EMERGING WAYS OF TRANSFER OF IMMOVABLE PROPERTY: GIFT DEED

NAEESHA HALAI

Student Researcher; Fourth Year BLS LLB at SVKM's Pravin Gandhi College of Law, Mumbai, India

Abstract - Real Estate Sector is one of the most sought-after investment alternatives in India. There are various circumstances when one wishes to transfer the ownership of property to their beloved ones. Transfer of a property can be done in two possible ways- by an act of parties and by law. An acquired property in India can be transferred by way of inheritance, gift, purchase, and relinquishment, etc. For transferring a property, an individual must efficiently transfer his property at the earliest in his name after following the proper process of law. The most effective method of transferring or acquiring a property is by the execution of a Sale Deed also known as a Transfer Deed. This method of transfer of property is not be a tax-efficient or cost-effective mode. That's the reason why gift deed is the most cost effective method of transfer of property to the near and dear ones of the transferee.

Keywords - Donor, Donee, Gift Deed, Transferor, Transferee

I. INTRODUCTION TO TRANSFER OF PROPERTY IN INDIA

Property ownership can be transferred mainly in two different ways:

- Voluntary Transfer
- Involuntary Transfer

When the owner of property transfers the property willingly, it is said to be a voluntary transfer.

Voluntary transfer can be done in following ways:

1. for consideration e.g. by mortgage, sale, lease or exchange,
2. by gift, and
3. by will

Involuntary transfer takes place only when the court attaches the property of a person to alienate the assets of the joint family or undivided interest of a co-partner in such estate.

According to the act immovable property does not include standing timber, growing crops, or grass. Interpretation of the section also allows us to construe the fact that things that are attached to the land and which cannot be detached from the earth and things which are permanently fixed to the earth also come within the definition of immovable property. For example, timber, since it is of no use until one takes it out of the land or detaches it, it is useless therefore it is movable property.

II. IS BENEFITS ARISING OUT OF LAND CONSIDERED AS IMMOVABLE PROPERTY

Yes, benefits like crops from your land, fish and the lake and anything 12nm from the mainland are immovable and can be transferred. In the case Anand Bahera v. State of Orissa, it was held that profit arising out of land is immovable property. The right to walk on the land and to draw fish from the lake and taking it away is immovable property as it is the profit arising of the land. Grazing of cattle on the land is also immovable property as it is profit arising of the land.

III. INTRODUCTION TO GIFT DEED

Transfer of property has been defined under Section 5 of the Transfer of Property Act. The predominant methods of transfer of property is through Sale, Will and Gift deed. When one person bequeaths his existing movable or immovable property voluntarily without consideration to another is said to gift the property. A gift deed is an accord used when an individual desires to giveaway his assets be it property or money to someone. It is the transfer of certain subsisting property- moveable or immovable without any consideration from one person to another. As per Section 122 of the Transfer of Property Act, it being a voluntary transfer is done out of free will and compassion or emotional attachment of the donor (the one who transfers property) to the donee (the one to whom the property is transferred). A gift could be anything like jewelry, currency, house, shares etc. It can be in the form of cash or movable property or even in the form of immovable property. Gift Deed is a form of transfer of immovable property to any blood relatives. It being a legal document usually describes the voluntary transfer of a property from one person to another without any consideration as money or value in exchange provided that the property gifted is already registered as per Section 17 of the Indian Registration Act, 1908.

IV. SIGNIFICANCE OF GIFT DEED

The gift deed must not involve any consideration i.e. the donor should not have received any sort of consideration in cash or kind while making a gift. The gift must be accepted during the lifetime of donor. A transfer of property may be made without writing. Only in cases of law and order to be enforced, a

written document is a must. Gifts under the Islamic law may be made orally, as it does not require registration. When you gift the assets like land, it belongs to the beneficiary or receiver of the gift and you cannot switch the transfer or even ask money related compensation. As per the Indian Registration Act, any transfer of immovable property needs to be registered if the value of the property is more than Rs 100. It can be a cost effective method of transferring the ownership. Any kind immovable property can be transferred. Any kind of immovable property can be transferred other than that which are given in Section 6 of the TOPA. In the case Samsudden v. Abdul Husen it was held that the chance to transfer couldn't be transferred. The right to re-entry, easement can't be transferred. Specific rights cannot be transferred, as there are only certain people who should enjoy the right. The right to sue, public office, unlawful objects cannot be transferred.

