



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Analyzing the Legal Perspective and The Impact of the Owner's Intention on Movable and Immovable Property: A Comparative Study

Rohan Dey^a

^aSt. Xavier's University, West Bengal, India

Received 10 February 2024; *Accepted* 11 March 2024; *Published* 14 March 2024

We all have heard about Property. We own property and even trade property on a day-to-day basis. But what is property? We already know that there is no law defining property. Is it just a possession or something which belongs to someone or is it something more than that? What is immovable and movable property? The distinction between these two types of property is fundamental to various legal systems worldwide and has significant consequences for individuals, businesses, and societies as different types of properties will have specific laws that would apply to them and specific laws that would not. Adding to that, no law specifically defines each property, and there are various acts which when combined will define what is movable property and what is an immovable property. Even if we differentiated movable property from immovable property, how does the intention of the owner, the person owning the property affect the nature of the property in its entirety? Can it change a movable property into an immovable one and vice versa? What are the many ways by which we can transfer property? This study explores the legal frameworks governing movable and immovable property, why determining the nature of the property is important, and the impact of it on ownership rights. Additionally, the paper investigates the challenges and opportunities associated with each type of property, highlighting key differences and similarities.

Keywords: *movable property, immovable property, ownership rights, transfer of property.*

INTRODUCTION

The realm of property law is a complex web of statutes, precedents, and societal norms that govern the rights and responsibilities associated with ownership. Central to this legal landscape is the distinction between movable and immovable property, each subject to its own set of rules and considerations. However, beyond the black letter of the law lies a fascinating interplay between legal principles and the subjective intentions of property owners.

This comparative study embarks on a journey to dissect the intricate relationship between the legal perspective and the profound impact of the owner's intentions on both movable and immovable property. Delving into this intersection offers a unique vantage point to understand how legal systems around the world grapple with questions of ownership, control, and the allocation of rights.

By adopting a comparative lens, this study aims to unearth the nuances and divergences that exist across jurisdictions in interpreting and accommodating owner's intentions within the framework of property law. Through meticulous analysis of case law, statutory provisions, and scholarly discourse, it seeks to uncover patterns, trends, and underlying principles that shape legal reasoning and decision-making in matters about property rights.

Moreover, this study ventures beyond theoretical abstraction to explore the practical implications of legal doctrines surrounding the owner's intentions. Real-world scenarios and case studies will be examined to elucidate the challenges faced by legal practitioners, policymakers, and individuals embroiled in disputes over movable and immovable property.

In shedding light on the legal perspective and the dynamic interplay with the owner's intentions, this comparative study endeavours to contribute to the broader discourse on property rights. By fostering a deeper understanding of the complexities inherent in this field, it aspires to inform legal practice, guide policymaking, and stimulate further research into the ever-evolving landscape of property law.

THE CONCEPT OF PROPERTY

As per the jurisprudential definition of property, it is a bundle of rights¹ which means property is a lot of rights packed together which is available to the person owning that property. The owner has the right to possess the property physically and even occupy the property, he has the right to exclude others who do not own the property from possessing, using, or entering the property without the permission of the owner, he has the right to use the property to generate income, income which he is entitled to received and benefit from like a Movie Hall owner generating income from letting consumers watch a movie in the hall. The property owner can also enjoy the property peacefully and nobody can disturb his enjoyment. For a person, property can mean the total accumulation of his wealth. It can consist of lands, buildings, debts that other people owe to him, mortgage rights he holds over another person's rights, cheques received by him, and other things. When a person owns the property, he can improve the property and make it better, or make alterations and change the property which might even change the fundamental nature or the intention in mind with which the property was owned which inadvertently might also change the nature of the property from immovable to movable and vice versa, which is discussed later in this paper. The owner also has access to the various Legal Rights and Remedies through various laws in case of violation or infringement of any of his property rights Along with this he has the right to dispose of his property along with the property rights and obligations that come with the property either by passing it through inheritance, or by exercising his right to transfer his property, resulting in creation of a new title or new interest.

