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PROPERTY LAW

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I INTRODUCTION

THE TRANSFER of Property Act, 1882 (TPA) regulates transfer of immovable property by act of parties as opposed to transfer of real property by operation of law such as under the law of succession and inheritance. It regulates various modes of transfer such as sale, exchange, mortgage, lease and gifts. Transfer of movable property is regulated by the Sale of Goods Act, 1930. Transactions such as pledge and bailment are regulated by the Indian Contract Act, 1872. The TPA is also divided into two parts like the Indian Contract Act. The first part deals with general principles and the second part deals with specific transfers. It codifies law on certain principles of equity such as rule against perpetuity, doctrine of *lis pendens*, doctrine of part-performance, equitable mortgage, equity of redemption, right of foreclosure, marshalling of security, charge and actionable claims. It makes provision for matters such as transfers by ostensible owner, transfers in favour of unborn person, fraudulent transfers etc.

II GENERAL PRINCIPLES

What may be transferred

The TPA by section 6 provides as to what may be transferred by act of parties as opposed to what is transferred under operation of law. Under section 6(g) thereof pension receivable by civil pensioners or for that matter family pension may not be transferred. A widow of the deceased civil servant in Madhya Pradesh claimed on the strength of a probate in execution of will by the deceased to receive the retirement dues. The high court in this case held that family pension not being an estate cannot be bequeathed by will.¹

The observation of AK Srivastava J in this context is apt which is reproduced below:²

Since the family pension is not an estate of an employee, the same cannot be bequeathed by executing will because the will can be

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1 *Sundariya Bai v. Union of India*, AIR 2008 MP 227.

2 *Id.* at para 22.



executed only in respect of an estate which the testator possesses or/and may acquire in future during his life time. Needless to say an employee cannot enjoy his family pension during his lifetime and the same is enjoyable by his wife only after his death.

Condition restraining alienation

Section 10 of the TPA provides that where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void. An appeal before the Karnataka High Court involved the question whether a provision in a sale deed that in the event of failure to construct a private college in the property sold thereunder, the property shall be reconveyed by the vendee to the vendor for the same sale consideration was barred under the provisions of section 10 or 11 of TPA.

The high court after considering the submissions of the counsel for the parties and the case law on the point held that the condition restraining the assignee to deal with the property in any way except that he may recover or return the same to the assigner at the price for which he purchased, thereby shutting out all his options was an absolute condition which was hit by section 10 of the TPA and was therefore, void.³

Purchase of immovable property for the benefit of third person

Ashutosh Ghosh, was a physician practising in Rangoon. His wife Suprovabala executed a power of attorney, authorizing the brother of Ghosh to buy a house in Calcutta in her name. Ghosh bought this house for the benefit of his wife and daughters in 1935, made renovations in 1938 and he died in 1940 at Rangoon. At that point of time none of his children was married. He had seven daughters and a son. In 1935 Hindu Women's Property Act, 1937 had not come into force.

After the death of their mother her daughters got the property mutated in their name and they lived therein with their brother and his family. Some of them got married and others were forced to leave because of the ill-treatment by the brother and his wife. They then filed a suit for partition. The trial court decreed the suit. The defendant filed an appeal in the high court. The high court reversed the decree. The plaintiff therefore came in appeal before the Supreme Court.

After considering the rival contentions of the parties, appraising the evidence on record and taking note of the law laid down in earlier cases SB Sinha J arrived at the following conclusions:⁴

3 *Bhawani Amma Kanakadevi v. C.S.I. Dekshina Kerala Maha Idevaka*, AIR 2008 Ker 38.

4 *Binapani Paul v. Pratima Ghosh*, AIR 2008 SC 543 at 547 para 13.



Dr. Ghosh was a prosperous person. He must be a medical practitioner of repute. He had purchased two very valuable properties in Calcutta in quick succession in a very prime area in the town of Calcutta. The property in question was purchased in 1935. Renovations were made in 1938. He died in 1940 at Rangoon. He had seven daughters. In 1935 Hindu Women's Property Act, 1937 had not come into force. He, therefore, might be of the opinion that in case of his early death, which appears to have been his premonition, something should be kept apart for his wife and daughters. When a person develops such an intention, it would be opposed to the essential characteristics of a benami transaction. He further more was not a debtor. He was not required to avoid any liability. He had no apparent motive for entering into a benami transaction. The plaintiff's case that he had done so for the benefit of his wife, therefore, must be considered from that angle.

