

ADEMPION OF LEGACIES**HARDIK GUPTA***Best Citation - HARDIK GUPTA, ADEMPION OF LEGACIES, 2 IJLR 1, 2022***ABSTRACT**

The paper deals with the analysis of the provisions of ademption of legacies in the Indian succession act 1925. The subject is inserted in the chapter XVI of the act and specifically deals with what all constitute ademption of legacy and what all do not? The meaning of the term means the extinction of legacy either due to extinction or legacy or by an act of testator when he himself uses the legacy and exhausts it. Ademption also takes place when the legatee is transferred the legacy before the death of the testator and in such case the legatee is not entitled to that legacy which he receives after the death of the testator, this type of ademption is called ademption by satisfaction. In the following parts of the paper the types of ademption, along with what all constitute ademption of legacy are dealt with in the light of the act.

RESEARCH PROBLEM

This study aims at finding out to answers and thus it will deal with the following two questions:

1. What is the concept of ademption of legacies?
2. What are the different types of ademption?
3. What are the legacies which can be adeemed?

RESEARCH METHODOLOY

The research was based on the study of “Ademption of Legacies” for which various articles, statues, case laws and research papers were studied. Only secondary sources have been referred for this study. Secondary sources including

books, research articles and web sources and Statutes were referred for the paper.

By referring to different research paper and articles it was easy to compare and cross check the claims made in different papers and thus made the study reliable.

LIMITATIONS

While full efforts were made to do justice with this topic but still there were some limitations occurring during the research. The problem with material selection was also there because the aim was to use only reliable, authentic and trusted work. Also, as there is a lot to study and a deep analysis is required for such a topic it was felt that the research done was not enough because of lack of content in relation to the topic.

INTRODUCTION

The word ademption literally means “extinction” and the term legacy means “an amount of money or property left to someone in a will” and thus the term as a whole means the extinction of the legacies bequeathed by the testator in favor of the beneficiary of the will. The concept of ademption of legacy is not new in the Indian context, it is rather more than 90 years old and has been incorporated in the Indian legal system by the help of English law in the Indian Succession of Act, 1925. The Chapter XVI deals specifically with the ademption of legacy. The concept is usually applicable in the context of specific legacies on extinction of subject matter of which the ademption of that legacy takes place due to its absence. The main problem occurs when the beneficiary is deprived of its interests and is not even compensated for it. Various courts interpret is in different ways as some try to see the intent of the testator behind the will, while some construct it as, circumstance or acts leading to it, but ideally the black letters of the law are followed by literal interpretation of the words in the act. Thus, the act of 1925 tries to cover all the possible scenarios in which the ademption may take place and exception to such situations. The ademption does not

always deprive the beneficiary of his interest in the property as seen in concept the ademption by satisfaction, which is another type of ademption of legacy in which the legacy which the legatee was to get after the death of testator is either reduced or extinct due to his withdrawing the same before the death of testator and thus receives lesser or no part of it after the death of testator depending upon the amount of asset he withdraws. The main difference in both these types of ademption is that in the ademption by extinction the beneficiary is deprived on the subject matter as well as the compensation arising out of it, but in ademption by satisfaction the beneficiary is not deprived of the same but is rather given the benefits in part or full even before the death of the testator.

There are many other circumstances which can raise the question of ademption on certain property after the death of testator which may either due to change in location, subject matter, etc. of the legacy and thus in the further parts of the paper these questions are dealt with suitable illustrations.

ADEPTION OF LEGACIES

As discussed above the legacy is considered to be adeemed when the subject matter of the will or the legacy is no longer in the possession of the testator or the subject matter no longer belongs to him, in such cases it is considered that the legacy did not exist and the beneficiary is not compensated for the ademption. The ademption can take place due to many reasons, which are listed in the Indian succession act as to what all constitute to ademption of legacy and thus, trying to make situations unambiguous. There are three types of legacies under the concept of will, they are legacy:

- i) general,
- ii) specific and
- iii) demonstrative.

They are stratified based on the subject matter and the mode of their execution on the death of the testator.

