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## The emergence of Doctrine of Part Performance: A Legal analysis of Section 53A of the Transfer of Property Act

Chaitanya Thakur<sup>a</sup>

<sup>a</sup>West Bengal National University of Juridical Sciences, Kolkata, India

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*The Doctrine of Part Performance is fundamentally an egalitarian doctrine founded on the concepts of equity, justice, and good conscience. This research paper aims to examine the roots of the doctrine of part performance and evaluate its rationale and goals. In this article, the author firstly analyses the emergence of the doctrine in English law, followed by its evolution in Indian law. Afterward, the author addresses the amendments to section 53A and their ramifications. Additionally, the required criteria for the operation of section 53A and the extent of the section will be discussed. The author then contrasts the doctrine of part performance in English Law with its counterpart in Indian law. The author finally offers a suitable conclusion at the end of the article.*

**Keywords:** *part performance, equity, property.*

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### INTRODUCTION

The doctrine of part performance is built on the principle that when two people engage in an agreement wherein one side allows the other to act in the furtherance of the agreement, then such a person establishes equity and cannot later object to the agreement's performance on the basis that the legalities were not completed. Therefore, this doctrine seeks to safeguard a

transferee in situations when the transferor might act dishonestly by refusing to execute the contract. For instance, a scenario might emerge in which the transferor and transferee engage in a contract to transfer land, and the transferee was handed custody of such land in accordance with the terms of this contract. The transferor might still not ratify the first sales agreement, contract with a third person in response to a higher proposal, and then eject the original transferee from the estate. The idea of part performance acknowledges the likelihood of these circumstances and seeks to safeguard transferees. Whilst the notion of part performance originated in English law, it received statutory recognition in India in 1929 with the addition of Section 53A<sup>1</sup> to the Transfer of Property Act, 1882.

### THE GENESIS OF THE DOCTRINE IN ENGLISH LAW

After being acknowledged by the Court of Chancery, the egalitarian legal concept of the part performance was established in England.<sup>2</sup> Section 4 of the Statute of Frauds 1677<sup>3</sup> makes it abundantly explicit that every claim pertaining to property sale must be brought in writing. The Judges understood that perhaps the absence of recourse for violation of verbal agreements would result in widespread abuse of the legislation, defeating the overall aim of the Statute of Frauds<sup>4</sup>. Resultantly, the Court of Chancery formulated the idea of part performance to prevent these scenarios and preserve transferees' rights. The case of *Foxcroft v Lyster*,<sup>5</sup> as acknowledged by the Apex Court in *Sardar Govindrao Mahadik v Devi Sahai*,<sup>6</sup> was among the very first instances to address the notion of part performance. In this case, the judge concluded that when a person expends monetary funds in favour of property in pursuit of a parol contract, treating that individual as a trespasser on the estate violates equitable and good conscience standards. Additionally, it is worth noting that the acts adopted after the doctrine's acceptance by the courts also recognized its validity. For instance, section 40<sup>7</sup> of the Law of Property Act 1925 requires written contracts for the transfer of land. Additionally, the

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<sup>1</sup> Transfer of Property Act, 1882, s 53A

<sup>2</sup> Dr Poonam Pradhan Saxena, *Property Law* (2<sup>nd</sup> Edition, Lexis Nexis 2013)

<sup>3</sup> Statute of Frauds, 1677, s 4

<sup>4</sup> Soli J Sorabjee, *Darashaw J Vakil's Commentaries on The Transfer of Property Act* (3rd edition, Lexis Nexis 2009)

