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Sale under Transfer of Property Act, 1882

Introduction:-

In common parlance, a “sale” is a transaction wherein one person purchases some article from another in exchange for some consideration. However, when it comes to the law, a sale has several facets. The law categorizes the subject matter of the sale into moveable and immovable properties. At present, when it comes to property laws, there are no laws that exhaustively deal with them. For instance, the [Sale of Goods Act, 1930](#), generally covers the sale of moveable properties. However, it excludes “money” and “actionable claims” from its scope, even though they are considered moveable properties, according to [Section 2\(7\)](#) of the Act. Similarly, in the [Transfer of Property Act, 1882](#) (here-in-after also referred to as “TPA”), the general rules of transfer provided in [Chapter II](#) and the modes of transfer under [Chapters VI](#) (exchanges), [VII](#) (gifts), and [VIII](#) (actionable claims) of the Act apply to both moveable and immovable properties. However, when it comes to the specific modes of transfer, such as sale, mortgage, and lease, TPA only deals with immovable properties.

Before moving further, we must understand the kinds of transfers this Act deals with. Though it encompasses many types of transfers, such as mortgage, lease, exchange, gift, and actionable claims, it must be noted that the scope of this Act is not exhaustive. It applies only to certain kinds of transfers.

- As provided under [Section 2\(d\)](#) of the TPA, it governs only those transfers which take place by the ‘act of parties’ and not by the ‘operation of law’ except in cases of [Section 57](#) (discharge of encumbrances on sale) or [Chapter IV](#) (mortgage of immovable property and charges). This simply means that TPA is not applicable for transfers due to insolvency, forfeiture, succession or execution.
- [Section 5](#) of the TPA further explains that the transfer must be an act of ‘living parties. Thus, it can be said that this Act only deals with transfers *inter Vivo's* (between the living).

Now that we have a clear understanding of the applicability of this Act, we can deduce that a sale under TPA is also a transaction between living parties dealing with immovable property. The provisions of sale under TPA range from Sections [54](#) – 57 which deal with the definition, modes of transfer, registration, rights and liabilities of buyer and seller, and other aspects relating to marshaling and encumbrances.

Let's look at the said provisions.

Definition of sale:-

Section 54 of the Transfer of Property Act, 1882, defines “sale” as the transfer of ownership in exchange for a price. The term “price” is to be interpreted as a price in terms of money and not otherwise. If the transfer involves any other kind of consideration, it is not a sale. Further, the Section also provides that the price need not be paid simultaneously with the transfer. The price may either be paid in full or partially, or partly paid and partly promised. The transfer will be deemed complete in all three cases. Thus, what is relevant is not the immediate payment but the reference as to when and how the payment is to be made.

The subject matter of the sale under the said Act is immovable properties. Section 54 includes immovable properties, both tangible and intangible. The tangible properties are those that are visible, such as lands, houses, etc. The intangible properties are those that do not have a physical existence, such as copyrights, trade secrets, the right to ferries or fisheries, or a right to mortgage debt, etc. This Section provides two specific methods for how a sale can be made and executed. According to this Section, a sale can be completed by a “registered instrument” in cases of

- Transfer of tangible immovable property of the value of Rs. 100 or upwards;
- Transfer due to reversion; or,
- Transfer of intangible immovable property.

In other cases, such as the transfer of tangible immovable property of a value less than Rs 100, a sale can be made either by a “registered instrument” or by “delivery of property”. According to this Section, when the seller hands over the possession to the buyer or the person he specifies, delivery of the property is deemed to have occurred.

Contract for sale

Section 54 further incorporates the concept of “contract for sale.” It is an agreement between the parties that a sale will be effectuated in the future by executing a sale deed on mutually settled terms.

In English law, such a contract transfers an equitable estate in Favour of the purchaser. However, under Indian law, a contract for sale does not transfer any title, nor does it create a charge or interest on the property. It is merely a promise to create a right to obtain another document, i.e., a deed of sale. Therefore, it does not require registration, as held in the case of [*Dave Ramshankar Jivatram v. Bai Kailasgauri \(1972\)*](#). The Gujarat High Court in this case also held that it is not enforceable in any court of law. For instance, A agreed to sell the property to B, but they did not execute any documents. Later, A sold the property to C. In this case, B cannot approach the court to enforce his right to specific performance.