The main flaw in the specified legacy is that it is at the verge of being adeemed by the act of a third party or any other cause of action which may lead to its extinction and thereafter the legatee will lose all the rights over it in absence of the subject matter and will not even be entitled to compensation thereof, because a specific legacy is a legal or equitable gift of a specified object or interest that forms part of the testator's estate. It must be recognised by a suitable description and segregated from the rest of the testator's personal assets in favour of the specific legatee. Thus it requires to under go certain changes in the concept so as to benefit the legatee and make good for his loses and thus in the English law the concept of intent of testator, to help out in such cases, but in [Bhaskaran Pillai v. Narayanan Aaan](#) it was held that, "ademption of a legacy does not depend on the intention of the testator, but is a conclusion of law from certain events or conduct."¹ Reliance was placed on a foreign judgment of *Humphreys v. Humphreys* Lord Thurlow, where the Lord Chancellor, was satisfied "that the only rule to be adhered to was to see whether the subject of the specific bequest remained in specie at the time of the testator's death; for, if it did not, then there must be an end of the bequest; and that the idea of discussing what were the particular motives and intention of the testator in each case, in destroying the subject of the bequest, would be productive of endless uncertainty and confusion."²

Also, to avoid such an ademption of specific legacy the gifts made should be less specific in nature, for e.g., "a gift may be worded to refer to all moneys from 'all bank and building society accounts' at death rather than money from a specific bank account. If a gift is of money from a specific bank account is made and such bank account is closed between attestation and death, there is a risk that the gift could adeem. However, a gift of money from all bank accounts would only fail if there are none at all in the estate

¹ [Bhaskaran Pillai v. Narayanan Aaan](#), (1965 KLT 1289)

² *Thankamma v. Vivekanandan*, 2011 (3) KLJ 118

at death.”³ Other than this the legacy can be made demonstrative legacy as Demonstrative legacy carry on them the benefit that they do not adeem where the source is insufficient to fully meet the bequest at the time of the testator's death. If the specified fund is insufficient, the bequest will be made out of the testator's general assets. And such a demonstrative legacy which turns on to the general legacy in absence of insufficient funds from the source, then such a legacy is not subjected to abatement like the other general legacies due to lack of funds and assets.

TYPES OF ADEMPMENT

After having an overview on how different types of legacies are affected by ademption, we shall now look onto the types of ademption. Ademption are mainly of two types, i.e., Ademption by Extinction and Ademption by satisfaction:

1. Ademption by Extinction:

As discussed above ademption by extinction is the transfer of specific property given in a will by the testator in order to nullify the bequest. When a testator devises a specific piece of property in his or her will, the testator no longer owns that property or the property is materially modified at the time of his or her death, this is known as extinction. As a result, the explicitly created property is adeemed, and the devise fails.

When a property specified in a will is no longer in the estate's control, the property or its monetary equivalent is not transmitted to the beneficiary, according to the general rule of ademption by extinction. When this happens, the property is marked as adeemed. Ademption by extinction is the most common form of ademption which creates a loss to the legatee but in ademption by satisfaction the concept is different.

2. Ademption by Satisfaction:

Ademption by satisfaction can not be considered in itself as a true form of ademption, as satisfaction by the name

suggests, does not deprive the legatee of his interest but rather it satisfies him. In ademption by satisfaction the person so entitled to receive the legacy is not deprived by the legacy due to its extinction or loss but rather in this the legatee or beneficiary receives the legacy in part or full even before the death of the testator so as to satisfy his needs. In ademption by satisfaction only the time of transferring the legacy is changed and not the subject matter of the same. It covers both specific bequests and devises, as well as a general bequest or legacy given from the testator's estate's general assets. If there is a parent-child or grandparent-grandchild relationship, many states assume that a gift given while the testator is alive is in place of a testamentary gift if the topic of the gift is the same as the subject of a provision of the will. Otherwise, unless there is independent proof, such as specific words or writings, indicating the testator intended for this to happen, an ademption by satisfaction will not be found. For example, “a grandparent may decide to give a grandchild the money that is already bequeathed in a will while the grandparent is still alive to help pay for the grandchild’s college.”⁴

Thus, the main difference in both these types of ademption is that in the ademption by extinction the beneficiary is deprived on the subject matter as well as the compensation arising out of it, but in ademption by satisfaction the beneficiary is not deprived of the same but is rather given the benefits in part or full even before the death of the testator and thus, it can be said to be an ademption in the form that the legacy which he was to get after the death of testator is either reduced or extinct due to his withdrawing the same before the death of testator and thus receives lesser or no part of it after the death of testator depending upon the amount of asset he withdraws.

ADEMPMENT AS PER THE INDIAN SUCCESSION ACT, 1925

The Indian succession act, 1925 deals with “*Ademption of legacies*” specifically in the chapter XVI of the act from

³ Smith, C., 2019. *Ademption: What Is It and How Can It Be Avoided?* — *WillPack*. [online] WillPack.

⁴Bankrate. n.d. *Ademption Definition* | *Bankrate.com*. [online]

sections 152-166, where it lays out what all constitute to ademption and what are the exceptions and scenarios in which the ademption does not take place, which we will discuss in this part of the paper.

