



TRANSFER OF PROPERTY ACT 1882

Dr. Khakare Vikas
Associate Professor



History

- Before 1882 the transfers of immovable properties in India were governed by the principles of English law and equity. And by the Regulations and Acts passed by the Governor-General-in-Council.
- In that time, law was quite confusing.
- This Act may be called the Transfer of Property Act, 1882. It shall come into force on the first day of July 1882.



Object of the Act

- PREAMBLE: *an Act to amend the law relating to the Transfer of Property by act of parties.*
- Object 1- to bring the rules which regulate the transmission of property between living person into harmony with the rules affecting its devolution upon death and thus to the complement the work that commenced with framing of the law of intestate and testamentary succession and
- Object 2- to complete the code of law of contract, so far as relates to immovable property.



Transfer of Property

By act of parties

By operation of law
(succession, insolvency, execution)

Testamentary
(after death of parties)

Inter vivos
(between two living person)

Transfer of immovable or
movable property

Transfer of immovable
property

Sale

Mortgage

Lease

Exchange

Gift



Not a complete code

- The Transfer of Property Act is not a complete code.
- It is not exhaustive.
- It is not applicable to all types of transfer of property.
- It is applicable for transfer inter vivos.
- Some of provisions of Mortgage (charges) and Easement is out of purview of this Act.
- There are other laws like Contract, Intellectual Property, Registration etc.



Property

- The term 'property' is derived from the Latin term 'Proprietat' and the French equivalent term is 'Proprius' which means a thing owned/possessed.
- Immovable property does not include standing timber, growing crops or grass (sec. 3)
- Salmond- it means proprietary rights in rem.
- John Austin- Property is a right availing against the world i.e. jus in rem.
- It is right to possess, use, enjoy, dispose, commercial exploitation, apply for different purposes, inherit.



- Property can be tangible or intangible.
- Property is *no men genralisssimeem* and extend to every species of valuable and interest including real and personal property, easement, franchises, incorporeal heridaments.
- It is unrestricted and exclusive right to a thing. It include right to exclude.
- Property is a legal concept which includes a bundle of rights.
- Police Act, 1861 sec. 1: property includes any movable property, money or valuable security.



- Sale of Goods Act 1930: property means the general property in goods and not merely a special property.
- Provincial Insolvency Act 1920: property includes any property over which or the profits of which any person has disposing power which he may exercise for his own benefit.



Nature of property

- in the TP Act, property is used as
- Tangible material things. (land, house, furniture, jewellery, etc)
- Rights which are exercised over material things. (to enjoy, possess, to sell, to gift etc)
- Rights which are not exercised over any material things (to repayment of a debt)
- Property means a proprietary right in rem or in personam.
- Property includes all a person's legal rights of whatever description.



- **Kinds of property**
- Real property: this property admitted of specific recovery and as this was originally allowed only where claimant had freehold interest. e.g.. land, building or anything attached to it.
- Personal property: it comprise of goods or things movable. In such property in respect of which only a personal action lay was classed as personal property.
- Tangible property: such property can be felt or touched.
- Intangible property: such property cannot be felt or touched.
- Tangible or intangible property may be movable or immovable.



- Corporeal property (dominium corporis): it its the right of ownership in material things. It can be seen or felt.
- Incorporeal property (dominium juris): It cannot be seen or felt. It may be *jura in re aliena* i.e which one has in the property owned by another OR *jura in re propria* over immaterial things i.e. the subject matter of a right of property is either a material or immaterial things recognised by law as property.
- Movable property: it is goods or things which are movable.
- Immovable property: it is permanent, fixed, cannot be moved and must be attached to property permanently.



Immovable property

- “Immovable property” does not include standing timber, growing crops or grass. sec. 3
- This definition is not clear and incomplete.
- General Clauses Act 1897: 'immovable property shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.
- The Registration Act 1908: immovable property includes land, buildings, hereditary allowances, right to ways, lights, ferries, fisheries or any other benefit to arise out of land and things attached to the earth, or permanently fastened to anything which is attached to the earth but not standing timber, growing crops or grass.



