

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Regular Second Appeal No.2473 of 1994 (O&M)
Date of Decision: March 22, 2018.**

Rohtash Singh

.....APPELLANT(s).

VERSUS

Sanwal Ram and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Deepak Girotra, Advocate
for the appellant (s).

Mr. Amit Jain, Advocate
for the respondents.

SURINDER GUPTA, J.

This is appeal against the concurrent judgments of the Courts below, whereby suit of the plaintiff-respondent No.1 was decreed as follows:-

“The suit of the plaintiff is hereby decreed with costs to the effect that the suit land was purchased by the plaintiff from defendants No.1 and 2 vide the agreement dated 09.06.1972 and since then he is owner-in-possession thereof. The impugned sale deed bearing No.336 dated 06.06.1988 in favour of defendant No.3 is the result of fraud, misrepresentation, concealment of facts and same is hereby set aside.”

2. On appeal by appellant-defendant No.3 Rohtash, first Appellate Court upheld the decree passed by learned Additional Senior Sub Judge

{now re-designated as Additional Civil Judge (Senior Division)}, Mahendergarh.

3. The case of plaintiff Sanwal Ram, in brief, is that defendants No.1 and 2 namely Leela and Smt. Ratni were owners in possession of 1/2 share of plot measuring 19 marlas bearing *khasra* No.591 *khatoni* No.7 *khewat* No.3 situated in village Bhagot @ Baghot, Tehsil and District Mahendergarh, which they agreed to sell to the plaintiff for a sale consideration of ₹800/- vide Writing dated 09.06.1972 in favour of plaintiff. Possession of the disputed plot was also handed over to him. After purchasing, the plaintiff has been using this plot and the entry of the purchase agreement was also incorporated in the revenue record. His possession after purchase of plot was throughout hostile against the right of the owner.

4. Defendants No.1 and 2 sold the suit land in favour of defendant No.3 vide sale deed No.336 dated 06.06.1988. This sale deed is a paper transaction and liable to be cancelled. Defendant No.3 was fully aware of the sale of the disputed plot in favour of plaintiff and his possession over it. The plaintiff came to know about sale deed when defendant No.3 sought mutation of the disputed plot in the revenue record in his favour. Plaintiff sought declaration to the effect that he is owner in possession of disputed plot and is entitled to get the entry to this effect recorded in the revenue record. He also sought cancellation of the sale deed dated 06.06.1988 alleging the same as illegal, null and void.

5. Defendants No.1 and 2 filed written statement admitting the claim of the plaintiff. Regarding the sale deed dated 06.06.1988 executed

by them in favour of defendant No.3, it was alleged that they have agreed to sell a plot to defendant No.3 within '*Lal Dora*' but he by playing smart, got executed the sale deed of the disputed plot in his favour but the possession of the same was never handed over to him.

6. Defendant No.3 in his separate written statement alleged that defendants No.1 and 2 were owners of disputed plot. No agreement was executed by them in favour of plaintiff. The plaintiff has fraudulently got his name entered in the revenue record in connivance with the revenue officials. As per the sale deed dated 06.06.1988, defendant No.3 has become owner of the suit land and possession was also handed over to him on the same day.

7. Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether the plaintiff is owner in possession of the suit land to the extent of 1/2 share on the ground mentioned in the plaint?OPP
- (2) Whether the sale deed dated 06.06.1988 executed by the defendants No.1 and 2 in favour of defendant No.3 is illegal, null and void and not binding on the rights of the plaintiff?OPP
- (3) Whether the suit is not maintainable in the present form? OPD
- (4) Whether the plaintiff has no locus standi to file the present suit ?OPD
- (5) Whether the defendants are entitled to special costs? OPD
- (6) Relief.

8. While deciding issue No.1 and 2, learned Additional Civil Judge observed as follows:-

No.356 dated 04.06.1988 against defendants No.1 and 2, an injunction order was passed restraining the defendants from alienating suit land. During the operation of that injunction order, sale deed dated 06.06.1988 was executed by defendants No.1 and 2 in violation of provisions of Section 52 of Transfer of Property Act (later referred to as 'T.P. Act'), as such, the transfer being in breach of mandatory provisions of law is bad in the eyes of law.

(ii) Defendants No.1 and 2 have admitted that suit land was sold by them in favour of plaintiff vide agreement dated 09.06.1972 for sale consideration of ₹800/-. The entry of this transaction is incorporated in the revenue record. Even at the time of sanctioning mutation in favour of defendant No.3 on the basis of sale deed dated 06.06.1988, it was specifically recorded that possession has not been transferred in favour of defendant No.3.

