

# LAW OF PROPERTY

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## I INTRODUCTION

THIS YEAR more than sixty decisions have been rendered by the Supreme Court and the various High Courts on the subject of property law. Many of them have no doubt reiterated the principles previously laid down. However, some of them have focussed attention on the existing diversity of judicial opinion on several points which in due course will have to be considered and settled by the Supreme Court. For instance, in regard to the doctrine of part performance embodied in section 53A of the Transfer of Property Act, 1882 the High Courts are divided in their opinion as to whether a person in whose favour there is an agreement for transfer can as plaintiff invoke that defensive equity and claim injunctive relief for protecting his possession. The Allahabad and Andhra Pradesh High Courts are prepared to extend to him the benefit of section 53A though he is figuring as plaintiff in the action but the Rajasthan, Orissa and Punjab High Courts have taken a contrary view.<sup>2</sup>

## II GENERAL PRINCIPLES

### Definition of immovable property

The Transfer of Property Act defines immovable property negatively. Very often we have to resort to the more positive definition to be found in the General Clauses Act, 1897. To what extent growing trees are to be treated as immovable property has been coming frequently before the courts.

A contract relating to bamboo in existence and to bamboo which is to come into existence in future relates to immovable property. The bamboo

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<sup>1</sup> *Ram Chander v. Maharaj Kumar*, AIR 1939 All. 611; *Achayya v. Venkata Subbarao*, AIR 1957 AP 854.

<sup>2</sup> *Motilal v. Jaswant Singh*, AIR 1964 Raj. 11; *Padmalabha v. Appalanarsamma*, AIR 1952 Ori. 143; *Amrao Singh v. Sanatana Dharam Sabha*, AIR 1985 P & H 195.

which is to come into existence in future is a *profit a prendre* which also falls within the definition of immovale property. So it was held in *State of Orissa v. Titaghur Paper Mills Co. Ltd.*<sup>3</sup> that when a paper mill enters into such a contract with the government, the royalty payable by it cannot be subjected to purchase tax in respect of goods. Though the bamboo may be severable, the contract contemplates further nourishment from the soil and so it is to be treated as immovable property within the definition of section 3 of the General Clauses Act and section 3 of the Transfer of Property Act.

#### Notice

Explanation 1 to section 3 deals with 'notice' in the context of a registered instrument. Where the registration is effected under section 30(2) of the Indian Registration Act, 1908, the subsequent transferee acquires notice of it from the earliest date on which any memorandum of the registered instrument has been filed by the sub-registrar within whose jurisdiction any part of the property is situated. This provision cannot be invoked by a pre-emptor who has to sue within one year of the date of registration.

He cannot claim that the limitation would run only from the time of his obtaining knowledge of the transaction. This is so even if on account of neglect on the part of the registration department copies were not sent to the sub-registrar within whose jurisdiction the property was situated.<sup>4</sup>

#### Transfer: Partition whether a transfer

A partition in a joint family is not a transfer. In *V.P.R. Prabhu v. S.P.S. Prabhu*<sup>5</sup> there was a partnership between defendants 1, 3 and 5. Defendant 5 and his sons (plaintiff and defendants 7 and 8) entered into a partition and the partnership interest of defendant 5 was divided among them. The plaintiff sued for dissolution of the partnership. It was held that though defendant 5 was manager of the joint family of defendant 5, plaintiff and defendants 7 and 8, a joint family as such cannot enter into a partnership. Though a joint family is a juristic entity it is not so for all purposes. So the plaintiff cannot become a partner simply because his father, who was head of the joint family, became a partner. Further the partition deed with his father does not make the plaintiff a partner. It is not a transfer, but only a mutual adjustment of pre-existing rights. So the suit for dissolution of the partnership at the instance of the plaintiff was liable to be dismissed.

<sup>3</sup> AIR 1985 SC 1293. (Use of dictionaries in interpreting terms of a statute pointed out).

<sup>4</sup> *Vinod Kumar v. Suresh Pal*, AIR 1985 P & H 361.

<sup>5</sup> AIR 1985 Ker. 265.

**Operation of transfer**

In *Sreenivasa Pai v. Saraswati Ammal*<sup>6</sup> the Supreme Court had to construe a document by which the transferor conveyed some property to his mother-in-law in these words:

I hereby agree that you (A) and after you, your son (B) and his descendants from generation to generation for all time may hold the property and enjoy the same from this day onwards.

