



# UTTARAKHAND

Judicial Services Exam

CIVIL JUDGE (Junior Division)

Uttarakhand Public Service Commission (UKPSC)

**Judgement**

**Volume - 3**



# UTTARAKHAND JUDICIAL SERVICES

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## Indian Constitution

S No.	Case Name	Related to
1.	Bimul Gurung vs. Union of India 2018 SCC Online SC 233	Constitution of India Article 19(1)
2.	State Bank of Travancore vs. Mathew K.C.,(2018) 3 SCC 85	Constitution of India Article 226
3.	Dataram Singh us. State of U.P., (2018) 3 SCC 22	Constitution of India Arts. 21 and 136
4.	State of T.N. us. K. Balu, (2018) 3 SCC	Constitution of India -Arts. 19(1)(g), 6, 32, 142, 47,245, and 246 Sc. List I Entry 23 List II Entries 13 & 51
5.	Sunita Devi us. Union of India, (2018) 3 SCC 664	Constitution of India - Art. 32
6.	Municipal Corpn. of Greater Mumbai vs. Pankaj Arora, (2018) 3 SCC 699	Constitution of India - Art. 226
7.	Satya Veer Sharma us. Supreme Court of India, (2018) 4 SCC 432	Constitution of India - Arts. 124 and 137
8.	Sampurna Behura VS. Union of India, (2018) 4 SCC 433	of Juvenile Justice (Care and Protection of Children) Act, 2015 - Ss. 4, 7, 106 and 107 - Implementation of J.J Act.
9.	K.S. Puttaswamy VS. India, (2018) 4 SCC 651	Constitution of India - Pt. III - Linking of Aadhaar with bank account, mobile number and social welfare schemes:
10.	M. Siddiq us. Mahant Suresh Das, (2018) 4 SCC 655	Constitution of India - Arts. 145(3) and 136
11.	Pralhad Shankarrao Tajale us State of Maharashtra, (2018) 4 SCC 615	Constitution of India Art. 233
12.	Dheeraj Mor VS: High Court of Delhi (2018) 4 SCC 619	Constitution of India Art. 233

