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PROPERTY LAW

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I INTRODUCTION

TRANSFER OF Property Act mainly applies to the transfers of immovable properties and some of the sections also apply to movable properties as well. Considering the scope and extent of the Act, the following limitations can be deduceed, i) The Act applies to the transfers by act of parties and has no application to the transfers by operation of law. ii) The Act deals with transfers *inter vivos* and has no application to the transfers under will or succession.[1] iii) 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. iv) The Act applies only to the transfers which take place in India and has no extra-territorial operation, v) 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 vi) 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 (TPA) 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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1 The Indian Succession Act, 1925.

II GENERAL PRINCIPLES

Immovable property

In *Sub Registrar, Amudalavalasa* v. *Dankuni Steels Ltd*.,[2] the High Court of Andhra Pradesh ordered Midwest Iron and Steel Company Ltd.to be wound up. Pursuant to order auction was conducted to sell the property of respondent no.3 in three lots. Finally, based on the auction for a consolidated sale, the second respondent namely, SMC Marketing Private Ltd. figured as the highest bidder, became the successful auction purchaser. It bid for the property which consisted of land, building, civil works, plant and machinery and current assets, *etc*. The amount for the highest bidder was Rs.8.35 crores. The official liquidator was accorded permission by the company judge to execute the sale deed in favour of the first respondent in the appeals, *viz,* Dankuni Steel Ltd. A sale deed came to be executed by the official liquidator in favour of the first respondent dated August 5, 2004.

The Supreme Court observed that "Immovable property has been defined in the General Clauses Act, 1897 as 'including land, benefits to arrive out of land and things attached to the earth or permanently fastened to anything attached to the earth'. The expression 'immovable property' in the Transfer of Property Act has been defined as 'not including standing timber, growing crops or grass'. In the Registration Act, 1908, immovable property includes, apart from land and buildings, things attached to the earth or permanently fastened to anything which is attached to the earth but not including standing timber, growing crops or grass. Most importantly, the court opined that Section 8 of the TPA declares that in the absence of an express or implied indication, a transfer of property passes to the transferee all the interests, which the transferor was capable of passing in the property and in the legal incidents thereof. Such incidents includes, *inter alia,* where the property is land, all things attached to the earth. When the property is machinery attached to the earth, the movable parts thereof also are comprehended in the transfer.

Actionable claim

In *Infrastructure Leasing and Financial Services Ltd.* v. *HDFC Bank Ltd.,*[3] the IL and FS had on June 25, 2018, entered into a Master Facility Agreement (MFA) with HDFC for Rs. 400 crores. The MFA created a separate escrow account with HDFC Bank Limited for opening of a separate escrow account with the Escrow Bank. Along with MFA, an Assignment Agreement was also executed between the IL and FS and HDFC. It was also agreed that 'all the receivables derived/to be derived from the operation of the ILFS's Contracts, a sufficient portion of which, to pay the principal and interest as and when the same shall become due' was assigned and pledged and was to be 'set aside for that purpose on the same day'. A Power of Attorney by way of security interest was also executed between the IL&FS and HDFC.

2 2023 SCC OnLine SC 499.

3 AIR 2023 SC 5239.

A petition was filed by the Union of India before the National Company Law Tribunal (NCLT) under Sections 241 and 242 of the Companies Act, 2013. NCLT held that so far as part of the receivables deposited in the Escrow Account which were sufficient to meet the principal and interest assigned by IL and FS to HDFC, no proprietary interest continued with IL and FS, nor could it exercise any right over that part of the Escrow Account which was assigned. It was also held that the freeze order of October 15, 2018 neither negate the Agreement nor did it take away the property right of HDFC in the lease rental receivables. However, the right over receivables deposited in the Escrow Account to the extent they were in excess of principal and interest, was retained by the IL and FS and in the event, any amount in excess of the said principal and interest was transferred to or debited in the HDFC's account and they needed to be reversed, after adjusting the shortfall in debiting any interest or principal of any earlier months.

The NCLT ordered to supersede the existing board of directors of the IL&FS. A new board of directors was also constituted, but the NCLT declined to issue a moratorium sought by the UOI, (akin to a moratorium under Section 14 of the IBC) in respect of IL and FS and its 348 group companies. Aggrieved, appeals were filed before the National Company Law Appellate Tribunal (NCLAT). NCLAT, *inter-alia*, stayed the institution or continuation of suits or any other proceedings against the IL and FS. IL and FS called upon HDFC to reverse the amount which was debited by the Escrow Bank. NCLAT directed the UOI and IL and FS to approach Justice (Retd.) D.K. Jain for consent and discuss the terms and conditions to supervise the operation of the resolution process. Hence the appeal

The question was, whether the documents executed by IL and FS transferring the rents to HDFC constituted an assignment. Thus does it fall outside the scope of an asset and security freeze order made by the NCLAT?

Under the TPA, Section 5 states generally that all manner of property is capable of transfer. Section 6 lays out what are the kinds of properties or actions which are not transferable: these are "personal claims" in the nature of tortious claims and "choices in action" cannot be transferred.

The court referred to the definition of "Actionable Claim"[4] in Section 3 of the TPA. It was opined that in terms of Section 3 of the TPA, actionable claim means (a) claim to an unsecured debt (other than a debt secured by mortgage of immovable property, hypothecation or pledge (b) beneficial interest in a movable property. Both these are recognised as enforceable. Other claims, however, do not fall within the expression "actionable claim."

Sections 130, 131 and 132 of TPA, deal with transfer of actionable claims. Quoting Section 130 and 131 of the TPA and the relevant judicial precedents, the

4 "S. 3 Interpretation clause…."actionable claim" means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accuring, conditional or contingent:"

Supreme Court found that under the impugned Deed of Assignment only the Account Receivables in the books of ICICI Bank Ltd. has been transferred to Kotak Mahindra Bank Ltd. The obligations of ICICI Bank Ltd. towards its borrower(s) (customer) under the loan agreement secured by deed of hypothecation/mortgage have not been assigned by ICICI Bank Ltd. to the assignee bank, namely, Kotak Mahindra Bank Ltd. Hence, it cannot be said that the impugned Deed of Assignment is unsustainable in law. The obligations referred to in the impugned Deed of Assignment are the obligations, if any, of ICICI Bank Ltd. towards Kotak Mahindra Bank Ltd. (Assignee) in the matter of transfer of NPAs.

The true nature of the transaction was held that it is an assignment and not a pledge. The reference to pledge, in some places in the documents, did not undermine the fact that the rents payable to and receivable by the lender (IL and FS) stood absolutely assigned to HDFC. The provisions of the TPA and the precedents support the conclusion that there can be a transfer of debts, which are defined as actionable claims.In the present case, the rents payable by IL and FS tenants, lessees and licensees are debts, which stood transferred to the creditor, *i.e.* HDFC Bank.[5] Therefore, the NCLAT's conclusions are unexceptionable; the challenge to its correctness, therefore fails.

Spessuccessionis

In *Elumalai alias Venkatesan* v. *M. Kamala*,[6] one Sengalani Chettiar was married to one Rukmini. The said marriage produced a son, namely, Shri Chandran. The appellants [Uma Ravi Chandran and Vinayaga Murthy] are the sons of Chandran. Sengalani Chettiar married again this time with one Kuppammal. From the second marriage Sengalani Chettiar had five daughters and a son. The controversy in this case relates to A-Schedule property in the suit for partition filed by two children out of the six children born to Sengelani Chettiar from his second marriage. The property in dispute was the self-acquired property of Sengalani Chettiar. In regard to the said property, Chandran, the father of the appellants had executed a Release Deed. The terms of the Release Deed dated November 12, 1975, are as follows:

"This Deed of Release is executed on the 12th day of November, 1975 in favour of 1. C.Sengalani Chettiar, son of Singara Chettiar, residing at No.144, VenkatachalaMudali Street Meersapet, Mylapore, Chennai, 2. Sengalani Chettiar, as the guardian of his minor son, Vinayagarnurthy, aged about 2 years, this deed executed by S. Chandran, son of Sengalani Chettiar, residing at No.19, Santha Sahib Street, Meersapet, Mylapore, Chennai is as follows:

5 Infrastructure Leasing & Financial Services Ltd. v. HDFC Bank Ltd., 2023 SCC OnLine SC 1371, S. Ravindra Bhat* and Dipankar Datta, JJ. while upholding the impugned order, has held that the rents receivable by a borrower can be assigned to a lender as an "actionable claim" as per the Transfer of Property Act, 1882.

6 *Elumalai alias Venkatesan* v. *M. Kamala. and Etc*. AIR OnLine 2023 SC 65AIR 2023 SC 659, AIROnLine 2023 SC 65 K. M. JOSEPH, J. and HRISHIKESH ROY , J. Civil Appeal Nos. 521-522 of 2023 (Arising out of SLP (C) Nos. 14948-14949 of 2017), D- 25 - 1 - 2023

"I am the son of your first wife. As I could not be with you, I had received through the transfer of mortgage gold jewellery which is worth of Rs. 10,000/- and the materials of a value of Rs.5000 /- and releasing my share in respect of the house sites situate at Manamathi Village, which belong to us and more particularly described in the schedule hereunder, through this document on this day.

The mortgage amount of Rs.10,500/- as against the above said house site, shall be settled by you. Hereafter, we do not have any other connection except blood relation. In this manner, I had execute this Deed of Release."

The trial court however found that the Release Deed in question was a void document for the reason that Chandran executed the Release Deed in 1975, while his father Sengalani Chettiar was alive. It is found that the Release Deed would not be a bar for the appellants to inherit the property of their father Sengalani Chettiar. The plaintiffs were only found to be eligible to get only 2/7 share. Plaintiffs were accordingly given a decree of 2/7 share *inter alia*. The suit came to be dismissed as far as 'B' schedule property is concerned. Plaintiffs filed AS No.883 of 2009. Defendants 1, 3 and 6 filed appeal AS No.718 of 2009. By the impugned judgment the high court has allowed these appeals and found that the appellants were not entitled to claim any share in the property of the deceased Sengalani Chettiar.

The question is whether the father of the appellants, the son of first wife of his father, can execute a release deed on behalf of his children.

The Supreme Court was of the view that conjecturing that Chandran has survived his father and his succession had opened intestate in regard to the estate of his father, the conduct of executing the release deed though by itself may not have resulted in a lawful transfer, his conduct being accompanied by the receipt of consideration would have estopped Shri Chandran. The very fact that Shri Chettiar did not execute any document by way of Will only shows that he proceeded on the basis that the branch represented by Shri Chandran was being cut off from inheritance from the property in question.

