




RIGHTS & LIABILITIES OF THE BENEFICIARY



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TOPIC: RIGHTS & LIABILITIES OF BENEFICIARY

INTRODUCTION:

Trust is primarily created for the benefit of beneficiary. So there are certain rights given to the beneficiaries and these rights are attached with the duties as well. So in order to answer this question we will look at the relevant provisions which deals with the rights and duties of beneficiaries.

RELEVANT STATUTORY PROVISIONS:

Chapter:6, sec:55-69 of Trust Act,1882.

DEFINITION OF TRUST:

PARTIES OF TRUST:

WHO IS BENEFICIARY:

Beneficiary is a person for whom a trust is created.

According to **sec:9**, every person who is capable of holding property may be a beneficiary.

POSITION OF BENEFICIARY:

Beneficiary holds a very important position in a trust since the trust is created for him.

According to **Snell:**

“A trustee in a sense is a servant to the beneficiary.”

This statement itself speaks adequately about the position of the beneficiary.

RIGHTS OF BENEFICIARIES:

Sec:55-67, deals with the rights of beneficiary classified broadly under 2 heads.

- a) Rights of beneficiary (sec:55-61)
- b) Remedies available to beneficiary (sec:62-67)

1-RIGHTS TO RENTS & PROFITS:

Sec:55, a beneficiary is entitled to rents and profits of the trust estate. This right lasts so long as the trust property exists or so long as the trust is not validly terminated, subject to the provisions of the instrument. Provisions of S.55 cannot override the express provisions contained in the instrument.

2-RIGHT TO SPECIFIC EXECUTION U/S 56:

The beneficiary is entitled to have intention of the author of the trust specifically executed to the extent of his interest and a trustee is thus bound to carry out the specific execution of the authors intention.

3-RIGHT TO TRANSFER TRUST PROPERTY U/S 56:

This sec also gives the right to beneficiary/beneficiaries to transfer the trust property to another person or themselves. This means that when the trust property is held by the trustee, the beneficiaries may direct him to transfer it, if they are competent to contract.

Exception:

However, an exception to S.56, exists and that is where the benefit of the trust is directed toward a married woman, she cannot transfer the property.

4-RIGHT OF INSPECTION U/S 57:

A beneficiary has a right to against trustee and all other persons claiming under him to take notice of the trust and inspect and take copies of:

- a) Instrument of trust
- b) Documents of title relating solely to the trust property
- c) The accounts
- d) Vouchers if any which support the accounts
- e) Cases submitted & opinions taken by trustee for guidance, in discharge of his duty

5-RIGHT TO TRANSFER BENEFICIAL INTEREST U/S 58:

Beneficiary may transfer his beneficial interest provided that he is competent to contract and sui juris.

This right of beneficiary is called "**Jus Disponendi**" which means that right to disposition.

Exception:

Beneficiaries who are married woman cannot transfer their interests.

6-RIGHT TO SUE FOR EXECUTION OF TRUST U/S 59:

Where the execution of trust becomes impracticable due to;

- a) Non-appointment
- b) Death of trustee
- c) Disclaimer by trustee
- d) Discharge of trustee

Then beneficiary has a right to institute a suit for execution of trust. And until a new trustee is appointed **u/s 73**, the court shall execute the trust as far as may be possible.

Underlying Principle:

Well known principle of equity "**A trust never fails due to want of trustee**".

7-RIGHT TO PROPER TRUSTEE U/S 60:

It is the right of beneficiary that the trust property be held protected and administered by proper persons. The following are not proper persons to be a trustee:

- a) Person domiciled abroad
- b) Alien enemy
- c) A person having an interest inconsistent with that of beneficiary
- d) An insolvent

- e) A married woman or minor, unless the law of beneficiary allows

Number of trustees;

Where receipt and custody of money is involved than there should be at least 2 trustees

8-RIGHT TO COMPEL AS TO ANY ACT OF DUTY U/S 61:

A beneficiary has a right to compel the trustee to do a certain duty which he is bound to do. He may also be restrained by the beneficiary from committing any contemplated or probable breach of trust.

REMEDIES AVAILABLE TO TRUSTEE IN CASE OF BREACH OF TRUST:

1-WRONGFUL PURCHASE BY TRUSTEE U/S 62:

Where a trustee has wrongfully bought trust property and remains in the hands of trustee or is sold to another person. The beneficiary has a right to;

- A) Get it declared as trust property
- B) Re-transferred by the trustee

PROVIDED THAT:

The beneficiary did not being competent and with free consent to sell property.

Also rights of lessee would not be affected here.

CONDITIONS FOR RE-TRANSFER OF TRUST PROPERTY:

The beneficiary must:

- a) Repay the purchase money with interest
- b) Along with any other expenses incurred on preserving the property

Trustee /purchaser may account for the:

- a) Net profits of property
- b) Occupation rent

- c) Allow a deduction from payment of purchase money if property is damaged or has been distrained

2-FOLLOWING TRUST PROPERTY INTO HANDS OF THIRD PERSON U/S 63:

Whenever trust property comes into the hands of a third person or stranger the beneficiary may require him to;

- a) Admit formally
- b) Institute a suit for declaration

S.63, also states that where property has been converted into money or some other form and can be traced in the hands of the trustee or his legal heirs the beneficiary would be entitled to it.

3-ACQUISITION BY TRUSTEE OF TRUST PROPERTY WRONGFULLY CONVERTED U/S 65:

Where a trustee wrongfully sells or otherwise transfers trust property and afterwards himself becomes the owner of the property, the property becomes subject to the trust.

4-RIGHT IN CASE OF BLENDED PROPERTY U/S 66:

Where the trustee wrongfully mingles the trust property with his own, beneficiary is entitled to a charge on the whole fund for the amount due to him.

5-WRONGFULLY EMPLOYMENT FOR PARTNERSHIP PURPOSES U/S 67:

If a partner being a trustee wrongfully employs trust property in the business, or on account of the partnership is liable thereof in his personal capacity to the beneficiaries, unless he had a notice of breach of trust. The parties having such notice are jointly and severally liable of breach of trust.

LIABILITIES OF BENEFICIARY:

U/S:68, Where one of several beneficiaries:

- a) Joint in committing breach of trust

- b) Knowingly obtains an advantage there from without the consent of other beneficiaries, either

1-actually conceals it

2-does not within a reasonable time take proper steps to protect the interest of the other beneficiaries

- c) Deceived a trustee and thereby induced him to commit a breach of trust

The other beneficiaries are entitled to have beneficial interest impounded against him and all who claim under him, until loss caused by breach is compensated.

RIGHTS & LIABILITIES OF BENEFICIARIES TRANSFEREES:

U/S 69, Every person to whom a beneficiary transfers his interest has the right and is subject to the liabilities of the beneficiary in respect of such interest at the date of transfer.

BAR TO REMEDIES FOR BREACH OF TRUST:

A beneficiary's right of action is lost in one of the following ways:

- a) By lapse of time i.e by way of limitation
- b) By continued acquiescence in the breach
- c) By concurrence
- d) By subsequent confirmation of breach
- e) By release of trustee from liability

CONCLUSION: