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**ANALYSIS OF THE DOCTRINE OF PART PERFORMANCE UNDER
SECTION 53A OF THE TRANSFER OF PROPERTY ACT**

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Abstract:

This paper primarily focuses on the doctrine of part performance and the recent trends regarding protection under Section 53A of the Transfer of property Act, 1882 even after amendment. The foundation of the doctrine in English law and the evolution in India and its development, scope, fundamentals of the doctrine and the meaning of the doctrine are well explained. The criterion for application of the doctrine and the exceptions to the doctrine is propounded in this paper. The legislative intent behind Section 53A is that protecting the transferee by allowing him to retain the possession of the property, against the right of the transferors, who after the execution or completion of an incomplete instrument of transfer has failed to complete it in the manner specified by law, without any fault of the transferee.

Keywords: *Part-performance, transfer of property, contract for transfer, immovable property, written agreement, signed by transferor, consideration, possession of property, transferee in possession, willingness to transfer, protection of possession, equitable doctrine, defective right (shield not sword), no registered transfer required (in earlier law context), transferor barred from enforcing rights, equity and justice, bona fide transaction, law of estoppel.*

INTRODUCTION

In the Indian legal context, the doctrine of part performance is a crucial concept in property law, which is entrenched in the principle of equity and is codified in Section 53A of the Transfer of Property Act, 1882. This doctrine plays an important role in protecting the rights

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of the transferee especially when both have acted in good faith by fulfilling their obligations under the contract.

THE FOUNDATION OF THE DOCTRINE OF PART PERFORMANCE IN ENGLISH LAW

The concept of part performance which is an egalitarian legal concept was established in English Law and the same was acknowledged by the Court of Chancery. In England, section 4 of the Statute of Frauds, explicitly states that every claim relating to property sale must be brought in writing. The judges understood that the absence of remedy for violation of verbal agreements which caused widespread abuse of the legislation, defeating the basic objectives of the Statute of Frauds. Thereafter, the Court of Chancery formulated the idea of part performance to prevent these scenarios and preserve transferees' rights. The notion of part performance was addressed in the case of *Foxcroft v Lyste*.¹ There are two landmark judgements that facilitated to develop the doctrine of part performance i.e. *Maddison v. Alderson*² and *Walsh v. Lansdale*³. In these cases, the judges decided that when a person expands monetary funds in favour of property after a contract, treating that individual as a trespasser on the estate violates equitable and good conscience standards.

THE EVOLUTION OF THE DOCTRINE OF PART PERFORMANCE IN INDIA

The concept of Part Performance was not incorporated in the draft of the Transfer of Property Act 1882. Subsequently this doctrine was inserted in the Transfer of Property Act, 1882 through amendment in Section 53A with retrospective in nature. It came into force with effect from April 1, 1930. Before the introduction of this amendment, the application of this doctrine borrowed from English law, was not very uniform and certainly not certain. For example, in *Mahomed Musa v Aghore Kumar Ganguli*⁴, the privy council had applied this doctrine as explained in *Maddison v. Alderson* but it had been questioned. However, in *Ariff v. Jadunath*⁵, the privy council did not apply the doctrine of part performance. Although the

¹ (1733) 2 Eq Cas Abr 741; 22 ER 613

² (1883) 81 A.C. 467

³ (1882) 21 Ch. D 9

⁴ (1914) 42 Cal. 801

⁵ (1883) 8 App. Cas. 467

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concept was established by the English courts, this doctrine was regularly used in Indian Courts after the Mohamed Musa case but there remained substantial misunderstanding and disagreement over the doctrine's validity given the lack of legislative acknowledgment. Consequently, the Indian government constituted a Special Committee in 1927 to determine the application of this doctrine in India. The Committee unearthed the advantages and disadvantages of the idea of part performance as it evolved in England and recommended bringing an amendment in the Transfer of Property Act.⁶ The Special Committee observed that illiterate and ignorant purchasers might partly fulfill their responsibilities before being duped by transferors.⁷ Furthermore, the Committee observed that when a transferee acquires possession of an estate in due diligence and in accordance with the contract agreement, treating such an individual as a trespasser violates fairness and justice. The committee observed that the doctrine must be given statutory recognition, but the law of registration made the following recommendations:

1. The agreement must be written.
2. The transferee must have taken possession of the property as a result of part performance or an act of furtherance.
3. The transferee who wants to avail himself of the doctrine must be willing to perform his part.
4. The rights and liabilities must be enforceable between the parties when the contract has been partly performed.
5. The doctrine must not affect the rights of the transferees.

