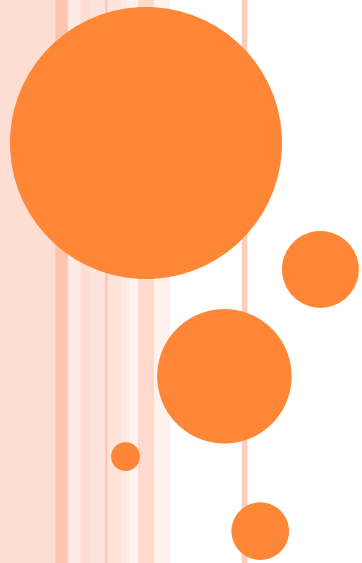


TRANSFER OF PROPERTY ACT, 1882



Dr.V.Sivaramasethu

INTRODUCTION

- Transfer of property Act Came into force
01.07.1882
- This Act applies for both immovable and movable property and also to tangible and intangible properties



DETAILS OF PROVISIONS

- **Part I** relating to the general principles of transfer of property
- **Part II** relating to specific types of transactions sale, mortgage, lease, exchange, gift, charge and actionable claims.
- General principles of Transfer **Sec 5 to 53A**
- Sale - **Sec 54 to 57**
- Mortgage & Charge -**Sec58 to 104**
- Lease -**Sec 105 to 117**
- Exchange - **Sec 118 to 121**
- Gifts -**Sec 122-129**
- Actionable claims –**Sec 130 to 137**



OBJECTIVES

- The Transfer of Property Act of 1882 pertained to British India and outlined the legal procedures for transferring property from one person to another.
- Under this Act transferring of property needed to occur between living people, needed to happen in the present or future and could be between single people or groups of people. Transferable property could be movable or immovable.



IMMOVABLE PROEPRTY

DEFINITION:

- Immovable property **does not include** standing timber, growing crops or grass (**Sec 3 T. P Act**)
- Immovable **shall include** land , benefits arise out of land, things attached to land (**General clauses Act)**

1. land.....
2. Benefits to arise out of land..
3. Things attached to land.....



General principals of transfer of property



TRANSFER

- An act by which a living person conveys property in the present, or in future to one or more living persons or to himself and to himself and one or more living persons. (Sec 5)

A to B , C and D

A to A (trust)

A to himself and to any number of living persons



T. P ACT IS NOT APPLICABLE

- Court sale
- Wills
- Partition or family settlement
- Gift to idol
- Surrender or release or relinquishment



PROPERTIES CANNOT BE TRANSFERRED UNDER T.P ACT

- Spes successionis (chance of succession)
- Right to re entry
- Easement right
- An interest in property restricted to enjoyment of owner
- A right to future maintenance
- Public office cannot be transferred
- Mere right to sue cannot be transferred
- Stipends allowed in military naval , army, civil pensioners
- No transfer opposed to nature of interest – unlawful act (Sec 6)



WHO CAN TRANSFER PROPERTY

- Any person who are competent to contract
- Authorized to dispose off the property(Sec 7)



HOW TO TRANSFER

- If the value of property is above 100, then only by registered instrument.
- If the property is tangible property, and of less than Rs. 100, by delivery only.
- If the property is intangible – only by registered instrument. (Sec 9)



ATTESTATION

- At least 2 persons as witness
- Each must see the executants sign and sign a mark to that effect.
- It is not necessary that both are present at the same time – they may be at different times also.
- Animus attestandi : the attestants must put the signature with an intention to attest.



CONDITION RESTRAINING ALIENATION

- The power of alienation of the transferee cannot be restrained
- If the transferor prohibits the transferee from alienation by putting a condition or limitation such a condition or limitation is void(Sec 10)
- **Illustrations:** A sells his house to with a condition that B cannot transfer this house to any one except C. The condition is void because C may be chosen as a person who may never purchase the property
- **Exception**
 - ❖ Lease is an exception for the above rule
 - ❖ A deed dedicating property to deity contained a condition absolutely restraining transfer is valid



CONDITION RESTRAINING ENJOYMENT

- If the transferor restraining the mode of its enjoyment the condition is void and the transferee is not bound by the condition
- It is applicable only where an absolute interest or ownership has been transferred. (In case of Sale , gift and exchange)
- **Exception**
 - A condition or direction restraining the mode of enjoyment may be made by the transferor provided it is for beneficial enjoyment of transferor's own adjoining property



DIFFERENCE BETWEEN SEC 10 AND SEC 11

Section 10

- applicable to the transfers of absolute interest as well as limited (partial) interest
- It refers to a restraint on alienation

Section 11

- It is applied to transfers of only absolute interest (ownership)
- It refers to enjoyment



