

Introduction

Section 3 of the Transfer of Property Act, 1882 asserts under what circumstances a person is said to have a knowledge of fact or notice. Notice is mentioned in section 39, 40, 41, 53 and 53(A) of Transfer of Property Act.

The legal notion of notice describes a requirement that a party in dispute must be mindful of the legal process and the knowledge of a fact affecting their rights, liabilities and duties. A person may himself have actual notice of a fact or he may have constructive notice or notice may be attributed to him when knowledge of the fact has been acquired by his agent during business transacted by the agent of him.

Classification of Notice

There are two types of notice under the Transfer of Property Act, 1882 namely, Express or Actual Notice and Constructive Notice. To understand the concept of notice we need to elaborately discuss these two types of notice.

1-Express or Actual Notice

When a person receives the actual knowledge of a fact or a definite information regarding a legal dispute, it is called actual or express notice. Vague rumor and hearsay are not regarded as an actual notice.

What are the essential conditions for an actual notice?

The following are the essential conditions to constitute an actual or express notice:

1. There must be a definite and direct information or actual knowledge of a fact.
2. A person pertaining to the transaction can only have an actual knowledge.

3. The actual knowledge must be linked with the transaction.

Illustration: X sells his land to Y. X and Y have a contract. Y gives X 50% of the money and contracted to give the rest after registration of the instrument. Now, X again sells the same land to Z. If Z knows about the previous contract between X and Y, then Y can go against Z in the court.

2-Constructive notice

Constructive notice is the knowledge of those particulars facts which a court ascribes on a party. The legal presumption regarding constructive notice is that a person should have known a fact as if he actually knows it. If the situations indicate that a man of ordinary prudence ought to have known a precise fact pertaining to the transaction of transfer then that person will be deemed to know it. This notice works like a provision of law.

In the famous case of ***Plumb V Fluit* [1791]** it was upheld by the court that 'Constructive notice is itself an evidence of notice.' The court will not allow any person to disprove it.

Wigram V C determined the cases of constructive notice into 2 classes in the case of ***Jones V Smith* [1841]** namely,

1. Cases in which the party alleged has had actual notice regarding the fact that the property in dispute is somehow affected;
2. Cases in which the court has been persuaded from evidence on record before it that the party alleged has restrain himself from inquiring to avoid the notice.

What are the essential conditions for constructive notice?

In respect of registered transaction, the followings are the essential conditions for constructive notice:

1. The instrument has to be registered in consonance with the Registration Act, 1908.
2. The instrument has to be duly entered or filed in books kept under section 51 of the Registration Act, 1908.

3. The particulars pertaining to the transaction to which the instrument relates have to be correctly entered in the indexes kept under section 55 of the Registration Act, 1908.

Legal Presumption of Constructive Notice:

In the following circumstances the legal presumption of constructive notice arises –

1. Willful abstention from an inquiry or search
2. Gross negligence
3. Document compulsorily registrable
4. Actual possession
5. Notice to an agent

1-Willful abstention from an inquiry or search

A person has notice if it was his responsibility to make an enquiry of if there was something to put him on an enquiry which if he pursued he would have learnt the truth. The words 'will abstention from an inquiry or search' in section 3 means an abstention from inquiry or search as would show want of bonafides and a mere omission to make inquiries cannot be regarded as sufficient to constitute constructive notice within the meaning of the section.

Illustration: A sells property to B. A got the property by partition and presumption right was reserved in the partition deed. It is B's duty to check the partition deed before purchasing the property, if he abstains himself from enquiring about the partition deed to avoid competition then it is a willful abstention.

2-Gross Negligence

Gross negligence does not mean mere carelessness, it is a degree of negligence so gross in nature that a court of law may treat it as a proof of fraud. If there exists mental indifference to obvious risks then it is a gross carelessness or negligence. What would be gross negligence in one case would not be so in another. It all depends on the man's knowledge and the means of information which lay to his hand.

The main difference between willful abstention and gross negligence is that in latter the intention is not wrong or fraudulent.

Illustration: X purchases a property within the municipality. X did not check whether any municipal taxes pertaining to the property were in arrears. As X failed to check before purchasing it amount to gross negligence.

3-Registration as notice

Registration is considered as constructive notice when the document is compulsorily registrable. The amending act of 1929 made it clear that registration of an instrument relating to immovable property amounts to notice of the instrument from the date of registration.

Registration is notice only in the following circumstances:

1. When the instrument is required by law to be registered;
2. Registration is notice to a subsequent transferee. Prior transferee is not affected by notice of subsequent transactions from the registration of the same;
3. The instrument must have been registered in the manner prescribed by the Registration Act, 1908.

4-Possession as notice

If someone possesses an immovable property, then the purchaser must know that someone is exercising right to possession and enjoyment on that property. In other words, the person dealing with any immovable property shall be deemed to have notice of the title of any person who, temporarily is in actual possession thereof. The possession must be actual.

Illustration: A sells his property to B and then A requested B to let him live in the property as long as A finds a new place to live. Registration was not done. A sells the same property to C. As B's possession is not actual so it is not a constructive notice to C.

4-Notice to agent

The general principle is that a person has notice of fact when information of the fact is given to or obtained by his agent. The knowledge of the agent is regarded the knowledge of the principal. This general principle has certain limitations.

Notice to agent is notice to principal in the following circumstances:

1. The agent must have actual knowledge of a fact.
2. The agent must have obtained the knowledge during agency.
3. The agent must have appointed for particular transaction or business.
4. The knowledge of fact must be material to that particular transaction or business.
5. The agent must obtain the knowledge in a good faith as a reasonable prudent man.

Exceptions to the principle:

1. If the agent fraudulently conceals a knowledge of fact with wrongful intention then his knowledge will not amount to principal's knowledge.
2. If there is a third party who is involved with agent in the fraud and the third party knows that agent conceals the fact with a wrongful intention then agent's knowledge will not amount to principal's knowledge.

Case Reference

Suleman Khan v Punjab Province [1953] PLR 919

The onus of proving want of notice is on the transferee.

Nagendra Chandra v Parameswar Ray 9 DLR 476

Notice of registration of sale-deed is recognized as constructive notice. This presumption can be rebutted by producing proof that there was no such notice.

Daniels v Davison [1919] 46 IA 250

Where land is in the occupation of someone other than vendor, the fact of the occupation gives the purchaser constructive notice of any rights of the occupying tenant.

Ranjital v Municipal Board of Lucknow [1936] 12 Luck. 353

A person purchasing property within the municipal limits was bound to inquire whether any municipal taxes in respect of the property are in arrears. If he did not care to do so, it would amount to gross negligence.