UNIT – II

Doctrines under the Transfer of Property Act

Election • Ostensible Owner • Lis Pendens • Part-Performance • Fraudulent Transfer

Including Landmark Supreme Court & Privy Council Judgments

OVERVIEW

Unit Structure

01 **Doctrine of Election**

S. 35 – choosing between two inconsistent rights

02 **Transfer by Ostensible Owner & Co-owner**

S. 41 & S. 44 – protection of bona fide transferees

03 **Apportionment, Priority & Defective Title**

Ss. 36–38, 48 – rent, improvements, priority of rights

04 **Lis Pendens, Fraudulent Transfer & Part-Performance**

Ss. 52, 53, 53A – key protective doctrines

Doctrine of Election

Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm the transfer or to dissent from it.

If he dissents, he must relinquish the benefit so conferred.

Essential ingredients:
1. Transfer of property by a person who has no right to transfer it
2. As part of the same transaction, a benefit is conferred on the true owner
3. The true owner must elect – he cannot take both the benefit and retain the property

The doctrine is based on equity: one cannot approbate and reprobate.

Landmark: Cooper v. Cooper; Indian application in many High Court decisions following English equity principles.

Transfer by Ostensible Owner

Section 41: Where a person is the ostensible owner of property and transfers it for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it, provided the transferee has acted in good faith and has taken reasonable care to ascertain that the transferor had power to transfer.

Essentials:
- Transferor is ostensible owner (with consent of real owner)
- Transfer is for consideration
- Transferee acts in good faith
- Transferee takes reasonable care to verify title

Landmark: Ramcoomar Koondoo v. MacQueen (1872) – Privy Council foundation of the doctrine of ostensible ownership in India.

This section protects bona fide purchasers for value from secret titles.

Transfer by Co-owner

Section 44: Where one of two or more co-owners of immovable property transfers his share, the transferee acquires the transferor's right to joint possession or other common/part enjoyment, and to enforce partition.

But where the property is a dwelling house belonging to an undivided family, and the transfer is to a person who is not a member of the family, the transferee does not get the right to joint possession or common enjoyment; he can only claim partition.

This protects the privacy and integrity of the family dwelling house.

Related: S. 47 (transfer by co-owners of share in common property).

Apportionment of Periodical Payments & Benefits

Section 36 – Apportionment of periodical payments on determination of interest of person entitled:
All rents, annuities, pensions, dividends and other periodical payments shall, on the transfer of the interest of the person entitled to receive them, be deemed to accrue due from day to day and be apportionable accordingly.

Section 37 – Apportionment of benefit of obligation on severance:
When, by reason of a transfer or otherwise, a person becomes entitled to a portion of the benefit of an obligation, he can claim only a proportionate part of the benefit, and the person obliged can perform only proportionately (subject to the nature of the obligation).

These provisions ensure fairness when interests are divided mid-period.

Priority of Rights Created by Transfer

Section 48: Where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall be subject to the rights previously created.

General rule: Qui prior est tempore potior est jure (he who is first in time is stronger in law).

Exceptions arise where the later transferee takes under a registered document and the earlier one is unregistered (Registration Act considerations), or where equitable doctrines such as notice apply.

Registration and notice play a crucial role in determining actual priority.

Rent paid to Holder under Defective Title

Section 50: No person shall be chargeable with any rents or profits of any immovable property which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding that such person had no title to the property.

Protection is available only when:
• Payment is made in good faith
• The payer held the property from the recipient in good faith

This protects tenants who pay rent to a person they honestly believe to be the landlord, even if that person's title is later found defective.

Improvements made by Bona Fide Holders under Defective Title

Section 51: When a person makes improvements on immovable property believing in good faith that he is absolutely entitled to it, and he is subsequently evicted by a person having better title, the evicted person is entitled to:

- Require the person causing eviction to compensate him for the improvements; or
- Require the improved property to be sold to him at the market value (without improvements) existing at the time of eviction.

The option is with the person who made the improvements.

This is an equitable provision protecting bona fide improvers from complete loss of the value they have added.

Doctrine of Lis Pendens

Section 52: During the pendency in any court of a suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court.

Essentials:

- Pendency of a suit/proceeding
- Suit not collusive
- Right to immovable property directly and specifically in question
- Transfer by a party to the suit

Effect: The transfer is not void, but is subject to the result of the suit.

Landmark: Bellamy v. Sabine (English foundation); Indian courts have consistently applied the principle to prevent the subject-matter of litigation from being altered mid-way.