<sup>5</sup> *Foxcroft v Lyster* [1703] 2 Vern 456

<sup>6</sup> *Sardar Govindrao Mahadik v Devi Sahai*, 1982 AIR 989

<sup>7</sup> Law of Property Act, 1925, s 40

forementioned language expressly says that any such condition can not alter the Court-recognized concept of part performance. *Maddison v Alderson* is yet another decision that established the modern interpretation of the concept.<sup>8</sup> In this matter, the plaintiff asserted a claim on the deceased's life estate based on a purported oral agreement to transfer the estate provided the plaintiff served for the deceased as a housekeeper. Even though the decedent left a written will to benefit the plaintiff, it failed to be valid because it was not properly attested. The plaintiffs argued that she partially fulfilled the contract by working as a housekeeper to carry out the oral arrangement. The judge ruled that the conduct alluded to in asserting part performance must always be connected to the claimed oral agreement for the rule to operate. Additionally, the judge stated that a party's partial performance might generate equity that essentially terminates the agreement, safeguarding the transferee's interests. *Walsh v Lonsdale*<sup>9</sup> is another well-known decision credited with establishing the doctrine's premises.<sup>10</sup> Even so, the concept as introduced into the Indian legal framework is clearly distinguishable from that established in English courts, as detailed in a subsequent part of the article.

### THE EMERGENCE OF THE DOCTRINE IN INDIA

When the Transfer of Property Act 1882 was initially drafted, the idea of part performance had not been incorporated. It got included in the Act in 1929 by an amendment. Whereas the theory did not get formal status until 1929, a series of decisions examined the egalitarian doctrine's application in India.<sup>11</sup> In *Mahomed Musa v Aghore Kumar Ganguli*,<sup>12</sup> the doctrine's application in India has been questioned. In this judgment, the judge applied the idea in India based upon the English judges' ruling in *Maddison v Alderson*.<sup>13</sup> Albeit the concept established by the English courts was regularly used after the *Mohamed Musa* case, there remained considerable misunderstanding and disagreement over the doctrine's validity given the lack of legislative acknowledgment.<sup>14</sup> As a result, the Indian government established a Special

<sup>8</sup> *Maddison v Alderson* [1883] 8 AC 467

<sup>9</sup> *Walsh v Lonsdale* [1882] 21 Ch D 9

<sup>10</sup> *Walsh v Lonsdale* [1737] 1 Atk. 12:26 ER 9

<sup>11</sup> Soli J Sorabjee (n 4)

<sup>12</sup> *Mahomed Musa v Aghore Kumar Ganguli* (1914) 42 Cal 801

<sup>13</sup> *Maddison* (n 8)

<sup>14</sup> Soli J Sorabjee (n 4)

Committee in 1927 to determine the English doctrine's application in India.<sup>15</sup> The Committee examined the advantages and disadvantages of the idea of part performance as it evolved in England and published a conclusion in less than 3 months containing suggestions for TPA modification.<sup>16</sup> The Special Committee concluded that uneducated and ignorant purchasers might partially fulfill their obligations before being duped by transferors.<sup>17</sup> Additionally, the Committee ruled that when a transferee obtains possession of an estate in due diligence and according to a contract agreement, treating such an individual as a trespasser violates fairness and justice. Furthermore, the Committee considered the impact of the restriction period's expiration on the concept of part performance. This was argued that the expiry of the limitation period would've had zero impact on the connection here between transferor and transferee and thus have zero impact on the safeguards offered by the concept of part performance.<sup>18</sup> The Hon'ble Supreme court concurred in *Mahadeva & Ors v Tanabai*.<sup>19</sup> Section 53A was incorporated into the TPA in 1929 as a result of the Special Committee's suggestions, and the notion of part performance was granted legislative status in India.<sup>20</sup> The Statement of Reasons and Objects of the amending Act (Act No. XX of 1929) also indicates expressly that it was based upon that Special Committee's findings.

## THE AMENDMENT TO SECTION 53A AND THEIR REPERCUSSIONS

Before 2001, the legislation provided an exemption to the concept of part performance, allowing for the inclusion of unregistered documentation as sufficient proof to seek safeguards under the concept. This had been indicated in Section 53A by the wording "*the document, though required to be registered, has not been registered.*"<sup>21</sup> Consequently, an individual seeking safeguards under Section 53A may depend on such an unregistered paper to substantiate his or her case. Yet, the provision was amended in 2001 to delete the aforementioned wording. To fully grasp the ramifications of this development, it is necessary to explain the history of such

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<sup>15</sup> *Ibid*

<sup>16</sup> *Mahadeo Nathuji Patil v Surjabai Khushalchand Lakkad and Ors.* (1994) 96 BOMLR 846

