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PROPERTY LAW

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I INTRODICTION

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: a) The Act applies to the transfers by act of parties and has no application to the transfers by operation of law. b) The Act deals with transfers *inter vivos* and has no application to the transfers under will or succession.[1] c) Though the Act contains some provisions, which also apply to movable property under sections 5 to 37 and sections 118 to 137 but most all the provisions are applicable to immovable property. d) section 2 of the Act saves the rules of Mohammedan Law which says that whenever any provision of the Transfer of Property Act is inconsistent with the Mohammedan Law, the rules of Mohammedan Law will prevail, e) The Act applies only to the transfers which take place in India and has no extra-territorial operation, f) Sections 10 to 35 are taken from Indian Succession Act and rest of the sections from English Law which are based upon rules of Equity and g) When the Act makes no provision, the courts can apply the English Common Law on the grounds of *'justice, equity and good conscience.'*

The Transfer of Property Act, 1882 is better understood not in isolation but when read with certain provisions of other enactments like Indian Contract Act, the Partition Act, General Clauses Act, Tenancy Act, Registration Act and the Securitisation and Reconstruction of Financial Assets Enforcement of Security Interest Act, 2002 and other important local tenancy laws. 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.

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II GENERAL PRINCIPLES

Right to sue non-transferable

In *Muzaffar Husain* v. *State of Uttar Pradesh*,[2] the Supreme Court took cognizance of the legal provision under section 6(e) of the Transfer of Property Act. The claimants in this had purchased the right to receive compensation and the right to sue in place of the original owners, which was totally prohibited under section 6(e) of the Transfer of Property Act read with the provisions contained in the Land Acquisition Act. The appellant was a judicial officer. He had committed misconduct by passing orders in favour of the claimants.

The Supreme Court observed that the appellant had awarded enhanced compensation at an exorbitantly higher rate in favour of the subsequent purchasers/ investors, who had no right to receive any compensation, more particularly when Section 6(e) of the Transfer of Property Act specifically prohibited the transfer of mere right to sue. The said cases were found to have been decided by the appellant, in flagrant violation of the cardinal principles of law and equity, and against all judicial norms and propriety, with a view to unduly favour such subsequent purchasers who had no legal right to receive the compensation.

***Bona-fide* purchaser for consideration**

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 the source of purchase money is 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 sell it to a *'bona fide'* purchaser, he cannot afterward 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 quad non 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 asenunciated in section 115 of the Evidence Act.

Rajpal Singh v. *Saroj (Deceased) Through LRs*[3] is a case pertaining to rights of *bona-fide* purchaser under section 41 of TP. Act. In this case, there was an agreementto sell by husband. Wife hasfiled collusive suit for declaration of ownership over same property and the suit was decreed in 1995. Decree was not registered and no entries were made in revenue record by wife. Husband sold

1 The Indian Succession Act, 1925.

2 2022 SCC OnLine SC 567.

3 AIR 2022 SC 2707.

property to bona fide purchaser in 1996 and received entire consideration.Held bona fide purchaser was entitled to title over suit property.

Transfer by ostensible owner

In *Umadevi Nambiar* v. *Thamarasseri Roman Catholic Diocese Rep. by Its Procurator Devssia's Son Rev. Father Joseph Kappil*[4], the Supreme Court considered application of provisions of sections 3 and 41 of TP Act. The court observed that if respondents, *bona-fide* purchasers had exercised reasonable care as required by Proviso to section 41, they could have easily found out that there was no power of sale in power of attorney executed by appellant, principal in favour of her sister. After finding that power of attorney did not contain authorization to sell, *bona-fide* purchaser cannot claim benefit of section 41. High court turned interpretation clause *i.e.,* section 3 of Transfer of Property Act upside down and held principal in relation to a deed of Power of Attorney, to have had constructive notice in terms of section 3 of a sale effected by agent. Findings of high court attributing constructive notice to appellant, principal in terms of section 3, erroneous.

Priority of rights

Section 48 of the Transfer of Property Act, 1882, deals with priority of rights. The rule enshrined under the section is based on the maxim '*qui prior est tempore potiorest jure.'* Itmeans*'he who is prior in time is stronger in law.'* The one who has the advantage in time should have precedence in law as well, is the basis of the rule where two successive transfers of the same property have been effected. The section lays down the transfer effected later must submit to the earlier. In other words, the section embodies the rule of priority founded on law and justice.

In *Jahidul Islam* v. *Abu Sharma (death) his legal heirs Jubeda Begam (Wife) and* [5] case, the plea of the plaintiff that he purchased the suit property from a co-sharer of that property. Defendant counter-claimed the property on the ground that he purchased the same from a co-sharer, alleged vendor of plaintiff admitting that she is not aware that her share andhusband ever occupied any land in the village where suit land is situated and she executed the sale deed in another village as per the advice of plaintiff and never delivered possession of land to the plaintiff. The plaintiff failed the suit to prove the title of his vendor to suit property. Hence, the plaintiff is not entitled to the relief claimed. Transfer by co-owner and alleged co-sharer not having any saleable right in the suit property. The sale is invalid. Transferee not entitled to possession or enjoyment of property purchased by him. Here priority of rights created by the transfer. Two sale deeds registered in respect of the same property. However, both deeds were executed by different persons. Held section 48 is inapplicable.

A perusal of section 48 of the transfer of property act as quoted herein above would go to show that where one of two or more co-owners of an immoveable

4 AIR 2022 SC 1640.

5 AIR 2022 Gau. 13.

property legally competent in that behalf transfers his share of such property or any interest therein his share of such property or any interest the transferee acquires as to such share or interest and so far as is necessary to give effect to the transfer, the transferor's right to give effect to the transfer the transferor's right to join possession or other common or part enjoyment of the property and to enforce a partition of the same.[6]

In view of the above, it is relevant that the co-owner, who transfers his or her share in the property has to be legally competent on that behalf. As already held herein above, the concurrent findings of facts arrived by the courts below that the proforma respondent nos. 6 and 7 did not have any saleable right with respect to the schedule B land, under such circumstances of the instant case.[7]

The next question arises as regards the applicability of section 48 of the said act which gives priority with respect to the transfer made at various stages with respect to the same property, but the said provision is only applicable when a person creates a right by transfer at different times in over the same immovable property. However, in the instant case that the deed of sale in favour of the plaintiffs was done by the proforma respondent nos. 6 and 7, whereas the deed of sale was executed by the defendant nos. 1 to 4. Under such circumstances, the question of applying Section 48 to the facts and circumstances of the instant case does not arise. Consequently, the second substantial question of law so formulated by this court in its order dated 31/05/2013 is not a substantial question of law that would affect the instant *lis* between the parties thereby calling for interference to the appellate decree passed by the court below.[8]

Lis pendense

Wharton's Law Dictionary has been defined *'lis pendens'* as pending suit. *'Lis'* means a suit, action, controversy, or dispute, and dispute is a conflict or contest, while controversy is a disputed question, a suit at law; and the *pendens* of the *lis* is not disturbed on in any manner affected by the fact of an appeal taken from one Court to another. The litigation or contest still goes on. Section 52 of the Transfer of Property Act deals with the doctrine of *lis pendens*. 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

6 *Id*., para 13.
7 *Id*., para 14.
8 *Id*., para 15.

lis was recognised in England. It is an extension of the law of *res-judicata* and aims at prevention of multiplicity of suits.

