LUDICROUS FIASCO OF PROTECTION AS A STUDY OF TANDEM BETWEEN ENGLISH AND INDIAN PROPERTY LAW

Arun Kumar N R, School of Excellence in Law, The Tamil Nadu Dr. Ambedkar Law University

INTRODUCTION:

The system of property and the transfer of the property, the enjoyment, the possession, the interest created in the property and such incidental legal rights created over the property always comes with the exceptional lack of protection of the same rights and few indulging areas, where the legislation has failed to make a stand accordingly for protection or where the legislation has overreached the power to legislate and built in a system that brings in default lacunas and grey areas. The most common reason for this, is the lack of clarity under the common law system, where the precedents can overturn the already existing legal rules and observations, thus from time to time modifying the law that governs. Indian being a Civil law country, they have also followed or subscripted the rules from the common law system into the use in Indian legislation. The systems in tandem have failed to afford protection as well as made legislation that go against the nature and scope of the property and ownership.

MULTI-FACETED EQUITABLE INTEREST

THE ENGLISH APPROACH

The concept of equitable interest found place in the English legislation for conveyance emanates from the natural law and thus imposes an obligation on the owner of the freehold to render, what is just, on the part of the person who owns an equitable interest on the legal estate. But what constitutes an Equitable Interest in a property is always set on a pendulum of infinite motion, the equitable interest is said to be created when a person who resides, owns, transfers, installs betterments, also a person who possess the Legal estate. In ***Mortgage***

Business Plc V. O'Shaughnessy[1]*,* the England and Wales court iterated that a person having an Equitable interest over a legal estate whether freehold or leasehold property, the equitable interest owner can never have any right to dispose of or alienate the property on his own overreaching the right of the legal owner of the property. Thus, any right or interest transferred by any person not being the legal owner of an estate is said to be not a transfer of a legal title or interest of the property and any such claims made is subsequent to the real

[1] Mortgage Business Plc V. O'Shaughnessy, [2012] EWCA Civ 17, [2012] 1 WLR 1521

interest owners. Following the same, a similar stand was observed by the court in

Westdeutsche Landesbank Girozentrale V. Islingtion[2], saying that any equitable interest in the estate does not give rise to an equitable title, as no estate can be divided into legal and equitable estate without an instrument in writing. If so any such instrument under Section 53[3] is made, it can be inferred that the division in law has created two new properties from the one estate, one said to be having a legal nature and the other having an equitable nature. In the eyes of law, any person enjoying the estate and the interest arising from it is taken to have a bona fide and better claim in the estate than the one who merely makes a claim. It can be put in a way that when the title is registered, the owner of the title has an overriding effect over the equitable interest owner, as the equitable interest can only be claimed through an order of the court. The general principles of the act states that an equitable interest is the residuary and other interests that an equitable interest owner can own in a property by the contribution he made for the same. Any property owned as a freehold or leasehold and any interest arising from the property, the mortgage of the property are said to be legal interests in the property. An equitable interest in the property should be recognised by a tenant, and the equitable interest in a property are generally recognised by the purchasers or the mortgagees only when they are served notice of the same.

An equitable interest owner must be recognised by the legal owner through a written instrument when the prima facie looks upon the relations cannot prove the existence of an equitable interest

[1] Mortgage Business Plc V. O'Shaughnessy, [2012] EWCA Civ 17, [2012] 1 WLR 1521
[2] Westdeutsche Landesbank Girozentrale V. Islington, LBC [1996] AC 669
[3] Law of Property Act, 1925

in the property. Any interest created only by parol and not ratified by a written instrument can be executed only at the will of the legal owner under the Section 54[4] of the act. Section 2(4)[5] states that the equitable interest in a property whether by charge or by custom cannot be overthrown straightaway by the conveyance of the legal estate. But this provision though may seem to afford protection for an equitable interest owner, the exceptions to the provision fails the rule of equity as a natural law can bear no exception, and if so, it has, it no longer holds the position of being a natural law, it merely becomes an enacted legislation. The schedule of the Land Registration Act, 2002 lays forth the recognition of the overriding interest on registration of title. The schedule says that an interest being equitable arising from the occupation of the land overrides any registration as to title and the purchaser of the title or the owner who registered the title in his name is liable to create the equitable interest for the occupant. The occupancy serves as a constructive notice to the title owner and the purchaser who intend to register the legal estate. The court recognises these rights and interests as equitable without any claim to be made by the equitable interest owner. In ***Williams and Glyn's Bank Ltd V. Boland***[6], the court held that the occupancy by the wife gave her an overriding interest which had to be recognised though being an equitable interest in the property. The bench held in the same case that an equitable interest to be enforceable by law in motion and not by the interpretation and order of the court, it must be an overriding interest and not a minor interest. In most cases, when the question as to what is an overriding equitable interest comes up, the precedents lay down that when there is possession as well or a mere occupation of the said estate gives rise to the equitable interest of higher degree which cannot be invalidated by the registration of title.

