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PROPERTY LAW

*Annam Subrahmanyam*¹

I INTRODUCTION

THE TRANSFER of Property Act deals with the transfer of immovable property in general. The Act is not a complete code of transfer of property. The Act does not apply to all the transfers taking place in India. Its scope is limited. The Act applies to transfers made by the parties' actions and not by application of law. Thus, its operations are limited to transfers by act of parties only, except in a few cases saved by section 2 of the Act. The Transfer of Property Act, 1882, is better understood not in isolation but when read with certain provisions of other enactments like the Indian Contract Act, the Partition Act, the General Clauses Act, the Tenancy Act, Registration Act and the Securitisation and Reconstruction of Financial Assets Enforcement of Security Interest Act, 2002 and other important local tenancy laws.

This year, under survey, various issues of considerable significance in Property Law have come before the Courts in India. The Courts have examined the provisions of the Transfer of Property Act regarding property rights issues and other relevant laws to interpret and clarify the legal position. The Supreme Court and various High Courts in India have decided several cases on important issues in 2024. The cases have been researched and summarised in the present survey on the Property Law.

II GENERAL PRINCIPLES

Actionable claim

*EFCALON The UP Pvt. Ltd. v. West Bengal Financial Corporation*² is a case where the meaning of an actionable claim is referred to. Here, it is related to intangible personal property that does not exist physically and cannot be physically possessed. It is opposed to "*chose in possession*", which concerns tangible

1 Formerly Principal, B.R. Ambedkar College of Law, Andhra University, Visakhapatnam, Andhra Pradesh, Senior Fellow, ICSSR, New Delhi and Professor of Law and Professor Political Science, Lal Bahadur Sastry National Academy of Administration, Mussoorie. Presently Dean, Research, Maharashtra National Law University, Chatrapati Sambhaji Nagar (Aurangabad). The author acknowledges, the apt and able assistance rendered by Mohan R. Bolla, Principal, Kristu Jayanti College of Law, Bangalore and M. Sarojamma, MNLUACS, in the preparation of the present survey research report.

2 AIR Online 2023 CAL 1808.

personal property, *i.e.*, goods. Types of movable properties which fit the definition of actionable claim are, *inter alia*, benefits under a contract, debts, damages in tort, intellectual property rights, shares and equitable rights in a trust fund.

Here, the decision was relied upon by the appellant *Gyarsi Bai v. Dhansukh Lal*,³ wherein it was held that this has no application in the facts and circumstances of the case since even, if the certificate issued by the corporation is to be taken as a preliminary decree which was worked out by sale of the mortgaged properties, this subsequent development, assuming that it subsequently resulted in conversion of the mortgage interest into an actionable claim did not change the incidence of duty on the date of execution of the instrument. Duty was payable on the basis of the transaction pleaded in the Memorandum of Understanding on the date of its execution. The Memorandum of Understanding provided for the transfer of an interest in immovable property together with actionable claims.⁴

Notice

The last paragraph of section 3 says that under what circumstances a person is said to have “Notice” of a fact, or when a person is going to know facts.

A person is said to have notice of a fact:

- (a) When he actually knows that fact or
- (b) When, but for

1. Wilful abstention from an enquiry or search, which he ought to have made; or
2. Gross negligence; he would have known it.

Explanation-I: How far does registration amount to notice

Explanation-II: When possession amounts to notice

Explanation-III: When notice to the agent amounts to notice to the Principal.

The Supreme Court in *Manjit Singh v. Darshana Devi* was dealing with the definition of notice under Section 3 of the Transfer of Property Act (TP Act). In this case, the original defendant no.1, *i.e.*, the owner of the suit property, after agreeing with the plaintiff, transferred the suit property in favour of the defendants Nos. 2 and 3 respectively, *i.e.*, the appellants before the court, by way of a sale deed dated 29-8-1986. The respondent no.1 original plaintiff had to institute the Civil Suit No.27/1987, praying for specific performance.

The court held that ‘Notice’ is defined in Section 3 of the TP, Act. It may be actual, where the party has actual knowledge of the fact, or constructive. “A person is said not have notice” of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.

The apex court has followed its precedent *viz.*, *R.K. Mohammed Ubaidullah v. Hajee C. Abdul Wahab*,⁵ wherein it was held that section 3 was amended by the

3 AIR 1965 SC 1055.

4 *Supra* note 2, para 55.

5 *R.K. Mohammed Ubaidullah v. Hajee C. Abdul Wahab* 2000 (6) SCC 402.

Amendment Act of 1929 in relation to the definition of “notice”. The court opined that the definition has been amended and supplemented by three explanations, which settle the law in several matters of great importance. Explanation II states that actual possession is notice of the title of the person in possession. The Supreme Court analysed the law, stating that a person may enter the property in one capacity and have a kind of interest. But subsequently, while continuing in possession of the property, his capacity or interest may change. A person entering the property as a tenant later may become usufructuary mortgagee, or may be an agreement holder to purchase the same property or may be some other interest created in his favour subsequently. Hence, with reference to the subsequent purchaser, he must inquire as to the title or interest of the person in actual possession as on the date when the sale transaction was made in his favour. It was categorically maintained that the actual possession of a person itself is deemed to be constructive notice of the title, if any, of a person who is, for the time being, in actual possession thereof. Thus, a subsequent purchaser has to inquire as to further interest, nature of possession and title under which the person was continuing in possession on the date of purchase of the property. The Supreme Court confirmed the ruling of the high court that the subsequent purchasers, *i.e.*, the appellants, in this case, could not be said to be bona fide purchasers in accordance with Section 19 (b) of the Specific Relief Act, 1963.

Constructive notice

Maharaja Singh v. Karan Singh (Dead) Thr. Lrs is a case where an appeal arose from a dispute concerning a sale agreement involving agricultural land and subsequent transactions that allegedly violated the rights of the original plaintiffs under the agreement. The plaintiffs sought specific performance of the agreement, while the defendants contended the agreement was a sham and that they were bona fide purchasers without notice. The case also examined the procedural requirements under the Zamindari Abolition Act and the interplay of statutory provisions governing property transactions.

The suit property, measuring 2.90 acres, was subject to an agreement for sale dated December 7, 1981, executed by the first defendant in favour of the plaintiffs. While the agreement stipulated the execution of a sale deed within three years, portions of the land were sold to the second to fourth defendants through registered sale deeds in 1983. The plaintiffs filed a suit for specific performance, alleging collusion and asserting their rights under the agreement. The defendants contended that the agreement was fabricated, and the subsequent purchasers claimed bona fide status.

Legal issues raised here are;

- i. Whether the agreement was sham or fictitious.
- ii. Whether the applicability of Sections 91 and 92 of the Evidence Act prevents oral evidence regarding the nature of the agreement.
- iii. Whether the subsequent purchasers were bona fide purchasers without notice.

- iv. Whether a prayer for cancellation of subsequent sale deeds is mandatory for granting specific performance.
- v. Effect of the Zamindari Abolition Act on the enforceability of the agreement.
- vi. Whether the plaintiffs demonstrated readiness and willingness to perform the contract.

The arguments of the defendants are;

- i) The appellants argued that the agreement was a sham, intended to deter the defendant from selling the property rather than creating enforceable rights. They emphasized the oral evidence of the deceased defendant's relatives, alleging his addictive behaviour and collusion.
- ii) They invoked Sections 91 and 92 of the Evidence Act, asserting that oral evidence could contradict the written terms to prove the sham nature of the agreement.
- iii) The appellants relied on *B. Vijaya Bharathi v. P. Savitri*⁶ to argue that the absence of a prayer for cancellation of subsequent sale deeds disentitled the plaintiffs from relief.
- iv) They contended that the agreement was forged and no consideration was exchanged, and
- v) They argued that the plaintiffs failed to prove their readiness and willingness as mandated under Section 16(c) of the Specific Relief Act.

The arguments of respondents are;

- i) The respondents submitted that the agreement was genuine, supported by its registration, and the defendants failed to demonstrate that it was a sham.
- ii) They argued that the constructive notice doctrine applied to the subsequent purchasers under Section 3 of the Transfer of Property Act, as the agreement was registered.
- iii) The plaintiffs maintained that Section 19(b) of the Specific Relief Act entitled them to enforce specific performance against subsequent purchasers without bona fide status.
- iv) They distinguished *B. Vijaya Bharathi* on the ground that it overlooked larger bench precedents.
- v) The respondents demonstrated their readiness and willingness to perform, supported by timely notices and actions.

Here, the prayer was a) for cancellation of subsequent sale deeds, which is not mandatory under Section 19(b) of the Specific Relief Act, b) Constructive notice due to registration binds subsequent purchasers, barring bona fide status. c) Oral evidence under Sections 91 and 92 of the Evidence Act cannot contradict written agreements unless the issue pertains to fraud or collusion.

6 AIR 2017 SC3934.

The judgment underscores the balance between procedural safeguards for property transactions and equitable relief under the Specific Relief Act. It clarifies the limited scope of oral evidence in contract disputes and reiterates the obligations of subsequent purchasers under constructive notice principles.

*Mukund Bhavan Trust v. Shrimant Chhatrapati Udayan Raje*⁷ is another case related to constructive notice where the Supreme Court, speaking through Justice Mahadevan, has *inter alia* dealt with notice under the TP, Act. The respondent no.1 plaintiff filed a Special Civil Suit No.133 of 2009 against the appellants and the State of Maharashtra. The trial Court rejected the application. The appellants preferred a civil revision application before the high court. The high court had set aside the order and remanded the matter to the trial court for considering the application filed under Order VII Rule 11(d) of CPC afresh. After the remand, the trial court rejected the application filed by the appellants under Order VII Rule 11(d) of CPC. The appellants preferred civil revision application no. 904 of 2014, which was dismissed by the high court, and impugned in this appeal.

Here, the apex court referred to *Prem Singh v. Birbal*,⁸ *R.K. Mohd. Ubaidullah v. Hajee C. Abdul Wahab*⁹. It was reiterated that Notice is defined in section 3 of the Transfer of Property Act. It may be actual, where the party has actual knowledge of the fact or constructive. The court noted section 3 as amended in 1929 in relation to the definition of “notice”. The definition has been amended and supplemented by three explanations, which settle the law in several matters of great importance. Referring to the relevant Explanation-II, the court stated that actual possession is notice of the title of the person in possession. A person may enter the property in one capacity and have a kind of interest. But subsequently, while continuing in possession of the property his capacity or interest may change. A person entering the property as tenant later may become usufructuary mortgagee or may be agreement holder to purchase the same property or may be some other interest is created in his favour subsequently. Hence with reference to subsequent purchaser it is essential that he should make an inquiry as to the title or interest of the person in actual possession as on the date when the sale transaction was made in his favour. The actual possession of a person itself is deemed or constructive notice of the title if any, of a person who is for the time being in actual possession thereof. A subsequent purchaser has to make inquiry as to further interest, nature of possession and title under which the person was continuing in possession on the date of purchase of the property.