However, as the courts in India developed from the common law approach to equity courts in contractual matters, this difference has become insignificant to a great extent. Various judgments have laid down that if an overt act, such as payment of advance money, delivery of possession, or any similar act, has been done in pursuance of the agreement, the transferee becomes entitled to obtain relief from the courts. For instance, in [*Kodapalli Satyanarayan v. Kondapalli Mavullu \(1998\)*](#), the Andhra High Court observed that if a property has been transferred to someone other than the prior agreement holder and the subsequent transferee has notice of the earlier transaction, then he will be deemed to hold that property in trust for the former party.

Similarly, in [*Ramesh Chand Ardawatiya v. Anil Panjwani \(2003\)*](#), the defendant agreed to sell his piece of land to the plaintiff. He also puts the plaintiff in possession of the property for an advance payment. The plaintiff constructed a boundary wall on that property. A trespasser tries to encroach upon the land at the behest of the defendant. The plaintiff sought a declaration from the Court that he was rightfully in peaceful possession of the property and sought a permanent injunction to restrain the trespassers from interfering with his possession. The Court granted relief and held that the plaintiff is entitled to

protect his possession and that A should refrain from taking the law into his hands and instead assert his title through due process of law.

The Court also observed, “if a person who entered into possession under a contract for sale and is in peaceful and settled possession of the property with the consent of the owner, he is entitled to protect his possession against the whole world, except the true owner.” However, if he is in possession of the property in part performance of the contract for sale and the requirements of [Section 53A](#) are satisfied, he may protect his possession even against the true owner.”

Parties to sale:-

In every sale, there are always two parties. The person who transfers the property is known as the “seller,” and the person who receives such property in exchange for monetary consideration paid by him is known as the “buyer.” They both must be competent in the eyes of the law to effectuate a valid sale deed.

Competency of a seller

[Section 7](#) of the Act deals with the persons who are competent to transfer.

According to this Section, a transfer will be valid only if the transfer or (the person who is transferring the property) fulfills the following conditions:

- He must be competent to enter into a contract.

This part of the Section is *Pari Materia* (on the same subject matter) with [Section 11](#) of the [Indian Contract Act, 1872](#), which deals with competency to enter into a contract. It states that to make a valid contract, a person must have reached the age of majority, must be of sound mind and must not be disqualified by any law from contracting

- He must be entitled to the transferable property at the time of the sale i.e., he holds the legal title to dispose of the property; or,
- He must be legally authorized to dispose of such property.

For instance, a Karta is empowered to sell the property of a [Hindu Undivided Family](#) (HUF) only in cases of legal necessity, pious purpose, or in favor of the female members of the family. Likewise, a guardian of a minor is authorized to sell the property of the minor only with the permission of the court and not otherwise. Similar observations have been made by the Supreme Court in the

case of [*Lakhwinder Singh v. Miss Paramjit Kaur \(2003\)*](#), wherein it observed that if a sale deed has been executed by a person having a general power of attorney over the property without the permission of the Court, such a sale deed will not be valid in the eyes of the law. The case of [*Smt M Bhagyamma v. Bangalore Development Authority \(2012\)*](#) further extended the scope and held that if a power of attorney authorizes the agent to transfer the property, then he will be deemed to be a competent seller.

Competency of a buyer

Generally, every person is competent to be a buyer, provided they are not disqualified from purchasing any property under any law that is in force in India. Besides that, in fact, even a minor can be a buyer, provided that the transfer is made by his guardian. It is based on the principle that a minor is entitled to retain assets and be exempt from liabilities. It was observed by the Allahabad High Court, in the case of [*Ulfat Rai v. Gauri Shankar \(1911\)*](#), that a sale to a minor by the guardian, which has been duly executed in exchange for a duly paid consideration, is valid.

