

CONCEPT OF IMMOVABLE PROPERTY

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ABSTRACT

The Transfer of Property Act, 1882 governs the transfer of property in India and categorizes property into movable and immovable property. Immovable property, as defined under TP Act, excludes standing timber, growing crops or grass. It just excludes only three properties and does not mention what are immovable properties. In order to get comprehensive definition we find a working definition of immovable property in the General Clauses Act 1897, which includes land, benefits arising from land, and objects permanently attached to the earth, excluding standing timber, growing crops and grass. The concept of immovable property is crucial in property law, as its transfer involves specific legal formalities such as registration under the Registration Act, 1908. The Act outlines various modes of transferring immovable property, including sale, mortgage, lease, exchange, and gift, each subject to specific legal requirements. Judicial interpretations have further clarified the scope of immovable property. This article examines the definition, legal provisions and judicial interpretations related to immovable property under the Transfer of Property Act, 1882, highlighting its significance.

KEYWORDS: *Immovable Property, Transfer of Property*

INTRODUCTION

Property is broadly divided into two kinds, namely movable and immovable property. Movable property refers to assets that can be easily transferred from one place to another, while immovable property cannot be moved without causing damage to such property.

The Transfer of Property Act deals with the general principles of transfer of both movable and immovable property and some specific transfer of immovable property. So major provisions of TP Act relates to the transfer of immovable property. For the purpose of application of TP Act we must know to classify the property and know the meaning of immovable property.

DEFINITION

As Transfer of Property Act covers various types of transfer with respect to both movable and immovable property, it should have defined immovable property exhaustively. But it gives incomplete and unsatisfactory definition. Section 3 para 2 of TP Act¹ defines immovable property as:

Immovable property does not include

¹ The Transfer of Property Act, 1882 (Act No. 4 of 1882), s. 3 para 2

- Standing timber,
- Growing crops or
- Grass

Standing timber, growing crops, and grass are considered severable from the land and are therefore not included in the term immovable property. However, if they along with the land on which they stand, are sold together, they pass to the purchaser. Examples of standing timber include trees such as Neem, Pipal, Banyan and Teak. However fruit-bearing trees like Mahua, Mango, Jack fruit, Jamun, etc. are not considered standing timber. They only become standing timber if a contract for their severance has been agreed upon. After agreement, the land where they stand, is deemed to be their warehouse.

Growing crops includes Creepers and vegetables like Sugarcane, Wheat, Barley, etc. They do not own independent existence beyond their produce.

Grass can only be used as fodder. No other use is possible other than fodder. Therefore, it is movable property².

Immovable property which is defined under section 3 of TP Act excludes only three properties, it only states what immovable property does not include, i.e. standing timber, growing crops or grass. So it removes these three items from the purview of immovable property. Instead of giving comprehensive definition it has negatively defined the term immovable property and it has not mentioned what are immovable properties.

So in order to understand comprehensively the term immovable property we must go to section 3(26) of the General Clauses Act, 1897³, where it is defined that:

Immovable Property Shall Include

- Land
- Benefits to arise out of land and
- Things attached to the earth

From these two Acts we can say that, Transfer of Property Act excludes certain things from the purview of immovable property, while the General Clauses Act includes certain things under the purview of immovable property.

Land

Land includes the following elements:

- A determinate portion of the earth's surface;
- Possibly the column of space above the surface;
- The ground beneath the surface;

²S.N. Shukla, Transfer of Property Act 15 (Allahabad Law Agency, Haryana, 28th edn., 2013)

³The General Clauses Act, 1897 (Act No. 10 of 1897), s.3(26)

- All objects which are on or under the surface in its natural state for example minerals. Land includes lakes, ponds and rivers within its boundary. They are called land covered by water.
- All objects placed by human agency on or under the surface, with the intention of permanent annexation. These become part of the land, and lose their identity as separate movable for example, buildings, walls and fences⁴.