WAYS BY WHICH PROPERTY CAN BE TRANSFERRED

This transfer of property will take place between two living persons, and property cannot be transferred between two non-living persons or between a living and non-living person which is called '*transfer inter-vivos*'.² Here persons include both normal people and juristic persons, idols,

¹ Denise R. Johnson, 'REFLECTIONS ON THE BUNDLE OF RIGHTS' (2007) 32 Vermont Law Review 247 <<https://lawreview.vermontlaw.edu/wp-content/uploads/2012/02/johnson2.pdf>> accessed 03 February 2024

² Edward C. Norton and Courtney Harold Van Houtven, 'Inter-Vivos Transfers and Exchange' (2006) 73(1) Southern Economic Journal 157-172 <<https://doi.org/10.2307/20111880>> accessed 03 February 2024

etc.³ and will take place by methods like Sale, Exchange, and Gift which results in absolute transfer rights, or by methods like lease and mortgage which results in partial transfer of rights. As per Section 5 of the Transfer of Property Act 1882⁴, transfer of property means '*an act by which a living person conveys property, in present or in future, to one or more other living persons, or himself and one or more other living persons*' and '*to transfer property*' is to perform such act. So transfer must be between two living persons, and cannot be between one living and one non-living person, or between two non-living persons. Let us take each method one by one.

Mortgage: It is a method of partial transfer where only some rights are transferred, and other rights are not. In Section 58 of The Transfer of Property Act 1882, mortgage, mortgagor, mortgagee, mortgage-money, and mortgage deed have been defined. A mortgage is a transfer of an interest in a specific immovable property to secure a loan advanced or to be advanced or debt, existing or future, or performance of an engagement which may give rise to pecuniary liability. The mortgagor is the transferor, the person who transfers and the mortgagee is the transferee, the person to whom the property is transferred. The mortgagor is the person who is giving the loan, and the mortgagee is the one who is taking the loan. The property being transferred is a specific immovable property, and it is specifically mentioned in the deed through which the mortgage takes place. However, it is important to note that the mortgage is just transferring an interest, as the residential interest in this specific immovable property lies with the mortgagor, and the mortgagee is not giving the full interest to the mortgagee which is why this method is a type of partial transfer of property. Along with this, there are various methods by which mortgage can take place, which brings us to the types of mortgage, which are a) Simple Mortgage, b) mortgage by conditional sale, c) Usufructuary mortgage, d) English mortgage, e) Anomalous Mortgage and f) Mortgage by deposit of title deed.

Sales: As per Section 4⁵, a sale is a lawful, permanent, and absolute transfer of ownership rights of a property or properties as per the contract of sale with which the sale takes place, for a

³ *Ibid*

⁴ Transfer of Property Act 1882, s 5

⁵ Sales of Goods Act 1930, s 4

monetary consideration which is also called price, under a valid contract of sale such that no rights are left behind with the transferor who is selling the property.

Exchange: An exchange is where consideration is not in money but in the form of immovable property. However, such types of transactions like land and completed buildings and some types of buildings are excluded from exchange. In exchange, an absolute transfer of property takes place. Defined in Section 118 of The Transfer of Property Act 1882⁶, an exchange is when two people mutually transfer the owner of one thing for the ownership of another, neither thing being money. Here three things are important, one being that ownership is transferred, another that the property of which ownership is transferred can be both movable property and/or immovable property, and that exchange also includes barter. Exchange is a mode of transfer that leads to absolute transfer.

Lease: A lease is where possession is transferred with the user's right to use immovable property with the duty of care and return the property subject to normal wear and tear. Defined in Section 105 of The Transfer of Property Act 1882⁷, a lease is always for immovable property, and it can be made for a certain time, express or implied, and can also be in perpetuity, in consideration of a price which has been paid, or a price which has been promised, or for money, crops, or any service or thing of value, which is to be rendered periodically or on various specific occasions, made to the transferor by the transferee, the transfer being accepted on terms which have been agreed upon.

Gift: As per Section 122⁸, a gift is a transfer of property, which is specific, and can be movable or immovable property, and the donor, the person who is transferring property to the other person who is called the donee, the person to whom the transfer is made, makes the transfer voluntarily and without any sort of consideration. A gift can be made by a testamentary will, and it takes place between two living persons, and not between a living person and an un-living person or between two un-living persons.

⁶ Transfer of Property Act 1882, s 118

⁷ Transfer of Property Act 1882, s 105

⁸ Transfer of Property Act 1882, s 122

MOVABLE AND IMMOVABLE PROPERTY

There are various types of Property, the main ones being movable and immovable property. As per Section 3⁹, 'immovable property' does not include standing timber, growing crops, or grass: 'instrument', means a non-testamentary instrument and movable property has not been defined in the Act. The General Clauses 1897 does have the definition of Movable property, which includes 'property of every description except immovable property' which means the property which does not fall under the immovable property is movable property, including standing timber, growing crops, or grass. As per Section 2(7)¹⁰, 'goods' mean every kind of movable property other than actionable claims and money, and the definition includes shares and stocks, grass, growing crops, and other things attached to the land or forming part of the land which are agreed upon to be severed before sale, or under a contract of sale.

