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DOCTRINE OF PART PERFORMANCE UNDER SECTION 53A OF THE TRANSFER OF PROPERTY ACT: A COMPARATIVE LEGAL ANALYSIS

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ABSTRACT

The principle of “part performance” is a theory which is premised on the principle of equity, good conscience, and justice. Originally based on English law theory, was introduced in Indian legal system through the Amendment approved in 1929 and adding clause “Sec. 53A in The Transfer of Property Act, 1882”. The paper presents evolution of the theory in Indian Jurisprudence, the repercussions, and the criteria for the operation of said Sec. Additionally, paper differentiate the doctrine in English law and its equivalent in Indian Law. Lastly, this paper provides a acceptable conclusion at the end.

Keywords: *Part performance, Sec. 53A, Equity.*

LITERATURE REVIEW

According to the theory of part performance, two people create equity when they agree to let each other behave in line with the agreement and cannot object to the performance depending on inadequate legality. When the transferor declines to carry out the contract, this theory guards a transferee from dishonesty. (thakur, 2022)

It is important to underline that part-performance can be accomplished in more than one way than only possession. (Navadgi, 2022) For example, if the transferee already owns the property, then, following contract signing, he must engage some "further act" to show his allegiance toward the maintenance of the contract.

English law's decision of *Maddison v. Alderson (1883)*¹ established the basis for the theory by deciding that, even in the lack of official paperwork, part performance can result in justice, therefore maintaining transferable rights. Even before its official acceptance in 1929, the Privy

¹ Maddison v. Alderson, [1883] 8 App Cas 467.

Council's decision in "*Mahomed Musa v. Aghore Kumar Ganguli*" (1914)² established in India that the theory might apply similarly. This case underlined the idea that equity should not let a party behave in a way that would be considered as fraud.

INTRODUCTION

The principle of "part performance" emerged in English law, it now has legal standing in India according to "Sec. 53A of the Transfer of Property Act, 1882",³ the legislation was amended in 1929 to include Sec. 53A. India thus adopted this idea of retroactive Part performance. The 1929 amendment adding this Sec. to the Act aimed at embracing the fair English concept of part performance. The second major objective is preventing fraud and misconduct by transferor—who attempts to take advantage illegally from a case in which document registration is not completed.

The primary objective of adding Sec. 53A to the Act was protecting right to prop. of the transferee in situations when dishonestly the transferor behaves viciously & refuses to fulfill the part of his obligations.

The foundation of doctrine of part performance is ideology that when an agreement is being entered into by 2 parties in which one party enables another to act in support of said contract, that party generates equity & fails to later contest the contract's performance on the basis that the laws were not followed.

Consequently, purpose of this concept is protection of transferee when the transferor could behave dishonestly by declining to carry out terms of the contract.

EMERGENCE OF DOCTRINE IN ENGLISH LAW

The Court of Equity, formerly the Courts of Chancery, established part performance and the equity principle in English law in response to the 1677 Statute of Frauds. This principle aimed to protect sincere transferees who had fulfilled their contractual obligations and purchased property on oral agreements⁴. The concept of equity of part performance has evolved to protect

² *Mahomed Musa v. Aghore Kumar Ganguli*, [1915] 17 BOMLR 420.

³ The Transfer of Property Act, 1882, § 53A.

⁴ Chaitanya Thakur, *The emergence of Doctrine of Part Performance: A Legal analysis of Sec. 53A of the Transfer of Property Act* *JUS CORPUS* 321-328 [2022].

and maintain the rights of transferees who were negatively impacted by technological issues during the transfer process.

The doctrine of part performance was laid down in case of “*Maddison v. Alderson*”⁵. The plaintiff claimed the estate of Alderson on the consideration of house-keeping services provided by Maddison. Maddison performed his promise zealously but the will of Alderson was improperly attested. In partial performance of contract, Madison claimed to be a housekeeper. It was the ruling of Lord Selborne that respondent is charged with equities resulting from conduct in the agreement, and partial performance may lead to equity finally dissolved the contract and safeguarded the rights of the transferee.

*Walsh v Lonsdale*⁶ established the doctrine of equity that an annual tenancy was created having rent as falling due at the end of each year, the claimant Walsh claimed damages against the defendant Lonsdale, who was hanged for failure to pay his rent in advance. The court however decided that equity required the lease to continue its original terms. It has, however been distinguished by the Indian legal system from English courts.

