

Ques.) Doctrine Of Part - Performance : Sec. 53-A, TP Act:

Doctrine of part - performance is an equitable doctrine. It is also known as "Equity of part-performance". Under this doctrine, 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 then, he would not be ejected from the property on the ground that the sale was unregistered and legal title had not been transferred to him. For instance, there is a contract of sale of a piece of land between 'A' and 'B'.

The contract is in writing, stamped, attested, and duly executed but not registered by 'A' who is the seller. 'B' who is the purchaser has performed or is willing to perform his part of the contract, i.e., has paid the price or is willing to pay the same. On the basis of such contract, 'B' takes possession of land. Now, 'A' sells the land to 'C' through a registered deed. 'C' having legal title of the land, attempts to eject 'B'. At this stage, since 'B' has no legal title, law may not protect his possession but, equity shall help him from being dispossessed. The doctrine of part - performance is based on the maxim "Equity looks on that as done, which ought to have been done". Equity treats the subject - matter of a contract as to its effect in the same manner as if the act contemplated in the contract had been fully executed from the moment the agreement has been made, though

all the legal formalities, (such as registration) of contract had not yet been completed.

Under English Law, the equity of part-performance was developed by the Chancery courts against the strict provisions of the Statute of Frauds, 1677. Although the Statute of Fraud was enacted to avoid fraud being played in the transfer of lands on oral agreements but its strict application created great hardship to such transferee and bonafide transferee who performed his part of contract by paying the price in full or in part and who had also taken possession of land<sup>but</sup> could not get title merely because of the absence of legal formalities. Such transferee were helpless and were being harassed. Equity then came to their help and Chancery courts which were the courts of equity, held that part-performance by such transferees would take the cases out of the statute of frauds.

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⇒ DOCTRINE OF PART-PERFORMANCE UNDER SEC. 53-A, TP Act :

The doctrine of part-performance is enacted law under Sec. 53-A, TP Act. It is not an application of English equity in India. The law contained in Sec. 53-A, TP Act is almost the same as it was laid down by the P.C. in Mohammad Musa V. Aghore Kumar Ganguli, 1914 P.C. The Hon'ble P.C. in this case held that equity of part-performance

could be applied to Indian cases just as it was being applied in England. It bypassed the provisions of Indian Registration Act, 1908, under which it is provided that any document required to be registered under Indian Registration Act, 1908 but not registered shall not be a valid document of transfer of rights in immovable property.

Later on, in Arif V. Jadunath, AIR 1931 P.C., the Hon'ble P.C. changed its opinion that the doctrine of part-performance could not be applied in India to over-ride or bypass the express provisions of Indian Registration Act, 1908 and T.P. Act. Subsequently, P.C. in Mian Pir Baksh V. Sardar Mohammad Tahir, AIR 1934 P.C., held that English equity of part-performance was not available in India against express statutory provisions regarding registration contained in the Indian Reg<sup>n</sup> Act, 1908 and T.P. Act, 1882.

The doctrine of part-performance is now an enacted law. It is not an application of English equity in India. This Sec. 53-A, T.P. Act, has been further amended in the year 2001 by Parliament and the words "the contract though required to be registered has not been registered" has been omitted & it has also been amended. Sec. 17 of Registration Act, 1908 as follows:

" 1-A : The documents containing contracts + transfer for consideration any immovable property for the purpose of Sec. 53-A, TP Act, shall be registered if they have been executed on or after the commencement of the Registration (Amendment) Act, 2001 and if such documents are not registered on or after such commencement then they shall have no effect for the purposes of Sec. 53-A, TP Act. "

The provisions of Amending Act, 2001, came into effect from 24/09/2001, and this Amendment Act is not retrospective. Sec. 17. Indian Registration Act, 1908, provides that written document of the transfer of immovable property with consideration must be registered and if such documents are not registered then they shall have no effect for the purposes of Sec. 53-A, TP Act, and the defence of part-performance will not be available on the basis of unregistered documents which are executed on or after 24/09/2001.

As a matter of fact, although Sec. 53-A, TP Act, incorporates a substantive right, yet it is only a defensive right, i.e., the right to continue the possession of a person which he has already possessed. The actual possession of the immovable property may be proved or disproved on the basis of certain

evidences, which may be oral or documentary.  
An unregistered document, i.e., for eg: a written agreement for sale has an evidentiary value in the eyes of court for purposes of proving any collateral transaction to prove the nature of the possession, i.e., whether the possession is actual or constructive.

Now, Sec. 53-A, TP Act, provides that:

- (i) Where a person contracts to transfer an immovable property for consideration, and
- (ii) acting in furtherance of this contract, the transferee has taken over a part or whole of the property, and
- (iii) such transferee has either performed his part of the contract or is willing to perform it.

