CASE STUDY: 1950-1970 SECTION- 6, THE TRANSFER OF PROPERTY ACT, 1882

Mubashshir Sarshar, National Law University, Delhi
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SECTION- 6, THE TRANSFER OF PROPERTY ACT, 1882

National Law University, Delhi

1 Mubashshir Sarshar, Student at National Law University, Delhi
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CHAPTER – I

INTRODUCTION

The bare text of section 6 of the Transfer of Property Act, 1882 lays down what may be transferred under the Act.

Scope of the Section

This section deals with what may be the subject of transfer under the Act. It proceeds on the maxim, “expression unius exclusion alterius” in that every property except those specified in the section may be transferred. The word ‘property’ as here used includes interest in property. As already seen in section 5 under the caption “property” that only is a man’s property which is the object of ownership of his part accompanied by possession or enjoyment of it to the exclusion of all other and giving him a free power of disposition. Where any one of the three ingredients are not absolute in their nature and usual term “property” used to denote the object or ownership is not used but the phrase “interest in property” is used, thereby connoting that the essential element of property are wanting and that the right is restricted or limited in some sense, hence the right of a mortgage in property is denoted by the word ‘interest’ in property. So also is the case of a lessee, co-sharer or co-owner or a hindu coparcener or a hindu widow whose right to maintenance is made chargeable on the property.

The transfer of ownership is distinct and different from the transfer of interest on the property.2 A transferor cannot transfer more than/better than title he has interest in the property.3 A licensee of property would not be competent to transfer leasehold rights in the property.

Wide connotation of “property” in section 6 includes not merely shares as transferable movable property but would cover as separable form of property. A right to obtain shares which may be antecedent to the accrual of rights of a shareholder upon the grant of a share certificate in accordance with the articles of association of a company.4

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In equity there can be a valid transfer of property which can be acquired afterwards even though the creditor will have to wait till property comes into existence. There is no bar to creating an assignement of a fund in favour of a creditor even though the fund ultimately becoming available may overtop the creditor’s due. The transfers of non-existent, conveniently called acquired property, provided they are not of the nature contemplated in Sec 6 (a) are perfectly valid.\(^5\)

The term ‘property’ is not perspicuous enough by itself and being a word often used in vulgar parlance, it has acquired a variety of meanings which bear no analogy to its legal concept. Generally speaking, property is a thing which is an object of ownership. Contingent interest is property and it is clearly transferable.\(^6\)

There is no legal prohibition against transferring the benefit of instalments under the mortgage-deed.\(^7\)

It is enough to say that in equity there can be a valid transfer of property which may be acquired afterwards, although the creditor would have to wait till the property came into existence. Nor is there any bar to creating an assignment of a fund in favour of a creditor even though the fund ultimately becoming available may over top the creditor’s dues.\(^8\)

In a case of Nallajerla Krishnayya v. Vuppala Rahavulu,\(^9\), it was stated, “if on a construction of a relevant terms of the instrument, the court comes to the conclusion that rights were created against the property, the matter is taken out of the purview of Sec. 6 (d) of the Transfer of Property Act.

Further, in the case of Lachman lal v. Baldeo Lal,\(^10\) it was held that the occupant of a gayawali gaddi does not amount to holding a priestly office or an office of a religious nature.

When an interest in vested in a person, it becomes his property and is under Sec 6 of the Transfer of Property Act transferable by him even before he has obtained possession.\(^11\)

\(^6\) Vide Mayait v. Official Assignee, AIR 1930 P.C 17 at p.18.
\(^7\) Shyampada Bhattacharjee v. Mohammad Dharam Buksh, AIR 1954 Cal 129.
\(^8\) Mohini Mohan Chakravarty v. Mohanlal Thalia, AIR 1964 Cal 470 at p. 474.
\(^9\) AIR 1958 AP 658.
\(^10\) AIR 1917 Pat 37.
\(^11\) Chikkakempe Gowda v. Madaiya and Eramma, 29 Mys. LJ 64. at p. 67.
1.1 Research scheme

The research scheme undertaken by the researcher would comprise of doing a doctrinal study of the High Court cases available in All India Reporter at the library of the National Law University, Delhi related to section 6 of the Transfer of Property Act, 1882. The researcher here would like to mention here that due to the non availability of any Supreme Court cases related to that section in the period allotted to him, he was impelled to take up High Court cases. Besides that the researcher would take the help of some of the commentaries of the Transfer of Property Act, 1882 to look into some of the concepts and theories related to the specific section.

