

DOCTRINE OF FEEDING THE GRANT BY ESTOPPEL

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ABSTRACT

The doctrine of feeding the grant by estoppel has been integrated under section 43 of the Transfer of Property Act, 1882. The doctrine under examination in this note is a blend of two principles of law; estoppel and equity, both of which are aimed at protecting the bonafide transferees in case of misrepresentation on part of the transferors regarding the title of the property in question. The author has attempted to provide a brief note that covers aspects of application of the doctrine in India and its evolution from the Common Law System. The applicability of this doctrine differs in India as it has been adopted with certain modifications to protect the interest of the bonafide transferees. This note comprises of the essentials and exceptions for the application of the doctrine in India and provides a two-fold comparison of its position under Indian and English law.

Keywords- Property Rights, Estoppel, Equity, Bonafide, Transfer, English Law, Transferor, Transferee

BACKGROUND

The doctrine of *feeding the grant by estoppel* is partly based on two principles, first is a popular common law principle, '*estoppel by deed*' and second is a principle of equity, '*Equity regards things to be done that ought to be done*'.ⁱ The principle of estoppel is not unfamiliar to the Indian Jurisprudence as it has been integrated into various statutes. This concept of estoppel essentially means that in a situation where a person has promised to perform a certain act, he is bound to keep that promise if the promise has already been acted upon by the promisee. The doctrine of estoppel is adapted in a modified version here depending on the written deed between the transferor and the transferee. The aforementioned equitable rule has also been incorporated under section 13(1)(a) of the Specific Relief Act, 1963.ⁱⁱ According to the doctrine of estoppel by deed, "a grantor who purported to grant an interest in land which he did not, at the time possess, but subsequently acquires the benefit, his acquisition goes automatically to the earlier grantee, or as it is usually expressed, feeds the estoppels."ⁱⁱⁱ

The incorporation of the aspect of equity creates a personal obligation on part of the transferor as he now has to transfer the immovable property to the transferee as soon as he gets the power to do so. The fact that the transferee had no knowledge about the authority of the transferor over the disputed property is immaterial; what needs to be done, is required to be done. The said principle was observed by Lord Westbury, L.J., in the case of *Holroyd v Marshall* where he stated that it was the right of the transferee to demand specific performance of the deed in case of such a transaction and the transferor has no right to deny the same once he acquires the interest in the property.^{iv}

ESSENTIALS FOR APPLICATION OF THE DOCTRINE IN INDIA

Section 43 of the Act is the statutory recognition of this doctrine under the Indian law which has distinctly been explained in the landmark judgment of *Jumma Masjid Mercara v Kodimaniandra*^v as, "Whenever a person transfers property to which he has no title on a representation that he has a present and transferable interest therein, and acting on that representation, the transferee takes a transfer for consideration. When these conditions are satisfied, the section enacts that if the transferor subsequently acquires the property, the

transferee becomes entitled to it, if the transfer has not meantime been thrown up or canceled and is subsisting.”

Fraudulent or erroneous representation

The scope of this essential is wide enough to include even those transactions where the transferor believes he is the actual owner of the property in question. The knowledge of transferor is not of relevance here, it is the transferee’s knowledge that determines whether the doctrine of feeding the grant by estoppel can be applied or not. The doctrine can only be applied when a party conceals the facts about the true ownership of the property and based on which that other party enters into the contract, thereby benefitting the person making the representation.^{vi} The question that is required to be asked while subjecting any situation to this essential is that whether the transferee accepted the sale based on the representation made by the transferor or not.^{vii} In case a person sells a property as an agent of a party and then later becomes the heir of that person, the doctrine will not apply. This is so because there was no erroneous representation on part of the transferor.^{viii}

Subsistence of the contract

This essential is significant to the transaction as it is a settled position of law that in case the transferee has already opted for another remedy, the contract will be considered to have come to an end and the transferee will not be able to get protection under this doctrine. If the transferee has obtained a decree from a court, rescinded the contract, repaid the mortgage^{ix} money in case of a mortgage, or has not claimed the property in question, then the contract will not be considered to be in subsistence. For instance, consider, A (transferor) transfers a property to B (transferee) which in reality belongs to C (owner), brother of A. Later, B becomes aware of the fact that A is not the real owner of the property and demands the consideration back. A is able to pay back the consideration amount to B after a few months. After the transaction, C dies and A inherits the property. Here, B does not have the option to validate the previous contract as that came to an end on the day A returned the consideration to B.