(iii) In view of above facts, sale deed dated 06.06.1988 is a result of fraud, misrepresentation and concealment of facts, as such, is set aside.

9. The first Appellate Court also dismissed the appeal filed by appellant-defendant No.3 Rohtash with the observations as follows:-

(i) Possession of the suit land on the basis of sale deed dated 06.06.1988 was not delivered to the appellant.

(ii) Defendants No.1 and 2 have admitted the sale of disputed plot in favour of plaintiff for consideration of ₹800/- vide agreement dated 09.06.1972.

(iii) Defendants No.1 and 2 have also admitted delivery of possession to the plaintiff under the agreement dated 09.06.1972.

(iv) Plaintiff is also shown in possession of the disputed plot in the

jamabandi for the year 1987-88 and khasra girdwari from *kharif* 1989 to *kharif* 1991.

(v) In the mutation sanctioned in favour of defendant No.3 Rohtash, it was specifically mentioned that he has not been delivered possession of the suit land.

(vi) Sale deed in favour of defendant No.3 was got executed during pendency of the suit and injunction order in favour of Asharfi wife of plaintiff.

(vii) Leela Ram and Ratni were not competent to execute the sale deed of the disputed plot in favour of defendant No.3 as they have already sold this land to plaintiff vide agreement dated 09.06.1972.

10. Learned counsel for the appellant has argued that finding of the Courts below are not only against the settled propositions of law but are perverse and liable to be set aside. Section 53-A of T.P. Act protects possession of a transferee under agreement only if he proves that he has done some act in furtherance of the contract and willing to perform his part of the contract. Secondly, it bars the transferor or any person claiming under him 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. This shows that protection of Section 53-A T.P. Act is available only as defence when the transferee or any other person claiming under him enforces their right against the transferee in possession of the immovable property under an agreement. The suit of the plaintiff claiming protection of Section 53-A T.P. Act is not maintainable.

The Courts below have taken note of the fact that the sale deed in favour of

appellant Rohtash is bad in view of the suit filed by Asharfi wife of plaintiff in which some injunction order has been passed. Asharfi had no right, title or interest in the suit property and she had withdrawn the suit filed by her, as such, provisions of Section 52 T.P. Act are not at all attracted to the sale deed executed by defendants No.1 and 2 in favour of appellant. At the time of execution of the sale deed, defendants No.1 and 2 were recorded owners of the suit land. The plaintiff has not become owner of the same, as such, findings of the courts below declaring the plaintiff to be owner in possession of the suit land is not sustainable in the eyes of law. The courts below have set aside the sale deed dated 06.06.1988 on the ground that it is result of fraud, misrepresentation and concealment of facts without evidence on record to this effect. Defendants No.1 and 2 though have taken a plea in the written statement that they intended to sell some other plot and instead of suit plot and present sale deed was got executed with regard to plot in dispute, but have not produced any evidence in support of their contention. Even the details of the plot which they intended to sell, has not been disclosed. The sale deed in favour of appellant is valid for all intent and purposes. Findings of the Courts below that plot in question was sold to the plaintiff, on the basis of writing dated 09.06.1972 are erroneous as title of the immovable property worth more than ₹100/- cannot be transferred except through a registered document.

11. Learned counsel for plaintiff-respondent No.1 has argued that the execution of the writing dated 09.06.1972 is duly proved. Even defendants No.1 and 2 have admitted this writing and delivery of possession. The entire sale consideration was paid to defendants No.1 and

2, who delivered possession of the disputed plot in favour of plaintiff and this fact was also incorporated in the revenue record. Learned counsel for the plaintiff-respondent No.1 has fairly conceded that writing dated 09.06.1972 does not confer any title of the disputed plot but after the payment of entire sale consideration, possession was delivered to the plaintiff and he is entitled to protection of his possession under Section 53-A of T.P. Act as after paying the entire sale consideration, plaintiff was not required to perform any part under the agreement. It was only the sale deed which was required to be executed in his favour, which defendants No.1 and 2 could execute at any point of time. The appellant was aware about the transaction in between the plaintiff and defendants No.1 and 2 as it was incorporated in the revenue record. Even if, it be believed that plaintiff could not file any suit as per provisions of Section 53-A of T.P. Act, still keeping in view the fact that he is in possession of the suit land, relief of permanent injunction restraining defendant No.3 from interfering in his possession could be allowed.