It may be noted that it was redundant for the Supreme Court to contemplate Shri Chettiar did not execute any will –only shows that he proceeded on the basis that the branch represented by Shri Chandran was being cut off from inheritance from the property in question. It would have a bearing if he had written a will stating that his relation with Shri Chandran was cut off from inheritance in view of the release deed. It is interesting to note that the Supreme Court did not deal with the *Rohit Chouhan*[7] case. Of course, it was a case where the father Gulab Singh transferred the whole property he got as his share in the ancestral property, after the birth of the son Rohit Chauhan.

Wakf property

In *P.V. Nidhish* v. *Kerala State Wakf Board*[8] the court found that the appellant came into possession even before the wakf was created that is before

7 *Rohit Chauhan* v. *Surinder Singh*, AIR 2013 SC 3525.

8 *P.V. Nidhish* v. *Kerala State Wakf Board* (2023) SCC OnLine. SC 519.

even the Wakf Act, 1954 was enacted (although the precise date is unclear and could be a matter of dispute). The appellants were permitted to pay rents to the third defendant in the suit. They were holding the premises when the amendment came into force; indeed, a proceeding purporting to evict them was unsuccessfully initiated before the amendment. Another one was commenced and was pending after it came into force. In these circumstances, could they be "encroachers" after the amendment became effective?

The court opined that the lessees cannot be construed to mean that such lessees become "encroachers". Therefore, it was held the expression "Whoever alienates or purchases or takes possession of", which is the opening phrase of Section 52A, cannot be read or construed to include possession taken in the past, which resulted in continued possession, when the provision was enacted. That is to say that Section 52A cannot cover cases ere leases of wakf properties had expired in the past and where the tenant or lessee was, at the time the amendment of 2013 came into force, in physical possession and facing civil proceedings for eviction.

The entire matter was remitted for fresh consideration, by the Wakf Tribunal, with the following directions:

> If the entity created by Mammu Haji is found to be a Wakf, the person in Management shall have the powers to terminate the tenancy and shall be entitled to take proceedings under the Wakf Act for eviction of a tenant, who after such termination of tenancy, is deemed to be an encroacher. We make it clear that we have not observed on the merits of the contentions of either parties. The issues have to be considered in O.S. No. 22/2012.

In view of the foregoing discussion, the impugned judgment cannot be sustained; it is hereby set aside. The appeal is allowed.

In *Shivshankara* v. *H.P.Vedavyasa Char,*[9] the appellant were the sons of the third defendant. They filed the stated first appeal on being aggrieved and dissatisfied with the judgment and decree dated July 4, 2007 in O.S. No.6456 of 1993. During the pendency of the captioned appeal, the second appellant died and consequently his legal heirs were impleaded as additional appellants 2.1 to 2.4. Ergo, in this appeal, hereafter the original first appellant and the impleaded legal heirs of the deceased second appellant are collectively described as 'appellants'.

The trial court framed the following issues based on the pleadings on both sides:

i) Whether the suit is bad for mis-joinder or non-joinder of necessary parties?

ii) Whether the Court fee paid on the plaint is insufficient?

iii) Whether the plaintiff is entitled for possession of the suit schedule premises?

9 AIR 12023 SC 1780.

Though the plaintiff/respondent herein adduced oral and documentary evidence in support of his claims, the defendant therein did not lead any evidence, at all. The trial court, after considering the evidence and the provisions of law applicable partly decreed the suit as per judgment dated 04.07.2007, holding that the plaintiff/respondent herein, is entitled to recover possession of suit 'B' schedule property from the defendants and consequently directed the defendants to vacate and deliver suit 'B' schedule property to the plaintiff (the respondent herein) within two months from that day. Further, it was also decreed that the plaintiff would be entitled to recover possession of 'B' schedule property from the defendants by due process of law in case of failure on the part of the defendants to vacate and deliver the suit 'B' schedule property within the period stipulated. Furthermore, the defendants were restrained by perpetual injunction from interfering with the peaceful possession and enjoyment of 'C' schedule property by the plaintiff.

C.T. Ravikumar J. observed, that the second defendant (the deceased second appellant) had purchased the suit schedule property as per Exhibit D-2, sale deed dated October 5, 2000 has to be seen. Since admittedly and indisputably the suit from which the appeal arises was one based on possessory title, the legality of Exhibit D-2 sale deed need not be gone into in this appeal and rightly has not been gone into by the high court. Evidently, the high court declined to act upon the same, in the light of the doctrine of *lis pendens*. Even if it is taken for granted that the provisions under Section 52 of the TPA are not applicable as such in the case on hand it cannot be disputed that the principle contained in the provision is applicable in the case on hand.

It is a well-nigh settled position that wherever TPA is not applicable, such principle in the said provision of the said Act, which is based on justice, equity and good conscience is applicable in a given similar circumstance, like court sale *etc*. Transfer of possession pendente lite will also be transfer of property within the meaning of section 52 and, therefore, the import of section 52 of the TPA is that if there is any transfer of right in immovable property during the pendency of a suit such transfer will be non-est in the eye of law if it will adversely affect the interest of the other party to the suit in the property concerned. It may be hasten to add that the effect of section 52 is that the right of the successful party in the litigation in regard to that property would not be affected by the alienation, but it does not mean that as against the transferor the transaction is invalid.

Promise to register the execution does not make the case criminal

In *Kunti* v. *State of Uttar Pradesh*.,[10] the appellant(s) in this case are Bhumidars of the agricultural land in village Akbarpur, Bulandshahr, Uttar Pradesh. Allegedly, an agreement to sell in respect of the property in dispute, dated 11.07.2008 was executed by the Appellants in favour of the respondent no 2. (Ajay Kumar Bansal) for a consideration of Rs. 10,80,000/-. As it appears from the agreement, from the total amount, Rs. 6,30,000/- was transferred in favour of the Appellant by respondent

10 2023 *SCC* OnLine SC 554.

no. 2 as advance. The remaining amount of Rs. 4,50,000/- was agreed to be paid at the time of the execution of the sale deed. This agreement to sell was registered in the office of Deputy Registrar, First, Office at Bulandshahr, in Bahi No. 1, Zild No. 3910, Page 1- 20, Item No. 4083. The execution of the sale deed was extended from 11.07.2008 to 31.12.2008, by mutual consent, however, on the said date, despite respondent no 2 herein being present, along with the amount remaining to be paid, the appellant was absent, in spite of having received information about the same. It has been recorded in the Impugned order that, a notice was sent by respondent no 2 on 01.01.2009, for execution of the agreement, after which, both parties met and an oral request to the same effect was also made. On various dates subsequent thereto, respondent no 2 has extended the time in favour of the appellant(s) herein for executing the sale deed, however, that was not done. Upon discovering that the appellant herein planned to sell the property in dispute to somebody other than the Appellant(s), the FIR, subject of the quashing proceedings was lodged at Police Station Kotwali, District Bulandshahr.

Ostensible owner

The Supreme Court in *Bani Amrit Kaur* v. *State of Haryana*,[11] the predecessor-in-interest of the appellant, Sukhjit Singh (deceased) filed the civil suit challenging the first sale deed. He was relying on the recital in the sale deed wherein Gurinder Singh mentioned that he is executing the sale on behalf of his minor son-Sukhjit Singh. Otherwise, there is no pleading or document produced on record by the plaintiff to show that the property in dispute was ever recorded in the name of late-Sukhjit Singh or it had fallen to his share ever as Gurinder Singh was survived by three sons and two daughters. The first sale deed was got registered by him during his lifetime as he expired on August 8,1968.

The Supreme Court lamented that filing of the suit was based on total misconception. It was held that in the absence thereof, in a litigation of the type where a sale deed registered in 1956 was sought to be challenged after 16 years by the plaintiff may be to extract some more money from the State, which had purchased the same from the 1st purchaser.The court further clarified even otherwise, from the certificate produced by the plaintiff on record showing that he was studying in Doon School, Dehradun would clearly establish that the property may have been sold for need and welfare of the child to provide him best education. The consideration mentioned in the second sale deed was merely for 14,784/-. The Court categorically remarked that the burden in such cases is heavy on the plaintiff who seeks to challenge the sale transaction entered into 16 years back.

The burden in such cases is heavy on the plaintiff who seeks to challenge the sale transaction entered into 16 years back.The transaction in favour of the State may otherwise be protected in terms of Section 41 of the Transfer of Property Act, 1882 as the stand taken before the court was that there was due diligence

11 Judgment delivered on Nov. 30, 2023Appeal (Civil), 3322 of 2015, 2023 INSC 1040, also *available at*: https://indiankanoon.org/doc/54893424/(last visited on Jan. 20, 2024).

before the sale transaction was entered into and there is nothing on record produced by the plaintiff to dislodge the stand taken by the State.

Moreover, the apex court observed that the transaction in favour of the State may otherwise be protected in terms of Section 41 of the Transfer of Property Act, 1882 as the stand taken before the court was that there was due diligence before the sale transaction was entered into and there was nothing on record produced by the plaintiff to dislodge the stand taken by the State.

However, to resolve the issue, the Supreme Court got impressed upon the authorities to settle the issue. The court appreciated the State's stand without prejudice to its rights, it had offered to pay 1,00,00,000/- more to the appellant which was not acceptable to her as it was claimed that the present value of the property may be more than 15,00,00,000/-. The court could not resist to state that she seemed to be too greedy. Finally the case was dismissed.

Lis pen dense

Yadaiah v. *The State of Telangana*.[12] This is a case where suit for specific performance of contract and doctrine of *lis pendens* applied by the Supreme Court. In this case, during pendency of suit, the sellers old suit property in favour of subsequent purchaser by executing sale deed. Trial court decreed suit for specific performance by granting alternative relief of refund of earnest amount with interest. Appellate court decreed suit by granting specific performance. Subsequent purchaser had purchased suit property during pendency of sale, therefore he could not claim to be bonafide purchaser for value without notice. Hence the order of appellate court was proper.

