THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL NO.267 OF 1996

JUDGMENT:

The plaintiff in O.S.No.29 of 1984 on the file of the District Munsif, Asifabad and appellant in A.S.No.7 of 1984 on the file of the Subordinate Judge Court at Asifabad, preferred this second appeal under Section 100 of C.P.C, challenging the concurrent findings recorded by both the Trial Court and the Appellate Court.

For convenience of reference, the ranks given to both the parties before the Trial Court will be adopted throughout the judgment.

The plaintiff's mother Bondakka W/o Mahadu, in her capacity as a natural guardian and in view of legal necessity, mortgaged the agricultural lands bearing Sy.Nos.272, 277 and 303 in total of extent of Ac.36-28 guntas situated at Rebbena Village of Asifabad Taluk. The 2nd defendant's father who is since deceased and who was 1st defendant's husband and father of the defendant No.2, Bondakka in her capacity as a natural guardian and in view of legal necessity borrowed Rs.500/- under registered mortgage deed dated 5.7.1950 bearing document No.3 of 1950 by virtue of which the said mortgagee was put in possession of the land and agreed to remain in possession of the said land for a term of 20 years and cultivated the same duly paying the revenue to the government. The said mortgaged property would become the property of the said mortgagor immediately on the expiration of the said term of 20 years in case the debt was not discharged. As per the terms of the mortgage deed, the mortgage commenced with effect from 05.07.1950 and term of 20 years expired by 04.07.1970 and the plaintiff became entitled to redeem the said mortgage within a period of 30 years from 05.07.1970. The said mortgage money of Rs.500/- secured under the mortgage deed came to be liquidated automatically within the period of 20 years and there remained nothing to be paid to the said mortgagee under the said mortgage deed. The said mortgagee, Ganeshlal expired about 8 years ago leaving behind defendants 1 & 2 as legal heirs and they are liable to deliver vacant possession after redeeming the mortgage.

The plaintiff's mother Bondakka died about 6 years prior to filing of the suit and the plaintiff came to know about the mortgage transaction only when he obtained registered copy of the mortgage deed on 12.05.1981 and when he made further enquires, he came to know on 22.06.1981 and when he obtained certificate of Khasra Pahani of Rebbena Village for the year 1954-55, one Odhavjee Kara S/o Kara Bai was also cultivating the said land along with the said deceased mortgagee, Ganeshlal and continues to do along with the 2nd defendant. Therefore, Odhavjee Kara is also impleaded as 3rd defendant, as the rights of the said 3rd defendant being derivative in nature cannot be more than that of the said mortgagee Ganeshlal, the original mortgagee. The plaintiff is the owner and pattedar of the said mortgaged property and a mortgagee Ganeshlal under the said mortgage deed and defendant nos.1 & 2 are the legal heirs of the said mortgagee Ganeshlal and the relationship of the mortgagee is still subsisting between the legal heirs of the deceased mortgagor (Bondakka) and mortgagee (Ganeshlal).

A part of the suit schedule property is in possession of defendants 1 & 2 and the other part is in possession of the 3rd defendant, being cultivated by them and therefore, as a consequence of automatic discharge of debt, after expiry of 20 years by 04.07.1970, the defendants are liable to deliver vacant possession in view of satisfaction of the mortgage deed. The defendants possession is with effect from 05.07.1970 is in their fiduciary capacity and they are bound under the law to account for the profits received by them from 05.07.1970, the date of the suit and thereafter, till delivery of vacant possession, remit the profits at Rs.1,295/- for the property for 11 years from 05.07.1970 to 04.07.1981.

Despite demands, defendants 1 & 2 did not redeliver the property redeeming the mortgage. The plaintiff claimed a decree

a) directing defendants 1 & 2 to deliver to the plaintiff the said mortgage deed and all documents relating to the said mortgaged property shown in the plaint schedule which is in possession of the defendants,

b) to direct the defendants 1 to 3 to deliver the possession of the mortgaged property shown in the plaint schedule to the plaintiff

c) to direct the defendants 1 & 2 to execute and to have registered acknowledgment in writing that any right in derogation of the plaintiff's interest transferred to the defendants 1 & 2 suits to deceased husband and father of Ganeshlal has been extinguished

d) to direct the defendants 1 to 3 to render the account in regard to the surplus profits earned by them during the period from 05.07.1970 till the date of decree and to pay the plaintiff on ascertainment of actual profits. Hence the suit was filed.