Schedule 3[7]reads as follows:

An interest belonging at the time of the disposition to a person in actual occupation, so far as relating to land of which he is in actual occupation, except for—

(a) an interest under a settlement under the Settled Land Act 1925 (c. 18);

(b) an interest of a person of whom inquiry was made before the disposition and who failed to disclose the right when he could reasonably have been expected to do so;

[4] Law of Property Act, 1925
[5] Law of Property Act, 1925
[6] Williams and Glyn's Bank Ltd V. Boland [1981] AC 487
[7] Land Registration Act, 2002

(c) an interest—

(i) which belongs to a person whose occupation would not have been obvious on a reasonably careful inspection of the land at the time of the disposition, and

(ii) of which the person to whom the disposition is made does not have actual knowledge at that time;

(d) a leasehold estate in land granted to take effect in possession after the end of the period of three months beginning with the date of the grant and which has not taken effect in possession at the time of the disposition.

These are the interests that can have an overriding effect on disposition.

Once again, a brief look into the schedule and the act gives the elusive nature of equitable claim and no clear specifications have been made as to whether an equitable interest can be registered to give rise to the equitable claim. The English law frowns upon equitable interest as a minor interest and most of the time, what the court decides becomes the principle of equity. Section 4[8] gives another definition of equitable interest. The section expressly talks about the creation of equitable interest in property, it reads as follows: Any interest created in the property validly which cannot subsist as legal estates are said to be equitable interest and those equitable interests can be disposed by the owner to the equitable interest owner under Section 53. Any such interest created is said to be an equitable interest. The equitable interest concept in the English law goes against the absolute ownership right to alienate, the law is silent as to the question of absolute ownership being affected by the equitable interest. Only the English law follows the division of an estate into legal and equitable estates and this results as a clog in the right to alienate, unless and until the equitable interest is disposed of. The court observed that pre-emption can also be executed as an equitable interest in the legal estate when agreed upon by the legal title owner.[9] The same right of pre-emption cannot at the time of promise create an equitable interest in the property. Though argued and reinstated by the provisions for protection, the equitable interest is always down the lineage as a minor interest on registration on title by the legal owner. The enforcement of equitable interest lacks precision and the reason that contemplates is that the lack of concise definition as to what may be an equitable interest.

[8] Law of Property Act, 1925
[9] Pritchard V. Briggs [1980] Ch 338

A common law system cannot be said be the protector of an equitable interest, as the rulings change the position of the equitable interest owners in law from time to time. A contract for sale creates an equitable interest on the property for the purchaser and the sale deed can be specifically executed by the equitable jurisdiction of the court. By far this can be the only way of protection that is known to all common and civil law countries all over the world. One cannot diverge from the connotation of 'Trust' when dealing upon the concept of equitable interest. But this mere vesting of property in a person's managerial powers to deal upon, realise and transfer the accrued benefit to the beneficiary to whom the trust was created for doesn't simply entail an equitable interest for the beneficiary, instead an acting pseudo equitable interest is created for the beneficiary. This is because, though arguments raised a trustee cannot dispose of any of the trust property in the way he chooses to. The trustee here merely becomes a servant to the beneficiary, while in the concept of equity, the person with the legal right to the estate and the person with equitable interest in the estate conjointly form the legal ownership of the said estate.

In ***Randall V. Randall***[10], the court held that any equitable interest claims on an estate that is transferred under the gift can be made only after the gift has been received by the donee which serves him with the absolute power to dispose of with the estate. In the time between, the equitable interest though may have been made through a contract or any consent recital in the deed, would have no enforceable effect unless and until donee receives it in full with absolute interest. Here too, the concept of equity applies as a credit rather than the equitable interest owner being given a title for the equitable share of the estate. The donee finds the equitable retribution as an obligation accompanying the gift.