The committee also suggested that the expiration of the limitation period must not affect the relationship between the transferor and the transferee and that there should be no impact on the protection given by the doctrine. Based on its recommendations, the section 53-A was inserted in the Transfer of Property Act, 1882. This Section recognizes the doctrine of part performance, and in this way, the doctrine was made applicable to Indian Scenarios. The Hon'ble Supreme court also concurred in *Mahadeva & Ors v Tanabai*⁸. The Statement of Reasons and Objects of the Amending Act (Act No. XX of 1929) also indicates explicitly that

⁶ Abhineet Upadhyay, Harsh Raj Singh and Parnika Rajesh, "Analysis of the Doctrine of Part Performance", Indian Journal of Law and Legal Research, Vol. IV, P. 1 -8

⁷ Aman Mehta, "S.53A, Transfer of Property Act – A Sword to its Own Shield?", Supremo Amicus, Vol. 19.

⁸ 2004 (5) SCC 88

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it was based upon that Special Committee's findings. This amendment is mainly based on the principle of equity and the legal maxim "*qui aequitatem quaereret, aequitatem agendum est*" meaning "He who seeks equity must do equity".

DIFFERENCES BETWEEN ENGLISH LAW AND INDIAN LAW OF THE DOCTRINE OF THE PART PERFORMANCE:

Basis of differences	English Law	Indian Law
Essential elements of the Doctrine	Under the English law the contract can be an oral contract between two parties.	Under Indian Law the contract must be in writing in order to get the benefit of the doctrine.
Scope of the Doctrine	The scope of the doctrine in English Law is wider than in Indian Law. It is both an action and a defence.	The scope of the doctrine in Indian law is limited. The doctrine can only be taken as a defence in Indian Law.
Applicability of the doctrine.	Any conduct in furtherance of the contract is sufficient for the application of this doctrine in English law.	For the application of the doctrine in Indian Law, the property or any part of it must be in possession of the transferee.
Statute mentioning the doctrine	Unlike Indian Law, the doctrine is mentioned in any statute but provide equitable rights to the parties.	The doctrine provides a statutory right under Indian law as it is mentioned under section 53-A of the Transfer of Property Act, 1882.

SCOPE OF DOCTRINE OF PART PERFORMANCE

This doctrine is applicable to only written and valid agreement/contract but not to oral or void agreement. The valid written contract must be signed by the transferor. The transferee must be ready and willing to perform his part of promise and might take possession of the property as a part performance of a contract. The Apex court has held in *Jacobs Private Limited vs. Thomas Jacob*⁹ that the doctrine of part performance has to be used as a shield, not a sword. The main objective of Section 53A is to safeguard the interests of the transferee who acts upon a contract, even if it is not fully documented, by providing them with a legal defence against the transferor's attempts to back out of the agreement.

⁹ AIR1995KER249

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OBJECTIVE OF THE DOCTRINE OF PART PERFORMANCE:

The doctrine of part performance has the following objectives

1. It ensures that both parties to the contract, i.e., the transferor and transferee, perform their parts and fulfill their obligations as mentioned in the contract.
2. It preserves and protects the rights of the transferee towards ownership of the property.
3. It prevents fraudulent acts by transferors who try to take advantage of innocent transferees.
4. By virtue of this doctrine, the transferor or any other person under his name is barred from enforcing any right on the said property against the transferee except those mentioned in the contract.

MEANING OF THE DOCTRINE OF PART PERFORMANCE:

The doctrine of part performance in India is recognized under Section 53A for the Transfer of Property Act 1882. The Doctrine simply means that where two people enter into an agreement and one of the parties acts in consonance with the agreement, it creates equity, presuming that the other party will also perform its obligations. So, if the other party later denies or acts fraudulently by refusing to fulfill his duties as mentioned in the agreement, the doctrine of part performance applies to safeguard the interest of the party who performed acts in furtherance of the agreement. Thus, the doctrine is embodied to protect the interests of transferees who take possession of the property but are not able to obtain the title after paying the consideration in part or whole and where the transferor later denies such an agreement or sues for the possession. This doctrine prevents such instances and provides justice to genuine and innocent transferees.