<sup>17</sup> *Ibid*

<sup>18</sup> Soli J Sorabjee (n 4)

<sup>19</sup> *Mahadeva & Ors v Tanabai* AIR 1960 Cal 40

<sup>20</sup> Transfer of Property (Amendment) Act, 1929

<sup>21</sup> Transfer of Property Act, 1882, s 53A

a criterion. Until 1929, Section 49 of the Registration Act, 1908<sup>22</sup> made it absolutely clear that any unregistered documentation relating to immovable property is unacceptable as evidence to establish any title.<sup>23</sup> Accordingly, to assert any title or benefit in connection with immovable property, any documentation depended on must always be registered. By 1929, the legislation regarding this issue was updated to include unregistered papers in claims for immovable property under Section 49 of the Registration Act. Likewise, as Provision 53A of the TPA was originally enacted in 1929, it did not need papers to be registered to be protected by the part. As a response, unregistered papers, including an unregistered sale deed, were acceptable evidence in order to assert Section 53A privilege. Later in 2001, the Act was amended to delete the provision in Section 53A that permitted the admission of unregistered papers.<sup>24</sup> Additionally, Section 49 of the Registration Act 1908 was revised in 2001, and the exemption permitting the admission of unregistered papers was repealed. As a result, the legal situation was identical to that which existed previous to 1929, when every claim relating to the immovable property required the backing of a registered document. As a result of the 2001 modification, solely registered papers can be recognized to apply Section 53A.<sup>25</sup> For instance, an individual cannot assert protection under Section 53A based on such an unregistered agreement. The concept of part performance, on the other hand, is limited to partially executed contracts. Additionally, a registered sale contract implies that the transaction has been completely performed. But on the contrary side, a recorded agreement to sell a property does not always imply that the sides have agreed to a deal. Thus, the transferee may plead part performance via the use of papers, including a registered agreement to transfer the property.<sup>26</sup> The revision definitely reduced the extent of application of Section 53A of the TPA. The section will, nevertheless, continue to extend to legal infractions besides a lack of registration.

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<sup>22</sup> Registration Act, 2008, s 49

<sup>23</sup> Dr Poonam Pradhan Saxena (n 2)

<sup>24</sup> Registration and Other Related Laws (Amendment) Act, 2001

<sup>25</sup> Soli J Sorabjee (n 4)

<sup>26</sup> Dr Poonam Pradhan Saxena (n 2)

## NECESSARY REQUIREMENTS FOR THE DOCTRINE OF PART PERFORMANCE

The egalitarian principle of part performance is concerned with protecting the transferee whenever a transferor seeks to evict a transferee from land entrusted to him and pursuance of a contract, provided that certain fundamental requirements are met.<sup>27</sup> Therefore, the transferee is not needed to have initiated an action for part performance to demand Section 53A relief.<sup>28</sup> Yet, essential criteria should be met for the principle to operate. To begin with, the transferee's agreement should be written. The judges have indicated unequivocally that the concept doesn't quite extend to verbal agreements in India.<sup>29</sup> Furthermore, there has to be a consideration for the indicated transfer. As nothing more than a consequence, gifts are excluded.<sup>30</sup> Moreover, the contract's provisions must be fairly identifiable by the judge in determining the agreement's precise character.<sup>31</sup> The deal's ambiguity and uncertainties weaken the transferee's case.<sup>32</sup> Besides, a transferee should have acquired possession per the terms of the agreement. As such, the transferee should have performed or be ready to perform an act consistent with the agreement. In *Pannalal v Labhchand*,<sup>33</sup> the judge ruled that there should be distinguished conduct in the advancement of the agreement. The transferee's simple maintenance of possession is insufficient to fulfill this need. Finally, the transferee's documentation relying on the principle should be registered.<sup>34</sup> The preceding section examined the ramifications of this situation.

