

City Academy Law College

LL.B. HONS. 5TH SEMESTER

Property Law

UNIT II

Syllabus	II General Principles Governing Transfer of Immoveable Property: <ul style="list-style-type: none">• Transfer by ostensible owner,• Rule of feeding the grant by estoppels.• Rules of Lis pendent,• Fraudulent Transfer.• Rule of part performance.
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UNIT II

Lecture 1	Transfer by ostensible owner
Lecture 2	Rule of feeding the grant by estoppels
Lecture 3	Rules of Lis pendent
Lecture 4	Fraudulent Transfer
Lecture 5	Rule of part performance

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UNIT II

Lecture 1

Transfer by ostensible owner

Previous questions

Long questions

Q1. What is meant by 'Ostensible Owner'? What protection does Sec. 41 of the Transfer of Property Act provided to a person to whom immovable property has been transferred by an ostensible owner? (2018)

Short Questions

Q1. Ostensible owner

Notes

The transfer of property to an ostensible owner is dealt under Section 41 of the Transfer of Property Act, 1882.

According to it, "**Transfer By Ostensible Owner:** where, with the consent, express or implies, of the persons interested in immovable property, a person is the ostensible owner of such property and transfer the same for consideration, the transfer shall not be voidable on the grounds that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith."

Necessary conditions-

For the application of this section following conditions are necessary;

1. The most fundamental criterion is that the individual transferring the property must be the ostensible owner.
2. The actual owner's consent, which might be implied or expressed, is necessary.
3. In exchange for the property, the ostensible owner must be compensated.
4. The transferee must use reasonable caution over the transferor's power over the property, and whether the transferee acted with bona fide intention.

5. This section, needless to say, does not apply not to the transfer of movable property, and only to that of immovable.

The rule enunciated in Section 41 acts as an exception to the general principle that a person cannot transfer a superior title to property than what he holds i.e. '**Nemo Dat Quod Non Habet**'. .

The Supreme Court noted in **Jayadaya Poddar v. Bibi Hazara (1974)** that whether a person is an ostensible owner is a subjective matter that depends on specific facts and circumstances. When determining whether a person is an ostensible owner or not, the following factors must be considered:

- I. Who paid the price, or who paid the purchasing money?
- II. Who held possession following the purchase, i.e. who owned the property?
- III. The motive for acquiring the property in a benami fashion i.e. why was the property acquired in the name of someone else?
- IV. Relationship between the parties, i.e., whether the real and ostensible owners were familiar with each other or not?
- V. The parties' conduct in managing the property, i.e. who used to look after, oversee and manage the property?
- VI. Who had custody of the title deeds?

Estoppel:

The real owner would be prevented on disputing the validity of the transfer on the ground that the transferor was not, in fact, competent to do so because of real owner's act of giving implied or expressed consent to the ostensible owner to hold himself out the world as the owner of the property.

Exceptions to Section 41 of the Transfer of Property Act, 1882-

If the true owner permits another to hold himself out as a real owner, a third person who –

(a) deals with that other after taking reasonable care to ascertain that the transferor had the power to make transfer &

(b) Act in good faith, such third person acquires good title to the property as against the true owner.

Assignment

Q1. Which section of TPA provides about transfer of property by ostensible owner?

Q2. Section 41 of TPA enacts an exception to which general principle?

Q3. Write any three conditions which are necessary for the application of section 41?

Q4. Write exceptions to Section 41 of the Transfer of Property Act, 1882.

Q5. Jayadayal Poddar v. Bibi Hazara case is related with which of the following section-

- a) Section 43
- b) Section 53
- d) Section 41

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UNIT II

Lecture 2

Rule of feeding the grant by estoppels

Previous questions

Long questions

Q1. What do you understand by “Feeding the grant by estoppels”? What are the essential requirements for the application of the doctrine ‘Feeding the grant by estoppel’? (2016)

Notes

Under the Transfer of Property Act, 1882, this principle has been laid under Section 43 as **“feeding the grant by estoppel”**.

This principle has been evolved under the Act by the English Common Law and through the Principle of Equity which says that a person cannot deny his previous statements and he has to fulfill them.

Section 43 of TPA deals with transfer by unauthorised person who subsequently acquires interest in property transferred.

Where a person erroneously or fraudulently represents that he is authorised to transfer the certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

“Feeding the grant by estoppel” means that if a person does not have a title deed to the property, but gives it to another by transferring it, fraudulently causing the loss of another, he or she will withdraw his or her next interest from that property, in the event of that transfer.

An estoppel appears to be against the transferor for his conduct, and the law obliges him to ‘support’ that stopper due to his subsequent acquisition. The principle behind this section is therefore based in part on the doctrine of estoppel and in part on the equal doctrine that a person who has promised more than he can afford, must give when he gets what he originally intended.

The doctrine of feeding the grant by estoppel forces a man to do where performance is possible. It gives the transferor the opportunity to proceed with the transfer, then it is entirely up to the transferor if he or she intends to continue the transfer after the transfer has become effective.