12. Keeping in view the facts of the case, findings of the Courts below and arguments of learned counsel for the parties, I find that following ***substantial questions of law***, arise for determination in this appeal:-

- (i) ***Whether sale of suit property in favour of appellant vide sale deed dated 06.06.1988 is hit by principle of lis pendens?***
- (ii) ***Whether the suit is maintainable as per provisions of Section 53-A of T.P. Act?***
- (iii) ***Whether the plaintiff could be declared owner in possession of the suit property on the basis of writing dated 09.06.1972?***
- (iv) ***Even if writing dated 09.06.1972 by defendants***

No.1 and 2 in favour of plaintiff is proved, whether sale deed dated 06.06.1988 executed by them in favour of appellant can be set aside?

- (v) *Whether the findings of learned Addl. Civil Judge (Sr. Divn.), Mahendergarh that sale deed dated 06.06.1988 is a result of fraud, misrepresentation and concealment of facts, is based on any evidence on record?*
- (vi) *Whether the plaintiff can be allowed the relief of injunction restraining the defendants from interfering in his possession?*

Substantial question No.(i)

Whether sale of suit property in favour of appellant vide sale deed dated 06.06.1988 is hit by principle of lis pendens.

13. Sale deed dated 06.06.1988 was executed during pendency of the suit filed by wife of plaintiff Sanwal Ram against defendants No.1 and 2 Leela and Smt. Ratni. This fact is not disputed that Smt. Asharfi wife of plaintiff Sanwal Ram had filed a suit for injunction against Leela and Smt. Ratni (defendants No.1 and 2 in civil suit) on 04.06.1988, wherein an interim injunction order was passed restraining defendants Leela and Ratni from interfering in the peaceful possession of Asharfi over the suit property and also from alienating the same, till further orders. Admittedly, that suit was withdrawn by Asharfi and no final order was passed in that suit on merits. During the pendency of that suit, sale deed in question dated 06.06.1988 pertaining to the property, which was subject matter of suit filed by Asharfi, was executed by Leela and Smt. Ratni in favour of appellant Rohtash. The Courts below have taken note of this fact and learned Additional Senior Sub Judge, Mahendergarh has observed that the sale deed

in favour of appellant is in contravention of Section 52 of T.P. Act. First Appellate Court has also found the sale deed dated 06.06.1988 in “stark violation of the order passed by the Court.” The question, which arise for consideration is as to whether the sale deed executed by Leela and Smt. Ratni, defendants-respondents on 06.06.1988 is hit by the principle of lis pendens.

14. Section 52 of T.P. Act reads as follows:-

“52. Transfer of property pending suit relating thereto.— During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”

15. A bare look of the provisions of above Section shows that any

suit or proceedings, which is not collusive and in which any right to immovable property is in question, neither party to the litigation can transfer or otherwise deal with such property so as to affect the rights of opponent. To attract provisions of Section 52 T.P. Act, it is required to prove on file that :-

- “(i) a suit or proceeding in which any right to immovable property is directly or specifically in question, was pending;
- (ii) that suit was not collusive;
- (iii) the immovable property in question was transferred or otherwise dealt with by party to the suit or proceeding so as to effect the right of any other party thereto under any decree or order which may be made therein.”

16. The principle is lis pendens as contained in Section 52 above is not attracted to the present case as firstly, the suit filed by Asharfi was withdrawn and secondly, Smt. Asharfi had no right, title or interest in the suit property, which has been affected by the sale deed dated 06.06.1988. Both the Courts below have not looked into this aspect and learned Additional Civil Judge (Sr. Divn.) has committed grave error of law while observing that sale deed dated 06.06.1988 is hit by the provisions of Section 52 of T.P. Act. This substantial question of law is accordingly answered in favour of appellant and findings of Courts below, that for the violation of provisions of Section 52 T.P. Act, sale deed dated 06.06.1988 is illegal, null and void and not binding on the rights of plaintiff, are set aside.

