24

PROPERTY LAW

Annam Subrahmanyam[*]

I INTRODUCTION

THE TRANSFER of Property Act, 1882 has been enacted during the British regime. Whitley Stokes, Member, III Law Commission of India drafted the Transfer of Property Act, 1882 (TPA).The Act came into force on the first day of July, 1882. It is needless to mention that it is desirable to revisit the law to simplify the same and to make it more comprehensive. The TPA deals with transfer of immovable property in general. The Act is not a complete code of transfer of property. The Act does not apply to all the transfers taking place in India. Its scope is limited. The Act applies to transfer by the act of parties, *inter vivos*, and not by application of law. Thus, its operations are limited to transfers by act of parties only except in a few cases saved by section 2 of the Act. TPA is better understood not in isolation but when read with certain provisions of other enactments like Indian Contract Act, 1872, the Partition Act, 1893, the Hindu Succession Act, 1956, General Clauses Act, 1897, Tenancy Acts of various states and the Registration Act, 1908. This year under survey, various issues of considerable significance on the property law have come up before the courts in India. The courts have scanned the Act, and other relevant laws to interpret and delineate the legal position. The apex court and the high courts in India have decided many cases in the year 2018. The judgments have been analysed and reported in the present survey on the property law. Thus, the present survey on property law is an attempt to give a bird's eye view of the important judicial decisions relating to the subject on two specific headings, general principles of transfer of property and specific transfers.

Applicability of the Act

Durga Prasad Shrestha v. *Special Secretary, Tourism Department, Government of Sikkim, Gangtok, East Sikkim*[1] is a case pertaining to sale of immovable property.

* M.A., M.A., M.L., Ph.D., Professor of Law and Dean, School of Law, Vel Tech University, Avadi, Chennai and Ex. Principal, University College of Law, Andhra University, Visakhapatnam, Andhra Pradesh State. The author greatly acknowledges the able and knowledgeable assistance rendered by Prof, (Dr.) Mohan R. Bolla, Professor of Law and Principal, KristuJayanti College of Law, Bengaluru in the preparation of the present Survey Report.

1 AIR 2018 Sikkim 22.

TPA was not enforced in State of Sikkim at the relevant time. The court held that court can apply rules of equity and justice to transaction and determine dispute before it in respect of property.

II GENERAL PRINCIPLES

Family arrangement

In *Narendra Prasad Singh* v. *Ram Ashish Singh*,[2] the High Court of Patna has considered necessity of registration of documentof familyarrangement. In this suit for declaration of title, materials on record showed that property was acquired by Ash Kuer from joint family fund.The property had been treated as joint family property right from the very beginning and the family arrangement was made among the members of the family for avoiding any future disputes and for preserving peace and security of the family by avoiding litigation.But, there was a deed of gift dated August 12, 1991 executed by Ash Kuer in favour of the appellant.The trial court held that the plaintiffs got their perfect title over the Schedule II land. The first appellate court affirmed the finding recorded by the trial court. However, in the appeal before the High Court of Patna, the contesting defendant denied the genuineness of the said document and also assailed the same on the ground that the said document being an award of partition of the family properties, was not registered.

The high court in review ruled that there cannot be any dispute over the legal proposition that any agreement or award having consequence of creation of rights in favour of any persons with regard to an immovable property worth more than Rs. 100/- would require compulsorily registration and if unregistered, the same cannot be looked into. If Ext.4 could be held to be an award or deed of partition, the matter would have been different and registration of such document would have been compulsory for the same to be taken in evidence.The revision court found no legal infirmity in the concurrent findings recorded by the courts below that the joint family fund was the source of the money used for the purchase of the suit property in the name of Ash Kuer. The same, therefore, has rightly not been held to be *Stridhan* by the courts below.The court viewed since acquisition of the land in the name of a member of a family from the joint family property cannot be regarded as a benami transaction within the meaning of section 2 of the Benami Transaction (Prohibition) Act, 1988.

Family settlement

In *Sita Ram Bhama* v. *Ramvatar Bhama*[3] the Supreme Court observed that document itself being family settlement and relinquishment document taking away shares of sisters and mother in immovable property is inadmissible in evidence even for collateral purpose, until same is impounded.The document dated September 9, 1994 divided the entire property between plaintiff and defendant which document is also claimed to be signed by their mother as well as the sisters. In any view of the

2 ChakradhariSharan Singh J., in *Narendra Prasad Singh* v. *Ram Ashish Singh,* AIR 2018 Patna 205.

3 AIR 2018 SC 3057.

matter, there is relinquishment of the rights of other heirs of the properties, hence, courts below are right in their conclusion that there being relinquishment, the document was compulsorily registrable under section 17 of the Registration Act. Pertaining to family settlement, a memorandum of family settlement and its necessity of registration, the law has been settled in *Kale* v. *Deputy Director of Consolidation.*[4] The propositions with regard to family settlement, its registration were laid down as follows:[5]

1) The family settlement must be a bona fide one so as to resolve family disputes andrival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.

Validity of conditions in the allotment letter after the sale

In *A.P Industrial Inf. Corp. Ltd* v. *S.N Raj Kumar,*[6] the appellant-corporation allotted industrial plots to the respondents/ entrepreneurs herein at Visakhapatnam and other places in the State of Andhra Pradesh. All the respondents are transport companies with their headquarters all over India and they got allotted the aforesaid plots in Visakhapatnam or other places in the state with the purpose of having branch

4 (1976) 3 SCC 119.

5 *Id.,* para 10.

6 AIR 2018 SC1981.

offices. Intention was to construct transport offices and godowns. Almost six years after the execution of the sale deed, show-cause notices were issued to the respondents for cancellation of the plots on the ground that the respondents had failed to establish their industrial units on the said plots within the stipulated period and had kept them idle which was detrimental to the industrial development.

The high court ruled that once the contract is concluded, the allotment conditions or covenants of agreement of sale ordinarily cannot be enforced having regard to the various provisions of the Transfer of Property Act, Indian Contract Act, 1872, the Registration Act, 1908 and the Specific Relief Act, 1963, which constitute the Civil Code of India and govern the transfer of immovable property from one person to another. The allotment letter or the sale agreement does not survive once the contract is concluded on execution of the registered sale deed resulting in alienation, conveyance, assignment and transfer of title.

The apex court speaking through Justice A. K Sikri held that section 5 of the TPA defines 'transfer' as conveyance of property from one living person to one or more living persons. Sections 8, 10 and 11 thereof attach sanctity and solemnity to a transfer of immovable property. The apex court also confirmed the legal position of conditions as per the TPA. It was reiterated that all that section 32 of the TPA provides is that "in order that a condition that an interest shall cease to exist may be valid, it is necessary, that the event to which it relates be one which could legally constitute the condition of the creation of an interest". If the condition is invalid, it cannot be set up as a condition precedent for crystallization of the interest created. The condition that the industrial unit shall be established within a specified period failing which the interest shall cease, is a valid condition. Clause 7 of the agreement between the parties is, therefore, valid and is binding on the parties thereto.

Ostensible owner

R. Subhash Reddy, J. in *Gopal Singh (Dead) Through Lrs*. v. *Swaran Singh*[7] has dealt with the law relating to ostensible owner. The suit schedule property was auctioned in the restricted auction under the provisions of The Punjab Package Deal Properties (Disposal) Act 1976. It was originally sold to one Mohan Singh, son of Aladitta, resident of Kamalpur in the auction held on December 23, 1964. There was a restriction on transfer which was held pursuant to an auction, not to alienate the suit property till the final realisation of the loan amount taken by the allottee for purchase of the land or till the expiry of 10 years which is later. On the ground that the said Mohan Singh has breached the condition, proceedings were initiated for resumption of the land. Initial order for resumption passed by the authority was set aside in the writ petition by the high court. Thereafter, further order was passed by the Deputy Commissioner-cum-Chief Sales Commissioner, Kapurthala on March 28, 1985. The aforesaid order was passed by recording a finding that cancellation of the auction was proper and further confirmed the allotment made in favour of the appellants. It was the case of the respondent- plaintiffs that respondent-plaintiffs were *bonafide*

7 Decided on Dec. 7, 2018, *available at*: https://indiankanoon.org/doc/193588422/(last visited on Dec. 24, 2019).

purchasers of the suit land for a valuable consideration. It is further submitted that in any event, in view of section 41 of the TPA the civil court is competent to entertain the suit for grant of relief as prayed for. It is also pleaded that defect in the prayer, if any, for quashing the order dated March 28, 1985, may not come in the way of the respondent-plaintiffs for seeking relief of declaration of their title which is to be protected in view of the provision under section 41 of the TPA.

The Supreme Court observed that it is not in dispute that originally land was put to restricted auction to sell the land under the provisions of the Act and the rules framed thereunder. There are restrictions on the alienation of the land as per the original transfer. At first instance when the order of cancellation was passed, matter was carried to high court and the high court has disposed of the petition by directing the authorities not to take steps for eviction of the petitioners therein unless they are provided opportunity before passing appropriate order. After order was passed by the high court, order dated March 28, 1985 was passed cancelling the transfer and further allotment made in favour of the appellants herein was confirmed.It was clarified that every order made by any officer or authority under the Act was final and no civil court shall had jurisdiction to entertain any suit or proceeding and no injunction should have been granted by any court or other authority in respect of any action taken under provisions of the Act. The first appellate court, by applying the aforesaid provision, has clearly recorded a finding that the suit is barred and further it was also held that suit is not maintainable against the state and its authorities, who are defendant nos.1 to 4, without issuing notice under section 80 of CPC. There is also nothing on record seeking leave from the court for dispensing with issuance of notice as provided under section 80(2) of the CPC. The said aspect is not at all dealt by the high court. So far as the bar of the suit under section 16 is concerned, the high court referred to Special Leave Petition(C) No.26714 of 2015, but, it appears that the said petition is dismissed for non-prosecution. High court also referred to certain other earlier judgments to support a finding on the validity of the order dated March 28, 1985. But the Supreme Court was of the view that when the suit itself was barred, it was not open for the civil court to record any finding on the validity of the order dated March 28, 1985. Therefore, the apex court allowed the appeal and held the order of the authority cancelling the auction sale and allocation made to the appellants as valid. In effect the respondents claim for the application of section 41 of the TPA has been declined.