Defendants 1 to 3 filed their written statement denying material allegations of the plaintiff. The defendants admitted the mortgage, borrowing of amount and mortgage of the property but denied the claim of the plaintiff on various grounds. It is the specific contention of the defendants that mother of the plaintiff, as natural guardian for legal necessity borrowed a sum of Rs.500/- from Ganeshlal while agreeing to sell the suit schedule property for Rs.1,000/- including the consideration of Rs.500/- under registered mortgage deed and executed an agreement to sell on 05.12.1952. She also agreed to obtain the permission for alienation under Sections 47 and 48 of A.P. (Telangana) Tenancy and Agricultural Lands Act (for short 'Act') within a period of 6 months and execute registered conveyance. Late Ganeshlal did not pursue the matter as the land was already in his possession. According to the agreement dated 05.12.1952, it was incumbent in the matter of plaintiff to obtain permission for alienation. As she did not evince any interest, the registered conveyance could not be executed for want of permission. Meanwhile, in the year 1953 the Government of Hyderabad issued orders for implementing Record of Rights in Land Regulation of 1358 Fasli and the preparation of record commenced in the year 1954. The name of Ganeshlal and Odhavjee Kara were recorded as owners in the record of rights prepared during the year 1954-55. During those days in Sirpur and Asifabad Taluka dry land was available for the purpose for Rs.354/- @ 30/- per acre and the suit land was full of wild growth which had to be cleared. Besides they consisted of Chalka soil which gave very poor yield. In the year 1952, the total monthly salary including dearness allowance of 3rd grade clerk was less than Rs.100/-, but late Ganeshlal due to paucity of finance gave away half of the extent of suit lands to 3rd defendant at the time of purchasing the lands, as such he is in possession of his half extent since 1953-54 as owner. The other half is in possession of defendants 1 & 2 after the demise of Ganeshlal. Hence, the defendants are entitled to invoke the provisions of Section 53-A of Transfer of Property Act to protect their possession and to resist the suit.

It is specifically contended that the defendants are entitled to benefit under Section 53-A of Transfer of Property Act to protect their possession and resist the suit in view of the agreement dated 05.12.1952. The plaintiff is not entitled to redeem the suit mortgage schedule property after such long period.

It is also contended that the plaintiff is not entitled to recover possession of the property or claim any other relief in the present suit, since the defendants are in lawful possession of the property, in pursuance of mortgage and agreement of sale executed by Bondakka on behalf of the plaintiff as natural guardian.

The plaintiff is not entitled to claim recovery of possession basing on Article 61-A of Limitation Act, as no limitation for the present suit, the suit claimed is barred by limitation and that the plaintiff is incompetent to file the suit. Finally, it is contended that by virtue of agreement of sale dated 05.12.1952, the relationship between mortgagor and mortgagee is ceased to exist and the status of the defendants is that they are only purchasers of the property and therefore, the suit is not maintainable and prayed for dismissal of the suit.

As per Section 103 of the Act, the mortgage is a usufructory mortgage but not a simple mortgage. After obtaining leave of the Court under Order VIII Rule 9 of C.P.C, the plaintiff filed a written statement denying material allegations and contended that the permission under Section 47 of the Act required and that the title derived by defendants 1 to 3 is only through Ganeshlal which is covered by Section 59 of Transfer of Property Act and that the suit is filed within 12 years from the date of knowledge i.e. on 12.06.1981 when he came to know about the existence of 3rd defendant on the suit lands, while reiterating the competency of the Civil Court referring to Section 103(2)(c) and called upon the defendants to put their claim to stick proof.

The defendants also filed additional written statement for rejoinder while reiterating the contentions urged in the original written statements and contended that Section 47 of the Act has no application. Based on the above pleadings, the Trial Court framed the following five issues:

1) Whether the agreement dated 5-12-1952 set up by defendant is true valid and binding on plaintiff?
2) Whether the defendants are entitled to invoke the provisions of Section 53-A of T.P. Act?
3) Whether the suit is barred by time?
4) Whether the Court has no jurisdiction?
5) To what relief, the plaintiff is entitled to?

During trial, on behalf of the plaintiffs P.Ws 1 & 2 were examined and Exs.A-1 & A-2 were marked. On behalf of the defendants, D.Ws 1 to 3 were examined and Exs.B-1 to B-23 were marked and Exs.C-1 to C-13 were marked by the Court.

Upon hearing argument of both the counsel, the Trial Court dismissed the suit holding that the suit is barred by limitation, thereby, held Issue No.3 in favour of the defendants and against the plaintiff and further held that the defendants are entitled to protect their possession claiming benefit under Section 53-A of Transfer of Property Act, as there is a written agreement of sale while holding permission under Section 47 of the Act. But, because of equitable doctrine under Section 53-A, the defendants are entitled to protect their possession and held the issue no.2 in favour of the defendants and against the plaintiffs. As the agreement dated 05.12.1952 was believed, the Trial Court dismissed the entire claim.

Aggrieved by the dismissal of the suit by the Trial Court, the plaintiff being unsuccessful, preferred an appeal in A.S.No.7 of

1989 on the file of the Subordinate Judge at Asifabad, which ended in dismissal, thereby confirmed the decree and judgment passed by the Trial Court. The Appellate Court concluded and held that that Ex.B-1 is valid and the defendants are entitled for the benefits under Section 53-A of Transfer of Property Act to protect their possession. Thus, the First Appellate Court recorded concurrent findings confirming the findings recorded by the Trail Court on all the issues. The present second appeal is filed challenging the findings recorded by the Trial Court and confirmed by the First Appellate Court raising several contentions, more particularly, with regard to the requirement of permission under Section 47 of the Act, thereby, the agreement of sale is not valid and on the strength of such invalid document, the defendants are disentitled to protect their possession under Section 53-A of Transfer of Property Act, as the agreement of sale is invalid as it was without permission and in violation of Section 47 of the Act.

