

(1971) 09 RAJ CK 0010

In the Rajasthan High Court

Case No : Company Suit No. 2 of 1968 in Company Case No. 1 of 1964

Stoneware Pipe and Sanitary Fitting Manufacturing Co. Ltd.,
Jaipur

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 24-09-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2
Jaipur Registration Act, 1944 — Section 17
Jaipur Transfer of Property Act, 1944 — Section 53A, 54
Transfer of Property Act, 1882 — Section 53A

Citation : AIR 1972 Raj 83 : (1972) RLW 103

Hon'ble Judges : P.N. Shinghal, J

Bench : Single Bench

Advocate : S.K.M. Lodha, for the Appellant; R.N. Munshi, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Shinghal, J.—Plaintiff Messrs Stoneware Pipe and Sanitary Fittings Manufacturing Company Limited- Jaipur, was under members" voluntary winding-up. Shri Ram Gopal Chokhani was appointed. Its liquidator, but he obtained an order on July, 9. 1964 for the appointment of the Official Liquidator to be the liquidator, and for supervision by Court. The plaintiff has stated that Messrs Madanlal Kishore Sineh of Kishangarh obtained the permission of the former Jaipur State on January 17, 1946 for establishing a factory for the manufacture of stoneware pipes and other sanitary fittings in Jaipur. They and some others promoted a public company under the name and style of M/s. Stone Ware Pipes and Sanitary Fittings Manufacturing Company Limited, and it was incorporated on March 16, 1946, under the Jaipur Companies Act. The permission and the rights and concessions etc- granted to M/s. Madanlal Kishore Singh were transferred to the Company, which appointed M/s. Madanlal Kishore Singh as its managing agents.

2. The managing agents pursued their efforts to obtain allotment of a plot of land to the Company, in the industrial area, for the setting up of the Company's factory. Plot No. 3, which is the suit plot, was allotted for the purpose. The managing agents then addressed letter Ex. 3 dated April 25, 1946 to the Director of Industries and Commerce for delivery of possession of the plot. The Director conveyed the sanction for the sale of that plot measuring 450 ft. x 483 ft. for the establishment of a factory, at the rate of annas 4 per square yard. A sum of Rs. 6.414/13/6 was accordingly deposited by the plaintiff against cash receipt Ex. 5 dated September 6, 1947. Possession of the plot was given to the plaintiff and it provided a wire fencing where necessary. The plaintiff has contended that it then became the full owner, in possession, of the suit plot.

3. The plaintiff has stated further that it constructed roads, buildings, sheds etc. In and over the suit plot, installed machinery and other equipment at a cost of about Rs. 58.956/4/- and started the production. Its grievance is that although it was the owner in possession of the suit plot, the Urban Improvement Trust, defendant No. 2, illegally and forcibly occupied an area measuring 340 ft. x 483 ft. (18246 $\frac{2}{3}$ square yards) in May, 1958. That area has been marked ABFE in site-plan Ex. 8. while the entire area purchased by the plaintiff has been marked ABCD in that plan. Shri Ram-pal Singh, who was a share-holder and ex-director of the Company, held a discussion with the Organizer. Industrial Estates, Industries and Supplies department, in that connection, and the Organizer sent him reply Ex. 9 dated January 3, 1959 enquiring about his expectation of the price for the total area, excluding the area enclosed by the factory. While these efforts to recover the land were going on, an extraordinary meeting of the members of the Company was held on August 31, 1961 in which the aforesaid decision was taken to wind it up voluntarily and to appoint Shri Ram Gopal Chokhani as the liqui-dator. Shri Chokhani found letter Ex. 11 of April 1962, pasted on the factory premises stating that as the plaintiff was under liquidation and had not fulfilled the conditions on which the land was allotted, and there was no chance of the land being utilised for the purpose for which it was allotted, it stood forfeited and its possession resumed by the Government with effect from the date of the order. Shri Chokhani lodged a protest under letter Ex. 12 dated April 23. 1962, but did not receive a reply. The plaintiff then gave a notice u/s 80 of the Code of Civil Procedure, on June 30. 1962.

4. When the Official Liquidator took over the winding up proceedings under the supervision of the Court, he gave a notice (Ex. 14) to the authorities concerned u/s 80 of the CPC on December 22/30. 1965. No reply was received, and the Official Liquidator advertised the sale of the plot by public auction, along with the structures and the machinery, fixing December 22. 1966. as the date of auction. The Director of Industries informed the Official Liquidator (by his letter Ex. 20 dated December 12. 1966) that the plot was in the possession of the Government since April 7. 1962 and that the Official Liquidator had no right to sell it but could remove the structures or the machinery installed in the shed.

5. The plaintiff has filed the present suit with these allegations, on November 15, 1957, in forma pauperis, and prayed for a decree for (i) restoration of possession of 18246 $\frac{2}{3}$ square yards of land marked ABFE in site-plan Ex. 8 and, if need be. for demolition of the constructions made by the defendants, and (ii) payment of Rs. 11,450/- by way of mesne profits up to date of the suit and thereafter at the rate of Rs. 1,200/- per annum until restoration of possession. In the alternative, the plaintiff had prayed that a decree may be passed for the payment of Rupees 1,82,466/66 as compensation in lieu of the price of the land marked ABFE. The plaintiff has further prayed that the defendants may be restrained, by means of a prohibitory injunction, from interfering with its possession on the remaining land measuring 5903 $\frac{1}{3}$ square yards marked CDEF in site plan Ex. 8. In the alternative, the plaintiff has prayed for restoration of possession of that land by ejecting the defendants, or for the payment of Rs. 59,033/34 as compensation at the rate of Rs. 10/- per square yard. It has prayed for the award of interest and costs also.