Substantial questions No.(ii) to (v):-

17. Plaintiff-respondent No.1 had alleged that defendants No.1 and

2 vide writing dated 09.06.1972 agreed to sell the suit property to him for a sale consideration of ₹800/- and delivered the possession. Though a specific issue No.1 was framed as to “whether the plaintiff is owner in possession of the suit land to the extent of 1/2 share on the grounds mentioned in the plaint” but learned Addl. Civil Judge (Sr. Divn.), Mahendergarh without recording any finding that the execution of the Writing dated 09.06.1972 is duly proved, has observed that the sale deed executed by defendants No.1 and 2 in favour of appellant is illegal. The relevant findings of learned Additional Civil Judge (Sr. Divn.) in this regard are contained in para 15 of the judgment, which reads as follows:-

“15. Vide the written statement dt. 16.1.79, the defendants No.1 and 2 specially admitted that the suit land was sold by them in favour of the defendant No.2 vide the agreement dt. 9.2.72 for a sale consideration of Rs.800/-. Perusal of Ex.P2 (Jamabandi for the year 1987-88), Ex.P3 and P/4 (khasra girdawaris w.e.f. 25.10.84 to 10.4.92) reveals the cultivating possession of the plaintiff over the suit land and also that the defendants No.1 and 2 agreed to sell the same in his (plaintiff) favour for a sale consideration of Rs.800/-. It is worthwhile to mention here that careful study of Ex.P5 (the mutation bearing No.2022 sanctioned on 13.7.88) reveals that the possession of the suit land was not transferred in favour of Rohtash Singh (defendant No.3) at the time of sanction of mutation thereof in his favour. This justifies the claim of the plaintiff that he is in possession of the land-in-suit.

16. Thus, keeping in view the afore-said facts and circumstances, I observe that the impugned sale deed bearing No.336 dt. 6.6.88 in favour of the defendant No.3

by the defendant No.1 and 2 is the result of fraud, misrepresentation and concealment of facts and the same is hereby set aside.”

18. Firstly, this fact is to be seen as to whether plaintiff or defendants No.1 and 2 have been able to prove that sale deed dated 06.06.1988 is the result of fraud, misrepresentation or concealment of facts. Though defendants No.1 and 2 have taken the plea that they had agreed to sell some other plot within '*Lal Dora*' but appellant-defendant No.3 got executed the sale deed with regard to the disputed plot but they have not produced any evidence to prove their plea. Even defendants No.1 and 2 have not stepped into witness box to make statement in support of their plea. In the absence of any evidence that sale deed dated 06.06.1988 were got executed by defendant No.3-appellant by way of fraud, misrepresentation and concealment of facts, the findings recorded to this effect by the Courts below are not sustainable and even the first Appellate Court has not looked into this aspect while dismissing the appeal.

19. First Appellate Court has observed that the execution of the agreement is admitted by defendants No.1 and 2 and plaintiff has examined scribe and attesting witnesses to prove its execution. It was also observed that possession of plaintiff over the suit property is also proved from the statements of witnesses and entry in the revenue record. Even at the time of sanctioning of mutation as per sale deed dated 06.06.1988 in favour of appellant, a note was given that the possession of the suit property has not been transferred.

20. Learned first Appellate Court observed that :-

(i) Leela Ram and Smt. Ratni admitted sale of the land in dispute

to the plaintiff-respondent No.1 for a sale consideration of ₹800/- vide writing dated 09.06.1972 Ex.P1/A. They also admitted the delivery of possession of the suit land to the plaintiff at the time of 'sale'.

(ii) Possession of the plaintiff also find mention in the jamabandi for the year 1987-88 (Ex.P2) and *khasra girdawari* from the crop of *kharif* 1987 till *kharif* 1991 (Ex.P4).

(iii) At the time of sanction of mutation in favour of appellant on the basis of sale deed dated 06.06.1988, a specific note was given that possession has not been transferred in his favour.

(iv) The sale deed dated 06.06.1988 was executed by defendants No.1 and 2 in favour of defendant No.3-appellant.

(v) Defendants No.1 and 2 Leela Ram and Ratni were not competent to execute the sale deed dated 06.06.1988 in favour of defendant No.3-appellant as they had already sold the suit property to plaintiff Sanwal Ram, who has been in possession of the suit land since 09.06.1972 as owner and the sale dated 06.06.1988 is of no consequence and does not create any title in favour of Rohtash Singh in respect of the suit land.

21. Before proceeding further, it will be relevant to have a look on the provisions of Section 53-A of T.P. Act, which reads as follows:-

“53A. Part performance.—Where 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 2[***] where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the 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.”