Having done so, the court rejected other technical objections of the appellant, allowed the appeal and restored the judgment of the trial court setting aside the order of the high court.

Doctrine of lis pendens

Section 52 of the TPA contains a bar in respect of transfer of property during the pendency of a suit relating thereto. It protects the rights of the parties adversely affected by such transfers and puts the transferee in the shoes of transferor. In an appeal decided by the High Court of Andhra Pradesh a party affected by transfer of the suit property applied for being impleaded in the suit. His application was allowed. The high court in a revision petition saw nothing wrong in the order appealed against and upheld the trial court's order.⁵

The high court observed as follows:⁶

The trial court examined the matter from the proper perspective and this court is not inclined to take any different view.

The High Court of Karnataka had to examine the question of availability of doctrine of *lis pendens* in a matter where a person in possession of land under an agreement for sale failed to get a sale deed executed for failing to avail of the benefit of part performance. The court said that *lis pendens* cannot arrest limitation from running.⁷

⁵ *V. Rama Rao v. T. Raghunathan*, AIR 2008 AP 92.

⁶ *Id.* at 83.

⁷ *Shivayya v. Praveena*, AIR 2008 Kant 157.

*Doctrine of part-performance*

The Supreme Court considered the question as to the applicability of the doctrine of part-performance in an appeal from Karnataka. Section 53-A of the TP Act prescribes, *inter alia*, that the benefit of part-performance is available to a person who has entered into an agreement to purchase immovable property, has taken possession of the same and is ready and willing to perform his part. In the given case there was nothing on record to show that he was ready and willing to do so and as such it was held that he was not entitled to such benefit.⁸

Similarly, the Karnataka High Court in an appeal held that though a person under an agreement of sale put in possession does not care to get the sale deed executed and further enters into an agreement of sale puts another in possession without executing a sale deed in his favour is not entitled to the benefit of the doctrine of part performance. In such a case, the original owner has a right to claim possession and *mesne* profits from the agreement holder.⁹

Sale of immovable property – how effected

Section 54 of the TPA contains the law on sale of immovable property. This section was amended by a local amendment in Uttar Pradesh and therefore, in Uttar Pradesh the sale of immovable property requires a registered agreement for sale. In a case decided by the High Court of Allahabad, parties agreed to sale and purchase of an immovable property by an agreement for sale which was not registered. An earnest money of Rs.7,00,000/- was paid by cheque to the vendor and the balance of Rs.13,00,000/- was to be paid at the time of executing the sale deed subject to clearing some formalities. After the formalities were fulfilled the vendor did not execute the sale deed. The purchaser gave a legal notice and filed a suit for specific performance of the contract directing the vendor to execute the sale deed or in the alternative to refund the earnest money. His suit for specific performance was decreed by the trial court. The vendor went into appeal. The high court set aside the decree and held that in Uttar Pradesh sale cannot be effected by an unregistered agreement for sale as such an agreement is not admissible in evidence and on the basis of such a document no court can pass a decree for specific performance but in view of special facts and circumstances of the case the high court was pleased to direct the refund of Rs.7,00,000/- being the earnest money with interest at the rate of 12% per annum from 22.1.1993 till the date of recovery.¹⁰

A landlord had entered into an agreement of sale with his tenant. Thereafter, he filed a suit for eviction on the ground of *bona fide* personal necessity. The trial court decreed his suit. The tenant filed an appeal in the

8 *A. Lewis v. M.T. Ramamurthy*, AIR 2008 SC 493.

9 *Shivayya v. Praveena*, AIR 2008 Kant 157.

10 *Vijay Kr. Sharma v. Devesh Behari Saxena*, AIR 2008 All 66.