Condition restraining enjoyment

A condition in a transfer, which restricts the enjoyment of an absolute interest, is void. Such a condition would be repugnant to the interest created and the transfer is deemed to have been made as if there were no condition at all.

7 *Mukund Bhavan Trust v. Shrimant Chhatrapati Udayan Raje* decided on Dec. 20, 2024 available at: <https://indiankanoon.org/doc/159675077/>.

8 (2006) 5 SCC 353.

9 *R.K. Mohd. Ubaidullah v. Hajee C. Abdul Wahab* (2000) 6 SCC 402.

*State of Andhra Pradesh v. Madanapalle Ex-Servicemen Association, Annammayya District*¹⁰ case related to resumption of leasehold land and allocation of land to Ex-servicemen Association for constructing Sainik Bhavan, intended for welfare of ex-service personnel. However, association built five shops and leased them out leading to resumption of land. Association challenged action of resumption of land on ground that no conditions were attached to land grant or, if any, they were invalid under Section 11 of the TP Act. While section 11 allows the transferee to enjoy property without restrictions, sections 31 and 32 allow for resumption of land if conditions are violated. Grant of land was subject to conditions outlined in the Board Standing Order, which mandated the land's use for a specified purpose only. The association was aware of conditions under Board Standing Order and was bound by them. The order of resumption of land was upheld due to the association's failure to comply with the conditions of the grant.

Here, the respondent, which is an ex-servicemen association, was allotted Ac.0.03 cents of land in Sy.No.298/2 and Ac.0.03 cents of land in Sy.No.298/3, by way of proceedings dated 26.03.1982 bearing R.Dis.No.16583/80, issued by the District Collector, Chittoor. The said lands were granted for the construction of a Sainik Bhavan, for the welfare of the ex-servicemen of the area. The said proceedings also stated that the land is being alienated to the respondent "subject to the usual conditions appended in the annexure". The respondent, after obtaining the said land, is said to have constructed five shops and had leased out the said shops on a twenty-year lease.

The Manda! Revenue Officer, Madanapalle, issued proceedings bearing ROC. No.A/1115/93, dated 15.09.1993 resuming the said land. Aggrieved by the said resumption, the respondent had approached the erstwhile High Court of Andhra Pradesh, by way of W.P.No.24779 of 1995 which was disposed on 24.03.2005, leaving it open to the respondent-association to avail all the remedies available under law. Subsequently the respondent- association filed an appeal before the Sub-Collector, Madanapalle against the order of the Manda! Revenue Officer. This appeal was dismissed on 11.05.2006 in proceedings D.Dis. (B1)/2503/2005. Aggrieved by the said order of dismissal, the respondent-association had approached the Joint Collector and Additional District Magistrate, Chittoor, by way of a revision. This revision also got dismissed by an order dated February 5, 2011 in proceedings bearing D. Dis. (E2)7608/2006. Aggrieved by the said order of dismissal, the respondent-association had approached this court, by way of W.P.No.18203 of 2014, which was allowed, by a single judge of this court, on September 2, 2022. Aggrieved by the said judgment, the respondents in the writ petition, has now filed the present appeal.

It is the case of the appellants that the appellants are entitled to resume the land upon violation of the conditions of the grant and the resumption of the land on account of the violation of the condition of construction of a Sainik Bhavan

10 AIR OnLine 2024 AP 32.

cannot be faulted. It is the case of the respondent-association that the initial grant was made on payment of market rate of the land and no conditions were attached to the grant, as the statement in the grant that the grant would be subject to usual conditions contained in the annexure to the proceedings, has no meaning, as no such annexure was attached to the proceedings of the grant of land. It is further contended by the respondent-association that even if any such conditions are to be admitted, the same would fall foul under Section 11 of the Transfer of Property Act which stipulates that any restriction on the right of enjoyment of an absolute transfer of land would have to fail.

The court observed that a perusal of the facts and material placed before this court would show that there has been a grant of land in favour of the respondent-association wherein the grant is said to have been made for the purpose of constructing the Sainik Bhavan subject to the usual conditions which are attached in the annexure to the said proceedings. However, no annexure has been placed before this court to consider the said conditions. In the circumstances, this court would have to hold that no conditions have been stipulated as such in the proceedings granting the land. In the absence of any such conditions, the general guidelines or law relating to such grant of land would have to be looked into. The grant of government land, to private or public institutions or persons is regulated by Board Standing Order 24.

The court held that the respondent was aware that the land was being granted to him, under Board Standing Order no.24. It must be held that the respondent was aware of the condition under the Board Standing Order and was bound by it. The violation of the said condition would revert the land to the government. Accordingly, the judgment of the single judge is set aside and the writ appeal is allowed.

Lis pendense

Wharton's Law Dictionary has been defined '*lis pendens*' as pending suit. 'Lis' means a suit, action, controversy, or dispute, and dispute is a conflict or contest, while controversy is a disputed question, a suit at law; and the *pendens* of the *lis* is not disturbed or in any manner affected by the fact of an appeal taken from one Court to another. The litigation or contest still goes on. Section 52 of the Transfer of Property Act deals with the doctrine of *lis pendens*. It states that during pendency, in any Indian Court of competent jurisdiction of any suit or proceeding, which is not collusive and in which any right to property is directly or specifically in question, the property cannot be transferred or dealt with by any party to the suit or proceedings so as to affect the rights of any other party there to under any decree or order which may be made therein except under the authority of court or such terms as it may impose.

Yogesh Govayanka v. Govind the case pertains to the transferee in *pendent lite* and his right to be impleaded in it. Rejection of the application for implementation. Held that the mere fact that the registered sale deed was executed during the pendency of the suit would not automatically render it null and void. Though

appellant was aware of pending litigation, there exists no bar to the implementation of transferees *pendent lite* with notice. Permitting the implementation of a transferee *pendent lite* is, in each case, a discretionary exercise undertaken to enable a purchaser with a legally enforceable right to protect his interests, especially when the transferor fails to defend the suit or where there is a possibility of collusion. In the facts of the case, there appeared to be a possibility of collusion between the plaintiffs and defendants. Appellant who had a registered sale deed in his favour, had seemingly acquired an interest in the land. Appellant was entitled to be added as a defendant.

The fulcrum of the dispute herein concerns the implementation of a transferee *pendent lite* who undisputedly had notice of the pending litigation. At the outset, it appears pertinent to reiterate the settled position that the doctrine of *lis pendens* as provided under section 52 of the Act does not render all transfers *pendent lite* to be *void ab-initio*, it merely renders rights arising from such transfers as subservient to the rights of the parties to the pending litigation and subject to any direction that the court may pass there under.

Tulasidas Raghujibhai Vithalani v. Priyandanben HarishankarRajyaguru is a case relating to execution proceedings. There was an objection to a suit for the cancellation of the sale of land. Compromise reached between the parties, where a piece of land was decided to be given to the plaintiffs. However, defendants sold land to subsequent buyers contrary to the compromise agreement. DHs filed an execution petition praying defendants hand over possession of the land as per the compromise. Subsequent buyers raised objections to execution on ground that they had rightful ownership for many years. Further, subsequent buyers lacked knowledge about the compromise decree during purchase. The compromise deed was not registered by DHs under section 52 of the T.P. Act. DHs failed to register notice of *lis pendens*; therefore, principles of *lis pendens* shall not apply to subsequent purchasers. Subsequent buyers are permitted to file their objections before the executing court with respect to disputed lands, and after hearing the parties executing court shall decide the matter in accordance with law.

In view of the aforesaid submission made hereinabove, learned counsel S.P. Majmudar submitted that, the attempt on the part of the applicants is nothing but to defeat the right of the decree holder to get their fruits of the decree and therefore, no grounds made out for entertaining this review and/or recall application and therefore, he prays that the application may not be entertained and same deserves to be dismissed with cost.

Having heard counsel for the respective parties and considering the peculiar facts and circumstances of the present case, it appears that, since the year 2000, the applicants become a lawful owner of the land admeasuring 180 square yards by executing a sale deed, they derived a status of ownership of the land. The applicants, after approval of the corporation, constructed premises, and since then, the premises have been in their possession and occupation. Before the

executing court, the decree holder did not disclose the name of the applicants to show who had the land to enable the court to issue a possession warrant. Before the execution of the sale deed, a search was made, and title was also obtained from the advocate concerned and by public notice, objections were invited. It is not in dispute that the compromise decree was not registered with the sub-registrar office as provided under section 52 of the Transfer of Properties Act (Gujarat Amendment). In these circumstances, it was difficult for the applicants to get information about the pendency of the consent decree and/or litigation. The sale transactions of different plots executed during the period, *i.e.*, between 2000 and 2007, by Vallabhdas Bhalodiya.

Here, the execution petition was filed in the year 2004. In 2009, this court, in a petition being special civil application no.12645 of 2009, modified the order of the executing court. Pursuant to this order, the Executing Court proceeded with the matter. The decree holder in their application Exh. 61 did not disclose the name of the applicants to show that they are in possession, but asked the Court to issue a possession warrant in the name of Vallabhdas Bhalodiya as if he had the suit land. In the petition being Special Civil Application No.16208 of 2013, the other plot holders were impleaded as party respondents, whereas the applicants, though their names were disclosed in the objections filed by Bhalodiya, were not joined as party respondents. If they could have joined, then the courts would not have directed the applicants to part with the possession of 180 square yards of land. In the case of other plot holders, this court directed them to join as a party opponent in the execution petition and asked the executing court to give them a right of hearing.

Another case, *Devtree Corp. LLP Chandrdigarh v. Bhumikka North Garsdenia* has been decided by the High Court of Kerala on Section 52 of the TP Act. It relates to interim measures restraining the appellant company from alienating the suit properties. There was a challenge against proceeding under section 9 of the Act of 1996 (not being collusive) involving a direct or substantial question relating to an immovable property that satisfies all the requirements of section 52 of the T.P. Act. The doctrine of *lis pendens* applies to section 9 proceedings. The company had purchased the company having stepped into the shoes of its vendors, and was bound by the interim measure passed against its vendors. The company was bound by the result of section 9 proceedings. Interim measure shall remain in force for 45 days from the date of service of notice on the parties to the proceedings by the arbitral tribunal.

The agreement dated October 16, 2020 contains a binding arbitration clause. The appellant/purchaser, being the assignee, steps into the shoes of the vendors of the agreement dated October 16, 2020, and takes the properties from the vendors with all rights and obligations attached to them. The transferee is not bound by the obligations only if the person in whose favour the obligations exist agrees to waive such obligations. No such waiver is claimed or asserted by the appellant.

