

## **TOPIC 5-WHAT KIND OF PROPERTY CAN BE TRANSFERRED (SECTION 6(a) and 43 of TPA**

### **THINGS TO BE COVERED**

- **Transfer of spes successionis**
- **Transfer by heir apparent**
- **Chance of a relation obtaining legacy on death of a kinsman**
- **Comparison with section 43 of the Act**
- **Doctrine of Feeding Grant by Estoppel**
- **Status of bonafide transferee for consideration without notice**

### **Case Laws**

1. *Jumma Masjid v. Kodimaniandra Deviah (1962)*
2. *Kartar Singh v. Harbans Kaur (1994)*

#### **1) SECTION 6(a)**

**“Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force**

- (a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature.**

As a general rule, property and interests in it are transferable. Law favours alienation to accumulation. However, it is important for the transferor to have a present and subsisting title in the property.

### **Spes Successionis**

It means expectation of succession i.e. a possibility of getting property in future through succession i.e. through inheritance or will. Transfer of spes successionis is void ab initio.

#### *Chance of Heir Apparent*

Heir Apparent-because there is no heir of a living person. It is a mere chance because if a person hopes to succeed to property of an intestate what and how much of it would be available can only be ascertained at the death of the intestate. This is so because no property may be left by the time

he dies, or he may have made a will with regard to it or that the heir apparent may die before person whose property he hopes to succeed to.

Thus there is only a hope, expectancy or chance to succeed.

Eg. A family consist of a father (f) and son (s). S hopes to succeed to the property of F his father. He professes to transfer property X, with a conviction that he is the future owner of it and assures him that on the death of F he would deliver the possession of property to X. The next day X dies and S actually becomes the owner of those properties but refuses to deliver possession to X. X cannot press for delivery as the transfer was void ab initio.

#### *Chance of relation obtaining legacy on death of kinsman*

It means expectancy of getting property under a will. Before death of testator the legatee has simply a chance of getting property because either he may not survive the testator or the will in his favour may not be the last will.

#### *Any other mere possibility of like nature*

It means any other possibility which is dependent on chance such as prize money to be won in a lottery, possibility of catching fish etc. all of those which cannot be transferred because of them being a mere chance.

### **SECTION 43 OF TPA**

**“Where a person fraudulently or erroneously represents that he is authorized to transfer certain immoveable 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.”**

#### **Requirements for Section 43**

- 1) Transferor is unauthorized to transfer-has no interest or title in the immoveable property
- 2) Representation that is fraudulent or erroneous. The transferee has to show that he was misled by a fraudulent or erroneous representation by the transferor that he was authorized to transfer. Misrepresentation should be with respect to authority to sell and nothing else. Such as a transferee of a minor posing to be a major at the time of transfer cannot seek benefit of this provision.
- 3) Transfer is for consideration and not a gratuitous one.

- 4) Transferor subsequently acquires interest in the same property somehow. It could be by inter vivos transfer or inheritance or gift. The property should be the same one.
- 5) The transferee should on such subsequent acquisition compel the transferor to pass title to him. It is important for the transferee to avail this option during the subsistence of the contract. Where a transferee has rescinded the contract and has asked for damages from the transferor in that case the contract has been rescinded and transferee cannot take the benefit of this provision.
- 6) There should not be another transferee in the meanwhile who has taken title of the said property from the transferor (upon his subsequent acquisition) for a consideration and without notice of the option vested in the original transferee.

### **Feeding Grant by Estoppel**

Under English law benefit of subsequent acquisition automatically passes to the transferee. It is based on the doctrine, that where a person promises more than what he can perform, he must deliver the same when he acquires the capacity to perform.

Feeding grant by estoppel means the grant by an incompetent person who makes the other believe that he is competent. The estoppel is fed when the incapacity is removed and he is estopped from claiming his incompetency at the time of initial transfer.

### **English and Indian Law-Distinction**

Under the Indian law the grant upon subsequent acquisition is not automatic rather has to be exercised by the transferee during the subsistence of the contract. While under the English law such grant is automatic.

Under Indian law claim of initial transferee can be defeated by a subsequent bonafide transferee for consideration without notice while under the English law such a claim cannot be defeated by a subsequent transferee.

### **Distinction between Section 6(a) and Section 43**

- 1) Section 6(a) is a rule of substantive law while section 43 incorporates rule of estoppel.
- 2) Under 6(a) the fact of spes successionis is within the knowledge of both transferor and transferee. There is no misrepresentation on the part of transferor. While under section 43 there is a fraudulent or erroneous misrepresentation and the transferee acts on such misrepresentation.
- 3) Section 43 only applies to those transfers which are for a consideration and not those that are gratuitous in nature. Section 6(a) applies to all kinds of transfers. Thus gift of a property that one hopes to inherit is also void.

- 4) *Spes successionis* applies to both moveable and immoveable property while the rule of estoppel only applies to immoveable property.
- 5) Transfers under section 6(a) are void ab initio while those under section 43 are voidable at the option of the transferee.