EMERGENCE OF DOCTRINE IN LEGAL PHILOSOPHY

Part performance had not been considered when the TPA, 1882 was first drafted. An amendment was done in the year 1929. Although, idea was not formally recognized till 1929, the egalitarian doctrine's applicability in India was evaluated in a number of rulings⁷.

The question of whether the doctrine applies in India has been questioned in “*Mahomed Musa v. Aghore Kumar Ganguli*”⁸.” The PC decided that the equity of part performance is equally applied in the situation happening in India as in English ones. Not registered in this case were the parties to a signed compromise deed splitting the properties. After forty years of ground work, heirs challenged it as it was never documented. It was permitted once the Privy Council declared that partial performance is legal. But then this had broken the Indian Registration Act of 1908 since documentary materials must be registered to be legally accepted. Many debates and doubt have surrounded the implementation of the theory following the Mohamed Musa

⁵ Maddison v. Alderson, [1883] 8 App Cas 467.

⁶ Walsh v Lonsdale, [1882] 21 ChD 9.

⁷ Chaitanya Thakur, *The emergence of Doctrine of Part Performance: A Legal analysis of Sec. 53A of the Transfer of Property Act* *JUS CORPUS* 321-328 [2022].

⁸ Mahomed Musa v. Aghore Kumar Ganguli, [1915] 17 BOMLR 420.

case as the theory failed to be granted a legal legitimacy.

The Indian government thus created a Special Committee in 1927 to ascertain how the English philosophy could be implemented in India. Three months later, the special committee on English part performance released a report. The committee decided that, as part of contract among two parties of immovable property, ignorant transferees could, even before being exploited, discharge their obligations and make commitments⁹. The committee also came to the conclusion that it is irrational and unfair to label transferee as a trespasser even if they diligently obtain ownership of an estate in line with terms of the commercial agreement. The committee also considered how the idea of part performance suffered under the statute of limitations.

They said that the statute of limitations expiring would not change the connection between the transferor and transferee in keeping with the decision rendered by Indian SC in the “*Mahadeva and Ors. v. Tanabai*”¹⁰(2004) case. When the act came in 1929, a few lenient changes were done to it; one of them formalized the idea of part performance by including Sec. 53A to the TPA, 1882¹¹.

PART-PERFORMANCE DOCTRINE UNDER SEC. 53A

Fairness, fairness, and moral rectitude are the cornerstones of the part-performance philosophy. Its foundation is the equitable dictum "*qui aequitatem quaereret, aequitatem agendum est*," which says that "*He who seeks equity must do equity.*"¹² According to this rule, the defendant will be placed in the similar set of facts as it was prior to transaction being requested to be dismissed by party looking for the cancellation of the contract.

Under Contract Law, the rights just flow from one party to the next after performance is finished. But this theory of part performance is founded on the presumption that, should two living individuals engage into a contract & one of party's consent to other to act upon contract, another party, by his voluntary conduct, generates equity and justice. If all legal procedures be disregarded, the first party will be estopped from future objecting to performance under the

¹⁰ Mahadeva and Ors. v. Tanabai, [2004] 3 ALL WC 2180.

¹¹ The Transfer of Property Act, 1882, § 53A.

¹² Chaitanya Thakur, *The emergence of Doctrine of Part Performance: A Legal analysis of Sec. 53A of the Transfer of Property Act* *JUS CORPUS* 321-328 [2022].

agreement¹³.

The doctrine safeguards the rights and interests of the transferee and guarantees their possession of the transferred property in cases when the transferor is dishonestly denying to perform their portion of the agreement.

ESSENTIALS OF SEC. 53A

The democratic concept of part performance deals with protecting the transferee wherever a transferor wants to expel a transferee from land given to him in accordance with a contract, provided that certain essential standards are satisfied. However, protection under Sect.53A is provided only when certain conditions are fulfilled as stated in “*Madan Mohan v. Gauri Shanker and Anr*”¹⁴. (1987).

Hence, the initiation of an action by the transferee for part performance is not sufficient, if one wants to get relief under sec.; instead, more conditions have to be met to initiate it effectively.

Also, Bombay HC in case of “*Smt. Kamalabai Laxman Pathak v. Onkar Parsharam Patil and Ors. (1994)*”¹⁵ has Provided some of the essential ingredients of Sec. 53A.