V. ESSENTIALS OF A VALID GIFT DEED

A valid Gift Deed has the following requirements to be fulfilled:

1. The donor has to make the gift by his own free will and free consent with no consideration being involved.
2. The gift has to be accepted by the donee during the lifetime of the donor.
3. Donor should be over major i.e. above 18 years of age.
4. The Gift should be tangible as well as transferable.
5. He must be of a sound mind and must not be disqualified by law to enter into a contract.
6. The Gift should be an existing one and not a future property.
7. The Gift should be a registered property asper the Indian Registration Act, 1908.
8. Gift Deed should be attested by two witnesses.
9. The Gift Deed has to be signed by both the parties i.e. the donor and the donee.

VI. SIGNIFICANCE OF GIFT DEED

There is no monetory consideration but is made in return for love and affection. It is a document which transfers property to another as a gift. Such a deed is often used to present someone with a gift. This kind of transfer is unavoidable. When you gift the assets like land, it belongs to the beneficiary or receiver of the gift and you cannot switch the transfer or even ask money related compensation. It can be a cost effective method of transferring the ownership.

VII. ACCEPTANCE OF A GIFT DEED

Acceptance of the gift is a legal requirement. The acceptance of the gift must happen before the death of the donee to whom the gift is transferred to. There has to be an implied acceptance on part of the donor as well as the done. A valid accepted gift cannot be cancelled unless and until it is a conditional gift on part of the donor. A conditional gift is when certain conditions need to be fulfilled before acceptance. On acceptance, the donee gains absolute right in the property depending on the rights set in the gift deed. The gift deed has to be attested meaning the witnesses who sign the instrument should have seen the donor signing the gift deed and they should sign as witnesses in the presence of the donor and in the presence of each other. The donor on requisite stamp paper should sign the deed and the donee should accept the gift. A gift to two or more persons (donees) and one of them does not accept it, it is void so far he is concerned. The gift of movable property, may or may not be registered. But delivery of the property and acceptance of it are essential. For moveable property such as a car, such a registration is not mandatory and transfer can be achieved by delivery. A gift comprising both existing and future property is void.

VIII. ACCEPTANCE OF GIFT DEED IN CASE OF A MINOR

A minor is legally not eligible to form a contract. Therefore, they are not allowed to transfer the property. This means a gift deed where the minor is the donor is illegal and void.

But in cases of being a done, a minor is competent to contract. A legal guardian can accept the gift on behalf of the minor. When the minor attains majority, he will be competent to either accept or reject the gift. Guardians act like the managers of the minor's gifted property. Section 7 of TOPA. The individual must not be a minor or an insane person. The person must have the title of property or the person must have the authority to transfer; in part or in whole, as held in the case Krishna Khurhai v. Grindlays bank, if transfer is made ultra virus to the authority vested in the agent, the transfer will be void.

IX. CONDITIONAL GIFT DEEDS

A conditional gift is where the gift deed turns invalid on certain happening or non-happening of events. These form gifts wherein conditions are placed before or at the time of making the gift; it cannot be added later. The condition must be uncertain or something that is not in the control of the donor. However, a conditional gift where the donor has complete control over the condition is void. An immoral or illegal condition is void.

X. GIFT DEED IN THE CASE OF UNDUE INFLUENCE OR FRAUD

Fraud is when the gift deed is forged through lies and deceit. This means the gift deed can be declared void

as per the discretion of the donor. The deed is valid as long as it is not declared void. For instance, if A deceitfully gifts a property belonging to B, to C it is considered fraud. In such cases, the gift deed is declared void or invalid.

XI. REVOCATION OF GIFT DEED

Section 126 of the Transfer of Property Act deals with revocation of gift deed. Following conditions need to be fulfilled for a revocation of gift deed to take place:

1. The agreement between the donor and donee stating that the gift can be revoked on the occurrence of a certain event
2. Such an event must not be based on the mere will of the donor
3. The condition should not be illegal, immoral or repugnant to the estate created under the Gift
4. There must be a valid reason, based on which the Gift Deed may be rescinded as in contracts

A gift which is not based on fraud, cannot be cancelled unilaterally.

