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What may be Transferred under Section 6, Transfer of Property Act, 1882

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Civil law revolves around the concept of property. It is governed by both the Civil Procedure Code and the Transfer of Property Act. It is critical for both lawyers and the public to be aware of the specifics of property transactions and transfers. The provision that determines what properties can be transferred is explained in this article. The reader can deduce that this provision is negative in nature because it specifies what cannot be transferred; nonetheless, aside from these exceptions, all types of attributes may be transmitted. It has been demonstrated that, even though the provisions appear to be identical on the surface, there is a significant difference in the meaning and explanation of Section 6 of the Transfer of Property Act. The author has attempted to explain the content of this section by stating several illustrations to assist the reader in connecting it to the notion in support of various judicial decisions.

Keywords: *coparcenary, easement, future maintenance, pensions, public office, spes succession.*

INTRODUCTION

Section 6 of this act deals with the essential basic questions of what may be transferred. At the outset, any property or interest is based on the fundamental maxim – “*Alienation Rei*

PreferturJuriAccrescendi" [Law favors alienation to accumulation]¹. Any interference in the owner's right to transfer his interest in the property is disfavored in the law. Alienation of property requires the transferor to have a valid subsisting title over it². A transferor cannot alienate property or interest, which he has no valid title over. Any, transfer of property or interest under the exception clauses, shall make such transfer null and void, under Section 6(a).

CRITICAL ANALYSIS

Section 6(a) - Spes Succession

The heir is an individual, who inherits the estate of a deceased, who dies without leaving behind a valid will. As per the Doctrine of *SpesSuccessionis*, it is merely a possibility that an heir-apparent would inherit or succeed the estate of a deceased. A mere possibility of inheriting the estate in the future, cannot be made the subject of the transfer³. In *Official Assignee, Madras v Sampath Naidu*⁴, Madras HC held that a mortgage executed by an heir is void, even if he inherits the property later in the capacity of an heir. Thus, *SpesSuccessionis* is **void ab initio**. The chance of a relation/friend obtaining a legacy is even slimmer than an heir apparent, as held in *CF PagDat v Chote Singh*.⁵ Before the will operates, the legatee has the only expectancy of obtaining a legacy, which cannot be made subject matter of property transfer⁶. In *Anda Mohan Roy v Gaur Mohan Mullick*⁷, the Privy Council also held that if transfers based on possibilities are held valid, then the purpose of Section 6(a) will be defeated.

The objective of Section 6(a) is merely to ban the transfer of future probable interest. Akin to the chance of heir-apparent and relation, any such transfer of like nature merely relies on the

¹ Dr. Poonam Pradhan Saxena, *Mulla: The Transfer of Property Act* (11th edition, Lexis Nexis 2013)

² Anne Rodell, Clare Harris, *Property Law and Practice* (3rd edition, College of Law Publishing 2009) 120-129

³ Namrata Kandankovi, 'Section 6 Transfer of Property Act 1882' (*Ipleaders*, 30 May 2019)

<<https://blog.iplayers.in/transfer-of-property-act-section-6/>> accessed 08 March 2022

⁴ *Official Assignee v Sampath Naidu* AIR 1933 Mad. 795

⁵ *CF Pag Dat v Chote Singh* [1906] 9 OC 55

⁶ Dr. Poonam Pradhan Saxena (n 1)

⁷ *Anda Mohan Roy v Gaur Mohan Mullick* AIR 1923 PC 189

future possibility, which is non-transferable⁸. For example, in *Puncha v Bindeshwari*⁹, Court held that chance of offerings being given to the temple by future worshippers cannot be transferred, since it's a mere possibility. However, as held in *Sukhlal v Bishambar*¹⁰, the right of *Mahabrahmin* to get offerings by religious Hindus is not a mere possibility, it's a valid, tangible, and definite right.

Section 6(b) – Right of Re-entry: As per this right, after the transfer of the property, if the transferee breaches a condition, the transferor shall have the right to re-enter the premises of the property. In *Re Davis & Co.*¹¹, A and B entered a hire-purchase agreement, under which if A failed to pay the installments, B has the right to re-enter the property. The Court held that right to re-enter is a personal right and is attained in a personal capacity.

