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## SECTION 6 (A) AND 43 OF THE TRANSFER OF PROPERTY ACT, 1882: A CRITICAL ANALYSIS WITH CONTRACT LAW

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### INTRODUCTION:

The term “property” has a comprehensive meaning which includes everything owned by a living person which provides benefit out of it and the capability of such property to be transferred from one to another<sup>1</sup>. The Transfer of Property Act, 1882 is a legislation that deals with the transfer of property from one living person to another. The word “any kind” specified in the act in itself is self explanatory as it also includes intangible property such as intellectual property rights<sup>2</sup>. The doctrine of *spes successionis* is a mere chance or a probability of inheriting a property upon the death of the transferor’s death through succession or will<sup>3</sup>. Section 43 of the act deals with another aspect of property law principles which will be further discussed in this research paper.

This research paper deals with the theoretical aspects of the doctrine of *spes successionis* under section 6 (a) and the rule of estoppel under 43 of Transfer of Property Act, 1882. The researcher has attempted to provide a descriptive analysis of interpreting the said provisions critically with the contractual principles provided under The Indian Contract Act, 1872. The researcher argues that both the Property Law and Contract Law are distinct disciplines but are interconnected with each other on the basis of the core principles that they are founded upon. On the basis of this argument the researcher has attempted to criticize the rationale behind section 43 of the TPA, 1882.

The paper will also address the legal technicalities encountered in the legislation in drawing up a line of distinction between section 6 (a) and 43 of the Transfer of Property Act, 1882. Thus various case laws and judgements decided in this purview will be referred to. The researcher

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<sup>1</sup> Michael Weir, *Concepts of Property*, 7, The National Legal Eagle. 16-18 (2001).

<sup>2</sup> Section 6, Transfer of Property Act, 1882.

<sup>3</sup> Section 6 (a), The Transfer of Property Act, 1882.

has utilized various secondary sources such as books, journal articles, published research papers to substantiate the formulated hypothesis.

**KEYWORDS:** Transfer of Property, Spes Successionis, Rule of Estoppel, Fraud

Misrepresentation.

**RESEARCH QUESTIONS:**

1. Whether section 43 of the Transfer of Property Act, 1872 seeks to validate transfer through fraud and misrepresentation?
2. Whether the Transfer of Property Act, 1882 is sufficient enough to address the ambiguities underlying in the distinction between section 6(a) and 43 of the act?

**RESEARCH OBJECTIVES:**

1. To examine the thin layer of distinction between 6(a) and 43 of the Transfer of Property Act, 1882 by understanding their legal intent.
2. To understand the association between The Transfer of Property Act, 1882 and the Indian Contract Act, 1872.
3. To explore sections 6(a) and 43 of the Transfer of Property Act, 1882 with the general and specific principles of the Indian Contract Act, 1872.

**RESEARCH PROBLEM:**

Though there are various discussions held in the purview of the blurred layer of distinction between section 6(a) and 43 of the Transfer of Property Act, 1882, there still exists an ambiguity in the application of both the provisions when analyzed through the general and specific contractual principles. These ambiguities arise due to the strict separation of the said disciplines and their essence from getting overlapped with each other. Thus this paper attempts to solve the research problem by conducting a multi disciplinary approach.

**RESEARCH HYPOTHESIS:**

Contract law and Property Law though they are different fields of law, and have their own significance and theoretical framework, there is a stringent line of division between these disciplines which is not reasonable. When analyzing section 43 from the purview of contractual principles, section 43 is promoting unjust enrichment thus defeating the intention of legislators in framing such provision under the Transfer of Property Act, 1882.

### RESEARCH METHODOLOGY:

The researcher has attempted, doctrinal methodology of research in this study by utilizing various statutes, legislations enacted in India. Government databases, Case commentaries, Case laws were used to understand the rationale behind section 43 of property law under the Indian Contract Act, 1872 in a different standpoint. To support the analysis, the researcher will be relying on various journal articles and books.