- Therefore 'immovable property' includes
 1. Land
 2. Benefits to arise out of land, and
 3. Things attached to earth i.e.
 - i. things embedded in earth,
 - ii. things attached to what is so embedded in the earth,
 - iii. things rooted in earth; except
 - a) standing timber,
 - b) growing crops, or
 - c) growing grass.



1-Land

- Land means surface of the earth. it includes everything upon the surface of land, under the surface of land and also above the surface of land. Anything upon the land, so long it is not removed from there shall be part of the land.
- Land includes:
 1. a determinate portion of land,
 2. possibly the column of space above the surface,
 3. the ground beneath the surface,
 4. all objects which are on or under the surface in its natural stage
- Eg: soil, mud, underground water, water collected in a pit, pond, lake, river, sub-soil, mineral, coal, gold mines, space above land.



2-Benefits to arise out of land

- Benefits which a person gets from land, is also an immovable property.
- It is intangible immovable property.
- A right by the exercise of which a person gets certain benefits is called beneficial right or beneficial interest of that person.
- It is any profit or gain from land.
- Eg: right of way, right to use, lease, tenancy, right of fishery, right of ferry, hereditament, fruits, lac etc.



3-Things attached to earth

- i. things embedded in earth,
 - ii. things attached to what is so embedded in the earth,
 - iii. things rooted in earth
- Embedded means, a thing whose foundation is laid well below the normal surface of the earth OR fixed firmly in a surrounding mass.
 - Eg: wall, pole, houses, building.
 - A machinery attached to a concrete base by nuts and bolts firmly, cannot be treated as embedded in the earth.
 - A thing (like a rock) placed on earth without intention to move is not immovable property.



- A machinery or other installations of business are fixed to the land for commercial purpose only. They are regarded as accessory to the business and not an annexation to the premise.
- **Things attached to what is so embedded in the earth:** it would become part of property. Eg: door, window, shutter etc.
- For this, thing must be attached permanently and for the beneficial enjoyment of the house or building.
- Electric bulb, window screens, other ornamental things are not immovable property.

- 
- **Things rooted in the earth:** trees, plants, shrubs which grow on land are rooted in the earth.

- **Standing Timber, Growing Crops and Growing Grass**

- 'Timber' means, a tree that is chiefly meant to be used either for house building or for the burning purposes or for the furniture or the boat or other construction. Eg: seasham, neem, babool, teak.
- Fruit bearing trees are not timber and hence not immovable.
- **Crops** means, a plant grown for food or other purpose and include all vegetables in the form of fruits, leaves, bank or roots.
- **Grass** is mainly grown for fodder purpose. It is movable property



• **Examples of immovable property**

- Right of way or easement.
- Right under lease or tenancy.
- Right to extract gold, silver, coal or other minerals from mines.
- Right of fishery,
- Right of ferry,
- Right to collect dues from fair or haat (bazar).
- Right to hold exhibition or fair on one's land,
- Right to collect forest produce.(lac, tendu leave,gum)
- Mortgage debt,
- Office of the hereditary priest of a temple and its emoluments.



Movable property

- A property which is not immovable is movable property.
- Eg: standing timber, growing crops, growing grass, thins placed on earth, royalty, copy right, decree for arrears of rent, right to get maintenance allowance, furniture,

Difference



movable property

1. All interest which are interests in object other than land are called movable.
2. It can be easily shifted or moved without any loss/damage.
3. It is liable for Sales Tax.
4. Registration is optional.
5. Mere delivery with intention to transfer complete the transfer.

immovable property

1. All interest which are interests in land are called movable.
2. It cannot be shifted or transported without any loss or damage and if transported, it will lose its original shape, capacity, quality or quantity.
3. It is liable for Stamp duty.
4. Registration is mandatory.
5. Mere delivery is not enough. Transfer must be registered.



Instrument

- "Instrument" means a non-testamentary instrument. sec. 3
- Instrument means a legal document.
- Where a property is transferred through without any written document, that document is called as instrument.



