

PART PERFORMANCE

**Presented by
Laval Verma,
Civil Judge,
Gopeshwar, Chamoli.**

The doctrine of part-performance, if a person has taken possession of an immovable property on the basis of a contract of sale and has either performed or is willing to perform his part of the contract, he cannot be evicted from the property because the sale was unregistered and the legal title has not been transferred to him. This doctrine is founded on the principle that equity looks at what is done rather than what should have been done.

SECTION 53A

Sec 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 1[***]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 rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

1. The word “the contract, though required to be registered, has not been registered, or,” Omitted by Act 48 of 2001, sec 10 (w.e.f.24-09-2001)

INGREDIENTS OF SECTION 53A

Section 53A and various judicial pronouncements clearly laid down the following ingredients or essential elements that are necessary to fulfil.

1. Contract to Transfer an Immovable Property for Consideration.
2. Contract In writing and Ascertainable with Resonable Certainty.
3. Part- Performance of Contract by Transferee, Transfer of Possession or Continuance in Possession.
4. Readiness or Willingness of Transferee (the person receiving the property).

The transferee must have taken possession of the property, either in part performance of the contract or by continuing to be in possession. In addition to possession, the transferee must have also done some act in furtherance of the contract.

Contract for transfer of an immovable property -

The most fundamental ingredient is that there must be a contract between two parties to transfer an immovable property. If there is no such contract in the first place, then there will be no room for dispute. Even if someone disputes in court, Section 53A of the Act does not apply if no contract is made between the parties to the suit. Just merely entering into the contract is also not sufficient.

Contract in writing -

The contract should always be in writing to make the transfer of an immovable property legally valid, and only then is the application of Section 53A possible. Otherwise, the transferee cannot avail himself of the protection that is provided by Section 53A of the Act.

Willingness to Perform-

The transferee must have either performed their part of the contract or be willing to perform it.

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The Supreme Court held that the use of the equitable doctrine of part performance necessitates a written agreement for the transfer of property in the case of **Mool Chand Bakhru and Anr. V. Rohan and Ors. (2002)**. But the Supreme Court decided that the communications of the seller could not be interpreted as a sale agreement. The Court ruled that for a party to avail itself of the benefits of the doctrine of part performance as a defence, the contract must be one of the transfers of specific immovable properties. If the transfer of immovable property results from an oral contract, Section 53A is not applicable. It was held in **V.R. Sudhakara Rao and Ors. VS. T.V. Kameswari (2007)** that a person who is in possession of property solely based on an oral agreement of sale is not eligible for the protection of Section 53A. Additionally, the judges have explicitly said in **Smt. Kalawati Tripathi and Ors. VS. Smt. Damyanti Devi and Anr. (1993)**, that verbal agreements in India are not covered by the doctrine of part performance.

- **Deprivation of Rights-**

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If all the conditions above are satisfied, the transferor or anyone claiming under them is debarred from enforcing any right against the transferee and those claiming under them with respect to the property. This means that the transferee's possession is protected even if the contract is not registered or the transfer is not completed as per formal legal procedures.

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Exception for Innocent Transferees-

The provision includes a proviso that states that the rights of a transferee who has no notice of the contract or part performance are not affected by Section 53A.

OBJECT OF SECTION 53A

The object of the addition of this Section to the Act via amendment in 1929 was to adopt the English doctrine of part performance, which is an equitable doctrine. The other major aim is to prevent fraud and misbehavior on the part of the transferor, who tries to take unlawful benefit from a situation where the registration of documents is not done. By incorporating Section 53A in the Act, the fundamental aim of safeguarding the transferee's right to property in incidents where the transferor acts maliciously and dishonestly by denying to perform his part of the contract is achieved.

- **Also, the Section aims to prevent injustice caused to the transferee. If the transferee, who fulfilled his or her obligations under the contract in the hope that the other party would do the same, was denied any recourse, it would be a grave injustice. The Section gives a defence measure to the transferee to preserve his rightful possession of the property.**

CAN WE GRANT INJUNCTION UNDER
SECTION 53A ?

No , In a suit for specific performance of an agreement of sale, injunction cannot be granted on the basis of sec.53-A of the Transfer of Property Act 1882.

Relief of injunction cannot be granted when plaintiff has not shown his readiness and willingness to perform his part of contract. In a suit for specific performance of agreement of sale interim injunction can be granted defendant basis on 53-A of the Transfer of Property Act.

Injunction and Sec.53-A of the Transfer of Property Act 1882--In a suit for specific performance of an agreement of sale, injunction cannot be granted on the basis of Sec.53-A of the Transfer of Property Act 1882. Relief of injunction cannot be granted when plaintiff has not shown his readiness and willingness to perform his part of the contract.

