

# Evolving Scope of Section 53A, Transfer of Property Act (1882): Part Performance in Unregistered E-Documents and Agreement to Sell

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## Abstract

Section 53A of the Transfer of Property Act, 1882 (TPA) embodies the equitable doctrine of part performance: a transferee who has acted on a contract, taken (or continued) possession and is ready and willing to perform, may defend that possession against the transferor. The provision is protective and defensive functioning primarily as a shield rather than a sword—by debarring the transferor from enforcing rights inconsistent with the contract when statutory conditions are met.

The contemporary legal challenge arises from digitisation of property transactions—e-contracts e-signatures, scanned documents, email negotiations and electronic agreements to sell—often executed quickly and sometimes left unregistered. While the Information Technology Act, 2000 (IT Act) recognises electronic records and validates contracts formed through electronic means, such recognition does not automatically satisfy property-transfer formalities that are governed by the Registration Act, 1908 and the TPA. In particular, after the Registration and Other Related Laws (Amendment) Act 2001 documents containing contracts to transfer immovable property for the purpose of Section 53A must be registered if not registered (for documents executed on or after commencement) they have “no effect” for Section 53A purposes.

Supreme Court jurisprudence has progressively clarified this tightened statutory regime: unregistered agreements may still be receivable as evidence of a contract in a suit for specific performance under the proviso to Section 49 of the Registration Act, but cannot be used to claim the statutory protection of Section 53A where registration is mandated. This doctrinal bifurcation becomes crucial for unregistered e-documents: they may be valid “contracts” under the IT Act, and admissible if properly proved as electronic evidence, yet still fail to trigger Section 53A because the property law requires registration for that specific defence.

This paper traces the statutory evolution, analyses the present legal position, and uses landmark Supreme Court decisions to evaluate whether and how unregistered electronic agreements to sell can operate in litigation—either as contractual proof (specific performance) or as a possessory defence (Section 53A). It concludes with recommendations for transactional compliance, evidentiary best practices, and policy reforms aligned with digital governance.

**Keywords:** Section 53A, part performance, unregistered agreement to sell, e-contract, electronic signatu-

re, Registration Act Section 17(1A) Section 49 proviso, electronic evidence IT Act Section 10A, specific performance, possession defence.

## Introduction (History & Definitions)

### Historical background

The doctrine of part performance originated in equity to prevent fraud and unconscionable conduct by a transferor who, after inducing a transferee to act (e.g. take possession, spend money, make improvements), seeks to repudiate the bargain by relying on formal defects. India codified this equitable principle by inserting Section 53A into the TPA via the 1929 amendment, thereby providing statutory protection to transferees who had partly performed a contract for transfer of immovable property but did not have a completed registered conveyance.

Over time, however, widespread informal property dealing, agreement-to-sell possession arrangements, and revenue/stamp evasion raised systemic concerns. The legislature responded through the Registration and Other Related Laws (Amendment) Act, 2001—introducing Section 17(1A) in the Registration Act to require registration of contracts to transfer immovable property when they are relied upon “for the purpose of Section 53A”. Parallely, the 2001 reform removed the portion of the proviso to Section 49 that earlier allowed unregistered documents to be used as evidence of part performance for Section 53A.

### Definitions and key concept

1. **“Part performance” (Section 53A TPA)** Section 53A applies where,
  - There is a written contract to transfer immovable property for consideration, signed by or on behalf of the transferor
  - Terms are ascertainable with reasonable certainty
  - Transferee has taken/continued possession in part performance and done some act in furtherance; and
  - Transferee has performed or is willing to perform their part. The legal consequence is a bar: the transferor (and persons claiming under him) are debarred from enforcing rights inconsistent with the contract against the transferee in possession, subject to the protection of bona fide transferees without notice.
2. **Shield and sword** Section 53A does not itself convey title; it protects possession defensively. The transferee typically cannot use Section 53A to claim ownership; rather, it operates to resist dispossession by the transferor when statutory conditions are met. This understanding appears consistently in Supreme Court analysis which treats 53A as a protective equity embedded in statute, not a mode of transfer.
3. **Agreement to sell** An agreement to sell is a contract for future conveyance; it is not the conveyance itself. Therefore, title generally passes only through a registered instrument of transfer (sale deed) where required by law. The Supreme Court has repeatedly warned against informal power-of-attorney sales and agreement-based transfers used to bypass registration and stamp duty, reinforcing that such devices do not substitute a registered conveyance.
4. **Unregistered e-document and e-contract** Under the IT Act, contracts formed through electronic means cannot be denied enforceability merely because they are electronic (Section 10A). Electronic signatures are legally recognised where law requires authentication by signature, if done in the prescribed manner (Section 5). However, property transfers and possessory defences are not governed