### REVIEW OF LITERATURE:

1. **Michael Weir, *Concepts of Property*, 7, The National Legal Eagle. 16-18 (2001).** The author provides an overview of the concepts on the property and its types. Not just limiting to these aspects, the article also discusses various theoretical justifications for property such as occupational theory, labor theory, the economic theory and property and personality theory. Therefore, this work enabled the research to grasp a fundamental knowledge on property law.
2. **Dr. Poonam Pradhan Saxena, *Property Law*. Lexis Nexis. 387- 390 (2017).** The book is descriptive in nature and provides an insight into the basic understanding on the subject matter of the course. The book is lucid and contains thematically arranged chapters with cited provisions of Indian Succession Act, 1925. The book includes everything such falls under the ambit of property law such as its historical background, evolution, theoretical framework, contemporary concepts etc.
3. **Sonakshi Pandey, “India: Rule Of Estoppel Vis-À-Vis Section 6(a) of Transfer of Property Act”, 2023.** This article deals with the relationship between section 6 (a) and 43 of the Transfer of Property Act, 1882. The crux argument of the article is that the author finds it unreasonable in the statement that there is an ambiguity in the application of both the provisions in the case of disputes that arise as a result of their application.

The author has also indulged in the doctrinal methodology of research and utilized various case laws and judgments to support her stance.

4. **Lutz-Christian Wolff, *The relationship between contract law and property law*, Common Law World Review, 2020, 1, pp 1.** This Journal is the foundational step of this research paper as it aided the author to develop a different theoretical approach and argument. The author has established a well defined relationship between the two distinct law fields, property law and contract law. The central argument of the author is that, both these disciplines of law, though distinct in their features and the purpose of enforcement, shouldn't be strictly separated from each other as their ethos and legal intentions are interlinked with each other.

#### **CH-1: DISTINCTION BETWEEN 6 (a) AND 43 OF TRANSFER OF PROPERTY ACT, 1882:**

This chapter of the research paper intends to clarify the thin line of distinction between the provisions, 6(a) and 43 of the Transfer of Property Act, 1882 to avoid uncertainties in understanding the same provisions under the contract law.

Section 6 - “*Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force*”<sup>4</sup>. Unless there is a legislative limitation to the contrary, all property is transferable under this provision, according to the letters of this general law. Any sort of property, both movable and immovable are alienable under Section 6 of the act, with the exception that is stated from section 6 (a) to 6 (i) and cannot be assumed to be chosen due to the uncertain nature of the future. It is well-established that when property is transferred, it is explicitly intended to convey the transferor's interest in the sought-after property<sup>5</sup>.

The mere possibility of an apparent successor inheriting to an estate is not considered as a transferable property under clause (a) of section 6 of the Transfer of Property Act. The term "Spes Successionis" is the legal doctrine for such a possibility provided in the provision. Spes Successionis is the possibility that an heir apparent may inherit the estate during their lifetime, or that a relative would receive a legacy under their will. Such an expectation cannot be the

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<sup>4</sup> Section 6, The Transfer of Property Act, 1882.

<sup>5</sup> Concept of Property and General Principles Relating to Transfer of Property, *School of Legal Education*,

subject of a transfer as it does not equate to a property interest, thus rendering it as void. Property of any sort may generally be transferred in accordance with Section 6; however, the party affirming non-transferability must demonstrate the presence of any use or custom that limits the transfer right as per the section<sup>6</sup>. As a mere chance of transfer in itself is not considered as a transfer, then a lawsuit based on such a possibility of succession cannot be brought by such a person<sup>7</sup>. This was also provided under section 60 (m) of the Code of Civil Procedure, 1908. It cannot be argued that a transfer of a mere chance to succeed has occurred when the property itself is being transferred, rather than the right of expectation of an apparent heir. For instance, an agreement to transfer the property entered into by his brother, who is enjoying and possessing the property in dispute. When a person disappears for an extended period of time and is thought to be deceased, does not transfer the right of expectancy but rather the property itself and is not subject to clause (a) of Section 6<sup>89</sup>.