The appeal was dismissed for default even before admission on 03.01.2012 and it was subsequently restored to file on 10.07.2015 and this Court ordered notice to the respondents. But, at the stage of admission, this Court heard argument of both the counsel and came to a conclusion that there is no justification reason in admitting the appeal and adjourn the same after 20 years.

During hearing, learned counsel for the appellant Sri B. Nalin Kumar reiterated the contentions raised before the Trial Court and First Appellate Court, relying on the judgment of the

Division Bench in **Syed Jalal and others v. Targopal Ram Reddy**[1] and Full Bench judgment of this Court in **K. Parvathamma v. The Commissioner of Excise (Board of Revenue) Govt. of A.P. Hyderabad and others**[2], **Modem Rajamouli v. Modem Roshaiah and others**[3] and also judgment of the Apex Court reported in **Hamzabi and others v. Syed Karimuddin and others**[4].

Whereas, learned counsel for the defendants Sri B. Sudarshan Reddy argued totally in support of the judgment of the concurrent findings recorded by both the Trial Court and First Appellate Court and placed reliance on the judgment reported in **Hafeezunnisa Begum, through her son Mohd. Abdul Hameed and others v. Syed Arab**[5] and **Lachamamma v. K. Chinna Venkata Reddy and other**[6].

Basing on the above pleadings, the following are the substantial questions of law to be decided by this Court (formulated by the appellants), since no other question arises, this Court accepted the substantial question of law formulated by the appellant as substantial question of law.

1. ***Whether the respondent shall become owner of the land according to the sale agreement dated 5-12-1952 without obtaining the permission under Section 47 of the A.P. Tenancy Act.***
2. ***Whether the respondent can claim the benefit of Section 53-A of the Transfer of Property Act.?***

---

[1] AIR 1970 ANDHRA PRADESH 19
[2] AIR 1970 ANDHRA PRADESH 333
[3] 2000 (3) ALD 677
[4] (2001) 1 Supreme Court Cases 414
[5] 1969 (2) An.W.R 317
[6] 1969 (2) An.W.R. 271

<u>In Re-Point</u>

The undisputed facts are that Bondakka mortgaged the property and delivered vacant possession of the property under original of Ex.A-1, agreeing to continue Ganeshlal in possession of the property for 20 years and also executed an agreement of sale marked as Ex.B-1, subsequent to execution of original of Ex.A-1. The contention of the defendants is that, after satisfying the mortgage debt covered by original of Ex.A-1, Ganeshlal continued in possession along with the 3rd defendant, in pursuance of agreement of sale marked as Ex.B-1. Though, execution of Ex.B-1 was disputed, the Trial Court and the First Appellate Court held that Ex.B-1 was executed by Bondakka, mother of the plaintiff. Thus, the fact finding recorded by the Trial Court and affirmed by the Appellate Court regarding execution of Ex.B-1 is not to be disturbed in the present second appeal, while exercising jurisdiction under Section 100 of C.P.C. Various documents marked as Exs.B-1 to B-23 would disclose that Ganeshlal was in possession of the property during his lifetime along with the 3rd defendant and after death of Ganeshlal, defendants 1 to 3 are continuing in possession of the property and the same is supported by Ex.A-2. Thus, it is clear that possession of the defendants and execution of original Ex.A-1 and Ex.B-1 are not in dispute, but the only question before this Court is that whether execution of mortgage covered by original of Ex.A-1 and execution of Ex.B-1 is a permanent alienation under the Act. If so, whether such alienation is valid without obtaining permission under

Section 47 of the Act. In view of the specific contention raised by the learned counsel for the appellant/plaintiff, it is appropriate to advert to the definition of 'permanent alienation' under Section 2(o) and it is apposite to extract hereinunder for better appreciation of facts:

> *"Permanent alienation includes any sale, exchange or gift and any transfer of a right of occupancy or of the patta of a holding but does not include any disposition by Will"*

Here, the mother of the plaintiff Bondakka initially by executing original of Ex.A-1, transferred right of occupancy for a period of 20 years for discharging the debt due under usufructory mortgage or mortgage by conditional sale covered by original of Ex.A-1. Later, she executed an agreement of sale marked as Ex.B-1, while alienating the same to Ganeshlal to continue in possession of the property which was delivered to him in pursuance of original of Ex.A-1. Therefore, transfer of right of occupancy and execution of agreement of sale is a permanent alienation within the definition of permanent alienation under Section 2(o) of the Act. The word "protected" is defined in Section 2(r) of the Act as a person who is deemed to be a protected tenant under the provisions of the Act. The term 'tenant' is defined under Section 2(v) of the Act as an Asami shikmi who holds land on lease and includes a person who is deemed to be a tenant under the provisions of the Act. A conjoint reading of the definitions of 'protected' and 'tenant' is given to understand that a person in occupation or owner of the property (Asami shikmi) is a protected tenant and it is not a disputed question when husband of the deceased Bondakka was a protected tenant. therefore, the provisions of the Act are applicable to permanent alienations of land within the area to which the Act is applicable.

