

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

SECOND APPEAL No. 811 of 2004

BHAGWAN

Versus

MANI BAI

Appearance:

Shri G.M.Agrawal – learned counsel for the appellant.

Shri Palash Choudhary, learned counsel for the respondent.

(RESERVED ON 20/8/2024)

(JUDGMENT PRONOUNCED ON 20/11/2024)

1. This appeal under Section 100 of the Code of Civil Procedure has been preferred by defendant No.1 being aggrieved by the judgment and decree dated 27/9/2004 passed in Civil Appeal No.23-A/2004 by the 4th Additional District Judge, District Dewas whereby the judgment and decree dated 21/4/2004 passed in Civil Suit No.24-A/2003 by the 2nd Civil Judge, Class I, Dewas has been set aside and plaintiff's claim has been decreed for declaration of title and possession.
2. As per the plaintiffs, Umrao Singh, husband of plaintiff No.1 and father of plaintiffs No.2 and 3 was the owner of the suit land bearing Survey No.551/2, Gram Khokariya, Tehsil and District Dewas. He has since expired on 28/6/2002. About five years ago, he had borrowed a sum of Rs.18,000/-

from defendant No. 1. A document was also executed between them wherein it was agreed that till Umrao Singh would not return the amount, defendant No.1 would continue to reap the crops sown over the suit land. The suit land had in fact been mortgaged by Umrao Singh in favour of defendant No. 1. In 2001, plaintiff No.2 agreed that he would pay the loan amount to defendant No.1 by the June of next year. On 2/6/2002 plaintiff No.2 requested defendant No.1 to take Rs.30,000/- from him and to permit him to cultivate the suit land. The defendant No.1 however denied to do so and stated that since he has an agreement in his favour he shall get executed sale deed with respect to the suit land. Due to the aforesaid acts of defendant No.1 Umrao Singh expired but defendant No.1 has still retained possession of the suit land.

3. Contending aforesaid, on 30/11/2002 the plaintiffs instituted an action for declaration of their title to the suit land, for possession of the same and permanent injunction subsequent thereto and for damages in the sum of Rs.6000/-.

4. The defendant No.1 contested the plaintiff's claim by filing his written statement submitting that on 12/12/1986 Umrao Singh had sold Survey No.551/2 in his favour for a consideration of Rs.31,500/- and had delivered possession of the same to him. Umrao Singh had assured him that he would execute registered sale deed with respect to the suit land in his favour but he did not do so despite repeated requests having been made to him in that regard. The defendant No.1 has even otherwise acquired title to the suit land by virtue of adverse possession being in possession for a period of more than 16 years. No transaction of mortgage was ever executed between Umrao Singh and him and instead it was a sale transaction and upon death of Umrao Singh, plaintiffs have unnecessarily raised the present dispute.

5. By judgment and decree dated 21/4/2004 the trial Court held that plaintiffs have not proved that any transaction of mortgage took place between

Umrao Singh and defendant No.1 and instead defendant No.1 has proved that on 12/12/1986 Umrao Singh had taken a sum of Rs.31,500/- from him by way of loan and had executed an agreement in his favour and had also delivered possession of the suit land to him. Defendant No.1 has failed to prove that he has acquired title to the suit land by virtue of adverse possession and instead is in possession by virtue of agreement to sale dated 12/12/1986. In consequence plaintiff's claim was dismissed.

6. In appeal by plaintiffs, by the impugned judgment and decree the lower appellate Court has held that on 12/12/1986 Umrao Singh had executed an agreement to sale in favour of defendant No.1 upon obtaining a sum of Rs.31,500/- from him and had delivered possession of the suit land to him, that defendant No.1 has never taken any steps for execution of registered sale deed in his favour and that he is not entitled to the protection of his possession under Section 53A of the Transfer of Property Act and plaintiffs are entitled to recover possession of the suit land from him on strength of their title. In consequence allowing the appeal, plaintiff's claim has been decreed.