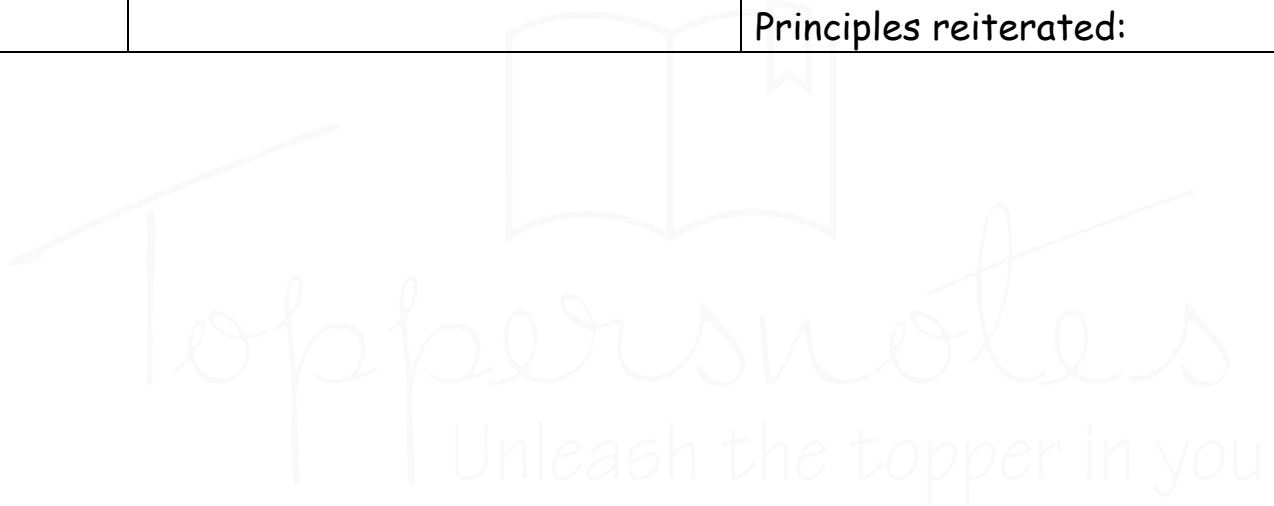
13.	State of Karnataka VS. T.N., (2018) 4 SCC 1	Inter-State Water Disputes Act, 1956 - Ss. 5, 6, 3 and 2 (c):
14.	Sukhda Pritam VS. High Court Rajasthan, (2018) 4 SCC 627	Constitution of India Arts. 233 and 309 - Appointment to posts of Higher Judicial Service -Rr. 31(3) and 33(iii) of Rajasthan Judicial Service Rules, 2010 - Validity:
15.	Commr. of Service Tax (Appeals 1) VS. Sri Selvaganapathy & Co., (2018) 4 SCC 578	Constitution of India - Arts. 139-A, 136 and 226- Transfer of writ Proceedings to Supreme Court:
16.	Sivakami us. State of T.N., (2018) 4 SCC 587	Constitution of India - Art. 226
17.	Lok Prahari us. State of U.P., (2018) 6 SCC 1	Constitution of India - Art. 14
18.	Vinod VS. District Selection Committee, (2018) 6 SCC 68	Constitution of India - 226
19.	Tehseen Poonawalla vs. union of India, (2018) 6 SCC 72	Constitution of India - Art. 32
20.	Bharati Reddy State VS. Karnataka, (2018) 6 SCC 162	Constitution of India - Arts. 226 and 32
21.	Vandana Tyaagi V.S Apeejay Saraswati P.G, College for girls, (2018) 5 SCC 789	Constitution of India - Arts. 136
22.	Pankaj Kumudchandra Phadnis vs. Union of India, (2018) 5 SCC 785	Constitution of India Art. 136 - Mohandas Gandhi assassination case:
23.	Ganga Malik us. Union of India, (2018) 5 SCC 771	Constitution of India Art. 32
24.	Mohd. Akhtar us. State of J&K, (2018) 5 SCC 497	Constitution of India- Arts. 21 and 32
25.	Saraswati Singh VS. Shailesh Singh, (2018) 5 SCC 370	Constitution of India Art. 32:

26.	Saraswati Singh, vs. (2018) 5 SCC 373	Shailesh Constitution of India Art. 32
27.	Aparbal Yadav us. State of U.P., (2018) 5 SCC 363	Constitution of India - Art. 226
28.	Seema Upadhyay vs. Union India, (2018) 5 SCC 325	Constitution of India - Art. 32
29.	Mohd. Akhtar us. State of J&K, (2018) 5 SCC 336	Constitution of India - Arts. 21 and 32
30.	Lok Prahari us. Union of India, (2018) 4 Article 14 SCC 699	Article 14
31.	Paramveer Albert Ekka Memorial College vs State of Jharkhand, (2018) 6 SCC 788	Constitution of India Art. 30(1)
32.	Shakti Vahini vs. Union of India, (2018) 7 SCC 192	Constitution of India - Arts. 21 and 19(1)(a) and 14 - Right to marry person of one's choice - Honour killing and other forms of honour crimes inflicted on young couples/ families by Khap Panchayat:
33.	Subhash Kashinath Mahajan vs. State of Maharashtra, (2018) 6 SCC 454	Constitution of India - Arts. 21, 14, 32 and 136 - Misuse of provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in last three decades:
34.	Seema Upadhyay v. Union of India, (2018) 5 SCC 325	Constitution of India - Art. 32 - PIL - Maintainability: Petitioner's main prayer seeking:
35.	Mohd. Akhtar v. State of J&K, (2018) 5 SCC	Constitution of India - Arts. 21 and 32 - 336 Abduction, rape and murder of 8 yr. old minor girl by juvenile accused:
36.	Prateek Gupta v. Shilpi Gupta, (2018) 2 SCC 309	Constitution of India - Art. 226 - Habeas corpus -



