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## BETWEEN ESTOPPEL AND OWNERSHIP: BRIDGING THE DOCTRINAL DISSONANCE OF UNDER S.43 TPA (1882)

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### Introduction

This paper examines the doctrinal and conceptual tensions embedded in Section 43 of the Transfer of Property Act, 1882, a provision that embodies the principle of “feeding the grant by estoppel.” At its core, Section 43 permits the validation of a transfer made by a person who lacks present title, provided that such title is subsequently acquired<sup>1</sup>. This creates an apparent contradiction with the foundational rule of property law—*nemo dat quod non habet*—which asserts that one cannot transfer better title than one possesses<sup>2</sup>. The paper interrogates how the legal system reconciles this contradiction and seeks to locate the theoretical foundations that justify such validation.

The analysis argues that Section 43 operates not merely as an equitable exception but as a hybrid doctrine that destabilizes classical conceptions of property. By allowing a defective transfer to acquire retrospective validity, the provision collapses temporal distinctions central to property law and introduces a legal fiction that challenges the requirement of certainty of title. The doctrine prioritizes reliance over strict ownership, thereby shifting the conceptual basis of property from a rigid title-based system to one that accommodates equitable considerations.

Through doctrinal analysis and engagement with jurisprudential theory, the paper demonstrates that Section 43 transforms contractual expectations into proprietary entitlements without the formal mechanisms traditionally required for the creation of property rights. Drawing on Hohfeld’s framework of jural relations, it is argued that the provision restructures legal relations by converting in personam claims into in rem rights. Further, by engaging with Waldron’s theory of property as a system of allocation, the paper situates Section 43 within a

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<sup>1</sup> Transfer of Property Act, 1882, § 43 (India).

<sup>2</sup> The maxim *nemo dat quod non habet* is a foundational principle of common law property. See Frederick Pollock & Robert Samuel Wright, *An Essay on Possession in the Common Law* 89 (1888).

broader normative framework that emphasizes fairness in transactional relationships.

Despite its equitable rationale, the provision generates significant instability. It weakens the *nemo dat* principle, introduces uncertainty through the elective nature of the transferee's right, and blurs the distinction between contract and property. The paper concludes that Section 43 represents an uneasy compromise between certainty and fairness. While it performs an important corrective function in imperfect property systems, its doctrinal incoherence underscores the need for reform, particularly in integrating the provision with modern systems of registration and title verification.

### **I. The Foundational Paradox and Doctrinal Tension**

In light of the principle "*nemo dat quod non habet*", through what kind of theoretical footing can the legal system justify validating transactions founded on misrepresentation? How can the law insist that one cannot transfer property that one doesn't own, and yet enforce such a transfer as valid?

Section 43 of the Transfer of Property Act, 1882 embodies the doctrine popularly described as "feeding the grant by estoppel"<sup>3</sup>, a principle that allows a transferee to transfer when the transferor, having fraudulently or erroneously represented authority, subsequently acquires the interest allegedly transferred.

While the provision appears to function as a limited equitable exception, it in fact reveals a deeper doctrinal tension between two foundational principles of property law: the requirement of certainty of title and the equitable protection of reliance.

Property law traditionally insists that a valid transfer must be supported by a present proprietary interest. However, Section 43 disrupts this orthodoxy by allowing a defective transfer to acquire validity upon a future event. This produces a doctrinal dissonance, wherein the law simultaneously affirms that one cannot transfer what one does not own, yet permits such a transfer to become effective retrospectively. This paper argues that Section 43 functions as a hybrid doctrine that bridges this dissonance by transforming contractual expectations into proprietary entitlements, thereby challenging classical conceptions of property as a stable and

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<sup>3</sup> Transfer of Property Act, 1882, § 43 (India).

determinate bundle of rights.

