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PROPERTY LAW

*M L Upadhyaya**

I INTRODUCTION

THE PRESENT survey attempts to analyze the cases decided by the Supreme Court and the various high courts on the provisions of the Transfer of Property Act, 1882 (TPA) during the year 2007. The Act has served usefully for a period of 125 years. As is well known the Act was enacted in pursuance of the sixth report dated 28.5.1870 by the third Law Commission. The Act is applicable only to the transfer of immovable property by act of parties and not to transfers by operation of law. As such the law of succession and inheritance are governed by the Indian Succession Act, 1956. The Indian Contract Act, 1872, governs the transfers of movable property such as pledge, bailment, guarantee, surety and indemnity. Similarly, transfer, sale and purchase of movable property are governed by the Sale of Goods Act, 1930. The survey follows the pattern prescribed by the Act, namely, the first part deals with the cases under the general principles and the second part deals with the specific transfers. The number of cases reported in the year under survey being fairly large, only those cases, which have some bearing on the further development of the law have been analysed. In most of the cases the appeals admitted by the Supreme Court involved a substantive question of law as to the interpretation of the statute. Besides, some cases were those where an appeal was admitted by special leave by the Supreme Court under article 136 of the Constitution. The Act regulated only some modes of transfer of immovable property such as sale, exchange, mortgage and gifts and prescribed conditions for a valid transfer.

II GENERAL PRINCIPLES

Notice defined

Section 3 of the TPA defines what is notice for the purpose of transfer of property. In a case decided by the M.P. High Court, the question for consideration was whether notice should be express or otherwise. The court held that the notice for this purpose includes both the actual as well as constructive notice.¹

* Ph.D. (London), Professor of Law and Vice President, Amity Law School, New Delhi.

1 *Motilal Jain & Others v. Prakash Bhartiya*, AIR 2007 (NOC) 377 (MP).



Attestation

In a case decided by the Andhra Pradesh High Court the question for consideration was about the veracity of the evidence tendered by an attesting witness. In that case the scribe who wrote the document read over the document to the parties and put their signatures as attesting witnesses. The parties signed the document later. The court held that the document was duly attested both under the provisions of the TPA as well as law of evidence.²

A sold some property to B but did not execute the registered sale deed. Subsequently A agreed to sell the same property to C who had the knowledge that the property had already been sold to B. B then filed a suit against A for specific performance. The Madras High Court held that since C had the knowledge of previous sale, B was entitled to specific performance and A was liable to execute the sale deed.³

Actionable claim

The Kerala High Court in a case concerning lottery tickets held that the interest of the purchaser of the lottery in the prize money is an actionable claim under TPA.⁴

Transfer

Section 5 of the TPA defines as to what is meant by the term transfer. The Karnataka High Court considered the question whether partition of a joint family property is transfer under the provisions of the TPA. The court answered the question in the negative for the reason that no conveyance is involved and those who receive the share on partition have an antecedent title.⁵ In the past the Supreme Court had also taken the same view that neither partition nor family arrangement was transfer under section 5 of the TPA.

A person dedicated his property to a temple by a settlement deed and with intention to get it registered paid the registration charges. Subsequently he challenged the settlement deed on the ground that though he signed the settlement deed he had not read it. The Madras High Court held that in the absence of proof that he suffered some such physical disability or handicap which prevented him from reading it, the deed could not be invalidated.⁶ This is so because gift once made cannot be revoked.

Passing of property to the transferee – how and when?

Section 8 of the TPA provides as to how and when property passes on to the transferee in a valid transfer. A person transfers his land with all appurtenance thereon to another. There was a well on the land so transferred. In a suit the transferer contends that the well was not transferred as it was not

2 *Peddavandla Narayanamma v. Peddasant Venkata Reddy & Others*, AIR 2007 AP 137.

3 *Mohideen Sahib v. A. Amana Bi*, AIR 2007 Mad 133.

4 *LIS (Registered), Palakkal Court v. State of Kerala*, AIR 2007 Ker 178.