The object of the Act is to protect the interests of tenants of agricultural lands, but when the tenant decides to sell away the property for any purpose after recognising him as a protected tenant, he is entitled to contend that the permanent alienation is contrary to the provisions of the Act and such alienation is invalid unless a prior permission was obtained under Section 47 of the Act. The Trial Court, though framed an issue regarding validity of the transaction, covered by original of Ex.A-1 and Ex.B-1, while holding that the defendants are entitled to invoke the equitable Doctrine of Part Performance under Section 53-A. The Appellate Court also did not consider the specific conditions urged by the plaintiff with reference to validity of Ex.B-1 and original of Ex.A-1 with reference to Section 47 of the Act.

According to Section 47(1) of the Act, notwithstanding anything contained in any other law for the time being inforce or in any decree or order of a Court, no permanent alienation and no other transfer of agricultural land shall be valid unless it has been made with the previous sanction of the Tahsildar. Therefore, on a bare reading of the language used in Section 47(1) of the Act, previous sanction of the Tahsildar is mandatory.

The dispute in the matter before me, it is the contention of the defendants that Bondakka agreed to obtain sanction from the Tahsildar as required under Section 47(1) within six months and agreed to execute registered sale deed. But, she did not obtain sanction from the Tahsildar. Thus, it is evident from the contentions urged in the written statement that no previous or prior sanction of the Tahsildar was obtained. Therefore, the agreement marked as Ex.B-1 is against the purport of Section 47(1) of the Act.

The High Court of Andhra Pradesh in **Ambiah v. Mallanna**[7] held (i) that the provisions of Section 47 not only apply to transfer inter vires but are equally applicable to a transfer by operation by law which takes place when property is sold in a court auction; (ii) that such sanction should be obtained even before the properties are attached by the decree-holder with a view to bring them to sale through Court and that in the absence of such sanction the order of attachment is illegal.

The correctness of the above judgment was questioned before a Full Bench in **P. E. Ramakistiah v. M. Pochiah**[8] that as the object of an order of attachment is merely to prevent the judgment-debtor from disposing of the property to the detriment of the decree-holder and that it does not operate as transfer of any property under law no sanction was necessary under section 47(1) of the Act, at the stage of attachment of the properties.

Placing reliance on the above two judgments of, this Court in **K. Parvathamma**'s case (supra 2) held that the provisions of Section 47 of the Act requiring prior sanction of the Tahsildar for effecting an alienation or a transfer are equally applicable to

[7] AIR 1964 Andhra Pradesh 514 (DB)
[8] (1967) 2 AN WR 17 (FB)

transfers by operation of law when properties are sold in auction by a civil court as well as by the revenue officials under the provisions of the Madras Revenue Recovery Act. In the case of private alienations the rule is well settled that prior sanction should be obtained before the registration of the document, that is, at the stage when the title to the property passes to the purchaser. Likewise, in the case of involuntary sales, sanction should be obtained before the sale is confirmed, that is, the stage at which there is a transfer of property by operation of law. Notwithstanding the directions given by the Division Bench in **(1967) 2 AnWR 17 (FB)** (names of the parties are not traced anywhere) that sanction should be obtained by the purchaser, that is the person whose bid at the auction is accepted before the order of confirmation the learned counsel for the petitioner argued that in view of the specific provisions contained in the Hyderabad Land Revenue Act which do not find a place in the C. P. C. or the Madras Revenue Recovery Act, the requisite sanction should be obtained even before the Collector sanctions the auction and under section 134 of the Act which declares that the sale is concluded by the order of the Collector. In order to appreciate this subtle distinction, it is necessary to refer to the relevant provisions of the Hyderabad Land Revenue Act.

In **Syed Jalal**'s case (supra 1), the Division Bench of this Court in paragraphs 18 , 19 and 31 reiterated the principles laid down by the Full Bench of this Court referred above. In the facts of the judgment, whether there was a specific condition in the agreement for obtaining permission or not, the result would be the same, the seller is bound to do everything in his power to effect valid sale. The facts of the above judgment are almost identical to the present facts. But, if the principle laid down by the Full Bench is applied to the present facts of the case, permission is required to be obtained before effecting transfer of immovable property i.e. transfer execution of registered document. But, the registration has not taken place till today and the defendants during lifetime of Ganeshlal, he along with 3rd defendant continued in possession and after his death, defendants 1 & 2 are continuing in possession and enjoyment of part of the property and the other part is in prosecution of the 3rd defendant.

Undoubtedly, the agreement of sale would not create any interest in the immovable property under Section 54 of the Transfer of Property Act and transfer of immovable property shall be effected only by execution of registered sale deed or conveyance or in any other recognized modes of transfer. Till execution of the registered sale deed, the purchaser is not entitled to claim any right in pursuance of the agreement of sale, except under Section 53-A of the Transfer of Property Act.

