

Property Law

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1. Introduction

Property and law are born together and die together, before laws were made there was no property; and if the laws were taken away property would cease.¹ The term 'property' is interpreted in its widest sense to encompass not only tangible property but also an intangible property. The concept of property, traditionally understood as the absolute control over a “thing” has been somewhat altered by extending legal protections to “similar” or “quasi-proprietary” rights, including copyrights and patents, thereby granting them the same legal protection as property.² A wide definition of property would encompass dominion, possession and right to enjoy and disposal of one's acquisition, without any control or diminution, except in accordance of the laws of the land. The T.P.A. (hereinafter 'T.P.A.') serves as the primary legislation governing the transfer of immovable property in a general context. However, the T.P.A. does not constitute a comprehensive code for property transfer. Its provisions are more effectively comprehended when considered alongside relevant sections of other legal frameworks, including the Indian Contract Act, 1872, the Registration Act, 1908, the SERFAESI Act, 2002, as well as local land and tenancy laws. In the year under survey, a number of decisions on different aspects of transfer of property have been handed down by the High Court of Allahabad, more important of which are analyzed here. This survey highlights how the Court reinforced statutory formalities, clarified the scope of equitable doctrines like *lis pendens*, part performance, notice, and so forth, and balanced general principles with special legislative mandates to ensure certainty and fairness in property transactions.

2. Application of the T.P.A.

The character of property was notably impacted by the enforcement of contract law. The general principles of contract are applicable to T.P.A. and it recognizes only five modes of transfer i.e. sale, gift, lease, mortgage and exchange. The property may transfer in two principal ways i.e. (i) by act of the parties and (ii) by operation of law. The preamble explicitly states that it pertains solely to transfers executed *inter vivos* by 'act of parties'. In contrast, transfer through 'operation of law' occurs automatically by the virtue of the

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¹ Jeremy Bentham, *Theory of Legislation*, available at: <https://dn790004.ca.archive.org/0/items/legislation00bentuoft/legislation00bentuoft.pdf> (last visited on Aug. 15, 2025).

² J. Lakshminiah, "The Social and Economic Conditions", in G.S. Sharma (ed.), *Property Relations in Independent India: Constitutional and Legal Implications* 80 (ILI, New Delhi, 1967).

principle of *res nullius*. The T.P.A. does not apply in situations where the transfer occurs by 'operation of law' such as sale on insolvency or in execution of court decree or order. Moreover, it does not deal with the matters related to interstate and testamentary succession. Consequently, this method of transfer is excluded from the purview of T.P.A., with the exception of section 57 and chapter IV, which address the discharge of encumbrances that can only be accomplished through either a sale or a court order.³

In *Dindyal v. Board of Revenue*⁴ plaintiffs filed a suit under section 175 of U.P. Tenancy Act, 1939 claiming themselves to be occupancy tenant and defendants as sub-tenants. The trial court found that lands were given to the plaintiffs as *Nazul* land and it was a land given on grant under Crown Grants Act, 1895 (Government Grants Act, 1950). The trial court held that the provisions of the tenancy Acts (U.P. Tenancy Act, 1939 and Agra Tenancy Act, 1926) are not applicable and dismissed the suits. Appeals before the board of revenue filed by plaintiffs were allowed holding that the plaintiffs were given the occupancy rights by the grant and therefore the tenancy Acts requiring registered deed would not be applicable. However, it was held that other provision of the tenancy Acts are applicable and plaintiffs are entitled to file a suit for ejection/eviction against the defendants as they were sub-tenants. The defendants came in appeal to the High Court, the High Court decided that as Govt. Grants (U.P. Amendment Act, 1960) specifically provides that U.P. Tenancy laws would not be applicable to property given in grant by the government, application of some provisions of tenancy Acts by the board of revenue is wrong. The High Court expressed the opinion that findings of board of revenue are perverse, contrary to law as well as self-contradictory.

3. General Principles

Chapter II of the T.P.A. sets out the general principles governing transfer of property by the 'act of parties'. These principles provide the foundational rules governing transfer of property and are relevant to the specific modes of transfer. However, these general principles are not absolute, the T.P.A. explicitly saves the operation of Muslim personal law where a settled rule covers the subject; in such a situation the personal law rule will prevail.⁵

3.1 Doctrine of Constructive Notice

The term 'notice' as defined in section 3 of T.P.A., stipulates that it is not limited to actual knowledge; rather it also includes constructive notice arising where a person deliberately avoids inquiry or is grossly negligent in failing to make enquiries that a reasonable person would have made.

³ *Laxmi Devi v. Mukund Kanwar*, AIR 1965 SC 834.

⁴ 2024:AHC:196923.

⁵ *T. Ravi v. B. Chinna Narasimha* (2017) 7 SCC 342.



In *Jayshree Kailash Wani v. Official Liquidator*⁶ the High Court held that the T.P.A., envisages the doctrine of constructive notice. It is the duty of the seller to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover. This is, however, subject to the presence of contract to contrary between the parties. In this case, the property was purchased in e-auction and the purchaser has paid the earnest money. The purchaser was required to deposit the bid amount within 60 days from the date of acceptance of the bid. The purchaser applied for an extension of time to deposit the bid amount taking a stand that since the e-auction notice did not disclose the facts that there exist a drain, pond and a sub-station of the electricity department, thus the appellant was kept in dark and the appellant is agreeable to make the payment of the entire bid amount subject to removal of the obstructions from the auction land. However, the e-auction notice itself provided for an opportunity to the appellant to make an inspection of the site in question much before the date of the submission of the earnest money. The appellant had not made physical inspection of the property in question before auction. The court opined that for the inaction or lethargy on the part of the appellant, the respondent cannot be held to be responsible. The terms and the conditions of the e-auction contained a stipulation that the auction was “as is where is and whatever there is basis”. The phrase “as is where is” finds its root in the common law doctrine of “Caveat Emptor” which means “let the buyer beware”. This doctrine puts the duty on the purchaser to carry out all necessary inspection of the property before entering into an agreement. If the purchaser fails to conduct such an inspection, then later, on identification of defects in the property may not be a ground to revoke or claim damages under the contract. In such cases it is presumed that the purchaser had the notice of defects, if any. The Court held that there are two types of defects namely latent defects and patent defects. Latent defects are such type of defects which are unlikely to be discovered by a purchaser during investigation. On the other hand, the second category is patent defects which are discoverable if the buyer would have carried out inspection. In the instant case the defects falls under the second category, being patent defects and could have been easily discovered by inspection of the property. Consequently, the claim of the appellant was rejected.

3.2 Transfer Compared with Will

Section 5 of the T.P.A. define 'transfer of property' as an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons. The concept of transfer by a living person is entirely foreign to the concept of a Will. When a person creates a Will, he provides for testamentary succession without transferring any property. In contrast, a transfer is

⁶ 2024:AHC:172092-DB.

irrevocable and takes effect either immediately or upon the occurrence of a specified event. A Will, however, is revocable and only becomes effective after the death of the testator.

