

To Study and Analyse the Difference between Contingent Interest and Spes Successionis under the Transfer of Property Act of 1882

Vinit Kumar

B. A LLB 7th Semester, Amity Law School, Amity University Patna, Patna, Bihar, India

Abstract: *Researching the differences between contingent interest and Spes Successionist under the Transfer of Property Act of 1882, as they are sometimes confused due to their similar qualities. The goal of this research article is to provide answers to various questions, such as what a contingent interest in immovable property is and what the nature of speculative investment is. The successionis of the Transfer of Property Act, the analogies that develop between them, and how they are both mutually incompatible concepts under the Act, among other things.*

Keywords: Spes Successionis Contingent Interest Condition Precedent

1. Introduction

The Transfer of Property Act addresses two types of interests: vested and contingent. Vested interest is distinct from contingent interest. When an interest vests, the transfer is complete; however, when an interest is contingent, the transfer is contingent on a condition antecedent. When the criterion is met, the transfer occurs and the interest becomes vested. Contingent interest is defined under Section 21 of The Transfer of Property.

Contingency refers to an uncertain future event. The interests are contingent in a transfer of property if the vesting of interest is contingent on any contingency, i. e. an uncertain future event. The interest is contingent in a property transfer if the vesting of estate is contingent on an event that may or may not occur.

A contingent interest is one that is created to take effect only if i. some specified uncertain future event occurs or ii. some specified uncertain future event does not occur.

These conditions are further classified as follows:

- 1) Condition precedent, which means that they must be met first before the transfer can take place.
- 2) Condition following, which means that the transfer occurs first, and the requirements must be observed by the transferee later, and if he does not comply with the conditions, the transfer is null and void.
- 3) Adjacent condition

1.1 SPEC Successionis and Conitngent Contract Understanding

Section 6 of the Transfer of Property Act of 1882 mentions Spes Successionis. It declares that property of any kind may be transferred unless otherwise prohibited by this Act or any other legislation now in force -

- 1) The probability of an apparent heir inheriting an estate.
- 2) The possibility of a relative inheriting a legacy following the death of a kin.

- 3) No other simple possibility of a similar sort may be transmitted.

This sentence refers to bare possibilities, not possibilities associated with an interest, such as dependent remainders and future interest. In terms of contingent interest, it is distinct from the simple prospect of an heir ostensibly succeeding in succession, or the chance of a connection earning a legacy, and it is also distinct from the mere right to suit. It is a tried and true type of property. It has undoubtedly been passed down through generations in this country, and it is entirely conceivable to raise funds and distribute them in any way the beneficiary desires.

In contrast, in a property transfer, if an interest is created in favour of a person to take effect only if a certain uncertain event occurs, or if a specified uncertain event does not occur, that person obtains a contingent interest in the property. There are certain exceptions, which are as follows:

Exception - When a person becomes entitled to an interest upon reaching a certain age, and the transferor also gives him absolutely the income that will arise from such interest before he reaches that age, or directs the income or a portion of it to be applied for his benefit, such interest is not contingent⁵. That example, when the transfer of

If the property is supposed to happen only on the occurrence of a specified uncertain event, then the person to whom the transfer is to be made is said to have a contingent interest in that property, which means that the interest arises only on the occurrence of the specified uncertain event, which means that the event on the occurrence of which the property is to be transferred is specified and uncertain. As a result, if a person A is said to pass his property to B solely upon his death, the occurrence of A's death is uncertain but specified, and B's interest therein becomes the Contingent Interest.

The exception is when a person becomes entitled to the interest in attaining that property at a certain age, but the transferor is giving him the benefits arising from his land before that age, in which case the interest is not deemed dependent.

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For example, in the preceding example, A was to transfer his property to B only upon his death; however, if A transfers his property before his death, B's stake in the property is no longer contingent. If the transfer is subject to a condition prior, no transfer occurs until the condition is met. Until then, the interest is conditional on the condition being met.

When the criterion is met, the transfer becomes effective and the interest becomes vested. The specified uncertain event could be one that is contingent on the will of the intended transferee, such as the execution of a deed or the payment of a quantity of money. Section 26 of the Act⁷ governs the accomplishment of such a condition.

2. Research Methodology

For the purposes of this research paper, the researcher will primarily focus on analysing and studying the various differences between contingent interest and Spes Successionist under the Transfer of Property Act, 1882, as they are commonly regarded as the same due to their similar characteristics. To improve the quality of the research and better comprehend the notion, the researcher conducted both exploratory and explanatory research. The purpose of this study paper is to answer many problems such as what is a contingent interest in immovable property and what is the nature of speculative investment.

The Transfer of Property Act's successionis, the parallels that arise between them, and how they are both mutually exclusive concepts under the Act, among other things.

2.1 Goals and Objectives

The researcher explored the concepts of contingent interest and spec successionis in depth using case law and assessed basic discrepancies between them. In light of the foregoing, the primary objectives of the intended study are listed below. The following are the primary goals of this study:

- Research contingent interest under the 1882 Transfer of Property Act.
- To investigate spec successionis under the 1882 Transfer of Property Act.
- To comprehend the distinctions between spec successionis and the Transfer of Property Act of 1882.

