

**(1995) 08 SHI CK 0007**

**In the High Court Of Himachal Pradesh**

**Case No : Civil Revision No"s. 282 and 295 of 1994**

Gursaran

APPELLANT

Vs

Shakuntala and Others <BR> Shakuntala and Another Vs  
Gursaran and Another

RESPONDENT

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**Date of Decision : 28-08-1995**

**Acts Referred:**

Himachal Pradesh Urban Rent Control Act, 1971 — Section 14  
Transfer of Property Act, 1882 — Section 53A

**Citation : (1995) 4 ILR HP 2510**

**Hon'ble Judges : A.L. Vaidya, J**

**Bench : Single Bench**

**Advocate :** D.N. Sharma, in Civil Revision No. 282 of 1994 and Naresh Sood and vice K.D. Sood, in Civil Revision No. 295 of 1994, for the Appellant; Naresh Sood and vice K.D. Sood, in Civil Revision No. 282 of 1994 and D.N. Sharma in Civil Revision No. 295 of 1994, for the Respondent

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## **Judgement**

A.L. Vaidya, J.—Both these revisions are being disposed of through this common judgment as these revision petitions have arisen from the same proceedings.

2. Smt. Shakuntala and Tula Ram claim themselves to be the owners/landlords of the demised premises, which is a part of House No. 114, Annadale, Shimla. The landlords preferred a petition u/s 14 of the H.P. Urban Rent Control Act (hereinafter to be called as "the Act") against Sh. Gursaran, for his eviction from the demised premises, which he has been occupying as tenant under the landlords. The eviction of Sh. Gursaran has been sought on the grounds that the tenant was in arrears of rent; has sub-let the premises in favour of Respondent No. 2 without the consent of the landlords; that the premises were in dilapidated condition and that the premises were required bonafide by the landlords for carrying out the extensive and major repairs and such repairs could not be carried out without the premises being vacated. The landlords further pleaded that the premises were bonafide required by them for their own use and occupation.

3. The tenant Sh. Gursaran contested the petition and pleaded that predecessor of present Petitioners had agreed to sell House No. 114", in question, in his favour through a writing executed in February, 1980 for a consideration of Rs. 10,000/- and Rs. 5,000/- were paid as advance by him. It was also pleaded by the tenant Sh. Gursaran that he was always ready and willing to perform his part, i.e. to pay the balance price as he was in possession of the entire building as owner and had spent about Rs. 10,000/- for repairs etc. According to the tenant Sh. Gursaran, the present Petitioners had knowledge of the agreement and accordingly he was legally entitled to protection of his possession u/s 53-A of the Transfer of the Property Act. He pleaded that he was not paying any rent to the owners and was not in arrears of rent. The remaining averments made in the petition regarding sub-letting etc. were not admitted.

4. The learned Rent Controller put the parties to trial on the following issues:

1. Whether the premises in question have become unsafe and unfit for human habitation. If so, its effect? OPP.

2. Whether the premises in question are bonafide required by the Petitioner for carrying out extensive repairs which cannot be carried out without getting the entire building vacated? OPP.

3. Whether the premises in question are required bonafide for their own occupation after carrying out the repairs? OPP.

4. Whether the premises in question have been sublet by the Respondent to Respondent No. 2 without the permission of the Petitioners? OPP.

5. Whether the Respondent is in arrears of rent. If so, to what extent? OPP.

6. Whether there exists relationship of landlord and tenant between the parties? OPP.

7. Whether the predecessors of the Petitioners have agreed to sell the premises in question to the Respondent. If so, its effect? OPR.

8. Relief.

5. Issues No. 1 and 2 were decided in the affirmative, while Issue No. 3 was held to have been rendered redundant. Regarding subletting the finding was against the landlord. Issue No. 5 again was held in favour of the landlords. Under Issue No. 6 it was held that there existed relationship of landlord and tenant between the parties. Under Issue No. 7 it was held that the predecessors of the Petitioners had agreed to sell the premises in question to the Respondent, but the possession could not be protected. The learned Rent Controller, allowed the petition.

6. The tenant Gursaran assailed the aforesaid findings, before the Appellate Authority, which after hearing the parties, maintained the eviction order passed against the tenant, but modified. the order with the direction that Appellant-

tenant Gursaran was held entitled to receive an amount of Rs. 13,000/- in all from the present landlords on the ground that the original owners, who were predecessors of the present landlords, had taken Rs. 5,000/- as advance, as per agreement to sell, executed in favour of the tenant Sh. Gursaran, which amount had not been returned and the present owner-landlords have been directed to pay that amount.