In *I.R. Constructions Pvt. Ltd. v. Yashpal Khullar*⁷ the pertinent issue before the High Court was whether the letter of allotment creates any transferable right in favour of the allottee which can be transferred through a Will or not? The Court held that once it is admitted that ownership in the disputed immovable property never vested in testator during his lifetime, mere execution of the Will mentioning that ownership would devolve upon the plaintiff after death of the testator would not make the plaintiff as owner of the disputed plot after death of testator. Even if the rights conferred by testator are treated to be lawfully bequeathed upon the plaintiff under the Will, the plaintiff would, at the most, succeed rights of testator as an allottee. The court deliberated upon the scope of Will under the T.P.A. and determined that a Will is not an instrument of transfer of property. As per section 3 an “instrument” means non-testamentary instrument. The Will being a testamentary instrument excluded by the provisions of T.P.A. A Will comes into effect after the death of the testator is certainly not an instrument of transfer of property by one living person to other as per section 5 of the T.P.A.

3.3 Adoption Deed and Transfer of Property

In *Munder v. Deputy Director of Consolidation*⁸ the child was adopted by the adoption deed. The deed was neither registered nor stamped. On the death of his adopted father, adopted child's cousin claimed right in the property his adopted father. The cousin (petitioner) raised objection regarding the validity of the adoption deed on two accounts: i) that the adoption deed was not registered; ii) that the adoption deed was not stamped. The said objections were rejected by the consolidation authority and also by the court. Against that the petitioner filed the present writ petition. The High Court held that the adoption is a devolution and not a transfer of the property to the adoptee. On adoption for all purposes from the date of adoption, all the ties of the adopted child in family of his or her birth shall be deemed to be severed. Moreover, on adoption, the adoptee gets transplanted in the family in which he is adopted with same rights as that of a natural born child.

It is to be noted that adoption neither result in transfer of property nor devolution of property to the adoptee. Adoption means “the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child”.

⁷ 2024:AHC:120823.

⁸ 2024:AHC-LKO:39156.



4. Oral Transfer

Before the enactment of T.P.A., the mere transfer of possession sufficed for the transfer of title. As per section 9 of T.P.A. “a transfer of property may be made without writing in every case in which a writing is not expressly required by law”. However, where it is specifically provided that an instrument has to be in writing and registered, an oral or un-registered document is not sufficient to convey the property.

In *Prem Kumar v. Gurdev Singh*⁹ the respondent contended that law recognises both oral transfer and oral understanding regarding transaction of sale. Therefore, registration or non-registration of the agreement would be irrelevant for claiming specific performance for an unregistered agreement for sale in relation to an immovable property situated in U.P. The Court determined that the plea of oral transfer, as outlined in Section 9 is not available to the respondent since in the State of U.P. the requirement of law under U.P. Civil Laws (Reforms and Amendment) Act, 1976 is that there has to be a written and duly registered agreement for sale in order to obtain a decree for specific performance. Hence, the contention of respondent relying on oral contract has no substance.

4.1 Doctrine of Feeding the Grant By Estoppel

The doctrine embodied in section 43 stipulates the equitable rule that one who induces reliance must make good the contract when able. If the transferor lacked title at the time of the conveyance but subsequently acquires the title or power, that later acquisition may 'feed' the earlier grant, validating it to the extent of the interest acquired. The transferor is estopped from later denying that representation.

In *Malka Parvez Shams Ara Begum v. Sardar Mohan Singh Since Deceased*¹⁰ the High Court determined that it is very much clear from the language of section 43 that even if the action of the appellant is treated as fraudulent or erroneous whereby she, on the date of execution of the agreement, represented herself to be authorized to transfer immovable property, such transfer at the option of plaintiff-respondents would operate for the entire period during which the contract subsists. In a suit for specific performance of the agreement, so long as the decree is not drawn either way, the contract would be deemed to subsist and the alleged voidness pressed by the appellant would not defeat the rights of the purchaser or proposed transferee. This position stands further clarified by the subsequent part of section 43 of T.P.A. which starts with non-obstante clause and reads in favour of a transferee who has acted in good faith for consideration without notice of the existence of the said option. The

⁹ 2024:AHC:193613.

¹⁰ 2024:AHC:153371.

Court also referred section 22 of the Indian Contract Act, 1872 which states “contract caused by mistake of one party as to matter of fact- a contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact”. The Court clarified that the aforesaid provision has been referred to in connection with the argument advanced by the appellant side that the defendant was under mistake of fact as to the ceiling proceedings and she bonafidely executed the agreement. The provision makes it clear that the contract would not become voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

4.2 Priority of Rights

Section 48 embodies the equitable maxim *qui prior est tempore potior est jure* i.e. first in time is first in right and rests on the corollary *nemo dat quod non habet* i.e. one cannot give a better title than one has. Section 48 protects the earlier transferee's equitable priority unless displaced by a special contract, express reservation, or other overriding statutory/ equitable doctrine.

A question involving such priority arose in the case of *Ram Keval v. Deputy Director of Consolidation*.¹¹ It was held that the earlier sale deed would prevail over the subsequent sale deed. The transferor/vendor cannot prejudice the rights of the transferee/vendee by any subsequent dealing with the property. This proposition is expressed in the equitable maxim “*qui prior est tempore potior est jure*”. This means that “the first in time prevails over the others” and in other words “he who is earlier in time is stronger in law”. It would also be apt to indicate the principle “*nemo dat quod non habet*” which means “no one can give what they do not have” in other words “no man convey a title than what he has”. When a man in possession of a property has created an interest in favour of someone, he cannot later deviate from it and create another interest without being free from previous transfer. If there are successive transfers of the same property, the later transfer is subject to the prior transfer. Further, section 48 of the T.P.A. embodies this principle in legislation. Section 48 is founded upon the above said principles including that no man can convey a title than what he has. If a person has already affected a transfer, he cannot derogate from his grant and deal with the property free from the rights created under the earlier transaction. Section 48 is absolute in its terms. It determines the priority when there are succeeding transfers. It says that where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their fullest extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created. The court therefore held that the said

¹¹ 2024:AHC-LKO:2591.



provision contemplates that where a person has created different rights in or over the same property, such rights cannot be exercised to their full extent together, then each later created right shall be subject to the rights previously created. The exception is if special contract or reservation binding the earlier transferee is executed.

4.3 Transfer Pendente Lite

The principle of *lis pendens* is founded on the premise that for the effective administration of justice, the outcome of a court case should be relevant not only to the parties involved in the litigation but also to those who hold a title that is subject to the ongoing proceedings. The stipulation in section 52 does not, invalidate the conveyance or transfer in other respects, but rather ensures that it is subservient to the rights of the parties engaged in the litigation.¹² This section comes into operation from the point of the institution of the suit and continues to survive till the satisfaction of the decree.¹³

In *Ashok Kumar v. Bijendra Singh*¹⁴ the transferees of the transferee *pendente lite* claimed that they are bonafide purchasers for value without notice. Refuting their claim the court held that any transaction *pendente lite* between parties to the suit would bind their transferees in the same manner as the parties. The transferees would not have any right independent of their transferor or transferors, who are parties to the pending action. The only exception to the principle is if a purchaser *pendente lite* or his vendor effect the transfer with permission of the Court. Similarly, in *Bharath v. Mirchi*¹⁵ *Devi* it was held that sale of property during the pendency of the case in which stay is granted to the party would be dependent on the operation of section 52. However, no disobedience of the order of the Court can be imputed to the party. Also, in *Doober v. Addl. Commissioner III, Devi Patan Mandal, Gonda*¹⁶ the High Court expressed the opinion that section 52 is an enabling provision, which only recognizes a fact that during the pendency of any proceedings if a property is transferred, it does not adjudge the transaction to be valid or invalid. It only binds the party who has purchased the property during the litigation and prevents him to take a different stand than his transferor and that the transferee is bound by the outcome of the litigation. The High Court referred the decision of the Apex Court in the case of *Jitendra Singh v. State of M.P.*¹⁷ wherein it has been held that the writ petitions against orders arising out of summary

¹² *Thomason Press (India) Ltd v. Nanak Builders and Investors Pvt. Ltd.*, AIR 2013 SC 2389.