1.2 Research Techniques for Data Collection

Research technique of analysis, critique, and review of the theories would be intended to be employed.

1.3 Research Methodology

The researcher has followed the doctrinal method of research throughout the project and the MLA system of formatting has been adopted by him.

1.4 Scheme of Chapterisation

The first chapter would comprise to giving a general introduction to the project and the conceptual understanding of the section. It would also state the research scheme, the research technique, the research methodology and the scheme of chapterisation which would be followed in the project. The second chapter would comprise the core of the project and it would include the four cases taken up by the researcher for his case study. Finally, the third chapter would conclude the project.

1.5 Footnoting Style to be adopted

National Law University standard style of footnoting will be followed throughout the project.
CHAPTER – II

CASE STUDY

Abdul Kafoor and Anr.

v.

Abdul Razack and Anr

(AIR 1959 Mad 131)

FACTS

One Vappu Rowther was the owner of properties, he died in 1936 and left behind him a daughter Savuravan Beevi through his predeceased first wife, his second wife, Zuleka Beevi and a son by her, the first respondent to the appeal. Zuleka Beevi died after the succession to the estate of Vappu Rowther opened. Savuravan Beevi died in 1944 leaving behind her children the appellants as her heirs. The appellants claim that their mother was entitled to a share in the properties as an heir of Vappu Rowther, that on the death of their mother they were entitled to the same. However the first respondent contend that Savuravan Beevi even during the life-time of Vappu Rowther had executed a release on 13-1-1936 relinquishing all her rights of inheritance in the properties of her father Vappu Rowther in consideration of a payment of Rs. 300.

Further to secure that sum of Rs. 300 and as part of the same transaction Vappu Rowther is said to have executed a simple bond, on the same date in favour of his daughter, Savuravan Beevi promising to pay her with interest at four kalam per cent per annum. The first respondent, therefore, pleaded that by virtue of the release and the benefit she obtained under Ex. B. 12 the appellants' mother had surrendered all her rights in the estate of her father and that she was also estopped from claiming a share. The first respondent also pleaded that he would be entitled to benefit under Section 43 of the Transfer of Property Act. Alternatively he claimed that in case the partition were to be granted, he should be compensated for improvements effected on the property, the debts of the estate which her discharged and the funeral expenses of Vappu Rowther incurred by him.
PROCEDURAL FACTS

The learned District Munsif negatived the contentions of the first respondent and held that the release was invalid and that the appellants would be entitled to a partition and separate possession of 7/24 share in the properties. He also held that interest paid under Ex. B. 6 worked out at slightly more than the legitimate share of income to which Savuravan Beevi would be entitled and directed the defendants to refund a sum of Rs. 38/13/0 together with a sum of Rs. 50 which was received towards the principal. The first respondent filed an appeal to the Sub-Court, Mayuram, against the preliminary decree.

The learned Subordinate Judge agreed with the District Munsif and held that Ex. B. 6 was not valid, that Savuravan Beevi and her sons were not estopped from claiming partition and that the first respondent would not be entitled to the benefit of Section 43 of the Transfer of Property Act.

Against that decree the first respondent filed a second appeal to this court. Krishnaswami Nayudu, J., who heard the appeal held that the release deed was invalid and that the appellants would not be estopped from claiming partition by reason of Section 115 of the Evidence Act. The learned Judge, however, held that apart from the rule of estoppel provided for in Section 115 of the Evidence Act there were other kinds of estoppel under which it could be held that a family arrangement was entered into by Savuravan Beevi with her father who was benefited by it and therefore, binding on the parties concerned.

ISSUES

1. Whether Section 6(a) of the Transfer of Property Act which does not apply to Muslims, apply in this case as a transfer or renunciation of a contingent right of inheritance is prohibited by the Muhammadan law itself?