In **Modem Rajamouli**'s case (supra 3), this Court adverting to Section 47 & 50-B of the Act, with reference to Section 53-A of Transfer of Property Act, held that after deletion of Section 47, several transfers which were taken place from 1950 to 1969 could be validated with the aid of proceedings under Section 50-B and thereby the invalidity could be cured. Section 50-B was introduced with a definite purpose to save the invalid transactions that have taken place between June 10, 1950 to March 18, 1969 and the time was extended finally upto March 31, 1972. If the transferee or alienee did not avail himself of this opportunity of getting his alienation and possession validated under Section 50-B, he should suffer the consequences, since the transfer and delivery of possession remained invalid and unlawful after March 31, 1972. There is no possibility of validating all the invalid transactions that took place preceding that date. The contract of sale and the unauthorised and illegal possession of the land are null and void and the protection of Section 53A of the T.P. Act is not available.

If the principles laid down in the above judgments are applied to the present facts of the case, they are identical to each other since one of the parties in the said suit claiming title to the property by virtue of agreement of sale and delivery of possession in pursuance of the agreement of sale without obtaining prior sanction from Tahsildar as required under Section 47(1) of the Act, but obtained no sanction even after repeal of Section 47 and introducing Section 50-B in the Act. In such a case, the Court categorically expressed that such alienation and continuation in possession is invalid. In the present facts of the case also, the defendants did not obtain any sanction or by Bondakka during her lifetime did not obtain any sanction, as required under Section 47(1) of the Act. Therefore, the sale is invalid, in view of the perspective pronouncements of the Full Bench, Division Bench and Single Judge of this Court in the judgments referred supra.

Learned counsel for the 3rd respondent Sri Ravi Kiran would contend that such agreement of sale marked as Ex.B-1 coupled with delivery of possession is protected subsequent to introduction of Section 50-B after repeal of Section 47 and in support of his contention, learned counsel placed reliance on **Hafeezunnisa Begum**'s case (supra 5) and **Lachamamma**'s case (supra 6).

In **Hafeezunnisa Begum**'s case (supra 5), single Judge of this Court held that it is not permissible to read the provisions of Section 50-B as a conditional validation of transfers; the procedure that is prescribed by the section for obtaining the certificate of the Tahsildar is merely an enabling provision. the intention of the Legislature was to make it possible to obtain statutory recognition of the transfers in the form of a certificate of the Tahsildar which is to take the place of a deed of conveyance registered under the Indian Registration Act. The omission of a party to take advantage of the enabling provisions of the Act in order to secure a certificate which is conclusive evidence of the transfer, does not put the validation itself in jeopardy. The Court further held that the legislature has, by necessary implication made the provisions of Sections 47 to 49, inapplicable to the cases of transfers are exempted from the operation in Sub-section (1) of Section 5-B. Those transfers are exempted from the operation of Sections 47 to 49. Evidence of this exemption can be secured by obtaining a certificate from the Tahsildar after utilising the machinery prescribed by that provision. But this is only an enabling provision, and the absence of certificate does not nullify the validation of the alienations or the exemption granted to them from the operation of the provisions of Sections 47 to 49. Section 50-B is thus intended to achieve two fold result, firstly, exemption from the operation of the provisions of Sections 47 and 49 in respect of transfers relating to a specified period, and, secondly, the Legislature has provided for the substitution by the issue of a certificate which is to be effective as the deed of conveyance under the general law. Therefore, the omission to obtain a certificate cannot nullify the effect of the validation itself that implicit in Section 50-B.

In another judgment of this Court in **Lachamamma**'s case (supra 6), this Court held that Section 50-B by necessary implication retrospectively validates the transfers of agricultural lands made when Section 47 of the Act was in force and were invalid for want of prior sanction of the Tahsildar. But even otherwise if the Third Amendment Act is held to be prospective, at least from 18-3-1969 onwards the possession cannot be deemed to be unauthorised and therefore the persons in possession could be entitled to invoke the provisions of Section 53-A, Transfer of Property Act to protect their possession, even though at the time when they came into possession it may be invalid or unauthorised.

The law declared by the learned single Judge of this Court in the above judgment is contrary to the judgments rendered by the Full Bench and Division Bench of this Court and in the latter judgment. Therefore, basing on the law declared by this Court, Full Bench, Division Bench and learned single Judge, it is difficult to uphold the contention of the defendants, since the defendants or their predecessor in title Ganeshlal or Bondakka did not obtain prior sanction or sanction subsequent to execution of original Ex.B-1, as agreed in view of the contention raised by the learned counsel for the defendant that she agreed to obtain sanction within six months. Therefore, the occupation of the schedule property by defendants in pursuance of Ex.B-1 or in pursuance of original of Ex.A-1 as a permanent occupation is invalid, since their occupation is permanent alienation within the definition of Section 2(o) of the Act, thereby, such agreement and delivery of possession in pursuance of Ex.B-1 and continuing in possession and enjoyment after the period fixed under the original of Ex.A-1 in pursuance of Ex.B-1 is hit by Section 47 of the Act. Consequently, the transaction covered by either original of Ex.A-1 or Ex.B-1 is not valid and it is against the intention of the legislature in enacting the Act.

