



HIGH COURT OF JUDICATURE AT ALLAHABAD

S.C.C. REVISION No. - 85 of 2026

Rajesh Kumar Chaurasia and 2 others

.....Revisionist(s)

Versus

Suresh Kapoor and 3 others

.....Opposite Party(s)

Counsel for Revisionist(s)	: Padmaker Pandey, Prakash Chandra Dwivedi, Sr. Advocate
Counsel for Opposite Party(s)	: Dipti Tiwari, Kunal Shah, Manas Bhargava, Shivansh Mishra

AFR

Court No. - 35

HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

1. Heard Sri Atul Dayal, learned Senior Advocate assisted by Sri Padmaker Pandey, learned counsel appearing for the revisionists and Sri Kunal Shah, learned counsel for the respondents.
2. This revision under Section 25 of the Provincial Small Cause Courts Act, 1887 (hereinafter referred to as the "Act") has been preferred by the defendants-revisionists assailing the judgment and decree dated 14.05.2026 passed by the learned Small Causes Court/Additional District & Sessions Judge, Court No. 18, Kanpur Nagar in S.C.C. Suit No. 109 of 2019, whereby the suit instituted by the plaintiff-respondent for eviction and consequential reliefs has been decreed. During the pendency of the suit, the original plaintiff was substituted by his legal heirs. The revisionists seek setting aside of the impugned judgment and decree and dismissal of the suit.

3. The facts giving rise to the present revision, as borne out from the record, are that the plaintiff instituted S.C.C. Suit No. 109 of 2019 against the defendants alleging default in payment of rent for the period from 01.01.2003 to 31.08.2019. It was further pleaded that the tenancy had been determined by notice dated 01.09.2019. The plaintiff asserted that the monthly rent of the disputed premises was Rs.3,000/- and, consequently, the tenancy was outside the ambit of the U.P. Act No. 13 of 1972.

4. The defendants contested the suit by filing their written statement on 26.09.2022. The principal defence was that the relationship of landlord and tenant had ceased to subsist after execution of an agreement to sell dated 24.12.2002. According to the defendants, on the said date an agreement to sell as well as a separate letter recording delivery of possession had been executed, pursuant to which possession of the disputed premises was delivered to them in part performance of the agreement. On that basis, the defendants disputed the very maintainability of the suit as one founded upon a subsisting tenancy.

5. The plaintiff filed his replication on 07.01.2023. The parties thereafter led evidence in support of their respective cases. The plaintiff's affidavit of evidence and his cross-examination were placed on record on 16.01.2023. The defendants relied, inter alia, upon the agreement to sell dated 24.12.2002 and the alleged letter of possession of the same date. In support of their defence, evidence of the defence witnesses was also led, including the affidavits and cross-examinations of D.W.1 and D.W.3 dated 28.05.2025 and 07.07.2025, respectively.

6. The defendants also placed on record copies of rent-deposit tenders relating to the period commencing from the year 2016 onwards. The aforesaid documentary and oral evidence was considered by the learned court below while adjudicating the rival claims of the parties.

7. Upon consideration of the pleadings and the evidence on record, the learned Small Causes Court/Additional District & Sessions Judge, Court No. 18, Kanpur Nagar, by judgment dated 14.05.2026, decreed

S.C.C. Suit No. 109 of 2019, Suresh Kapoor Vs. Rajesh Chaurasia and others. Aggrieved thereby, the defendants have preferred the present revision under Section 25 of the Provincial Small Cause Courts Act, 1887.

Submission on behalf of the Revisionist

8. Learned counsel for the revisionists has assailed the judgment and decree passed by the court below principally on the ground that the effect of the agreement to sell dated 24.12.2002 and the accompanying letter of possession has not been correctly appreciated. It is submitted that the defendants were admittedly in possession of the disputed shop as tenants even prior to 24.12.2002 and that, according to their case, upon execution of the agreement to sell and delivery of possession in pursuance thereof, the character of their possession underwent a change and the relationship of landlord and tenant between the parties came to an end. It is, therefore, contended that the suit for eviction, founded upon the existence of a subsisting tenancy, was not maintainable.

9. Learned counsel submits that the court below has further erred in declining to extend the protection available under Section 53-A of the Transfer of Property Act, 1882. According to the revisionists, the court below proceeded on an erroneous appreciation of the evidence while recording a finding that possession had not been delivered in pursuance of the agreement to sell and also failed to properly appreciate the letter of possession dated 24.12.2002. It is argued that the question was required to be examined with reference to the agreement to sell, the said letter, the evidence led by the defendants and the payment of the entire sale consideration, taken cumulatively, rather than by considering the individual pieces of evidence in isolation.

10. Learned counsel has emphasized that the fact that the defendants were in possession of the disputed shop as tenants even prior to the execution of the agreement to sell dated 24.12.2002 was not in dispute. It is submitted that the plaintiff himself admitted such prior possession and the court below also noticed the same. According to the revisionists, once such prior possession stood admitted, the subsequent continuance

of possession could not have been treated as conclusive of the subsistence of the tenancy. The court was required to examine whether, in the facts and circumstances of the case, the character of such possession had thereafter become referable to the agreement to sell and the alleged delivery of possession in pursuance thereof.

11. Learned counsel has further submitted that D.W.2 specifically proved the letter of possession dated 24.12.2002 and also supported the defendants' case regarding payment of the entire sale consideration. It is contended that the aforesaid evidence, read along with the agreement to sell, furnished sufficient material to establish that the defendants' possession after 24.12.2002 was in part performance of the agreement and was no longer referable merely to the earlier tenancy. It is, therefore, urged that the court below erred in holding that the requirements for invoking Section 53-A of the Transfer of Property Act were not satisfied.