B predeceased A. On the death of A, the rival claimants were A's daughter and B's wife. If the settlement conferred an absolute estate on A, her daughter will be the heir. But if A had secured only a life estate, then B will have a vested remainder and B's wife will get the property on the death of A. The Supreme Court pointed out that the settlor had not given the property to *A and her heirs* though A's daughter was alive at that time. So A had obtained only a life estate. B is having a vested remainder. So on A's death, B's widow is entitled to the property.

A deed of adoption may be treated as a transfer deed or a will, as the case may be, if it makes a disposition of property. In *Md. Shaffi v. Tallai Ram*<sup>7</sup> a Mohammadan executed a document reciting that he had adopted A as his son and that A would succeed him as a natural born son. Since a Mohammadan is not entitled to make an adoption, the document could not be given effect to as an adoption deed. However, there was a disposition of property by means of that document and so the document was treated as a will. The lower courts had declined to give effect to the document. Reversing the decision the High Court allowed the appeal of A and decreed his suit.

**Transfer by ostensible owner (benami transactions)**

The principles governing the determination of the question whether a transfer is *benami* or not are summarised by the Calcutta High Court in *Raj Ballav Das v. Haripada Das*<sup>8</sup> as follows:

(i) The burden of showing that a transfer is a *benami* transaction lies on the person who is asserting that it is such a transaction.

(ii) If it is proved that the purchase-money came from a person other than the person in whose favour the property is transferred, the purchase is *prima facie* assumed to be for the benefit of the person who supplied the purchase-money, unless there is evidence to the contrary.

<sup>6</sup> AIR 1985 SC 1359.

<sup>7</sup> AIR 1985 P & H 121.

<sup>8</sup> AIR 1985 Cal. 2 at 11; *Andalammal v. Rajeswari Vedachalam*, AIR 1958 Mad. 321; (sale deed set aside as the plaintiff was the real owner and not *benamidar* for her husband and as the plaintiff executed it under coercion).

(iii) The true character of the transaction is governed by the intention of the person who has contributed the purchase-money.

(iv) The question as to what his intention was has to be decided on the basis of the surrounding circumstances, the relationship of the parties, the motive governing their action in bringing about the transaction and their subsequent conduct, *etc.*

In the light of these criteria it was held that the case of *benami* set up by the third plaintiff in the the suit for partition was not true. The plea of *bona fide* purchase for consideration from the ostensible owner without notice of the title of the real owner cannot be allowed to be taken up for the first time in second appeal.<sup>9</sup>

The distinction between a sham transaction and a *benami* transaction was discussed by the Madras High Court in *Rajammal v. Raman Kutty*.<sup>10</sup> A vendor executed a sale deed under which the vendee undertook to discharge the mortgages existing on the property and also the taxes due in respect of it, though no cash passed from the vendee to the vendor and though the encumbrances were still undischarged, the document was neither sham nor *benami*. The vendee had the legal duty to discharge the encumbrances and that was consideration for the sale deed.

#### Doctrine of feeding the grant

In *Ram Pyare v. Ram Narain*,<sup>11</sup> A who had *sardari* rights deposited on 28-10-1961 the amount necessary for acquiring *bhumidari* rights. On the same day he sold his rights to B. The certificate granting *bhumidari* rights was issued to A only on 30-10-1961. Thus on the date of sale A did not have *bhumidari* rights. So the right of B was challenged by A's son successfully in the High Court of Allahabad. On appeal by B to the Supreme Court, Chinnappa Reddy J pointed out that section 43 was attracted to this case. The subsequently-acquired title of A fed the grant made by him. So B could invoke section 43. A's son was not a *bona fide* transferee for consideration who could resist the application of that section. So the appeal succeeded and B was held entitled to the property.

Another case decided by the Supreme Court involving the application of section 43 was *B.S.D. Mahamandal, Kanpur v. Prem Kumar*.<sup>12</sup> In that case three daughters inherited their father's property for a limited estate. For convenience of enjoyment they divided the property into three shares each being in exclusive possession of one share. A, one of the daughters, sold the property in her hands to B for the necessity of the estate. Subsequently her sisters died and she got their shares also. On the death of A,

<sup>9</sup> *Drigpal Singh v. Wife of Laldharia Ojha*, AIR 1985 Pat. 110 (husband purchasing *benami* in wife's name).