During the course of the hearing, an important question was posed by the esteemed sister as to what would be the consequence in case the proceedings to enforce the obligations under the agreement dated October 16, 2020 against the vendors, ends in an award in favour of the respondent. The senior counsel for the appellant submitted that such an award does not bind the appellant. Said contention is not tenable. Since the sale transaction in favour of the appellant during the pendency of Section 9 proceeding is subject to the outcome of section 9 proceeding, and said proceeding being a step-in-aid to the proceeding to be initiated before the arbitral tribunal, the appellant who is a *pendent lite* purchaser during section 9 proceeding cannot be permitted to say the award does not bind him. Accepting such contention in effect amounts to unilateral termination of the ‘arbitration agreement’ and consequently renders the award of the tribunal as unenforceable. It will also defeat the very object behind Section 8 of the Act of 1996.

The court observed that the parties are entitled to move for appropriate interim measure before the arbitral tribunal. The finding and observations made in this order are only confined to the interim application and same is not binding on the tribunal. All contentions on merit, including whether arbitration clause is binding on the appellant are kept open to be decided by the tribunal.

***Lis Pendens* and specific performance**

In *Siddamsetty Infra Projects Pvt. Ltd v. Katta Sujatha Reddy*,¹¹ CJI Chandrachud was dealing with the agreement of sale of an immovable property. The matter relates to the doctrine of *lis pendens*, specific performance and Section 10 of the Specific Relief Act 1963, before the amendment in 2018 stated that the court can exercise its discretion to award specific performance of contract where (i) there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done; or (ii) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief. The Explanation provided that, unless there is anything to the contrary, the court shall presume that the compensation in money is not an adequate relief for the breach of a contract to transfer immovable property. There is nothing in the agreements to sell to rebut this statutory presumption.

The court observed that on an application of the facts to the principles in Sections 10 and 16 of the Specific Relief Act, we are of the considered opinion that this is a fit case for this Court to exercise its discretion to direct specific performance. The court also observed that the purpose of *lis pendens* is to ensure that the process of the court is not subverted and rendered infructuous. In the absence of the doctrine of *lis pendens*, a defendant could defeat the purpose of the suit by alienating the suit property. This purpose of the provision is clearly elucidated in the explanation clause to section 52 which defines “pendency”. Amending Act 20

11 Decided on Nov. 8, 2024 available at: <https://indiankanoon.org/doc/35702503/> and https://api.sci.gov.in/supremecourt/2022/30567/30567_2022_1_1504_56986_Judgement_08-Nov-2024.pdf.

of 1929 substituted the word “pendency” in place of “active prosecution”. The Amending Act also included the Explanation defining the expression “pendency of suit or proceeding”. “Pendency” is defined to commence from the “date of institution” until the “disposal”. The argument of the respondents that the doctrine of *lis pendens* does not apply because the petition for review was lying in the registry in a defective state cannot be accepted. The review proceedings were “instituted” within the period of limitation of thirty days. The doctrine of *lis pendens* kicks in at the stage of “institution” and not at the stage when notice is issued by the Supreme Court. Thus, Section 52 of the Transfer of Property Act would apply to the third-party purchaser once the sale was executed after the review petition was instituted before this court. Any transfer that is made during the pendency is subject to the final result of the litigation.

Part-performance

Section 53A of the TP Act deals with part-performance. It is an exception to the rule that every transfer of property should be registered if required by law. It provides the rule of part-performance, and it depends mainly on the English equity doctrine of part-performance. This was added to the Act in 1929.

In English, the Statute of Frauds required all contracts relating to immovable property to be in writing and under section 4, no action or suit shall be maintained on an agreement relating to land which is not in writing and signed by the parties to be charged with. Its stringent provision could be utilised to make the statute an instrument of fraud.

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

*Bhajarang Shahu v. Denesh Jaiswal*¹² is a case relating to recovery of earnest money entitlement. Oral agreement for sale of property was entered between seller and purchaser where earnest money and possession was given but sale deed was to be executed after resolution of dispute between seller and his family members. Here sale deed was not executed by seller, instead he issued a notice against purchaser/tenant to vacate property. Agreement must be in writing to invoke protection section 53A of T P Act. Purchaser did not establish that vital and fundamental terms for sale of immovable property were concluded between parties. There was no evidence to show the source of amount paid and how it was channelized to the seller. Hence it is the duty of court to dismiss suit barred by limitation even, if not pleaded as defence section 3 of Limitation Act as article 19 prescribes 3-year limitation for money lent. Trial court’s order for refund of earnest money with interest was set aside as suit was barred by limitation and lacked evidence of valid agreement.

12 AIR 2024 Chhtr. 150.

The case of the plaintiff, in short, is that the plaintiff/respondent no.1 filed a suit on the ground that he was a tenant of 04 shops of appellant/defendant and has been a tenant of the suit shops in past, therefore, on 24.06.2009, defendant no.1 entered into a deal for sell of the suit shops with the plaintiff. It was agreed to purchase two shops and earnest money of Rs.10,39,000/- was paid and the total sale consideration was of Rs.15,00,000/-. The plaintiff pleaded that in lieu of such agreement, the session of the suit shops was handed over to him. Since there was a dispute going on between the family members of the seller, it was agreed by the defendant that only after the resolution of the property dispute, the sale deed would be executed in favour of the plaintiff. However, the defendant did not execute the sale deed; instead, a notice was served on April 10, 2015 to the plaintiff by the defendant to vacate the possession of four shops with the averments that the plaintiff is a tenant of the suit shops, and possession of the two shops has been parted with a third party, and sub-tenancy is created without the consent of landlord. In respect of the other two shops, the plaintiff averred that an agreement to sell had already been entered into, and an earnest money had been received, but instead of execution of the sale deed, the notice of termination of tenancy and vacating the shops was served, which eventually led to the filing of civil suit by the respondent/plaintiff.

“But there are certain conditions which are required to be fulfilled, if a transferee wants to defend or protect his possession under section 53A of the Act. The necessary conditions are:

- i) There must be a contract to transfer for consideration any immovable property;
- ii) The contract must be in writing, signed by the transferor, or by someone on his behalf;
- iii) The writing must be in such words from which the terms necessary to construe the transfer can be ascertained;
- iv) The transferee must in part performance of the contract take possession of the property, or of any part thereof,
- v) The transferee must have done some act in furtherance of the contract; and
- vi) The transferee must have performed or be willing to perform his part of the contract.”

Court observed that if the very inception of defence of the tenant was that his possession was protected under Section 53 A of the Act, 1982, the writing in contract was *sine qua non*. The doctrine of Section 53 A of the Act, 1982 arises in India with reference to the admissibility of the document for want of registration and risk of prejudice when the oral contract is set up as defence.

*Pramod Bhauraoji Mahajan v. Rajendra Kisnaji Mahajan*¹³ is a case related to a suit for possession. Plaintiff was owner of suit property. Contract to sale of

13 AIR OnLine 2024 Bom. 1201.

suit property was executed between plaintiff and defendant. Part of consideration amount was paid by defendant to the plaintiff. Possession of the suit property was handed over to the defendant. The sale deed had not been executed as the defendant had not performed his part of the contract by paying the remaining consideration. Defendant had not filed suit or counterclaim for specific performance of the contract. He had not paid the remaining amount till now. Defendant had not entered into the witness box nor adduced any evidence to prove readiness and willingness to pay the remaining amount. The suit was maintainable only for claiming possession of the suit property, when the defendant's possession was not legal, as they had no right to retain it. There was no specific pleading of the defendant to claim an equitable right to retain possession of the suit property under Section 53A of the TP Act. Plaintiff was entitled to possession of the property.

In this case, the second appeal is preferred against the judgment and decree passed by the 2nd *Ad-hoc* Additional District Judge, Wardha, in Regular Civil Appeal No.127/2001 dated August 18, 2005, which was preferred against the Judgment and Decree passed by the Civil Judge, Junior Division, Hinganghat, District Wardha, in Regular Civil Suit No.5/1996, dated June 25, 2001. The parties are referred to their original status.

The plaintiff is the owner of the suit property bearing Survey No.260/2, admeasuring 1.10 HR., situated at village Pawani, Tahsil Hinganghat, District Wardha. A contract to sale on a stamp-paper at Exhibit No.27 of the suit property dated 20.03.1991 was executed between plaintiff and defendant no.1, for the consideration amount of Rs. 30,000/-. That time Rs. 20,000/- out of consideration amount was paid to the plaintiff. The defendant no.1 is son of defendant no.2. The possession of the suit property was handed over to the defendants. The remaining amount of Rs. 10,000/- was agreed to be paid on or before March 15, 1992 and, thereafter, sale-deed was to be executed. The plaintiff was ready and willing to execute the sale-deed, but defendant no.1 was not having remaining amount of consideration with him. The plaintiff requested him and insisted for the execution of sale-deed. He was not ready and willing to perform his part of contract. Therefore, sale-deed was not executed. The plaintiff sent a notice (Exhibit-28) to the defendants for execution of sale-deed. Defendant no.1 sent a reply to the said notice (Exhibit-66) and contended that he is ready to pay the remaining consideration amount. He communicated to the plaintiff to deposit the loan amount of the Co-operative Society, Pawani taken on the said land. It is averred that the defendants did nothing thereafter. Therefore, the plaintiff filed the suit for possession of the suit property.

The defendants contended that they were ready to get execute a sale-deed, but the plaintiff prolonged and avoided to execute it. At the time of marriage of plaintiff, in the year 1992, he took Rs. 3,000/- from the defendants. That time defendants asked to a plaintiff to execute the sale deed, but the plaintiff said that they are relatives of each other and the sale deed can be executed at any time; however, it was not executed deliberately. The defendants are ready to execute the

sale deed by paying the remaining amount of consideration. There is no recital as a condition of forfeiture of earnest money in the contract to sell. A loan amount of the co-operative society was not paid by the plaintiff. The plaintiff agreed to bring no due certificate from the co-operative society; he did not secure it. Thereafter, the defendant No.1 was ready to execute the sale-deed. It was not brought. It is lastly prayed to dismiss the suit.

The trial court dismissed the suit. The first appellate court allowed the appeal and set aside the judgment and decree of the trial court and decreed the suit.

The following question of law is formed by the present court;

Whether the suit filed by the plaintiff for possession of the suit property was maintainable when, admittedly, an agreement of sale was executed between the plaintiff and the defendants, and it was not the case of the plaintiff that the contract between the parties was rescinded and/or the plaintiff had not sought a declaration that the agreement of sale executed between the parties was rescinded.

The advocate for the defendants submitted that the plaintiff has not prayed for rescission of the contract and for declaration that contract to sale is not binding upon him. Therefore, bare suit for recovery of possession of the suit property is not maintainable. He submitted that defendants are entitled to retain possession of the suit property in view of Section 53A of the TP Act, 1982 as held by the trial court. He supported the judgment of the trial court.

