It is, therefore, reasonable to infer that the Legislature intended to allow a reference to be made to this Court of a question of law arising out of the order of Sales Tax Tribunal imposing a penalty on a dealer. If such a reference is not allowed, anomalous situation may arise in some cases. Supposing a dealer has been assessed to tax as well as to penalty and a reference is allowed on a question of law arising out of the order of the Sales Tax Tribunal in the case of the assessment of tax and that question is decided in favour of the dealer and it is held that the tax assessed was illegal or unjust. If no reference is allowed against the order imposing penalty and the penalty is recovered, there is no method by which the dealer can recover the amount of penalty illegally recovered by the Government from him. It will be only on a reference made to this Court that the non-liability of the dealer to pay penalty will also be adjudged on the ground that the tax assessed was not legal and so no penalty could be imposed on account of the non-payment of that tax. We, therefore, hold that the word "tax" used in section 22(1) of the Punjab Act includes both tax assessed and penalty imposed and a reference on a question of law arising out of the order of the Sales Tax Tribunal imposing penalty can be made under that section to this Court.

(6) This petition is, therefore, allowed and the Sales Tax Tribunal, Chandigarh, is directed to decide the application of the petitioner under section 22(1) of the Punjab Act made to it on merits and if any question or questions of law is/are found to arise out of its order, that question or those questions may be referred to this Court after drawing up a proper statement of the case. Since the matter was not free from difficulty, the parties are left to bear their own costs.

B. S. G.

APPELLATE CIVIL

Before A. D. Koshal, J.

CHHANKA RAM,—*Appellant.*

versus

REHMAN, ETC.,—*Respondents.*

Regular Second Appeal No. 1200 *of* 1968

April 24, 1973.

Transfer of Property Act (IV of 1882)—*Section* 53-*A—Agreement to sell property in favour of the tenant in possession—Continuance of tenancy not envisaged therein—Transferee—Whether holds the*

property as a "prospective vendee"—Transferor—Whether debarred from enforcing rights arising from the earlier contract of tenancy—"Prospective vendee" filing suit against attack on his right by proceedings in revenue Court—Whether entitled to the benefit of the provisions of section 53-A.

Held, that it clearly emerges from the provisions of section 53-A of the Transfer of Property Act, 1882, that although mere execution of an agreement to sell does not clothe the transferees with rights of ownership in the property which forms the subject-matter of the agreement, yet such transferees from the date of the agreement hold the property as "prospective vendees" and not as tenants in which capacity they held it earlier, unless the continuance of the tenancy is expressly envisaged in the agreement itself. After the execution of the agreement, the possession of the transferees would be referable to the terms thereof and not to any earlier relationship between the parties. Where the transferees, who are tenants of the property continue, in possession thereof after the execution of the agreement which does not provide either expressly or by necessary implication that till the sale deed is executed and registered, they shall continue to hold the property as tenants, such possession of the transferees is no longer referable to the contract of lease earlier in force and the transferor is debarred from enforcing against the transferee any right arising from the earlier tenancy which has not peen expressly kept intact.

Held, that normally the provisions of section 53-A of the Act can be pressed into service by a transferee only if he is a defendant, but where the plaintiff seeks to use these provisions merely as a defence to the attack levelled against his right as "prospective vendee" by the defendant through the proceedings in the revenue Court, there is no reason why such a plaintiff should be disentitled to the relief which he claims under section 53-A. The suit in such a case is regarded as having been brought by way of a defence to the action taken by the defendant and not by way of an attack properly so called. The plaintiff seeks to use the provisions of this section not as a sword, but as a shield.

Regular Second Appeal from the decree of the court of Ved Parkash Aggarwal, Additional District Judge, Gurgaon, dated the 2nd day of March, 1968, modifying that of Shri H. C. Gupta, Sub-Judge 1st Class, Palwal, dated the 29th August, 1967, (granting the plaintiffs a decree of the suit with costs and further declaring that the possession of the plaintiffs would be that of the prospective vendees, and their possession will not be interfered with and they shall get back the sum of Rs. 884-09 from the defendant) to the extent of granting the plaintiffs a decree on their deposit of Rs. 8,072.50 paise in court for the defendant and they will be entitled to adjust Rs. 849.09 Paise and the costs of both the courts in the amount of Rs. 8,072-50 Paise and this amount of Rs. 8,072.50 Paise

shall be deposited by them by 2nd May, 1968 and in case they do not deposit the amount, it shall be deemed that they did not want to perform their part of the contract and the suit shall stand dismissed with costs throughout.