Section 6(c) – Easement: An easement is a right presented to the owner or occupier of the land for the beneficial enjoyment of the land¹². This right to beneficial enjoyment encompasses the right to do something and prevent something from being done. The legal rationale behind this right is “*Profits APendre*[Right to enjoy benefits arising out of the Land].”¹³The transfer of the right to easement cannot be executed without the benefit of the dominant tenement. In *Sital v Delaney*,¹⁴ Court held that the right to easement cannot be transferred without dominant heritage, which is the rights in the property for which the benefit exists.

Section 6(d) – Restricted Interests: A personal right is intended to be enjoyed by a specific person and hence is not transferable. In *Shoilojanund v Peary Charon*¹⁵, Court held right to receive voluntary offerings is restricted to personal enjoyment and is not transferable. Further, in *Joydev Sen v State of West Bengal*¹⁶, the license of a stamp vendor is not transferable

⁸ Amrit Mishra, 'Property of 'any kind' May be transferred' (*Law Teacher*, 17 July 2019) <<https://www.lawteacher.net/free-law-essays/land-law/property-of-any-kind-law-essays.php>> accessed 09 March 2022

⁹ *Puncha Thakur And Anr. v Bindeshwari Thakur And Ors.* (1915) 28 Ind Cas 675

¹⁰ *Sukh Lal v Bishambar* (1916) 37 IndCas 661

¹¹ *Re Davis & Co.*, (1947) 75 CLR 409

¹² Dr. Poonam Pradhan Saxena (n 1)

¹³ John Sprankling, *Understanding Property Law* 109-120, (3d ed. 2000).

¹⁴ *Sital v Delaney* (1916) 20 Cal WN 1158

¹⁵ *Shoilojanund v Peary Charon* (1902) ILR 29 Cal 470

¹⁶ *Joydev Sen v State of West Bengal* AIR 2010 (NOC) 256 (Cal)

because the property cannot be passed on or inherited by a person on the ground of having a relationship with the licensee.

Section 6(dd) – Right to Future Maintenance: Right to future maintenance is created only for the benefit of the person to whom it has been given, thus cannot be made a subject of the transfer¹⁷. Such rights are created under will, compromise, or deed. For example, in *Dhupnath v Ramacharit*¹⁸, Court held that a decree entitling a woman to maintenance from her husband or a share in the estate of the deceased husband is a personal right inherited in a personal capacity. The entire object of maintenance is to furnish support to a person who's not able to maintain themselves independently¹⁹. As held in *Ramprasad v Motiram*²⁰, Court held that future maintenance is need-based, and the liability cannot be given to the transferee of future maintenance.

Section 6(e) – Mere Right to Sue: In this clause, the *mere right to sue* means only the sole right to sue. In *Venkataram v Venkataswami*,²¹ Court held that right to sue is a personal right, only the aggrieved person can sue in court. There is a difference between interest in the property and the bare right to sue. As held in *Gangaraju v Gopala*²², the transfer of rights to receive profits arising out of the land with the transfer of land is assignable. Further, in *Murlidhar v Rupendra*²³ Court held that the transfer of property also attached the right to recover compensation concerning the property. Hence, what is barred is the bare right to pursue an action, however, an actionable claim associated with an interest in the property, is enforceable and assignable, under Section 6(e).

Section 6(f) – Public Office: The public office and public officer are not transferable. A doctor, lawyer, civil servant, etc. working under the government are people, who are paid salaries for

¹⁷ Dr. Poonam Pradhan Saxena (n 1)

¹⁸ *Dhupnath v Ramacharit* AIR 1832 All 662

¹⁹ Rukhman Singh, 'Properties and Rights which cannot be transferable under the Transfer of Property Act, 1882' (Legal Service India) <<http://www.legalservicesindia.com/article/2471/Properties-and-Rights-which-cannot-be-transferable-under-the-Transfer-of-Property-Act,-1882.html>> accessed 18 March 2022

²⁰ *Ramprasad v Motiram* AIR 1947 Pat 404

²¹ *Venkataram v Venkataswami* AIR 1921 Mad 56

²² *Gangaraju v Gopala* AIR 1957 AP 190

²³ *Murlidhar v Rupendra* AIR 1953 Cal 231

the public services rendered by them. In *State of MP v Sandhya Tomar*²⁴, Court held salary is a civil return for public services rendered, which cannot be attached or transferred. Further, in *Ananthayya v Subba Rao*,²⁵ an agreement between two people was signed, as per which a person agreed to pay a certain part of his income to his brother, in return for him being maintained by his brother, here the provision will be inapplicable.