Advocate for the defendants is relying upon the following authorities:

a) *Govind Prasad Chaturvedi v. Hari Dutt Shastri*,¹⁴ in which it is held that the fixation of the period within which the contract has to be performed does not make the stipulation that time is essence of the contract. When a contract relates to sale of immovable property it will normally be presumed that the time is not the essence of the contract. The intention to treat time as the essence of the contract can be inferred by circumstances which should be sufficiently strong to displace the normal presumption that in a contract of sale of land stipulation as to time is not the essence of the contract.

b) *Balasaheb Manikrao Deshmukh v Rama Lingoji Warthi*¹⁵, in which it is held that no distinction can be made between the case where the purchaser has filed suit for specific performance and has failed on the point of limitation and a case where the purchaser has not filed any case but the suit has become time-barred. Suit for possession filed by the vendor dismissed.

c) *Shrimant ShaInrao Suryavanshi v. Pralhad Bhairoba Suryavanshi (Dead) by LRs*¹⁶ wherein it is held that law of limitation does not apply to a plea taken in defence by defendant even though by that defence claim made by him may not be enforceable in the court being barred by limitation.

14 AIR 1977 SC 1005.

15 2001(1) Mh.L.J. 79.

16 AIR 2002 SC 960.

d) *Mahadeva v. Tanabai*,¹⁷ wherein it is held that merely because the suit for specific performance at the instance of the vendee has been barred by limitation that by itself is not enough to deny the benefit of the plea of part performance of contract to sale to protect the possession.¹⁸

Court observed that from the previous and subsequent conduct of the defendant no. I noted above, though the time was not essence of contract, it can be safely inferred that defendant no. I failed to prove one of the essential ingredient of Section 53A of the T.P. Act *i.e.*, his readiness and willingness to pay that remaining consideration amount to the plaintiff within a reasonable time.

There is no specific pleading of defendant no. I that he claims equitable right to retain possession of the suit property under Section 53A of the TP, Act. However, the learned trial Court framed issue no.4 regarding right under Section 53A of the TP, Act. The trial court erred in law and failed to consider basic principle of civil trial that one has to first plead and then prove the material of facts in issue. The defendant no. I failed to plead specifically and prove his right under Section 53A of the TP, Act. As per order 7 Rule 7 of the Code of Civil Procedure, 1908 defendant No. I has to plead the relief specifically. It is not pleaded by defendant no. I.¹⁹

The trial court erred in dismissing the suit by holding that under Section 53A of the T.P. Act, defendant's possession over the suit property is to be protected. A defendant no. I failed to plead and prove the essential ingredient of part performance of contract that he was ready and willing to perform his part of contract. The first appellate court has rightly concluded in para no.13 of the impugned judgment that defendants failed to establish their defence of readiness and willingness. No interference is warranted in it. The reasons and findings of the First Appellate Court are found legal and correct. Therefore, no interference is warranted in the impugned judgment and decree. For the reasons discussed above, the argument of the learned Advocate for the defendants is not accepted and case laws cited supra by them are also not applicable and not relied upon. Hence, substantial question of law is answered in the 'Negative'. The appeal deserves to be dismissed.²⁰

*Chitta Ranjan Meher v. Soudamini Meher*²¹ is another case related to *lis pendence*. In the instant case, the question for consideration was whether payment of stamp duty and penalty would cure the defect of non-registration as provided in section 8.17(1-A) of the Registration Act. The plaintiff had filed a suit for declaration and recovery of possession. The defendant raised a counter claim in the suit asking for direction to the plaintiffs to execute the sale deed in her favour as per the agreement after obtaining necessary permission of the competent authority was required to be obtained as per section 34 of the OCH and PFL Act.

17 AIR 2004 SC 3854.

18 *Id.*, para 8.

19 *Id.*, para 17 e.

20 *Id.*, para 18.

21 AIR OnLine 2024 Ori. 373.

The court observed that, the counter claim of the defendant was not a suit for specific performance of contract, *per se*, but a suit for part performance of contract within the meaning of section 53A of the T.P. Act.

Therefore, though an unregistered document may be admitted into evidence as per section 49 of the Registration Act as also in terms of section 8.35 of the Stamp Act, there is no provision by which it can be held that mere payment of stamp duty or penalty would validate the contract for the purpose of Section 53A of the TP Act overcoming the bar placed in Section 17(1-A) of the Registration Act. Mere admissibility of a document as evidence cannot in any manner do away with the mandatory requirement of registration as contemplated under section 17(1-A) as otherwise the very provision itself would be rendered otiose. The counter-claim could not have been entertained, much less allowed, based on the unregistered agreement for sale at the instance of the defendant. Further, once the validity of the agreements is set at nought, it goes without saying that the defendant cannot be said to have acquired any manner of right, title or interest over the suit land on such basis. The possession of the defendant over the suit land in view of the non-registration of the contract would also become unlawful. The plaintiffs would, therefore, be fully entitled to ask for recovery of possession, subject, of course, to the condition that the consideration amount received by them from the defendant is refunded.

The plaintiffs case, briefly stated, is that they, being the son and father respectively, executed two agreements for sale on July 18, 2009 of the suit property in favour of the defendant. The suit property consisted of two lots in the plaint as described in the schedule. The consideration was fixed at section 67500/- each, which was paid in full. The plaintiffs also delivered possession to the defendant. Since the suit property was subjected to consolidation and the proposed sale would create a fragment, applications seeking permission of the consolidation authority were submitted by the plaintiffs under Section 34 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (OCH and PFL Act). It was stipulated in the agreements that the deeds of conveyance would be executed after obtaining permission. However, permission could not be obtained within the stipulated period, mainly because of non-cooperation by the defendant. Under such circumstances, the plaintiffs filed the suit praying for a decree of declaration that the two agreements dated July 8, 2009 are null and void and inoperative and further, for recovery of possession.

In other words, this is a suit of the nature described in Section 53-A of the TP Act. Such being the case, the provision of Section 17(1-A) would come into play. Admittedly, the agreements were not registered and therefore, ordinarily the same could not form the basis of the counter-claim filed by the defendant in view of Section 17 (1-A) of the Act.

Here, both the courts below have taken the view that the documents being impounded, the defendant paid stamp duty and penalty as per Section 35 of the Indian Stamp Act, 1899 and therefore, the same are admissible in evidence. The

question is whether payment of stamp duty and penalty would cure the defect of non-registration as provided in Section 17(1-A) of the Registration Act. It must be kept in mind that even an unregistered agreement can be used for collateral purposes and may be received as evidence of a contract in a suit for Specific Performance under Chapter-II of the Specific Relief Act, 1963. But then, this court has already held, for reasons indicated, that the suit, i.e. the counterclaim of the defendant, is not a suit for Specific Performance of Contract, *per se*, but a suit for part performance of contract within the meaning of Section 53A of the TP Act. Therefore, though an unregistered document may be admitted into evidence as per Section 49 of the Registration Act as also in terms of Section 35 of the Indian Stamp Act, there is no provision by which it can be held that mere payment of stamp duty or penalty would validate the contract for Section 53A of the TP Act overcoming the bar placed in Section 17(1-A) of the Registration Act. Mere admissibility of a document as evidence cannot in any manner do away with the mandatory requirement of registration as contemplated under Section 17(1-A), as otherwise the very provision itself would be rendered otiose.

A reading of the impugned judgment would reveal that this is where both the courts below fell into error by treating the documents as valid only because stamp duty and penalty was paid by the defendant. Such being the case, the counterclaim could not have been entertained much less allowed on the basis of the unregistered agreement for sale at the instance of the defendant. This court therefore, finds considerable force in the contention of the appellants as noted above.²²

III SPECIFIC TRANSFERS

Sale of immovable property

In *Kaushik Premkumar Mishra v. Kanji Ravaria Alias Kanji*²³ case, the dispute was over a piece of land in Maharashtra measuring around 3.40 hectares. In 1985, Kanji Ravaria (the vendor) executed a sale deed in favour of Kaushik Premkumar Mishra and his minor brother. Since the buyers were minors, the sale was intended to be in their favour for legal protection. However, due to stamp duty issues, this sale deed could not be registered immediately and faced a delay of 26 years, finally getting registered in 2011. Meanwhile, in 2010, Kanji Ravaria sold the same land to another buyer (Respondent No. 1), claiming to be a bona fide purchaser without knowledge of the previous sale.

Following this, the original buyers (the Mishra brothers) filed a civil suit seeking: Declaration of ownership of the land. Permanent injunction preventing the vendor and the later purchaser from interfering with their rights. The trial court dismissed the suit, declaring the sale deed in favour of minors void due to delayed registration. The First Appellate Court reversed the trial court, upholding the sale deed in favour of the Mishra brothers. The high court restored the trial court's

²² *Id.*, para 17.

²³ AIR 2024 SC 3766.

judgment, siding with the subsequent purchaser. The matter reached the Supreme Court for final adjudication.

Key legal issues here are: a) Can minors acquire property through a sale deed? b) Does the delayed registration of a sale deed invalidate it? and c) Does a subsequent purchaser have rights as a bona fide purchaser when an earlier sale deed exists?

The Supreme Court clarified that a sale deed executed in favour of minors is valid and not void. Minors can legally acquire property, and Section 11 of the Indian Contract Act does not prevent minors from being beneficiaries of a valid transaction. Delay in registration due to procedural issues like stamp duty deficiencies does not invalidate the sale deed. The date of execution of the sale deed matters, and once executed, the vendor's rights over the property are divested immediately. Registration, even if delayed, relates to the date of execution and gives legal recognition to the transaction.

Regarding rights of subsequent purchaser (*bona fide* purchaser) it was observed that a subsequent buyer cannot claim to be a bona fide purchaser, if the property has already been sold by the vendor. The court held that the later purchaser could not acquire any title because the vendor had already transferred his rights. The remedy for the subsequent buyer lies against the vendor only, not the original buyers.

Regarding conduct of the vendor: The submission with regard to delay of 26 years in getting the document registered also does not extend any benefit to the respondents. Non-registration of a document duly presented for registration could be for many reasons. But once it is registered, there is a presumption of correctness attached to it, that is to say that the document has been duly executed and registered in accordance to law. It was for the defendants (respondents) to come forward and to establish that the document was wrongly registered. They did not lead any evidence in this respect. Instead, they tried to put burden on the plaintiff-appellant by requiring him to call the sub registrar as a witness, which the appellant rightly denied. It was always open for the respondents to have called for the records of the sub-registrar's office and also the sub-registrar in order to find out any mandatory lacuna, illegality or lack of procedure not being followed with respect to the registration. They did nothing of this sort.²⁴

Srinivas Raghavendraro Desai (Dead) By Lrs v. Kumar Vamanrao Alias Alok is another case, wherein the validity of the sale deed was questioned. The suit properties had gone to the share of the co-defendant as per the 1984 partition. Co-defendant had executed a registered sale deed of the suit properties in favour of the purchaser. If the defendant was the true owner of the suit property, he could object to the sale transaction. Defendant had never challenged the sale transaction despite having knowledge thereof. Plea of defendant that execution of sale deed was in violation of interim order passed by trial court. Interim order restraining

²⁴ *Id.*, para 33.8.

defendant from alienating the suit property was passed by trial court on May 31, 1999. As on that date, co-defendant was not party to the suit as he was impleaded only on 02.01.2001. No order was passed thereafter directing applicability of interim order to newly impleaded co-defendant. It cannot be said to be a case of wilful violation of interim order of trial court. Suit properties were the properties of co-defendant. Sale deed executed by co-defendant in favour of purchaser was upheld.