TRANSFER TO UNBORN PERSON

- Transfer cannot be made directly in favour of unborn person (Sec 13)



RULE AGAINST PERPETUITY

- Till the unborn person comes to existence there should be a transfer in favour of living person
 - Transfer to 'A' for life and then to A's son valid
- The transfer should not postpone the vesting of the property in the unborn person beyond the attainment of the majority (Sec 14)
 - Any number of living person +18 years



THE MAXIMUM LIMIT FIXED FOR POSTPONING THE VESTING OF PROPERTY

- Life or lives in existence at the date of transfer + minority of the ultimate beneficiary + with addition of the period of gestation provided gestation actually exists (i.e ultimate beneficiary is actually in mother womb at the death of the last person) (Sec 14)





- Where the transferor provides that the transfer shall take effect upon the happening of an event **of must nature** which is bound to occur in future here the nature of interest of the transferee is a vested interest (Sec 19)
- Illustration : A makes a gift of his house to B. He simply executes the gift deed but does not specify any date on which the ownership to be transferred .The interest B is vested interest
- Nature of vested interest
 - Present fixed right
 - Transferable and heritable interest
 - Time of vesting of interest



Vested

Contingent

Nature

- It is ownership

Nature

- It is only a chance of becoming an owner. However, it is different from spes successionis

CONTINGENT INTEREST

- Contingency means uncertain future event
- Where the transferor provides that the transfer shall take effect upon the happening of an event that **may or may not happen** here the nature of interest of the transferee is contingent.(Sec21)
- **Illustration**
 - A makes a gift of his property to B when he attains the age of 18 years or marries under that age with the condition neither attains that age nor marries with the consent of C the property goes to D . B and D both take a contingent interest in the property

Nature of interest

- Future possible interest
- Not heritable
- Transferable interest



VESTED AND CONTINGENT INTEREST

Vested

Definition

- A vested interest is created in favour of a person – without specifying the time when it is to take effect, or specifying that it is to take effect forthwith, or on the happening of a certain event

Contingent

Definition

- A contingent interest is created in favour of a person – to take effect only on the happening or not happening of a specified uncertain event, which may or may not happen



CONDITIONAL TRANSFER

- Transfer of property with certain conditions is called conditional transfer
- When a property is transferred conditionally, The transfer is subject to conditions or limitations.
- The legal effect of the transfer may vary according to conditions (Sec 25)
-



THREE TYPES OF CONDITIONS

- **Condition precedent:** Conditions which is required to be fulfilled before the transfer of property taken place. It is prior to transfer
- **Condition Subsequent:** Condition which is required to be fulfilled after the transfer of property has already taken place
- **Collateral condition :**condition which is required to be fulfilled simultaneously with transfer



CONDITION PRECEDENT

- Where transfer is dependant on any lawful Condition precedent its **substantial compliance is sufficient** for the transfer.
- Here the rule is that a conditional precedent is to interpreted liberally. (Sec 26)
- Example 'A' makes a gift of his house to 'B' if 'B' marries 'C'
- Gift in favour of 'B' shall take effect only if 'B' marries 'C'
- If B does not marry the house cannot be transferred in his favour



VOID CONDITION PRECEDENT

- Condition precedent is void if its performance is either impossible or unlawful.

The following conditions are void

- Impossible to perform
- Unlawful
- Forbidden by law
- Defeats the provision of the law
- Fraudulent
- Involves any injury to person or property
- Opposed to public policy



CONDITION SUBSEQUENT

- Conditions which is required to be fulfilled after the transfer of property (Here Transfer already taken place)
- Here interest of the transferee which is already been vested in him is affected by fulfillment or non fulfillment of that condition
- **Illustrations:**
- A transfer Farm Land to B provided he shall go to England . If B shall not go to England with in the period prescribed after the date of transfer his interest in the form land will cease
- Condition subsequent must be performed strictly.(Sec 29)
- The terms of condition must be clear and must also be fulfilled clearly.
- Ignorance , illness or neglect cannot be taken as a non compliance of condition subsequent.