FUNDAMENTALS OF THE DOCTRINE OF PART PERFORMANCE

In *Vasanthi v. Venugopal*¹⁰, the Apex Court reiterated the essential conditions necessary for application of this section. A written contract for the transfer of an immovable property. The most important limb of Section 53A is the pre-existence of the contract. The Hon'ble High

¹⁰ AIR 2017 SC 1569

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Court of Bombay in *Kamalabai Laxman Pathak v. Onkar Parsharam Patil*¹¹, has given emphasis on the basic ingredients of Section 53 A. The fundamentals for the doctrine of part performance, it is as follows:

a) There must be a written contract for transfer of an immovable property signed by or on behalf of the transferor. The doctrine cannot be applied if there is a void agreement or no agreement. Therefore, the contract must be written. This doctrine is not applicable to oral contracts. In *V.R. Sudhakara Rao v. T.V. Kameswari*¹², it was held that the benefit of section 53-A is not available to a person who is in possession of property based on oral agreement of sale.

b) There must be a valid contract. Section 53-A is applicable only where a contract for the transfer of immovable property is valid in all respects. It must be an agreement enforceable by law under the Indian Contract Act, 1872.

c) Section 53-A is applicable only in case of transfer of immovable property. It does not apply to an agreement for the transfer of movable property even though supported with consideration. In *Hameed v. Jayabharat Credit & Investment Co. Ltd and Ors*¹³ held that the defense of Part Performance is not available in respect of possession of movables.

b) There must be consideration. In *Ranchoddas v. Davaji*¹⁴ the court held that there should be a contract and; It must be for consideration; It must be in writing and signed by the transferor; The terms necessary to constitute the transfer can be ascertained with reasonable certainty.

c) The contracts should describe the terms of the transfer with reasonable certainty. In *Hamida v. Humer and Ors*¹⁵, it is held that the terms of written contract must be ascertainable with reasonable certainty. The terms of written contract must be ascertainable with reasonable certainty

d) The transferee must have taken possession as a result of this contract or continued in possession if he was already in possession of the property. This is confirmed in *A.M.A Sultan*

¹¹ AIR 1995 Bom 113

¹² 2007 INSC 434

¹³ C.R.P. No. 2277 of 1985

¹⁴ AIR 1977 SC 1517

¹⁵ AIR1992ALL346

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(deceased by LRs) and Ors. v. Seydu Zohra Beevi¹⁶. In *Arun Kumar Gupta v. Santosh Kumar*¹⁷, the court held that if the agreement contains no provision about transfer of possession, nor possession was handed over in fact, then protection of the section will not be available to safeguard the rights of the transferee.

e) The transferee must have done some act in furtherance of the contract. In *Nathulal v. Phoolchand*¹⁸ the court held that if the transferee is already in possession of the property then, after the contract of transfer, he has to do some further act in part performance of the contract or otherwise it will not be considered as part performance.

f) The transferee should have performed his part of the deal or be willing to perform it. In *Sardar Govindrao Mahadik and Anr. vs. Devi Sahai and Ors Govind*¹⁹, the court held that it is an essential condition for the applicability of this section that the transferee must be willing to perform his part of the contract. In *Jacob Private Ltd v. Thomas Jacob*²⁰, the High Court of Kerala held that willingness in the context of Section 53A must be absolute and unconditional.

APPLICATION OF THE DOCTRINE OF PART PERFORMANCE:

The primary objective of the doctrine contained in Section 53-A of the Acts is to protect the rights and interests of the transferees. The section is only applicable where:

1. This section is applicable where there is a written contract to transfer the immovable property.
2. This section is applicable where the transferee has taken possession of the property as a result of part performance, or continues to be in possession if he was already in possession, or does an act in furtherance of the said contract.
3. This section is applicable where the transferee willfully performs his part or is willing to do so.
4. This section is applicable where the transfer has not been completed by the transferor according to the contract.

¹⁶ AIR1990KER186

¹⁷ 2017 Supreme(All) 1150

¹⁸ 1970 AIR 546,1969 SCC (3) 120

¹⁹ 1982 AIR 989

²⁰ AIR1995KER249

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CONDITIONS FOR APPLICATION OF THE SECTION 53-A

The High Court of Madras in *Balaraja and Anr VS Syed Masood Rowther and Anr*²¹ stipulates some necessary conditions that should be fulfilled in order to apply the Section 53 A in the year 1998, in the case of

1. The doctrine can only be applied to legally valid and enforceable contracts.
2. The contract must be registered in order to reap the benefit of the section 53- A
3. The section is not applicable to oral agreements.
4. For the application of the section, it is necessary that the possession has been taken by the transferee as a result of part performance.
5. The transferee must also be willing to perform his part of the contract or do an act furtherance of it.