So far as the argument raised by learned counsel for the respondents regarding sale conducted by defendant no. 7 in favour of defendant no. 9 to be in violation of the interim order passed by the trial court is concerned, suffice it to state that the interim order restraining defendants no.1 to 4 from alienating the property in question was passed by the trial court on May 31, 1999. As on that date, defendant no. 7 was not party to the suit as he was impleaded only on January 2, 2001. There is no order passed by the trial court thereafter directing that the interim order was further extended qua the newly impleaded defendant also, hence it cannot be said to be a case of wilful violation of the order passed by the trial court.²⁵

For the reasons mentioned above, the appeals are allowed. The findings of the high court with reference to regular survey nos. 106/2 and 44/4 are set aside. The same are held to be the properties coming to the share of the appellants. The sale deed executed by the appellant (since deceased) in favour of defendant no. 9 regarding survey no. 106/2 is upheld.²⁶

In *Mohd. Zahoov. Ram Sajeevan*²⁷ there is a suit for possession. Here sale deed was registered in favour of defendant without passing of any consideration. At the time of registration, vendor refused to sign/mark thumb on record of registrar stating that he does not wish to get document registered. Despite that, Registrar registered the document. Defendant had not derived any title out of sale deed executed by plaintiff in his favour. Said sale deed being void, registration of such sale deed would not give any life sale deeds of same land, previous sale deed or validity to a void document. Void sale deed was registered later to sale deed of the same property registered in favour of the plaintiff. In case of two or more would prevail over later sale deed. Plaintiffs were entitled to a declaration of their rights and title over the suit property.

Regarding suit for recovery of possession, and bar of limitation, the court observed that as sale deed in favour of defendant was held to be void, even cancellation was not required and plaintiff had to simply sue for declaration of document being void and of his own title. Suit for possession based on title was to be filed within 12 years. Sale deed was executed on November 28, 1967. Plaintiffs were dispossessed in 1969. Suit was filed on March 13, 1973 *i.e.*, within 12 years from their dispossession and suit was not barred by limitation.

25 *Id.*, para 22.

26 *Id.*, para 24.

27 AIR 2024 MP 169.

The facts in brief of the case are that a suit was filed by the present appellant before the trial court in the year 1973. The suit was for cancellation of sale deed dated November 27, 1967 and for recovery of possession in the suit land. The suit was filed by the present appellants on the assertions that the appellant / plaintiff no.2 was the owner of the suit land situated in survey No. 661, 662 and 663. The said plaintiff no.2 was a beggar and he put the defendant No.2 in possession of the said land who was the nephew of plaintiff no.2. The plaintiff further alleged that the plaintiff no.2 had given some portion of the suit land for construction of house and shop to the plaintiff no.1 about 15 years prior to filing of the suit.

It was further alleged in the suit that the plaintiff no.1 had extended a loan of Rs. 700/- to the plaintiff no.2 and the plaintiff no.2 had no means of returning the loan amount and therefore in November, 1967 it was agreed between the plaintiffs that the plaintiff no.1 shall purchase the suit land from plaintiff no.2 for a sale consideration of Rs.1500/- and out of that agreed consideration of Rs.1500/-, the amount of Rs. 700/- which had been loaned to the plaintiff no.2 shall be set off and rest amount of Rs.800/- shall be paid to plaintiff no.2 at the time of execution of sale deed. This was alleged to be an oral agreement between the plaintiffs *inter se*.

The intention of the parties was not to defer the payment of consideration or to execute the deed of promise of consideration to be paid at a later date. The clear intention was to accept the consideration before the sub-registrar at the time of registration. The learned senior counsel for the defendant no.1 tried to justify it on the anvil of Section 55 (5) (b) and 55(4) (b) of the Transfer of Property Act 1882, to submit that the remaining amount would only be a charge and the vendor can recover it, but the sale cannot be held to be void and only voidable, if the defendant no.1 refuses to pay the said consideration, but he never refused and it was the vendor who refused to accept and that the defendant no.1 is willing to pay it even today.

Here, the court relied on the following judgments:²⁸

In the case of *Kaushik Premkumar*,²⁹ the Supreme Court has held that the defendant no.1 had not categorically denied not having received any sale consideration. It was also held that even if assuming that no sale consideration was paid even though there was a registered sale deed, it would be at the instance of the vendor to challenge the said sale deed on the ground of no sale consideration being paid, but the vendor did not file and suit making challenge to the sale deed for being declared as void or being cancelled on such ground. Thus, this case does not help the present defendant No.1 at all.

28 *Vidhyadhar v. Manikrao*, (AIR 1999 SC 1441), *Bishundeo Narain Rai v. Anmol Devi*, (1998) 7 SCC 498, *Dahiben v. Arvindhbai Kalyanji Bhanusali*, (2020) 7 SCC 366, *Janak Dulari Devi v. Kapildeo Rai*, (2011) 6 SCC 555, *Shiva Narayan Sah v. BaidyaNath Prasad Tiwary*, AIR 1973 Patna 386 and *Kaushik Premkumar Mishra v. Kanji Ravaria*, AIR 2024 SC 3766

29 AIR 2024 SC 3766.

In the case of *Vidyadhar*,³⁰ the Supreme Court³¹ thereof held that even if the whole of the price is not paid, the transaction of sale will take effect and the title would pass under that transaction and that non-payment of a portion of the sale price would not affect validity of sale. It was observed that part-payment of consideration by the vendee itself proved the intention to pay the remaining amount of the sale price. However, in the present case, there was no intention to defer the payment of consideration, and even a part of consideration has not been paid. Thus, reliance on this judgement is misplaced. Section 54 of TP Act, mandates sale to be compulsorily registered as against general provisions of registrability of a document under the Registration Act.

In a recent case of *Kanwar Raj Singh v. Gejo*,³² the Supreme Court has considered the effect of section 54 of TP Act in detail that mandates sale to be compulsorily registered and has held as under :

“Every sale deed in respect of property worth more than Rs 100 is compulsorily registerable under Section 54 of the Transfer of Property Act. Thus, a sale deed executed by the vendor becomes an instrument of sale only after it is registered. The decision of the Constitution Bench only deals with the question of when the sale is complete; it does not deal with the issue of the date from which the sale deed would operate. Section 47 of the Registration Act does not deal with the completion of the sale; it only lays down the time from which a registered document would operate.”³³

Now, coming to the facts of this case, the consideration was entirely paid on the date of the execution of the sale deed. The sale deed was registered with the interpolation made about the description/area of the property sold. The first defendant admittedly made the said interpolation after it was executed but before it was registered. In terms of Section 47 of the Registration Act, a registered sale deed where entire consideration is paid would operate from the date of its execution. Thus, the sale deed as originally executed will operate.”³⁴

The questioned sale deed was executed on November 28, 1967, the plaintiffs were dispossessed in January 1969 and the suit was filed on March 13, 1973. Thus, the suit was certainly not barred by limitation as the suit was filed within 12 years from their dispossession. Therefore, the second substantial question of law is also answered in favour of the plaintiffs and it is held that the suit was not barred by limitation.³⁵

Mortgage by conditional sale

*Laxman Krushna Sangade v. Hari Bhima Pokharkar*³⁶ is a case for mortgage by conditional sale and a suit for redemption and possession. Here the plaintiffs

30 AIR 1999 SC 1441.

31 *Id.*, para 37.

32 AIR 2024 SC 238.

33 *Ibid.*

34 *Ibid.*

35 *Id.*, para 39.

36 AIR 2024 Bom. 8.

being in dire need of money approached defendant. Defendants agreed to pay loan subject to condition of executing sale deed in their favour. Accordingly, sale deed was executed. On the same day, contemporary document titled agreement of resale of suit lands on refunding loan amount was also created. If condition for re-transfer is not embodied in same document, that effects or purports to effect a sale, transaction would not be regarded as mortgage by conditional sale. Plaintiff did not comply strictly with Section 58(c). Further that sale deed did not recite any other transaction of advance of any sum by vendee to vendor, which was entered into by and between parties. Even sale deed did not recite that sale deed was executed as security towards loan received from vendee and that nominal sale deed was executed. Hence, plaintiffs case that by two separate documents, sale deed in question was mortgage by conditional sale could not be accepted. There were no specific prayers for redemption, possession and re-conveyance. Held suit is liable to be dismissed.

In this case, the plaintiffs have claimed that they had filed a suit for redemption and possession. The agricultural fields were the suit lands. The plaintiffs had a case that they were in dire need of money. They contacted the defendants for financial assistance. The defendants agreed to pay a loan subject to the condition of executing the sale deed in their favour. They also agreed to convey the suit lands to them upon returning their amount. A contract was concluded that the plaintiffs would refund Rs.1200/- to them within ten years, and they would recovery the suit fields to them. Accordingly, on November 3, 1973, the sale deed was executed. On the same day, a contemporary document titled an agreement of resale of the suit lands on refunding the loan amount was also created. It was purely a mortgage by conditional sale. The plaintiffs went to the defendants with the loan amount and requested them to recovery the suit lands. However, they denied it. Hence, the suit was filed.

The defendants had a case stating that the plaintiffs agreed to sell the suit lands to them. Hence, from time to time, the plaintiffs took Rs.1130/- from them. They requested the plaintiffs to execute the sale deed, but they avoided it. They had no written evidence of the money they had paid the plaintiffs. Taking advantage of the said situation, the plaintiffs forcibly got an agreement of resell of the suit lands from them. They were afraid of losing the money paid to them. Hence, they executed the said agreement. They never intended to resell the suit lands, as they had their other lands adjoining to the suit lands. It was purely a sale transaction. It was not a mortgage by a conditional sale. Both courts held that it was a mortgage by a conditional sale. The defence of the defendants was discarded.

