

# Part Performance

**Azizun Nahar**  
**Lecturer**

**Department of Law and Human Rights**  
**University of Asia Pacific**

# Part Performance

---

- Doctrine of part performance is an equitable doctrine. It is also known as 'equity of part performance'. Under this doctrine, if a person has taken possession of an immovable property on the basis of a contract of sale and has either performed or, is willing to perform his part of contract then, he would not be ejected from the property on the ground that the sale was unregistered and legal title had not been transferred to him.

# Part Performance

---

- For instance, there is a contract of sale of a piece of land between A and B. The contract is in writing, stamped, attested and duly executed but not registered by A who is the seller. B, who is the purchaser, has performed or is willing to perform his part of contract i.e. has paid the price or is willing to pay the same. On the basis of such contract B takes possession of land. Now, A sells the land to C through a registered deed. C having legal title of the land, attempts to eject B. At this stage, since **B** has no legal title, law may not protect his possession but, equity shall help him from being dispossessed.

# Part Performance

---

- The doctrine of part-performance is, therefore, based on the maxim: **Equity looks on that as done which ought to have been done.** That is to say, equity treats the subject-matter of a contract as to its effects in the same manner as if the act contemplated in the contract had been fully executed, from the moment the agreement has been made, though all the legal formalities (e.g. of registration) of contract have not been yet completed.

# Part Performance

---

- Essentials of Part Performance u/s 53 of the Transfer of Property Act, 1882
- 1. There shall a contract of transfer.
- 2. The contract, certainly, shall be relating to immovable property.
- 3. The contract must be in writing.
- 4. The contract must be signed by the transferor or by his agent.
- 5. The contract shall be made for consideration.

# Part Performance

---

- ⑥ 6. The conditions of the contract shall be determinable with reasonable certainty.
- ⑦ 7. Transferee must have to take possession fully or partially or if already in possession must have to remain in possession.
- ⑧ 8. The contract shall be performed partly. Conferring possession, for the purpose of this section shall be treated as part performance.



# Part Performance

---

- ⑨ 9. Further actions shall have to be performed in accordance with the stipulations of the contract.
- ⑩ 10. Parties must have to agree to fulfill remaining acts.
- ⑪ 11. The registration of the contract to transfer property must be compulsory.

# Part Performance

---

- Purposes/ Effects of Section 53 A
- 1. To protect the transferee from being defrauded.
- 2. Restraining the transferor from taking unlawful advantage.
- 3. Allowing the transferee to possess the property though the transfer deed is not executed properly.
- 4. Preventing the transferor or his heirs to repudiate the transfer.



# Part Performance

---

- **Scope and Application of Section 53A**
- 1. This section is applicable to transfer of immovable property.
- 2. This section is applicable solely to written contract, not to oral contract.
- 3. Contract must be for consideration.
- 4. Section 53 A is only applicable to those suits filed under 01 April, 1930.
- 5. Other rules already mentioned under the heading 'essentials'.

# Part Performance

---

- ◉ Limitations of Section 53A

- ◉ 1. Section 53 A is only binding upon the transferor or his heirs, not upon others.
- ◉ 2. This section shall not affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.
- ◉ 3. This section is not applicable to oral transfer.

# Part Performance

---

- Analysis of Sections 53B, 53C, 53D, 53E
- 1. No immovable property under a contract for sale (*Bayna*) can be transferred. (Section 53 B)
- 2. If an owner's name is not appeared in respect of the property in the latest khatian (when he is the owner of the property otherwise than by inheritance) or if his name or the name of his predecessor is not appeared in the latest khatian (when a person acquires ownership by inheritance) property cannot be transferred. (Section 53C)

# Part Performance

---

- ③ 3. No immovable property under registered mortgage shall be re-mortgaged or sold without the written consent of the mortgage. (Section 53D)
- ④ 4. Every instrument of sale, gift, mortgage and declaration of hebe of any immovable property shall be supported by an affidavit by the executant affirming that he has lawful title to the property. (Section 53 E)