H. L. Sarin, Senior Advocate, with Maluk Singh, Advocate, *for the appellant.*

S. P. Goyal, Advocate, *for the respondents.*

JUDGMENT

Koshal, J.—In this second appeal by the defendant certain facts are no longer in dispute and may be shortly stated. The defendant was the owner of 179 Kanals 5 Marlas of land situated in village Sunhera which was in possession of the two plaintiffs as tenants under him. On the 3rd of July, 1959, the parties entered into agreement Exhibit P. 1 for the sale by the defendant of his entire land to the plaintiffs in two lots. One lot consisted of 109 Kanals 8 Marlas of land of which the price was fixed at Rs. 9,572/8/-. The plaintiffs paid Rs. 1,500 as earnest money in respect of this lot and agreed to pay the balance on the 16th of July, 1959, when the sale deed was to be executed and presented for registration to the Sub-Registrar concerned. The second lot was comprised of 69 Kanals 17 Marlas of land for which the price agreed upon was Rs. 6,111/14. Out of this price the plaintiffs paid Rs. 900 as earnest money at the time of the execution of agreement Exhibit P. 1 and promised to pay the balance before the Sub-Registrar on the 15th of June, 1960, when the sale deed was to be executed and presented for registration to the registering authority. In the concluding portion of the agreement the following stipulation appeared :

> "If the promisees do not have the second sale deed registered in time, the land measuring 69 Kanals 17 Marlas shall be deemed to be on lease. The vendees are already in possession of the land sold as lessees. In that event the earnest money of Rs. 900 shall stand forfeited. If I, the seller, fail, I shall be responsible for payment of Rs. 1,800."

No sale deed was executed in terms of the agreement and on the 14th of July, 1961, the defendant filed an application against Rehman plaintiff No. 1 for recovery of rent in respect of the area measuring 109 Kanals 8 Marlas under section 14-A(ii) of the Punjab Security of Land Tenures Act before the Assistant Collector, Second Grade, Ferozepore Jhirka. Rehman plaintiff No. 1 contested

the application with the plea that as from the 3rd of July, 1959, the tenancy had come to an end and that the plaintiffs were holding the land under agreement Exhibit P. 1 of which they had always been ready and willing to perform their part. The Assistant Collector accepted the plea and dismissed the application by his order dated the 30th of March, 1962, which was maintained in appeal by the Collector and in revision by the Commissioner but was reversed on the 14th of January, 1965, in revision by the Financial Commissioner who directed plaintiff No. 1 to deposit in Court arrears of rent amounting to Rs. 844.09 within one month from the date last mentioned and that if the arrears were not so deposited, plaintiff No. 1 would be liable to be ejected from the land. Plaintiff No. 1 deposited the arrears within the period stipulated in the order of the Financial Commissioner.

2. On the 23rd of March, 1965, the plaintiffs filed the suit giving rise to this appeal. They averred that they had always been ready and willing to perform their part of agreement Exhibit P. 1 (hereinafter referred to as the agreement) while the defendant had backed out of it. They pleaded that from the date of the agreement the relation of landlord and tenant between the parties came to an end and that the defendant had no right to claim any rent from them so that the order of the Financial Commissioner dated the 14th of January, 1965, was without jurisdiction. It was also asserted in the plaint that on account of that order the defendant was threatening to oust the plaintiffs from the land measuring 109 Kanals 8 Marlas mentioned above and was also demanding further rent from them.

The plaintiffs sought a decree for permanent injunction restraining the defendant from interfering with their possession over the land just above-mentioned, another for a declaration that the order of the Financial Commissioner, dated the 14th of January, 1965, was without jurisdiction and not binding on them and still another for the recovery of Rs. 884.09 paise, which amount they had deposited for payment to the defendant under compulsion.

