
JUDICIAL INTERPRETATION OF TRANSFER OF PROPERTY TO MINOR

Lakshya Agarwal, Symbiosis Law School, Noida

Shaswat, Symbiosis Law School, Noida

ABSTRACT

The present research investigates the judicial interpretation of transfer of property to minors and its development by courts until recent times. The paper analyses existing legal precedents and literature that propound the legitimacy, validity, and implications of such transfers. Furthermore, the study investigates the mechanisms employed by courts across jurisdictions to strike a balance between the rights of the minors and the interest of the transferor. The research by examining landmark cases and existing literature, provides a comprehensive overview of the current position of transfer of property to minors. Overall, the study by comparing and analyzing with the existing research identifies and offers recommendations for potential reforms to address the gaps and improve the legal framework governing such transfers.

Keywords: minor, property, transfer, judicial interpretation

INTRODUCTION

Background – The concept of transfer of property to minors has seen a continuous evolution through judicial interpretation and legal scrutiny through years. The concept is complex owing to the intersection between property law and provisions under contract law. Earlier, in common law minors were seen as incapable of holding or managing property which led to the development of various other methods of property transfer such as gifts, trusts, guardianships, etc. to transfer property to minors. Whereas, in contemporary times, the interpretation of the courts has evolved significantly in recognizing minor's rights and the protection of their interests. The Courts have had to give more weightage in balancing the interests of the transferor with the rights of the minors. This approach has led to the formation of various legal precedents that shape the current legal framework.

Objective - The primary purpose of this study is to evaluate the judicial interpretations regarding the transfer of property to minors and consider their impacts on the legal landscape of these transfers. It further compares the existing literature and finds the possible gaps and challenges in that area of study, with recommendations for improvement to eliminate the complexities around the concept.

Scope and Limitation – The research mainly focuses on analyzing the evolution of such transfers through judicial interpretations while also making a comparison with the landscape in a common law jurisdiction such as United Kingdom. It explores existing literature and legal precedents to provide an insight on how the judiciary has interpreted the property rights of minors in recent times. The study limits itself to major jurisdictions and judicial interpretations that govern the property transfers to minors. While the research dives into relevant provisions of the contract law and property law, it does not extend to covering the legislations in detail. While the study offers recommendation, it does not propose legislative changes rather focuses on identifying gaps and probable areas for further research.

LITERATURE REVIEW

1. **Simpson A.W.B.** in his book "*A History of the Land of Law*"¹ gives a historical overview of how land law developed including transfer of property to minors. The author provides an

¹ A.W.B. Simpson "*A History of the Land Law*" (2nd edn, OUP Oxford 1986)

account for the evolution of guardianships and trusts, and the balance between the rights of a minor and the interests of a transferor. The study becomes crucial as it provides a basis for understanding the current legal frameworks and principles such as those in the case of *Mohori Bibee*. By exploring the concepts of guardianship and trusts the author provides a basis to understand the restrictions and protections for minors in such transfers. Though, the work serves significantly in providing an insight into the historical context of judicial interpretations, it has been limited in touching upon recent developments such as digital assets/property.

2. In the landmark case of ***Mohori bibee v. Dharmodas Ghose***², the privy council held that contracts with minors shall be void ab initio and not void. This decision has influenced the approach of the Courts towards the transfer of property to minors, laying emphasis on the protection of their rights. The decision aims to protect the rights of the minors from exploitative contracts including transfer of property. However, considering the changing needs of the society and the understanding of a minor as it evolves, more balanced approach instead of the rigid one, could have served the purpose in a better way. Overall, this case provides a solid foundation for understanding and interpreting the legal frameworks concerning the contractual capacity of minors and their property rights. It further provides a basis for future legislations and judicial interpretations in the changing needs of the society.

3. In the case of ***A.T. Raghava Chariar v. O.A. Srinivasa Chariar***³ the enforceability of a mortgage executed in favour of a minor who has advanced the mortgage money was analysed. The court went ahead to hold that in contrast to the decision in *Mohori Bibee's* case, a minor can be a transferee of property and transfers of property to a minor, either by gift, sale, or mortgage, are valid. This decision states that the law protecting minors from contractual obligations should not bar them from benefiting from transactions in which they have paid full consideration. It outlines an approach towards property rights of the minor, that ensures they are protected while he or she has the ability to benefit from transactions.