The Trial Court though adverted to Section 47 of the Act, mostly concentrated on Section 53-A of Transfer of Property Act and held that the defendants are entitled to claim the benefit of equitable Doctrine of Part Performance under Section 53-A of Transfer of Property Act without recording any finding. However, the Appellate Court while answering point nos.1 & 2, discussed about Section 47 in paragraph 7 of the judgment adverting to the law declared by this Court in 1990 (1) APLJ at page 220, but the principle has no direct application to the facts of the case.

Learned Senior Civil Judge (Subordinate Judge) also adverted to **Syed Jalal**'s case (supra 1), wherein, this Court in paragraph 31 concluded that in view of the judgment in **Neminath Appayya v. Jamboorao**[9], the defendants can raise plea of part performance, notwithstanding anything under Section 47 of the Act.

The Trial Court and the Appellate Court did not consider the effect of Section 47(1) on the transaction of permanent occupancy as defined under Section 2(o) of the Act. But, simply, recorded a finding in view of Section 53-A of Transfer of Property Act, the defendants are entitled to protect their possession in a suit filed by the plaintiff, who is the original owner of the property under the provisions of the Act. This approach of the Trial Court and the Appellate Court is erroneous on the face of record for the reason that there is a statutory bar under Section 47(1) against permanent alienations as defined under Section 2(o) of the Act and the Trail Court framed an issue and the Appellate Court framed a point for consideration. The Courts are satisfied to record its own findings based on the facts of law as required under Section 20 Rule 4 of C.P.C or Order XLI Rule 31 of C.P.C, but disowning their responsibility both the Trial Court and Appellate Court did not record any finding and in a most casual manner, recorded a finding with regard to entitlement to protect possession by the defendants, ignoring the point for determination framed by the Appellate Court and issue framed by the Trial Court with regard to validity of the transaction. Therefore, the approach of the Trial Court and Appellate Court in deciding the issue before it without recording any finding with regard to validity of the transaction of

[9] AIR 1966 Mys 154

Ex.A-1 and Ex.B-1 is erroneous. Consequently, I hold that the transaction covered by original of Ex.A-1 and B-1 are invalid and against the mandate of Section 47(1) of the Act. Accordingly, the substantial question of law is answered.

<u>In Re-Substantial Question of Law</u>:

The second substantial question of law raised before this Court is that the defendants being the purchasers of Ex.B-1 are entitled to protection under Section 53-A of Transfer of Property Act. The Trial Court and First Appellate Court accepted this contention placing reliance on the judgment of High Court of Mysore, but a perusal, the judgment of the Mysore High Court is not applicable, since, it pertains to Bombay Act. But, there is a vague reference of A.P. (Telangana) Tenancy and Agricultural Lands Act. In fact, there was no discussion about applicability of Section 53-A of Transfer of Property Act in the entire judgment of both the Trial Court and Appellate Court. Based on the said judgment, Mysore High Court arrived at such conclusion that the defendants are entitled to protect possession under Section 53-A of Transfer of Property Act. The judgment of Mysore High Court is not binding precedent and it has got only persuasive value. Even otherwise, as per my finding in point no.1, the transfer of right of permanent occupancy under the original of Ex.A-1 or alienation under Ex.B-1 are invalid as Bondakka did not obtain prior sanction from the Tahsildar as required under Section 47(1) of the Act. In such a case, the agreements and mortgage marked as Ex.B-1 and original of Ex.A-1 are not enforceable under law.

To claim benefit under Section 53-A of Transfer of Property Act, the defendants have to plead and prove the necessary conditions for making out defence of Part-Performance in suit for ejectment by owner and the following are the requirements:

1. that the transferor has contracted to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty;
2. that the transferee has, in part-performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession continues in possession in part-performance of the contract;
3. that the transferee has done some act in furtherance of the contract; and
4. that the transferee has performed or is willing to perform his part of the contract.

If these conditions are fulfilled, then notwithstanding that the contract, though required to be registered, has not been registered or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him is debarred from enforcing against the transferee any right in respect of the property of which the transferee has been taken or continued in possession other than a right expressly provided by the terms of the contract, as held in **Nathulal v Phoolchand**[10].

To claim benefit under Section 53-A of Transfer of Property Act, which is an exception to the provision relating to transfer of property, has to be strictly construed and the person who claims benefit thereof has to show that its terms have been fully satisfied.

Turning to the present facts of the case, after the 2nd defendant and husband of 1st defendant Ganeshlal obtained possession of the property under the original of Ex.A-1 usufructory mortgage deed or a mortgage by conditional sale and later obtained Ex.B-1 agreement of sale and continuing in possession as a purchaser under Ex.B-1, while continuing in pursuance of antecedent possession. Whether the possession has been taken by the alleged contract and continuing in possession is itself sufficient to claim benefit of part-performance under Section 53-A. But, if its continuing in any way, which is referable unequivocal to the contract, thus, it is sufficient to claim benefit of Doctrine of Part-Performance. In the present facts of the case, Ganeshlal i.e. husband of the 1st defendant and father of the 2nd defendant is continuing in possession in pursuance of the agreement of sale, but not based on antecedent possession.

