

Concept of Sale under Transfer of Property Act

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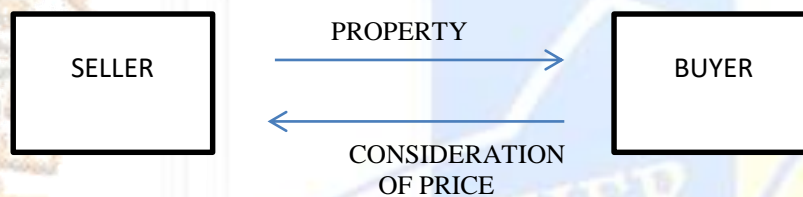
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Abstract- Transfer of Property Act, 1882 applies to transfer of property by act of parties and does not apply to transfer of property which takes place by operation of law. Sale is a mode of transfer of property. Generally, when a person voluntarily transfers his property to another for a price, it constitutes a sale. Sale is the exchange of property for money or for property capable of being valued in money. But sale is different from exchange. There is no price in exchange and exchange is done by change of money for money or property for property. There is absolute transfer of rights in a sale. Sale under section 54 of the Transfer of Property Act refers to sale of immovable property only.

Index Terms- Transfer of property, immovable property, buyer, seller, sale.

INTRODUCTION

Sale is one of the modes of transfer of property from one person to another. Section 54 – 57 of the Transfer of Property Act deals with sale of immovable property. Section 54 of the Transfer of Property Act defines ‘Sale’ and specifies how a sale of immovable property may be made. Sale is a transfer of ownership for a consideration. When a property is sold; there will be an absolute transfer of all rights in the property sold. No rights in respect of the property will be left with the transferor after the property is sold. Section 54 also provides the essentials for a sale of immovable property and section 55 deals with the rights and liabilities of buyer and seller i.e. parties to sale.



DEFINITION OF SALE

The word ‘sale’ literally means ‘voluntary transfer of property from one person to another for a price’. A sale in its broadest sense, may be defined as the transfer of the property in a thing for a price in money, usually the term ‘sale’ is confined to a personal property. A sale as defined by Blackstone, is a transmutation of property from one man to another in consideration of some price or recompense in value¹.

As per section 54 of the Transfer of Property Act, 1882, ‘sale’ is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised². Generally, transfer of absolute interest in property, movable or immovable property from one person to another in consideration for price is a sale. However, sale under section 54 of Transfer of Property Act refers to sale of immovable property only.

ESSENTIAL ELEMENTS OF SALE

➤ Parties

In a sale, there is a seller and a buyer. The seller has to be competent to transfer the immovable property to the buyer. Both parties i.e. the seller and buyer have to be competent to contract under the Indian Contract Act to make a valid sale. The transferor must be the owner of the property and he must have a legal title to the property.

In *Lakhwinder Singh v. Paramjit Kaur*³, the court held that an agent having a power of attorney to sell it without being the owner of the property. Where the sale is executed after getting a general power of attorney; without obtaining the requisite permission of the court, the sale deed is invalid and would not confer any title on the transferee. In *Shakeela Bano v. Mohd Bismil Siraj*⁴, a sale deed was executed by father on behalf of the respondent (minor) held void ab initio. In *Biswanth Sahu v. Tribeni Mohan*, the court held that the transferor should either be the owner of the property or should have an authority to dispose of it. For example, the Karta of the joint family property is authorized to transfer the property under certain specified circumstances.

¹ Dr.S.R.Myneni, Law of Property 300(2nd ed, Asia Law House).

² Section 54, Transfer of Property Act.

³ AIR 2004 P&H 6.

⁴ AIR 2006 MP 192.

➤ Subject matter of sale

The subject matter of sale must be transferable immovable property. The transferred property may be tangible or intangible. The property transferred must be in existence on the date of transfer and such property must be a transferable property.

In *Ram Jiwan Rai v. Deoki Nandan Rai*⁵, in a suit for declaration of title of the property, the controversy was with respect to the identity of the property. There was a mistake in the plot number. The court held that both boundaries and plot number was given in the sale certificate, a mistake in plot number must be treated as a misdescription which did not affect the identity of the property sold. Rather, it is intrinsic evidence in proving that seller wanted to convey the right and title in the suit property to the buyer.