The court observed that having heard the arguments and perusing the records, it isevident that the plaintiff hasfiled a suit for specific performance. According to the plaintiff, suit property is owned by defendant nos. I to 4 and they have executed an agreement of sale in favour of plaintiff on January 22, 2004 for a sum of Rs. 28,000/- and entire consideration of Rs. 28,000/- was paid. The finding of the trial court disclose that the agreement of sale was held to be proved by answering issue no.I in the affirmative. However, the trial court has answered issue regarding readiness and willingness and grant ofspecific performance in the negative and granted alternative relief holding that appellant no.5 is a bonafide purchaser. Interestingly, this finding is challenged by plaintiff -respondent no.I herein before the appellate court in RA 42/2014. The defendants did not dispute and the present appellant was respondent no.5 has contested the appeal. Very interestingly, he has not filed any counter under Order 41 Rule 22 of CPC, challenging the finding on issue no.I by the trial court. As such, the finding on issue no.I regarding due execution of the suit agreement and payment of consideration has attained finality.[13] The court also observed that further, it is also important to note here that the entire sale consideration was paid and when plaintiff

12 AIR 2023 SC 3736.

13 *Id.,* para 11.

has filed a suit forspecific performance,during thependencyof the suit, defendant nos.I to 4 have sold the suit property to defendant no.5, *i.e.* the present appellant. The sale was said to have taken place on 11.06.2009. When the appellant has purchased the suit property during the pendency of the sale, he cannot claim to be a *bona fide* purchaser for value without notice. He only steps into the shoes of the original vendors and the original vendors have not disputed the agreement. The agreement was proved and passing of considerationis also proved and the present appellant has purchased the suit property during the pendency of the suit and hence, it is hit by principles of *lis pendens* under Section 52 of the TPA. When the transaction between defendant Nos. 4 and defendant No.5 itself is hit by Section 52, defendant no.5 appellant cannot claim to be a bona fide purchaser. His remedy is to seek relief of refund of the consideration as against defendant nos.4. But, he cannot resist thesuit on the ground that he is a bona fide purchaser.The trial court has failed to consider any ofthese aspects and in a mechanical way held that the readiness and willingness is not proved though the entire.[14] (Para 12).

Part-performance

In *Ghanshyam* v. *Yogendra Rathi*[15] Pankaj Mithal J., held that the respondent was found to be in settled possession of the suit property at least in part performance of the agreement which cannot be disturbed or disputed by the transferer, *i.e.,* the appellant.

The plaintiff-respondent instituted a suit for eviction of the defendant-appellant from the suit premises which is part of H-768, J.J. Colony, Shakarpur, Delhi and for mesne profits on the averment that he is the owner of the said property by virtue of an agreement to sell dated April 10, 2002, power of attorney, a memo of possession and a receipt of payment of sale consideration as well as a "will" of the defendant- appellant bequeathing the said property in his favour; the possession of the suit premises was handed over to the plaintiff-respondent pursuant to the agreement to sell subsequently on the request of the defendant-appellant the plaintiff-respondent allowed the defendant-appellant to occupy the ground floor and one room on the first floor of it for a period of three months as a licencee; the defendant- appellant failed to vacate the suit premises despite expiry of the licence period and termination of licence vide notice dated February18, 2003.

The defendant-appellant contested the suit on the ground that the aforesaid documents have been manipulated on blank papers but without disputing the execution of any of them or that the possession memo was not executed or that the sale consideration as per the agreement was not paid. The trial court after framing three issues; the first being with regard to manipulation and fraudulently obtaining the alleged documents, the second regarding the right of the plaintiff-respondent to get the defendant-appellant evicted and the third with regard to entitlement of mesne profits, decided all the issues against the defendant-appellant. A categorical

14 *Id.,* para 12.

15 2023 SCC OnLine SC 725.

finding of fact was recorded that there is no evidence to prove that any of the above documents were obtained by misrepresentation, manipulation or by playing fraud upon the defendant-appellant. The plaintiff- respondent has proved his right over the property and since the licence of the defendant-appellant stands determined, he is entitled to a decree of eviction and payment of mesne profits though not at the rate claimed by the plaintiff-respondent for which there is evidence but at the rate of Rs.1000/- per month for the use and occupation of the premises in dispute. The leave was granted and the appeal was admitted probably on the question as to whether the above documents namely the power of attorney, the will, the agreement to sell coupled with possession memo and the receipt of payment of sale consideration would confer any title upon the plaintiff-respondent so as to entitle him to a decree of eviction and mesne profits.

The aforesaid point was not raised by the defendant-appellant through his pleadings in the trial court or the first appellate court and, therefore, the high court in second appeal held that he cannot be permitted to raise such an issue and that the appeal, as such, does not involve any substantial question of law.

The suit as per the pleadings is that of eviction and mesne profits on the averment that the plaintiff-respondent is the owner of the property. He has claimed ownership on the strength of the aforesaid documents especially the agreement to sell and the memo of possession as well as the receipt of payment of sale consideration.

The Supreme Court observed that legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53A of the Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transferer or any person claiming under him.

The court remarked that as the plaintiff-respondent admittedly was settled with possessory title in part performance of the agreement to sell dated April 10, 2002 and that the defendant-appellant has lost his possession over it and had acquired the right of possession under a licence simpliciter, exhausted his right to continue in possession after the licence has been determined. Thus, the defendant-appellant parted with the possession of the suit property by putting the plaintiff-respondent in possession of it under an agreement to sell. The plaintiff-respondent in this way came to acquire possessory title over the same. The defendant-appellant, as such, ceased to be in possession of it as an owner rather occupied it as a licencee for a fixed period which stood determined by valid notice, leaving the defendant-appellant with no subsisting right to remain in possession of the suit premises. In view of the aforesaid facts and circumstances, the plaintiff-respondent has rightly been held to be entitled for a decree of eviction with mesne profits, the Supreme Court did not find any error or illegality in such a decree being passed.

J. *Shivappa S/o Bailappa Holer* v. *Yamanappa*[16] This is a case for a suit for specific performance in an unregistered agreement to sell and unregistered document affecting immovable property can be received in evidence. Further, the vendee was not put in possession of the property, therefore, he cannot claim protection under section 53A of TPA. Finding of subordinate courts that agreement was in fact executed and entire sale consideration had been paid was essentially a question of fact which was arrived at after proper consideration of evidence suit decreed in favour of vendee was proper.

Court observed that 'It is to be stated that the proviso categorically states that in a suit for specific performance, an unregistered document affecting the immovable property can be received as evidence. Thus, the entire argument in this regard would have to be rejected. It is also to be stated here that the law does not require an agreement of sale to be compulsorily registerable. However, if an agreement of sale is registered, the prospective purchaser gets the benefit of protection of part performance, if he has been put in possession pursuant to the agreement of sale. Conversely, if the agreement of sale is not registered, he cannot claim the protection afforded by Section 53A of the TPA. In the instant case, admittedly the plaintiff did not claim that he had been put in possession pursuant to the agreement of sale and he was therefore not obviously entitled to seek for protection under Section 53(A) of the TPA. In my view the entire argument that an unregistered agreement of sale cannot be admitted into evidence, as it had been executed after 2001 in this case completely misconceived. In view og the finding of both the courts that the agreement of sale was in fact executed and the entire sale consideration had been paid is essentially a question of fact which has been arrived at after proper consideration of the evidence and does not deserve any interference in the second appear.[17]

III SPECIFIC TRANSFERS

Memorandum of understanding/agreement of sale

In *Eldeco Housing and Industries Limited* v. *Ashok Vidyarthi*,[18] a Memorandum of Understanding was entered into between the appellant and respondent no. 1 on August 3, 1998, regarding sale of the property in question. It was specifically mentioned in the MoU that there is a litigation pending between the family members of the respondent no.1. The sale deed will be got registered immediately after the litigation is over and the right of the vendor is determined. The respondent no. 1 shall inform the appellant when the rights of the parties are finalised. As the appellant came to know that the respondent no. 1 is trying to sell the property to third parties, it filed a suit for injunction. The trial court, rejected the application. The revision filed against the order was dismissed by the high court. The respondent no. 1 filed review application, which was allowed and the

16 AIR 2023 Kar. 251.

17 *Id.*, para 17.

18 2023 SCC OnLine SC 1612.

suit filed by the appellant was rejected. Hence, the appeal before the Supreme Court.

The apex court found that the Memorandum of Understanding was entered into between the parties on April 15, 1998 with reference to the House. It was mentioned therein that the property was in dispute and the respondent no. 1 has 3/4th share in the property. The trial court had decided against respondent no. 1. However, the appeal is pending in the high court. Though sale consideration of 4,000/- per square yard was mentioned, however, the same was to be finally determined after decision of appeal by the high court. The sale deed was to be registered only after the litigation is decided in favour of respondent no. 1.

This MoU was followed by a registered agreement signed between the parties on September 2, 1998. It referred to the earlier MoU entered between the parties. Clause (4) of the agreement refers to the details of 10,00,000/- paid by the appellant to respondent no. 1. One of the clauses in the agreement was that respondent No. 1 had assured the appellant that litigation pending in the high court is likely to be decided shortly in his favour. However, in case it is not decided after one year from the date of execution of first MoU on April 15, 1998, the appellant will have right to get the earnest money returned along with interest @ 18% per annum. Even the appellant had issued notice dated March 22, 2001 to respondent no. 1 for refund of earnest money.

A suit for injunction was filed by the appellant against respondent no. 1 in January 2009. In suit, the appellant referred to the MoU entered into between the parties on 31.08.1998 (as registered on September 1, 1998). The appellant (plaintiff therein) came to know that respondent no. 1 was intending to sell the property to some other person as the prices of the property had increased manifold during the interregnum. An application was filed by respondent no. 1 under Order VII Rule 11(d) C.P.C. for rejection of the plaint.

The Supreme Court found that the vendee had issued a notice on March 22, 2001 seeking refund of the earnest money with interest as the case could not be decided within one year. In the light of the aforesaid facts, the suit for specific performance filed after dismissal of the suit for injunction was barred under Order II Rule 2 CPC and deserved to be rejected.

Agreement of sale

In *R. Hemalatha* v. *Kasthuri*,[19] the respondent was the original plaintiff and the appellant, original defendant. The respondent/plaintiff had instituted civil suit for specific performance of the Agreement to Sell dated September 10, 2013. After the chief-examination of the plaintiff as PW-1, a preliminary issue was framed by the trial court on the admissibility of the agreement dated September 10, 2013 in evidence. The defendant claimed that in view of the Tamil Nadu Amendment Act to the Indian Registration Act, 1908 stipulated that the instruments of agreement relating to sale of immovable property of the value of Rs.100/- and above shall be

19 Decided on April 10, 2023 *available at* (last visited on Jan. 20, 2024) https://indiankanoon.org/doc/139250294/.

compulsory registered, the unregistered document was inadmissible. The trial court held the that the unregistered agreement was inadmissible. The plaintiff moved the High Court. The high court had allowed the revision petition relying upon Section 49 of the Registration Act and hence the appeal to Supreme Court.

