

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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THE INTERPRETATION OF CONDITIONAL TRANSFER IN PROPERTY LAW: ANALYZING THE RIGHTS AND DUTIES OF THE TRANSFEREE

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Abstract

The Conditional transfer in a property law is a transfer based on certain conditions. Section 25 of the Transfer of Property Act, 1882¹ is about Conditional Transfer. Which defines it as, any transfer happens must be fulfilled with the conditions given in the law. Substantially determining the rights and obligations of the transferee. This research gives the overview of the laws which governs the conditional transfers, the major focus is on the rights which are given to transferee and the obligations imposed. This analyses the main questions raise from non- fulfilment of the conditions imposed by the transferer, giving interpretation of law in cases of fraud, misrepresentation, coercion or succession concerns. Identifies key challenges and gives the solutions to the problems. This paper highlight's role of Judiciary in interpretations, precedents, statutory provisions, evaluate viewpoint of law and how courts deal with such transfer. Suggests the reforms needed in the provisions which aims in advancement of property transactions. This study emphasizes the implications of conditional transfers and talks about the balance between the rights imposed on transferee as well as on transferer, dealing of properties must be inevitably fair. This research provides better understanding of conditional transfer of property between transferer and transferee, about the effect of rights and duties in modern legal system.

Keywords: Conditional Transfer, Property Law, Rights and Obligations of transferee, Statutory Provisions, Implications.

¹ Transfer of Property Act 1882, s 25

Chapter 1: Introduction

Introduction

The transfer is an act by which a property can be transferred from one living party to another living party. Transfer can take place any time in present or in future. There are various forms of transfer under Transfer of Property Act, sale, mortgage, lease, gift, exchange, etc. Conditional transfer is a transfer where certain conditions imposed on transferee for occurrence of event, which must be met for the transfer to take place. Section 25 of Transfer of Property Act, 1882², states that any transfer occurs on the fulfillment of the transfer that has condition imposed on it from transferer to transferee. There are different types of conditional transfer such condition precedent, condition subsequent, and condition collateral. The Rights of the transferee depend on the condition imposed to the property transfer. The Duties of transferee can be certain legal obligations ascertained by the nature and conditions of the transfer. The classification of duties can be depended on the requirements of the transfer are condition precedent or subsequent. The conditional transfer and its practical implication in modern legal issues, provide clear understanding of their enforceability.

Literature Review

1. **“Everything To Know About Conditional Transfer in Property Law”** by [Adv. Lavya Kumari](#), The article gives us holistic interpretation and understanding about section 25 of The Transfer of Property Act which regulates the Conditional Transfer. “Conditional Transfer” which means such kind of transfer which comes with some conditions attached to it. The article consists of key points which makes the conditional transfer a valid transfer in property law that contains circumstance in which the conditional transfers are prohibited by law, when are valid, void or voidable by law. In the conclusion, it states an importance for an individual to have ample amount of knowledge and clarity about the Conditional Transfer to have better resolutions.³
2. **“Conditional Transfer”** by **Adv. Yogita Joshi**, this article gives an understanding of Transfer of property in Property Law. The recognition of distinction between absolute and conditional transfer. It also lays down the six categories of conditions that should

² The Transfer of Property Act 1882, 25

³ Adv. Lavya Kumari, ‘Everything to Know Conditional Transfer in Property Law’ (2025) ezy Legal <<https://www.ezylegal.in/blogs/everything-to-know-about-conditional-transfer-in-property-law>> accessed 17 March 2025

not be imposed while creating an interest in the conditional transfer of property as it loses the ability to be a valid transfer. It also states an importance of conditions which holds a merit of getting fulfilled and avoiding putting such conditions which are impossible to be fulfilled. Explained by backing an analysis of cases. It emphasises upon the crucial role of conditions that are attached to the transfer of property in determining the validity of the transfer.⁴

3. **“Transfer of Property Act in India, 1882: Meaning & Key Elements”** This legal article is providing the understanding of the Transfer of Property Act, 1882 and statutory provisions relating to the property transfer. It is explaining the historical evolution and its objectives of transfer property. This work talks about the types of transfer of property given under the law. Rights and duties of transferor and transferee who are dealing in this transaction.⁵
4. **“Conditional Transfer” by Prakash Chandra**, this Research paper is about aspect of conditional transfer under transfer of property law, which are governed under section 25 to 34 of transfer of property act, 1882. The word property has wide meant which includes all legal rights and duties of parties involved. The evolution of conditional transfer in India is emerging which is also very complex. The interconnection of legal framework, government policies and judicial interpretation are shaping the concept of conditional transfer in property law.
5. **“Detailed study on the conditional transfer of property act, 1882” by the Nishant Vimal**. The author is stated that the concept of the conditional transfer in the property law is the wide concept and it is well analysed within the framework of the property law. The article underscores that while condition precedent allows for substantial compliance, condition subsequent and collateral conditions require strict adherence to ensure the transfer remains valid. The future research may explore the comparative application of conditional transfer principles across different jurisdictions, and analysing how various legal systems address similar challenges. conditional transfer