2[***] The words, “the contract, though required to be registered, has not been registered, or” were omitted by Act No.48 of 2001 w.e.f. 24.09.2001. Section 12 of the Act No.48 of 2001 regarding the application of Section 10 vide which the above words were deleted, provides as follows:-

“12. Saving.--Notwithstanding anything contained in Section 6 and 10, any--

(a) right of a transferor or any person claiming under him debarred under Section 53-A of the Transfer of Property Act, 1882 immediately before the commencement of this Act shall remain so debarred as if Section 10 had not come into force in respect of such right;

22. Hon'ble Apex Court while considering scope of Section 53-A of T.P. Act, in case of ***Delhi Motor Company Vs. U.A. Basrurkar (dead)***

by his LRs and others AIR 1968 Supreme Court 794, has observed as

follows:-

“In our opinion, this argument proceeds on an incorrect interpretation of Sec. 53-A, because that section is only meant to bring about a bar against enforcement of rights by a lessor in respect of property of which the lessee had already taken possession; but not give any right to the lessee to claim possession or to claim any other rights on the basis of an unregistered lease. Section 53-A of the Transfer of Property Act is only available as a defence to a lessee and not as conferring a right on the basis of which the lessee can claim rights against the lessor.”

23. Perusal of Section 53-A T.P. Act shows that a person claiming protection of Section 53-A, has to prove that he has a contract in his favour for transfer of immovable property in writing signed by the transferor or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty. The possession has been delivered to the transferee in part performance of the contract or where he was already in possession he 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 willing to perform his part of the contract.

24. The above terms as laid down in Section 53-A of T.P. Act specifically provide that in addition to the terms of written contract, delivery of possession to the transferee, it is required to be proved by the transferee that he has done some act in furtherance of the contract and has performed or is willing to perform his part of the contract To find answer to the above vital question, I have gone through the plaint of the suit, wherein this pleading is totally missing that the plaintiff has done some act in furtherance

contract. Writing dated 09.06.1972 (Ex.P1/A) has been taken by the plaintiff as a sale deed and not an agreement to sell. Plaintiff has nowhere alleged that under this writing, he has ever asked the defendants to execute the sale deed in his favour or that he has always been ready and willing to perform his part of the contract i.e. to get the sale deed executed in his favour. There is nothing in the pleading or in the statement of Chhajju Ram PW2, who has appeared as attorney of plaintiff that after the execution of the agreement, any steps were taken to get the sale deed executed.

25. In the above facts and circumstances of the case, a question arise as to whether this writing Ex.P1/A be treated as sale deed to transfer the title of the suit property in favour of plaintiff. Answer to this question will be in negative. The object of Section 53-A of T.P. Act is to give right to the defendant to protect his possession as against the transferor. He can resist the suit for recovery of possession from him either by transferor or by any person claiming under him except only from a bona fide purchaser. It is well settled proposition of law that Section 53-A T.P. Act provides the transferee right to defend his possession under the doctrine of part performance. It creates no real right and much less deprives the transferor of ownership of the land/immovable property.

26. In this case, perusal of the agreement Ex.P1/A shows that it was not an agreement, rather it appears to be executed as a sale deed of the disputed property. The plaintiff has also referred to this document as a document of purchase of disputed property and the courts below have also termed (though wrongly) the transaction through this document as sale of the disputed plot instead of agreement to sell.

27. The legal position which emerges from the above discussion is that the plaintiff has proved the execution of the document by defendants No.1 and 2, which is in fact an invalid document of sale of plot.

28. Here, learned counsel for respondent No.1 has argued that entire sale consideration was paid by the plaintiff, possession of the suit property was delivered to him, as such, he was not required to perform any other act under writing dated 09.06.1972, hence plaintiff is entitled to protection of Section 53-A of T.P. Act.

29. Before answering the above argument, it will be appropriate to ascertain as to whether under Section 53-A of T.P. Act, plaintiff can claim that he has become owner of the property agreed to be sold to him. Section 53-A T.P. Act only protects possession and does not confer any ownership right on the transferee. The ownership right is transferred only as per the relevant provisions of T.P. Act by way of sale, gift, conveyance etc. etc. and the agreement to sell does not fall in any of such category. The consequence of above observation is that defendants No.1 and 2 namely Leela Ram and Smt. Ratni continued to be owner of the suit property even after execution of writing dated 09.06.1972 in favour of plaintiff. As the plaintiff had not claimed any relief of specific performance of the agreement Ex.P1/A, sale deed executed by defendants No.1 and 2 is a legal and valid document. It is neither hit by the principle of lis pendens nor by any principle laid down under Section 53-A of T.P. Act. As already discussed, defendants No.1 and 2 or plaintiff have utterly failed to prove that the sale deed in favour of the appellant is a result of fraud, misrepresentation or concealment of facts etc. The findings of the Courts below on this aspect is beyond pleading,

evidence on record and perverse, as such is set aside.