Section 6(g) - Stipends & Pensions: In *Saundariya Bai v UOI*²⁶, Court held pension is a sum payable from the government to ex-servicemen, and is paid regularly by the government so it is not transferable. However, it can be attached when the sum goes into the hand of the ex-serviceman or his legal representatives²⁷. It also needs to be understood that what cannot be the subject of transfer is the stipend and not the pension paid to the pensioner, as held in *Suraj Devi v Sita Devi*²⁸. In *Sect. of State v Khemchand*²⁹ Court held a pension is the periodical payment of a monetary sum from the government to a pensioner, on account of past services rendered by the concerned pensioner, hence it's not a privilege.

Section 6(h) - Nature of Interest: The interests cannot be transferred, as the nature of interest per se is not transferable. Thus, as held in *Raja Verma Valia v Kettayath*³⁰, the things provided for religious uses, service purposes, and public use cannot be made a subject of the transfer. If the law does not allow contract of the concerned property, then certainly it also prohibits the transfer of the same property. In *NutanKumar v 2nd Additional District Judge*³¹, the aim of this clause is to prohibit transfers with an unlawful object or consideration of transfer for a purpose contrary to public policy. In *Gogun v Janokee*³², Court held the transfer of property for a brothel, and gambling place in consideration of a bribe is contrary to public policy and hence such transfer is void. Both parties must be competent to engage in the transfer, as stated in section 7 as well. However, some persons under statutes have specifically

²⁴ *State of MP v Sandhya Tomar* (2013) 11 SCC 357

²⁵ *Ananthayya v Subba Rao* AIR 1960 Mad. 188

²⁶ *Saundariya Bai v UOI* AIR 2008 MP 227

²⁷ Dr. Poonam Pradhan Saxena (n 1)

²⁸ *Suraj Devi v Sita Devi* AIR 1996 Raj 6

²⁹ *Sect. of State v Khemchand* (1880) ILR 4 Bom 432

³⁰ *Raja Verma Valia v Kettayath* (1875) 7 Mad HC 210

³¹ *Nutan Kumar v 2nd Additional District Judge* AIR 1994 ALL 298

³² *Gogun v Janokee* (1873) 20 WR 235

been disqualified to be a transferee. For example, in *Ramchandra Vasudev Vijaypure v Anant Laxman Thakur*³³, Court held that any person associated with official duty with the sale of the property is legally disqualified from purchasing it.

Section 6(i) –Statutory Prohibition on Transfer of Interest: In *Raja Verma v Ravi Verma*³⁴, Court held that a tenant, who has a non-transferable right of occupancy cannot transfer his interest in the property. This clause is part of the exception to the general rule, which says that tenancies and leaseholds are transferable³⁵. For example, in *Arjaneyalu v Venugopal*³⁶, Court held that non-permanent tenures cannot be transferred by permanent tenures are transferable. Many tenancy laws today prohibit subletting of the property, without the written consent of the landlord. In *Wazir Mohammed v Har Prasad*³⁷, Court held that the sub-clause of this provision neither allows nor bans the transfer of occupancy rights by the tenant³⁸. It merely notes the interests of the landlord and tenant created by the legislation itself.

CONCLUSION

When the transferor does not have a valid title to the property and only seeks to acquire one in the future or has an interest in the property, created only for his personal enjoyment, or when a transfer of such interests in the property must not be allowed to be transferred, owing to public policy, then such transfer is prohibited. The transferor is only allowed to transfer the property, provided he has a valid and existing title over the property. Hence, Section 6 enlists exceptions to the general rule of property of any kind may be transferred.

³³ *Ramchandra Vasudev Vijaypure v Anant Laxman Thakur* AIR 1926 Bom 282

³⁴ *Raja Verma v Ravi Verma* (1962) 4 IA 76

³⁵ Dr. Poonam Pradhan Saxena (n 1)

³⁶ *Arjaneyalu v Venugopal* AIR 1922 Mad 197

³⁷ *Wazir Mohammed v Har Prasad* (1922) 15 IC 613

³⁸ Dr. Poonam Pradhan Saxena (n 1)