Fraudulent Transfer

Section 53(1): Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Section 53(2): Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such subsequent transferee.

Burden of proving fraudulent intent lies on the person who alleges it. Subsequent bona fide purchaser for value is protected.

This section is an important tool against asset-stripping by debtors.

Doctrine of Part-Performance

Section 53A (inserted 1929): Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or being already in possession continues in possession in part performance and has done some act in furtherance of the contract, and is willing to perform his part,

then, even if the contract is not registered or complete according to law, the transferor is debarred from enforcing against the transferee any right other than a right expressly provided by the contract.

It is a shield, not a sword – the transferee can defend possession but cannot claim title on the basis of part-performance alone.

Landmark: Many decisions of the Supreme Court have clarified the scope, including the requirement of a written contract and willingness to perform.

Essentials of Part-Performance under Section 53A

1. Written Contract

Contract must be in writing signed by the transferor (or on his behalf) from which terms can be ascertained with reasonable certainty.

2. Consideration

The contract must be for consideration.

3. Possession

Transferee has taken possession in part performance, or being already in possession continues in possession and does some act in furtherance of the contract.

4. Willingness

Transferee has performed or is willing to perform his part of the contract.

Landmark Judgments – Doctrines

Ramcoomar Koondoo v. MacQueen (1872)

Foundation of ostensible ownership doctrine – bona fide purchaser from ostensible owner protected.

Bellamy v. Sabine

Classic English authority on lis pendens – property in litigation cannot be transferred to the prejudice of parties.

Nathulal v. Phoolchand (1970)

Supreme Court on essentials of S. 53A – readiness and willingness is crucial.

Shyam Narayan Prasad v. Krishna Prasad (2018)

Recent clarification on the protective nature of part-performance and its limits.

Further Important Decisions

G.T. Girish v. Y. Subba Raju (2022)

Supreme Court on the scope of lis pendens and the effect of transfer during pendency.

R.K. Mohammed Ubaidullah v. Hajee C. Abdul Wahab

On fraudulent transfer and the protection of bona fide transferees.

S.P. Chengalvaraya Naidu v. Jagannath (1994)

Fraud vitiates everything – relevant while examining fraudulent transfers.

K.B. Saha & Sons Pvt. Ltd. v. Development Consultant Ltd.

On the interplay between registration requirements and part-performance.

Key Doctrines Compared

Doctrine	Section	Core Protection
Election	S. 35	Against approbation & reprobation
Ostensible Owner	S. 41	Bona fide purchaser from apparent owner
Lis Pendens	S. 52	Subject-matter of litigation preserved
Fraudulent Transfer	S. 53	Creditors & subsequent transferees
Part-Performance	S. 53A	Transferee in possession under written contract

Practical Importance of these Doctrines

• Section 41 and 53A are frequently invoked in property litigation to protect purchasers who have acted honestly.

• Lis pendens (S. 52) is a powerful tool to prevent alienation of disputed property during the pendency of a suit – courts regularly issue injunctions based on it.

• Fraudulent transfer provisions help creditors recover assets that debtors try to put beyond reach.

• Doctrine of election prevents a person from accepting a benefit under a document while rejecting the burden.

These doctrines balance the competing equities between the true owner, the transferee, creditors and litigating parties.

SUMMARY

Key Takeaways – Unit II

- Doctrine of Election forces a person to choose between inconsistent rights under the same transaction.
- Section 41 protects bona fide purchasers from ostensible owners who had the real owner’s consent.
- Lis Pendens (S. 52) makes transfers during litigation subject to the final decree.
- Section 53 makes transfers intended to defeat creditors voidable at the creditor’s option.
- Section 53A (Part-Performance) is a defensive doctrine protecting a transferee in possession under a written contract.
- These doctrines together form the equitable backbone of the Transfer of Property Act.

Quick Reference – Important Sections

Doctrine of Election	S. 35
Transfer by Ostensible Owner	S. 41
Transfer by Co-owner	S. 44
Apportionment	Ss. 36–37
Priority of Rights	S. 48
Rent to Defective Title Holder	S. 50
Improvements by Bona Fide Holder	S. 51
Lis Pendens / Fraudulent Transfer / Part-Performance	Ss. 52, 53, 53A

End of Unit – II

Election • Ostensible Owner • Lis Pendens
Fraudulent Transfer • Part-Performance

Proceed to Unit-III: Mortgages of Immovable Property