30. Having failed in proving that the sale in favour of appellant is hit by provisions of Section 52 of T.P. Act or the sale deed is illegal, null and void and result of fraud, misrepresentation and concealment of facts etc., the question to be seen is as to whether relief claimed by the plaintiff under Section 53-A of T.P. Act can be allowed.

31. It is well established that Section 53-A of T.P. Act provides for passive equity and not an active equity, conferring no right on the plaintiff to seek relief of injunction in a Court of Law based on Section 53-A of T.P. Act, though, he can use Section 53-A of T.P. Act to debar the transferor who has agreed to sell the property or any person claiming under him from claiming any right in respect of that property. The right conferred under Section 53-A of T.P. Act is a right available to the defendant only to protect his possession and on the basis of provisions of this Section, the defendant cannot claim any title.

32. In case of ***Kulwant Singh and others Vs. Parsada Ram 2015 (36) RCR (Civil) 689***, this Court has observed as follows:-

“25. While discussing the import of Section 53-A of Transfer of Property Act, a Division Bench of this Court (Circuit Bench at Delhi) in case of ***Sardari Lal and others Vs. Shrimati Shakuntla Devi 1961 PLR 362*** had observed as follows:-

“17. The above section has imported the English doctrine of part performance with certain distinctive features. In England the phrase “part performance” is commonly used as a short and convenient statement of the general ground upon which verbal agreements regarding real estate are re-enforced. The doctrine rests upon the principle of fraud, and proceeds upon the idea that the party has so changed his situation on the faith of the oral agreement

that it would be a fraud upon him to permit the other party to defeat the agreement by setting up the statute. The English equitable doctrine of part performance is a partial importation into India, and it is applied not generally, but within the confinement of the statute. The important limitation is, that the right conferred by section 53A is only available to a defendant to protect his possession and does not furnish a basis for cause of action. This right is restrictive in character in so far as it operates as a bar to the plaintiff asserting his title. This section contemplates that the transfer having taken place, the transferor is debarred from enforcing a right other than what is expressly provided by the contract. By applying the provisions of section 53A a person can protect his possession against a challenge contrary to the terms of the contract.

18. *In Parbodh Kumar Dass v. Dantmara Tea Co. Ltd., AIR 1940 PC 1, at page 2, Lord Macmillan said :-*

“In their Lordships’ opinion, the amendment of the law effected by the enactment of Section 53-A conferred no right of action on a transferee in possession under an unregistered contract of sale. Their Lordships agree with the view expressed by Mitter, J. in the High Court that ‘the right conferred by Section 53-A, is a right available only to the defendant to protect his possession.’ They note that this was also the view of their late distinguished colleague Sir Dinshah Mulla, as stated in Edn.2 of his treatise on the Transfer of Property Act at page 262. The section is so framed as to impose a Statutory bar on the transferor; it confers no active title on the transferee. Indeed, any other reading of it would make a serious inroad on the whole scheme of the Transfer of Property Act.”

It will thus be seen that section 53A confers no title on the transferee but permits this provision to be used in defence and not for attack.

Reference may also be made to *New Delhi Municipal Committee v. H.S. Rikhy, AIR 1956 Punjab 181 (185)*, wherein the view that Section 53A merely protects the defendant and does not confer any legal right. The right which is conferred by Section 53A is in the nature of a passive equity available only to the defendant for protection of his possession without conferring upon him any active title and on its basis the law in India does not permit him to sue. In a suit like the present the

doctrine of part performance cannot be availed of.”

26. Section 53-A was inserted in Transfer of Property Act by way of Act No.20 of 1929 on the recommendation of the Special Committee constituted by then Government of India to make recommendation whether the British equitable doctrine of ‘part performance’ be extended in India also. The Special Committee was of the view that an illiterate or ignorant buyer who had partly performed his part of contract required statutory protection. The Committee was of the further view that where a transferee in good faith takes lawful instrument i.e. a written contract would be executed by the transferor takes possession over the property, the equity demanded that the transferee should not be treated as trespasser by the transferor and subsequently evict him through process of law in the absence of lawful transfer instrument. The Special Committee also considered the question whether protection under the proposed Section 53-A to a transferee would also be available even if the period of limitation for bringing an action for specific performance of an agreement to sell has expired. On the said question, the Committee was of the view that even after expiry of period of limitation, the relationship between the transferor and transferee remains the same as it was within the period of limitation and, therefore, the possession over the property taken in part performance of an agreement is required to be protected even if the period of limitation for bringing an action for specific performance has expired.