7. By order dated 28/4/2005 the instant appeal has been admitted for hearing on the following substantial question of law :-

“Whether the lower appellate Court was justified in denying the benefit of Section 53-A of the Transfer of Property Act to the appellant in a suit filed by the respondents ?.”

8. Learned counsel for defendant No.1 has submitted that defendant No.1 had obtained possession of the suit land from Umrao Singh after payment of the entire sale consideration of Rs.31,500/- on 12/12/1986. Thereafter, he has made substantial construction and improvements thereupon. He is entitled for protection of his possession under the doctrine of part performance of contract as envisaged under Section 53A of Transfer of Property Act, 1882 (hereinafter referred to as 'the Act') even though he has not filed any claim for specific

performance of contract and which claim has also become barred by time. The conditions necessary for availing the benefit under Section 53A of the Act have been fulfilled by defendant No.1. The impugned judgment and decree passed by the lower appellate Court hence deserve to be set aside. Reliance in this regard has been placed upon the decisions of the Apex Court in **Shrimant Shamrao Suryavasnhi & Ors. V/s. Prahlad Bhairoba Suryavanshi by LR's & Ors.** 2002 (3) SCC 676, **Mahadeva & Ors. V/s. Tanabai,** AIR 2004 SC 3854, **Santram Dewangan V/s. Shivprasad,** SLP No.34421/2016 decided on 18/4/2020 and **Union of India & Ors. V/s. K.C. Sharma & Co. & Ors.** (2020) 15 SCC 209. It is further submitted that defendant No.1 was always ready and willing for execution of the sale deed in his favour and had paid the full price for the same but it is Umrao Singh who did not execute the sale deed in his favour.

9. Per contra, learned counsel for the plaintiffs has submitted that defendant No.1 is not entitled for protection of his possession under the doctrine of part performance as envisaged under Section 53A of the Act. No steps were ever taken by defendant No.1 for execution of the sale deed in his favour. Merely for the reason that he had paid the full amount of alleged sale consideration to Umrao Singh, he is not entitled to retain his possession. For protecting such possession the essential ingredients of Section 53A of the Act were required to be fulfilled by defendant No.1 which he has failed to do. The appeal hence deserves to be dismissed. Reliance has been placed by him upon the decision of the Apex Court in **A. Lewis & Ors. V/s. M.T. Ramamurthy & Ors.** (2007) 14 SCC 87, **Shrimat Shamrao Suryavanshi & Ors. V/s. Prahlad Bhairoba Suryavasnhi by LR's. & Ors.,** (2002) 3 SCC 676 and of this Court **Bhavuti (Decd. Through LR's) V/s. Alam & Ors.** ILR 2013 M.P. 2670 and **Bajesingh & Ors. V/s. Leelabai & Ors.,** ILR 2023 M.P. 1218.

10. I have considered the submissions of the learned counsel for the parties

and have perused the record.

11. The defendant No.1 is seeking protection of his possession over the suit land on strength of doctrine of part performance as contained in Section 53A of the Act which is as under :-

“53A. Part performance.— Where any person contracts to transfer for consideration any immovable property by writing signed by him on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in 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.] ,”

12. Section 53A as aforesaid provides protection to a transferee who in part performance of contract has taken possession of the property even if limitation for him to bring a suit for specific performance has expired. However, for seeking such protection the transferee is required to fulfill certain conditions which have been enumerated by the Apex Court in the decision of ***Shrimant Shamrao Suryavasni & Ors*** (supra) in which it has been held as under :-

“16. But there are certain conditions which are required to be fulfilled if a transferee wants to defend or protect his possession under [Section 53-A](#) of the Act. The necessary conditions are

- 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.”