12. In support of the aforesaid submission, learned counsel for the revisionists has placed reliance upon the judgment of this Court in **Habib Khan Vs. XIIth Additional District Judge and others**¹ contending that the principles governing protection under Section 53-A of the Transfer of Property Act have to be applied upon an assessment of the agreement, the surrounding circumstances and the evidence relating to possession and performance. On the strength of the said decision, it is submitted that the court below adopted an unduly restrictive approach in appreciating the agreement to sell, the letter of possession and the evidence relating to payment of consideration and possession.

13. Learned counsel has also assailed the validity of the notice dated 01.09.2019 by which the tenancy was sought to be terminated. It is submitted that the notice demanded rent for the period from 01.01.2003 to 31.08.2019 and that a substantial part of the amount so demanded was allegedly barred by limitation. According to the revisionists, inclusion of such time-barred rent rendered the demand illegal and consequently impaired the validity of the notice itself. It is, therefore, contended that

1 2014 (2) ARC 692

the said notice could not constitute a valid foundation for the suit for eviction.

14. It is further submitted that the cause of action pleaded by the plaintiff was founded upon the aforesaid notice dated 01.09.2019. According to learned counsel, once the notice itself is held to be illegal and ineffective, the cause of action founded upon such notice would also fail and the suit for eviction would consequently be liable to be dismissed.

15. Learned counsel has lastly submitted that the defendants had deposited the requisite amount under protest even prior to filing their written statement. It is contended that such deposit constituted a valid tender of the amount claimed by the plaintiff and that the court below failed to appreciate its legal effect while examining the allegation of default. According to learned counsel, the deposit, coupled with the other material available on record, was sufficient to dislodge the finding of default recorded against the defendants.

16. On the aforesaid premises, learned counsel for the revisionists submits that the judgment dated 14.05.2026 suffers from an erroneous appreciation of the pleadings and evidence and from a failure to correctly appreciate the legal consequences flowing from the agreement to sell dated 24.12.2002 and the alleged delivery of possession in pursuance thereof. It is accordingly urged that the impugned judgment and decree be set aside and S.C.C. Suit No. 109 of 2019 be dismissed.

Submission on behalf of the Respondents

17. Learned counsel for the respondents has supported the judgment and decree passed by the court below and submitted that the revisionists failed to establish that possession of the disputed premises was delivered to them pursuant to the registered agreement to sell dated 24.12.2002. On the contrary, it is submitted that the agreement itself expressly records that possession had not been delivered and that the same was to be handed over at the time of execution of the sale deed. According to learned counsel, the express terms of the agreement, therefore, the

subsequent assertion that the revisionists were placed in possession in part performance thereof on the very same date.

18. It is submitted that the contrary plea of the revisionists rests principally upon an alleged letter of possession dated 24.12.2002. The execution of the said document was disputed; the document is unregistered; and none of the attesting witnesses was examined to establish its execution or the alleged delivery of possession. Learned counsel submits that, in the absence of satisfactory proof of the document and the transaction alleged therein, mere production of the letter could not establish that the character of the revisionists' possession had changed. It is further contended that the recital in the alleged possession letter is directly at variance with the recital contained in the registered agreement and, therefore, the former cannot be relied upon so as to displace or alter the terms of the latter in the manner suggested by the revisionists.

19. Learned counsel has further submitted that the revisionists were admittedly occupying the disputed premises as tenants even prior to the execution of the agreement to sell. Mere continuation of such possession, it is urged, cannot constitute part performance of an agreement to sell under Section 53-A of the Transfer of Property Act unless the circumstances establish that the possession thereafter was held in a different legal capacity and was referable to the agreement. Reliance has been placed upon **Nazim Shaikh Hasan vs. Nasir Mushtaq Shaikh and others**², **H.K. Sharma vs. Ram Lal**³, **Vayyaepi Srinivasarao vs. Gaineedi Jagajyothi**⁴ and **Kashi Nath Mehrotra vs. Roop Narayan Chaudhari**⁵. It is contended that possession originally obtained as a tenant does not, merely by reason of the subsequent execution of an agreement to sell, become possession in part performance, particularly where the agreement contains no stipulation indicating that the existing possession was thereafter to be treated as possession of the prospective purchaser.

² SLP(Civil) No. 17699 of 2026

³ (2019) 4 SCC 153

⁴ 2026 SCC OnLine SC 84

⁵ 2007 (6) ALJ 372

20. Learned counsel has also placed reliance upon **Chandrakant Shankarao Machale vs. Parubai Bhairu Mohite**⁶, and **S. Saktivel vs. M. Venugopal Pillai**⁷, in support of the submission that the express terms of the registered agreement cannot be displaced by relying upon an alleged subsequent or contemporaneous unregistered arrangement in the absence of legally admissible and cogent proof. On this basis, it is argued that the alleged possession letter cannot be permitted to override the recital in the registered agreement that possession was to be delivered at the time of execution of the sale deed.

21. Learned counsel accordingly submits that the revisionists have failed to establish the foundational facts necessary for claiming protection under Section 53-A of the Transfer of Property Act. Their possession of the disputed premises admittedly commenced as tenants and, according to the respondents, continued in that capacity. No reliable evidence, it is contended, establishes that such possession was surrendered or otherwise ceased to be referable to the tenancy and thereafter became possession pursuant to the agreement to sell. The execution of the agreement and the alleged payment of consideration, by themselves, are stated to be insufficient to bring about such a change in the legal character of possession. It is, therefore, urged that the relationship of landlord and tenant did not come to an end on 24.12.2002.