6. A written statement has been filed by the State of Rajasthan. defendant No. 1. but not by the Urban Improvement Trust. The State has traversed the claim altogether by denying almost all the important averments in the plaint. It has pleaded that the plaintiff has no right, title or interest in the suit land, and that it is not its owner. The plaintiff's possession on the suit land has also been denied. It has been stated that the letter (Ex. 9) dated January 3, 1959 was written because of a mis-representation of the facts to the Director and that it does not confer any right or title in the plaintiff. The defendant has also challenged the legality of the notice tender Section 80 Civil Procedure Code. In particular, it has been pleaded that the plaintiff has not filed a copy of the sale-deed, that it does not appear that the sale deed was registered and that there was therefore no valid sale in favour of the plaintiff who had no locus standi to file the suit Then it has been pleaded that the defendants are in lawful occupation of the suit land as owners. It has been pleaded further that the suit is not within limitation and that the valuation mentioned in the plaint is much below the market value which is not less than Rs. 25/- per square yard. A plea of non-joinder of parties has also been taken.

7. The following issues were framed on February 20, 1969 in consultation with the learned counsel for the parties who agreed that these were the only points for decision in the case,--

1. Does the land covered by plot No. 3 of the Industrial area, Jaipur South. Jaipur, and described in paragraph 3 of the plaint belong to the plaintiff-company ?
2. Has the Government taken illegal and unauthorised possession of the land marked ABFE in the plan (Annexure I) annexed to the plaint, in May, 1958?
3. Is the plaintiff-company entitled to get mesne profits at the rate of Rupees 1,200/- p. a. from May, 1958, until restoration of possession?

4. Is the plaintiff-company in possession of the land marked CDEF in the plan (Annexure I) appended to the plaint? if so, is it entitled to restrain the defendants from interfering with its possession?

5. Has the plaintiff-company no *locus-standi* to file the present suit?

6. is the suit within limitation?

7. Is the plaintiff-company entitled to get compensation in lieu of the price of the land covered by plot No. 3 in question as stated in paragraph 18 of the plaint?

8. Is the notice served on the defendant not correct and if so, what is its effect?

9. Relief?

8. Learned Government Advocate has frankly stated that he has nothing to say in regard to issues Nos. 6 and 8 and that the former may be decided in favour of the plaintiff and the latter against the defendants. A perusal of the record shows that this contention is quite justified, and the two issues are decided accordingly. I shall deal with the remaining issues *ad seriatim*.

9. Issue No. 1.

This issue relates to the question whether the suit plot belongs to the plaintiff? The learned counsel for the parties have addressed their arguments both on facts and law and I shall examine them separately- I shall examine the facts first.

10. It will be recalled that it is the plaintiffs case that Messrs Madan-lal Kishore Singh applied to the Government of the former Jaipur State for permission to establish a factory for the manufacture of stoneware pipes and other sanitary fittings, and that permission was granted to them on January 17. 1946. The plaintiff has been able to establish this contention by the statements of Kishore Singh P. W. 3, Shiv-charan Das. P- W. 4 and Ishwari Singh P. W. 6. Kishore Singh was a partner of the firm of Messrs Madanlal Kishore Singh, and so also his son-in-law Ishwari Singh P. W. 6. Both these witnesses have stated that Messrs Madanlal Kishore Singh obtained permission from the former Jaipur State for establishing a factory for manufacturing stoneware pipes and sanitary fittings etc. and that a company under the name and style of Messrs Stone Ware Pipes and Sanitary Fittings Manufacturing Company Limited was incorporated to carry on that business. Agreement Ex. 1 was made (on February 26. 1946) between Messrs Madanlal Kishore Singh and the plaintiff for the sale of the concessions obtained by the former from the Government of Jaipur as well as the right to acquire the land described in the letter of the Director of Industries (No 9660 dated November 2. 1945). Both Kishore Singh and Ishwari Singh affixed their signatures to agreement Ex. 1, and they have proved the signatures of the other executants also. They have further stated that the agreement was ratified in a meeting of the Board of Directors of the plaintiff on May 4, 1946 and Ex. 2 has been produced as the record of those proceedings. Shiv-charan Das Khandelwal P, W. 4 has also proved documents Exs. 1 and 2. The statements of Kishore

Singh and Ishwari Singh also go to prove that Messrs Madanlal Kishore Sinfih were appointed as the managing agents of the plaintiff.

They have stated that letter Ex. 3 was sent by Ishwari Singh on April 25, 1946, on behalf of the plaintiff, for delivery of possession of the suit plot to the plaintiff, with the assurance that its cost would be paid as soon as the decision of the Director of Industries was received. Ex. 21 dated April 29, 1946 is another letter of Ishwari Singh informing the Director of Industries about the incorporation of the plaintiff and requesting him to convey the sanction for the setting up of the factory in its name. Kishore Singh has stated that the managing agents of the plaintiff received Government sanction Ex. 4 dated May 21, 1946 for the sale of the suit plot measuring 450 ft. x 483 ft. at the rate of annas 4 per square yard, and asking for the immediate remittance of the cost. Kishore Singh has stated that the plaintiff deposited the full price under receipt Ex. 5 (dated September 6, 1947). Both Kishore Singh and Ishwari Singh have stated that the Government then delivered possession of the suit plot to the plaintiff, which put up a fencing and built a chimney, tinsheds etc.