13. The aforesaid proposition has been further reiterated by the Apex Court in the case of *Mahadeva & Others* (supra). In *A. Lewis & Ors.* (supra) it has been categorically held by the Apex Court that the existence of right to claim protection under Section 53A of the Transfer of Property Act would not be available if the transferee kept quiet and remained passive without taking effective steps. Further he must also perform his part of the contract and convey his willingness. In *Santram Dewangan* (supra) relied upon by learned counsel for defendant No.1 only the fact of delivery of possession pursuant to execution of agreement to sale was considered without considering the other necessary conditions for seeking protection under Section 53A which in view of the aforesaid judgments does not come to the aid of defendant No.1.

14. In *Bhavuti* (supra) it was held by this Court that a person is entitled to protect his possession only when he is ready and willing to perform his part of the contract and has to take effective steps for execution of the sale deed. It was held as under :-

“7. The provisions of [Section 53A](#) of the Act were considered by the Supreme Court in the case of Mohanlal (deceased)

through his LR's [Kachru and others Vs. Mira Abdul Gaffar and another AIR 1996 SC 910](#), wherein it was held that a person in possession in pursuance of the agreement for sale is entitled to protection under [Section 53-A](#) of the Act only, if he is ready and willing to perform his part of the contract. It is further held that mere statement of a person in possession of the property in pursuance of an agreement for sale, that he is ready and willing to perform his part of contract is not enough. Similar view has been taken in the case of Supreme Court in the case of [Ram Kumar Agarwal and another Vs. Thawar Das \(Dead\) through LR's AIR 1999 SC 3248](#), [Roop Singh \(Dead\) through LR's Vs. Ram Singh \(Dead\) through LR's AIR 2000 SC 1485](#), [Mool Chand Bakhru and another Vs. Rohan and Others AIR 2002 SC 812](#) and [P.T. Munichikkanna Reddy and Ors. Vs. Revamma and Others AIR 2007 SC 1753](#).”

15. Thus for claiming protection of possession under doctrine of part performance a transferee must have done some act in furtherance of the contract, and must have performed or should be willing to perform his part of the contract. The said essential conditions are mandatory and cannot be excluded or disregarded for any reason whatsoever. Merely because the transferee has obtained possession in part performance of the contract and has paid the full price to the transferor would by itself be wholly insufficient for extending the protection to him upon his failure to do some act in furtherance of the contract and having performed or being willing to perform his part of the contract.

16. In the present case, the agreement to sale was executed in favour of defendant No.1 by Umrao Singh on 12/12/1986. The suit was instituted on 30/11/2002 ie., after a period of 16 years therefrom. It has to be ascertained on the basis of conduct of defendant No.1 whether he is entitled for protection of his possession under the doctrine of part performance.

17. In his written statement defendant No.1 pleaded that after execution of the agreement to sale in his favour he kept requesting Umrao Singh for

execution of the sale deed in his favour for a period of one year but he avoided to do so. The said plea was affirmed by him in his statement as DW/6. There is no plea or proof as to what steps he took after that period for getting the sale deed executed in his favour. On the contrary it is evident that after that period defendant No.1 neither expressed nor conveyed to Umarao Singh and subsequently to plaintiffs his readiness and willingness to perform his part of the contract and to get the sale deed executed in his favour. There is no written notice by him to either of them seeking execution of the sale deed. Moreover, in his written statement defendant No.1 has not even pleaded that he has been and is still ready and willing to perform his part of the contract since the date of its execution. It is evident that after a period of one year of execution of the agreement to sale, defendant No.1 did not ever express his readiness and willingness to perform his part of the contract and never took any steps in furtherance of the same.

18. Thus, from the evidence available on record and from conduct of defendant No.1 it is apparent that he has completely failed to fulfill the essential requisites of seeking protection of his possession under the doctrine of part performance of contract envisaged under Section 53A of the Transfer of Property Act, 1882. The substantial questions of law as framed is hence answered against defendant No.1 and in favour of the plaintiffs as a result of which affirming the judgment and decree passed by the lower appellate Court the appeal deserves to be and is accordingly dismissed. No costs.

(PRANAY VERMA)
JUDGE