INDIALAW



CIVIL

Supreme Court: Lays down principles to invoke Section 53A of Transfer of Property Act, 1882

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The Division Bench comprising of Justice J.B. Pardiwala and Justice R. Mahadevan of the Hon'ble Supreme Court ("**SC**") in the case of, *Giriyappa and Anr. v. Kamalamma and Ors*[1], explained the conditions to invoke section 53A of Transfer of Property Act, 1882[2].

In the instant matter, the SC was hearing an appeal arising from an order of the Hon'ble Karnataka High Court ("**HC**") passed in Regular Second Appeal No.1740/2008, in which the appeal filed by the Petitioners (the original Defendants) was dismissed, thereby upholding the judgment and order of the First Appellate Court as well as the decree of the Ld. Trial Court. The Petitioners (original Defendants) filed a Regular First Appeal, which was also dismissed, as was their Second Appeal before the HC.

The contentions of the Petitioners were that although the Respondents (original Plaintiffs) may be the rightful owners of the suit property, they executed a sale agreement on 25th November 1968, agreeing to sell 2 *guntas* of land from Survey No. 24/9 for a total consideration of Rs. 850/-. The Petitioners assert that, based on the aforesaid agreement, they have been in continuous possession and enjoyment of the property since that time. However, the HC dismissed the second appeal. The HC was of the view that, the Ld. Trial Court and the First Appellate Court, after thoroughly examining the oral and documentary evidence, concluded that the Defendant failed to prove the execution of the Sale Agreement dated 25th November, 1968 by the Plaintiff, and that the Defendant was put in possession of the property under it.

Conversely, the Plaintiff demonstrated that he constructed a shed on the suit property in 1982 – 1983, and that the Defendant illegally occupied it in 1983 – 1984. The Defendant had also sought occupancy rights before the Ld. Land Tribunal, Tumakuru, which was dismissed on 15th May 1987, and this order attained finality.

Both courts' findings are consistent with the evidence presented, and no perversity is found in their judgments. Since the Defendant failed to prove the execution of the sale agreement or that they gained possession under it, the question of protection under section 53A of the Transfer of Property Act, 1882 does not arise. Therefore, the SC's ruling in *Shrimant Shamrao Suryavanshi**[i]*** is not applicable in the present case.

Subsequently, after deliberating on the facts of the instant case, the SC went on to lay down the prerequisite to invoke section 53A of the Transfer of Property Act, 1882:-

1. There is a contract in writing by the transferor for transfer for consideration of any immovable property signed by him or on his behalf, from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty;
2. 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;
3. The transferee has done some act in furtherance of the contract and has performed or is willing to perform his part of the contract.

In accordance with the provisions outlined above, the SC was of the opinion that, if the specified preconditions are met, the transferor or any person claiming through them shall be barred from asserting any claim against the transferee or anyone claiming under the transferee, in respect of the property that the transferee has taken or continues to possess, except for any right that is expressly provided for in the terms of the contract. This applies even if the transfer has not been completed in the manner prescribed by the applicable laws at the time. However, an exception to this bar is made for a transferee who has paid consideration and has no knowledge of the contract or of its partial performance.

As per the provision of section 53A of the Transfer of Property Act,1882 was introduced primarily to resolve conflicting views and, more importantly, to protect transferees. The section aims to relax the strict requirements of the Transfer of Property Act,1882 and the Registration Act,1908 in favour of transferees, allowing them to invoke the defence of part performance. Further, section 53A represents an exception to the general requirements that a contract be in writing and registered, and that such contracts cannot be proved by any other form of evidence. As a result, this exception must be interpreted narrowly. In light of the foregoing, the SC dismissed the Special Leave Petition.

In author's view, the Hon'ble Supreme Court's ruling in the present case shows the need for statutory requirements as prescribed under section 53A of the Transfer of Property Act, 1882 to invoke its protection. The Hon'ble Supreme Court rightly emphasized that mere possession or a sale agreement without clear proof of execution, possession in part-performance of the contract, or the transferee's acts furthering the contract, is insufficient to invoke section 53A. The ruling clarifies that the section provides protection to transferees only when these preconditions are met. The present decision reaffirms that the provision must be narrowly interpreted, particularly when the Defendant has failed to substantiate the execution of the sale agreement or possession under it.

[1] Special Leave Petition (Civil) No.30804 of 2024, decided on 20th December, 2024.

[2] 53A. Part performance.– Where any person contracts to transfer for consideration any immoveable 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***, or, 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.

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[i] 2002 (3) SCC 676.