Necessary Conditions

For the application of this section following conditions are necessary;

1. A transferor should be an unauthorised person, which means he doesn't have any capacity to make a transfer but still he promises the transferee that he will perform the transfer of a particular immovable property.
2. The transferor must fraudulently represent to the transferee that he holds an authority to transfer the immovable property.
3. The transfer is for a Consideration.
4. The transferor must obtain the authority of a property in the future or subsequently which he had promised to transfer when he had no authority or interest. The authority acquired may be through transfer inter vivo or by the law.
5. The transfer will not pass automatically to the transferee. The transfer depends upon the discretion of the transferee that if all the conditions are fulfilled then he may compel the transferor to transfer the title in his favour.

Exceptions to the doctrine of 'feeding the grant by estoppel'-

- When the transferee is aware of the true transaction
- When the transfer is forbidden by law
- When the second transferee acquires rights

The second paragraph of section 43 protects the rights of the second transferee in good faith and for consideration who has no notice of the option in favour of the first transferee.

Assignment

Q1. “Feeding the grant by estoppel” is engrained in which section of TPA?

Q2. What do you understand by “Feeding the grant by estoppel”?

Q3. The second paragraph of section 43 protects the rights of whom?

Q4. Write down any three conditions for the application of section 43?

Q5. Write down Exceptions to the doctrine of ‘feeding the grant by estoppel’.

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Lecture 3

Rules of Lis pendent

Previous questions

Long questions

Q1. Discuss the doctrine of “Lis Pendens” and give its basis. Does the doctrine apply to an execution proceeding? Describe. (2016,2018)

Notes

Sec.52 - Transfer of Property pending suit relating thereto.

Doctrine of lis Pendens is incorporated in Sec. 52, which provide that during pendency of any suit regarding title of property, any new interest in respect of property should not be created.

Meaning:- ‘Lis’ means litigation, and ‘Pendens’ means pending. Thus lis pardons means pending litigation – The doctrine is expressed in maxim “pendent lite nihil innovature” means during pendency of litigation nothing new should be introduced.

Basis of Doctrine- “Necessity” is the basis of this doctrine. Thus the doctrine of lis-pendens is founded on necessity. It prevents the parties from disposing of a disputed property in such a manner as to interfere with courts proceedings.

Essential ingredient of Sec. 52 -

1. There is a pendency of a suit or proceeding.
2. Such suit or proceeding must be with respect to a right to immovable property directly and specifically.
3. Pendency of suit must be in a court of competent jurisdiction,
4. Suit or proceeding must not be collusive.
5. A party to suit transferred or otherwise dealt the property in dispute.
6. The Transfer must be such as affect the rights of the other party to litigation.

In case all these conditions are fulfilled, the transferee bound by the decision of the court.

- In **Samarendra Kr. Sinha V Krishna Kumar Nag AIR 1967** Sec. The S.C. Stated that sec. 52 is applicable to involuntary transfers as well. Therefore, doctrine of its pendens is applicable where transfer is made by the order of the court. eg. Attachment and sale.
- It is necessary that the transfer is made by a party to the suit. Transfer made by a stranger does not affected by Sec. 52.
- Doctrine of lis pendens do not apply to the transfer made with the permission of the court. eg. Compromise with the permission of the court.

Effect of Lis-Pendens- Normally a decree of a court binds only the parties to the suit. But under the doctrine of lis pendens, any stranger to the suit who purchases a property which is the subject matter of the suit, during the pendency of the suit is also bound by the decree passed in the suit.

Sec. 52, however, does not invalidate the transfer, but render it subservient or subject to the rights of the parties to suit. If the decision of the court is in favor of the transferor, the rights of the transferee is not affected by it and if the decision goes against the transferor the transferee cannot get any interest in the property.

Assignment

Q1. Doctrine of lis Pendens is incorporated in which section of TPA?

Q2. What do you understand by Doctrine of lis Pendens?

Q3. Section 52 is applicable to-

- A) involuntary transfers
- B) Voluntary transfer
- C) Both a and b

Q4. Write down the effect of Lis-Pendens.

Q5. Write down any three essential ingredient of section 52 of TPA?

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Lecture 4

Fraudulent Transfer

Previous Questions

Long Questions

Q1. Define “Fraudulent Transfer”? What are the rights available to the transferer and transferee under the Transfer of Property Act to check the fraudulent transfer? Discuss. (2013, 2015, 2017)

Short Questions

Q1. Fraudulent Transfer

Notes

Meaning- Fraudulent Transfer means the illegal transfer of property to defraud creditors. Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

The Sec. 53 of T.P.A. is exception to the general principle of privity of contract. According to the principle of privity of contract only a party to the contract, who has been defrauded can avoid the contract. And a stranger to contract has no locus standi to avoid the terms of the contract even if contract was entered with D intention to defraud the stranger.