Here the entire case revolves around the intention of the parties. It is evident that a separate agreement to resell the same land was also executed on the same day. The plaintiffs had a case of mortgage by conditional sale. Hence, Section 58(C) of the Transfer of Property Act would apply. It has been provided in the said section that where the mortgagor ostensibly sells the mortgaged property, on the condition that on default of payment of the mortgage money on a certain date, the sale shall become absolute or on condition that on such payment being made the

sale shall become void or on condition that on such payment being made the buyer shall transfer the property to the seller, this is a mortgage by conditional sale. The proviso to this clause is significant to determine whether it was a mortgage by conditional sale or the transition of a pure sale. The said proviso reads thus: 'No such transactions shall be deemed to be the mortgage unless the condition is embodied in the document which affects or purports to affect the sale'.

It is very specific that to determine whether the document is a mortgage by conditional sale, the condition of resale shall be embodied in the document of sale itself. In the present case, a separate agreement to sell was executed on the same day. Both courts admitted the plaintiff's case, read the sale deed and agreement to resell together, and held that the intention of the parties was not to sell the suit lands, but that it was a mortgage by conditional sale.

The mortgagor is the owner who parted with some rights of ownership, and the right of redemption is a right which he exercises by virtue of his residuary ownership to resume what he had parted with. Section 60 of the Transfer of Property Act provides that after the money becomes due, the mortgagor has a right, on payment or tender at a proper time and place, of the mortgage-money to require the mortgagee to deliver the mortgage deed and all documents relating to the mortgaged property, to deliver possession thereof to the mortgagor. The section is clear that where the mortgagor wishes to redeem the mortgage, he may, on the failure of the mortgagee to redeem, file a suit for redemption, as provided under Order XXXIV of the Civil Procedure Code. On reading Rule 7 of the said Order, it is specific that in a suit for redemption, the plaintiffs have to plead the case of mortgage, the type of mortgage, whether the direction is required to the mortgagee for an account of the principal money and interest due, costs of the suit, if any or pray for declaring the amount due at that date or directions to the mortgagee to deliver the documents and possession, if parted and retransfer the mortgaged property on payment of the money in the court. It seems from the prayer that those are like a suit for the specific performance of the contract. There were no specific prayers for redemption, possession and re-conveyance.³⁷

Right of redemption

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

In England, the above two expressions are not used synonymously under the Common Law. The right of the mortgagor to get back his property on payment of the debt was called right of redemption. This right was available to the mortgagor within the stipulated time, and after that, it was lost. But the courts of equity

³⁷ *Id.*, para 23.

looked upon the common law notion of forfeiture leniently and maintained that after default, though the mortgagor lost his remedy at Common Law, his known as 'the Equity of Redemption'.

But there is no such distinction in India, under section 60 of the Act. The mortgagor's right of redemption is not extinguished even after the expiry of the date fixed for payment. In India, it is not equitable remedy but a statutory right recognized under section 60.

*Dulabhai Bijalbai Talpada v. Ravjibhai Ghelabhai Ralpada Vaghri*³⁸ is a case pertaining to redemption of mortgage. Document in question titled as 'conditional sale'. Despite its title, parties intended to create mortgage as security for loan with a condition to repay amount within five years. Mortgagee pleaded that mortgagor had received additional loan before five-year period ended and had executed unregistered document to convert mortgage into a sale. However, process to extinguish mortgage through legal means was not followed, and therefore, right to redeem mortgage was not extinguished. Decree for redemption was rightly passed.

In the instance case plaintiffs filed suit for redemption of mortgage by conditional sale in respect of the agriculture lands which is the suit lands. The plaintiffs sold the said suit land to defendant executing registered mortgage deed by conditional sale for Rs.7.000/-. It was not the deed of conditional sale, simplicitor but it was the deed of conditional sale as conditions of mortgage with the terms that after the expiry of five years from the date of the deed i.e. from 12/3/1968, if the mortgagors repay Rs. 7,000/- to the defendant, the defendant shall hand over the actual possession of the lands to the plaintiffs. It is contended by the plaintiffs that as the deed of conditional incorporate the terms and conditions, it is not conditional sale simplicitor, but it is in fact the deed of conditional sale as Ghelabhai died, and the plaintiffs happen to be the legal heirs of Bai Diwali. The plaintiffs handed over the actual possession to the defendant. Thereafter, the plaintiffs decided to repay the amount, and therefore, the plaintiff issued a registered notice dated 14/2/1984 to the defendant offering the amount of deed of Rs.7.000/-, calling upon the defendant to redeem the mortgage. But the defendant was not prepared to accept the amount of Rs.7.000/-and not willing to redeem the mortgage and refused to hand over the possession of the lands. Therefore, the plaintiffs are constrained to file the suit for the redemption of the mortgage.

The court held that, in view of the above, it can safely be concluded that the learned court below has not committed any error in redeeming the mortgage. The question of law framed herein above is there for answered in negative. For the foregoing reasons, the present appeal fails to succeed. Accordingly, it is dismissed. No order as to costs. Decree is drawn accordingly. R and P be sent back.

38 AIR 2024 Guj. 220.

Charge over mortgaged property

*Chittaranjan Tripathi v. Indian Overseas Bank, Bhubaneswara*³⁹ the court considered the charge over mortgaged property, delay in removal of charge and entitlement of compensation. Borrower had availed cash credit loan from Bank, for which he had mortgaged his property. Despite clearing entire loan amount, Bank had till date prevented borrower from enjoying his own property, which clearly violated his fundamental rights. RBI Circular mandates that lending institutions, including Banks should return all original movable/immovable property documents and remove registered charges within 30 days of full repayment and failure to comply would incur penalty of Rs.5000 per day. Since all outstanding dues were cleared, release of original property documents was due on Dec 1, 2023. Despite repayment of entire loan amount, original property papers were returned after delay and extensive follow-ups. However, registered charge over property, had yet to be removed despite multiple requests. Held that the borrower was entitled to compensation of Rs.5000/- per day till charge over mortgaged property was removed.

Lease

In *Rewa Tollway P. Ltd. v. State of Madhya Pradesh*⁴⁰ case the court was asked to consider whether it is a lease, bond or license. Right to collect tolls was given in lieu of amount spent by Concessionaire in construction of roads, bridges etc. under Build, Operate and Transfer (BOT) Scheme. Definition of lease as given under IS Act clearly covers any instrument by which tolls of any description are let. Also, all the ingredients of a lease under section 105 of TP Act, were fulfilled. Concession agreement was rightly considered as lease.⁴¹

The High Court of Madhya Pradesh at Jabalpur decided a group of twelve petitions wherein the question involved was whether a transaction where the right to collect tolls is given in lieu of the amount spent by the Concessionaire in the construction of roads, bridges etc. under the Build, Operate and Transfer (BOT) Scheme amounts to a "lease" as contemplated under Section 105 of the TP Act, 1882 1 and Section 2(16) of the Indian Stamp Act, 1899. The division bench of the high court, had dismissed the same and hence, the twelve appeals. The State for reconstruction, strengthening, widening and rehabilitation of a section of road / high way projects to be executed through concession on build, operate and transfer scheme. A concession agreement was signed on a stamp paper of Rs.100 between the state organization and the appellant. The Collector (Stamps), Bhopal passed an order directing recovery of deficit stamp duty amounting to Rs.1,08,00,000/- (Rupees one crore eight lakhs) said to be payable on the concession agreement. The appellant challenged the order. The hitherto position was that BOT agreements were exempted from payment of stamp duty. Later, the circulars have been issued

39 AIR 2024 Ori. 163.

40 AIR Online 2024 SC 507.

41 *Id.*, para 28.

requiring 2% stamp duty. The circulars have been challenged as violative of article 14 and the doctrine of legitimate expectation.

The Supreme Court held that the judgment of the high court in these appeals did not require any interference. However, the court clarified on legitimate expectation referring to various judgments⁴² emphasised that legitimate expectation primarily grants an applicant the right to a fair hearing before a decision that negates a promise or withdraws an undertaking from which an expectation of certain outcome or treatment arises. It does not, however, create an absolute right to the expected outcome. The protection of legitimate expectation is subject to overriding public interest, which means that even if an individual's expectation is reasonable and based on a past practice or representation by the executive or legislature, it can be denied if justified by a significant public necessity.

The Supreme Court ruled that the doctrine of legitimate expectation serves only as a procedural safeguard ensuring fairness in administrative decisions and policy changes. It grants the expectant party the right to a fair hearing and an explanation but does not guarantee the realization of the expected benefit. The government's authority to revise policies in public interest remains paramount, with the judiciary intervening only in cases of arbitrariness, unreasonableness, or lack of public interest. This balanced approach ensures that while individuals can expect consistent treatment based on past practices or promises, the government retains the flexibility to respond to evolving needs and priorities. On the doctrine of promissory estoppel, since it is an equitable doctrine, it only comes into play when equity requires a party be estopped from withdrawing its promise. It has been well settled by this court in several judgments that the principle of promissory estoppel cannot be invoked against the exercise of legislative power. In order to avoid burden on the present judgment, we are relying on the observations made by this court in a recent judgment dealing with the doctrine of promissory estoppel. that a prior executive decision does not bar the State legislature from enacting a law or framing any policy contrary to or in conflict with the previous executive decision in furtherance of larger public interest. Nor can it be canvassed that the law laid down by the legislature would be hit by principle of promissory estoppel or legitimate expectation because earlier the executive had expressed its view differently.

Lease and licence-differences

In *C.D. Varghese v. Joseph Masni*⁴³ case court explained in detailed the difference between lease and license.

As per section 105 of TP Act, lease is transfer of right to enjoy immovable property for certain period expressly, impliedly or in perpetuity. On the other hand, 'licence' as defined under Section 52 of the Easement Act is a right to do, or

42 *Union of India v. Hindustan Development Corporation* (1993) 3 SCC 499 *Ram Pravesh Singh v. State of Bihar* (2006) 8 SCC 381 *P.T.R. Exports (Madras) Pvt. Ltd. v. Union of India* (1996) 5 SCC 268.

43 AIR 2024 Ker. 27.

continue to do, in or upon immovable property of grantor, something which would, in absence of such right, be unlawful, and such right does not amount to easement or interest in property. The lessee of building/premises, who got exclusive possession coupled with transfer of interest therein, has right to possess and enjoy building/premises; whereas licensee of building, who got mere right of occupation of premises/building without transfer of any interest therein, does not have such right of absolute possession and enjoyment of building/premises and his right is to do or continue to do specific business or trade only in building/premises for which permission was granted by licensor as occupant of building/premises. ⁴⁴(para, 20)

Lease or licence and determination of lease. Specific case of plaintiffs that they had obtained a plaint schedule rooms for running 'Olympus Tours and Travels' and said arrangement was 'lease' and not 'licence'. Whereas, as per the defendant's plaint schedule, rooms were given in occupation of the plaintiff as licensee, as per the licence deed. On meticulous evaluation of evidence of parties, the defendant had agreed to provide mere occupation of the building for the purpose of running 'Olympus Tours and Travels', and parties had never intended to create interest over the same by parting exclusive possession so as to treat the arrangement as 'lease', instead of 'licence'. Held, the trial court as well as the appellate court rightly negative contention of the plaintiff and hence the concurrent verdicts did not require interference.