K. Ravi Prasad Reddy v. *G. Giridhar*[9] is a case wherein High Court of Andhra Pradesh has considered the position of temporary injunction during *pendent lite.* Held section 52 of T.P. Act does not operate as bar to grant of temporary injunction under order 39, rule 1 and 2, CPC.

Section 52 T.P.Act although provides protection to the parties from transfers *pendent lite,* in as much as it makes such transfers subservient to the decree that may be passed in the suit, but it does not come in the way of passing an order of temporary injunction restraining alienation of the suit property during the pendency of the suit on the applicant satisfying all the three ingredients of prima facie, balance of convenience and causing irreparable loss or injury in his favour. [10]

The distinction between section 52 of TP Act and order 39 rule 1 and 2 CPC, is that an order of temporary injunction is of pre-emptive nature restraining the act of alienation by party to the suit where there is such a danger, whereas section 52 comes into play after the alienation takes place during pendency of the suit. Section 52 provides for the consequences of a transfer taking place pending litigation, *i.e.,* that the *pendent lite* purchaser would be entitled to or suffer the same legal rights and obligations of his vendor(s) that may be finally determined by the court. Section 52 does not come in way of applicability of order 39 rule 1 and 2 of CPC. In other words, notwithstanding section 52 making transfers during pendency of suit subject to ultimate decree that may be passed in the suit, the court may, pass an order of temporary injunction, if all the requisite pre-conditions for such grant are satisfied.

If an order is passed and transfer is restrained, the question of applicability of section 52 will not arise as then there will be no transfer pending litigation. On other hand, if the party does not apply for temporary injunction or if the application is rejected and the suit property is transferred pending litigation, section 52 shall come into play and those transfers would abide by the ultimate result of the suit.

It cannot be accepted that section 52 providing for the effect of transfers during pendency of the suit, the order of temporary injunction under order 39 rule 1 and 2 could not be passed. If same is accepted, then the court cannot pass an order of temporary injunction to restrain alienation in spite of specific provision under order 39 R.1 (a) of CPC, in any case, as in every case any alienation made pending litigation would abide by the doctrine of *lis pendens* embodied under section 52. This will render the provisions of order 39 rule 1and 2 CPC ineffective.

Court also observed that from the aforesaid, we are of the considered view that section 52 of T.P.Act, although provides protection to the parties from transfers *pendent lite*, in as much as it makes such transfers subservient to the decree that may be passed in the suit, but it does not come in the way of passing an order of

9 AIR 2022 Andhra Pradesh 59.

10 *Id*., para 24.

temporary injunction restraining alienation of the suit property during the pendency of the suit on the applicant satisfying all the three ingredients of prima facie, balance of convenience and causing irreparable loss or injury in his favour.

In the present case, the trial court, while granting temporary injunction, has discussed that during the pendency of the suit, the defendant no.1, the appellant herein, transferred the suit schedule property in favour of defendants nos.2 and 3, and those defendants, in turn, transferred the part of the suit property in favour of third persons. The defendants/appellants invoking the jurisdiction of this court are therefore responsible for bringing about the state of things complained of by the plaintiff/ respondent before the court below and cannot be *prima facie* said to be equitable in his dealings. In *Gujarat Bottling Co. Ltd.* v. *Coca Cola Co.* the apex court clearly laid down that the considerations of the conduct being fair and honest will arise not only in respect of an applicant seeking an order of injunction but also in respect of the party approaching the court for vacating the *is related to a* or temporary injunction already granted in the pending suit or proceeding. [12]

Earthz Urban Spaces Pvt. Ltd. v. *Ravinder Munshi* [13] is a case related to suit for specific performance based on oral agreement. Here plaintiff pleaded existence of oral agreement to sell suit property, to it by defendants-owners, on the basis of Whatsapp chats, legal notice and MoU. MoU was merely negotiation of terms of proposed agreement, and not agreement. No consideration has paid by plaintiff. Court observed that in the absence of binding agreement, no contract existed between parties. Failure to prove existence of oral agreement disentitles

Held owners defendants shall be entitled to alienate property during pendency of suit where plaintiff fails to prove presence of binding agreement in respect thereof and doctrine of *lis pendens*, in applicable

Taking into account the conduct of the plaintiff in the aforesaid case, the court observed that the doctrine of *lis pendens* will not apply to the property that was subject matter of the suit and the defendant therein would be free to deal with the property. Counsel for the plaintiff submits that the aforesaid judgment was passed prior to the amendment of the Specific Relief Act in 2018 and therefore, would not apply to the present case. I do not agree. The observations of the aforesaid judgment would be squarely applicable to the facts of the present case, on account of the following factors: (i) The transcripts of the WhatsApp messages filed on behalf of the plaintiff do not establish any oral agreement between the parties. (ii)The transcripts of the WhatsApp messages of April 27, 2021 have been selectively extracted in the plaint and material parts thereof, have been deliberately omitted so as to mislead the court. (iii) The case of an 'Oral Agreement to Sell' has been set up only for the first time in the plaint. In the legal notice sent on behalf of the plaintiff to the defendants, the case was completely based on the MoU and dated June 2, 2021. (iv) A perusal of the aforesaid MoU clearly show that it is not

11 *Id.*, para 25.

12 *Id*., para 34.

13 AIR 2022 Delhi 184.

a binding agreement between the parties and therefore, cannot be enforced in a court of law. (v) No proof of payment of any amount to the defendants has been produced on behalf of the plaintiff. The cheque bearing no.001082 amounting to Rs.2 lakhs wrongly records the name of the defendant no.3.[14]

Taking into account the aforesaid, I am of the view that the likelihood of the plaintiff succeeding in the present suit is remote and therefore, it is a fit case to exempt the suit property from the operation of Section 52 of the Transfer of Property Act during the pendency of the suit. Great prejudice would be caused to the defendants if, upon issuance of summons in the suit, the doctrine of *lis pendens* is applied in respect of the suit property.[15]

Santhosh Kumar v. *Estate of Ishwar Dayal (deceased)* [16]is case pertaining to impleadment of necessary party to the Probate proceeding in which Real estate developers. Intervenors had acquired substantial interest in suit properties on the basis of grant of probate to their client. However, appeal was filed against order granting probate and interveners though called may be called hit by doctrine of *lis pendense*, can be impleaded as party to said appellate probabate proceedings. Held probate court has powers to issue notice to persons interested before granting Probate.

Court observed that on conspectus of facts and law discussed herein above, it is clear that in the present case, the petitioners legal right to proceed with the development of the land under agreement is directly dependent upon the result of the appeal as the authority of executors is itself an issue in the aforesaid appeal and the result of the ligation may affect the intervenors legally i.e., by curtailing their legal right. In the present case, plaintiff has not raised objection for impleadment of as party the intervenors. The probate court has been granted unfettered discretion under section 2283 of the Act to issue notice while granting probate calling all parties claiming to have interest in the estate of the deceased to come and see the proceeding, of course before the grant of probate. The very purpose of such notice is watch the proceedings either by filing objection or to support the proceedings.[17]

Part-performance

Section 53A of the T.P. Act deals with part-performance. It is an exception to the rule that every transfer of property should be registeredif required under law. It provides the rule of part-performance and it is depending mainly on the English equity doctrine of part-performance. This was added to the Act in 1929. In English, the Statute of Frauds required all contracts relating to immovable property to be in writing, and under section 4, no action or suit shall be maintained on an agreement relating to land which is not in writing and signed by the parties to be charged with. Its stringent provision could be utilized so as to make the statute as an

14 *Id.*, para 19.
15 *Id*., para 20.
16 AIR 2022 Patna 180.
17 *Id.*, para 25.

instrument of fraud.The English equity maxims are the basis for the English doctrine of part-performance. They are: *He who seeks equity must do equity*; b) *Equity treats that as done which ought to have done* and c) *Equity looks to the intent rather than the form.* The principle provided here is, if a person made bargain with another and allows that other to act upon it, he will have created an equity against himself and he has to perform such act.

