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PROPERTY LAW

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I INTRODUCTION

THE TRANSFER of Property Act came into force on the first day of July, 1882. Sir Whitley Stokes drafted the property law. The important objects of the Transfer of Property Act are *firstly* to bring the rules which regulated the transfer of property between living persons into harmony with the rules affecting its devolution and *secondly* to provide a complete code of law of contract so far as it related to immovable property.

The Transfer of Property Act mainly applies to the transfers of immovable properties and some of the sections also apply to movable properties as well. If we consider the scope and extent of the Act, we can deduce the following limitations: i) The Act applies to the transfers by act of parties[2] and has no application to the transfers by operation of law.[3] ii) The Act deals with transfers *inter vivos* and has no application to the transfers under will or succession.[4] iii) Though the Act contains some provisions, which also apply to movable property under Sections 5 to 37 and Sections 118 to 137 but all most all the provisions are applicable to immovable property. iv) Section 2 of the Act saves the rules of Mohammedan Law which says that whenever any provision of Transfer of Property Act is inconsistent with the Mohammedan Law, the rules of Mohammedan Law will prevail, v) The Act applies only to the transfers which take place in India and has no extra-territorial operation, vi) Sections 10 to 35 are taken from Indian Succession Act and rest of the sections from English Law which are based upon rules of Equityand vii) When the Act makes no provision, the courts can apply the English Common Law on the grounds of *'justice, equity and good conscience'*.

The Act is not a comprehensive code to deal with all the transfers, as it is evident from the preamble which says that it is expedient to define and amend certain parts of

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2 *VinodchandraSakarlal Kapadia* v. *State of Gujarat* 2020 SCC On Line SC 545

3 *Bharat Petroleum Corporation Ltd.* v. *P.Kesavan (2004) 9 SCC 772*

4 The Indian Succession Act, 1925

the law relating to the transfer of property by act of parties. So it can only define and amend but not introduce any new principles.[5]

Property in its wider sense constitutes all proprietary rights belonging to a person and does not include personal right. Proprietary right is defined as a right which constitute the assets or estates of the individual and which has economic value. In this sense, it includes both corporeal property e.g. right to land, right to building, etc. and incorporeal property which includes rights *in re aliena* such as easement right, rights of mortgagee and lessee. So Transfer of Property Act applies to the transfers of all the above mentioned properties.

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. The Supreme Court and the various High Courts in India have decided several cases on important issues in the year 2020. The cases have been researched and summarized in the present survey on the Property Law.

II GENERAL PRINCIPLES

Transfer '*inter vivos' vis a vis*testamentary disposition

Transfer of property is defined by section 5 of the Act. According to this section, transfer of property means an act by which one living person conveys property in present or in future to a) one or more other living persons or b) to himself or c) to himself and one or more other living persons and to transfer property to perform such act.

By virtue of the above definition, transfer of property is an act. Every act leads to some consequence. Here transfer also leads to a consequence i.e., conveyance of rights in the property from one person to another person.

In *Vinodchandra Sakarlal Kapadia* v. *State of Gujarat*,[6] Justice U.U. Lalit was dealing with the expression 'transfer' under the Tenancy Act of Gujarat State. It was interpreted in light of the Transfer of Property Act, viz., the transfer by way of act of parties. The Supreme Court referred to article 48[7] and article 51(A) (g) of the Constitution of India. It was iterated that the necessity of meeting agricultural production and to preserve agricultural land was clearly discernible in the above constitutional provisions. Further, by enacting clause (g) in article 51(A), Parliament has given the status of fundamental duties to article 48 and honored the spirit and message of Article 48 as a fundamental duty of the citizens.

The Supreme Court observed that where the object of the legislation is to prevent a mischief and to confer protection on the weaker sections of the society, the court would not hesitate in placing an extended meaning, even a stretched one, on the

5 *Tajjo Bobi* v. *Bhagwat Prasad,* 1918 L.R. All.295

6 2020 SCC On Line SC 545

7 Article 48 states that State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines, and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows, calves and other milch and drought cattle.

word, if in doing so the statute would succeed in attaining the object sought to be achieved. The apex court observed that if a tenant or any other person from the priority list is conferred ownership in respect of the agricultural land or when a landlord is allowed to retain the land which was surrendered by his tenant, each one of them is obliged to cultivate the land personally. In case any of them is unwilling, the land must be given to those who principally depend upon agricultural operations for their sustenance. If a person is a beneficiary of such statutory purchase and wishes to transfer his holding the law obliges that he must take prior sanction from the Collector. While granting such sanction, the authorities may essentially check whether the transferee is an agriculturist or an agricultural labour who otherwise fulfils the requirements and would carry out the obligation of cultivating the land personally; and that his holding would not go beyond the ceiling limit.Since the ownership itself was conferred as a result of the legislative scheme as discussed hereinabove, these conditions are inherent in the very conferral of ownership and, therefore, specifically incorporated in section 43 with direct reference to the provisions named therein.

The apex court laid down its analysis in the following passage:

> A transfer inter vivos would normally be for consideration where the transferor may get value for the land but the legislation requires previous sanction of the concerned authority so that the transferee can step into the shoes of the transferor, and carry out all the obligations as a part of legislative scheme must be discharged. Thus, the screening whether a transferee is eligible or not, can be undertaken even before the actual transfer is effected. As against this, if a testamentary disposition which does not have the element of consideration is to be permitted, and if it is assumed that Sections 43 and 63 of the Act do not get attracted, the land can be bequeathed to a total stranger and a non-agriculturist who may not cultivate the land himself; which in turn may then lead to engagement of somebody as a tenant on the land. The legislative intent to do away with absentee landlordism and to protect the cultivating tenants, and to establish direct relationship between the cultivator and the land would then be rendered otiose. The construction put on the expression "assignment" appearing in Section 43, therefore, has to be consistent with the legislative scheme. In the context of the entire scheme, the term "assignment" used in Section 43 of the Act must include testamentary disposition as well. By adopting such construction, in keeping with the law laid down by [the Apex] Court, the statute would succeed in attaining the object sought to be achieved. On the other hand, if it is held that the testamentary disposition would not get covered by the provisions of Section 43, a gullible person can be made to execute a testament in favour of a person who may not fulfil the requirements and be eligible to be a transferee in accordance with law. This may not only render the natural heirs of the tenant without any support or sustenance, but may also have serious impact on agricultural operations.

The apex court held that a transfer *intervivos* (which the transfer of property Act generally deals with) would normally be for consideration.In such transfers the transferor may get value for the land. The court observed that the construction put on the expression "assignment" appearing in Section 43, therefore, has to be consistent with the legislative scheme. In the context of the entire scheme, the term "assignment" used in Section 43 of the Act must include testamentary disposition as well. By adopting such construction, in keeping with the law laid down by [the Apex] Court, the statute would succeed in attaining the object sought to be achieved. On the other hand, if it is held that the testamentary disposition would not get covered by the provisions of section 43, a gullible person can be made to execute a testament in favour of a person who may not fulfil the requirements and be eligible to be a transferee in accordance with law. This may not only render the natural heirs of the tenant without any support or sustenance, but may also have serious impact on agricultural operations.

Actionable claim

Ashok Bhushan J., in *Skill Lotto Solutions Pvt Ltd.* v. *Union of India*,[8] was dealing with the taxing on lotteries under the GST Act. The petitioner is an authorized agent, for sale and distribution of lotteries organized by State of Punjab. It has filed the writ petition impugning the definition of 'goods' under section 2(52) of Central Goods and Services Tax Act, 2017. The petitioner seeks declaration that the violative of articles 14, 19(1)(g), 301 and 304 of the Constitution of India. It was contended the provisions of the Central Goods and Services Tax Act, 2017 are self-contradictory in as much as the definition of actionable claim is as per definition of Transfer of Property Act, which is only the claim and not the goods. Further, under the definition of goods, actionable claims have been included as goods under section 2(52). It is further submitted that GST is being levied on the face value of the lottery tickets which is impermissible since the face value of the tickets also includes prize money to be reimbursed to the winners of the lottery tickets.

The Supreme Court has observed that lottery, betting and gambling are well known concepts and have been in practice in this country since before independence and were regulated and taxed by different legislations. When the Act, 2017 defines the goods to include actionable claims and included only three categories of actionable claims, i.e., lottery, betting and gambling for purposes of levy of GST, it cannot be said that there was no rationale for including these three actionable claims for tax purposes. Regulation including taxation in one or other form on the activities namely lottery, betting and gambling has been in existence since last several decades. When the Parliament has included above three for purpose of imposing GST and not taxed other actionable claims, it cannot be said that there is no rationale or reason for taxing above three and leaving others. The Court categorically maintained that it is a duty of the State to strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. The Court referred to the

8 *Skill Lotto Solutions* v. *Union of India*, 2020 SCC OnLine SC 990.

