



2026:AHC:26402

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL No. - 934 of 2025

Irfan Quraishi

.....Appellant(s)

Versus

U.P. State Industrial Development Authority
Limited And Another

.....Respondent(s)

Counsel for Appellant(s) : Ashish Kumar Singh, Rahul Pandey
Counsel for Respondent(s) : Rahul Kumar Jadaun, Vibhu Rai

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 order dated 23.07.2025 passed by the Judge Small Causes, Bulandshahr in O.S. No.1054 of 2022 (Old No.790 of 2022) Irfan Quraishi Vs. U.P. State Industrial Development Authority Limited & others, whereby the application of the defendant No.2 Smt. Aparna Bajpai under Order VII Rule 11 CPC has been allowed and consequently, the plaintiff's suit has been dismissed on the ground of being barred by law, want of cause of action as well as, due to the insufficient court fees paid.

2. The factual matrix is that the plaintiff-appellant filed a suit, being O.S. No. 1054 of 2022, with the averments that father of defendant no.2, Late Chandradutt Bajpai, was the owner in possession, and proprietor of M/S CDS Chemicals, situated at C-4, Industrial Area (Jokhabad), Sikandrabad, District Bulandshahr. It was further averred that an oral agreement was entered into between the plaintiff and the father of defendant no.2 for the sale of the aforesaid plot for a consideration of Rs.70 lacs. Out of the said consideration, a sum of Rs.29 lacs was paid through three demand drafts and a further sum of Rs.6 lacs was paid in cash on 10.07.2008. It was also averred that since then, the plaintiff was in possession of the disputed plot.

3. It was further averred that the plaintiff repeatedly requested the father of defendant no.2 to execute the sale deed in respect of the disputed plot; however, he continued to defer the same on one pretext or the other. Subsequently, the father of defendant no.2 died due to Covid-19 in the year 2021, leaving behind defendant no.2 as his legal heir.

4. It was further averred that thereafter, the plaintiff remained in contact with defendant no.2 and requested her to execute the sale deed in respect of the disputed plot, however, defendant no.2 continued to assure the plaintiff that she would execute the sale deed in his favour after completing due formalities; however, when she ultimately refused to execute the sale deed, the plaintiff was compelled to file the present suit seeking the following reliefs:-

(a) that by decree of permanent injunction granted in favour of the plaintiff against the defendant no.2, the defendant No.2 be restrained from dispossessing him, interfering in the peaceful possession of the plaintiff or in any other manner whatsoever.

(b) that by decree of mandatory injunction granted in favour of the plaintiff against the defendant no.2, the defendant No.2 be directed to complete the necessary formalities in the office of defendant no.1, for transferring the disputed plot No. C-4, Industrial Area (Jokhabad), Sikandrabad, District Bulandshahr by receiving the balance sale consideration from the plaintiff.

(c) any other relief which in the facts and circumstances of the case, the Court may deem appropriate to grant in favour of the plaintiff.

5. During the pendency of the suit, defendant no.2 Smt. Aparna Bajpai moved an application 72-C2 under Order VII Rule 11 CPC on the ground that no oral or written agreement in respect of the disputed property was ever entered into between her father and the plaintiff. It was further averred that the plaintiff has instituted the suit on the basis of photocopies of the alleged demand drafts,

which was not legally maintainable. It was also averred that the date of alleged agreement and duration during which it was to be performed, was not disclosed by the plaintiff.

6. It was further averred that the suit should have been filed for the relief of specific performance of a contract, for which *ad valorem* court fees was required to be paid; however, the plaintiff has deliberately claimed the relief of mandatory injunction. It was also averred that the plaintiff was neither the owner of the disputed property nor any cause of action arose in his favour, and the suit was barred by limitation. The suit was undervalued and the court fees paid was insufficient.

7. It was further contended that there was neither any oral nor written agreement between the plaintiff and the defendant no.2, and that the suit, having been filed solely on the basis of an alleged oral agreement, was not legally maintainable. It was further averred that the suit was barred by the provisions of Section 80 CPC, since no prior notice was given to the U.P. State Industrial Development Authority Limited defendant no.1, who was a functionary of the State.