Essential ingredients of Sec.53, Para-1

1. There shall be transfer of immovable Property- The Transfer shall be Valid Transfer within the meaning of Sec.5 of T.P.A. Hence relinquishment, surrender, partition, family settlement and dissolution of partnership are not regarded as transfer of property.

Through the provisions of Sec. 53 are applicable to immovable property, but the privy council in Abdul hye V Mir Mohammad (1883) case applied this section to movable property on the ground of equity, justice and good conscience.

2. Such transfer is made with the intention to defeat and delay the creditors of the transferor- It is noted that to attract the provisions of the Section, The transfer is made with the

sole object of defeating or delaying the interest of creditors, rather than to give the property honestly to the transferee. The following circumstances gave the strong presumption that the transfer was fraudulent:-

1. The Transfer was made secretly and in haste,
2. The Transfer was made soon after the decree was passed against the judgement debtor.
3. The transferor who was indebted has gifted all the properties before attachment.
4. The consideration was very small amount in comparison of the value of the property transferred.
5. There is evidence that there is no actual payment of consideration as shown in sale-deed.

3. Transferee has not received the property in good faith and for consideration:-Where the transferee has purchased the property from the debtor in a good faith the creditor can't avoid the sale under section 53(I).

When all the above conditions are proved to be existing, the transfer is voidable by the auditors. Sec. 53 does not make a fraudulent transfer void automatically. It remains a perfectly valid transfer until creditors exercise their right to avoid the transfer. Since the right to avoid the Transfer is optional a creditor may or may not exercise his right under the section.

Exception to the Rule under Sec. 53(1) - The rule that a fraudulent transfer can be avoided by creditors is not applicable to –

- a. A Transferee in good faith and for consideration, and
- b. Any law relating to insolvency for the time being in force.

Sec.53 (2) - Gratuitous Transfer to defraud subsequent transferee- Sec. 48 laid the general rule that first transferee has preference over the second. But under sec. 53(2), if it is proved that first transfer is fraudulent, the subsequent transfer shall prevail and first transfer would be voidable at the option of subsequent transferee.

Mere fact that the first transfer was gratuitous and the second transfer is with consideration, does not raise the presumption of fraud in respect of the prior transfer.

Assignment

Q1. Which section of TPA provides about fraudulent transfer of property?

Q2. What do you understand by fraudulent transfer?

Q3. Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be.....at the option of any creditor so defeated or delayed?

Q4. Write down exception to the Rule under Sec. 53(1).

Q5. In which case the Privy Council applied section 53 to movable property on the ground of equity, justice and good conscience?

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UNIT II

Lecture 5

Rule of part performance

Previous questions

Long questions

Q1. Discuss the doctrine of Part-Performance with the help of decided cases. (2017)

Q2. Discuss the doctrine of part-performance. What is the difference between part-performance and the equitable estoppels? Explain. (2019)

Notes

The doctrine of part performance is ingrained under section 53A of TPA, 1882.

The doctrine of part performance has originated from principles of equity, justice and good conscience. It is based on the equitable maxim, "Equity looks on that as done which ought to be done."

Sec. 53-A laid down a special provision. According to it where a transfer has partly-performed his part under a contract of sale and is willing to perform the remainder part, he would not be ejected from the property on the ground that the transfer is not made in accordance the law for the time being in force.

Essential Ingredients of Doctrine –

1. There is a contract for the transfer of an immovable property -

Transfer here means a transfer of property within the meaning of the Act. [sec.5]. thus family settlement, partition, surrender etc. are not transfer. The contract of transfer of immovable property must be for consideration.

Moreover, the contract to transfer must be in writing and signed by the transfer or any other person authorize on his behalf

2. The Transferee takes possession of property under this contract-The transferee has partly performed the contract. He can partly performed the contract in two ways-

- He has taken possession of property or any part thereof, or
- Where he was already in possession he continues in possession and has done some act in furtherance of the contract. For Instance part payment of price where property is agreed to be sold to a mortgagee in possession.

3. The transferee either performed his part of contract or is willing to perform the same-
The willingness to perform his part must be absolute and unconditional.

If all the above mentioned conditions are fulfilled, the transferee is entitled to claim against transferor or any person claiming under him that he should not be dispossessed or evicted from the property, merely on the ground that the transfer has not been completed in the manner prescribed there for by the law for the time being in force.

Exceptions to Rule under Sec. 53-A-

- Where parties has expressly agreed to such a right under the terms of the contract.
- A transferee for consideration who has no notice of the contract or part performance thereof.

Assignment

Q1. The doctrine of part performance is ingrained under which section of TPA, 1882.

Q2. Doctrine of part performance is based on which equitable maxim?

Q3. Write down Essential Ingredients of Doctrine of part performance.

Q4. Write down exceptions to doctrine under Sec. 53-A.

Q5. For the purpose of this section the contact to transfer must be inand.....by the transfer or any other person authorize on his behalf. Fill the blanks.