27. The object of introduction of the above provision in the Transfer of Property Act was to overcome the difficulty faced by the transferee in possession if his claim of seeking specific performance of agreement has become barred by limitation.

28. In case of *State Bank of Bikaner and Jaipur Vs. Vijay Kumar* 1999(2) Civil Court Cases 671 (P&H), a Co-

ordinate Bench of this Court has observed as follows:-

“If all the conditions are satisfied, then lessee (or the transferee) is entitled to continue in possession, irrespective that the lease has not been registered. Section 53-A is principally for the protection of ignorant transferees who take possession or spend money in improvements relying on documents which are ineffective as transfers or on contracts which cannot be proved for want of registration. The effect of the section is to relax the strict provisions of the Transfer of Property Act and the Registration Act in favour of the transferees in order to allow the defence of part performance to be established. It can be used not for an attack but only in defence and that too in defence only against the transferor or any person claiming under him. The right conferred is one available to the defendant to protect his possession.”

29. Hon’ble Supreme Court in case of ***Raheja Universal Limited Vs. N.R.C. Limited and others*** 2012(2) **R.C.R. (Civil) 506**, has observed as follows:-

“47. The provisions of Section 53A of 1882 Act recognise a right of a transferee, where a transferor has given and the transferee has taken possession of the property or any part thereof. Even this provision does not create title of the transferee in the property in question but gives him a very limited right, that too, subject to the satisfaction of the conditions as stated in Section 53A of the Act of 1882 itself. In the case of State of U.P. v. District Judge (supra), this Court, while deliberating upon the rights emerging from Section 53A of the Act of 1882, held as under:

“... That protection is available as a shield only against the transferor, the proposed vendor, and would disentitle him from disturbing the possession of the proposed transferees who are put in possession pursuant to such an agreement. But that has nothing to do with the ownership of the proposed transferor who remains full owner of the said land till they are legally conveyed by Sale Deed to the proposed transferees.”

30. In case of ***Delhi Motor Company and Ors Vs. U.A. Basrurkar (Dead) by his legal Representative and Ors*** 1968 AIR (SC) 794, a Three Judges Bench of Hon’ble Supreme Court has observed that protection of Section 53-A is available as defence and does not confer a right on the basis of

which a claim can be raised. Similar observations were made by Hon'ble Supreme Court in case of ***Biswabani Pvt. Ltd. Vs. Santosh Kumar Dutta 1980 (1) SCC 185.***

31. Perusal of Section 53-A of Transfer of Property Act shows that in order to defend or protect his possession, the transferee has to fulfil following conditions:-

- 1) *there must be a contract to transfer for consideration any immovable property;*
- 2) *the contract must be in writing, signed by the transferor, or by someone on his behalf;*
- 3) *the writing must be in such words from which the terms necessary to construe the transfer can be ascertained;*
- 4) *the transferee must in part performance of the contract take possession of the property, or of any part thereof;*
- 5) *the transferee must have done some act in furtherance of the contract; and*
- 6) *the transferee must have performed or be willing to perform his part of the contract.*

32. In the light of the above proposition of law, it is to be seen as to whether the respondent-plaintiff was competent to file suit for injunction and seek the protection of Section 53-A of Transfer of Property Act. One of the ingredients required for seeking protection of Section 53-A of Transfer of Property Act is that he has performed or is ready and willing to perform his part of contract. There is no evidence led by the plaintiff to this effect. As such, he is not entitled to seek protection under Section 53-A of Transfer of Property Act firstly due to the non-fulfilment of the condition incorporated therein; secondly, protection under Section 53-A of Transfer of Property Act can be used not for an attack but only in defence. The right conferred is one available to the defendant to protect his possession.”

33. From the above discussion, it is apparent that suit filed by Sanwal Ram claiming protection under Section 53-A of T.P. Act is not

maintainable. It is also proved that he has not taken any step in furtherance of writing dated 09.06.1972, which is claimed as agreement to sell. A bare reading of this writing shows that it was not an agreement but was a sale deed. Text of this writing (when translated in English) reads as follows:-

“Subject: About purchase of plot abadi in khasra No.591, Mauja Baghot.