Unauthorised transferor subsequently acquiring interest

In *Ashok Chinnappa Metagud* v. *Annapurna*,[8] a claim was made for protection under section 43 of TP Act.[9] The appellant is an advocate. There was sale of property

8 AIR 2018 Kar. 1.

9 Transfer of Property Act, 1882, s.43 reads:Transfer by unauthorised person who subsequently acquires interest in property transferred.—Where a person fraudulently or erroneously represents that he is authorised to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

in his favourfrom his brothertransferor who had only leasehold rights in property and not ownership right. Actually, both the appellant and respondent no.12 Mallikarjun,had leasehold rights and because of execution of Ex.R-91, the respondent no.12 sold his 1/3rd interest in favour of his brother. Later, when this appeal was pending, respondent no.12 and his son *i.e.,* respondent no.13 purchased 2/3rd interest of Kalamadani family, which was represented by respondents 6 to 11 under a registered sale deed. The question was whether the appellant can claim protection under section 43 of the TPA alleging that there was an unauthorized transfer of the property.

The High Court of Karnataka observed that analysation of section 43 of the TPA gives a picture that when the transfer of immovable property takes place, the transferor should not have transferable interest. Yet he transfers the property fraudulently or erroneously making a representation that he has a transferable interest, and, if any time in future, the transferor acquires interest in the property, the transferor is estopped from taking a contrary stand against the interest of transferee who acted on that misrepresentation. In other words, this section protects the interest of transferee if he has been misled by the transferor in the guise of having a transferable interest. The only condition for seeking protection under section 43 of the TPA is contract between transferor and transferee must be in subsistence during the time when the former acquires the interest. But transferee cannot take protection under section 43 of the TPA if he enters into transaction knowing fully well that the transferor had no right or any kind of interest.

Justice Sreenivas Harish Kumar held that the transferee in the instant case cannot claim protection under section 43 as he entered into transaction knowing fully well that the transferor had only leasehold right and no right of ownership. Therefore, section 43 of the TPA will have no application and the transfer has to fail.

Lis pendens

'*Lis'* means litigation or an action or a suit. *'pendens'* means continuing or pending. *Lispendens* means pending suit or an action. Section 52 deals with the doctrine of *lispendens*. The doctrine is based on the Common Law maxim *'pendente lite nihil innovator'* which means during pendency of a litigation, nothing new should be introduced. Though it creates a hardship on an innocent purchaser, still it is based on public policy. To avoid this hardship registration of *lis* was recognised in England. It is an extension of the law of *res-judicata* and aims at prevention of multiplicity of suits.

In *Rajul Mukim* v. *Sumermal Surana*[10] High Court of Calcutta observed that it is clear that the appellant was aware of the pendency of the partition suit at the time that the appellant purchased a share of Khazana's interest therein. However, the appellant took no steps to apply to be impleaded in the suit. Since the appellant has purchased a share of a co-sharer in a partition suit during the pendency of such suit, the doctrine of *lispendens* would apply. As a consequence, unless the appellant applied on her own to be impleaded as a party to the partition suit, the appellant would have

10 AIR 2018 Cal 102.

to look at Khazana's share in the property and seek a partition with the Khazana upon Khazana being allotted a demarcated area in the Darga Road property. The high court also observed that whatever rights the appellant may have, the appellant may assert against Khazana, including partition of the allotment made in the subject suit in favour of Khazana. The order impugned cannot be faulted for not letting the appellant to interfere in execution proceedings with which she has no nexus.

Lis Pendens only in genuine cases

Daljit Singh v. *Janraj Singh,*[11] is a case related to decree for specific performance of agreement to sell. A objection was made by purchaser *pendente lite* regarding allegedly executing another agreement to sell property in favour of second defendant during pendency of suit for specific performance filed by plaintiff. The High Court of Punjab held the fact that purchaser *pendente lite* (second defendant) not having knowledge of suit, unbelievable, he being resident of village of the vendor itself and doctrine of *lispendens* applicable.It was held that the purchaser *pendente lite*, not *bona fide* purchaser and he cannot oppose relief of specific performance to vendee.

Knowledge or ignorance of *Lis Pendens*

In *K. V. Rajasekhar Kedarnath Co-op. Housing Society Ltd.,*[12] plaintiff filed the suit against defendants 1 to 6 seeking specific performance of agreement of sale executed by D.1 and for a declaration that the sale deeds executed by D.1 with the connivance of D.3 in favour of D.2 and D.4 and subsequent sale deeds executed by D.2 in favour of D.5 and D.6 pending the suit as non-est in law and for their cancellation. The question was whether petitioner's knowledge or ignorance about pending litigation between respondent and defendant will be of any consequence for the application of section 52 of Act. The High Court of Andhra Pradesh held that petitioners filing separate appeal not permissible and petitioners being *pendente lite* transferee can seek his impleadment. The admitted facts are that the petitioners are the purchasers pending suit and first appeal either directly from the second defendant or from his vendees. They have not chosen to come on record as parties before the courts below. Although, their contention is that they were *bonafide* purchasers for value without notice of the pending litigation and they came to know about it very recently. Their knowledge or ignorance about the pending litigation is of no much consequence in view of section 52 of TPA, which propounds the doctrine of *lispendens.* It was held that the effect of transfer *pendente lite* and the rights and obligations of such third party purchasers is no more a virgin field to be explored.

Part performance

In *Rajender Singh* v. *Nanga alias Nanak (deceased) thr. L.Rs.*,[13] a claim was made for the benefit of protection of part performance under section 53A of TP Act regarding a suit for declaration of title and possession by purchaser of property wherein

11 AIR 2018 P & H 115.
12 AIR 2018 Hyd. 71.
13 AIR 2018 P & H 29.

vendee has already performed his part of contract. No date was specified for execution of sale deed.The question was whether execution of sale deed immediately or within specified time is a requirement of section 53-A. The high court held that failure of vendee to get sale deed executed within reasonable time cannot operate as statutory bar against benefit under section 53-A.The suit for injunction was also held to be not maintainable on his part. However, in the present case, as notice above, the lower appellate court has rightly held that the agreement in question did not require any registration. Therefore, the plaintiff could not be non-suited, even for the purpose of injunction, claimed by him. Hence, the courts below has rightly granted the injunction in favour of the plaintiff. The court elaborated that section 53-A of the TPA creates a benefit in favour of a person, who had a prior agreement in his favour along with the possession of land mentioned in the agreement. This section creates a bar against, the original owner or a person claiming title under him, for claiming any right title or interest *qua* the land mentioned in the agreement, during the subsistence of such agreement. Therefore, if his possession is threatened then it is only the suit for injunction, which can be filed by a person, claiming benefit of section 53-A of the Act. Needless to say that, if such a person is sued, then he will be entitled to take the same as defence. Hence, so far as the possession is concerned, once a person claiming benefit of section 53-A of the Act; shows and proves the ingredients of section 53-A of the Act along with the requirement of registration of the same, if any, then he can, very well, use the agreement, as a basis for filing a suit, as plaintiff also. His remedy is not limited to take the defence, in case a suit is filed against him.

Possession and part performance

In *Shivaji Yallappa Patil* v. *Ranajeet Appasaheb Patil,*[14] after partition of suit property, co-owners of property agreeing to sell their part to vendees and owners of suit property transferring entire possession of property in favour of vendees after agreement to sell in pursuance of part performance. The Supreme Court observed that section 53 A which was added in 1929 and imports into India a modified form of the equity of part performance as developed in England in *Elizabeth Maddison* v. *John Alderson.*[15] The following postulates are *sine qua non* for basing a claim on section 53 A of the TP act, 1882:

a) There must be a contract to transfer for consideration any immovable property.
b) The contract must be in writing signed by the transferor, or by someone on his behalf.
c) The writing must be in such words from which the terms necessary to construe the transfer can be ascertained.
d) The transferee must be in part performance of the contract take possession of the property, or of any part thereof.
e) The transferee must have done some act in furtherance of the contract.

14 AIR 2018 S C 1961.
15 (1883) 8 App Cases 467.

f) The transferee must have performed or be willing to perform his part of the contract.

After perusal of the factual matrix of the entire case and peculiar facts, the court viewed that the present respondent nos. 1 and 2 were put into the possession of entire land. The decree passed by the Munsiff in the year 1987 regarding possession in an independent suit filed in the year 1984 is indicative of the fact that the plaintiffs/ respondent nos. 1 and 2 were in possession. The apex court observed that it is well settled law that section 53A of the TPA confers no right on a party who was not willing to perform his part of the contract. A transferee has to prove that he was honestly ready and willing to perform his part under the contract.It was ruled the vendees entitled to benefit under section 53-A of Act of 1882 and to decree of specific performance.