3. In his written statement the defendant pleaded that he had always been ready and willing to perform his part of the agreement, but that the plaintiffs had been remiss in the performance of their part of it, so that he had forefeited the earnest money of Rs. 1,500. According to him, the relationship of landlord and tenant between the parties had subsisted all along and that the order of the Financial

Commissioner, dated the 14th of January, 1965, was fully justified. He pleaded that the Civil Courts had no jurisdiction to entertain the suit. Other pleas were also raised, but the same need not be reiterated here.

4. The following issues were framed by the trial Court :

(1) Whether the agreement, dated 3rd July, 1959 marked A was executed by the defendant in favour of the plaintiffs ? OPP.

(2) Whether the agreement at mark 'A' is inadmissible in evidence as alleged ? OPD.

(3) Whether with the execution of mark 'A' agreement, the tenancy rights of the plaintiffs came to an end ?OPP.

(4) Whether the suit is within time ? OPP.

(5) Whether the suit is not properly valued for purposes of court-fee and jurisdiction ? OPD.

(6) Whether the plaintiffs were ready and willing to perform their part of the contract ? OPP.

(7) Whether the defendant was ready and willing to execute the sale deed in favour of the plaintiffs ? OPD.

(8) Whether the defendant is entitled to forfeit Rs. 1,500 ? OPD.

(9) Whether the plaintiffs are entitled to refund of Rs. 884.09 paise ? OPP.

(10) Whether the order of the Financial Commissioner, Punjab, dated 14th January, 1965 is illegal and *ultra vires*, for reasons stated in the plaint ? OPP.

(11) Whether the suit is maintainable in the present form ? OPP.

(12) Whether the plaintiffs are estopped from filing the suit, as alleged ? OPD.

(13) Whether this Court has no jurisdiction to entertain the suit ? OPD.

(14) Relief.

5. The trial Court decided issue No. 1 in favour of the plaintiffs and issue No. 2 against the defendant. Under issues Nos. 3, 10 and 13, it found that the agreement terminated the relationship of landlord and tenant between the parties and decided the issues in favour

of the plaintiffs. The suit was held to be within time and issue No. 4 decided accordingly. Issues Nos. 5 and 11 were not pressed before the trial Court and went against the defendant. The trial Court further held that the plaintiffs had always been ready and willing to perform their part of the agreement but that the defendant had gone back on it. On issues Nos. 8 and 9 the findings were that the defendant was not entitled to forfeit the earnest money of Rs. 1,500 and that the plaintiffs were entitled to get back the amount of Rs. 884.09 deposited by them in compliance with the order of the Financial Commissioner. For want of evidence on issue No. 12, it was decided against the defendant. As a result of these findings the trial Court decreed the suit with costs, making it clear that the possession of the plaintiffs was that of "prospective vendees".

6. The findings arrived at by the trial Court were affirmed in appeal by Shri Ved Parkash Aggarwal, Additional District Judge, Gurgaon, who, however, made the decree granted by the trial Court subject to the condition that the plaintiffs deposited in Court for payment to the defendant a sum of Rs. 8,072.50 being the balance of the price fixed in the agreement for the land in dispute; and it is against the decree passed by the learned Additional District Judge that the defendant has come up in second appeal to this Court.

7. The first contention raised by Shri Maluk Singh, learned counsel for the defendant-appellant, was that the findings of the Courts below on issues Nos. 6 and 7 were erroneous and that the defendant had proved not only his continued readinness and willingness to perform his part of the agreement, but also that the plaintiffs had refused to perform their part of it. Those findings, however, are concurrent findings of fact not open to challenge in second appeal in the absence of any misappreciation or misinterpretation of evidence. I may mention here that according to the case set up by the defendant himself in paragraph 3 of his written statement, he extended the time for payment of the balance of the price of the disputed land by means of a notice, dated the 3rd of May, 1960, which was received by the plaintiffs on the 13th of May, 1960. That notice finds a mention in the reply (Exhibit P.W. 5/A), which the plaintiffs gave thereto on the 19th of May, 1960, and which states that the plaintiffs had always been ready and willing to pay up the balance of the price of the land, but that the defendant had shown no inclination to have the sale deed executed and registered and had, on the other hand, been putting them off from time to time. In their reply the plaintiffs further called upon the defendant to obtain a

copy of the relevant *jamabandi* entries and to execute the sale deed and have it registered within a week of the receipt of the reply by the defendant. A similar demand was made by the plaintiffs in their notice (Exhibit P. 2), dated the 25th of May, 1962, but the defendant did not care to comply with it. These facts are sufficient justification for the findings arrived at by the two Courts below on issues Nos. 6 and 7.