<sup>10</sup> AIR 1985 Mad. 223.

<sup>11</sup> AIR 1985 SC 694.

<sup>12</sup> AIR 1985 SC 1103.

the reversioners sought to set aside the sale of A on the ground that her alienation was not consented to by her sisters (co-limited owners). On this point they succeeded in the High Court. On appeal to the Supreme Court it was pointed out that the transferees can rely upon section 43. Their alienor (A) survived her sisters and so the whole estate came into her hands. The alienation being for necessity, want of consent of the other sisters was cured by A surviving them and becoming sole limited owner. In this way by applying the provisions of section 43 the Supreme Court upheld the alienation.

#### **Alienation by co-sharer**

When a co-sharer sells his interest in a dwelling house to a stranger, the other co-sharers have a right of pre-emption under the Partition Act, 1893.<sup>13</sup> A co-sharer cannot be allowed to put up substantial construction during the pendency of a suit for partition brought by the other co-sharers.<sup>14</sup>

#### **Priority of transfer**

The registration of a document takes effect from the date of the execution of the document. This principle was applied by the Karnataka High Court in *Varadaraju Iyengar v. Lakshminarayana Setty*.<sup>15</sup> The owner executed a simple mortgage over certain sites in favour of A on 9.7.1949. This mortgage was registered only on 27.12.49. Meanwhile on 21.7.49 some of these sites were sold to the defendants. A became insolvent. The plaintiff, receiver in insolvency of A, sued upon the mortgage. The defendants contended that they were purchasers without notice and relied upon the second para of section 48 to resist the mortgage suit. The Karnataka High Court pointed out that the mortgage took effect from the date of its execution though registered later and so the defendants were bound by the mortgage.

In *Manni Devi v. Ramayan Singh*<sup>16</sup> A sued for specific performance of a contract for sale against the vendor and the subsequent purchaser. The vendor died and the suit abated against him as his legal representative was not brought on record within time. In these circumstances it was held that the suit abated as a whole and could not be conducted against the subsequent purchaser. This was because the person who was bound to execute the sale deed was only the legal representative of the vendor. The subsequent purchaser might be required to join in it but the primary obligation was only that of the legal representative. So the suit abated *in toto*.

<sup>13</sup> *Nirupama Basak v. Baidynath Parmanick*, AIR 1985 Cal. 406.

<sup>14</sup> *Rukmani v. Thirumalai Chettiar*, AIR 1985 Mad. 283.

<sup>15</sup> AIR 1985 Kant. 245.

<sup>16</sup> AIR 1985 Pat. 35.

**Doctrine of part performance**

The rent controller's court may have no jurisdiction to go into the question of eviction of the tenant where the tenant raises the defence that his possession is attributable to an agreement for sale of the premises to him.<sup>16a</sup> If the defendant does not aver that he is willing to perform his part of the agreement, he may be evicted.<sup>16b</sup>

There is a difference of judicial opinion on the question whether the defensive equity under section 53A may be pleaded by the plaintiff where he is not seeking a declaration of title but is seeking only an injunction to protect his possession against the defendant. The High Courts of Allahabad<sup>16c</sup> and Andhra Pradesh<sup>17</sup> have taken the view that in such a case section 53A can be invoked even by the plaintiff as he is using it only as a defensive equity. The Rajasthan<sup>18</sup> and Orissa<sup>19</sup> High Courts have taken a contrary view and allow only a defendant to invoke the protection of section 53A. The Punjab High Court<sup>20</sup> has expressed its concurrence with the view of the Rajasthan and Orissa High Courts. No doubt the Supreme Court has held in *Mohan Lal v. State of Punjab*<sup>21</sup>: "Under our jurisprudence even an unauthorised occupant can be evicted only in the manner authorised by law. This is the essence of the rule of law". This observation, according to the Punjab High Court, should be restricted to cases where the defendant has no better title to the property than the plaintiff.<sup>22</sup> So where the defendant has his own title, the plaintiff cannot set up section 53A to claim the relief of injunction as against the defendant. In England the doctrine of part performance is treated as an active equity capable of supporting an injunctive action and even an action for declaration of title. In India it is no doubt only a passive equity. But in 1957 Subbarao J (as he then was) extended it to a case where though the transferee is figuring as plaintiff, he is seeking the aid of section 53A only for defensive purposes.<sup>23</sup> This was then hailed as a progressive step. It is respectfully submitted that the party with an agreement to purchase in his pocket should be granted the benefit of section 53A without undue regard to the question whether he is seeking as plaintiff or as defendant. This will also bring the Indian law nearer to the English law, a process to which our Supreme Court is by no means

<sup>16a</sup> *Mahendra Chandra v. Abani Bhusan*, AIR 1985 Cal. 108.