¹³ *Aziz v. District judge*, AIR 1994 All 167.

¹⁴ 2024:AHC:125647.

¹⁵ 2024:AHC:143460.

¹⁶ 2024:AHC-LKO:52394.

¹⁷ 2021 SCC OnLine SC 802.

proceedings are not maintainable as the mutation proceedings are of fiscal nature and do not decide the right, title or interest.

4.4 Gift During Pendency of Suit

In *Ajay Chauhan v. Smt. Kewala Devi*¹⁸ while entertaining the writ petition for hearing, under section 12 of the U.P Consolidation of Holding Act, 1953. The Court passed an interim order directing the parties to maintain status quo with respect to the nature and possession of the land in question. Further, directed that in the meantime, no third party rights shall be created over the property in question. Respondent has executed a gift deed of the land in dispute in favour of her daughters. Appellant stated that the aforesaid gift deed is in violation of the interim order passed by this Court and therefore, the respondent is liable to be summoned and prosecuted for having committed contempt of this Court. The High Court held that the validity of the gift deed executed by respondent would be governed by Section 52 of the T.P.A. and is dependent on the decision of the writ petition pending before this Court and also of the consolidation authority. The execution of the gift deed does not by itself change the nature and possession of the suit property though it creates third party rights in the same. Even though the gift deed is in violation of the restrain order passed by this Court, the execution of the gift deed does not substantially interfere in the process of justice and therefore, in light of Section 13(a) of the Contempt of Courts Act, 1971, it is not a case to institute proceedings under the Contempt of Courts Act, 1971.

In *Savitri Devi v. Civil Judge Junior Divion Court No. 22*¹⁹ the prominent issue before the High Court was: i) whether the petitioner has sufficient interest in the pending suit proceedings to be made party?; ii) whether merely on account of the fact that gift deed was executed during the pendency of the proceedings, such an instrument can be held to be void by the trial court while deciding the application for impleadment? The Court held that the principle underlying section 52 of the T.P.A., is based on justice and equity. The operation of the bar under section 52 is subject to the power of the court to exempt the suit property from the operation of Section 52, subject to such conditions it may impose. That means that the court in which the suit is pending, has the power, in appropriate cases, to permit a party to transfer the property which is the subject-matter of the suit without being subjected to the rights of any party to the suit, by imposing such terms as it deems fit. Having regard to the facts and circumstances, the High Court held that this is a fit case where the suit property should be exempted from the operation of Section 52 of the T.P.A., subject to a condition relating to reasonable security, so that the defendants will have the liberty to deal with the

¹⁸ 2024:AHC:154087.

¹⁹ 2024:AHC-LKO:7477.



property in any manner they may deem fit, in spite of the pendency of the suit. It further held that the discretion to make subsequent transferee as a party is discretion of the court and the court has to look into the fact as to whether the transferee has substantial right in the suit proceedings and the subject matter related therein. Transfer *pendente lite* is neither illegal nor void ab initio but remains subservient to rights eventually determined by court in pending litigation. The transfer in favour of purchaser *pendente lite* is effective in transferring title subject to certain obligations as decision of Court in a suit is binding not only on litigating parties but also on those who derive title *pendente lite*.

4.5 No Contempt for Transfer of Property During Pendency of Suit

In *Gokul Prasad v. Diwakar Prasad*²⁰ the High Court held that a mere execution of sale deeds of the disputed plots are not by itself sufficient to institute proceedings under the Contempt of Courts Act, 1971. The validity of the sale deeds would be dependent on the decision of the writ petition in light of section 52 of the T.P.A. and also on the determination of the rights of the parties as adjudicated in different proceedings. Similarly, in *Deoki Nandan Sharma v. Sri Pradeep Sharma*²¹ the High Court held that mere execution of sale deed of disputed property is not by itself sufficient to institute proceedings under the Contempt of Court Act, 1971. The validity of the sale deed would be dependent on the decision of the court in the light of section 52 of T.P.A. and also on the determination of the rights of the parties as adjudicated in different proceedings. Also, in *Anuj Kumar Goswami v. Anjan Kumar Goswami*²² the High Court held that the validity of the sale deed is dependent on the operation of section 52 and it does not by itself substantially interfere with the course of justice. It is not a case for proceeding under Contempt of Court Act, 1971 in view of section 13 (a).

4.6 Statutory Bar Prevail Over Lis Pendens

In *Gur Lal Singh v. State of U.P.*²³ the petitioners relied on section 52, T.P.A. to defend a sale deed executed during pending ceiling proceedings. The High Court clarified that *lis pendens* ordinarily renders a transfer *pendente lite* subservient to the outcome of the suit, but it does not render the transfer void. However, a special statute may expressly declares such transfers void. Section 5(8) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960, declares such transfer void and therefore overrides the general doctrine of *lis pendens*. Consequently, a purchaser under a document hit by Section 5(8) cannot claim

²⁰ 2024:AHC:186688.

²¹ 2024:AHC:193606.

²² 2024:AHC:188511.

²³ 2024:AHC-LKO:74350.

protection under section 52 of T.P.A., nor acquire locus to challenge ceiling orders. The Court held that *lis pendens* does not save or validate a transfer that the governing statute has already rendered void; statutory bar prevails over the general equitable doctrine.

4.7 Transfer of Property During Revision Petition

In *Govind v. Deputy Director of Consolidation Bahraich*²⁴ the petitioner purchased the disputed property by a registered sale deed during the pendency of revision petition. The High Court held that the said sale is hit by section 52 of T.P.A. as in the revision the said property was directly and specifically the subject matter of revision.