Keeping aside all the contentions and arguments aside, the prior question that arises is what constitutes an equitable interest. Only when equitable interest is determined, the statutory protections become meaningful. What one judge thinks as an equitable right or interest over the property may be just be a term of an agreement in the eyes of another. Where the former cases give a right for the equitable interest over the estate, the latter gives only the benefit of fulfilling the obligation of a contract. A mere spes successionis form equity in one's eyes, but that cannot be claimed to give an equitable interest in the property unless there is occupation and any form of contribution for the estate.

[10] Randall V. Randall 2014 EWHC 3134 Ch

Equitable interest may form the basis of conjoint ownership of a property, where the owners, be it sellers or buyers can be said to have an interest in equity over the property rather than to be termed joint ownership. As the English law suggests, equitable interests can make up a legal interest when the aggregate of the divisions becomes a unity.

THE INDIAN APPROACH:

In India, the concept of equitable interest is not recognised. In Maung Shwe Goh V. Maung Inn[11], the privy council held that in India, the concept of equitable interest in property is not recognised as the rule followed in common law countries is that the ownership of a property must be free and absolute in vesting to alienate and no claim as to equity can be made in the said property. In India, absolute ownership is demanded when transfer is to be made. An interest can be transferred and owned for time or vested in contingency, though these are recognised, it can create no equitable interest in the property for the intended person. The intended person waits upon the transfer to take place and gets the hold of the property as an absolute owner. In case of life interest too, the property simply is to vest in a person for the rest of his life, creating no right over the property or interest in the property as his own, the life interest owner acts an as intermediary between the transferor and the final intended transferee. In ***O.P. Dawar V. Sunil Kumar & Anr. on 17 December, 2008,*** the Delhi High court held that the principle of equity that has been recognised in the English law has been transcribed into the Indian law as a principle through which an obligation is created on the transferee and does not vest in him any ownership based on equity.The same position was observed in a Supreme Court decision in the case of ***Bai Dosabai V. Mathurdas Govinddas,[12]*** where the equity is recognised as a covenant, a negative one, and in cases under the accumulation of income, the principle is observed. Where, the property's income is said or directed to be divided and delivered to any person or a group, it is often mistaken as to a right arising from equity. The creation of equity doesn't rise from any directions to be laid down by the transferor and to be adhered by the transferee, this relationship becomes a part of the transfer and doesn't give rise to any right to be vested in any person. This can be inferred from the recurring nature of equity. Equity runs until the equitable interest owner has been satisfied or paid up for his share in the property. If that is not the case, on notice of equity, the interest remains with the equitable interest owner and creates no nee obligation on the transferee. This is because the transferee on transfer,

[11] Maung Shwe Goh V. Maung Inn, AIR 1916 PC
[12] AIR 1980 SC 1334

concised to the interest on equity, merely takes the place of the transferor when a notice is served upon. So, this vests the same obligation in the transferee as that of the obligation vested in the transferor, not affecting the right of equity.

Strong arguments have been placed time and again in Indian law system opposing the concept of Equitable interest, but even then, in the Transfer of Property Act, with meticulously traversing into the provisions relating to contribution in mortgage, the concept of implied equity can be seen and is recognised. In cases where, the mortgaged property is owned by a group of people together and the debt is paid for the mortgage by one of such mortgagees, the law recognises the concept of 'liable in equity' and the mortgagors are liable to contribute based on their equitable interest in the property. In India, equitable mortgage is recognised as it renders commercial transactions faster and easier, but the same mortgage in the eyes of law is considered to be a simple mortgage, hence no division as to ownership can be traced. In ***Fung Ping Shan and another V. Tong Shun,*** the court recognised that the equitable interest is a concept though not recognised, it can be traced and used as basis for determining ownership and to protect the owner from fraud. In ***K.J.Nathan V. Maruthi Rao and Other***[13]**,** the concept of equitable mortgage and what constitutes a valid equitable mortgage, but nowhere the creation of an equitable interest is mentioned. The Indian law in contrary to the English law has failed to protect the rights of equitable nature. Also, the betterments done by the person with a defective title can be contested as an equitable interest in the property[14].

The only common recognition of Equitable interest can be found in case of a trustee beneficiary relationship, wherein the beneficiary is said to have an equitable interest in the trust property[15].

