



FACULTY OF JURIDICAL SCIENCES

COURSE: LL.B. 1st Semester

SUBJECT: Law of Property

SUBJECT CODE: LL. B.104

NAME OF FACULTY: Dr. Ravi Kant Gupta

Lecture-18



Scope of Doctrine of Part Performance:

The Doctrine of Part Performance is applicable to only written and valid contract. It is not applicable to oral or void agreement. The contract must be in writing and signed by the transferor. The transferee has taken possession of the property as a part performance of a contract and transferee must be ready and willing to perform his part of promise. This section is applicable not only to the contract of sale but it is applicable to all such contracts of transfer for consideration. It has been held in (Jacobs Private Limited vs. Thomas Jacob [8]) that the doctrine is intended to be used as a shield, not a sword.

Amendments to Section 53-A of Transfer of Property Act, 1882 (hereinafter called as T.P. Act)

An amendment has been made in Section 53-A of Transfer of Property Act by the Registration and other related laws and Act (48 of 2001). This Amending Act (48 of 2001) has made following changes in section 53-A:

Section	Amendment
Section 17	Sub Section 1 A of Registration Act inserted: The documents containing contract to transfer for consideration, any immovable property for the purpose of Section 53-A of Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and other Related Laws (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 the said section 53-A
Section 49	Section 49 of Registration Act, in the proviso; words, figures and letters as evidence of part performance of a contract for the purposes of Section 53-A of T.P. Act, 1882 (4 OF 1882), shall be Omitted.
Section 53-A para 4	In Section 53-A, para no. 4 of T.P. Act, the words the contract, though required to be registered, has not been registered, or, Omitted.

The provisions of this Amending Act (Act of 48 of 2001) came into force with effect from 24-September-2001. This Amendment Act is not retrospective.

Legal Effect of the Amending Act (48 of 2001) in Section 53-A:

In para fourth of Section 53-A of T.P. Act, the words the contract, though required to be registered, has not been registered has now been omitted. This may mean to suggest that non registration of any contract to transfer for consideration is not any relevant factor (i.e. not necessary) for the application of part performance under this section; and, the defense of part performance is available also on the basis of an unregistered document.

But this is not the case. The same Amending Act (48 of 2001) has simultaneously amended section 17 and Section 49 of Registration Act. Therefore, the amendment in section 53-A should be read with amendments in section 17 and section 49 of Registration Act.

In nutshell, the amendments of section 17 and section 49 of Registration Act has now incorporated the law which fulfills the real purpose of amending Section 53-A of the T.P. Act. The object or the real purpose of these amendments (Amending Act 48 of 2001) is that there should not be any perpetual possession of an immovable evading the law of registration. Accordingly, section 53-A of the T.P. Act now insists upon proof of some acts having being done in furtherance of contract. There must be real nexus between contract and the acts done in pursuance or furtherance thereof.

Conclusion:

Thus, the doctrine of part performance is an equitable doctrine. It is incorporated to prevent fraud from taking advantage on account of non-registration of the document. It is based on the doctrine: Equity looks at the intention rather than form.

MCQ

1. Transferee of the part performance has right to protect his possession:

- (a) Wrong
- (b) Right
- (c) can accrue only after payment of full consideration
- (d) Delivery of possession is not necessary

2. In case of part performance what is not necessary with a transferee?

- (a) Possession
- (b) Contract for consideration
- (c). Notice to transferor
- (d). Readiness on his part

3. Section 53-A amended in

- (a) 2000
- (b) 2001
- (c) 2002
- (d) 2003

4. Amendment in Section 53-A came into force in

- (a) 24-September 2000
- (b) 24-September 2001
- (c) 24-September 2002
- (d) 24-September 2003

5. Amendment in Section 53-A was.....effect.

- (a) Retrospective
- (b) not retrospective
- (c) Can not say
- (d) None of the above