Siva v. Subha Ramesh [18] is a case pertains to agreement to sell, suit for specific performance and permanent injunction. As per the vendor, sale consideration was not passed on and vendee admitted that possession was handed over to her and vendee sought for relief of permanent injunction restraining vendor from interfering with possession which she got under alleged sale deed and also sought protection under Section 53A of T.P. Act. Sale deed was unregistered document. Held, vendee cannot seek any remedy under unregistered sale deed.

In this case, an Appeal Suit has been filed, against the judgement and decree, dated 27.04.2016, passed by the III Additional District Court, Salem, in OS.No.100 of 2014. The suit was filed for specific performance of the sale agreement, dated 09.11.2012, and for permanent injunction and also for declaration of the gift settlement deed, dated 29.11.2013 executed, by the 1st Defendant in favor of the 2nd Defendant, as null and void and for costs.

In this case, PW.1 in her evidence has stated that at the time of execution of the sale agreement, possession was handed over to her. Therefore, the plaintiff cannot seek any remedy under the unregistered document. Therefore, the lower court miserably failed to appreciate this aspect. Held that the judgment of the lower court is an erroneous one and liable to be set aside and this Appeal Suit is to be allowed.[19]

Md. Toyjal Hoque v. *Md. Najat Ali*[20] is a case wherein High Court of Gauhathi was dealing with part performance and benefits of section 17(1A) of Registration Act clarifyingthat for taking benefit under section 53A of T.P. Act, any documents executed pursuant to Registration and other Related Laws (Amendment) Act, 2001, same has to be registered, Here document on basis of which defendants claiming their rights under section 53A of T.P. Act is not registered.Held defendants not entitled to benefit of section 53A of T.P. Act.[21]

Part Performance *vis a vis* Limitation

In *Biswanath Banik* v. *Sulanga Bose,*[22] the plaintiffs had instituted a Title Suit against the respondents herein (original defendants) in the Court of Civil Judge, Sr. Division, Sealdah. The trial court rejected the claim by the defendants. The High Court has quashed the order passed by the trial court. The Court has

18 AIR 2022 Madras 148.
19 *Id*., para 17.
20 AIR 2022 Gua 23.
21 *Id*.,para10.
22 (2022) 7 SCC 731.

allowed the application under Order VII Rule 11 CPC and has rejected the plaint on the ground that the suit is barred by limitation and that the suit for a declaration simpliciter under Section 53A of the Transfer of Property Act would not be maintainable against the actual owner. Hence the appeal.

The Supreme Court observed that in the present case, the high court held that the suit was barred by limitation.It rejected the plaint. The high court has also held that the suit for a declaration simpliciter under Section 53A of the Transfer of Property Act against the original owner would not be maintainable.

However, the apex court noted that even the plaintiffs have also prayed for the decree for a permanent injunction. They were claiming to be in possession and the declaration and permanent injunction as such invoking Section 53A of the Transfer of Property Act.

The Supreme Court clarified that when the suit is for a decree of permanent injunction and it is averred that the plaintiffs are in possession of the suit property pursuant to the agreement and thereafter, they have developed the land and that they are in continuous possession since more than twelve years and they are also paying taxes to the corporation, the cause of action can be said to have arisen on the date on which the possession is sought to be disturbed. If that be so, the suit for decree for permanent injunction cannot be said to be barred by limitation. It is the settled proposition of law that the plaint cannot be rejected partially. Even otherwise, the reliefs sought are interconnected. Whether the plaintiffs shall be entitled to any relief under Section 53A of the Transfer of Property Act or not has to be considered at the time of trial, but at this stage it cannot be said that the suit for the relief sought under Section 53A would not be maintainable at all and therefore the plaint is liable to be rejected in exercise of powers under Order VII Rule 11 CPC.

III SPECIFIC TRANSFERS

Validity of 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 parties, ii) there must be the subject matter, iii) there must be transfer or conveyance iv) the transfer must be for price and v) it should be registered..

In *Kewal Krishan* v. *Rajesh Kumar.,*[23] the High Court of Madras observed that a document which is void need not be challenged by claiming declaration as said plea can be set up and proved even in collateral proceedings. Here, in the instant case, sale deed was executed without payment of consideration.

23 AIR 2022 SC 564.

It is the specific case made out in the plaints as originally filed that the sale deeds are void as the same are without consideration. It is pleaded that the same are sham as the purchasers who were minor sons and wife of Sudarshan Kumar had no earning capacity. No evidence was adduced by Sudarshan Kumar about the payment of the price mentioned in the sale deeds as well as the earning capacity at the relevant time of his wife and minor sons. Hence, the sale deeds will have to be held as void being executed without consideration. Hence, the sale deeds did not affect in any manner one half share of the appellant in the suit properties. In fact, such a transaction made by Sudarshan Kumar of selling the suit properties on the basis of the power of attorney of the appellant to his own wife and minor sons is a sham transaction. Thus, the sale deeds of April 10, 1981 will not confer any right, title and interest on Sudarshan Kumar's wife and children as the sale deeds will have to be ignored being void. It was not necessary for the appellant to specifically claim a declaration as regards the sale deeds by way of amendment to the plaint. The reason being that there were specific pleadings in the plaints as originally filed that the sale deeds were void. A document which is void need not be challenged by claiming a declaration as the said plea can be set up and proved even in collateral proceedings. Hence, the issue of bar of limitation of the prayers for declaration incorporated by way of an amendment does not arise at all. The additional submissions made by the respondents on 16th November 2021 have no relevance at all.[24]

Bhikari Charan Baral v. *Balamukunda Swain*[25] is a case where the High Court of Orissa was asked to explain about passing of title upon entering into sale deed with particular terms therein, title under such deed can be passed on date of execution of deed itself and the same has nothing to do with passing of consideration money.

Reading the aforesaid judgment, the court finds that the judgment was passed again taking into account several other judgments of this court in same line and also considering the situation arises here also came to observe, on entering into the sale deed with the particular terms therein, title under such deed would have been passed on the date of execution of the deed itself and the same has nothing to do with passing of consideration money or not.[26]

In *Pazhamalai* v. *Muruganandam,*[27] High Court of Chhattisgarh has considered sale deed and validity of suit property sold by owner to defendant. Here, plaintiff subsequently purchasing same property from owner. However, owner cannot convey property which he had already conveyed to defendant. Since title was already passed to defendant, plaintiff cannot claim title to same and the maxim *'nemo dat quod non habet'*is applicable. Court observed that since it is suit for

24 *Id.,* para16.
25 AIR 2022 Ori. 120.
26 *Id*., para 8.
27 AIR 2022 Mad 200.

declaration of title, burden to prove title is upon plaintiff and this burden will never get shifted to defendant till plaintiff discharges his burden.