5 *Aratappa v. Jagannath*, AIR 2007 Ker 91.

6 *Ragendra v. C Gounder*, AIR 2007 (NOC) 1325 (Mad).



expressly mentioned in the sale deed. The Madras High Court held that even in the absence of express recital to that effect the well goes with the land.⁷

A landlord agreed to sell his house to his tenant in possession for Rs.45,000/-, the tenant paid Rs.15,000/- on the same day and promised to pay the balance of Rs.30,000/- after five years. The landlord agreed to execute the sale deed then. The tenant paid the balance of sale price on expiry of five years. But the landlord refused to execute the sale deed as earlier agreed. The tenant filed a suit for specific performance. The landlord contested the suit on the plea that the agreement was for taking a loan and not for sale. The matter reached the Supreme Court in appeal. The court after hearing counsel for both the parties held that the agreement was for sale and rejected the plea of the landlord. The court saw no merit in the plea that in view of the manifold increase in the price of land in Bangalore the court should not exercise its discretion under section 20 of the Specific Relief Act to the detriment of the landlord.⁸

Third person's right to receive maintenance

Section 39 of the TPA provides that a person entitled to receive maintenance in a marriage out of the profits of a property and if such property is transferred the right may be enforced against the transferee, if he has notice thereof but not against a transferee for consideration without notice of the right. In a case⁹ decided by the Kerala High Court, a husband transferred his property with the knowledge of his wife and children and as such they had no claim against the transferee.

Transfer by ostensible owner

Section 41 of the TPA deals with transfer of property not by owner himself but by an ostensible owner. The owner executed a power of attorney and authorized his attorney to sell the property. The attorney then sold the property for consideration and executed a registered sale deed. Subsequently the owner filed a suit for injunction. The Uttaranchal High Court held that the suit was barred by section 41 of the TPA.¹⁰

Transfer by unauthorized person

Section 43 of the TPA states the implications of transfer of property by unauthorized person who pretends to be owner. The husband transferred the property owned by his wife. The wife challenged the validity of such transfer. But the wife died during the pendency of her suit. Now the husband became the owner of her property. Section 43 provides that if a person pretending to be the owner subsequently becomes the owner the transfer by him conveys a good title.¹¹

7 *Arkkani v. Subrananiam*, AIR 2007 (NOC) 2118 (Mad).

8 *P.S. Ramakrishna Reddy v. M.K. Bhagyalakshmi*, AIR 2007 SC 1256.

9 *Vijayan v. Sobhna and Others*, AIR 2007 Ker 177.

10 *Samai Singh v. Hukum Singh Chauhan*, AIR 2007 (NOC) 2054 (Utr).

11 *Hardev Singh v. Gurmail Singh*, AIR 2007 SC 1058.

**Doctrine of *lis pendens***

Doctrine of *lis pendens* based on justice, equity and good conscience is contained in section 52 of the TPA. The parties to a suit for specific performance sought the benefit of the doctrine. But the Supreme Court held that the doctrine had no application in the facts and circumstances of their case.¹²

A person who bought the property during the pendency of a suit filed a suit for specific performance and delivery of possession of such property.

The Andhra Pradesh High Court held that since the sale and purchase was in gross violation of the provisions of section 52 of the TPA the suit was liable to be dismissed. A person who violates the law can never be treated as holding a legally enforceable right.¹³ In another case the same high court held that though a purchaser in *lis pendens* is bound by a decree passed against his vendor, he cannot as of right be impleaded in the suit.¹⁴

A person sold his property to two persons jointly. One of them filed a suit against another purchaser for partition and separate possession in which he also impleaded the vender. The vendor filed a written statement admitting the facts. Later he lost interest in the suit. In the meantime one of the joint purchasers sold his share to a third person. The third person applied to be impleaded in the suit. The Orissa High Court held that the third person was entitled to be impleaded.¹⁵

The Madras High Court in a suit for partition and separate possession held that a purchaser in *lis pendens* cannot be impleaded as a party and will face the consequences of the pending suit.¹⁶

