"Introduction

Our legal system in India has its roots in English Law, and during the pre-independence era, property laws were heavily influenced by British governance and practices. Consequently, there arose a need for a comprehensive, codified civil law that would be easily comprehensible to local judges and advocates while being well-suited to the Indian population. To address this, the first law commission was established in 1870, followed by the second law commission in 1879, led by Whitely Stokes. Their primary objective was to formulate property laws tailored to the Indian context.

On the 17th of February 1882, the Transfer of Property Act was officially enacted, representing a significant milestone in the development of property laws in India. This Act drew inspiration from 'The Law of Conveyancing and Property Act, 1881' under English Law, with necessary adaptations. However, despite this foundation, various discrepancies and contradictions within the law persisted, leading to a series of amendments.

In 1927, a Special Committee was convened to address these issues. Their proposed bill, with certain modifications, was passed in 1929 as Act No. 20. This amendment introduced Section 53A, which granted statutory recognition to the age-old English Equity of Part Performance, commonly known as the Doctrine of Part Performance. One of the primary reasons this doctrine had not been adopted earlier by the Privy Council was the permissibility of granting leases through oral agreements, as permitted by this Act and the Indian Contract Act of 1872, which also recognized oral agreements.

Nonetheless, the incorporation of this doctrine was deemed necessary to protect the interests of transferees and safeguard their possession of the property. The Privy Council's decision in the case of Probodh Kumar Das v. The Dantmara Tea Co. Ltd. underscored the significance of this doctrine in imposing a statutory bar on the transferor while ensuring the protection of the transferee's rightful possession."

"Section 53A of the Transfer of Property Act, 1882, outlines the concept of part performance, primarily aimed at safeguarding the interests of the transferee against fraudulent actions. Its primary objective is to prevent any form of deceit or wrongdoing on the part of the buyer, ensuring that they can fully enjoy their property rights.

According to Section 53A of the Transfer of Property Act, 1882, which governs this doctrine:

This section stipulates that when a transferor or someone acting on their behalf conveys immovable property for valuable consideration in a written agreement signed by the transferor, to the transferee or a representative, with clearly defined terms. In the course of executing this contract, the transferor must have exercised part performance, either by taking possession of the property or by making partial use of it, thereby actively acting upon the contract. This provision also encompasses the transferor's willingness to fulfill their part of the contract and extends to situations where the transferor has already fulfilled their obligations under the contract."

Hence, in cases where there is no proper registration of the property transfer as mandated by the law, and an agreement has been reached, the transferor cannot enforce their rights against the transferee if the transferee has taken possession or continues to remain in possession. Any exceptions to this rule must be explicitly mentioned in the contract terms. It's also worth noting that if the transferee is unaware of the contract or this doctrine, their rights remain unaffected. This is the crux of Section 53A.

Now, let's consider how this differs from the English Equity of Part Performance. In India, a written document is mandatory, whereas in England, an oral agreement can also be considered. In India, this doctrine can only be used as a defense to protect one's interests, not as a basis for taking legal action, as established in the landmark case of Delhi Motor Company and Ors vs U.A. Basrurkar. In England, it can be employed both defensively and offensively, allowing for both passive and active equity. Moreover, in India, taking possession or demonstrating a willingness to do so in furtherance of the contract is essential, while in England, any action in accordance with the contract suffices. Therefore, Section 53A can be seen as a partial adaptation of the English Equity of Part Performance.

Now, within this article, we will primarily examine several cases that illustrate how a written and signed agreement, even if not registered, provides a defense through the doctrine of part performance. Additionally, we will explore other relevant cases that aid in understanding the application of this doctrine.

Case Analysis: Sheth Maneklal Mansukh Bhai v. Messrs. Hormusji Jamshedji (1950)

Facts of the case:

In this case, a Talukdari estate in Viramgam taluka, Ahmedabad District, which included 12 villages, was owned by various talukdars. The plaintiff, Maneklal Mansukhbhai, applied for a permanent lease of a portion of this estate. Permission was granted, subject to government sanction. The plaintiff initiated the construction of a ginning factory and setup of the property, even before a formal lease was registered. Later, the plaintiff mortgaged the property to the defendant, Hormusji Jamshedji, as they were unable to pay the rent.

The dispute arose when the defendant took possession of the property through the equity of redemption. The plaintiff claimed the land, asserting that the defendant did not possess a permanent lease. The defendant, in turn, argued that the plaintiff did not have a registered lease deed and, therefore, had no basis to claim the property.

Issues raised:

The key question was whether the plaintiff could invoke Section 53A of the Transfer of Property Act to protect their rights.

Held by the Supreme Court:

The Supreme Court delved into Section 53A of the Transfer of Property Act, which mandates a written agreement, signed by both parties, with part performance. The court argued that a secondary piece of evidence, Ex. 181, indicated the existence of a written contract between the Talukdar Settlement Officer (T.S.O.) and Manilal. This served as sufficient evidence, and the absence of a registered lease deed was not a hindrance.

The Supreme Court affirmed that, as per English law, from which the equity of part performance is derived, the legislature had actively incorporated the doctrine concerning the cessation of a lease. Therefore, there was no strict necessity for a registered lease deed. The agreement existed, and the defendant could subsequently lease the property upon registration.

Hence, the formal deed was not an essential requirement as long as there was a written agreement signed by both parties, supported by evidence. The High Court's decision was reversed, and the Assistant Judge's ruling was restored. This case lays the foundation for subsequent judgments, including a more recent judgment by the Supreme Court on August 14, 2020, which we will explore further.

Other relevant cases:

Nathulal v. Phool Chand:

In this case, the Supreme Court established conditions for invoking the doctrine of part performance as a defense against encroachment by the transferor. These conditions include a written agreement with reasonable terms, possession granted to or held by the transferee, actions taken in furtherance of the contract, and a clear indication of the transferee's performance or willingness to fulfill their part of the contract. If these conditions are met, the transferor cannot seek ejectment from the property.

Roop Singh v. Ram Singh:

This case reiterated that the plea of adverse possession is inconsistent with possession under Section 53A of the Transfer of Property Act. The question of property possession, regardless of whether the transfer occurred through a lease or sale, does not support adverse possession claims when Section 53A applies.

Moolchand Bakhru & Anr v. Rohan & Others (29 January 2002):

In this case, the court emphasized that an agreement for property transfer must be ascertainable from the written document, either as an oral or written agreement. In the absence of essential terms, oral agreements cannot fall under Section 53A. This is particularly important because Section 53A requires the transferee to be in possession to safeguard their interest in part performance. Therefore, in cases where no possession is granted, the transferor may be entitled to mesne profits, as determined by the Supreme Court, overturning the High Court's ruling.