In *Durga Prasad Shrestha* v. *Special Secretary, Tourism Department, Government of Sikkim, Gangtok, East Sikkim,*[16] the high court held that the document/ alleged agreement to sell failed to ascertain its terms with reasonable clarity. It cannot be treated as agreement to sell or sale deed. Hence appellant cannot claim benefit of part performance on the basis of said agreement. Referring agreement to sell and transfer by unauthorised person, transferor not acquiring interest in property transferred even after agreement, section 43[17] not applicable and transferee cannot enforce terms of contract.

Registration Amendment Act 2001 and part performance

Minhaj v. *Dierdre Elizabeth (Wright) Issar*[18] case has dealt with the amended Registration Act read with section 53 A of the Act. The core issue is whether the suit agreement dated July 9, 2003 on the basis of which relief of specific performance has been claimed, could be received as evidence as it is not a registered document. Section 17(1A) of the 1908 Act came into force with effect from September 24, 2001. Whereas, the suit agreement was executed subsequently July 9, 2003.The Supreme Court interpreted the provision and held on a plain reading of this provision, it is amply clear that the document containing contract to transfer the right, title or interest in an immovable property for consideration is required to be registered, if the party wants to rely on the same for the purposes of section 53A of the 1882 Act to protect its possession over the stated property. If it is not a registered document, the only consequence provided in this provision is to declare that such document shall have

16 AIR 2018 Sikkim 22.

17 This section (S. 43) enacts the well-known as principle of substitution. When one of the several co-owners transfers his share, the transferee stands in the shoes of the transferor and thereby acquires a right to join possession or part enjoyment of the property, including the right to enforce partition. This right is however subject to the conditions and liabilities affecting at the time of the transfer, the share or interest so transferred. No evidence has been furnished to indicate that respondent no.3 was legally competent to transfer the property in dispute, the same having fallen in the share of another respondent. The section specifically lays down that the transferor must be legally competent to transfer his share. When the property is not his share, the question of legal competence obviously would not arise as in the instant case.

18 *Ameer Minhaj* v. *Dierdre Elizabeth (Wright) Issar* (2018) 7 SCC 639.

no effect for the purposes of the said section 53A of the 1882 Act. The issue, in our opinion, is no more *res integra*.

The apex court held that the registered general power of attorney, has been executed by the original defendant no.1 predecessor in title of respondent nos.1 and 2 (defendant nos.3 and 4), in favour of respondent no.3 (defendant no.2). The court opined that the trial court was justified in observing that being a registered document, there is a legal, rebuttable presumption that a registered document, has been duly stamped. As observed by the trial court, the question as to whether the document was hit by the provisions of the 1882 Act or the 1899 Act can be decided after the parties adduce oral and documentary evidence. The high court, the court opined, should have stopped at that instead of analysing the said instrument by invoking the principle of incorporation by reference to the agreement to sell dated November 12, 1995. For, the appellant (plaintiff) is not a party to the said document. Indeed, the executor of the document original defendant no.1 and the defendant no.2 in whose favour the same has been executed, are parties to the present suit. The principal document, namely, the agreement to sell dated November 12, 1995, as rightly noticed by the courts below, was executed prior to coming into force of section 17(1A) of the 1908 Act. That provision has been made applicable prospectively. Hence, it was held that the same was not required to be compulsorily registered at the time of its execution. Even if it was required to be registered, keeping in view the purport of section 49 read with section 17(1A) of the 1908 Act, the same could be received as evidence for a limited purpose, without having any effect for the purposes of section 53A of 1882 Act.

III SPECIFIC TRANSFERS

Sale

High Court of Madhya Pradesh in *Bank of Maharashtra* v. *The District Magistrate Bhopal*[19] held that as per section 54 of the TPA, 'sale' is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.The sale deeds transfer unequivocal right in property to the borrower free from all encumbrances. The award/ decree passed by the *Lok Adalat* did not declare the sale deeds as null and void. The high court confirming the Award of the *Lok Adalat* held that the bank as a secured creditor has a right to realize its dues by sale of such property in accordance with law. The court directed the district magistrate to immediately hand- over the possession of the property mortgaged in favour of secured creditors within two weeks.

Specific performance

In *Balwant Vithal Kadam* v. *Sunil Baburaoi Kadam* [20] the respondent filed a suit against the appellants for specific performance of the two agreements, to

19 High Court of Madhya Pradesh in *Bank of Maharashtra* v. *The District Magistrate Bhopal* on 10 May, 2018, *available at*: https://indiankanoon.org/doc/100088444/(last visited on Dec. 20, 2019).

20 AIR 2018 SC 49.

purchase 1/12 th share of the appellants in the land admeasuring 2 hectares 18 acre situated at Malegaon Taluka and District Satara. The sale consideration was fixed at Rs.10,000/-. The respondent had paid Rs.3,000/- by way of earnest money to the appellants. The sale deed was to be executed within six months. Since the dispute arose between the parties and no sale deed was executed, the respondent filed a suit to seek specific performance of the agreement against the appellants.On the plea relating to validity and enforceability of the agreement in question Abhay Manohar Sapre, J.concurred with the opinion of high court.It was held that the agreement in question was not hit by section 48 of the Maharashtra Co-operative Society Act inasmuch as the agreement to sell in itself does not create any interest in the land nor does it amount to sale under section 54 of the TPA. The apex court held that it only enables the intending buyer to claim specific performance of such agreement on proving its terms. In other words, there lies a distinction between an agreement to sell, and sale. The latter creates an interest in the land once accomplished as defined under section 54 of the TPA. The court also concurred with the opinion of high court that since the dues of the Land Development Bank were repaid, the question of applicability of section 48 did not arise.

***Ex Parte* cancellation of registered deed**

In *Vatumalli Laxmi Prasanna* v. *State of Telangana,*[21] a writ petition was filed challenging ex parte registration of deed of cancellation by sub-registrar and petitioner/ vendee, purchasing disputed land *vide* registered sale deed. The high court held that the writ petition was not maintainable.The high court held that proviso appended to Rule 26(i)(k)(i) of the Rules, 1960, clearly vests power in the competent authority to present deed of cancellation of earlier deed of conveyance on behalf of state. The proviso does not envisage prior notice. It was held that once the deed is presented for registration and complies with all requirements; registering authority has no competence to refuse registration of such document. In the cases on hand once power to register unilateral deed of cancellation of earlier registered sale deed is held valid, the aggrieved parties have to avail the civil law remedies as available to them. Further, the narration of facts would disclose that there appears to be a dispute between state and vendor of the petitioners/petitioners and such disputes require adducing of evidence which cannot be undertaken in exercise of power of judicial review.

Payment of whole price not *sine qua non*

Sankarsan Behera v. *Commissioner, Consolidation, Odisha, Cuttack*.[22] is a case wherein the high court observed that payment of whole price at time of execution, not *sine qua non*. Execution of sale deed for consideration that will be paid in future satisfies sale, right, title and possession over property passing in favor of vendee on date of execution of sale deed with promise that money will be paid in future.It was categorically maintained that mere execution of registered sale deed sufficient to pass title to vendee. The court lamented that in such cases, the writ of *certiorari* cannot be issuedunderarticle 226 Constitution of India, to correct errors of fact or law unless

21 AIR 2018 Hyd. 32.

22 AIR 2018 Ori. 41.

error is manifest. The court lamented that theconcurrent findings of fact of law which are found to be correct by subordinate court and not to be disturbed by exercising writ of *certiorari.*

Unregistered agreement to sell and impleadment of necessary party

Sarbati v. *State of Rajasthan,*[23] is a case regarding anunregistered agreement to sell and its admissibility. A suit was filed for declaration of title and permanent injunction. Both the courts below after perusing the material available on record and based on admitted case of the plaintiff that she has purchased the land by way of an agreement to sell from one Saddiq Khan, came to the conclusion that as the valuation of the property was more than Rs.100/-, the same could not have been transferred otherwise then by way of a registered sale deed in terms of provisions of section 54 of the Act. The high court concurring with the lower courts versions held that the claim of plaintiffbased on an unregistered agreement to sell in respect of property having valuation of more than Rs.100/- and the agreement to sell, were not admissible. The court also considered that impleadment of necessary party, in suit for declaration of title and permanent injunction. The gram panchayat inadvertently allotted 'JohadPaytan' land to the plaintiff vendee, which was already allotted to Public Health and Engineering Department (PHED) for setting up of filter plant by colonization department. It was held that PHED, being a necessary party andas it was not impleaded in the suit,the suit was not maintainable.

Agreement to sell coupled with possession

Devinder Singh v. *Fateh Jung Singh,*[24] the defendants had set up a case that three documents namely agreement to sell, general power of attorney and Will were the result of forgery. However, no evidence was led on behalf of the defendants. In view of the evidence available on the file, the high court held that the first appellate court committed a material illegality in ignoring the testamentary deposition of late Mahender Singh only on the ground that the testamentary document is not the 'Will' as defined in section 2(h) of the Indian Succession Act, 1925. Agreement to sell coupled with the delivery of possession although does not confer any right, title or interest in the property, however, it certainly enables the agreement holder to protect his possession, in terms of section 53-A of the TPA, subject to fulfillment of the requirement of law. An agreement holder, who has been ready and willing to perform his part of the contract and has taken step in furtherance thereto, can protect his possession. Similarly, it was also held that the general power of attorney holder, which is valid and has not been revoked, can be acted upon by the power of attorney holder, in accordance with law. Merely because these documents were executed collectively at the time of entering into 'sale transaction' as is commonly understood, these documents would not be rendered unenforceable. These documents collectively or separately can be put to use for staking claim, in accordance with law.