The Supreme Court observed that after the Tamil Nadu Amendment Act, 2012, as per Section 17(1) (g), instrument of agreement relating to sale of immovable property of the value of Rs.100/- and upwards is required to be registered compulsorily. However, despite the same and despite the "explanation" to sub-section (2) of section 17 has been omitted, there is no corresponding amendment made to Section 49 of the Registration Act. Further that as per proviso to Section 49 of the Registration Act, an unregistered document affecting immovable property and required by Registration Act or the TPA to be registered, may be received as evidence of a contract in a suit for specific performance under Chapter-II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument, however, subject to Section 17(1A) of the Registration Act. It is not the case on behalf of either of the parties that the document/ Agreement to Sell in question would fall under the category of document as per Section 17(1A) of the Registration Act. Therefore, in the facts and circumstances of the case, the high court has rightly observed and held relying upon proviso to Section 49 of the Registration Act that the unregistered document in question namely unregistered Agreement to Sell in question shall be admissible in evidence in a suit for specific performance and the proviso is exception to the first part of Section 49. The court ruled that the appeal failed.

Damodhar (D) Thr. Lrs. v.*Tejrao Bajirao Mhaskeand,* [20] observed: "…..There can be no doubt with respect to the position that where a deed of sale had been duly executed and registered, its delivery and payment of consideration have been endorsed thereon it would amount to a full transfer of ownership so as to entitle its purchaser to maintain a suit for possession of the property sold. The very object of the mandate for registration of transfer of an immovable property worth more than Rs. 100/- under Section 54 of the TPA, read with Section 17 of the Indian Registration Act, is primarily to give certainty to title. When execution is challenged, registration by itself is no proof of execution and proof of complying with Section 67 of the Evidence Act is necessary. There can be no reason to disbelieve a recital contained in a registered sale deed regarding payment of consideration, executed by the vendor. Hence, if it is said to have already been paid, going by the registered sale deed, certainly it is for the vendor asserting non-passing of consideration to prove the said asserted fact. Bearing in mind the aforesaid aspects the aforesaid question has to be approached….."

The apex court explained the term 'transfer' is a word in a broader sense and the word 'sale' is a specific word. Sale, going by the definition under TPA, presupposes transfer from one person to another of the right in property and in other words, in sale, the ownership of the property is transferred. A conjoint

20 AIR 2023 SC 3319.

reading of Section 54 of the TPA and Section 17 of the Indian Registration Act, 1908, mandates that transfer of ownership of any land worth more than Rs.100/- shall be effected by a registered deed. Therefore, transfer of a land worth more than Rs.100/- by a registered deed implies transmutation of all rights as the vendor possessed in the property concerned. We are not oblivious of the fact the mere registration of a document is no proof of its execution.

The Supreme Court reiterated that by virtue of Section 54, of the TPA and Section 17 of the Registration Act and since the immovable property was worth more than Rs. 100/- Ext.128 was reduced in writing and registered. The intention of the parties was also reflected specifically in Ext.128 and at the same, nothing reflecting a contra- intention not to pass the title and ownership in present even impliedly therein. In other words, the need to take into consideration the surrounding circumstances and the conduct of parties in deciding the passing of title would arise only if the recitals in the document are indecisive and ambiguous. The oral evidence of the second defendant could not override the registered Ext. 128 sale deed, as held by the first appellate court in the facts, circumstances and evidence on record in this case. In such circumstances, no other question(s) need be considered. The upshot of our consideration as above, is that the high court has committed a serious error based on perverse appreciation of evidence, in setting aside the judgment and decree of the first appellate court decreeing the subject suit and in restoring the decree of dismissal of the suit of the trial court.

Charge on the property sold

In *Yogendra Prasad Singh (Dead) ThrLrs* v. *Ram Bachan Devi*.,[21] the plaintiff is the son--in--law of the first defendant. The first defendant has four daughters. One of the daughters, Sachita Devi has been married to the plaintiff. The first defendant was heavily indebted. He had borrowed money from various persons by executing mortgage deeds, hand notes, *etc*. As the first defendant was unable to pay debts, he decided to sell the suit property. Accordingly, he executed a registered Sale Deed on February 4, 1963 in favour of the plaintiff for consideration of Rs.10,000/-. According to the case of the plaintiff, he was placed in possession of the suit property and started cultivating the same. His contention was that there was an absolute sale under the Sale Deed dated February 4, 1963. His contention is that he paid off the debt as mentioned in the Sale Deed. The plaintiff has contended that the first defendant being his father in law, collected the registered Sale Deed from the office of the sub registrar and has kept the same in his custody.

The first defendant executed a registered Deed of Cancellation dated June 15, 1967 in respect of the cancellation of the Sale Deed. The plaintiff was admittedly not a signatory to the said Deed of Cancellation. Thereafter, the first defendant purported to execute a Gift Deed dated January 12, 1968 (for short 'the Gift Deed')

21 Decided on July 31, 2023, *available at:* (last visited on Feb. 10, 2024). https://main.sci.gov.in/supremecourt/2010/36865/36865_2010_11_1501_45586_Judgement_31-Jul-2023.pdf.

in respect of the suit property in favour of the second defendant. The case of the plaintiff is that though he was all along in possession, on the basis of the order passed in proceedings under Section 145 of the Code of Criminal Procedure, 1973 he was illegally dispossessed from the suit property. Therefore, the plaintiff filed a Suit for declaration of title. The plaintiff also claimed a declaration that the Gift Deed is forged. The plaintiff prayed for a decree for possession of the suit property. The trial court concluded that the plaintiff had acquired ownership in respect of the suit property on the basis of the sale deed. It was held that the Deed of Cancellation dated June 15, 1967 being a unilateral document was not valid. The trial court also held that the second defendant did not acquire any right, title or interest on the basis of the gift deed executed by the first defendant. In the appeal against the decree of the trial court the high court held that as consideration was not paid under the sale deed, the plaintiff did not acquire any right, title or interest in respect of the suit property. Hence the appeal.

The apex court observed that a sale deed of an immovable property is executed in accordance with section 54 of the TPA. There cannot be any dispute that normally, on the execution of a registered Sale Deed by the owner of the property, the title in the property subject matter of the Sale Deed stands transferred to the purchaser. Considering the principles laid down in Section 55 (4)(b) of the TPA, the seller will have a charge over the property subject matter of the sale for unpaid consideration and he can enforce the charge by filing a suit. The court examined the recitals in the sale deed from the translated English version of the same produced by the appellants.

Noting through Abhay Oka J., the court iterated that on overall reading of the sale deed, it was apparent that under the sale deed, the entire right, title and interest of the first defendant in the suit property has been transferred to the plaintiff by the sale deed. At the highest, as per Section 55 (4)(b) of the TPA, the first defendant was entitled to have a charge on the suit property for the amount of consideration which was not paid by the plaintiff. The court also lamented that even that provision may not help the first defendant. The reason is that the plaintiff has taken over the suit property with liabilities as set out in the sale deed. The creditors of the first defendant can, therefore, proceed against the suit property. Finally, the court ruled that the title and ownership passed on to the plaintiff on the date of sale deed. Thus the appeal was allowed.

Compulsory registration and effect on non-registration of sale

In *Shakeel Ahmed* v. *Syed Akhlaq Hussain*[22] the suit was filed on the basis of a Power of Attorney, an agreement to sell, an affidavit and a will executed in favour of the respondent. The appellant, admittedly, was in possession of the property in question. The suit was contested on several grounds that the appellant was the owner of the property having received the same on the basis of a Hiba (oral gift) from its owner Laiq Ahmed his own brother. Secondly, that the suit was not maintainable as none of the documents on the basis of which the suit was filed

22 Decided on Nov. 1, 2023 *available at*: https://indiankanoon.org/doc/77012793/ (last visited on Jan. 20, 2024).

were neither admissible nor enforceable under law. The trial court decided against the appellant and in favour of the respondent. The high court reversed the decision of the trial court. Hence the appeal.

The Supreme Court reiterated that the fact remains that no title could be transferred with respect to immovable properties on the basis of an unregistered agreement to sell or on the basis of an unregistered General Power of Attorney. The Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right, much less a legally enforceable right to approach a Court of Law on its basis. Even if these documents i.e. the agreement to sell and the power of attorney were registered, still it could not be said that the respondent would have acquired title over the property in question. At best, on the basis of the registered agreement to sell, he could have claimed relief of specific performance in appropriate proceedings. In this regard, reference may be made to sections 17 and 49 of the Registration Act and section 54 of the Transfer of Property Act, 1882. The apex court categorically maintained that the law is well settled that no right, title or interest in immovable property can be conferred without a registered document.

The requirement of compulsory registration and effect on non-registration emanates from the statutes, in particular the Registration Act and the TPA. The ratio in *Suraj Lamps and Industries* v. *State of Haryana*[23] only approves the provisions in the two enactments. The court also opined that (i). *Ameer Minhaj* v. *Deirdre Elizabeth (Wright) Issar*[24] also support its view.

The apex court clarified that in case the respondent wanted to evict the appellant treating him to be a licensee, he could have maintained a suit on behalf of the true owner or the landlord under specific instructions of Power of Attorney as landlord claiming to have been receiving rent from the appellant or as Attorney of the true owner to institute the suit on his behalf for eviction and possession. The court held the impugned judgment deserves to be set aside and the suit deserves to be dismissed.

Sale and mortgage by conditional sale

In *Prakash (Dead) By Lr.* v. *G.Aradhya,*[25] on August 18, 2023 on October 16, 1963 a property measuring 30 ft. x 60 ft. was purchased by the father of the appellant, Gangaramaiah, in the name of the appellant, who was minor at that time. On December 24, 1973 the father of the appellant, Ganga Ramaiah sold the aforesaid property to one Rudramma for a sum of 5000/- (Rupees Five Thousand). The age of the appellant, who claimed himself to be minor at that time, was mentioned as 13 years. On the same day, another unregistered document was executed between

23 Reference may be made to *Suraj Lamps and Industries* v. *State of Haryana* 2012 (1) SCC 656 (i). *Ameer Minhaj* v. *Deirdre Elizabeth (Wright) Issar* AIR OnLine 2018 SC 525 (ii). Balram Singh v. Kelo Devi 2022 LiveLaw (SC) 800 (iii). *Paul Rubber Industries Private Limited* v. *Amit Chand Mitra* 2023 INSC 854.