7. The tenant Sh. Gursaran as well as the landlords Smt. Shakuntala and others assailed the aforesaid judgment passed by the Appellate Authority by preferring separate revision petitions. Civil Revision Petition No. 282 of 1994 has been filed by Sh. Gursaran assailing the order of eviction passed by the Appellate Authority, mainly on the ground that after agreement of sale, executed by the predecessors of the present landlords in his favour, he has become owner of the entire property including the demised premises, which resulted in extinguishing the relationship of landlord and tenant between the parties and his possession over the demised premises stood protected u/s 53-A of the Transfer of Property Act.

8. On the other hand, Smt. Shakuntala and other land lord also assailed the order of the Appellate Authority, directing them to pay Rs. 13,000/- to the tenant Sh. Gursaran on account of advance of Rs. 5,000/- paid by Sh. Gursaran in favour of the original owners who were predecessors of the present landlords, on the ground that such an order was not within the ambit of the proceedings instituted nor such an order could be passed against the present landlords, who had admittedly not executed the alleged agreement of sale in favour of tenant Gursaran. This revision petition has been registered as C.R. No. 295 of 1994.

9. I have heard the learned Counsel for the parties and have very minutely scrutinised the entire record.

10. Insofar as the findings of eviction of the tenant arrived at by the two forums below have not been assailed while arguing the present revision petitions by the learned Counsel for the tenant except that the rent due has been paid. The main point submitted on behalf of the tenant had been that the tenant was already in occupation of the demised premises when the predecessor of the present landlords executed the agreement for sale in his favour of the entire House No. 114 in February, 1980 and his possession stood protected u/s 53-A of the Transfer of the Property Act and the present proceedings with this background were not legally maintainable. It is not so simple a matter as has been contended on behalf of the tenant.

11. In order to appreciate the arguments submitted by the learned Counsel for the parties, provision as envisaged u/s 53-A of the Transfer of the Property Act are to be appreciated. Section 53-A of the Act, for the sake of convenience is being reproduced hereunder:

53-A 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 therefore 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 right of a transferee for consideration who has no notice of the contract or of the part performance thereof.

12. The original owners of this House No. 114 were S/Sh. Tarlok Singh and Pritam Singh. Sh. Tarlok Singh alone executed an agreement for sale of this house in favour of Gursaran tenant on 25th February, 1980. However, it has been referred in the agreement that at the time of registration Tarlok Singh would associate Pritam Singh also. There were various conditions made in the said agreement, which provided that Rs. 5,000/- as advance have been taken and that in case vendor resiled from the agreement vendee would be entitled to get back Rs. 5,000/- and an equal amount as compensation. It was also agreed in the agreement that registered sale deed would be executed within a month from the date of execution of the agreement. Condition No. 6 of the agreement is very much relevant which runs as under:

That the vendee was in occupation of the upper storey and that lower storey was occupied by one tenant and the proprietary possession of this, would be given at the time of registration.

The aforesaid condition only revealed that sofar as Gursaran was concerned, he was already in occupation of the upper storey. This is admitted case of the parties that Gursaran tenant was occupying the demised premises as tenant prior to the aforesaid agreement. The aforesaid condition clearly reflected that possession of proprietorship of the premises in occupation of other tenant would be delivered at the time of registration of sale deed. That means proprietary possession had not been delivered in favour of the tenant, on the basis the execution of this agreement dated 25th February, 1980.

13. The doctrine of part-performance as envisaged u/s 53-A of the Transfer of Property Act, can be made available to a party in case the ingredients referred therein are fulfilled. The following necessary conditions are required to be

established before the advantage of the aforesaid provision of law can be taken:

1. there must be a writing in respect of Immovable property;
2. the said writing must be for consideration;
3. the transferee in part performance had taken possession of the property or any part thereof;
4. the transferee continues to be in possession in part performance of the contract; and has done some act in furtherance of the contract,
5. the transferee was ready and willing to perform his part of the contract.

14. In case, the aforesaid provisions were legally established by the transferee, definitely his possession under the aforesaid provisions of law could be protected. It may again be referred here that the proviso to the aforesaid provisions of law makes the things crystal clear that such provisions shall not affect the right of transferee for consideration who had no notice of the contract or of the part performance thereof. The evidence examined on record clearly established that the present case, as put up by the tenant, did not come within the ambit of Section 53-A of the Transfer of Property Act and as a consequence thereof, tenant cannot claim benefit of doctrine of Part-performance.