solely by contract validity; they are heavily formalised by the Registration Act and the TPA. Thus, even a valid e-contract may fail to satisfy “registration” prerequisites needed to invoke Section 53A, especially after 2001 reforms.

### **Research Objectives**

To trace the legislative evolution of Section 53A TPA and allied registration provisions post-2001. To examine whether an unregistered electronic agreement to sell can support a defence under Section 53A.

To distinguish the evidentiary admissibility of unregistered agreements (including e-documents) in suits for specific performance versus their ineffectiveness for Section 53A defence.

To analyse Supreme Court jurisprudence shaping modern application of Section 53A in contexts of informal documentation and digitization.

To propose compliance and policy recommendations for secure digital property contracting and litigation-proof documentation.

### **Research Hypothesis**

After the 2001 amendment regime, unregistered agreements to sell whether paper-based or electronic cannot be relied upon for the statutory protection of Section 53A, though they may still be admissible to prove a contract for specific performance under the proviso to Section 49 of the Registration Act, subject to proper proof rules for electronic evidence.

### **Research Methodology**

**Doctrina of Black-letter method:** statutory interpretation of Section 53A TPA, Section 17(1A) and Section 49 Registration Act, and IT Act Sections 5 & 10A.

**Case law analysis** landmark Supreme Court decisions (2002–2024) on Section 53A, agreement-to-sell transactions, registration consequences, and electronic evidence proof.

**Comparative doctrinal mapping-** pre-2001 vs post-2001 legal effects of unregistered agreements and shifting judicial emphasis on strict compliance.

**Analytical synthesis** - integration of digital contract validity (IT Act) with property formalities (Registration Act/TPA) and evidentiary rules (Section 65B jurisprudence).

**Outcome-oriented recommendations:** best practices for parties, lawyers, and registry policy makers.

### **Main Body (Law, Analysis, Statutory Definition)**

#### **1 Statutory framework of Section 53A and its conditions**

Section 53A TPA codifies part performance and imposes a statutory bar on the transferor’s inconsistent enforcement actions when the transferee satisfies specific conditions: a written signed contract with ascertainable terms; possession in part performance; acts in furtherance and performance or willingness to perform by the transferee. The provision expressly preserves the rights of a subsequent transferee for consideration without notice.

**Functional character:** Section 53A does not transfer title; it restricts the transferor’s remedies and protects possession. This explains why litigants often pair Section 53A with a suit for specific performance or other remedies 53A alone is defensive.

#### **2 The 2001 “registration turn”: Section 17(1A) and Section 49 proviso**

The most important statutory shift was effected by the Registration and Other Related Laws (Amendment)

Act, 2001. It inserted Section 17(1A) into the Registration Act, requiring that documents containing contracts to transfer immovable property for the purpose of Section 53A must be registered if executed on or after commencement; if not registered, they shall have no effect for Section 53A.

Simultaneously, Section 49’s proviso—which earlier allowed an unregistered document to be received as evidence of part performance for Section 53A was amended by omitting that specific phrase. The proviso still allows unregistered documents to be received as evidence of a contract in a suit for specific performance or as evidence of a collateral transaction, but not as evidence of part performance for Section 53A after 2001.

Practical effect:

Before 2001: courts could (in appropriate cases) accept unregistered agreements to support the defence of part performance.

After 2001: for agreements executed post-commencement, registration is a statutory gatekeeper for Section 53A unregistered contracts—paper or electronic—are legally disabled for that defence.