Attested

- "attested", in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgement of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary; sec. 3



- **Attestation** is an act of certifying the signature of the executant.
- **Object:** Attestation of a document ensures the authenticity or truthfulness of the execution of a document.
- It confirms that executant and none else has executed the document
- It confirms that executant has executed document with free consent and there was no force, fraud, or under influence.
- **Who can attest:** Any two person; Age of majority; Sound mind;



- A person called to identify execution is not attesting witness.
- Registrar, sub-registrar, any officer, typist or party to contract cannot be presumed to be attesting witness.
- A person who is not party to transaction but person interested may be attesting witness. (relatives of party)



- **Essential for valid attestation:**

1. The attestation must be done by two or more person.
2. Each attesting witness must
 - a) see the executant signing the instrument (document) or fixing his mark on it. OR
 - b) see some other person signing the instrument in presence of and under the direction of executant OR
 - c) has received from the executant a personal acknowledgement of his signature or mark or of the signature of such other person
3. Each attesting witness has signed the instrument in presence of the executant.



- **Legal effects of attestation:**
- The documents which require attestation is valid only when it is properly attested and valid and proper attestation is proved.
- Where attestation is mandatory, non attestation make it ineffective.
- Attestation is not to show knowledge of content of document.



Registered

- "Registered" means registered in any part of the territories to which this Act extends under the law for the time being in force regulating the registration of documents. sec. 3
- It is a document which is officially recorded.
- It is under the provisions of Indian Registration Act 1908.
- Registration is valuable evidence regarding the statements made in the document.
- Where ever required document must be duly attested and registered.



Actionable claim

- "Actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.
- Intangible movable property.



- It is a claim affording ground for action in-law.
- It is an act or claim for which an action can be instituted in civil court for realisation of the benefit.
- In England it is called as 'chose in action' or 'a thing in action'
- To ascertain whether it is actionable claim, there should be 'debt'. A debt is a sum of money which is payable in future or will become payable in future by reason of present obligation.
- A debt is a property. It is obligation to pay liquidate/certain sum of money.



- Beneficial interest in movable property is intangible movable property and can be transferable. An actionable claim can be transferred.
- Definition of actionable claim include
 1. Unsecured money debt. and
 2. A claim to beneficial interest in movable property not in possession of the claimant.



1. Unsecured money debt.

- A debt may be secured or unsecured.
- In secured debt, the creditor (who gives loan) takes security from the debtor (who take loan) by way of mortgage or pledge or hypothication. A secured debt is not actionable claim.
- A debt may be **existent debt** (already become due and is payable) or **accruing debt** (present due but payable in future) or **conditional or contingent debt** (claim exist but payment depends upon the fulfilment of some condition).



2. Claim to beneficial interest in movable property not in the possession

- It is right of a person to take the possession of movable property from the possession of another. Provided the claimant has beneficial interest.(right to possess).
- For this: **1.** the claim is in some movable property; **2.** the movable property is in possession of another person; **3.** the beneficial interest or the right of possession of the claimant is recognised by the court.



- Illustration
- A has sold fifty bags of wheat to B. The bags of wheat are in the godown of A. BR's right to take possession of the bags of wheat from the godown of A is his (BR's) actionable claim.
- A has fifty bags of wheat in his godown. A has not sold these bags to B or the contract of sale is not valid. B has no beneficial interest in those bags of wheat. Claim of B, if made by him, is not his actionable claim.



- **Examples of actionable claims**

1. a share in partnership
2. a claim for arrears of rent
3. a claim for money under insurance policy
4. a claim for return of earnest money
5. a claim for recovery of annuity
6. amount under a decree
7. a claim for fixed deposit in bank
8. a claim for benefit when contract is broken



- **these are not actionable claim**

1. right to damages in tort or breach of contract.
2. claim for mesne profits.
3. a claim for future decree.



Notice

- "a person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.
- **Notice:** means knowledge or information of fact.
- **Actual or express notice:** means direct knowledge or information about something.
- **Constructive notice:** is based on equity. Where a person actually does not know anything about a fact but the court treats that under the circumstances he must have knowledge of that fact.

