment) Act, 1976 (U.P. Act No. 57 of 1976) came into force w.e.f. 1-1-1977. This Act amended the Registration Act, 1908 as well as the Transfer of Property Act, 1882, besides several other enactments. Section 54 of the Transfer of Property Act, 1882, as applicable to the State of U.P., w.e.f. 1-1-1977, reads as under:*

"Section 54. *"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*

Sale how made- Such transfer, in the case of tangible immovable property [***], or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

Contract of Sale- A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

Such contract can be made only by a registered instrument.”

20. Section 3 of the Transfer of Property Act, 1882 defines-

“Instrument- as a non testamentary instrument

“Registered- means registered in any part of the territories to which this Act extends under the law for the time being in force regulating the registration of documents.”

21. Section 17 of the Registration Act, 1908 Act provides that certain documents are required to be compulsorily registered and, other documents are exempted from being registered. Section 17(1)(b) of the Registration Act, 1908, as applicable in the State of U.P., reads as under:

“Section 17(1)- The following documents shall be registered- (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, 1877, or this Act came or comes into force, namely:—

.....

(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 to in immovable property.”

22. Section 17(2)(v) of the Act of 1908 reads as under:

“Section 17(2)- Nothing in clauses (b) and (c) of sub-section (1) applies to-

(v) any documents other than documents specified in sub-section (1-A)] **[other than contract for sale]** not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest 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;

The words “**other than contract for sale**” occurring in Section 17(2)(v) of the Registration Act have been inserted by U.P. Act No. 57 of 1976 w.e.f. 1-1-77.

23. Section 4 of the Transfer of Property Act, 1882 reads as under:

“4. Enactments relating to contracts to be taken as part of Contract Act and supplemental to the Registration Act. - The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872 (IX of 1872).

[And Section 54, Paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1908 (XVI of 1908).]”

24. Thus, from a combined reading of Sections 3, 4 and 54 of the Act of 1882 and, Section 17 of the Act of 1908, as applicable to the State of U.P., as amended by U.P. Act 57 of 1976, it is clear that every contract of sale of an immovable property situated in any district of U.P. shall be made only by a registered instrument. Even though a contract for sale of immovable property does not by itself create any interest in or charge on such property and only creates a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest, nonetheless, the said contract for sale of an immovable property is required to be registered in the State of U.P. w.e.f. 1-1-1977.

25. The next question which arises for consideration is whether an unregistered document for sale of an immovable property, could still be enforced in a suit for specific performance. At this stage, the Court may refer to Section 49 contained in the Registration Act, 1908 alongwith U.P. Amendments made therein by U.P. Act No. 57 of 1976, w.e.f. 01.01.1977. A careful perusal of the amendments made would reflect that certain provisions relating to admissibility of an unregistered agreement in a suit

for specific performance have been “omitted” and requirement of registration has been “inserted.” The provision reads as under:—

Central Act

“49. Effect of non-registration of documents required to be registered.- No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882) to be registered shall-

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered:

[Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882 (4 of 1882), to be registered **may be received as evidence of a contract in a suit for specific performance** under Chapter II of the Specific Relief Act, 1877 (3 of 1877) [***] or as evidence of any collateral transaction not required to be effected by registered instrument.]

In Uttar Pradesh:

In Section 49,-

(i) in the first paragraph, after the words “or by any provision of the Transfer of Property Act, 1882”, **insert** the words “**or of any other law for the time being in force**”;

(ii) for clause (b), substitute the following clause, namely : -

(b) confer any power or create any right or relationship, or”;

(iii) in clause (c), after the words “such power”, insert the words “or creating such right or relationship”;

(iv) in the proviso, **omit** the words “**as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or.**”

[Vide Uttar Pradesh Act 57 of 1976, sec. 34 (w.e.f. 1--1-1977).]”

26. The result of these amendments is, that, prior to 01.01.1977, an unregistered contract for sale qua immovable property situated in U.P. could be enforced in a suit for specific performance of a contract, but after the amendment in Section 49 of the Registration Act w.e.f. 01.01.1977, an unregistered agreement cannot be enforced in a suit for specific performance of a contract nor can it be read in evidence."