**3 Digitisation and unregistered e-documents means valid contract ≠ valid 53A defence**

Under the IT Act, electronic contracts are legally recognised: Section 10A provides that contracts formed through electronic means are not unenforceable merely because electronic records were used. Similarly, Section 5 recognises electronic signatures where law requires signature authentication, if done in the prescribed manner.

However, contract validity does not automatically equate to satisfaction of property-transfer formalities. The Registration Act/TPA regime imposes additional requirements when rights in immovable property are implicated—especially when invoking Section 53A. Therefore an e-agreement to sell (even digitally signed) may be a valid contract under contract law IT Act, yet

If it is unregistered, and executed in the post-2001 regime, it cannot be relied upon for Section 53A due to Section 17(1A).

**4 Evidentiary dimension: proving e-documents in court**

Even where an unregistered electronic agreement is used only to prove contract existence for specific performance, it must be proved in compliance with electronic evidence rules. The Supreme Court in Arjun Panditrao Khotkar (2020) reaffirmed that a Section 65B(4) certificate is generally a mandatory condition for admissibility of secondary electronic evidence (with nuanced treatment when original devices are produced).

This intersects with property litigation as follows: an unregistered e-agreement might be admissible (if properly proved) for limited purposes under Section 49 proviso, but still ineffective for Section 53A protection post-2001.

**5 Statutory evolution timeline (Chart/Table)**

**Table 1: Key statutory milestones impacting Section 53A and digital documentation**

Year	Reform / Development	Legal Significance for 53A / e-documents
1929	Section 53A inserted into TPA	Codifies part performance; protects possession on equity-like conditions
2000	IT Act enacted (e-records & e-signatures recognition)	Electronic records/contracts gain legal recognition (subject to other laws)

2001	Registration Amendment: Section 17(1A) inserted; Section 49 modified	Registration becomes mandatory for contracts relied on under 53A; unregistered documents lose 53A effect
2009	IT Act Section 10A in force (as per India Code)	Contracts formed electronically cannot be denied enforceability solely for being electronic
2011–2018–2024	SC clarifications (GPA sales; unregistered agreements; strict compliance)	Judicial reinforcement of formal conveyance & strict 53A conditions

### 6 Document effect matrix (Table + simple graph)


Table 2: Legal effect by document type (post-2001 baseline)

Document type	Title transfer	Specific performance (as contract evidence)	Section 53A defence	Notes
Registered sale deed	✓	✓	n/a	Primary mode of transfer
Registered agreement to sell (with possession clause)	✗	✓	✓	Can support 53A (if other conditions met)
Unregistered agreement to sell (paper)	✗	✓ (limited)	✗	Admissible for contract proof under S.49 proviso, but not for 53A
Unregistered e-agreement to sell (e-sign/email/PDF)	✗	✓ (limited, if proved)	✗	Valid contract under IT Act, but 53A barred by S.17(1A) unless registered

Graph 1 (Indicative): 53A availability score (0–3)

Registered ATS:  (3/3)

Unregistered ATS:  (0/3)

Unregistered e-ATS:  (0/3)

Registered sale deed: (not applicable for 53A; title transfers instead)

(This graph visualises the post-2001 statutory gatekeeping effect of registration for Section 53A.)

Case Studies: Landmark Supreme Court Judgments (Chart/Table/Graph included)

Case Study 1: *Shrimant Shamrao Suryavanshi v. Pralhad Bhairoba Suryavanshi* (2002) 3 SCC 676

Core issue: Whether a transferee in possession can defend possession under Section 53A even if a suit for specific performance is barred by limitation.

Holding & ratio: The Court elaborated the six essential conditions for Section 53A and held that limitation bars a suit but does not prevent a *defence* under Section 53A when conditions are satisfied.

Relevance to unregistered/e-docs: While this case is foundational on 53A essentials, it sits at the cusp of

the post-2001 environment and is frequently cited for the doctrinal “checklist.” Modern disputes involving e-agreements must still satisfy these conditions plus the post-2001 registration mandate where applicable.

Case Study 2: *Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra (2004) 8 SCC 614*

Core issue-Whether a person lacking privity of contract with the original owner can invoke Section 53A by claiming through an intermediary agreement chain.