2.2 Applicability and Limitations

The current research article focuses on sections 6 and 21 of the Transfer of Property Act of 1882. Using numerous case laws and decisions, the study article attempts to explore contingent interest in a property and the nature of spec successionis under the Act in detail. The paper primarily pleads for recognising the underlying distinction between the two because both are about future conceivable interests, but where spec successionis is not transferable, contingent interest can be. It is clear that, despite significant differences, they are used interchangeably, and that there is a need to distinguish between the two. As a result, the author attempts to describe the notion in depth. The research article is limited to sections 6 and 21 of the Transfer of Property Act of 1882 and does not investigate any other sorts of property interests, limiting its impact.

2.3 Questions for research

The research paper will address the following questions:

- What constitutes a contingent interest in immovable property under the Transfer of Property Act of 1882?
- What are the requirements for a spec successionis over a property under the Transfer of Property Act of 1882?
- Whether the concepts of contingent interest and spec successionis are substantially the same under the Transfer of Property Act of 1882.
- What is the distinction between spec successionis and contingent interest under the 1882 Transfer of Property Act?

2.4 Data Sources

Only data gathered from secondary sources was used in this article. Books, thesis reports, seminar papers, articles, internet websites, published books, legal journals, and newspapers were used as secondary data sources.

2.5 Writing Method

The nature of this research report is a hybrid of exploratory and explanatory research. The research begins with exploratory research and then moves on to explanatory research, which aims to answer the question of how contingent interest and spec successionis differ under the Transfer of Property Act of 1882. . The researcher has carefully picked the following way of writing since it allows the researcher to be creative in order to acquire the maximum understanding on a subject.

3. Contingent Interest Nature

1) Contingent interest: A contingent interest is a future probable interest. In a contingent property transfer, the transferee has only a future possible entitlement in respect of the property transferred to him. It is neither a present nor a future right. Because the event's occurrence or non - occurrence is unknown, so is the interest based on it is uncertain. The right to enjoyment in a contingent interest is also dependant on some event or condition that may or may not occur or be performed.

2) Non – heritable: A contingent interest is not heritable. When a person with contingent interest dies (i. e. dies before the contingent interest vests), his legal heirs receive nothing, not even the contingent interest. Following a person's death, his legal heirs are only entitled to inherit the properties in which he had a vested interest at the time of his death. The Supreme Court stated in *Rajesh Kanta Roy v. Smt. Shanti Devi*:

"In the case a contingent interest, one of the features is that if a person dies before the contingency disappears and before the vesting occurs, the heirs of such person do not get the benefit of the gift (transfer)."

3) Transferable interest: A transferable interest is contingent interest. However, because a contingent interest is an uncertain stake in the property and the transferor's own title is faulty, the transferee receives an imperfect title as

well. If the contingent interest subsequently vests, the transferee's interests will likewise vest.

However, if the contingency does not occur, the transferee has no ownership to the property. In other words, even while a contingent interest is transferable, the transferee's title is still subject to the same contingency that existed before to the transfer.

3.1 Prior to Vesting, Sale of Inchoate Contingent Interest

A father and his son purported to transfer certain property as owners when the father only had a life interest in it and the son had an inchoate contingent interest that had not become vested, i. e. an undivided share in the family property that was to vest on his father's death. The sale was deemed ineffective until the property was partitioned.¹⁰

4. SPEC Successionis- Non - Transferable Under Section 6

Spes successionis indicates succession anticipation. The expectation of succession is the expectation or possibility of obtaining a property through succession (inheritance or will). As a result, spes - successionis is not a present property. It is only a chance of acquiring particular property in the future. Section 6 subclause (a) defines spes - successionis as follows:

1) Chance of an heir apparent - An heir apparent is someone who appears to be an heir but is not a legal heir. Heir apparent is a person who would become an heir in the future if he survives the propositus (the deceased whose property he inherits) and the propositus dies intestate (without making a testament). Father and son have the right to inherit each other's possessions. If the father dies first, the son becomes the father's heir and receives his father's property. However, if the son dies before, that is, while the father is still living, he cannot inherit his father's property.

Because it is a future uncertain event, it is unknown who will die first, i. e. who will survive whom. As a result, during the father's lifetime, the son cannot be termed his heir; he is simply his father's heir presumptive. An heir apparent can only inherit the property if one of two things happens. (1) He outlives the propositus, and (2) the propositus dies intestate, that is, without a will. Even if the son outlives his father, he may discover that his father left a will in which the property is to be distributed to someone other than his heirs after his death.

Thus, prior to the intestate death of the propositus, the "chance" of an apparent heir of receiving is only a future conceivable interest. It is a bare right that generates no interest in favour of the heir apparent. It cannot be treated by law as a current fixed right in property. As a result, the possibility of an heir apparent is a nontransferable possession.

