

GOYLE'S COMMENTARY ON THE TRANSFER OF PROPERTY ACT (2<sup>nd</sup> ed. 2001). By M.R. Mallick. Eastern Law House, Calcutta. Pp. 986. Price Rs. 750/-.

PRIOR TO 1882, the transactions with regard to immovable property were governed by a few regulations and principles of justice, equity and good conscience as these prevailed in England. Realising that the existing regulations covered very few points regarding transfer of property and the equity principles could not always be applied to the peculiar social conditions in this country, a draft bill was sent by the Secretary of State for India to the Governor General's Council in 1877. After some criticism and by making relevant modifications, it was passed into law in 1882. However, it came to be realised sooner than later that the Act has failed to bring certainty regarding the branch of law covered by it. Conflicting decisions were available from different high courts regarding most of the provisions of the Act within a short span of thirty years. The exercise to examine the conflicting decisions and resolutions thereof was started in 1927 and completed in 1929 through the Transfer of Property (Amendment) Act. Although titled as the amending Act, it was an exercise to overhaul the provisions of the Act.

The Transfer of Property Act is not an exhaustive piece of legislation. It does not take into its fold the entire gamut of property law. This is evident from the preamble to the Act, which put the object of the Act as to define and amend (not consolidate) certain parts of law relating to transfer by act of parties. The Act is not an exhaustive code in property matters can be seen from the following facts:

- (a) The Act is essentially applicable only to those transactions wherein the subject matter of the transfer is immovable property;
- (b) The Act applies only to transfers by act of parties and not the ones by operation of law;
- (c) The Act applies only to transfers *inter-vivos* and not to transfers resulting from testamentary instrument;
- (d) The Act does not apply to government grants;
- (e) The Act does not apply to transfers made by or on behalf of the government;
- (f) Chapter II of the Act will not affect any rule of Mohammedan law;



The above identified factors restrict the scope of the Act from being labelled as a complete code on property matters. But the significance of the Act is not diluted thereby. The Act remains crucial in property matters as it takes within its fold the entire lot of transactions relating to immoveable property. These transactions may be few in one's lifetime but they could make or mar not only the party to the transaction but his future generation as well.

The book under review is a comprehensive commentary on the Transfer of Property of Act authored by L.C. Goyle and first published in 1991. A decade later, the second edition has been revised and updated by H.R. Mallick who adorned the bench of the Calcutta High Court. The comprehensive analysis of this important branch of law is reflective of Sh. Mallick's legal acumen and clarity of the subject. Mallick has dwelt more on Indian pronouncements while retaining the English decisions recorded by Goyle. The conversion of subject wise treatment to that of statute wise by Mallick has made the work lucid in form and easily intelligible to readers. A new feature introduced by Mallick is a small note of historical background to each section of the Act while making critical and masterly analysis of the concepts. The case law has been updated. The Indian and English decisions up to 1999 have been recorded.

A new feature of the book is the inclusion of the Indian Easements Act, 1882 and the Government Grants Act, 1895. The Easement Act, although not applicable to the whole of the Indian Union, is an essential component of property Law. Giving it its due place has rendered the work to be more useful for those handling property matters. Under section 3 of the Government Grants Act, Government Grants take effect according to their own tenor notwithstanding any rule, statute or enactment.<sup>1</sup> But the factum of conveyance and the claim for ownership under this Act puts it under the broader umbrella of property law. The inclusion of these statutes in the present work have enhanced the utility of the work. This bonus is in addition to the focus of the work remaining around transfers *inter-vivos*.

Some of the fundamental rules governing transfer of property like the rules against perpetuity, rule against accumulation, vested and contingent interest, rule of election, *lis-pendens* and the rule of part performance have been expanded and dealt in greater detail. This is the first work wherein the law of charity has been extensively dealt with. Section 18 of the Act, which operates as an exception to the rules against perpetuity, is generally given a peripheral treatment. Despite the fact that the transfers made for the benefit of the public at large are numerous with their rallied problems, section 18 has been getting only a marginal reference. Mallick deserves to be congratulated for his concerted effort on this significant

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<sup>1</sup> For details see, *Chitra Kumar v Union of India*, 2001 (1) RCR 445 (SC)



aspect of charity, *vis-à-vis* the rules against property.

The chapter on mortgages has been elaborated. The ticklish question of registration of mortgage has been given a lucid explanation. However, the rule of marshalling and contribution (sections 81 and 82) has not been given the deserved treatment. It would be useful to examine these rules more critically in the context of mortgage. Similarly, the rule of priority could have been better explained if sections 48, 78 and 93 were discussed in one go. Clubbing these provisions would make it easier for the reader to understand the principle of priority, as the rule is not restricted in its application to mortgage only. The treatment given to the concept of charge (section 100) is praise worthy.

The importance of the chapter on leases lies primarily during the period when rented premises are enjoying 'rent holiday'.<sup>2</sup> Another crucial question is the distinction between lease and license. Both these aspects have been dealt with extensively in the present work. By making detailed reference to the case law starting with *Associated Hotels of India Ltd. v. R.N. Kapoor*<sup>3</sup> and culminating in *Delta International v. Sham Sunder Ganeriwala*<sup>4</sup> via *Rajbir Kaur v. M/s Chokosiri & Co.*<sup>5</sup> the tests to be applied for drawing a line between lease and licence have been critically examined. It needs no emphasis that this distinction plays a crucial role in case of subletting under the Rent Acts for the eviction of the tenant.

It would have been appropriate to include a chapter on the historical perspective of the Act. It could serve a useful purpose, if the reader can be made to pass through the journey of the statute from 1882 at the outset. It would be equally useful to include the scope of the Act in this chapter. This would give the reader a clear view as to the property matters falling within the purview of the Act as the starting stage.

While discussing the applicability of the Act to the present states of Punjab, Haryana and Union Territory of Chandigarh, reference could have been made to *Milkha Singh v. Mst. Shankari*<sup>6</sup> and *State Bank of Bikaner and Rajasthan v. Vijay Kumar*<sup>7</sup> to authenticate the point made at page 5 of the book.

The chapter on gifts, like other modes of transfer, could have been dealt in greater details. This becomes necessary in view of the fact that leaving aside the gift by will, gift of movables in contemplation of death and gift under Mohammedan law, the entire law of gifts is enshrined in this chapter only.

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2. As long as the premises are exempt from the operation of the Rent Act

3. AIR 1959 SC 1262.

4. (1999) 4 SCC 545.

5. AIR 1988 SC 1845.

6. AIR 1947, Lahore 1 (FB).

7. 1999 (1) RCR 542 P&H.



Mallick's effort is commendable in making the volume so comprehensive in an area of law which keeps on posing new challenges. His acumen and authority is stamped on every page of the book.

The publisher deserves to be complemented for neat print, attractive binding and reasonable price affordable by the young and old professionals.

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