EXCEPTION TO DOCTRINE OF PART PERFORMANCE:

It is clearly known that Section 53 A applies to contracts where the transferee has performed his part of the contract and taken possession of the property as a consequence of the performance. However, there is an exception that provides that the doctrine will not be applied to subsequent transferees who have no idea regarding the contract or its part performance.

This means that the provision will not be applicable to bona fide transferees who, after entering into contract, are unaware of the terms of the contract and its part performance by the transferor. The provision to section 53-A of transfer of Property Act includes an exception in favour of a transferee for consideration who has no knowledge of contract or its performance. This implies that a transferee who acquires the property for consideration without any knowledge of contract or its execution is not affected by this rule.

THE REGISTRATION AND OTHER RELATED LAWS (AMENDMENT) ACT, 2001 (ACT NO.48 OF 2001)

The Registration and other Related Laws (Amendment) Act, 2001 (Act No.48 of 2001) amended section 53A of the Transfer of Property Act, 1882 along with other sections of the Registration Act, 1908 and the Indian Stamp Act, 1899. In the amendment, the words “the

²¹ 2023 Supreme(Mad) 2976

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contract, though required to be registered, has not been registered, or,” are omitted from section 53A. The amendment has a substantial legal effect with regard to the protection guaranteed under S.53A. The legal effect is that a purchaser or a transferee cannot protect the possession that he had over the property against the transferor by using section 53A as an armor if the agreement to sell was not registered and duly stamped. There is a lot of difference in the position of section 53A before the amendment and after the amendment. Prior to the amendment, even an unregistered and unstamped agreement to sell would have been admissible by the courts as evidence. After the 2001 amendment, the agreement to sell has to be compulsorily registered and duly stamped in order to be admissible in court and for the transferee to be granted protection under S.53A. However, the 2001 amendment was not retrospective in nature, so the contracts or agreements to sell which had been made prior to the amendment were valid and admissible as far as S.53A was concerned.

In *Sukhdev Singh v. Income-tax Ward – 6(3), Mohali*²², the court observed that:- “.....Now originally Section 53A of T.P. Act provided that even if “the contract though required to be registered has not been registered”, which means the right of defending the possession was available even if the contract was not registered but by Amendment Act 48 of 2001, the expression “though required to be registered has not been registered” has been omitted which means for the purpose of possession under S.53A of T.P. Act, the agreement referred is required to be registered.” In *Deewan Arora v. Tara Devi Sen*²³, the Hon’ble Delhi High Court upheld the statutory effect of S.17 of the Registration Act and item 23A in the schedule I of the stamp act via which unregistered documents and documents whose 90% of stamp value was not paid would have no effect for the purposes of the said section 53A.

CAN WE GRANT INJUNCTION UNDER SECTION 53-A:

No, in a suit for specific performance of an agreement sale, injunction cannot be granted on the basis of section 53- A of the transfer of the property Act 1882. Relief of injunction cannot be granted when the plaintiff has 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.

²² IT Appeal No. 1118 (Chd.) of 2011

²³163(2009) DLT 520

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Injunction and Section 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 Section 53 A of Transfer of Property Act 1882. Relief of injunction cannot be granted when the plaintiff has not shown his readiness and willingness to do his part of the contract.

In a suit for specific performance of agreement of sale, an interim injunction can be granted against the defendant basing on 53-A of the Transfer of Property Act. In *Sunil kumar VS Ram Prakash*²⁴, the 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 the legal necessity to discharge his antecedent debt which is not tainted with immortality.” In *Munna Lal VS Keshav Prashad Das and Another*²⁵, the court held that 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 is made in writing. This does not have a settled and perfect title in the property.

CONCLUSION

The Doctrine of Part Performance, as enshrined in Section 53A of TPA plays a significant role in property law in India. The doctrine of Part Performance is an equitable principle intended to thwart fraud and unlawful exploitation resulting from the non-registration of a document. Thus, the doctrine of part performance is an equitable doctrine. It provides protection to transferees who have partially performed agreements for the transfer of property, even if the agreements do not comply with formal legal requirements. It is based on the doctrine: Equity looks at the intention rather than form.

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²⁴AIR (1988) 576

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