BLOGS

Concept of Immovable Property under the Transfer of Property Act

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Edit TABLE OF CONTENTS Introduction Classification of Immovable Property Exceptions to Immovable Property Differences between Immovable and Movable Property Landmark Judgements Conclusion

Introduction

Property that is immovable typically refers to assets that cannot be easily moved and are permanently attached to land. **Section 3** of the Act defines immovable property. Legal definitions vary but generally include land, structures, benefits from land, and certain rights. These definitions are not exhaustive.

For example, the Transfer of Property Act excludes standing timber, growing crops, and grass from the definition of immovable property. The Registration Act adds further details, encompassing lands, buildings, rights, and more, while excluding standing timber, growing crops, and grass. Through the transfer of property law jurisprudence, it was established that “immovable” means permanently fixed and attached to land.

Classification of Immovable Property

Section 6 of the Transfer of Property Act, 1882 deals with what may be transferred. In India property that is immovable primarily includes land, benefits arising from land, and things attached to the earth, which can be classified into three categories:

1. Land: Refers to a portion of the earth, including space above and below it, as well as objects placed on or under it with the intention of permanent annexation, such as sub-soil, mines, minerals, and even bodies of water like wells and ponds.
2. Benefits to Arise Out of Land: Includes interests in land like rent, agricultural revenue, rights to catch fish, collect lac, or income from immovable property, among others.

3. Things Attached to the Earth:
    1. Things Rooted in the Earth: Trees, shrubs, herbs, and plants are considered immovable property unless detached or cut.
    2. Things Embedded in the Earth: Objects firmly fixed within the land become immovable property, but intention matters. Stacked stone blocks for a wall in a builder's yard are movable, unlike those forming a wall.
    3. Attached to What is Embedded: Objects attached to immovable property for permanent beneficial enjoyment, like doors and windows, are immovable, provided the attachment is intended to be permanent. Items like fans and window blinds, although attached to a building, are not immovable property.

Exceptions to Immovable Property

1. Trees, shrubs, and herbs are usually considered immovable, except when they qualify as standing timber, crops, or grass.
2. Standing timber pertains to trees intended for construction or wood use, such as neem, babul, sheesham, teak, or bamboo in India, excluding fruit-bearing trees.
3. Crops, encompassing fruit plants and food-related growth, are considered movable property.
4. Grass, consisting of short plants with long leaves used for fodder, is also considered movable, whether cut or not.
5. Documents related to standing timber, crops, or grass do not require registration, as they are not immovable property.

Differences between Immovable and Movable Property

Immovable property, like land and buildings, is permanently affixed to land, requiring complex legal procedures for ownership transfer and affecting the land if moved, while movable property, such as personal belongings and machinery, can be easily relocated without altering its nature and typically involves simpler legal procedures for transfer.

Edit AspectMovable PropertyImmovable Property DefinitionProperty capable of being moved from place to another Land, benefits arising from land, and things permanently attached to the land. ExamplesStocks, shares, machinery, jewelry, crops, promissory

notes, personal assetsLand, buildings, trees, rights to ways, lights, and other permanent attachments. Ownership TransferEasily transferable Transfer often requires legal processes Legal ConsiderationsGenerally simpler legal procedures for transfer and ownership.Involves complex legal processes, such as deeds and registrations. Determining FactorsIntent, mode of annexation, degree of annexation.Attachment to land, depth of attachment, and permanency of attachment.

Landmark Judgements

In the case of **Shantabai v. State of Bombay**, the issue was whether the right granted to the petitioner was a right in immovable or movable property. The court determined that the right to enter another's land and derive benefits from it, such as cutting timber and trees, constituted an instance of "profits a prendre," which is a benefit arising out of land and thus, a grant in immovable property.

The court highlighted the distinction between timber trees and standing timber, emphasizing that the grant in question allowed the grantee to benefit from the soil itself, not just the trees. Since the right extended over 12 years and was created through an unregistered lease deed, the petitioner could not claim any remedy.

In **State of Himachal Pradesh v. Motilal Pratap Singh & Co**, the court held that a contract to cut standing timber does not require registration, while a contract related to land with bamboo clumps and trees, not intended for immediate cutting, constitutes property that is not movable.

In the case of **Kapoor Construction v. Leela Nagaraj & Ors**, it was established that three key factors, specifically, the intention behind the attachment, the method of attachment, and the extent of attachment, collectively determine whether a property is classified as movable or immovable.

Conclusion

Immovable property in India, as defined by various legal statutes, encompasses land, benefits arising from land, and things permanently attached to the earth. Exceptions within immovable property consist of standing timber, crops, and grass, which are categorized as movable property.

These distinctions are pivotal in determining legal procedures for ownership transfer and various property-related matters, with complex processes often associated with property that is

immovable due to its permanent nature, in contrast to the more straightforward procedures linked to movable property.