

Concept of Domicile

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Abstract

This research study studies the importance of domicile of a country. The obstacles which comes in the way of giving domicile to different person and on which criteria are pointed out in the light of leading decision of courts. Various suggestions have been made such as guidelines framed by the courts to be given mandatory force by suitable rules to be framed. The study is based on how the prospective of domicile comes to country.

Introduction

According to lord Grand domicile means home or permanent home. It means intention of making a place, permanent residence with an idea of continuance. Every individual is free to decide his domicile anywhere in the entire world. A person may have nationality of a different country and the domicile in another. Lex patrie is the governing law in the civil law countries and lex domilii is the governing law in the common law countries. The fundamental difference between the two major systems of the world has been an obstacle in the unification of the rules of private international law and has also resulted in bizarre result.

For example: A suit filed in an Italian court for the succession to the property of an Indian who died domiciled in Italy. According to the rules of Italian private international law, the Italian court will decide the matter according to the law of the nationality of the deceased. On the other hand if the suit is filed in Indian court, the Indian court will decide the matter according to the law of domicile of the deceased.

In Re Samara case

Samara was a rich Tunisian Jew died domiciled in Liborno. He left Tunisian and settled in Paris and then further he went to Liborno. While he was in Paris he made a will which was valid in French law but not valid in Jewish law i.e. Law of nationality. The relatives of samara challenged the validity of the will in the Italian court, on the ground that samara died with the nationality of Tunisian therefore law of nationality governed the succession to his

property. The defendant on the other hand contended that nationality of samara was lost as he left Tunisian. As samara had no nationality at the time of death so he was governed by the lex domicilii.

Judgment—The first trial court gave the decision in favor of the defendant but further it was reversed on the ground that it was not been satisfactory proved that samara deceased without the nationality.

Meaning

Domicile is based on the concept of individual liberty. An individual is free to establish his domicile at any place in the world. National boundary is not a hindrance in the choice of domicile. That means, a person may have a nationality of one country and domicile in another. A person may be stateless but cannot be without a domicile. All the matters connected with a person's personal life such as marriage, adoption, succession etc., should be determine by the law of domicile i.e. Lex domicilii.

Domicile is a jural concept used for a purpose of establishing the connection of a person with the law of the domicile country.

Example: - A marries B and establishes his matrimonial home at Jaipur. After sometimes a son C was born to them. Jaipur is a domicile of A as well as of B as B is wife of A and under Indian law husband domicile is the wife's domicile. C's domicile will remain Jaipur as long as he is a minor.

Under PIL the concept of domicile says that even a person can acquire a domicile at a place only if he resides their permanently or indefinitely with an intention to live there permanently. If a person goes to a place with the fixed intention for staying there for 20 years he will not be domicile.

CASE LAW: - Ramsay Vs. Liverpool Royal Infirmary¹

Facts: A person died leaving a will. His will was valid under Scottish law but not under England law. He was born in Glasgow and his domicile was Scottish. For 37 years he lived in Liverpool England and never went to Scotland. The only fact that connected him with

¹(1930) SC (HL) 8.

Scotland was that he often said that he was proud of Glasgow man. But he did not even attend funeral of his mother at Glasgow and even arrange his own burial at Liverpool.

Judgement: House of Lords held that it was not proved that he made Liverpool his permanent home; therefore he continued to have a Scottish domicile of origin.

CASE LAW: - Winans Vs. A.G.²

Facts: Winans was born in United State and left US after 27 years. Winans lived 47 years in England till he died. During this period he lived in Russia, Germany, and England. He established his residence in England and he died in England only.

Judgement: On these facts, House of Lords came to the conclusion that it cannot be established a fixed settlement of abounding American domicile and living permanently in England.

CASE LAW: - Shan Karan Govindan Vs. Lakshmi Bharati³

Facts: Shan Karan went to England for higher studies in medicine and he practiced there. He died leaving, movable properties and money. A suit for partition was filed. Shan Karan domiciled in India and went to England for higher education after sometime his parents declined to provide him financial support. With the help of an English friend Miss. Hope worth, he completed his studies and started practice in medicine. He earned a fortune & purchased a mansion in Sheffield where he practiced. He joined the British health service. He lived in England for 30 years and died, he never went to India during that period. But in letters he wrote and expressed his intention to return to India, he also wrote that he had earned sufficient fortune & on his insurance policy maturing, he would returned to India. A petition was filed by his parents claiming his property.

Judgement: On these fact the Kerala HC came to a conclusion that he did not abundant the domicile of origin. He had a residence in England but the 2nd essential element of DOC i.e., intention was lacking.

²[1904] AC 287.