Constitution Bench decision in *State of Bombay v. R.M.D. Chamarbaugwala*.[9]In that case, the court had clearly stated that "in this country, the aforesaid were never accorded recognition of trade, business or commerce and were always regulated and taxing the lottery, gambling and betting.Thus, the court did not accept the submission of the petitioner that there was any hostile discrimination in taxing the lottery, betting and gambling and not taxing other actionable claims. Hence, the court did not find any violation of article 14 in item no. 6 of Schedule III of the Act, 2017.

Transfer by Minor

L. Nageswara Rao J., has dealt with an alleged minor's transfer in *C. Doddanarayana Reddy(D) By Lrs.* v. *C.Jayarama Reddy (Dead) By Lr*. [10] The plaintiff filed a suit for partition and separate possession of 1/4th share in the suit schedule property between himself and his three brothers who are defendant Nos. 1, 2 and 3. defendant nos. 4 to 17 are the persons who had purchased the property from the defendant nos. 1 to 3, the brothers. The plaintiff claimed that he was minor at the time of death of his father in the year 1963 and that he continued as a member of the Joint Hindu Family in joint possession and enjoyment of the property of Joint Hindu Family. The plaintiff asserted that his signatures were obtained on a few documents and that he was not aware of the contents of the same nor did he execute any document thereof and understood what they were. The plaintiff in order to prove that he was minor produced school leaving certificate. The trial court did not rely on the date of birth of the plaintiff mentioned in the school leaving certificate. The trial court held that the plaintiff was not a minor at the time of execution of lease deed in favour of his brothers and his father.Aggrieved, plaintiff filed appeal before the first appellate court. The first appellate court also held that plaintiff was not a minor at the time of execution of release deed and, thus, dismissed the appeal of the plaintiff. In second appeal, the high court found that ex.p/1 is a transfer certificate and, thus, the plaintiff was minor and such certificate is admissible as proof of age under section 35 of the Evidence Act.

The Supreme Court held that the high court gravely erred in law in interfering in the findings of fact recorded by the first appellate court. The plaintiff had not challenged the release deed dated June 15, 1963 in the plaint on the ground that he was minor on the date of execution nor has he challenged on the ground of fraud, coercion or undue influence in execution of the said document. He had not pleaded so as is required to be pleaded in terms of Order VI Rule 4 Code of Civil Procedure, 1908. The only pleading raised by the plaintiff is that he was a minor at the time of death of his father in 1963. He had not disclosed the date of death of his father in the plaint. The averment in the plaint is that his signatures have been obtained on certain documents but he does not know the contents thereof.

Nageswara Rao J., maintained that the onus was on the plaintiff to prove that he was a minor at the time of execution of release deed. He failed to prove his date of

9 AIR 1957 SC 699.

10 Decided on Feb. 14, 2020, *available at*: https://indiankanoon.org/doc/4472721/.(last visited on Jan 20, 2023).

birth as April 8, 1946. Therefore, his suit was to be dismissed and was rightly dismissed by the learned trial court and the first appellate court. The high court in second appeal could not reappreciate the evidence to take a different view that such document is proved. It was ruled that the illegality on account of alleged improper consideration did not give rise to a substantial question of law. The Supreme Court found that plaintiff had admitted the release deed and the marriage deed dated June 15, 1963 and June 29, 1964 respectively- having been executed by him. Both the documents are registered documents. On the basis of such admission, both courts had returned a finding of fact that the plaintiff had not been able to prove date of birth as April 8, 1946. Thus, the apex court ruled that the high court could not have interfered with the finding of the lower courts. Transfer of property of senior citizen void.

Right against inalienability

In *Sridhar* v. *Revanna,*[11] Muniswamappa, great grandfather of the plaintiffs and grandfather of defendant No.1, was the absolute owner of the suit schedule property. Muniswamappa executed two gift deeds dated June 5, 1957 in favour of defendant No.1, N. Revanna. The gift deed was executed by Muniswamappa in favour of his grandson, N. Revanna. The gift deed also contained a condition that donee and his younger brothers hereafter had no right to alienate the scheduled property. Defendant no.1, N. Revanna executed sale deeds dated October 7, 1985, 08.10.1985 and October 10, 1985 in favour of defendant Nos.2 to 5. Defendant Nos.6 and 7 were the tenants of the premises. Original suit no.11133 of 1995 was filed by the plaintiffs-appellants against N. Revanna, defendant no.1, vendees as defendant nos.2 to 5 and defendant nos.6 and 7. It was pleaded that sale deed executed by defendant No.1 is void and the plaintiffs being sons of defendant No.1 and great grandsons of Muniswamappa are the absolute owners of the property. Both the plaintiffs were minors and the suit was filed by their next friend and guardian paternal grandmother, Smt. Jayamma. The trial court held that the plaintiffs have failed to prove that they have got absolute right over the suit schedule property and they have also failed to prove that defendant No.1 had no right to alienate the property. The suit of the plaintiffs was dismissed by the trial court. The high court held that the trial court was clearly in error in holding that the condition imposed on defendant No.1 was void. The high court took the view that the benefits that defendant no.1 received by virtue of sale deed had to be given back to the plaintiffs. The plaintiffs aggrieved by the judgment of the high court have come up in this appeal.

The Supreme Court observed that Section 10 expressly provides that where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void. According to section 10 any condition restraining the transferee the right of alienation is void. A plain reading of section 10 of Transfer of Property Act makes it clear that the condition in the gift deed dated 05.06.1957 that defendant no. 1 shall not alienate the property is a void

11 Civil Appeal No..1209 OF 2020 https://main.sci.gov.in/supremecourt/2014/3577/3577_2014_9_1501_20470_Judgement_11-Feb-2020.pdf(last visited on Dec. 24. 2022).

condition. The court ruled that Revanna received the suit properties by registered gift deed dated June 5, 1957 from his grandfather, Muniswamappa. As per the gift deed defendant no.1 and his younger brothers who may be born had no right to alienate the suit schedule property. The court held on application of the rule against alienation under section 10, the condition restraining the alienation being void shall be ignored and the plaintiff become absolute owners of the property gifted.

Alienation of Idol forRanganatha Swamy

Justice D.Y. Chandrachud, in *Idol of Sri Renganathaswamy Rep By ...v. P K Thoppulan Chettiar*[12] was dealing with the question whether the Deed of Settlement dated 8 July 1901 creates a specific endowment, regulated by the Act of 1959.ThoppulanChettiar purchased the suit property in 1877 for the purpose of performing charitable work in reference to Renganathaswamy sanctum. Thoppulan Chettiar executed a deed of settlement, prohibiting the future sale or mortgage of the suit property and directing his descendants to continue carrying out these charitable activities upon his death from the income of their business. It has been contested that the restraint created in the deed of settlement is void under section 10 of the Transfer of Property Act, 1882. The trustees of the first respondent are not able to perform the charities on account of encroachments in the suit property.

In the present case, the court found that the deed of settlement states that the charity is to be carried on for the benefit of the-devotees of Sri Renganathaswamy who visit during the Chithirai Gajendra Moksham and Padi Eighteen festivals. The devotees as the ultimate beneficiaries of the charity are not an identifiable group of individuals, but constitute an uncertain and fluctuating body of persons. The devotees as a class of beneficiaries are not definitive. The respondent trust is a public trust.

The court finally stated question of whether the settlor intended the religious purpose to be the primary beneficiary subject to a charge in favour of the legal heirs of the settlor, or whether the heirs were the primary beneficiaries subject to a charge towards the continuation of the charitable purpose must be determined by reading the settlement deed as a whole.

Doctrine of election

Deepak Gupta, J. in *BhagwatSharan (Dead Thr.Lrs.)* v. *Purushottam.,*[13] was dealing with the doctrine of election. It was found that the plaintiff and defendant nos. 1-3 filed suit for eviction of the occupant who claimed that the property had been bequeathed to him by Hari Ram. According to the defendants, the plaintiff having accepted the Will of Hariram and having taken benefit of the same, cannot turn around and urge that the Will is not valid and that the entire property is a joint family property. The plaintiff and defendant nos. 1-3 by accepting the bequest under the Will elected to accept the will.

