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Transfer of Property envisaged under Section 5 of the Transfer of Property Act, 1882

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Property as an entity has a wide ambit that may incorporate anything which holds value and which may possess the rights of ownership. Transfer of Property, governed under Section 5 of the Transfer of Property Act, 1882; where the act of transferring the property is pursued by a living person to one or more persons or to himself or one or more other living persons which may constitute a company, association, or body of individuals but, may not include a partnership firm, which was also highlighted in the case of, Shiromanigurudwara Prabhandak Committee, Amritsar v Sri Somnath Dass¹. Considering its extensive scope, which offers the person who shall be deemed to have the property all the legal rights but not his rights which may constitute their status or personal condition, this aspect is governed under Section 6 Clause (dd), of the Transfer of Property Act, 1882. The provisions stated under the Transfer of Property Act, of 1882 do not commonly adhere to the testamentary succession, but it applies to the Hindu Succession Act, of 1925; which enforces that any male or female who has a certain property can make a will or testament to transfer the property or any other assets to anyone, and it shall be considered valid and justifiable in the eyes of law, under the Hindu Law.

Keywords: *transfer of property, legal rights, personal rights, property, ownership.*

¹ *Shiromanigurudwara Prabhandak Committee Amritsar v Sri Somnath Dass AIR (1938) Lahore 369*

INTRODUCTION

Transfer of Property Act, 1882; which was earlier governed by English law, now has another dimension and own individuality, where the transfer is made to a living and juristic person, it should be through conveyance which can either be upheld in the present or the future. Making sure that nothing is transferred before the title. There are properties that cannot be transferred which are mentioned under Section 6 of the Act. People who can be competent to contract should be of sound mind and must have attained the age of maturity and the contract must not be void in the eyes of law. Considering that the transfer made, must be in a considerable form; which must not be written unless mandatorily, it must not be based upon the creation of interests which might depend on the dispersal of interests after the lifetime of one or more persons from the date of transfer. Also, Considering that an unborn child, cannot be held accountable for the transfer of property, to transfer the interests of the property, the person must have attained the age of maturity. Governing such conditions under Section 25 of the Act, if anything is forbidden by law, or is unlawful, the transfer shall not be pursued and will be void from the moment if intended to be created.

ANALYSIS

The term TRANSFER in Section 5, does not obligate the person who conveys the property necessary to be the owner of the property which is to be transferred. It has also been said, in the following section that, the conveyance of the interest of the transferor for example- in the mortgage, lease, etc; there is no transfer of an interest of the property. Also, the section focuses on all the properties held outside India or the territories and does not exclude them from the equation of transfer. In the case of, *Prethi Singh v Ganesh*² was held that the clause of transfer, if affected, where the act comes into the picture; then the location, rights, and liabilities of people, all are held in its adherence.

Transfer of Property is an act of conveyance, which projects the act of transferring the title of the property, rendering the rights and interests from one living person to the other. The pursued

² *Prethi Singh v Ganesh* AIR (1951) All 462

property could be to one or more living persons, to himself or one or more other living persons, which may be transferred now or in the future. In the case of, *Lionel Edwards Limited v State of West Bengal*,³ it was proclaimed by the Honourable court, that the entitlement of the property shall be conveyed from one living person to the other, who by any chance has no right over the title otherwise. It was held in the case of, *A. Nadalwari v N. Malvarayan*,⁴ that if at all the transferee showcases any interests in the property before it is conveyed to him then it cannot profess the entitlement of transfer of property, because, the document of transfer shows the change in ownership.

The property is a transferrable entity, which adheres to the general rules and regulations which are addressed in Section 6 of the Act; concerning it with, what may be transferred, is based upon the maxim, '*Alienation Rei Prefertur Juri Accrescendi*', which means that the law favours the alienation of the property than the accumulation. Any act done, which hinders the right of the owner of the property, is condemned in the eyes of law.