A perusal of letter Ex. 9 of the Organizer, Industrial Estates. Government of Rajasthan. Jaipur, dated January 3, 1959, also shows that that officer asked Shri Rampal Singh to intimate the expected price of the total area excluding the area enclosed by the factory, at an early date. The genuineness of this letter has been admitted by the respondents. Ex. 11 is a letter of the Director of Industries and Supplies Government of Rajasthan. Jaipur. It is of April 1962 and is addressed to Shri Ram Gopal Chokhanl. the former liquidator of the plaintiff. The genuineness of this letter has also been admitted. It states that as the plaintiff had not fulfilled the conditions on which land was allotted in Jaipur, and there were no chances of the land being utilised by the plaintiff for the purpose for which it was allotted, it stood forfeited to the State and its possession resumed with effect from the date of the issue of the letter. The letter shows that the land had been allotted to the plaintiff. Shri Ram Gopal Chokhani protested against that letter in communication Ex. 12 dated April 23, 1962. which was sent by his counsel to the Director of Industries and Commerce. It also appears from letter Ex. 20 dated December 12, 1966 of the Director of Industries that the plot was in the possession of the Government only with effect from April 7, 1962.

11. As against this evidence of the plaintiff, learned Government Advocate has relied on letter Ex. A-3 dated December 10, 1958. of the Secretary, Urban Improvement Board, to the Director of Industries, advising that acquisition proceedings may be taken in respect of the suit land. But for obvious reasons, the letter can be of no benefit to the defendant. Learned Government Advocate has invited my attention to the statements of C. M. Misra D. W. 1 and V. K. Gadhoke D. W. 4 also. C. M. Misra is the Manager of the Industrial Estates since July, 1961 and he has stated nothing which can be said to have a bearing on the question of purchase of the suit land by the plaintiff. On the other hand he has stated that it appeared from letter Ex. 11 (of April 1962) that the suit land was in

the possession of the Company before April 7, 1962. V. K. Gadhoke D. W. 4 was working as Executive Engineer of the Improvement Trust in Jaipur at the time of his statement, but he has not stated anything. which could be said to bear on the purchase of the suit land by the plaintiff.

12. The evidence of the plaintiff is sufficient to prove that the suit land was allotted to the plaintiff, that sanction for its sale was conveyed in favour of the plaintiff, that the plaintiff was asked to pay its price at the rate of annas 4 per square yard, that the price was paid by the plaintiff and that possession of the land was delivered to it The question however remains whether this was enough to establish the transfer of the land to the plaintiff

13. It will be recalled that the defendant State has taken the plea that as there was no registered sale-deed of the suit land in favour of the plaintiff, no right, title or interest could have passed in its favour. The learned counsel for the plaintiff has tried to meet this plea in two ways. Firstly, he has argued that as the transfer took place during the period when the land belonged to the Maharaja of Jaipur, who was a Sovereign, it was not necessary for him to effect the sale in accordance with the provisions of Section 54 of the Jaipur Transfer of Property Act, 1944 or Section 17 of the Jaipur Registration Act, 1944, which came into force on February 8, 1944. The learned counsel has thus argued that the Maharaja was not bound by the two Acts by virtue of his prerogative as the Sovereign of Jaipur. He has placed reliance on Director of Rationing and Distribution Vs. The Corporation of Calcutta and Others, In support of his argument. Secondly, the learned counsel has argued that the plaintiff is, at any rate, entitled to maintain the suit u/s 53A of the Transfer of Property Act.

14. So far as the first argument is concerned, the learned counsel has pointed out that His Highness's sanction for the sale of the suit plot was conveyed in the Director's letter Ex. 4 dated May 21, 1946, on payment of its price at the rate of annas 4 per square yard. When that price was paid under receipt Ex. 5 dated September 6, 1947, there was, according to the learned counsel, a completed sale in favour of the plaintiff for it was not necessary for a sale by the Sovereign to comply with the requirements of Section 54 of the Jaipur Transfer of Property Act, 1944 or Section 17 of the Jaipur Registration Act, 1944. On the other hand, the learned Government Advocate has pointed out that the decision in Director of Rationing and Distribution Vs. The Corporation of Calcutta and Others, has been overruled by their Lordships of the Supreme Court in Superintendent and Legal Remembrancer, State of West Bengal Vs. Corporation of Calcutta, He has made a reference to Union of India (UOI) Vs. Jubbi and Dunia, etc., also in which the view taken in Superintendent and Legal Remembrancer, State of West Bengal Vs. Corporation of Calcutta, has been affirmed.

15. It may be said to be beyond controversy, however, that the question of the existence of a prerogative of the nature urged by Mr. Lodha is essentially a question of fact. As has been held by their Lordships in the case of Superintendent and Legal Remembrancer, State of West Bengal Vs. Corporation

of Calcutta, with reference to the common law doctrine that the Crown is not bound by statute save by express provision or necessary implication, such a question has to be examined on the facts of the case. It was therefore necessary for the plaintiff to plead and establish that the Maharaja of the former Jaipur State enjoyed the prerogative that he was not bound by statute save by express provision or by necessary implication- But no such plea has been taken and there is no evidence in regard to it at all. The learned counsel cannot therefore be heard on a plea which has not been taken and for which there is no evidence whatsoever,

16. It may also be mentioned that their Lordships of the Supreme Court have clearly held in *Superintendent and Legal Remembrancer, State of West Bengal Vs. Corporation of Calcutta*, that the common law doctrine that the Crown is not bound by statute save by express provision or necessary implication, is a rule or canon of interpretation as distinguished from a rule of substantive law; and there is nothing to show that such a rule or canon of interpretation was followed by the courts in the former Jaipur State so as to justify its consideration by me.