In the case of *Amrit Narayan v. Gaya Singh*<sup>9</sup>, it was decided that a Hindu reversioner had no legal claim or interest in the property that the female owner had lived to hold. Until her death, he had nothing to give up, or even leave to his successors. Under such circumstances, his entitlement only becomes enforceable after the owner's death. It is mere spes successionis up until then and cannot be enforced. In the case of *The Official Assignee of Madras V Sampath Naidu*<sup>1011</sup>, the privy council held that a mortgage deed signed by an heir apparent is considered as invalid irrespective of the fact that he has obtained the property as an actual heir. In the case of *Gulam Abbas v. Haji Kayyum Ali*<sup>11</sup>, a Mohammedan man died in leaving a wife and five boys. Two of his sons paid him a large amount of cash and some moveable property before he passed away, helping him pay off his heavy obligations. They thus signed a relinquishment document in which they agreed to forfeit any future claims to their father's assets. The two sons were barred from claiming any portion of the property divided, according to the ruling delivered by the Apex Court. The same was held in the case of *Elumalai Venkatesan & Anr. V M. Kamala & Ors*<sup>12</sup>.

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<sup>6</sup> *Jumma Masjid, Mercara v. Kodimaniandra*, 1962 AIR 847.

<sup>7</sup> AIR 1933 Mad 795.

<sup>8</sup> Sonakshi Pandey, *India: Rule Of Estoppel Vis-À-Vis Section 6(a) Of Transfer Of Property Act*, 2023, 1-7.

<sup>9</sup> SCC OnLine PC 72.

<sup>10</sup> (1973) 1 SCC 1.

<sup>11</sup> AIR 554 1973 SCR (2) 300 1973 SCC (1) 1 ACT.

<sup>12</sup> (2023) SC 65.

The Gulam Abbas case was referenced in a recent ruling by the Apex Court in *Elumalai v. M. Kamala Reliance*<sup>13</sup>, and the Apex Court's ruling in that case was restated. According to the case's brief facts, the appellants were the sons of a certain Shri Sengalani Chettiar's predeceased son. During the life of his own father, the appellants' father completed a Release Deed and was paid a significant sum of money in return. The appellants contended that their father's act was *spes successionis*, meaning that they could not be prevented from claiming a portion of their grandfather's separate property after his death.

Section 43 of the Transfer of Property Act 1882 states that a transfer will remain in effect in the future if someone acts to transfer certain immovable property for consideration after falsely or fraudulently representing that they are authorized to do so<sup>14</sup>. It will function with respect to any interest in such property that the transferor may acquire. This can be done at the transferee's discretion and for as long as the transfer contract is in effect. This regulation protects the rights of a bona fide transferee who was unaware of the option or the prior transfer.

This rule reflects the doctrine of estoppel, which states that someone who makes a representation is unable to subsequently retract it. Property can be transferred in whole or in part by anybody with the legal capacity to enter into contracts. He ought to have the right to the transferable property or the ability to dispose of non-personal transferable property. The property may be immovable or movable, current or future, and the right may be unconditional or conditional. Unless a transfer in writing is expressly mandated by law, such a transfer may be made verbally.

Sections 43 and 6 (a) regarding the non-transferability of *spes successionis* seem to be at odds with one another, and this has generated considerable debate for a long period of time. However, in the case of *Jumma Masjid, Mercara v. Kodimaniandra*<sup>15</sup>, the Supreme Court put an end to the dispute of confusion by ruling that both clauses may be fully implemented in their respective fields. The court decided that if someone transfers property under the false representation that he has an interest in it while, in reality, he only has a *spes successionis*, the transferee is entitled to the benefit of section 43 provided he accepted the transfer for consideration and in good faith. In the *Jumma Masjid* case, a purported successor sold part of his property. Since the contract was not revoked, the later acquisition of the property was

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<sup>13</sup> (1973) 1 SCC 1.

<sup>14</sup> Section 43, The Transfer of Property Act, 1882.