Then, the transferor or any other person cannot dispossess the transferee. The transferee can only defend his possession. He can neither claim title of the property nor can take any action, that property in his possession cannot be transferred to any other person.

Revise these notes regularly so that the notes may become the part of the memory.

⇒ Essential conditions for application of Sec. 53-A, TP Act :

The provisions of Sec. 53-A, TPA, makes it clear that following essential conditions are necessary for its application :

- (i) There is a written contract for the transfer of an immovable property ;
- (ii) The transferee takes possession of the property under this contract ;
- (iii) The transferee has either performed his part of the contract or is willing to perform the same.

The Hon'ble S.C. has restated in *Vasanthi V. Venugopal*, AIR 2017 S.C., that on fulfilment of these requirements, the transferee becomes entitled to protection and can defend his continuance of possession over property and he should not be evicted from the property.

The transferee must get possession of property and the transfer of immovable property must be registered as per Registration Act, 1908.

Sec. 53-A, TP Act, is not applicable if the contract for transfer is oral. The Hon'ble S.C. in

*Mool Chand Bakhu V. Rohan*, AIR 2002 SC, held that an express written agreement for the transfer is a *sine qua non* (i.e. must) for the applicability of the doctrine of part-performance.

⇒ Valid contract : Sec. 53-A, TP Act, is applicable only where the contract for transfer is valid in all respects. It must be an agreement enforceable at law under the Indian Contract Act, 1872. The contract must be complete in all respects including registration.

⇒ Possession in furtherance of contract : The second essential requirement is that the transferee has taken possession or continues possession in part-performance of the contract or has done some act in furtherance of the contract. The party availing benefit of part-performance must specifically plead that he has taken possession of property in part-performance of contract. If no pleading to this effect is made no relief will be granted to the party seeking to avail benefit of this principle as held by Hon'ble S.C. in Shyam Narayan Prasad V. Krishna Prasad and Ors., AIR 2018 S.C. It is necessary that the transferee has taken possession of the immovable property on the basis of the contract of sale. The transferee must take possession in furtherance of the contract of sale. If the transferee has not taken possession of the property, Sec. 53-A, TP Act, cannot apply.

13/12/20

Sec. 53-A, TP Act, 1882 requires that the transferee has taken possession of the property it is irrelevant as to the vendor himself has given possession or not. It is not necessary that the vendor himself should have delivered the possession. But the possession must be taken only on the basis of the contract or deed of transfer. This means that the possession must be taken in furtherance of such contract, or it must be taken in part-performance of the contract. Incomplete deed of sale is a contract which would transfer the property. The transferor has performed his part of the contract by executing it and has completed it except registration and transferee's part is to take possession of that property for the transfer of which the contract was executed. So, the transferee must take possession of property in part-performance of this contract and if the transferee has not taken possession of the property Sec. 53-A, TP Act, shall not be applied as held by the Hon'ble S.C. in Nanji Gowda V. Gangamma, AIR 2011 S.C..

If requirement of Sec. 53-A, TP Act, are satisfied he gets the right to seek protection of his right to possession, but where the buyer paid only a part of the amount and took over possession and subsequently fails to pay the balance amount and also not ready or willing to do so, the court held that he was not entitled to protection of Sec. 53-A, TP Act.

Where the transferee is already in possession of the property in some other capacity and the essential requirements of Sec. 53-A, TP Act, are fulfilled then, Sec. 53-A, TP Act, shall entitle him to continue that possession. The possession must be continued on the basis of or in furtherance of contract of sale. It is necessary for transferee to show that he continued in possession in pursuance of that contract of transfer.

- Transferee is willing to perform his part of the contract : Sec. 53-A, TP Act, is based on the principles of equity. Equity says that, "one who seeks equity must do equity". Therefore, where a person claims protection of his possession over a land under Sec. 53-A, TP Act, his own conduct must be equitable and just, i.e., transferee must be willing to perform his part of contract. Equity of part-performance cannot favour a transferee who is not ready and willing to do what is required from him. He is not willing to pay the price agreed upon. Similarly, a person who actually did not pay the full consideration, but falsely pleads that he had paid the full price, thus not willing to perform his part of contract as held by Hon'ble S.C. in Govind Rao V. Devi Sahai, AIR 1982 S.C. However, willingness to perform the part ascribed to a part must not be conditional. Willingness for Sec. 53-A, TPA

should be absolute and unconditional.

