

**PRINCIPLES OF THE LAW OF TRANSFER:** By Shantilal Mohanlal Shah, (Fourth Ed. 1969). N. M. Tripathi Private Limited, Bombay. Pp. xxx+368. Rs. 35.

The book under review is the fourth edition (1969) of "Principles of The Law of Transfer" by Shantilal Mohanlal Shah, a seasoned writer, a former Judge and a Senior Advocate of the Supreme Court of India. The Law of Transfer of Property is the backbone of most of the civil litigation in this country as most of the civil cases rotate round the various types of conveyances of property and as such to have the latest case law and legal pronouncements on the subject, as the book provides, is a happy addition particularly for the students for whom the book is principally meant. Looking to the intricacy and immense importance of the subject, however, a few comments are called for.

The profession of law is wedded to the utmost clarity, accuracy and unambiguity and as such the omission of the most important word, *viz.*, 'Property', from the title of the book leaves a reader to speculate whether the book is a commentary on the Transfer of Property Act, 1882. If the use of the word is not essential, I may say that the framers of the Act have used it redundantly. So much for the title of the book.

Some of the provisions of the Transfer of Property Act are quite terse and complicated and it is, therefore, gratifying that Shah has endeavoured to simplify them by adopting the method of lectures and systematically dividing the whole subject into XI lectures.

The doctrine of notice plays a very important role nearly in all types of transactions of property and it is good that the author has allotted one full chapter<sup>1</sup> to this topic highlighting all its aspects and candidly explaining its immense impact on various ramifications of the law of property through decided cases.

As already stated the law of property is so important that there is a plethora of decisions on one and the same law-point by various High Courts in the country stating sometimes very fine points of differences, and as such it would have been better, in substance and look, had the various cases been given in the foot notes. The author has satisfied himself only by giving one or two relevant cases in *brackets* in the body of the text itself.

---

1. Shah, *Principles of the Law of Transfer* (1969) at 63-102. Hereinafter cited as *Shah*.

The Ist chapter is Introductory. Among other things, the author has commented on the definition of transfer.<sup>2</sup> Under this sub-heading "partition" has been a subject of great controversy and remains yet a topic finally unresolved at the level of the Supreme Court. The author has done well to discuss the matter in detail and with clarity. Another important topic in the area of definitions and introduction is 'attestation'.<sup>3</sup> Shah has discussed it in chapter II<sup>4</sup> under the heading 'Essentials of a valid Transfer'. The discussion is quite exhaustive and detailed but it would have been more befitting and systematic, in my opinion, had it found place in the Ist Chapter of introduction alongwith other definitions.

Lecture II deals with essentials of a valid transfer. In this chapter section 6 of the Act has been discussed in detail but sections 19 and 21 dealing with vested and contingent interests have also been discussed, as if passing by, under the commentary of section 6 which appears a bit hotch-potch arrangement. Vested and contingent interests are very important topics which have found place separately, more befittingly under Chapter III and not as a part of commentary on section 6.

Lecture III is on conditional transfers and transfers for the benefit of unborn persons. Section 17 of the Act which deals with 'discretion for accumulation' has been explained by the author in a bit faulty way. He says:

*The Section allows accumulation of income during either of the two following periods only:*

- (i) *the life of the transferor; or*
- (ii) *a period of 18 years from the date of the transfer.*<sup>5</sup>

He puts a full sotp here and then in next para gives an illustration which shows as if accumulation can be made for any of the two periods. Thus the point that accumulation is allowed up to a longer of the aforesaid periods, is missing. It is only in the third paragraph mentioning *three exceptions to the rule* that a hint to this accurate period has been given.

Even in this third para the position is clouded with obscurity and the exact point of time when the property and the income

---

2. See section 5 of Transfer of Property Act, 1882 (hereinafter mentioned only as 'the Act').

3. See section 3 of the Act.

4. *Shah* at 31.34.

5. *Id.* at 43. Emphasis added.

thereof shall be disposed of is missing. The section of the Act contains the words '*and at the end of such last mentioned period the property and income thereof shall be disposed of...*' These are essential words to give the exact point of time but the author has omitted them totally, as if they are redundant, and hence the resultant obscurity.