⁴ Adv. Yogita Joshi, ‘Conditional Transfer’ (2025) rest the case <<https://restthecase.com/knowledge-bank/conditional-transfer>> accessed 17 March 2025

⁵ Sobha, ‘Transfer of Property Act India’ (17 March 2025) <<https://www.sobha.com/blog/transfer-of-property-act-india/>> accessed 17 March 2025

remains a dynamic area of property law, requiring continued interpretation and judicial in property dealings.⁶

6. **“Analysing the Concept of Conditional Transfer Under the Indian Property Law” by Ishita Sinha**, in this article author has explained the comprehensive legal study of conditional transfer, whereas the impact of rights and structure of ownership. The transfer of property act which provide a detailed framework of conditional transfer from section 25 to section 34. The research states the difference between the absolute and conditional transfer. This transfer gives ultimate ownership rights, meanwhile imposes certain legal obligations on transferee. The judicial pronouncement has emerged the concept of the conditional transfer. The conditional transfer has main role in property transfer when conditions are imposed, the judiciary also ensures the fairness, integrity and validity of law.⁷
7. **“Conditional Transfer- Condition Precedent and Condition Subsequent” By Dhruvi Dharia**, in this article the author clearly distinguishes the condition precedent and condition subsequent and their impact on the rights and duties of the transferor and the transferee. The author also underscores the validity of the conditions for the transfer. These distinctions are vital for legal practitioners to navigate property transactions effectively.⁸
8. **“Restrictions on Alienation” by Vikhyat Singh Kathait, Rakshita Mathur**, This Research the author has explained the fundamental principle of ownership which creates rights to parties to the transaction for immovable property. The paper focus on the alienation of property which is a voluntary act to dispose of transfer the ownership of the property to someone else. The restriction on alienation, its types and relevant statutory provisions are explored in this paper. How it's important in Indian legal system and property law. The role of court in explaining conditional transfer and its validity on

⁶ Nishant Vimal, 'Detailed study on the conditional transfer of property act, 1882' (2025) studocu <<https://www.studocu.com/in/document/university-of-rajasthan/land-law/tp7-hhh/42471352>> accessed 17 March 2025

⁷ Ipsita Sinha, 'Analysing the Concept of Conditional Transfer Under the Indian Property Law' (2025) Mondaq <<https://www.mondaq.com/india/landlord-tenant-leases/1422038/analysing-the-concept-of-conditional-transfer-under-the-indian-property-law>> accessed 17 March 2025

⁸ Dhruvi Dharia, 'Conditional Transfer- Condition Precedent and Condition Subsequent' (2025) Law Times Journal' <<https://lawtimesjournal.in/conditional-transfer-condition-precedent-and-condition-subsequent/>> accessed 17 March 2025

restrictions impose. The complex topic like conditional transfer is crucial component of property law.⁹

9. “Conditional Transfer in Property Law” by Aishwarya Agrawal, the research signifies crucial role the conditional precedent, conditional subsequent, and conditional collateral which are classification under conditional transfer. The transfer depends on the happening and non- happening of certain conditions. The legal precedents and doctrine which escalates the concept of conditional transfer. The challenges faced and the well- defined legal framework. The fundamental concept of conditional transfer, which allows the transferer and transferee to fulfil the specific needs and circumstances to the property transfer. The parties can neglect the difficulties and can protect their interest in property.¹⁰

10. “Transfer of property and conditions for valid transfer” by Prakhar Jaiswal, The article includes introduction to the Transfer of Property Act, 1882. Transfer of Property must be intervolved and can be between two or more person. Mentions about the conditional transfer, if so then it must be reasonable, not impossible to be fulfilled and should not violative of public policy. The transfers should be made in a prescribed mode as per provided in the provisions of the property law. By virtue of provisions of The Contract Act, 1872 which aligns with the Transfer of Property Act, 1882 can be taken into consideration while making a transfer. In conclusion, the transfers must be valid and not voidable or void at any point of time the transfer takes place.¹¹

Statement of problem

The concern in analysing the conditional transfer which are stated under the section 25 of Transfer of Property act, 1882.¹² The conditions are unclear, indefinite, and contrary. They impose unnecessary boundaries on property rights. Though the types of conditions given under the provisions are creating boundaries to transferee, which are violative of the fundamental rights of the transferee just like Article 21 of the Indian Constitution¹³, these are the primary

⁹ Vikhyat Singh Kathait, Rakshita Mathur, Restrictions on Alienation, Vol 4, no 6, IJRPR 2445, 2445-2451 (2023)

¹⁰ Aishwarya Agrawal, ‘Conditional Transfer in Property Law (2025) Law Bhoomi <<https://lawbhoomi.com/conditional-transfer-in-property-law/>> accessed 17 March 2025

¹¹ Prakhar Jaiswal, ‘Transfer of Property and Conditions for Valid Transfer’ (2025) Law Times Journal <<https://lawtimesjournal.in/transfer-of-property-and-conditions-for-valid-transfer/>> accessed 17 March 2025

¹² The Transfer of Property Act 1882 s 25

¹³ India Constitution, art. 21

concerns of the conditional transfer under the TPA.