12. Decided on Feb. 19, 2020,*available at:* https://indiankanoon.org/doc/98822089/(last visited on Jan. 10, 2023).

13 2020 SCC OnLine SC 348.

The Supreme Court observed that it is trite law that a party cannot be permitted to approbate and reprobate at the same time. It was stated that the principle was based on the principle of doctrine of election. In respect of Wills, this doctrine has been held to mean that a person who takes benefit of a portion of the Will cannot challenge the remaining portion of the Will.

The predecessors of the respondents namely, Sumara Umar Amad instituted a suit in 1974 against his father Sumara Amad Osman seeking for partition of the land of 23 acres, 27 Guntas. The plaintiff referred to certain mortgage transaction with his father. He claimed half share in the said property, had sought for partition of the scheduled property. In that regard, certain exchange of notices by way of paper publication published a notice in the daily Newspaper "Nobat" on March 29, 1974 expressing the intention to sell the property. In the said suit, the defendants 2 to 4 who were purchasers of the property under the Sale Deed dated July 29, 1975 the defendants 2 to 4. The defendant contended that he had purchased the suit land before the birth of the plaintiff. The parties being Mohammedans, the plaintiff cannot have any right in the suit land based on his relationship as a son, during the lifetime of the father. The defendant No.1, therefore, claimed absolute right and the authority to sell the property. The trial court had dismissed the suit. The plaintiff preferred a regular appeal. The court reversed the judgment of the lower court. The second appeal was without any relief and hence the appeal before the Supreme Court.

It was contended that the high court taking note that the purchase was made by the appellants during the pendency of the proceedings before the court has indicated that they would be governed by section 52 of the Transfer of Property Act which is in accordance with law. The Supreme Court found that the substantial questions of law have not been considered in the light of the contention and answered with reference to the questions raised therein. The apex court observed that the substantial questions of law were formulated required to be answered one way or the other by providing high court's reasonings and to arrive at a conclusion on that basis. On the other hand, if the court was of the opinion that any of the substantial questions of law framed was to be modified, altered or deleted, a hearing was required to be provided on the same and thereafter, appropriate substantial questions of law could have been framed and answered. The Court opined that without resorting to any such procedure, on taking note of the substantial questions of law as it existed, a brief reference was made thereto and the same had been disposed of without answering the same, which would not be justified.The court lamented that nature of right claimed by the appellants was also to be adverted and a decision be taken in that regard instead of merely stating that the appellants would be governed by section 52 of Transfer of Property Act. The court further opined that the question would also arise as to whether the plaintiff could still claim a share in the property after having confirmed the sale to the extent of half of the property by ratifying the sale.

The court observed, even if the appellants are considered to be the purchasers during the pendency of the suit which was still a subject matter of the suit, whether section 52 of the Transfer of Property Act will come into play if it stood excluded in

view of confirmation. Even otherwise the working out of the equities in the final decree proceedings in the manner of allotment of shares thereto despite purchase during pendency of suit is also an issue which will arise after a proper consideration is made by the high court, while answering the substantial questions of law and if need be by framing additional substantial questions in that background.

The court held that the substantial questions raised had not been appropriately dealt with and answered. Therefore, the matter would require reconsideration by the high court. The matter was remitted to the High Court of Gujarat at Ahmedabad to restore Second Appeal No.12 of 2014 on file and reconsider the same in the light of the above observation and in accordance with law.

It may be stated that the apex court would have in the interest of justice and in order to avoid delay the matter must have been decided by the apex appellate court instead of remitting back the same to the high court.

Transfer by ostensible owner

Section 41 of the Act deals with 'ostensible owner'. An ostensible owner is one who exhibits all the Indicia (qualities) of ownership without being the real owner. He is apparently the full and unqualified owner and he is not true owner because his name only appears in the records. He also possesses property but he never intended to own that property. The real test is, as to what is the source of purchase money and who is really enjoying the benefits of the property. A benamidar is a typical instance of an ostensible owner. Transfer from him is valid, if it is according to section 41 of the Act. It is based on the principle, that when a real owner culpable stands by and allows other to hold himself out to the world as the owner of property and thereby to sell it to a 'bona fide' purchaser, he cannot afterwards assert his title against such purchaser. Because, the owner rendered the fraud possible by holding out the other person as owner of the property. Therefore, he has to suffer for it. This is called d*octrine of holding-out.* This principle is an exception to the rule of *nemo det quodnon habet*which means no person can convey a better title than he himself possesses. This section 41 is based on the principle of evidence i.e., estoppel as enunciated in Section 115 of the Evidence Act.

An ostensible owner is one who exhibits all the indicia (qualities) of ownership without being the real owner. He is apparently the full and unqualified owner and he is not true owner as his name only appears in the records. He also possesses property but he never intended to own that property. The real test is, as to what is the source of purchase money and who is really enjoying the benefits of the property. A benamidar is a typical instance of an ostensible owner. Transfer from him is valid, if it is according to section 41 of the Act.

Nardev Singh v. *Balwant Kaur alias Kulwant K Kaur*.[14] is a case of Transfer by ostensible owner. Here, vendor owning 1/3rd share of suit land, executed sale deed for entire suit land in favour of vendee. Vendee is a bona-fide purchaser and vendor

14 AIR 2020 Punjab and Haryana 157: AIR Online P&H 460.

concealed said fact. Held vendee not entitled to derive title although free to take action against vendor.

Court observed that while I am in agreement with the above cause of the appellant in the background of the facts narrated hereinabove. The son of deceased Hardam Singh was fully aware of having suffered a decree of declaration that he was merely owner of only 1/3rd share in the suit land and, therefore, having concealed the same from the vendee clearly seems to have committed a fraud not only on vendee but also on his sisters. The vendee cannot take refuge under the garb of being a bona fide purchaser and cannot take advantage of the concealment/fraud committed by his vendor. It was open to the appellant/vendee to take action against the vendor/son of deceased Hardam Singh. Be that as it may, the decree dated 31.01.1994 declaring that the son and the daughters of deceased Hardam Singh are owner to the extent of 1/3rd share each in the suit land has since attained finality. Vendor was, therefore, clearly not the owner of the entire suit land and could not have passed on a valid title for the entire suit land in favour of the vendee. It is settled position that what is not owned by a person cannot be sold and any sale deed and/or mutation executed qua the land of which vendor is not a owner, does not pass any valid title on the vendee.

Lis pendens

Section 52 deals with the doctrine of *lis pendens*. *Lis pendens* means pending suit or an action. It states that during pendency, in any Indian Court of competent jurisdiction of any suit or proceeding, which is not collusive and in which any right to property is directly or specifically in question, the property cannot be transferred or dealt with by any party to the suit or proceedings so as to affect the rights of any other party there to under any decree or order which may be made therein except under the authority of court or such terms as it may impose. The doctrine is based on the Common Law maxim *'pendente lite nihil innovator'* which means during pendency of 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 recognized in England. It is an extension of the law of *res-judicata* and aims at prevention of multiplicity of suits.

Justice A.S. Bopanna in *Gajaraba Bhikhubha Vadher v. Sumara Umar Amad (dead) thr. Lrs.,*[15] was dealing withthe purchase of impugned property made by the appellants during the pendency of the proceedings before the Court. It was contended that the purchases would be governed by section 52 of the Transfer of Property Act. It was found that the said Confirmation Deeds dated June 28, 2012 and June 29, 2011 had come into existence subsequent to disposal of the suit on 17.04.1982 and prior to disposal of the Regular Appeal on July 11, 2012. In that regard, even if the contention on behalf of the plaintiff that there was another Sale Deed dated Feburary 1, 1978 for the extent of 11 Acres 27 Guntas regarding which there is no confirmation is taken note, the existing Confirmation Deeds would in any event exclude the extent of 12 Acres sold under the sale deed dated July 29, 1975. Further, the question would also

15 (2020) 11 SCC 114.

arise as to whether the plaintiff could still claim a share in the property after having confirmed the sale to the extent of half of the property by ratifying the sale.

The Supreme Court observed: "In that circumstance, if the said documents which had come into existence at the fag end of the Regular Appeal was to alter the right of the parties and the purchase made by the appellants is in the extent to which the Confirmation Deed relates, the effect thereto was also to be examined. The said consideration would be necessary in that circumstance since even if the appellants are considered to be the purchasers during the pendency of the suit which was still a subject matter of the suit, whether Section 52 of the Transfer of Property Act will come into play if it stood excluded in view of confirmation. Even otherwise the working out of the equities in the final decree proceedings in the manner of allotment of shares thereto despite purchase during pendency of suit is also an issue which will arise after a proper consideration is made by the High Court, while answering the substantial questions of law and if need be by framing additional substantial questions in that background."

