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ESTOPPEL

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Meaning and Concept

The word estoppel is derived from the French term 'estoup' which means 'shut the mouth'. It is derived from the maxim ALLGANS CONTRARIA NON EST AUDIENDUS which means a man alleging contradictory facts ought not to be heard. It is an equitable doctrine which has its roots on the principles of equity and good conscience. The doctrine of estoppel prevents a person from taking up a position inconsistent with what he had asserted earlier.

Origin

The foundation of the concept of doctrine of estoppel was first laid down in English law in the case **Hughes v Metropolitan railway company**, the plaintiff leased his land to the defendant company to conduct the repair work within 6 months and on failure to carry out such works within the time period the lease would stand forfeited. Later the same parties negotiated another agreement whereby the railway company was to purchase the freehold of land. The defendants did not carry out the repair works under the delusion that transfer of property would take place. Later after the period of 6 months plaintiff issues notice to forfeiture. The court upheld that when negotiation initiated there was an implied promise to forfeit the lease with respect to the limited time period. The railway company acted upon the promise and hence doctrine of estoppel was applied and they were given more time for the repair work.

This doctrine acquired much attention in the case of **Central London Property Trust Ltd v High Trees Housing Ltd**. The defendant rented his flat to the plaintiff for a certain sum of money and the amount was reduced to half during the period of World War II as the occupancy rate was reducing. The plaintiff continued to pay half of the amount even after the world war on the contention that no time period was stated by the defendant. The defendant claimed the payment of full amount. The court by applying the doctrine of estoppel held that it is implied that the reduced rate is limited to the period of continuance of war and defendants were held liable to pay the full amount.

Indian Perspective

In India estoppel have been treated as rule of evidence and they have been given a place in the evidence Act. " Estoppel is only a rule of evidence, you cannot found an action upon estoppel" (per Bowen L.J, in Law v Bouverie, 1891,3 Ch 82, 105 AC;

As a rule of substantive law, it is entirely judge made, both in England and in India. The principle is evolved as a result of compulsions felt by the Judges when called upon to adjudicate cases based on equity and good conscience in the absence of any statutory provision dealing with the subject matter of the case. The result is that the rule is invoked and applied even in cases where there is no pre-existing legal relationship between the parties to a cause either in the form of a contract or otherwise. The principles are applied even to a mere promise to perform an act in future even if the promise is not supported with consideration. All that is required to be established is that the promise made was intended to be acted upon and on that belief someone did act and altered his position.

India the principle of estoppel was first recognised in the case of **Sourujmull & Ors v the Ganges Manufacturing Co.** The SC held that this doctrine is not only limited to the law of evidence but also a person may be prevented from doing some act or relying upon certain arguments or contention which in the light of equity and good conscience will be detrimental to his opponent.

Though the concept of estoppel has wider application under Indian law it is mainly dealt under the Indian Evidence Act 1872. Section 115 to 117 of The Indian Evidence Act deals with the concept of estoppel.

According to section 115 of the Act, When one person has, by his **declaration, act or omission, intentionally caused or permitted** another to believe a thing to be true and to act upon such belief, neither he or his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

This principle was laid down in the famous case **Pickard v. Sears**, In this case A who was the owner of certain machinery allowed it to be in the possession of B his friend. B owed some money to C. C obtained a decree against B and the execution the machinery was being attached and A does not raised any objection at that time. Subsequently when C sold the machinery to another A

brought a suit setting up his title. The court held that A is estopped from denying the fact that B is the owner of the machinery.

Essential Elements

- There must be a declaration, act or omission by one person intentionally causing or permitting another to believe certain things to be true.
- The other person must have believed and acted upon such belief and suffered a loss.

If the above conditions are satisfied the doctrine of estoppel would apply and person made representation cannot deny the truth of that thing.

The doctrine would not apply to a person who relied upon a second hand information unless it is intended to be made towards him or it was a general representation where anybody could act upon it.

The party claiming the plea of estoppel must clearly state in its pleadings. Otherwise he cannot claim it in a later stage.

If the party to whom the representation has somehow recognises the truth and knows that it was a false representation then he claim the plea of estoppel.

Section 116

According to this section a tenant of an immovable property during the continuance of tenancy cannot deny the title of his landlord at the time of beginning of tenancy. Similarly under this section a licensee of an immovable property shall not be permitted to deny the that the person in possession from whom got the license had a title at the time of giving the license.