22. With regard to the notice dated 01.09.2019, learned counsel submits that its validity was not affected merely because the demand included rent relating to an earlier period which the revisionists now claim to be barred by limitation. Reliance has been placed upon **Khadi Gram Udyog Trust vs. Shri Ram Chandraji Virajman Mandir**⁸, and **L.M. Joshi vs. K.M. Parikh**⁹, in support of the submission that a demand for arrears, including an amount which may not be recoverable by reason of limitation, does not by itself invalidate a notice determining the tenancy,

6 (2008) 6 SCC 745

7 (2000) 7 SCC 104

8 AIR 1978 SC 287

9 AIR 1972 Bom 373

provided the notice otherwise sufficiently communicates the intention to terminate the tenancy.

23. Learned counsel has further relied upon **Bhagabandas Agarwalla vs. Bhagwandas Kanu**¹⁰ and **B.R. Trading Company v. Dharam Raj Sahu and Others**¹¹, to contend that a notice determining tenancy is required to be construed as a whole and according to its substance, with due regard to the intention conveyed by it, rather than being invalidated on account of a technical or hyper-technical objection. It is submitted that the notice dated 01.09.2019 clearly conveyed the respondents' intention to terminate the tenancy and that the inclusion of a demand for arrears relating to an earlier period did not detract from the operative part of the notice or render the determination of tenancy ineffective.

24. Lastly, learned counsel submits that the findings recorded by the court below are founded upon a proper appreciation of the pleadings and evidence and do not suffer from perversity, jurisdictional error or any material irregularity warranting interference in exercise of revisional jurisdiction under Section 25 of the Provincial Small Cause Courts Act, 1887. It is accordingly submitted that the revisionists have failed to demonstrate that the impugned judgment and decree are contrary to law and that the revision is liable to be dismissed and the judgment and decree dated 14.05.2026 affirmed.

Issue for Consideration

25. Having regard to the rival submissions and the material available on record, the principal controversy which arises for consideration is whether, and in what circumstances, the possession of a person who was already occupying an immovable property as a tenant can, upon his subsequently entering into an agreement to purchase the same property from the landlord, cease to be referable to the tenancy and become possession in part performance of the agreement within the meaning of Section 53-A of the Transfer of Property Act, 1882. The question assumes significance where the tenant asserts that the agreement to sell was accompanied by delivery of possession, while the agreement itself

¹⁰ (1977) 2 SCC 646

¹¹ (2008) 73 ALR 193

contains a recital inconsistent with such delivery. The further question is whether, in such circumstances, the alleged change in the character of possession can be established on the basis of a separate document or the surrounding evidence, and what legal consequence such change, if proved, would have upon the subsistence of the tenancy.

26. The connected question is whether the execution of an agreement to sell by itself, or coupled with payment of the sale consideration and continued possession of the prospective purchaser, is sufficient to bring an existing tenancy to an end, or whether the termination of such tenancy must independently be established in accordance with the law governing surrender or determination of a lease. This question necessarily requires the Court to keep distinct the contractual rights arising from an agreement to sell, the statutory protection contemplated by Section 53-A of the Transfer of Property Act, and the independent question whether the pre-existing relationship of landlord and tenant has in fact ceased.

27. A further and distinct issue arises with regard to the validity of a notice determining tenancy where the notice, besides communicating the intention to terminate the tenancy, also contains a demand for arrears of rent extending over a period, a part of which may be beyond the period of limitation for recovery. The question is whether the inclusion of such a demand, by itself, renders the notice invalid and consequently defeats the determination of tenancy, or whether the validity of the notice is to be examined with reference to the substance of the notice and the operative intention conveyed by it, independently of the recoverability of individual components of the monetary demand.

28. The aforesaid questions fall for determination upon an examination of the pleadings and evidence on record, the terms of the agreement to sell and the alleged document recording delivery of possession, the subsequent conduct of the parties, and the legal principles governing part performance, surrender or determination of tenancy, and the validity of a notice determining a lease. The findings recorded by the court below are required to be tested against these

principles in exercise of the jurisdiction conferred by Section 25 of the Provincial Small Cause Courts Act, 1887.

I. Effect of the Agreement to Sell on the Existing Landlord-Tenant Relationship

29. The principal controversy between the parties centres around the legal effect of the agreement to sell dated 24.12.2002. The execution of the said agreement between the parties is not seriously disputed. The defendants, however, seek to derive from it a consequence which goes beyond the creation of a contractual right to obtain execution of a sale deed. Their case is that the entire sale consideration of Rs.1,10,000/- was paid, that a separate letter of possession dated 24.12.2002 was executed, and that possession of the disputed shop was delivered to them in pursuance thereof. On this premise, it is contended that the defendants ceased to be tenants and thereafter continued in possession as prospective purchasers, with the result that a suit for their eviction on the basis of the alleged subsistence of the tenancy was not maintainable.

30. The question, therefore, is not merely whether the agreement to sell was executed or whether the sale consideration was paid. The more fundamental question is whether the defendants, who admittedly entered into possession of the disputed shop as tenants prior to the agreement to sell, have established by legally admissible and reliable evidence that the character of their possession thereafter underwent a legally recognisable change and became possession in part performance of the agreement within the meaning of Section 53-A of the Transfer of Property Act, 1882. Closely allied to this question is the further issue whether the pre-existing tenancy was thereby surrendered, determined or otherwise brought to an end.