The rights and duties of the transferee which are provided under the Section 55 of The Transfer of Property Act, 1882.¹⁴ The transferee only have some rights to take action against the transferor which also have some flaws. Which are problematic for transferee when they enjoy the benefits of the property (some in rents or ownership). Moreover, it creates difficulties for the Court of law in clarity balance of responsibilities which creates the inconsistent judicial decision. These highlights the urgent need for proper statute and the changes needed which can protect the rights of other the parties involved.

Objective

The key objectives about conditional transfers under The Transfer of Property Act, 1882 are:

1. Regulating Property Transfers- To ensuring the occurrence of property transfers takes place in an organised and structured manner. Without any technical glitches. With enforceable conditions to protect the interests of transferors and transferees.
2. Ensuring Compliance with the Transferor's Intentions- In the Transfer of Property Act, 1882, Conditional Transfers under Section 25¹⁵, provides owner of the property to impose conditions or specific obligations on the transferee. It also ensures that the intentions are respected and not to deceive the other party.
3. Preventing Fraud and Unfair Practices- It ensures that the property is not misused at any moment, for which conditions are imposed. By imposition of such condition property cannot be fraudulently misused for illegal practices.
4. Encouraging Responsible Ownership- Such conditions can be imposed to ensure that the property is used in a lawful manner with responsibility, care and caution. To avoid misuse and fraudulent actions by any of the party to the transfer. Conditions which include reasonable restrictions on selling the property, leasing or modifying the property.
5. Providing Flexibility in Property Transactions- The Transfer of Property Act, 1882, allows different types of conditional transfers, which offers flexibility to property owners.
6. Balancing Individual Rights and Social Welfare- By allowing the imposition of conditions to the transfer the law ensures that property rights are exercised in a way

¹⁴ The Transfer of Property Act 1882 s 55

¹⁵ The Transfer of Property Act 1882 s 25

which ensures that it aligns with the legal provisions and societal norms. It ensures the non-hindrance of another person's rights.

Research Questions

1. What is the legal framework governing conditional transfer in property law and are there any legal ambiguities or reforms needed in the law?
2. What are the rights and obligations of the transferee in conditional transfer?
3. What are the common legal disputes arising and how do courts interpret and implement conditions in property transfer?

Hypothesis

Primary Hypothesis: The Conditional transfer is a complex concept in property law, it builds a relationship between the parties to a contract that defines the rights and responsibilities of the transferee based on judicial interpretation and statutory law.

Secondary Hypothesis: The present legal system governing conditional transfer faces challenges in interpretation and leads to uncertainty. The conditional precedent and conditional transfer can fail to fulfill and comply, which may be abolished but not directly disproved.

Alternative Hypothesis: Judicial pronouncement can considerably influence the legal binding of conditional transfer. The ruling of specific cases is more effective than statutory provisions. The property transfer under conditional transfer depends on legal principles, the transfers which violate the conditions, fundamental rights, or government policies are void.

Research methodology

The present study follows a doctrinal legal research methodology to analyse the statutory framework of conditional transfer in the Transfer of Property Act, which particularly tends to focus on the rights and duties of the transferee. The research is mainly dealing with the interpretation of law and judicial interpretations. The primary source of the paper is the statutory provision of the TPA and the judicial precedents. The secondary sources of the research are case analysis, legal publications, and journal articles. The objective of this research paper is to clarify and state provisions of conditional transfer with the rights and duties of the transferee.

Scope of Research

The Scope of Research on Conditional Transfers under the Transfer of Property Act, 1882 (TPA) is broad, here are some key areas for research:

1. Doctrine and Conceptual Analysis of Conditional Transfer
 - Nature of conditional transfers under Section 25- 34.
 - Distinction between absolute and conditional transfers.
 - Types of conditional transfers.
2. Judicial Interpretation
 - How courts have interpreted legality, uncertainty and enforceability of conditions that can be imposed in conditional transfers.
 - Analysis and interpretation of Indian court on the landmark judgements on conditional transfers.
3. Comparative Research and Understanding
 - Comparison of Indian Laws on conditional transfers with English Laws.
 - International perspective on property transfers with conditions.
4. Validity and Enforceability of Conditions
 - Conditions that are voidable and void which are impossible to be fulfilled, validity of such conditions.
 - Doctrine of Repugnancy- when any condition contradicts the absolute nature of the transfer.
 - Effect of illegal or impossible conditions.
5. Role in Sustainable Development and Modern Property Transactions
 - Impact on real estate laws, trusts and gift deeds.
 - Impact or role in inheritance and succession planning.
6. Challenges
 - The transferee has the certain rights and duties to perform against the transferor, these rights and duties also have some glitch.