24 AIR OnLine 2018 SC 525 .

25 2023 SCC OnLine SC 1025.

the parties claiming to be Reconveyance Deed in terms of which on the request of the vendor, the vendee had agreed to re-transfer the property back within five years of the sale deed in case the sale consideration of 5000/- (Rupees Five Thousand) is paid. On July 24, 1978, a suit was filed by Rudramma seeking eviction of the Gangaramaiah in terms of the Lease Agreement dated December 24, 1973 as he had not been paid the rent. Therefore, asuit was filed by Ganagaramaiah seeking permission from the court to mortgage the property of the minor. A public notice was issued inviting objections. *Vide* order dated September 27, 1978 permission was granted to execute fresh Mortgage Deed in order to discharge the earlier mortgage for a sum of 7000/- (Rupees Seven Thousand). On March 26, 1987, the legal heirs of Rudramma sold the property in-question in favour of defendant no.4 in the suit, namely, N. Shashidar. Gangaramaiah died on April 30, 1987. A suit was filed by the appellant praying for various reliefs, which was dismissed by the trial court. The judgment of the trial court was upheld by the high court. Hence, the appeal before the Supreme Court.

The Supreme Court observed that in the case in hand, the specific term used in the document is "reconveyance agreement" executed by Rudramma in favour of Gangaramaiah. It is clearly mentioned therein that the property in- question had already been sold and registered in the name of Rudramma. On a request made by Gangaramaiah, the right to purchase the property was given within a period of five years on payment of sale consideration of 5,000/- (Rupees Five Thousand). The agreement states that it shall cease to have effect on expiry of a period of five years.

The apex court stated that a perusal of the contents of the sale deed shows that it is clearly mentioned therein that the same was an absolute sale for a total sale consideration of 5,000/- (Rupees Five Thousand) required by the vendor to meet domestic expenses and to meet education expenses of his minor son and to discharge some debts. Total sale consideration was 5,000/- (Rupees Five Thousand). Out of this amount, a sum of 3,000/- (Rupees Three Thousand) was received earlier and 2,000/- (Rupees Two Thousand) was to be received in the presence of the sub-registrar at the time of the registration of the sale deed. Possession of the property was to be delivered on registration of the sale deed. The vendee was entitled to get the mutation entered in her name and enjoy the property by paying the taxes, if any. She would become an absolute owner thereof from generation to generation. There were no encumbrances attached to the property.

Conditional transfer-allotment of plot for specific purpose

In *Aman Semi-Conductors (Pvt.) Ltd.* v. *Haryana State Indust.Dev. Corp.Ltd.*,[26] the appellant had applied for allotment of the industrial plot to the HSIDC. After he was interviewed and his credentials verified, he was issued with the letter of intent. The final payment was made in respect of the plot. Later the

26 Decided on Feb. 27, 2023, *available* at :https://main.sci.gov.in/supremecourt/2009/331/331_2009_14_1501_42320_Judgement_27-Feb-2023.pdf (last visited on Jan. 20, 2024).

next month, an agreement was executed between HSIDC and the appellant in which he agreed to complete the project in two years. The agreement also contained the condition that extension could be granted upon payment of a fee. The appellant took possession of the plot on December 29, 1995. The appellant was called upon to showcause why he did not complete construction and set up the unit, in 1997. The appellant replied that he could not start the unit due to lack of infrastructural facilities. He alleged that road and electricity facilities were not adequate, which had hindered his project. Several notices were issued by the HSIDC on March 23, 1998, April 29, 1998. And on September 18, 1998 the HSIDC communicated that it had resumed the plot and cancelled the allotment. It refunded the sum of 1,66, 425, through a cheque, which was sent to the appellant. The latter upon receipt of this intimation did not accept the cheque and returned it back on October 6, 1998.

In the meanwhile, the appellant approached the District Consumer Forum, Gurgaon, on September 30, 1998. The District Consumer Forum allowed the complaint on May 16, 2000 and directed the HSIDC to withdraw the resumption order. It also directed HSIDC, not to allot the plot to any other person; HSIDC was granted 3 months' time to comply with the requirement of allotting the plot to the appellant. The HSIDC's appeal was rejected on April 29, 2003 by the State Consumer Commission. It approached the NCDRC belatedly. On November 10, 2003 NCDRC dismissed its revision petition as time-barred. Subsequently, the HSIDC approached the Supreme Court, which remitted the matter by its order dated January 20, 2004 to the NCDRC for fresh consideration on merits. By the impugned order, the revision petition was allowed.

The appellant's arguments are twofold. The first is that HSIDC violated principles of natural justice, did not grant him a hearing and unilaterally cancelled the allotment. The added point made was that the allotment was followed by payment of full consideration and that, in these circumstances, some minimum hearing ought to have been given before adverse action of resumption was taken. It was also alleged in this regard that cancellation order did not disclose any application of mind; no reasons are forthcoming. The second substantial argument made was that in the absence of essential infrastructural facilities such as roads, overall development of the industrial area availability of electricity and other amenities, HSIDC could not have expected the appellant or any other allottee to construct the plot within the time granted, *i.e.,* two years.

The Supreme Court found that the allotment made in favour of the appellant by HSIDC contained several conditions. The HSIDC and the appellant entered into an agreement on October 27, 1995. Clause 4 (iii) of the agreement stipulates that the allottee would enjoy the right of possession as long as he complied with all terms and conditions of allotment contained in the agreement. The important condition in Clause 6 was that the allottee shall start on the site construction of building for setting up the industry within a period of six months and complete the construction thereof within 1 1/2 years from the date of the possession. The plans thereof shall be in accordance with the rules made as per the directions given from time to time by the Town and Country Planning and Urban Estate Department, in this respect and approved by the director Town and Country Planning Department

or any officer duly authorised by him in this behalf. Further the allottee shall complete the construction and installation and machinery and commence production within a period of two years from the date of possession after constructing a minimum of 25% of the permissible covered area, failing which the plot shall be liable to be resumed by the Corporation.

The court observed that besides this, there were other mandatory stipulations such as that regular payment of maintenance charges, proportional conservation charges, proportionate external development charges as could be determined by HSIDC and importantly the condition that the allottee could not change its constitution and if it did so, it should in any event, hold not less than 51 % shareholding in its concern. Similarly, any request of the allottee for transfer of plot, could be considered where the final allotment letter had been issued and the project had been completed and approved by the HSIDC. The embargo on transfer was subject to the condition that the HSIDC had the final say or approval, in this regard.

The Supreme Court analysed that the development of industrial areas, was part of the state's overall project for promoting industries and growth of its economy, with the objective of providing livelihood. The HSIDC therefore, correctly contends that the stipulation in the allotment letter, requiring allottees to construct their respective projects and start it, was essential. The appellant too had furnished a project report, proposing to set up an FM radio and audio component manufacturing unit. This project was appraised, he was interviewed and after satisfying itself about its feasibility, HSIDC allotted the plot. There is no denial of the fact that the allottee did not take any step towards setting up the unit he proposed. His pleading, before the District Consumer Forum, was that the infrastructural facilities, such as road and external development had not come up. He claims to have applied for electricity connection. On the other hand, there is nothing on the record- even till date- pointing to any plan to construct a factory or industrial unit. He did not supply any plans for approval; nor did he ever show inclination to procure the needed machinery and equipment required for his proposed industrial unit. Other steps such as securing tax registration, *etc.*, too were not shown to have been done. In these circumstances, the conclusion which this court is compelled to draw is that the appellant was always insincere and perhaps never intended to follow up and set up the industrial project, which he proposed to HSIDC, as the basis for allotment of his plot.

The Supreme Court referred to the judgement in *Indu Kakkad*[27] and *Hari Om*[28] cases and Section 31 of the TPA[29] and held that the condition that the

27 *Indu Kakkad* v. *Haryana State Industrial Development Corporation Ltd*, 1999 (2) SCC 37.

28 *Managing Director, Haryana Industrial Development Corporation* v. *Hari Om Enterprises* 2009 (16) SCC 208.

29 The S. provides that "on a transfer of property an interest therein may be created with the condition super-added that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen."

industrial unit shall be established within a specified period failing which the interest shall cease, is a valid condition. Clause 7 of the agreement between the parties is, therefore, valid and is binding on the parties thereto.

The court traced the idea behind development of industrial plots and allotting them to deserving applicants is to act as a catalyst to promote economic growth. The court held that aspect was underlined in *Hari Om* case.

In view of the above conclusions, the Supreme court held that the appellant is only entitled to refund of the sum of 1,66,425/- which was paid for the plot. However, there is no denial of the fact that the cheque issued to him was returned and HSIDC had the benefit of those monies all these years. In these circumstances, HSIDC is directed to refund the sum of 1,66,425/- with interest at 6% p.a. from September 18, 1998 till date. The amounts shall be paid to the appellant, within six weeks from today.

It may be stated that the cancellation of the allotment would serve no purpose. It is not evident whether the terms of the agreement were silent about the infrastructure facilities as claimed by the allottee. The conditions about the construction without infrastructure and other facilities and the consequent non compliance of the terms alleged by the Corporation should have been interpreted to promote the objects sought to be achieved by the HSIDC and instead of cancellation of allotment the court might have required the allottee to install the project and operate.

Right of redemption

In *Ganesh Prasad* v. *Rajeshwar Prasad* [31] the suit property was a Shop. The pleadings were so poor and pathetic that as a result, the Supreme Court found it extremely difficult to understand what the Plaintiffs intend to say by way of the amendment. With lot of effort, ultimately what we have been able to understand is that the father of the appellant defendant, namely, late Gulab Chand was the mortgagee of the suit property. The father of the plaintiffs, namely, late Harihar Prasad was the mortgagor and he executed a mortgage deed dated February 12, 1957 in favour of the father of the appellant defendant for a sum of Rs. 700/-. The grandfather of the appellant defendant, namely, late Laxman Prasad remained in occupation of the suit property as a tenant from the year 1953 at the rate of Rs. 23 monthly rent and later the father of the appellant defendant occupied the suit property, as a tenant till the year 2005 *i.e.,* the year of his demise. Thereafter, the appellant defendant became the tenant of the suit property. What is sought to be conveyed by the appellant defendant is that the grandfather and father of the plaintiffs were tenants in the suit property and a mortgage deed was also drawn and executed in the year 1957 with respect to the same property. It is also the case of the plaintiffs that the appellant defendant has inducted sub-tenants in the suit property.