A lady who had a limited interest in a property received under a compromise decree sold that property while a suit challenging the compromise decree was pending. The Punjab and Haryana High Court held that the sale being hit by the doctrine of *lis pendens* was a nullity.¹⁷

K.T. Shankaran J of the Kerala High Court in *Padmaja*¹⁸ explained the legal implication of a transfer after a court decree is passed. His observations read as follows:

The right of a transferee *pendente lite* is subservient to the decree and he is bound by the decree passed in the suit against his transfer. The decree can be enforced even against the transferee without notice ... a title which is hit by Section 52 of the Transfer of Property Act could not be projected as a valid title to deny the fruits of a decree in favour of the decree holder. The question whether a subsequent transferee is having possession of the property or

12 *Sanjay Verma v. Manik Roy*, AIR 2007 SC 1332.

13 *Pannala Renuka v. Kavali Venkataiah*, AIR 2007 AP 46.

14 *Jogani Mallaiiah v. Suresh Babu*, AIR 2007 AP 301.

15 *Shantilata v. Rajaniman Nayak*, AIR 2007 Ori 69.

16 *S. Vardanagan v. Smt. V. Raja & Others*, AIR (NOC) 854 (Mad).

17 *Mangal Singh v. Hardial Singh*, AIR 2007 P&H 203.

18 *Padmaja v. Erattil Sanjeev and Ors.* AIR 2007 (NOC) 70 (Ker) (C)(D).



whether he paid proper consideration to his transferor and whether he was aware of the litigation is not at all material or relevant for consideration.

Contrary to the above the AP High Court held that subsequent purchasers seeking impleadment and alienation of property during pendency of suit, being hit by doctrine of *lis pendens* under section 52 of the TP Act, cannot be considered as either necessary or proper parties and cannot be impleaded.¹⁹

Fraudulent transfer

In a case decided, by the full bench of the AP High Court a transfer of property was based on fraud committed by transferor and transferee by a registered sale deed. Subsequently, a suit was filed for the cancellation of sale deed. The court held that in such a case the proper course of action is that the true owner of the property can execute a subsequent deed of cancellation and the registrar of sale deed has the inherent power to register such a deed.²⁰

Doctrine of part performance of property

The High Court of Calcutta²¹ as well as the High Court of Gujarat in two separate cases, held that in any dispute, the pleas of acquiring title by adverse possession and under the doctrine of part-performance cannot be claimed. The High Court of Calcutta observed that the two pleas are mutually inconsistent, whereas the Gujarat High Court observed that the two pleas are mutually destructive. As one cannot be allowed to say that on one side he admits title of owner for purposes of section 53A and at the same time, assert title in his own self.²² In a case²³ decided by the AP High Court the lessee claimed the benefit of part performance against the lessor which is untenable in law. The lessor is indisputably the owner of the property and has the right to resume possession on expiry of lease and no lessee can claim the possession or continuation of possession on the basis of doctrine of part performance.

There was an agreement to sell and the transferee was already in possession of the property before the agreement was executed. The transferee filed the suit for specific performance and claimed the benefit of doctrine of part performance and he was willing to perform his part. The Allahabad High Court held him to be entitled to the benefit of doctrine of part performance and decreed his suit.²⁴ In a case²⁵ before the Rajasthan

19 *Major P.T. Choudhary v. Mohammed Abdul Basheer Khan*, AIR 2007 (NOC) 121 & (AP).

20 *Yanala Maheshwari v. Ananthula Sayamma (FB)*, AIR 2007 AP 57.

21 *Basanti Bai v. Fulchand Mondal*, AIR 2007 Cal 8(B).

22 *Raj Sing Hurji Bhil v. Vani Ken Manjubhai*, AIR 2007 Guj 69.

23 *St. Mary's Educational Society v. Qutubuddin Ahmed*, AIR 2007 AP 156 (A).

