

doctrine of feeding the grant by estoppel (section 43)

Course Name – LL.B 4th sem

Subject – Transfer of Property Act

Teacher - Mrs. Aakanksha

Section 43 says

- Where a person
- Fraudulently or erroneously represents that he is authorized to transfer certain imm. property &
- Professes to transfer such property for consideration
- Such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract subsists.
- Section will not impair the right of transferees in good faith for consideration without notice of the existence of said option.

principles

- Common law doctrine of estoppel by deed
- Equitable principle –if a person promises more than he can perform ,must fulfill the promise when he gets ability to do so.

Estoppel by deed (english law)

□ Rajapakshe v. fernando AIR1920PC216

Facts; grantor purports to grant an interest in land-which he did not possess at that time-subsequently acquires.

Held benefit of subsequent acquisition goes automatically to grantee.....that feeds the estoppel

Essentials

1. Fraudulent or erroneous representation

(dishonest, deceitful, wrong, untrue)

the benefit of this section cannot be availed by the transferee if he did not believe the representation to be true & act upon that.

Narayan chandra saha v. Dipali mukherjee AIR
2002 Cal 229

Facts-no evidence –son of owner of property made representation –a purchased it.

Held-cannot avail benefit of s.43 since there was no representation made fraudulently.

□ Mohori bibi v. Dharmodas Ghose

False statement- truth known to both the parties-no estoppel .

□ Janakirama v. Nilakanta ILR(1954)Mad 537

Representation + inquiry from other sources.no question of tranferee having acted on that representation-benefit not available.

2.Transfer for consideration

Not applicable for gratuitous tranfers. Only transfer for value(mortgages,sale,exchange,leases)but not charges or gifts

□ 3. subsequent acquisition of interest

it shall pass to transferee at their option & time during which contract subsists (unless rescinded or extinguished)

Section 6 & section 43

- Acc. To s.6(a)'chance of heir apparent' to get the property in future is a non transferable right(void ab initio).....but acc. To s.43 validates transfer made without title when the transferor subsequently acquires the property.

Jumma Masjid v. Kodimaniandra deviah (1962)
supp(2)SCR554;

- No conflict with s.6&43 both can operate simultaneously
- Facts- heir apparent sold his would be share I joint property to M for rs300, became entitled to property later-M invoked 43, other part contended its void ab initio
- Held –M entitled to get protection and sc observed that S.6(a)-rule of substantive law & s.43 based on estoppel (rule of evidence)

□ Karthar singh v. Harbaunj kaur(1994)4SCC730

Facts- mother executed sale deed in favour of K alienating lands of herself and of her minor son Kulwat, when he became major he set aside that sale of his property, before delivery of possession he died and H succeeded raised plea of s.43

Held diligent enquiries were not made, contact to sell minor property void thus there is no contract subsisting thus he cannot invoke the benefit under s.43.

Transferee in good faith

- S.43 cannot be enforced against a person who has taken a subsequent transfer from transferor in good faith & for consideration without notice.
- H.P.A international v. Bhagwandas Fateh Chand Daswani(2004)SCC537

Partition A gets property x & B gets y; A represents owner of x, y & sold to C, B dies A inherits property y, A secretly sold y to D, D purchased in good faith, with consideration and without notice.

Held – D entitled to get y against claim of C.



thankyou.....