Patna High Court. It upheld the decree and dismissed his appeal. The court observed that an agreement for sale by itself does not create any interest in or charge on such property. Sale is not complete unless the possession of property is handed over to the purchaser on payment of the purchase price to the seller and a sale deed is duly executed.¹¹

Execution of sale deed in auction purchase not required

The property of a company comprising of land, building and machinery was sold by court auction in favour of another company being the highest bidder. The purchaser company made payment of the full price and the sale was confirmed by the court. Thereafter, the purchaser company sold the property purchased at the auction sale. Then the company in whose favour the sale was confirmed requested the official liquidator who had conducted the auction sale to execute a sale deed in favour of the company who had bought it from the auction purchaser company as its nominee. The official liquidator refused his request on the ground that he would not be a party to such an illegal and unlawful transaction as it involves evasion of stamp duty. The auction purchaser company being new owner of the property may do so by following the proper procedure under the law. The matter was taken to the Rajasthan High Court and the high court after considering a number of Indian and English authorities on the point held that once the sale at an auction sale is confirmed the purchaser at auction sale becomes a full owner of the property; further execution of a sale deed is not required; and only a certificate of sale issued by the court is enough as his document of title. The auction purchaser cannot ask the official liquidator to execute a registered sale deed in favour of his nominee which does not connote the transfer or assignment to the latter of any property in or ownership or the right of the person nominating him.¹²

Mortgage by conditional sale

An owner of a house mortgaged his property to secure a loan of Rs.7,000/- and executed a document dated 3.2.1953. He agreed to repay the mortgage amount within a period of five years and in case he failed to do so, within the stipulated period it would be deemed that the suit house property including the shop was sold and the mortgagee would be treated as the owner thereof.

The mortgagor filed a suit for redemption of mortgage alleging that he was entitled to redeem the mortgage on repayment of mortgage amount to the mortgagee. The mortgagee refused to accept the amount and redeem the mortgage. The defendant alleged that the payment was not tendered within the stipulated period and as such he had become the owner. The trial court dismissed the suit for redemption. On appeal, the first appellate court

11 *Ramesh Chandra v. Prem Lata Sinha*, AIR 2008 Pat 155.

12 *Megha Enterprises Pvt. Ltd. v. Official Liquidator, Jaipur*, AIR 2008 Raj 138.



reversed the dismissal order. It held that the suit house property was mortgaged and the condition incorporated in the document created a clog on mortgage and that such a condition was void in the eye of law and decreed the suit.

The high court in second appeal held that it was a mortgage and the condition was a clog on redemption and observed as follows: ¹³

It is well settled that if the condition of re-conveyance is enumerated in document itself, then it has to be regarded as mortgage as provided under section 58(C) of the TPA.

Accordingly, the mortgagor was held entitled to redeem the mortgage and his suit for redemption was upheld by the high court.

An owner of property executed a deed for conditional sale of his property for a period of five years as a security for a sum of Rs.500/- and gave him possession of the said property for five years or earlier on payment of the loan. When the debtor offered the payment, the creditor refused to accept it and did not handover the property back to him. The debtor filed a suit for redemption. The high court held that the transaction was a mortgage and not a sale. On appeal to the Supreme Court it upheld the decision of the high court. SB Sinha J aptly observed: ¹⁴

An answer to the question as to whether the transaction is a sale or a mortgage not only would depend upon the language used in the deed, but also the circumstances attending thereto. When an absolute transfer of property is made, it cannot be limited to a period. The transaction shows that the appellant was to have title in the property only for a period of five years. Appellant was to remain in possession thereof only for the said period. Plaintiff/respondent was entitled to tender the said amount of Rs.500/- not only at the expiry of the said period but even prior thereto. On tender of such document the appellant was required to execute a deed of re-conveyance in favour of the plaintiff/respondent. Such a transaction in our opinion cannot be construed to be a transaction of sale. It was a mortgage as has been rightly held by the High Court. A suit for redemption of mortgage, therefore, was maintainable.

The appeal was accordingly dismissed. The creditor in this case obviously had become dishonest and wanted to grab the valuable property mortgaged with him for a paltry sum of Rs.500/- which he had used for nearly five years taking undue advantage of the helplessness of a poor man who needed a loan of Rs.500/- to meet unavoidable necessity.