8. The next contention of Shri Maluk Singh was that the relationship of landlord and tenant between the parties never came to an end and that it must be deemed to continue till a sale deed was executed and registered in favour of the plaintiffs. This contention is also without substance. Although the mere execution of the agreement did not clothe the plaintiffs with rights of ownership in the land in dispute, they would from the date thereof hold the property as "prospective vendees" and not in any capacity in which they held it earlier unless the continuance of the tenancy was envisaged expressly in the agreement itself. After the execution of the agreement the possession of the plaintiffs would be referable to the terms thereof and not to any earlier relationship between the parties. That this is the correct legal position appears clearly from the provisions of section 53-A of the Transfer of Property Act, which are reproduced below for facility of reference :

> "53-A. Where any person contracts to any 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, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the tranferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract ;
>
> and the transferee has performed or is willing to perform his part of the contract ;
>
> 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 shall be debarred from enforcing against the transferee and persons claiming under him

any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of the transferee for consideration, who has no notice of the contract or of the part performance thereof."

The words "the transferor * * * shall be debarred from enforcing against the transferee * * * * any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract" clinch the matter in favour of the plaintiffs. They were in possession of the land in dispute before the agreement, was executed as tenants under the defendant. After the agreement, they continued in possession, but the agreement did not provide either expressly or by necessary implication that till the sale deed was executed and registered the plaintiffs shall continue to hold the land as tenants. In these circumstances the defendant is debarred from enforcing against the plaintiffs any right arising from the earlier tenancy which was not expressly kept intact. The agreement was for consideration in the form of earnest money amounting to Rs. 1,500 and created a new relationship between the parties which was no longer referable to the contract of lease earlier in force.

9. The view that I have just expressed finds support from *Annamalai Goundan* v. *Venkatasami Naidu and others* (1). The petitioner in that case was a tenant under the first respondent by virtue of a lease deed which was originally for a period of two years ending with the 18th of November, 1954. On the 2nd of July, 1957, the first respondent sought the eviction of the petitioner from the Assistant Collector concerned on the ground that the petitioner had fallen into arrears in the matter of payment of rent since November, 1954. Some amounts had been admittedly paid up to the 25th of September, 1956, but it was not disputed that on the date of the application for eviction there were arrears of rent payable by the petitioner. The defence set up by the petitioner was that in May, 1955, an agreement was entered into between the parties whereby the landlord agreed to sell the leased properties to the petitioner for a sum of Rs. 800 to be paid by an agreed date. The first respondent did not dispute the execution of the agreement nor the fact

(1) A.I.R. 1959 Mad. 354.

that consideration passed for it. It was also admitted by him that within the time fixed for execution of the sale deed the petitioner had tendered balance of price due to respondent No. 1, who improperly refused to accept the amount and execute the sale deed. In repelling the contention that the relationship of landlord and tenant continued between the parties after the date of the agreement to sell, Ganapatia Pillai, J., observed :

> "It is obvious that, till the contract of sale was entered into, the petitioner only occupied the position of lessee. But, after the date of the contract and after it was performed in part by consideration being paid for the contract and the landlord allowing the tenant to remain in possession by reason of the new status created under the contract, it was no longer open to the landlord to contend that the right of possession claimed by the petitioner was referable to the contract of lease. There can be no doubt in this case that the conditions laid down in section 53-A of the Transfer of Property Act are fulfilled even though a contract to sell alone was obtained. No authority was cited for the contention that a deed of transfer should have been obtained by petitioners, before they could invoke section 53-A. Indeed the very language of the section is against such a contention. The question whether this defence would be open in a proceeding for eviction under the Madras Cultivating Tenants Protection Act is really beside the point, because, the moment possession is taken or continued under the contract of sale, the original relationship of landlord and tenant ceases to exist and the landlord cannot take advantage of the provisions of the Madras Cultivating Tenants Protection Act to file an application for eviction. The Assistant Collector was, therefore, wrong when he held that the petitioner was a tenant of the first respondent liable to be evicted under the Madras Cultivating Tenants Protection Act. It is manifest that, before any proceeding for eviction could be taken under the Madras Cultivating Tenants Protection Act, the relationship of landlord and tenant must subsist both on the date when the cause of action arose and when the application was made. On the plea raised by the petitioner in this case, I hold that the relationship of landlord and tenant ceased to exist when the contract of sale was entered into and was performed in part."