In *Samsuddin v. Abdul Hussain*¹¹, the court held that a release deed for a third of her father's property after his death for a specified consideration is void since she is just an heir apparent and had no right in his property prior to his

death. The court ruled that release is not a defence because it is a spec - successionis transfer.

2) Chance of a legacy - The expectation of receiving certain property under a will. The well - established law of wills states that a will becomes effective only after the death of the testator (the person who prepares the will), not on the date it is written.

Furthermore, the last will and testament takes precedence, and if two or more wills are signed in favour of different people, only the legatee under the final will and testament is entitled to the property. As a result, when a person executes a will, Before the testator's death, the legatee has only a chance of inheriting the property because (1) the legatee may not survive the testator and (2) the will in his favour may not be the last will and testament. before to the operation of a will, i. e. before to the death of the testator, the legatee has only a chance of receiving property in the future if it is the last will and testament. As a result, the likelihood of a relative, acquaintance, or any other individual obtaining a bequest is even more remote than the possibility of succession of an heir and, as such, is not transferable.¹²

3) Any other potential of a similar type - Any other possibility of a similar nature would mean any other conceivable interests or property that is as unclear as the likelihood of an heir apparent or a relative receiving property under a will. The main principle behind clause (a) is that any property that is only a future uncertain probable interest should not be made transferable.

As a result, clause (a) excludes not only the possibility of an heir apparent or a legatee, but also any other "chance" of obtaining future property that is not currently a fixed right of the transferor. The prospect of obtaining a property in the future, as considered above, is nontransferable, similar to the chance of receiving a prize in a competition or winning a lottery.

5. Distinction between Contingent Interest and SPES Success

Both Contingent Interest and Spes Successionis are future potential interests. In both circumstances, there is no current fixed right in respect of property, and there is a "chance" that it will become a perfect title in the future. However, the degree of this possibility in a contingent interest is lower than in spes successionis. For example, if a property is transferred subject to a specified uncertain future occurrence, there are only two options: the event occurs or it does not occur. However, spes successionis, or sheer chance of heir apparent, is based on various factors, including (i) the heir apparent's survival of the propositus (dead person). (ii) even if he survives, the propositus has already transferred the property during his life, or (iii) he has written a will of that property. As a result, spes successionis has been regarded as a simple potential future interest. As a result, spes successionis is a non - transferable interest under section 6 (a) of this Act. Contingent interest is not a "mere" possibility in the future.

It is simply uninteresting. As a result, the transfer of such an interest has been authorised by law. A contingent interest is a transferable interest that is subject to contingency. In *Ma Yait v. Official Assignee*, the privy council noted the following distinction: ". the contingent interest which the children took, whether they took it under the first, second, and third schedules or under the fourth schedule, was something quite different from a mere possibility of a like nature of an heir - apparent succeeding to the estate, or the chance of a relation obtaining a legacy. It is a well - established kind of property - - it has undoubtedly been transferred in this country for generations - - in respect of which it is entirely conceivable to acquire funds and dispose of it in any manner desired by the beneficiary.

Comparison of SPES Successionis and Contingent Interest –

A contingent interest differs from a simple spes successionis. Spes Successionis cannot be transferred, although dependent interest can be. A contingent interest is distinct from the mere potential of an heir apparent inheriting to the estate or the prospect of a relative collecting a legacy. It is also distinct from the mere right to sue because it is a well - established kind of property. It has undoubtedly been passed down through generations in this country, and it is entirely conceivable to raise funds and distribute them in any way the beneficiary desires.

Contingent ownership is based on the presence of an incomplete title in the present, rather than the mere prospect of future acquisition. The following examples will help you understand the difference between contingent interest and spes successionis:

- 1) Shyam is a Hindu who died leaving behind a widow Rita and a sibling Ram. In this situation, Ram just has a chance to become the owner of A's estate.
- 2) Shyam is a Hindu who owns separate property and leaves his estate to his wife Rita for life, followed by his son, if he has one, and in the absence of a son of Ram. Ram's interest in this case is contingent and transferable. Furthermore, his dependent interest is something more than a simple possibility of becoming the owner of it. He is only interested if Shyam does not have a son.

6. Conclusion

In this research study, Spes Successionis and Contingent Interest are compared and contrasted to explain how they differ. The essential factor to grasp and remember is that the transfer of property under the Contingent interest occurs only when the condition is met, and if the requirement is not met, the transfer is null and void. The requirements must be met, as well as the preamble rules, which speak of justice, fairness, and good conscience, the three basic principles of natural law on which this act is based. Whereas, under section 6 clause (a), the possibilities alluded to are of an uncertain future interest subject to numerous conditions possibilities. The law cannot take the risk of recognising any interests that are subject to a variety of possibilities. It should be noted that contingent interest, as defined in Section 21 of the Act, is likewise a potential interest based on an uncertain future event. However, contingent interests

are transferable interests since the possibilities are connected with an interest in this case; they are not bare possibilities.

References

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