BLOGS

Important Terms Under Transfer of Property Act

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In this post, we will discuss the definitions of important terms under the Transfer of the Property Act.

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Introduction

The Transfer of Property Act of 1882 is a significant law in India governing the transfer of property. It covers various aspects related to the transfer of property, including sale, mortgage, lease, gift, exchange, and actionable claims. Let us go through some important terms under the Transfer of Property Act in this post!

Heir Apparent

An heir apparent is a person who is next in line to inherit property, either because they are the direct descendant of the current owner or because they have been designated as the heir in a will or trust. They have a chance of succession and expectancy does not amount to an interest in the property and cannot be made the subject matter of a transfer.

The heir apparent has certain rights and obligations, for example, if the current owner of the property dies without leaving a will, the heir apparent will inherit the property as the rightful heir.

In addition to that, the heir apparent may have certain obligations, such as paying any outstanding debts or taxes on the property before taking possession. It is important to note that the rights and obligations of an heir apparent may vary depending on the jurisdiction and the specific circumstances of the case.

Immovable Property

Section 3 of the Transfer of Property Act defines “immovable property” as including land, buildings, easements, rights to ways, lights, ferries, fisheries, or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth.

(i) Land: This refers to the surface of the earth, including any structures or buildings erected on it. Land can include agricultural land, residential plots, commercial plots, etc. For example, a parcel of land on which a house is built is considered immovable property.

(ii) Benefits arising out of land: This encompasses rights or benefits that arise from the ownership or possession of land. Examples include rights to collect rent, royalties from mining operations, or easements such as rights of way or rights to light. For instance, if someone owns a piece of land and has the right to collect rent from a building constructed on it, that right would be considered immovable property.

(iii) Things attached to the earth: These are items that are naturally attached to the land or permanently fixed to it. Examples include trees, plants, and natural resources like minerals and water. If someone owns a parcel of land with a forest on it, the trees within that forest would be considered immovable property.

(iv) Things permanently fastened to the land: These are items that are affixed to the land in such a way that they cannot be easily removed without causing damage to the land or the item itself. Examples include buildings, fences, and monuments. For example, a house built on a piece of land is considered immovable property because it is permanently attached to the land.

Under the Transfer of Property Act, 1882, immovable property can be transferred from one person to another through various means such as sale, lease, gift, mortgage, or exchange.

When a person transfers immovable property to another, the transferee becomes the owner of the property and acquires all the rights, title, and interest in the property. However, the transfer of immovable property may be subject to certain conditions, restrictions, or limitations as agreed upon by the parties involved in the transaction.

Attestation

Under the Transfer of Property Act, 1882, attestation refers to the process of verifying the execution of a legal document by a person who is authorized to do so. Attestation is required for

certain documents, such as deeds of sale, gift, mortgage, lease, or exchange of immovable property, to make them legally valid.

Essential conditions of a valid attestation:

- Section 59 of the Transfer of Property Act requires that certain documents related to the transfer of immovable property must be attested by at least two witnesses.
- The witnesses must sign the document in the presence of the person executing it, and the signature of the person executing the document must also be affixed in the presence of the witnesses.
- It is not necessary for both witnesses to be present at the same time.
- No particular form of attestation has to be followed.
- The witnesses who attest to the execution of the document must be competent to testify in a court of law and must not have any interest in the property being transferred.
- The attestation of the witnesses provides evidence that the document was executed voluntarily and with the full understanding of the parties involved.

Actionable Claim

Under the Transfer of Property Act, 1882, an actionable claim refers to any claim that can be enforced in a court of law. An actionable claim can be transferred from one person to another, either by assignment or by creation of a charge. The right to sue for damages in case of breach of contract, right to receive benefits under a contract etc. are actionable claims.

The transfer of an actionable claim can be made by a written instrument, such as an assignment deed, which must be signed by both the assignor (the person transferring the claim) and the assignee (the person receiving the claim). However, certain actionable claims, such as claims for personal injury, cannot be assigned or transferred as they are based on personal rights and cannot be separated from the person to whom they belong.

Presumption of Notice

Presumption of notice under Transfer of Property Act presumes that a person who has a registered interest in immovable property has constructive notice of any other registered interests in that property. This means that the person is deemed to have knowledge of any registered

transactions involving the property, even if they have not received actual notice of those transactions.

The presumption of notice applies to all registered transactions, such as deeds of sale, gift, mortgage, lease, or exchange of immovable property. Such presumption is based on the principle that the registration of a transaction provides public notice of that transaction and is intended to protect the interests of third parties who may have an interest in the property. It is therefore important for anyone acquiring an interest in immovable property to conduct a thorough search of the property's title and any registered transactions before completing the transaction.

When does the presumption of notice not apply?

Presumption of notice doesn't apply in cases when the registered transaction is fraudulent or has been made with the intent to deceive or defraud a third party. In such cases, the party who has been defrauded may be able to challenge the validity of the transaction and seek appropriate legal remedy.

For more Notes on Transfer of Property Act, click here!