As would be seen, the facts with which Pillai, J., was dealing were practically on all fours with those in the present case wherein also all the conditions laid down in section 53-A of the Transfer of Property Act are fulfilled. (The only condition not so fulfilled according to Shri Maluk Singh is about the readiness and willingness of the plaintiffs to perform their part of the areement and on that point I have already found against him). I would accordingly hold that the tenancy was superseded by the agreement after the date whereof it ceased to be oprative so that the revenue authorities had no jurisdiction to entertain any proceeding initiated by the defendant for the recovery of any rent from the plaintiffs and the suit out of which this appeal arises was correctly taken cognizance of by the trial Court. The findings of the two Courts below on issues Nos. 3, 10 and 13 are thus affirmed.

10. It was last contended by Shri Maluk Singh, that the provisions of section 53-A of the Transfer of Property Act could be pressed into service by a transferee only if he was a defendant and that he could not do so if he occupied the position of a plaintiff. The contention is based on the dictum of their Lordships of the Privy Council in *Probodh Kumar Das and others* v. *Dantmara Tea Co. Ltd. and others* (2), to the effect that the section is so framed as to impose a statutory bar on the transferor, that it confers no active title on the transferee and that the right conferred by it is a right available only to a defendant to protect his possession. That dictum met with the approval of their Lordships of the Supreme Court in *Delhi Motor Co. and others* v. *U.A. Basrurkar* (3), in which it was observed :

> "In our opinion, this argument proceeds on an incorrect interpretation of section 53-A, 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 53-A 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 53-A was clearly laid down by their Lordships of the Privy Council in *Probodh Kumar Das* v. *Dantmara Tea Co.*"

(2) A.I.R. 1940 P.C. 1.
(3) A.I.R. 1968 S.C. 794.

Learned counsel for the plaintiffs does not have any quarrel with the ratio of the decisions in the two cases before the Privy Council and the Supreme Court but urges, on the other hand, that the plaintiffs are seeking to use the provisions of section 53-A of the Transfer of Property Act merely as a defence to the attack which has been levelled against their rights as "prospective vendees" by the defendant through the proceedings culminating in the order of the Financial Commissioner, dated the 14th of January, 1965. This appears to be true. The plaintiffs were in peaceful enjoyment of the possession of the land in dispute till those proceeding were initiated and posed a threat to the plaintiffs continuing in possession. Had they not paid the amount found by the Financial Commissioner to be due from them on account of arrears of rent, they would have been thrown out of the land in compliance with his order. As has already been held, after the agreement had been executed the relationship of landlord and tenant came to an end and the plaintiffs held the land under the agreement for whatever it was worth. However, the defendant approached the revenue authorities giving a complete go by to the agreement, which was also ignored by the Financial Commissioner on the ground that the revenue authorities were not expected to decide complicated questions of fact or law. It is his decision that has compelled the plaintiffs to move to protect their possession and also their right not to pay any rent to the defendant which right had accrued to them by virtue of the agreement even though its execution had not entailed the vesting in them of the rights of ownership in the land in dispute. The suit which they instituted must, therefore, be regarded as having been brought by way of a defence to the action taken by the defendant and not by way of an attack properly so called. And if that be so, there appears to be no reason why the plaintiffs should be disentitled to the relief which they claim. That this is how section 53-A should be interpreted is borne out not only by some of the observations of their Lordships of the Privy Council in *Probodh Kumar Das* v. *Dantmara Tea Co. Ltd.*, but also from other decisions which I shall hereafter discuss.