8. It was further averred that the father of defendant no.2 died leaving behind defendant no.2, her sister, and her mother as his legal heirs; however, the other legal heirs had not been impleaded as parties to the suit. It was also averred that the plaintiff had earlier moved an application for temporary injunction under Order 39 Rules 1 and 2 CPC, which was rejected by the trial court vide order dated 31.05.2024, wherein it was concluded that the plaintiff was not entitled to any relief on the basis of the alleged oral agreement.

9. With these averments, it was prayed that since the plaintiff has concealed material facts and has not approached the Court with clean hands, as such, the plaint was liable to be rejected under Order VII Rule 11 clauses (a), (c), and (d) CPC. It was further averred that the suit was barred under Sections 38 and 41 of the

Specific Relief Act.

10. The aforesaid application filed by defendant no.2 under Order VII Rule 11 CPC was opposed by the plaintiff on the ground that, in the facts and circumstances of the case, the provisions of Order VII Rule 11 CPC were not applicable. It was further averred that the issue of limitation is a mixed question of fact and law, which cannot be decided at the threshold stage.

11. It was further submitted that the findings recorded by the trial court while deciding the application under Order 39 Rules 1 and 2 CPC could not influence the final adjudication of the suit, which is required to be decided on its own merits. It was also averred that no legal notice under Section 80 CPC was required to be served on defendant no.1 in the present case.

12. The trial court, by the impugned order dated 23.07.2025, has allowed the defendants' application under Order VII Rule 11 CPC, holding that the plaintiff was asserting his rights in respect of the disputed property solely on the basis of an oral agreement, which is unenforceable in law in view of the specific provisions of Sections 17 and 49 of the Registration Act, 1908, as applicable in the State of Uttar Pradesh. The trial court further concluded that, on the basis of such an oral agreement, no cause of action has arisen in favour of the plaintiff to institute the present suit.

13. The trial court also held that the suit, having been filed for specific performance of an agreement, required payment of *ad valorem* court fees, which was not paid by the plaintiff, and on this ground as well, the trial court decided the issue against the plaintiff.

14. The above order of the trial court has been challenged by the plaintiff by filing the instant appeal under Section 96 CPC.

15. Shri Ashish Kumar Singh, learned counsel for the plaintiff-appellant submitted that the suit filed by the plaintiff was maintainable, as there was an admission on the part of defendant no.2 that her late father had accepted the consideration in respect

of the disputed property. On the basis of such admission, it was contended that the plaintiff was at least entitled to refund of the consideration paid, which was not considered by the trial court.

16. It was further submitted that the issues raised by the defendant no.2 could not have been decided at the threshold stage, as they required evidence to be adduced, and therefore the plaintiff's suit was legally maintainable. It was also submitted that even if the court fees paid was insufficient, the plaintiff ought to have been afforded an opportunity to make good the deficiency; however, no such opportunity was granted and the plaint was straightaway rejected, which is illegal. With these submissions, it was prayed that the appeal be admitted for hearing.

17. Per contra, learned counsel for respondent no.1 UPSIDA submitted that, in respect of the disputed property, a lease was executed by the authority in favour of the father of defendant no.2. He further submitted that, upon obtaining no-objection certificates from the other legal heirs of the deceased Chandradutt Bajpai, the leasehold rights in the disputed plot were transferred in favour of the wife of the deceased, Smt. Sunita Bajpai, on 18.09.2024, and now she is in possession of the disputed plot. He further submitted that the plaintiff never remained in possession of the disputed plot.

18. Sri Vibhu Rai, learned counsel for respondent no.2, submitted that the defendants have never admitted that any part consideration was paid by the plaintiff either to the father of the deceased defendant or to defendant no.2. It was further submitted that there was no written agreement between the parties and, as such, no right could be inferred in favour of the plaintiff.