As discussed in question no.1, the transaction covered by original of Ex.A-1 and Ex.B-1 are not enforceable under law, as they are hit by Section 47(1) of the Act. In such case, whether the defendants are entitled to claim benefit under Section 53-A of

[10] (1970) SC 546

Transfer of Property Act when the transaction itself is invalid is a question. The Doctrine of Part-Performance cannot create or annul a title on the person claiming benefit under Section 53-A and the Doctrine of Part-Performance has no application when non-observance of a statutory provision makes the transaction ineffective.

In **John H. Arseculeratne v. J.B.M.Perera**[11], the Privy Council held that agreement between parties shall be valid only if it fulfils all conditions of clauses as per provisions of statute.

In **H.S.Rikhy & others v. New Delhi Municipal Committee**[12], the Supreme Court held that where a contract with a corporation has to be executed in a particular form, but the statutory provisions regarding the agreement have not been complied with, the agreement is invalid and not binding on either party, notwithstanding that there has been part-performance of the contract. In the same judgment, the Supreme Court also drawn distinction between ultra vires and irregular acts and held that a distinction must be made between acts which are ultra vires and those for the validity of which certain formalities are necessary. In the latter case, persons dealing without notice of any informality are entitled to presume *omnia rite esse acta*. Accordingly a company which, possessing the requisite powers, so conducts itself in issuing debentures as to represent to the public that they are legally transferable, cannot set up any irregularity in their issue against an equitable transferee for value who has no reason to

[11] (1928) PC 275
[12] (1962) 3 SCR 604 = (1962) SC 554

suspect it. The Apex Court also observed that, it is also convenient here to notice the argument that the Committee is estopped by its conduct from challenging the enforceability of the contract. The answer to the argument is that where a statute makes a specific provision that a body corporate has to act in a particular manner, and in no other, that provision of law being mandatory and not directory, had to be strictly followed. The statement of the law in paragraph 427 of the volume of Halsbury's Laws of England settles the controversy against the appellants and it is noted as the result must not be ultra vires - A party cannot by representation, any more than by other means, raise against himself an estoppel so as to create a state of things which he is legally disabled from creating. Thus, a corporate or statutory body cannot be estopped from denying that it has entered into a contract which it was ultra vires for it to make. No corporate body can be bound by estoppel to do something beyond its powers, or to refrain from doing what it is its duty to do.

In **M/s. Technicians Studio Pvt. Ltd v. Smt. Lila Ghosh and another**[13] the Supreme Court observed that a tenancy at will is implied when a person enters into possession under a void lease. But part performance in this country does not give rise to an equity as in England but to a statutory right which is comparatively a restricted right in that it is available only as a defence. It has been held that Section 53A is only a partial importation in the statute law of India of the English doctrine of part performance. It is well settled that Section 53-A confers no

[13] AIR 1977 SUPREME COURT 2425

active title on the transferee in possession, it only imposes a statutory bar on the transferor. Thus a person who is let into possession on the strength of a void lease does not acquire any interest in the property but gets under Section 53-A only a right to defend his possession. As the section says, this right is subject to the condition that the transferee has performed or is willing to perform his part of the contract.

In **Sitaram Gupta and others v. Corporation of Calcutta**[14], the Calcutta High Court held that where a contract with a Corporation has to be executed in a particular form, but the statutory provisions regarding the agreement have not been complied with, the agreement is invalid and not binding on either party, notwithstanding that there has been part performance of the contract. Where a company or public body is incorporated or established by Statute for special purposes only and is altogether the creature of statute law, the prescription for its acts, and contracts are imperative and essential for their validity. Further, the Court also held that such a contract being a null and void, it cannot be ratified.

In **Akram Mea v. Secunderabad Municipal Corporation**[15], Andhra Pradesh High Court held that, if the contract is invalid under any other law, Section 53-A obviously cannot validate that which law says is invalid. In this view, a contract between the plaintiff ad the Cantonment, infringing the provisions of Section 114(1) read with Section 115 of the Cantonment Act, 1924, cannot

---

[14] (1956) C 18 (22)
[15] (1957) Andhra Pradesh 859

be allowed to sustain the plea of part-performance by the plaintiff. Further, this Court held that under Section 53-A, the proposed transfer can protect his possession by invoking Section 53-A but cannot assert any active title on the strength of that possession. Doubtless, the right conveyed under the section can be relied upon only as a shield and not as a sword but protection is available to the transferee both as a plaintiff and as a defendant so long as he uses it as shield. In paragraph 10 of the judgment, it was also held that Section 53-A necessarily implies that the contract contemplated by the section is a valid contract. If the contract is otherwise valid, Section 53-A protects the possession of the transferee, notwithstanding the fact that the contract is not registered. But if the contract is invalid under any other law, that section obviously cannot validate that which the law says is invalid.

Thus, from the principles laid down by the Privy Council, Supreme Court, Calcutta High Court and Andhra Pradesh High Court in the judgments referred supra, when agreement is not valid and enforceable under law, the person in possession based on agreement of sale is not entitled to claim benefit to protect his possession invoking equitable Doctrine of Part-Performance under Section 53-A of Transfer of Property Act.