		Custody of child - Inter-country dispute:
37.	Raj Kumar Bhatia vs. Subhash Chander Bhatia, (2018) 2 SCC 87	Constitution of India - Art. 227 - Supervisory jurisdiction of High Court under - Nature and scope of:
38.	Joseph Shine v. Union of India, (2018) 2 SCC 189	Constitution of India - Arts. 21, 14, 15 and 32 - Gender equality and gender sensitivity:
39.	Kamini Jaiswal v. Union of India, (2018) 1 SCC 156	Constitution of India - Art. 145 - Constitution of Benches and allocation of cases:
40.	Campaign for Judicial Accountability and Union of India, (2018) 1 SCC 196	Constitution of India - Art. 145 - Constitution of Reforms v Benches and allocation of cases:
41.	State of Tripura vs. Jayanta Chakraborty, (2018) 1 SCC 146	Constitution of India - Arts. 16(4), (4-A), (4-B), 341, 342 and 145(3) - Reservation for SC/ STs:
42.	Sunita Singh v. State of U.P., (2018) 2 SCC 493	SCC SCs, STs, OBCs and Minorities - Reserved category status - Determination of - Claim to SC community "Jatav" status on basis of caste status of husband:
43.	State of Karnataka v. State of T.N., (2018) 4 SCC 1	Inter-State Water Disputes Act, 1956 - Ss. 5, 6, 3 and 2(c):
44.	United Air Travel Services v. Union of India, (2018) 8 SCC 141	Constitution of India - Art. 14 - Compensation for infringement of Art. 14 - When warranted:

45.	Mukesh v. State (NCT of Delhi), (2018) 8 SCC 149	Constitution of India - Arts. 137 and 145 - Review under Art. 137:
46.	Sivakumar v. Union of India, (2018) 7 SCC 365	Constitution of India Arts. 226 and 21 - Multi - State crime involving high officials of State and Centre:
47.	Vinay Sharma v. State (NCT of Delhi), (2018) 8 SCC 186	Constitution of India - Art. 137 - Review under - Ambit and scope of power to review in criminal proceedings - Review when maintainable - Principles reiterated:



## INDIAN CONTRACT ACT, 1872

S. no.	Case name	Related To
1.	Mhada us. Shapoorji Pallonji & Co. (P) Ltd., (2018) 3 SCC 13	Government Contracts and Tenders
2.	Sam Built Well (P) Ltd. v. Deepak Builders, (2018) 2 SCC 176	Government Contracts and Tenders - Judicial Review / Validity - Opinion of project owner / Experts on satisfaction of eligibility criteria Relevance of - Judicial restraint.
3.	Mhada us. Shapoorji Pallonji & Co. (P) Ltd., (2018) 3 SCC 13	Government Contracts and Tenders arbitration or Foreign seated arbitration Determination
4.	Raveechee & Co. v. Union of India. (2018) 7 SCC 664	Arbitration Act, 1940 SS. 29 and 13- Pendente lite interest.

## Negotiable Instrument Act, 1881

S. no.	Case name	Related To
1.	Kishan Rao vs. Shakargauda	Supreme Court reiterated that mere denial of a debt or liability cannot shift the burden of proof from the accused in a case of dishonour of the cheque.
2.	Priyanka Nagpal vs. State (NCT of Delhi), (2018) 3 SCC 249	Negotiable Instruments Act, 1881 - S. 138 - Sentence and compensation:
3.	P. Ramadas vs. State of Kerala, (2018) 3 SCC 287	Negotiable Instruments Act, 1881 - S. 138:
4.	P. Ramadas vs. State (NCT of Delhi), (2018) 3 SCC 249	Negotiable Instruments Act, 1881 - S. 138 - Sentence and compensation:
5.	P. Ramadas vs. State of Kerala, (2018) 3 SCC 287	Negotiable Instruments Act, 1881 - S. 138:

## Specific Relief Act, 1963

S. no.	Case name	Related To
1.	Maharashtra State Electricity Distribution Co. Ltd. vs. Datar Switchgear Ltd., (2018 3 SCC 133	Contract and Specific Relief - Termination /Discharge of Contract - Termination/ Repudiation for Breach of Contract:
2.	Kalawati vs. Rakesh Kumar, (2018) 3 SCO 658	Specific Relief Act, 1963 - S. 16(e) -Specific performance of contract.
3.	Krishna Devi us. Keshri Nandan, (2018) 4 SCC 481	Contract and Specific Relief - Formation Defects - Fraud and misrepresentation - Matters required to be established:
4.	M.P. Power Management Co. Ltd. us. Renew Clean Energy (P) Ltd., (2018) 6 SCC 157	Contract and Specific Relief - Performance of Contract Time of Performance - Time of the Essence - Termination/Discharge/ Compensation/Penalty for delayed performance:
5.	Y.P. Sudhanva Reddy v. Karnataka Milk Federation, (2018) 6 SEC 574	Section 34, 35, 37 and 38
6.	Urmila Devi D. Mandir Shree Chamunda Devi, (2018) 2 SCC 284	Specific Relief Act, 1963 - S. 21 - Compensation in lieu of specific performance:
7.	Manjeet "Singh vs. National Insurance Co. Ltd.; (2018) 2 SCC 108	Contract and Specific Relief - Termination/ Discharge of Contract Termination/ Repudiation for Breach of Contract:
8.	Eureka Builders Gulabchand, (2018) SCC 67	Transfer of Property Act, 1882 - Ss. 8, 7 and 54 - Nemo dat quod non habet:

## Transfer of Property 1882

S. no.	Case name	Related To
1.	A Dharmalingam VS. Lalithambal, (2018) 6 SCC 65	Transfer of Property Act, 1882 - Ss. 54, 7 and 8 Sale of remainder men's interest during lifetime of holders of life estate:
2.	Dharmalingam vs. Lalithambal, (2018) 6 SCC 65	Transfer of Property Act, 1882 - Ss. 54, 7 and 8 Sale of remainder men's interest during lifetime of holders of life estate:
3.	A.P. Industrial Infrastructure Corpn. Ltd. vs. S.N. Raj Kumar, (2018) 6 SCC 410	NA
4.	Balwant Vithal Kadam v. Sunil Baburaoi Kadam, (2018) 2 SCC 82	Transfer of Property Act, 1882 - S. 54 - Agreement for sale/ agreement to sell of immovable property:
5.	A. Dharmalingam vs. Lalithambal, (2018) 6 SCC 65	Transfer of Property Act, 1882 - Ss. 54, 7 and 8 Sale of remainder men's interest during lifetime of holders of life

## The Transfer of Property Act, 1882

S. No.	Case Name	Facts	Date
1.	Tanu ram bora Versus Promod Ch. Das (d) Through Lrs. And Others	[Section 43 of Transfer of Property Act, 1882 Transfer by Erroneous Representation of Title Will Hold Good If Transferor Acquires Title Later.	February 8 <sup>th</sup> 2019
2.	Ganesan (d) Through lrs Versus	Not always Necessary that attesting witnesses Should	11 July, 2019

	Kalanjam And others	Actually see The Testator Sign the will	
3.	Sopan (dead) Through his L.r. Versus Syed nabi	Sale with a Mere Condition of Re-transfer Is Not a Mortgage	July 16, 2019



## [Section 43 of Transfer of Property Act, 1882]

### Transfer by Erroneous Representation of Title Will Hold Good If Transferor

Acquires title later,

Tanu Ram Bora

Versus

Promod Ch. Das (d) through Irs. And others

#### Division Bench

Hon'ble L. Nageswara Rao & M. R. Shah JJ.