Scheme of Chapters

Chapter 1: Introduction

This chapter includes the definition and concept of Conditional Transfer under Transfer of Property Act, the gap involved in research study of conditional transfer, research methodology, hypothesis and scope of this research study.

Chapter 2: Variable Explanation

In this research, the variable refers to an emerging nature of conditional transfer in the Country. the Impact of the topic and theoretical explanation of variables. The conditional transfer is shaped by interpreted of law and judicial interpretations.

Chapter 3: Concept and Legal framework of Conditional Transfer (Question 1)

In this chapter the nature and concept of conditional transfer is explained. Different types of transfers under Property law, impact of conditional transfer on ownership status. Classification of conditional transfer.

Chapter 4: Rights and Duties of Transferee (Question 2)

The rights and duties available to Transferee in conditional transfer are explained in this chapter. The remedies available to transferee in breach of contract cases.

Chapter 5: Judicial Interpretation and Challenges in implementing Conditional Transfer (Question 3)

This chapter includes issues related to conditional transfer, the challenges in implementation, enforceability and obedience of conditional transfer. It involves Judicial interpretation and emerging jurisprudence.

Chapter 2: Variable Explanation

Conditional transfers in property law are an essential element in shaping property transfer by permitting transferors to put conditions that regulate when and how a property transfer takes place. Sections 25 to 34 of the Transfer of Property Act, 1882 (TPA)¹⁶, states the transfers depend on the fulfilment of certain conditions. A condition in a transfer must be legal, certain, and must not violating any public policy; if not, it will become void. Though, legal uncertainty, irregularities in judicial interpretation, and economic consequences have created some

¹⁶ Transfer of Property Act 1882

difficulties in the effective enforcement of conditional transfer laws.

The concept of conditional transfers can be taken into consideration through many legal and economic aspect. From point of law, the nature of the condition, its legality, and its relation with public policy are the primarily determined of a lawful transfer. Economically, conditional transfers reflect property financial flexibility and monetary value, the condition for resale of property may be restricted. Socially, these transfers must be proportionate with the personal independence with regulation of law, ensuring that conditions do not injustice which restricts rights of an individual, such as their right to marry and right to carry on any business or occupation.

Other than their importance, the issue in conditional transfer must be resolved in defining of valid and lawful conditions, irregularities in ruling of court, and conflicts with alienation restrictions. Under the section 25¹⁷ and 126¹⁸ of The Transfer of Property Act should be changed to provide proper statutory definitions of valid and void conditions, which certifies legal disparities and deducts litigation. whereas, Sections 31 to 34 of the TPA, should contain valid time limit for conditional transfers, to prevent unclear legal issues. Additionally, the Doctrine of Acceleration should be legally codified to ensure that when a conditional transfer not works, the property is efficiently transferred to another beneficiary.

In conclusion, although conditional transfers are important for flexible property transfer. By introducing legal understanding of judicial uniformity, and economic justification, the legal system can create a clear and competent mechanism for conditional transfers, furthering both property transferor and transferees.

Chapter 3: Research Question I

What is legal framework governing conditional transfer in property law and are there any legal ambiguity in the law?

Introduction

The transfer of property is an act which takes place between two parties, one is transferer and another is transferee. The property transfer includes transfer of ownership or possession.

¹⁷ Transfer of Property Act 1882, s 25

¹⁸ Transfer of Property Act 1882, s 126

Whereas in Conditional Transfer the transfer of ownership of the property and rights over the property gets transferred to the transferee, where rights and duties of the transferee created. The conditional transfer is divided into different types such as, 1. Condition Precedent, 2. Condition Subsequent, 3. Condition Collateral. In transfer of Property Act, 1882 the section 25 to 34 particularly deals with the Conditional transfer under Transfer of Property Act. The Conditions which may Imposed must not be contrary to law and the conditions should be valid conditions under property law. The conditions imposed should not be fraudulent in nature, it must not violate the public policies, not should not affecting the morals of the people, not act should be done which affect the person or hurt his property. E.g. A person 'P' transfers property to 'Q' and put a condition for transfer that 'Q' should commit a thief in R's house, which is an invalid conditional transfer and violating to the law.