<sup>16b</sup> *Chander Mohan v. Biharilal*, AIR 1985 P & H 226

<sup>16c</sup> *Ram Chander v. Maharaj Kumar*, AIR 1939 All. 611.

<sup>17</sup> *Achayya v. Venkata Subba Rao*, *supra* note 1.

<sup>18</sup> *Motilal v. Jaswant Singh*, AIR 1964 Raj. 11.

<sup>19</sup> *Padmalabha Panda v. Appalarasamma*, *supra* note 2.

<sup>20</sup> *Amrao Singh v. Sanatan Dharam Sabha*, *supra* note 2.

<sup>21</sup> (1971) Punj. L J 338 (SC).

<sup>22</sup> *Kallappa Setti v. Lavminarayanarao*, AIR 1972 SC 2299.

<sup>23</sup> *Supra* note 17.

averse as would be clear from the celebrated case of *Govindarao v. Devi Sahani*.<sup>24</sup>

### III SPECIFIC TRANSFERS

#### Sales

*Statutory charge for unpaid purchase-money:* The statutory charge under section 55(4)(b) in respect of unpaid purchase-money cannot be claimed in the case of an invalid sale<sup>25</sup> or oral sale of property which is over Rs.100/- in value.<sup>26</sup> Further, no such charge can be claimed after the expiry of twelve years in the absence of acknowledgment.<sup>27</sup>

*Execution:* Where the seller does not sign or affix his mark on the sale deed, there is no execution of the sale deed.<sup>28</sup> A third party cannot write the name of the vendor so as to make it an effective sale deed.<sup>29</sup>

*Proof of failure of consideration:* Failure of consideration may be proved. Section 92 of the Evidence Act, 1872 is no bar to this.<sup>30</sup> If payment of full consideration money is a condition precedent, on its non-payment, the document can be cancelled.<sup>31</sup>

#### Mortgages

*Mortgages by conditional sale:* A suit lies for a declaration that a transaction is a mortgage by conditional sale and not an outright sale with a condition for reconveyance. If the transaction is a loan, it is only a mortgage by conditional sale. This inference is strengthened when the value of the property is much more than what is indicated in the document. So when the value of the property is Rs. 3,000/- and the amount advanced is only Rs. 1,000/- and ostensible sale price includes the interest payable on the advance, it is clear that the document is only a mortgage document and not a sale deed.<sup>32</sup>

*Mortgage by deposit of title deeds:* A mortgage by deposit of title deed does not require registration. It does not yield priority to a subsequent sale though the vendee had no notice of the equitable mortgage.<sup>33</sup> When that is a contemporaneous document mentioning the amount of loan, rate of interest and details of property, the document requires registration.<sup>34</sup>

<sup>24</sup> AIR 1982 SC 989.

<sup>25</sup> *Nododa Khima v. Bombay State*, ILR 1967 Guj. 323.

<sup>26</sup> *Lakshmiddevamma v. Land Acquisition Officer*, 1985 AP 200.

<sup>27</sup> *Ibid*

<sup>28</sup> *Kali Charan v. Sudhir Chandra*, AIR 1985 Cal. 66.

<sup>29</sup> *Ibid*.

<sup>30</sup> *Ganesh Prasad v. Dev Nandan*, AIR 1985 Pat. 94.

<sup>31</sup> *Ibid*.

<sup>32</sup> *Abdul Gaffar v. Sudha Kanta*, AIR 1985 Cal. 133.

<sup>33</sup> *Ishar Dass v. Dhanwant Singh*, AIR 1985 Del. 83.

<sup>34</sup> *Ibid*.