In view of the above discussion, the court holds that the lower appellate court was not right in granting the decree for declaration of title in favour of the plaintiff since there was no property left behind in the hands of the legal heirs of Mottayapadayatchi and they could not have conveyed what they themselves did not have through sale deed. The substantial question of law framed by the court is answered accordingly in favour of the appellant. In the result, the Judgment and decree passed by the lower appellate court is hereby set aside and the second appeal is accordingly allowed.[28]

PK Pate(Dead) By Lrs. v. *Labshankar Purushothambhai Trivedi*[29] is a case pertains to validity of sale deed. Here, sale deed was executed by vendor posing as administrator of a trust as well as owner of the land. Other administrator was alive at relevant time but it was not shown that the said administrator and vendor to sold land of the trust. Here, consideration paid was merge. As sale deed was not signed by all the administrators, court held that sale deed is notvalid.

Right of a seller

Umesh Prasad Sharma v. Allahabad Bank, Represented by and Through the Chief Manager, Gangtok Branch, Sikkim Trader International Building, Metro Point, NH-31A, Gangtok, East Sikkim[30] is a case pertains to application of the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Here, there is an auction sale of property of guarantor. Sons of guarantor stating that property mortgaged by their father is ancestral property and jointly cultivated by them, should not be sold in auction to realize dues. Evidence on record however showing that property of guarantor is self-acquired property and not ancestral property. Petitioners who are adult sons of guarantor has no right to stop their father in dealing with his self-acquired property in manner he chose. No interference warranted with recovery proceedings, more so when guarantor himself have no grievance.

Here, a writ petition was filed under article 226 and sections 13 and 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.Court observed that that the validity of auction sale of property belonging to the guarantor. Petitioners are adult sons of the guarantor, pleading that their father mortgaged landed property is ancestral property and should not be sold in auction to realize dues. Since petitioners are not parties before Tribunal, their issues not determinable by Recovery Officer who is concerned only with recovery of amount specified by Tribunal in the recovery certificate. Hence, the Writ petition, maintainable.[31]

28 *Id.,* para 19.
29 AIR 2022 Guj. 158.
30 AIR 2022 Sikk 5.
31 *Id*., para 21.

Court also observed that although both sections 20 and 30 of the RDB Act uses the expression "any person aggrieved" the scope of the two provisions is materially different. Whereas an appeal under section 20 is preferred against an order of the Tribunal the appeal under section 20 is against the order made by the recovery officer. The issues sought to be raised in the present petition by the petitioners, who are not parties before the Tribunal are not determinable by the recovery officer who is concerned only for recovering the amount specified by the Tribunal in the recovery certificate. The respondent no.4 in an appeal under Section 20 of the RDB Act could have raised those issues while challenging the final order passed by the tribunal under Section 19 (20) of the RDB Act. This court is not examining whether the petitioners could have challenged the final order passed by the Tribunal in the facts of the case as it is only academic.[32]

In view of the aforesaid, this court is of the considered view that the present case is not a fit case for interference with the recovery proceedings. More so when respondent no.4 himself doesn't seem to have any grievance and the petitioners have no right over the property. [33]

Equitable 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 the loan. In case the advanced money cannot 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 a mortgage is for the security of the creditor.

A mortgage by deposit of title deeds is a form of mortgage recognised by section 58(f) of the act, which provides that it may be effected in certain major towns, where a person delivers to a creditor or his agent, the documents of title to immovable property with intent to create a security thereon.

It is not necessary to deposit all the title deeds. Depositing one important title deed is enough. Depositing the receipts does not amount to this nature. Property need not be situated in those major towns but depositing the deeds before the creditors who are residing on those towns is required.

In England, the mortgage of this kind is called an "Equitable Mortgage" as opposed to a "Legal Mortgage" because in this type of mortgage, there is simply a deposit of title, without any writing or any formalities.[34]The object of the legislature to provide this kind of mortgage is to give facility to the mercantile community.

32 *Id*., para 22.
33 *Id*., para 28.

Dr. Narayana Pisharadi v. *Stancash Chits (P) Ltd. Trissur*[35] is a case related to equitable mortgage. In this, a suit was filed byfor enforcement of mortgage. There was an application by mortgagor seeking to deposit the entire suit claim and for return of title deeds. Generally, such an application has to be filed before institution of suit for enforcement of mortgage and even there, mortgagor should voluntary to deposit the entire amount. Here, the mortgagor amount to deposit is conditional. Held, rejection of application is proper.

The court also observed thatreference is made to sections 60 and 83 of TP Act to point out that the sub-judge had rightly held that an application for return of titled deeds by the mortgagor has to be filed before institution of suitfor enforcement of mortgageand even there, mortgagor should voluntary to deposit entire amount. It is submitted that in the instant case, the petitioner had approached the court after institution of the suitand their offer was to depositthe amount conditionally. Hence, the trail court had rightly rejected the request for release of the title deed.[36]

Mortgage by conditional sale

Mortgage by conditional sale[37] is one of the kinds of mortgages. Essentials for Mortgage by Conditional Sale are as follows;

i. The mortgagor ostensibly sells the mortgaged property by sale. It is only ostensible but not real.

ii. There is a condition attached to the sale which makes it only ostensible. The condition may assume only of the three incidents; a) that on default of payment of mortgage money the sale shall be absolute. b) that on such payment, the sale shall become void and c) that on such payment, the property shall be transferred

iii. Delivery of possession is not necessary and

iv. It can be redeemed at any time

The conditions to convey and the transfer must be in the same document after the amendment in 1921. The only remedy of the mortgage is to obtain a decree forforeclosure i.e. absolutely preventing the mortgagor from redeeming the property. Attestation and registration is necessary only when principal money is Rs.100 or upwards

Bhaira (dead) Through LR's. v. *Toran Lal*[38] is a case relating to mortgage by conditional sale or outright sale. Here, document i.e., sale deed in question does not contain any stipulation for treating sale as mortgage. Therefore, transaction in question, is in absence of embodiment as contained in Section 58(c), cannot be regarded as security for loan and it is held to be outright sale.

34 *Gokuladas* v. *Eastern Mortgage and Agency Co*., 33, Cal.410.

35 AIR 2022 Ker. 139.

36 *Id.*,para 4.

37 S. 58 (c)

38 AIR 2022 Chha. 11.

Also held even otherwise, the Additional Collector, Balodabazar in revenue proceedings has also held that sale dated April 27, 1968 is the real sale and it was not executed for the security of loan and that order has become final, as such, the first appellate court has committed a legal error disbelieving.[39]

Right of redemption

Literally "to redeem" means to repurchase and with regard to law of mortgage, it means paying off the mortgage money and buying back to the mortgaged property or to get back the estate which has passed to the mortgagee as security for debt. It is quite natural that a mortgagor should get back his security on payment of principal money together with interest and cost. This right of the mortgagor is known as 'Right of Redemption or Equity of Redemption'.

In England, the above two expressions are not used synonymously under the Common Law. The right of the mortgagor to get back his property on payment of the debt was called right of redemption. This right was available to the mortgagor within the stipulated time and after that it was lost. But the courts of equity looked upon the Common Law notion of forfeiture leniently and maintained that after default, though the mortgagor lost his remedy at Common Law, his known as 'the Equity of Redemption'.

But there is no such distinction in India, under Section 60 of the TP Act. The mortgagor's right of redemption is not extinguished even after the expiry of the date fixed for payment. In India it is not equitable remedy but a statutory right recognized by Section 60. The right of redemption arises when the principal money secured by mortgage has become due, and may be exercised at any time thereafter, subjected to the law of limitation.