11. In *Probodh Kumar Das* v. *Dantmara Tea Co. Ltd.* (supra) the plaintiffs were in possession of an estate under unregistered documents from the previous owners. Subsequently the defendants got a registered conveyance of the estate in their favour from the same owners. The real contention between the parties related to the right to the export quota under the Indian Tea Control Act (Act XXIV of 1933), which was passed to regulate the export of tea

from India. The Licensing Committee recognised the defendants as the persons entitled to the export quota rights of the estate. The plaintiffs filed a suit for a declaration that the defendants had no right or title to the estate and that they were debarred from enforcing any right to the estate including the right to sell tea under the export quota allotted to them or to transfer the quota rights to any other person. They also asked for an injunction. The suit was dismissed on the ground that the plaintiffs could not rely upon section 53-A of the Transfer of Property Act in regard to the reliefs claimed by them in the suit. It is no doubt true that Lord Macmillan, who delivered the judgment of their Lordships remarked that the right conferred by the section was a right available only to the defendant to protect his possession, but he soon afterward observed :

> "It was suggested that by obtaining the export quota rights from the Licensing Committee the Dantamara Tea Co. Ltd., as persons claiming under the transferors were enforcing a right in respect of the property against the appellants as persons claiming under the transferee, and could be enjoined at the appellants' instance from so doing, but in their Lordships' view there has been no enforcement within the meaning of the section of any right against the appellants."

It would appear from these observation that the suggestion made to their Lordships was that the plaintiffs in that case had brought the suit really in defence to what the defendants therein had done, namely, the obtaining of quota rights. The suggestion was turned down not for the reason that a plaintiff could not assert his rights by way of defence to some action already taken by the defendant, but on the ground that the defendant in the case had not taken any action by way of attack such as he was debarred by section 53-A from taking. The right to export did not depend on the ownership of the property but merely on the entitlement conferred by the Licensing Committee and it was apparently to this aspect of the matter that their Lordships were referring while dismissing the suggestion with the observation that "there has been no enforcement within the meaning of the section of any right against the appellants". If it was the intention of their Lordships to hold, as has been contended before me, that a plaintiff could not set up the provisions of section 53-A even as a defence against action taken before the institution of a suit by the defendant, they would, it appears to me, have made that clear.

12. In *Pandit Ram Chander* v. *Pandit Maharaj Kunwar* (4), the plaintiff was a lessee of a house under a registered lease, but the lease was defective as it was not signed by both the parties as required by section 107 of the Transfer of Property Act. The suit was instituted against the subsequent purchaser of the house for an injunction restraining him from demolishing the house or otherwise interfering with the right of the plaintiff as lessee. Thom, C.J., and Ganga Nath, J., who decided the case, repelled a contention that the plaintiff could take the plea based on section 53-A only in defence to a suit to eject him and not to ward off any interference with the enjoyment of his rights under the lease and in doing so, they observed :

> "Now, in the present case, what is it that the plaintiff is attempting to do? He is not attempting to set up a transfer which is invalid; he has not instituted a suit for the declaration of the validity of the transfer; he has not instituted a suit in which he claims an order against the defendant directing him to perform any covenant of the transfer. What he is seeking to do is to debar the defendants from interfering with his possession into which he has entered with the consent of his transferor after the execution of a transfer in his favour. He is, in other words, seeking to defend the rights to which he is entitled under section 53-A, T.P. Act. Defendants 1 and 2 in demolishing part of the property of which the plaintiff had obtained possession were acting *suo motu* with the aid of the Municipal Board of Moradabad. The defendants it is who are seeking to assert rights covered by the contract. The plaintiff seeks merely to debar them from doing so; the plaintiff is seeking to protect his rights. In a sense, in the proceedings he is really a defendant and we see nothing in the terms of section 53-A, T.P. Act, to disentitle him from maintaining the present suit."