COLLATERAL CONDITIONS

- The condition to be fulfilled simultaneously with transfer
- Example
- A leases his property to B so long as B resides in the house of A . The conditions is collateral.
- The transfer(lease) remains in operation only till B fullfills the condition.(he continues to live With A)



The Doctrine of ELECTION

- Election means choice
- it is a obligation to choose between two inconsistent alternative rights
- If through one instrument, you have two transactions – then you **have to accept both the transactions or none**. You can't accept one and reject other.(Sec 35)
- Example: 'The land in the Chidambaram is the property of 'C' and worth Rs 800/- A by instrument of gift proposes to transfer it to 'B' giving by the same instrument Rs 1000 to 'C '. 'C' elects to retain the land. He forfeits the gift of Rs 1000/-



ESSENTIALS OF DOCTRINE OF ELECTION

- Persons Who transfer a property is not the owner
- Through the transfer the transferor confers certain benefits upon the owner of the property
- Two things
 - a. **Transfer of property**
 - b. **Conferring of the benefit**

forms part of the same instrument



LIMITED POWER OF TRANSFER

- Transfer by person authorised only under certain circumstances to transfer
- Transferor has limited power of transfer in respect of immovable property .His power of transfer is limited.
- The authority to transfer depends on existence of only specific circumstances.
- He cannot transfer except under those circumstances (**Sec 38**)
- Example: The guardian of minor's property, the manager (karta) of joint family have limited authority of transfer.



RESTRICTIVE COVENANT

- Covenant means written agreement or contract with respect of property.
- If a transferor imposes a negative covenant then such covenant is binding and enforceable also against transferee provided
 - The covenant is for more beneficial enjoyment of transferors own land
- The subsequent transfer is for value the assignee has notice of the covenant
- .



TRANSFER BY OSTENSIBLE OWNER (BENAMI TRANSACTION)

- Ostensible owner is a person who has all the indications of ownership and looks like a owner of a property but is not real owner.
- **Benami transaction** means any transaction in which property is transferred to one person for a consideration paid or provided by another
- It provides where a property is transferred in the name of another, the person in whose name the property is held shall become the real owner. (**Benami transaction Act, 1988**)



Ostensible owner



TEST FOR OSTENSIBLE OWNER

- Source of purchase money (i.e **who paid the price?**)
- Nature and possession after the purchase(**who had the possession**)
- Motive for giving benami colour to the transaction (**why the property was purchased in the name of other person?**)
- Relationship between the parties (**whether the real owner and the ostensible owner were related to each other or were strangers**)
- Conduct of the parties in dealing with the property .
(**who used to take care of and had control over the property**)
- Custody of the title deeds
- Here the burden of proof lies on the person who claims that he is the real owner



ESSENTIAL CONDITIONS FOR APPLICATION OF SECTION 41

- There is a transfer of an immovable property by ostensible owner with express or implied consent of the real owner
- The transfer is for consideration
- The Transferee acted in good faith
- The transferee has exercised reasonable care in finding out the transferors power to make the transfer.
- The protection bonafide transferee for value under the section is not limited to first transferee only every subsequent transferee is entitled to the protection .



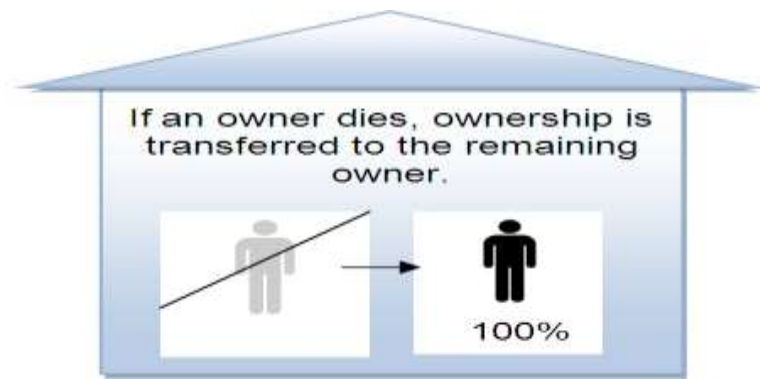
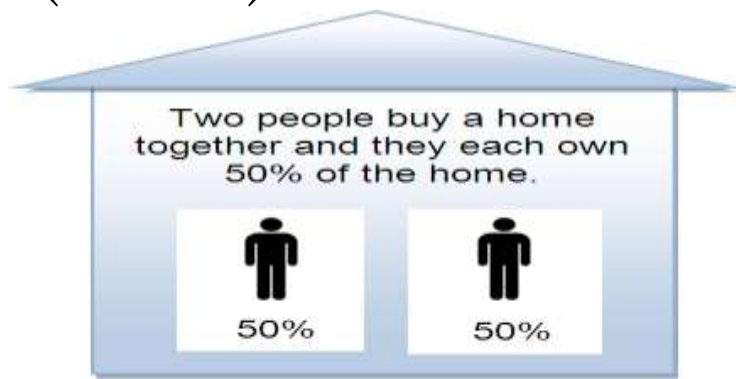
DOCTRINE OF FEEDING THE GRANT BY ESTOPPEL