24 *Bhajan Lal & Anr. v. Bal Govind and Ors.*, AIR 2007 All 199 (B).

25 *Amar Singh ready by LRs. v. Laxman & Ors.*, AIR 2007 (NOC) 320 (Raj) (D).



High Court there was an agreement to sale written on a plain paper but not registered. It was held that the transferee acquires possession of suit property on part performance of agreement and the transferee may avail the benefit of doctrine of part performance, inspite of the fact that the sale agreement was not registered. Similarly, the Rajasthan High Court in a case²⁶ where there was an agreement for sale payment of entire consideration of money was made and possession was delivered, the sale deed was executed but not registered. The high court held that the transferee was entitled to the specific performance on the basis of executed agreement.

Mortgages

Mortgage by conditional sale

Section 58(6) of TPA deals with mortgage by conditional sale. A plaintiff transferred his land by way of security to his creditor and promised to pay the loan within five years. He also executed a deed of sale in favour of his creditor and delivered to him the possession of the property. He also agreed that if he failed to make the payment, the creditor would become the absolute owner of the property. When the dispute arose the Bombay High Court held that the transaction was one of mortgage by conditional sale and not sale with condition to allow repurchase.²⁷

The Patna High Court in a similar case²⁸ took the same view and observed as follows:²⁹

Inspite of the fact that there are some clear distinctions between conditional sale and mortgage by conditional sale, the courts are of the opinion that the question whether in a given transaction it is a mortgage by conditional sale or a sale outright with condition of repurchase is a vexed question and must be decided on its own facts and in most cases the intention of parties determines the nature of document and one should be guided by the terms of the documents...

If it is clear that the courts are of the view that in order to come to a conclusion whether a particular document is a sale with condition of repurchase or a mortgage by conditional sale, one should go through the contents of documents itself and from that he should gather what was the actual intention of the parties.

In view of the above the court held that in the case at hand the parties executed the document of mortgage by conditional sale and not the documents of conditional sale.

²⁶ *Magna v. Amar Chand and Others*, AIR 2007 (NOC) 1435 (Raj).

²⁷ *Shivram Bhika Bodke & Ors. v. Sadashiv Laxman Sanap*, AIR 2007 Bom 162.

²⁸ *Mishreelal Shah and Anr. v. Jaganath Sah through LRs*, AIR 2007 Pat 145.

²⁹ *Id.* at 150.



A person mortgaged his property as a collateral security for loan taken from a state financial corporation and on default of payment on due date gave a letter to the corporation to forbear from suing. The Delhi High Court held that it was obviously a case of creation of mortgage arising from forbearance to sue and thus cannot be said to be without consideration. Therefore, petitioner cannot be allowed to defeat the rights of respondent corporation under the state financial corporation Act.³⁰ In another case³¹ the bank filed the suit for recovery of loan on default of payment by the debtor. Defendant denied that he had created any equitable mortgage. The bank failed to prove that the documents of title were ever deposited with the bank. The court therefore held that the transaction did not create any equitable mortgage with title deed.

Right of redemption

One Jagdish mortgaged his property under a registered mortgage deed with possession to the mortgagee by creating an usufructuary mortgage. The mortgagee was his tenant. Further there was a condition that on redemption the tenant would continue to be a tenant, as he was before the mortgage. In the appeal, the Supreme Court took the following view:³²

Hence when the mortgage was redeemed, it did not follow that the erstwhile mortgagor could be straightway evicted. When the mortgage comes to an end, the appellant reverted as tenant, particularly since there was a specific term in mortgage deed that on redemption of the mortgage the mortgagee will be a lessee as previous to the mortgage.