Benefits to Arise Out of Land

While lands are immovable properties, certainly benefits arising out of the land is also immovable property. Any benefits arising out of immovable property and every interest in such property is also regarded as immovable property, which includes⁵:

- Right to receive future rent
- Right to way
- Right to lights
- Mortgage debt and so on.

Things Attached to the Earth

Section 3 paragraph 5 of Transfer of property Act defines the term, things attached to the earth⁶ as follows:

- things rooted in the earth
- things embedded to the earth
- things attached to what is so embedded
- chattel attached to earth or building

Things rooted in the earth include all the trees and shrubs except standing timber, growing crops or grass. Though trees are attached to the earth, if they are intended to be cut and sold separately, they are considered as immovable property.

Things embedded in the earth includes all the buildings, walls and other constructions, in which foundation is laid well below the normal surface of the earth. There are certain things embedded in the earth, but they are not considered as immovable property. Example, an anchor embedded in the land to hold a ship. When the article in question is no further attached to the land by its own weight, it is generally to be considered as movable property. But even in such a case, if the intention is to make the articles as part of the land they do become part of the land.

Things attached to what is so embedded to earth includes, all doors, windows in a house attached for permanent beneficial enjoyment of the house which includes electric ceiling fan. Whether ceiling fan is immovable property or not it depends upon the intention of fixation. If it is for permanent beneficial enjoyment of the property, then it is immovable property or if it is meant for temporary enjoyment then it is not immovable property.

⁴S.N. Shukla, Transfer of Property Act 12 (Allahabad Law Agency, Haryana, 28th edn., 2013)

⁵<https://www.lawctopus.com/>

⁶ The Transfer of Property Act, 1882 (Act No. 4 of 1882), s. 3 para 5

If a chattel i.e. movable property is attached to earth or building, it is immovable property and it is mixed question of fact and law. The degree, manner, extent and strength of attachment to the earth or the building are the main features to be regarded.

According to section 2(6) of Indian Registration Act, 1908 immovable property⁷ includes land, buildings, hereditary allowances, rights of ways, lights, ferries, fisheries or any other benefits arise out of land and things attached to the earth but not standing timber, growing crops or grass.

The definition which is given under Indian Registration Act is somewhat better when compared to Transfer of Property Act and General Clauses Act, because it covers many items. But it also excludes standing timber, growing crops or grass from the purview of immovable property. If any agreement is made to transfer the above three things it is treated as movable property but sometimes it depends upon the nature of contract. If transaction is confined only to the present, the property is said to be movable and if extends to future also, the property is regarded as immovable property.

Trees which bear fruits are considered as immovable properties. But certain trees like mangoes, jackfruit trees are also used as standing timber due to custom in some places. It just depends on the nature of the tree. It is based on the idea for what purpose it is going to be used. When a tree is sold, it is considered as immovable property if the person who acquires it intends to use it to obtain its fruits, whereas if the buyer intends to cut it and use it for building, repair or carpentry work then it is standing timber.

LANDMARK CASE LAWS:

Marshall Vs. Green⁸

In this case the defendant purchased some growing trees, by words or mouth, on the terms that he would remove them as soon as possible. Later, when the defendant cut down some trees, the plaintiff countermanded the sale and prohibited the defendant from cutting the remaining. However, the defendant still cut them and carried them away. It was not denied by either party that there was a verbal contract. However, the question here was whether the contract was required to be in writing. The issue was whether there has been a transfer of interest in land in which registration is compulsory or whether it was a mere sale of timber.

The state contended that the subject matter was goods, so it had legislative competency. However, the respondent contention was that the law tries to create a new class of goods not known to the law. This was beyond the legislative competency of the state and hence unconstitutional. The court held that the right to fell, cut, obtain, remove bamboos from forest areas for the purpose of converting it into paper was profit a prendre taking into consideration the duration of the contracts and the ancillary rights granted like right to collect timber, fuel and other forest produce.