XII. TAXATION OF GIFT

According to Section 56 (2) (vii) of the Income Tax Act, 1961, a gift is not taxable if it is received by an individual or Hindu undivided family from any relatives/blood relatives or as inheritance or at the time of marriage or in contemplation of death. But in any other context, if the aggregate of gifts received exceeds Rs 50,000 in a year, then the gift will be taxable as income from other sources.

XIII. DONOR'S VOLUNTARY DECISION EXPRESSED THROUGH GIFT DEED

For a donor to bestow a Gift through Gift Deed, the following conditions have to be met-

- The donor must voluntarily make the Gift out of natural love and affection
- The decision should not appear as to be taken under pressure
- There should be no exchange of money involved in the act
- The donor can make a Gift should be capable of giving (should be over 18 years of age and possess a sound mind)

XIV. REGISTRATION OF GIFT DEED

Though there is no exchange of money involved in the process, registration of a Gift Deed is mandatory to make a valid transfer of property. Two witnesses have to be present during registration, who should also attest the Gift Deed. Once the registration process is complete, transfer of title can be made.

Stamp duty of recommended value has to be paid for registration of Gift Deed. The Stamp duty charges differ from state to state and also based on gender. Few states offer a concession in stamp duty if the property is gifted to family members.

XV. COMPONENTS OF A GIFT DEED

A Gift Deed should include the following-

1. Date and Place of execution of the Gift Deed
2. Details of the Donor (Name, Father's Name, Date of Birth, Address)
3. Details of the Donee (Name, Father's Name, Date of Birth, Address, Relationship with Donor)
4. Relationship of Donee with the Donor
5. Details of the property that is being gifted
6. Signatures of Donor and Donee
7. Details of two witnesses in whose presence the deed was executed
8. Signatures of the witnesses

XVI. CONCLUSION: DRAFT OF A GIFT DEED

- There should be a complete absence of monetary compensation while giving a gift. When there is money or something of equal value given in return for receiving a gift it becomes an exchange.
- A gift must be given by the donor to the donee without undue influence, fraud or coercion. It should be given through the sheer will of the donor.
- A gift has to be existing movable or immovable property. It cannot be something that will be transferred to the donor in the future.
- A gift can be absolute or limited. An absolute gift is the complete transfer of the property to the donee. He can do whatever he wants to with the property. However, limited rights only create a life interest. The property will go back to the heirs of the donor after the death of the donee. So, the donee only has the right to enjoy the property he may not sell it or destroy it.
- The donor must not simply execute the gift deed but must have the intention to gift the property. The deed must be executed voluntarily and with the intention to transfer the property.

REFERENCES

[1] https://www.lawctopus.com/academike/transferability-immovable-property/
[2] https://www.lawctopus.com/academike/transferability-immovable-property/
[3] https://www.lawctopus.com/academike/transferability-immovable-property/
[4] https://www.google.co.in/amp/s/www.livemint.com/Money/PYvt8NpP8AXnea8nKAn9FI/For-a-transfer-of-property-through-gift deed-to-be-valid-it.html%3ffacet=amp
[5] https://blog.ipleaders.in/importance-gift-deed/
[6] https://medium.com/@shellykaundal/5-ways-to-transfer-property-in-india-aceef6b31a08

[7] https://www.lawctopus.com/academike/transferability-immovable-property/
[8] https://www.lawctopus.com/academike/transferability-immovable-property/
[9] https://blog.ipleaders.in/importance-gift-deed/
[10] https://legaldesk.com/property/property-transfer-through-gift-deed
[11] https://blog.ipleaders.in/importance-gift-deed/
[12] https://legaldesk.com/property/property-transfer-through-gift-deed
[13] https://www.lawctopus.com/academike/transferability-immovable-property/
[14] https://www.google.co.in/amp/s/www.livemint.com/Money/PYvt8NpP8AXnea8nKAn9FI/For-a-transfer-of-property-through-gift-deed-to-be-valid-it.html%3ffacet=amp
[15] https://blog.ipleaders.in/importance-gift-deed/

★★★