



FACULTY OF JURIDICAL SCIENCES

COURSE: BALLB/BBALLB VI Semester

SUBJECT: Law of Property

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Lecture-1





Immovable property – concept and definition

Definition in Section 3 is not exhaustive. It says only that ‘immovable property’ does not include standing timber growing crops or grass. Definition of immovable property in Section 3(26) of General Clauses Act, 1897, is also not exhaustive. It defines immovable property as it shall include land, benefits to arise out of land, and things attached to earth. Thus we find that while Transfer of property excludes certain things. General Clauses Act, includes certain things under the head ‘immovable property’. By combing both definitions, we may say that, the term includes land, benefits to arise out of lands, and things attached to the earth, except standing timber, growing crops and grass.

(A) Land: It means a determinate portion of the earth’s surface, which may be covered by water, the column of surface above the surface, the ground beneath the surface. All the objects which are on or under the surface in its natural State are included in the term land. Also all objects placed by human agency on or under the surface with the intention of permanent annexation are immovable property, e.g., Building, wall, fences.

(B) Benefits to arise out of land: Apart from physical point of view, every benefits arise out of land is also regarded as immovable property. Registration Act also includes as immovable property benefits to arise out of land, hereditary allowances, right of way, lights, ferries and fisheries. In *Anand Behera v. State of Orissa*, AIR 1956 SC 17, the right to catch away fish from chilka lake, over a number of years, was held to be an equivalent of *profits a pendre* in England and a benefits to arise out of land in India. Similarly, a right to collect a rent and profits of immovable property, right to collect dues from a fair or heat or market on a land are immovable property.

(C) Things attached to earth: Section 3 of transfer of property defines the expression ‘attached to earth’ as including (1) things rooted in the earth, (2) things embedded in the earth, (3) things attached to what is so embedded, and (4) chattel attached to earth or building.

(1) Things rooted in earth include trees and shrubs, except standing timber, growing crops and grasses (Section 3, TPA). Whether tress regarded as movable or immovable depends upon the circumstances of the case. If the intention is that trees should continue to have the benefit of further sustenance or nutriment by the soil (land), e.g., enjoying their fruits, then such tree is

immovable property. But if the intention is to oust them down sooner or later for the purpose utilizing the wood for building or other industrial purpose, they would be timber and of accordingly be regarded as movable property (*Shantabai v. State of Bombay*, AIR 1958 SC 532) determining whether the tree is movable or immovable, the intention if party is important if the parties intend that the tree should continue to have the benefit of further nutriment to be afforded by soil, the tree is immovable property. But if intention is to withdraw the tree from land, and the land is providing it only as a warehouse, it is to be treated as movable property.

(2) Things embedded in earth: It includes such things as house, buildings, etc., however certain things like an anchor imbedded in the land to hold a ship is not an immovable property' to determine whether such things are movable or immovable property, depends upon circumstances of each case and there are two main conditions to indicate intention.

(3) Things attached to what is so embedded must be for the permanent beneficial enjoyment of the to which it is attached, as section says for, e.g., door and windows of a house are immovable property to be permanent, like electric fans or window blinds, they are movable property.

(4) Chattel attached to earth or building if a chattel, i.e., movable property is attached to earth or building, if is immovable property. The degree, manner, extent and strength of attachment are the main features to be regarded in determining the question. Standing timber, growing crops and grasses are regarded as severable from land and they are regarded as movable property. However if they and the land on which they stand is sold,

d) Standing timber: The word standing timber includes Babool Tree, Shisham, Nimb, Papal Banyan, Teak, Bamboo, etc. The fruit bearing tree like Mango, Mahua, Jackfruit, Jamun, etc., are not standing timber, and they are immovable properties (*Fatimabibi v. Arrfana Begum*, AIR 1980 All 394). But if intention is to cut them down sooner or later for the purpose utilizing them as timber, and not to use them for the purpose of enjoying their fruits, they are regarded as movable property. (*T.A. Sankunni v. B.J. Philips*, AIR 1972 Mad 272).

(e) Growing crops: Growing crops includes creepers like pan, angoor, etc., millets (Wheat, Sugarcane, etc.), Veg like Lauki, Kaddo, etc. These crops don't have any own independent existence beyond their final produce.

(f) Grasses: It can only be used as fodder, and no other use is possible. Therefore it is movable. But a contract to cut grass will be an interest in chattel, so is immovable property. The following has been judicially recognised as immovable property:

- (1) Right to collect rent of immovable property.
- (2) Right to dues from a fair on a piece of land.
- (3) A right of fisheries.
- (4) A right of terry.
- (5) A right of way.
- (6) Hereditary offices.
- (7) The interest of a mortgagee in immovable property.

Minerals: Upon transfer of immovable property, things not only rooted to it, but also anything found deep down below the property goes along with the transfer. All minerals below the land sole are immovable property.

Movable Property

Transfer of property does not define movable property. In General Clauses Act, it is defined as “Property of every description except immovable property”. Some examples are right of worship, royalty, machinery not attached to earth which can be shifted, a decree for arrear of rent