4. **Esha Gupta**, in her article "*Comment: Sridhar v. N Revanna (2020)*"⁴ provides a comprehensive analysis of the landmark Supreme Court decision in *Sridhar v. N. Revanna*, which examined the transfer of property to a minor by way of gift. The author discusses key

² *Mohori bibee v. Dharmodas Ghose* ILR [1903] 30 cal. 539 (PC).

³ *A.T. Raghava Chariar v. O.A. Srinivasa Chariar* [1916] 31 MLJ 575 (MHC).

⁴ Esha Gupta, 'Comment: Sridhar V. N Revanna' [2020], 5.1 NLUO SLJ 189

issues in the judgement such as the validity of conditions included in a gift deed, capacity of a minor to receive gifts, and also the interpretation of various sections of the Transfer of Property Act relating to the issue. This article becomes important in understanding how the courts have interpreted the property transfer to a minor amidst developing transfer mechanisms. Moreover, the article also highlights how the Courts are adapting to the changing circumstances whilst keeping in consideration the rights of the minors. The article analyses various provisions of the Act, and provides suggestions for potential reforms for further improvement in the concept of transfer of property.

ANALYSIS

1. Legal capacity of minors in property transfers

To understand the property transfers to minors, the concept of minority and its impact on legal capacity plays a major role. For all practical purposes, in the UK as well as in India, the age of majority is set at 18 years. However, the legal treatment of minors in property transfers differs in some respects in these jurisdictions. Whereas in the UK, the common law rule is that contracts made by the minor are voidable, whereby he may either enforce or repudiate the contract upon reaching the age of majority. Yet, there are exceptions to this rule, like contracts in case of necessity, which bind the minor. The former tries to protect the minor from disadvantageous agreements and the latter allows for transactions in property to be beneficial.⁵

The Indian legal system which is influenced by the British common law, adopts a more stringent approach towards such transfers. As per section 10 of the Indian Contract Act⁶, a

person who is of sound mind and has gained the age of majority is eligible to contract. Based on this premise, the Supreme Court in the landmark case of *Mohori Bibee v. Dharmodas Ghose*, laid down that contracts with minors are void ab initio and not merely voidable. In this case, a minor had mortgaged his property; the Privy Council held that the mortgage was entirely void on account of the minor's lack of capacity to contract.

⁵ Ravi2badv, 'Can a minor become party to the transfer of property: An Analysis' (Legal Service India) "<https://www.legalserviceindia.com/legal/article-1969-can-a-minor-become-party-to-the-transfer-of-property-an-analysis.html> accessed 4 August, 2024"

⁶ The Indian Contract Act, 1882, § 10

The judgement has served as the basis for multiple legal precedents, shaping the legal landscape for transfer of property to minors. It underscores the importance of protecting the interests of minors which may be subject to the obligations under the contract entered into between the parties. However, Indian courts have provided exceptions when the transaction is demonstrably for the benefit of the minor.

2. The Transfer of Property Act, 1882 and minors

In India the transfer of property is majorly governed by the Transfer of Property Act, 1882 (referred to as “Act” hereinafter). Some salient provisions relevant for the present purpose include section 6⁷, which states that property of any kind may be transferred except as otherwise provided by the Act such as the transfer of a property which is restricted in its enjoyment for the owner personally cannot be transferred. It also bars an easement right from being transferred from the dominant heritage and various other properties. This section has been applied by courts and used in restricting some types of property transfers to minors.

Furthermore, section 7 of the Act⁸ is crucial in understanding the situation about the transfer of property to minors as it lays down conditions for persons who are competent to transfer property. It states that any person who is competent to contract is entitled to transfer a property. With regard to this, judicial interpretations have been clear that despite minors not being explicitly mentioned in the provision, they do not have the competence to transfer property because they are not competent to contract.

However, reading sections 6, 7 & 58⁹ of the Act along with section 11 of the Indian Contract Act¹⁰, it can be inferred that though the minor cannot be a transferor but he can be a transferee for a property. It was held by the Madras High Court in the case of *A.T. Raghava Chariar v. O.A. Srinivasa Chariar* that a minor can be a transferee and nothing in the Act provides the disqualification of a person to be a transferee if he is a minor.