17. There is one more point against the argument of Mr. Lodha. The prerogative referred to by him has not been shown to be based on any legal doctrine prevalent in the former Jaipur State, but emerges from analogy from the common law doctrine that the Crown is not bound by statute save by express provision or necessary implication. Where, therefore, there is any express provision or necessary implication to the contrary, the alleged prerogative would not be available and the Ruler would be bound by the ordinary law. A perusal of the Jaipur Registration Act, 1944 shows that Section 17 (1) thereof provided, inter alia, for the compulsory registration of non-testamentary instruments purporting to or operating to create, declare, assign, limit or extinguish any right, title or interest, of the value of Rs. 100/- and upwards to or in Immovable property. Exceptions to that requirement were provided in Sub-section (2) of Section 17. One of these was a grant of Immovable property by the Government. It will therefore be fair and reasonable to hold that even if there was any such prerogative in the former Jaipur State as has been urged by the learned counsel for the plaintiff, the provision in Section 17 Of the Jaipur Registration Act had the effect of exempting only those instruments which fell within the purview of Sub-section (2). In other words, the statute provided, by necessary implication, that a sale of Immovable property of the value of Rs. 100/- or more would be effected only by a registered instrument and not otherwise as there was no exemption in favour of sales made by the Ruler. Such a reasoning has found favour in the judgment of their Lordships of the Supreme Court in the case Of *Superintendent and Legal Remembrancer, State of West Bengal Vs. Corporation of Calcutta*,

18. Before leaving this point it may be mentioned that learned Government Advocate has invited my attention to Section 42 of the Government of Jaipur Act. 1944, for the purpose of showing that the only prerogative of His Highness the Maharaja of Jaipur, which was preserved from June 1. 1944 onwards when that

Act was promulgated, was the prerogative to make and pass Acts, Proclamations and Orders in His Highness's discretion without reference to the Legislative Council.

19. The second argument of the learned counsel for the plaintiff is based on Section 53-A of the Jaipur Transfer of Property Act. 1944. That section is similar in all respects to Section 53A of the Indian Transfer of Property Act, 1882 which is now in force in Rajasthan, Learned Counsel for the plaintiff has therefore argued that as the transfer of the suit land for consideration is evidenced by documents Exs. 4, 9. 11. 20 and 43. which have been signed on behalf of the transferor and from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty and the transferee namely the plaintiff, has. as part-performance of the contract taken possession of the land and has paid the price thereof as evidenced by cash receipt Ex. 5, and the plaintiff has performed or is willing to perform its part of the contract, then, notwithstanding that the contract, though required to be registered, has not " been registered, or the instrument of transfer has not been completed in the manner prescribed therefore by Section 54 of the Transfer of Property Act. the defendants are debarred from enforcing any right against the transferee in respect of the suit property.

The learned counsel has argued further that as the defendants have [forcibly dispossessed the plaintiff, it can maintain the present suit for restoration of possession, injunction and compensation. Developing the argument the learned counsel has contended that the words of Section 53A of the Transfer of Property Act do not justify the view that the plaintiff, as such, is in all circumstances debarred from the benefit of the section, and that as long as he uses it as a shield, he should be entitled to the equity of part-performance contained in it. It has been urged that if this view is not upheld, a powerful transferor may always defeat the salutary provisions of the section by dispossessing the transferee by force and compelling him to take the position of a plaintiff- For this argument the learned counsel has placed reliance on Pandit Ram Chander Vs. Pandit Maharaj Kunwar and Others, ; AIR 1940 1 (Oudh) , AIR 1944 212 (Oudh) : AIR 1949 410 (Nagpur) ; Fateh Mohd. v. Mst. Ghosia Bibi AIR 1953 Ajmer 19; Gulab Chand v. Madholal AIR 1953 Ajmer 47 ; Ettapparambath Atiyandi Pakkirichi Umma Vs. Kaiprath Kalandan and Another, ; Achayva v. Venkata Subba Rao. AIR 1957 AP 854 ; Maruti Gurappa and Another Vs. Krishna Bala and Another, and Chaitan Das v. Murali Dalai AIR 1971 Orissa 41.

20. The point which therefore requires consideration is whether the benefit which has been allowed to the transferee u/s 53A of the Transfer of Property Act gives him a right to institute a suit for the resto- ration of possession of the property lost by him by the machinations of the transferor, or for the issue of a prohibitory injunction or recovery of compensation.

21. It has to be remembered in this connection that in view of the provisions of Section 54 of the Indian Transfer of Property Act. 1882 and Section 17 read with

Section 49 of the Indian Registration Act, 1908. a transfer of tangible Immovable property of the value of one hundred rupees and upwards could be made only by a registered instrument. It was therefore held by their Lordships of the Privy Council in AIR 1931 79 (Privy Council) that the English equitable doctrine of part-performance could not prevail in India so as to set at naught the express statutory provisions of the aforesaid sections of the Transfer of Property Act and the Registration Act. To relieve the hardship, the Transfer of Property (Amendment) Act, 1929 introduced the equity of part-performance in Indian law by enacting Section 53A, and this was reinforced by amendments in the Registration and the Specific Relief Acts- it is significant, however, that the English equity of part-performance was only partially introduced in our country so that it can be availed of within the four corners of Section 53A of the Transfer of Property Act. As the Jaipur Transfer of Property Act, 1944 contained a provision similar to Section 53A of the Indian Transfer of Property Act, a similar limitation will hold good in the present case.

Thus for the purpose of understanding and applying Section 53A it has to be borne in mind that if the section has not been in existence at all, no defence would have been available to the transferee if the transfer in his favour fell short of the requirement of Section 54 of the Transfer of Property Act. The transferee, in that case, could not take resort even to a plea of estoppel in face of the statutory provisions of Section 54 of the Transfer of Property Act and Section 49 of the Registration Act. it appears to me. therefore, that the effect of Section 53A is to provide that the transferee will be able to protect his possession against the transferor if the requirements of. Section 53A are fulfilled. The protection is statutory, but it is of limited import and efficacy for it has to be confined to the wordings of the statute. The statute, as has been stated. raises a bar against the transferor inasmuch as it debars him from "enforcing against the transferee any right in respect of the property of which the transferee has taken or continued in possession,". The section does not therefore give to the transferee a right of action for a suit, including a so-called defensive suit for restoration of possession forcibly taken by the transferor, or for injunction or compensation. Any other view will result in setting at naught the provisions of Section 54 of the Transfer of Property Act and Section 17 of the Registration Act.