19. It was further submitted that in the absence of any written agreement, the plaintiff was not entitled to any relief of permanent or mandatory injunction in respect of the disputed property. It was also submitted that the plaintiff's application for temporary injunction under Order 39 Rules 1 and 2 CPC had earlier been rejected by the trial court by order dated 31.05.2024, which was

challenged by the plaintiff by filing FAFO No. 1648 of 2024, which was dismissed on merits by this Court vide order dated 18.10.2024, wherein it was held that on the basis of the alleged oral agreement the plaintiff was not entitled to any relief.

20. It was further submitted that the aforesaid order dated 18.10.2024 was assailed by the plaintiff before the Hon'ble Supreme Court by filing SLP (Diary) No. 6912 of 2025 (*Irfan Qureshi v. U.P. State Industrial Development Authority*), which was subsequently dismissed for non-compliance with the conditional order. It was further submitted that the plaintiff's suit was not legally maintainable, being in the nature of enforcement of an alleged oral agreement, which was impermissible in view of the bar contained under Sections 17 and 49 of the Registration Act, 1908, as applicable in the State of Uttar Pradesh, as well as Sections 38 and 41 of the Specific Relief Act. It was thus contended that the trial court has not committed any illegality in rejecting the plaint and, therefore, no interference was warranted by this Court in exercise of its appellate jurisdiction.

21. I have heard learned counsel for the parties and perused the order of the trial court and the documents submitted with the appeal.

22. 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)

23. This Court in the case of **Prem Kumar and Others vs Gurudev Singh and others 2024 SCC OnLine All 7420**, considering whether unregistered agreement to sell could be legally enforced in a suit for specific performance, 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."*

24. In similar facts and circumstances this Court in the case of ***Irfan Qureshi vs UP State Industrial Development Authority and Another 2024 SCC OnLine All 6776***, the parties of the instant appeal, while considering the legality of the order dismissing the plaintiff's interim injunction application, held as under:-

7. *Having heard the learned counsel for the parties, I find that mandatory injunctions can be granted under Section 39 of the Specific Relief Act, 1963. The said provision finds place in Chapter VIII and it applies when, in order to prevent breach of an obligation, it is necessary to compel performance of certain acts which the court is capable of enforcing and grant of injunction to prevent such breach is always in the discretion of the court. In the instant case, admittedly, the suit in question has not been filed claiming a decree for specific performance of an agreement, probably for the reason that there is no written agreement between the parties. Appellant's claim for relief of mandatory injunction based upon oral understanding requires to be dealt with in the light of law of the land.*

8. *Considering the arguments of Sri. Samir Sharma, learned Senior Counsel, in relation to Section 53-A of Transfer of Property Act, this Court thinks it appropriate to deal with the legal proposition in that regard.*

9. *Section 17 of Registration Act, 1908 provides for documents,*

registration whereof is compulsory. There is an amendment made by U.P. Act No. 57 of 1979 by inserting clause (f) in Section 17(1). The relevant provision i.e. Section 17(1), (as amended in U.P.), reads as under:

“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 (XX of 1866), or the Indian Registration Act, 1871 (VII of 1871), or the Indian Registration Act, 1877 (III of 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 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;

.....

(f) any other instrument required by any law for the time being in force, to be registered.”

10. There is also a corresponding amendment in sub-section (2) of Section 17, inasmuch as, Clause (v), as it stood before Central Act 48 of 2001 was substituted partially vide Section 3 of Central Act 48 of 2001, w.e.f. 24th September, 2001. Sub-section (2)(v) of Section 17 reads as under:—

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

.....

(v) any document 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”

11. An amendment was also made in Transfer of Property Act, 1882 by Section 30 of U.P. Act No. 57 of 1976, w.e.f. 1.1.1977. Section 54, as amended in U.P., reads as under:

“54. “Sale” defined.- “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 of the value of one hundred rupees and upwards, 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.”