31. The distinction is of considerable significance. Where possession of an immovable property is obtained pursuant to an agreement to sell, such possession may, subject to fulfilment of the statutory requirements, furnish the foundation for a plea of part performance. The situation is materially different where the person asserting such protection was already in possession under an independent jural relationship, such as

that of a tenant. In such a case, the mere fact that an agreement to sell is subsequently executed does not, by itself, alter the legal character of the possession. Some material must exist from which it can reasonably and legally be concluded that the basis upon which possession was held has thereafter changed and that the possession became referable to the agreement to sell.

32. This distinction also follows from the scheme of the Transfer of Property Act. An agreement to sell does not, by itself, create or transfer any right, title or interest in the property which amounts to ownership. It creates a contractual right to seek completion of the proposed transaction. Section 53-A, on the other hand, confers a limited statutory protection against the transferor where the conditions prescribed therein are satisfied. Neither of these provisions, by itself, determines the fate of an existing lease. The question whether a subsisting tenancy has come to an end has to be independently examined in accordance with the law governing determination or surrender of the lease.

33. In the present case, this aspect assumes particular importance because the defendants' possession admittedly preceded the agreement to sell dated 24.12.2002. Their physical possession, therefore, cannot itself furnish the necessary link between the agreement and possession. Physical possession remained continuous before and after the agreement. What is required to be established is a change in the juridical basis of that possession. Unless such change is proved, the continuance of possession must ordinarily be attributed to the relationship under which possession was originally obtained.

34. The learned court below has examined the registered agreement to sell as well as the alleged possession letter dated 24.12.2002 in this context. The registered agreement constitutes the principal contractual document between the parties. The defendants, however, rely upon the separate possession letter to establish that, notwithstanding the terms of the registered agreement, possession was delivered to them in part performance of the proposed sale on 24.12.2002 itself. The evidentiary

value and legal effect of this document consequently assume considerable significance.

35. The alleged possession letter was not proved through any of the persons stated to have witnessed its execution. Its execution was disputed and the defendants did not examine the attesting witnesses to establish that the document was in fact executed in the manner alleged or that possession was delivered pursuant to it. The mere production or marking of a disputed document cannot, by itself, establish the truth of the facts recited therein. Where a document is relied upon as the very foundation for a change in the legal character of possession, its execution and the transaction alleged therein must be established by cogent and legally admissible evidence.

36. It is necessary, however, to make it clear that the failure to prove the possession letter does not, by itself, conclude the controversy. The Court is required to examine the entire body of evidence and determine whether the defendants have otherwise established that their possession ceased to be referable to the tenancy and became possession in part performance of the agreement to sell. The question is, therefore, not one of treating the possession letter in isolation, but of assessing its evidentiary significance along with the registered agreement, the evidence regarding consideration, the conduct of the parties and the other circumstances appearing on record.

37. Learned counsel for the revisionists has placed considerable reliance upon the payment of the entire sale consideration of Rs.1,10,000/-. Payment of consideration is undoubtedly a circumstance relevant to the contractual transaction. It cannot, however, by itself determine the character of possession or bring about transfer of ownership. An agreement to sell, even when supported by payment of the entire consideration, does not become a conveyance of the property. The contractual rights arising from the agreement, the statutory protection contemplated by Section 53-A and the acquisition of title are distinct legal consequences and cannot be treated as interchangeable.

38. The fact that the defendants have themselves instituted proceedings seeking specific performance of the agreement to sell is also relevant in this context. The pendency or institution of such proceedings does not determine the defendants' title, nor is that question before this Court in the present revision. It does, however, indicate the nature of the right which the defendants themselves claim to possess under the agreement. A contractual right to compel execution of a sale deed cannot, without more, be equated with ownership of the property or with the automatic extinction of a pre-existing tenancy.

39. The decisive question, therefore, remains whether the agreement to sell, either by its express terms or when read with the subsequent conduct of the parties, demonstrates that the parties intended to bring the existing tenancy to an end and that the defendants thereafter retained possession in a capacity referable to the agreement to sell.

40. The legal position in this regard has been authoritatively considered by the Supreme Court in **Nazim Shaikh Hasan**. Upon consideration of the earlier decisions, the Supreme Court reiterated that the mere execution of an agreement to sell between a landlord and tenant does not *ipso facto* determine the subsisting tenancy. The tenancy comes to an end only where the terms of the agreement or the unequivocal conduct of the parties disclose an express or implied surrender within the meaning of Section 111(e) or Section 111(f) of the Transfer of Property Act. The Court further held that the continuous possession of a tenant after execution of an agreement to sell would not amount to part performance under Section 53-A unless such possession is shown to be directly relatable to and flowing from the agreement to sell.

41. The principle emerging from the aforesaid decision is of direct relevance here. The existence of two transactions between the same parties, one creating a tenancy and the other contemplating a future sale, is not legally inconsistent. Both may coexist unless the latter transaction, by its terms or by the unequivocal conduct of the parties, demonstrates that the former has been surrendered or otherwise determined. The mere execution of the agreement to sell, therefore, cannot be treated as an

implied surrender merely because the parties thereafter continued to remain in the same physical relationship with the property.

42. The same principle was considered by the Supreme Court in **H.K. Sharma**. The Court examined the effect of an agreement to sell executed by a lessor in favour of the lessee during the subsistence of the tenancy and held that the question whether the jural relationship of landlord and tenant came to an end has to be determined with reference to Section 111 of the Transfer of Property Act and the intention of the parties. The relevant inquiry is whether the parties intended, upon execution of the agreement, to surrender the tenancy or whether they intended that the tenancy should continue notwithstanding the proposed sale.