It was maintained that keeping in view the subsequent developments, the apex court opined that the substantial questions raised have not been appropriately dealt with and answered the matter would require reconsideration by the high court.The apex court held that the judgment in second appeal no.12 of 2014 passed by the High Court of Gujarat was set aside. The matter has been remitted to the high court to restore second appeal and reconsider the same in the light of the above observation and in accordance with law.

Jumailath Beevi v. *Rajeena*[16] is a case related to execution of decree and it was objected by transferee *pendente lite. It was claimed by ………that* that it was defeated her marital claims, wherein husband executed a sale deed of land in favour of his sister and brother-in-law during pendency of litigation before Family Court. On the basis of sale deed, these title holders further sold land to vendee. Title holders did not have title to sell property to vendee, Contention of vendee that they were not aware about pendency of litigation and that they cannot be dispossessed on basis of decree obtained behind their back, not tenable. Held that vendee cannot resist execution of decree, if purchase was during pendency of litigation.

Here the court observed that the contention of the petitioner's that they were not aware about the pendency of the litigation and they cannot be dispossessed on the basis of decree obtained behind their back, has no legal basis. By the application of the principle of *lis pendens*, a purchaser of property during the pendency of the litigation is treated as having the pendency of the litigation and treated as having constructive notice and that he will be bound by the decree to be entered into in the pending suit. As per the provisions of Order 21 Rule 102 CPC, the legislature has clearly intended that there shall not be any resistance or obstruction by a transferee pendente lite. Where a resistance or obstruction is raised by a transferee pendente the lite, it is explicit from reading of Rules 98, 99, 101 and 102 of Order 21 CPC, that the scope of

16 AIR 2020 Kerela 212; AIR Online 2020 Ker 590.

adjudication ought to be confined only to the question whether the person who resists or who was dispossessed was a transferee during the pendency of a suit in which the decree was passed. Once the finding to the above question is in the affirmative, the executing court can only hold that he had no right to resist or obstruct or complain of dispossession. Such a person, a transferee *pendent lite*, cannot seek protection from the executing court.

Based on the aforesaid prepositions of law and applying the admitted circumstances of the case, we hold that petitioners being *pendente lite* transferees have no right to complain of dispossession or resist execution of the decree in O.P. No. 1350 of 2008 on the files of the Family Court, Nedumangad. The impugned order, according to us, is perfectly justified and the same needs no interference.

Part performance

In *Union of India* v. *K.CA.Sharma and Co*..[17] Justice Subhash Reddy J., dealing *inter alia* a matter pertaining to section 53A of the TPA observed:

> …..the respondents were put in possession and they continued in possession by cultivating the land the said judgments would not render any assistance in support of the case of the appellants. On the other hand, in the case of *Maneklal Mansukhbhai*[18] relied on by learned senior counsel for the respondents, it is clearly held by this Court that defence under Section 53A of the Transfer of Property Act, 1882 is available to a person who has agreement of lease in his favour though no lease has been executed and registered. Similar proposition is also approved in the judgment of this Court, in the case of Hamzabi[19] wherein the Court has held that Section 53A of the Transfer of Property Act, 1882 protects the possession of persons who have acted on a contract of sale but in whose favour no valid sale deed is executed or registered. As it is clear that respondents were put in possession and the Panchayat has acted upon their proposal for grant of lease said case law supports the case of the respondents.

Therefore, the court was not inclined to interfere with the High Court decision.

III SPECIFIC TRANSFERS

Sale deed

Sale generally means an act of selling or to give up or hand over something to another for money. In another way, we can say, transfer of property voluntarily to buyer for price. Section 54 of the Act gives the definition for sale as follows: "Sale is a transfer of ownership in exchange for price paid or price promised or part paid and part promised" Sale proceeds are out and out transfer of all the rights over immovable property with presence of consideration. Essentials of sale are; i) there must be two

17 2020 SCC OnLine SC 644.

18 *ManeklalMansukhbhai* v. *Hormusji Jamshedji Ginwalla& Sons* AIR 1950 SC 1.

19 *Hamzabi* v. *Syed Karimuddin* (2001) 1 SCC 414.

parties, ii) there must be the subject matter, iii) there must be transfer or conveyance, and iv) the transfer must be for price.

In*C.S. Venkatesh* v. *A.S.C.Murthy (D) by Lrs.*[20] case, a sale deed and reconveyance agreement executed on the same day.Here transaction cannot be mortgaged by way of conditional sale in view of section 58(c). Recitals contained in sale deed showing property agreed to sold for consideration and that possession already delivered under deed of mortgage. Clauses of sale deed and evidence on record showing that intention of parties was to make transaction a sale. Plea that sale deed executed as security for loan advanced by defendants and that it cannot be considered as sale. It is settled that the real character of the transaction has to be ascertained from the provisions of the documents. Observed that in the light of surrounding circumstances, since two documents were executed on the same day the transaction cannot be mortgage by way of conditional sale in view of the express provisions contained in section 58 (c) of the Transfer of Property Act,1882.A perusal of the recitals contained in the property was agreed to be sold absolutely for a total consideration of Rs.35000/-, the plaintiff has also stated that since possession has already been delivered earlier under a deed of mortgage, delivery of possession under this document does not arise. It was further stated that henceforth neither himself nor his heirs have any right,title or interest in the property and that the plaintiff is entitled to water,air,right of easement,*etc.* Concerning the property together with all right,title and interest and right of disposal of the property the defendant, his son and grandson,etc. unto posterity are entitled to enjoy the property, without any obstruction or trouble either by the plaintiff or from anyone claiming under him He has delivered the possession certificate issued by the CITB and Khata certificate for transfer of Khata from Bangalore City Corporation thus the language here was very clear from its recitals.Even the evidence led by the parties does not indicate to the contrary. Thus,a careful perusal of all clauses of the sale deed and the evidence on record would clearly show that the intention of the parties was to make the transaction a sale we are also of the view that since the execution of the reconveyance deed has already been established. Question of holding the sale deed to be nominal cannot be accepted.

Mortgage by conditional sale or usufructuary mortgage

Section 58 (a) gives the definition of mortgage. Many have accepted that mortgage as understood in this country cannot be defined better than by the definition adopted by the Legislature in section 58 (a) of the T.P. Act. Mortgage is the transfer of an interest in some immovable property. It is given by way of security for a loan. A person who takes a loan and gives some security for repayment of the loan in the form of transfer of some interest in any immovable property, it is called a mortgage of property. The ownership of the property remains in the debtor but some of his interests in the property are transferred to the creditor who has given loan. In case, the advanced money could not be recovered by the creditor, he can recover his money on the basis of his interest in that property. Therefore, it may be said that mortgage is for the security of the creditor.

20 AIR 2020 Supreme Court 930: AIR Online 2020 SC 165.

In *Dalel Singh* v. *Rampal* [21] case*,* there was a mortgage by conditional sale, deed should be in form of sale and not in form of mortgage deed. It is apparent that the deed should be in the form of sale and not in the form of mortgage deed. First part of section 58(c) provides that where the mortgagor ostensibly sells the mortgage property on condition that on default of payment of mortgage money on a certain date, the sale shall become absolute. Thus, there is a requirement that it should be a sale not by a mortgage deed which would become sale after a particular period in the eventuality of non-payment of the mortgage money. As regards second part, that also provides that it should be a sale which could become void on payment of money. Similarly, there is another eventuality provided when there is sale deed which incorporates in itself a condition that on payment of amount agreed to between parties, the buyer shall retransfer property to seller. Hence, in the present case, the mortgage is not by conditional sale.

Now let us examine whether such mortgage fulfils the requirement of usufructuary mortgage as defines in section 58(d) of the Transfer of Property Act or not. The mortgagor had delivered possession and authorized him to retain such possession until the payment of the mortgage money and the mortgagee was entitled to receive the rents and profits accruing from the property and the mortgagor had not personally made liable to pay anything except tender of the amount at the time of redemption of the mortgage. In other words, mortgagor had not made himself personally liable. In such circumstances, the mortgage in the present case is an usufructuary mortgage. No doubt, section 58(g) provide that a mortgage which is not a simple mortgage or mortgage by conditional sale or an usufructuary mortgage or an English mortgage or a mortgage by deposit of title deeds, such mortgage is called anomalous mortgage. However once the mortgage in question falls within the definition of usufructary mortgage, therefore it cannot be held that it is an anomalous mortgage.