In the present facts, the plaintiff is the owner of the property and Bondakka is the mother of the plaintiff who executed original of Ex.A-1 & Ex.B-1 representing the plaintiff. Therefore, the plaintiff is undisputed owner. But, the 3rd defendant is claiming right to continue in possession invoking the equitable Doctrine of Part-Performance under Section 53-A. Learned counsel for the defendants 1 & 2 Sri B. Sudarshan Reddy places reliance on **Hamzabi**'s case (supra 4) to contend that when a mortgagor obtained mortgaged property, it would result in extinguishment of mortgagor's right of redemption if the preconditions of Section 53-A are fulfilled and if the mortgagee is able to prove the requirements under Section 53-A including readiness and willingness, he is entitled to claim protection under Section 53-A of Transfer of Property Act. Similarly, learned counsel for the 2nd defendant also placed reliance on **Lachamamma**'s case to contend that when transfer of agricultural lands made in contravention of Section 47 of the Act when it was in force and were invalid for want of prior sanction of the Tahsildar, but even otherwise if the Third Amendment Act is held to be prospective, at least from 18-3-1969 onwards the possession cannot be deemed to be unauthorised and therefore the persons in possession could be entitled to invoke the provisions of Section 53-A, Transfer of Property Act to protect their possession, even though at the time when they came into possession it may be invalid or unauthorised.

But, the Apex Court judgment cannot be applied for the reason that the transaction covered by Ex.B-1 is invalid, as it is hit by Section 47(1) of Act, since prior sanction from Tahsildar was not obtained when Section 47 was in force or even after introduction of Section 50-B, no steps were taken to validate such transaction within the specified period. Therefore, in view of the principle laid down by the learned single Judge of this Court in **Modem**

Rajamouli's case (supra 3), the defendants are not entitled to claim protection under Section 53-A of Transfer of Property Act, as their possession is unauthorised and illegal, since the defendants failed to validate the transaction invoking Section 50-B of the Act and thereby, the alleged sale is null and void.

In **Lachamamma**'s case (supra 6), this Court held that the possession became illegal, though it was unauthorised and invalid by the date of the predecessor came into possession of the property, in view of Section 50-B. But, by the date of filing the suit before the Courts, time fixed for validating the transaction under Section 50-B was not expired, since the last date fixed for validation was 31.03.1972. Therefore, on the date of pronouncement of judgment i.e. on 20.07.1970, in **Lachamamma**'s case the parties are entitled to get the transaction validated invoking Section 50-B of Transfer of Property Act. therefore, in those circumstances, the Court concluded that the defendants are entitled to protect their possession and invoking Section 53-A. But, in the present case, time prescribed for validating the transaction was expired long back i.e. on 31.03.1992 and after expiry of the period for validation under Section 50-B, the possession of the defendants is unauthorised and illegal and in such a case, the defendants are not entitled to claim protection under Section 53-A of Transfer of Property Act.

The Doctrine of Part-Performance is purely an equitable doctrine and the person who is claiming equity must do equity. When the transaction itself is invalid, it is against public policy and hit by Section 23 of Contract Act. Since it is against public policy, the same is not enforceable under law. Even otherwise, the intention of the legislature in incorporating the A.P. (Telangana Area) Tenancy and Agricultural lands Act, 1950, is to protect the farmers and the tenants as defined under Section 2 (r) from entering into illegal transactions. Section 47 is introduced only to safeguard the interests of the poor tenants in Telangana Area. If, protection is given to the person in illegal possession based on unenforceable and invalid agreement, it would totally frustrate the intention of the legislature. Therefore, to give effect to the provisions of an Act, a transaction of permanent alienation, as defined in Section 2(o) of the Act, the equitable Doctrine of Part-Performance cannot be applied, since it amounts to legalising an illegal transaction, totally in frustration of the legal bar contained under the Act. Therefore, I find that the defendants 1 & 3 are not entitled to claim protection under Section 53-A of Transfer of Property Act, since the original transaction covered by original of Ex.A-1 & Ex.B-1 are invalid which cannot be given effect to, even if the requirements under Section 53-A are proved by the defendants. Thus, the possession of the defendants 1 to 3 is illegal and they are bound to deliver vacant possession of the property to the plaintiff, who is the true owner of the property. The Trial Court and the Appellate Court on erroneous appreciation of law, concluded that the defendants are entitled to protect their possession invoking equitable Doctrine of Part-Performance and it is contrary to the law declared by the Supreme Court.

Therefore, the findings recorded by the Trial Court and affirmed by the Appellate Court are hereby set-aside and in view of my foregoing discussion, I hold that the plaintiff is entitled to claim recovery of possession of suit schedule property while directing the defendants 1 to 3 to deliver vacant possession of the property to the plaintiff within three months from today and liberty is given to the plaintiff to file an application for ascertainment of mesne profits.

In the result, the second appeal is allowed.

Consequently, miscellaneous applications pending if any, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:27.10.2016

SP