However, when a later loan is advanced and it is consolidated with the previous loan and there is only a receipt referring to the sum due in respect of the equitable mortgage created earlier, a valid mortgage by previous deposit of title deeds is created in regard to the consolidated loan.<sup>35</sup>

*Anomalous mortgage:* A usufructuary mortgage covers a transaction where the mortgage is put in possession with the condition that the profits are to be utilised in lieu of interest, or in payment of the mortgage money or partly in lieu of interest and partly in payment of the mortgage-money. It is not converted into an anomalous mortgage simply because it is to be redeemed only on expiry of five years, or it is to be redeemed within twenty years from the date of its execution. The first is only a proviso for redemption and the second is a clog on redemption.<sup>36</sup>

### Right of redemption

*Extinguishment of equity of redemption:* The equity of redemption can be extinguished only as provided by section 60. This was made clear by the Supreme Court in *Jayasingh v. Krishna*.<sup>37</sup> The plaintiffs mortgaged their *watan* lands in 1955 to A and B with possession. By virtue of the possession secured under the mortgage, A and B obtained grants of the lands under the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950. Subsequently the plaintiffs sued for redemption. The defendants contended that the grants by the government in their favour had put an end to the plaintiffs' equity of redemption. Venkataramaiah J pointed out that the principle "once a mortgage always a mortgage" has application here. The mortgagees have taken advantage of their mortgages in securing the grants. Under section 90 of the Indian Trust Act, 1882 this advantage gained by them as mortgagees must be held by them in trust for the mortgagors. So they have no answer to the redemption suit brought by the plaintiffs.

*Clogs on redemption:* A clause in a mortgage deed that the mortgage should be redeemed within a year, failing which it will become a sale is a clog on redemption.<sup>38</sup> A mortgagee cannot grant a lease which will survive the redemption of the mortgage.<sup>39</sup> This is the general rule.

*Splitting up of mortgage:* The integrity of the mortgage is broken only when *all the mortgagees* acquire the interest of a mortgagor. In *Namrang Singh v. Jangir Singh*<sup>40</sup> one of the several mortgagees purchased half of the equity of redemption. He then sued for redeeming the entire mort-

<sup>35</sup> *Ibid.*

<sup>36</sup> *Haji Fatima Bee v. Prahlad Singh*, AIR 1985 MP 1.

<sup>37</sup> AIR 1985 SC 1646.

<sup>38</sup> *Banwarilal v. Puranchand*, AIR 1985 P & H 189.

<sup>39</sup> *Deokinandan v. Roshanlal*, AIR 1985 Raj 11 at 18.

<sup>40</sup> AIR 1985 P & H 268.



gage. Since the mortgage had not been disintegrated, the plaintiff was entitled to redeem the mortgage as a whole.

### Charge

A decree for maintenance in favour of a deserted wife providing a charge upon immovable property is capable of execution even after the death of the judgment-debtor (her husband). The fact that she may have become one of the heirs does not stand in the way of execution of such a decree.<sup>41</sup>

### Leases

*Remedy of eviction:* Even if the plaintiff is unable to establish that the defendant is his tenant, still if he proves his title, he is entitled to the equitable relief of possession as against the defendant who has no title to the property.<sup>42</sup>

*Notice to quit:* The service of a notice under section 106 does not put an end to a condition of the lease that the monthly rent should be paid in advance.<sup>43</sup> A notice to quit should not be read in a hyper-critical manner or in a spirit of over-refined subtlety. It should be construed in a commonsense way.<sup>44</sup> Thus, where a company has taken a lease for its director and notice to quit is given to him, and he gives a reply to that notice, it is hyper-critical to contend in defence to the suit for eviction that the notice was not given to the company as such and so the suit should fail. The director is an agent of the company which has to act through human agency. He is the person in possession and is a necessary party to the suit. So the notice given to him is to be treated as notice given to the company itself.<sup>45</sup> Referring in the quit notice to section 102 instead of section 106 does not render the notice invalid.<sup>46</sup> A notice requiring the tenant to deliver possession on March 31 gives him time up to the midnight of March 31 and so is a valid notice.<sup>47</sup> Similarly, a notice given by the tenant intimating that he will vacate "within" September 1972 means that he will have the whole of September to give up the tenancy. So the notice is valid. The principle is that the notice should terminate the tenancy *at the end* of a month of the tenancy.<sup>48</sup> If a local tenancy law does not specify the manner in which the tenancy should be terminated, section 106 will have to be

<sup>41</sup> *Rundibala Roy v. Putubala*, AIR 1985 Cal. 47.

<sup>42</sup> *Aras Khan v. Ali Mian*, AIR 1985 Pat. 126.