The court analysed the legal position and held that if the right of redemption is not extinguished, the provision like Order IX Rule 9 of the CPC will not debar the

31 Decided on Mar. 14, 2023, *available at*: https://indiankanoon.org/doc/140008397/ (last visted on Jan. 20, 2024).

mortgagor from filing a second suit because as in a partition suit, the cause of action in a redemption suit is a recurring one. The cause of action in each successive action, until the right of redemption is extinguished or a suit for redemption is time barred, is a different one.

Supreme Court held that the appeal stands dismissed. The interim order passed by the Supreme Court dated January 3, 2019 staying the further proceedings of Suit No. 154 of 2009 pending in the Court of Civil Judge (J.D.) Eastern, District Ballia was vacated.

It was categorically maintained that the trial court shall now proceed to take up the Suit No. 154 of 2009 for hearing and dispose of the case within a period of six months. The Court had confined the adjudication in the present appeal only on the limited question whether the plaintiffs should be permitted to amend the plaint and secondly, whether the provisions of Order IX Rule 9 of the CPC are applicable to the case on hand. The court answered the queries positively.

In *Celir LLP* v. *Bafna Motors,*[32] *Bafna Motors (Mumbai) Pvt. Ltd*., had availed credit facilities from Union Bank of India. The loan was secured by a simple mortgage over the land of the Bafna. Bafna was at default. The Bank issued a demand notice and then subsequently took possession of the Secured Asset. The property was auctioned. Celir LLP was the highest bidder. Celir LLP deposited 25% of the bid amount. Bafna filed a redemption application before the debt recovery tribunal. When the redemption application was heard, the Celir LLP had deposited the balance sum of the total bid amount. In the meanwhile the Bafna approached the High Court of Bombay by filing a writ petition. The high court allowed the writ petition. The court permitted the Baffna to redeem the mortgage. Hence, Celir approached the Supreme Court.

The Supreme Court observed that on a careful application of Sections 35 and 37 of the SARFAESI Act, it is evident that the situation contemplated under Section 13(8) of the SARFAESI Act does not exclude application of Section 60 of the TPA. It was held that admittedly the bid amount of the petitioner was Rs.57.00 lakhs. Though the auction was conducted on March 16, 2021 and payment was made by Celir within the stipulated period. However, admittedly there was no registration of any sale certificate.

On the other hand, Bafna had approached respondent nos.1 and 2 for settlement of the loan account under OTS Scheme on March 18, 2021. It was accepted by first respondent on March 31, 2021 for an amount of Rs.5.10 crores. It has been paid by Bafna.

The court observed that lending of money, recovery of dues and entering into OTS are all commercial decisions which are taken by the banks/financial institutions in their best interest, subject of course within the statutory framework. The court had come to the conclusion that Bafna had not lost the right of redemption upon publication of notice for auction sale. If that be the position, then it should

32 AIR 2023 SC 4568.

be left to the discretion of the secured creditor as to which course of action would be more beneficial to it. Chandrachud J., noted that right to property is a valuable right. Though no longer a fundamental right, it is still a constitutional right. The interpretation which we have adopted subserves such a right. That apart, third respondent Bafna had not lost the right of redemption upon publication of notice for auction sale; his right of redemption would have been lost only upon the sale certificate getting registered which admittedly has not taken place. Therefore, the action of respondent nos.1 and 2 in accepting the higher OTS amount of the third respondent though after publication of notice for public auction and auction is justified and cannot be faulted.

T. Santhi v. *Karnataka Bank Limited*.[33] This is a case where right of mortgagor to redeem the property mortgaged involved. Here property was sold to plaintiff by defendant and plaintiff was aware of equitable mortgage effected by third defendant (her vendor) in respect of suit property in favour of Bank. There was no documentary evidence by the plaintiff that he had settled mortgage debt.In fact, defendant with the help of plaintiff and her husband had played fraud on Bank fervently hoping to save suit property. When a purchaser creates forged or false records that amounts to fraud, they cannot be considered to be a bona fide purchaser. Held plaintiff not entitled to right of redemption of mortgage.

The court observed that though the plaintiff has claimed that the encumbrance certificate for the suit property Ex.A12 showed the mortgagees as P. Logan, L. Mohana and D. Murugan, she has not produced any encumbrance certificate post the sale deed dated June 25, 2003 executed in her favour to substantiate that the mortgages were redeemed. Had this encumbrance certificate been produced it ought to have shown nil encumbrance for the suit property. However, itis doubtful as to whether the 2nd defendant had any role to play in the entire episode. He could not have conspired or colluded for the si1nple reason that the suit property was not in his name and his liability to the 1st defendant co-existed with that of the guarantor (3rd defendant).Therefore, it is clear that the 3rd defendant with the help of the plaintiff and her husband had played a fraud on the 1st defendant bank fervently hoping to save the suit property from going out of the 3rd defendant's hands.No purchaser can be *bonafide* when he / sheis involved in creating fabricated or fake record which tantamount to fraud. She is therefore not entitled to the right of redemption of mortgage. In the decisionin *Vidihadhar* v. *Manikraoand*,[34] relied upon by the learned senior counsel for the petitioner with regard to redemption of mortgage by the purchaser would not apply to the facts of the present case. Accordingly, point nos.1 and 2 are answered against the plaintiff.[35]

Veer Ummal v. *Rajendran Babu*.[36] This case is pertaining to redemption of mortgage and default in deposit of mortgage money and also delay condoned for

33 AIR 2023 Mad. 27.
34 AIR 1999SC1441.
35 *Supra* note 33 para 11.
36 AIR 2023 Mad. 129.

deposit ofmortgage money. Challenge was made.Incase of preliminary decree for redemption of usufructuary mortgage, no limitation begins to run until deposit is made. Filing of application to condone delay in depositing mortgage money is superfluous and mortgagor/decree holder can directly deposit amount. Mortgage being a usufructuary mortgage, right of redemption does not get extinguish dueto default indeposit ofmortgage money within time specified by court order condoning delay in deposit of mortgage money, proper.

A careful perusal of the Supreme Court Judgement will clearly disclose that in the case of preliminary decree for rede1nption of usufructuary mortgage nolimitation begins to run until deposit is made though there is a conditional preli1ninary decree. Therefore, this court is of the considered opinion that the filing of an application to condone the delay in depositing the mortgage money is superfluous and the mortgagor/ decree holder could have directly deposited the a1nount.[37]*Sopan Bhaurao Daund by L. Rs* v. *Ranjana Nanasaheb Walunj*.[38]

This is case for suit for redemption of mortgage and claim by mortgagee for certain improvements made in mortgaged land. Here, the receipt was produced on record there was no evidence produced by mortgagee to prove receipt and its contents. If receipt was executed by contractor who had carried outwork, then it could have been proved through said contractor. Nothing was brought in evidence to substantiate said pleadings. Mortgagee failed to prove that he had spent amount for improvement of land. In absence of evidence, amount spent on development for removing debris and digging could not be granted. Held refusal togrant amount for improvement was proper.

Court also observed:, This court has gone through the judg1nents of both the courts below and also the material on record. By considering the record this court finds that, in the plaint itself there is an aver1nent that in thesuit land a well is situated. In the mortgage deed itself there is mention of the said well. It speaks about the right to fetch the water ofwell given to the appellants. Though there appears to be a specific clause in the mortgage deed to the effect that at the ti1ne of redemption the plaintiff –respondent shall pay the amount if any spent by the appellants for improvement, it is also specifically mentioned that the water from the well is not adequate and therefore, the appellants were permitted even to make improvement. On this, appellate court has recorded that, though the receipt is produced on record there is no evidence produced by the appellants on record to prove the receipt described of the said and also the contents. Though the contractor who allegedly executed the work of improvement of well is examined, still this receipt is not shown to him. Nothing is brought in his evidence to substantiate the pleadings of the present appellants. If the receipt was executed by the contractor who has carried the work, then naturally it could have been proved through the said contractor. The amount spent on the developmentis stated to be Rs.75,000/-

37 *Id.* para 2.

38 AIR 2023 Bom. 380.

for removing debris and digging well.However, forwant ofspecific evidence both the learned. [39]

Transfer interests in lease deed

Gujarat Industrial Development Corporation v. *Kumar Wire Mesh Pvt. Ltd*[40] is case wherein,the petitioner company applied for permission for creationof chargeof leasehold land as per clause 2(r) of lease deed. Authorities demanded transfer fees for issuance of 2(r) permission. There was merelychange in name of petitioner company. Therewas no change of more than 51% in shareholdings at time of filing application and no reason for authority to claim transfer. Demand of transfer fees, erroneous and authorities directed to issue 2(r) permission as applied by petitioner without demanding any transfer fees.

The court observed that apart from that conclusion which has been arrived at by the Single Judge if closely perused, it would emerge from records that it was an admitted position that actually there is no transferof sharesof morethan51%any time after 2015 in case of petitioner and if that be so, there is hardly any reason for respondent to claim any transfer fee and as such, we are also ofthe opinion that view taken by the single judge is a possible view based upon examination of relevant circulars, and hence, we see no reason to set aside said order in the absence of any distinguishable material. We also deem it proper to quote the relevant observations made by the single judge while allowing petition and it reads:

"18.Having considered the rival sub1nissions and having gone through the1naterial on record,it appears that the respondent - GIDC has applied the Circular dated September 10, 1996 with retrospective effect to levy the transfer fee in view of the change in shareholding, which took place in the year 2015 without considering the fact that the respondent-GIDC has granted 2(r) permission of the lease deed on November 19, 2016. For this purpose, it would be germane to refer to clause 2(r) of the lease deed, which reads thus :- 2 (r) That he will not transfer, assign under let or part with the possession of the demised premises or any part thereof or any interest therein without the previous permission of the lesser for the purpose of this covenant, any change in the constitution of the lessee shall be demised to be a transfer by the lessee of his interest in the demises premises in favour of another person. Provided that where the lessee is a body corporate, a change in its Board of Directors, Managing Committee by whatever name called shall not be deemed to be a change in the constitution of the lessee provided further the where the lessee, for the purpose of constructing a building on the de1nised premises, is obtained loan from a bank or other financial institution by mortgaging his leasehold interest in the demised premises in favour of such bank or institution, permission of the lessor shall be deemed to have been subject to the conditions:-

(i) that such mortgage shall not affect the rights and powers of the lessor under this lease deed and

39 *Id*., para 2.

40 AIR 2023 Guj. 79.

(ii) that the lessor before exercising his rights and powers under this lease deed will consult that bankor ascase may be the financialinstitutionconcerned.