Legal Framework governing Condition Transfer

The Transfer of Property Act, 1882¹⁹, governs the Conditional transfer by providing rules for conditions imposed are valid under the law. Section 25²⁰ of the act states conditional transfer, which says that the conditions imposed by the transferer must be fulfilled by the transferee. the conditions must not me fraudulent, unlawful, or against the public policies. The condition must be valid and lawful to transfer the property. This section does not provide for any unreasonable condition.

The act has three different types of conditions:

- **Conditional Precedent:** In this condition the transfer of property takes place between the parties when the conditions imposed by the transferer is fulfilled before the property gets transferred in Favor of transferee. this conditional precedent is provided under section 26 of the Transfer of Property Act, 1882²¹. The conditions imposed must be legal and should not violating of the law for a valid transfer of the property. Illustration for the same can be, if 'A' puts a condition on 'B' that if he will graduate from degree university in next 5 years than 'A' will transfer his property in favour of 'B'. which is an example of condition precedent.
- **Conditional Subsequent:** In this condition the transfer of property takes places between the parties when the conditions imposed by the transferer on transferee is fulfilled after

¹⁹ Transfer of Property Act 1882

²⁰ Transfer of Property Act 1882, s 25

²¹ Transfer of Property Act 1882, s 26

the property gets transferred. This conditional subsequent is provided under section 29 of the transfer of property, 1882²². The conditions imposed must be legal and should be strictly followed and fulfilled by the transferee. if any fraudulent act is involved in the transfer of property than that transfer will be considered as void by the court.

Illustration for the same can be, if 'X' offers his property to Y and puts a condition that Y must score CGPA of 8.5 in her end semester exams every semester during her degree program gets completed. If Y will fail to fulfil this condition, then the transfer property will get cancelled and the ownership of transferred property will return back to X.

- Condition Collateral: In this condition the transfer of property takes place between the parties when the conditions imposed by the transferer is fulfilled by the transferee, simultaneously with the property to be transferred. The condition imposed must be strictly fulfilled. unlawful and invalid conditions must not be imposed.

Sections 27 of Transfer of Property Act, 1882²³, states the condition for transfer of the property in which if the first transfer fails then second transfer will take in effect. If the condition imposed is valid than this transfer will take place and the transfer where condition imposed is invalid than the requirement to fulfil the condition will not work and subsequently transfer will not take in effect. Illustration for the same can be, if 'P' offer 'Q' a property to transfer in his favour if he will fulfill the condition imposed on him or P will transfer the same property in favour of 'R'. in case Q fails to fulfill the condition imposed than the property will subsequently transfer to 'R'.

“The Doctrine of Acceleration” relates to the sec 27 of the act, the principle of this doctrine escalates the concept of conditional transfer, when the first transfer fails than second transfer will come in effect, and it will be considered as the property never belong to the first person in transfer. In case of transfer in form of gift this doctrine will be exception to that.

Section 28 of the Transfer of Property Act, 1882²⁴, states the transfer which gets effected on non-happening of any specific event. If a condition was imposed that if a specific event will not take place than the property will get transferred in favour of ultimate beneficiary is a “Conditional Limitation”.

²² Transfer of Property Act 1882, s 29

²³ Transfer of Property Act 1882, s 27

²⁴ Transfer of Property Act 1882, s 28

Section 31-34 of the Act²⁵, this section deals with the conditional which imposes limitations, the conditions should not be unlawful or prohibited by law, time for condition to be fulfilled is not specified, time is specified to fulfill the condition imposed for transfer of property.

Legal Ambiguities in the context Conditional Transfer

- Section 25 of the Transfer of Property Act, 1882, in which the section states that the conditions must not be void, illegal, or immoral to society, but it has not clarified the illegal conditions and the public polices which should not be violated, directing to judicial Reasonableness.
- Section 10 of Transfer of Property Act, 1882²⁶, which restricts the absolute restrictions on ownership, while conditional transfers frequently impose ownership restrictions, which creates difference between Section 10 and 25²⁷. Transfer must comply the Restrictions on Alienation.
- Section 126 of Transfer of Property, 1882²⁸, which states Conditional gifts, which approves the revocation if condition imposed does not met. The conditions remain unclear imposed which are imposed by the donor, lead to create ambiguities of law. The supreme court in a judgement of 2018 said that if the conditions imposed not fulfill than the property transferred will revert back to donor in case of gift, the burden of proof for revocation of transfer will be on donor.
- The doctrine of Acceleration²⁹ is about the transfer where, in case of first transfer condition failed to fulfill than it will subsequently transfer to second party. What if the first transfer has never taken place. This doctrine is not defined under Transfer of Property Act, 1882, which lead to inconsistency in legal proceeding.