<sup>43</sup> *Veena Rani v. Ishrati Amanullah*, AIR 1985 Pat. 207.

<sup>44</sup> *Agarwalla v. Bhagwandas*, AIR 1977 SC 1120 at 1122.

<sup>45</sup> *H.C. Gupta v. Ramanarao*, AIR 1985 AP 193.

<sup>46</sup> *Bal Kissen v. Kanupada*, AIR 1985 Cal. 129.

<sup>47</sup> *Bholanath v. Bholanath Boral*, AIR 1985 Cal. 387.

<sup>48</sup> *Sibendranath v. Ganesh Chandra*, AIR 1985 Cal. 269.

applied.<sup>49</sup> A quit notice under that section (or under section 111) is not necessary as a condition precedent to a suit for eviction under the relevant Rent Control Act.<sup>50</sup> Rent may be paid by cheque. Such payment may be treated as payment in legal tender by implied agreement of the parties.<sup>51</sup>

#### Duties of lessor and lessee

*Lessee's right to recover possession from his licensee:* In *Santlal Jain v. Aytar Singh*<sup>52</sup> the plaintiff who was lessee of A granted a license over part of the property to B. He terminated the license and sued for possession. Thereafter, B purchased the land from A and resisted the suit. The Supreme Court held that the plaintiff was entitled to an injunction to prevent B from interfering with his possession. The duty of the licensee is to surrender possession when the license has come to an end. No doubt B can enforce his subsequently-acquired ownership by proper legal procedure. Under the East Punjab Urban Rent Restriction Act, 1949 the lessee cannot be evicted by the owner except on certain grounds specified in the Act. B will have to prove in proper proceedings that he is entitled to recover possession from the lessee. Till then he has to surrender possession to the plaintiff.

*Right to repairs:* When the roof or doors have fallen, the tenant by restoring them does *no* illegal act though he may not have obtained the prior permission of the landlord.<sup>53</sup> He cannot be evicted simply on the ground that prior permission of the landlord had not been obtained. The tenant, however, by doing so may forfeit his right to recover the expenditure incurred by him on the repairs.<sup>54</sup>

*Doctrine of suspension of rent:* This doctrine is based upon equitable considerations. In *M/s. Apparel Trends v. Krishna Dandona*<sup>55</sup> the defendant was the lessee of an industrial premise on a rent of Rs. 600/- per month from 1976. He defaulted in payment of rent from 1979. To the petition for eviction on the ground of non-payment of rent, the defendant pleaded that the rent was inclusive of electric supply. As electricity was disconnected from January 1980, he was entitled to suspend rent from that date. No steps were taken by the tenant for restoration of the current as he was taking current through another industrial establishment. His default had commenced a year before the disconnection. Having regard to these factors the court disallowed the claim for suspension of rent.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Jiwan Ram v. Tobgyal*, AIR 1985 Sikkim 10, following *Dhanpal Chettiar v. Yesoda Ammal*, AIR 1979 SC 1745.

<sup>51</sup> *Jiwan Ram v. Tobgyal*, *ibid.*, following *Damadilal v. Parashram*, AIR 1976 SC 2229 at 2232. *Contra: Mohanlal v. Kanwar Sen*, AIR 1954 All. 480.

<sup>52</sup> AIR 1985 SC 857.

<sup>53</sup> *Eashwar v. Sudershan*, AIR 1985 AP 4.

<sup>54</sup> *Ibid.*

<sup>55</sup> AIR 1985 Del. 106.

**Estoppel as between lessor and lessee**

The sub-lessee is estopped from questioning the title of the sub-lessor (lessee). This estoppel continues so long as the sub-lessor is not evicted from the premises. Till such eviction the lessee can recover rent from the sub-lessee.<sup>66</sup> A mere order for eviction of the lessee is not sufficient to prevent him from recovering the arrears of rent due to him from the sub-lessee.<sup>67</sup>

**Rent control legislation**

When there is rent control legislation, grounds of eviction not specified therein are not available to the parties. Thus efflux of time fixed in the lease is no ground for eviction of the tenant.<sup>68</sup>

**Forfeiture of lease**

Under section 114 a defaulting tenant can avoid the forfeiture of the lease by paying the arrears of rent in court. This provision cannot be invoked when the West Bengal Premises Tenancy Act applies. The forfeiture incurred by non-payment of rent under that Act is governed by that Act itself and not by section 114 of the Transfer of Property Act.<sup>69</sup>