4.8 Transfer of Property During Execution Proceeding

In *Shankar Lal Gupta v. Ashok Kumar Gupta*²⁵ the decree-holder obtained a decree for possession of immovable property. After decree the petitioner claims to have been given possession by the erstwhile tenant and moved an application under Order XXI Rule 97 C.P.C. to resist execution. Thereafter, the petitioner produced an unregistered agreement and tax receipts only; no registered transfer or other conclusive evidence of title was produced. The executing court rejected petitioner's application; petitioner moved the High Court under Article 227. The pertinent legal issues in the present case were: i) whether a transferee who took possession during the pendency of proceedings can resist execution under Order XXI?; ii) what is the interplay of Order XXI Rule 102 of C.P.C. with section 52, T.P.A. pertaining to prohibition on transfer during pendency? The High Court held that a person who acquires possession after the decree or during the pendency of the suit, such a *pendente-lite* transferee or a transferee who stepped into the tenant's shoes after the decree cannot resist execution of the decree for possession. It was held that such a transferee is ordinarily a trespasser and is not entitled to obstruct delivery of possession; the executing court and revisional court were correct to reject the application under Order XXI Rule 97 C.P.C. where the objector produced only an unregistered document and tax receipts and failed to make out a genuine transferable right. Also, the High Court held that Order XXI, Rule 102 of C.P.C. bars a *pendente-lite* transferee from resisting execution of a decree for possession; this rule must be read together with Section 52, T.P.A., which makes transfers during pendency ineffective as against other parties to the suit. The Court explicitly reproduced Rule 102 and Section 52 and held that even the defence of being a bona-fide purchaser “with consideration and without notice” is not available to a *pendente-lite* transferee.

²⁴ 2024:AHC-LKO:41758.

²⁵ 2024:AHC:93170.



4.9 Fraudulent Transfer

The proposition of law in connection with a fraudulent transfer is enunciated in section 53 of the T.P.A. It renders voidable any transfer of immovable property made with the intent to defeat or delay creditors or to defraud subsequent transferees. Concurrently, it protect bona-fide purchasers for value without notice.

In *Hemlata Sharma v. State of Uttar Pradesh*²⁶ while the suit for partition is pending the property was transferred, the court determined that since the share of the parties is yet to be determined therefore, it cannot be said that Prahlad kumar pandey executed the sale deed exceeding his share. Further, it was concluded that the dispute is of civil nature. Therefore, it is to be taken into consideration if any property is alienated during pendency of the civil suit the transaction will be covered under Section 53 of T.P.A.

4.10 Doctrine of Part-performance

Section 53-A of T.P.A. embodies the equitable doctrine of part-performance. The transferor is estopped from insisting on rights inconsistent with the terms of the contract. However, the protection is purely defensive in nature pertaining to possession but does not confer title on the transferee, nor it defeat the rights of a subsequent bona-fide transferee for value without notice. Following the amendment in Registration Act, 1908 and other related laws concerning transfer of property, any contract intended to be relied upon for protection under Section 53-A is required to be mandatorily registered under the Registration Act.

In *Irfan Qureshi v. UP State Industrial Development*²⁷ the High Court held that appellant's claim for relief of mandatory injunction based upon oral understanding requires to be dealt with in the light of law of the land. That an agreement to sell concerning immovable property situated in State of U.P. required compulsory registration. Section 17 of Act, 1908 read with Section 54 of Act, 1882, as applicable in U.P., makes it very clear that a contract of sale, as defined in Section 54, can be made only by a registered instrument. By omission of explanation to sub-section (2) of Section 17 of Act, 1908, the legislature has made it very clear that in State of U.P., an agreement to sell immovable property would require compulsory registration so as to create any right, title or interest in immovable property. Moreover, the Court held that in order to take shelter behind the above provision, one has to satisfy the following conditions, as are evident from bare reading of Section 53-A: the contract should have been in writing, signed by or on behalf of the transferor; the transferee should have got possession of the immovable property covered by the contract as a

²⁶ 2024:AHC:64261.

²⁷ 2024:AHC:166060.

part-performance of the contract; if the transferee is already in possession and he continues in possession in part-performance of the contract, he further should have done some act in furtherance of the contract; and the transferee has either performed his part of the contract or is willing to perform his part of the contract.

The High Court held that all the postulates of Section 53-A are sine qua non and a party cannot derive benefit by fulfilling only one or more conditions. It must satisfy all the conditions altogether. Furthermore, except an alleged oral understanding between the appellant and the father of the respondent, there is no written contract or even any other document by which it can be inferred that the property was agreed to be sold by the father of the respondent, except certain photostat copies of the bank drafts on which some notings were made. The High Court without expressing any opinion as regards oral and documentary evidence to be led in the original suit or its maintainability, held that while analysing the claim for injunction based upon a plea under Section 53-A of T.P.A. and in absence of any written registered or unregistered agreement for sale, it is not inclined to accept the appellant's claim for injunction.

5. Specific Transfers

Chapter III to VIII of T.P.A. deals with the specific transfers of property. It signifies the conveyance of property through the specific modes of sale, mortgage, lease, exchange, gift, and assignment of actionable claims. Each of these chapters elaborates the distinctive legal incidents, formal requirements, and rights and obligations that arise in that particular mode of transfer. The specific transfers of property will operate in harmony with the general principles of transfer of property contained in chapter II, except where a special provision displaces the general rule. This reflects the maxim *generalia specialibus non derogant* i.e. the special law overrides the general law.

5.1 Sale

Section 54 lays down the concept of sale. The term 'sale' means a transfer of ownership in exchange for a price pertaining to immovable property. A sale necessarily results in the conveyance of an absolute proprietary interest from the transferor to the transferee. A valid sale generally involves three sequential elements: i) an agreement to sell establishing the terms of transfer, ii) execution of a sale deed as the formal instrument of conveyance, and iii) registration of the sale deed when the property's value is rupees 100 or more, which is mandatory under the Registration Act.



5.2 Registration of Sale Deed

In *Munder v. Deputy Director of Consolidation*²⁸ the petitioner submitted that the adoption deed is mandatorily required to be registered for the reason that by the said adoption deed, the immovable property was going to be transferred in favour of respondent which is of the value of more than 100 Rupees, as required under Section 54 of the T.P.A. in which it has been provided that in the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Here, the transaction by the adoption deed is more than hundred rupees. Moreover, it is submitted that as per Section 17(b) of the Registration Act, 1908, which provides that documents of which registration is compulsory and sub-section 1(b) of Section 17, provides that other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent to or in immovable property and Sub-Section provides any other instrument required by law for the time being in force, to be registered and the effect of non-registration has been provided under Section 49 of the Registration Act, 1908, that document will not be admissible in evidence. Furthermore, it is submitted that Section 35 provides that the instruments not duly stamped are inadmissible in evidence and in the present case, the adoption deed was neither registered nor stamped as per the provisions of the Act, hence it could not be admissible evidence and on the basis of which any judgment and order passed in favour of respondent is a nullity and liable to be quashed. The learned counsel for respondent have submitted that the submission made by learned counsel for petitioner relying upon provisions of different Acts are not applicable in the present case as the adoption deed was executed on 15.05.1931. At that time, the registration was not mandatory and it had come by amendment in the year 1977, in the Hindu Adoption and Maintenance Act, 1956. The learned Counsel has further submitted that it is a devolution of property and not the transfer of property.

The Court in the instant case held that on the perusal of Section 54 of the T.P.A., it is very clear and there is no ambiguity in defining the word 'sale' i.e. transfer of ownership in exchange for a price paid or promised. The adoption deed is not the sale. Hence Section 54 of the T.P.A. and provisions of Registration Act, 1908, relied upon by learned counsel for petitioner are not applicable in the present case as the adoption deed is not a transaction or declaration of any transfer of property.