13 *Vasantrao v. Kishanrao Neb*, AIR 2008 Bom 42 at 44.

14 *Vishwanath Dadoba Karale v. Parisa Shantappa Upadhiye*, AIR 2008 SC 2510 at 2511 paras 6, 8, 9.



Right to redemption

A person took loan from the bank on the security of his immovable property. He failed to pay the loan and interest by the stipulated time. The bank gave him adequate opportunity to do so but he failed. The matter went to the Debt Recovery Tribunal. The DRT ordered sale of the mortgaged property. The property was put to public auction and sold. A certificate of sale by public auction was duly issued but not registered and possession was not handed over to the buyer. At this stage the borrower tendered the amount of loan with interest. But bank refused to accept the amount and returned the same.

The borrower filed a writ petition in the High Court of Madras and sought to exercise his right of redemption. The single judge of the high court allowed the petition accepting the plea of the borrower that the sale of property under a court auction is not complete until the certificate of sale is registered.

The bank filed the writ appeal. The division bench of the Madras High Court allowed the appeal holding that the certificate of sale granted to the purchaser of any property sold by public auction by a civil or revenue officer did not require registration under section 17(2)(xii) of the Indian Registration Act, 1908.¹⁵

No time limit to redeem usufructury mortgage

The Punjab and Haryana High Court considered this question in a peculiar case. The mortgagee of a usufructury mortgage filed a suit for declarantion that he has been in possession of agricultural land as mortgagee for more than 60 years and as such he be declared the owner thereof. The defendant denied the factum of mortgage. The trial court dismissed the suit holding that the plaintiff did not disclose any cause of action as the mortgagee did not demand payment of mortgage money nor the mortgagor refused the payment of the same.

The plaintiff filed the appeal in the high court. The full bench of the high court dismissed the appeal holding that in the absence of any time limit fixed in the mortgage deed the principle of equity applies to the case that once a mortgage always a mortgage and mortgage is always redeemable. In case of a usufructury mortgage the right to redeem arises on the date of payment only.

In the instant case the mortgagee was using the mortgaged property for all these years virtually as an owner but the right of the mortgagor was not lost and as such the mortgagee was not entitled to the declaration sought for.¹⁶

¹⁵ *R. Chidambara Manickam v. Shakeena*, AIR 2008 Mad 108.

¹⁶ *Ram Kishan v. Sheo Ram*, AIR 2008 P&H 78 (FB).



Rights of the mortgagee to claim possession of the mortgaged property

In an appeal decided by the Rajasthan High Court the question for consideration was as to whether a usufructuary mortgagee is entitled to claim the possession of mortgaged property even when he did not pay the money he had agreed to advance. Since the mortgage was without any consideration, he was held not entitled to any relief.¹⁷

A person executed a registered mortgage deed as a security for a loan of Rs.20,000/- and handed over possession of his house and land to the mortgagee. The period prescribed in the mortgage deed was seven years. The mortgagor died in the meantime. The legal heirs of the mortgagor filed a suit for redemption. The mortgagee in his written statement contended to be a tenant under an unregistered lease deed. The trial court dismissed the suit for redemption holding the defendant to be a tenant. The appeal of the mortgagor was allowed holding that a mortgagee under a registered mortgage deed cannot claim to be tenant under an unregistered lease deed. The mortgagee came in appeal to the Supreme Court. The Supreme Court did not find any merit in the appeal and dismissed the same. SB Sinha J observed as under:¹⁸

The deed of mortgage was registered one. It fulfilled the conditions of a valid mortgage. Its terms could not have been varied or altered by reason of an unregistered document so as to change the status of the parties from mortgagee to a lessee.