Pal Alloys and Metal India Private Limited v. Allahabad Bank[40] is a case pertains to application of provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and taking possession of secured assets and exercise of right of redemption of the mortgage.

The failure of the petitioners to deposit the entire dues at a prior point of time either within 90 days of the filing of the affidavit on February 15.02.2019 or before 15.04.2019 also cannot extinguish their right of redemption because there is no equity or right in property created in favor of the purchaser by the contract between themortgagees. and 1st respondent Bank and the proposed purchasers respondents 2 and 3. Only on execution of conveyance, ownership passes from one party to another; the petitioners/mortgagors cannot be held to have lost their right of redemption just because the property was put to auction; and a mortgage being a security for the debt, the right of redemption continues although the mortgagors fail to pay the debt at the due date.[41]

39 *Id.*, para 17.

40 AIR 2022 Punjab and Haryana 23.

41 *Id.*,para 120.

Govindaraj (died) v. Valliammal (died)[42] is a case pertaining to right of redemption. In this case, plaintiffs have filed a suit for redemption of mortgage and recovery of possession. The suit schedule properties have been originally mortgaged in favour of one Nachiar Ammal and Govindasamy. The said Nachiar Ammal and Govindasamy have created a made over document in favour of one S.K.Ramasamy. The said S.K.Ramasamy has created another made-over document in favor of the defendant. The original owner namely Ramasamy Naidu and his minor son have created a sub mortgage in favour of the defendant under exhibit A4. All these documents are admitted in the written statement. The defendant has not questioned the sale deed in favor of the plaintiffs in the written statement. There is no whisper in the written statement about the discrepancy with regard to the extent of the property or the boundaries of the property. In fact, the defendant has admitted in the written statement that she had leased out the suit schedule property in favor of one Ramasamy who is a necessary party in the suit. Hence, this court can easily come to a conclusion that the relationship between the mortgagor and mortgagee has been established by the plaintiffs. The defendant has also not disputed the sale deed in favor of the plaintiffs. Hence, the plaintiffs have entered into the shoes of the mortgagor and are entitled to redeem the suit schedule property.[43]

Mortgage and pledge-differences

In *PTC India Financial Services Limited* v. *Venkateswarlu Kari,*[44] the Supreme Court analysed the difference between mortgage and pledge. It was observed: "…A mortgage conveys the whole legal interest in the chattels; a pledge or pawn conveys only a special property, leaving the general property in the pledger or pawn or; the pledgee or Pawnee never has the absolute ownership of the goods, but has a special property in them coupled with a power of selling and transferring them to a purchaser on default of payment at the stipulated time, if any, or at a reasonable time after demand and non-payment if no time for payment is agreed upon."..Therefore, unlike a pledgee, a mortgagee acquires general rights in the things mortgaged subject to the right of redemption of a mortgagor. In other words, the legal estate in the goods mortgaged passes on to the mortgagee. In comparison, a Pawnee has only the special right in the goods pledged, namely, the right of possession as security and in case of default, he can bring a suit against the pawnor as well as sell the goods after giving a reasonable notice. Whether a particular transaction is a mortgage of moveable property or a pledge can only be determined by reference to the intention of the parties, and other surrounding circumstances….."

Right of lessor

The term lease and other items defined in section 105 as follows: "A lease of immovable property is a transfer of a right to enjoy such property, made for a

42 AIR 2022 Mad 83.

43 *Id*.,para 11.

44 2022 SCC OnLine SC 608.

certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor, who accepts the transfer on such terms."

Lessor, lessee, premium and rend defined: The transferor is called the '*lessor*', the transferee is called the '*lessee*', the price is called the '*premium*' and the money, share, service or other thing to be so rendered is called the '*rent*'.

Lease is an outcome of the rightful separation of possession from ownership. So the fundamental conception of a lease is that it is the separation of right of possession from ownership. Possession is continuous exercise of right over the property. Generally this can be enjoyed by the owner, however sometimes this right is being enjoyed by somebody else, then it may be lease.

In *Surja Narayan Pradhan v. Jumden Lepcha*[45] case, the High Court of Sikkim has observed the failure of defendant to discharge its burden to prove what was alleged in written statement. Here, there was money payable under lease deed, and claim for entitlement of plaintiff. Defendants claiming that entire amount due as per lease deed was paid. As neither in written statement nor in evidence on affidavit, defendants mentioned place, time, date where alleged payment was made and no document filed to substantiate that entire amount was paid. Held, plaintiff entitled to receive balance amount.[46]

Termination of tenancy by notice

EIH Limited v. *Nadia A.Virji*[47] is case where the Supreme Court has observed by stating that high court rightly held that monthly rent cannot be said to be more than ten thousand rupees, hence Act, is impliedly barred.

In the instant case, the landlord inducted tenant in respect of a showroom. Under the tenancy agreement, the liability to pay the taxes including surcharge and water tax/fees was upon the tenant. Thereafter suit for eviction was filed. As per the landlord, the total rent payable by the tenant inclusive of monthly rent and taxes would exceed the ceiling limit of Rs.10,000/- p.m., specified in section 3(f)(i) of the Act 1997 for commercial premises, hence the Act 1997 would not be applicable and therefore he terminated the tenancy by issuing notice section 106 of T.P. Act. Held, Act, 1997 would be applicable. Merely because the obligation to pay half of the property tax and surcharge would be upon the tenant as per section 230 of the Act 1980 and the tenant is obliged to pay his share of municipal tax as an occupier of the premises section 5(8) of the Act 1997 and merely because for the purpose of recovery of the tax due from the tenant, such tax apportioned can be recovered as rent, such tax apportioned (half of the amount of the property tax and surcharge) cannot become part of the rent of the premises which is tenanted. For that purpose, the terms and conditions mentioned in the tenancy agreement /lease agreement are required to be considered.

45 AIR 2022 Sikk.20.

46 *Id.,* para18.

47 AIR 2022 SC 3611.

In view of the above discussion and for the reasons stated above and as the monthly rent due and payable would be Rs. 10,000/- per month which cannot be said to be more than ten thousand rupees as monthly rent, the high court has rightly observed and held that the Act 1997 shall be applicable and therefore the civil suit filed by invoking section 106 of the TP Act is impliedly barred. Therefore, the high court has rightly rejected the plaint in exercise of powers under Order 7 Rule 11 CPC. No interference of this court is called for. Accordingly, the present appeals stand dismissed.[48]

Rajendra Arya v. *Manoj Kumar Gupta* [49] is a case related *to* suit for eviction by quit notice. Here, tenant admitted his tenancy over shop-in-question in his reply to quit notice. However, denied tenant-landlord relationship in his written statement. Conduct of tenant disentitles him to now raise new plea questioning relationship of landlord-tenant over shop-in-question. By virtue of section 116 of Act, of 1872, tenant is estopped from challenging title of his landlord and tenant liable to be evicted.