22. It will be recalled that Section 53A of "the Transfer of Property Act came into existence for the purpose of mitigating the effect of the judgment of their Lordships of the Privy Council in AIR 1931 79 (Privy Council) . I have therefore looked into the two subsequent pronouncements of their Lordships in AIR 1940 1 (Privy Council) and AIR 1941 128 (Privy Council) . In Probodh Kumar Das's case, the plaintiffs were at least partly in possession of what may shortly be stated as the K. T. estate, under a contract of sale dated October 10, 1931, but no conveyance was executed in their favour. On the other hand the defendants had a duly completed title, but were not in possession. A dispute arose between them about the right to export the tea quota of the K. T. estate under the Indian Tea Control Act. The Licensing Committee ultimately recognised the defendants as

entitled to the export quota rights of the estate. The plaintiffs filed a suit for a declaration that the defendants had no such right or title to the estate and were debarred from enforcing any right to it. Including the right to sell tea under the export quota. They, also sought an injunction. In doing so, they relied on Section 53A of the Transfer of Property Act.

It may be said that, in a sense, they resorted to the remedy of suit under compulsion, in order to defend their possession of the K. T. estate and all that the possession signified. Even so, their Lordships took the view that the amendment of law effected by the enactment of Section 53A conferred no right of action on a transferee in possession under an unregistered contract of sale. In expressing themselves on the point, they observed as follows,--

"The section is so framed as to impose a statutory bar on the transferor; it confers no active. title on the transferee. Indeed, any other reading of it would make a serious inroad on the whole scheme of the Transfer of Property Act."

It therefore appears that Section 53A cannot be said to confer a right of action on a transferee in possession under an unregistered contract of sale so that it is not permissible for him to institute a suit for restoration of pos-session of injunction etc. under its authority.

23. Their Lordships of the Privy Council again examined the nature of the equity of part performance (in Section 53A of the Transfer of Property Act) in AIR 1941 128 (Privy Council) The Secretary of State there granted to the Kuchawar Lime and Stone Company Limited quarrying leases for 20 years. The Company went in liquidation in 1933 and agreed with one Bose for the sale to him of the rights under the leases subject to the sanction of the Board of Revenue. The agreement was not registered. In 1934 the Government purported to forfeit the leases and gave permission to the appellant to enter and work the quarries, which they did. No formal lease to the appellants was executed. In September 1934, the respondent Company brought a suit against the Secretary of the State for a declaration that their leases had not been forfeited and for an injunction restraining the defendant from granting leases to the appellant or others. When the case came up before their Lordships on subsequent developments, they made the following observation regarding the scope of Section 53A of the Transfer of Property Act.-

"But the words of the section make it quite plain that the section does not operate to create a form of transfer of property which is exempt from registration. it creates no real right: it mere-ly creates rights of estoppel between the proposed transferee and transferor" (Emphasis added).

It was therefore declared to be law, as far back as in 1941 that Section 53A did not create any "real right" beyond the right to plead estoppel in spite of the provisions of Section 54 of the Transfer of Property Act and Section 17 read with Section 49 of the Registration Act,

24. The view expressed by their Lordships in AIR 1940 1 (Privy Council) has been approved and followed by their Lordships of the Supreme Court in Delhi Motor Company and Others Vs. U.A. Basrurkar and Others, The plaintiff in that case was the Delhi Motor Company, which was a partnership firm. It entered into a contract with the defendant Company for taking a sub-lease of a building of which the defendant Company was the tenant.

Three unregistered documents evidenced that transaction which did not, in terms, purport to be a sub-lease and was in the form of partnership. Possession of a portion of the building was given to the plaintiff on April 1, 1950, but it was dispossessed thereafter. It brought a suit for possession, damages and injunction. Their Lordships found that the lease was for a minimum period of 15 months so that it fell within the purview of Section 107 of the Transfer of Property Act and could be made by a registered instrument only. They accordingly held that the plaintiff could not claim any rights on the basis of the lease evidenced by the unregistered documents. While rejecting the argument of the learned counsel for the plaintiff to the contrary, their Lordships held as follows.-

"In our opinion, this argument proceeds on an incorrect interpretation of Section 53A, because that section is only meant to bring about a bar against enforcement of rights by a lessor in respect of property of which the lessee had already taken possession. but does not give any right to the lessee to claim possession or to claim any other rights on the basis of an unregistered lease. Section 53A of the Transfer of Property Act is only available as a defence to a lessee and not as conferring a right on the basis of which the lessee can claim rights against the lessor. This interpretation of Section 53A was clearly laid down by their Lordships of the Privy Council in Probodh Kumar Das v. Danta-mara Tea Co."

If I may say so with respect, this decision will govern the controversy before me for in both the cases the plaintiff was put in possession by the transferor and was compelled to raise a suit for restoration of possession, injunction and compensation. As their Lordships have laid it down that such a suit cannot be maintained, it follows that the plaintiff is not entitled to maintain the present suit.