The Kerala High Court was required to deal with the right of a mortgagor to deposit the mortgage money after the preliminary decree at any time before the final decree was passed. The mortgagee filed an application for closing this right of the mortgagor by raising an untenable objection. The high court protected the mortgagor by making the following observation:³³

In a case of usufructuary mortgage, a plaintiff need not make any application for extension of time fixed in the preliminary decree for deposit of the amount found due. The mortgagor has no right to make an application for passing a final decree to fore close the right of the plaintiff or sale of the mortgaged property declaring that plaintiff has been debarred from making payment in court or proceeding. Further the plaintiff usufructuary mortgagor has a right to make payment of the redemption money due undue the

30 *Madan Lal Sobti v. Rajasthan State Industrial Development and Investment – Corporation* AIR 2007 (NOC) 638 (Del).

31 *State Bank of India v. Zeenath X Ray & ECG Clinic & Ors.*, AIR (NOC) 2315.

32 *M/s Hastimal & Sons v. P. Tej Raj Sharma*, AIR 2007 SC 3246.



preliminary decree and subsequent liability at any time before passing the final decree. So long as the right subsists, the right of redemption of the mortgagor is not lost, even if, he defaults to deposit the redemption money. In the case of preliminary decree for redemption of usufructuary mortgage no limitation starts to run until the deposit is made. Even if plaintiff fails to deposit the amount as fixed by the preliminary decree, the period of limitation will not start to run from the date of default or period fixed under the preliminary decree and such failure will not debar him from exercising the right to file the final decree application....

In a case³⁴ decided by the Gujarat High Court, a suit for redemption of mortgage was filed by one of the successors of the mortgagor upon his death, where the other legal heirs did not join and were not impleaded. The question for consideration was whether the suit was bad for non-joinder of other successors. The high court held the suit to be maintainable and added that the decree passed in such a suit would enure to the benefit of the mortgagors/successors though they are not the plaintiffs. The judge further added that the law is not a sword with the absolute edge to cut, the law also provides a shield and sheath to the honest people.

A person, his son and son's wife jointly mortgaged a house with another person. The father and son died and their rights devolved on the sole legal representative i.e., son's wife. She filed the suit for redemption against the mortgagee. She had no knowledge that her father-in-law had, during the meantime, sold the property to the mortgagee. Therefore, the High Court of Madras held that though the right of redemption under section 66 can only be extinguished by act of parties to mortgage, in this case the mortgagor i.e. the father in law himself had by his action extinguished the right, therefore the daughter-in-law had no right to redeem the property.³⁵

III LEASE

Chapter V of the TP Act in sections 105 to 117 provide for various aspects of lease of immovable property. The Supreme Court had an occasion in an appeal from the judgment of the Madhya Pradesh High Court, to consider whether a person was owner of the land or a government lessee. The person concerned had purchased the land in government auction. But the revenue records had shown the land in question to be *Nazul* land which implied that the land was a government land. The Supreme Court after considering various aspects of the matter held that record of right is not a document of title and government was not able to prove that the person was a lessee. The fact that the owner was paying annual rent did not mean that he

33 *Sarojini Prabhu & Ors. Papikutty Adiesian & Ors.*, AIR 2007 Ker 44.

34 *Hiragauri Ratilal & Ors. v. Hajam Sumar Ladha*, AIR 2007 Guj 76.

35 *Nagammal v. Valliammal*, AIR 2007 Mad 177.



was a lessee and in view of the fact that the government could not prove the land to be *Nazul* land and that the state had a right of reversion, the court allowed the appeal and set aside the judgment of the high court.³⁶

Similarly, the Delhi High Court had to decide this question in a very peculiar case. A person agreed to buy a flat from a builder, executed an agreement and paid the full consideration. The builder promised to hand over the possession of the flat on completion of the building. The purchaser had executed an agreement on a printed form where the term for purchaser was used as a licensee. The question for consideration, therefore, was whether the purchaser was licensee or sub-lessee. The court observed that it was not the form of agreement but the substance of the matter which should be considered and held that he was a sub-lessee.³⁷

The Uttaranchal High Court also decided a similar matter in different circumstances. A government employee was provided with a government accommodation as a facility. He claimed to be a tenant of the government. The high court held that it was not a case of lease but was only a licence.³⁸

