

### *Kumar v. Jamnalal Gadiwala*

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Kumar agreed to sell his house of six rooms (two independent units) at Pune to Jamnalal Gadiwala for a price of Rs 30 lakhs. They made an agreement of sale on 15 June 2004. Jamnalal paid Rs 10 lakhs at the time of agreement. Relevant terms and conditions of the agreement are as follows:

1. Jamnalal shall pay Rs 20 lakhs at the time Kumar hands over vacant possession of the house to Jamnalal.
2. Kumar shall hand over possession of the house to Jamnalal at the time of execution of the sale deed on 15 November 2004.
3. Kumar shall not be entitled to terminate the agreement. His only remedy shall be to receive the balance of price with 16 % interest from the date of default, subject to completion of sale-deed.
4. Kumar shall assist in registering the agreement at the request of Jamnalal, and at Jamnalal's expense.

In October 2004, Jamnalal requested Kumar for registration of the agreement. Kumar told him that they should execute the sale deed directly soon. The agreement was never registered.

Jamnalal required the house immediately because he had to vacate his rented house, and offered to pay Rs 10 lakhs of the balance amount. At Jamnalal's request Kumar gave to Jamnalal on 1 November 2004 possession of one unit of the house consisting of three rooms. Kumar gave to Jamnalal (i) a letter acknowledging that possession was given, (ii) a receipt for Rs 10 lakhs, and (iii) a declaration in writing that in terms of what he agreed (point No 3 above) he could not seek possession of the unit from Jamnalal, but would only claim balance price at the time of sale-deed on 15 November 2004.

Jamnalal kept demanding the sale deed from Kumar, but Kumar kept avoiding it.

In December 2007, Kumar filed a suit against Jamnalal in the civil court of Pune for repossession of the three rooms. Jamnalal claimed he could retain possession under the terms of their contract, and under Section 53A of the Transfer of Property Act. He also counterclaimed for permanent injunction that Kumar shall not dispossess him.

Above facts are either admitted or sufficiently proved.

Argue for Kumar and Jamnalal.

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**Study:** Transfer of Property Act and Registration Act as amended in 2001, Specific Relief Act, Limitation Act, Interpretation of Statutes.

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This imaginary problem is formulated by Nilima Bhadbhade, ILS Law College, Pune. Anyone is free to use it for non-commercial educational purposes, after acknowledging the author.

## SOME PROVISIONS OF THE TRANSFER OF PROPERTY ACT

### **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 [\*\*\*]<sup>1</sup> 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.

### **Section 54 - "Sale" defined**

"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

*Sale how made.*- Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

*Contract for sale.*-A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

## SOME PROVISIONS OF THE REGISTRATION ACT

### **Section 17 - Documents of which registration is compulsory**

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:--

....

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

....

[(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment)

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<sup>1</sup> Certain words omitted by Act 48 of 2001, section 10 (w.e.f. 24-9-2001).

Words omitted: "the contract, though required to be registered, has not been registered, or,"

Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.]<sup>2</sup>

.....

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to--

....

(v) [any document other than the documents specified in sub-section (1A)]<sup>3</sup> not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

....

Explanation.--A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.

#### **49 - Effect of non-registration of documents required to be registered**

No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall--

- (a) affect any immovable property comprised therein, or
  - (b) confer any power to adopt, or
  - (c) be received as evidence of any transaction affecting such property or conferring such power,
- unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), [\*\*\*]<sup>4</sup> or as evidence of any collateral transaction not required to be effected by registered instrument.

#### **EXTRACT FROM THE SCHEDULE TO THE LIMITATION ACT**

No	Description of suit	Period of limitation	Time from which period begins to run
<i>PART II-Suits relating to contracts</i>			
54.	For specific performance of a contract.	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
<i>PART X –Suits for which there is no prescribed period</i>			
113.	Any suit for which no period of limitation is provided elsewhere in this Schedule	Three years	When the right to sue accrues

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<sup>2</sup> Inserted by Act 48 of 2001, section 3 (w.e.f. 24-9-2001).

<sup>3</sup> Substituted by Act 48 of 2001, section 3, for "any document" (w.e.f. 24-9-2001).

<sup>4</sup> Certain words omitted by Act 48 of 2001, section 6 (w.e.f. 24-9-2001). Words omitted: "or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882,"