

wordings of the relevant sections of the two Acts are not identical.

In the above case an earlier decision of WALLIS, J., in the *Corporation of Madras v. Masthan Saib* (1) was followed.

Learned counsel has also cited *Saundatti Yellama Municipality v. Shripadbhat* (2) and *Sholapur Municipality v. Shivram Bhagwant* (3). These cases also follow the reasoning in *Municipal Council, Kumbakonam v. Abbahs Sahib* (4). I do not think that the rulings cited above afford any help in deciding questions arising out of the U. P. Municipalities Act. I regret I am unable to follow them. In my opinion there is no ground to restrict the powers of the Board given under section 6 of the Act. My answer to question No. 3 is in the affirmative.

BY THE COURT:—The answer by the majority of the Judges constituting this Bench to all the three questions referred is in the affirmative.

APPELLATE CIVIL

*Before Sir John Thom, Chief Justice, and
Mr. Justice Ganga Nath*

RAM CHANDER (PLAINTIFF) *v.* MAHARAJ KUNWAR
AND OTHERS (DEFENDANTS)*

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*Transfer of Property Act (IV of 1882), section 53A—Scope—
Protection not confined to transferee when defendant in the
suit—Benefit of section available to transferee who as plain-
tiff seeks to protect the rights conferred by the section.*

The plaintiff was the lessee of a house under a registered lease which, however, was defective as it was not signed by both the parties as required by section 107 of the Transfer of Property Act. The suit was brought against a subsequent purchaser of the house on the allegation that he had, in

*Second Appeal No. 1443 of 1936, from a decree of Reyazul Hasan, Additional Civil Judge of Moradabad, dated the 23rd of May, 1936, confirming a decree of Mazhar Husain Qazilbash, Munsif of Moradabad, dated the 4th of November, 1935.

(1) (1909) 21 M.L.J. 788.

(2) (1932) I.L.R. 57 Bom. 278.

(3) (1928) I.L.R. 52 Bom. 414.

(4) (1911) I.L.R. 36 Mad. 113.

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collusion with the Municipal Board, procured the demolition of a portion of the house, and the reliefs claimed were a perpetual injunction restraining the defendant from demolishing the house or otherwise interfering with the plaintiff's rights as lessee and the restoration of the demolished portion at the defendant's cost:

Held that although the lease was defective and inoperative, the provisions of section 53A of the Transfer of Property Act applied to the case and the plaintiff had a right of suit.

The intention of section 53A of the Transfer of Property Act plainly is that the transferor is not to be entitled, merely because the transfer was invalid as the result of a non-compliance with the formalities of the law, to enforce as against the transferee a right which the deed of transfer was intended to convey. Not only are the benefits of that section open to the transferee where he is a defendant; they can be extended to him in a case in which he is a plaintiff.

In the present suit the plaintiff was not seeking a declaration of the validity of the transfer or a decree directing the defendant to perform any covenant of the transfer; what he was seeking was to debar the defendant from interfering with his possession into which he had entered with the consent of his transferor after the execution of the transfer in his favour; in other words he was seeking to protect the rights which were given to him by section 53A of the Transfer of Property Act, and there was nothing in the terms of that section to disentitle him from maintaining the suit.

Mr. S. N. Seth, for the appellant.

Messrs. Panna Lal and Shabd Saran, for the respondents.

THOM, C.J., and GANGA NATH, J.:—This is a plaintiff's appeal and arises out of a suit in which the plaintiff prayed that—

(a) A perpetual injunction may be issued to defendants Nos. 1 and 2 restraining them from doing anything towards the demolition of the house and from doing anything as might interfere with the plaintiff's rights as lessee.

(b) Defendants Nos. 1 and 2 may be ordered to restore the demolished portion of the house to its original

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condition, otherwise it may be caused to be reconstructed at the expense of defendants Nos. 1 and 2 through the court amin. In case defendants Nos. 1 and 2 do not pay the cost of construction, the house may be restored to its original condition at the expense of the plaintiff and the amount spent may be awarded to the plaintiff against the defendants Nos. 1 and 2.

This second appeal has been referred to a Bench by a learned single Judge in this Court as it is, in his opinion, one in which an important question of law is involved.

On the 8th August, 1931, Brij Lal sold a house to the defendant Maharaj Kunwar in discharge of his liability under two decrees obtained by Maharaj Kunwar on the basis of two mortgage deeds. The price of the house was fixed at Rs.8,400. The amount due under the mortgages was Rs.4,762. Out of the sale consideration the aforementioned mortgages were paid off and the balance of the sale price was paid in discharge of a debt to one Babu Ram. The sum of Rs.35 was paid in cash to the vendor.