Extinguishment of right of redemption

Section 60 of the TPA confers a right on the mortgagor to redeem his property after paying to the mortgagee the amount borrowed under the mortgage with interest. However, a proviso to section 60 provides that the right conferred by this section may be extinguished by act of the parties. In an appeal decided by the High Court of Andhra Pradesh the mortgagor executed a document expressing his inability to pay the borrowed amount and thereby giving to mortgagee the right to put the property mortgaged to a public auction and receive the resultant amount. Considering the effect of this document the high court held that this amounted to redemption of the mortgaged property.¹⁹

Similarly in Rajasthan, under section 43(2) of the Rajasthan Tenancy Act, 1955 usufructuary mortgages were deemed to have been redeemed on completion of 20 years from the date of commencement of the Act, namely, 5.4.1961. Thereafter, the mortgagor could redeem the mortgage at any time by making the payment of mortgage money. The mortgagor in a case decided by the high court wanted to redeem it on 9.7.1965. There was a difference

17 *Basanti Lal v. Phaphi*, AIR 2008 Raj 72.

18 *Chandrakant Shankar Rao Machale v. Parubai Bhairu Mohite*, AIR 2008 SC 3255 at 3257 para 13.

19 *Syed Noor Mohammed v. Syed Khaja Moimuddin*, AIR 2008 AP 82.



of opinion in the revenue courts as to whether the said suit was barred by limitation or not. The high court held that the suit was not barred. The lower revenue court had held that he could have redeemed it before 5.4.1961 as on that date the right to redeem was extinguished but the high court held that it extended to further period of 12 years from 5.4.1961.²⁰

Accession to mortgaged property

Section 70 of the TPA lays down that during the continuance of a mortgage if there is some addition or increase in the mortgaged property, the same is covered by the mortgage and the mortgagee is entitled to the security thereof. In a case decided by the Supreme Court the mortgagor mortgaged the leasehold rights to a bank for securing the loan. Subsequently, she acquired the freehold rights in respect of the same and became a full owner thereof. The Supreme Court held that under section 70 of the TPA the mortgagee bank was entitled to put it to public auction under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.²¹

Lease

Sections 105 to 117 make detailed provisions about the law relating to lease and rights and obligations of lessor and lessee. Section 108 specifically provides for rights and liabilities of the lessor and the lessee. The Patna High Court had to decide a case under section 108 (h). In this case a government school was a tenant of the landlord. The school authorities demolished a few rooms of school building and reconstructed new rooms without the prior permission or the knowledge of the landlord. After the expiry of the lease period the school authorities were holding it over but the lease had determined. They continued to pay the rent. In law, their status was that of a monthly tenant but the breach arising out of demolition and reconstruction rendered them merely a trespasser and hence liable to eviction.

The high court, therefore, held that considering the aforesaid facts and the defiant attitude of the state in asserting right which it did not have and destroying the property of another without any legal authority the state was a trespasser on the land and must vacate the same forthwith.²²

Under a registered lease deed dated 25.6.1969 a shop was initially let out for a period of 21 years. The lease deed contained a clause that on the expiry of the period of this lease the lessee shall have the option to renew the lease for a further period of 10 years upon fulfilment of terms and conditions mentioned therein. During the continuation of the lease the lessor and the lessee died. The tenant did not vacate the shop at the expiry of lease

20 *Laxman v. Board of Revenue*, AIR 2008 Raj 109.

21 *M.K. Ramesh Kumar v. Asset Reconstruction Company (India) Ltd.*, AIR 2008 AP 45.

22 *Bharat Bhushan Deva v. State of Bihar*, AIR 2008 Pat 29.



period. The lessors accepted the tenancy. When the lessor filed a suit for eviction against the lessee on expiry of lease by efflux of time after 31 years from the date of commencement, the trial court decreed the suit. The tenant went in appeal to the high court.

The question for consideration in the appeal was whether the tenants continued on the principle of holding over or whether they continued as tenants in the absence of registered deed for renewal of the original lease which was only for 21 years though there was a clause for renewal for further period of 10 years at the option of lessee as the suit was filed before a period of 31 years.

The high court observed that in its considered view, renewal of lease can be made only through a bilateral process, as renewal cannot be effected unless one exercises the option pursuant to the renewal clause and the other accepts such proposal for renewal.