²⁵ Transfer of Property Act 1882, s 31 Transfer of Property Act 1882, s 32

Transfer of Property Act 1882, s 33

Transfer of Property Act 1882, s 34

²⁶ Transfer of Property Act 1882, s 10

²⁷ Transfer of Property Act 1882, s 25

²⁸ Transfer of Property Act 1882, s 126

²⁹ Legal Service India, 'The Doctrine of Acceleration' < <https://www.legalserviceindia.com/legal/article-5191the-doctrine-of-acceleration.html> > accessed 21 March 2025

Chapter 4: Research Question II

What are the rights and obligations of the transferee in conditional transfer?

Introduction

In India, the transfer of property governs under the Transfer of Property Act, 1882,³⁰ the act provides certain rights and obligations to the transferor and the transferee. The Transfer of Property Act, 1882, deals with a category of transfer which is 'Conditional Transfer', such transfer is based on certain conditions that are imposed by the transferor on the transferee. Herein, the transferor and the transferee enjoy the rights and the obligations that are depending upon the nature of the conditions which are attached to the transfer of the particular property. A "conditional transfer" is a kind of transfer of the property which takes effects only on the fulfilment of certain condition that is attached to the transfer. It is defined under section 25 of TPA, 1882³¹. The condition is specified and there must not be any ambiguity to qualify it as a conditional transfer. Herein, the conditions that are imposed must be valid conditions and the validity of such conditions are, that, the conditions that are imposed must not be impossible to perform, the conditions must not be unlawful. It must be in adherence to the public policy. The conditions must not be vague in nature and must not have an uncertain nature. Wherein, the condition that is imposed deems to be invalid the transfer fails and the whole transfer gets void. There are variety of conditional transfer under TPA, 1882. Such as, under Section 21³², deals with "Contingent Interest", defines as, when any interest is created in a property to take its effect on the happening of a specified uncertain event. Section 26 of the act³³, "Conditional Precedents", where there is a transfer of a property, in which the interest in the property does not vest in the transferee until the condition is fulfilled. Section 29 of TPA, 1882³⁴, deals with "Conditional Subsequent", when a transfer of certain property is made subject to a conditional subsequent, and if the condition is fulfilled, the property reverts back to the transferor and the interest of the transferee stands defeated. In this the transferee gets the rights immediately but those can also be taken away if the condition is fulfilled on the later stage. Section 19 of the act³⁵, deals with the concept of "Vested Interest", when a property is transferred in the favour of the transferee with or without a condition which is imposed that does not postpone the ownership or is not an uncertain condition, the interest created in the favour of such person is

³⁰ Transfer of Property Act 1882

³¹ Transfer of Property Act 1882, s 25

³² Transfer of Property Act 1882, s 21

³³ Transfer of Property Act 1882, s 26

³⁴ Transfer of Property Act 1882, s 29

³⁵ Transfer of Property Act 1882, s 19

called as vested interest. Herein, the ownership begins immediately.

Rights of Transferee in Conditional Transfer

- The right to receive the ownership or enjoyment of the property upon the fulfilment of the conditions, the transferee becomes the lawful owner of the property only if the conditions that are imposed by the transferor is fulfilled by the transferee in case of a conditional precedent or continues to enjoy the rights if the conditions remain unbroken in case where the transfer is a condition subsequent.
- The right to possession of the property, in many conditional transfers possession of the property may be given before the fulfilment of the condition that are imposed by the transferor. The transferee may use the property as per the terms of the transfer.
- The right to enforce the transfer on fulfilment of the conditions, if the conditions are fulfilled from the transferee's end, then the transferee has the right to enforce the transfer as a legal and valid one.
- The right to procure benefits if the conditions are met, the conditions that are imposed by the transferor on the transferee are finally and completely fulfilment and satisfy, any rents, profits, or other benefits that is attached to the property may belong to the transferee.
- The right to enforcement of transfer, once the conditions are fulfilled by the transferee, he can legally enforce the transfer, which may involve, claiming of the possession of the property from the transferor on his behalf, seeking specific performance in the court of law, or defending their title in the case of any civil dispute that may be arise at any time regarding which the subject matter can be the transaction of the property that has taken place between the transferor and the transferee.

Obligations of Transferee in Conditional Transfer

- Obligations which are to be satisfied and fulfilled to perform the conditions attached to the contract to claim the right over the property. The non fulfilment of conditions will result in violation of contract.
- Obligation to not violate the conditions which are given under the contract by the transferor in case of the transfer where happening and non- happening of the event is specified. This violation can suspend the rights of the transferee.

- Obligation to fulfil the conditions given under the condition subsequent, the violation of the same will result in no claim of ownership and revert back of the property to transferor or any third party if involved. Its possession will be considering as illegal possession of the property.
- Obligation is imposed to ensure that the duties must be maintain if the property is in possession. The condition mentioned in the contract before the transaction taken place must be fulfilled even after the transfer of the property, nonetheless it will result into violation of conditions.
- Obligation to re- transfer, if in any case the transferor puts the condition over property to be revert back in case of marriage taken place. That re- transfer must be performed to avoid future consequences.