In a suit for specific performance of agreement of sale interim injunction can be granted against defendant basing on 53A of T.P.Act.

SUNIL KUMAR VS RAM PRAKASH AIR 1988 SC.576

The Hon'ble supreme court held that “ permanent injunction cannot be granted against kartha of the family being manager of the property who has right to dispose of the joint Hindu family property to meet out legal necessity to discharge his antecedent debt which is not tainted with immorality.”

MUNNA LAL VS KESHAV PRASAD DAS AND ANOTHER,2007(2) A.L.J.2

The plaintiff having possession over a room, which is just a small portion of the entire building in suit, cannot be granted a relief of permanent injunction because the plaintiff do not have a settle and perfect title in the property.

SECTION 53A ONLY AS A DEFENSIVE SHIELD

The transferee typically invokes Section 53A of the Act as a defence and a shield to safeguard and protect their possession of the property. The judgement in **Delhi Motor Co. and Ors. VS. U.A. Basrurkar and Ors. (1968)** says that it can only be used as a defence by the transferee; he or she neither can use the Section to their advantage and claim possession nor does it grant the transferee any rights that they can seek against the transferor. The transferee is not permitted to assert a claim on his own behalf, indicating that he is not permitted to request a title on the grounds that all the ingredients of Section 53A were met.

A significant ruling on the nature of transferee rights under Section 53-A was made in the case of **Probodh Kumar Das VS. The Dantmara Tea Co. Ltd. (1939)**. According to the Court, a transferee in possession under an unregistered contract of sale did not receive any rights of action as a result of the legislative amendment caused by the passage of Section 53A. Their Hon'ble Court concurred with Mr. Justice Mitter's assertion made in the High Court that the defendant is the only person who has the right to preserve his possession under Section 53A. This case had a significant impact on the interpretation of Section 53A, which only served to further its concretisation. With this, the Privy Council said, the concept used in India was not active equity.

As a result, Section 53A of the Act restricts the transferor's ability to enforce any rights other than those expressly granted in the contract, whereas this is not the case under English law. The right is only admissible as a defence to secure possession of the property against the transferor. The protection is available to the transferee as a plaintiff and defendant as long as he uses it as a shield, not a sword.

Above all, according to the ruling made by the **Kerala High Court** in the case of **Jacobs Private Limited v. Thomas Jacob (1994)**, the doctrine of part performance must be employed as a shield rather than a weapon. Therefore, it was generally established that Section 53A only allows for "defence or protection."

**UNION OF INDIA AND ANR.
VS.
M/S K.C.SHARMA AND CO. (2020)**

- **The case of Union of India and Anr. V. M/s K.C.Sharma and Co. (2020) is a landmark judgement addressing the issue of whether the bona fide transferee can be protected under Section 53A of the Act, even if he has no registered documents to support his claims. The Supreme Court rightly gave its decision by saying that the registered deeds are not required to receive the safeguards under Section 53A, and when the transferee has possession and has done some acts in furtherance of the contract, he will be recognised as the owner or lessee, as the case may be.**

JOGINDER TULI
VS.
STATE NCT OF DELHI AND ORS. (2022)

Hon'ble Delhi High Court held in the case of **Joginder Tuli v. State NCT of Delhi and Ors (2022)** that the issue of whether the transferee can receive benefits under Section 53A of the Act, even if he has no registered documents to support his claims. It was held that Unregistered Document Can't be relied to protect possession of party.

CASE LAWS

- Mool chand bhakru and other Vs rohan and other . CASE NO APPEAL (CIVIL) 5920 OF 1998 SC Dated 29/01/2002.
- V. R. Shudhakar Rao And Other Vs T.V. Kameshwari CASE NO APPEAL (CIVIL) 8303-8304 OF 2003 SC Dated 18/04/2007.
- Smt.Kalawati Tripathi And Other Vs Smt. Damyanti Devi And others AIR 1993 Pat 1, 1992 (40) BLJR 1025.
- Sunil Kumar Vs Ram Prakash AIR 1988 SC 576
- Munna Lal Vs Keshav Prasad Das And another,2007(2) ALJ 2
- Delhi Motor Com. And anothers Vs U.A. Basrurkar And Other .1968 AIR 794 1968 SCR (2)720.
- Prabodh Kumar Das Vs The Dhanmantr Tea Com.(1940) 42 BOMLR 199 Dated 10 oct 1939.
- Jacob Printing Ltd. Vs Thomas Jacob AIR 1995 Ker 249 Dated 28 Sept(1994).
- Union Of India And another Vs M/s KC Sharma And Com. CASE NO APPEAL (CIVIL) 9049-9053 OF 2011 SC.
- Dated 14 aug 2020.
- Jogendra Tuliv Vs State NCT of Delhi And other. Dated 17 Jan 2022.

THANK YOU