Redemption of mortgage

Jeetan Prasad Kushwah v. *Vinay Kumar Singh*[22] is a case whereredemption of mortgage of ancestral property. Here mortgaged was made by father of plaintiff in favors of defendants which fact was fact admitted by defendants. On the basis of unregistered sale deed, defendants cannot claim title suit property and there was a plea of adverse possession. Held plaintiffs is entitled to redeem suit property and recover possession from defendants.

Holding over of tenancy

In *Nand Ram (D) Th. Lrs.* v. *Jagdish Prasad(D)Th. Lrs.,*[23] the land measuring 1 Bigha 19 Biswas out of Khasra No. 9/19 and 16 Biswas out of Khasra No. 9/20/2, in total measuring 2 Bighas 15 Biswas was taken on lease for 20 years. The lease was commencing from 23rd September, 1954 till 22nd September, 1974 on payment of Rs.235/- per year by Jagdish Prasad, the defendant. It was agreed between the parties

21 AIR 2019 Punjab and Haryana 54.

22 AIR 2020 Madhya Pradesh 116: AIR online 2020 MP 670.

23 Chandrachud J., *Nand Ram(D) Th. Lrs. .* v *Jagdish Prasad(D)Th.Lrs,* (2020) 9 SCC 393.

that it will not be open to the plaintiff-lessor to seek ejectment of the defendant-lessee from the leased premises, however, if the rent for one year remained in arrear, then the lessor would have the right to eject the lessee.

Section 111 of the TP Act provides for determination of lease in the eventualities mentioned therein. It was found that the defendant was inducted as a lessee for a period of 20 years.The lease period expired on 23rd September, 1974. The court analysed that even if the lessee had not paid rent, the status of the lessee would not change during the continuation of the period of lease. The lessor had a right to seek possession in terms of clause 9 of the lease deed. The mere fact that the lessor had not chosen to exercise that right will not foreclose the rights of the lessor as owner of the property leased. After the expiry of lease period, and in the absence of payment of rent by the lessee, the status of the lessee will be that of tenant at sufferance and not a tenant holding over. The apex court stated that section 116 of the TP Act confers the status of a tenant holding over on a yearly or monthly basis keeping in view the purpose of the lease, only if the lessor accepts the payment of lease money. If the lessor does not accept the lease money, the status of the lessee would be that of tenant at sufferance.

The Supreme Court referred to the summed up legal position or status of a lessee whose lease has expired and whose continuance is not assented to by the landlord, is that of a tenant at sufferance.[24]

If, however, the holding over has been assented to in any manner, then it becomes that of a tenant from month-to-month. Similar, i.e. from month-to- month, is the status of a lessee who comes into possession under a lease for a period exceeding one year but unregistered. He holds it not as a lessee for a fixed term, but as one from month-to-month or year-to-year depending on the purpose of the lease. If upon a tenant from month-to-month (or year-to-year) and in either of the aforesaid two contingencies, a notice to quit is served, then on the expiry of the period, his status becomes of a tenant at sufferance. Waiver of that notice, or assent in any form to continuation restores to him his status as a tenant from month-to-month, but capable, of once again being terminated with the expiry of any ensuing tenancy month.

The apex court observed that the respondent continued to be in possession of the land leased *vide* registered lease deed dated September 22, 1954. The respondent has admitted the ownership of the appellants before the Reference Court. Such plea operates as estoppel against the respondent in respect of the title of the appellants. However, the claim of compensation put forward by the respondent was declined for the reason that non-payment of rent disentitles the respondent from compensation. In the present proceedings, the respondent has denied his status as that of a tenant but claimed title in himself. The respondent claimed adverse possession and claimed possession as owner against a person, who has inducted him as tenant. It was held that the respondent was to prove his continuous, open and hostile possession to the knowledge of true owner for a continuous period of 12 years. The court lamented that the respondent has not led any evidence of hostile possession to the knowledge of

24 *Bhawanji Lakhamshi* v. *Himatlal Jamnadas Dani* (1972) 1 SCC 388.

true owner at any time before or after the award of the reference court nor he has surrendered possession before asserting hostile, continuous and open title to the knowledge of the true owner. The question of adverse possession without admitting the title of the real owner was held not tenable.

Tenant's right erecting a building in the leasehold property

In *Bharat Petroleum Corporation Limited* v. *R. Chandramouleeswaran*,[25] the Supreme Court was dealing with the question whether the leasehold tenant will acquire right to purchase the leasehold property on erecting a building in the leasehold property. In other words, whether the landlords could be directed to sell the leasehold land in whole or in part at the price fixed by the court.

The appellant had under different written registered lease deeds with the landlords taken land on long-term lease and had thereupon constructed petrol pumps that were given to and operated by the dealers appointed by the appellant under the dealership agreements. In some cases the leases were renewed on nationalization of companies in terms of Burmah Shell (Acquisition of Undertakings in India) Act, 1976, Caltex (Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited) Act, 1977, and Esso (Acquisition of Undertakings in India) Act, 1974. However, it is an accepted position that the term or duration of the leases, even where leases were renewed, has expired in all cases.The landlords, the respondents had or have filed suits for ejectment for recovery of possession of the land. The appellant had filed applications purportedly in exercise of their right under Section 9 of the Act for transfer/sale of the leasehold land in whole or in part at the price fixed by the court. By different impugned judgments, the High Court of Madras has rejected the applications filed by the appellant. Hence, the appeal.

The apex court began its interpretation by referring to in brief the scheme of the Act. The court stated that Act postulates and grants certain rights that may be exercised by the tenant facing eviction proceedings. Under section 3 of the Act, the tenant is entitled to be paid compensation equivalent to the value of the building, which he or any of his predecessors in interest or any person not in occupation at the time of ejectment who derived title from either of them, had erected and for which compensation has not been already paid.

The court observed that the tenant is also entitled to the value of the trees and any improvements which may have been planted/made by him. Section 9 of the Act grants the tenant, who is entitled to compensation under section 3 and against whom a suit for ejectment has been instituted or proceeding under section 41 of the Presidency Small Cause Courts Act, 1882 (Central Act XV of 1882) taken by the landlord, to apply for an order directing the landlord to sell for a price to be fixed by the court, in whole or in part, the extent of land specified in the application. Under clause (b) to section 9(1), the court shall decide the minimum extent of the land which is necessary for the convenient enjoyment by the tenant and accordingly fix the price for the land either as prayed by the applicant or as determined by the court, whichever is less.

25 (2020) 11 SCC 718.

It was observed that section 12 protects the rights of a tenant against eviction, notwithstanding the contract entered into by a tenant. However, prior to its amendment vide the Amendment Act, 1972, the override and paramountcy of the Act was not applicable to written registered leases of land that had stipulations as to the 'erection of buildings.'The court categorically held that the proviso to section 12 had given primacy to the written registered document with a covenant as to 'erection of buildings' after the date of the agreement. Parties are *ad idem* that the effect of the proviso was to effectively deny the tenants the statutory right to purchase land under section 9 or enforce other rights under the Act where the written registered agreement had a stipulation relating to 'erection of buildings' by the tenant, in which event parties would be bound by the terms of the agreement and the Transfer of Property Act, 1882, and the Act, that is the Madras City Tenants' Protection Act, 1921, would not apply.

After referring to several precedents and the provisions, the apex court opined that where the lessee is in actual physical possession of the land over which he has made construction then he is entitled to an additional benefit given by section 9(1)(a)(ii) of the Act. However, if the lessee who has made construction on the land let out to him but was not subsequently in possession of the same, as is the case of the appellants in the present cases, then he is not entitled to the benefit of section 9(1)(a)(ii) though he may be entitled to the benefit of Section 9 (1)(a)(i). These are the questions on which the Division Bench of the high court will record a finding. Thus, the matter has been reverted back to the High Court. However, it is obviously clear that the tenant on constructing a building on the leasehold premises will not get a right to purchase the property including the leasehold property through a court direction.