➤ Money consideration

Price is an essential element of the sale. Price must be ascertained at the time of contract of sale. Price must be paid at the time of execution of sale, before or after sale. The price paid or price promised has same status with regard to the transaction of sale. However, the term 'price' has not been defined in the Transfer of Property act, 1882.

In *Inder Kaur v. Tara Singh*⁶, the court held that if the buyer pays money through a cheque which is dishonored, the sale would not take effect.

➤ Conveyance

Section 54 of Transfer of Property Act provides for two modes for transfer of property

1. Delivery of Possession: Where the property is tangible immovable property of the value of one hundred rupees and upwards, transfer can be made only by a registered instrument. Where the property is tangible immovable property of a value of less than one hundred rupees, its transfer may be made either by a registered instrument or by delivery of property. Delivery of tangible immovable property takes place when the seller puts the buyer or such person as the buyer directs in possession of the property⁷.

2. Registration of sale deed: Registration is required for the completion of sale where the value of the tangible immovable property is rupees hundred or more. Where the property is intangible immovable property of any valuation, it will require registration for the completion of sale. Registration serves as the prima facie proof to show the intention of the seller that he intended to transfer the ownership on the date of the execution of the sale.

In *Abdul Alim v. Abdul Sattar*⁸, the court held that an unregistered sale deed can be used as an evidence as to the possession of the property.

CONTRACT FOR SALE

A contract for sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties⁹. It does not, of itself, create any interest in or charge on such property unless and until terms and conditions envisaged are fulfilled.

ESSENTIALS OF CONTRACT FOR SALE:

- There is agreement between buyer and seller
- The agreement as to future sale
- It does not create any interest in the property
- It does not create any interest in the property
- It does not create any charge on the property
- There must be a consideration in the form of price to be paid.¹⁰

CONTRACT OF SALE

A contract of sale is the reverse of a contract for sale. A contract of sale is transfer by way of sale absolutely transferring the ownership as well as possession with all rights, titles, benefits, easements etc.¹¹

RIGHTS AND LIABILITIES OF BUYER AND SELLER

Rights and liabilities can be considered under two headings

- Before completion of sale
- After completion of sale

⁵ AIR 2005 Pat 23.

⁶ (1978)80 Punj LR 41.

⁷ Section 54, Transfer of Property Act, 1882.

⁸ AIR 1936 Cal 130.

⁹ Section 54, Transfer of Property Act, 1882.

¹⁰ Dr.S.R.Myneni, Law of Property 308(2nd ed, Asia Law House).

¹¹ Ibid.

RIGHTS AND LIABILITIES OF SELLER

RIGHTS OF THE SELLER BEFORE THE SALE

1. Mesne Profits: As per sub section 4(a) of section 55 of the Transfer of Property Act, until the transfer of ownership to the buyer, seller is entitled to receive the rents and profits from the property. This provision is made to compensate the owner for performing his duties of maintenance.
2. Right to receive consideration: Seller is entitled for the consideration agreed to be paid by the buyer for the value of property.
3. Right to sue the buyer: In case of breach of any term of the agreement or refusal to execute the sale deed, the seller will have a right to sue the buyer for specific performance as well as claim compensation for the loss incurred by him.
4. Right to receive information: The seller has right to receive the information who does not know about his own property and where the buyer knows about it. When the buyer suppresses the fact and induced the seller to sell the land, the sale is voidable of the seller.¹²
5. Restrictive covenant: If the seller has several properties situated side by side and when he sells one of them to the buyer, then he can impose reasonable restrictive covenants upon the buyer for his convenience.

RIGHTS OF THE SELLER AFTER THE SALE

1. Charge for the unpaid price: Section 55(4)(b) of the Transfer of Property Act provides that where the ownership of the property has passed to the buyer before payment of the whole of the purchase money, to charge upon the property in the hands of the buyer, and transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money, or part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has to been delivered.¹³
2. Interest: When there is unpaid amount, the unpaid vendor has a right to receive interest on such amount.
3. Retention of documents: Under section 55(3), the seller can retain any part of the property and sell a part of the property to the buyer then the seller can retain the original documents of the property with him and give certified copy to the buyer.

