



FACULTY OF JURIDICAL SCIENCES

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Lecture-17



The Doctrine of Part Performance

Doctrine of Part Performance is an equitable doctrine and it is incorporated to prevent fraud and from taking illegal advantage on account of non-registration of the document. This Doctrine is based on the maxim, Equity look at as it is done which ought to have been done.

Basically the doctrine says that the transferor or any person claiming under him shall be debarred from enforcing against the transferee and the person 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 term of the contract.

Definition

The doctrine of part performance is enshrined in the provisions of The Transfer of Property Act, 1882.

Section 53-A of the Act, deals with definition of the doctrine and it says:

When 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 where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law 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.

Illustration:

A contract to transfer his immovable property to B by way of sale and put B in possession of the property before a regular Sale-Deed is executed. The contract is said to be partly performed and if later on A refuses to execute regular document of sale and files a suit for eviction against B treating B as trespasser. Then B can resist A's claim on the ground that the contract of transfer in his favour has partly been performed and that A should not be allowed to go back

upon his own word.

Ingredients of Section 53-A

Bombay High Court in *Kamalabai Laxman Pathak v. Onkar Parsharam Patil*, has given emphasis on the ingredients of the Section 53-A which are as follows:

Contract for Transfer of immovable property:

For the application of this section, the first condition is that there must be a contract and the contract must be transfer of immovable property for value.

a)Written contract:

The contract must be written. Section 53 "A is not applicable if the contract for transfer is oral. In *V.R. Sudhakara Rao v. T.V. Kameswari*[2], 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. Writing alone is not sufficient. The contract must also be duly executed. That is to say, it should be signed by the transferor or by any other person on his behalf.

b)Validcontract: It may be noted that Section 53-A is applicable only where contract for the transfer is valid in all respects. It must be an agreement enforceable by law under the Indian Contract Act, 1872.

c)Immovable property: This section 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. The defense of Part Performance is not available in respect of possession of movables

(Hameed v. Jayabharat Credit & Investment Co. Ltd and Ors.[3])

Transfer for consideration:

The written contract must be for the transfer of an immovable property for consideration. The written contract on the basis of which the property has been possessed, must clearly suggest the transfer of property. If the document is ambiguous or confusing, this section cannot be made applicable. It is one of the necessary ingredients of section 53-A that the terms of written contract must be ascertainable with reasonable certainty (Hamida v. Humer and Ors.[4]).

Possession in furtherance of Contract:

The Transferee has taken possession or continues possession in part performance of the contract or, has done some act in furtherance of the contract

(A.M.A Sultan (deceased by LRs) and Ors. v. Seydu Zohra Beevi[5]).

Some Act in furtherance of the contract:

Taking possession is not only the method of part performance of contract. 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 (Nathulal v. Phoolchand[6]).

Transferee is willing to perform his part of contract:

Section 53-A is based on the principle 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 section 53-A, his own conduct must be equitable and just. It is an essential condition for the applicability

of this section that the transferee must be willing to perform his part of contract (Sardar Govindrao Mahadik and Anr. vs. Devi Sahai and Ors Govind[7])

REFERENCE:

1. AIR 1995 Bom 113
2. (2007) 6 SCC 650
3. AIR 1986 Ker 206
4. AIR 1992 All. 346)
5. AIR 1990 Ker. 186
6. AIR 1970 SC 546
7. AIR 1982 SC 989
8. AIR 1995 Ker 249