²⁸ 2024:AHC-LKO:39156.

5.3 Consideration of Sale Deed

In *Rajvir Singh v. Randhir Singh*²⁹ the legal issue before the High Court was: whether, both the courts below have erred in applying the provisions of Section 54 of the T.P.A. to the present case inasmuch as the sale deed itself clearly recorded that the entire sale consideration has been paid in advance and there was no question of any payment or part payment of sale consideration after registration of sale deed? The Court relied upon the decision of Supreme Court in *Kewal Krishan*, wherein after interpreting the provisions of section 54 of T.P.A. it was held that a sale of an immovable property has to be for a price that may be paid or payable in future and such payment is an essential part of sale and if a sale deed is executed without payment of price, it is no sale in the eyes of law. The Court in the instant case held that it was a concluded sale as per Section 54 of T.P.A. with no infirmity and payment of sale consideration is found to have reached to the vendor. Since it was not a case of part-paid or part-promised, question is answered in favour of defendant-respondent attaching validity to the transaction of sale.

5.4 Effect of Non-registration of Sale Deed

In *Ashok v. Smt Kusum Devi*³⁰ the High Court determined that it is admitted on record that title in the property vested in plaintiff-respondent by virtue of registered sale deed executed by Malkhan Singh. There is no other sale deed conferring title upon the defendant-appellant. The entire case of the defendant is based upon the matter written on the back-side of the registered sale deed. There is no dispute about the fact that such writing was not made in the presence of sub-registrar or at the time when the registered sale deed was executed. This writing was made two years after the execution of the registered sale deed. The same cannot be treated to be a registered sale deed or even a registered agreement. The two witnesses of the said writing were also not produced before the courts for leading evidence. Further, in so far as provisions regarding sale are concerned, it is observed that in U.P., U.P. Civil Laws (Reforms and Amendment) Act, 1976, has been enforced, w.e.f. 1.1.1977. By virtue of Section 30 of this Act, section 54 of T.P.A. has been amended. Similarly, by Section 32 of this Act, Section 17 of the Registration Act has been amended and Clause (f) has been inserted in it. These amendments clearly suggests that an agreement to sell of the immovable property is a compulsorily registrable document in U.P. and no un-registered agreement to sell can be executed nor it can be taken in evidence in view of Section 49 of the Registration Act. The Court eventually held that in so far as the submission that the document does not require registration, this Court is not in a position to accept the same and proviso to Section

²⁹ 2024:AHC:167782.

³⁰ 2024:AHC:108473.



49, as applicable in the State of U.P., does not come for the rescue of the defendant-appellant as transfer of property and also delivery of possession cannot be treated as a collateral transaction not required to be effected by registered document.

In *Azmat Ali v. Puttan*³¹ the appellant purchased khandhar along with land in dispute for a consideration of rupees 600 in regard to which the sale deed was executed but was not registered. The appellant was in the possession of the property and constructed the house thereon and residing in the same. The court held that the appellant acquired no right or interest in the disputed property as the sale deed was unregistered. Also, in *Chhail Bihari Sahu v. Prakash Chandra*³² the property worth less than 100 rupees was transferred by executing unregistered sale deed. In the sale deeds neither the number of the property nor its location nor its boundaries were described. Only this much was written that there being good relations between the vendor and vendee, the property measuring 35 x 32 feet is being given for a sum of Rs.80/- to the vendee and its possession has been delivered. The court held that a vaguely written instrument which is completely short of requirements of valid sale deed, though being unregistered considering the value of the property, rightly or wrongly shown therein, would not confer title upon the vendee.

5.5 Contract For Sale Does Not Confer Title

In *Ashok Kumar Kureel v. State of U.P.*³³ the High Court accepted the plea of the petitioner that mere execution of an agreement of sale does not amounts to passing of any right, title or interest in the property in dispute as per section 54 of T.P.A. A contract for sale of immovable property by itself does not creates any interest in or charge on such property. Therefore, as yet no title of the land in dispute has passed in favour of the third party. Also, in *Prem kumar v. Gurdev Singh*³⁴ the dispute arises from a suit for specific performance of an unregistered Agreement for sale (hereinafter 'AFS') in relation to an immovable property situation in district Meerut. The appellant/defendant executed AFS in favour of respondent/plaintiff at Jalandhar, sum of Rs.55,000/- was received by the defendants in advance as part of sale consideration and he agreed to pay the balance amount before the competent registering authority at the time of registration of sale deed. The date fixed for execution of the sale deed was pleaded as 15.07.1977, on which the respondent was required to pay the balance sale price beside the cost of stamp and registration expenses. Respondent waited for the appellants in registrar's office at Meerut but appellants did not appear. The suit

³¹ 2024:AHC-LKO:31043.

³² 2024:AHC:152804.

³³ 2024:AHC:127186-DB.

³⁴ 2024:AHC:193613.

for specific performance of contract was filed by the Respondent at Jalandhar. The said plaint was returned due to lack of territorial jurisdiction of Punjab court. Subsequently, the suit was presented before the trial court at Meerut. Trial court decreed the suit and the first appellate court upheld the decree of trial court of Meerut. Appellants filed an appeal to the High Court. The main issue before the High Court was: whether a decree for specific performance based upon an unregistered agreement for sale is at all sustainable? As regards requirement of registration of an AFS, it is noted by the High Court that the U.P. Civil Laws (Reforms and Amendment) Act, 1976 amended the Registration Act 1908 as well as the T.P.A., besides several other enactments as applicable to the State of U.P. This amendment introduced a change in section 54 of T.P.A. making it mandatory to make a contract for sale only by a registered instrument. Further, the Court analyzed the implication of the U.P. 1976 Act on section 17 of the Registration Act, 1908 and held that a combined reading of Sections 3, 4 and 54 of the T.P.A. of 1882 and, Section 17 and 49 of the Registration Act of 1908, as applicable to the State of U.P., as amended by U.P. Act 57 of 1976, it is clear that every contract of sale of an immovable property situated in any district of U.P. shall be made only by a registered instrument. Even though a contract for sale of immovable property does not by itself create any interest in or charge on such property and only creates a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest, nonetheless, the said contract for sale of an immovable property is required to be registered in the State of U.P. and an unregistered agreement cannot be enforced in a suit for specific performance of a contract nor can it be read in evidence in the state of U.P. after the U.P. 1976 Act.

5.6 Mortgage

The term 'mortgage' as provided under Chapter IV of the T.P.A. defines it as the transfer of an interest in specific immovable property for the purpose of securing payment of a debt or performance of an obligation. Unlike a sale, a mortgage does not convey absolute ownership but only a limited interest sufficient to serve as security, while ownership remains with the mortgagor subject to redemption. The T.P.A. recognizes several forms of mortgages each with distinctive features and legal consequences. The essential incidents of mortgage include the mortgagor's right of redemption, the mortgagee's remedies for enforcement, and the priority of mortgages inter se.