When a property has been mortgaged by one person and the mortgagee has taken possession then the parties cannot deny the title of eachother.

Section 117

The person accepting the bill of exchange cannot deny that the person drawing the bill has the authority to draw it or endorse it but can deny that bill was actually drawn by a person whom it

appeared to have been drawn.

Kinds of Estoppel

- **Estoppel by record**

It is public record or judgement which are believed to be true. And a person who acts in pursuance of such record or judgement cannot be estopped.

- **Estoppel by deed**

When a person enters into an agreement and his statement is furnished. Then he cannot deny the truth of his statement.

- **Estoppel by conduct (estoppel by pais)**

When a person by words or conduct or deed induces another person to believe the existence of certain things and make him to act. Then he is estopped from denying the existence of such facts.

- **Estoppel by Election**

Where a person has option to choose and has chosen certain thing then he cannot go back from it. If a person A offers his property to B. B out of generosity says that he cannot take it for free. Then A says to B that he has the freedom to take it as a gift or make payment as per his willingness. B then makes payment and takes the property in his possession. Later B becomes bankrupt and requires A to give back the money as he now wishes to take the property as a gift. As per this principle now B is estopped from choosing the other option because he had already elected and exercised that option.

- **Equitable Estoppel**

Where a person tries to bring an action which would defeat his previously given statement, claim or action he would be estopped from doing so.

- **Estoppel by negligence**

Where a person negligently makes another person to believe certain thing to be true and that another had believed and acted upon it then the former is estopped from denying it.

Essentials

- The person against whom the plea of estoppel by negligence is claimed must have a duty to take care the party who invokes the estoppel or to general public.
- Negligence must proximately connect with result to which it has led.

- **Estoppel and waiver**

Waiver is the voluntary relinquishment of rights by a person and is a contractual nature whereas estoppel is a rule of evidence which does not create a cause of action. But sometimes waiver also amounts to estoppel. When a person does not exercise a right which he has then he estopped from exercising is subsequently for example in a case Dr. G. Sarana v University of Lucknow the plaintiff had to go through an interview by the selection board and at that time he did not questioned the composition of the selection board hoping that he would be selected but later when he was rejected he questioned the composition of the selection board and court held that he is estopped from questioning it subsequently.

Applicability of estoppel against statute and laws

This doctrine is not applicable to statutes. That is if a person makes a statement as to the existence of certain provisions in a statute he is not estopped from denying what he was previously stated. This doctrine cannot be invoked to defeat the provisions of law. If a minor enter into a contract representing himself as major the contract is void ab initio. Minor is not estopped from taking the defence of void ab initio contract.

No estoppel can arise against the fundamental rights enshrined in the constitution. A concession made by a person either by mistake of law that he would not exercise his fundamental right would not estopp him as enforcing the estoppel would defeat the purpose of the constitution.

Applicability of estoppel against the Government

where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government has been held bound by the promise and the promise is held to be enforceable against the Government at the instance of the promisee notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article

229 of the Constitution.

In *Collector of Bombay v. Municipal Corporation of the City of Bombay* the Municipal Corporation removed old markets from a certain site and vacated it in the year 1865 upon the assurance of the Government who approved and authorized the grant of another site to the Municipality. The Government also assured the Municipality that no rent should be charged from it. The Municipality on the assurance of the Government gave up the required site and erected new markets on the new site after spending a sum of Rs. 17 lakhs. The Government thereafter in the year 1940 assessed the new site to land revenues. The Municipality challenged the actions of the Government and the Supreme Court held that the Government, under the circumstances of the case, has lost its right to assess the land in question by reason of the equity arising in favour of the Municipality Corporation because Corporation has taken possession of the land in terms of assurance given by the Government. This is the first instance of doctrine of promissory estoppel deployed against the Government by the Supreme Court where the Court did not allow the Government to go back on its representation and charge the land revenues from the Municipality.

Estoppel and tax laws

The doctrine is not applicable where a non taxable income has been made taxable. *I.T commissioner v Fiem Muar*. So also stating that tax would not be collected will not binding on state to collect them. *Mathura prasad v. State of Punjab*

Estoppel under Indian contract Act

The Indian Contract Act recognises the principle of **Promissory Estoppel**. It is common law doctrine recognised by the courts of equity in England.