The Gauhati High Court was faced with a peculiar question of law. The parties had executed two sets of lease agreements for the same premises between same landlords and same tenants. Neither the first lease agreement was cancelled nor a reference to that effect was made in the second lease agreement. The court, therefore, held that on and from the date of second lease agreement for the same premises between the same parties on the same terms and conditions the life of the first lease agreement had automatically come to an end.³⁹

The Gujarat High Court in an appeal was called upon to decide the question whether the appellant had the relationship of landlord and tenant or he was merely a licensee. He was in possession of the land for a long time by the grace of the landlord. The landlord contended that he was merely a licensee, terminated the licence and had succeeded in getting a decree to resume possession. The appellant failed to prove that he was a tenant and hence the high court held him to be a licensee and dismissed the appeal.⁴⁰

Determination of lease

Section 106 of the TP Act requires service of a notice before determination of lease. However, in a writ petition before the Allahabad High Court the question for consideration was whether in a case of tenancy for a fixed period of five years with a clause that it may be further extended by mutual agreement between the parties and where the tenant continued in possession beyond five years without the consent of the landlady it was necessary that the land lady should have given a notice. The high court held

36 *Narain Prasad Aggarwal v. State of M.P.*, AIR 2007 SC 2349.

37 *Raka Singhal v. Pushpa Builders Ltd.*, AIR 2007 Delhi 222.

38 *Madan Mohan Kukreti v. Geeta Bhawan*, AIR 2007 Uttaranchal 32.

39 *Manoj Roy v. Gunendra Roy*, AIR 2007 Gau 172.

40 *Gajriben v. Kantilal Uttamram Chavli*, AIR 2007 Guj 18.



that it was a case where notice under section 106 was not necessary and the tenancy was determined under section 111 by efflux of time.⁴¹

However, in an appeal before the Karnataka High Court, the landlord gave the notice to quit before the expiry of lease period and filed the suit for eviction. The tenant did not take any objection of premature notice or premature filing of the suit instead contested the case by filing written statement and the suit proceeded for the trial. At this stage he took the objection. The court held that he is not allowed to take the objection at this late stage. On the other hand, by his inaction amounting to acquiescence or waiver he allowed the suit to proceed ahead and cannot now be permitted to urge such a pleading as it would cause hardship and irreparable prejudice to the plaintiff because of the lapse of time.⁴²

The Bombay High Court in a second appeal was called upon to decide whether the lessee who continued beyond the 20 years period of lease was holding over.⁴³ In this case, after the expiry of first 20 years period the lease was not extended for another ten years but the lessee continued to hold the property and the lessor accepted the rent. Since there was no registered instrument for extension of the lease under section 107 of the TP Act, the lease was, therefore, deemed to have been renewed from month to month. Further, the court held that the present case is squarely covered by the judgment of the Supreme Court in *Bhrmahshell Oil Distributing Company*.⁴⁴

The Gauhati High Court in an appeal was required to decide about the term of notice to quit under section 106 of the TP Act as amended by TP (Amendment) Act, 2002. The court held that after the amendment notice to quit in all cases of tenancy from month to month is only for a period of 15 days.⁴⁵

The Orissa High Court in an appeal noted that section 106 of the TP Act provides that a lease of immovable property other than agricultural land will be deemed to be a lease from month to month and notice to quit for a period of 15 days was required to be served before terminating the lease. Section 11 of the TP Act provides that the lease for immovable property is automatically determined by efflux of time limited thereby. In the case in hand the lease was for a fixed period and on expiry of such period lease was automatically determined and no notice to quit under section 106 was required before a suit for eviction was filed because the tenant continued in possession even after the expiry of the lease. The tenant in his written statement did not take the plea of holding over. There was no evidence to show that the landlord accepted any rent or consented to the continuance of

41 *Union of India v. Jagdish Kaur*, AIR 2007 All 67.

42 *M/s Cordcell Private Ltd. v. M/s Marazaria Products Pvt. Ltd.*, AIR 2007 Kar 162.