Ademption takes place in the following cases as per the act:

1. Section 154: When the given gift was to be received by the legatee from a third party (rather than the testator), and that gift was received by the Testator himself during his lifetime (naturally, nothing remains to be received), legacy is adeemed. E.g., A dies with a testament bequeathing the amount of debt to be received by C in favour of B, but if as himself in his lifetime receives it and makes no such appropriate changes in the testament than such a debt recovered will go in the general legacy of A and will not be received by B as a specified legacy. Thus, it is important that the testator makes appropriate changes in the will if he himself receives such an asset himself.
2. Section 155: If the Testator, instead of entire amount of property has received only a part, the legacy is adeemed to that extent. In the above scenario if A was to receive ₹10,000 from C which he has bequeathed to be received by B after his death and if A himself receive ₹3000 from C than the legacy is to adeemed to the extent of only ₹3000 and the rest will still be in favour of B. Thus, this type of legacy is also known as *Partial ademption of legacy*. This is also expressed in the Section 156 of the act as, “If a portion of an entire fund or stock bequeathed is received by the Testator, the fund/stock operates as an ademption only to the extent amount received and residue of the fund/stock shall be applicable to the discharge of the specific legacy.”
3. Section 158: Section 158 is nothing but deals with Ademption of legacy by extinction which has been dealt in detail in the above parts of the paper and section 159 is to discussed in that part as *Partial ademption of legacy* which says that “When stock exists only in part at the Testator’s death, the legacy is adeemed partly.”

4. Section 162: Conversion of Specific legacy into General legacy.

When the legacy is specific to be received by the beneficiary but is received in part by the testator himself and is he mixes that with the other general estate, than the bequest seizes to be specific and is adeemed as the property has now been shifted to the general estate of the testator and will be transferred to heirs as general legacy.

EXCEPTIONS TO ADEPTION OF LEGACY

1. Section 160: Temporary removal

When goods/property bequeathed are removed for any temporary cause, by fraud or without the knowledge/sanction of the Testator legacy is not adeemed. When goods are removed for a temporary period of time and there is a chance of recovering them, in such a case the legacy is not adeemed. There may be scenarios in which the goods need to be removed for either saving their material substance or any other cause and for removing them the sanction of testator has not been provided and then after they still come under the testator’s possession, in such case the legacy is not adeemed as far as there remains a chance of recovering them back. E.g., A bequeaths all house goods in his dwelling house in Calcutta at the time of his death. The goods are removed to save him from fire. Legacy is not adeemed.

2. Section 161: Changing location of assets does not adeem the legacy.

When in a will the location of the goods is used only to complete the description of the goods, but if for reasons the goods are shifted to some other place without changing the subject matter of the goods specified, then the goods will not be adeemed so far as the goods remain the same and only the location or position of the goods is changed. E.g., A bequests a diamond necklace for his wife kept in the locker of “Bank of Children” but the same diamond necklace is transferred to the locker of “Bank of Adults”, the change in location of the diamond necklace will not adeem the legacy only for the reason that the location of the subject matter has changed.

3. Section 162: As we saw above that when the legacy specific to be received by the beneficiary but is received in part by the testator himself and is he mixes that with the other general estate, than the bequest seizes to be specific and is deemed as the property has now been shifted to the general estate of the testator and will be transferred to heirs as general legacy.

The same section 162 also provides for a condition in which if the testator does not mix the legacy with the general estate and keeps it separate then the legacy is not deemed for the reason that the legacy is still specified and has not been changed by mixing with general legacy.

4. Section 164: Change of subject without testator's knowledge:

Where with the duration of time the subject changes its from the date of will to the date of date of testator's death and the change takes place without the knowledge or sanction of the testator, the legacy is not deemed, until and unless it is implied that the legacy bequeathed is the same but has changed for only due to time. E.g., A bequeaths is Fertile land to his eldest son, E, with the locations of the land specified in the will, but after 10 years when the testator dies, the land which was specified to be bequeathed to E turns barren, the legacy is not deemed due to this conversion so far as the location of the land specified remains same.

5. When stock explicitly donated is sold and an equivalent quantity of the same stock is later bought and becomes the Testator's property after his death (Section 166).
6. When stock is lent with the understanding that it would be replaced, and it is, in fact, replaced (Section 165).⁵

CONCLUSION

The concept of ademption of legacies has been developed in the English law and has shown its reflection in the Indian law as well by the "Indian Succession Act, 1925". The concept has been used to deal in situations where the legacy

bequeathed is specific in nature gets extinct after the death of testator and thus, gives recourse as to what should be done in such situations. In such situations the beneficiary is not entitled to claim any damages or compensation and thus, neglects the interest of the beneficiary. Many courts try to see the intent behind the will of the testator and some see the situations and circumstances leading to it to decide such cases. More over for the help of the court and giving a literal interpretation the act specifies various situation in which the legacy will be deemed to be adeemed and also exceptions to its and is thus, a useful law.

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