LIABILITIES OF THE SELLER BEFORE SALE

1. Duty to disclose: The seller is bound to disclose to the buyer in case of any material defect in the property or in the seller's title. This duty extends to patent as well as latent defects.
2. To produce documents: The seller is bound to produce documents to the buyer on his request for examination of the title relating to the property which are in seller's possession.
3. To execute proper conveyance: On payment of amount or tender of the amount in respect of the price, seller has to execute proper conveyance of the property when buyer asks him to do so.
4. Liability to register: Seller has the duty to register the property in the name of the buyer or any person directed by buyer as per the agreement within the stipulated time.
5. To take care of property and documents: Seller has the duty to take as much care of the property and the documents of title which are in his possession.
6. Payment of outgoing: All public charges and rents accrued due in respect of the property upto the date of sale should be paid by the seller.

LIABILITIES OF THE SELLER AFTER COMPLETION OF SALE

1. To give possession: The seller is bound to give possession of the property to the buyer or any person directed by the buyer upon the completion of the sale.
2. Implied covenant for title: The seller shall be deemed o contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same. If the buyer subsists and that he has power to transfer the same. It is implied in every transfer and need not be expressly stated in the sale deed. The legal effects of such covenant are
 - a) The covenant imports an absolute warranty of title.
 - b) If there is any defect in the seller's title that is discovered after the sale is duly completed, buyer is entitled to sue for damages and claim a return of purchase money.
 - c) The liability is limited to the title which the seller professes to transfer.
 - d) The covenant runs with the land and is enforceable by subsequent purchasers of land¹⁴.
3. Delivery of documents: Upon the payment of purchase money, seller is bound to deliver to the buyer all documents of title relating to the property.

¹² Dr.S.R.Myneni, Law of Property 310(2nd ed, Asia Law House).

¹³ Ibid, 311.

¹⁴ Dr.S.R.Myneni, Law of Property 314(2nd ed, Asia Law House).

RIGHTS AND LIABILITIES OF THE BUYER

RIGHTS OF THE BUYER BEFORE SALE

1. To receive all information: Buyer is entitled to receive all information of any material defect in the property of which the seller is aware and buyer is not aware before the sale according to section 55(1)(a).
2. To inspect documents: According to section 55(1)(b), all documents related to the property can be inspected by the buyer before sale.
3. To question in respect of property: As per section 55(1)(c), buyer has right to question the seller relating to property and its title.
4. Enter into agreement: As per section 55(1)(d), upon the payment of any advance with an intention to purchase the property, buyer is entitled to enter into an agreement to sell.

RIGHTS OF THE BUYER AFTER COMPLETION OF SALE

1. Delivery of possession and documents: The buyer is entitled to possession of property and documents to title on the completion of sale.
2. Entitlement of benefits: Buyer is entitled to the benefits of any improvement in the property and to the rents and profits there of as soon as the ownership is transferred to him.

LIABILITIES OF THE BUYER BEFORE COMPLETION OF SALE

1. To pay price: Buyer is bound to pay or tender the purchase amount to the seller upon the property being sold free from encumbrances.
2. To conduct inspection: It is the duty of the buyer to inspect the property for finding any defects relating to the property.
3. To make inquiry: It is the duty of buyer to make an inquiry regarding the title and ownership of the property.

LIABILITIES OF THE BUYER AFTER COMPLETION OF SALE:

1. To pay outgoing: After the sale all charges and taxes must be paid by the buyer. Seller has a right of indemnity against the buyer if the charge is levied upon the seller after the transfer of ownership.
2. To bear loss: When the ownership is passed to the buyer, buyer must bear any loss that occurs to the property after sale.

CONCLUSION

Under the Transfer of Property Act, sale refers to the sale of immovable property which may be tangible or intangible. Sale takes place between two persons i.e. buyer and seller. For making a valid sale, there must be two parties and both the parties must be competent. The sale of the property results in the transfer of ownership. The transfer of ownership involves the transfer of all rights and liabilities surrounding the property. Such transfer to the buyer along with the payment of price to the seller constitutes a sale. Intention to sell the property is shown by a contract of sale whereas the actual transfer takes place in the form of sale. Sale confers absolute title to the buyer.

REFERENCES

1. Dr.S.R.Myneni, Law of Property 314(2nd ed, Asia Law House).
2. Transfer of Property Act, 1882.
3. <https://indiankanoon.org/doc/613871/>