12. Consistent with the amendments referred to above, Section 49 of Act, 1908 was also simultaneously amended by Section 34 of U.P. Act No. 57 of 1976 w.e.f. 1.1.1977 and the amended Section 49, as applicable in U.P. reads as under:

“Section 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) or of any other law for the time being in force, to be registered shall-

(a) affect any immovable property comprised therein, or

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

(c) be received as evidence of any transaction affecting such property or conferring such power or creating such right or relationship, 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 part-performance of a contract for the purposes of Section 53-A of the Transfer of Property Act, 1882 (4 of 1882), or as evidence of any collateral transaction not required to be effected by registered instrument.”

13. The aforesaid provisions make it clear that an agreement to sell in respect of immovable property lying in State of U.P. required registration necessarily i.e. compulsorily. Section 17 of Act, 1908 read with Section 54 of Act, 1882, as applicable in U.P., makes it very clear that a contract of sale, as defined in Section 54, can be made only by a registered instrument. By omission of explanation to sub-section (2) of Section 17 of Act, 1908, the legislature has made it very clear that in State of U.P., an agreement to sell immovable property would also require compulsory registration so as to create any right, title or interest in immovable property. This view finds support from a decision of this Court in *Smt. Prabha Awasthi v. Nisha Richharia*, 2012 (8) ADJ 557, wherein a Division Bench referring to Section 17 of Act, 1908, as amended in U.P. w.e.f. 1.4.1977, read with Section 49, has observed as under:

“Section 17 of the Registration Act, 1908 has been amended in the State of U.P. vide U.P. Act No. 57 of 1976 w.e.f. 1st of April, 1977 by amending clause (b) of sub section (2) and by omitting the Explanation thereto of section 17 of the Registration Act. It follows that after the commencement of the aforesaid Amending Act, an agreement to sell in respect of immovable property lying in the State of U.P. necessarily requires registration. A document which

necessarily requires registration being unregistered one cannot be read in evidence in view of section 49 of the aforesaid Act. It deals with the effect of non registered document required to be registered. Noticeably, section 49 of the Registration Act was also amended by the U.P. Act No. 57 of 1976 vide section 34 simultaneously.”

14. Though dispute before Division Bench in Prabha Awasthi (supra) related to an agreement executed in 2005 but while having a retrospect of the provisions of Act, 1908, as amended in U.P. in 1977, and the situation as had arisen, the Court has made above observations. However, since proviso to Section 49 of Act, 1908 permits an unregistered document to be received as evidence of part-performance of a contract for the purpose of Section 53-A of Act, 1882, this Court finds that permitting a document to be received in evidence for limited purpose as such would not have the effect of influencing the rights of the parties vis a vis the immovable property concerned. The general legislative policy under Section 49 of Act, 1908 is contained in three clauses i.e. (a), (b) and (c) and proviso carves out an exception in respect to clause (c) only and not (a) and (b) thereof. The inevitable conclusion qua the immovable property is that, an unregistered document shall not result in affecting the right etc. over the immovable property in any manner and also shall not confer any power to adopt it. To the extent the proviso operates, it permits that an unregistered document affecting immovable property may be given in evidence i.e. where a document remains unregistered and title does not pass, the agreement between the parties which preceded the ineffective document shall remain and may be received in evidence to look into the terms thereof. This by itself, would not confer any right since no such right has been conferred under the substantive law. Receiving in evidence does not mean conferment of substantive right. The rule of evidence cannot enlarge or alter the provisions of substantive law. It cannot confer rights, if there are none under the substantive law.

15. The Court finds that even Section 53-A would have no application in the present case. Section 53-A of Act, 1882 reads as under:

“Part performance.- Where any person contracts 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:**

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 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 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.

16. In order to take shelter behind the above provision, one has to satisfy the following conditions, as are evident from bare reading of Section 53-A:

(i) The contract should have been in writing, signed by or on behalf of transferor.

(ii) The transferee should have got possession of immovable

property covered by contract as a part-performance of the contract.

(iii) If the transferee is already in possession and he continues in possession in part-performance of the contract, he further should have done some act in furtherance of the contract.