In *Yenugu Achayya* v. *Ernaki Venkata Subba Rao* (5), decided by Subba Rao, C.J., and Viswanatha Sastri, J., 10 acres of land were owned by the father-in-law and the husband of the second defendant and they executed a sale deed in favour of the plaintiffs who paid the consideration for the sale and obtained possession of the land. The husband of the second defendant died before the sale deed

(4) A.I.R. 1939 All. 611.
(5) A.I.R. 1957 A.P. 854.

could be registered. After his death, an attempt to get it compulsorily registered proved abortive and the plaintiffs and other members of their family, being defendants Nos. 3 to 6, partitioned their family properties including the said land which was allotted to the share of the plaintiffs, who leased it out to tenants and paid taxes due thereon. In the meantime the first defendant, who was interested in the holding of which the said land formed a part paid the taxes due on the entire holding and filed a suit for contribution to which defendants Nos. 2 to 6 were made parties. The first defendant pleaded that the plaintiffs were in possession and enjoyment of the land in pursuance of the sale deed executed by the husband of the second defendant. A decree for Rs. 321 was passed in that suit and the land in possession of the plaintiffs was sold with the result that a sum of Rs. 1,025 was realised. The first defendant drew out a sum of Rs. 321 and the second defendant filed an application for drawing out the balance of Rs. 704. The plaintiffs resisted that application on the ground that the sale proceeds related to the property that was sold to them by the second defendant's husband and her father-in-law and that they were in possession thereof at the time when it was sold in court auction. The Court dealing with the matter directed the parties to file a separate proceeding to establish their right to the land to enable them to claim the money in Court deposit and it was then that the plaintiffs filed a suit for a declaration that they were entitled to the surplus sale proceeds. That suit was decreed by the Court of first instance and that of first appeal, both of whom relied on the provisions of section 53-A. In the High Court strong reliance was placed upon the observations of their Lordships of the Privy Council in *Prabodh Kumar Das* v. *Dantmara Tea Co. Ltd.* (supra). The Division Bench was of the opinion that the Judicial Committee did not intend to lay down, irrespective of the nature of the relief claimed that under no circumstances could a transferee rely on the provisions of section 53-A as a plaintiff. The Division Bench examined *Pandit Ram Chander* v. *Pandit Maharaj Kunwar* (supra) and agreed with the observations extracted therefrom in an earlier part of this judgment. Their own interpretation of section 53-A may be quoted in the words of Subba Rao, C.J., who spoke for the Court:

> "The section does not either expressly or by necessary implication indicate that the rights conferred on the transferee thereunder can only be invoked as a defendant and not as a plaintiff. Under the terms of the section the transferor is debarred from enforcing against the transferee only

rights in respect of the property and this bar does not depend upon the array of the parties. The transferee can resist any attempt on the part of the transferor to enforce his rights in respect of the property whatever position he may occupy in the field of litigation. In one sense, it is a statutory recognition of the defensive equity. It enables the transferee to use it as a shield against any attempt on the part of the transferor to enforce his rights against the property.

"Whether the transferee occupies the position of a plaintiff or a defendant, he can resist the transferor's claim against the property. Conversely, whether the transferor is the plaintiff or the defendant, he cannot enforce his rights in respect of the property against the transferee. The utility of the section or the rights conferred thereunder should not be made to depend on the manoeuvring for positions in a Court of law, otherwise a powerful transferor can always defeat the salutary provisions of the section by dispossessing the transferee by force and compelling him to go to a Court as plaintiff. Doubtless, the right conveyed under the section can be relied upon only as a shield and not as a sword, but the protection is available to the transferee both as a plaintiff and as a defendant so long as he uses it as a shield."

14. The passage quoted above from *Pandit Ram Chander* v. *Pandit Maharaj Kunwar* (supra) was brought to the notice of their Lordships of the Supreme Court in *Delhi Motor Co.* v. *U. A. Basrurkar* (supra), but their Lordships did not express any opinion as to the correctness of the view taken therein.

15. With great respect I find myself in complete agreement with the view expressed in *Pandit Ram Chander* v. *Pandit Maharaj Kunwar* (supra) and endorsed in *Yenugu Achayya* v. *Ernaki Venkata Subba Rao* (supra) and hold that the plaintiffs in the case before me are entitled to take advantage of the provisions of section 53-A, which they seek to use not as a sword, but as a shield.

16. In the result the appeal fails and is dismissed but with no order as to costs.

B. S. G.