Holding & ratio- The Court emphasised that Section 53A is available only against the transferor (or those claiming under him) within the contractual framework, and the claimant must satisfy the statutory conditions; mere possession via a chain of informal agreements is insufficient when the legal nexus is missing.

Digital relevance-In digital-era “assignment” or “nominee” arrangements done via emails/WhatsApp or unsigned PDFs, privity and proof become harder. Even if such electronic chains are contractually valid inter, Section 53A remains strict the defence is not a general possessory equity for all downstream occupants.

Case Study 3-*Suraj Lamp & Industries (P) Ltd. v. State of Haryana (2011) 1 SCC 656*

Core issue-Validity of “SA/GPA/Will” transactions as substitutes for registered conveyance.

Holding & ratio- The Supreme Court condemned the misuse of agreement/GPA/Will structures to avoid stamp duty and registration, clarifying that there cannot be a sale by GPA nor can such bundles substitute a duly registered sale deed for title transfer.

Link to Section 53A and e-docs- While Section 53A may protect possession under a properly registrable contract (subject to registration requirements post-2001) Suraj Lamp reinforces the larger policy: informal documentation cannot be a backdoor conveyance. This is directly relevant to e-transactions where parties assume that digitally executed documents “equal” transfer—Suraj Lamp reminds that conveyance formalities remain central.

Case Study 4: *Ameer Minhaj v. Dierdre Elizabeth (Wright) Issar (2018) 7 SCC 639*

Core issue-Whether an unregistered agreement to sell (executed after the 2001 amendment) is admissible in evidence, and how non-registration impacts Section 53A reliance.

Holding & ratio-The Court clarified a crucial distinction:

An unregistered agreement may still be received as evidence of contract in a suit for specific performance under the proviso to Section 49, but

If a party seeks to rely on it for Section 53A, Section 17(1A) makes registration mandatory otherwise, it has no effect for that purpose.

Digital relevance- This is the most direct doctrinal bridge to unregistered e-agreements. Even if an e-agreement is valid under IT Act Section 10A and duly e-signed, it remains an “unregistered document containing a contract to transfer” and therefore cannot trigger Section 53A post-2001.

Case Study 5- *Giriappa & Anr. v. Kamalamma & Ors. (2024 INSC 1043)*

Core issue: Reaffirmation of conditions for Section 53A whether courts were right to deny 53A protection when the alleged sale agreement and possession were not proved.

Holding & ratio:- The Supreme Court described Section 53A as a relaxation in favour of transferees but insisted it must be strictly construed; failure to prove the agreement and possession in part performance defeats the defence.

Digital relevance- In e-agreement disputes, proof is often contested: authenticity of emails, e-signatures, device logs, and digital record integrity becomes pivotal. Giriyappa’s insistence on strict proof aligns with electronic evidence jurisprudence requiring compliance for admissibility and reliability.

Recent reinforcement (Specific performance admissibility): *Muruganandam v. Muniyandi* (2025)

The Supreme Court has reiterated that unregistered documents affecting immovable property may be received as evidence of a contract in suits for specific performance under the proviso to Section 49, while not conferring title.

This supports the “dual-track” view: unregistered (including electronic) agreements may still matter for contractual enforcement, but not for Section 53A protection where registration is mandatory.

**Table 3: Supreme Court case map (Table)**

Case (Year)	Theme	Key principle for 53A / unregistered docs
<i>Shrimant Shamrao</i> (2002)	Essentials limitation +	Lists conditions; limitation doesn’t bar defence
<i>Rambhau</i> (2004)	Privity/nexus	53A not for strangers; strict statutory nexus
<i>Suraj Lamp</i> (2011)	Informal conveyance	SA/GPA/Will not substitute registered sale deed
<i>Ameer Minhaj</i> (2018)	Post-2001 regime	Unregistered contract admissible for SP, not for 53A
<i>Giriyappa</i> (2024)	Strict construction	53A must be strictly proved; failure defeats defence

**Graph 2 (Timeline “tightening”):**

2002	2004	2011	2018	2024
Checklist	Nexus	Anti-informal transfer	Registration gatekeeping	Strict proof

2002 (Checklist) —► 2004 (Nexus) —► 2011 (Anti-informal transfer) —► 2018 (Registration gatekeeping) —► 2024 (Strict proof)

**Recommendations**

Always register agreements intended to support Section 53A. If the transaction involves possession being delivered under an agreement to sell and the purchaser expects possessory protection, parties must ensure the agreement is registered (especially for post-2001 execution), because Section 17(1A) disables unregistered documents for 53A.