THE UNSUNG EQUITY IN PART PERFORMANCE:

The part performance principle has been one of the fewer strata that recognises the concept of equity. In ***Ram Baran Prasad V. Ram Mohit***[16], the court held the 'Agreement for Sale' entails a right in equity to the buyer in the property, creating an equitable interest. The buyer if denied sale execution, he can claim the right in equity over the property. The buyer also has the right to sue for specific performance of the contract. In ***Walsh v Lonsdale***[17], the lessorlessee

[13] K.J.Nathan V. Maruthi Rao and Other, AIR 1965 SC 430
[14] Section 51, Transfer of Property Act, 1882
[15] Commissioner Of Gift-Tax, Bombay City I v. Dr. R.B Kamdin
[16] Ram Baran Prasad V. Ram Mohit AIR 1966 SC 213
[17] Walsh v Lonsdale (1882) 21 ChD 9

relationship was declared to be in existence even though there was not any express agreement to the same. The principle of equity was observed serving as to establish the relationship and rights between the parties in the case. The payment of rent was considered to be an act, that granted the lessee a right in equity as the transfer wasn't governed by the conveyance law.

EXCEPTION OF RULE AGAINST PERPETUITY:

Aim of Rule against Perpetuity:

In ***Stanley V. Leigh***[18], it was observed that the mischief that would arise against the public from estates remaining for ever, or for very long time unalienable, or untransferable from one hand to another, being a damp on industry and prejudice to trade, which may be added the inconvenience and distress that would be brought on families whose estates are so fettered.

The exception as to the rule against perpetuity that involves the charitable works, for public advantage are harboured under Section 18[19]. The Section acts as a cloak of activities that are scavengingly bad to the nature of the property owned. This exception has been universally accepted. The legislators had no premonition about the excessive exploitation of the property when vested under the same person without any disturbance. The absence of governmental overview has been one of the major reasons of exploitation. In ***Broughton V. Mercer***[20], the court held that the bequeath of property by an Englishman to a hospital was held to be exempt from the rule against perpetuity. This, being a case of public dominion and use, the concept of equitable waste can no longer be applied to the same and no specified owner of the property can be held liable for the violation of the environmental code as well. Government intervention is minimal compared to other environmental protection. Medical waste dumping becomes a problem of higher intensity. But a contrasting opinion can be found in the English property law. In ***Re Bowen***[21], the court held that any rights that are created *in futuro* is not an exception under the rule against perpetuity and must in all cases be transferred within the period specified in the Perpetuities and Accumulations Act, 1964. To be valid an interest *in futuro* must vest within the period allowed under the perpetuity rule, and if that happens the charitable trust itself fails. Some rights created in present to perpetual institutions are permissible and valid in

[18] Stanley V. Leigh (1732) 24 E R 917(918)
[19] Transfer of Property Act, 1882
[20] Broughton V. Mercer, (1875)14 Beng LR 422
[21] Re Bowen [1893] 2 Ch 491

England, and they are regarded as exceptions to the rule against perpetuity in so far, the rule applies to interest created in present. Even in the Indian system there is no express provision that prohibits the disposition in perpetuity in present[22]. The difference between the potential transfer and the periodical remote transfer has been the lacuna of protection unveiled for the abusers of law. The idea of tying up of property to a certain institution of whatever sort it may be is the test of rule against perpetuity, wherein both the legislations have failed to recognise the rights created *in prasenti* may also tie the property up as in case of gift to charitable purposes.

Recognition of public policy: -

To determine what is public policy, the courts have put in a liberal exclusive definition, saying that any gift made to any charitable purposes that is not specifically intended to satisfy a particular individual or a group of individuals is invalid in law, as it is not in the interest of the public. So, any gift to beat the rule against perpetuity or to fall under the exception of the same rule, has to be made in the view of purporting the whole public. But the same law has erred in classifying the public policy, by including the aspects of religion into the same. Though argued as protective discrimination, the same cannot be held to made in the general interest of the public as a whole.

Equity: -

'Law is bent whenever necessary.' Law is generally flexible, but the legislators use the same to create protections in favour and observe the said principles that are not applicable in general, only to specific conditions. The rule in Re Rigley's Trust is now followed in India recognising the principle 'equality is equity'. Where a deed is made with two transfers as to a person in common and a trust where there is no specified division is made, the court apply the principle of equity to decide the amount to be transferred. Also, when the transfer is invalidated on grounds that the transfer to a person has been struck by the rule against perpetuity, the same does not invalidate the part where conferment of the property is towards a trust.