15. Needless to say, it has been very specifically mentioned in Clause 6 of the agreement that tenant Gursaran was already in occupation of the upper storey of House No. 114 which was the subject matter of the agreement to sell (Ex. RW-1/A) and the lower storey was in occupation of a tenant, the proprietary rights of which were agreed to be delivered at the time of registration of the sale deed. This clause only meant that proprietary possession had not been delivered in favour of Gursaran tenant, though he was already occupying a part of the premises as a tenant. In case intention of the parties were to transfer the possession of proprietor in that property in favour of Gursaran, that could have been made a specific condition of the agreement. But on the other hand, clause No. 6 of the agreement, referred to above, clearly indicated that the possession, in execution of this agreement for sale of ownership right had not at all been transferred in favour of the tenant, who continued to occupy a part of the premises as a tenant. In this view of the matter the essential condition of Section 53-A of the Transfer of Property Act that the transferee in part performance, has taken possession of the property or any part thereof does not stand legally established. It may be referred here that it has been the case of the tenant Gursaran that in the execution of the aforesaid agreement for sale, possession of the entire building was delivered in his favour, which fact did not stand reflected from the term of the agreement, referred to above.

16. There has been some litigation pertaining to the house under reference. The present landlords purchased House No. 114 through a registered sale deed dated 3rd April, 1986, the certified copy of which on record is: (" \\ ... \\i~ 1 /A.)sic This Gursaran tenant had filed a suit for injunction against the previous owners

Tarlok Singh and Pritam Singh in the Court of Sub Judge, wherein it was prayed that Defendants be restrained from alienating in any manner the aforesaid House No. 114, on account of agreement to sell executed in favour of Gursaran dated 25th February, 1980. This suit was filed on 10th . January, 1985. In that suit, the present landlords were also made party and they filed their written statement, dated 29th November, 1986, whereby they contested the suit. It has been pleaded in their written statement that they were the bonafide purchasers of the said property in good faith and they had no knowledge of the alleged sale agreement dated 25th February, 1980. It was also alleged by them that they entered into sale agreement with Defendants 1 and 2 on 6th October, 1984, which was renewed on 21st December, 1984 and Defendants 1 and 2 never disclosed about the agreement of sale dated 15th February, 1980 or any other agreement of sale. According to them, they paid the entire sale price amounting to Rs. 19,000/- in favour of Defendants 1 and 2. They pleaded that they came to know about the alleged agreement of sale only after the sale of the said property.

17. In this very suit, Defendants No. 1 and 2 who happened to be S/Sh. Tarlok Singh and Pritam Singh, the previous owners, in their written statement submitted that Defendants had executed an agreement dated 25th February, 1980 with the Plaintiff wherein Defendants had agreed to sell the suit property to the Plaintiff for total sale consideration of Rs. 10,000/- out of which Rs. 5,-000/- were paid to the Defendants by the Plaintiff at the time of the execution of the said agreement of sale and balance was agreed to be paid by the Plaintiff to the Defendants within one month from the date of execution of the agreement of sale. It was also pleaded that Defendants were always ready and willing to perform their part of contract but it was the Plaintiff who failed to honour his commitments under the said agreement of sale. The Plaintiff failed to perform his part of the said agreement and did not turn up for registration of the sale deed and further failed to pay the balance of sale consideration of Rs. 5,000/-. The other averments were also not admitted.

18. Defendants in the aforesaid suit, made a statement (Ex. RW-1/K) that Plaintiff would not be dispossessed except in due course of law as they had already filed an eviction petition. This statement was made on 25th March, 1987. The present eviction petition had been preferred on 17th May, 1986, meaning thereby that the present eviction petition against the tenant was already pending at the time when the statement was made.

19. Ex. RW-1/L is the certified copy of the statement, made by the learned Counsel for the Plaintiff Gursaran, wherein it was stated that in view of the above statement, he withdrew the suit.

20. Ex. RW-1/M is the certified copy of the order dated 25th March, 1987 passed by the trial Judge, wherein it had been mentioned that the suit was withdrawn by the Plaintiff vide his statement, so it was dismissed as withdrawn.

21. The aforesaid documents clearly reflected that suit of the Plaintiff for

injunction as pointed out above was dismissed, meaning thereby that the plea of part performance taken by the Plaintiff in that suit was not of any legal help to him and the matter was left open insofar as the eviction proceedings were concerned to that effect alone. The aforesaid circumstances clearly revealed that even after the execution of the agreement to sell dated 25th February, 1980, relationship of landlord and tenant did not come to an end, but on the other hand that relationship continued and in this context the tenant could be evicted by due process of law which was already taken by the present landlords by preferring an eviction petition u/s 14 of the Act, For which they were legally entitled, on the basis of sale of the entire property in their favour, made by the previous landlords.