2. Whether the appellants' mother had surrendered all her rights in the estate of her father and that she was also estopped from claiming future share in the property on the execution of simple bond?
CONTENTIONS

In the case of Asa Beevi v. Karuppan Chetty\[^{12}\], a Bench of three Judges of the High court held that the chance of a Muhammadan heir-apparent cannot validly be released.

The contention on behalf of the first respondent, which was accepted as sound by the learned Judge, was that the simple bond amounted to a family arrangement. In the written statement filed by the respondent no specific plea was taken that Exs. B. 6 and B. 12 amounted to any family arrangement. The only contention was that it was a release and as a release it was valid to extinguish the releasor's rights of future inheritance. Ex. 6 was not an arrangement in the sense that no other member of the family got a benefit under it. There was neither a settlement nor any arrangement by Vappu Rowther as a result of Ex. B. 6. He continued as owner and died intestate.

The Deed of release executed on the 13th day of January 1936 in favour of Vappu Rowther by Savuravan Beevi Ammal, eldest daughter of the said Vappu Rowther stated that "whereas you have me a daughter by your senior wife and a son by name Razak by your junior wife, whereas there is due to me a one third share in the properties according to our caste custom and whereas, I have agreed to receive from you a sum of Rs. 300 and to execute a release in respect of my rights over the immoveable and moveable properties belonging to you, the sum received by me in the matter of getting a simple debt bond executed by you is Rs. 300. As this sum of Rs. 300 has been received by me in the aforesaid manner I have no right whatever over your immoveable and moveable properties. Hereafter there will be between us friendly relationship only and not relationship as regards money matters. To the said effect is the deed of release executed by me with consent."

However, it is not very clear from the document as to whether any future right of inheritance was at all released, and indeed during the last stages of the argument the learned Advocate for the respondent contended that the releasor should be deemed to have surrendered her then existing claim to the property. If that were so, the release merely made Vappu Rowther's

\[^{12}\] AIR 1918 Mad 119
title to the properties perfect and on his death Savuravan Beevi would under the law of inheritance be entitled to her legitimate share.

JUDGMENT

The learned Judge relied on the argument and allowed the appeal.

ANALYSIS

An analysis of the case brings out that the judgment given by the honourable judge was right, as when property is conveyed in future there is said to be a transfer of property no less than when it is conveyed in the present as stated under Section 5 of the Transfer of Property Act. The Legislature has provided that the chance of an heir-apparent cannot be a subject of conveyance in present or in future. An agreement, therefore, to convey in future such a chance cannot be considered a valid contract because it is an agreement to transfer that which the law says is incapable of transfer. The 'object' of such an agreement is of such a nature that if permitted, it would defeat the provisions of Section 6 (a) of the Transfer of Property Act and Section 23 of the Indian Contract Act. It would be defeating the provisions of the Act to hold that though such hopes or expectations cannot be transferred in present or future, a person may bind himself to bring about the same results by giving to the agreement the form of a promise to transfer not the expectations but the fruits of the expectations by saying that what he has purported to do may be described in a different language from that which the Legislature has chosen to apply to it for the purpose of condemning it.
Facts

The defendant is the appellant. The defendant contended that the suit property was gifted to Subbamma, one of the daughters of Venkata Reddy by her mother, Konamma, as per the oral directions of her father, Venkata Reddy. There is a family arrangement under which Subbamma's absolute rights in the suit properties were recognized and that, in any event the plaintiff who brought about the attested the Dakhal deed dated 14-10-1906 Ex. B-7 executed by Konamma in favour of Subbamma was estopped from challenging the validity of the Dakhal deed. The defendant claimed as the donee, under Exhibit B-8 from Bakki Reddy who claimed title from Subbamma under a settlement deed executed by her on 3-4-1930 and marked as Exhibit B-9.

Procedural Facts

The lower courts below concurrently found that the defendant did not establish the family arrangement as well as the oral gift set up by them. On the question of estoppel, the District Munsif held in paragraph 22 of his judgment said that it was impossible to hold that the plaintiff was estopped from questioning Subbamma's absolute title to the suit land.