5.7 Identification of Substance for Stamp Duty

In *Ajij Khan v. State of U.P. Thru Secy. Tax And Registration*³⁵ the High Court observed that where an instrument creates a right or interest in specific property to secure

³⁵ 2024:AHC-LKO:82274.



repayment of a debt and provides the creditor with enforcement mechanisms such as attachment and sale, it is a mortgage deed for the purpose of stamp duty under Article 40 of Schedule 1-B of the Indian Stamp Act. The nomenclature of the document is irrelevant; the court must assess its substance and legal effect rather than its form. In the instant case, the petitioner executed a document described as a guarantee deed for obtaining a loan of Rupees 10,00,000/-. Under the document, the creditor was given explicit rights to recover the loan amount through attachment and auction of movable and immovable properties of the debtor in case of default. The revenue authorities treated the instrument as a mortgage deed and assessed stamp duty under Article 40 of Schedule 1-B of the Indian Stamp Act, 1899. The petitioner contended that it was merely a guarantee or security bond, which would fall under Article 57, attracting lesser duty. The initial order under Section 33 of the Stamp Act and the appellate order under Section 56 both upheld the higher duty, prompting the present writ petition. The two prominent legal issues in the present case were: i) whether the instrument, though labeled a guarantee deed in substance amounted to a mortgage deed under Article 40 of Schedule 1-B of the Stamp Act?, ii) whether nomenclature of the document is decisive for stamp-duty classification or whether substance and legal effect determine its true nature? It was observed that the substance of the transaction prevails over the form or nomenclature of the document. That under section 58(a) of the T.P.A., a mortgage involves the creation of an interest in specific immovable property for securing payment of a debt. Whereas, section 2(5) of the Indian Stamp Act, a “bond” or “security bond” signifies only a personal obligation, without transferring proprietary rights. The document in question gave the creditor the right to recover the debt by sale of specified property, thereby creating a proprietary interest, which is a core attribute of a mortgage. The court held that the instrument contained all essential ingredients of a mortgage, despite being titled a guarantee deed.

5.8 Sale or Mortgage by Conditional Sale

In *Ram Shanker v. Mohd. Ibrahim*³⁶ the High Court observed that merely because a condition of repurchase is incorporated in a sale deed does not automatically make it a mortgage by conditional sale. Proof of a debtor-creditor relationship and intention to treat the transfer as security for a debt is essential for it to be called a mortgage. Absence of such proof renders the transaction a sale with a repurchase clause, where the seller's rights lapse if the option is not exercised within the stipulated period. In the instant case, original plaintiff Mohd. Azeem filed suit seeking a decree for declaration and possession over property. The said property initially belonged to Bhagwandeem, who, by registered sale deed transferred it

³⁶ 2024:AHC-LKO:46924.

to Mohd. Azeem for a consideration of Rupees 150. The deed contained a repurchase clause, permitting Bhagwandeem to repurchase the property within 10 years by repaying the same amount. Bhagwandeem neither exercised his right of repurchase nor repaid the amount and died in November 1962. After his death, his widow, Smt. Indrani, sold the property to Ram Shanker, who was a tenant in the premises. Mohd. Azeem challenged this transfer, claiming Smt. Indrani had no title, as Bhagwandeem's right to repurchase had lapsed. Trial Court held that the deed was a sale deed with a repurchase clause, not a mortgage by conditional sale, and decreed the suit in favor of Mohd. Azeem. First Appellate Court affirmed the Trial Court's decision. The Defendants Ram Shanker and others filed the present second appeal, contending the document was a mortgage by conditional sale, granting them a right of redemption. The main legal issues in the instant case is: Whether the instrument was a mortgage by conditional sale under Section 58(c), T.P.A., or merely a sale deed with a repurchase clause. The High Court observed that for a document to be treated as a mortgage by conditional sale under section 58(c) T.P.A., two conditions must be met: a) The repurchase condition must be embodied in the same document; b) There must be proof of a debtor-creditor relationship and that the property was transferred as security for a debt. That the said document explicitly stated that the property was free from encumbrances and was sold because Bhagwandeem needed money. Further, no evidence was produced to prove a debtor-creditor relationship between Bhagwandeem and Mohd. Azeem. The sale consideration was rupees 150, reflecting fair value, and there was no clause regarding interest or repayment terms, which are typical of a mortgage. Therefore, the document was not a mortgage by conditional sale, but a sale with an option of repurchase, which Bhagwandeem failed to exercise within the stipulated period. Also, the High Court observed that even assuming it was a mortgage, Smt. Indrani could not transfer the property to Ram Shanker without redeeming the mortgage first. And no proof of repayment of the alleged mortgage money was produced. The original deed remained with Mohd. Azeem, indicating no redemption occurred. The Court held that the document was a sale deed with a repurchase clause, not a mortgage by conditional sale under Section 58(c) T.P.A.

5.9 Lease

A lease constitutes a mutual agreement wherein a landlord provides a tenant with a time-limited right to the exclusive use of immovable property in exchange for rent or a premium, thereby establishing a restricted proprietary interest for the tenant, while the reversionary interest is retained by the landlord. Chapter V of the T.P.A. relates to leases of immovable property. Section 105 define lease. Section 106 deals with duration of leases in absence of written contract or local law or usage to the contrary. It also make provision for



termination of lease by giving notice. A lease may either be for a fixed term or for perpetual duration. Leases from year to year, for a term exceeding one year, or reserving yearly rent must be effected by a registered instrument. In contrast, a lease of shorter duration may be oral with delivery of possession. Thus, a lease strikes a balance between the lessee's right of enjoyment and the lessor's continuing ownership, with formal requirements ensuring legal certainty.

5.10 Notice for Termination of Lease

In the case of *Jitendra Kumar Rajput v. Pranveer Singh*³⁷ the issue before the Court was that in case of issuance of more than one notice for termination of tenancy and based upon last notice, a suit is instituted, what would be the fate of earlier notice. It was determined by the Court that section 113 of the T.P.A. is relevant for this issue, which deals with the waiver of notice to quit. Further, it is apparently clear that in case lessor gives notice to lessee to vacate the property leased and lessee remains in possession and thereafter, lessor gives second notice to lessee to quit, the first notice is waived of. The legislation is very much clear on this point. If no action has been taken upon the issuance of earlier notice and there is no change of status of lessor and lessee, the earlier notice would be waived off after issuance of latter notice. Also, in *Dharmveer Singh v. Rohit Kumar*³⁸ the trial court decreed the suit for recovery of arrears of rent and eviction on determination of tenancy/lease by serving a notice under section 106 of T.P.A. Tenant challenge this order before the High Court as violative of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The court found that it was admitted by the tenant/petitioner that the building was constructed in 1996 and first assessment of the building was done in the year 2008 by the concerned municipality, therefore the Act of 1972 would not be applicable. The notice issued under section 106 of T.P.A. determining the lease of tenancy would be sufficient to maintain the suit for eviction.

5.11 Form of Notice

In *Engineer Prabhu Dayal Agrawal v. Joint Registrar Co-Operative Society*³⁹ the landlord gave a notice for determination of tenancy under section 106 of T.P.A. The trial court found that the tenancy law was not applicable but said that notice terminating tenancy was not valid. The landlord submitted that once it is determined that Tenancy Act of 1972 is not applicable the court was neither to see the default in payment of arrears of rent nor could have seen into the niceties with which the notice as was claimed to have been issued and served. He submitted that the lease is terminated by mere giving of the notice in advance. The

³⁷ 2024:AHC:95277.

