



FACULTY OF JURIDICAL SCIENCES

COURSE: BALLB/BBALLB VI Semester

SUBJECT: Law of Property

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Lecture-6



Which property may be transferred

Section 6—”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.”

This section enumerates different kinds of property which cannot be transferred (Exceptions to Section 6)—

1. **Spes Successionis** [Section 6(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, cannot be transferred.”

A mere possibility/chance/expectancy of an heir succeeding to an estate is excluded from the category of transferable property, e.g., A Hindu, dies leaving a widow B and a son C. C has only a spes successionis, as his succession to the estate is dependant on 2 factors, i.e., his surviving the widow B, and B leaving the property intact.

2. **Right of Re-entry.** [Section 6(b)] “A mere right of a re-entry for breach of a condition subsequent cannot be transferred to anyone except the owner of the property affected thereby.

By a Mere given to right of re-entry meant a right to resume possession of-land which has been given to another person for a certain time. It is usually inserted in lease empowering the lessor to re-enter up a breach of covenants in the lease.

(a) A grants a lease of a plot of land for 5 years to B with the condition that B shall not dig a tank on the land. B digs the tank. A relates to transfer C the right of re-entry for the breach of the condition committed by B. The transfer is invalid.

b) A grants a lease of plot for 5 years to B. Subsequently A transfers his right of re-entry at the expiry of 5 years to C. The transfer is valid as at the expiry of lease the right of reentry is transferred along with the land to C.

3. **Easement** [Section 6(c)]— “ An easement cannot be transferred apart from the dominant heritage.”

An easement B a right to use, or restrict the use of land of another in some way, for example, right of way, right of water or light, etc. (Section 3 Easement Act). These right cannot be transferred without the property which has the benefit of it.

4. **Restricted Interest [Section 6(d)].**—”An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him”

E.g., if a house is lent to a man for his personal use, he cannot transfer his right of enjoyment to another. Similarly a religious office like those of mutawali of a wakf or of mahant of a math and emoluments attached to priestly office cannot be transferred. ,

5. **Maintenance [Section 6(dd)].**—”A right to future maintenance, in whatsoever manner arising secured or determined, cannot be transferred.”

A right to future maintenance is only for the personal benefit of the person to whom it is granted, thus it cannot be transferred.

6. **Mere right to sue [Section 6(e)]** —”A mere right to sue cannot be transferred.”

A right to sue is personal to the party aggrieved, as for, e.g., damages for the breach of contract or for tort, claims for past mesne profit for suing an agent for accounts, for pre-emption, etc. These rights cannot be transferred. But where the right to sue has merged in a decree, the right under the decree is assignable. Thus, a right to mesne profit or damages under a decree is assignable.

7. **Public office [Section 6(f)].**—”A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.”

Thus prohibition is based on the ground of public policy as the public office is held for qualities personal to incumbent.

If the office is not public, it would be transferable, even though the discharge of its duties should be indirectly beneficial to the public.

8. **Pensions [Section 6(g)]**—“Stipends allowed to military, naval, air force and civil pensioners of the government and political pensions cannot be transferred, pension means a periodical allowances or stipend granted not in respect of any right of office but on account

of part services of particular merits. Section 60 of CPC also exempts a pension from attachment in execution of decree against the pension holder.

9. **Nature of Interests [Section 6(N)].** —”No transfer can be made (1) in so far as it opposed to the nature of the interest affected thereby, or (2) for an in so far unlawful object or consideration within the meaning of Section 23 of the Indian Contract Act, 1872, or (3) to a person legally disqualified to be a transferee. “

This clause forbids the transfer of certain things which from their very nature are not transferable, e.g., *res communes* (things of which no one in particular is the owner and may be used by all men), *res nullius* (things belonging to nobody). *Res extra commercium* (things thrown out of commerce)

Again, any property otherwise transferable becomes non-transferable when the object or the consideration of the transfer is unlawful (within the meaning of Section 23, Indian Contract Act).

