



PRESENTS

**3rd NMIMS
HYDERABAD
MOOT COURT
COMPETITION, 2025**

MOOT PROPOSITION

Akhil Kumar, a primary school teacher residing in the bustling city of Atlas, entered into a formal Agreement of Sale on 15.03.2023 with Surya Prakash, who is the lawful owner of a property situated in a prime locality at James Street, Church Colony, Atlas City. The subject property is an independent bungalow comprising ground plus three floors, spanning an area of 150 square yards. The agreed sale price for the property was fixed at ₹20 Lakhs. To initiate the transaction, Akhil Kumar paid an earnest amount of ₹5 Lakhs to Surya Prakash. The terms of the agreement explicitly stipulated that the balance payment of ₹15 Lakhs has to be paid by Akhil Kumar in a maximum of three installments, within a period of three months from the date of the agreement of sale. It was agreed that possession of the property would be handed over upon the execution of the sale deed. These terms were duly documented in an unregistered written agreement of sale. This unregistered agreement of sale was attested by one witness Mr. Shashi Kumar, the father of Akhil Kumar, and another witness, Mr Shukla, an NRI and a childhood friend of Surya Prakash.

Despite Akhil Kumar's adherence to the initial terms, Surya Prakash delayed executing the sale deed, citing that the property was mortgaged to the Bank of Bulandh for a loan that was yet to be fully repaid and there was a delay in issuing a no objection certificate (NOC) from the bank. This revelation was contrary to Surya Prakash's obligation under the unregistered agreement to disclose any encumbrances on the property at the time of the transaction. On 30.06.2023, Surya Prakash assured the timeline for the execution of the sale deed to 30.08.2023, assuring Akhil Kumar via several emails that the outstanding loan would be cleared within two months.

As the delay persisted, Akhil Kumar grew increasingly suspicious of Surya Prakash's conduct. Also facing financial strain after taking a loan to pay the advance ₹5 Lakhs and being unable to meet additional living expenses, Akhil Kumar requested temporary possession of the property's third floor as a means of mitigating his financial burden.

On 01.12.2023, Akhil Kumar filed a civil suit before the Junior Civil Judge Court of Atlas, seeking specific performance of the agreement to sell. In his plaint, Akhil Kumar contended that Surya Prakash had failed to disclose the mortgage encumbrance on the

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property, which constituted a breach of the agreement, hence sale could not be concluded in time and that the sale deed executed in favor of Antony was fraudulent, carried out with the intent to defeat Akhil Kumar's legitimate rights under the agreement and against Section 53 of Transfer of Property Act. He further claimed that in any given case he has part performed the agreement and under Section 53A of the TPA hence, he is legally at least entitled to retain possession of the third floor, even if the agreement was unregistered.

Surya Prakash, in his written statement, contended that Akhil Kumar had failed to pay the remaining ₹15 Lakhs within the stipulated timeline as he was struggling financially, therefore effectively terminating the agreement and that the property was sold to Antony in good faith for a higher consideration, with possession duly transferred. He also deposed that time was of the essence in the agreement and Akhil Kumar did not have the money to perform the contract, also he did not file any bank statement in the court showing his readiness to perform the contract. Moreover, he deposed that he had transferred Rs. 4 Lakhs cash back to Mr. Anil Kumar on 20.10.2023, and this suit was filed to extort money from him. He also deposed that he visited the police station to register an FIR against Mr. Anil Kumar, however, police refused to register the crime as the dispute was civil in nature. He further contended that the Agreement of Sale is an unregistered and unstamped document and hence, cannot be looked into as evidence. He claimed that email communications cannot be admitted as secondary evidence under the Evidence Act, given the primary document (the agreement) is unregistered. He further argued that Mr. Akhil Kumar relied solely on his father as a witness to prove the unregistered agreement of sale, which cannot be permitted. Surya Prakash further deposed that the third-floor occupancy granted to Akhil Kumar was based purely on humanitarian grounds as a tenant due to Akhil Kumar's financial struggles and not as part performance. He has also filed a WhatsApp photocopy with Akhil Kumar in a casual text message sent on 20.07.2023, thanking Surya Prakash for his generosity.

Antony, the subsequent purchaser, who was also made a party, argued that he was a bona fide purchaser for value, having no knowledge of the prior agreement between

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Akhil Kumar and Surya Prakash, and that he had taken possession of the property and made substantial improvements over the one year and spent over ₹ 5 Lakhs over the property in renovation works. He also presented detailed invoices and photographs documenting ₹6 Lakhs spent on renovating the property. Further, he claims that his registered sale deed should have more consideration in the eyes of the law than an unregistered document. However, Antony during his cross-examination was unable to answer the suggestion that he allegedly knew about Akhil Kumar's occupation of the third floor but chose not to conduct due diligence before purchasing the property. He also filed an affidavit from a real estate broker named Charan, stating he was unaware of Akhil Kumar's agreement or occupation during the sale. However, he failed to get Charan cross-examined.