The author deals with the important *Doctrine of Election* at pages 55 to 60. In this doctrine, he, in my humble opinion, gives an erroneous concept of the doctrine at p. 57 where he states:

'Where, by reason of election, the benefit conferred on the owner of the property is forfeited and reverts to the grantor, *the transferee who is disappointed by such election is not helpless in the matter. Where the transfer to him is gratuitous he is entitled out of the benefit conferred on the owner of the property to the amount of the value of the property attempted to be transferred to him*, and if the transferor dies or otherwise becomes incapable of making a fresh transfer he is entitled to a charge for such amount upon the benefit which has reverted to the grantor'.

It shows that if the owner of the property (refractory donee) elects against the instrument, the disappointed transferee is not helpless and even if the transfer was gratuitous, he will get the amount of the value of the property attempted to be re-transferred. But it is submitted that this view is not correct and the disappointed transferee in cases of gratuitous transfer is quite helpless. He gets nothing in such cases where the transfer was gratuitous and the grantor (transferor) survives the election. He is fully on the mercy of the transferor as he can only look to him to make a substituted gift. Thus if the transferor changes his mind and does not make a fresh gift to the disappointed transferee he has got neither legal remedy of any kind nor a charge upon the property of the transferor or upon the benefit so relinquished by the refractory donee and reverted to the transferor.

Again, the author while dealing with clause 8 of section 35<sup>6</sup> (election) shows that if the owner of the property does not elect within one year after the date of the transfer, the transferor or his representative may call upon him to elect. *If not, the consequences will be that the donee will retain his property, and the transferor or his representative will be obliged to make good to the disappointed transferee the loss of the property attempted to be transferred to him by paying him the value of such property.*" It is submitted that this view of the author is also not correct because the disappointed transferee does not get the value of the

---

6. *Id.* at 60. Emphasis added.

property in all the cases, for example, in case of gratuitous transfer when the transferor has not died and is still capable to make a transfer and the election is not made for a very long time by the owner of the property and the transferor also does not call upon him to make his election, the only consequences will be that (i) the property will remain with the owner (ii) the owner of the property will lose the benefit conferred upon him in lieu of his property which was professed to be transferred and (iii) the disappointed transferee will get *nothing* and can claim nothing as a matter of right. *Thus the transferor or his representative is not obliged to make good to the disappointed transferee the loss of the property attempted to be transferred to him as the transaction was merely gratuitous.*

The description of the doctrine of election is otherwise quite clear but as the section contains nine clauses and the doctrine is an important one, it would have been better for proper understanding of the law, in the opinion of this reviewer, if the full text of the section had been reproduced in these pages.<sup>7</sup> It will be observed that even the framers of the Act have given illustrations below important clauses in the middle of this section wherever more clarity was needed. Otherwise the general practice is that in an enactment illustrations always appear *at the end* of the full section and not *in between* the paragraphs.

Chapter IV deals with the doctrine of notice and unconscionable transfers of immovable property. The doctrine of notice has been dealt with in detail. A transfer by an ostensible owner (section 41) has also been dealt with nicely, but at certain places obscurity has crept in, for example on page 72 under the heading "Consent of true owner" in the 25th line the author says:

Mere silence on the part of the true owner, however, is not enough to imply his consent. There must be a duty to speak, which arises whenever and only when silence can be considered *as having an active property, that of misleading*

In the end of this chapter the author deals with the important doctrine of part performance.<sup>8</sup> The description is clear and in full detail. But while giving a comparative study of Indian Law and English Law,<sup>9</sup> though the author has mentioned two points of difference and has also said that for the exercise of the

---

7. The author has reproduced only the first paragraph of the section. See, *Shah* at 56.

8. *Id.* at 93-102.

9. *Id.* at 96.

right no question of limitation can arise but the counterpart of this point in English law that there is a limitation period in England for the exercise of this right under the doctrine<sup>10</sup> is missing. Again, a fourth point of difference, giving the reason for the rule that in India it was enacted to mitigate the harshness of the law of compulsory registration whereas in England the reason was the harshness of section 4 of the Statute of Frauds, 1677 is not mentioned. Further at the end of the discussion in the last paragraph of this chapter<sup>11</sup> the author makes a sweeping remark that if an amendment is made to explanation II to section 3 of Act, 'the proviso to section 53A may even be unnecessary'. In the reviewer's view this is going too far as there are various types of possession in jurisprudence and to protect the right of a *bona fide* transferee under various circumstances, as was the intention of the legislature, the proviso must remain there.