³(1974) AIR 1764 ,(1975) SCR(1) 57.

Characterstics

1) No one can be without one:

Domicile connects a person with the nation and the laws of nation. Every person must have a domicile. It is necessary to connect every individual with the system of law of that his legal relation may be regulated a person has a freedom to change his domicile but has no freedom to live without a domicile. Domicile of a person is determined on his birth. A legitimate child acquires domicile of his father. An illegitimate child acquires domicile of his mother. Adopted child acquires the domicile of their adopted parents. An orphan child acquires domicile of the place he or she was found. Every person has a right to choose a domicile, but his domicile of origin will remain till he does not acquire another domicile. Every dependent person has a domicile of a person he is dependent on or it is fixed by law.

2) No person can have two domicile:

Law of domicile connects a person with a system of law. If a person is allowed to have 2 domicile the purpose to connect will not be possible. Indian constitution recognizes only 1 domicile. It is possible that a person can have 2 domicile 1 domicile of his origin, 2 domicile of his choice. A person may have 2 domiciles for different purpose. In countries having federal system of government there are 2 sets of govt:

- i. Federal govt.
- ii. State or regional govt.

For the purpose of federal law, he may have federal domicile and for the purpose of regional law, he may have regional domicile.

3) Link with system of law:

Domicile connects a person with a system of law and he is governed by that system of law. It is assumed that same system of laws prevails all over the country but in matters relating to succession and marriage it may be different. As in, India the position is different. A person having a domicile of India is not enough because it is necessary to find to which community he belongs as law differs to community to community.

4) Presumption in the favor of the continuance of an existing domicile:

In both English and Indian law there is a Presumption in the favor of the continuance of an existing domicile. A person continues to have an existing domicile until the person who alleges his proves it. The burden of proof of changing his domicile is lies on him.

Types of Domiciles

1) Domicile of origin:

No person can be without a domicile. The place the person is born becomes the domicile of origin. It continues till the person do not acquire any other domicile i.e., domicile of choice. The moment the person gives up the domicile of choice, Domicile of origin will revive. Basis of domicile of origin is paternity or maternity. Domicile of origin is a creature of law and no person can give up totally. If a person is forced to leave his country even then the domicile continues to exist.

Illustrations- Re Lloyd Evans is a good illustration of this rule. In this case the person had domicile of origin in England but he established the domicile of choice in Java first and then in Belgium. Further at the time of German invasion, he came to England where he made a will and died. Question before the court was that whether he died with the domicile of England or not.

The court held that he did not left Belgium willingly but went to England due to German invasion. He would have returned there after the circumstances become favorable. Domicile of origin continues until domicile of choice is acquired.

According to English Private International Law:-

- Legitimate child: - the child will get the domicile of his father if he is alive at the time of his birth. The child born after the death of his father gets the domicile of his mother. Under Indian law the child will get the domicile of the country in which his father resided at the time of death.
- Illegitimate child: - Illegitimate child get the mother domicile. Even under Indian law, illegitimate child gets the mother domicile.

NOTE: - exception domicile of a child whose paternity or maternity is unknown, he gets the domicile of the country he is found.

2) Domicile of choice:

An independent person may acquire a domicile of choice. Under Indian law a married women may acquire a domicile of choice under certain circumstances. The Indian succession act 1925, section 10 lays down- A person acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of Origin. The residence of a person

is a tangible fact from which intention may be inferred, while intention is an intangible fact which can be gathered from a certain tangible facts.

CASE LAW: - Loicis De Raedt Vs. Union of India⁴

The supreme court said that a person who claim to have established his domicile of choice must also form an intention of making permanent house in a country of residence and living their permanently.

For Example: -a foreigner staying in India on the strength of his passport and continuously seeking permission of the government of India do not indicate that he intended to make India his domicile.

To get the domicile of his choice 2 conditions must be fulfilled:-

1. **Residence:**

Residence is an elastic term and has no proper definition. It is differently constructed with the purpose and the contest. The word RESIDENCE has no time limit as a person must reside a same place for a long period. Residence in a country is a prima facie evidence of domicile. Constructed Residence means dual permanently or for a considerable time.

CASE LAW: - Central Bank Of India Vs. Ram Narain⁵

Facts:-Before partition of India Ram Narayan continued to have a business in Multan, where he was domiciled. After partition of India Multan became the part of Pakistan. During the disturbance of partition Ram Narayan sent away his family to India but he himself continued to reside in Multan presently part of Pakistan, in order to wind up his business. Thereafter, he also migrated to India. The question before the court was whether before migration he continued to be domiciled in Pakistan or he acquired an Indian domicile the moment he sent his family to India.