<sup>15</sup> AIR 1962 SC 847.

claimed under section 43 in a joint property to the Masjid. The transferor contended that the interest was invalid ab initio under section 6(a) and one of spes successionis at the time of the transfer. It was further contended that section 43 could not be used to legitimize a transfer invalid under section 6(a). The case of *Almanaya Kunigari V Nabi Sab V Murukuti Papaiah*<sup>16</sup> was referred as a precedent to this case, where the court decided that if the transferee has acted on the transferor's representation, i.e, spes successionis, the circumstance would support the rule of estoppel, the transferee will subsequently will have all the required grounds to acquire the property<sup>17</sup>.

So, from the above cases, it can be construed that both section 6 (a) and 43 can co exist but they are entirely different from each other. Section 6 (a) is applicable both to movable and immovable property, whereas section 43 is only applicable to immovable properties along with consideration.

The doctrine of spes successionis refers to the mere possibility of heirs inheriting the property in future, but if the question is regarding the self acquired property, the inheritance rights do not come by birth rather takes effect only after the demise of the owner of the property. Therefore, there is a requirement to draw a line of distinction between these two provisions in order to avoid contradiction in the rights of the owner of the property and rule of equity. The succeeding chapter of this paper will address the same provisions with relation to the principles under Indian Contract Act, 1872 and attempts to analyze whether the said provisions are in compliance with the contractual principles.

## **CH-2: THE ASSOCIATION BETWEEN CONTRACT LAW AND PROPERTY LAW:**

The foregoing chapter has descriptively discussed the line of difference between section 6 (a) and 43 of the Transfer of Property Act, 1882 with relevant case laws and judgments. Also the said provisions were analyzed from the principles of contract law to validate the purpose of the said provisions thus creating an interlinked connection between Contract and Property law.

It is well known that property law and contract law are two distinct legal disciplines that deal

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<sup>16</sup> AIR 1915 MADRAS 972.

<sup>17</sup> Sarthak Sisodia and Neha Bharti, *Non-Transferable Property under the Transfer of Property Act, 1882*, Indian JL & Legal Research (2022).  
(<https://heinonline.org/HOL/P?h=hein.journals/injllw9&i=2547>)

with subject matters and has its own significance<sup>18</sup>. The stringent division between contract law and property law is not justifiable where amendment, conclusion and termination of contracts are property law transactions<sup>19</sup>. The intended and ideal objectives of contemporary contract law, i.e, the Indian Contract Law are often guided by three overarching goals: facilitating trade, safeguarding the interests of the contractual parties and the public interest, and offering a private dispute resolution process<sup>20</sup>. Contract law is the subset of the law of obligations, which is the body of law that regulates individual rights and the related duties that arise between parties<sup>21</sup>. The said rights and claims are regarded as Rights in Personam<sup>22</sup> which are personal in nature and could be exercised only against that particular individual.<sup>23</sup>

Property law is generally understood to deal with the legal relationships (property rights) between natural or legal people and objects<sup>24</sup>. Thus, property law may be defined as "a system that regulates the acquisition, registration, destruction, and third party effects of those property rights, surrounded by a framework of rules.". The term "Property Law" has come into existence from the early modern period, i.e, 17th century AD, where as the concept of property dates back to the period of Aristotle and Plato<sup>25</sup>.

Now it has become generalized that contractual claims are one of the types of intangible property<sup>26</sup>. The Property law covers the property or proprietary rights which are rights in rem, i.e, rights enforceable against the world<sup>27</sup>. In recent years, several analysts have called attention to the interplay and additional roles that property law and contract law play<sup>28</sup>. One may consider contract law to be a "generator or enabler of property law<sup>29</sup>". It is true that contracts form the basis of many property law transactions, but it is crucial that authors who highlight the

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<sup>18</sup> Eveline Ramaekers, *What is Property Law?* 37 (3) Oxford Journal of Legal Studies, (2017), 588, 591.

<sup>19</sup> Lutz-Christian Wolff, *The relationship between contract law and property law*, Common Law World Review, 2020, 1, pp 1.

