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DOCTRINE OF PART PERFORMANCE



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EVOLUTION

The concept of doctrine of part performance has taken from England the English law and is applicable to Indian Cases. The doctrine of part performance is inserted by the Transfer of Property (Amendment) Act, 1929 and is based on the equitable doctrine of part performance in English law which is known as equity of part performance. After the Mohammed Musa V. Aghore Kumar Ganguli (1914) 42 Cal. 801, the privy council held that equity of part performance could be applied to Indian cases. Before 1929, the English part performance was neither certain nor uniform and in other cases it was not applied.

MEANING

The doctrine of part performance is a equitable doctrine. It means the transferee performed the contract partly by taking of the possession or any part thereof, ready to perform the contract wholly but the transferor refused to perform the contract. Therefore, the readiness and willingness to perform the contract is necessary for the applicability of this doctrine. In such circumstances, the part performance by the transferee is assumed to be done which ought to have been done. In these cases, the aggrieved party may be the plaintiff or the defendant. When the performance has been done partly, the transferor cannot be estopped from the obligation contracted to perform. On 2001 amendment, the word registered is omitted and the doctrine of part performance is applicable even to the unregistered of document and it is not retrospective.

Sec.53-A of the Transfer of Property Act, 1882 states that where any person contract to transfer immovable property for consideration in writing by the transferor or on his behalf from which the term necessary to constitute the transfer can be ascertained with reasonable certainty and the transferee has performed the part performance of



the contract and has done act in furtherance of the contract then notwithstanding, there is an instrument of transfer which is not completed in the prescribed manner by the law in force, the transferor or any other person cannot claimed against the transferee who has taken possession or continued in possession other than a right expressly provided by the terms of contract.

ESSENTIALS

- There must be the valid contract between the parties to the contract to transfer any immovable property.
- The contract must be made for consideration of any immovable property.
- The contract must be in writing and the terms of conditions must be ascertain.
- The transferee must partly perform the contract by taking possession or any other part.
- The transferee must be done some act in furtherance of the contract.
- The transferee must be performed or willing to perform his part of the contract.

ENGLISH AND INDIAN LAW

In English Law, the part performance of the contract is not required to be writing or signed by the transferor. It is an equitable right and can be used to enforce the right and to defend the possession of the transferee which created title in the transferee.

In Indian Law, the doctrine of part performance deals with Sec.53A of the Transfer of Property Act, 1882. For the applicability of part performance, the contract is required to be in writing and signed by the parties. It is a statutory right and is used only to defend the possession of the transferee. It does not create title to the transferee.



CASE LAWS

Case 1.

Nathulal V. Phoolchand, 1969 SCC 3 120.

In considering whether a person is willing to perform his part of the contract the sequence in which the obligations under a contract are to be performed must be taken into account. Therefore, the terms of the contract the obligations of the parties have to be performed in a certain sequence, one of the parties to the contract cannot require compliance with the obligations by the other party without in the first instance performing his own part of the contract which in the sequence of obligations is performable by him earlier.

Case 2.

Ranchhoddas Chhaganlal vs Devaji Supadu Dorik And Ors., 1977 SCC (3) 584.

The true principle of the operation of the acts of part performance seems to require that the acts in question must be referred to some contract and must be referred to the alleged one; that they prove the existence of some contract, and are consistent with the contract alleged. The doctrine of part performance is a defence. It is a sword and not a shield. It is a right to protect his possession against any challenge to it by the transferor contrary to the terms of the contract.

Case 3.

Sardar Govindrao Mahadik And Another V. Devi Sahai And Others, 1982 SCC 1 237.

Section 53-A requires that the person claiming the benefit of part performance must always be shown to be ready and willing to perform his part of the contract. And if it is shown that he was not ready and willing to perform his part of the contract he will not qualify for the protection of the doctrine of part performance.



Case 4.

Shrimant Shamrao Suryavanshi And Another v. Pralhad Bhairoba, 2002 AIR SC 960.

The Limitation Act does not extinguish a defence, but only bars the remedy. Since the period of limitation bars a suit for specific performance of a contract, if brought after the period of limitation, it is open to a defendant in a suit for recovery of possession brought by a transferor to take a plea in defence of part-performance of the contract to protect his possession, though he may not be able to enforce that right through a suit or action.

Case 5.

Mool Chand Bakhru And Another v. Rohan And Others, 2002 SCC 2 612.

Section 53-A provides that 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 he is entitled to protect his possession in respect of the property of which he was put in possession in part-performance of the agreement to sell.

Case 6.

D.S Parvathamma v. A. Srinivasan, 2003 AIR SC 3542.

The essential features of the equitable doctrine of part-performance as statutorily modified and incorporated in Section 53-A abovesaid, to the extent relevant for the purposes of this case, are:

(i) that 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,



(ii) that the transferee has performed or is willing to perform his part of the contract,
(iii) that the plea of part-performance is not available to be raised against a transferee for consideration who has no notice of the contract or of the part-performance thereof.

Case 7.

Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra (Dead), 2004 SCC 1 4342.

The doctrine of part-performance is rooted in equity and provides a shield of protection to the proposed transferee to remain in possession against the original owner who has agreed to sell to the transferee if the proposed transferee satisfies other conditions of Sec.53-A. It operates as an equitable estoppel against the original owner to seek possession of the property which was given to the proposed vendee in part-performance of the contract.

Case 8.

Fgp Ltd vs Saleh Hooseini Doctor & Anr., (2009) 10 SCC 223.

Part performance to take the case out of the Statute of Frauds, always supposes a completed agreement. There can be no part performance where there is no completed agreement in existence. It must be obligatory, and what is done must be under the terms of the agreement and by force of the agreement.

Case 9.

Union of India V. M/s. K.C. Sharma & Co., Civil Appeal No. 9049 - 9053 of 2011.

Held - The protection under Sec.53A of the Transfer of Property Act, 1882 is available to a person who is put in possession pursuant to an agreement of lease in his favor though no lease has been executed and registered.



Case 10.

Wg. Cdr. (Retd.) Sh. Yeshvir Singh Tomar V. Dr. O.P. Kohli & Ors., 2015 SCC OnLine Del 10834.

That by virtue of the amendment brought about to Sec.53-A of the TPA with effect from 24.09.2001 by the Act 48 of 2001, an Agreement to Sell in the nature of part performance cannot create rights unless the agreement is registered and stamped at 90 percent of the duty as of the sale deed as per Article 23-A of the Schedule I of the Indian Stamp Act, 1899 as applicable to Delhi which was accordingly amended by the Act 48 of 2001.

DISCLAIMER

This write up has been sent to you for information purposes only and is intended merely to highlight legal maxim. The information and/or observations contained in this issue do not constitute legal advice and should not be acted upon in any specific situation without appropriate legal advice. The views expressed in this issue do not necessarily constitute the final opinion of M/s.Wallcliffs Law Firm and should you have any queries in relation to any of the issues set out herein or on other areas of law, please feel free to contact us on mail@wallcliffs.com.



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