With the variability of what to transfer also, comes the aspect of parties competent to transfer which is governed under Section 7 of the Act, which necessarily must suffice two obligations i.e., the transferor must be competent to contract with other persons and the transferor of the title must have the authority to transfer even if not the real owner. This has been taken from Section 11 of the Indian Contract Act, which categorizes the people who can enter into in contract. The transferor must be a major, be of sound mind, not be a lunatic, and have not been debarred from entering a contract.

The property must be transferred orally if not expressly mentioned to be in writing format, governed under Section 9 of the Transfer of Property Act, but writing shall be an important quotient concerning the cases relating to; the sale of an immovable property valuing more than rupees hundred⁵, sale or reversion of intangible things⁶, simple mortgage⁷, all other mortgages

³ *Lionel Edwards Limited v State of West Bengal* AIR (1967) Cal 191

⁴ *A Nadalwari v N Malvarayan* AIR (1936) Mad 918

⁵ Transfer of Properties Act 1882, s 54

⁶ *Ibid*

⁷ Transfer of Properties Act 1882, s 59

valuing more than hundred or more⁸, lease of immovable properties with a term exceeding more than a year⁹, exchange¹⁰, gift of immovable property¹¹, transfer of actionable claim¹², etc. The Transfer of Property Act does not offer the transferee to showcase his parting interest, such involvement shall be considered void; concerning it with, if the transferee wishes to resell the property after acquiring it, he shall not be refrained from doing so, as its very essence is based upon the principle of Public Policy, which allows the transferee, free circulation and disposal of the property, this aspect has been governed under the Section 10 of the Act.

Thus, it can be said, that the property is a multi-dimensional quotient, which offers the transferee the interests offered in its favour, and the transfer must be direct, where it can enjoy the interests, in a laid down manner only, where the person receiving the property, becomes the part of the contract and legal obligations under the Transfer of Property act, is bestowed upon him.

CONCLUSION

The Transfer of Property Act, came into existence in the year 1882, which was earlier governed by the rule of English Law and equity. The Preamble of the act lays down the objectives for effective legislation considering that the scope of the act is limited, as the transfer applies only by the act of parties and not by the operation of law. It deals with the aspect of Inter Vivos which means the act of transfer of property to be between two living persons which may include the immovable as well as the movable property. To further profess the importance of a living person, the case of, *Har Narain v Bank of Upper India*,¹³ threw light on the fact that the court is not a juristic person neither is it a living person and thus, an order for sale is not the transfer of property which falls within the ambit of this act.

According to Section 3, of the act the immovable property; considerably does not include standing timber, crops, or grass. Taking the case of the trees, if at all there is an intent to reap

⁸ *Ibid*

⁹ Transfer of Property Act 1882, s 107

¹⁰ Transfer of Property Act 1882, s 108

¹¹ Transfer of Property Act 1882, s 123

¹² Transfer of Property Act 1882, s 130

¹³ *Har Narain v Bank of Upper India* AIR (1938) Oudh 84

certain benefits or nutrients from the soil, enjoying its fruits then it shall be considered as an immovable property, keeping it intact and not making any alternations. But, if the intention is such, to cut down the tree sooner or later for any industrial use or any other purpose, then it shall be considered as a movable property; this distinction was highlighted in the case of, *Shantabai v State of Bombay*.¹⁴ Further to enhance the array of distinctions between movable or immovable property, pertains to the fact that anything which cannot change its place, without any alterations is said to be immovable; highlighted in the case of, *Sukry Kurdepa v Goondakull*.¹⁵ The transfer of the property may take place either on an immediate basis or in near future, which shall be effective from the date mentioned in the sale deed, according to Section 5, in the case of, *Jugalkishore v Raw Cotton Co*.¹⁶, the clause of transfer in present or future; exempts the word, 'property' and qualifies, 'convey'.

¹⁴ *Shantabai v State of Bombay* AIR (1958) SC 532

¹⁵ *Sukry Kurdepa v Goondakull* (1872) 6 Mad 71

¹⁶ *Jugalkishore v Raw Cotton Co* (1955) SCR 1369