Judgement:-Supreme Court of India said that, his domicile cannot be determined by his family migration to India, as he himself did not establish a home in India. Thus he continued to have domicile of Pakistan.

2. **Intention to live permanently:**

⁴(1991) 3 SCC 554.

⁵1955 AIR 36, 1955 SCR(1) 697.

It is an intangible fact. It is difficult to prove as it is an act of mind. The intention must be fixed not fickle and must be directed towards one particular place or a country. For the purpose of acquisition of domicile of choice, there should be an intention to reside at a place or in a country permanently or for an unlimited time. Intentions can be gathered from all events and circumstances of life of a person.

In this world the people leaving their country to escape murder, genocide has become common. When a person flees from his country to escape murder or any other charge goes to another country, the question is whether he acquires the domicile of the other country or not. The answer to the question is he would not acquire the domicile of the other country.

CASE LAW: - Shan Karan Govindan Vs. Lakshmi Bharati⁶

Facts: Shan Karan went to England for higher studies in medicine and he practiced there. He died leaving, movable properties and money. A suit for partition was filed. Shan Karan domiciled in India and went to England for higher education after sometime his parents declined to provide him financial support. With the help of an English friend Miss. Hope worth, he completed his studies and started practice in medicine. He earned a fortune & purchased a mansion in Sheffield where he practiced.

He joined the British health service. He lived in England for 30 years and died, he never went to India during that period. But in letters he wrote and expressed his intention to return to India, he also wrote that he had earned sufficient fortune & on his insurance policy maturing, he would return to India. A petition was filed by his parents claiming his property.

Judgment: On these facts the Kerala HC came to a conclusion that he did not have the domicile of origin. He had a residence in England but the 2nd essential element of DOC i.e., intention was lacking.

Difference between Domicile of Origin & Domicile of Choice.

1. Domicile of origin comes into being with birth. On the other hand, domicile of choice is acquired by the free consent of the person.
2. Domicile of origin is stronger and less easily shaken in comparison to domicile of choice.

⁶ (1974) AIR 1764, (1975) SCR(1) 57.

3. Domicile of origin cannot be escaped easily. It continues till a person acquired a domicile of choice and as a person leaves domicile of choice, Domicile of origin revives.
4. Domicile of origin is acquired by operation of law whereas; domicile of choice is acquired by free consent of person.
5. Domicile of origin cannot be abundant as it is creation of law whereas; domicile of choice can be abundant as it is created by free will.

Domicile of Dependent Person

Dependent persons are married women, minor or mentally disorder person. Dependent persons are not capable of acquiring domicile of choice. Dependent persons get the domicile of the person on whom he is dependent on. It is also called as imposed domicile as it changes when the domicile of the person, on whom he or she is dependent on changes. A dependent person cannot abundant his domicile of dependency. Thus a wife who live separate from her husband, a minor who has his own separate house away from his parents, a lunatic who lives in another country cannot acquire a domicile of their own.

Domicile of Married Women

Married women are under cove, influence, power and protection of husband and they are dependent on their hubby, hence they acquire the domicile of hubby. Their domicile changes with the domicile of hubby. Even after desertion of hubby or separation wife is not entitled to have domicile of choice. She can only acquire domicile of choice after the termination of marriage or death of hubby. **Section 15 and section 16 of Indian Succession Act, 1925** provides that wife acquires and retains the domicile of hubby during the period of coverture. It can be suspended only under following conditions:-

1. Wife is living separately under decree of court.
2. Hubby is undergoing a life sentence.

CASE LAW: - Lord Advocate Vs. Jaffery⁷

Mrs.Mickinon was married to Robert Mickinon. Robert Mickinon was born in Campbeltown and was a chief quarter master in the navy. On retiring from the navy he lived with his wife in Aberdeen. He forms a bigamous marriage with Willhemina, with whom he lived until his

⁷(1921) 1 AC 146.

death. Mrs. Micikinson filed a petition for divorce on the ground of her husband desertion and adultery. The two main question before the court was:-

- 1) Whether at the date of Mrs. Micikinson petition, Robert micikinson had acquired a domicile in queen's land.
- 2) Whether Mrs. Micikinson had acquired domicile in queens land by the virtue of dependency.

The house of the lords affirmed that Robert micikinson acquired a domicile in queens land but his wife domicile remain Scottish because of the special circumstances of this case.

Domicile of Minor

Indian law 18 years, English law 16 years.

1. Natural Children

- a. Legitimate children – father
- b. Illegitimate children – mother
- c. Orphanage minor – domicile cannot be change, minor after attaining majority can have domicile of choice.