The concept of property is fundamental to legal and economic systems, encompassing both movable and immovable assets. The movable property includes items such as vehicles, machinery, and personal belongings, while immovable property typically refers to land and buildings. Understanding the legal and economic aspects of these categories is crucial for individuals, businesses, and policymakers otherwise, it would be hard to differentiate between movable and immovable property.

1. Immovable Property: As per Section 3 of the Transfer of Property Act, the definition of immovable property is vague and ambiguous, as all we get to know is '*excludes standing timber, growing crops and grass*' as if the definition is incomplete and it is completely unclear as to what it includes. Out of all the laws available, the General Clauses Act of 1897¹¹ gives the best definition possible, according to which '*immovable property*' includes land, benefits to arise out of land, and things attached to earth. However, even with this definition is also incomplete. What is '*things attached to Earth*'? As given in Section 3 of the Transfer of Property Act 1882¹², 'attached to the earth' means – (a) rooted in the earth, as in the case of trees and shrubs; (b)

⁹ Transfer of Property Act 1882, s 3

¹⁰ Sale of Goods Act 1930, s 2(7)

¹¹ General Clauses Act 1897, s 2(26)

¹² Transfer of Property Act 1882, s 3

imbedded in the earth, as in the case of walls or buildings; or (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

Land constitutes every part of the earth, which is not at all covered by water and is habitable. Land also includes every part of the surface of the surface, the space above the surface, and the ground underneath the surface¹³. That also means the soil below the land that is called the subsoil, all the mines present below harboring ores and minerals, the minerals in the soil, and everything else below the ground also become part of the land and just like land, and they also become immovable property. In this regard, even the tube wells that draw groundwater, ponds, canals, rivers, tanks, and even wells are also considered land, because they are substantially shallow, and compared to seas and oceans, they are shallow enough for human beings to get access to the land right below these water bodies, so it would not matter if these water bodies or waterways were manmade due to human intervention or if they occurred naturally, as, being sufficiently shallow, they also will be known as land.¹⁴

Various rights also fall within immovable property like right of way or right of ferry, or something like a right to collect rent from a rented property.

2. Movable Property: Movable property has not been defined in the Transfer of Property Act 1882, but The General Clauses Act 1897¹⁵ defines '*movable property*' as property of every description, except immovable property. This means that any property that does not fall within the category of immovable property, would fall within the category of movable property, or in simple terms, any property that is not immovable would be considered to be movable, thus standing timber, growing grass and crops would be seen as movable as the definition of immovable property excludes these three, but why so? After taking a closer look at the Registration Act 1908¹⁶, we find that movable property also includes what was not included in

¹³ Tania Murray Li, 'What is land? Assembling a resource for global investment' (2014) 39(4) Transactions of the Institute of British Geographers 589-602 <<https://doi.org/10.1111/tran.12065>> accessed 03 February 2024

¹⁴ Alain Pottage, 'The Measure of Land' (1994) 57(3) Modern Law Review <<https://www.jstor.org/stable/1096517>> accessed 05 February 2024

¹⁵ General Clauses Act 1897, s 2(36)

¹⁶ Registration Act 1908, s 2(9)

immovable property that is standing timber, growing crops and grass, fruits on trees, fruit juices in the fruits which grow on trees, and along with that the property of every description except property which is immovable in nature. These have been regarded as movable property as they are not immovable, and movable property also includes those things that are fully capable of being moved, or displaced from one point to another, where the movement occurs or the displacement occurs doesn't need to be due to intervention by human beings. The best example of this kind of property is electricity. Electricity is a current that is generated when electrons move from one electron to another electron, and electricity cannot be touched, felt, or moved like a chair or other such objects. In the case of *State of Andhra Pradesh v National Thermal Power Corporation Ltd.*, the Court held that even though human beings cannot touch electricity, or move the electrons that form electricity from one atom to another, electricity would still fall under movable property and would not be excluded from the category of movable property.¹⁷

COMPARATIVE ANALYSIS: EFFECT OF INTENTION ON NATURE OF PROPERTY

Properties can be tangible, which can be touched and felt, or intangible, which cannot be touched and felt and it can be movable or immovable. Depending on the nature of the property, different rules and specific procedures will apply. For example, the transfer of property, whether it is valid or not will depend on whether the given procedure is followed for that kind of property, if it is not followed, the transfer will be void. Thus, in situations like this, the nature or, the kind of property is important so that proper laws can be applied.