It is not necessary - that transferee should plead his willingness in each and every case. Such willingness may be inferred from his conduct. In *Teja Singh V. Ram Prakash Talwar*, AIR 1984 P & H H.C., held that if transferee's payment of installments was delayed due to some reason, but the transferee was willing to perform his part of contract by making payment of remaining installments. Then, the benefit of Sec. 53-A, TP Act, cannot be denied to the transferee.

If the defendant took the plea of part-performance and had demanded specific performance within the stipulated time he shall be deemed to be ready and willing to perform his part of the contract, and failure to do so would mean that he could not show his willingness to perform his part of the contract.

Willingness of the transferee to perform the contract must subsist till the final decision of the court.

If the transferee has already performed his part of the contract and no date is specified for execution of sale-deed, the execution of sale-deed immediately or within a specified period is not required under Sec. 53-A, TP Act. Failure of transferee to get the sale-deed executed is not a statutory bar against the benefit of Sec. 53-A, TP Act.

## ⇒ NATURE OF TRANSFEREE'S RIGHT U/ SEC. 53-A, TP Act:

(i.) No title or interest in property : Sec. 53-A, TP Act, does not confer

any title or interest to the transferee in respect of the property in his possession. The only protection is that the transferor or any other person on his behalf cannot evict the transferee, and Sec. 53-A, TPA, will protect his right to continue the possession. This section imposes a statutory bar on the transferor. He cannot dispossess transferee, but no other right is conferred upon him. The transferee can get title of the property under the contract of sale only after its registration. The Hon'ble S.C. in Technicians Studio Ltd. V. Lila Ghosh, AIR 1979 S.C.

Observed that the unregistered compromise-deed is not in furtherance of agreement to sale and the possession was not given by the transferor in lieu of the agreement.

Sec. 53-A, TP Act, does not affect the ownership rights of the proposed transferor who remains full owner of his land till he legally conveys by sale-deed to the transferee.

(ii.) Passive equity : Sec. 53-A, TP Act, does not give to the transferee any right of action. It provides merely a right of defence. He is not entitled to restrain the transferor.

from transferring the property to any other person. In India, the equity of part-performance is a passive equity: it can be used only as a shield not as sword.

But in English Law, the equity of part-performance is also an active equity and gives to the transferee a right of action against his evictor. The transferee should always intimate his intention to perform his part of the contract.

The Hon'ble P.C. in Prabodh Kumar Das V. Dantmara Tea Co. Ltd, AIR 1940 P.C. held that in India, the equity of part-performance as incorporated in Sec. 53-A, TP Act, was not an active equity. It does not give any right of action to the transferee who is in possession of property under contract of sale. The only right available to a defendant is to protect his possession. In India, the equity of part-performance can be used only as shield not as sword.

(iii) Transferee as plaintiff or defendant?

Sec. 53-A, TP Act, confers on the transferee only the right to defend his possession when he is being evicted by a person having better title. He must always be defendant.

A defendant will not be entitled to avail of the provisions of Sec. 53-A, TP Act, if he uses it as a weapon of attack.

⇒ Rights of Subsequent Transferee for Value:  
The proviso to Sec. 53-A, TP Act provides that "Nothing in Sec. 53-A, TP Act, shall affect the rights of a transferee for consideration who has no notice of the contract or of the part-performance thereof".

The proviso to Sec. 53-A, TP Act, protects the interest of a subsequent transferee for value without notice of previous transferee's rights of part-performance. Therefore, this section does not affect the rights of a transferee for consideration who has no notice of the contract of sale or of part-performance.

Any rights which the transferee may have against the transferor would not be of any avail against a bona fide transferee for value having no notice of the previous transaction and the burden of proving that the subsequent transferee had notice lies on the person claiming the benefit of part-performance.

If no notice on the part of subsequent transferee could be proved by the original transferee, the doctrine of part-performance shall not protect the possession of the prior transferee.

The protection provided under Sec. 53-A, TP Act, deals with mixed question of facts as well as law.

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## \* Difference between English and Indian Law :

Sec. 53-A, TP Act, incorporates the provisions of English equitable doctrine of part-performance. But this section is not total importation of English Law. It is modified form of that law, Thus, the importation is partial. Indian law of part-performance may be distinguished from the English law as under :

- (i.) Under English law, the doctrine of part-performance is applicable to written as well as oral agreements whereas, Sec. 53-A, TP Act is applicable only where the agreement of transfer is written and registered.
- (ii.) In England, the equity of part-performance is active as well as passive, i.e., the transferee is entitled to defend his possession and is also entitled to enforce his right in an independent suit. For Eg: A suit for specific performance or for an injunction to restrain disposition.

In India, Sec. 53-A, TP Act, does not give any right of action to the transferee. Part-performance is only passive in India.