Sec. 53A and many judicial rulings explicitly set out the subsequent essentials required to fulfill:¹⁶

- 1) The parties must enter a contract for value or consideration.
- 2) The conditions & terms which are required in the transfer should be determined from the written and signed agreement by the transferor with a reasonable degree of certainty.
- 3) Immovable property or any portion of it had already been in possession by the transferee, or “transferee”, which is in possession already, continued to be in possession in fulfilment of the agreement.
- 4) The transferee needs to take action to carry out the terms of the agreement.
- 5) The transferee needs to be prepared and willing to carry out their end of the bargain.
- 6) The acts carried out in furtherance of the contract and the contract itself must be clearly referable to one another and have a genuine link.

¹⁴ Madan Mohan v. Gauri Shanker and Anr, [1988] AIR MP 152.

¹⁵ Smt. Kamalabai Laxman Pathak v. Onkar Parsharam Patil and Ors., [1995] AIR BOM 113.

¹⁶ The Transfer of Property Act, 1882, § 53A.

In case of “*V.R. Sudhakara Rao and Ors. Vs. T.V. Kameshwari*”¹⁷(2007) it was held that if solely based on oral contract, a person is in the possession of prop., he is not entitled for part performance under sec. 53A.

It is established in “*Govind Prasad Dubey v. Chandra Mohan Agnihotri and Anr*” (2009)¹⁸ that Sec. 53A is only applicable on the cases where clauses, content and terms are clear and easily comprehensible.

As per “*Sardar Kamaljit Singh v. Suresh Chand*”¹⁹ if the transferee has not taken possession of the prop. yet, this principle will not be applicable. The third condition mentioned above must be fulfilled accordingly.

In “*Andhra Graphite (P) Ltd., Marripalem, Visakhapatnam v. Jobbing Syndicate, Visakhapatnam*”²⁰, it was held that transferee must fulfil his or her duty and obligations as per the contract and he can avail the remedy if he/she is ready to perform their part of contractual duty.

EXCEPTION TO THE CLAUSE

Sec. 53A requires the theory not to apply to, or affect rights of, any following transferee who is uninformed or has no information about conditions of agreement or its part performance. Otherwise stated, this theory is not applicable to situations in which a transferee who contracted for the transfer of prop. which is immovable for some value does not have any info. which is neither constructive nor actual notice, of agreement or its “part performance”²¹ Any claim would be rendered futile which transferee would have against the transferor u/s 53A of the Act should the person who receives such transfer for consideration, should be a bona fide transferee who did not know of transaction Sect. 53A proviso defends & protects the right of a legal transferal for consideration, the SC decided in “*Hemraj v. Rustomji (1952)*”²². Any rights which the transferee would have under the unregistered document will be rendered useless depending on the incomplete performance of contract for consideration which was against a

¹⁷V.R. Sudhakara Rao and Ors. Vs. T.V. Kameshwari, [2007] INSC 423.

¹⁸ Govind Prasad Dubey v. Chandra Mohan Agnihotri and Anr, [2009].

¹⁹ Sardar Kamaljit Singh v. Suresh Chand, [2010] LAWS RAJ 3-6.

²⁰ Andhra Graphite (P) Ltd., Marripalem, Visakhapatnam v. Jobbing Syndicate, Visakhapatnam [2010] ER 33.

²¹ Paridhi, *Sword or Shield: Doctrine of Part-Performance in India (legal service India) Sword or Shield:*

Doctrine of Part-Performance in India (11 August 2024) legalserviceindia.com.

²² Hemraj v. Rustomji, [1953] AIR SC 503.

bonafide transfer, who did not have any kind of information of prior transaction. The party which is claiming the benefit in this case must prove that next transferee has received notification.

The Supreme Court says that the right under Sec. 53A is not nullified even if the allegation that the ownership was obtained by adverse possession was denied as the possession was illegal or the case to enforce the terms of the sale agreement has expired.