(iii) The lessor will sent to the said financial institution concerned or as the case may be a copy of the notice, of not less than 90 days that may be served upon the lessor for rectification of the breach of any covenants of the said lease deed."[41]

On perusal of the above clause 2(r) of the lease deed, it is clear that the same is applicable for three purposes *i.e.* -(i) transfer, (ii) assignment or (iii) when the lessee is a body corporate for the purpose of creating charge on the land to avail the financial assistance for the purpose of constructing building on the premises by mortgaging the lease hold property interest in the property. The petitioner in the year 2016 was granted permission under Clause 2(r) of the lease deed for availing the financial assistance from SVC bank for Rs. 461 Lacs. It appears that thereafter, the petitioner wanted to avail financial assistance from ICICI bank asper the sanctioned letter produced at Annexure I page No.113 of the petition and for further financial assistance for Rs. 32,00,000/. The petitioner, therefore, applied for permission under Clause2(r) of the lease deed on August 27, 2019 as the petitioner wanted to shift the mortgage of SVC bank to ICICI bank and accordingly the application was preferred online with the respondent - GIDC.

However, the respondent - GIDC without considering the facts on record *suo motu* registered another application for transfer on September 9, 2019 without intimation to the petitioner recording the incorrect facts in the said application, which is produced at Annexure-K, page 132 of the petition.The respondent GIDC, thereafter, passed the impugned order on September 21, 2019 for levy of transfer fees and additional transfer fees. The petitioner thereafter, sought clarification for levy of the transfer fee and additional transfer fee, which was provided by the respondent - GIDC by letter dated November 18, 2019 along with the copies of the Circulars dated July 6, 2017, June 13, 2019, 17th June, 1997 and 6th May, 2015. On perusal of the Circulars, which are provided by the GIDC along with the letter dated November 18, 2019, it appears that none of the Circulars is applicable to the facts of the case, because there is nothing on record to show that when the petitioner made an application on August 27, 2019, for permission under clause 2(r) of the lease deed there was a change in the shareholding more than 51% as per the Circular dated September 10, 1996, which is relied upon by the respondent-GIDC in its affidavit-in-reply for thefirst time before this court. On perusal of the

In view of the foregoing reasons, the petition succeeds and it is accordingly allowed. The impugned order dated September 21, 2019 passed by the respondent - GIDC for levy of transfer fee, as well as, additional transfer fee being illegal and contrary to the facts and materials on record, the same is hereby quashed and set aside.

41 *Id.,* para 1.

Lease and e-auction sale

M. R. Shah, J. in *G.Vikram Kumar* v. *State Bank of Hyderabad* ,[42] has rendered justice above technicalities. The respondent no.3 herein – builder. Res 3 had taken loan from respondent no.2 –Bank for the development of the multi-storey housing project. He was not able to repay the security interest to the Bank.The Bank initiated proceedings against the borrower under section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The borrower filed suit before the Debt Recovery Tribunal (DRT), Hyderabad. The Tribunal directed that the bank may proceed with the sale but shall not confirm the sale till the next date of hearing. An MoU was entered into between the respondent no.1 and the borrower with respect to the sale of Flat No.6401 on April 10, 2016 for a lumpsum consideration of 45 lakhs. The said agreement to sale was executed by the borrower without informing/obtaining any consent from the DRT as well as the Bank.

The Bank issued a public notice on July 28, 2016 for auctioning the properties of the borrower. The property in question, *i.e.*, Flat No.6401 was also subjected to auction. The borrower filed an application before the DRT praying for stay on all proceedings of the Bank. The DRT rejected the application. the respondent no.1 filed a Writ Petition before the high court. The high court stayed the auction qua Flat No.6401 as notified under the auction sale notice subject to respondent no.1 (original wit petitioner) paying to the bank not less than 25.81 lakhs before the scheduled date and time of the auction, failing which, the Bank shall be free to proceed with the auction. The respondent no.1 has paid the amount to the Bank as directed by the high court. The high court has allowed the writ petition filed by respondent no.1 herein. That thereafter the appellant herein the auction purchaser filed the review petition which has been dismissed by the high court. Hence, against the final decision of the high court in the main writ petition allowing the same in favour of the respondent no.1 herein and rejecting the review application filed by the appellant, the appellant – successful auction purchaser has preferred the present appeals.

It is submitted by the appellant that the high court has not properly appreciated the fact that a sale agreement holder cannot seek redemption of a property under Section 91 of the Transfer of Property Act, 1882 and cannot be treated at par with an auction-sale purchaser under Section 54 of the TPA makes it clear that no interest charge is created upon a property only by way of sale agreement.

The Supreme Court held that the impugned judgment and order passed by the high court has been quashed and set aside. It is directed that on the full payment of the auction sale consideration by the appellant (after deducting the

42 Civil Appeal Nos. 3152-3153 of 2023, 2023 Latest Caselaw 429 SC, https://indiankanoon.org/doc/126147244/ (last visited on Han. 30, 2024).

25% of the amount already deposited earlier) with 9% interest from the date of auction till the actual amount is paid, to be paid within a period of four weeks from today, the sale certificate be issued in favour of the appellant with respect to Flat No.6401. Whatever the amount is already deposited by the respondent no.1/his heirs shall be returned to the respondent no.1 (now his heirs) with the interest at 9% from the date of such deposit till the actual date of return which shall be returned within a period of four weeks from today. The heirs of original respondent no.1 are granted three months' time to vacate the flat in question and are directed to hand over the peaceful and vacant possession of the Flat No.6401 to the appellant within a period of three months from today as ordered above.

Eviction of lease

In *the State of Uttarakhand* v. *Ravi Kumar (D) Thr. Lrs* .[43] John Vaughn, son of Charles Vaughn obtained a lease of the Suit Land from the erstwhile colonial rulers through the Secretary of State for India in Council for 30 years on payment of rent as agreed between the parties. The lease deed which was registered on 22.08.1925. But, the revenue entries were made in favour of one Manohar Lal, who is said to have purchased the Suit Land through a sale deed dated November 17, 1947. The same Manohar Lal is also stated to be the paternal uncle of the respondents, namely Virendra Kumar and Ravi Kumar. The relief sought by all the remaining private parties in connected matters flows from their claim on the Suit Land. at the expiry of thirty years in 1954, the predecessor of Respondents applied for renewal and paid enhanced rent as per the 1924 Lease Deed.After that, consolidation proceedings took place between 1959-1960 wherein revenue entries remained in favour of Manohar Lal and even compensation was also awarded for a portion of Suit Land which was acquired by the military authorities in 1963.

1967 that the State filed a suit for possession of the Suit Land along with the damages before the concerned district judge. During the pendency of the said suit, UP Public Premises (Eviction of Unauthorised Occupants) Act, 1972 was promulgated and accordingly, the said suit stood transferred to the Prescribed Authority under the Act. In the interregnum before the final adjudication took place before the prescribed authority, it is pertinent to note that Bhumidhari certificates were also issued to the predecessor of respondents under the applicable tenancy law by depositing the amount which was equal to twenty times the land revenue for the suit land. Eventually, the prescribed authority dismissed the suit on March 25, 1975 as being non-maintainable in view of the exclusion clause contained in the UP Public Premises (Eviction of Unauthorised Occupants) Act, 1972 whereby the lands which were held by any class of tenure-holder are exempted from the applicability of the said Act.

The State's appeal against the said order before the District Judge was also dismissed on the grounds of being time-barred and the suit being non-maintainable.After the demise of Manohar Lal, who died issueless, mutation proceedings were initiated in 1978 by the present Respondents on the basis of a

43 AIR 2023 SC 3018.

family settlement.The Tehsildar, Haldwani passed an order dated July 4, 1978 in favour of the respondents. This order was later confirmed by another order dated August 30, 1978 passed by the concerned SDM directing the Tehsildar, Haldwani to mutate the Suit Land in favour of Respondents in revenue records. Against the order of the SDM, the State preferred an appeal before the Commissioner, Kumaon which was rejected. The case has been remanded to the high court due to non availability of records to enable it to determine the applicable tenancy law and their impact on the alleged rights of the Respondents.

Notice to quit

In *Paul Rubber Industries Private* v. *Amit Chand Mitra*,[44] the question was as to what extent the court can take cognizance of a clause relating to purpose for which a lease is granted contained in an unregistered deed of lease for immovable property stipulating its duration for a period of five years. On March 27, 2003, a document captioned "Tenancy Agreement" was executed by and between one Sabita Mitra (the landlady, since deceased), now represented before us by her legal heirs being the two respondents and an incorporated company, Paul Rubber Industries Private Limited. The latter is the appellant in this proceeding. In this judgment, we shall refer to the landlady and her legal representatives as the respondents interchangeably and the appellant Paul Rubber Industries Pvt. Ltd. shall be described as defendant. The property in question comprises of approximately 16 cottahs (one cottah is equivalent to approximately 720 sq. ft.) of land situated at Radha Madhab Dutta Garden Lane, within the city of Kolkata. The tenure of the agreement, as stipulated therein was for a period of five years with provision for renewal for further five years. There is stipulation for further renewal for such period and on such terms and conditions as might have been agreed upon by the parties. This is contained in clause 2 of the agreement. But no such renewal was effected. First five years of the tenancy stood completed on October 31, 2007, and a letter was sent by the landlady on 07.11.2007 seeking enhancement of rent. It does not appear that the defendant had paid rent thereafter. It had, however, raised a plea that such rent used to be collected on behalf of the landlady on due date, but this was stopped after October 2007.

Thereafter, on March 6, 2008, the landlady served a notice requiring the defendant to vacate the subject-premises with effect from August 31, 2008. In this letter of March 6, 2008, the defendant was addressed as monthly tenant. Default in payment of monthly rent was highlighted in this letter. It was also specified therein that the landlady needed the said premises for her own use and occupation and for business purpose of her family members. The trial court found that the tenancy of the defendant was month by month governed under the 1882 Act and after the expiry of the lease, the said tenancy was not renewed by the parties on mutual consent as per the terms and provisions of the agreement dated March 27, 2003. The high court dismissed the appeal.