43. The distinction drawn in **H.K. Sharma** from **R. Kanthimathi v. Beatrice Xavier**¹², is instructive. In the latter case, the agreement itself contained a recital which disclosed that possession had been surrendered to the purchaser, thereby furnishing clear evidence of the intention to bring the landlord-tenant relationship to an end. The significance of the decision, therefore, lies not in the mere existence of an agreement to sell but in the terms of that agreement and the intention thereby manifested. In the absence of a similar stipulation or other circumstances establishing express or implied surrender, execution of an agreement to sell does not automatically determine a subsisting tenancy.

44. The Supreme Court has also reiterated the same distinction in **Vayyaeti Srinivasarao**, where it was held that, when possession is handed over to the vendee pursuant to an agreement to sell, the protection under Section 53-A of the Transfer of Property Act would be available, subject to fulfilment of the other conditions prescribed by the said provision. Conversely, where possession has not been delivered pursuant to or in relation to the agreement to sell, the protection under Section 53-A would not be attracted. The decision thus reinforces the requirement of a demonstrable nexus between the agreement to sell and the possession sought to be protected under Section 53-A. Where possession was already with the claimant in an independent capacity, such as that of a

12 (2000) 9 SCC 339

tenant, mere continuance of possession after execution of the agreement cannot, without more, establish the requisite nexus with the agreement.

45. The principle has likewise been applied by this Court in **Smt. Shakuntala Devi**. There too, the person claiming a change in status was already a tenant and a registered agreement to sell had subsequently been executed. The Court, while considering the effect of **R. Kanthimathi** in the light of the later pronouncement in **H.K. Sharma**, noticed that the agreement in **R. Kanthimathi** contained a specific recital indicative of surrender of possession, whereas the agreement before it contemplated delivery of possession at the time of registration of the sale deed. The Court consequently held that, in the absence of a clause or other circumstance evidencing surrender or termination of the existing tenancy, even the execution of a registered agreement to sell did not, by itself, alter the legal character of the tenant's possession.

46. The aforesaid authorities, when considered together, establish a principle which may be stated thus: where a person is already in possession of immovable property as a tenant and subsequently enters into an agreement to purchase the property from the landlord, the agreement to sell does not, by its mere execution, determine the existing tenancy or convert the tenant's possession into possession in part performance of the agreement. For such a change to be recognised, there must be cogent material showing that the possession thereafter became referable to the agreement to sell and that the pre-existing tenancy was expressly or impliedly surrendered or otherwise determined in accordance with law. Payment of consideration and mere continuation of physical possession, without more, are insufficient.

47. The decision relied upon by learned counsel for the revisionists in **Habib Khan** does not advance the case of the revisionists beyond this principle. There can be no dispute with the proposition that possession delivered pursuant to an agreement to sell may, subject to fulfilment of the statutory conditions, furnish a basis for invoking Section 53-A. The difficulty in the present case, however, lies at an anterior stage: the defendants were already in possession as tenants and were required to

establish that their possession thereafter became possession in part performance of the agreement rather than continued possession under the tenancy. The decision, therefore, cannot be understood as dispensing with proof of the factual ingredients necessary to establish such a change.

48. Tested on the aforesaid principles, the registered agreement to sell dated 24.12.2002 assumes considerable significance. As noticed by the court below, the agreement contains a recital that possession had not been delivered and was to be handed over at the time of execution of the sale deed. Such a recital is plainly inconsistent with the defendants' assertion that they were delivered possession under the agreement on 24.12.2002 itself. It also assumes significance because the defendants were already in possession under the tenancy. In these circumstances, the burden upon the defendants to establish that the character of that possession was nevertheless changed by a contemporaneous act of surrender and delivery in part performance was necessarily a substantial one.

49. The alleged possession letter is relied upon to overcome this difficulty. But the difficulty for the revisionists is that the execution of that document has not been satisfactorily established. The persons alleged to have witnessed its execution were not examined. Nor has the evidence otherwise led by the defendants established with the requisite clarity that possession was actually delivered to them in a capacity different from that in which they were already occupying the shop. The document, therefore, cannot be treated as conclusively establishing the transaction which it is relied upon to prove.

50. The fact that the alleged possession letter is unregistered is not, by itself, sufficient to dispose of every question concerning its evidentiary relevance. The more fundamental difficulty is that its execution and the transaction alleged therein have not been satisfactorily proved and, even apart from that deficiency, the recital relied upon by the defendants is required to be reconciled with the express terms of the registered agreement. The question is not simply whether an unregistered document

exists, but whether the evidence as a whole establishes a legally recognisable change in the basis of possession notwithstanding the terms of the registered agreement.

51. The subsequent conduct of the parties furnishes an additional and important circumstance. The defendants have placed on record rent-deposit tenders relating to the period commencing from the year 2016. Such conduct cannot be brushed aside while determining whether the tenancy had in fact come to an end in the year 2002. If the defendants' possession had ceased to be that of tenants on 24.12.2002 and thereafter continued exclusively in part performance of the agreement to sell, their subsequent conduct would ordinarily be expected to reflect that altered legal position. The rent-deposit material, therefore, constitutes a circumstance which the court below was entitled to consider while assessing the continued subsistence of the tenancy.

52. The reply submitted by the defendants to the notice dated 17.09.2019, as noticed by the court below, is also relevant. The contents of the reply and the conduct of the defendants are required to be considered in determining the jural relationship which the parties themselves recognised after execution of the agreement to sell. While a party's subsequent conduct cannot, by itself, create or extinguish a legal relationship contrary to law, it is plainly relevant in determining whether the alleged surrender or change in the character of possession actually occurred.