43 *Indian Oil Corporation v. Alka Agarwal*, AIR 2007 Bom 113.

44 AIR 1988 SC 1470.

45 *Jadab Chandra (Malakar) Das v. Sri Sri Hayagriv Madhab*, AIR 2007 Gau 185.



tenancy. The court, therefore, held that the tenant was not entitled to any protection of holding over under section 116 of the TP Act.⁴⁶

Section 107 of the TP Act requires that any lease for a period exceeding one year can only be made through a registered document. The Andhra Pradesh High Court heard an appeal wherein a lessee claimed to hold permanent lease on immovable property under an unregistered lease deed. He also claimed perpetual injunction restraining the lessor from dispossessing him. The court held that the lease being unregistered he could not claim such benefit.⁴⁷

Section 108 of the T.P. Act lays down rights and liabilities of lessor and lessee. The Calcutta High Court heard an appeal involving some complicated questions. The landlord let out a flat consisting of two rooms, a kitchen and a store-space with corrugated tin-sheet roof. The tenant raised permanent structure on the store space and replaced the tin-sheet roof by cement concrete roof. The landlord contended that this was done without his consent and knowledge and amounted to breach of conditions of the tenancy and was in violation of section 108 of the TP Act.⁴⁸ Disagreeing with these contentions the court observed:⁴⁹

The kitchen and store space with tin shade on its roof were there right from the commencement of the tenancy. Only the worn out tin shade was replaced by cement concrete slab. By such replacement, the accommodation available to the tenant is neither extended nor altered, as the floor space of the tenancy remains the same even after such alteration.

The Supreme Court in an appeal from the judgment and order of the Madhya Pradesh High Court considered a question of law as to what is meant by termination of tenancy by implied surrender within the meaning of section 111(f) of the TP Act. The court observed that such implied surrender may either be (i) by creation of a new relationship or (ii) by relinquishment of possession. The court further observed that although technically a tenant may continue to occupy the premises, once the nature of possession changes resulting in change in his status, which he accepts, the same may amount to virtual taking of possession.

In the case at hand the court agreed that the tenant by becoming mortgagee of premises altered his status and a new relationship was created. He ceased to be a tenant and became a mortgagee.⁵⁰ In other words it was a case of merger of interest.

46 *Maheshwar Singh v. Radhamadhab Jew Thakur*, AIR 2007 Ori 190.

47 *V. Muralidhar v. S. Anaiah Goud*, AIR 2007 AP 347.

48 *Dayanand Gupta v. Govindlal Bangur*, AIR 2007 Cal 247.

49 *Id.* at 251.

50 *Tara Chand v. Sagarbhai*, AIR 2007 SC 2059.



A tenant in Andhra Pradesh with the permission of landlord constructed a building on the land taken on lease. He constructed the building with his own funds. Parties agreed that as and when the tenant would vacate the premises the landlord would pay the cost of the building as assessed by qualified valuer. When the trial court passed the decree of eviction he did not frame an issue as to the cost because there was no dispute between the parties. It took an averment in the written statement as to the cost being assessed at Rs. 30 lacs and passed the decree accordingly. The high court noted that the trial court was in error for not having considered the mesne profits and as such found that there was clear infraction of the mandatory procedure prescribed under the Code of Civil Procedure and hence set aside the decree.⁵¹

A matter decided by the Karnataka High Court involved two questions for decision. The first one was whether a notice to quit under section 106 of the AP Act was necessary. Since the tenancy was for a fixed period of five years, the tenancy automatically stood determined by efflux of time and a notice to quit was not necessary. But the landlord had sent a notice by registered post, which was refused by the tenant. The tenant admitted that the postal address given on the envelope was correct. The second question was whether the tenant was entitled to the protection of holding over under section 116 of the TP Act because he had continued in possession even after the expiry of lease period of five years. The high court rightly held that merely the fact of continuing beyond the period of lease and payment of rent did not entitle him to the protection of statutory tenant for “holding over” under section 116 of TP Act.⁵²