25. The learned Government Advocate has cited a number of other decisions in support of the view I have taken, and I may as well refer to them before examining the cases cited by the plaintiff's learned counsel. It has thus been held in Ramrao Nilkanth v. Purnanand Saraswati Swami, AIR 1940. Bom 281, on the authority of the decision of their Lordships of the Privy Council in AIR 1940 1 (Privy Council) that Section 53A of the Transfer of Property Act serves as a defence and cannot be made a ground of attack. A similar view has been taken in Madhuban Ganda and Others Vs. Basanta Khetri, : Bajrangi Gope and Others Vs. Rupnarain Mahton and Others, and Parul Bala Ghosh Vs. Saroj Kumar Goswami and Others, In Hari Prosad Agarwalla and Another Vs. Abdul Haq and Others, the suit was instituted by the lessors who were put in possession. The

lease was however not made in accordance with the law and the defendants illegally started using the land for extracting fire-clay. It was held by Sinha, J., that Section 53A gives no right to a transferee to come to court as a plaintiff either to maintain his possession or to recover possession if he is dispossessed. A similar view has been taken in the case of a suit by a dispossessed transferee in *The State Vs. Madan Lal, In Sardarilal and Others Vs. Shrimati Shakuntla Devi*, it has been held that the right which is conferred by Section 53A is in the nature of a passive equity available only to the defendant for the protection of his possession, without conferring upon him any active title and on its basis the law in India does not permit him to sue.

26. *Motilal and Another Vs. Jaswant Singh and Others*, is a decision of this court in a suit under Order 21, Rule 63, Civil P. C. It has been held by Bhandari. J., (as he then was) that the language of Section 53A must be construed as debarring any person coming to a court of law from enforcing any right against the transferee and that it does not give any right to the transferee so that he can not maintain a suit for the declaration of his title under Order 21, Rule 63. Civil P. C., in *Vora Mulla Taheralai Mulla Akbaralli Vs. Manoranjan Barua*, the suit was instituted by the transferee who was in possession and had paid the price of the house to Ali-hussain. The defendant obtained a decree against Alihussain and got the house attached. -The plaintiff raised an objection under Order 21, Rule 58, Civil P. C., but it was rejected. He therefore filed a suit for declaration that the house was not liable to attachment and sale. Following the decisions of their Lordships of the Privy Council in AIR 1940 1 (Privy Council) and of their Lordships of the Supreme Court in *Delhi Motor Company and Others Vs. U.A. Basrurkar and Others*, their Lordships of the Gujarat High Court held that a transferee does not get any right u/s 53A to claim possession for he can only plead estoppel against the transferor in order to defend his possession. He cannot maintain any suit.

27. The above cases support the view which I have taken against the maintainability of the present suit,

28. I have gone through the cases cited by the learned counsel for the plaintiff. The first of these is a judgment of Thomas, C. J., *Pandit Ram Chander Vs. Pandit Maharaj Kunwar and Others*, There the plaintiff was a lessee of certain properties under a deed of lease which was duly registered but was not signed by either the lessor or the lessee in accordance with the provisions of Section 107 of the Transfer of Property Act. Nevertheless the plaintiff had obtained possession. The defendants demolished a part of the property and it was alleged that this was done in collusion with the Municipal Board on the ground that the building was dangerous. The plaintiff brought a suit for injunction restraining the defendants from interfering with any of his rights as the lessee. A controversy arose whether this was permissible u/s 53A of the Transfer of Property Act. The learned Chief Justice took the view that the plaintiff was not attempting to set up a transfer which was invalid; he had not instituted the suit for the declaration of the validity

of the transfer and he had not instituted the suit in which he claimed an order against the defendant directing him to perform any covenant of the transfer. He therefore held that as the plaintiff was seeking to debar the defendant from interfering with his possession, he was, in a sense, "really a defendant" and there was nothing in Section 53A to dis-entitle him from maintaining the suit.

It will be sufficient for me to say that the decision of their Lordships of the Privy Council in AIR 1940 1 (Privy Council) was not available by then. Moreover the facts of the case were quite different. The learned counsel for the parties have not invited my attention to any recent judgment of their Lordships of the Allahabad High Court, but I have read a Bench decision of the Allahabad High Court in Pearey Lal and Another Vs. Prithi Singh and Others, in which a somewhat different view appears to have been taken.

29. AIR 1940 1 (Oudh) was decided by a learned Single Judge following the decision in Pandit Ram Chander Vs. Pandit Maharaj Kunwar and Others, By then the decision of their Lordships of the Privy Council in AIR 1940 1 (Privy Council) was not available. The suit was by the vendee under Order 21, Rule 103. Civil P. C. and it was held to be by way of a defence so that the benefit of Section 53A Of the Transfer of Property Act was allowed to the plaintiff. The appeal against that judgment was considered in AIR 1944 212 (Oudh) It was heard by Thomas, C. J. and Misra, J., who followed the decision in Ram Chander's case. By that time, the decision in Probodh Kumar Das's case, had become available but their Lordships explained it away by saying that when their Lordships of the Privy Council used the word "defendant" they used it to describe the position of a person who pleaded Section 53A and that what they had said was that his position must be that of a person who invoked the section for defending himself against his transferor. With utmost respect to the learned Judges, I am unable to think that this could be said to be a correct interpretation of the decision of their Lordships of the Privy Council in Probodh Kumar Das's case.

30. The next case cited by Mr. Lodha is AIR 1949 410 (Nagpur) It was held in that case that while Section 53A creates a defence, it gives the part-performer a right to resist dispossession, and if, in point of fact, he is forcibly ejected, he has his remedy, for, were it otherwise, the shield would be useless against resolute men who relied on the strong arm of force. That was a judgment of a learned Single Judge, but he does not appear to have taken note of the other decision of his own court in AIR 1940 113 (Nagpur) That was a case in which the plaintiff claimed to be the occupancy and the absolute occupancy tenant of the lands in the suit, on sale by the defendant under an unregistered sale-deed for a sum of Rs, 300/-. The plaintiff contended that he allowed the defendant to continue in possession as on an "ada-tiya" contract which had been terminated, and so he was entitled to possession. It was held by Vivian Bose, J., that Section 53A did not entitle a person to sue. Reference may also be made to Dammulal Babulal Jain v. Mohammad Bhai. AIR 1955 Nag 306 in which it was held, following the decision in AIR 1940 1 (Privy Council) that Section 53A does not confer a right of

action on the transferee in possession under an unregistered contract or conveyance. In view of these decisions of the Nagpur High Court, the decision in AIR 1949 410 (Nagpur) cannot be said to be the final opinion of that Hon'ble Court.