The rights and obligations of transferee is subject to the conditions given under the of contract for transfer. To enjoy the rights over the property of the transferee also need to fulfil some duties. Proper knowledge of these rights and duties is important to transfer the property under conditional transfer which are fairly and legally executed under the Transfer of Property Act, 1882.³⁶ The laws which protects the entitlement of the transferee from the unlawful and improper conditions, which guarantee the equality and stability between the parties in the transaction of property.

Chapter 5: Research Question III

What are the common legal disputes arising and how do court interpret and implement conditions in property transfer?

Introduction

A conditional transfer refers to a transfer of property which refers to a transfer where some conditions are imposed by the transferor on the transferee at the time execution of a transfer. In conditional transfer the rights or interests takes effect only when it met those conditions which are imposed. Such transfers are common in Property Law as they provide flexibility and protection to the parties in the transfer of property, it helps the transferor to draft the document of transfer as per his/ her will and put the required points which they wish to impose on the transferee. Not putting the conditions clearly leads to dispute between the party but through

³⁶ Transfer of Property 1882

conditional transfers a transferor can expressly mention the conditions that he want to impose on the transferee which will make the transfer deed more credible and less ambiguous.

The common reasons that arise the legal dispute between the parties:

1. Ambiguity in the Conditions that are imposed

One of the most common legal disputes which arise between the parties concerning to the transfer of property cases is from vague and ambiguous conditions attached to a transfer. When the language in which the conditions are defined is unclear and it can be interpreted differently other than that of what has been stated expressly in the draft and what the transferor wants to convey, it can lead to ambiguity for either of the party at any time of the execution of the transfer. For example, a property owner named “Mickey” states in a will that the estate will pass on to his son “upon the completion of his higher education” but do not expressly mention about the nature of the degree whether it is a diploma, a bachelorette degree, post graduate degree or a specific level of study that are there. This ambiguity may lead to legal dispute between the parties when the subject matter is unclear.

“Case: **Keshavlal Lallubhai Patel v. Lalbhai Trikumlal Mills Ltd., AIR 1958 SC 512**”³⁷

In this case, a transfer deed had an ambiguous clause regarding the price of goods, which arose a dispute between the parties. The Hon’ble Supreme Court has given a verdict stating, that the unclear conditions in a transfer deed must be interpreted in favour of the party who did not make the deed/ draft the transfer document.

2. Non- fulfilment of the Conditions

The other legal dispute in transfer of property cases is a non- fulfilment of conditions. When a transferee fails to fulfil the conditions that are attached to the transfer, it arises a dispute between the parties whether they should still receive the property and the transferor should execute a transfer or not. For example, a testator (a person who makes a will), named “Mickey” leaves a property on his son “on the condition that he resides with Mickey and his wife for the lifetime and not settle abroad for any reason”. If the son later leaves his parents and settles abroad, does he lose the property? In such circumstance the court will assess whether the condition was put on the person is

³⁷ Keshavlal Lallubhai Patel v Lalbhai Trikumlal Mills Ltd. [1958] SCR 213, [1958] SC 512

reasonable and enforceable or not. Some conditions which violate the public policy (such as in this example, restricting a person to move abroad or wherever he wants to live) may be deemed as invalid and the transfer may proceed regardless.

3. Impossibility to fulfil the Conditions

In case where it is impossible for a person to fulfil the conditions that are imposed, it can cause legal disparity and uncertainty at the time of execution of the transfer. It could be due to change in law or the condition that were never realistically achievable. For example, a property transfer is made on the condition that the recipient “discovers a cure for cancer within 15 years”. If this proves impossible, what will happen to the property? If the condition is deemed impossible then the court may, invalidate the condition and allow the transfer or may declare the entire suit void. If at any point an impossibility arises due to external factors in such condition court may apply the doctrine of frustration (“frustration here interprets as an unsuccessful transaction where it is impossible for the party to make a transfer).

“Case: **Sushila Devi v. Hari Singh, AIR 1971 SC 1756**”³⁸

In this case, a transfer deed was declared impossible due to conflict between the parties, due to which the transfer conditions were not fulfilled. The Hon’ble Supreme Court had given a judgement that in such situations where condition becomes impossible to fulfil due to some circumstances, such transfer deed stands void and unenforceable.

4. Violation of Public Policy

It may cause dispute between the parties as some conditions in a conditional transfer may be legally problematic because they contradict to the public policy. In such cases the transfer may stand void. Such as those that, restricts marriage or family relations, encourages illegal activities or discriminate against a particular group of people in the society. For example, “Mickey” makes a will that his son will inherit the property only if he does not gets married out of their caste.” Here, the court can strike down such a condition that violates the public policy. And allowing the transfer to proceed without the imposition of a condition on such party.