Similarly, in a matter decided by the Madras High Court, the same two questions came up before the court for decision. On the first question whether a notice to quit was necessary the parties had entered into a contract of lease and had agreed to terminate the tenancy by giving three months notice in writing but the landlord without giving a notice to quit filed a suit for eviction. The high court held that the suit for eviction without properly terminating the tenancy was not maintainable. With regard to the second question the facts disclosed that after expiry of the lease period no renewal was sought for but the tenant continued to pay rent regularly and the landlord accepted the same also. The landlord in his receipt acknowledged the payer of the tenant. The high court, therefore, held that by accepting the rent periodically and by acknowledging him to be a tenant the landlord had impliedly given his assent to his continuance beyond lease period and therefore the tenant was held to be a tenant by “holding over” under section 116 of the TP Act.⁵³

In a matter decided by the Uttaranchal High Court the landlord’s suit for eviction was decreed. The tenant in appeal raised the plea that he has

51 *St. Mary Educational Society v. Dr. Qutubuddin Ahmed*, AIR 2007 AP 156.

52 *M.C. Mohammed v. Gowramma*, AIR 2007 Kar 46.

53 *K. Anjanakumari v. Bhavani*, AIR 2007 (NOC) 138 (Mad).



purchased one third portion of the property under tenancy and hence he could not be evicted from the portion whereof he had become the owner. The high court rightly rejected his plea on the ground that unless the tenant purchased the whole property he was not entitled to the protection of section 111(d) of the TP Act.⁵⁴ Section 111(d) provides for the merger of the interest of the landlord and the tenant in the same person at the same time.

The law on gifts

The Gujarat High Court heard a matter which involved a question of law that whether in a gift deed executed by several donors jointly by a registered deed was valid on the pleas by one of the donors that he was a minor at the time of the execution of the deed but in the gift deed he himself had admitted that he was aged 22 years. The high court held that the gift deed was valid unless it was proved that the admission by minor to be of 22 years of age was under duress, coercion or undue pressure or misconception of law or some mistake of facts. But the high court, it is submitted, did not consider the aspect of the law of contract as to the consequences of a minor pretending to be a major entering into a contract.⁵⁵

In a case decided by the Andhra Pradesh High Court an oral and unregistered gift by a Muslim donor of immovable property was challenged to be invalid under section 123 of the TP Act. The high court held that section 123 which required that a gift of immovable property must be in writing and must be registered did not apply to a gift by Muslims. But in this case the donor on other grounds did not have the capacity to make a gift of property which was owned by his late wife and on her death it devolved on the husband as well as his sons and daughters. He was only the owner of the part of the property and he could not make the gift of the whole of the property.⁵⁶

Similarly, the Patna High Court held that in a joint Hindu family, a coparcener's interest cannot be gifted without the consent of other coparceners. The reason being that so long as coparcenary contraves, coparcener's interest is indeterminate because it may increase or decrease by reason of death or birth in the family. It becomes determinate only when the status of coparcenary is broken. In a continuing joint family the coparceners have an indeterminate interest which cannot be gifted.⁵⁷

IV CONCLUSION

The present survey revealed that most of the cases came before the high courts on the plea of technicalities of the law and the procedure where the high courts refused to interfere. Again the second appeal in such cases

54 *Murli Singh v. Ram Singh*, AIR 2007 Uttarakhand 80.

55 *Patel Prabhudas Hergovandas v. Heirs of P.B. Kachrabhai*, AIR 2007 Guj 148.

56 *Chand Bee v. Hameed Unnissa*, AIR 2007 AP 150.

57 *Munnihal Mahto v. Chandeshwar Mahto*, AIR 2007 Patna 66.



coming before the Supreme Court were rightly dismissed by the Supreme Court on the solitary principle that the court will seldom interfere in cases where the two courts below have arrived on a concurrent finding of fact and law unless the finding was perverse or suffered from an error of law apparent on the face of record or the decision involved some violation of principles of natural justice or otherwise caused miscarriage of justice.