



## VN SARIN v AJIT KUMAR POPLAI: PARTITION AND THE MEANING OF 'TRANSFER' UNDER SECTION 5 TPA

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### **ABSTRACT**

*In V.N. Sarin v. Ajit Kumar Poplai,<sup>1</sup> the apex court focused on deciding whether property allotted to a coparcener upon partition of a Hindu joint family falls under the ambit of 'acquisition by transfer' under Section 14(6) of the Delhi Rent Control Act, 1958,<sup>2</sup> which bars eviction proceedings within five years of such acquisition. The Court<sup>3</sup> analysed the concept of 'transfer' under Section 5 of the Transfer of Property Act, 1882.<sup>4</sup> The apex court further held that partition does not constitute a transfer under Section 5,<sup>5</sup> as it doesn't create new titles, but merely defines and separates pre-existing coparcenary rights.<sup>6</sup> By emphasising a purposive interpretation, the court distinguished partition from conventional transfers where the transferee acquires rights for the first time.<sup>7</sup> Therefore, the court's decision reinforces the notion that statutory definitions must be applied contextually, taking into account the substantive nature of property rights and the legislative intent underlying rent control laws.*

**Keywords:** Partition, Coparcenary Property, Acquisition by Transfer, Section 5 Transfer of Property Act, Delhi Rent Control Act.

### **FACTS<sup>8</sup>**

The aforesaid dispute revolved around a bungalow located at Racquet Court Road, Civil Lines, Delhi, owned by a joint HUF family consisting of B.S. Poplai (Respondent 2) and his two sons,

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<sup>1</sup> *VN Sarin v Ajit Kumar Poplai*, AIR 1966 SC 432.

<sup>2</sup> Delhi Rent Control Act 1958, s 14(6).

<sup>3</sup> *Supra* Note 1

<sup>4</sup> Transfer of Property Act 1882, s 5.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Supra* Note 1.

<sup>7</sup> *Supra* Note 1.

<sup>8</sup> *Supra* Note 1.

Major Ajit Kumar Poplai (Respondent 1) and Vinod Kumar Poplai. The appellant (V.N. Sarin) received tenancy through B.S. Poplai with a monthly rental of 80 Rs. The joint family members partitioned their coparcenary property on May 17<sup>th</sup> 1962, resulting in the premises being allotted to Respondent 1, who applied for the appellant's eviction on the ground that he required the premises bonafide for him and his family members.

The appellant contested the eviction on three grounds:

- Respondent 1 was not his landlord
- Respondent 1 did not require the premises bona fide
- Respondent 1 had acquired the premises by transfer through partition, making the application barred under Section 14(6) of the Delhi Rent Control Act, 1958 ("Rent Control Act"), which prohibited eviction applications within five years of acquisition by transfer.<sup>9</sup>

After proceedings before the Rent Controller and Rent Control Tribunal, upholding the eviction of the appellant, as valid under Section 14(1)(e) of the Rent Control Act,<sup>10</sup> later affirmed by the Punjab High Court, following which the appellant filed a special leave to appear before the apex court.

## ISSUE

The core issue before the Supreme Court was whether partition of coparcenary property among coparceners constitutes "an acquisition by transfer" within the meaning of Section 14(6) of the Delhi Rent Control Act, 1958,<sup>11</sup> hinging on the interpretation of the concept of "transfer" under Section 5 of the Transfer of Property Act, 1882.<sup>12</sup>

## RATIO DECIDENDI<sup>13</sup>

The apex court held that property allotment to a coparcener through partition doesn't constitute "acquisition by transfer" under Section 14(6) of the Rent Control Act.<sup>14</sup> The court examined the nature of partition, in conjunction with Section 5 TPA, defining "transfer of property" as

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<sup>9</sup> *Supra* Note 2.

<sup>10</sup> Delhi Rent Control Act 1958, s 14(1)(e).

<sup>11</sup> *Supra* Note 2.

<sup>12</sup> *Supra* Note 4.

<sup>13</sup> *Supra* Note 1.

<sup>14</sup> *Supra* Note 2.

"an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons."<sup>15</sup>

The Court reasoned that:<sup>16</sup>

- The true effect of partition is that coparceners receive specific properties instead of their undivided rights in the joint property.
- Each coparcener already possesses an antecedent title to the property, though its extent is undetermined until partition.
- Partition transforms joint titles into separate titles rather than creating new titles.
- Section 14(6) discusses scenarios where a person with no prior title to the property becomes a landlord through transfer.<sup>17</sup>

## CRITICAL ANALYSIS – SECTION 5 TRANSFER OF PROPERTY ACT

**Interpretation of Section 5 in the Context of Partition:** Section 5 of the Transfer of Property Act defines transfer as an "act by which a living person conveys property to others or to himself and others".<sup>18</sup> The Court acknowledged that, based on this definition, High Courts had differing interpretations on whether partition constitutes a transfer.<sup>19</sup> The appellant's argument largely relied on the broad language of Section 5,<sup>20</sup> asserting that any conveyance of property, including partition, falls under the ambit of the provision.<sup>21</sup> Since partition involves the "conveyance" of property rights from the joint family to an individual coparcener, such an argument is supported by a literal interpretation of Section 5.<sup>22</sup>

The apex court adopted a highly pragmatic approach to interpreting Section 5,<sup>23</sup> considering a purposive interpretation, beyond the mere wording of Section 5<sup>24</sup> to consider the nature of coparcenary property rights, thereby recognising that Section 5<sup>25</sup> must be analysed in light of

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<sup>15</sup> *Supra* Note 4.