³⁸ 2024:AHC:197299.

³⁹ 2024:AHC:178788.

court held that except where the immovable property is leased out for agricultural or manufacturing purposes, in the absence of any contract between the parties or any local law or usage to the contrary what is prescribed under Sub-section 1 of Section 106, the tenancy is terminable upon notice by the landlord in 15 days' advance. The intendment of the legislature therefore, appears to be very clear that notice is a must to determine the tenancy and once the tenancy has been determined, tenant is liable to be evicted at the instance of the landlord by instituting the suit. It would have been a different case altogether, had the tenant-respondent took up the plea of deposit made in time to seek benefit under Section 114 of the T.P.A. but neither any such pleading had been raised, nor any such issue was framed. Where the question of termination of tenancy arose and the issue was whether the default part in the conduct of the tenant has to be seen or not and it was held that this question could not have been gone into. Looking to the intendment of the legislature under Section 106 of the T.P.A., once the tenancy has stood terminated by the issuance of notice as the landlord inclined himself to terminate it, the question of default can of course, rightly should not have been gone into.

5.12 Unregistered Lease

In *Trilok Chand Fabrication Pvt. Ltd. v. State of U.P.*⁴⁰ the High Court observed that the appellant has claimed that it was a lease for manufacturing purpose, admittedly there was no registered written lease. Therefore, rule of construction as envisaged in Section 106 would not be applicable as the statutory requirement of Section 107 of the Act has not been satisfied. The plea of the appellant that 15 days' notice terminating the present tendency is bad in law would not be sustainable. Further, under no circumstances an unregistered instrument can create a valid lease beyond a period of one year. Furthermore, an oral agreement cannot create a valid lease from year to year. Registration Act, 1908 also compulsorily requires lease of an immovable property created for a term exceeding one year to be registered. In absence of such registration, courts cannot take such a lease into consideration as the same would attract the bar contained under Section 49 of the Act, 1908. Therefore, the Court held that in absence of a registered instrument executed in its favour, a tenant, cannot be permitted to claim possession of a secured asset for a term beyond one year from the date on which the lease is claimed to have come into effect. If a tenant intends to safeguard his possession of the secured asset, presence of a registered lease deed executed in his favour is the sine qua non for the same. As mandated by Section 107 of the T.P.A. 1882 and Section 17 of the Act, 1908, the lease of an immovable property, beyond the period of one year can only be created by a registered instrument. An oral agreement, accompanied by

⁴⁰ 2024:AHC:5811-DB.



the delivery of possession cannot create a lease beyond the prescribed period under Section 107 of the T.P.A. 1882. An unregistered lease, cannot be taken into consideration by the courts, given the bar placed under Section 49 of the IRA, 1908.

In *Mridula Singh v. Lucknow Development Authority Gomti Nagar*⁴¹ the petitioner, was granted a plot on garden lease by Lucknow Development Authority for gardening purposes. Lease executed for 10 years, expressly prohibiting construction. Renewal claimed for 30 years, but deed remained unregistered. Lucknow Development Authority cancelled allotment alleging construction of boundary wall and default in rent and later letters directed petitioner to vacate. The principal issues in the present case were: i) whether the unregistered lease deed conferred any legal right on the petitioner to retain possession?; ii) whether acceptance of rent by Lucknow Development Authority amounts to waiver or creates tenancy by holding over?. The High Court held that a lease of immovable property exceeding one year or reserving yearly rent requires compulsory registration under Section 107, T.P.A. and Section 17(1)(d) of the Registration Act, 1908. An unregistered lease deed confers no right, title, or interest in the property under section 49, Registration Act. Further, it was held that there can be no estoppel against the provisions of a Statute. When Section 17(1)(d) of the Registration Act and 107 of the T.P.A. clearly provides that a lease for a term exceeding one year or reserving a yearly rent can be made by a registered instrument only, and Section 49 of the Registration Act provides that an unregistered lease deed confers no right, title or interest in the property upon the petitioner and it will not be admissible in evidence of the transaction of lease between Lucknow Development Authority and the petitioner, there can be no estoppel against the plea of invalidity of an unregistered lease deed. Further, mere acceptance of rent by lessor does not amount to waiver of termination nor create tenancy by holding over unless statutory requirements are fulfilled.

In *Satyannarayan v. State of U.P.*⁴² the petitioners are tenants of shops in a building; claim tenancy for over 60 years under oral agreements. The owners mortgaged the property to Punjab National Bank for loan facilities and outstanding was due. Thereafter, the borrowers defaulted; bank issued recovery notice under Section 13(2) S.A.R.F.A.E.S.I. and thereafter applied under Section 14 for physical possession. Additional District Magistrate (Finance & Revenue), passed order permitting possession; Sub-Divisional Magistrate passed consequential order nominating Naib-Tehsildar to take possession. Petitioners applied asking that, being tenants, they should be given symbolic/notional possession instead of physical dispossession; that application remained undecided when writ was filed. The main issues in the present case were: i) whether tenants under oral/unregistered tenancy

⁴¹ 2024:AHC-LKO:38201.

⁴² 2024:AHC-LKO:83140-DB.

can resist physical taking of possession under Section 14 S.A.R.F.A.E.S.I.?; ii) whether the petitioners' failure to produce a registered lease or to regularize tenancy under the U.P. Tenancy Act, 2021 precludes protection of possession? The High Court delve into the application of Section 107 of the T.P.A. in the context of S.A.R.F.A.E.S.I. proceedings and held that a lease of immovable property for more than one year, or reserving a yearly rent, can only be created through a registered instrument; an oral or unregistered agreement cannot confer legally enforceable tenancy rights beyond a year. Consequently, occupants claiming tenancy on the basis of long-standing oral arrangements cannot resist possession proceedings under the S.A.R.F.A.E.S.I. Act unless they demonstrate a valid, registered lease executed prior to the mortgage, or compliance with statutory tenancy laws. Further, if a valid lease existed before mortgage, tenant's right must be determined by Section 111 T.P. Act and such tenancy can protect tenant from bank's taking of possession and therefore the secured creditor cannot take possession until the lease is legally determined.

5.13 Exchange of Properties

The term 'exchange' refers to statutory form of barter. Chapter VI comprising of sections 118 to 121 of T.P.A. deals with transfer of property by exchange. It signifies mutual conveyance of ownership wherein a property is transferred in lieu of another property. In exchange, the title is conveyed by following the same formalities that regulates a sale as a method of transfer of property. Thus, exchange is a mutual conveyance of ownership, operating as a transfer of property, but distinguished by the nature of the consideration being property in lieu of property rather than money.