However, in this case the renewal was a unilateral process because in terms of the original lease deed the renewal was at the option of lessee and the lessor had no such option. The high court agreed with the findings arrived at by the trial court and upheld the same. The appeal was accordingly, dismissed.²³

A landlord of a house filed a suit for eviction of a monthly tenant on the ground of *bona fide* requirement of himself and his wife. The landlord also alleged in his suit that the tenant had unauthorisedly erected a *pucca* wall on his terrace. The trial court accepted both the pleas of the landlord and decreed the suit. The tenant filed an appeal in the Calcutta High Court. During the pendency of the appeal the plaintiff and his wife both died and upon their death their son was substituted. The son had a house of his own in which he was living. The plaintiff landlord had before his death executed a will whereby the suit property was given to his grandson. The grandson got the will probated. The grandson thus became the owner. He was in America but intended to return to India soon and required the house for his *bona fide* use and occupation.

The high court did not accept the plea of the grandson for the reason that on the death of the plaintiff the ground of *bona fide* personal requirement had disappeared on which the trial court had decreed the suit. The plaintiff had out of his own money purchased a separate house for his son in which he was living. Grandson could not be a real legal heir eligible to be substituted for his grand father as long as his father was alive. His father was rightly substituted for the deceased plaintiff. The grandson had acquired the suit property under a will as a legatee. His *bona fide* requirement was fresh cause of action. The appellate court had the power to take into consideration developments during the pendency of appeal but this was not a fit case for

23 *Renuka Seal v. Sahitra Dey*, AIR 2008 Cal 75.



that purpose. The court accepting the appeal of the tenant, set aside the decree passed by the trial court.²⁴

Notice to quit

A company took the suit premises on a monthly rent of Rs.3500/- for four years from 16.7.1980. The lease deed provided for a ten per cent increase of rent. On expiry of four years a notice of eviction was issued and suit for eviction was filed before the additional rent controller. Then under section 6-A of the Delhi Rent Control Act, 1988 a notice was issued for increase of rent. The rent was increased to Rs.3850/-. The rent controller ceased to have jurisdiction. The petition for eviction was withdrawn. A fresh petition for eviction was filed in the Delhi High Court. It allowed the petition and ordered for eviction. The tenant company went in appeal to the Supreme Court. The question for consideration before the Supreme Court was whether the contractual tenancy between the landlord and the tenant came to an end merely by filing an eviction petition and whether the landlord could seek enhancement of rent simultaneously on post-termination of tenancy?

The Supreme Court after considering the submissions of the counsel on both sides and in view of the law laid down by the court in a number of previous cases held that it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant. Therefore, it had no hesitation to hold that no notice to quit was necessary under section 106 of the TPA in order to enable the respondent to get a decree of eviction against the appellant.²⁵

The owners of a suit property situated at Connaught Place executed a lease deed dated 18.9.1986 and registered it on 20.9.1986 and let it out on a monthly rent of Rs. 189.50 paise. On expiry of the lease deed the tenancy became monthly. The tenant sublet and assigned or parted with a part of the premises to the State Bank of Bikaner and Jaipur without the consent of the owner. Rest of the portion was also let out to others on huge monthly rent thereby the tenant was earning about Rs. 2 lacs per month from the sub tenants and paying Rs.189.58 to the owner. Thus, he was not entitled to the protection under the Delhi Rent Control Act, 1988 and was liable to be evicted. The owner gave a notice of termination of tenancy on 9.4.1995 and called upon the defendant to hand over the vacant and peaceful possession of property by the end of 31.5.1995.

The owner also filed a suit for eviction in the high court. The high court framed several issues for consideration. On consideration of the evidence of the parties and submissions of their counsel it held that the tenant by not renewing the original tenancy and not taking steps for specific performance allowed the tenancy to become a monthly tenancy. Therefore, a notice to quit

24 *Raj Kumar Dutta v. Bimal Kumar Dhar*, AIR 2008 Cal 190.