(iv) The transferee has either performed his part of contract or is willing to perform his part of the contract.

(emphasis supplied)

25. 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.

26. 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 and perpetual injunction under the Specific Relief Act 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.

(emphasis supplied)

27. The Apex Court in the case of ***Padhiyar Prahladji 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)

28. The Apex Court in the case of ***Vinod Infra Developers Ltd. versus Mahaveer Lunia and others 2025 SCC OnLine SC 1208*** has held that at the preliminary stage of deciding Order 7 Rule 11 CPC application, the court is required to confine its examination strictly to the averments made in the plaint and not venture into the merits or veracity of the claims. If any triable issues arise from the pleadings, the suit cannot be summarily rejected.

29. The Apex Court in the case of ***Keshav Sood versus Kirti Pradeep Sood and others 2023 SCC OnLine SC 2459*** has held that the scope of Rule 11 of Order 7 of CPC is concerned, the law is well settled. The court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of defendant and documents relied upon by him cannot be looked into while deciding such application.

30. It is well settled that at the stage of deciding an application under Order VII Rule 11 CPC, the Court is not required to consider the written statement or the documents filed by the defendant, nor is it required to examine the case of the plaintiff on merits. At this stage, the Court is only required to consider the averments made in the plaint along with the documents relied upon by the plaintiff.

31. A perusal of the plaint reveals that the plaintiff has alleged that there was an oral agreement to sell between him and the late father of defendant no.2 in respect of the disputed plot and that, in pursuance of the said agreement, he paid a sum of ₹29 lacs by way of three demand drafts and a further sum of ₹6 lacs in cash on 10.07.2008, whereafter possession of the disputed plot

was allegedly handed over to him. It is apparent that there was no written agreement between the plaintiff and the father of defendant no.2, who has since died, and as such, the aforesaid assertions of the plaintiff cannot be verified.

32. It is further apparent that after the death of the father of defendant no.2 in the year 2021, he left behind his wife and two daughters as his legal heirs; however, in the present suit, the other legal heirs of the deceased have not been impleaded as parties. It is also evident that the plaintiff is seeking to enforce the alleged oral agreement by claiming the relief of mandatory injunction, seeking a direction to defendant no.2 to execute a sale deed in respect of the disputed plot in his favour. Such a relief can not be granted in the absence of any written agreement between the parties.

33. It is well settled that an agreement relating to immovable property, where the consideration was agreed to be ₹70 lacs, was required to be reduced into writing, duly stamped, and registered in accordance with the provisions of the Stamp Act and the Registration Act, which is admittedly not the case herein. Consequently, merely on the basis of an alleged oral agreement, no legally enforceable right accrues in favour of the plaintiff.

34. It is further evident that the relief claimed by the plaintiff is barred under Sections 38 and 41(h) of the Specific Relief Act, as an equally efficacious remedy of specific performance was otherwise available; however, in the absence of any written agreement between the parties, even such remedy could not have been enforced by the plaintiff.

35. It is further evident that the plaintiff had earlier challenged the rejection of his application for temporary injunction by filing FAFO No. 1648 of 2024 before this Court, which was dismissed vide order dated 18.10.2024. In the said order, this Court had already

held that the plaintiff can not claim any right, title, or interest in the disputed property on the basis of an alleged oral agreement. The findings recorded therein operate as res-judicata in the present appeal.

36. In view of the above, it is apparent that the reliefs claimed by the plaintiff were legally unenforceable and plaintiff's suit was clearly barred by law. Even assuming that the defect relating to payment of court fees was curable, since the suit itself was barred by law, the trial court committed no error in allowing the defendants' application under Order VII Rule 11(d) CPC and rejecting the plaint at the threshold. The impugned order, therefore, does not warrant any interference by this Court in exercise of its appellate jurisdiction.

37. Accordingly, the appeal is dismissed at the admission stage under Order XLI Rule 11 CPC. Consequently, the impugned judgment and decree dated 23.07.2025 is affirmed.

February 6, 2026

Himanshu

(Sandeep Jain,J.)