Immovable Property
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Definition of immovable property given under Transfer of Property act, 1882 is exclusionary one. It provides that immovable property does not include standing timber, growing crops, and grass. Further, the transfer of property act provides definition for things attached to earth which means— (a) rooted in the earth, as in the case of trees and shrubs; (b) imbedded in the earth, as in the case of walls or buildings; or (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached;

To have the complete definition of immovable property we have to refer to Section 2(6) of Indian registration act which provides “immovable property” includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass; and Section 3(26) of the General Clauses Act which says “immovable property” shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

Reading all the four clauses that is 2(6) of Indian registration Act and 3(26) of General Clauses Act and definition given under transfer of property act of immoveable property and things attached to earth, the complete definition of immovable property can be attained.

Immovable property includes land, benefit arising out of the land, things attached to earth i.e. things embedded in earth things, attached to what is embedded in attached and things rooted to earth except standing timber, growing crops and grass.

The term “land” includes surface of the earth until it is removed for example pond, mud, River. It further includes under the surface i.e. water, soil and things above the surface i.e. space.

The term “benefit arising of the land” means any profit a prendre that includes right to way, right to rent, right to fishery, right to carry away woods.

Next “things attached to earth” means anything fixed to earth it means a doctrine of fixtures which include degree of annexation and purpose of annexation. The term attached to earth include things embedded in earth which means house buildings etc, but does not include machinery or machines attached by nuts and bolts. Here the intention of party is observed to know whether the property is immovable or not. Further commercial items are attached for their own enjoyment and hence are not immovable property. Secondly it includes things attached to what is embedded in the earth i.e. doors, windows etc. The two test given above that is degree of an expression and purpose of an exception is used to determine whether
property is immovable or employment. Lastly it includes things rooted to earth that is trees and shrubs. It is intention of the parties to determine whether property is immovable or not. Mango tree can be treated as movable and immovable both depending upon the intention of the parties.

Judicial Trends

In Shantabai v. State of Bombay the petitioner got right to collect and carry wood from the forest. Subsequently government took the land by legislation. Question before the court was whether the right given to petitioner was immovable property or movable property. The Court after going into the definition given under the act held that the grant was not for standing timber but also for trees that were to fall gradually as they grow to attain required high till 12 years. In other words they are not right over standing timber rather is right over benefit arising out of the land that is immovable property.

In State of Orissa versus Titaghur paper mill, the defendant got right from state of Orrisa to collect all bamboo trees and materials that are falling apart. For this defendant also got right to construct a warehouse, roads and canal etc. The court concluded that right given to paper mill was right over immovable property as they didn’t merely had right over the tree but had right over the benefit of the land.