M. R. Shah, J.

**Dated:** February 8, 2019

#### Law Point

After the amended Act 20 of 1929, u/s 43 of TPA, it doesn't matter whether the transferor acted fraudulently or innocently in making the representation and what matters is that the transferor/ vendor makes a representation and the transferee/ vendee has acted on it.

#### Brief facts

The Appellant (original plaintiff purchased the suit land by a registered sale deed of from Late Pranab Kumar Bora, husband of original Defendant No.2 and Father of original Defendant Nos. 3 to 8 on 06/01/1990.

The suit property/land was declared as ceiling surplus land in the year of 1988 and consequently, the same was acquired by the Government. However, subsequently on 14/09/1990, the suit land was again declared ceiling free.

Thereafter, the Appellant mutated the land in his name and his name was recorded in the Sadar Jambandi. The original Defendant no, 1 (an ex-Police officer) illegally entered into the suit land on 09/04/1995.

The Appellant petitioner immediately filed a suit in the court of Ld. Civil Judge praying:

- \* for the possession of the suit land by evicting Defendant no. 1
- \* for a decree of declaration declaring his right, title and interest over the suit land and;

### **Decision of the trial court**

The Ld. Trial Court decreed the suit in favour of the Appellant petitioner and held that the Appellant purchased the suit land by valid document and has got right, title and interest over suit land.

Assailing the judgment of the Ld. Trial Court, the Defendant no. 1 filed an appeal before the First Appellate Court.

### **Decision of the first appellate court**

The First Appellate Court allowed the appeal of the Defendant no. 1 and remanded back the matter to the Ld. Trial Court, framing an additional issue to the effect Whether the suit land was declared as a ceiling surplus land and as such it was acquired by the Government in the year 1988 and as such whether the vendor had any saleable right to sell the suit land to the plaintiff on 6/01/1990.

The Trial Court after considering the additional issue dismissed the suit on merits and held that the disputed land was declared as ceiling surplus land by Government and therefore, Late Pranab Kumar Bora, the vendor, had no right to sell the suit land by sale deed and consequently. The Appellant has no right, title and interest over the suit land.

Assailing the judgement of Id. Trial Court an appeal was preferred by the Appellant plaintiff to the First Appellate Court, which was dismissed and the Court further confirmed the judgement of the Ld. Trial Court and also concluded that the Defendants' right over the suit land was not established u/s 50 of TPA. Hence, the right of original Defendant no. 1 over the suit land was also declined,



## Decision of the high court

The High Court dismissed the appeal preferred by the Appellant and confirmed the judgement and decree passed by the First Appellate Court inter alia of the Trial Court.

An appeal was then preferred by the aggrieved Appellant in the Hon'ble Supreme Court.

## Contention of the Appellant

The counsel for the Appellant vehemently submitted as follow!

- \* The Courts below have not at all considered Section 43 of TPA.
- \* It is an admitted position that after the execution of the sale deed the suit land was subsequently made ceiling free and thereby the sale deed became a valid sale deed and in the view of section 43 of TPA, the right of the Appellant in the suit land are protected pursuant to the sale deed. The Counsel heavily relied upon the decision of the Hon ble Supreme Court in Ram Pyare v. Ram Narain and Other (1985) 2 SCC 162 and Jumma Masjid v. Kodimaniandra Deviah, AIR 1962 SC 847.
- \* The Trial Court as well as the first Appellate Court failed to appreciate the fact that the Appellant approached the court when the original Defendant No. 1 illegally entered into the suit land.
- \* The First Appellate Court has specifically held against Defendant no. 1, that he also has no right, title and interest on the suit land on the basis of the agreement to sell as none of the ingredients of Section 53A of TPA are satisfied and because no appeal is preferred against the order of the first Appellant court then, it had attain finality.
- \* The Defendant no. 2 to 8, the legal heirs of the original vendor, never challenged the registered sale deed and also never claimed any right. Title or interest in the suit land.