Why fiasco of protection: -

The same can be applied by a person in a way where he can create a trust in favour of the public,

[22] M.A.F.H alfyde V. C.A.Saldhanha 1949 Cal 533(537)

where the direction of accumulation is made in the favour of the charity's goals, but the enjoyment in possession can be made restricted only to the family members by nominating them to be the trustees of the said property. This is an act of tying the property up to the same possession.

COVENANTS:

The general principle is said that a personal contract even though it may have reference to property is binding only as between the parties thereto and their parties. It is not a general rule, enforceable against third persons into whose hands the property might have passed. The rule of covenants observed in English law is applied in Indian law as well. But this is against the recognition and principles on which the Indian law is built. The covenants were first recognised by the courts of equity under their equitable jurisdiction. The Indian courts have recognised the same principle of negative covenants that are formed as a part of the ownership in equity of the transferor. In ***Hardesh Ores Pvt Ltd V. Hede and company***[23], the court held that a perpetual injunction can be granted to enforce a negative covenant. In

S.Sridhar and Others V. The state of Tamil Nadu, the court held that the negative covenants are always binding on subsequent transferees. Now, taking into considerations of cases made and judgements degreed, we can opine that the concept of covenants has submerged the idea of origin, the principle of equity. India has never recognised the concept of spilt ownership except in cases of trust. For a country that has been built this way, the covenant recognition has been strikingly against the basis of development. The equitable interest or ownership created by a contract between two persons cannot be attached to the property, and be enforced against a third person. If not for equity, there cannot be covenants of notice. In ***Extreme media private ltd V. Shenxhen Vteam Co.Ltd, 2019***, the court observed that the specific enforcement of negative covenants can be made under Section 42 of the Specific relief act, thus making it the principle of equity under the Indian law. Even then the question that rises is that when a person lawfully executes a deed on receiving consideration for the same transfer and the property concerned is transferred with ownership to the transferee, the restrictions by covenants are merely a restriction in enjoyment of a fully paid consideration. A transfer cannot be made just to create benefit to a previous owner. Even if the covenant is of such important nature, when it runs with the land, for example maintenance of a water stream may be extinguished in time by

[23] Hardesh Ores Pvt Ltd V. Hede and company [2007]2 SC 378

act of nature, yet the covenant tied up to the land will run for eternity losing the very purpose of the covenant. A covenant cannot be simply made for a benefit of a person, yet in English law, the covenants in case of rentcharge can be altered and modified during the period of leasehold by a deed[24]. Section 79 of the English Act, straightaway states that a covenantor is burdened, legally obligated under a covenant made by the covenantee in perpetuity. Yet, so far, English law can be said to be the one true law, where covenants can be governed. Under Section 84[25] of the act, the upper tribunal has the power, on application by the owner of the property, where his beneficial enjoyment has been restricted due to the binding nature of a covenant that runs with the land, to decide the question on merits and to look into the construction of the covenant and the intended use, and if it is satisfied it may either discharge the covenant as a whole or modify any such restrictions, when;

- By reason of changes in the character of the property or in the neighbourhood, the covenant has become obsolete,
- The use of restrictive covenant is going to further impede the owner of the land,
- The minority of such to be benefitted have expressly denounced the legal incidents and rights over the covenant,
- The discharge of the covenant would no longer affect the rights of the beneficiaries.

But the same legislation has failed to avail further protection or to say otherwise, makes the power under this section a mere statutory provision without enforceability on the part of the covenantor, under the sub-section 3a, where it mentions, further application opposing the application made under sub-section 1 by any person not being the person entitled for the benefits can also be made before the tribunal. This sub-section makes the covenant universal and not restricting to the actual owners and beneficial enjoyers of the property. This further impedes the covenantor on his part to avail protection against the covenant. And it also fails under sub-section 7 to grant protection for gratuitous transfer of property, where the covenants

[24] Section 77, Law of Property Act, 1925.
[25] Law of Property Act, 1925.

imposed on such property cannot be made as an element of application under this section.