Transfer for value

Gratuitous transfers are not given protection under the doctrine of grant by estoppel. Any transaction that is facilitated by way of a gift or due to any order of the court, i.e., without consideration, will not be recognized under this doctrine.^x

Transferee's right to choose

This essential play a vital role while distinguishing the adoption of the doctrine. Under section 43, as discussed above, the property does not automatically transfer to the transferee once he gets the title of the property, he may choose to not go ahead with the transaction. If he fails to claim the property, his right becomes subject to the right of any other transferee in good faith to whom it may be transferred by the transferor for valuable consideration.^{xi}

EXCEPTIONS FOR APPLICATION***Knowledge on part of the transferee about the title***

If both the transferor and the transferee know about the true situation and collude to enter into a transaction which is invalid in law, knowledge of the transferee becomes material and Sec. 43 cannot be availed by him.^{xii} This exception aligns with the first essential that is listed above which requires any 'fraudulent or erroneous' representation on part of the transferor. As held in the case of *Ram Pyare v Ram Narain*, knowledge of the transferee and not the transferor about the original title will determine the applicability of the doctrine of feeding the grant by estoppel.^{xiii} A clear application of this exception can be understood with an example of the case of *Kartar Singh v Harbans Kaur*.^{xiv} In this case, a woman through a sale deed transferred her son's property as a guardian to the purchaser. All the details regarding her right to sell her son's property were known to the transferee as it was mentioned in the sale deed. After attaining majority, the son wished to rescind the contract and before he could do so, he died. So, the property ultimately went to his mother as she was the only rightful heir in the family. The question arose regarding the right of the transferee to claim back that property and seek protection under section 43. Supreme Court upheld in this case that during the time of the transaction, the transferee was aware of the arrangements and thus there is no remedy available to the transferee under section 43.

Transfer void ab initio

This exception is a continuation of section 10 of the Indian Contract Act, 1872^{xv}, which broadly states that in case any contract is for unlawful consideration or object then the transfer itself will be considered as void. In a situation where the matter itself is invalid or against public policy^{xvi} the transaction will not be protected under section 43 of the Act. For instance, if a

deed that gave tenancy rights to a person is invalid since its inception due to the existence of another deed of tenancy, no protection could be claimed by the alleged subsequent tenant under section 43 of the Act.^{xvii}

Bonafide subsequent transferee

In case the subsequent transferee has acted in good faith without the knowledge of the previous transaction, then his interest will be given priority over the previous one.^{xviii} The proviso to section 43 of the Act limits the scope of applicability of the section in situations where the transferor has transferred the property to another bonafide purchaser for consideration. The purchaser should have acted in good faith while purchasing the property with no knowledge about the previous transaction, only then can this exception be applied. For instance, in the case of *Brahmvar Sanatan Dharm Mandal v Prem Kumar*, 3 daughters in a family were the successors of the property of their mother. While the mother was still alive, the daughters alienated those properties to various transferees. None of these actions were challenged by either of the reversioners. In such a condition, since the transferees acted in good faith, the court held that they will be protected under the proviso to section 43 of the Act.^{xix}

COMPARISON OF INCORPORATION OF THE DOCTRINE UNDER INDIAN AND ENGLISH LAW

The doctrine of *feeding the grant by estoppel* recognized under section 43 of the Act works differently as compared to English law. Under English law, the application is more favorable towards protecting the rights of the transferee in case a transferor transfers a greater interest in a property compared to what he actually has in that property. In case a transferor, without having the power to do so, transfers a piece of immovable property to a transferee and subsequently gets the right to do, the property will automatically be transferred to the transferee.^{xx}

