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Lecture-14



Transfer by Unauthorised Person (Doctrine of feeding empty grant by estoppel)

A person who has no title or interest in an immovable property, cannot transfer that property. Transfer by such person is a transfer by unauthorised person. Section 43 of the Act provides the effect when such unauthorised person subsequently acquires interest in property transferred.

Section 43. Transfer by unauthorised persons who subsequently acquires interest property transferred—where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable 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.

Illustration—A, a Hindu who has reported from his father B, sells to C three fields X, Y and Z representing that A is authorised to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition, but on B's dying A as heir obtains Z, C not having rescinded the contract of sale, may require A to deliver Z to him.

The general rule of *nemo dat quod non habet* (no one can give to another, what he himself does not have) has been relaxed through this section. The principle of this section is based partly on the English doctrine of estoppel by deed and partly on the equitable doctrine that a person who has promised more than he can perform must make good his promise when he acquires the power of performance.

- There must be fraudulent or erroneous representation of ownership by the transferor.
- Transfer must be by the wrong owner.
- Transferee must act on that false representation, in good faith.
- Transfer is for the consideration.
- Transfer subsequently acquires some interest in that property which he professed to transfer.
- The contract of transfer still subsists.

Subsequently acquired interest does not pass automatically to transferee but only when he claims the right in such property.

The exception to this section (Second paragraph of Section 43) protects the rights of the record transferee in good faith and for consideration who has no notice of the option in favour of the first transferee.

Section 6(a) and Section 43 compared

Section 6(a) and Section 43 seems to conflict each other. Where Section 6(a) deals with spes- successionis and sender mere possibility/expectancy of a heir succeeding to an estate as an un-transferable property, through Section 43, such transfer can be made effective if transferor subsequently acquires those property and other conditions satisfied.

In *Jamma Masjid v. K. Deviah*, AIR 1962 SC 847 Supreme Court explained the relationship between two sections. Court said that Section 6(a) and Section 43 relate to two different subjects

- Thus, the differences in these sections are that in Section 10 the condition is deemed void due to absolute restraintment and in Section 11, the condition is deemed void due to the transfer being of absolute nature.

Condition of insolvency:

- Section 12 provides that when the transferee becomes insolvent, and if he has some interest in the property that was transferred to him by the transferor, the transferee still would not lose his interest in the property. Hence, any condition stating that transferee shall lose the interest in the transferred property on insolvency and this interest shall be reverted back to the transferor shall be void.

However, this section does not apply to a condition on a lease for the benefit of the lessor or those claiming benefit under him. However, in Smith v. Gronow (1891) 2 QB 394, if lessee assigns the lease and then is rendered insolvent, then this condition will not apply.