MORTGAGES:

The concept of mortgage comes with certain impediments as to the creation and maintenance of the same. The law prohibits partial redemption rights of a mortgagor, unless and until such interest in the property of the mortgagor has been transferred to one of such mortgagees. Pro tanto extinguishment of equity is allowed under the law, when the abovesaid condition has been fulfilled. But the same law in case of contribution under mortgage, has erred in holding the concept of equity, where one of such co-mortgagors can pay the mortgage debt and redeem the property, and is to all such payments incident entitled in equity from other mortgagors. The reverse tandem of the partial redemption has been recognised by law. The same rights are established and affected on partial redemption as well. The property is not bifurcated, the motto of mortgage is to pay the debt back to the mortgagee thus relieving the property from the hold of mortgage. The pro tanto extinguishment has been recognised in ***Narain V. Dwaraka Lal Mundur***[26], where the court held that a suit for partial redemption is a therefore, a combination of suit for redemption and a suit for contribution.

Agreement for mortgage: -

An agreement for mortgage in case of failure of repayment of debt is recognised in English law, the same doesn't apply to the Indian law[27]. This is because an agreement to mortgage is said to create a right only in equity and hence cannot create any valid mortgage or charge on the property. It merely creates a personal obligation to pay the debt back and does not hold any property good in law. Whereas an agreement for sale is said to create a right in equity in Indian law and a specific performance for the same is enforceable under law.

Clog on redemption: -

In law, the clog on redemption is held to be invalid. In ***Gangadhar V. Shankarlal***[28], the court held that a condition converting a mortgage into a sale is invalid as a clog on equity of redemption. In ***Shankar Din V. Gokal Prasad***[29], the privy council said that there was nothing

[26] Narain V. Dwaraka Lal Mundur (1887) ILR 47 Cal 397
[27] Maneklal V. Saraspur Manufacturing Company (1927) 29 Bom LR 253
[28] Gangadhar V. Shankarlal AIR 1958 SC 770
[29] Shankar Din V. Gokal Prasad (1912) ILR 34 All 620

in law to prevent the parties to a mortgage from coming to a subsequent arrangement qualifying the right of redemption. A separate transaction dehors the mortgage and is not a clog on redemption and may have the effect of extinguishing the equity of redemption. A mortgage by conditional sale acts as a clog on the right of redemption of the mortgagor, but it is not recognised in law as a clog, because it operates both as a sale and a mortgage under the same deed, the legislation has put in thought to exclude the applicability of clog of redemption in such kind of mortgages. The mortgage by conditional sale, is fabricated in a way where there is no conclusion of sale, but the nature of deed entered into by the parties is that similar to a sale deed. On failure of the repayment of debt, the sale is said to have been effectuated. If not, the same deed limits itself to that of a mortgage, where on repayment of the debt, the property goes back to the mortgagor. This mortgage is constructed by modification in the rule observed in ***Gangadhar V. Shankarlal.*** Here, sale is the genesis of the debt, as the law restricts clog only towards conversion of a mortgage into a sale.

CONDITIONS AGAINST ALIENATION IN GIFTS:

Section 126 of the act provides that the donor and donee may agree that on the happening of an event specified which does not depend upon the will of the donor, a gift shall be suspended or revoked. It was held by the Allahabad high court that the gift was a gift subject to a power of revocation valid under section 126 of the act and was not void under section 10 and 12 of the act. In ***Brij Devi V. Shiva Nanda Prasad***[30], it was held that a condition not to transfer, if done, the gift would be revoked was held to be hit by the absolute restraint under the section 10 of the act. It was held void and observed that section 126 must be construed as referring to conditions other than condition restraining alienation. The later judgement of the courts held that when the donee promises the donor not being a promise by the will of the donor, to not transfer the property under mortgage was held to be a personal promise made by the donee to the donor which is not governed by the Section 10 of the act. Further it was held that there was no absolute restraint on the part of the donor.

The Allahabad High court referred the above decision and concluded that Section 126 relates itself to the conditions imposed. But later argued that a promise made by the donee is not a condition imposed by the donor under Section 10 of the act, even if it was regarded as a condition, the condition is only a partial restraint and the Section 10 would not apply for the

[30] 1939 All 221

same. The words 'donor and donee' may agree shows that it refers to covenants and not conditions. Even then, a condition though agreed upon or made by the donor should be void, as it hinders the beneficial enjoyment of ownership. The same way under a onerous gifts and universal gifts, it is not a covenant when the donee is burdened with the obligations and duties that are to be played and disposed off by the donor himself, if not, it is to be taken as a restriction in enjoyment.

CONCLUSION: -

Law should be framed and formulated in a way that any lacunas that can be foreseen during the legislation should be under ability of the legislation to deal without any lack of availability of protection for the same. Hence, any legislation that involves in rights transferred should be carefully crafted as to accommodate the areas of questions and lack of enforcement.

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