**Tenancy by holding over**

The nature of tenancy by holding over has been discussed at length in *Rajendra Prasad v. Ram Prasad*.<sup>60</sup> The tenancy in this case expired in 1950 by efflux of time. The tenant held over. He paid rent collusively to an unauthorised agent of the landlord. Under section 116 the lessor or his legal representative should accept rent from the lessee or otherwise assent to his continuing in possession. The word "otherwise" shows that acceptance of rent is one mode of assenting to the tenant's continuing in possession. Here there was no such assent. So the tenant was in possession only as a trespasser. It was accordingly held that he was disqualified to become a *raiyat* under the Bihar Land Reforms Act, 1950.

**Gifts**

Once a gift is validly executed, it cannot be cancelled by the donor at his sweet will and pleasure. The gift is complete on acceptance by the donee and delivery of the property to the donee. In *Shakuntala Devi v. Anar Devi*<sup>61</sup> the original owner mortgaged the property to the defendant and then made a gift of it to his (owner's) daughter, Shakuntala Devi. He

<sup>66</sup> *In re Ganesh Trading Co. Pvt. Ltd.*, AIR 1985 Cal. 37.

<sup>67</sup> *Ibid.*

<sup>68</sup> *D.C. Centre, Rumtek Monastery v. Denzong Cinema Ltd.*, AIR 1985 Sikkim 17.

<sup>69</sup> *Sadhu Saran Prasad v. Rabindra Nath*, AIR 1985 Cal. 1.

<sup>60</sup> AIR 1985 Pat. 104.

<sup>61</sup> AIR 1985 H.P. 109.

then cancelled the gift deed and sued for redemption of the mortgage. The defendant (mortgagee) contended that the plaintiff had no *locus standi* to sue for redemption as he had gifted away the property. The plaintiff was non-suited on this ground. It was contended that the gift failed for want of acceptance by the donee. Under the English law<sup>62</sup> express acceptance by the donee is not necessary to complete a gift. Donee's acceptance is presumed until his dissent is signified. In India also acceptance may be implied. During the pendency of the appeal the original plaintiff died and his daughter succeeded him as his legal heir. She continued the appeal. But though she was donee, she could put forward only such pleas as her father (original plaintiff) could have put forward. So her appeal failed as she had no *locus standi* as she was standing in her father's shoes.

*Gift and undue influence:* The nature of "undue influence" on the basis of which a gift may be set aside is fully discussed in *Sukhdeo Rao v. Champa Debi*.<sup>63</sup> The donor was an old man who was living at the time of his death (13.4.76) with his brother's grandson to whom he gifted his property on 6.4.76. The gift was challenged by the donor's other brother and that brother's sons as one induced by undue influence. The donor was being looked after in his old age by the donee and his wife. This fact was not by itself any exercise of undue influence on the part of the donee. The donor had earlier declared that he would gift his property to his brother's grandson. So the gift was held to be perfectly valid. In *Ajmer Singh v. Atma Singh*<sup>64</sup> the gift deed was challenged by the donor himself. The donor was an old man who had to depend on one Charan Singh in whose favour he wanted to execute a power of attorney. Taking advantage of this situation Charan Singh by misrepresentations got a gift deed executed in favour of his own sons. What the donor signed was a gift deed but he was under the impression that it was a power of attorney. In these circumstances the gift deed was set aside.

#### Documents of title to goods

A lorry receipt in respect of a consignment of goods is a document of title to goods. When it is pledged with a bank by the consignor, and the consignment is lost, the carrier also becomes liable to the bank. This is because the bank steps into the shoes of the consignor in respect of his rights against the carrier when the lorry receipt is endorsed in its favour, *i.e.*, negotiated to it.<sup>65</sup>

<sup>62</sup> *Halsbury's Laws of England*, vol. 15, 418.

<sup>63</sup> AIR 1985 Pat. 89, following *Subhas Chandra Das v. Ganga Prasad*, AIR 1967 SC 878; *Lad Prasad v. Kamal Distillery Co. Ltd.*, AIR 1963 SC 1279.

<sup>64</sup> AIR 1985 P & H 315.

<sup>65</sup> *M/s. Deccan Queen Motor Service v. Indian Overseas Bank*, AIR 1985 Ker. 129.