The section under the Act differs from the Common Law Doctrine in broadly two aspects. First, the property does not automatically transfer to the transferee, giving him the option to either rescind the contract or bring a suit against the transferor. This is provided to deal with situations where specific performance of the contract is either impossible or not beneficial for the

transferee. There is a possibility wherein the transferee would not wish to continue with the transaction due to a lack of trust on the transferor or any other reason whatsoever. Second, the rights of the subsequent transferees have been considered. Importance is given to those that have acted in good faith and have no knowledge about the title while acquiring the property from the transferor.^{xxi} The threshold for inquiring about the title of the property is considerably less under section 43 and thus this protects the interests of those bonafide purchasers that have bought the property for some value. Nonetheless, it can also be argued that this rule poses a disadvantage to the previous transferees as they have the right to validate the transaction only until the transferor transfers the property to a purchaser.

CONCLUDING REMARKS

The doctrine of feeding the grant by estoppel, although derived from English law, its applicability in the Indian context can be determined by a detailed analysis of section 43 of the Transfer of Property Act, 1882. The present note has broadly discussed the extent and the essentials important for the applicability of this doctrine. While adopting the doctrine from English law, there were certain variations made thereby modifying the essentials required for the application of the doctrine. The transferee can claim protection under this doctrine if, the transferor misrepresents facts that lead to the existence of the contract between the transferor and transferee, the transaction is for some value, the initial contract is not invalid since its inception, the contract is still in subsistence and last but not the least, the property has not been transferred to a bonafide transferee for good faith. This doctrine has evolved over the years and broadened its scope to adjust and protect the rights of the parties suffering from the acts of misrepresentative transferors.

REFERENCES

ⁱ Renu Devi v Mahendra Singh, (2003) 10 S.C.C. 200.

ⁱⁱ Specific Relief Act, 1963, No. 47, Acts of Parliament, 1963, § 13(1)(a).

ⁱⁱⁱ Hardev Singh v Gurmail Singh, (2007) 2 S.C.C. 404 ¶ 14.

^{iv} Holroyd v Marshall, (1861) 10 HL 210.

^v Jumma Masjid Mercara v Kodimaniandra, A.I.R. 1962 S.C. 847.

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- vi Muthusami Pillai v Sandana Valan, 53 Mad L.J. 218.
vii Mulraj v Indar Singh, A.I.R. 1926 All 102.
viii Peyare Lal v Misri, A.I.R. 1940 All 453; Ni Pra Channabasava Deshikendra v C.P. Kaveramma, (2009) 1 S.C.C. 28.
ix Protab Chandra v Judisthir Das, (1914) 19 Cal L.J. 408.
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xi Gomathy Ammal v Rukmani Amma, A.I.R. 1967 Ker 58.
xii Kartar Singh v Harbans Kaur, (1994) 4 S.C.C. 730 ¶ 7; Jagat Narain and another v Laljee, A.I.R. 1965 All 504.
xiii Ram Pyare v Ram Narain, A.I.R. 1985 S.C. 694.
xiv Kartar Singh v Harbans Kaur, (1994) 4 S.C.C. 730.
xv Indian Contract Act, 1872, No. 9, Acts of Parliament, 1872, § 10.
xvi Ramasami v Ramasami, (1907) I.L.R. 30 Mad. 255.
xvii Ram Bhawan Singh v Jagdish, (1990) 4 S.C.C. 309 ¶ 10.
xviii Jumma Masjid Mercara v Kodimaniandra, A.I.R. 1962 S.C. 847.
xix Brahmvar Sanatan Dharm Mandal v Prem Kumar, (1985) 3 S.C.C. 350.
xx Agricultural Produce Marketing Committee v Bannamma, (2015) 5 S.C.C. 691 ¶ 13.
xxi Seth Parma Nand v Champa Lal, (1995) S.C.C. OnLine All 251 ¶ 15.
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