He also observed that "the defendant's learned Pleader too has not gone to the length of contending that the bar of estoppel can be raised against the plaintiff based on his connection with the original of Ex. B-7 alone."

Though no specific ground of appeal was raised by the defendant in regard to estoppel in the Memorandum of Appeal, filed before the Subordinate Judge of Tenail, the Subordinate Judge raised the question of estoppel as the 4th point for consideration and disposed it of in paragraph 8.
ISSUES

Whether the right of succession of Subbamma is only ‘Spes Successionis’. or only a mere chance of succession, within the meaning of section 6 of the Transfer of Property Act?

CONTENTIONS

The Court relied on the In AIR 1927 Bom 269 (D), where the Full Bench held that the conduct of the reversioner in joining the widow in executing the deed of alienation amounted to a clear election to hold the transaction as valid.

Further, in AIR 1929 Mad 503 (A), Courts-Trotter. Chief Justice, found it difficult to rest his opinion either on the doctrine of estoppel or on the doctrine of election. For the sake of uniformity, however, he preferred to follow the Full Bench decisions of Allahabad, and Bombay High Courts and evolved a third doctrine or formulae on grounds of equity and expressed himself as follows: "Where although no one has been damnified, so as to call into operation the doctrine of estoppel and the reversioner has taken no pecuniary benefit to bring itself within the meaning of the strict doctrine of election, he has nevertheless positively and definitely chosen to accounce his intention and in fact agreed to abide by the act of the widow".

JUDGMENT

The learned judge was however unable to persuade him that there was any legal basis for this third doctrine or formulae based on equity. Hence the Appeal was dismissed.

ANALYSIS

It was established beyond doubt that during the lifetime of the widow, the reversioner has no interest in praesenti in the suit property. Her right is only Spes Successionis or a mere chance of succession, within the meaning of section 6 of the Transfer of Property Act. It
is not a vested interest, but only an interest expectant on the death of a limit heir. It cannot, therefore, be sold, mortgaged or assigned, nor can it be relinquished.

A presumptive reversioner who gives his consent to a gift made by a widow without receiving any consideration whatsoever is entitled to recover the property when he succeeds to the estate on the death of the widow. The appellant in this case is only a donee from a donee from Subbamma who claims title under Ex B. 7, therefore there is no equitable considerations applicable to the facts of the present case.
Niresh Chandra Das  
v.  
Paresh Chandra Routh  
(AIR 1959 Gau 61)

FACTS

The respondent obtained a decree against the appellant and in execution of that decree he attached the tenancy right of the appellant. The appellant has a right under a lease to remain in possession of certain premises on payment of monthly rent. This right of the appellant is sought to be attached and sold in execution of the decree. An objection was raised by the judgment-debtor that this is not a property which is liable to be attached under Section 60, Civil Procedure Code. The objection was repelled by the Subordinate Judge and the present appeal has been filed against that order.

ISSUES

1. Whether the definition of the word 'lease' comes under the meaning of property as laid down is Section 6 of the Transfer of Property Act, which provides that ‘property’ of any kind may be transferred?
2. Whether the already leased property is a saleable property or not?

CONTENTIONS

The counsel for the appellant based his argument on Sub-section (d) of Section 6 which says that "an interest in property restricted in its enjoyment to the owner personally cannot be transferred by him." It cannot be said in the present case that the enjoyment of the tenancy right has been restricted to the tenant personally under the terms of the lease under which the right was created or that there was any enactment which restricts the enjoyment of the property i.e. the tenancy right to the appellant himself.

Further in purview of the next issue, Section 108(j) of the Transfer of Property Act provides as follows:
"(j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease.

This section in our mind clearly lays down that the right of a lessee is transferable and saleable.

JUDGMENT

The purchase by the auction purchaser no doubt will not put any bar on the right of the landlord to get ejectment of the tenant or auction purchaser but it cannot be said that under the auction sale, he will not acquire the right of the judgment-debtor. Hence, appeal was dismissed, but in the circumstances no order as to costs were passed.

ANALYSIS

In the definition of the word 'lease' it is clear that a lease creates an interest in the property in favour of the lessee and he has got a right to remain in occupation of the premises on payment of the rent. It cannot therefore be seriously contended that this right would not be considered as property within the meaning of Section 60.