23 AIR 2018 Raj. 156.

24 AIR 2018 P & H 70.

Unregistered agreement for sale

Awadhesh Kumar Singh v. *Shyam Narayan Jha,*[25] is a case pertains to unregistered agreement for sale. Section 17 of Registration Act, 1908 which states that document containing contracts to transfer any immovable property for consideration for purpose of section 53-A of TPA, shall be compulsorily registered. It was observed that section 17 of the Registration Act, 1908 has been amended by Act no. 48 of 2001 and one section *i.e.,* section 17(1-A) was inserted by Act 48 of 2001 and the aforesaid provision says that the documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53-A of the TPA, shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001, and if such documents are not registered on or after such commencement then, they shall have no effect for the purposes of the said section 53-A. In the present case, admittedly, possession of the disputed land has not been given to plaintiffs- appellants. Moreover, it is obvious from the pleading of the plaintiffs- appellants that agreement for sale in the present case was executed in the year 1995 whereas amendment in 17 of the Registration Act, 1908 was made in the year 2001. Moreover, in the same section an explanation has been attached which says that a document purporting or operating to effect a contract of the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money. Therefore, the aforesaid explanation clarifies entire controversy and I have no hesitation to hold that there was no requirement of registration of Exhibit 1 and court below committed error in holding that Exhibit 1 had no effect for want of registration.

Sale and agreement to sell

In *Surinder Prasad* v. *Madhur Green,*[26] High Court Himachal Pradesh held that unregistered agreement to sell cannot confer any title nor transfer any interest in immovable property. It was held that in view of the provisions contained under section 54 of the TPA read with section 17 of the Indian Registration Act, 1908, any contract of sale which is not a registered deed of conveyance would fall short of the requirements of sections 54 and 55 of TPA and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under section 53-A of TPA). As regards the other contention of the defendants that the shop was in fact delivered by late YoginderSood during his life time, there is practically no evidence led in this behalf. In such circumstances, the judgments and decrees passed by the courts below call for no interference. The high court stated that no question of law much less substantial question of law arose for consideration in this appeal and was accordingly dismissed.

Mortgage by conditional sale

While dealing with any aspect of mortgage in TPA, it is necessary to understand the clear meaning of mortgage given in the Act.Section 58 (a) gives the definition of

25 AIR 2018 Patna 24.

26 AIR 2018 HP 173

mortgage as follows:"A Mortgage is the transfer of an interest in specific immovable property for the purpose of securing.

a) the payment of money advanced or to be advanced by way of loan or

b) an existing or future debt or

c) the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called the *'mortgagor'* the transferee a '*Mortgagee'* the principle money and interest on which the payment is secured for the time being are called the *'mortgage money'*, and the instrument in which the transfer effected is called a '*mortgage deed' "*

The following are the elements of 'Mortgage':

1) Mortgage is a transfer of interest in immovable property

2) The interest transferred must be the interest in specific immovable property

3) The transfer should be by way of security and

4) Mortgage may be the security for the purpose of

a) Payment of money advanced or to be advanced by way of loan

b) future or existing debt or

c) performance of an engagement or pecuniary obligation

5) The parties must be competent to transfer and

6) Registration

Babu Genu Waghchaure v. *Shankar TukaramThorat* [27] is a case of mortgage by conditional sale where meager consideration amount shown in document and language used in document indicating existence of debt and long period mentioned therein indicating transaction in question as mortgage by conditional sale. It was held that the crux of the distinction between a mortgage by conditional sale and a sale with a condition of repurchase[28] lies in the fact that the former evidences a debt, the repayment of which is charged on the property conveyed, whereas in the later, the relationship of debtor and creditor does not subsist, in form, a mortgage by conditional sale is an ostensible sale, but in reality it is a mortgage. The very definition of a mortgage by conditional sale postulates an element of sale. The court must look into the form and reach the real intention of the parties. The intention whether the deed evidences a mortgage or sale must be gathered from its terms and the other attending circumstances. Each case must, however, be decided on its own facts and the true intention of the parties should be gathered from the language of the deed, interpreted in the light of the surrounding circumstances. On careful perusal, it appears that the language used in it indicates the existence of a debt and the long period indicates the transaction as mortgage by conditional sale. In the instant case, the first appellate court has rightly considered the contents of the deed along with the surrounding circumstances and concluded that the transaction is a mortgage by conditional sale. The specific words

27 AIR 2018 Bom 209.

28 English Mortgage, condition of the parties and surrounding circumstances is paramount.

used in the deed Exibit 37 such as "your money", "my land in transaction", "would get reconveyance" and "if the amount is not repaid the transaction should be considered as a sale transaction" are rightly considered by the first appellate court to conclude that the intention of the parties was to enter into a transaction of mortgage by conditional sale.

Rathnamma v. *Shanthamma*,[29] is also a case pertaining to mortgage by conditional sale. The plaintiffs have not whispered anything about loan transaction or mortgage of the property. A careful perusal of the sale deed shows that it contains all ingredients of 'sale'. It ends with a sentence, "you shall execute a sale deed when we pay sale consideration".On the factual matrix, it was held that the sale deed in question was executed on May 6, 1978. Plaintiffs' father and mother died, in the years 1992 and 1996 respectively. Plaintiffs have got issued a legal notice to the defendant in the year 2005 and filed the suit in the year 2006. Plaintiffs' parents did not enforce the condition upon which plaintiffs strongly rely for at least 14 years during their life time. Both the courts, on appreciation of evidence, had concurrently held that the plaintiffs failed to prove that defendant had agreed to execute a re-conveyance deed. The high court viewed thatthe contention urged on behalf of the plaintiffs that the condition contained in the sale deed would amount to mortgage in terms of section 58(c) of the TPA was too fragile to countenance.

Right of redemption of usufructuary mortgage

Dharam Singh v. *Faquir Chand*,[30] the plaintiff claimed possession of suit property pursuant to usufructuary mortgage claiming ownership by afflux of time. The court has held that mere expiry of period of 30 years from the date of mortgage does not extinguish the right of the mortgagor under section 62 of the TPA, there may not be any application of provisions of Limitation Act, 1963. The court proceeded to decide the instant appeal purely on the basis of law laid down by apex court *Singh Ram (D) Tr.Lr* v. *Sheo Ram*[31] wherein it has been specifically held that mere expiry of 30 years from the date of mortgage would not extinguish right of the mortgagor under section 62 of the TPA to redeem the mortgage land/property. Therefore, it was opined that all the substantial questions of law, would become redundant. Otherwise also it is case of the plaintiff that defendants mortgaged the suit land in favour of the plaintiffs-respondents but since he failed to redeem within prescribed period of limitation, plaintiffs have become owners by afflux of time. Only question which was required to be decided by the High Court was, "whether defendants could redeem the suit land after expiry of 30 years or not". Once the apex court[32] has specifically answered aforesaid question, finding, if any, returned by courts below with regard to mortgage allegedly made by defendants in favour of the plaintiffs is of no consequence. Consequently, in view of detailed discussion made and law laid down by apex court,[33] the high court allowed the appeal.

29 AIR 2018 Kar 205.

30 AIR 2018 HP 5.

31 (2014) 9 SCC 185.

32 *Singh Ram (D) Tr. Lr* v. *Sheo Ram* (2014) 9 SCC 185.

Right of redemption

Jaigopalcharya by L.Rs. of v. *Shyam Prakash*,[34] is a case pertaining to execution of compromise decree in a suit for redemption of mortgage and recovery of possession on the \ground that decree is unregistered and Court passing same lacking pecuniary jurisdiction.It was held that in order to thwart execution of a compromise decree, a judgment-debtor is required to make out a case that compromise decree is vitiated by fraud, misrepresentation, misunderstanding or mistake. It was found that no such allegations were forthcoming in the matter, nor discernible from the impugned order. Moreover, as per petitioners' own admission they did not make endeavour to take possession of the disputed property from respondent till of January 17, 2011. It was also not in dispute that in terms of compromise it was obligation of the petitioners to serve a registered notice on first respondent for getting vacant possession of the disputed premises so as to demolish the existing construction and raise new construction. The court held that the objection of the petitioners that execution was laid by the respondents belatedly was therefore not tenable inasmuch as when in terms of compromise decree petitioners themselves also awakened after more than 10 years, *i.e*., in the year 2011, to perform their obligation. The court also clarified that execution of a decree, which was passed after contest and execution of a compromise decree were on different footing.A compromise decree pre-supposes an agreement between rival parties willing to meet some of the demands of the plaintiff but not all; in a way, it may be called 'meet someone half way' and therefore it was held that a party to a litigation, who had entered into compromise, cannot be allowed to eschew or disown obligation on its part, which emanates from compromise decree.

The right of redemption

In *Jamila Begum (D) Thr. Lrs.* v. *Shami Mohd*.,[35] Justice R. Bhanumati observed that the right of redemption can be extinguished as provided in proviso to section 60 of the TPA. It can be extinguished either by the act of the parties or by decree of a court. The expression "act of parties" refers to some transaction subsequent to the mortgage, standing barred from the mortgage transaction. Jamila Begum-one of the mortgagees has purchased the property by the sale deed dated December 21, 1970. Thus, it was held that she purchased the entire equity of redemption by the execution of the sale deed, the mortgage qua the appellant has merged with the sale.

Accession and exchange

The Supreme Court in *Maharaji Education Trust* v. *Housing And Urban Development Corporation Ltd.,*[36] has considered the question of the charge within the purview of sections 70, 63 and section 118 of the TPA. The question was whether land obtained in exchange could be said to be accession of the property.

33 *Ibid*.