Lastly, a transfer cannot be made in favour of a person who is disqualified to be a transferee.

Un-transferable interests [Section 6(i)].”Nothing in this section shall be deemed to authorise a tenant having an un transferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, on the lessee of an estate, under the management of a court of wards to assign his interest such as such tenant farmer or lessee.”

Persons Competent to Transfer

Section 7 of the Act provides that, “Every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property, either wholly or in part and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.”

Operation of Transfer

Section 8 of the Transfer of Property Act provides transfer of different kinds of property and their legal incidents. It provides, “Unless different intention is expressed or necessarily implied, a

transfer of property passes for with the transferee all the interest which the transferor is then capable of passing in the property and in the legal incident thereof.

Such incidents include where the property is land, the easement annexed thereto, the rent and profits thereof accruing after the transfer and all things attached to the earth; and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all the other things provided for permanent use therewith; and, where the property is a debt or other actionable claim, the securities therefore except where they are also for other debts or claims not transferred to the transferee, but not arrears of interest accrued before the transfer; and where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.”

Transfer by Persons before they Acquire the Interest

Section 6(a) of the Act provides certain things which are non-transferable (spes sucessionis).

These are as follows—

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

(i) Chance of an Heir Apparent

- Both Hindu and Muslim law forbids transfer of the expectancy. A mere possibility or expectancy of a heir succeeding to an estate is excluded from the category of transferable property. Thus a Hindu reversioner has no right or interest. In presents in the property which the female owner holds for her life, e.g.:
- A dies leaving two widows and a reversionary heir B. The widows set-up a Will which authorised them to adopt a son. B filed a suit challenging the validity of the Will and in order to raise money for the litigation transferred his share to C. The court set-aside the Will. On the death of the widows B entered possession of A’s estate. C sued B but C’s suit was dismissed as B, at the time of transfer, had spes sucessionis in A’s estate and, therefore, could not transfer it.

(ii) Chance of Legacy

- The chance of a relation receiving a legacy is a possibility even more remote than the chance of succession of an heir, and therefore, is not transferable.

- **(iii) Other Possibilities of Like Nature**

Such possibilities which belong to the same category as the chance of an heir apparent or the chance of a relation obtaining a legacy, e.g. The possibility of winning a lottery or a prize in a certain competition cannot be transferred. A good illustration of this category is the 'next cast in a fisherman's net'. No one can guarantee that any fish will be caught, and the fisherman himself has no interest in the fish until they are caught in his net.

and that there is no necessary conflict between them. Section 6(a) would apply where there is a transfer of a mere spes successionis and the party knowing that the transferor has no more right than that of a mere expectant heir Section 43 applies where an erroneous representation is made by the transferor to the transferee that he is the full owner of property and authorised to transfer it.

Supreme Court held that Section 6(a) enacts a rule of substantive law while Section 43 enacts a rule of estoppel which is one of evidence. Thus, these two provisions operate on different fields and under different conditions and there is no ground for reading a conflict between or cutting one in reference to the other. Each of them can be given full effect on their own down the ambit of their own terms in their respective spheres.

MCQ

1. What kind of property is transferable?

- (a) Right to re - entry
- (b) Public Office
- (c) Any kind of property if not prohibited by law
- (d) Pension

2. What can be transferred under the Transfer of Property Act, 1882?

- (a) "An easement along with the dominant heritage
- (b) Political pension
- (c) Spes - Successionis
- (d), Stipends allowed to the civil pensioners of the Government

3. Which of the following interests is not transferable?

- (a) Vested interest
- (b) Contingent interest
- (c) Spes - successionis
- (d) Interest of lessee

4. Which of the following is correct?

- (a) An easement can be transferred
- (b) An easement cannot be transferred -
- (c) An easement cannot be transferred apart from dominant heritage
- (d) An easement cannot be transferred apart from servient heritage

5. A right of future maintenance in whatsoever manner arising, secured or determined

- (a) can be transferred
- (b) cannot be transferred
- (c) Can not say
- (d) None of the above