3. Mechanisms for Transfer of Property to Minors

Despite restrictions imposed on a minor to hold and manage property, both the UK and India

⁷ The Transfer of Property Act, 1882, § 6

⁸ The Transfer of Property Act, 1882, § 7

⁹ The Transfer of Property Act, 1882, § 58

¹⁰ The Indian Contract Act, 1882, § 11

in order to protect the interests of a minor, have developed certain mechanisms that allow for transfer of property to a minor. These include mechanisms such as gifts, trusts, and guardianships.

The decision of the Supreme Court in *K. Kamalam vs. K. Balakrishnan & Ors.*¹¹ becomes crucial as it throws light on the issue of gift as a tool for transfer of property to a minor. The court upheld that under Section 122 of the Transfer of Property Act¹², where it is said that a gift may be accepted "by or on behalf of the donee," a minor can also receive property by way of a gift and once a gift to a minor has been accepted it becomes irrevocable under Section 126 of the Act¹³ unless the conditions to revoke it are satisfied. The essence of the judgment was that acceptance of a gift by a minor may either be express or implied, and in case of the parent giving a gift of property to the child, the presumption shall be that of acceptance. Also, in the case of *Jayakant Harishandas Shah v. Durgashanker Vaji Pandya*, the Gujarat High Court held, that transfer of property to a minor by way of gifts is valid because gifts as such do not create reciprocal obligations on the minor. However, transfer of property through lease cannot be held legally valid as they bind obligations on the minor.¹⁴

Moreover, in the case of *Sridhar v. N Revanna*¹⁵ the Supreme Court reviewed the validity of conditions mentioned in the gift deed which restrains alienation of property donated to a minor. The court held that absolute restraints are void but partial and reasonable restraints may be valid especially for protecting the interest of the minor. It portrays a developing approach of the Courts in balancing the protection of minors with the rights of transferors, strongly favouring conditions that are reasonable and, in the minor's, best interests. It incorporates a more sophisticated interpretation of the provisions of the Transfer of Property Act.

Furthermore, in the United Kingdom, trusts are another method to transfer property to minors. The legal title and management of the property is held by the trustee on behalf of the minor till the minor attains the age of majority. Similarly, guardianship is another mechanism for property transfers to minors, wherein the property is managed by the guardian. In India, the Hindu Minority and Guardianship Act of 1956 is the most important piece of legislation that describes the role that is to be undertaken by the natural guardian, who usually is the parent,

¹¹ *K. Kamalam vs. K. Balakrishnan & Ors* [2004] 1 SCC 581 (SC).

¹² The Transfer of Property Act, 1882, § 122

¹³ The Transfer of Property Act, 1882, § 126

¹⁴ *Jayakant Harishandas Shah v. Durgashanker Vaji Pandya* [1970] 11 GLR 178 (GHC).

¹⁵ *Sridhar v. N Revanna* [2020] 2 AKR 171 (SC).

and legal guardians in the management of the estate of the minor. It lays down the rights and duties of a guardian wherein he must act in the best interest of the minor at all times.

Judicial interpretations have played a key role in the manner these mechanisms have operated at the practical level. Both jurisdictions emphasize on the fact that a guardian or trustee are in a fiduciary relationship with the minor and therefore must act responsibly. While in comparison both the UK trust system and Indian systems consider the interests of the minor of paramount importance, yet the former provides more flexibility. Overall, these mechanisms have evolved approach of the courts in determining the interests of the minors whilst protecting them against the practicalities of a property transfer.