In a nutshell, the essentials of a sale can be summarized in the following points:

- The sale must be between living people. “Living persons” includes a company or associations or body of individuals, whether incorporated or not;
- The subject matter of sale must be an immovable property;
- There should be at least two parties to a sale i.e., a seller and a buyer;
- They must be competent to enter a contract;
- They must hold a legal title to the transferable property at the time of the sale or must be legally authorized to dispose of the property;
- There should be an absolute transfer of ownership in favor of the buyer;
- The consideration must be in the form of money/price. It can be either paid at the time of the transfer or as per the time or conditions mutually settled by the parties;
- The sale deed must be registered if it is a tangible immovable property valuing one hundred rupees or more;
- A sale deed must be registered if the sale involves a transfer of intangible immovable property or a transfer due to reversion;

- In cases of a tangible immovable property valuing less than Rs 100, the sale can be made either by a registered instrument or delivery of property.

Rights and liabilities of buyer and seller:-

Every property transaction creates certain rights and liabilities for the contracting parties. In the case of a sale, the contracting parties, a buyer and a seller, are also vested with some rights and liabilities. Generally, the parties themselves expressly agree as to which rights and liabilities they will subject themselves to. These are mostly mentioned in a sale deed. However, the Act does not leave it entirely up to the parties. [Section 55](#) lays down a detailed description of every right and liability in the absence of a contract to the contrary. For convenience, the rights and liabilities of the buyer and seller can be categorized into the rights and liabilities before and after the completion of the sale.

Liabilities and rights of the seller and the buyer before completion of sale

Liabilities of a seller

- **Disclosure of material defects** ([Section 55\(1\)\(a\)](#)): A seller is bound to disclose any latent material defect in the property or his title in his knowledge. A material defect is of such a nature that if it was known to the buyer, his intention to enter a sale might deviate [*Flight v Booth (1834)*]. It is a latent defect because it cannot be discovered by the buyer even after ordinary care and inquiry.
- **Production of title deeds for inspection** ([Section 55\(1\)\(b\)](#)): A seller is bound to produce all the title documents relating to the property at the request of the buyer for his inspection.
- **Answer relevant questions regarding his title or the property** ([Section 55\(1\)\(c\)](#)): The seller must answer every relevant question put to him by the buyer relating to his title or the property. The answer must be to the best of his information.
- **Execute a proper conveyance of the property** ([Section 55\(1\)\(d\)](#)): Conveyance means an act of transferring a property. It can be done by signing or affixing a thumb impression on the sale deed by the seller. A seller is bound to execute a proper conveyance only on the payment of the

consideration by the buyer. This clause imposes reciprocal duties on both the buyer and the seller. The clause also provides that the execution must be at a proper time and place.

- **Take reasonable care of the property and title deed** ([Section 55\(1\)\(e\)](#)): The seller is bound to take care of the property and title deed in the same manner as an owner of ordinary prudence would do. This duty is to be exercised till the delivery of the property to the buyer.
- **Pay all the charges** ([Section 55\(1\)\(g\)](#)): A seller is bound to pay all the rent and public charges of the property, with interest if any, due till the completion of the sale except if the buyer purchased the property with all the encumbrances.

Rights of a seller

- **Right to take rents and profits** ([Section 55\(4\)\(a\)](#)): A seller is entitled to collect rents and profits from the property until the ownership is transferred to the buyer.

Liabilities of a buyer

- **Disclosure of all the facts known to the buyer that materially increase the value of the property** ([Section 55\(5\)\(a\)](#)): The buyer is under obligation to confide to the seller any fact to which he has reason to believe is not known to the seller relating to the increase in the property's value. If he fails to do so, it will be considered fraud, and the seller can avoid the sale if it is proven.

In the English case of *Summers v. Griffiths (1866)*, an old lady contracted to sell a property at a much lower price, believing that her rights in the property were not absolute. The buyer was aware that the lady's interest in the property was perfect and absolute, but he did not disclose it to the lady. He was held liable for fraud, and the sale was set aside.