6. The Apex Court in the case of ***Padhiyar Prahladi Chenaji (Deceased) Thr. LRS. vs. Maniben Jagmalbhai (Deceased) Thr. LRS. And others (2022) 12 SCC 128***, held as under:-

"18. Even otherwise on merits also, the courts below have erred in passing the decree of permanent injunction restraining Defendant 1 from disturbing the alleged possession of the plaintiff. Assuming for the sake of argument that the plaintiff is found to be in possession, in that case also, once the plaintiff has lost so far as the relief of declaration and title is concerned and Defendant 1 is held to be the true and absolute owner of the property in question, pursuant to the execution of the sale deed dated 17-6-1975 in his favour, the true owner cannot be restrained by way of an injunction against him. In a given case, the plaintiff may succeed in getting the injunction even by filing a simple suit for permanent injunction in a case where there is a cloud on the title. However, once the dispute with respect to title is settled and it is held against the plaintiff, in that case, the suit by the plaintiff for permanent injunction shall not be maintainable against the true owner. In such a situation, it will not be open for the plaintiff to contend that though he/she has lost the case so far as the title dispute is concerned, the defendant — the true owner still be restrained from disturbing his/her possession and his/her possession be protected."

(emphasis supplied)

7. The Apex Court in the case of ***Yellapu Uma Maheshwari and another vs. Buddha Jagadheeswararao and others (2015) 16 SCC 787***, while analysing Section 17 and 49 of the Registration Act, 1908, has held that a document which has the effect of creating and taking away the rights in respect of an immovable property, is compulsorily registrable and if not registered, is not admissible in evidence, however, it can be relied upon for collateral purpose, subject to payment of stamp duty, penalty, proof

and relevancy.

8. A Division Bench of this Court in the case of ***Vinod Kumar and others vs. Sudha Land Ventures and Homes Pvt.Ltd.*** 2015 SCC OnLine All 8778 has also considered the issue whether on the basis of unregistered agreement to sell, temporary interim injunction under Order 39 Rule 1 CPC or perpetual injunction under Specific Relief Act, 1963 can be granted to the plaintiff. The relevant paragraphs of the above judgment read as under:-

"14. In the case of K.B. Saha and Sons Pvt. Ltd. v. Development Consultant Ltd., [2008 (72) ALR 638 (SC).] the Hon'ble Apex Court noticed following facts as stated by Mulla in his Indian Registration Act, 7th Edition, at page 189.

"The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu and Kashmir; the former Chief Court of Oudh; the Judicial Commissioner's Court of Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under section 17 and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it."

15. The Apex Court culled out the following principles:

- 1. "A document required to be registered is not admissible into evidence under section 49 of the Registration Act.*
- 2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to section 49 of the Registration Act.*
- 3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.*
- 4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immoveable property of the value of one hundred rupees and upwards.*
- 5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."*

16. The word, “collateral transaction” has been interpreted as transaction in itself not required to be effected by a registered document, i.e., a transaction creating any right, title or interest in immovable property of the value of Rs. 100/- and onwards.

17. Learned Counsel for the respondent contends that even if the two sale-deeds were not registered, but they should certainly be looked into for collateral purpose and a bare perusal of two sale-deeds reveals that on 21.2.2014 and 22.2.2014, the respondent/plaintiff was put on possession of plots in suit and in view of above, learned Counsel tried to justify the impugned order.

18. This proposition is correct that if a document is invariably registrable and has not been registered, it will be admissible in evidence only for collateral purposes but collateral purpose has a limited scope and meaning. It cannot be used for the purpose of saying that the deed created or declared or assigned or limited or extinguish the right to immovable property. If the document is unregistered then it could not be used for showing that it created, declared, assigned or extinguish a right to immovable property. The term collateral purpose could not permit the party to establish any of these acts from the deed.

19. In our opinion, the contention that it could be used for collateral purpose for delivery of possession does not support the case of the plaintiff-respondent at all because by way of State Amendment in Order XXXIX, Rule 2, Sub Rule (2) proviso (a), C.P.C., a bar has been created w.e.f. 1.2.1977.