34 AIR 2018 Raj 171.

35 2018 INSC 0887, *available at* http://spotlawapp.com/judgementText/pdf/910012018/9100120181214009.pdf (last visited on Dec. 24, 2019).

36 *Available at*: https://indiankanoon.org/doc/155400907/ (last visited on Dec. 23, 2019).

In the instant case the property was exchanged by the Educational Trust with Avas Parishad in the year 2007. Agreement had been entered into with SGS Constructions on August 26, 2010 for a sum of Rs.154 crores in order to pay the dues of HUDCO and a sum of more than Rs.9 crores had also been paid to educational trust which was deposited by it with HUDCO. Deposit of title deed has been made by educational trust subsequently on July 27, 2011 with HUDCO. But prior to that, an agreement to sale had been entered into for the aforesaid 21 acres of land which was unencumbered. Thus, at the time when the agreement had been entered into, the property was unencumbered and was not under mortgage with HUDCO. The court observed that SGS Constructions by making a huge payment of Rs.9 crores had acquired a right over the said unencumbered property. Consequently, HUDCO will not have the first right to sell the 21 acres of land which was unencumbered as it was the subject matter of agreement to sell. It was held that HUDCO will have the right for other mortgaged properties to realize the dues at the first instance. Several orders for compromise through the appointment of Arbitrator and or remittance of amounts in compliance with the directions of the apex court for conduction of auctions turned out to be futile. Yet, the apex court considered that the initiation of contempt proceedings against the respondents was not worthwhile. Ultimately, it has been agreed by HUDCO as well as by SGS. Construction and Developer Pvt. Ltd. to finalise the deal with 5 per cent rebate in the reserve price. The amount thus worked out as Rs.301.15 crores. Before the apex court as an offer was accepted by SGS Constructions and Developers Pvt. Ltd as made by HUDCO, the Court ordered that the amount be paid. The Supreme Court opined that the property of 21 acres obtained in exchange[37] by Educational Trust cannot be said to be accession within the purview of section 70 of TP Act.

Lease

In *Suresh Rabidas* v. *State of West Bengal,*[38] the appellant/writ petitioner had acquired a leasehold interest in a land measuring an area of 2678 square feet on the basis of a lease deed executed by and between the appellant/writ petitioner and the State of West Bengal. It was found that by suppressing relevant documents which reveal that the appellant/writ petitioner had from time to time approached the concerned authority of the state seeking extension of time to construct and to start production, which he never did between January, 1991 till January 20, 2017, he had approached the writ court seeking mandatory orders in his favour.The single judge had observed to the effect that construction work on the leasehold land was not done by the appellant/writ petitioner during long period of 27 years and thereby the appellant/writ petitioner had violated the terms of the lease deed for which the state respondent had the right to re-enter possession of the land-in-question. It was held that in an Intra-Court *Mandamus* Appeal, no interference is usually warranted unless palpable infirmities or perversities

37 "Exchange defined" 118. When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange."

38 AIR 2018 Cal. 154.

are noticed. In the instant case, even a bare perusal of the impugned judgment and order did not reveal any such palpable infirmity or perversity. Moreover, the impugned judgment and order was supported with cogent reasons.The court dismissed the intra court appeal. It may be noted here that the Intra-Court *Mandamus* appeal should not have been accepted as there was no palpable infirmity in the earlier judgment.

In *Bijay Kumar Manish Kumar Huf* v. *Ashwin Desai*[39] four appeals are filed against the orders dated between November 15-17, 2016 and July 20, 2017 and passed by the High Court of Calcutta. On account of default in payment of lease money, a suit, *viz.*, title suit no.2450 of 2007 was instituted by the appellant landlord before the XI City Civil Court, Kolkata for recovery of khas possession, *mesne profits*, permanent injunction and other reliefs. The respondent had filed an Order VII, Rule 11 CPC application for rejection of plaint which was dismissed by the trail court on February 3, 2015 and again by high court in revision on March 31, 2015. A second application under Order VII, Rule 11 CPC was filed by the respondent claiming that plaint ought to be rejected for non-issuance of statutory notice under section 6(4) of West Bengal Tenancy Act, 1997. This was dismissed by the trial court on August 18, 2016. However, the revision petition against this was allowed by the high court on November 15, 2016 and it is against that the present appeal was filed. The apex court speaking through Justice N.V.Ramana observed that the dispute can be resolved by framing an issue by the trial court on the said point and by adjudicating the same as a preliminary issue.

The contention raised by the appellant is that they are governed by the provisions of TPA because the lease was executed in 1992 when the West Bengal Tenancy Act, 1997 was not in force and the same cannot have retrospective effect. On the other hand, the respondent contended that the suit was filed on September 6, 2007 when the West Bengal Tenancy Act, 1997 was in force.

It may be noted that the apex court has evaded its responsibility of guiding the lower courts and the question has been reverted back to the trial court. Technically speaking the apex court is expected to deal with the question and set it rest by judicious application of the wisdom.

Registration of permanent lease

D.P. Choudhury, J. of High Court of Orissa in *Pramoda Das (Dead) Through* v. *Saroj Kanta Misra*[40] was dealing with the permanent lease document must be registered for being valid. The high court observed that section 106 of the TPA is applicable if the lease of immovable property is meant for agricultural or manufacturing purposes where the duration should be one year. But for any other kind of lease, the lease is from month to month terminable by giving fifteen days' notice. Similarly, if the lease

39 Decided on Dec. 12, 2018, *available at*: https://indiankanoon.org/doc/8478598/(last visited on Dec. 10, 2019).

40 Decided on June 27, 2018, *available at*:https://indiankanoon.org/doc/38976589(last visited on Dec. 20,2019).

is construed as a contract to the contrary as per section 106 then the lease deed for beyond one year must be registered. On the other hand, a lease for construction of house over an immovable property, the principle of execution of registered document is mandatory. This is also very clear from section 117 of the TPA because under such provision of law the provision with regard to the lease will not apply in respect of lease for agricultural purposes. It was clarified that any immovable property beyond five years requires sanction by the Commissioner of Endowment. Section 19 of the Odisha Hindu Religious Endowments Act, 1951 read with sections 106 and 107 of the TPA, make clear to show that the lease being made beyond one year for the use other than the agricultural use requires registration of lease deed.

Cancellation of lease

In *Guruvinder Singh Chadda* v. *State of Chhattisgarh*,[41] show-cause notice was served on the petitioners but ground for cancellation of lease was not mentioned and opportunity of hearing was not given to petitioners. Material relied on by state governmentfor cancellation of lease was not supplied to petitioners. The court found that following the principle of law laid down in *Gorkha Security Services* case[42] it would be apparent that in the alleged show-cause notice issued to the petitioners, name of revenue officer, special case number, parties name, date of hearing, have been mentioned and no grounds have been stated on the basis of which the lease is required to be cancelled. Therefore, the court opined that the petitioners had no opportunity to even counter/reply the notice, on which ground the State proposed to determine the lease of the petitioners. The court also observed that, cancellation of lease has civil consequence and it ought to have been proceeded by giving reasonable opportunity of being heard to the petitioners which has not been done. The materials relied upon by the state government to cancel the lease had even not been supplied to the petitioners and thus, the court opined that it had resulted in passing of the order in breach of the principles of natural justice.Therefore, the orders, cancelling the lease deserved to bequashed and were quashed. Interestingly, the respondents/state government was given liberty to proceed in accordance with law. The court lamented that if proceeding is initiated afresh, then a duly constituted show cause notice supported by documents/material will be issued to the petitioners giving reasonable time to them to file and the parties will be entitled to lead evidence and support their respective cases and thereafter, a reasoned and speaking order will be passed strictly in accordance with law. It may be noted that the high court might pass strictures against the concerned authority. Further, to ensure justice, the court might have passed orders to submit the compliance of the principle of natural justice and to avoid further

41 AIR 2018 Chh. 125.

42 AIR 2014 SC 3371.

litigation and non-compliance of the court orders forcing the petitioner to file a contempt case against the concerned authorities.[43]

Eviction of sub tenant

In *Fahima Irfan Patel* v. *Troop Basheer Ahmed* ,[44] Eshwar and Mukund are the owners of the suit premises. They leased the premises to the plaintiff who in turn leased it to the defendant. The defendant was a chronic defaulter in paying the rents @ Rs.11,000/- p.m., and fell in due of a sum of Rs.1,54,000/-. After adjusting the arrears from the advance of the rent amount, the defendant was still found due in a sum of Rs.64,000/-. Therefore, the plaintiff got issued a legal notice to the defendant and demanded the vacant possession of the suit property from him. The defendant received this notice. Pursuantly, the original owners Mukund and Eshwar and other well wishers intervened and as a result, a compromise was arrived at. The defendant was given six months time to pay arrears of rent of Rs.64,000/- on or before February 2004 and the defendant agreed to quit and deliver vacant possession of the suit premises to the plaintiff on or before October 31, 2003. Thus, the defendant became a licencee after this compromise. On October 17, 2003 the plaintiff terminated the licence of the plaintiff by issuing a legal notice. On November 11, 2003 when the plaintiff wanted to take possession of the suit premises, the defendant and his supporters prevented her from taking possession of the suit premises and other articles given to the defendant by the plaintiff for the purpose of running a restaurant. The police also declined to interfere when she contacted them. Therefore, in these premises the plaintiff filed the suit seeking ejectment of the defendant from the suit premises.The trial judge dismissed the suit. The high court opined that the trial court had ignored the admission found in the written statement and the testimonies of DW-1 and DW-2. The high court found that the entire approach of the trial court was held very rhetorical. The high courtfound that defendant was inducted by the plaintiff as sub-tenant of the suit premises.The high court finally ruled that the plaintiff was entitled to decree of ejectment.