<sup>20</sup> Roger Brownsword, *General Considerations* in Michael Furmston (Ed.), *The Law of Contract*, 6th edn LexisNexis, London, (2017) 23–25.

<sup>21</sup> David Pearce, *Property and Contract: Where are we?* in Alastair Hudson (Ed.), *New Perspectives on Property Law, Obligations and Restitution*, Cavendish Publishing, (London) 2004, 88.

<sup>22</sup> Mindy Chen-Wishart, *Contract Law*, 5th edn OUP, Oxford, (2015) 33.

<sup>23</sup> Roy M. Goode, *Ownership and Obligation in Commercial Transactions*, (1987) 103 LQR 433.

<sup>24</sup> Fredrick H. Lawson and Bernard Rudden, *The Law of Property* (3rd rev edn OUP, Oxford 2002) 5.

<sup>25</sup> Ramaekers, Eveline. *What Is Property Law?*, Oxford Journal of Legal Studies, vol. 37, no. 3, 2017, pp. 588–617.

*JSTOR*, <https://www.jstor.org/stable/48561005>. Accessed 15 Feb. 2024.

<sup>26</sup> Stephen A. Smith, *Contract Theory* OUP, Oxford, 2004. pp. 98.

<sup>27</sup> Ben McFarlane, *The Structure of Property Law: Attempts to define property rights*, Hart Publishing, Oxford; Portland, 2008, pp. 374, 411–2.

<sup>28</sup> Simon Whittaker, 'Introductory', in Hugh G. Beale (ed), *Chitty on Contracts*, Vol. 1 General Principles (32nd edn Thomson Reuters, London 2015) 3, 182; Fairfield 2005, 1051.

<sup>29</sup> *ibid*.



functional similarities between contract and property law do not actually blur the lines between these two legal disciplines or provide arguments for their continued separation.

The typical justifications offered by many authors and legal publications for the distinction between property law and contract law are unpersuasive and not satisfactory. Specifically, the frequent comparison of the distinctions between property rights and contractual claims is misleading as it draws parallels between two quite different kinds of rights with distinct purposes. In the contemporary days, it is widely accepted that contractual claims constitute property. It follows that contract law governing the creation, nature, modification, and termination of contractual claims<sup>30</sup>.

Thus, this chapter has justified the interdependence of both contract and property law on the basis of their application and significance.

### **CH-3: ANALYSIS OF SECTION 6 (a) AND 43 WITH THE PRINCIPLES UNDER INDIAN CONTRACT ACT, 1872:**

This chapter of the research paper seeks to examine sections 6 (a) and 43 of the Transfer of Property Act, 1882, with the provisions of the Indian Contract Act, 1872. Therefore, the researcher will critically analyze the provisions, with the rationale embedded in both the statutes and attempts to support the argument of the previous chapter, that there is a considerable association between the Indian Contract Act and The Transfer of Property Act even more decisively.

The Indian Contract Act, 1872 defines and specifies various circumstances of Fraud and Misrepresentation under the provisions 17 and 18. Section 6 (a) of the TPA, 1882 favors the rule of equity. *“The chance of an heir apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of kinsman or any other mere possibility of a like nature”*. Interpreting the term “possibility”, it refers to the bare possibilities, but not the possibilities that are associated with interest, such as future interest or dependent remainders<sup>31</sup>. Section 43 of the Transfer of property Act, 1882 signifies the rule of estoppel. The letters of the provision are

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<sup>30</sup> Supra Note 19.

<sup>31</sup> Vinit Kumar, *To Study and Analyze the Difference between Contingent Interest and Spes Successionis under the Transfer of Property Act of 1882*, International Journal of Science and Research (IJSR), 2020, 1-2.

as follows;

*“Transfer by unauthorized person who subsequently acquires interest in property transferred.--Where a person [fraudulently or] erroneously represents that he is authorized to transfer certain immovable property and 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 of transfer subsists. Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option”<sup>32</sup>.*

The idea of estoppel is enshrined in Section 43, meaning that the person making the false or erroneous representation as an authorized person, cannot be heard to accuse the person acting on that representation of anything else. The stance taken by the courts is that, it makes no difference if the transferor makes the claim in a bonafide, genuine or dishonest manner. There is nothing more to be determined than whether the transferor has taken place fraudulently. There is minimal change based on the transferor's purpose. The fact that the transferee acted on the deception is still made significant regardless of whether the transferor made the assertion in a fraudulent or honest manner.