## II. Justifying the Exception: Feeding the Grant by Estoppel

The rationale underlying Section 43 lies in mitigating the rigidity of the rule *nemo dat quod non habet*, which ensures that no person can transfer a better title than they possess. While this rule promotes certainty, it can produce inequitable outcomes where a transferee has acted in good faith based on the transferor's representation.

Section 43 addresses this inequity by protecting reliance. Where a transferor represents that they are authorized to transfer property and the transferee acts upon that representation for consideration, the law prevents the transferor from subsequently denying its truth once they acquire the relevant interest. The doctrine thus operates as a form of estoppel, ensuring that a party cannot benefit from their own misrepresentation.

## III. From Title to Reliance: Theoretical Foundations of Section 43

From a broader jurisprudential perspective, this reflects a shift from a purely title-based conception of property toward one that recognizes reliance as a legally significant interest. Property is not merely a physical object but a bundle of rights—possession, use, exclusion, and transfer<sup>4</sup>. Section 43 reallocates this bundle in favour of the transferee, thereby prioritizing fairness in transactional relationships.

## IV. Structure and Operation of Section 43

Section 43 operates upon the satisfaction of four essential elements: (i) a fraudulent or erroneous representation of authority by the transferor, (ii) a transfer for consideration, (iii) subsequent acquisition of interest by the transferor, and (iv) the option of the transferee to enforce the transfer. The right conferred upon the transferee is not automatic but elective.

In *Jumma Masjid v. Kodimaniandra Deviah*, the Supreme Court clarified that the doctrine applies even where the transferor had no present interest at the time of transfer, thereby emphasizing its equitable foundation. The transferor is precluded from asserting a position

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<sup>4</sup> See Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning* 23–64 (Walter Wheeler Cook ed., 1919); see also A.M. Honoré, *Ownership*, in *Oxford Essays in Jurisprudence* 107, 112–28 (A.G. Guest ed., 1961) (describing the standard incidents of ownership including possession, use, and alienation).

inconsistent with their earlier representation<sup>5</sup>.

## V. Transforming Property: A Hohfeldian and Conceptual Analysis

Conceptually, the doctrine may be understood through Hohfeld's framework of jural relations, which distinguishes between rights, duties, privileges, and powers<sup>6</sup>. At the time of the initial transaction, the transferee possesses only a contractual claim. However, upon the transferor's subsequent acquisition of interest, this claim is transformed into a proprietary right enforceable against the world at large. Section 43 thus restructures legal relations rather than merely enforcing a promise.

Despite its equitable objective, Section 43 reveals a deeper structural instability within property law. Its operation exposes not merely a tension, but a fundamental incoherence in how the law conceptualizes ownership, transfer, and obligation.

## VI. Doctrinal Instability and Structural Critique

At its core, Section 43 appears to validate a transfer that was void at inception. This raises a critical conceptual problem: can a legal nullity be revived, or does the law merely pretend that it was never void? The doctrine operates as a legal fiction, retrospectively overlaying validity onto an invalid act. This produces a temporal paradox. At the time of the initial transfer, no proprietary interest exists; yet upon subsequent acquisition, the earlier transfer is treated as effective. The law thus collapses distinct temporal moments into a single legal effect, undermining the principle that proprietary rights must be clear and determinate at the time of transfer.

Section 43 significantly weakens the rule *nemo dat quod non habet*. Although framed as an exception, its logic challenges the rule itself. If a person can effectively transfer property they do not own—subject only to later acquisition—then *nemo dat* ceases to function as a strict rule and becomes contingent. This raises a deeper concern: Section 43 does not merely carve out an exception but reveals the fragility of the very principle it qualifies.

The transferee's right under Section 43 is optional rather than automatic. While this introduces

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<sup>5</sup> *Jumma Masjid v. Kodimaniandra Deviah*, (1962) 2 SCR 554 (India).