Tenancy and presumptions

In *Siri Chand* v. *Surinder Singh*,[26] the appellant is a landlord of a shop measuring 14 sq. yds. Respondent took the shop on rent @Rs.2,000/- per month for running a hair cutting and dressing work.The respondent-tenant on 27.07.1993, executed an agreement/rent deed undertaking to pay a sum of Rs.2,000/- each month. The rent deed was to be applicable *w.e.f.* July 28, 1993. The house tax and electricity bills were undertaken to be paid by the tenant. Rent was to be paid up to 5th day in each month to the owner. In event, the tenant failed to make the payment of rent up to the prescribed date in advance, the owner shall have right to get the shop vacated. The shop owner, if is in need of the shop, can serve notice of one month and get the shop vacated from the tenant.

An application under section 13 of East Punjab Urban Rent Restriction Act, 1949 was filed by the appellant-landlord dated 18.03.2006 praying for eviction of the tenant along with arrears of rent and house tax and interest on the arrears of rent. The appellant's case was that rent is not paid from 28.01.2004 to 28.07.2004 and from 29.07.2004 to 28.02.2005. House tax since 1999 to 2005 amounting to Rs.22,302/- was not paid. The rent controller held that tenant was in arrears of rent and house tax so the respondent-tenant is liable to eviction from the premises in dispute. The appellate

26 Ashok Bhushan J., *Siri Chand v. Surinder Singh*, (2020) 6 SCC 288.

court, after holding that document-rent deed was compulsorily registrable and having not registered allowed the appeal. The appellant filed a revision before the high court. The high court dismissed the same and hence the appeal before the Supreme Court. The court had referred to its precedent[27] dealing with the provision of section 106 of the Transfer of Property Act, 1882. The court noted the rule of construction, which was to be applied when there is no period agreed upon between the parties in a lease deed. It was held that The rule of construction embodied in this section applies not only to express leases of uncertain duration but also to leases implied by law which may be inferred from possession and acceptance of rent and other circumstances. But when the rent reserved is an annual rent, the presumption would arise that the tenancy was an annual tenancy unless there is something to rebut the presumption.

The court found that the clauses of the rent note made clear that there was a categorical promise that tenancy is a monthly tenancy and rent is paid every month by 5 th of every month. It is true that although in clause (9), it was mentioned that the tenant will be bound for making the rent money by increasing 10% each year, that was promise by the tenant to increase the rent by 10% each year for the period of tenancy, though the period of tenancy was unspecified. Clause (9) may or may not operate in view of specific clauses reserving right of landlord to evict the tenant on committing default of non-payment of rent by 5th of every month or when landlord requires shop by giving one month's notice. The Court was of the view that the judgment of the appellate court is unsustainable on the above ground also. It was held that the judgment and decree of the rent controller directing eviction ought not to have been interfered by the appellate court. The judgment and decree of the Rent Controller directing eviction of the tenant was held restored.

Lease and applicability of the tenancy law

West Bengal Small Industries Development Corporation v. *Sona Promoters Pvt. Ltd*.[28] was a case pertaining to the applicability of the tenancy law.

The Supreme Court tracing the legislative history of the West Bengal Government Premises (Tenancy Regulation) Act, 1976 observed that normally, the rights of the lessor and the lessee and the incidence of tenancy are governed by the Transfer of Property Act, 1882. The court lamented that the provision relating to termination of tenancy in case of breach of the conditions of the lease and recovery of possession from the lessee under the Transfer of Property Act is very time -consuming. Even, the execution of decree for possession is a complicated and time consumingprocess. In order to avoid all these hurdles and to expedite the recovery of possession, the Legislature has enacted the Act.

The corporation executed several lease deeds in favour of the respondent for setting up of a small-scale industry. The leases had been cancelled for not taking steps

27 Ram Kumar Das v. Jagdish Chandra Deo, DhabalDeb, AIR 1952 SC 23 . The Court after quoting Section 106 of the Transfer of Property Act, 1882, held that when there is no period agreed upon between the parties, duration has to be determined by referring to the purpose and object with which the tenancy is created.

28 Civil Appeal 2201 of 2020 decided on 18th March, 2020, AIR 2020 SC4398.

for construction of the factory building as per the terms.Respondents filed the writ petition in the high court. The high court passed *ad -interim* order restraining the corporation from taking any steps for eviction. On appeal the Division Bench concluded that the Act did not apply to the leased premises. Hence, the appeal to the Supreme Court by the appellant. The Supreme Court held that if bare land is let out by the government and/or the government undertaking to its tenant, the incidence of such tenancy cannot be governed by the provisions of the Act and as such a tenant cannot be evicted by taking aid of the provisions of the Act.Therefore, the court held that the eviction proceedings initiated by the Corporation against respondent No.1 under the Act was without jurisdiction.

The court has held that the corporation has to seek eviction of respondent no.1 from the premises in question under the provisions of the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962.Reserving liberty to the appellants to seek eviction of respondent Nos. 1 and 2 from the land in question under West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962, the Court dismissed the appeal. It may be noted that the litigation was started in 2007-2008. The respondents were expected to start the activity years back. The technicality would have been cleared and to avoid litigation further, the court would have required the respondents to abide by law and to start the construction within a reasonable time or evict the premises. Now due to the direction reserving the right of the government to initiate proceedings under the different law, the matter will be dragged further which is avoidable.

Termination of tenancy

Angalammal v. *T.V. NagappaMudaliar (Died),*[29] is a case of suit for delivery of possession and recovery of arrears of rent. Here, lease agreement was made in favour of defendant on monthly rent. Defendant contending that alleged lease not genuine as plaintiff did not show any monthly rent receipts. Sale agreement in favour of plaintiff showing that plaintiff is absolute owner and possession handed over to plaintiff on same day of execution of agreement. Failure of defendant to show lease deed is sham and nominal document. Hence there was no adverse possession. The Court held defendant in possession of suit property only as tenant. Here tenancy properly terminated by plaintiff. Hence defendant bound to surrender suit property and liable to pay arrears of rent.

The trial court after taking into consideration of the aforesaid facts had rightly held that the plaintiff is the owner of the suit property and the first defendant is bound to deliver the possession of the suit property and also held that the defendants are liable to pay the arrears of rent of Rs 108/-, but the first appellate court without the considering the aforesaid facts in a proper perspective had erroneously reversed the findings of the trial court. Hence, the judgment and decree passed by the first appellate court are liable to be set aside. Accordingly, the substantial questions of law are answered in favour of the appellant/plaintiff.

29 AIR 2020 Madras 175; AIR Online 2020 Mad 828.

Arbitrability of dispute relating to Lease

In *Suresh Shah* v. *Hipad Technology India Private Limited*,[30] the Supreme Court was dealing with the question of arbitrability of the dispute relating to lease/tenancy agreements/deeds when such lease is governed by Transfer of Property Act, 1882 and iron out the creases on the legal aspect. The Supreme Court referred to the case of *Booz Allen and Hamilton Inc* v. *SBI Home Finance Limited.*[31]

The court observed that a perusal of the provisions of Sub lease under the Transfer of Property Act indicate the manner in which the determination of lease would occur. It also includes determination by forfeiture due to the acts of the lessee/tenant in breaking the express condition agreed between the parties or provided in law. The breach and the consequent forfeiture could also be with respect to non- payment of rent. The court pointed out that in such circumstance, where the lease is determined by forfeiture and the lessor sues to eject the lessee and, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, section 114 of TP Act provides that the court instead of passing a decree for ejectment may pass an order relieving the lessee against the forfeiture due to which the lessee will be entitled to hold the property leased as if the forfeiture had not occurred. Under section 114A of the TP Act a condition for issue of notice prior to filing suit of ejectment is provided so as to enable the lessee to remedy the breach. No doubt the said provisions provide certain protection to the lessee/tenant before being ejected from the leased property. In our considered view, the same cannot be construed as a statutory protection nor as a hard and fast rule in all cases to waive the forfeiture. It is a provision enabling exercise of equitable jurisdiction in appropriate cases as a matter of discretion.[32]

The Supreme Court observed that such equitable protection does not mean that the disputes relating to those aspects between the landlord and the tenant is not arbitrable and that only a court is empowered to waive the forfeiture or not in the circumstance stated in the provision. The Court viewed, when the disputes arise between the landlord and tenant with regard to determination of lease under the TP Act, the landlord to secure possession of the leased property in a normal circumstance is required to institute a suit in the court which has jurisdiction. However, if the parties in the contract of lease or in such other manner have agreed upon the alternate mode of dispute resolution through arbitration the landlord would be entitled to invoke the arbitration clause and make a claim before the learned Arbitrator. Even in such proceedings, if the circumstances as contained in section 114 and 114A of TP Act arise, it could be brought up before the arbitrator who would take note of the same and act in accordance with the law qua passing the award. In other words, if in the arbitration proceedings the landlord has sought for an award of ejectment on the ground that the lease has been forfeited since the tenant has failed to pay the rent and breached the express condition for payment of rent or such other breach and in such proceedings the tenant pays or tenders the rent to the lessor or remedies such other

30 2020 SCC OnLine 1038.

