BLOGS

Transfer for Benefit of Unborn Person under Transfer of Property Act

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Introduction

Section 5 of the Transfer of Property Act, 1882, establishes the general rule for transfers, emphasizing transactions between living persons. However, exceptions to this rule are outlined in specific sections of the act, particularly those addressing transfers for the benefit of unborn persons. These exceptions, such as those outlined in Section 13, introduce distinct rules and conditions governing property transfers with the well-being of future generations in mind.

Section 13 of the Transfer of Property Act, 1882 (TPA) establishes conditions for transferring property for the benefit of an unborn person. It mandates that, to facilitate such a transfer, a prior interest must be created in favor of a living person before extending it to the unborn beneficiary. This prerequisite prevents a direct transfer to the unborn person and ensures that the interest granted to them encompasses the entire remaining interest of the transferor.

The section aims to maintain the unobstructed flow of property disposition across generations, restricting the creation of time-limited interests solely for unborn individuals. While successive life interests can be granted to living beneficiaries, absolute interests are required for those not yet born.

Definition of Unborn Person

An unborn person refers to an individual who is not in existence, even within the mother's womb. This term encompasses those yet to be conceived or currently in the prenatal stage. A child in the mother's womb, often referred to as a child "en ventre sa mere," is considered a competent

transferee under this classification.

Requirements for Transfer to Unborn Person

1. No Direct Transfer: Direct transfers to unborn persons are prohibited; the use of trust mechanisms is necessary to avoid leaving the property without an owner until the unborn person comes into existence.
2. Prior Interest: A transfer to benefit an unborn person must be preceded by a prior interest created in favor of a living person between the date of transfer and the unborn person's existence.
3. Absolute Interest: The entire property must be transferred absolutely to the unborn person, preventing any further transfer. English law's rule of double possibilities restricts conferring only a life interest to an unborn person; hence, an absolute interest is required to comply with Section 13.

Legal Consequences of Transfer for the Benefit of Unborn Person

1. Life Interest for Intermediary: The intermediary, living at the transfer date, is granted a life interest, conferring the right to possession and enjoyment while acting as a trustee for property preservation.
2. Property Reverts to Unborn Person: Upon termination of the life interest, the entire property or interest transfers to the unborn person, contingent on their existence before the life holder's demise.
3. Time Constraint for Unborn Person: The unborn person must come into existence before the life holder's death; otherwise, the property reverts to the transferor or their legal heirs, as post-life interest, it cannot remain in abeyance.

Applicability of Section 13 in Hindu and Muslim Law

Under pure Hindu law, a gift or bequest in favor of an unborn person was traditionally considered void. However, with the applicability of the Transfer of Property Act (TPA) to Hindus, such transfers are now valid if made in accordance with the provisions of Section 13 of the Act.

In contrast, Section 2 of the TPA explicitly states that it does not affect any rule of Mohammedan law, rendering Section 13 inapplicable to transfers made by Muslims. Nevertheless, under both

Hindu and Muslim law, a gift to a person not yet in existence has been historically deemed void.

It's noteworthy that Section 13 of the TPA and Section 113 of the Indian Succession Act, 1925, are nearly identical, with the former governing inter vivos transfers and the latter addressing bequests effective upon the death of the testator. The relationship between these sections is one of control, as Section 13 regulates Section 113 when read together.

Landmark Cases on Transfer to Unborn Person

In the case of ***Girjesh Dutt vs. Data Din***, the donor (A) made a gift of her property to her nephew's daughter (B) for life, and then absolutely to B's male descendants, if any. However, in the absence of any male child of B, the property was to go to B's daughter without the power of alienation. If B had no descendants, male or female, then the property was to go to her nephew. When B died without any issue, the court held that the gift for life to B was valid, as she was a living person at the date of transfer. However, the subsequent transfer in favour of B's daughter was deemed void under Section 13 of the TPA because it granted only a limited interest, not absolute. Consequently, the invalidity of the initial transfer rendered the subsequent transfer dependent on it also failed.

In the case of ***Raja Bajrang Bahadur Singh v. Thakurdin Bhakhtrey Kuer,*** the Supreme Court noted that it is impermissible to create an interest explicitly in favor of an unborn child. However, when a gift is designated for a class or series of individuals, and some members are currently in existence while others are not, the gift doesn't become entirely void or fail. Instead, it remains valid for those individuals who are alive at the time of the testator's death, while becoming invalid concerning the individuals who are non-existent at that point.

Conclusion

While the Transfer of Property Act allows for the indirect transfer of property to unborn persons through trusts, it necessitates the conveyance of the entire remaining interest to the unborn beneficiary. This ensures the smooth disposition of property across generations, aligning with the fundamental principle of Section 13. Any failure to adhere to these provisions renders the transfer void.