<sup>6</sup> Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning* 36–64 (Walter Wheeler Cook ed., 1919).

flexibility, it also creates doctrinal uncertainty. The absence of clarity regarding when and how the option must be exercised results in a state of suspended ownership. During this interim period, the property exists in a legally indeterminate state, complicating transactions and potentially affecting third-party rights. Ownership becomes contingent not only on future events but also on the subjective choice of the transferee, thereby undermining its stability as a legal institution.

Section 43 disrupts the classical distinction between contractual rights (*in personam*) and proprietary rights (*in rem*). Initially, the transferee possesses only a contractual expectation. However, upon subsequent acquisition, this expectation matures into a proprietary entitlement without any fresh act of transfer. From a Hohfeldian perspective, this represents a transformation of a claim-right into a right in rem without the formal mechanisms typically required for the creation of proprietary interests. This challenges the structural foundations of property law, which rely on clearly defined acts—such as conveyance and registration—to generate rights.

Jeremy Waldron's analysis of property as a system of allocation provides further insight into this doctrinal complexity<sup>7</sup>. Section 43 reflects a choice to allocate property not strictly on the basis of legal title, but on the basis of reliance. While this promotes fairness, it also introduces inconsistency. If ownership is determined by reliance rather than title, property law risks becoming a system of ad hoc allocation rather than a stable framework of rights.

Section 43 shifts the risk of defective title onto the transferor. While justified in cases of fraud, its application to innocent misrepresentation raises concerns. Transferees may be less incentivized to conduct due diligence, knowing that the law may later validate the transaction. This creates a potential moral hazard, where the burden of error falls disproportionately on the transferor, even in the absence of wrongdoing. The doctrine thus raises questions about whether it achieves a fair distribution of risk in property transactions.

Ultimately, the dissonance created by Section 43 reflects a broader conflict within property law itself. Property law seeks certainty, stability, and predictability, while equity seeks fairness and flexibility. Section 43 attempts to reconcile these competing objectives but does so imperfectly. Rather than resolving the tension, the doctrine exposes the difficulty of integrating equitable

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<sup>7</sup> Jeremy Waldron, *The Right to Private Property* 26–61 (1988).

principles into a system fundamentally structured around certainty.

## **VII. Contemporary Relevance, Limitations, and Reform**

In modern property systems, the relevance of Section 43 must be assessed in light of formal mechanisms such as registration and title verification. Transfers of immovable property typically require written and registered instruments, ensuring transparency and certainty<sup>8</sup>. However, in jurisdictions like India, where title systems are not fully conclusive and disputes remain prevalent, Section 43 continues to perform a corrective function. It addresses gaps that formal mechanisms cannot entirely eliminate, particularly in cases involving informal transactions and inheritance.

Despite its equitable purpose, Section 43 suffers from several practical limitations. The absence of clear guidelines regarding the exercise of the transferee's option creates uncertainty. Conflicts with bona fide purchasers may arise, and the interaction between the doctrine and registration requirements remains unclear. These issues undermine both doctrinal coherence and transactional efficiency.

Reform should aim to clarify the operation of Section 43 while preserving its equitable core. This includes defining the temporal scope of the transferee's option, integrating the doctrine with registration systems, and specifying the proprietary consequences of enforcement. In a digitized property regime, the doctrine could be restructured as a priority-based rule linked to recorded claims.

## **VIII. Conclusion: An Uneasy Compromise**

Section 43 represents an uneasy compromise between fairness and certainty in property law. While it protects transferees who rely on misrepresentation, it simultaneously destabilizes the principle of title certainty and blurs the boundary between contract and property. Its continued relevance lies in addressing imperfections in existing property systems; however, its doctrinal dissonance underscores the need for clearer integration with modern frameworks. Ultimately, Section 43 does not resolve the tension it embodies, but reveals the persistent conflict at the heart of property law.

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<sup>8</sup> Registration Act, 1908, § 17 (India); Transfer of Property Act, 1882, § 54 (India) (requiring registered instruments for sale of immovable property worth one hundred rupees or more).