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Conditions Restraining Alienation of Property

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Introduction

Conditions Restraining Alienation of Property declares that conditions that completely prevent a property transferee from disposing of the property are invalid, except in the cases of leases and married women. This rule is rooted in the principle of equity, emphasizing that property should not be permanently made inalienable.

It aligns with the fundamental legal principle that the right of disposal is integral to ownership rights. Therefore, any condition that restricts the transferee's right to dispose of the property is deemed void. It is because the property's owner, the transferee must have the freedom to transfer it in any manner they choose.

Legal Provisions Relating to Conditions Restraining Alienation of Property

Section 10 of the Transfer of Property Act, 1882, nullifies conditions that restrict a transferee from transferring their property interest while preserving the validity of the transfer itself.

Sections 10 to 17 of the Act emphasize that transferability is the norm, with non-transferability, i.e., **Section 6**, being the exception. These provisions clarify that property must be transferable, prohibiting conditions that restrict alienation, i.e., Section 10, restrain enjoyment, or make interests determinable upon insolvency or attempted transfer, which is **Section 12**. These rules apply to various property transactions and ensure that no directions for income accumulation or perpetuity are imposed.

Sections 10, 11, and 12 address conditions that can render the restraint of property alienation by the transferee null and void, with some exceptions where such conditions may be considered valid. Section 10 primarily distinguishes between two types of restraint conditions: absolute and partial.

Types of Conditions Restricting Property Transfer

1. Time Restrictions: Prohibitions on selling the property for a specific duration, unless there's a benefit for the transferor, like an option to repurchase at a predetermined price. This option is exclusive to the transferor.
2. Control Over Consideration: Conditions that dictate how the property should be transferred concerning monetary aspects, such as selling it for no consideration, market value, or a specific amount, or directing proceeds to specific individuals or purposes. These restrictions are invalid, as they overly restrain the transferee's ability to alienate the property.
3. Restrictions on Transferee: Constraints that specify particular individuals to whom the property or interest must be transferred can be partial or absolute. Absolute restraints, like dictating the buyer in a sale, are void. Partial restraints, like selling within the same family or community, are acceptable if both parties belong to that group.
4. Restrictions on Property Use: Conditions that limit the property's transfer for specific purposes, without mentioning the transferee's right to sell, are considered complete restraints on transfer and are invalid. For instance, requiring the property to be sold only for religious purposes infringes on the right of alienation.

Types of Restraints on Alienation of Property

Section 10 of the Transfer of Property Act invalidates conditions that impose an ***absolute restraint*** on alienation, meaning they completely remove or limit the right to dispose of the property.

This provision applies when property is transferred with a condition that prevents the transferee from dealing with it as an owner. The restraint can be absolute in terms of time or specific individuals or take other forms, as indicated in the deed.

While Section 10 deals with absolute restraints, it remains silent on ***partial restraints***. A partial restraint is one that doesn't significantly limit the transferee's ability to alienate the property but

imposes some limitations. Partial restraints are legally valid and enforceable.

The key consideration is whether the condition substantially restricts the power of alienation, focusing on the substance rather than the form of the restriction. Various ways, such as limiting alienation to a specific group or for a particular period, can constitute partial restraints on alienation.

Judgements on Conditions Restraining Alienation of Property

1. Saraju Bala Debi v. Jyotirmoyee Debi: This case dealt with conditions restricting property transfer for specific purposes. The court concluded that conditions requiring property to be sold solely for religious or specific purposes violated the right of alienation and were therefore void.
2. Rosher v. Rosher: A made a gift of a house to B, and gave a condition that if B decides to sell the house during the lifetime of A's wife, she should have the option of purchasing it for Rs 10000, while the market value of the house was set at Rs 10,00,000. This condition was held to be an absolute restraint and was declared void.
3. Debi Dayal v. Ghasita: In this case, the plaintiffs sold their house to the defendant with an agreement that the defendant could sell it back to them for the same price when he wanted to transfer it. However, he could only sell it to others if the plaintiffs declined. The Allahabad High Court determined this to be a special personal contract enforceable against transferees with notice but not others.

Conclusion

The Transfer of Property Act, 1882, was enacted to regulate property transfers in India, allowing such transfers between living individuals, whether in the present or future. This assignment focuses on restrictions placed on property transfers, categorizing them as absolute or partial, and addresses the conditions outlined in sections 10, 11, and 12. These sections specify conditions under which the transfer of property by the transferor is deemed void, while also highlighting exceptions when certain conditions may be deemed relevant.