

Part Performance

Section 53A of the Transfer of Property Act serves as a crucial legal provision that balances the stringent requirements of property registration with equitable principles to prevent unjust enrichment. This section is particularly significant in the context of transactions involving immovable property that have not been fully formalised or registered.

Purpose of Section 53A

The primary objective of Section 53A is to protect the rights of transferees who have taken possession of property under an agreement that, while not fully legally enforceable, has been partially performed by them. This protection ensures that these possessors, known as "part-performers," are not unjustly deprived of their possession until the formal transfer requirements are completed.

transferee. This establishes a clear record of their intentions.

- ❖ **Possession by the Transferee:** The transferee must have taken actual possession of the property, which indicates they have acted upon the agreement.
- ❖ **Consideration Paid:** The transferee must have paid or be ready to pay the agreed consideration, fulfilling their financial obligations under the agreement.
- ❖ **Possession in Part Performance:** The possession by the transferee should strictly arise from the agreement, not through unauthorised or forceful means.

Legal Protections Afforded

- a. **Right to Maintain Possession:** The part-performer is entitled to retain possession until a registered transfer of the property is

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Conditions for Protection under Section 53A

- ❖ **Written Agreement:** The agreement for the transfer of property must be documented in writing and signed by both parties—the transferor and the

executed.

- b. **Protection Against Disturbance:** The initial transferor is barred from disturbing the transferee's possession, recognizing it as lawful and protected under the law.

- c. **Option for Specific Performance:** The part-performer may seek court intervention to

enforce the agreement, compelling the transferor to complete the property transfer as agreed.

Distinction from English Law

- ❖ **Necessity of Written Agreement:** Unlike English law, which may recognize oral agreements, Indian law strictly requires a written and signed document.
- ❖ **Defensive Use Only:** In India, the doctrine serves solely as a defensive measure, unlike in England where it can be used both defensively and to enforce rights.

Ghanshyam v Yogendra Rathi

“Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53A of the Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transferor or any person claiming under him.”

