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## CONCEPT OF IMMOVABLE PROPERTY IN THE LIGHT OF SHANTABAI V. STATE OF BOMBAY CASE

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### ABSTRACT

This paper dredge into the concept of Immovable Property in India, focusing on the landmark Judgment of Honorable Supreme Court in *Smt Shantabai v. State of Bombay* case. It starts with giving a comprehensive meaning and definition of immovable property illustrated in different statutes. In its next half focusing on the case, it explains the legal implications of classifying certain things like trees, as either movable or immovable property. Exploring the detail arguments of both the parties, including the legal dispute of ownership of the trees the paper dives into the Judgment and illuminates the court's interpretation of the term in the context of the case and concludes it with providing the court's rationale behind classifying trees as either movable or immovable property.

## INTRODUCTION:

The Property which is categorized as immovable property, are those property which can't be easily moved and are permanently attached to the Earth. The Transfer of Property Act 1882 , provides an exclusionary definition of the term *Immovable Property* which states that “Immovable Property does not include standing timber, growing crops, and grass”<sup>1</sup>. However the act also provides a definition for things “*attached to the Earth*” which includes; rooted in the Earth (like trees and shrubs), imbedded in the earth (like walls or buildings), attached and imbedded for the permanent beneficial enjoyment of that<sup>2</sup>. This doesn't strictly provides a definition of the term “immovable property” but merely tells what it doesn't include hence we must look into other acts to get a clear definition of the term. General Clauses Act defines ‘Immovable Property’ as, it includes land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to earth<sup>3</sup>. For a more illustrative definition one must look into The Registration Act, which states that ‘immovable property includes land, building, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefits to arise out of land, and things attached to earth, but not standing timer, growing crops nor grass<sup>4</sup>. Hence from all the aforesaid definitions it can be concluded that things attached to earth is immovable property.

The case *Smt. Shantabai v. State of Bombay*<sup>5</sup> is related to movable and immovable property under Transfer of Property Act. The present case is a landmark judgment on interpretation of section 3 of the Transfer of Property Act, 1882. The judgment dated 24.03.1958 was an appeal under Article 32 of the Indian Constitution before the Hon'ble Supreme Court for the enforcement of fundamental rights as well as praying for setting aside an order dated 19.03.1956 by Divisional Forest Officer directing the petitioner to stop her work and cutting trees on the field with an immediate effect.

The case was before 5 judge bench of Chief Justice Sudhi Ranjan, Justice T.L Venkatarama Aiyar, Justice S.K Das, Justice A.K. Sarkar and Justice Vivian Bose.

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<sup>1</sup> Section 3, The Transfer of Property Act, 1882

<sup>2</sup> Section 3, The Transfer of Property Act, 1882

<sup>3</sup> Section 3 (26), The General Clauses Act

<sup>4</sup> Section 2 (6), The Registration Act

<sup>5</sup> AIR 1958 SC 532

□ **Parties of the case:**

In the present case the petitioner is Ms. Shantabai who has approached The Supreme Court against the respondent State of Bombay asking her rights to cut trees from the land in her possession.

□ **Issue:**

1. Whether an unregistered document related to an immovable property needs to be registered to become a valid document?
2. Whether the nature of right was related to the movable or immovable property?

□ **Rules Applied:**

1. Article 32 of the Indian Constitution.
2. Article 19 (1) (f) and Article 19 (1) (g).
3. Section 3 of Madhya Pradesh Abolition of Proprietary Rights Act 1950.
4. Rules framed under section 218(A) of The C.P. Land Revenue Act.

□ **Facts of the case:**

The broadly revolves around an unregistered document related to an immovable property. The appellant's husband Balirambhao Doye was a Zamindar of Pandhapur and on 26.04.1948 he executed an unregistered document in her favour, her the right to enter the land and cut and take the standing crop on the field for a consideration mount of Rs. 26000/- for 12.5 years i.e. till December, 1960 as per the document presented by her before the court. But with the enactment of the Madhya Pradesh Abolition of Proprietary Rights Act 1950, all her rights got evicted and she could no longer take or cut wood.

As soon as she comes to know about she applied to the Deputy Commissioner, Bhandara and he passed an order on 16 August 1955 stating that the section does not apply on the contracts or lease entered before 16 March 1950 however the lease was considered to be genuine and he

eventually permitted her to work on the land subject to the conditions laid under rules framed in section 218(A) of C.P. Land Revenue Act.

Later on Divisional Forest Officer took an action and passed an order stating that her name might get cancelled as she was undergoing an illegal activity of cutting trees, she moved her voice to the state government but nothing happened. The appellant finally preferred a petition under Article 32 of The Constitution of India, alleging her fundamental rights have been infringed.

□ **Case History:**

1. Initially the case was dealt by the Deputy Commissioner, Bhandara who permitted the appellant to work upon the land and gain profit as she was doing it before.
2. At the second stage the Divisional Forest Officer took the case in his hand and passed an order dated 19 March, 1956 directing her to stop cutting trees as it might amount to cancellation of her rights over the land.
3. The appellant moved to state government but nothing happened so she preferred this appeal under Article 32 before the Hon'ble Supreme Court under its Original Jurisdiction, stating that her fundamental right under Article 19(1) (f) and 19(1) (g) has been infringed.

