

## HE WHO SEEKS EQUITY MUST DO EQUITY

### INTRODUCTION:

Any one seeking assistance of a court of equity must, as a condition to obtaining relief, do justice as to the matters in which the role of the court is sought for. If anyone is willing to have the justice of equity then he should always be ready to return equity to others.

### MEANING:

The maxim means that to obtain an equitable relief the plaintiff must himself be prepared to do 'equity', that is, a plaintiff must recognize and submit to the right of his adversary. Scriptures of Islam also inform us to be conscientious:

“Woe to those who stint the measure:

Who when they take by measure from others, exact the full;

But when they meet to them or weigh to them, minis...”

### APPLICATION AND CASES:

This maxim has application in the following doctrines-

- i) Illegal loans
- ii) Doctrine of Election
- iii) Consolidation of mortgages
- iv) Notice to redeem mortgage
- v) Wife's equity to settlement
- vi) Equitable estoppel
- vii) Restitution of benefits on cancellation of transaction
- viii) Set-off

### EXPLANATION:

i) Illegal loans: In *Lodge v. National Union Investment Co. Ltd.*, the facts were as follows. One B borrowed money from M by mortgaging certain securities to him. M was a unregistered money-lender. Under the Money-lenders' Act, 1900, the contract was illegal and therefore void. B sued M for return of the securities. The court refused to make an order except upon the terms that B should repay the money which had been advanced to him.

ii) Doctrine of election: Where a donor A gives his own property to B and in the same instrument purports to give B's property to C, B will be put to an election, either accept the benefit granted to him by the donor and give away his own property to C or retain his own property and refuse to accept the property of A on condition. But B cannot retain his property and at the same time take the property of A.

iii) Consolidation of mortgages: Where a person has become entitled to two mortgages from the same mortgagor, he may consolidate these mortgages and

refuse to permit the mortgagee to exercise his equitable right to redeem one mortgage unless the other is redeemed. The right of consolidation now exists in England but after the enactment of the Law of Property Act, 1925, it can exist only by express reservation in one of the mortgage deeds.

iv) Notice to redeem mortgage: Notice to a mortgagor to redeem one's mortgage is an equitable right of the mortgagor.

v) Wife's equity to a settlement: There was a time when woman's property was merged with that of her husband. She had no property of her own. Equity court imposed on the husband that he must make a reasonable provision for his wife and her children. But, now, Under the Law Reform (Married Women and Tortfeasors) Act, 1935, married women have full right on her property and it is not consolidated with her husband's property.

vi) Equitable estoppel: A promissory estoppel arises where a party has expressly or impliedly, by conduct or by negligence, made a statement of fact, or so conducted himself, that another would reasonably understand that he made a promise thereon, then the party who made such promise has to carry out his promise.

vii) Restitution of benefits on cancellation of transaction: It is proper justice to return the benefits of a contract which was voidable, and, equity enforced this principles in cases where it granted relief of rescission of a contract. A party cannot be allowed to take advantage of his own wrong.

viii) Set-off: Where there have been mutual credits, mutual debts or other natural dealings between the debtor and any creditor, the sum due from one party is to be set-off against any sum due from the other party, and only the balance of the account is to be claimed or paid on either side respectively.

#### LIMITATION:

- i) The demand for an equitable relief must arise from a suit that is pending.
- ii) This maxim is applicable to a party who seeks an equitable relief.

#### RECOGNITION:

- i) Under sec 19-A of the Contract Act, 1872 if a contract becomes voidable and the party who entered into the contract voids the contract, he has return the benefit of the contract.
- ii) sec 35 of the Transfer of Property Act embodies the principle of election.
- iii) Sec 51 and 54 of the Transfer of Property Act.
- iv) In Order 8, Rule 6 of the CPC, the doctrine of Set-off is recognized.

#### EXCEPTIONS:

Following are exceptions to this doctrine.

##### I. State legislature:

It cannot apply against state legislature.

II. Acts of parliament:

It cannot apply against the acts of parliament.

III. Contrary to law:

Where an act is contrary to law, it has no application.

IV. Statutory prohibition:

Where there is statutory prohibition it cannot apply.

V. Matter of government policies:

It cannot apply against the matters of government policies.

VI. Factor of fraud:

If there is a factor of fraud in a case, it will not apply.

CONCLUSION:

To conclude I can say that the court of equity being a court of conscience has to look not only at the benefits of the plaintiff but also at the interest of the defendant and grant relief to the plaintiff only on the condition that he is prepared to give to the defendant what the latter deserves. The basis of the doctrine is the interposition of equity.