Further, so long as the tenant continues to pay the rent he cannot be ejected by an order or decree, but in case of transfers the tenant is liable to be ejected by an order or decree. It can be said that it is assumed that there is a power of transfer in the lessee. The only restriction which is placed on the exercise of this power is that in case he transfers it without the permission of the landlord, he is liable to be evicted from the house.
The Jumma Musjid Mercara by its Muthavalli Khan Saheb A. Abdul Rahaman Khan, Mercara
v.

Kodimani Andra Devaiah and Ors.

(AIR 1952 Mad 482)

FACTS

The plaintiff is the Jumma Masjid, Mercara, represented by its Mutavalli, Khan Sahib Abdul Rahman Khan. The suit is for recovery of possession of a half share in the immoveable properties described in the schedule attached to the plaint. According to the case of the plaintiff, the properties in suit originally belonged to one Sh. Basappa, and after his death in 1901, they devolved on his widow, Gangamma, who became a convert to Islam, and made a gift of these properties on 5-9-1932 to the Masjid. The properties continued in the possession of the plaintiff till the death of Gangamma which occurred on 17-2-1933. But on her death, Santappa and Basappa (this Basappa is a different person from Basappa the husband of Gangamma) the sister's son's sons of Gangamma's husband Basappa, became entitled to the properties as the reversioners to the estate. On 3-3-1933, under Ex. A. Santappa sold his half interest in the properties to the Mosque and therefore, it is claimed that under this document, the plaintiff will be entitled at least to a half share in the suit properties.

The father of defendants 1 to 3 one Rao Bahadur Subbaya, claimed on the death of Gangamma that the properties belonged to him and his joint family, as they were purchased on 18-11-1920 'under Ex. III from Santhappa Basappa, and another in the name of his son, Ganapathi, who subsequently died leaving his widow the 4th defendant. He applied for transfer of patta and the Revenue authorities effected the transfer, and in pursuance of the order of the Revenue authorities, Rao Bahadur Subbaya took possession of the properties from the plaintiff.
PROCEDURAL FACTS

It is claimed by the plaintiff that the defendants had no title at all to the properties and that the plaintiff is entitled to a half share. It may be mentioned, even at the outset, that the title put forward by the plaintiff under the gift deed of Gangamma was not established in the trial Court. No deed of gift was produced and that title is now abandoned in the appeal. The title, therefore, of the plaintiff is now confined to the title acquired under the sale deed, Ex. A. executed by Santhappa.

ISSUE

Whether the transfers by the reversioners in favour of Ganapati was a transfer of a chance of an heir apparent to succeed to an estate, which was prohibited by Section 6(a), of the Act, and Section 43 cannot be invoked to defeat the provision in Section 6(a)?

CONTENTIONS

The transfer by the reversioners in favour of Ganapati when it was made, was in fact and in effect, though not in form, the transfer of a chance of an heir apparent to succeed to an estate, which was prohibited by Section 6(a), Transfer of Property Act, and Section 43 cannot be invoked to defeat the provision in Section 6(a). There can be, it was contended, no estoppel against a statute.

It would be convenient to state the view of the effect of Section 6(a) and Section 43, Transfer of Property Act read together. Section 43 was amended by the Amending Act 20 of 1929 by inserting the words "fraudulently" or before the words "erroneously represents". The same statute contains the two Sections 6 (a) & 43. If it was the intention of the Legislature that in all cases of transfer whether the transfer was made disclosing the true facts or was made with an erroneous representation regarding the authority, no effect should be given to the transfer, as the transfer is prohibited under: Section 6(a) it would have stated so and created an exception to Section 43.

