

FEEDING ESTOPPEL BY GRANT

Hasnain Alvi^{**}

Introduction

Sec. 43 of TPA 1882 says that where a person fraudulently or erroneously represents that he is authorized to transfer certain immovable property and agrees to transfer such property for consideration, such transfer shall at option of the transferee, operate on any interest which transferor may acquire in such property at any time during which the contract of transfer may subsists.

A person, who has no title or interest over the immovable property, cannot transfer that property. If he does so, than the transfer is said to be made by an unauthorized person. This sec. provides that if a person having no authority, professes to transfer an immovable property, he is stopped from denying the transfer when he subsequently acquires such authority. The law incorporated in sec. 43 is based on following two principles.

- (a) The common law doctrine of estoppels by deed, and
- (b) The equitable principle that if a person promises more than he can perform, then he must fulfil the promise when he gets ability to do so.

In *Rajpakshe V. Fernando*¹, explaining the basis of this rule Privy Council stated thus:

* Hidayatullah National Law University (C.G.)

“where a grantor had purported to grant an interest in land which he did not at the time possess but subsequently obtained, the benefit of his subsequent acquisition goes automatically to earlier grantee, that is, it feeds the estoppels.”

Essentials for Application of Sec. 43 of TPA

1.1 Transferor is an unauthorized person. : if a person having no title or interest over the immovable property at the date of transfer. And if he transfers the property without any authority, the transfer is said to be made by an unauthorized person. Therefore such person actually does not transfer the property but only purports to transfer. The legal effect of such transfer would be that the transferor has promised to transfer the property and transferee has accepted it.

1.2 Fraudulent representation : There must be a fraudulent representation by transferor regarding his authority to transfer the property. In the absence of such representation such action shall not apply. The false statement may be made fraudulently or innocently. It is necessary that misrepresentation is in respect of transferor’s authority to transfer the property. If transferor misrepresents his age or state of mind, this sec. shall not apply. Sec. 43 is applicable only to those cases where the transferor is unauthorized person for want of title.

1.3 Transfer is for consideration-: Sec.43 does not apply to gratuitous transfer. Thus , where the transfer is without consideration i.e gift, charity etc. the transferee cannot get benefit of this section.

The sec. is applicable for the transfers for the value. It may be applied to sale, exchange, lease, mortgage, because these transfers are supported with considerations.

1.4 Subsequent acquisition of authority by transferor- The transferor must subsequently acquire title or interest in the property which he has professed to transfer earlier.

He may acquire interest or title over the property either by transfer *inter vivos* or by operation of law. Thus, he may obtain the property by purchase, gift, exchange, etc. he may obtain through inheritance or under a will.

Scope of Section 43 of TPA

The scope and applicability of sec. 43 has been lucidly explained by Supreme Court in case of *Jumma Masjid V. Kodimaniandra*² “It is immaterial whether the transferor acts bona fide or fraudulently in making the representation. It is only material to find out whether in fact the transferee has been misled. It is to be noted that when the decision under consideration was given the relevant words of Section 43 were ‘where a person erroneously represents’, and now, as amended by Act 20 of 1929 they are ‘where a person fraudulently or erroneously represents’ and that emphasises that for the purpose of the section it matters not whether the transferor acted fraudulently or innocently is making the representation, and that what is material is that he did make a representation and the transferee has acted on it. Where the transferee knew that the transferor did not possess the title which he represents he has, then he cannot be said to have acted upon it when taking a transfer. Sec. 43 would then have no application”

The transferee’s knowledge of the facts relating to title is not treated as material. Sec. 43 makes a departure from English law and protects the right of subsequent transferees in good faith and for consideration without notice of the rights of prior transferee. It is needless to consider the origin of rule embodied in sec. 43 whether it is based on English rule of estoppel by deed or on rule of “title feeding the estoppel” or on the maxim “equity treats that as done which ought to be done”. The language of sec. 43 is plain and explicit. It is not possible to hold that is where the transferee had been led into the belief that the transferor had title and was not aware of true facts relating to the title, that sec. 43 applies³.

Sec. 43 of TPA gives expression to the rule of estoppel as well as the doctrine of equity which regards that as done as ought to be done. Equity acts *in personem*. It does not run with the estate. Before sec. 43 is applied, the transferee has to prove that the transferor fraudulently or erroneously represented that he was authorized to transfer the property⁴.

Cases Concerning Sec.43 of TPA

In **Radha Bai V. Kamodh Singh**⁵ the Court held that this section has no application to the cases where the title itself being clear, the transfer is vitiated for any other reason. Nor it has application where the contract of transfer is void or property transferred was non transferable.

In **Ganga Baksh Singh V. Madhav Singh**⁶ the principle laid down in sec. 43 of TPA will not therefore debar reversioner who has consented to a gift made by a Hindu Widow from claiming the property if succession opens in his favour. The sec. is based on the general rule that where a transferor purports to convey a particular property and has no title under which he professes to convey, the transferee must be satisfied out of any title which the transferor then has or after wards acquire in the said property.

In **Kavali Hanumanna V. Huzurappa**⁷ Court held that assuming for the sake of argument that Yelemma was limited owner having right to be maintained out of the property, she becomes absolute owner after Hindu Succession Act 1956. The HSA 1956 came into force on 14th june 1956 where as Yelemma died on i.e on subsequent to the commencement of said act as per contention of both the parties. If that is her limited interest if any stands enlarged under Sec 14 of HSA 1956. Assuming for the sake of Argument that Yelemma has only limited interest in the property as on date of execution of registered deed, the plaintiff will get the absolute rights on the basis of equitable principle of “feeding the estoppels by grant”.

In **Fateh chand Tara Chand V. Parashram Maghanmal**⁸ it is true that in India law doesn't make a distinction between legal estates and equitable estates, but the rule that a transfer of property which is to come into existence in future, operates upon the property when it comes into existence does not depend upon any distinction between legal and equitable estates. This rule is an illustration to a well known maxim that I have already discussed earlier i.e equity regards that as done as ought to be done. The courts in India administer equity as well as law, and the maxim would be regarded as applicable in India.

Notes

1. A. I. R. (1920) p. C 216.
2. AIR 1962 SC 847.
3. Veera swami V. Durga Venkata Subarao, 1956 Andh. W.R 1115 at p. 1118 AIR 1957 AP 288.
4. Ramdeo V. Deputy Director of Consolidation, U.P, Lucknow, 1967 All W. R. (H.C).
5. 30 All. 38.
6. 1955, AWR. (HC) 223 at p. 228.
7. 1999 (7) A. L. D. 815 at p. 827.
8. 54 Bom. L. R. 757 at p. 759-60.

References

- Avtar Singh and Harpreet Kaur "*Text Book on Transfer of Property Act*" Pg128 (2nd ed. 2009).
- H. R. Khanna and Sir Dinshah Mulla "*Mulla on Transfer of Property Act 1882*" Pg. 378 (4th ed.1996).



This document was created with the Win2PDF "print to PDF" printer available at <http://www.win2pdf.com>

This version of Win2PDF 10 is for evaluation and non-commercial use only.

This page will not be added after purchasing Win2PDF.

<http://www.win2pdf.com/purchase/>