

## **INTRODUCTION**

Transfer of Property is the most difficult subject, next only to jurisprudence. The reason is that it deals with certain doctrines having their Origin in the Common Law of England, some totally alien to the Indian Concepts.

The Transfer of Property Act 1882, was amended substantially in 1929. The student must lend much attention to the doctrines enshrined in the Act. An attempt is made to present the subject with as much lucidity as possible. Case law is given its due place. No attempt is made either to exhaustively deal with the subject or to intensively probe into each doctrine.

Wherever it is found essential, a comparative picture is drawn comparing the Indian Law with the English. Some topics especially on Gifts, Leases & Exchange. are too simple and easy to understand. Though the preliminary aspects relating to transfer, sale & Mortgage, are simple the various doctrines in their ramification present them-selves to be formidable. A careful study should be made to understand the doctrines of "Rule against Perpetuities", of 'Election', of, Accumulation, of Acceleration, of "Ostensible Owner", of 'Lis Pendens', of "Feeding the Estoppel" of "Part Performance", "Marshaling & Contribution", of Subrogation, of Tacking etc. Illustrations should be analyzed.

## **CHAPTER 1            PRELIMINARY TOPICS**

### **Ch. 1-1 Transfer of Property :**

Sn.5 of Transfer of Property. Act defines Transfer of Property'. It means an act by which a living person conveys property in present or in future to one or more living persons, or to himself, or to himself and to one or more other living persons.

Living person includes a Company, Association or body of individuals. The T.P. Act deals with sale, mortgage, gift, lease and exchange. Hence, abandonment is not a transfer. Partition is not a transfer. Transfer to himself and others: This is possible in case of trust. Future property can be transferred (subject to Sn.6.).

The persons must be competent to make a contract. The trans-fer of property passes all the interests of the transferor and the legal incidents, to the transferee.

Registration, under the Registration Act is compulsory if the value of. the immovable property is worth Rs.100/- and above.

### **Ch.1-2 Attestation:**

The T.P. Act defines attestation in Sn.3. Attesting in respect of an instrument means that the documents must be attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the document. Further each of them must have signed the instrument in the presence of the executant.

The attestors must have animus attestandi (intention of attesting). It is not necessary that more than one should be present at the same time. Law also does not prescribe any particular form of attestation. The usual procedure is that the attestors must sign with address and date.

The Privy Council in Shamu Vs. Abdul Khandir, resolved the controversy whether the attestors should have actually seen he execution or not, of the document. It held that the attestors who sign the document must have actually seen the document executed. This was accepted in Sn.3. but it is given retrospective effect.

In English law attestors should all be present at the same time and must have seen the execution. But it is not so, according to Indian Law.

Attestors should be a sui juris (person legally capable) Even thumb impression is allowed.

Attestation does not mean that attestors have notice of the contents of the document. But attestation estops from denying the factum of execution. They vouch to the execution, not to contents.

## **Immovable Property:**

The Transfer of Property Act deals with various transfers relating to immovable property. S.3(2) says, Immovable Property does not include standing timber, growing crops or grass. The General Clauses Act says, Immovable Property includes lands, benefits that arise out of land and things attached to the earth. 'Attached to the earth' means rooted to the earth i.e., trees, shrubs etc., imbedded in the earth i.e., walls or buildings, attached to what is so embedded. Further right to receive future rent is Immovable Property.

**Marshall V Green:** Sale of trees to be cut and taken away.

Held: sale was not for Immovable Property, if the intention of the parties is that the trees should have further nutriment from the land, then it is Immovable Property otherwise not.

In English Law, there is the doctrine of fixtures. Whether a chattel is resetting merely, by its weight on the floor, it is not immovable.

In *Holland V. Hodgson*: a mortgage of a mill was made. Held: Certain looms attached to the stone of the mill, was also covered by the mortgage.

## **Constructive Notice.**

Section 3 defines notice. A notice may be actual or constructive. There is actual notice, when knowledge of a fact is brought directly to the person concerned. It is constructive when there is a presumption of the knowledge of the fact. The following are its different kinds:

- i) knowledge is presumed when the party wilfully abstains from making enquiry.
- ii) Gross negligence of the party.

iii) Registration:

The Privy Council had held that registration was not a constructive notice to subsequent transferees. (*Thilak Devlal's Case*). This is now superseded by T.P. Act. Hence, registration of a transfer amounts to notice, from the date of registration.

iv) Possession as notice:

If a person is actually in possession of a property, then the acquirer of the property is deemed to have notice of the title, if any, of the person in possession of the property.

v) Notice to agent is treated as notice to the principal.

The agent must have notice during the course of his business.

If an agent fraudulently conceals the fact, then there is notice to the principal. The principal should not be a party to the fraud.