During the pendency of the suits in which the aforementioned mortgage decrees were obtained Brij Lal executed a lease for the period of 11 years on the 30th November, 1930, in favour of the plaintiff appellant. This lease was duly registered and the appellant executed a registered qabuliat. The lease, however, was not signed by both the lessor and the lessee in accordance with the provisions of section 107 of the Transfer of Property Act. Nevertheless, although the lease was thus invalid, the appellant Ram Chander obtained possession of the subjects leased and he is still in possession thereof. The suit out of which this appeal arises was instituted when Maharaj Kunwar demolished part of the roof of the said house. It is alleged by the plaintiff that Maharaj Kunwar acting in collusion with the Municipal Board of Moradabad induced the Board

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to issue an order for the demolition of that part of the house which was occupied by the plaintiff on the ground that the building was dangerous.

The trial court dismissed the suit on the ground that it was barred by section 52 of the Transfer of Property Act. The lower appellate court has upheld the decision of the learned Munsif upon the additional ground that the lease granted to the plaintiff was invalid in view of the provisions of section 107 of the Transfer of Property Act. The lease was not signed by both parties in accordance with the provisions of the latter section.

We may dispose briefly of the contention that the suit must fail because of the provisions of section 52 of the Transfer of Property Act. It is true that the lease in favour of the appellant was executed whilst the suits on the basis of the mortgages in favour of Maharaj Kunwar were pending. The sale of the property mortgaged to the mortgagee, however, was a private sale and furthermore the entire decretal amounts under both decrees were paid out of the sale consideration. In these circumstances it cannot be maintained that the lease of the 30th November, 1930, executed by Brij Lal in favour of the appellant is invalid under the provisions of section 52 inasmuch as the execution of that lease did not affect the rights of any party to the suits upon the basis of the mortgages in favour of Maharaj Kunwar.

The main contest in this appeal centered round the interpretation of section 53A of the Transfer of Property Act. It was contended on the one hand for the appellant that having obtained possession in terms of the lease executed in his favour, being in possession and being willing himself to perform his part of the contract of lease though the lease was not signed by both parties, the respondents were not entitled to eject him by a process of law or otherwise. For the respondents upon the other hand it was contended that the

appellant could take the plea based upon section 53A of the Transfer of Property Act only in defence to a suit to eject him or to any interference with the enjoyment of his rights under the lease which was held to be invalid. He was not entitled, it was maintained, to bring a suit upon the basis of the lease and claim an order that he be left in undisturbed possession of the property leased to him; in other words that whilst the benefits of section 53A of the Transfer of Property Act were open to him if he were a defendant they could not be extended to him in a case in which he was a plaintiff.

Section 53A refers to the case of a contract by a transfer effected by a written document which has either not been registered or has not been completed in accordance with the law. In regard to such transactions the section enjoins that "then, notwithstanding that the contract, though required to be registered, has not been registered, 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."

It was contended for the plaintiff that in the present suit he was merely seeking the remedy which section 53A of the Transfer of Property Act afforded him. In other words he was seeking to debar the defendants from enforcing against him a right in respect of the property of which he had taken possession. It was maintained for the respondents on the other hand, as already indicated, that the benefits of the provisions of section 53A were only available to a party in litigation who was a defendant. In support of this contention reliance was placed on the decision in the case of *Dantmara*

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Tea Co. v. Probodh Kumar Das (1). This decision clearly supports the defendants' contention. The case is however distinguishable from the present because there the transferee sought a direct relief in support of his title. The decision appears to have been based upon certain observations of Lord MACMILLAN in the Privy Council case of *Pir Bakhsh v. Mahomed Tahar* (2). At page 659 of the judgment of the Board it is observed: "It remains to take note of the fact that since the present suit was brought the law in India has been altered by the Transfer of Property (Amendment) Act, XX of 1929, which has inserted a new section 53A in the principal Act, whereby a defendant in an action of ejectment may, in certain circumstances, effectively plead possession under an unregistered contract of sale in defence to the action. Their Lordships' views, as expressed in the present case, must therefore be understood to be referable to the state of the law before this partial importation into India of the English equitable doctrine of part performance." Learned counsel for the defendants respondents founded particularly upon the words "whereby a defendant in an action of ejectment may, in certain circumstances, effectively plead possession under an unregistered contract of sale in defence to the action." In the first place it is to be noted that the above observations of the Board are obiter; and secondly it does not at all follow from these observations that their Lordships intended to lay down that the only remedy which was open to a transferee under section 53A of the Transfer of Property Act was to plead as a defendant possession under an unregistered or invalid document. We would note further that the above observation concludes with the statement that the views of the Board, as expressed in the case, must be understood to be referable to the state of law before the introduction of section 53A into the Transfer of Property Act in 1929.

(1) (1936) 41 C.W.N. 54.