<sup>16</sup> *Supra* Note 1.

<sup>17</sup> *Supra* Note 2.

<sup>18</sup> *Supra* Note 4.

<sup>19</sup> *Supra* Note 1.

<sup>20</sup> *Supra* Note 4.

<sup>21</sup> *Supra* Note 1.

<sup>22</sup> *Supra* Note 4.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

pre-existing coparcenary rights, making partition qualitatively different from other forms of transfer where the transferee has no prior interest.

**Examination of "Conveyance" Under Section 5:** In a standard transfer under Section 5,<sup>26</sup> the transferee acquires rights which were not pre-existing, in partition, the court emphasises that each coparcener possesses an undefined right in coparcenary property pre-partition, which merely becomes defined and quantified through partitioning the property.

The Court cites *Girja Bed v. Sadashiv Dhundiraj*, where the Privy Council held that partition "does not give him (a coparcener) a title or create a title in him; it only enables him to obtain what is his own in a definite and specific form",<sup>27</sup> thus directly challenging the notion of partition involving a "transfer" under Section 5,<sup>28</sup> as argued by the appellant.

**Conflicting Judicial Interpretations of Section 5:** The Court acknowledged the existence of judicial pronouncements, such as *Soniram Raghushet v Dwarkabai Shridharshet*,<sup>29</sup> which supports the view of partition as a 'transfer' under Section 53 of the TPA,<sup>30</sup> which relies upon the definition of 'transfer' under Section 5.<sup>31</sup> Conversely, cases like *Naramsetti Venkatappala Narasimhalu v. Naramsetti Someswara Rao*<sup>32</sup> held a narrow view regarding partition, coming under the ambit of 'transfer' under Section 5.<sup>33</sup> Such contradictory judgments highlight the ambiguities in Section 5's<sup>34</sup> wording, when applied to the concept of partition.

Rather than definitively resolving this broader interpretive conflict regarding Section 5,<sup>35</sup> the Court took a more context-specific approach, focusing on the purpose of Section 14(6) of the Delhi Rent Control Act.<sup>36</sup>

**Contextual Application of Section 5:** In conjunction with the aforesaid, Courts must consider the application of Section 5<sup>37</sup> contextually, and not apply it uniformly. Chief Justice

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<sup>26</sup> Ibid.

<sup>27</sup> *Girja Bed v Sadashiv Dhundiraj*, 43 IA 151 at p 161.

<sup>28</sup> *Supra* Note 4.

<sup>29</sup> *Soniram Raghushet v Dwarkabai Shridharshet*, AIR 1951 Bom 94.

<sup>30</sup> Transfer of Property Act 1882, s 53.

<sup>31</sup> *Supra* Note 4.

<sup>32</sup> *Naramsetti Venkatappala Narasimhalu v Naramsetti Someswara Rao*, AIR 1948 Mad 505.

<sup>33</sup> *Supra* Note 4.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> *Supra* Note 2.

<sup>37</sup> *Supra* Note 4.

Gajendragadkar, in his opinion, cites *CIT v. Keshavlal Lallubhai Patel*,<sup>38</sup> where the Supreme Court previously held that partition was not a transfer for the Income Tax Act, despite the potential applicability of Section 5's definition.<sup>39</sup> This contextual application suggests that Section 5<sup>40</sup> should be read down contextually, rather than be interpreted literally. The apex court effectively establishes that even if partition might technically fit within the broad language of Section 5<sup>41</sup> in some contexts, this does not make it a transfer for all legal purposes.

Such a view is supported by the Delhi High Court's judgment in *Kenneth Solomon v Dan Singh Bawa*,<sup>42</sup> which held that although a will is explicitly excluded from the definition of "transfer" under Section 5 of the TPA,<sup>43</sup> its functional effect could still amount to "parting with possession" under Section 14(1)(b) of the Delhi Rent Control Act.<sup>44</sup>

Thus, both cases reinforce the context-specific application of Section 5,<sup>45</sup> demonstrating that property transactions should be assessed based on their substantive legal effect rather than a rigid textual interpretation.

## CONCLUSION

V.N. Sarin v. Ajit Kumar Poplai<sup>46</sup> provides important insights into the interpretation of Section 5 of the Transfer of Property Act<sup>47</sup> as it relates to the partition of Hindu joint family property. The judgment establishes that despite the broad language of Section 5,<sup>48</sup> not all property conveyances constitute "transfers" in every legal context. The Court's functional approach to interpreting Section 5<sup>49</sup> emphasises the importance of considering pre-existing rights and the substantive nature of the transaction rather than merely its form. While not definitively resolving all questions about the scope of Section 5,<sup>50</sup> the judgment provides a nuanced

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<sup>38</sup> *CIT v Keshavlal Lallubhai Patel*, 55 ITR 637.

<sup>39</sup> *Supra* Note 4.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> *Kenneth Solomon v Dan Singh Bawa*, 1985 SCC OnLine Del 159.

<sup>43</sup> *Supra* Note 4.

<sup>44</sup> Delhi Rent Control Act 1958, s 14(1)(b).

<sup>45</sup> *Supra* Note 4.

<sup>46</sup> *Supra* Note 1.

<sup>47</sup> *Supra* Note 4.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

framework for distinguishing between different types of property conveyances based on their substantive characteristics rather than formal similarities to the language of Section 5.<sup>51</sup>

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<sup>51</sup> Ibid.