22. The learned Counsel for the tenant Gursaran has tried to find support from some decided cases, which have been reported in *Chinna Thevar Vs. Gnanaprakasi Ammal and Another*, ; *Ramkrishna Singh Vs. Mahadei Haluai and Another*, ; *Chaman Lal v. Smt. Surinder Kumari* AIR 1983 Punjab and Haryana 323; *Mahadeo Keshav Lingarkar and Another Vs. Shamrao Balwant Kesarker*, and *Durga Prasad and Ors. v. Kanhiyalal and Ors.* AIR 1979 Raj 200. The aforesaid case law in a way will not be applicable to the facts of the present case. In the aforesaid cases, ratio has been that Section 53-A of the Transfer of Property Act does confer some right on the transferee, in case conditions of that Section were fully satisfied. The transferee can rely on the agreement of sale in his favour as a shield in a suit for eviction and can even ask for an injunction to protect his possession as against the transferor. In the present case, the facts are altogether distinct, as discussed above. Section 53-A of the Transfer of Property Act has got no applicability to the facts of the present case, more so, the present tenant has been un-successful on this plea of part of performance to secure injunction against the transferor or subsequent transferee.

23. On the other hand the case, *S. Duraisami Nadar v. Nagammal* 1981 (1) RCJ 349, can safely be taken note of in order to appreciate the controversy involved in the present case. In this case, it has been held that by merely entering into an agreement of sale, the tenant does not acquire any right in the property. If possession is traceable to the agreement of sale, then such possession can be sustained on the basis of the principle of part-performance u/s 53-A of the Act. It has been further held that though in a way the Petitioner says that his possession is traceable to the agreement of sale, unless the agreement of sale itself refers to that fact his possession which is traceable to the lease arrangement cannot now be treated as possession under the agreement of sale. It was also held that even assuming that the Petitioner is entitled to the benefit of Section 53-A his liability to pay rent does not cease unless the agreement of sale put an end to that liability in specific terms.

24. In the case, under reference, as pointed out earlier, agreement to sell (Ex. RW-1/A) dated 25th February, 1980 no where specifically provided that the tenancy in favour of Gursaran had come to an end. The possession of House No.

114 of Sh. Gursaran was also not transferred in part performance of that agreement. Moreover, terms of agreement, to be specific, term No. 6 of the agreement, as detailed above, nowhere could lead to the inference that tenancy in favour of Gursaran stood extinguished, but on the other hand the only inference in view of this term and previous litigation could be that tenancy was to continue - and it could be terminated or eviction could be there in due course of law, especially when injunction suit was dismissed and the present landlords claim that they have become owners of the House No. 114 by way of sale, in their favour, was not disturbed at all.

25. It has also been contended that the Petitioner Gursaran took some repair of the house, which were done in part-performance of the agreement. This plea again is not available especially when the previous litigation as discussed above had brought an end to such a plea.

26. So far as the grounds of eviction were concerned, both the forums below have rightly held that the landlords have established grounds for eviction through legal evidence. This Court has been taken through the entire evidence examined in this behalf. The inferences drawn by two forums do not require any interference. Otherwise also, learned Counsel for the tenant has not assailed those grounds, by submitting any argument in that behalf, except that the rent due has been paid.

27. It has come in the evidence and otherwise not disputed that on the basis of the agreement to sell dated 25th February, 1980, the previous owners had received Rs. 5,000/- as advance. Their case in the previous suit had been that the present tenant Gursaran did not comply with his part of the contract and, therefore, sale could not be effected in his favour. The subsequent purchasers in the previous suit claimed themselves to be bonafide purchasers. Admittedly, their plea was not at all interfered with as the suit preferred by the Plaintiff Gursaran, for injunction was dismissed as withdrawn. Even if for arguments sake Gursaran was entitled to Rs. 5,000/- alongwith compensation, such cause of action could be available to him against the original owners, with whom he had executed the agreement of sale. In the present proceedings the amount for compensation or damages as awarded by the Appellate Authority, against the present landlord-owners, could not have been so done, as neither any cause of action arose to Gursaran against the present landlords nor such relief could be granted within the purview of Section 14 of the Act, which deals with the eviction of the tenant by the landlord. The present landlords have rightly assailed such order of Appellate Authority which at the face of it not only is illegal but unsustainable on the grounds revealed in the present proceedings and the prayer of the landlords has to be favourably considered.

28. In view of the foregoing reasons, the Civil Revision No. 282/94, preferred by the tenant Gursaran, being devoid of any merit, is dismissed while Civil Revision No. 295/94 preferred by the landlords stands accepted and as a consequences thereof order passed by the Appellate Authority entitling the tenant to Rs.

13,000/- from the present landlords is quashed and set aside. Order of eviction, as such, passed by two forums, is maintained. The parties are, however, left to bear their own costs.