

“Restriction Repugnant to Interest Created”

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INTRODUCTION:

Sec.11 of Transfer of Property Act, 1882 says that *Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.*

Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.¹

Illustration

A and B enter into a sale deed for a piece of land. The terms of the sale deed provides that the piece of land should be used for the purposes of starting a factory for the manufacture of jute textiles only. This condition is invalid. B can enjoy the land in any manner that he chooses and the sale deed itself continues to be valid.

EXPLANATION:

Section 11 of the Transfer of Property Act deals with **repugnant conditions**. Repugnant conditions are those that are inconsistent with the nature of the interest transferred.

Section 11 prohibits the imposition of any condition directing the transferee to apply or enjoy in a particular manner, any interest that is transferred absolutely in a particular manner. Such conditions or directions are void and the transferee is entitled to receive property as if such a condition did not exist in the first place. The transfer itself is, however, not invalidated. These conditions are inconsistent with the nature of the interest transferred. Therefore, they are called repugnant conditions.

If a property is transferred absolutely in favour of the transferee, then any condition or terms of transfer, restricting the full enjoyment of the property (i.e.) repugnant to the interest created, then the transferee is empowered under sec 11 of TP Act to receive and dispose the property as if there was no such condition.

¹ Section 11 of the Transfer of Property Act,1882

ELEMENTS

This Section comes into operation when the following conditions are fulfilled:

1. Absolute interest is created in favour of the transferee by the transfer.
2. Terms of the transfer provide that the interest in the property shall be enjoyed or applied in the manner prescribed by the transferor.²

Interest must be created Absolutely:

In order that Section 11 may apply it is necessary that the interest created in favour of the transferee should be absolute. Where the interest created is not absolute for example lease, this Section does not apply. In the case of a lease, only limited interest is transferred and the lease is bound by the conditions and the mode of enjoyment. An interest which is transferred absolutely is not the same thing as the transfer of absolute estate in property. Any interest for example a life estate may be created absolutely without imposing any conditions or restrictions qualifying its legal incidents. But the transfer of an absolute estate passes to the transferee an interest which is unlimited in estate and unfettered in respect of any condition or trust³

Interest shall be applied or enjoyed in the manner prescribed by the Transferor

The expression “enjoyment of property” includes several rights such as right of alienation, right to effect partition of property, right to use the property for the purpose of residence, a provision for payment etc. The rights of alienation of property is an important form of enjoyment of property. A restriction of such rights, therefore, is a restriction on the enjoyment of property and restrictions should be disregarded⁴. A condition in a transfer deed that donee of property and his heir should reside in the property on pain of forfeiture of the gift is a restraint on the enjoyment of property and would be void for repugnancy if the main intention of the donor was to make an absolute gift.⁵

Hindu Law and Mohammedan Law

The invalidity of conditions in restraint of enjoyment of property is recognized both in Hindu law and Mohammedan Law. A direction in restraint of partition in a Hindu gift is void. In Anantha’s case⁶, it was decided under Hindu law that a condition in a gift to Brahmins restrictive of alienation is invalid as being repugnant to the nature of grant. The same decision was given in

² S.M. Lahiri, Transfer of Property Act, 108 (10th ed., 1986).

³ K.M.Gossain vs. A.C.Bose and another, AIR 1934 Cal. 379

⁴ Official Receiver, West Tanjore vs. S. Chethiar, AIR 1939 Mad. 509

⁵ R.K. Tambvekar vs. L.N. Tambvekar, AIR 1920 Bom. 73

⁶ Anantha vs. Naga Muthu, (1882) 4 Mad. 200

Rukmani bai's Case⁷. Even under Mohammedan Law when a gift is made subject to the condition which derogates from its completeness, the gift is valid, but the condition is void.⁸

CASE LAWS

Atika Begum, Amina Bi, Hajira and 2 Ors. Vs. Haji A.A.M. Abdulla, Habbeb and 113 Ors. (2002)⁹