*Today on 09.06.1972, Shri Leelu Ram son of Sarti and Ratna daughter of Sarti resident of Baghot Tehsil and District Mahendergarh have sold half share of abadi plot No.591 measuring 19 marlas adjoining the plot of Nathu son of Ram Dutt on one side for a sum of ₹800/- (Rupees Eight Hundred), half of which is ₹400/- (Rupees Four Hundred) to Sanwal Ram son of Sheo Narain Gujjar resident of Baghot, Tehsil and District Mahendergarh. **It is a complete and absolute sale.** In the above plot, no other share-holder has any concern or right to interfere in possession. This writing has been got scribed by Leelu son and Ratni daughter of Sarti after receiving ₹800/- (Rupees Eight Hundred) from Sanwal Ram son of Sheo Narain Gujjar resident of Baghot in presence of Chhattar Singh (sic) and Shri Chandan Singh son of Ganpat, Gujran, resident of Bhiwari, Tehsil Tijara, District Alwar in their full senses. This writing has been scribed on Government Stamp papers in order to create evidence and to use it as and when required.*

There is no cutting in this writing.

*Thumb impressions of
Leelu Ram and Ratna*

*Scribe
Hari Ram, Bhiwari.*

*Witnesses:
Chhattar Singh, and
Chandan Singh.*

Bharat Singh, Lamberdar.”

34. The plaintiff has not taken any step in furtherance of this writing as it was taken as document of sale of plot. In plaint and evidence, this writing was presenting and referred as document of sale of plot. It is also recited in the writing that plot has been sold to plaintiff. Even Courts below have referred to this as document of sale. The transaction of immovable property worth more than ₹100/- can be made by a registered document. This finds support from the observations of Hon'ble Apex Court in case of ***Guman Singh and others Vs. Manga Singh (D) by LRs and others 2016 (3) RCR (Civil) 592***, wherein, it has been observed as follows:-

“From the facts narrated above, it becomes manifest that the purported sale deed dated 02.05.1966 was never registered and remained an unregistered document. Even as per the appellants, consideration for the suit land was Rs.9000/-, i.e., more than Rs.100. The transaction pertains to immovable property. Such a sale deed was compulsorily registrable under Section 17 of the Indian Registration Act. The consequence of non-registration are provided in Section 49 thereof. Such document cannot be led into evidence and no rights indicated in the said document can be pressed and claimed. The document can be seen only for collateral purposes. In the instant case, on the basis of the said document, the appellants are claiming ownership which cannot be countenanced. Thus, the appellants cannot claim that they had become owners of the suit land on the basis of document dated 02.05.1966. Insofar as rights claimed on the basis of Section 53A of the Act are concerned, that deals with only part-performance. It has been held by this Court in ***'Ranchhoddas Chhaganlal v. Devaji Supdu Dorik' [1977 (3) SCC 584]*** that the plea of Section 53A of the Act can be taken only in defence.”

35. In view of the above legal position, plaintiff Sanwal Ram is not entitled to claim any relief under Section 53-A of T.P. Act. It, however, appears that the plaintiff has not even filed suit claiming relief under Section 53-A of T.P. Act. He had rather filed suit for declaration of his ownership and possession over the suit property. Though, he is proved to be in possession of the suit property, he is not owner of the same. He has further sought the declaration of his entitlement to get his name to be incorporated in the column of ownership in the revenue record. As the plaintiff is not owner of the suit property, he cannot be allowed any such relief as well. The claim of the plaintiff is based on the writing dated 09.06.1972 and he has alleged that he purchased the suit land vide this writing. As already discussed, this writing being unregistered document, is not a deed of transfer of the title of the immovable property. The claim of the plaintiff that sale deed dated 06.06.1988, is illegal, is without any basis and this sale deed was executed by defendants No.1 and 2, when they were owner of the suit land.

36. As a result of above discussion, substantial questions No.(ii) to (v) taken together are answered in favour of appellant.

Substantial question No.(vi) :-

37. Admittedly, plaintiff is in possession of the suit land. Even if, he has no title over the suit land; is not entitle to protection of Section 53-A of T.P. Act, he is entitled to the relief of injunction to protect his possession. This substantial question is decided accordingly in favour of plaintiff-respondent No.1.

38. As a sequel of my above discussion, this appeal is disposed of

in following terms:-

(i) Suit of plaintiff Sanwal Ram claiming to be owner of the suit property and seeking declaration that he be permitted to get his name incorporated in the revenue record as owner and further that the sale deed dated 06.06.1988 executed by defendants No.1 and 2 i.e. Leela Ram and Smt. Ratni in favour of appellant-defendant No.3 is illegal, null and void and is dismissed.

(ii) However, the plaintiff is allowed relief of permanent injunction to restrain the defendants from interfering in his possession over the suit land except in due course of law.

39. Keeping in view the facts of the case, the parties are left to bear their own costs.

March 22, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***