BLOGS

Transfer by Ostensible Owner under Transfer of Property Act

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Introduction

The Transfer of Property Act, 1882, outlines laws governing the transfer of property, emphasizing the rights of real owners, ostensible owners, and third parties. While the Act doesn't cover transfers through gifts, succession, inheritance, or testamentary, it aims to streamline property transfers for the public. Section 41 of the Act establishes the principle of transfer of property by ostensible owner, designed to protect the rights of innocent third parties.

Definition of Ostensible Owner

An ostensible owner is an individual who appears to be the rightful owner of a property, possessing indicia of ownership such as being listed on records and having physical possession. However, the ostensible owner lacks the genuine intent to own the property.

The concept, governed by Section 41 of the Transfer of Property Act, 1882, recognizes transfers made by such ostensible owners with the consent of interested parties. The transfer is deemed valid for consideration, and it is not voidable based on the lack of authorization by the ostensible owner.

This protection is contingent on the transferee acting in good faith and taking reasonable care to confirm the transferor's authority, ensuring a fair balance between property rights and the interests of innocent transferees.

Understanding Section 41 of the Transfer of Property Act

Section 41 of the Transfer of Property Act, 1882 addresses the transfer of property to an ostensible owner. It states that when an individual acts with the express or implied consent of the true owner of a specific immovable property, that individual is recognized as the 'ostensible owner' of the property.

Conditions for Lawful Transfer by Ostensible Owner

1. The transferor must be the ostensible owner of the property, holding it with the consent of the real owner.
2. The transfer must be for consideration, and the transferee must take reasonable precautions to ascertain the transferor's authority, acting in good faith.
3. Express or implied consent of the real owner is necessary for ostensible ownership.
4. The transfer must be made for something in return (consideration).
5. The transferee must exercise reasonable care and act with bona fide intention.
6. Lack of reasonable care by the transferee impacts the application of Section 41.
7. The transferee must demonstrate standard title investigation, and if the title is obvious, no inquiry is necessary.
8. Good faith is a crucial requirement, ensuring that the transferee acts honestly and conducts a reasonable investigation into the transferor's authority and title.

Benami Transactions and Section 41 of Transfer of Property Act

According to the Benami Transaction (Prohibition) Act of 1988, when a property is transferred benami (under someone else's name), the holder of the property becomes the genuine owner, with the benamidar serving as a trustee.

The real owner can challenge such alienation only by proving lack of consent and the buyer's awareness. The Act prohibits legal actions or claims against the person in whose name the property is held or any other claimant asserting real ownership.

Ownership rights of the true owner cannot be enforced against the benami owner due to legal provisions such as the Benami Transaction (Prohibition) Amendment Act, 2016. This Act renders

the transfer by an ostensible owner illegal, with specific exceptions.

In ***Thakur Krishna vs. Kanhayalal***, the court ruled that property held in the name of a benami owner is subject to acquisition by the government's competent authority without compensation. However, the 2016 Amendment Act outlines exceptions, including property held by the Karta or a member of an HUF for the benefit of other HUF members, purchases by known sources for spouses or children, property held by a trustee, and jointly held property with known individuals. These exceptions align with Section 41 of the Transfer of Property Act, 1882.

Landmark Cases on Transfer of Property by Ostensible Owner

In the case of ***Md. Shafiqullah Khan v. Md. Samiullah Khan***, the illegitimate sons of the landowner acquired the property after his death, even though they were legally ineligible to possess it. The legitimate heir, Muhammad Shafiqullah Khan, filed a lawsuit to claim his inheritance rights. However, the illegitimate sons, acting as ostensible owners, sold the property to a third party, Samiullah.

The lower court, considering Samiullah's lack of knowledge about the lawsuit and his good faith, protected him under Section 41 of the Act, barring Shafiqullah Khan from establishing his title. The Allahabad High Court, in contrast, held that this did not meet the Section 41 requirement, as ownership was not obtained with the express or implied consent of the lawful owner, thus denying the ostensible ownership status to the illegitimate sons.

In the case of ***Ishwar Dass vs. Bir Singh and Ors.*** before the court, the plaintiff claimed co-ownership of a piece of land along with proforma defendants. The dispute revolved around the extent of the plaintiff's share in the land. The plaintiff asserted a 1/3rd share, while the contesting defendants argued for a 1/6th share.

The land originally belonged to Saran Dass, who had two wives, Bimla Devi and Biasan Devi. The plaintiff contended that, due to neglect by defendants 1 and 2 (sons of Biasan Devi), Saran Dass gifted the land to Bimla Devi.

Defendants 1 and 2 challenged the gift, leading to a legal dispute that resulted in a partial dismissal of the suit. The court addressed the issue of ostensible ownership within this context, evaluating the plaintiff's claim of co-ownership against the backdrop of the disputed gift and its legal implications.

Conclusion

Section 41 of the Transfer of Property Act acts as a safeguard for unsuspecting third parties, ensuring the validity of property transfers made by ostensible owners with the consent of interested parties. However, this protection is contingent upon the third party's careful consideration and bona fide intentions, and it does not excuse negligence in property acquisition.

The provision emphasizes the authority granted to ostensible owners by real owners, whether expressed or implied, with legal constraints to prevent misuse. Property transfers, once executed, are irreversible at the owner's discretion, encompassing various forms such as mortgages, leases, sales, or exchanges. The burden of proof lies with the transferee to demonstrate the ostensible owner's status, reinforcing the need for due diligence and cautious investigation.