The concept of promissory estoppel is defined by two bench judges "Where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect, a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective

whether there is any pre-existing relationship between the parties or not.”

This principle was evolved for the first time in the case *M.P. Sugar Mills v. State of U.P* where the government through the Chief secretary announced categorical assurance for total exemption from sales tax. Based on this defendant setup a hydro generation plant by raising huge loan. Later Government change its policy and announced the exemption of sales tax @ 3%, 2.1/2% and 2% for the 1st, 2nd and 3rd years respectively. The tax exemption was completely withdrawn later, when the defendants factory started its production. The Supreme Court held that the Government is bound by its promise and directed to give exemption to the defendants company.

Bowen L.J in **Birmingham and District Land Co. V. L. & N.W.Rly Co.** explained the principle in following words:

If persons who have contractual rights against others induce by their conduct those against whom they have such rights to believe that such rights will either not be enforced or will be kept in suspense or abeyance for some particular time, those persons will not be allowed, by a Court of Equity, to enforce the rights until such time has elapsed...

The doctrine of promissory estoppel is not really based on the principle of estoppel but it is a doctrine evolved by equity in order to prevent injustice. In order to invoke the doctrine sound and positive foundation must be laid in the petition mere bald expression without any supporting material stating the party has altered the position would not be sufficient to invoke this doctrine. *State of Arunachal Pradesh v. Nezone Law house* (2008)5 SCC 609(617): AIR 2008 SC 2045)

Estoppel Under Transfer of Property Act

The doctrine of feeding the grant by estoppel is embodied under section 43 of transfer of property Act. Section 43:

Where a person erroneously represents that he is authorised to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

For example A a Hindu who has separated from his father B sells to C three fields, X, Y and Z, representing that A is authorised to transfer the same. Of these fields Z does not belong to A, it

having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

The section 43 feeds the estoppel. It is based on the principle of equity and estoppel. In order to apply section 43 there must be obviously fraudulent and erroneous representation by the transferor that he was authorised to transfer the immovable property, but there is nothing in the section that requires the transferor should have been aware of the erroneousness of the representation made by him. The transferor might have honestly believed that he has the authority to transfer that might not make the section inapplicable.

The section 43 protects the purchaser for value without notice. A transferee is entitled to the benefit of section 43 if he believed in the representation made by the vendor and was not aware of the true interest of the vendor with reference to the property. It was explained in the case *Banwari Lal V. Sukhadarahan Dayal* AIR 1973 SC 814, Court find that plaintiff No 1 transferee is entitled to benefit of the said provision in as much as she was never aware that her vendor defendant No. 2 had no interest in the property, the property having vested in the State of Orissa and she paid good consideration on the representation of the vendor- defendant No.2 and obtained possession from him Court held that section 43 protects the interest of plaintiffs.

This doctrine is partly based on the common law doctrine of estoppel by deed and partly on the equitable doctrine that a man who has promised more than he can perform must make good his contract when he acquires the power of performance.

In *Tilakdhari Lal V. Khedan Lal*, Lord Buckmaster stated the rule as

"If a man who has no title whatever to property grants it by a conveyance which in form would carry the legal estate, and he subsequently acquires an interest sufficient to satisfy the grant, the estate instantly passes"

In the present case Prem Lal had erroneously represented to the defendant that he was authorised to transfer the property. He had executed sale deed in respect of it for consideration. At the option of transferees, therefore, the transfer could operate on any interest which Prem Lal acquired in the property while contract of transfer was subsisting. Prem Lal become entitled to one- third shares in the property as a result of separation from his brothers. Therefore transferees are entitled

to that shares and they are not considered as trespassers.

The subsequent acquisition of title by the transferor does not automatically invest the transferee with the title so acquired as in English law, and for such acquisition transferee should exercise his option under Indian law. Any action by the transferee indicative of such option will be sufficient. It may not be expressed it may be implied also the plaintiff may claim his right over the property and that he was proceeding against not only the transferor but also the so called subsequent transferees.

Conclusion

The courts of equity in England recognised the principle of estoppel. These are neither the realm of law of contract nor the realm of law of evidence. The principle as embodied in the section 115 of Evidence Act pertains to representation made as to the existing facts and not deals with future promises. But this principle enunciated by the Courts of Equity in England pertains to essentially promises which are de futuro. Though the estoppel is a contribution of courts of equity but it has wider application in Indian Law also.

