

FRAUDULENT TRANSFER



ESSENTIALS BURDEN OF PROOF

WHAT IS FRAUDULENT TRANSFER?

Section 53 of Transfer of Property Act

Every owner of property has right to **transfer his property** as he likes. But the transfer must be made with a bonafide intention.

Where the transfer is made with fraudulent intention, it means with the intention of defeating the interest of creditor or interest of any subsequent transferee.

Where the transfer is made with fraudulent intention, the object of the transfer would be bad in the eyes of equity and justice; though it is valid in law.

ESSENTIALS OF FRAUDULENT TRANSFER

1. Transfer of an immovable property.
2. Made with intent to defeat or delay the creditors of the transfer.
3. Shall be voidable at the option of the creditor so defeated or delayed.

But the provisions of this sub section shall not affect-

a. The rights of subsequent transferee in good faith, for consideration.

b. Any law for the time being in force relating to insolvency.

NOTE: Partition and family settlement are not transferred under this act. So this section may not apply to partition or family settlement.

NOTE: Sham transfers means fictitious transfer / Benami transfer which is outside the scope of this section.

Section 53 safeguards the interest of a creditor in case of only real transfer which is made with a fraudulent intention. On the other hand, a sham transfer is actually not a real transfer.

NOTE: Section 53 is applicable to transfers only of immovable properties. **The provisions of this section do not apply to a transfer of movable property.**

MUSAHUR SAHU AND ANOTHER v HAKIM LAL AND ANOTHER 1915

Privy Council held that transfer of property by a debtor to one creditor in preference of the other is not a fraudulent transfer with intent to defeat or delay the interest of another creditors.

NOTE: If one creditor represents the other creditors, the purpose of this rule is to protect the debtor from the multiplicity of the suits by the other creditors.

ABDUL SHUKOOR SAHEB VS ARJI PAPA RAO AND OTHERS

Hon'ble Supreme Court held that the creditor may claim the attachment of the property of the debtor to protect the mortgage money.

No separate suit will be filed by the creditor for attachment, the creditor may seek attachment of the property in **section 53**.

BURDEN OF PROOF

The burden of proof lies on the creditors to show that the transfer was made to defeat or delay the creditor.

A transferee who takes property in good faith for consideration is protected. In other words when a transferee has purchased the property in good faith from a debtor, the creditor cannot make this transfer void.

Section 53 (2) Gratuitous transfer to defraud subsequent transferee.

Section 53 (2) provides that gratuitous transfer of an immovable property with intent to defraud a subsequent transferee shall be voidable at the option of subsequent transferee.

For Example-

A makes a gift of house to B in January 1990. In February 1990, A sells the same house to C. Here, B and C are two claimants of same property.

The general rule is that first transferee has preference over the second. Under this sub-section it is provided that if first transfer is proved to be fraudulent, the subsequent transfer shall prevail over the previous one.

In other words this sub section protects the interest of a bona fide transferee for value from a fraudulent gratuitous transfer made earlier.

[Read Section 53 of TPA \(VVI\)](#)

[Read more Law Notes](#)