MISREPRESENTATION [SECTION 18 OF THE INDIAN CONTRACT ACT, 1872]

“Misrepresentation’ is no deception involved but is only assertion of something by a person which is not true, though he believes it to be true. Misrepresentation could arise because of innocence of the person making it or because without sufficient or reasonable ground to make it. A contract which is hit by misrepresentation can be avoided by the person who has been misled.

For example, A makes the statement on information derived, not directly from C but from M. B applies for shares on the faith of the statement which turns out to be false. The statement amounts to misrepresentation, because the information received second-hand did not warrant A to make the positive statement to B [Section 18 (1)]

Now let us analyze the difference between fraud and misrepresentation.

Extent of truth Varies

One of the important difference between fraud and misrepresentation is that in case of fraud the person making the representation knows it fully well that his statement is untrue & false. In case of misrepresentation, the person making the statement believes to be true which might later turn out to be untrue. In spite of this difference, the end results is the other party is misled.

Right of the person concerned who suffers

Fraud not only enables the party to avoid the contract but is also entitled to bring action. Misrepresentation merely provides a ground for avoiding the contract and not for bringing an action on court.

Action against the person making the statement

In order to sustain an action for deceit, there must be proof of fraud. As earlier discussed fraud can be proved only by showing that a false statement was made knowing it to be false or without believing it to be true or recklessly without any care for truth. One is for action against deceit and the other is action for recession of the contract. In the case of misrepresentation the person may be free from blame because of his innocence but still the contract cannot stand.

Defences available to persons

In case of misrepresentation, the fact that plaintiff had means of discovering the truth by exercising ordinary diligence can be a good defense against the repudiation of the contract, whereas a defense cannot be set up in case of fraud other than fraudulent silence. The tenuous difference between fraud and misrepresentation was beautifully brought out in the famous case of Dery vs. Peek. In the said case the plaintiff brought an action of deceit against the promoters of a tramway company source; According to him, the promoters in the prospectus had not mentioned that they had not obtained the permission of the board of trade which was necessary for using mechanical power [to run a train] and here this was deceit. The plea of the defendant was that it never occurred to them to say anything about the consent — of the Board of trade because they had a right under the Act of parliament for using steam they presumed they would also get the consent of Board of trade. The Court verified the position and concluded that there was no deceit and the plea for action for deceit was dismissed.