R.S.A.No.895 of 2020 has been filed under Order XLII Rule 1 read with Section 100 of the Code of Civil Procedure, challenging the decree and judgment in A.S.No.153/2016 dated November 10, 2020 on the files of District Court, Kottayam arose out of the judgment and decree in O.S.No.520/2014 dated 10.06.2016 on the files of the Munsiff Court, Kottayam. The appellant herein is C.D.Varghese, the second plaintiff in O.S.No.520/2014. The respondents are the sole defendant as well as the 1st plaintiff.

C.D.Varghese, who is the second defendant in O.S.No.565/2014, has filed R.A.No.835/2020 challenging the decree and judgment in A.S.No.154/2016 dated 10.11.2020 on the files of the District Court, Kottayam arose out of the judgment and decree in O.S.No.565/2014 dated 10.06.2016 on the files of the Munsiff Court, Kottayam.

Section 52 of the Easements Act defines 'licence' as under:

Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.

Thus a plain reading of the definition of 'lease' as provided under Section 105 of the TP Act, 'lease' is a transfer of a right to enjoy an immovable property for

⁴⁴ *Id.*, para 15.

certain period expressly, impliedly or in perpetuity. On the other hand, 'licence' as defined under Section 52 of the Enforcement Act is a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property.⁴⁵

In *Delta International Ltd. v. Shya Sundar Ganeriwalla* the apex court referred to the decision in *Associated Hotels of India Ltd. v. R.N. Kapoor's* case and enunciated six parameters to find out the distinction between 'lease' and 'licence'. The same areas under:

- (1) To find out whether the document creates a lease or licence real test is to find out 'the intention of the parties', keeping in mind that in cases where exclusive possession is given, the line between lease and licence is very thin.
- (2) The intention of the parties is to be gathered from the document itself. Mainly, the intention is to be gathered from the meaning and the words used in the document except where it is alleged and proved that document is a camouflage. If the terms of the document evidencing the agreement between the parties are not clear, the surrounding circumstances and the conduct of the parties have also to be borne in mind for ascertaining the real relationship between the parties.
- (3) In the absence of a written document and when somebody is in exclusive possession with no special evidence how he got in, the intention is to be gathered from the other evidence which may be available on record, and in such cases exclusive possession of the property would be most relevant circumstance to arrive at the conclusion that the intention of the parties was to create a lease.
- (4) If the dispute arises between the very parties to the written instrument, the intention is to be gathered from the document read as a whole. But in cases where the landlord alleges that the tenant has sublet the premises and where the tenant in support of his own defence sets up the plea of a mere licensee and relies upon a deed entered into, inter se, between himself and the alleged licensee, the landlord who is not a party to the deed is not bound by what emanates from the construction of the deed; the tenant and the sub tenant may jointly set up the plea of a license against the landlord which is a camouflage. In such cases, the mask is to be removed or veil is to be lifted and the true intention behind a facade of a self-serving conveniently drafted instrument is to be gathered from all the relevant circumstances. Same would be the position where the owner of the

⁴⁵ *Id.*, para 20.

premises and the person in need of the premises executes a deed labelling it as a licence deed to avoid the operation of rent legislation.

(5) Prima facie, in absence of a sufficient title or interest to carve out or to create a similar tenancy by the sitting tenant, in favour of a third person, the person in possession to whom the possession is handed over cannot claim that the sub tenancy was created in his favour, because a person having no right cannot confer any title of tenancy or sub tenancy. A tenant protected under statutory provisions with regard to occupation of the premises having no right to sublet or transfer the premises, cannot confer any better title. But, this question is not required to be finally determined in this matter.

(6) Further lease or licence is a matter of contract between the parties. S.107 of the Transfer of Property Act *inter alia* provides that leases of immovable property may be made either by registered instrument or by oral agreement accompanied by delivery of possession; if it is a registered instrument, it shall be executed by both the lessee and the lessor. This contract between the parties is to be interpreted or construed on the well laid principles for the construction of contractual terms, viz. For the purpose of construction of contracts, the intention of the parties is the meaning of the words they have used and there can be no intention independent of that meaning; when the terms of the contract are vague or having double intendment one which is lawful should be preferred; and the construction may be put on the instrument perfectly consistent with his doing only what he had a right to do.

The principle laid down in *Associated Hotels of India Ltd. v. R.N. Kapoor's* case⁴⁶ is that the distinct factor to decide upon an arrangement either as 'licence' or 'lease' is to see whether any transfer of interest in the premises which was given for occupation.⁴⁷

It is true that nomenclature of a document is not decisive to find out what are the nature and characteristics of the document. On perusal of Exts. B1 to B5, it is emphatically clear that they are documents written with nomenclature as 'licence'. In a latest decision of the apex court in *Victory Iron Works Limited v. Jitendra Lohia*,⁴⁸ analysed the difference between 'lease' and 'licence' and in paragraphs 49 and 52, the Apex Court, after referring the decision in *Guruashish Constructions (P) Ltd. (Resolution Professional) v. MHADA*,⁴⁹ observed as under:

“As a matter of fact, the only decision of this Court which may probably come close to the facts of the present case, is the one in *Guruashish Constructions*

46 AIR 1959 SC 1262.

47 *Id.*, para 17.

48 (2023) 7 SCC 227.

49 AIR 2020 SC 3274.

(P) Ltd. (Resolution Professional) v. MHADA. In the said case, there was a tripartite joint development agreement entered into between (i) a society representing a large number of persons occupying 672 tenements in the property; (ii) Maharashtra Housing and Area Development Authority ('MHADA'), which was the owner of the land; and (iii) the corporate debtor. After the initiation of CIRP against the corporate debtor, MHADA issued a notice for the termination of the joint development agreement. NCLAT refused to treat the property as the asset of the corporate debtor. But this court reversed the said decision, by holding that section 14 (l)(d) stood attracted in the facts and circumstances of the said case and that even a reference to sections 18 and 25 may not be necessary. Though the said case arose out of a fact situation where the termination of the joint development agreement was hit by section 14, the said decision clinches the issue on what constitutes a property and the distinction between occupation and possession of a property".⁵⁰

In view of the above discussions, the cardinal features, which would distinguish 'lease' and 'license' are as under:

'Lease' is a transfer of a right coupled with exclusive possession with transfer of interest to enjoy an immovable property for certain period expressly, impliedly or in perpetuity. On the other hand, 'license' is a right to do, or continue to do, in or upon the immovable property of the grantor, given in occupation of the licensee, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property. To put it otherwise, the licensee of a building premises, who got exclusive possession coupled with transfer of interest therein, has the right to possess and enjoy the building/premises; whereas a licensee of a building, who got only a mere right to occupation of the premises/building without transfer of any interest therein, does not have such a right of absolute possession and enjoyment of the building/premises and his right is to do the specific business or trade only in the building/premises for which permission has been granted by the licensor as the occupant of the building/premises.⁵¹

Thus, it has to be concluded that the arrangement between the parties is not a 'lease', as contended by the counsel for C. D. Varghese and another, and the same is a 'license', as rightly found by the trial Court and confirmed by the appellate court. In view of the above finding, it has to be held that in this matter, there is no transfer of absolute possession creating an interest in the rooms, to hold the arrangement as leases as envisaged under Section 105 of the Transfer of Property Act and no heritable interest, in fact, is created in this matter to hold that the arrangement between the parties in this *lis* is a 'lease' instead of 'license'.⁵²

⁵⁰ *Id.*, para 18.

⁵¹ *Id.*, para 20.

⁵² *Id.*, para 27.

In view of the above finding, it has to be held that the trial court as well as the appellate court rightly negative the said contention and hence the concurrent verdicts do not require interference in the second appeal. Accordingly, the second appeal must fail.

Termination of tenancy

In *Devi Tenant House v. Prafulla Chandra Patra*⁵³ the court considered that a suit for termination of tenancy and challenge against landlord issuing notice for termination tenancy and demanding vacant possession of tenanted premises and payment of arrear house rent. There was no challenge to said notice. Defendants had chosen not to contest suit for eviction by leading evidence in counter. Therefore, subordinate courts rightly held that tenancy had been duly terminated in accordance with provisions contained in section 106 of Act.

In *Messrs Madhav Mukund Finance Pvt Ltd v. Messrs Exterior Interior Limited*⁵⁴ case the court considered that is a suit for termination of lease and recovery of possession. Here tenancy of defendant was a monthly one since it was based on unregistered lease agreement, tenancy was terminated under section 106. Hence, a statutory right was created to evict and recover possession. Plaintiff asked defendant to vacate premises by issuing notice. Said notice was not a fifteen days' notice as contemplated in section 106. Thereafter, a subsequent notice was served upon defendant. Plaintiff was held entitled to decree of recovery of possession of suit premises.

The court observed that there is nothing in the evidence to show that Exts.A7 to A9 gift deeds are vitiated by undue influence. The evidence was appreciated by the trial court in the right perspective. The decree and judgment of the trial court warrant no interference.

*Mahendra Kaur Arora v. HDFC Bank Ltd.*⁵⁵ is another case related to eviction and recovery of rent under Section 111 of the TP Act. Here, it was challenged against the termination of the lease agreement by the Bank after issuing three months' notice. However, there was nothing on record to demonstrate that any steps were taken by Bank calling upon landlady to remain present at premises for the purpose of taking over possession of leased premises on particular date and time for her to refund security deposit simultaneously to Bank. Procedure contemplated in lease deed was not followed. Plea of tenant that on failure of landlady to refund security deposit, at the time of handing over possession, they became entitled to continue using the leased premises was not tenable. Held order for eviction and arrears of rent was proper.⁵⁶

We are afraid, the aforesaid argument advanced by learned counsel for the Respondent-Bank is not persuasive. The language of Clause 6 of the Deposit

53 AIR 2024 Ori. 15.

54 AIR OnLine 2024 Cal. 778.

55 AIR OnLine 2024 SC 430.

56 *Id.*, para 10.

Agreement makes it abundantly clear that the respondent-Bank was liable to refund the deposit amount contemporaneous to the Bank removing itself from the leased premises and handing over vacant possession thereof to the appellant-landlady and giving charge thereof to her, which procedure in the instant case, had not been followed. There is nothing on record to demonstrate that any steps were taken by the respondent-bank calling upon the appellant-landlady to remain present at the subject premises for purposes of handing over/taking over possession of the leased premises on a particular date and time and giving charge thereof to her for her to refund, the security deposit simultaneously to the respondent Bank.⁵⁷

*Bijay Kumar Manish Kumar Huf v. AshwinBhanulal Desai*⁵⁸ is also another case pertaining to determination of lease under Section 111 of the TP Act.. Here tenant is considered a s ‘tenant at sufferance’. Request for payment of monthly occupational charges. Property was situated in commercial area. Tenant defaulted in payment of rent and municipal taxes for many years. The lease was terminated due to non-payment of rent. However, the tenant neither delivered possession of the property nor paid rent. If a tenant who once entered the property lawfully continues in possession after his right to do so stands extinguished, he is liable to compensate the landlord after the right of occupancy expires. The tenant was directed to deposit occupational charges. Since this order was passed on an interlocutory application, it was made subject to the outcome of the petition.