There is unjust enrichment<sup>33</sup> on behalf of the transferor as he acquires the ownership of the property through fraud or misrepresentation where he was initially an unauthorized person. The 13th Report of Law Commission of India<sup>34</sup> has stated that unjust enrichment is same as unjust benefit which represents the doctrine, “*Nemo debet locupletari ex aliena jactura*” meaning, no man should grow out of the benefit of other person by exploiting his resources and there is the claim for restitution<sup>35</sup>. In the English case of *Moses V Macferlen*<sup>36</sup>, Lord Mansfield opined that the action for the restitution "lies for the money paid by mistake; or upon a consideration which happens to fail; or for money obtained through extortion; or an undue advantage; or imposition (express or implied)".

Analyzing section 43 of the Transfer of Property Act, the transaction where the transferor is an unauthorized person who doesn't have interest over the property fraudulently or misrepresents

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<sup>32</sup> Section 43, The Transfer of Property Act, 1882.

<sup>33</sup> Ruchir Rai, *The Principle of Unjust Enrichment*, SSRN, 2016.

<sup>34</sup> <http://lawcommissionofindia.nic.in/1-50/Report13.pdf>, accessed on 14th February, 2024

<sup>35</sup> *Brewer Street Investments Ltd. v. Barclays' Woollen Co. Ltd.*, (1954) 1 QB 428.

<sup>36</sup> (1760) 2 Burr, 1005, 1007.

himself to have an interest over the property. The option provided to the transferee to make the transfer valid or void is inconsistent here. As the initial transfer in itself was made through fraud or erroneous representation making such contract valid subsequently doesn't make sense. If the transferee was aware that the transferor is not the legal owner of the property, i.e without notice, the circumstances would be different. In that scenario, the transfer would be controlled by Section 6(a) and Section 43 would apply. This argument which is said to be based on the principles of rule of equity is not reasonable and just as it affects the transferee though the option is provided either to accept or deny the transfer. This provision is more likely to promote unjust enrichment which the contract law entirely forbids.

## CONCLUSION:

It is necessary to eliminate inconsistencies between various property law ideas and norms in order to uphold the idea of rationality and equity. Therefore, unless there are valid reasons for a different approach, contract law regulations pertaining to property law matters must be consistent with those of other property law domains, such as land law and personal property law. It was shown that this result offers novel and ground-breaking insights into a wide range of legal matters. Obviously, one must admit that rationality may not have had a major influence on Indian law in the past circumstances. Moreover, the lawyers, courts and the entire judicial system typically have strong attachments to the legal concepts that they were raised and raised with.

This research paper has clarified the blurred line of distinction between the sections 6(a) and 43 of the Transfer of Property Act, 1882, using different case laws. The researcher has attempted to establish an interconnection between the Indian Contract Act, 1872 and the Transfer of Property Act, 1882, by analyzing the said provisions with the application of contractual principles.

As the courts have well established that *spes successionis* is void, which is found upon the well established *Principle of Equity*, this paper only criticizes the framing of section 43. The researcher comes to a conclusion that section 43 of the TPA, 1882 is promoting unjust enrichment which favors ownership through fraud or misrepresentation. Even though the transferee has the option to accept or reject the transfer from the person who initially doesn't have title or ownership with the property, the provision seeks to validate such unauthorized transaction. Therefore, there still needs to be a clarification in the framework of section 43 of

the Transfer of Property Act, 1882 or I would suggest that the courts can interpret the provision without isolating it from contract law and has to eliminate the element of injustice present in it.

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