31. I have gone through the decision in AIR 1953 Raj 19 , but it was based largely on AIR 1944 212 (Oudh) to which reference has been made already. The same holds good in the case of the decision in AIR 1953 Ajmer 47 where the learned Judicial Commissioner really followed the decision in S. Fateh Mohd."s case. AIR 1953 Ajmer 19.

32. The next case is Ettapparambath Atiyandi Pakkirichi Umma Vs. Kaiprath Kalandan and Another, It was held, following the decision in AIR 1940 1 (Privy Council) that Section 53A confers no right of action on a transferee in possession under an unregistered contract of sale and that the right conferred is a right available only to a defendant to protect his possession so that it confers no active title on the transferee. The abstract view of the law taken in that case does not therefore" support the argument of the learned counsel for the plaintiff even though it was ultimately held in that case that a suit under Order 21. Rule 63 or Rule 103, Civil P. C, was an exception to that rule.

33. Mr. Lodha has largely relied on a Bench Decision in AIR 1957 AP 854 . In that case a sale-deed of some land was executed in favour of the plaintiffs, and possession was de-livered to them. It could not however be registered. The land in possession of the plaintiff was sold in other proceedings, in execution of a decree, for Rs. 1,025/-. The plaintiffs wanted to recover the balance of Rs. 704/-. The Munsiff directed the plaintiffs to file a suit to establish their right to the land. It was in these circumstances that they filed a suit for a declaration that they were entitled to the surplus of Rupees 704/-. The two lower courts decreed the suit. Their Lordships of the High Court held that the transferee could resist any attempt on the part of the transferor to enforce his rights in respect of the property irrespective of what position he occupied in the field of litigation. In the facts of the case before them they reached the conclusion that the plaintiff was using his right only as a shield and not as a sword. The decision was based largely on Pandit Ram Chander Vs. Pandit Maharaj Kunwar and Others, and AIR 1944 212 (Oudh) which have been dealt with already, and it is not necessary to examine the matter once again beyond saving, with utmost respect, that every suit of a plaintiff may. In a sense, be said to be defensive, and the view of their Lordships will therefore make a serious inroad on the scheme of the Transfer of Property Act.

34. Maruti Gurappa and Another Vs. Krishna Bala and Another, on which also reliance has been placed by Mr. Lodha. was a suit under Order 21, Rule 103. Civil P. C. It was held by the learned Single Judge that the only right which the plaintiff put forward in a suit under Order 21, Rule 103, Civil P. C. was a right to maintain his possession and that the suit was therefore essentially for preserving that right. The learned Judge followed the decisions in favour of that view in

preference to the other view on the subject, but although he noticed the decision of his own court in *Ramrao Nilkanth Nadkarni Vs. Shrimant Purnanand Saraswati Swami*, in which it was held that Section 53A serves as a defence and cannot be made a ground of attack, he did not follow its reasoning even though it was based largely on the decision of their Lordships of the Privy Council in AIR 1940 1 (Privy Council)

35. The remaining case cited by Mr. Lodha is AIR 1971 Orissa 41. In that case the plaintiff deposited "salami" and received delivery of possession but the "patta" was not issued. The defendants disturbed the possession and their possession was upheld in proceedings u/s 145, Criminal P. C. The plaintiffs therefore instituted a suit for its restoration. It was held by the learned Judge that the suit was maintainable, and in reaching that conclusion he relied mainly on the decision in AIR 1957 AP 854. It appears that the well-considered Bench decision of his own court in *Padmalabha Panda v. Appalanarasamma* AIR 1952 Orissa 143, in which a contrary view was taken, was not brought to his notice.

36. For the reasons mentioned above, I am unable to follow the view taken in the cases on which reliance has been placed by the learned counsel for the plaintiff. I have therefore no hesitation in holding that the plaintiff is not entitled to maintain the suit u/s 53A of the Transfer of Property Act also, so that it cannot be held to be the owner of the suit land. Issue No. 1 is decided accordingly. Issue No. 2.

37. The point for decision is whether the defendant State took illegal and unauthorised possession of the land marked ABFE in the site plan An-nexure 1 in May 1958. That plan has been marked as Exhibit 8 during the course of the trial. It will be recalled that I have already reached the conclusion, while examining the factual part of issue No. 1, that the plaintiff had taken possession of the suit land, and it is not necessary to discuss that evidence again. As the defendant claims that it had taken possession of that land thereafter, it is for it to show what authority it had for doing so and for dispossessing the plaintiff. Learned Government Advocate has relied on Exhibit 11, which is a letter of the Director of Industries of April 1962. It states that as the plaintiff had not fulfilled the condition on which the land was allotted and there were no chances of its being utilised for the purpose for which it was allotted, the land stood forfeited and its possession "resumed to the Government" with effect from the date of issue of the letter. Reliance has also been placed on letter Exhibit 20, dated December 12, 1966 in which it has been stated by the Director that possession had been taken over by the State on April 7, 1962 under its aforesaid letter (Exhibit 11) of April 7, 1962. The defendant has not however stated on what conditions the land was allotted to the plaintiff and what conditions of allotment were not fulfilled by it. I have gone through the written statement of the defendants and it does not also set out those conditions, or make any statement about their breach. In these circumstances, when the plaintiff was in lawful possession. I have no hesitation in reaching the conclusion that the defendants took unauthorised