53. The cumulative effect of the material on record, therefore, does not establish that the defendants' possession ceased to be referable to the tenancy on 24.12.2002. The agreement to sell establishes a contractual arrangement between the parties, but it does not contain material sufficient to establish an express surrender of the existing tenancy. The alleged possession letter, which is relied upon to establish a contemporaneous change in possession, has not been satisfactorily proved. The subsequent conduct relied upon by the defendants does not unequivocally demonstrate that the tenancy had been surrendered or

otherwise determined. Payment of the sale consideration, even if accepted in full, does not by itself supply the missing link.

54. It is important in this context to maintain the distinction between absence of title and subsistence of tenancy. The fact that the defendants did not acquire title under the agreement to sell is one matter; whether they continued to hold possession as tenants is another. Equally, the mere existence of a contractual right to seek specific performance does not render the tenancy extinct. The present suit does not require adjudication of the ultimate rights of the defendants in their proceedings for specific performance. What falls for consideration is whether, on the date of determination of the tenancy and institution of the suit, the defendants continued to occupy the premises under a subsisting tenancy. On the evidence considered by the court below, the answer is in the affirmative.

55. The contention that the agreement to sell dated 24.12.2002 itself brought the landlord-tenant relationship to an end must, therefore, be rejected as a proposition of law. An agreement to sell may create enforceable contractual rights in favour of the prospective purchaser and, where the statutory requirements are fulfilled, may also support a plea under Section 53-A. But neither consequence follows merely from the execution of the agreement where the person asserting such rights was already in possession as a tenant. In such a case, the party asserting a change in the legal character of possession must establish the event or circumstances by which the existing tenancy was expressly or impliedly surrendered or otherwise determined and possession thereafter became referable to the agreement to sell. That requirement has not been satisfied in the present case.

56. The first issue is, accordingly, answered against the revisionists. The execution of the agreement to sell dated 24.12.2002, payment of the alleged entire consideration and the alleged possession letter of the same date have not been shown, either individually or cumulatively, to have effected a legally recognisable change in the character of the defendants' possession so as to attract the protection under Section 53-A of the Transfer of Property Act or to extinguish the pre-existing relationship of

landlord and tenant. The finding of the court below on this aspect, therefore, calls for no interference.

57. Before examining the validity of the notice dated 01.09.2019, it would be appropriate to consider the principal defence of the revisionists that, by virtue of the agreement to sell dated 24.12.2002, their status ceased to be that of tenants and that their possession thereafter was referable to the proposed sale of the property. The submission, in substance, is that the agreement to sell brought about a change in the character of their possession and, consequently, the relationship of landlord and tenant stood altered.

58. The aforesaid submission cannot be accepted merely on the basis of the existence of an agreement to sell. Where the parties have entered into a registered instrument creating or recording a particular legal relationship, or stipulating the terms governing their rights in the property, the legal effect of such instrument cannot ordinarily be altered or displaced by a subsequent unregistered arrangement. The status of the parties flowing from a registered instrument must, therefore, be determined with reference to the legally admissible instrument governing their relationship and cannot be treated as having been altered merely on the basis of an unregistered agreement or arrangement.

59. The aforesaid principle finds support from the judgment of the Supreme Court in **Chandrakant Shankarao Machale**, wherein the legal effect of a registered instrument and the limitations upon altering its terms were considered. The decision recognises that the rights and obligations flowing from a registered instrument cannot be displaced by a subsequent arrangement unless such subsequent arrangement possesses the legal efficacy required by law. The principle assumes significance in the present case since the revisionists seek to contend that the legal status of the parties, as governed by the subsisting tenancy, was subsequently altered merely by reason of the agreement to sell dated 24.12.2002.

60. The legal effect of the alleged subsequent arrangement must, in any event, be examined with reference to the statutory requirements governing the transaction. The Court cannot give effect to an arrangement merely because it has been pleaded or described by the parties in a particular manner if its object or operation is inconsistent with a mandatory statutory provision. In **S. Saktivel**, the Supreme Court, while referring to proviso (4) to Section 92 of the Evidence Act, considered whether a subsequent oral arrangement could be relied upon to rescind, modify or vary the terms of a registered settlement deed. The Court held that where a contract or disposition is required by law to be in writing, its terms cannot be modified, altered or substituted by an oral agreement or arrangement; and where the original document is a registered document, its terms can be altered, rescinded or varied only by a subsequent registered document. The decision thus underscores that the terms and legal effect of a registered document cannot be displaced by a subsequent unregistered or oral arrangement inconsistent with its terms.

61. There is another aspect which assumes significance. Even where a tenant subsequently enters into an agreement for purchase of the tenanted premises, the character of his possession does not automatically stand transformed into possession in part performance of the contract. In **Kashi Nath Mehrotra**, this Court considered the scope of Section 53-A of the Transfer of Property Act in a case where the proposed transferee was already in possession. It was held that mere continuance of possession is not, by itself, sufficient to attract the doctrine of part performance. Such continuance must be attributable to the part performance of the contract, and the contractual arrangement must contemplate either delivery of possession or continuance of possession pursuant to the agreement. The decision thus makes it clear that the protection founded upon part performance does not arise merely because a person already in possession subsequently enters into an agreement for sale.

62. The aforesaid principle is of particular relevance in the present case. The question is not merely whether an agreement to sell dated 24.12.2002 was executed between the parties, but whether, by its terms

and by the manner in which it was acted upon, the agreement legally brought about a change in the capacity in which the revisionists continued in possession. If the possession was already referable to an existing tenancy, the mere execution of an agreement to sell would not, without more, establish that such possession thereafter became referable exclusively to the proposed sale. A change in the legal character of possession must be established by cogent and legally admissible material.