Surrender of lease

Before, Justice M.R. Shah of High Court of Gujarat in *Virendra Bhogilal Shah(Huf)* v. *O.L of Sarangpur Cotton Manufacturing Co*.,[45] it was submitted that

43 See, *Gurvinder Singh Chadda* v. *K.R.Pisda* 27 Sa/37/2000 decided on Sep. 17, 2018. It is very interesting to note the evasive contentions of the contemnors. Return has been filed on behalf of respondent No.2 stating inter alia that order dated Dec. 5, 2014 was passed bona fidely as the order dated Oct. 31, 2014 was never produced or communicated to the contemnors and the contemnors were not having any knowledge of the same as such, for want of knowledge, the order could not be complied with and Cont. Case (C) No.510/2014 immediately after knowledge of the order dated Oct. 31, 2014, the contemnors had stayed the order dated Dec. 5, 2014 and also sought unconditional apology, as the order was never communicated to them. The order was allegedly passed in presence of counsel for respondents no.1 to 4 and 6 to 8 in the writ petition, despite that, the petitioner's lease has been cancelled and his part of building has been demolished which is flagrant violation of the order of the Chattisgarh Court, as the state was duly represented and they must have informed the authorities and therefore it could not have been done.

44 AIR 2018 Kar. 167

45 Decided on April 6, 2018, *available at*:https://indiankanoon.org/doc/113927366(last visited on Dec. 10, 2019).

considering section 111 of the TPA, lease can be determined either by express surrender or by implied surrender. It is submitted that there is primary distinction between express surrender of the lease by mutual agreement between lessor and lessee under section 111(e) of the TPA and implied surrender under clause 15. It was held that considering the terms of the lease deed it appears that the landlord / lessor has carved out absolute transferable interest in favour of the lessee in the perpetual lease. There is no forfeiture clause. There is no right to re-entry and therefore, the passage relief upon from TPA shall not be useful and/or of any assistance to the appellant.

Termination of tenancy and **notice to quit**

In *Universal Cables Ltd* v. *Laxmi Properties Ltd* .,[46] the High Court of Bombay held that it is well settled that notice to quit need not be worded with accuracy. It would not be invalid merely because the period mentioned therein falls short of the period specified under section 108(1) of the TPA namely of 15 days notice in case of month-to-month tenancy when a suit or proceeding is filed after expiry of the period so specified under section 108(1). The object and purpose being that the leasee should have a reasonable notice before he is asked to vacate the premises. The court observed that it is well settled that the notice would be required to be construed broadly and it should not be defeated by inaccuracies even in regard to the date of expiry of the notice. Even the amended section 106(3) of the TPA reflects this position. It was held that it would not be correct to contend that the notice of the respondents retrospectively terminated tenancy from December 31, 2005 and thus it was not in accordance with the requirements of section 106 of the TPA. This argument was considered as hyper-technical and would defeat the requirement and intention of the legislature as contained in section 106 (3) of the TPA, for the simple reason that by the notice dated February15, 2006 the respondents had unequivocally terminated the tenancy of the applicant in respect of the suit premises and secondly the suit was filed much later to the period of fifteen days (filed after 18 months) after the notice dated February 15, 2006 was received by the applicant.

Termination of sub-lease

In *Jagdish Sharaf* v. *State of Chhattisgarh,*[47] the lessee sub-let of disputed shop to another tenant and modified structure of shop without permission of competent authority. Here the lessee was unable to produce any registered sale deed executed in his favour regarding disputed shop and title was not conferred over lessee, and he continued to be tenant. The high court held that on thefailure of lessee to deposit entire rent the cancellation of allotment of shop was proper.It is well settled law that without a registered sale deed, no title is conferred or no right is created in favour of any person.[48]

46 AIR 2018 Bom170.

47 AIR 2018 Chha 89.

48 See: *Suraj Lamp and Industries Private Limited* v. *State of Haryana*, AIR 2012 SC 206; *Syndicate Bank* v. *Estate Officer and Manager, APIIC Ltd.,* AIR 2007 SC 3169; and *Patel Natwarlal Rupji* v. *Kondh Group Kheti Vishayaka*, AIR 1996 SC 1088.

Notice to quit

In *Rupa Ghosh* v. *Satyanarayan Dudhani*,[49] the defendants took the plea that commencement of period of tenancy had not been established and that tenancy has been terminated without serving notice. The court observed that the first appellate court has recorded concurrent finding on meticulous examination and threadbare discussion of the fact that the plaintiffs were the landlord and owner of the suit property and the defendants were the tenant. There was concurrent finding that the appellants/ defendants had defaulted in payment of the rents. It is settled that in exercise of jurisdiction under section 100, CPC concurrent finding of fact cannot be upset by the high court unless the findings so recorded are shown to be perverse. Applying the settled law to the facts of the present case makes, it abundantly clear that the substantial question of law as formulated is no more *res integra*. The issue regarding notice under section 111 of Act has been put to a quietus by the Supreme Court in the judgment rendered in the case of *V. Dhanapal Chettiar* v. *Yesodai Ammal*[50] wherein it has been held that "when the relationship of landlord and tenant is established then the question of service of notice under section 111 of the TPA loses its force.

Application of TPA *vis-a-vis* Tenancy Act

In *Apollo Zipper India Limited* v. *W. Newman and Co. Ltd.,*[51] the question was whether the suit filed by the appellant invoking the provisions of the TPA was maintainable or it should have been filed under the Tenancy Act. The apex court opined that the appellant rightly filed the suit by invoking the provisions of the TPA. In the case at hand, the monthly rent of the suit premises was Rs.40,000/- and, therefore, the appellant was well within their right to file summary suit against the tenant's eviction and for recovery of the arrears of rent by taking recourse to the provisions of the TPA read with Rule 1(B) of The Rules applicable to the suits filed on the original side jurisdiction of the High Court at Calcutta.The apex court held the impugned judgment was set aside and that of the single judge is restored. The respondent was granted six months' time to vacate the suit premises subject to the condition that they shall deposit the entire arrears of rent up to date at the rate of Rs.40,000/- per month within one month from the date of this order and also deposit six months' rent by way of damages for use and occupation within one month in advance. The apex court also reiterated that in an eviction suit filed by the landlord against the tenant under the rent laws, when the issue of title over the tenanted premises is raised, the landlord is not expected to prove his title like what he is required to prove in a title suit.In other words, the burden of proving the ownership in an eviction suit is not the same like a title suit.[52]

49 AIR 2018 Jhar 147.

50 (1979) 4 SCC 214.

51 AIR 2018SC 2847.

52 See *Sheela* v. *Firm Prahlad Rai Prem Prakash*, 2002 (3) SCC 375, para 10 at 383 and also *Boorugu Mahadev and Sons.* v. *Sirigiri Narasing Rao*, AIR 2016 SC 433, para 19 at 437.

Notice of eviction in joint tenancy

In *Suresh Kumar Kohli* v. *Rakesh Jain*[53] Suresh Kumar Kohli, the appellant is the owner of shop in New Delhi. On November 15, 1975, his father, along with another, let out the suit premises on a monthly rental of Rs. 450/- to Shri Ishwar Chand Jain, father of respondent No. 1, and Ramesh Chand Jain-respondent no. 2. The tenants started a family business under the name and style of Rakesh Wool Store. Rakesh Jain, respondent no. 1 herein was inducted as a partner in the family business on April 2, 1979. On April 25, 2009, the owner sent a legal notice to respondent no. 2 herein and his father Late Shri Ishwar Chand Jain terminating the tenancy with effect from May 31, 2009. ShriIshwar Chand Jain died on March 8, 2010. Since the tenant failed to vacate the suit premises, the appellant herein filed eviction petition. The Supreme Court observed that fundamentally, the concepts of joint tenancy and tenancy-in-common are different and distinct in form and substance. The incidents regarding the co-tenancy and joint tenancy are different; joint tenants have unity of title, unity of commencement of title, unity of interest, unity of equal shares in the joint estate, unity of possession and right of survivorship. The court observed that tenancy-in-common was a different concept. There is unity of possession but no unity of title, i.e. the interests are differently held and each co-tenant has different shares over the estate. Thus, the tenancy rights, being proprietary rights, by applying the principle of inheritance, the shares of heirs are different and ownership of leasehold rights would be confined to the respective shares of each heir and none will have title to the entire leasehold property. Therefore, the estate shall be divided among the co-tenants and each tenant in common has an estate in the whole of single tenancy. Consequently, the privity exists between the landlord and the tenant in common in respect of such estate.

From a perusal of lease deed dated November 15, 1975, the apex court found that the suit premises was let out jointly to late ShriIshwar Chand Jain and Shri Ramesh Chand Jain, son of late ShriIshwar Chand Jain. Thus, both of them were joint tenants and upon the death of Ishwar Chand Jain, respondent no. 1 inherited the tenancy as joint tenant only. In the light of *H.C. Pandey,*[54] the apex court clarified that when original tenant dies, the legal heirs inherit the tenancy as joint tenants and occupation of one of the tenants is occupation of all the joint tenants. It is not necessary for landlord to implead all legal heirs of the deceased tenant, whether they are occupying the property or not. It is sufficient for the landlord to implead either of those persons who are occupying the property, as party. An eviction petition against one of the joint tenant is sufficient against all the joint tenants and all joint tenants are bound by the order of the Rent Controller as joint tenancy is one tenancy and is not a tenancy split into different legal heirs. Thus, the plea of the tenants on this count must fail.