(2) (1934) I.L.R. 58 Bom. 650.

In our judgment that part of section 53A of the Transfer of Property Act which is under consideration presents little difficulty. The words appear to us to be perfectly simple and straightforward. Where a person has been party to a transfer which is invalid because the formalities of the law have not been complied with, then that person is to be debarred from enforcing, as against his transferee, any right in respect of the property of which the transferee has taken or continued in possession. In other words the intention of the legislature plainly was that the transferor was not to be entitled, merely because the transfer was invalid as the result of a non-compliance with the formalities of the law, to enforce as against the transferee, a right which the deed of transfer was intended to convey.

Now, in the present case, what is it that the plaintiff is attempting to do? He is not attempting to set up a transfer which is invalid; he has not instituted a suit for the declaration of the validity of the transfer; he has not instituted a suit in which he claims an order against the defendant directing him to perform any covenant of the transfer. What he is seeking to do is to debar the defendants from interfering with his possession into which he has entered with the consent of his transferor after the execution of a transfer in his favour. He is, in other words, seeking to defend the rights to which he is entitled under section 53A of the Transfer of Property Act. The defendants Nos. 1 and 2 in demolishing part of the property of which the plaintiff had obtained possession were acting *suo motu* with the aid of the Municipal Board of Moradabad. It is the defendants who are seeking to assert rights covered by the contract. The plaintiff seeks merely to debar them from doing so; the plaintiff is seeking to protect his rights. In a sense, in the proceedings he is really a defendant and we see nothing in the terms of section 53A of the Transfer of Property Act to disentitle him from maintaining the present suit.

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Defendant No. 3 is the Municipal Board of Moradabad. Although impleaded they did not enter appearance or contest the plaintiff's claim. Counsel on behalf of the Municipal Board, however, has appeared in appeal before us and has contended that in any event no perpetual injunction should be granted as against his clients. The Municipal Board, under section 263 of the Municipalities Act, have certain duties imposed upon them by the legislature in relation to property situated in the municipality. In certain cases, if they are satisfied that property constitutes a danger to the public, they have a right and duty to order its demolition. As the property stands at the present moment, however, we hold that the Municipal Board have no right to order its demolition. They did not appear to defend in the present suit and therefore it must be taken that at the present juncture there is no reason for an order for the demolition of the property under section 263 of the Municipalities Act. Furthermore we would observe that the learned Judge in the lower court has found that the house is in a good condition. He remarks in the course of his judgment: "The lower court's inspection note shows that beams and planks of the ceiling were as good as new and neither the ceiling nor the walls showed any sign of decay or danger of falling down."

The plaintiff has claimed Rs.100 in name of damages. The learned Civil Judge in the lower appellate court has observed at the conclusion of his judgment that if he had not held the suit barred he would have awarded the plaintiff Rs.50 as damages. We consider this sum to be a reasonable award in the circumstances.

In the result we allow the appeal and set aside the order of the lower appellate court. We grant a perpetual injunction restraining defendants Nos. 1 and 2 from doing anything towards the demolition of the house in suit and from interfering with the plaintiff's rights as a lessee. We further grant an injunction

restraining defendant No. 3 from demolishing the house so long as its condition remains as at present. We further grant a decree to the plaintiff for the sum of Rs.50 in name of damages as against defendants Nos. 1 and 2. The plaintiff is entitled to his costs against defendants 1 and 2 throughout.

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 REVISIONAL CIVIL

Before Mr. Justice Raghpal Singh

BHIM SEN (PLAINTIFF) v. RAGHUBIR SARAN (DEFENDANT)*

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 2(10)(a)—“Loan”—Promissory note merely in renewal of earlier promissory note, without any fresh advance—Whether a “loan”.

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A promissory note, merely in renewal of an earlier promissory note and without any fresh advance, is a transaction which is “in substance” a loan and is therefore a “loan” as defined in section 2(10)(a) of the U. P. Agriculturists' Relief Act.

Dharam Singh v. Bishan Sarup (1), not followed.

Mr. B. Mukerji, for the applicant.

Mr. Jagnandan Lal, for the opposite party.

RAGHPAL SINGH, J.:—The sole question for determination in this case is whether or not the transaction in question can be said to be a loan as defined by the Agriculturists' Relief Act. If the answer to this question is in the affirmative, then this revision application must fail.

The defendant executed a promissory note in favour of the plaintiff some time before the Agriculturists' Relief Act came into force. After that Act had come into force, the defendant, on the 16th of May, 1935, executed a fresh promissory note in satisfaction of the debt due on the first promissory note. The point for consideration before the court below was whether the second transaction amounted to a “loan”. The learned Judge of the court below has held that it was. On

*Civil Revision No. 458 of 1938.
(1) I.L.R. [1938] All. 29.