Sec 6 does not prohibit emphatically the transfer of a chance of an heir; nor does it make it absolutely illegal so as to vitiate the entire contract. It merely lays down that property of any
kind may be transferred but the chance of an heir cannot be transferred. This is no more than saying that the transfer of a mere chance of an heir is void in law and is of no effect. Section 6(a) would therefore apply to cases where professedly there is a transfer of a mere 'spes successionis' the parties knowing that the transferor has no more right than that of a mere expectant heir. The result, of course, would be the same where the parties knowing the full facts fraudulently clothe the transaction in the garb of an out and out sale of the property and there is no erroneous representation made by the transferor to the transferee as to his ownership. But where an erroneous representation is made by the transferor to the transferee that he is the full owner of the property transferred and is authorised to transfer it and the property transferred is not a mere chance of succession but immoveable property itself and the transferee acts upon such erroneous representation, then if the transferor happens later before the contract of transfer comes to an end to acquire an interest in that property no matter whether by private purchase, gift, legacy or by inheritance or otherwise, the previous transfer can at the option of the transferee operate on the interest which has been subsequently acquired although it did not exist at the time of the transfer.

JUDGMENT

Hence the result which was taken by the lower Court upheld, and the decision was affirmed. Thus, the appeal of the Plaintiff was dismissed with costs.

ANALYSIS

The court relied on the precept that where a person with only a chance of succession or expectancy to a property, representing erroneously that he is the owner thereof, transfers it to another, and later succeeds thereto, or acquires an interest therein he is precluded from questioning to validity of the transfer, on the principal that he subsequent acquisition feeds the estoppel. If, believing the representation so made, the transferee parts with money and obtains the transfer which of course, is ineffective to convey the property, and the transferor thereafter acquires any interest in the property so transferred, he must make good the transfer to the extent of the interest which he acquires subsequently.
CHAPTER – III

CONCLUSION

Thus accordingly, the general law lays down that all property is transferable under the section unless there is some legal restriction to the contrary.\(^{13}\) Section 6 makes property of any kind alienable subject to the exception set out which cannot be supposed to be selected by reason of the future character of the chances. The truth is that an attempted conveyance of non-existent property may, when made for consideration, be valid as a contract and when the object comes into existence equity fastens upon the property and the contract to assign becomes a complete assignment. It is well settled that a transfer of property clearly contemplates that the transferor has an interest in the property, which is sought to be conveyed.

Section 6 provides that, in general, every kind of property can be transferred from one person to another. However, following are the exceptions to this general rule, which the researcher has analysed.

First, in Chance of an Heir Apparent/ Spes Succession-The technical expression for the chance of an heir apparent succeeding to an estate is called spes secession is. It means succeeding to a property. This means an interest which has not arisen but which may arise in future. It is in anticipation or hope of succeeding to an estate of a deceased person. Such a chance is not property an as such cannot be transferred. If it is transferred, the transfer is wholly void.

Second, Right of Re-Entry- This is a right which a lesser has against the leasee for breach of an express condition of lease which provides that on its breach the leaser may re-enter the land. The transferor reserves this right to himself after having parted with the possession of the property. This right is for his personal benefit and cannot, therefore, be transferred.

Third, Transfer of Easement- Easement means an interest in land owned by another that entitled his holders to a specific limited use or enjoyment. An easement cannot be transferred without the property which has the benefit of it.

\(^{13}\) Kartar Singh v. B. Bishamber, AIR 1929 All 578.
Fourth, Interest Restricted in its Enjoyment-The cases which fall under this head would include the right of “Pujari” in a temple to receive offerings, the right of a “Widow” under Hindu law to residence and maintenance, etc. The rights given in these cases are purely of a personal nature and cannot, therefore, be transferred. These rights are restricted to the person to whom they belong.

Fifth, Right to Future Maintenance- A right to future maintenance in whatsoever manner arising can’t be transferred. It is solely for the personal benefits of the person to whom it is granted. However, the arrears of the past maintenance can be transferred.

Sixth, Right to Sue- Mere rights to sue can’t be transferred. However, if it is incidental to transfer of another right, it can be transferred.

Seventh, Public Offices and Salaries, Stipends, Pension, Etc.- Transfer of public offices and salaries, stipends, pension etc., cannot be transferred on the grounds of public policy.

And finally, eighth, Occupancy Rights- Transfer of occupancy rights of a tenant is prohibited on the ground of public policy. This restriction is imposed by law for the purpose of regulating relation between landlords and tenants.
BIBLIOGRAPHY