Facts:

The suit property consists of land, market, bazaar, stalls, houses and other superstructure, known as Parachery Market, situated on the western side of Govindappa Naicken Street, Madras-1 was purchased by the ancestors of the plaintiffs 1 and 2 as well as the defendants 1 to 113 out of their common fund, and the same is owned by the plaintiffs and defendants jointly by inheritance, sale and gift. Hafiz Mohammed Ghouse, executed a registered will, which contains a list of sharers who were entitled to the suit property and the number of shares held by each one of them. In the said registered deed, HMG declared himself as the Manager of the suit property on behalf of the co-owners and stipulated a condition that a sharer could sell his share to another sharer alone; and the property should not be divided by metes and bounds, and put into individual possession.

Decision:

While Section 10 of the Transfer of Property Act deals with a restriction against the transfer of interest conveyed absolutely, Section 11 of the Transfer of Property Act deals with the restrictions on the enjoyment of such interest conveyed absolutely. In fine, while Section 10 refers to a restriction on the transfer of property, Section 11 refers to a restriction on the enjoyment of the property. The principle behind Section 11 is that a condition repugnant to the interest created absolutely is void. It is well settled in law that a partition is not actually a transfer of property. The partition signifies the surrender of a portion of a joint right in exchange of a similar right from the co-sharer. The partition effects a change in the mode of enjoyment of property, but is not an act of conveying property from one to another. In other words, partition is a process, in and by which, a joint enjoyment is transformed into an enjoyment severally. Hence, partition is not actually a transfer of property, but would only signify the surrender of a portion of a joint right in exchange of a similar right from the other co-sharer or co-sharers. A right of partition, therefore, being an incident of joint ownership of property, any restriction repugnant to such right or interest is invalid as per Section 11 of the Transfer of Property Act.

⁷ Rukmani Bai vs. Laxmibai (1920) 44 Bom. 304 , Sarjubai vs. Jyotimoyee, (1931) 35CWN 903

⁸ Moulvi Mohd. Vs. fatimabibi, 8 ALL 39

⁹ Atika Begum, Amina Bi, Hajira and 2 Ors. Vs. Haji A.A.M. Abdulla, Habbeb and 113 Ors. (2002) 2 MLJ 4

Bhavani Amma Kanakadevi vs. C.S.I. (2007)¹⁰

Facts:

Plaint schedule property having an extent of 1.12 acres belonged to Parameswaran Pilla, the original plaintiff, the Appellants are his legal heirs. It was sold to respondent C.S.I. Dakshina Kerala Maha Idavaka for the purpose of construction of a private college for a consideration of Rs.11,200/-. There is a clause in the sale deed that if by any reason a college could not be constructed, respondent vendee shall reconvey the property for the same consideration to the plaintiff. Contending that no college was constructed and as provided under sale deed, plaintiff is entitled to get the property reconveyed by respondent and respondent is attempting to dispose the property to third parties. Respondent resisted the suit contending that clause in Ext.A2 to reconvey the property to the plaintiff is void under Section 10 of Transfer of Property Act.

Decision:

Though Ext.A2 does not contain a specific clause prohibiting respondent from alienating the property to third parties, there is an implied clause that in the event of failure to construct a college, the property shall be reconveyed to the assignor at the same price thereby shutting out any other option. It is an absolute restraint on the right of respondent to deal with the property including alienation, which is void as provided under Section 10.

BOOKS REFERRED

- ❖ G.P.Tripathi, The transfer of property Act (17th Ed., Central Law publications).
- ❖ Poonam Saxena, „Property and Easement“, Halsbury Laws of India; Vol. 12 (2002).
- ❖ S.M. Lahiri, Transfer of Property Act (10th ed., 1986).
- ❖ Solil Paul (Rev.), Mulla’s the Transfer of Property Act (9th ed. 1999).

¹⁰ SA No. 548 of 1994(F)