Gift of property

Section 122 defines Gift as follows:

A gift is the transfer of certain existing movable and immovable property” made voluntarily and without consideration by one person called the donor, to another person called the donee, and accepted by or on behalf of the donee.

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

The following are essentials ingredients of a Gift;

- i. There must be transfer of ownership,
- ii. The ownership must relate to property in existing
- iii. It must have been made voluntarily
- iv. The transfer must be without consideration
- v. There must be a donor
- vi. There must be a donee and
- vii. The donee must accept the Gift.

⁵⁷ *Ibid.*

⁵⁸ AIR 2024 SC 3051.

Section 123 lays down the mode through which a gift may be made. For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. For the purpose of making a gift of movable property, the transfer may be effected either by registered instrument signed as aforesaid or by delivery. Such delivery may be made in the same way as the goods sold may be delivered.

In *N. Thajudeen v. Tamil Nadu Khadi and Village Industries Board* the Supreme Court considered the validity of a gift and a registered gift deed was duly acted upon and accepted, and was a valid document which continued to exist despite its revocation as the donor had not reserved the right to revoke the same.

In the instant case, the question before the court was whether the registered gift deed was duly acted upon and accepted and was a valid document which continued to exist despite its revocation, as the donor had not reserved the right to revoke the same. Held, the registered gift deed was duly acted upon and accepted and was a valid document which continued to exist despite its revocation as, donor had not reserved the right to revoke the same.

Documents on record showed that possession of suit property was taken over by the donee on the date of the gift itself which was sufficient evidence that the gift was acted upon and accepted by onee. Donee had also applied to the revenue authorities for mutation in its name. The gift deed could not be held to be invalid for want of acceptance and on the basis of the gift deed, donee had acquired absolute right and title over suit property. None of the exceptions permitting revocation of the gift deed was attracted in the present case. Thus the gift deed, which was validly made, could not have been revoked in any manner. Revocation deed was void *ab initio*.

The registered gift deed dated March 5, 1983 is Exhibit A-1. It has been executed by the defendant-appellant. A perusal of the gift deed reveals that the donor has gifted the suit property in favour of the plaintiff-respondent for the purposes of manufacturing of Khadi Lungi and Khadi Yarn *etc.*, with the condition that the plaintiff-respondent shall not transfer the suit property for its own self-interest. The gift deed stipulates that neither the donor nor his legal heirs have any right or interest or will continue to have any right or interest in the suit property from the time and date of the gift deed. The gift deed further states that the gift is with full consent of the donor and that from the date of the gift itself, the plaintiff-respondent accepts the suit property for the use as aforesaid.⁵⁹

A simple and complete reading of the aforesaid gift deed would reveal that the gift is absolute with no right reserved for its revocation in any contingency. The only purpose stipulated therein is that the property gifted shall be used for manufacturing Khadi Lungi and Khadi Yarn *etc.*

59 *Id.*, para 6.

The court also observed that it is worth noting that the gift deed itself states that from the date of the gift deed the suit property is accepted by the plaintiff-respondent for the purpose of manufacturing Khadi Lungi and Khadi Yarn *etc.*, which duly proves that the gift was accepted. It was also acted upon as pursuant thereof the plaintiff-respondent had applied for mutation to the revenue authorities. In addition to the above, the plaintiff-respondent issued a memo on September 16, 1983, Exhibit A-4 which also proves that the possession of the suit property was taken over and that it proceeded to raise construction thereon.⁶⁰

Considering the above, in view of the findings recorded by the first appellate court and the high court that the gift deed was duly acted upon and accepted by the plaintiff-respondent, the conclusion is that the said gift deed cannot be held to be invalid for want of acceptance. Thus, on the basis of the aforesaid gift deed, the plaintiff-respondent acquired absolute right and title over the suit property.⁶¹

*Josekutty v. Tom Sojan*⁶² case is related to a suit by next friend and suit for cancellation of gift deed. Suit filed by son representing his mother. Plea that mother due to her old age was unable to protect her interest. That gift deeds were got executed by defendant. Second son by exerting undue influence. Mother made statement before court that she was not of unsound mind. Upon examination it was concluded that mother was of sound mind and had understanding capacity to protect her interests. Fact that defendant had met the expense for the gift was not sufficient to conclude that documents were vitiated. There was no evidence to prove that mental capacity of mother was affected by reason of her age. No material or circumstance to show that defendant and his family were in a position to dominate the will of mother. Refusal to cancel gift deed was proper.

In another case *Rizvi Khan alias Rizvi Khan v. Abdul Rashid*⁶³ the validity of gift deed concerning in a suit for declaration of title and recovery of possession. The donee claimed ownership on basis of gift deed executed in his favour by power of attorney. Defendants claimed inheritance rights as heirs of donor. Gift deed was found invalid as donor had no title to transfer as land was government property (Anabad Bihar Sarkar) leased to TISCO, with donor in illegal possession. Suit was defective for non-joinder of necessary parties *i.e.*, State of Bihar and TISCO. Principle of '*nemo dat quod non habet*' *i.e.*, one cannot give what one does not have applied. Donor had no title and therefore could not transfer valid title to donee. Dismissal of suit was proper.

This is a suit *inter alia* for relief for declaration of title which cannot be allowed for the reason that the nature of land was gairabad Bihar Sarkar, as the State of Bihar and its lessee TISCO had not been impleaded as party. Principle of '*nemo dat quod non habet*' will also apply since the donor had no title, therefore, he cannot transfer a valid title in favor of the donee. Second substantial question

60 *Ibid.*

61 *Id.*, para 10.

62 AIR OnLine Ker. 40.

63 AIT 2024 JhE. 167.

of law, is accordingly, answered in view of the fact that Shamsher Ali had no title, the first substantial question of law loses significance as to whether title could have been assed to a minor by gift or not. The second appeal, accordingly, stands dismissed.

Onerous gift

In *Naresh Kumari v. Smt. Chameli*⁶⁴ case, land measuring 38 Bighas 8 Biswas (“suit land”) was gifted by one Rai Bahadur Randhir Singh (“donor”) to Sanwalia, Ratiram and Sheoch and, all sons of one Chhailu (“donees”) in 1953. The oral gift was duly executed and mutation was carried out in favour of the donees on December 13, 1953. The possession of this land was also given to the donees on December 13, 1953.

In this case, the plaint averments were countered in an extremely dull even unimaginative manner in the written statements of the defendants. Nevertheless, the defendants opposed the plaint averments, contending that though the gift was for services rendered, there was no condition for the gift to revert to the donor upon the death of the donees. Even otherwise, they contended that the plaintiffs have no cause of action as the terms of the gift are being complied with and the defendants have been rendering “all kind of services”, to the plaintiffs! It was also asserted that records relating to possession and ownership of the suit land have been mutated in their favour since 1953 and that the suit is hopelessly barred by limitation.

The apex court referred to a broadly similar Privy Council case *viz., Forbes v. Meer Mahomed Tuquee*.⁶⁵ The appellant/plaintiff sought resumption of land granted to the defendants. The land was originally granted on the condition of rendering services, which were to keep off the incursion of wild elephants and attend to the safety of tenants in nearby areas. It was the appellants case that since the services are not required any more as the incursion of elephants has itself ceased, the land should revert to him as part of their zamindari. The lower court decreed the suit in favour of the plaintiff on the grounds, *inter alia*, that since the defendants therein have ceased to render the services, the land must revert to the plaintiff therein. This decree of the lower court was reversed by the High Court, and the matter finally reached the Privy Council, where defendants/grantees argued that they had rendered the services till they were required to do so, and since the elephant incursion had stopped on its own, they are no longer bound by the condition. Privy Council considered that grantees had enjoyed peaceful possession of land for a long period of time, and they were in long cultivation of this land, and hence, the agreement was construed in such a manner that the Sunnad was “...partly as a reward for past, partly as an inducement for future, services.”

64 Decided on 21 February, 2024, available at, https://indiankanoon.org/doc/185897939/https://api.sci.gov.in/supremecourt/2009/34021/34021_2009_13_1501_57772_Judgement_11-Dec-2024.pdf.

65 *Forbes v. Meer Mahomed Tuquee*, 1870 PC 21.

Similarly, in the present case, the gift was for past services but even if it is assumed that it was for some past and some future services, there was no occasion for the defendants to render the services as the appellants had left the village and now, when defendants have been enjoying peaceful possession of land for long, resumption of land in favour of appellants will not be justified. The defendants had produced their witness DW-1 before the court, who gave the evidence that the plaintiffs had left the village long ago, immediately after the death of the Donor, which would be only a few years after the gift deed was executed in 1953 and therefore, there was no question of rendering any further service.

The Supreme Court analysed that the conditional oral gift was executed on December 13, 1953 and all land records pertaining to ownership were transferred in the defendant's names along with possession. The oral gift, as recorded in the Mutation, has a default clause, *i.e.*, "if the donee refuses to render services in that case, the land shall revert to the donor or to his heirs". The position regarding revocation of gifts upon breach is a possible condition. However, merely incorporating a defeasance clause will not exempt the plaintiff from discharging his burden. The plaintiff has to satisfy the court and lead evidence to show what exactly was the nature of the services agreed upon, that a demand for these services was communicated and that the defendants refused rendering of services having reneged on the agreement.

The Supreme Court observed that on a perusal of the material on record, both the plaintiff and PW-1's deposition are conspicuously silent regarding any specific instances where services were denied by the defendants or their predecessors-in-interest. There was only a vague and conclusory allegation that services have been refused, without any evidence in support of the same. The defendants primarily asserted that they have continued to render services and did not raise any plea of adverse possession. Their assertion has to be read only to the extent that they continued to render services to the donor or even his heirs, till the time they were physically residing in the village.

VI CONCLUSION

In the year under survey, there are several cases decided by the Supreme Courts and high courts which the courts have given apt interpretations. The courts have decided mainly on *lis pendense*, Part-performance, sale of immovable properties, Right of redemption and Lease and License. In this year under survey in *C.D. Varghese v. Joseph* case, the court has clearly explained the deference between lease and licence spelling out many aspects touching in this area. However, the clarifications given by the courts in the judgments of this year are very useful to avoid a lot of litigation and would settle several disputes relating to property law which are pending in the courts in India.