- It is the case of fraudulent transfer.
- The transferor doesn't not have ownership, yet he transfer for consideration.
- Later on the transferor gets the ownership and
- the transferee has not yet rescinded the contract.
- The transferor is bound to give the property to the transferee.(Sec 43)



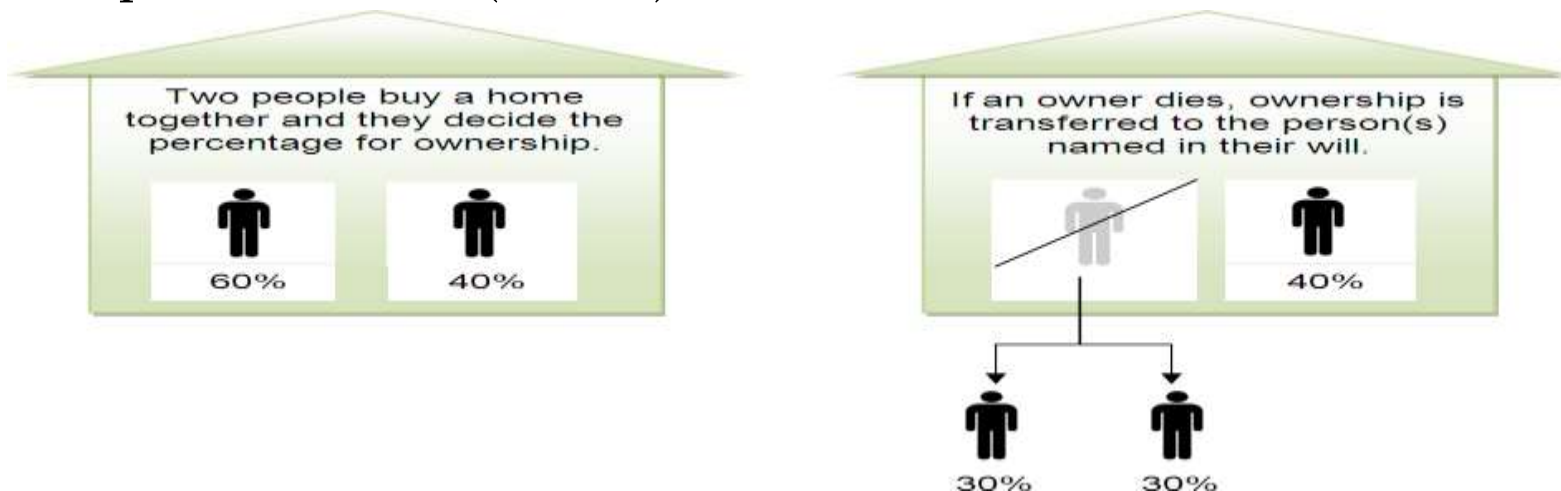
JOINT TENANCY

- Joint tenancy is when two or more people own equal shares of a home. If an owner dies, ownership is transferred to the remaining owner(s)
- Joint Tenancy implies **Unity of titles** as well as unity of **possession**
- If the co owners hold property, upon the death of any one of them his share goes to the survivors (Sec 45)



TENANCY IN COMMON

- Tenancy-in-common is when two or more people own a home. Ownership does not have to be equal. If an owner dies, ownership is transferred to the person(s) ...
- Tenancy in common implies the **unity of possession**
- If the co owners hold it as tenants in common, upon the death of any one of them his share goes to the heir or representatives. (Sec 45)



LIS PENDENS?





LIS PENDENS

DOCTRINE OF LIS PENDENS

- Lis = dispute Pendens = pending
- During the pendency of a suit or inquiry, or a litigation, a property cannot be transferred.
- The suit must be related to such property. (Sec.52)





*Fraudulent Transfer
Of Property*



FRAUDULENT TRANSFER

- Transfer is made with bonafide intention
- If transfer is made with (Malafide)fraudulent intention (with intention defeat the creditor or any interest of subsequent transferee) is not valid
 - **Essential**
- Transfer of immovable property
- Made with intent to defeat the creditor
- Shall be voidable





DOCTRINE OF PART PERFORMANCE

- It is an equitable doctrine – Equity of part performance
- A person has taken the **possession** of an immovable property on the basis of **contract of sale** either performed or is willing to perform his part of contract then he cannot be ejected on the ground the sale is **unregistered (Sec 53 A)**
- After 2001 in sec 53 A –(**the contract though required to be registered has not been registered**) Removed
- After 24.09.2001 .The contract of the transfer of immovable property with consideration as provided in 53A is now compulsorily registrable document.
 - Sec 17(1A) (to defeat the claim un registered document is not used) and Sec 49 (unregistered document cannot be an evidence in part performance) registration Act also amended .



THANK YOU