63. On consideration of the findings recorded by the courts below, the revisionists have failed to establish that their possession after 24.12.2002 was, in law, referable exclusively to the proposed sale and ceased to be referable to the subsisting tenancy. No legally sustainable basis has been demonstrated for holding that the agreement to sell, by itself, resulted in an automatic conversion of the tenancy into possession as a prospective purchaser. The defence that the relationship of landlord and tenant stood extinguished merely on account of the agreement to sell, therefore, cannot be accepted.

II. Validity and Effect of the Notice Determining the Tenancy

64. Once the relationship of landlord and tenant is found to have continued, the notice dated 01.09.2019 assumes its ordinary legal significance. The principal objection now urged by the revisionists is that the said notice demanded rent for the period from 01.01.2003 to 31.08.2019 and that a substantial part of the demand was barred by limitation. The question, therefore, is whether the inclusion of such demand rendered the notice itself invalid and incapable of operating as a notice determining the tenancy.

65. The two aspects, namely, the recoverability of a particular amount of arrears and the validity of a notice determining tenancy, are required to be kept distinct. A claim for recovery of arrears may be subject to the law of limitation, but that circumstance does not necessarily determine the validity of a notice by which the landlord has otherwise clearly expressed his intention to terminate the tenancy. The question, therefore,

has to be examined by keeping in view the substance of the notice and the statutory purpose which it seeks to fulfil.

66. The principle that limitation ordinarily bars the remedy and does not extinguish the underlying right or debt has long been recognised. In **Khadi Gram Udyog Trust**, the Supreme Court, while considering the expression “entire amount of rent due”, recognised that a debt may become barred by limitation without being extinguished. In that context, reliance was placed upon **Halsbury's Laws of England** (Third Edn.), Vol. 24, p. 205, Article 369, which explains that the Limitation Act ordinarily takes away the remedy by action or set-off while leaving the right otherwise unaffected. The same principle was expressed by **Cotton, L.J.** in **Curwen v. Milburn**¹³, in stating that a statute-barred debt continues to be a due debt although its recovery cannot be enforced by action.

67. The aforesaid principle was also recognised by the Supreme Court in **Bombay Dyeing and Manufacturing Co. Ltd. v. State of Bombay**¹⁴, where it was held that the law of limitation ordinarily bars the remedy without extinguishing the debt, except in cases where the statute itself provides for extinguishment. The principle was reiterated in the context of personal actions, namely, that limitation ordinarily bars the remedy without extinguishing the underlying right. Thus, merely because a particular component of the rent claimed in the notice may not be recoverable through a proceeding instituted after expiry of the prescribed period of limitation, it does not follow that the underlying relationship of debtor and creditor or the character of the amount as rent due stands obliterated for every purpose.

68. This distinction becomes important while examining the validity of the notice dated 01.09.2019. A notice determining tenancy is not rendered invalid merely because, in addition to expressing the intention to terminate the tenancy, it contains a demand which may subsequently be found to be partly barred by limitation. The material consideration is whether the notice, read as a whole, sufficiently and unequivocally

13 (1889) 42 Ch D 424

14 AIR 1958 SC 328

conveyed the landlord's intention to determine the tenancy and whether the tenant was in a position to understand the act of determination.

69. The law does not require a notice to quit to be construed with a hyper-technical approach. In **L.M. Joshi**, the validity of a notice to quit was considered with reference to the substance of the statutory requirement and the intention conveyed by the notice. The validity of such a notice cannot be made dependent upon technical objections which do not affect the essential requirement of communicating the intention to determine the tenancy.

70. The same principle was stated by the Supreme Court in **Bhagabandas Agarwalla** wherein it was held that a notice to quit should not be construed with a desire to find faults which would render it defective. The notice has to be construed so as to give effect to the transaction in accordance with the principle *ut res magis valeat quam pereat*. The Court must, therefore, examine the notice in a common-sense manner and ascertain whether its substance sufficiently conveys the intention to determine the tenancy. The Supreme Court, in that context, also referred to the observation of **Lindley, L.J.** in **Sidebotham v. Holland**¹⁵, that the validity of a notice to quit ought not to turn on the “splitting of a straw”.

71. Applying the aforesaid principles, the revisionists have failed to demonstrate that the demand of arrears contained in the notice dated 01.09.2019 rendered the intention to determine the tenancy ambiguous or incapable of being understood. The notice proceeded on the footing that the revisionists continued to be tenants, demanded payment of the rent stated to be due and, at the same time, communicated the landlord's decision to terminate the tenancy. The fact that some part of the amount demanded may, upon application of the law of limitation, ultimately be found to be not legally recoverable cannot, by itself, obliterate the separate and otherwise intelligible act of determination of tenancy contained in the notice.

15 (1895) 1 QB 378

72. The objection based on limitation may, therefore, have relevance while determining the quantum of arrears legally recoverable from the revisionists, but it does not, in the facts of the present case, furnish a ground for invalidating the notice dated 01.09.2019 in its entirety. No defect has been demonstrated which goes to the root of the determination of tenancy. The notice, when read as a whole and in a manner consistent with its substance and purpose, sufficiently conveyed the landlord's intention to bring the tenancy to an end. The objection to its validity on the ground that the demand included arrears pertaining to an earlier period is, accordingly, rejected.

73. The conclusion aforesaid is also consistent with the principle reiterated by this Court in **B.R. Trading Company** that the validity of a notice under Section 106 of the Transfer of Property Act is to be determined by construing the notice as a whole and by examining whether it sufficiently conveys the intention of the landlord to terminate the tenancy. The absence of any particular expression, including the word “terminate”, is not by itself decisive, so long as the language employed clearly manifests the intention to bring the tenancy to an end and the date of determination is ascertainable. A notice, therefore, is not to be construed in a hyper-technical manner so as to defeat its substantive purpose.