The principle laid down in this case is do the parties intend that it should be continue to have the benefit of further nourishment to be afforded by the land? If the answer is yes, it is to be treated as immovable property. On the other hand, if the parties intend to withdraw the tree from the land, the land is practically serving only as a warehouse for the things sold is to be treated as movable property. When what is sold is only the right to cut and enjoy the trees as timber, no interest in immovable property is transferred. If such right extends over a period of years, it is an interest in immovable property.

⁷The Indian Registration Act, 1908 (Act No.16 of 1908), s.2(6)

⁸Marshall v. Green, (1875-1876) L.R. 1 CPD 35 (A)

Ananda Behara and Another V. State of Orissa And Another⁹

The petitioner had obtained a license to catch and take possession of all fish in specific sections of Chilka Lake from its owner (Raja of Parikud). With the passage of the Orissa Estates Abolition Act of 1951, ownership of the estate was transferred to the State of Orissa. The State of Orissa refused to recognize the petitioner's license. The petitioner argued that their fundamental rights under Article 19(1)(f) and Article 31(1) were being violated. They also claimed that catching and taking possession of fish was a transaction involving the sale of future goods (i.e., the fish) and that, therefore, the Act, which applies only to immovable property, should not apply to them.

The court held that the lake is immovable property and, therefore, the petitioner's right to enter the estate (which they did not own) and take fish from the lake is considered a "profit a prendre." In India, this is regarded as a benefit derived from the land and is thus classified as immovable property.

The Supreme Court ruled that the right to catch and take possession of fish from specific sections of the lake over a specified future period is a license to enter the land, coupled with a grant to catch and take possession of the fish. This grant is classified as a "profit a prendre".

The petitioner claimed that the transaction were sales of future goods, specifically the fish in these sections of the lake. Since fish are movable property, they argued that the Orissa Act of 1952 does not apply, as it is limited to immovable property. However, if this is the basis of their claim, then their petition under Article 32 is flawed because, until any fish is actually caught, the petitioners would not acquire any property rights in them.

If the petitioners rights amount to nothing more than the right to obtain future goods under the Sales of Goods Act, then that is merely a personal right arising from a contract to which the State of Orissa is not a party. In any case, a refusal to perform the contract that gives rise to that right may constitute a breach of contract but cannot be considered a violation of any fundamental right.

Thus, as the sale of grant to petitioner was oral. However, a right related to tangible immovable property (in this case, the fish), if it is more than Rs.100 needs to be registered under section 54 of TP Act. As there was no registration in this case therefore no title or interest was passed to the petitioner.

Doctrine of Fixtures

Sometimes for legal requirements movable property acquires the character of an immovable property. These are called fixtures. English law of fixtures is based on two Latin maxims:

- *Quicquid plantatur solo, solo cedit* – whatever is planted in the land becomes part of the land
- *Quicquid aedificatur solo, solo cedit* – whatever is built upon the land becomes part of the land.

As far as India is concerned these Latin maxim are not followed. Once an object is embedded in the land the owner of the object loses his right in it and it immediately vest on to the owner of the soil. If a house is built on the land, then the house becomes part of the land. The property attached to the house is also considered as an addition to the property and pass on to the owner of the land.

⁹Ananda Behara and Another v. State of Orissa and Another, (1956) S.C.J. 96

Whatever is attached to the land becomes part of the land. But it is impossible to say precisely what attachment is essential for this purpose, though it is difficult to say so. The question depends on the circumstances of each case. There are two tests to find whether a chattel is a fixture or not

- Mode of annexation
- Purpose of annexation

Mode of Annexation: If a chattel i.e. movable property is simply resting by its own weight upon the floor, it is presumed not to be a fixture until it is shown that the intention was to make it part of the land. Where on the other hand, it is affixed to the land even slightly, it is presumed to be a fixture, until it is shown that it was not intended to be incorporated in the land.