Lecture V deals with 'Special cases on Transfer of immovable property, Priority and *Lis Pendens*'. This chapter treats the two important doctrines, namely the 'doctrine of priority' and the 'doctrine of *lis pendens*'. The doctrine of priority (section 48) has been discussed in short<sup>12</sup> and the various exceptions to the doctrine such as the 'principle of estoppel', crown debt and land revenue, do not find place in the discussion. A hint of the exceptions on account of fraud, misrepresentation and gross neglect as embodied in section 78 has been given at the end but the mention of section 79, which also constitutes an important exception to the doctrine of priority does not appear anywhere.

The doctrine of '*lis pendens*' (Section 52) has, however, been discussed beautifully and in full detail<sup>13</sup> except the fact that a mention of 'estoppel' as an exception to the plea of '*lis pendens*' and a comparison between *lis pendens* and *res judicate* has not been made.

Lecture VI is on sale of immovable property and is a good commentary on nearly all the points involved.

The next lecture deals with 'Mortgages of immovable property' and lecture VIII is a commentary on 'Rights and liabilities of mortgager'. The whole topic of mortgages embracing the various kind of mortgage, and the 'clog on equity of redemption' has been discussed thoroughly with adequate clarity and the relevant case law.

Chapter IX deals with 'Rights and liabilities of mortgagee and charges'. The topic of charge is important and has been dealt

10. See the leading case *Walsh v. Lonsdale* (1882)21 Ch. D. 9.

11. *Shah* at 102.

12. *Id.* at 108-109.

13. *Id.* at 114-122.

with quite nicely. A comparison between charge, mortgage and lien has been done in detail. At places, of course, some deviation appears to have crept in. For example, on page 253 in the third paragraph the various ways in which a charge can be extinguished has been discussed but while discussing the details of the first mode<sup>14</sup> in the next paragraph the extinction of a *mortgage* has been discussed throughout instead of using the words charge or chargee. Of course a charge is also extinguished in the same way as a mortgage yet the words *charge* and *chargee* should have been used instead of *mortgage* and *mortgagee* as the context is that of a charge and not of a mortgage.

In lecture X the topic of 'Leases of immovable property' has been discussed. The discourse is fine and in adequate detail except for a few obscurantisms at places. For example on page 261 under the heading 'Indefinite Period: (a) Tenancy-at-will', the author says: "The tenant in such a case is not a trespasser and *though he is not liable to pay anything by way of rent, he is not liable to pay any damages or mesne profits either.*"<sup>15</sup>

The construction of the sentence starting with the word 'Though' does not appear to give the desired sense. It shows as if in the natural course of things a tenant is not liable to pay any damages or mesne profits *only, in the case when he is liable to pay something by way of rent or if a tenant is not liable to pay the rent he should be liable to pay either damages or mesne profits at least*, and that is why the author, to show the peculiarity of this type of cases, says that "in such a case. . . . though he is not liable to pay anything by way of rent, he is not liable to pay any damages or *mesne profits either.*' But the reviewer does not think there is any such rule of natural justice or common sense. The sense which the author wants to convey in such cases is perhaps this, that the tenant in such case is not a trespasser and neither is he liable to pay anything by way of rent nor any damages nor *mesne profits*, his only liability being to pay compensation for use and occupation.

Lecture XI, the last one, deals with exchanges, gifts and actionable claims. The whole of this topic has been discussed in fine detail with case on each important law-point.

The printing is generally fine and faultless except at places where spelling errors or misprints appear. A few examples of such misprints are: 'beting'<sup>16</sup> appears instead of 'being'; 'relt-

---

14. Viz, release of debt or of the security.

15. *Shah* at 261.

16. *Id.* at 111.

ting'<sup>17</sup> is printed for 'relating'; 'Convenant'<sup>18</sup> should be read as 'Covenant' and 'Propertes'<sup>19</sup> as 'Properties'.

The above comments are only in the shape of humble suggestions and the book is full of valuable material. The author has taken great pains in simplifying the legal notions and has supported all the important concepts with the latest case law.

*N. R. SHARMA\**

---

17. *Id.* at 319.

18. *Id.* at 250.

19. *Id.* at 300.

\* Lecturer in Law, University Law School, Jaipur.