In this case, the revisionist has failed to explain why the rent receipt of the said cash amount is not filed by him. In these circumstances, illustration (g) of section 114 of the Indian Evidence Act attracts. Section 2(1) (g) of the UP Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 says that any building, whose monthly rent exceeds two thousand rupees, the provisions of the Act, 1972 will not apply. Therefore, the respondent-plaintiff rightly filed the eviction suit by invoking the provisions of the Transfer of Property Act, 1882. It is for the reason that once the monthly rent of the shop-in-question is found to exceed the limit, prescribed under Section 2(1)(g) of the Act, 1972, the provisions of the Act, 1972 have no application to the shop-in-question.[50]

In *Gyan Vigyan Sansthan* v. *Co-operative Tribunal Uttar Pradesh, Lucknow and* [51] case, High Court of Allahabad was asked application of the provisions of Section 70 of U.P. Co-operative Societies Act, 1966 and Section 106 of Transfer of Property Act, 1882 with regard to reference of dispute to arbitration and its validity. Here,lease deed was executed by society in favour of its member declared to be void and cancelled by arbitrator in exercise of powers under section 70 of the Act of 1966.Complaint in question was made by the third party, although a member of the society. No dispute between lessor and lessee. Deed in respect of which the complaint was made, was a registered lease deed. Dispute could not have been decided by the arbitrator and it was only the registrar who could have taken a decision on the complaint made by a third party by exercising his powers under Sections 68 and 69 of the Act. Held the Award of arbitrator liable to be set aside

In this case, the respondent initially moved an application alleging that the execution of the lease deed by the society in favour of the petitioners was contrary

48 *Id.*, para 11.
49 AIR 2022 Utta 109.
50 *Id.,* Para 13.
51 AIR 2022 All 306.

to the bye-laws of the society inasmuch as the petitioners were not the members of the society and no lease deed could be executed in their favour. It is also relevant to state that the respondent along with the application seeking invocation of the arbitration filed an inquiry report dated 05.09.2005 conducted by Deputy Housing Commissioner, U.P. Awas Evam Vikas Parishad, which was done after issuance of a show-cause notice to the society. It was also alleged that the execution of the lease deed by the society was contrary to Rule 200 of the U.P. Co-operative Societies Rules, 1968, which requires prior approval from the Registrar, which was not done. The lease deed in question was executed under the Transfer of Property Act was for a term of 30 years and was also duly registered as is required under Section 107 of the Transfer of Property Act. Admittedly, the lessor of the property never determined the leaseby issuing a notice under Section 106 of the Transfer of Property Act. Even before the Arbitrator, there were no disputes in between the society i.e. the lessor or the petitioners, who were the lessee. The complaint in question was made by the third party (although a member of the society) on which an inquiry was conducted and the said third person moved an application before the Arbitrator for settlement of the dispute. Section 70 of the Act as quoted above, prescribes the disputes, which can be adjudicated by the Arbitrator insofar as they relate to or arise among members, past members and persons claiming through members, past members and deceased members.[52]

Sushil Kumar Chatterjee v. *Palash Konar*[53]is a case pertaining to application of the provisions of Section 106 of Transfer of Property Act, 1882, Section 26 of Bengal General Clauses Act, 1899, Section 114 of Evidence Act, 1872 and Section 27 of General Clauses Act, 1897. Here there was evictionby issuance of notice and presumption as to. Tenants was denying service of notice; however, landlord discharged its obligation by proving postal receipts. Here nature of postal endorsement that 'the addressee is out of station' on returned envelope.Court held it would not rebut presumption.Hence, issuance of notice proved. Decree for eviction, proper.

Termination of Tenancy under Sectionn108 (B) (j)

In *Shabbir Mohammad Sayed v. Noor Jehan Mushter Shaikh*[54] the Supreme Court explained objection as to execution and sustainability and suit for transfer of tenancy rights. Here, the suit decreed in favor of plaintiff directing landlord to handover possession. Objector raising objection to execution on ground that tenant who was actually in possession of property assigned his tenancy rights in favour of objector. It was claimed that the landlord also assigned leasehold rights in favor of objector on same day. There was no express contract between the parties.The agreement by the tenant implied that the tenancy was not terminated. The assignment by the tenant was not ratified by the landlord. Assignment of tenancy rights by a tenant in favor of objector was prohibited under S.198 of the

52 *Id.,*Para 13.

53 AIR 2022 Calcutta 341

54 AIR 2022 SC 3755.

Contract Act sans any ratification and in the absence of a contract to the contrary within the meaning of Section 26 of the Act of 2000. Objection to execution is unsustainable.

As far as the alleged assignment by the so-called tenant in favour of the appellant is concerned, it is prohibited under section 26. There is no express contract to the contrary to rescue the appellant. The full bench of the High Court of Bombay in the decision relied upon by the appellant was actually dealing with the question of whether the interest of the tenant could be attached and sold. No doubt, it has also been held that there could be ratification by the landlord even after the transfer by the tenant.[55]

Thus, an assignment by the tenant can be ratified by the landlord. In this case, however there is no ratification in the alleged agreement executed by the 3rd defendant landlord. He does not even refer to the alleged agreement executed by the tenant in favour of the appellant. Ratification is an act which presupposes knowledge of the act of the person whose act is sought to be ratified. A perusal of the alleged agreement executed by the landlord would reveal that it makes no reference to the alleged agreement executed by the tenant in favour of the appellant. The third defendant had proceeded to allegedly execute the agreement purporting to create interest in his own right. Therefore, we are of the view that even proceeding on the basis of the principle laid down by the full bench of the High Court of Bombay, in the facts of this case, there is no ratification. Sans any ratification and in the absence of any contract to the contrary within the meaning of Section 26, the alleged transfer by the 'lawful tenant' cannot pass muster.[56]

Determination of lease

Gopi alias Goverdhannath (d) by LRs. v. *Sri Ballabh Vya*[57] is a case where Supreme Court tried to apply the provisions of Section10 (2) of Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, and Section 109 of Transfer of Property Act,1882 for eviction of a house and termination of landlord-tenant relationship. Here, the predecessor-in-interest of tenants were tenants under original owner in respect of scheduled property. Property was purchased by landlord from original owner by registered sale deed. Section 109 provides that if landlord transfers leased out property or any part of it, transferee shall possess all rights of landlord. Thus, the landlord would step into the shoes of original owner. Held jural relationship between landlord and tenant established.

Question regarding denial of title of landlord and tenants raising plea that they had perfected title by adverse possession. Also raising plea that they were owners of property as purchaser. Such mutually destructive pleas cannot be allowed to be raised.

55 *Id.*,para17.
56 *Id.*, para 24.
57 AIR 2022 SC 5248.

Tenancy-at-sufferance

In *Indian Oil Corporation Ltd*. v. *Sudera Realty Private Limited.*[58] is a case pertaining to payment of mesne profits. Here*, tenant*was in continuous possession even after the expiry of lease is treated as a tenant at sufferance. But such a tenant at sufferance is not a tenant by holding over. It cannot be forcibly dispossessed. But it cannot in law have any right or interest anymore. Since appellant lessee continued its possession after the expiry of lease, the court held liable to pay mesne profits

Here application of validity of Section 3 of West Bengal Premises Tenancy Act, 1956 was observed by the Court. The mere inclusion of a prior determination clause will not alter the character of lease for a fixed period unless the option is exercised. Existence of pre-determination clause giving option to lessee to determine the lease after a period of 8 years, instead of exercising the option of prior determination, lessee allowed the lease to run its full course of 21 years in terms of lease, held lessee cannot take benefit available under Act of 1956.