Treat “valid e-contract” as only the first layer; compliance is the second. An e-agreement may be enforceable as a contract under IT Act Section 10A and authenticated via electronic signature, yet still fail for Section 53A if unregistered. Transactional checklists should therefore separate: (1) contract validity, (2) stamping, (3) registration, (4) possession documentation, and (5) litigation-proof evidence trail.

Build electronic evidence readiness at the time of contracting. If parties transact digitally, store metadata and execution logs, preserve original files and audit trails, and plan for Section 65B compliance when producing electronic records. After *Arjun Panditrao*, secondary electronic evidence typically requires the statutory certificate, so a future lawsuit can fail on proof even if the underlying facts are true.

Use registered conveyance for title; avoid “GPA/Agreement bundles.” In light of Suraj Lamp, parties should avoid informal “document bundles” as substitutes for sale deeds. If the commercial intent is transfer of ownership, only a registered conveyance reliably transfers title.

For litigation strategy: choose the correct legal track.

If the agreement is unregistered: pursue specific performance and rely on Section 49 proviso for admissibility as contract evidence (subject to stamping/objections and proof).

Do not plead Section 53A as a primary defence unless registration prerequisites and strict factual elements are demonstrably satisfied.

Policy/administrative reform: States should strengthen end-to-end e-registration workflows (including secure e-sign, biometric/eKYC options, and immutable registry logs) consistent with Registration Act’s recognition of electronic maintenance of records (e.g., provisions for electronic record-keeping introduced by the 2001 amendment). This reduces fraud, improves accessibility, and aligns legal formalities with digital practice.

## Conclusion

Section 53A TPA remains a vital equitable safeguard, protecting transferees who have acted in reliance on a contract and taken possession, from opportunistic repudiation by transferors. Statutorily, it operates through a debarring mechanism: it does not vest title, but restricts the transferor’s enforcement against the transferee in possession when prescribed conditions are met.

The “evolving scope” of Section 53A, however, is less an expansion than a recalibration—from a flexible equitable remedy to a carefully gated statutory defence. The 2001 legislative reforms represent the decisive turning point: registration is mandatory for contracts relied upon for 53A purposes, and unregistered documents are expressly stripped of effect for that defence. By simultaneously amending Section 49’s proviso to remove the part-performance evidentiary route for 53A, Parliament closed the earlier doctrinal space through which unregistered agreements could support a possession shield.

Digitisation introduces a new factual texture but not a new exemption. The IT Act modernises contract formation by validating electronic means and recognising electronic signatures, ensuring that e-contracts are not denied enforceability merely for being electronic. Yet, property law formalities continue to govern the creation, transfer, and protection of interests in immovable property. Thus, an unregistered electronic agreement to sell—however well drafted or technologically authenticated—cannot, by itself, unlock Section 53A protection in the post-2001 regime.

Supreme Court decisions reinforce this structured position. Ameer Minhaj crystallises the bifurcation: unregistered agreements may still be admissible to prove a contract for specific performance under Section 49 proviso, but are ineffective for Section 53A. Suraj Lamp reaffirms that informal devices cannot substitute registered conveyance for title. Giriappa underscores strict construction and strict proof—an approach that harmonises with the modern electronic evidence discipline articulated in Arjun Panditrao, where admissibility can turn on compliance with statutory certification requirements.

Therefore, the contemporary message for digital property contracting is clear: digital convenience must be paired with statutory compliance. Parties seeking possession protection must register the underlying contract when the law mandates; those relying on unregistered electronic agreements must correctly channel claims through specific performance and meet electronic evidence requirements. This balance—between technological facilitation and formal legal safeguards—best serves certainty, fraud prevention, revenue protection, and fairness in property transactions.

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