## CONTEXTUAL RELEVANCE OF SECTION 53A

The notion is intended to safeguard the transferee in situations when the transferor might act wrongfully & seek to deprive the transferee of possession. The theory is founded on the fair ideals of morality and equity. Nevertheless, under Indian jurisprudence, a transferee's privilege provided by Section 53A is restricted in nature. The judges have almost always found

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<sup>27</sup> *Madan Mohan v Gauri Shanker* (1988), AIR 1988, MP 152

<sup>28</sup> *Technicians Studio Pvt. Ltd. v Lila Ghose* AIR 1979, SC 2425

<sup>29</sup> *Kalawati Tripathi v Damyanti Devi* AIR 1993 Pat 1

<sup>30</sup> *Piru Charan Pal v Sumtmony Nema* AIR 1973 Cal 1

<sup>31</sup> *Mool Chand Bakhru v Rohan* AIR 2002, SC 812

<sup>32</sup> Soli J Sorabjee (n 4)

<sup>33</sup> *Pannalal v Labhchand* AIR 1955, Madh B. 49

<sup>34</sup> Soli J Sorabjee (n 4)

that perhaps the transferee’s interest under Section 53A is restricted to safeguarding his possession.<sup>35</sup>In practice, the concept can only be used as protection.<sup>36</sup> It effectively indicates that an individual may simply oppose eviction under Section 53A. In *Technicians Studio Pvt. Ltd. v Leela Ghosh*,<sup>37</sup> the Supreme Court observed unequivocally that Section 53A doesn’t at all bestow a proactive title on the transferee but only serves as a barrier to the claimant alleging ownership of the estate. Even though there has remained considerable dispute regarding whether the transferee must be a respondent in a Section 53A litigation, several courts have held that a transferee can be either a complainant or a respondent when asserting Section 53A obligations.<sup>38</sup>

## DISTINCTION BETWEEN ENGLISH LAW AND INDIAN LAW

Whilst the notion of part performance originated in English jurisprudence, the concept implemented in India under Section 53A of the TPA is partially an adoption of the notion as it is used under English law. In contrast, India’s concept is more limited in reach. The egalitarian concept may be employed as a protection or a “weapon of attack” under English law.<sup>39</sup> But on the contrary, as previously explained, Section 53A may be employed as just a shield but not as a weapon.<sup>40</sup> A further important distinction here between its applicability is that the concept is relevant to verbal accord in England.<sup>41</sup>The judges have made it very apparent that Section 53A applies solely to documented contracts in India.<sup>42</sup> As a result, the doctrine’s implementation is severely restricted in Indian law.<sup>43</sup>

## CONCLUSION

In a nation like India, wherein a big proportion of the population is unaware of the legal requirements that must be fulfilled in certain circumstances, the instances in which

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<sup>35</sup> *Probodh Kumar Das v Dantamara Tea Co* (1940) All LJ 226

<sup>36</sup> *Achayya v Venkata Subba Rao* AIR 1957, AndhPra 854

<sup>37</sup> *Technicians Studio Pvt. Ltd.* (n 28)

<sup>38</sup> *Pannalal* (n 33)

<sup>39</sup> *Dr Poonam Pradhan Saxena* (n 2)

<sup>40</sup> *AkramMea v Secundarabad Municipal Corp.* AIR 1957, AP 859

<sup>41</sup> *Kalawati Tripathi* (n 28).

<sup>42</sup> *Dr Poonam Pradhan Saxena* (n 2)

<sup>43</sup> *Savarkundla Nagarpalika v Maninagar Niwas SahakariMandhi Ltd.* AIR 1981, Guj 243

uninformed, as well as uneducated customers, are readily deceived are rather considerable. The same is shown by the frequency with which Section 53A is invoked by judges. In light of the above, the necessary action of statutorily recognizing the notion of part performance was taken. As noted before, the distinctions amongst the doctrines in India and England demonstrate that the idea has indeed been adopted only partly into the Indian judicial framework. While limiting the breadth of usage by requiring the presence of a documented agreement, the main requirements minimize the extent of legal abuse. Nevertheless, given the social and financial status of the Indian people, the modification that eliminated the exemption permitting the utilization of unregistered papers for Section 53A purposes could likely undercut the provision's aim.