**ARGUMENT:**

1. **Petitioner:** the learned counsel from the petitioner's side argued that his clients' right has been flowed out of the contractual liability and relying upon the case of Chhotabhai Jethabhai Patel' case he said they are entitled to file this writ petition.
2. **Respondent:** as such there were no arguments from the respondents' counsel as this was an original jurisdiction petition.
3. **Outcome of the case:** the five judge bench of the Supreme Court has dismissed the petition with cost as it was found that the order did not infringe any fundamental rights of the petitioner and also the judges have propounded various principles and interpreted the provisions under the Transfer of Property Act, 1882.

**RELATED AND REFERRED CASE LAWS:**

1. *Ananda Behera v. The State of Orissa*<sup>6</sup>: In this case the court discussed about the concept called Profit a Prendre or Benefits arising out of land which as per section 3 of The Transfer of Property Act means that the owner has the absolute power to bar someone or to make someone eligible to access his land and give rights to regulate it. In the present case the court addressing this concept held that the lease between the petitioner and her husband was of this nature and hence no contractual rights arise out such lease document. Therefore, A benefit to arise out of land is a interest in land and is considered as Immovable Property.
2. *Firm Chhotabai Jethabai Patel & Co. v. The State of Madhya Pradesh*<sup>7</sup>: In this case the petitioners approach the court under Article 32 of The Constitution of India alleging interference with their rights, acquired under the contract with the former proprietor by The State of Madhya Pradesh. The Court held that the contract appeared to be the essence and to that effect license was given to the petitioner to cut, gather and carry away the produce.

**PRINCIPLES LAID DOWN IN THE SAID CASE:**

1. Trees are considered as immovable property.
2. In the case of a lease, one enjoys the property has no rights' to take it away. In a property-a-Prendre one has a license to enter on the land, nor for the purpose of enjoying it but for removing something.
3. Deed for transferring the right in the case where registration required.
4. That there is a difference between lease & Profit-a-Prendre where the Immovable property is being enjoyed in the lease, whereas a person has only right to take the goods in profit-a-Prendre and nothing beyond that.

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<sup>6</sup> AIR 1956 SC 17

<sup>7</sup> AIR 1953 SC 108

**ANALYSIS:**

The petitioner filed this present case before the 5 Judge bench of Supreme Court, where Justice Bose gave a separate judgment and other four has collectively given their final say on the said matter. The matter is related to a document which was not a lease but was amount to give certain rights to someone to enter into one's land along with giving an authority to cut down certain trees and carry away the wood and this is called as concept of Profit-a-Prendre as explained exhaustively in the case of *Ananda Behera v. The State of Orissa*.

Since the document of lease was not a registered document it was held that the appellant does not have any fundamental right and hence this claim cannot be enforced. The nature of the rights can be of some Profit-a-Prendre or can be of personal right as under a contract but cannot be of fundamental as such. The court went ahead and stated that the state of M.P was not a party in such contract between the appellant and her husband, hence can't be held binding under any such contract. Furthermore, it was stated that trees are regarded as immovable property as they are attached to the Earth and are rooted in the Earth. Also that the appellant cannot complain about the infringement of fundamental right as she has not acquired any such rights as of now. Hence the petition stands dismissed with costs.

The reasoning given by Justice Bose was that in case of lease a person enjoys the right over the property but does not have any right to take away that property however in case of Profit-a-Prendre the person has a license to enter the land but not for the purpose of enjoying it rather for the purpose of removing something or the other. Continuing it he said that trees are considered as immovable property and in any case the lease document has to be registered in case lease is for more than one year, and since in this case the lease was for more than one year it needed to be registered for the courts to recognize it.

Hence in such circumstances the petition cannot be succeeded.

As far as Authors' opinion is considered she completely agree with the decision of the Hon'ble Supreme Court as the judgment was pronounced after taking all the relevant facts into consideration. As according to her when she claimed her fundamental right to get infringed she did not even have the right to make any changes in the said deed which means at that point in time does not have the right to manage that property, it was merely a power to manage things

when the actual owner is not around that's it. The rationale behind dismissing the petition was correct in its own way.

### **CONCLUSION:**

Although the case *Smt. Shanta Bai V State of Bombay* got dismissed but it was the earliest and landmark judgment in terms of determining the scope of Section 3 of The Transfer of Property Act, 1882. It is from this case court has provided for rationale for classifying trees as movable or immovable property and given a clear distinction between the terms.

It is from this case, that the trees are considered as immovable property and in cases of lease the person who enjoys the property but doesn't have the right to take it away where as in case of Profit-a-Prendre, person can have the authority to enter in the land and can have the right to remove something from it but not to enjoy it as a matter of his right.

The Bench has made a clear distinction between both the terms lease and Profit-a-Prendre. Also was pretty much clear as to when it is mandatory for the lease document to be registered and when not by stating that in case the lease if for one year or more than it has to compulsorily be registered.