53 AIR 2018 SC 2708.

54 1989 AIR 1470.

Termination of lease of *wakf* property

In *Guramardeep Singh* v. *Ved Vyas*, [55] the lease of property by Wakf Board was in question and it was alleged that there was breach of terms of lease deed. The court held that the mere service of notice *ipso facto* would not result in termination of lease. The court held that the Board is required to approach civil court for ejectment of lessee and jurisdiction of civil court is not barred in respect of civil dispute relating to wakf property. The court also observed that if the lease agreement is executed and the Board feels that the plaintiff-respondent no.1 has rendered himself liable for ejectment, it is required to approach the civil courts for this purpose. Mere alleged breach of lease deed, *ipso facto* would not mean that tenancy stands terminated.

Acceptance of enhanced rent and continuation of tenancy

In *K. Taviti Raju* v. *Govinda Ram Dhanji,*[56] the prior fixed period of lease expired at the end of July, 2012 stood extended as is evident from the later conduct of the plaintiff in accepting the rent after the expiry of the period of lease under deed lease dated January 1, 2009 *vide* Ext. 1. It was a tenancy continuing from month to month and therefore terminable by clear 15 day's notice. The plaintiff does not deny to have received the rent for the month of June, 2012 by bank draft sent under a covered letter dated July 11, 2012 by the defendant. He states to have issued a notice on August 7, 2012, Ext. 2 terminating the tenancy directing vacation of the suit shop room on expiry of August 2012. The court opined that it was a clear 15 daysnotice. On the face of such termination of tenancy, there cannot be continuance of tenancy with erstwhile relationship as landlord and tenant merely because of acceptance of the rent at the enhanced rate sent by way of draft with a coverage letter under registered post. It was found that the courts below having concurrently held the termination of tenancy to be in accordance with law, ongoing through the pleadings as well as the evidence both oral and documentary evidence on record and viewing those through the spectrum of settled position of law holding the field, the high court held that mere acceptance of rent at enhanced rate by lessor cannot continue tenancy with erstwhile relationship as landlord and tenant and termination of tenancyis proper.

Eviction under Jammu and Kashmir Tenancy Act

In *Ravi Deep* v. *Satya Paul* [57] plaintiff-respondent herein had filed a civil suit for ejectment of the defendant-appellant herein from two number of shops on the ground of personal necessity claiming, inter alia, that he has retired from government service and getting monthly pension of Rs. 15,000/- and in order to augment the income, he intends to start business of his own in the suit shops for which he reasonably and *bona-fidely* requires the suit shops for his personal necessity.The defendant-appellant had not been conducting any business in the suit shops. They were under his lock and key and were not given back. Initially a suit for ejectment of appellant, Ravi Deep, was filed by respondent-owner, which came to be decreed in favour of the

55 AIR 2018 P& H 42.

56 AIR 2018 Orissa 50.

57 AIR 2018 Jammu and Kashmir 129.

respondent-owner. The first appeal was also dismissed. Hence, the second appeal before the high court. It was *inter alia* contended for the first time before the high court that notice required under section 106 of the TPA was not issued. The high court referring to the established precedents[58] has observed that non-issuance of notice under section 106 does not and will not preclude a landlord for all times to come from exhorting eviction of tenant inasmuch as the Supreme Court indubitably held that such notice is not compulsory or obligatory or that it must fulfill all the technical requirements of section 106 of the TPA. The appeal has been dismissed.

It may be noted that the high court could have passed strictures against the appellant for the unreasonable and vexatious appeals and must have awarded costs to the respondent.

***Res judicata* and suit for eviction**

In *Mridul Gupta* v. *Legal representative of late Hemendra Datta*[59] court considered application of rule of *res judicata*in a suit for eviction. The earlier suit was dismissed on the ground that the notice issued under section 106 of Act wasinvalid. Subsequently, the plaintiffs issued another notice upon the defendants under section 106 of the Act for quitting the suit premises. The high court observed that law relating to res judicata is now well-settled that in order that a matter may be said to have been heard and finally decided, the decision in the former suit must have been one on merit. As the former suit was not dismissed on merit but on the ground of invalid notice, the instant suit filed by the plaintiffs cannot be barred by res judicata. In this context, the observations made by the apex court in *Sheodan Singh* v. *Daryao Kunwar*[60] were aptly relied upon by the high court.

Using leased property for commercial purpose

In *Debasish Mukherjee* v. *State of West Bengal*[61] the respondent no. 1 being a company incorporated under the Companies Act 1956, filed an application under article 226 of the Constitution of India for a direction upon the District Collector, Hooghly to restore the possession of the land of the writ petitioner measuring 8.76 acres in Mouja Khaser Bheri, Singur, Hooghly along with the structures situated thereon and also to pay compensation for the delay in handing over the said land along with the structures. The single judge by the judgment and order impugned directed the District Magistrate, Hooghly to deliver possession of the land and structure as described

58 *V. Dhanapal Chettiar* v. *Yesodai Ammal* (1979) 4 SCC 214.

59 AIR 2018 Tripura 30.

60 AIR 1966 SC 1332.

61 AIR 2018 Calcutta 1, the matter pertains to the return of the land acquired for the Singur Project of the Tata Motors Limited and cancellation and return of the land to the cultivators / land owners. Pursuant to the judgment of the learned Single Judge the Tata Motors also claimed that its land shall be returned along with its structures. In the present appeal it was alleged that the single Judge erred in interpreting the judgment of the apex court in the case of *Kedar Nath Yadav* v. *State of West Bengal*, reported in AIR 2016 SC 4156 the Tata Motors sought to get back the land along with the structures built by it. The case involves the identification of the *ratio decidendi* in the judgment of the Supreme Court and apply the same in deciding the appeal.

in the foregoing paragraph within a period of 6 weeks from the date of communication of the said order but, did not allow the prayer for compensation. Aggrieved by the said judgment and order impugned, the appellants who were the respondent nos. 1 and 3 to 5 in the writ petition have preferred this appeal. It was alleged that the single judge erred in interpreting the judgment of the apex court in the case of *Kedar Nath Yadav* v. *State of West Bengal,*[62] it was contended on behalf of the Tata Motors referring to section 108 (h) of the TPA and submitted that once Tata Motors Limited had abandoned the property without removing the structures which it had subsequently changed and altered the said land along with the structures would revert back to the writ petitioner and the State of West Bengal could not claim any right over such structures.

The high court observed that in view of the principle laid down in section 108 (h) of the Transfer of Property Act, 1882 it was of the view that once Tata Motors Limited had abandoned the project without removing the structures although, they could have done so and once the acquisition proceedings had been set aside, the writ petitioners in terms of the decision of the apex court were entitled to get back the land along with structures.The court was in agreement with the contention on the point that the acquisition proceeding having being set aside on the ground of violation of the procedure laid down in the Land Acquisition Act, the writ petitioner was entitled to get back the land along with the structure as land included anything attached to it. The land of the writ petitioner was included in the acquisition proceeding which was set aside and the same should be returned to the writ petitioner with the structures. Any land owner, whether a cultivator or a business house is a beneficiary of the judgment. No separate class was created by the apex court while granting restoration of land to the land owners/cultivators irrespective of payment of compensation. We agree with the decision of the single judge and the reasons assigned by him. The land along with the structures should be returned to the writ petitioner within six weeks from the date of communication of this order.

Transfer of coparcenary ownership and exchange under section 118 of the TPA

In *Shyam Narayan Prasad* v. *Krishna Prasad,*[63] one Gopalji Prasad is the common male ancestor of the parties. The appellant & Laxmi Prasad, 5th respondent herein, are the sons of Gopalji Prasad. Shyam Narayan Prasad was allotted a shoe shop at Manihari which is run on a rented premises owned by Gouri Shankar Prasad. He was also allotted other properties in the partition.After the partition, the sons of Gopalji were put in possession of their share of the properties. However, Laxmi Prasad (defendant no.2) in collusion with his brother Shyam Narayan Prasad (defendant no.1) executed an agreement exchanging the liquor shop at Singtam Bazar, East Sikkim with the shoe shop at Manihari. It is their contention that since the property is an ancestral property, they also have a share in the property which had fallen to the share of defendant no.2 and that he has no legal right to exchange the property with defendant no.1. It was further contented that the deed of exchange entered into between defendant

62 AIR 2016 SC 4156.

63 (2018) 7 SCC 646.

nos.1 and 2 is in relation to an immovable property. Since the said document has not been registered, it has no legal effect.The trial court held that the property was ancestral property and that the plaintiffs being the sons and grandson of defendant no.2, they have also equal share in the property allotted to him in the partition. The suit was accordingly decreed. The district judge allowed the appeal, set aside the judgment and decree of the trial court. The plaintiffs filed a second appeal the district judge before the high court. The high court restored the judgment and decree of the trial court.

The Supreme Court *inter alia* referred to *Rohit Chauhan* v. *Surinder Singh*[64] and held that it was clear from section 118 of the TPA, that where either of the properties in exchange are immovable or one of them is immovable and the value of anyone is Rs.100/- or more, the provision of section 54 of the TPA relating to sale of immovable property would apply. The mode of transfer in case of exchange is the same as in the case of sale. It is thus clear that in the case of exchange of property of value of Rs. 100/- and above, it can be made only by a registered instrument. In the instant case, the exchange deed at Exhibit P2 has not been registered. Having regard to section 49 of the Registration Act, 1908 the apex court opined that any document which is not registered as required under law, would be inadmissible in evidence and cannot, therefore, be produced and proved under section 91 of the Evidence Act. Since Exhibit P2 is an unregistered document, it is inadmissible in evidence and as such it can neither be proved under section 91 of the Evidence Act nor any oral evidence can be given to prove its contents. Therefore, the high court has rightly discarded the exchange deed at Exhibit P2.