31 (2011) 5 SCC 532.

32 *Namdeo Lokman Lodhi v. Narmadabai,* AIR 1953 SC 228.

breach, it would be open for the Arbitrator to take note of section 114, 114A of TP Act and pass appropriate award in the nature as a Court would have considered that aspect while exercising the discretion.

On the other hand, the disputes arising under the Rent Acts will have to be looked at from a different view point and therefore not arbitrable in those cases. This is for the reason that notwithstanding the terms and conditions entered into between the landlord and tenant to regulate the tenancy, if the eviction or tenancy is governed by a special statute, namely, the Rent Act the premises being amenable to the provisions of the Act would also provide statutory protection against eviction and the courts specified in the Act alone will be conferred jurisdiction to order eviction or to resolve such other disputes. In such proceedings under special statutes the issue to be considered by the jurisdictional court is not merely the terms and conditions entered into between the landlord and tenant but also other aspects such as the *bona-fide* requirement, comparative hardship etc. even if the case for eviction is made out. In such circumstance, the court having jurisdiction alone can advert into all these aspects as a statutory requirement and, therefore, such cases are not arbitrable. As indicated above, the same is not the position in matters relating to the lease/tenancy which are not governed under the special statutes but under the TP Act.

In the backdrop of the above discussion, the apex court opined that insofar as eviction or tenancy relating to matters governed by special statutes where the tenant enjoys statutory protection against eviction where under the court/forum is specified and conferred jurisdiction under the statute alone can adjudicate such matters. Hence in such cases the dispute is non-arbitrable. If the special statutes do not apply to the premises/property and the lease/tenancy created there under as on the date when the cause of action arises to seek for eviction or such other relief and in such transaction if the parties are governed by an arbitration clause; the dispute between the parties is arbitrable and there shall be no impediment whatsoever to invoke the arbitration clause.

The petitioner in the instant case while invoking the arbitration clause has proposed the name of Justice (Retired) Mukul Mudgal as the sole arbitrator. The respondent neither replied to the said notice nor objected to the Arbitrator proposed by the petitioner. In that backdrop since a dispute between the parties is to be resolved through Arbitration, the prayer made in this petition is liable to be accepted. In the result, the petition is allowed. Justice (Retired) Mukul Mudgal, former Chief Justice of Punjab and Haryana High Court is appointed as the Sole Arbitrator to resolve the dispute between the parties.

Acceptance of gift

In *Daulat Singh (D) Thr. Lrs.* v. *The State of Rajasthan*[33] case, Daulat Singh was owner of 254.2 Bighas of land. On 19.12.1963, he gifted away 127.1 Bighas of land to his son, Narpat Singh. After the transfer, the appellant was left with 17.25 standard acres of land, which was below the prescribed limit under the Ceiling Act. Proceeding was initiated under the Ceiling law. However, the same was dropped by

33 (2020) 13 SCALE 800.

the Court of Deputy Sub-Divisional Officer, Pali, Rajasthan.The Revenue Ceiling Department re-opened the case of the appellant. The Additional District Collector, Pali declared that the mutation of the land done in favor of the son of the appellant was invalid as there was no acceptance of the gift. It was declared therein that the appellant was holding 11 standards acres of extra land over and above the ceiling limit. The collector, therefore, directed the appellant to handover vacant possession of the aforesaid 11 standard acres of extra land to the Tahsildar. Aggrieved, the appellant preferred a writ petition under article 227 of the Constitution of India, 1950 before the High Court. The High Court allowed the writ petition. The high court held that the case was beyond the purview of Section 6 of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 because the land was transferred by way of gift. It was further held that the aforesaid transfer of land, by the appellant in favor of his son by virtue of a registered gift deed, being bona fide, was valid in the eyes of law. The single judge, therefore held that there was no surplus land which was available with the appellant which can be resumed. Thereafter, the respondents preferred an appeal against the above order before the Division Bench, which allowed the appeal holding that the gift deed was invalid as the son of the appellant was unaware about the same. The division bench had set aside the order passed by the single judge bench. The appellant has preferred the appeal before the Supreme Court by way of Special Leave Petition.

The Supreme Court observed that section 122 of the Transfer of Property Act, 1882 provides that for a gift to be valid, it must be gratuitous in nature and must be made voluntarily. The said giving away implies a complete dispossession of the ownership in the property by the donor. Acceptance of a gift by the donee can be done anytime during the lifetime of the donor. Section 123 provides that for a gift of immovable property to be valid, the transfer must be effectuated by means of a registered instrument bearing the signature of the donor and attested by at least two witnesses.

The Apex Court referred to its precedent in *Naramadaben Maganlalb Thakker* v. *Pranjivandas Maganlal Thakker.*[34] The court had held that acceptance by or on behalf of the donee must be made during the lifetime of the donor and while he is still capable of giving. Through that decision it would be clear that the execution of a registered gift deed, acceptance of the gift and delivery of the property, together make the gift complete. Thereafter, the donor is divested of his title and the donee becomes the absolute owner of the property.

The court also referred to the case of *Asokan* v. *Lakshmikutty.*[35] According that case, gift did not contemplate payment of any consideration or compensation. It is, however, beyond any doubt or dispute that in order to constitute a valid gift acceptance thereof is essential. The court noticed that the Transfer of Property Act did not prescribe any particular mode of acceptance. It was held the circumstances attending to the transaction which may be relevant for determining the question. Accordingly, there

34 (1997) 2 SCC 255.

35 (2007) 13 SCC 210.

may be various means to prove acceptance of a gift. The document may be handed over to a donee, which in a given situation may also amount to a valid acceptance. The fact that possession had been given to the donee also raises a presumption of acceptance.

Supreme Court held that section 6 of the Ceiling Act of 1973 declared that every transfer of land including by way of gift, made on or after September 26,1970 and before 01-01-1973, shall be deemed to have been made to defeat the provisions of the Ceiling Act of 1973.

The apex court found that in the instant case, the gift deed was executed on 19-12-1963 that was much before September 26,1970. Therefore also, the court iterated that Section 6 of the Ceiling Act of 1973, did not affect the transfer of land by the appellant-donor in favor of the donee-son. Thirdly, there is no finding that the gift deed in the present case was actuated upon any extraneous consideration. Hence, it was held constituted a bona fide transfer which was exempted from the rigors of Section 6 of the Ceiling Act of 1973. Hence, the appeal was allowed.

Gift and restrictions on transfer

Sridhar v. N Revanna[36] is a case, there was a doner imposing restrictions on alienation of property gifted in favour of minor. It was held section 13 of the Act has no application as property was not gifted to unborn person but a minor.Hence condition restraining alienationwas avoid.

In the present case, a perusal of the gift deed as indicates that owner af the property gifted the immovable property to his grandson, gift was not in favour of who was minor ,five years old the reference of done and his younger brothers or their male children was made while enumerating the conditions as contained in the gift deed the condition put on person unborn is entirely different from execution of the gift deed, in favour of a person who is not born thus the gift was clearly gift in favour of done and not in favour of unborn person, thus Section 13 has no application in the facts of the present case.

The court has clearly opined that the high court erred in holding that defendant which was not entitled to transfer the property which was received by gift deed dated 05.06.1957, the plaintiffs were not entitled for declaration as sought for in the suit and there is no merit in the appeal. Hence the appeal was according dismissed.

Oral gift to Deity and requirement of registration

In *Sri Dadhibaban MahaprabhuBije* v. *Paramananda Sahu*,[37] oral gift was made infavour of deity and registration of –execution of deed of acknowledgement in favour of deity document in nature of dedication of immovable property to God do not require registration as it constitutes religions trust and it is exempted from registration.