- **Pay the price in accordance with the contract** ([Section 55\(5\)\(b\)](#)): The buyer must pay the purchase money at the time of completion of the sale to the seller or any person as directed by the seller. If there are any encumbrances existing on the property at the time of sale, the buyer is free to deduce

such amount from the consideration he has to pay. It is in correspondence with the duty of the seller to execute a proper conveyance.

Right of a buyer

- **Refund of money paid on proper denial to accept delivery** ([Section 55\(6\)\(b\)](#)): The buyer is entitled to receive the amount of any purchase money with interest properly paid by him to the seller in anticipation of delivery. The buyer is also entitled to get a refund of any earnest money paid by him or the cost awarded to him in a suit to compel the specific performance of a contract or to obtain a decree for its rescission.

Liabilities and rights of the seller and the buyer after completion of the sale:-

Liabilities of a seller

- **To give possession** ([Section 55\(1\)\(f\)](#)): The seller is bound to put the buyer or person as directed by the buyer in possession of the property on being so required. This clause uses the words- "...such possession of the property as its nature admits." It refers to the nature of possession. For instance, in the case of tangible immovable property, physical control is to be given over property. In the case of intangible immovable property, the possession is symbolic.
- **Implied liability** ([Section 55\(2\)](#)) – The seller must undertake implicitly that he holds the perfect title to the property and is transferring the same free from any encumbrance. The rights or interest created by the sale shall vest with the transferee and may be enforced by every person in whom that right or interest is for the whole or any part thereof from time to time is vested.
- **To deliver title deeds on receipt of price** ([Section 55\(3\)](#)): The seller is bound to hand over all the documents relating to the title of the property to the buyer on payment of the whole of the purchase money. Proviso (a) to Section 55(3) states that if a seller retains any part of the property comprised in the documents, he is entitled to keep the documents as well.

Proviso (b) also imposes the same duty on the buyer of the greatest value when the property is sold to different buyers. However, in both cases, such a person must furnish such documents and their true copies to other buyers at their request. They are also under an obligation to keep the documents safe unless prevented from doing so by fire or other inevitable accidents.

Right of a seller

- **Charges upon the property for the unpaid price** ([Section 55\(4\)\(b\)](#)): Where the ownership has been transferred to the buyer before payment of the whole consideration amount, the seller becomes entitled to a charge upon the property which is in the hands of the buyer or any transferee without consideration or any transferee with notice of non-payment. The charge will be for the purchase money or the part remaining unpaid or for the interest on such amount or part from the date on which the possession was delivered.

Liabilities of a buyer

- **To bear loss to the property** ([Section 55\(5\)\(c\)](#)): After the completion of the sale, the ownership is completely transferred to the buyer. From that date, if any damage, destruction or decrease in value occurs on the property, the buyer will be bound to bear such losses.
- **To pay the outgoings.** ([Section 55\(5\)\(d\)](#)): The buyer is liable to pay all the public charges or rent accruing after the completion of the sale or as agreed by the terms settled in the sale deed.

Rights of a buyer

- **Benefit of the increment.** ([Section 55\(6\)\(a\)](#)): Any benefit arising from improvement or increase in value of the property or the rents and profits after completion of the sale shall vest with the buyer.

Conclusion: -

Considering the above discussion, we can conclude that the Transfer of Property Act, 1882 deals with the sale of immovable property by the act of living parties lucidly and comprehensively. It does provide not only the definition but also the modes of execution and registration. It also provides a framework of rights and liabilities to which the seller and buyer will be subjected, but at the same time, it is also flexible enough to allow the parties to settle on other terms at their discretion. In my view, there is one matter that needs some clarification. The bare text of Section 54 lacks clarity regarding the ramifications of an unregistered sale deed. It plainly states that it does not create any title or interest in the property. Though various courts have ruled that the answer depends on the facts and circumstances of each case and the applicability of principles of equity in those cases, the language of the Section remains rigid. To eliminate any confusion, it should be more comprehensive and expansive.