The last contention of the learned counsel for the appellant is in relation to application of section 53A of the TPA. It is well settled that the defendant who intends to avail the benefit of this provision must plead that he has taken possession of the property in part performance of the contract. Perusal of the written statement of the first defendant shows that he has not raised such a plea. Pleadings are meant to give to each side, intimation of the case of the other, so that, it may be met to enable courts to determine what is really at issue between the parties. No relief can be granted to a party without the pleadings. Therefore, it is not open for the first defendant/appellant to claim the benefit available under section 53A of the TPA.

Gift and revocation

S. Sarojini Amma v. *Velayudhan Pillai Sreekumar*[65] is a case where there was a gift deed. Ownership in property can be gifted without transfer of possession of such property and recitals in gift deed that gift would take effect after death of donor. Held gift is incomplete during lifetime of donor and can be cancelled. It was held that gift means to transfer certain existing moveable or immoveable property voluntarily and without consideration by one person called the donor to another called the donee and accepted by or on behalf of the donee. A conditional gift with no recital of acceptance

64 (2013) 9 SCC 419.

65 AIR 2018 S C 5232.

and no evidence in proof of acceptance, where possession remains with the donor as long as he is alive, does not become complete during lifetime of the donor. When a gift is incomplete and title remains with the donor the deed of gift might be cancelled. A gift is transfer of property without consideration. Moreover, a conditional gift only becomes complete on compliance of the conditions in the deed. In the instant case, the deed of transfer was executed for consideration and was in any case conditional subject to the condition that the donee would look after the petitioner and her husband and subject to the condition that the gift would take effect after the death of the donor. Held, that there was no completed gift of the property in question by donor to the donee and the donor was within her right in cancelling the deed.

Gift deed and its validation

Topden Pintso Bhutia v. *Sonam Plazor Bhutia,*[66] is a case where the court held that every unregistered document cannot be validated and only those documents which bear compliance of legal provisions can be validated. If gift deed complies with legal mandate of sections 122, 123 of TPA and substance and not form of document is relevant. Gift deed not only bereft of registration but also not in compliance of sections122, 123 cannot be validated. The consequence of validation of the unregistered document as per the notification of 1946 is that, the document is to be admitted in court to prove title or other matters contained in the document. This points to the inevitable conclusion that the document ought to have been correctly executed under relevant provisions of law, which consequently allows its admission as evidence, subsequent to the validation. 'Valid' as per Bryan A. Garner Black's Law Dictionary,[67] means "legally sufficient or binding". By ordering validation of Exhibit 'A', the court would be implying that the document is legally sufficient and binding which is not the correct position herein as the document falls short of the legal requirements. That apart, no court had opined that the document ought to be registered, which is a prerequisite under the notification of 1946. Thus, it is not every document that has not been registered which can be validated by the order of the court, but only those documents which bear compliance to the legal provisions.

Attestation of gift

In*Late Radha Sah through L.Rs* v. *Most. Girja Devi through L.R* ,[68] the High Court of Patna held that when female belonging to Hindu joint family executing gift deed of her self-acquired property and not attested by two witnesses as per requirement of Act. Therefore, the deed was held void.

Proof of gift deed

In *Daulatarao Ramchandra Jadhav* v. *Janabai Anandarao Jhadha***,**[69] court considered that proof of execution of a gift deed by examining attesting witnesses. In this case, there was an execution of gift deed and defendant claimed alienation of

66 AIR 2018 Sikkim 1.

67 See, 8th edn. 2nd Reprint (2007).

68 AIR 2018 Patna 115.

69 AIR 2018 Kar 62.

property by his mother in his favour by execution of gift deed. Plaintiff did not specifically deny the execution of the deed.

The Supreme Court affirmed the order of the high court holding that the document was admissible when it is not objected by the other side when it was marked and even raising presumption under section 90 of the Evidence Act when the execution is not specifically denied on the basis of certified copy being produced without any objection. The above said principle was held applicable to this case also. There was absolutely no objection raised at the time of marking of this document. Therefore, procedurally the said document cannot be said to have been proved by means of examining one of the attesting witnesses to the gift deed nor it can be said that the defendant has made all his efforts to secure any of the witnesses for identification of signature of Laxmibai who executed the gift deed in favour of the defendant. However, from the legal dictum it is clear that the document has to be proved if it is specifically denied or the execution of the document comes into dispute between the parties. The plaintiffs have not specifically denied the execution of the document. The evasive explanation with regard to the document as could be seen from the pleadings referred to above, in my opinion, cannot be said to be a specific denial by the plaintiffs. Therefore, in my opinion, in that regard the defendant is exempted from proving the execution of that document

Hindu woman's gift reserving right to possession

In *Reninkuntla Rajamma* v. *K. Sarwanamma*[70] a Hindu woman executed a registered gift deed of immovable property reserving to herself the right to retain possession and to receive rent of the property during her lifetime. The gift was accepted by the donee but later revoked. In this case court held that the fact that the donor had reserved the right to enjoy the property during her lifetime did not affect the validity of the deed. The court held that a gift made by registered instrument duly executed by or on behalf of the donor and attested by at least two witnesses is valid, if the same is accepted by or on behalf of the donee. Such acceptance must, however, be made during the lifetime of the donor and while he is still capable of making an acceptance. In the instant case, admittedly, the deed of transfer was executed for consideration and was in any case conditional subject to the condition that the donee would look after the petitioner and her husband and subject to the condition that the gift would take effect after the death of the donor. We are thus constrained to hold that there was no completed gift of the property in question by the appellant to the respondent and the appellant was within her right in cancelling the deed. The judgment and order of the high court cannot, therefore, be sustained.

Will

Baljinder Singh v. *Wattan Singh*[71] wherein court held that when Will executed on suspicious circumstances, Registered Will executed by testator should not be ignored on alleged suspicious circumstances unless there is some substantial ground available to create doubt in mind of court with regard to genuineness of Will. Plea that deed

70 AIR 2014 SC 2906.

71 AIR 2018 P & H 148.

writer could not identify photograph of testator is not tenable when Will was executed in 1991 and he was examined in 1999. Professional deed writer cannot be expected to remember face for eight years. Testator not revoking Will during lifetime as he remained alive for three years and nine months after execution of Will. It was held the execution of Willis valid.

Power of attorney and will

In *Abhishek Sharma* v. *Jyoti Makhija*,[72] the trial court has decreed the suit by holding that in terms of the registered power of attorney and Will the respondent/ plaintiff had purchased the suit property from the appellant no. 2/defendant no. 2.Therefore only a tenant and that appellant no. 2/defendant no. 2 was not the owner of the suit property. The high court observed that a power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see section 1A and section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee. The high court confirmed the judgment of the trial court and held the alleged subsequent conveyance deed executed illegally by the appellant no.2/defendant no.2 in her favour during the pendency of the suit, cannot in any manner create any title in favour of the appellant no.2/defendant no.2 on the principles as contained in section 48 of the TPA.[73]

IV CONCLUSION

The present year which is under survey, courts have decided many cases relating to the rights of parties to immovable property concerning different areas of the provisions of TPA. In this regard, courts have played considerable role in settling rights of the disputed parties while interpreting provisions of the Act. In *Ameer Minhaj* v. *Dierdre Elizabeth (Wright) Issar,*[74] the Supreme Court clarified about the prospective applicability of the Registration Amended Act, 2001. In *A.P Industrial Inf. Corp. Ltd*

72 High Court of Delhi, *Abhishek Sharma* decided on Nov.30, 2018, *available at*:https:// indiankanoon.org/doc/161770750/ It was observed :A will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing distribution of his estate upon his death. It is not a transfer inter vivo. The two essential characteristics of a will are that it is intended to come into effect only after the death of the testator and is revocable at any time during the life time of the testator. It is said that so long as the testator is alive, a will is not be worth the paper on which it is written, as the testator can at any time revoke it. If the testator, who is not married, marries after making the will, by operation of law, the will stands revoked. (see ss. 69 and 70 of Indian Succession Act, 1925). Registration of a will does not make it any more effective.

73 48. Priority of rights created by transfer.—Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

74 (2018) 7 SCC 639.

v. *S.N Raj Kumar,*[75] in its very apt judgment had interpreted the sale and the restraints put by the corporation for the compliance of the conditions specified in the allotment letters is very laudable. In *Apollo Zipper India Limited* v. *W. Newman and Co. Ltd.,*[76] the apex court opined that the appellant rightly filed the suit by invoking the provisions of the TPA. It may be noted that the apex court in *Bijay Kumar Manish Kumar Huf* v. *Ashwin Desai*[77] must have aptly guided the lower courts instead of reverting back the question to the trial court. It would have been more appropriate to set it rest by judicious application of the wisdom atleast to avoid the delay. In *Guruvinder Singh Chadda* v. *State of Chhattisgarh*[78] it would have been more appropriate that the court must have rendered justice by requiring the compliance of its directions to avoid further litigation. In all, the survey finds the judgments of the courts very erudite beset with proper application of the law ensuring dispensation of justice.

75 AIR 2018 SC1981.

76 AIR 2018SC 2847.

77 Decided on Dec 12, 2018, *available at*: https://indiankanoon.org/doc/8478598/(last visited on Dec. 12, 2019).

78 AIR 2018 Chha. 125.