36 AIR 2020 Supreme Court 824.

37 AIR 20202 Orissa 1: AIR Online 2019 Ori. 184.

In S*ainath Mandir Trust v. Vijaya*[38] the apex court held that: it is no doubt true that the gift deed was an unregistered instrument and no title could pass on the basis of the same under section 123 of the Transfer of Property Act. However,when the document is in the nature of a dedication of immovable property of God, the same does not require registration as it constitutes a religious trust and is exempt from registration as it constitutes a religious trust and is exempt from registration .we have taken note of a full bench decision of the Madras High Court in the case of *Narasimhaswami* v. *Venkatalingam,*[39] wherein it was held that Section 123 of the Transfer of Property Act does not apply to such a case for God as is not a living person and so the transaction is not a transfer as defined by section 5 of the Transfer ofProperty Act. Thus,a gift toan idol may be oral and be effected.

Arbitrability of transfer of property disputes

In *Avitel Post Studioz Limited. v. HSBC PI Holdings (Mauritius) Limited*,[40] the court held that allegations of fraud are arbitrable, provided, they relate to a civil dispute. The court also held that matters pertaining to fraud can be the subject matter of arbitration proceedings, provided the fraud does not "vitiate and invalidate the arbitration clause", or raise questions that affect *rights in rem* and therefore necessitate adjudication in the public domain. In Avitel, the Supreme Court sought to clear out multiple anomalies. It addressed the ambiguity arising due to the lack of a specific category of non-arbitrable cases being carved out in the domestic legislation and the decision of the Indian Parliament to not incorporate the recommendation of the Indian Law Commission in this regard. According to the Supreme Court, "the Parliament has left it to the courts to work out the fraud exception on a case by case basis". However, this is worrying as it will lead to a "a case by case" determination of what constitutes fraud and will result in unnecessary judicial intervention and delay. This approach would harm the existing regime of arbitration to a considerable extent.

Expansion of the scope of arbitrability

N.V. Ramana J., in *Vidya Drolia* v. *Durga Trading Corporation*,[41] reaffirmed the law laid down in *Avitel Post Studioz Limited* v. *HSBC PI Holdings (Mauritius) Limited and*.[42] The Supreme Court overruled its decision in *N. Radhakrishnan v. Maestro Engineers*.[43] The court categorically ruled that i) fraud renders a dispute non-arbitrability only ii) In a clear case where the arbitration clause or agreement itself cannot be said to exist; or iii) If allegations are made against the State or its instrumentalities of arbitrary, fraudulent, or mala fide conduct which requires a public enquiry.The court observed that it would be grossly irrational and completely wrong to mistrust and treat arbitration as flawed and inferior adjudication procedure. Thus

38 AIR 2011 SC 389.

39 AIR 1927 Mad. 63.

40 (2020) SCC On Line SC 656.

41 2020 SCC OnLine SC 1018.

42 (2020) SCC OnLine SC 656.

43 (2010) 1 SCC 72.

marking a clear shift in judicial perception and its increasing faith in the process of arbitration.

The *Vidya Drolia* decision specifically highlight edits decision in *Booz Allen & Hamilton Inc.* v *SBI Home Finance Ltd.*.,[44] regarding arbitrability of *rights in personam* issues arising out of *rights in rem.* The Court categorically held that certain in *personam* issues in copyright and patent matters can also be arbitrated besides the tenancy disputes. Thus, the court removed doubts as to the arbitrability of disputes, which, even though pertain to *rights in rem* are essentially subordinate disputes which can be resolved through arbitration.

The court clarified on arbitrability of disputes covered by special legislations and exclusion of debts recovery tribunal matters. It was held that the creation of a special forum by itself will not divest the arbitral tribunal of its jurisdiction. The test laid down was to identify whether the statute creates special rights and remedies which a civil court cannot grant. The principle essentially opens up doors for arbitration even when there is a separate tribunal formed for adjudication of such disputes.

The apex court ruled that landlord-tenant disputes governed by the Transfer of Property Act are arbitrable as they are not actions in rem but pertain to subordinate rights in *personam* that arise from rights in rem. Such actions normally would not affect third-party rights or have erga-omnes affect (towards all) or require centralized adjudication. An award passed deciding landlord-tenant disputes can be executed and enforced like a decree of the civil court. Landlord-tenant disputes do not relate to inalienable and sovereign functions of the State. The provisions of the Transfer of Property Act do not expressly or by necessary implication bar arbitration. Transfer of Property Act, like all other Acts, has a public purpose, that is, to regulate landlord-tenant relationships and the arbitrator would be bound by the provisions, including provisions which ensure and protect the tenants.

Fraud and compulsory registration

In *Gurcharan Singh* v. *Angrez Kaur*,[45] the apex court, revisited the facts and sequence of events in the case to examine as to whether any fraud was played on the Court or Bhajan Singh in obtaining the decree dated January 9,1995.

Bhajan Singh had executed a registered Will dated September 2, 1986. It was a registered Will. Pursuant to a Family Settlement dated June, 15, 1994 Bhajan Singh had decided to allot plaintiffs in equal share and relinquished all his rights in the suit property. The decree was passed on 09.01.1995 on the basis of which mutation was sanctioned on 03.03.1995. Bhajan Singh was admittedly alive till 24.04.1998. In his lifetime, he never objected the decree or mutation in favour of the defendants. It had been accepted by the Courts below that both Bhajan Singh and Gurmail Kaur were divorced. Gurmail Kaur after September 15, 1973 started living with Maghar Singh, brother of Bhajan Singh in Village Jalowal and thereafter never returned to Bhajan Singh. Gurmail Kaur also filed a suit for maintenance against Bhajan Singh, which

44 (2011) 5 SCC 532.

45 (2020) 10 SCC 250.

was dismissed for non-prosecution. The plaintiffs, *i.e.,* Angrez Kaur and Paramjit Kaur, after divorce went with their mother and lived with Maghar Singh and never returned to Bhajan Singh. In her statement, PW1 has admitted that she never came to see her father. The Courts have found that Bhajan Singh lived with the defendants after the divorce, who were taking care of Bhajan Singh. The execution of registered Will by Bhajan Singh on September 2, 1986 in favour of the defendants and further his admission that all the claim of the defendants in suit no. 556 are correct and accepting that he has relinquished his rights in favour of the plaintiffs, Gurcharan Singh, Gurnam Singh and Kulwant Singh clearly disprove any ground of fraud either on the Court or on Bhajan Singh.

The divorce between Bhajan Singh and Gurmail Kaur took place on September 15, 1973 and thereafter for 25 years, Bhajan Singh lived away from his wife and daughters and it was the defendants, who were taking care of Bhajan Singh. Admitting the claim of plaintiffs/appellants in the suit filed against the defendant Bhajan Singh for declaration cannot be termed as any fraud played on Bhajan Singh or the court. Sequence of events clearly indicate that Bhajan Singh of his own volition wanted to give the entire property to the defendants due to the circumstances of the case, in which Bhajan Singh was placed. It is due to this reason that Bhajan Singh in his Will dated September 2, 1986 stated that he has no wife or children. The court, thus, did not find any substance in the submission that fraud was played in obtaining decree dated January 9, 1995 by the defendants.

The apex court found that the suit no. 556 of 21.09.1994 filed by the appellants against Bhajan Singh relates to the suit property described in plaint and decree was passed only with regard to suit property A to D. The decree dated January 9, 1995 was, thus, expressly covered by expression "any decree or order of a Court". When legislature has specifically excluded applicability of clause (b) and (C) with regard to any decree or order of a court, applicability of section 17(1)(b) cannot be imported in section 17(2)(v) by any indirect method. The court thus opined that decree and order dated 09.01.1995 did not require registration and were fully covered by section 17(2)(vi), which contains exclusion from registration as required in section 17(1). High court as well as first appellate court erred in coming to the conclusion that decree dated January 19, 1995 required registration and due to not registered is null and void.

VI CONCLUSION

In the year under survey, there are many Supreme Court judgments which have been considered for the survey. The courts appreciated the legislative intent of avoiding hurdles and to expeditious recovery of possession of the lands under the special Act *viz.,* the West Bengal Government Premises (Tenancy Regulation) Act, 1976. The Apex Court recognized the frustrated way of approach of a divorced husband of one who in his Will stated that he has no wife or children. The court aptly has highlighted the significance of the Transfer of Property Act, having a public purpose, that is, to regulate landlord- tenant relationships and the arbitrator would be bound by the provisions, including provisions which ensure and protect the tenants. The court gave

a very aptly clarified by its interpretation to section 13 of the Act that it has no application if the property was not gifted to unborn person but a minor. The court removed doubts as to the arbitrability of disputes, which, even though pertain to *rights in rem* are essentially subordinate disputes which can be resolved through arbitration.In all the courts while deciding the cases have aptly interpreted and analysed various ambiguous issues relating to the property law.