DIFFERENCE BETWEEN ENGLISH LAW AND INDIAN LAW

Oral contracts formed out of Statute of Frauds can be governed by English law's part performance theory. Under Sec. 53A of TPA, 1882 this theory can only be applied to a document registered under TPA, 1882 and the Registration Act, 1908²³. English law does not prescribe that the contract had to be in writing. Under English law, part performance is an active equity and the person in possession can enforce in an independent lawsuit for additional actions. Under English law, the person claiming the part performance theory can utilize it to establish his title on the property. The defendant can just utilize Sec. 53A notion of part performance as a shield to safeguard his/her ownership. In pursuance of a negotiated agreement, the defendant cannot establish his/her claim or title on the property using this Sec. as a weapon. Under English law, this is an equitable right; under Sec. 53A, it is a statutory right for safeguard of possession on the opposite side. Unlike English law Sec. 53A grants no right of action.

Consequently, Sec. 53A of TPA, 1882, has partially adopted the equitable notion of part performance of England.

AMENDMENT AND THEIR REPERCUSSIONS

Usually acting as a defence and a shield to maintain & preserve the possession of property, the transferee consults Sec. 53A of the Act.

“Probodh Kumar Das v. The Dantmara Tea Co. Ltd.”²⁴ (1939) produced a major decision w.r.t to the scope of transferee rights under Sec. 53-A. Court said that the legislative

²³ The Registration Act, 1908

²⁴ Probodh Kumar Das v. The Dantmara Tea Co. Ltd, [1940] 42 BOMLR 199.

amendment brought about by Sec. 53A did not grant any rights of action to a transferee in possession under an unregistered agreement of sale. Under Sect. 53A, the Hon'ble Court agreed with the contention stated in HC that respondent is the only one entitled to retain his possession. This case had a major influence on reading of Sect. 53A, which only helped to concretize it more. The PC said, the idea applied in India was not active equity.

Consequently, whereas English law allows the transferor to enforce any rights other than those specifically given, Sec. 53A of the Act limits this authority. The right is only admissible as a defense to guarantee custody against the transferor. Long as the transferee utilizes it as a shield rather than a sword, the safeguard is accessible to him as a plaintiff & defendant.²⁵

RECENT JUDICIAL INTERPRETATION

Union of India and Anr. v. M/s K.C. Sharma and Co. (2020)²⁶

In this case Sec. 53A of the Act gave the accused lease-based ownership of property; so, whether a lease deed existed is irrelevant as the parties clearly intended for this. Consequently, the Court decided that Sec. 53A of the Act would allow parties whose activities were based on a solely on agreement of sale of contract but deficient in getting a registered document in their favor to retain their right to possession.

Consequently, whether a registered or signed instrument exists, under Sec. 53A of TPA, 1882, the right to defend his ownership from the transferor vests with the transferee.

Joginder Tuli v. State NCT of Delhi and Ors. (2022)²⁷

The key question in current case was whether all the documents were required to be registered by the transferee to be entitled to avail the benefits & rights provided by Sec. 53A of TPA, 1882.

The court decided that petitioner will not get defense or protection in the absence of any documentation or other concrete proof proving her in possession and hence cannot rely on Sec. 53A of the TPA.

²⁵ Paridhi, *Sword or Shield: Doctrine of Part-Performance in India (legal service India) Sword or Shield: Doctrine of Part-Performance in India* (11 August 2024) legalserviceindia.com.

²⁶ Union of India and Anr. v. M/s K.C. Sharma and Co., [2020] AIR SC 686.

²⁷ Joginder Tuli v. State NCT of Delhi and Ors. [2022].

The TPA, sec. 53A protections are generally agreed to depend on the cited document being a registered instrument²⁸. Sec. 17(e)(1A) read in line with Sec. 49 of the “Registration Act”²⁹ states that the court or proof cannot review any unregistered document. The respondent might thus have benefited from Sect. 53A only if the requested contract for sale followed “Sec. 17(e)(1A) of the Registration Act”.

The writ petition was denied since Complainant has not presented any registration records proving ownership of the contested land.

CONCLUSION

In nation like India, where majority of the population are not aware of relevant regulation and the legal processes which must be followed instances, it is not uncommon to see misguided and under educated transferred employees being misled. supplied the social and economic situation of Indian population, modification eliminating the immunity permitting the use of registration documents for Sec. 53A purposes might beat the fundamental goal of the provision supplied.

Sec. 53A is important to protect rights and interests of the transferee. Any kind of transfer deed is usually merely a consensual agreement created on paper or another informal way but not registered. The transferee acts to assist that by stopping more incursion or requests for eviction from the transferor. The transferee has to be qualified for this protection or defense. Thus, it would help the transferee if the issue was resolved right away.

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