74. The remaining submission concerns the deposits and tenders allegedly made by the revisionists. The mere fact that the defendants deposited certain amounts, or that such deposits were made under protest, cannot by itself conclude the question of default. The relevant inquiry is whether the amounts so deposited represented the rent legally payable, whether the deposits covered the period for which rent had become due, whether they were made within the time contemplated by law and, where a statutory provision governing such deposit is invoked, whether the conditions prescribed therein stood duly satisfied. A deposit can discharge the liability of a tenant only to the extent that the requirements governing such deposit are otherwise fulfilled.

75. The court below has considered the rent deposit tenders placed on record along with the other evidence and has recorded a finding of default against the revisionists. The said finding cannot be characterised as one rendered by ignoring material evidence or by adopting an interpretation of the record which no reasonable court could have adopted. The revisionists have not been able to demonstrate any such patent error in the consideration of the deposit documents as would warrant interference in the limited revisional jurisdiction under Section 25 of the Provincial Small Cause Courts Act, 1887. The mere possibility of another view being taken on the evidence, or a different appreciation of the deposit documents being possible, does not furnish sufficient ground for interference in revision.

76. It is also significant that the principal defence of the defendants before the court below was that, after execution of the agreement to sell dated 24.12.2002, they had ceased to be tenants and their possession was thereafter referable to the proposed sale. Having failed to establish any legally sustainable change in the character of their possession, they cannot, at the same time, rely upon the same transaction to avoid the consequences arising from the subsisting tenancy. Once the relationship of landlord and tenant is found to have continued, the obligation to pay rent and the consequences of failure to discharge that obligation necessarily have to be examined with reference to the subsisting tenancy and the applicable statutory provisions.

III. Scope of Revisional Jurisdiction and Final Determination

77. The findings recorded by the court below with regard to continuance of the tenancy, validity of the notice dated 01.09.2019 and default, therefore, do not suffer from any jurisdictional error, perversity or material irregularity warranting interference in exercise of the revisional jurisdiction under Section 25 of the Provincial Small Cause Courts Act, 1887. No ground has been made out for re-appreciation of the evidence merely because another view may arguably be possible. The findings of the court below, being founded upon a consideration of

the material available on record and not suffering from any error of the nature contemplated by the revisional jurisdiction, call for no interference.

78. On an overall consideration of the pleadings, documentary evidence and oral evidence on record, this Court finds that the learned court below has duly considered the principal defence of the defendants founded upon the agreement to sell dated 24.12.2002, the alleged payment of the entire sale consideration and the possession letter relied upon by them. The conclusion that the defendants failed to establish either acquisition of ownership or any legally recognisable change in the character of their possession cannot be said to be perverse merely because the revisionists seek a different appreciation of the same material. The findings recorded by the court below are founded upon the evidence available on record and disclose a plausible and legally sustainable view.

79. The jurisdiction under Section 25 of the Provincial Small Cause Courts Act, 1887, is supervisory in character and is not intended to provide a second opportunity for a re-appraisal of the evidence as though the revisional court were exercising appellate jurisdiction. Interference is justified where the court below has acted contrary to law, exceeded or failed to exercise the jurisdiction vested in it, or committed a material irregularity in the exercise of its jurisdiction resulting in an erroneous adjudication. A finding cannot be interfered with merely because, on the same evidence, another view may also be possible. Unless the finding is shown to be such that no reasonable court could have arrived at it, or is vitiated by a manifest error of law or procedure, the revisional court would not be justified in substituting its own assessment for that of the court of first instance.

80. Tested on the aforesaid parameters, no such infirmity has been demonstrated in the present case. The essential foundation of the defence, namely, that the defendants' possession ceased to be referable to the tenancy on 24.12.2002 and thereafter became possession in part

performance of the agreement to sell, has not been established. The agreement to sell, even when considered together with the alleged payment of consideration and the possession letter, does not furnish a legally sustainable basis for holding that the subsisting relationship of landlord and tenant stood extinguished. The defendants, therefore, cannot defeat the claim for eviction merely by relying upon the existence of the agreement to sell or upon the alleged payment of the sale consideration.

81. Once the continuance of the tenancy is established, the subsequent notice dated 01.09.2019 has to be examined in that legal setting. As already held, the notice sufficiently communicated the landlord's intention to determine the tenancy and was not rendered invalid merely because the demand of arrears contained therein extended to a period in respect of which the remedy for recovery may have become barred by limitation. The objection as to limitation, therefore, does not affect the validity of the determination of tenancy. The finding of default recorded by the court below, having also been examined in the light of the deposits and tenders relied upon by the revisionists, does not disclose any error warranting revisional correction.

82. The cumulative effect of the foregoing discussion is that the relationship of landlord and tenant between the parties continued notwithstanding the agreement to sell dated 24.12.2002; the tenancy was validly determined by the notice dated 01.09.2019; and the revisionists have failed to establish any legally sustainable defence against the claim for eviction. The principal grounds upon which the decree of eviction has been assailed thus fail on their own merits as well as on an examination of the material available on record.

83. For the foregoing reasons, this Court finds no jurisdictional error, material irregularity or perversity in the judgment and decree dated 14.05.2026 passed by the learned Small Causes Court/Additional District & Sessions Judge, Court No. 18, Kanpur Nagar, so as to warrant interference in exercise of the revisional jurisdiction under Section 25 of

the Provincial Small Cause Courts Act, 1887. The revision consequently fails and is, accordingly, dismissed. The judgment and decree dated 14.05.2026 are affirmed. There shall, however, be no order as to costs.

(Dr. Yogendra Kumar Srivastava,J.)

September 07, 2026

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