³⁸ Sushila Devi v Hari Singh [1972] 2 SCC 288

5. Fraud or Misrepresentation in Meeting Conditions of the transfer

In some case the dispute between parties arose when either of the party misrepresents the facts to make seem like they have fulfilled all the conditions from their side when they did not actually do so. For example, a person named “Minnie” will inherit the property of her father “Mickey” only if she remains drug- free for 3 years. She submits a false drug test reports to her father where she misrepresents by showing that she is eligible. Here, court may invalidate and make a transfer void if the fraud gets proved.

The criminal charges can also be imposed for committing a fraud.

Courts interpretation of conditional transfer in some of the cases and implementation of conditions in property transfer:

- **“Thakur Raghunath Jee Maharaj v. Ramesh Chandra, (2001)”³⁹** This case is related to the breach of “Conditional Trust or Gift.” Here a temple trust was given an estate by a person under a condition that the land will only be used for the fulfilment of the primary purpose (i.e. for religious means) and not anything else. But the property was misused and in the cause of action the property was challenged in the court of law by the legal heirs of the original donors. The Hon’ble Supreme Court gave a verdict in the favour of the donor as breach of conditions makes the transfer void. If the conditions are breached at any time, then the Hon’ble court can revoke such conditional trusts and gifts.
- **“Satyabrata Ghose v. Mugneeram Bangur & Co. (1954)”⁴⁰**
This case is a landmark judgement by the Hon’ble Supreme Court. In this case it interpreted the doctrine of frustration (when there is an impossibility of fulfilment if the conditions that are imposed) for more clarity. It was held that if these are such conditions that are not possible to be fulfilled then such deed of transfer can be deemed void. This reasoning applies when a conditional transfer that relies on a happening of certain incident, which afterwards gets to a knowledge that it cannot be fulfilled, then it stands revoked.

All the mentioned cases strike down a primary value of the sections relating to the conditional transfers, which are “Section 25- Section 34”⁴¹, of Transfer of Property Act, 1882.

³⁹ Thakur Raghunath Jee Maharaj v Ramesh Chandra [2001] 5 SCC 18

⁴⁰ Satyabrata Ghose v Mugneeram Bangur & Co. [1954] 1 SCR 712

⁴¹ Transfer of Property Act 1882, s 31 Transfer of Property Act 1882, s 32

It provides a clear picture in the cases of conditional transfers. And helps in the interpretation of the statute. Provides precedents which makes it easy for the court as well as for the parties executing the transfer deed. It helps in lessen the percentage of disputes relating to the cases of transfer of property. The common legal disputes which arise during the execution of the transfer deed are mentioned above which also helps a transferor as well as the transferee to take reasonable care and take prior measures while executing any transfer deed. It helps in the proper and easy execution of the transfer of property between the parties.

Conclusion and Suggestion

Conditional transfer is a significant element of property law, which permits transferor to put specific condition on transferee to transfer the property. The Transfer of Property Act, 1882, which states the concept of conditional transfer from section 25 to 34, which provides framework to those legal provisions, those statutes govern the rights and duties of transferee while transfer takes place. The act limits the conditions and restrain the illegal and invalid conditions, those conditions must be valid and certain. Judiciary plays an important role in interpretation conditional transfer, which rely on the judgements given by the competent courts. There are some ambiguities such as time bound, invalid conditions are not specified, uncertain rules for revocation of conditional gift, impossibility in fulfilling conditions. To establish equality, justice, certainty in statutes, regularity, the reform of statutory judicial principles, clarify legal guidelines, and establish clarity in law. Enhancement in validity of conditional transfer and reduction in legal issues will strengthen the legal framework governing property law.

The conditions imposed by the parties must be unambiguous, the valid and invalid conditions should be clearly codified. It should include the legal guidelines which states the permissibility and impermissibility in conditional transfer under property law. In fact, the illustrative examples should be included, which can give the clarity of that provision. The ambiguities between section 10⁴² and 25⁴³ which is restriction on alienation must be resolved. A reasonable time should be specified for transfer of uncertain happening of events. The doctrine of acceleration must be codified in law, which establish uniformity in application of law by court and prevent ambiguity in cases of inadequate conditional transfer. The conditional transfer is

Transfer of Property Act 1882, s 33

Transfer of Property Act 1882, s 34

⁴² Transfer of Property Act 1882, s 10

⁴³ Transfer of Property Act 1882, s 25

an effective legal mechanism in property law, ensure parties to meet their conditions imposed to structure the transfer of property. Though, indefinite legal provisions and inconsistent judicial pronouncements which may create confusion and delay in legal disputes.

The Indian legal system has more transparent statutory provisions for conditional transfers, which gives equal protection of property rights to both transferor and transferee. The conditional transfer can be fair and which protects the interest of the parties involved.

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