COMMENT

The concept of transfer of property to minors as understood from judicial interpretations is still evolving as per societal needs so that the rights of the minors and interests of the transferor both can be balanced. The study by analysing landmark judgements, relevant provisions, and comparative perspectives provides a comprehensive insight into the complexities of such transfers. The majority of the landscape pertaining to property is based on the premise laid down in *Mohori Bibee v. Dharmodas Ghose*¹⁶ wherein the court held contracts by minors as void ab initio. The judgement even today serves as the basis for several judicial decisions and legislative enactments. While, it seeks to protect the rights of the minors, it may subsequently prevent such transfers also that are made in the minor's beneficial interest. Simpsons' study is broadly similar to the general conclusion, whereas this research takes the analysis a bit further to address modern Indian courts' interpretations to serve changing social needs.¹⁷

The Transfer of Property Act, 1882, being the fundamental legislation that lays down the process for transferring property does not permit a minor to transfer any property by himself. However as affirmed in the case of *A.T. Raghava Chariar v. O.A. Srinivasa Chariar*¹⁸, that there is nothing in the Act that prohibits a minor from becoming a transferee in a transaction.¹⁹

¹⁶ *Supra* Note

¹⁷ R S Pandey, 'Minors' Agreements in India and the U.K.-A Comparative Survey' [1972], Special Issue JILI 205

¹⁸ *Supra* Note

¹⁹ Ayush Kumr, 'Law of Minor Agreements - Time ripen for change', [2021] 2.1 JCLJ 708

This point of contention has led to the formation of various other modes for transfer of property such as gifts, trusts, and guardianships.

The decisions of the Apex Court in Kamalam wherein it stated that, for a valid acceptance of gift, delivery of possession of property was not an essential requirement in law, and in the case of Sridhar where it allowed for reasonable restrictions on the gift deed, highlight the approach of judicial interpretations towards balancing protection for the minor on one side and facilitation of transfers on the other. It reflects that the Courts have been adopting a more realistic approach in interpreting the provisions related to the transfers, thereby leaning towards the best interest of a minor. Judicial decisions have also been amplified with regard to the ambit of trusts and guardianship in managing a minor's property, resulting in widening the landscape surrounding such transfers.

Overall, the study provides a comprehensive analysis of legal landscape relating to transfer of property to minors. It offers an in-depth analysis of the challenges and complexities associated with such transfers. However, with the rise of technology and digitalisation, there will be a need to examine the problems related to digital transfers as well. This aspect of the landscape still remains to be researched in regard to how the law in India can respond and adapt to the complexities related to such transfers.

CONCLUSION

The research examines judicial interpretations of transfer of property to minor and demonstrates the continuous evolution of the concept through landmark decisions of the courts, legislative provisions, and the changing needs of the society. The principle in the case of *Mohori Bibee* served as the basis of various interpretations that the Courts adopted while evolving the concept around such transfers. Also, in the cases of *A.T. Raghava Chariar* and *N. Revanna*, the Court has indicated that the above principles can be interpreted to have minors as transferees and at the same time allow for the transfer of property through gifts. Judicial pronouncements and their interpretations indicate a balanced approach towards the protecting a minor's interest and facilitating the transfers.

Moreover, as the concept is still evolving, there are few aspects related to such transfer that can be beneficial for future interpretations. This would include making the legislations as clear as possible in terms of laying down the rules governing the transfers. Further, the concept requires

continuous research in the effects of digital transfers owing to rise in digitalisation and technological innovations. Overall, judicial interpretations will continue to play a major role in giving shape to the landscape surrounding these transfers.

REFERENCES

BOOKS REFERRED

1. Dr. R K Sinha, *The Transfer of Property Act*, (23rd edn, Central law Agency 2023)
2. Dr. Poonam Pradhan Saxena, Mulla, *The Transfer of Property Act* (13th edn, Butterworth's Lexis Nexis 2018)
3. A.W.B. Simpson *A History of the Land Law* (2nd edn, OUP Oxford 1986)

LEGAL DATABASE

1. SCC ONLINE
2. MANUPATRA
3. CASEMINE
4. LEXIS NEXIS

WEBSITES

1. Ravi2badv, 'Can a minor become party to the transfer of property: An Analysis' (Legal Service India) <https://www.legalserviceindia.com/legal/article-1969-can-a-minor-become-party-to-the-transfer-of-property-an-analysis.html> accessed 4 August, 2024

ARTICLES

1. Esha Gupta, 'Comment: Sridhar V. N Revanna' [2020], 5.1 NLUO SLJ 189
2. R S Pandey, 'Minors' Agreements in India and the U.K.-A Comparative Survey' [1972], Special Issue JILI 205
3. Ayush Kumr, 'Law of Minor Agreements - Time ripen for change', [2021] 2.1 JCLJ 708