The court also observed that as regards the case based on the effect of the waiver within the meaning of Section 113 of Transfer of Property Act, we notice the following aspects. The notice of termination is itself not produced. In this regard, we must notice that the judgment of this Court in Calcutta Credit Corporation Ltd. (supra) was rendered under Section 113 of the Transfer of Property Act. Waiver of forfeiture within the meaning of Section 111 (g) of the Transfer of Property Act is provided in Section 112 of the Transfer of Property Act. The considerations relevant for the operation of the Section 112 is different from that of Section 113 of the Transfer of Property Act. Since the notice itself is not before the court, things are not clear. There is no adjudication about the notice of termination in the earlier suit. We have also noticed the proviso to clause 26. We have seen the stand of the appellant even in the year 1990 as made clear from the letter dated August 21, 1990 addressed by it to its solicitors. There is no case as to when the appellant stood paid. This is also relevant for the reason that the notice of termination referred to by the appellant dated December 7, 1977 if not legally permissible at the time when it was issued, it would not in law have the effect of determining the lease which was for a period of 21 years. In the circumstances of this case, we find no merit in the case of the appellant based on the decision of this Court in Calcutta Credit Corporation Ltd. as regards the effect of waiver under Section 111 of the Transfer of Property Act resulting in the creation of the new tenancy.[59]

The appellant would contend that there was a pre mature determination of the lease vide letter dated October 19, 1990 and this would result in the occupation of the appellant from the said date being as a monthly tenant and, therefore, the Tenancy Act applied. It is the case of the respondent that this contention was not

58 AIR 2022 SC 5077.

59 *Id*., para 54.

60 *Id.*,para 58.

raised before the courts below and the contention which was raised before the high court was that it became the monthly tenant in 1991 on the basis of holding over of possession after the expiry of the lease. The case of the respondent further is that it must be understood that the letter dated October 19, 1990 was one only enquiring whether the appellant would deliver possession of the 2nd and 3rd floors. The letter adverts to the lease expiring by efflux of time. We are of the view that there is merit in the contention of the respondent. We cannot on the terms of the letter dated 19.10.1990 hold that it amounted to termination of the lease. We have found that there was a lease for a term of 21 years commencing in the case of the 2nd and 3rd floors from September 17,1969. Therefore, the period of 21 years had already run out by the time the letter dated October 19, 1990 came to be issued. In other words, it was a case of a lease qua the 2nd and 3rd floors which had expired by efflux of time, in September, 1990. We reject the argument of the appellant in this regard.[60]

Renewal of lease

In *Bipin Kumar Tiwary* v. *Zila Parishad, Dhanbad*[61]case, there was a refusal to renew the lease deed. Petitioners in an auction allotted buildings for running restaurant and marriage hall respectively on basis of the lease. Here, the question was consideration maximum period of the lease was for three years and said period has expired. Allotment of public property is required to be made through public auction giving an opportunity to public at large to participate in same. Since the period of the lease was already expired, the resolution passed by Board of Zila Parishad for renewal of the lease, was arbitrary. Hence lease in favour of petitioners cannot be renewed.

Here, the main question before this court is not with regard to the power of the Chairman, Zila Parishad rather, as to whether the renewal of the lease agreements can be made after the expiry of the maximum period of the same in a manner which is violative of the constitutional schemes as well as the judgments of the Supreme Court. The answer to the said question is certainly negative. The purpose of letting out the concerned buildings/properties under the ownership of the Zila Parishad, Dhanbad was to raise financial resources. Respondent no.3 before making publication for auction of the premises in question found that the prevalent market rent of the leased buildings is Rs. 15/- per sq. ft. and the petitioners were paying rent at the rate of Rs. 4/- per sq. ft. and due to the said reason, the Zila Parishad, Dhanbad was found incurring considerable loss.[62]

Though the learned counsel for the petitioners have questioned the power of the sub divisional officer and circle officer in determining the market rent of the buildings under the control of Zila Parishad, Dhanbad, yet they have accepted the fact that the Zila Parishad can fix the rent of the buildings/premises owned by it and as such if the Zila Parishad agrees with the rate suggested by the sub- divisional

61 AIR 2022 Jhar. 14.

62 *Id.*,para 22.

officer, the same makes no material difference. Moreover, the petitioners have in fact insisted the Zila Parishad, Dhanbad to renew their respective lease agreements on the rate stipulated in the same subject to 5% increase per year, the period of which have already lapsed. Since, it was provided in the auction notice dated March 9, 2017 itself that the term of lease would be effective for a maximum period of three years and the same was on temporary basis, there is no question of the petitioners having legitimate expectation for further extension of the lease period. Thus, in my view the respondent No.3 the premises in question. It is not the case of the petitioners that they have been debarred by the Zila Parishad, Dhanbad from participating in the fresh auction process and, as such, they have failed to make out any case inviting interference of this court under extraordinary writ jurisdiction which otherwise is "plenary" in nature. So far as the contention of the petitioners that they have made huge investment in renovating the leased premises, the same is not worth consideration as they themselves were fully aware of the fact that the maximum period of lease agreements executed by them was for three years only.[63]

Cancellation of lease

New Okhla Industrial Development Authority v. *Ravindra Kumar Singhvi (Dead) By LRs.*[64] case pertains to cancellation of lease under Section 111 (g) of T P Act. Here, plaintiff allotted residential plot and its possession handed over to him. Prior to said allotment of plot, another plot already allotted to wife of plaintiff in different sector. Still she sworn on affidavit and denied allotment. When affidavit was filed, lease deed was already executed in her favour. Subsequently, permission to transfer another plot was granted by Authority unknowingly about fact that separate plot is also granted to plaintiff. Plea that possession not lies with wife of plaintiff is incorrect. Once affidavit found to be false, no benefit can be claimed. Held cancellation of allotment of plot obtained after filing false affidavit is legitimate ground of cancellation of lease.

The court also observed that the fact is that the second plot allotted to the plaintiff had been allotted against the express terms of allotment. Therefore, there is neither equity nor any law in favor of the plaintiff. A person who misleads the Authority in obtaining allotment of a plot is not entitled to any relief.

Fore forfeiture of lease

Western Engineering Works v. State of West Bengal[65] case related to forfeiture of the lease under Section 112 of TP Act. Upon failure of the lessee to complete construction within the extended time granted by high court, State issued notice, terminating the lease and re-entry into leased land. The state was restrained to terminate the lease until extended period as per orders of the high court, and did not voluntarily treat lease as subsisting even after forfeiture occurred. Forfeiture of lease, not waived either expressly or impliedly.

63 *Id.*, para 23.
64 AIR 2022 SC 928.
65 AIR 2022 Cal 324.

Here the court is of the considered opinion that the Government should have disposed of the appellant's application for permission to use the concerned land for a purpose, other than what was originally contemplated, prior to terminating the lease. Had the Government taken a prompt deision on the appellant's said application and had the decision been a favourable one, maybe the appellant could have completed the requisite construction by the end of December 2017. The Courtis inclined to give the appellant the benefit of the doubt on this ground.

Express covenants in lease deed

In *Bahubali Estates Ltd.* v. *SewnarayanKhubchand.,*[66] the court has considered breaching of express covenants in lease deed by lessee under Section 114 A of TP Act. Whether breached by lessor. Here there is a transfer of ownership of leasehold property by lessors to Company by way of capital. Contended that company has no title over suit property. No essential condition of lease is violated by lessor by transfer of ownership. Thus, with property being vested in Company, by operation of law it has become owner of property and landlord of lessee. Lessee directed to pay arrears of rent to company.