But how does intention come into play when deciding the nature of the property? Movable property can be chairs, tables, bags, and cars, from a simple book to a complicated thing as a helicopter, whereas immovable property can be a tree growing on land, to even the right ferry like the right to get transport through a river, or the right to fishery i.e. fishes in the water of a pond, river or lake, which can be caught and sold for money¹⁸. To understand how intention matters here, let us take an example.

¹⁷ *State of Andhra Pradesh v National Thermal Power Corporation Ltd.* (2002) 5 SCC 203

¹⁸ *Kumar Pashupati Nath Malia and Anr. v Sri Sankari Prosad Singh Deo and Ors* AIR 1957 CAL 128

For Things which are Rooted in the Earth: Let us say a person plants a Mango Tree and waters it daily takes care of it, and grows it. He intended to grow the mango tree to grow mangoes on it, so that he could collect them and sell them; in this case, the mango tree is immovable property. Now, another person plants a Mango tree, waters it daily, takes care of it, and grows it. He intended to grow the mango tree and then later cut it down, so that he could later collect and sell the wood to make a tray out of the wood of the mango tree. In this case, the tree becomes a movable property. Here, the same subject, which is a mango tree, plays the role of both movable and immovable property depending on the intention of the owner of the tree. It is why standing timber, growing crops and grass have been considered to be movable property in Indian Laws, as the purpose of the owner is not to keep this property for long term, but for short-term use. A prudent man would not grow grass. Crops are grown so that once they can be harvested; they can be sold or consumed. The same thing is true with standing timber; the goal is to sell them for other purposes.

Standing Timber: Standing timber in all sense is movable property. Standing timber are trees that are planted, or are already rooted in the earth, and then later cut down so that its wood can be used for various purposes like making furniture, or building a house. Thus, other trees, the wood of which can be put to use for making furniture, doors, and other things which in general would be seen as immovable property, would be seen as movable property and hence will fall under and be treated as 'standing timber' as they were being grown to be used as timber. Courts have also supported this in various cases.

As in the case of the State of Orissa v Titaghur Paper Mills Co. Ltd.¹⁹, it was held by the court that various trees can be planted and grown, but they do not have various purposes and can be only used for one purpose. So, bamboo trees, being such a kind of tree, have no utility and will not serve any purpose except that they can be used for making houses or can be cut down and used as poles, therefore, bamboo trees have been held to be treated as movable properties.

¹⁹ *State of Orissa v Titaghur Paper Mills Co. Ltd.* AIR 1985 SC 1293

Another case in this regard is the case of *Bajinath v Ramadhar*²⁰, where it was held by the court that trees like Sheesham, neem, and babool and even teak trees, the woods of which are used for making houses and other things like doors, wardrobes, beds, chairs, and tables, even though these trees are rooted in the earth, they would be treated as they are movable properties.

Given the case of *Shanti Bai v State of Bombay*²¹, it was held by the Supreme Court of India that if the owner of a tree is interested in the further vegetative growth of the tree, and intends to keep the tree alive, it will be immovable property. But if it is intended that the tree is to be cut reasonably early, the tree is standing timber and becomes immovable property. Thus, the intention for planting the tree plays a huge role like the property the tree falls to, even though it is rooted in the earth or embedded in the earth.

Another case is *Sheik Jan Mohammad v Umanath Mishra*²², where it was held that palm trees, date trees, or trees of any kind that have been planted and is being used exclusively for taking their fruits are immovable property.

Things that are embedded in the Earth: Instead of trees, let us take the example of other properties like buildings, houses, walls, or electricity poles. When attached or fixed firmly to the ground through various means, they become a part of land and whatever is part of the land becomes a thing embedded in the earth. Houses are not even placed on the surface of the land, as the surface of the land is dug, then the construction of the house takes place, which takes a lot of time and once constructed, it becomes a complete structure that is permanently fixed to the land where it has been constructed and there is no hope of it being moved. This also applies to walls.

But there are exceptions. In the case of *V.P. Pakrudheen Haji v State Bank of India*²³, it was held that an anchor, which is fixed in the ground to hold a ship, is not immovable property but the same anchor fixed firmly in the land to hold a suspension bridge would become an immovable

²⁰ *Bajinath v Ramadhar* AIR 1963 All.214

²¹ *Shanti Bai v State of Bombay* AIR 1958 SC 352

²² *Sheik Jan Mohammad v Umanath Mishra and Ors* AIR 1962 PAT 440

²³ *V.P. Pakrudheen Haji v State Bank of India* AIR 2009 Ker 78

property. So, where the items are only placed on the surface of the soil without any aim to make them part of the land, the things may not be immovable properties even if they appear to be fixed in the land.