Purpose of Annexation: To become a fixture, the chattel should have been attached to the immovable property for the permanent beneficial enjoyment of that to which it is attached. This purpose can be readily inferred if the person attaching the chattel is the owner of the immovable property to which it is attached. Where, however, he is not the owner but only a tenant it would not generally be possible to infer such a purpose. The chattel in such a case continues to be a chattel¹⁰.

Exceptions: There are certain exceptions under English Law to the general rule that movable property becomes fixture in certain circumstances. They are 1. Trade fixture, 2. Ornamental and domestic fixture and 3. Agricultural fixture. Trade fixtures are permitted to promote commercial activities. If some items are used for commercial activities, the fitter may take them away when the job is done.

English law on fixture does not apply to India. It was laid down in the case of *Thakur* as follows. In Indian Law also, things embedded in the earth or attached to what is so embedded for the permanent beneficial enjoyment of that to which is attached are regarded as immovable property. The tests employed in English law to decide whether or not a chattel has become a fixture are applied in India also to judge whether movable property is to be treated as immovable property. When these tests are satisfied any dealing with the property to be valid should conform to the legal requirements laid down for such dealings in relation to immovable property. The doctrine whatever is attached to the land becomes a part of the land is rarely used in Indian Law. Objects that are embedded or constructed on the land become part of the land. Also there is no such indication that there was any provision in the law or practices of this country that the right to land is subject to property.

In *Thakur ParamanickChunder v. Ram Dhone*¹¹ Case the property in dispute belonged to Manikchand initially. After his death his wife got a life interest in it. He sold it to Gangadhar without any legal necessity. Gangadhar sold to Paramanick. Ramdone, the plaintiff in this suit, is the reversioner of Manikchand. So he claimed ownership of the property. Meanwhile, Paramanick built a house on the land of that property. The question arose as to whether Ramdhone would get the rights to that house as well. The court ruled in favour of Ramdone. However, it was also said that since Paramanick had built the house on goodwill, he was entitled to remove the house or get compensation for it.

¹⁰ G.C.V. Subbarao, s, Transfer of Property Act 15 (C.SubbiahChetty & Co. Chennai, 16thedn. Reprint 2021)

¹¹ *Thakur ParamanickChunder v. Ram Dhone* 3.6 W.R.228 (F.B.)

The English rule for ascertaining whether an object attached to the land has become a fixture is followed in India. In *S.P.K.N.Subramanian v. M.ChidambaramServai*¹², an oil engine was installed by the lessees in a film shed with the intention of using it for their business during their occupation of the leased land without any intention of permanent improvement of the land. Then there was a security bond pledging an oil engine installed as part of a cinema. The question arose as to whether a security bond pledging an oil engine installed as part of a cinema can be deemed to be a transaction relating to immovable property so as to attract the provisions of s.3 of TP Act. The engine was an immovable property to ascertain whether such registration would constitute a notice. If an object is attached to a fixed purpose of consumption, it becomes part of immovable property. But if the article is fitted for the purpose of consumption it becomes article. The situation in which it is fitted, the influence and intention of the fitter should be taken into consideration. It has been said in this case that it has to be decided in each case according to the circumstances of the case. It is also stated that in this case the oil engine does not become an immovable property.

If a machine is attached to the land for constant use in a factory, for its permanent beneficial enjoyment it becomes part of immovable property. But if a water pumping machine is installed on the land not for permanent beneficial enjoyment of the land, then it is considered as movable property.

CONCLUSION

The Transfer of Property Act, 1882, provides a comprehensive legal framework governing the transfer of immovable property in India. It defines immovable property, lays down essential conditions for a valid transfer, and specifies various modes of transfer. Immovable property is a permanent asset that is attached to the land or structures. It includes land, buildings and anything permanently attached to the earth. Other than this, everything comes within the purview of movable property.

REFERENCES

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3. *3. <https://www.lawctopus.com/academike>*

¹²*S.P.K.N. Subramnianv.M.ChidambaramServai, AIR 1940 MAD527*