2. Adopted Children

- Domicile of adopting parent

3. Domicile Of Lunatics

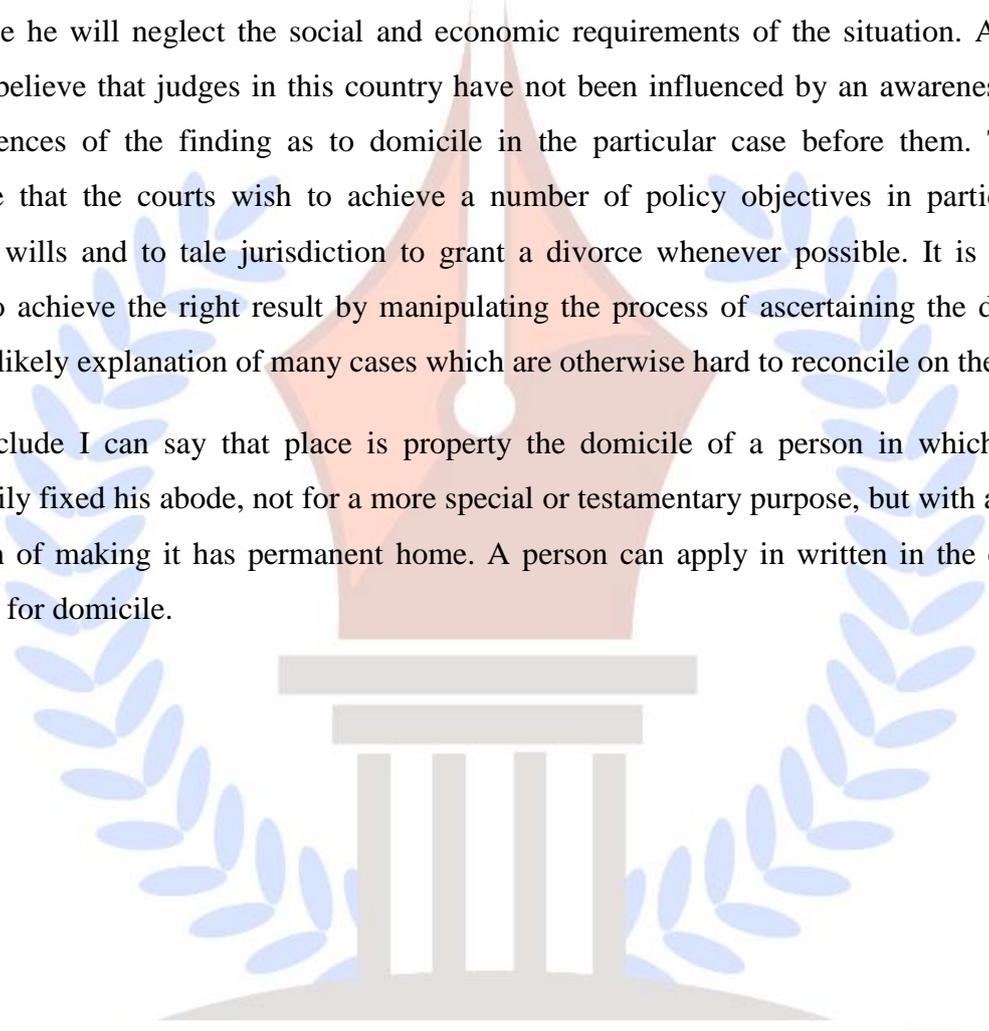
An insane person cannot have domicile of choice. Domicile of lunatic changes in following ways:-

- a) If lunatic is minor, it changes with parents.
- b) If lunatics are married women, it changes with hubby.
- c) If lunatic is major, it changes with guardian.

Conclusion

Domicile is regarded as a relative term which varies in meaning according to different situation (**For example:** taxation, divorce, interstate succession etc.) to which it is applicable. A judge must however inevitably focus his attention on the concrete problem before him; otherwise he will neglect the social and economic requirements of the situation. Also it is hard to believe that judges in this country have not been influenced by an awareness of the consequences of the finding as to domicile in the particular case before them. There is evidence that the courts wish to achieve a number of policy objectives in particular, to validate wills and to take jurisdiction to grant a divorce whenever possible. It is easy for courts to achieve the right result by manipulating the process of ascertaining the domicile, and is a likely explanation of many cases which are otherwise hard to reconcile on their fact.

To conclude I can say that place is property the domicile of a person in which he has voluntarily fixed his abode, not for a more special or testamentary purpose, but with a present intention of making it his permanent home. A person can apply in written in the office in Pakistan for domicile.



JUS IMPERATOR