## Contention of defendants

Shri Harisharan Ld. Counsel appearing for Defendant (i.e. Defendant No. IS LR's (1 and 6)) submitted that:

- \* There are concurrent findings of facts by all the courts below that the sale deed was executed in favour of the Appellant but the land in question was a government land and the original owner had no right, title or interest

in the suit land and consequently, the Appellant, also, will not have any right.

- \* For getting protection u/s 43 of TPA, the vendor has to prove that the transferor acted fraudulently or erroneously represented, but in the present case, these ingredients are not satisfied

## **Issue**

Whether the Appellant can take protection us. 43 of 1882 Act, claiming his right, title and interest in the suit land.

## **Observation of the Hon'ble supreme court**

The Hon'ble Supreme Court made following observations:

1. The heirs of the original vendor are not contesting the proceeding and they have never disputed the right title and interest of the Appellant.
2. There is no record to show that the Appellant was informed specifically at the time of execution of the sale deed that the land in question is ceiling surplus land. In these circumstances, Section 43 of 1882 Act, is highly relied upon.
3. In *Ram Poare (Supra)*, it was observed and held by the Hon'ble Supreme Court that as the sale deed in favour of the vendee was result of an erroneous representation of the vendor, thereafter the son of the vendor cannot claim to be transferees in good faith and therefore their suit for cancellation of the sale deed would not be maintainable.
4. In the case of *Jumma Masjid (Supra)*, the following observations are made by the Hon'ble Supreme Court:
  - (i) Section 43 of TPA embodies rule of estoppel and enacts that a person who makes a representation shall not be heard to allege the contrary as against the person who act on the representation.
  - (ii) It is immaterial whether the transferor acts bonafide or fraudulently in making representation.
  - (iii) The only material to find out whether in fact the transferee has been misled.
  - (iv) After the amended Act 20 of 1929, it doesn't matter whether the transferor acted fraudulently or innocently in making the representation and what matters is that the transferor/vendor makes a representation and the transferee/ vendee has acted on it.

## **Decision of the Hon'ble Supreme Court**

Under the facts and circumstances of the case, the Hon'ble Supreme Court held that the rights of the Appellant in the suit land by a sale deed would be protected by the operation section 3 of TPA.

Therefore, the findings recorded by all the courts below that the Appellant plaintiff has no right, title and interest in the suit land' cannot be sustained and deserves to be quashed and set aside.

Further, other reliefs ie decree for return of possession and for permanent injunction are deserve to be granted, as the First Appellate Court has specifically held that the defendant no.1 has no right, title and interest in the suit land and the said finding attained, finality. Thus, defendant no. I cannot be permitted to be continuing in possession.

For reason stated above, the present appeal is allowed and the judgment and decree passed by the Ld Trial Court, confirmed by the first Appellate Court are hereby quashed and set aside.

Not always necessary that attesting witnesses should actually see the testator sign the will

**Ganesan (d) through Irs  
Versus  
Kazanjian and others**

(Supreme court order)

**Coram:** Hon'ble Mr. Ashok Bhushan j.

Hon'ble Mr. Navin Sinha j.

**Delivered on:** 11 July, 2019

### **Law Point**

Section 63 (C) of the Indian Succession Act, 1925 reads as follows.

"63 (c/ The Will shall be attested by two or more Witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the restator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but if shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."

### **Brief facts**

The appellant filed a suit claiming share in the suit properties asserting them to be joint family properties.

### **Observation of the trial court**

The Trial Court held that the suit property was the self-acquired property of the deceased who died intestate and genuineness of the Will had not been established in accordance with the law, entitling the appellant to 1/5" share. The appeal of the defendant was allowed holding that the signature of the testator was not in dispute and the testator was of sound mind. The Will was executed in accordance with Section 53 (c] of the Indian Succession Act, 1925 (hereinafter called "the Act") and proved by the attesting witnesses DW 3 and DW 4. The second appeal by the appellant was dismissed.