25 *M/s Nopany Investments (P) Ltd. v. Santosh Singh (HUF)*, AIR 2008 SC 673.



was not necessary and the owner was entitled to a decree for vacant possession of the suit property.²⁶

A three bedroom single unit house in Haus Khas was let out on 16.8.1981. The Delhi Rent Control Act came to be amended in 1988 whereby tenancies exceeding monthly rent or Rs. 3500/- were not covered by the Act. A suit for ejectment was filed and it was dismissed in default on 17.1.1998 by the civil judge. No application was filed for restoration. A suit seeking ejectment was filed in the year 2002 after issuing a notice dated 11.3.2002 determining the tenancy. The appeal court affirmed the order of the trial judge dated 21.5.2007 by its order dated 5.12.2007. A second appeal was filed in the High Court of Delhi. The high court also dismissed the appeal by its order dated 25.2.2008 holding, *inter alia*, that the tenants continued under section 116 of the TPA by holding over. The effect of not applying for restoring the suit was deemed to be a waiver of the right and that filing of a suit for ejectment filed by only one co-owner was not maintainable and that the landlord in this case was entitled to profit at the rate provided by the first appellate court.²⁷

A landlord let out his premises to a bank for seven years with a clause for renewal for another seven years with a provision for enhancement of rent at a fixed percentage. The lease continued beyond seven years. He gave a notice to quit under section 106(1) of the TPA. The notice did not mention the period of notice. The trial court held that the mistake in the notice was not fatal. It did not preclude the lessor from giving a fresh notice to quit clearly stating that the lease stood determined requiring the lessee to deliver vacant possession. The point to be noted in this connection is that the defective notice in this case was given on 12.4.2005 on which the court refused to grant a decree of eviction. However, by its order dated 16.7.2008, it permitted the lessor to give a fresh notice in accordance with law thereby allowing the tenant (Central Bank of India) to continue in the premises against the wishes of the landlord. Remember, the defect in the notice to quit was not fatal in the language of the court. The view taken by the court in this case was very funny. This was the most appropriate case for a compromise. Instead, the court held a long hearing and wrote a long judgment of 20 paragraphs.

Eviction of lessee by landlord

Section 109 of TPA empowers the transferee of a land to evict the lessee by filing a suit for eviction. In a case decided by the High Court of Karnataka, the original lessor had entered into an agreement for sale of a property in possession of his tenant. The transferee by virtue of sale agreement had acquired constructive possession of the property actually in the possession of the tenant but in relation to the tenant he had become a

26 *S. Rajdev Singh v. Pimchip Associates Pvt. Ltd.*, AIR 2008 Del 56.

27 *M.R. Sahni v. Doris Randhawa*, AIR 2008 Del 110.



landlord. In this newly acquired position he filed a suit for eviction. The high court held he was entitled to evict the tenant and the suit was maintainable.²⁸

Gift

An orphan living in orphanage was granted suit leased by the then ruler of Talcher in Orissa by a deed dated 2.12.1947 out of compassion in order to provide him shelter. He was in possession of the suit land since then but settlement authorities did not record his name in the settlement documents and showed the land to be in illegal occupation. He filed a suit for declaration of his right title, interest and confirmation of his possession over the land and recovery of possession. The district judge dismissed the suit. He came in appeal to the high court. The question for determination before the high court was whether the grant by the ex-ruler was a gift within the meaning of section 123 of the TPA. The high court on the basis of relevant record held that though the grant was not registered under the provisions of the Registration Act it was a gift within the meaning of section 123 of the TPA.²⁹

III CONCLUSION

The foregoing survey shows that the cases concerning sale, mortgage and lease involve complicated questions of law as to the interpretation of law, deeds and documents by the high courts and the Supreme Court. The litigation concerning such matters take time and cause mental torture to parties apart from expenses. In most cases unscrupulous people reap the undeserved profits by using the property being in wrongful possession. The *mesne* profits awarded to the rightful parties is no recompense to them. The cost involved in seeking possession of their own property by prolonged litigation is huge. An alternative mode of dispute resolution is the need of the hour. The Supreme Court has of late taken an initiative for resolving such disputes by *Lok Adalats* and setting up centers for reconciliation at the high courts level. It is indeed a laudatory measure which needs wide publicity and encouragement.

²⁸ *M/s Mujawar & Co. v. Fazlur Rehman*, AIR 2008 Kant 32.

²⁹ *Sher Khan v. State of Orissa*, AIR 2008 Ori 94.