possession of the suit land marked ABFE

38. As regards the date of that Illegal or unauthorised possession, the learned counsel for the plaintiff has invited my attention to the statement of Ram Gopal P. W. 2 who was appointed as the first liquidator of the plaintiff under its resolution (Exhibit 10) dated August 31, 1961. He has stated that he got possession of portion CDEF (shown in site-plan Exhibit 8), when he took over as liquidator because portion ABFE was then in the possession of the Urban Improvement Trust. The witness has not however referred to any contemporaneous document to support his assertion in this respect. On the other hand it appears from letter Exhibit A. 4. dated January 29, 1962. of the Joint Director of Industrial Estates, that he allowed Rampal Singh to make his representation up to Feb. 15, 1962 and informed him that if that was not done a final action would be taken without further reference to him. A perusal of letter Exhibit 11 of April. 1962 strengthens the view that the land was not forfeited and its possession was not resumed to the Government until April 7. 1962 when that letter was issued- Rampal Singh P. W. 5 was a director of the plaintiff and the learned counsel for the plaintiff has invited attention to that part of his statement where he has stated that the State Government committed trespass on portion ABFE in May 1958. It is however not possible to accept his testimony also for the simple reason that while he has stated that he addressed a letter to the Director of Industries protesting against the trespass, that letter or its copy has not been placed on the record. From the evidence on the record I therefore conclude that the illegal and unauthorised possession of the land was taken by the State on April 7, 1962 and not in May 1958. Issue No. 2 is decided accordingly. Issue No. 3.

39. The issue between the parties is whether the plaintiff is entitled to claim mesne profits at the rate of Rs. 1,200/- per annum from May 1958 until restoration of possession. I have already decided that the day of the alleged dispossession was April 7, 1962, and I have also held already that the plaintiff is not entitled to maintain the present suit. I have therefore only to consider whether the assessment of mesne profits at the rate of Rs. 1,200/- per annum is correct.

40. A perusal of the statement of Official Liquidator Daulatram P. W. 1 shows that the annual letting value of the suit plot was at least Rs. 1,200/-per annum from May 1958 onwards- in spite of that assertion of the witness, he was not cross-examined on the point Then there is the statement of Rampal Singh P. W. 9 that the suit land could fetch a rent of at least Rs. 1,200/- per annum. He was also not cross-examined on the point. What is more, the defendant has not led any evidence in rebuttal beyond examining Om Prakash D. W. 3. He has stated that before 1964 the rate of premium was Rs. 500/- per acre and the annual rent was Rs. 50/-per acre. Even on the basis of this calculation, mesne profits would exceed Rs. 1,200/- per annum. I have there-fore no hesitation in holding that the calculation of mesne profits at the rate of Rs. 1,200/- per annum is quite

justified and this is my finding on the point.

Issue No- 4 :

41. This issue raises the question whether the plaintiff is in possession of the land marked CDEF in site plan Exhibit 8 and, if so. Is it entitled to restrain the defendants from interfering with its possession ? I have already examined the second part of the issue while recording my finding on issue No, 1, and it will be sufficient to say that the plaintiff is not entitled to institute the present suit for restraining the defendants from interfering with its possession.

42. So far as the first part of the issue is concerned, the plaintiffs have examined Official Liquidator Daulatram P. W. 1, and Ram Gopal P. W. 2. The Official Liquidator has stated that he is still in possession of portion CDEF shown in site-plan Exhibit 8. He was cross-examined on the point and had to admit that portion CDEF does not contain any lock of the plaintiff because it is not enclosed, and is incapable of being locked. The witness has further admitted that there is no "chowkidar" also. It is therefore difficult to accept his bald statement that he is in possession of portion CDEF when he has not been able to explain how he is laying that claim in face of notice Exhibit 11. So far as the statement of Ram Gopal P. W. 2 is concerned, it will be sufficient to say that he has not stated anything about current possession as he ceased to be the Liquidator on July 9, 1964 when his resignation was accepted. On the other hand it has been admitted by him that notice Exhibit 11 was found pasted on the factory premises. That notice is of April 1962 and it states that the land stood forfeited to the State and its possession had been resumed with effect from the date of the notice. The notice was issued on April 7, 1962. The evidence on the re-cord therefore leads to the conclusion that the plaintiff was not in possession of land marked CDEF on the date of the filing of the suit-Issue No. 5.

43. It is not necessary to examine the question whether the plaintiff has no locus standi to file the suit because the question regarding the maintainability of the suit has been dealt with at length while recording the finding on issue No. 1. Issue No. 7.

44. The point for decision is whether the plaintiff is entitled to get compensation in lieu of the price of the land covered by the suit plot as stated in paragraph 18 of the plaint. The plaintiff has asked for compensation at the rate of Rs. 10/- per square yard. Paragraph 21 of the written statement shows that the defendant State has stated that the land would fetch not less than Rs. 25/- per square yard. It appears, therefore, that the plaintiff's calculation of compensation at the rate of Rs. 10/- per square yard is quite justified. Reference in this connection may also be made to the statement of Official Liquidator Daulat Ram P. W. 1 who has stated that the valuation of the suit plot was never less than Rs. 10/- per square yard from May 1958. It is significant that he has not been cross-examined on the point. Then there is the statement of Rampal Singh P, W. 5 that the market value of the suit plot from 1958 onwards was not less than Rs. 25/ per

square yard, be-cause that was the rate of the land in the area. As the defendant has not led any evidence in rebuttal and as the valuation has in fact been placed at Rs. 25/- per square yard in the written statement, the valuation made by the plaintiff is quite justified.

45. This leaves the question of relief. As it has been held that the suit is not maintainable it is dismissed with costs.