44 AIR 2023 SC 4558.

The Supreme Court perused into the provisions of Sections 105, 106 and 107 of the 1882 Act and the provisions of Sections 17 and 49 of the Registration Act, 1908. The Court also referred to the relevant cases.[45] The court observed that a lease of immovable property is defined in Section 105 of the TP Act. A transfer of a right to enjoy a property in consideration of a price paid or promised to be rendered periodically or on specified occasions is the basic fabric for a valid lease. The provision says that such a transfer can be made expressly or by implication. Once there is such a transfer of right to enjoy the property a lease stands created. What is mentioned in the three paragraphs of the first part of Section 107 of the TP Act are only the different modes of how leases are created. The first para has been extracted above and it deals with the mode of creating the particular kinds of leases mentioned therein. The third para can be read along with the above as it contains a condition to be complied with if the parties choose to create a lease as per a registered instrument mentioned therein.All other leases, if created, necessarily fall within the ambit of the second para. Thus, dehors the instrument parties can create a lease as envisaged in the second para of Section 107.[46] The Supreme Court opined that in this case, factum of creation of tenancy has been established. But the purpose of tenancy, so as to attract the six months' notice period under Section 106 of the 1882 Act could not be established by such evidence as in such a situation, registration of the deed would have been mandatory. The onus would be on the defendant to establish the fact that manufacturing activity was being carried on from the demised premises.

The apex court ruled that mere statement by the DW-1 to which we have referred earlier or the purpose of lease as specified in the lease agreement would not be sufficient to demonstrate the purpose of lease to be for manufacturing. This could be proved by explaining what kind of work was being carried on in the factory shed. In such a situation also, the registration of the deed would have been necessary. In absence of such registration, tenancy would have been of "month to month" character. For these reasons, the Supreme Court was not inclined to hold that the High Court erred in law in dismissing the defendant's appeal. Therefore, the present appeal should stand dismissed on the same rationale.

Sub lease

In *Yuvraj @ Munna Prahlad Jagdale* v. *Janardan Subajirao Wide (Dead)*[47] the leased premises, consisting of two blocks with an approximate area of 455 sq. ft., are situated on the ground floor on the eastern side of the cement concrete building, in Pune. These premises were let out to the tenant by the original landlord and landlady, the predecessors-in-title of the appellants. The purpose was to run

45 *Anthony* v. *K.C. Ittoop* (2000) 6 SCC 394, *Shantabai* v. *State of Bombay* AIR 1958 SC 532, Satish Chand Makhan v. Govardhan Das Byas (1984) 1 SCC 369 and *Bajaj Auto Ltd*. v. *Behari Lal Kohli*, AIR 1989 SC 1806

46 The second para of s. 107 which reads thus: "All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession."

47 Decided March, 2023, *available at*: https://indiankanoon.org/doc/52639698 (last visited on Jan. 20, 2024).

hotel business under the name and style of Hotel Ambika. Civil Suit was filed by the landlord and landlady for eviction of the tenant on two grounds. Their claim was that the tenant carried out unauthorized construction of a toilet in the leased premises, thereby violating the mandate of Section 13(1)(b) of the Act of 1947 ii) the tenant parted with the running of the hotel and possession of the leased premises in favour of one Krishna B Shetty, thereby committing breach of Section 13(1)(e) of the Act of 1947. The trial court held against the plaintiffs in so far as the ground under Section 13(1)(b) of the Act of 1947 was concerned, as the Advocate Commissioner's second report (Exh.23) showed no trace of a toilet having been constructed in the leased premises. However, as regards the ground raised under Section 13(1)(e) of the Act of 1947, the finding was otherwise. The trial court observed that the original lease deed dated January 22, 1975 (Exh.55) stated clearly in page 4 that the tenant would not assign the business and would not allow third persons to conduct the said business in any way nor would he transfer the said business in any way in favour of a third person. The trial court then adverted to Section 15(1) of the Act of 1947, and decreed the suit. The appellate Court dismissed the Appeal filed by the tenant. The High Court of Bombay, however, reversed the findings of both the courts below. Hence, the appeal.

The issue for consideration is whether the tenant committed breach of the lease condition with regard to assignment of his business in the leased premises, warranting his eviction under Section 13(1)(e) of the Act of 1947. The Supreme Court observed that the provisions Section 13(1)(e) & Section 15(1) make it crystal clear that, in the ordinary course and notwithstanding anything contained in any other law, unless the contract itself permits sub- letting, it shall not be lawful, after coming into operation of the Act of 1947, for a tenant to sub-let the premises let out to him or to assign or transfer in any manner his interest therein. The proviso to Section 15(1), however, authorizes the State Government to permit, in any area, transfer of interest in premises held under leases or a class of leases, by issuing a notification in the Official Gazette, duly delineating the extent to which such transfer is permitted. Presently, it is nobody's case that a notification was issued by the state government having application to the case on hand. Viewed thus, reliance placed by the high court upon this provision was wholly misconceived. In the absence of such a notification by the state government, the issue is whether the tenant could have assigned his leasehold interest in favour of Krishna B Shetty under the assignment agreement dated January 15, 1985 (Exh.49), overriding the condition in the lease deed to the contrary.

The lease deed is stated to have recorded unequivocally in page 4 that the business of Hotel Ambika is the independent business of the tenant and that he would not assign the business and would not allow third persons to conduct the said business in any way nor would he transfer the said business in any way in favour of a third person. Therefore, there is a clear interdiction against transfer or assignment by the tenant of the business being run in the leasehold premises in favour of a third person.

The apex court observed that given the clear proscription in the lease deed, duly endorsed by the explicit language of Sections 13(1)(e) and 15(1) of the Act of 1947, the very execution of the assignment agreement dated 15.01.1985 (Exh.49), whereby the tenant admittedly assigned his business in the leasehold premises in favour of Krishna B Shetty for 2,00,000/¬ and accepted a sum of 50,000/¬ as earnest money, was sufficient in itself to establish transgression of the lease condition and the statutory mandate. The Court lamented that no doubt, the earlier decisions of this Court, referred to hereinabove, laid down the principle that the mere execution of a genuine partnership deed by a tenant, whereby he/she converted a sole proprietary concern into a partnership business, while continuing to actively participate in the business and retaining control over the tenanted premises wherein the business is being run, would not amount to sub-letting. However, that principle has no role to play in the case on hand as the tenant did not stop short at executing the partnership agreement dated January 1, 1985 (Exh.48) but went on to execute the assignment agreement dated January 15, 1985 (Exh.49), whereby he assigned his hotel business in the leased premises to Krishna B Shetty and received earnest money also.

The very act of execution of this document was sufficient in itself to complete the breach of the lease condition and the statutory mandate and did not require anything further. All the more so, as the landlord and landlady were admittedly not parties thereto and the judgment rendered in the said suit was not even placed on record as per due procedure and at the relevant time. Irrespective of the result in the said suit, the ineluctable fact remains that the tenant admitted execution of the assignment agreement (Exh.49) and that singular fact settled the issue as to whether there was an act of assignment on his part.

Therefore, the apex court found on facts that the tenant admitted committing a breach of the lease condition with regard to assignment of his leasehold interest in favour of a third party, when he signed the assignment agreement dated 15.01.1985 (Exh.49) for a consideration of 2,00,000/- and received 50,000/- as earnest money. The breach being complete on his part upon such execution itself, the failure of the assignee, Krishna B Shetty, in his suit for specific performance against the tenant is of no import.

Gift deed

Usha Kumari v. *Santha Kumari*.[48] This a case relating to due execution of gift deeds and suit for partition. Here the second attestor toGift deeds wasexamined as DW3.In his chief examination, he spoke about due execution and attestation of Gift deeds. Moreover, signature on Gift deeds not denied. Execution and attestation were proved by evidence of PW3 wife. Thus, gift deeds were upheldand properties covered under it were excluded from partition. Court observed that "It is to be borne in mind that the documents under consideration are not Will Deeds where any and all suspicious circumstances are required to be dispelled by the propounder. The documents inquestion are Gift Deeds. All that law requires is

48 AIR 2023 Ker. 161

proof of the same in terms of Section 68 of the Evidence Act.Its due execution and attestation have been proved by the evidence of PW3.There has been misreading of the evidence by the trial court. On a totality of the materials, there is no reason to hold against Exts. Bl to B3 gift deeds.The finding against the said documents, entered into by the trial court is liable to be set aside and Ido so. Exts. Bl to B3 Gift Deeds are upheld." (Ibid para 2)

Subash Fotu Bhandari Thu. L. Rs. v. *Vassant Data Quenim Robolo Thru. L. Rs.*[49] Here the validity of Giftdeed was questioned as gifts deed in favour of father of plaintiffs was not duly executed. It was neither signed by donors nor did it bear their thumb impressions. It was signed by person who was not their power of attorney holder. No evidence on record to establish that donors-uncle and aunt were unable to sign or didnot know to sign. No provisions in the Notarial Code or Portuguese Civil Code were produced to establish that gift deed could be executed without signatures of donors or by personnot their power of attorney holder. Held, gift deed, is invalid.

Article 77(1) provides that merely because the parties may not be able to or do not know to write, so1ne other person cannot be permitted to sign on their behalf.In such a case, the thumb impression shall substitute the signature, provided that its affixation is1nade in the presence of the Notary and the latter declares in thedocuments that itcompares with the one recorded in the book of speci1nen signatures. Thus, the procedure for affixation of thumb impression was not something alien to the Notarial Code upon which Mr Costa relies. Admittedly the Gift Deed dated 23.02.1922 does not bear either the signatures of Raiu and Radha or even their thumb 1mpressions.[50] The defendants have relied upon two promissory notes executed by Raiu on20.02.1922. These documents are duly proved and marked as Exhibit DW1/A and DW1/B. Both these documents show the signature of Raiuin a fir1n hand. Moreover, these documents, executed hardly 2 to 3 days before the suspected draw of the Gift Deed dated 23.02.1922, negate the state1nent in the Deed about Raiubeing unable to sign due to his sickness and Radha not knowing to sign. Therefore, Costa's contention about Raiu's state of health on the particular day, *i.e.,* February 23, 1922, cannot be readily accepted without any evidence to back the same.[51]

Noted earlier, the evidence on record does not establish that Raiu and Radhaalias Caxibai were unableto sign or didnot know to sign. Admittedly, Crisna Neurencar, alleged to have signed on their behalf, was not their power of Attorney. Moreover, there is no explanation why Raiu's and Radha's thumb impression was not affixed, even though the Notarial Code contemplates such affixation in certain circuinstances. Therefore, in the absence of signatures of Raiu and Radha *alias* Caxibai on a crucial document that purports to gift away their entire properties (disposable quota), the two courts were justified in the view that they have

49 AIR 2023 Bom. 46

50 *Id*., para 37.

51 *Id* para 39.

adopted. Such aview is neither contrary to the evidence on record nor the laws then applicable.[52]

VI CONCLUSION

In the year under survey, there are many Supreme Court and high court judgments that have been considered for the survey. 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 summarized 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.

52 *Id*., para 56.