

Course Name- LL.B 4th sem
Subject- TPA
Teacher- Mrs. Aakanksha
Concept- Apportionment

Principle of Apportionment

Section 36 & 37 of the Transfer of Property Act lay down the rules regarding the principle of apportionment. Section 36 states- “In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and transferee, to accrue due from day to day and apportionable accordingly but to be payable on the days appointed for the payment thereof”.

Although this principle does not usually apply to transactions of transfer of property which take place through ‘operation of law’ but there are exceptions in cases where the rule has been applied on grounds of equity.

The expression ‘apportionment’ means division of a common fund between several claimants. It is classified into two types- ‘Apportionment by time’ and ‘Apportionment by estate’:-

Apportionment by time-

When a property yields income which is periodical in nature, the question of apportionment of this periodical income between the transferor and transferee is bound to arise. The general rule of transfer of interest along with the property between the transferor and the transferee as laid down by section 8 of the Act is inapplicable in cases of apportionment of the periodical income. The section clearly lays down that all periodical income shall be accrued and apportioned on a day to day basis.

Liability of the tenant– Unlike section 8, section 6 is applicable in terms of a transaction between the transferor and the transferee and does not hold the tenant liable as the section makes the principle of apportionment applicable only between the transferor and the transferee.

Concept of Transfer– The basic concept of Transfer of Property Act, 1882 says that when a property is lent to several owners, any one of the several cannot ask for his specific share of rent or for eviction on the ground that he being the co-owner has the right to ask for rent and evict in cases of non-payment of the same.

Further, this section like all others are read in light of section 8 under the transfer of property act. The act lays down that all interest including the rents and profits are to be transferred from the transferor to the transferee. In cases where the income accrues from day to day basis, the transferee would then from the date of transfer receive the income on a daily basis. Where however the income does not accrue on a daily basis and is in the form of periodical payments, the amount shall be apportioned between the transferor and the transferee.

Apportionment by estate-

Section 37 deals with this kind of apportionment stating that “ When, in consequence of a transfer, property is being divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract, to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the State Government by notification in the Official Gazette so directs”.

In other words, when the whole of a property is transferred to more than one person, any benefit arising out of obligation to the property is transferred to the several owners. Therefore in such a case, the obligation attached to the property must then be performed in favour of each of the several owners in proportion to their respective share in the property. The rule is applicable only after fulfilment of the below conditions:

1. The person who is obligated with the duty to fulfil the burden under this section must have notice of the same.
2. The obligation should be of a character which can be severed.
3. The severance of the obligation should not end up increasing the burden of the obligation.

Thus apportionment by estate simply means division and further transfer of a property in the hands of a few owners who are thereby liable to fulfil the obligations attached to the share of property.

The difference between this section and the previous one is that each section deals with one of the two kinds of apportionment. While sec. 36 deals with the apportionment of time, sec. 37 deals with that of the estate.

Section 37 i.e. apportionment by estate contemplates a scenario where each share whether in terms of income or rent of the various owners is apportioned according to their particular share in the property. In cases of tenancy, the tenant is to be informed if he has to pay each owner separately but in cases where the apportionment isn't done or the tenant isn't informed, the tenant will be liable only singly.

This clearly explains that even if the estate is in the state of tenancy, it can still be apportioned.

Illustrations

- X sells a flat to W, Y, Z and leases the same to C. C has notice of the fact that W is a contributory to the extent of half of the selling price which is Rs.100/-. Thus C must pay 50/- to W, 25/- to Y, 25/- to Z according to the joint direction of W,Y,Z.
- A, B, C, E jointly own a farming land and lease it to D. D agrees to work for A for one week every year as a farmer. Later on B, C, E want D to work separately for each of them. D is not liable to work for more than a week every year.
- X has rented his house at 15000/- per month. He then sells it to Y on 15th May 2019. The seller is entitled to a 14days rent while the buyer to the rest of the 16days rent.
- X, Y, Z are owners of a property in the ratio 2:1:1. They let the house on rent without informing the tenant that the rent is to be paid in the above ratio. The tenant is only liable to pay the rent as a whole and not as an apportioned amount.

Conclusion

The above article gives an overview of the principle of apportionment and its applicability under various situations of transfer of property. The principle is dealt with precisely under section 36 and 37 of the Transfer of Property Act,1882.