20. In Rule 2, in sub-rule (2), the following proviso has been added by State Amendment:

“Provided that no such injunction shall be granted—

(a) where no perpetual injunction could be granted in view of the provisions of section 38 and section 41 of the Specific Relief Act, 1963.”

21. A bare perusal of Order XXXIX, Rule 2, Sub Rule (2) proviso (a), C.P.C., reveals that temporary injunction shall not be granted where no perpetual injunction could be granted in view of provisions of sections 38 and 41 of Specific Relief Act, 1963.

22. Section 38 of Specific Relief Act deals with provisions when temporary injunctions can be granted and section 41 deals with provisions when injunction can be refused.

23. Provisions of section 41 of Specific Relief Act is as under:

41. Injunction when refused.-An injunction cannot be granted—

- “(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought;
- (c) to restrain any person from applying to any Legislative body;
- (d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;
- (e) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (g) to prevent a continuing breach in which the plaintiff has acquiesced;
- (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- (i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court;
- (j) when the plaintiff has no personal interest in the matter.”

24. A perusal of provisions of section 41(h) of Specific Relief Act reveals that when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust, then there is no ground to grant injunction."

9. The plaintiff-appellant has annexed with the appeal the copy of the alleged agreement to sell dated 16.01.2020, which was executed between the defendant/vendor Sanjeev Kumar and plaintiff/vendee Smt. Zaibunisha, which disclosed that it was agreed between the parties that for a sale consideration of Rs.65 lacs, out of which Rs.5 lacs was received as earnest money by the vendor, a sale deed regarding the disputed land would be executed by 15.09.2022, after obtaining the balance sale consideration of Rs.60 lacs by the vendor.

10. It is further apparent that since the vendor belongs to scheduled caste community, as such, as per the relevant statutory provisions, he was

required to obtain permission from the competent authority for selling the disputed land to the vendee and after that, the sale deed was to be executed in favour of the vendee.

11. It is apparent that the above alleged agreement to sell is an unstamped and unregistered document, which is inadmissible in evidence, on the basis of which, no relief can be granted to the plaintiff. It is further apparent that the plaintiff could have cured the defect by making good the deficiency of stamp duty on the agreement and could have also got it registered and then the plaintiff was certainly entitled to file the suit for the relief of specific performance of the agreement to sell, but the plaintiff has not chosen to do so.

12. It is further apparent that after curing the defect in the agreement to sell, an equally efficacious remedy for specific performance of the agreement to sell was available to the plaintiff, but instead of availing that remedy, the plaintiff has filed the suit for the relief of permanent injunction, which is legally not maintainable and is barred under Section 41(h) of the Specific Relief Act, 1963. It is further apparent that on the basis of the above alleged agreement, no right title or interest is vested in the plaintiff insofar as the disputed land is concerned.

13. It is apparent that in the instant case, since the provisions of Section 38 and 41 (h) of the Specific Relief Act, 1963 are attracted, as such, no perpetual injunction can be granted by any court.

14. It is further evident that the defendant is the true owner of the disputed property and against the true owner, the plaintiff is not entitled to the relief of permanent injunction more particularly when no right title or interest is vested in the plaintiff on the basis of the alleged unregistered and unstamped agreement to sell dated 16.01.2020.

15. The trial court has considered all the above facts and has rightly concluded that the plaintiff cannot be granted the relief of permanent injunction against the true owner on the basis of unregistered agreement to sell, which does not confer any right title or interest in the plaintiff regarding the disputed property. There is no perversity in the impugned judgment of the trial court warranting interference by this Court in exercise of its appellate jurisdiction.

16. Accordingly, the instant appeal is meritless and is liable to be dismissed at the admission stage.

17. The appeal is dismissed at the admission stage under Order 41 Rule 11 CPC.

18. Consequently, the impugned judgment and decree dated 09.10.2025 is hereby affirmed.

(Sandeep Jain,J.)

February 5, 2026
Jitendra