In *The Catholic Diocese of Gorakhpur v. Bhola (Deceased)*⁴³ the High Court determined that a transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale. Therefore, if two persons mutually transfer ownership of an immovable property, in order to the transaction being termed as “exchange”, it has to be only in the manner provided for transfer of such property by sale. Therefore, “exchange” is permissible only when it has ingredients of a “sale” covered by section 54 of the Act. In the present case, such ingredients are completely missing and, therefore, alleged handing over possession by the plaintiff to the State/District Magistrate cannot be termed as “exchange” of plots. Moreover, it was held that if transfer of immovable property by a citizen to the State or inter-se two citizens is permitted through exchange of letters or affidavits, it would lay down an unprecedented and unique but absolutely illegal mode of transfer of property and immovable property would, then, become capable of being

⁴³ 2024:AHC:146911.



transferred completely dehors the provisions of the T.P.A., Registration Act or any other law governing creation of rights in immovable property.

5.14 Gift

The term 'gift' is voluntary transfer of property, made without consideration, by donor to donee and accepted by or on behalf of the donee. The essence of a gift lies in its gratuitous nature and the requirement of acceptance during the donor's lifetime while he is still capable of giving. A valid gift of immovable property must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses, while movable property may be gifted by mere delivery. Once accepted, a gift is generally irrevocable, save for grounds such as fraud, undue influence, or conditions expressly reserved by the donor in conformity with law.

5.15 Gift Compared with License

In *Shyam Pathak v. State of U.P.*⁴⁴ and in *Nisar Ahmad v. State of U.P.*⁴⁵ the dispute arose from an affidavit, where the deponent allowed the petitioner to enter his land for excavation of mud for brick manufacturing. Authorities treated the affidavit as a gift deed, imposed stamp duty under Article 33 read with Article 23 of Schedule 1(B) of the Indian Stamp Act. Petitioner contended that the authorities have erred in treating the affidavit to be a gift and therefore imposed with stamp duty as conveyance whereas in fact the said affidavit created only a licence, not a transfer of ownership, and therefore come within Article 5(c) of Schedule 1(B) of the Indian Stamp Act. The two prominent legal issues in the present case were: i) whether the affidavit considered as a gift of transfer of ownership under section 122 of T.P.A. or merely a licence for permission under section 52 Easements Act?; ii) whether stamp duty under Article 33 read with Article 23 of Schedule 1(B) was rightly imposed or whether Article 5(c) should be applicable? The court observed that Gift under Section 122 T.P.A. involves voluntary, consideration-free transfer of ownership and possession, which is irrevocable. Whereas, licence under section 52 Easements Act merely allows lawful use of property, without creating any interest or ownership rights. The basic difference between a gift and licence would be transfer of interest in the immovable property. The affidavit only allowed excavation of mud, did not transfer ownership or exclusive possession of land. Further, Article 33 of Stamp Act does not define “gift” and therefore interpretation must be taken from section 122 T.P.A. The High Court held that the said affidavit does not amount to a gift deed but a licence under section 52 of the Easements Act.

⁴⁴ 2024:AHC-LKO:82705.

5.16 Gift under Muslim Law

Section 129 of T.P.A. protect the Muslim law of gifts from the contrary provisions of the Act. It provides that nothing in this Chapter shall be deemed to affect any rule of Muslim law. For a valid gift under the Muslim law, there are three essential requirements i.e., declaration of the gift by the donor, acceptance of the gift expressed or implied by or on behalf of the donee and delivery of possession of the subject of the gift by the donor to the donee and if all the three requirements are fulfilled, the oral gift would be valid and it cannot be ignored on the ground that a gift made by a Muslim is not in accordance with Section 123 of the T.P.A.

In *Nisha Gupta v. Inam Ahmed And Others*⁴⁶ the High Court held that in view of the provision under section 129 of the T.P.A., the provision of section 123 of the T.P.A. shall not affect the validity of the gift under any rule of Muslim Law, so if an oral gift is there and the aforesaid three requirements are fulfilled, it cannot be ignored on the ground that a gift made by a Muslim is not in accordance with section 123 of the T.P.A. However, if a gift is made by a Muslim by executing a gift deed, it is not exempt from registration in accordance with the provision under section 17 of the Registration Act. Section 129 of the T.P.A. does not exempt the written gift deed executed by a Muslim.

In *Sahas Degree College v. State of U.P.*⁴⁷ the High Court referred to Mulla, Principles of Mahommedan Law, which states the legal position of gift under the Muslim law. It provides three essential requisites to make a gift valid i) declaration of the gift by the donor ii) acceptance of the gift by the donee expressly or impliedly and iii) delivery of possession to and taking possession thereof by the donee actually or constructively. No written document is required in such a case. Section 129 T.P.A., excludes the rule of Muslim law from the purview of section 123 which mandates that the gift of immovable property must be effected by a registered instrument as stated therein. But it cannot be taken as a sine qua non in all cases that whenever there is a writing about a Muslim gift of immovable property there must be registration thereof. Whether the writing requires registration or not depends on the facts and circumstances of each case. The Court eventually determined that merely because the gift is reduced to writing by a Muslim instead of it having been made orally, such writing does not become a formal document or instrument of gift. When a gift could be made by Muslim orally, its nature and character is not changed because of it having been made by a written document. What is important for a valid gift under Muslim Law is

⁴⁵ 2024:AHC-LKO:86422.

⁴⁶ 2024:AHC-LKO:17547.

⁴⁷ 2024:AHC:129076.



that three essential requisites must be fulfilled. The form is immaterial. If all the three essential requisites are satisfied constituting valid gift, the transaction of gift would not be rendered invalid because it has been written on a plain piece of paper. The distinction that if a written deed of gift recites the factum of prior gift then such deed is not required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to us to be in conformity with the rule of gifts in Muslim Law.

6. Conclusion

The decisions of the High Court of Allahabad in 2024 underscore the enduring centrality of the T.P.A. as the governing framework for immovable property transactions, while also reaffirming that its principles must be applied in conjunction with other statutory laws, statutory amendments, personal laws, and equitable doctrines. The Court consistently emphasized that formal statutory compliance such as compulsory registration under Sections 54, 107 of T.P.A., and 17 of the Registration Act, 1908 cannot be bypassed by oral arrangements, mutation entries, or equitable pleas, thereby reinforcing the maxim that there can be no estoppel against statute.

Equally, the Court highlighted the nuanced role of general doctrines such as notice, *lis pendens*, fraudulent transfer, and part performance. These remain vital equitable safeguards but operate only within the limits of statutory prohibitions. In particular, rulings on Section 52 clarified that while *pendente lite* transfers are ordinarily subservient, they become void where a special law like the Urban Land Ceiling Act expressly declares them so. Similarly, the application of Section 53 and Section 53-A are closely tied to questions of good faith, registration, and the transferee's diligence. At the same time, the Court refined the contours of specific transfers i.e. sale, mortgage, lease, gift, and exchange by stressing compliance with statutory form, the balance between contractual autonomy and legislative safeguards, and the protection of bona fide transferees. The survey shows how the Court's jurisprudence continues to harmonize equitable doctrines with legislative imperatives, advancing both transactional certainty and fairness.

It is essential for the Court to deliver a definitive ruling regarding the necessity of registering gift deeds executed by Muslims, rather than differentiating between a written deed of gift that acknowledges a prior gift, which does not require registration, and a gift made through a deed that necessitates registration. Moreover, there is a pressing need to reassess the legal provisions that mandate the registration of property transfer documents valued at Rupees 100/-.