EQUITY IMPUTES AN INTENTION TO FULFILL AN OBLIGATION

Meaning

Equity considered and estimated acts of parties. Thus where a person is under an obligation to do a certain act, and he does some other act which is capable of being regarded as an act in fulfillment of his obligation. In other words a person is presumed to do what he is bound to do.

In Sowden v. Sowden, a husband covenanted with the trustee of his marriage settlement to pay to them £50,000 to be laid out by them in purchase of land in a particular area D. He, in fact, never paid the sum, but after marriage purchased the land at D in his own name, for £50,000. He died and could not bring the land into settlement. Equity courts construed that he purchased land to fulfill his obligation.

Application and cases

i) Doctrine of performance and satisfaction

ii) Ademption

iii) Doctrine of presumption of advancement

iv) Relief against defective execution of power of appointment.

i) Doctrine of performance and satisfaction- Sowden v. Sowden and Lachmere v. Lady Lachmere cases are examples of performance. Satisfaction is the donation of a thing with it is to be taken in extinguishment of some prior claim of donee. This maxim is helpful where the presumed intention of the testator is to be found out; where the intention is express the maxim has no application.

ii) Ademption- Ademption is a transfer of property which operates as a complete or pro tanto substitution for a gift previously made by the will of the donor.

e.g. X by his will leaves his daughter Y one-third of his residuary estate. Thereafter on Y’s marriage X gives Y 20,000 Taka. X dies. 20,000 Taka is an ademption -complete or proportionately to the gift of one-third share of the residuary estate of X.

iii) Presumption of advancement- When a purchase or transfer of property without consideration is made by a father or a person in loco parentis, to or in the name of a child, a presumption arises. And the presumption is that it was for the benefit of the child. Such presumption, is known as ‘advancement’. The doctrine applies to cases of parent and child, husband and wife, of mother and child and even to illegitimate child, but not to a man and his mistress.

iv) Relief against defective execution of power of appointment- A power is an authority vested in a person to deal with or dispose of property not his own. A power may be legal or equitable but after 1925 all powers of appointment are necessarily equitable.

e.g. A holds 50,000 Taka upon trust to divide among a certain class of persons. A has no option is this matter He is bound to carry out the trust. On his failing to do so, the court will see that the property is duly divided.

A defective execution will always be aided in equity under the circumstances mentioned, it being the duty of every man to pay his debts, and a husband or a father to provide for child.

Recognition

i) The Succession Act- Presumption against satisfaction is mentioned here. In Hasanali v. Popatal, a testator, who had a sum of Rs 9000 as deposit from his brother, gave to is brother a legacy of Rs 9000 and it was held that the brother was entitled to both, the legacy and his deposit. But as decided in Rajmanuar case where a will contained a clear indication that the legacy was meant as a satisfaction of the debt due to X, X could not claim both as the section explains.

ii) The Trust Act- Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract. Equity thus imputes an intention to fulfill an obligation.

The doctrine of advancement does not apply in Bangladesh.