Machinery that is securely fastened or attached to a concrete base using nuts and bolts and other manmade instruments and attachments cannot be considered an object embedded in the soil or the earth since it is not fixed or attached to the land to benefit the land where it is put. Machinery or other installations of enterprises are fastened to the land for commercial purposes exclusively. In the case of *Narayan Sa v Balaguruswami*²⁴, Large containers were installed in a distillery for making liquors. The court ruled that the vessels were mobile property since they were placed in the land for trading reasons rather than for any benefit use of the land, and to be immovable property, the property must be there for the 'permanent beneficial enjoyment of the land'.

As in the case of *Ssangyong Engg. Construction P. Ltd. v Yograj Infrastructure Ltd*²⁵, a crusher plant and a hot mix plant, two man-made machineries, were brought by the company and then fixed in the ground through the soil for work to proceed. When it came to the Court, it was regarded by the court that these plants were something that can be called 'attached to the earth'. On top of that, the company did not intend to use the plant permanently at a particular place, and it could be moved later, which indeed happened as later, the hot mix plant and crusher plant were moved after the repair project and the road construction project were complete, the sole reason for which the plants were set up.

Any kind of fixation of the Earth fixed with nuts and bolts is not immovable property as the purpose for the fixation is not permanent and it is just for some temporary cause of purpose. For the property to be immovable, it must be there for a permanent cause or goal and must be for the beneficial enjoyment of the land.

When a thing is attached to something that is already there, that something already being embedded in the earth permanently, and the thing is for the beneficial enjoyment of the land,

²⁴ *Narayan Sa v Balaguruswami* AIR 1924 Mad. 187

²⁵ *Ssangyong Engg. Construction P. Ltd. v Yograj Infrastructure Ltd* AIR 2015 NOC 878 Del

then the thing would also become an immovable property. For example, a house is constructed on land, and being a house, it is fixed there permanently, and cannot be moved. However, doors windows, curtains, or shutters can be, but when a door or a window is attached to the walls of a house, it is attached permanently, for the beneficial enjoyment of the house. Therefore, in this case, the doors and windows would become immovable property, as things embedded in the land, or the earth, become a part of the land and then would be regarded as immovable property and things that are permanently attached to what is embedded will become a part of the thing, in our case that is doors and windows, and along with the house, they will also become part of the land as they are part of the thing which is itself a part of the land. So what is important is that the objects or things must be permanently attached, and when attached, it must be for the beneficial enjoyment of the land, house, or building as if things are attached without any intention of the owner of making them a part of the house, land or building, it would not be regarded as immovable property as it is there temporarily. For example, a vase of flowers and other ornaments are there, attached to the walls of the living room of a house. These are there not for the beneficial enjoyment of the house, and they are there just for aesthetic purposes, and for decorating the house. Along with that, these are not there permanently and can be moved from one place to another. Let us take another example, like electric bulbs. When an electric bulb is brought and attached to a house, it is known to the user that the bulb might go off, or just stop working one day, and must be replaced hence, the electric bulb is not there permanently, which it is not there for the permanent enjoyment of the land. Window screens are another example. When there is a dust storm, or some other thing, and the owner of the house starts using window screens, it is not permanently attached to the house. When the need for the window screen is complete, the user will stop using it and would remove it. Therefore, the cause for the window screen is temporary. So movables or anything that is attached to a house without the intention of making those things a part of the house, building, or land, would be regarded as movable properties and not as immovable properties. Hence, ornaments, bulbs, ashtrays, and any such movable would not be held as immovable property

CONCLUSION

Property in short is a bundle of rights, which a person owes. The owner of these rights can sell these rights and enjoy these rights, and the owner can transfer his property through various modes of transfer like sale, exchange, or gift that leads to absolute transfer of property, or through lease and mortgage that leads to partial transfer of property.

Along with that, there are two types of property that are movable property and immovable property. Various laws like The Transfer of Property Act 1882 and General Clauses Act 1897 define immovable property as including land, benefits that arise out of the land, things attached to the earth, and it excludes standing timber, growing crops, and grass. Movable property, on the other hand, has not been defined in The Transfer of Property Act 1882, but according to The General Clauses Act 1897, movable property means property of any description that does not fall under the definition of immovable property. The movable property includes standing timber, growing crops, and grass, and even objects as simple as fruit juices in the fruits which grow in rest to something as complex as electricity. After going through various case laws, along with the enactments, we learn how whether a property is movable or immovable can change depending on the intent with which the property is being used, or is going to be used by the person who owns the property. Furthermore, it is to know what type of property a person is holding, whether it is movable or immovable so that we can know which law is going to be used on the property.