The Hon'ble Junior Civil Judge Court of Atlas delivered its judgment on 11.05.2024, where the Court in its operative portion of the judgment concluded that:

".....It is established that Akhil Kumar entered into an agreement of sale with Surya Prakash and paid ₹5 Lakhs as earnest money. Despite the agreement being unregistered, its existence is corroborated by email communications and the testimony of Akhil Kumar's father as a witness. The unregistered agreement, while insufficient for transferring title, is admissible to establish the existence of a contractual relationship. Surya Prakash's failure to disclose the mortgage on the property was the reason for his subsequent delay in executing the sale deed constitutes a breach of the agreement. Surya Prakash's acknowledgment of Akhil Kumar's financial contribution through emails and willingness to perform his obligations further supports the claim of part performance. The evidence on record shows that Antony had constructive notice of Akhil Kumar's possession and prior agreement with Surya Prakash. Antony's failure to conduct due diligence undermines his claim as a bona fide purchaser. Antony's claim of substantial improvements to the property does not override Akhil Kumar's equitable rights under the agreement. Hence, Surya Prakash and Antony are directed to execute a sale deed in favor of Akhil Kumar, and Antony is directed to vacate the premises within 90 days.

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However, Akhil Kumar will be entitled to the relief of specific performance, subject to his payment of the balance consideration of ₹15 Lakhs within 90 days from the date of this judgment. Antony is entitled to claim reimbursement for improvements from Surya Prakash. Further, Surya Prakash is directed to bear the costs of the litigation and compensate Akhil Kumar for his breach of contract, quantified at ₹20 Thousand. Consequently, Akhil Kumar is entitled to retain possession of the third floor under Section 53A of the Transfer of Property Act, 1882 in case he could not pay the entire sale consideration within 90 days.”

Aggrieved by the Judgement, Both Antony and Surya Prakash preferred an Appeal to the District Court of Atlas, where the Hon'ble Court overturned the Judgment delivered by the trial court and held that:

“The Trial Court erred in granting specific performance based on the unregistered and unstamped Agreement of Sale. While an unregistered document may be admitted for collateral purposes, it cannot be the basis for enforcing a contractual obligation that requires registration. Further, Akhil Kumar failed to establish his financial readiness and willingness to perform his obligations under the agreement. No bank statements or credible evidence or loan approval letters from the bank were presented to demonstrate his capacity to pay the balance amount of ₹15 Lakhs. The oral tenancy arrangement and continued occupation of the third floor further undermine his claim, as they are inconsistent with the assertion of specific performance. Further, the absence of rent payment or a written tenancy agreement raises doubts about whether the occupation constitutes part performance or a separate, informal arrangement.

This casts doubt on his intent and ability to fulfill the terms of the contract.....The Trial Court's conclusion that Antony had constructive notice of Akhil Kumar's possession and prior agreement is not supported by the evidence and is based on assumptions and penalized Antony for failing to cross-examine his broker, Charan, while overlooking Akhil Kumar's inability to substantiate constructive notice beyond mere conjecture. Antony, as a subsequent purchaser, made substantial improvements to the property and acted in good faith. Penalizing him for Surya Prakash's breach is inequitable, particularly when the evidence does not conclusively prove Antony's knowledge of the prior agreement. This court

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recognizes that equitable relief is discretionary and must balance the interests of all parties. Surya Prakash conceded to this request and allowed Akhil Kumar to occupy the property as a tenant from 18.07.2023, although through an oral tenancy agreement between the parties without any rent.

Subsequently, Akhil Kumar discovered that Surya Prakash had executed a sale deed on 10.11.2023, transferring ownership of the same property to one Mr. Antony for a consideration of ₹19 Lakhs. The execution of this sale deed included handing over possession of the property to Antony. Upon learning of this breach, Akhil Kumar immediately issued a legal notice on 15.11.2023, demanding specific performance of the agreement to sell. However, the notice was returned as “no such person at the address”.

While Akhil Kumar’s grievance is acknowledged, specific performance is not an automatic remedy. For these reasons, the judgment of the Trial Court is set aside, and the appeal is allowed with no costs. Specific performance is denied to Akhil Kumar and the registered sale deed in favor of Antony is upheld as valid and enforceable.”

Aggrieved by the said order of the District Court, Mr. Akhil Kumar preferred a Second Appeal to the Hon’ble High Court for the State of Yukeshire.

The Hon’ble High Court, staying the operation of the order passed by the district court has framed the following substantial questions of law:

1. Whether the unregistered and unstamped Agreement of Sale can be admitted as evidence in a civil suit for specific performance under the Evidence Act and the Registration Act, 1908.
2. Whether time was of the essence in the Agreement of Sale?
3. Whether the sale deed executed in Antony’s favor violates Section 53 of the Transfer of Property Act as a fraudulent transfer intended to defeat Akhil Kumar’s claim.
4. Whether Akhil Kumar can invoke the doctrine of part performance under Section 53A of the Transfer of Property Act to retain possession of the third floor?
5. Whether Antony qualifies as a bona fide purchaser?

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NOTE:

1. The names and incidents used in the Moot proposition are fictitious and are used only for educational purposes.
2. Laws of Atlas are *pari materia* to the Laws of India.
3. Participants are free to frame additional issues however, the abovementioned issues need to be mandatorily dealt with.
4. Teams may also contest the framing of any Substantial Question of Law, particularly if they hold the view that a specific issue does not constitute a substantial question of law