Court considered that when personal assets are introduced by a partner into firm as his contribution to its capital, they become property of firm by reason of intention and agreement of parties. Hence, registration of such transfer is not necessary.[67]

The Judges relied on the English law that the personal assets introduced by a partner into the firm as his contribution to its capital becomes the property of the firm by reason of the intention and agreement of the parties. The view does not spring from the consideration that there is no transfer. On the aforesaid basis, it can be safely concluded that by reason of vesting of the property in the company by operation of law, the company has become the owner of the suit

Validity of gift

Section 122 gives the definition of 'gift' as follows: "A gift is the transfer of certain existing movable and immovable property" made voluntary and without consideration by one person called the donor, to another person called the donee, and accepted by or on behalf of the donee."

Acceptance when to be made: Such *acceptance*must be made during the life time of the donor and still he is capable of giving. If donee dies before acceptance the gift is void.

Gift how Made Effected? Section 123 lays down the mode through which a gift may be made.

For the purpose of making a gift of immovable property, the transfer must be affected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. For the purpose of making a gift to movable property, the transfer may be effected either by registered instrument signed as

66 AIR 2022Cal 294.

67 *Id.,* para 32.

aforesaid or by delivery of possession. Such delivery may be made in the same way as the goods sold may be delivered. By observing the above section, we can conclude that registration of a gift is necessary, if it is immovable property and for movable property, it is only an option of the parties to the gift.

. In *Keshav* v. *Gian Chand*[68]case, Keshav and other defendants contested the suit on several grounds including validity of the relied upon gift deed. Keshav claimed that he was a tenant in occupancy of the land for over 15 years, a fact admitted by Hardei before the revenue authorities. Keshav had therefore acquired rights over the land. Hardei, during her lifetime, had denied execution of the gift deed and opposed the request of mutation of the land in favour of Gian Chand and Dhanbir, which request for mutation was rejected in 1989.

The question, whether a person was in a position to dominate the will of the other and procure a certain deed by undue influence is a question of fact, and a finding thereon is a finding of fact, and if arrived at fairly in accordance with the procedure prescribed, it is not liable to be reopened in second appeal. In the present case, the plea as to invalidity of the gift deed is not to be decided on general presumption and assertion. Concurrent findings of facts arrived at in the present case were based upon a holistic examination of the entire evidence relating to execution and validity of the gift deed. The lower courts did not adopt a legalistic approach but took into account not one but several factual facets to accept the version given by Keshav that the gift deed was not a valid document. These concurrent findings are not perverse but rather good findings based upon cogent and relevant material and evidence on record. These findings of the facts can be interfered in the second appeal only if they are perverse or some gross illegalities have been committed in arriving at such findings. To reverse the findings is not only to assess errors but also deal with the reasons given by the court below and record findings and grounds for upsetting the conclusion[69]

Sudhangshu Sahoo v. *Kalipada Sahoo*[70] case refers to relief of declaration and recovery of possession property in a gift. Gift deed by which plaintiff acquired title in suit property was not declared as null and void by any competent court of law till date. Plaintiff entitled to relief of declaration and recovery of possession under Sections 122, 123 Transfer of Property Act.

Here in the present case, defendant /appellant contended that long back oral family settlement took place by which he acquired title in the suit property and as such Gita Rani's husband Sisir Kumar Sahoo had no right to execute the deed of gift in favour of Gita Rani Sahoo. For the said reason Gita Rarni Sahoo acquired no right to execute deed of gift in favour of plaintiff. Defendant /appellant has filed a separate suit for cancellation of deed of gift which was pending.

68 AIR 2022 SC 678.

69 *Id.*,para 10. Also see Nazir Mohamed v. J. Kamala and Others, 2020 SCC OnLine SC 676 : AIR 2020 SC 432; *Hero Vinoth (Minor)* v. *Seshammal,* AIR 2006 SC 2234.

70 AIR 2022 Calcutta 153.

Court held that deed of gift by Sisir Kumar Sahoo and subsequently by Gita Rani Sahoo in favour of plaintiff had not been declared as null void by any competent of court of law till this date. Defendant/appellant has also miserably failed to prove that there was any oral family statement by which he has acquired title in the suit property. Transfer of share by way of such oral alleged family settlement in respect of property valued more than Rs. 100/- is not permissible in law.

Revocation of gift

In *Sasikala* v. *Revenue Divisional Officer Cum Sub Collector, Devakottai, Sivagangai*[71] High Court of Madras observed that writ petition challenging registration of a document cancelling conveyance or acceptance of fraudulent transactions is maintainable under Art. 226 and held thatSub-Registrar, the Registering Authority has no power to register documents of unilateral cancellation.Unilateral revocation or cancellation of gift or settlement deed is permissible only in respect of case falling under scction 126 subject to certain conditions.

Section 126 of the Transfer of Property Act recognizes the power of revocation where the donor reserves a right to suspend or revoke the gift on happening of any specified event. However, the illustrations clarify that the revocation should be with the assent of the donee and it shall not be at the will of donor as a gift revocable at the mere Will of the donor is void. The sub-registrar cannot decide whether there was consent for revocation outside the document. If the donor by himself reserves a right to revoke the gift at his Will without the assent by the donee, the gift itself is void. Since we are dealing with unilateral cancellation, the power of registration of cancellation or revocation of gift deed cannot be left to the discretion or wisdom of registering authority on facts which are not available or discernible from the deed of gift. When the power of revocation is reserved under the document, it is permissible to the registering officer to accept the document revoking the gift for registration only in cases where the following conditions are satisfied; (a)There must be an agreement between the donor and donee that on the happening of a specified event which does not depend on the Will of the donor the gift shall be suspended or revoked by the donor. (b)Such agreement shall be mutual and expressive and seen from the document of gift. (c) Cases which do not fall under Section 126 of Transfer of Property Act, unless the cancellation of Gift or Settlement is mutual, the registering authority shall not rely upon the self serving statements or recitals in the cancellation deed. For example questioning whether the gift deed was accepted or acted upon cannot be decided by the registering authority for the purpose of cancelling the registration of gift or settlement deed.[72]

Court also observed that however, an absolute deed of sale or deed of conveyance which is duly executed by the transferor may be cancelled by the civil

71 AIR 2022 Madras 323.

72 Para 42

court at the instance of transferor as contemplated under ection 31 of Specific Relief Act.

Can a gift deed be cancelled after execution of 10 years?

In*S. Muragan* v. *District Registrar, Madhurai Registration District, TNAU Nagar, Rajakambeeram, Thirumogur Road, Y. Othakdai, Madurai*[73]case, High Court of Madras has considered cancellation of gift after execution of 10 years. Here the petitioner, donor voluntarilyexecuted gift deed in the year 2011. In the gift deed, it is clearly mentioned that the petitioner has no right to cancel and frustrate gift deed and any such step would be void. No condition found attached to the gift. The Court observed thatplea of ignorance or innocence and seeking indulgence cannot be raised after 10 years of execution of gift deed. Petitioner aged 39 years old and not a minor at the time of execution of gift deed, cannot claim that he mistakenly executed the gift deed. Having executed a gift deed, the petitioner is bound by the laws of the land. Hence the court held gift deed could not be cancelled.

VI CONCLUSION

In the year under survey, there are many Supreme Court and high courts judgments that have been considered for the survey in the year 2022. The courts have scanned applications of provisions of the Transfer of Property Act on property rights issues and other relevant laws to interpret and delineate the legal position.All these cases have been researched and summarised in the present survey on property law. The courts while deciding the cases have aptly interpreted and analysed various ambiguous issues relating to the property law and other related laws.