



IMPACT ON NON-PAYMENT OF PART OR ENTIRE OF THE SALE CONSIDERATION

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Abstract

Sale Consideration means the total aggregate sum of the Consideration and the Deferred Consideration which is paid by the Purchaser to the Seller in regard to the Transfer of his right during an execution of a sale deed. The price paid or promised or part paid and part promised indicates the actual payment of the whole of the price at the execution of the sale deed and is not sine qua non for completion of the sale deed thus price constitutes an essential ingredient which specifies the interest of the seller to the transaction of the sale.

Key words: Sale, Consideration, Purchaser, Seller, Transfer, Sale Deed

I. INTRODUCTION

A sale is a transaction which constitutes between two or more parties in which the buyer agrees to sell the moveable or immovable assets to the seller for a specified amount. A sale process is said to be completed only when both the parties are competent to make a transaction for the specified amount. To constitute a sale, a transaction must involve or undergo the exchange of goods and services or specified payments between the parties. Where if one party transfers a moveable or immovable

asset to the other party without any consideration where it is said to be considered as a donation or as a gift. A sale of immovable property just states as a transfer of ownership in exchange of price paid or promised or part paid and part promised indicates the actual sale in accordance to Transfer of Property Act, 1882.

II. SALE OF IMMOVABLE PROPERTY UNDER TRANSFER OF PROPERTY ACT, 1882

A sale of immovable property undergoes different modes of in which it can be transferred. A transfer of immovable property may attract by way of Sale, exchange, lease, gift, mortgage etc. Where each mode of transfer undergoes its own recognition and its significance in its own process. Section 3 of the Transfer of Property Act specifies the meaning in regard to the key terminologies. "Transfer of Property" means an act by which a living person conveys property, in present or future, to one or more living persons, or to himself and one or more other living persons; and "to transfer property" is to perform such act.¹

Sale is a transfer of ownership for a money consideration. It implies an absolute transfer of all rights in the property sold. No rights in the property sold are left in the transferor.² Section 54 of the Transfer of Property Act defines "sale" and where the provisions also specify how a sale of an immovable property should be executed. The Section reads as follows – "Sale" is a transfer of

¹ Section 5 of the Transfer of Property Act, 1882.

² Dr. Avatar Singh, Prof. (Dr.) Harpreet Kaur, Textbook on the Transfer of Property Act, 6th Edn. Lexis Nexis, pg. 183.



ownership in exchange for a price paid or promised or part-paid and part promised.³

2.1 SALE HOW MADE

Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than hundred rupees, such transfer may be either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property take place when the seller places the buyer, or such person as he directs, in possession of the property.⁴

2.2 CONTRACT FOR SALE

A contract for the sale of immovable property is a contract that a sale of such party shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.⁵

III.ELEMENTS OF SALE

1. Transfer of Ownership – Ownership is the aggregation of all the rights and liabilities in a property. When there is the transfer of ownership, the aggregation or total of all rights and liabilities in a property are transferred from transferor to the transferee.

2. Money Consideration – The “price” that is referred to in the provision connotes to money consideration. Where the ownership of property is transferred in consideration for money it amounts to sale but if it is

transferred for anything else which clearly amounts to exchange.

Section 54 of the Act provides that contract for sale of itself does not create any interest or in charge on such property.⁶

IV.ESSENTIALS OF VALID SALE

The essential elements of a sale are:

- 1) Parties
- 2) Subject – Matter
- 3) Money – Consideration
- 4) Conveyance

1) **Parties** – When we deal with chapter of sale the basic consideration where it should be accomplished is the parties. Where there must be at least two parties to a sale are the transferor who is called as a seller / vendor, and the transferee is known as the purchaser / buyer. In regard to a valid sale, both the seller and the purchaser must be competent at the time of execution of sale. The seller must be competent to contract, i.e., he must be of sound mind and must have attained the age of majority.⁷ A contract of sale must be based on a mutual agreement between the parties.⁸ Besides that, he must be the owner of the property or should have an authority to which the said property he is going to sell.⁹ The seller must have a legal title to it only then he has the authority to sell the property.¹⁰ Similarly, an agent having a power of attorney to sell the property can also sell it without being the owner of the property but in regard to the authority given to him. Once the sale is executed in regard to the authority

³ Section 54 of the Transfer of Property Act, 1882.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Bhabani Sarma v. Narayan Sarma*, AIR 2003 Gau 171

⁷ *Shakeela Bano v. Mohd Bismil Saraj*, AIR 2006 MP 192

⁸ *Misabul Enterprises v. Vijaya Srivastava*, AIR 2003 Del. 15

⁹ *Gangotri Bal v. Jeevrakhan Lal*, AIR 2006 Chh 88

¹⁰ *Arjuna Subramanya Reedy v. Arjuna China Thangaavelu*, AIR 2006 AP 362



given by general power of attorney, without obtaining the requisite permission of the court, the sale deed would be considered as an invalid and would not confer any title on the transferee.¹¹ But in regard to the Power of Attorney executed in favour of the holder expressly authorizes him to transfer the property he would be a competent seller.¹² A transferee must be competent to receive the transfer and he shall not be disqualified by law in regard to the acceptances of the property transferred.

2) **Subject-Matter** – Section 54 of the TP Act only deals with the transfer/ sale of immovable property. Immovable property includes tangible and intangible and it includes land, the benefits arising out of land and the things attached to the earth except standing timber, growing crops, and grass.¹³ When a property is transferred where it should establish an intention to sell the property to the purchaser for a consideration, the transfer includes the delivery of the property along with the ownership of that property.

3) **Money-Consideration** – The “Price” is an essential element of sale. In regard to the property on which the contract to sale is made the price must be ascertained for the property to be transferred. The price must be paid effectively at the time of execution of sale, before it in advance or after the sale. The price paid and price promised to stand on equal footing in regard to the process and transaction of a sale. There is no question of illegality, or contrary to public policy if both parties agree that the payment of the

considered shall be postponed in certain events, or that it shall not be paid at all if the property is lost.

Non- payment of sale consideration does not vitiate a sale if it is promised to be paid. But if a declaration is made in regard to the consideration has already been paid and it is found to be incorrect, the transaction does not amount to a sale. Where in this case there was a concurrent finding that no sale consideration was paid and it was based on cogent reasons. The sale was not taken into consideration and it was set aside.¹⁴ A transfer of a property would not amount to sale if there is no price is paid or promised or partly paid or promised. The transaction under sale without the consideration will not amount to gift provided evidence is adduced for it nor it falls into the category of exchange if the transferor does not transfer ownership of the property.

Therefore, a stipulation in a sale deed that the price will be paid in one year, provided that the possession is obtained within that time, and that if possession is not so obtained then the payment of the price will be postponed, or that in the occasion of the vendee not getting the property, the price will not be paid at all. In all of the above-mentioned situation, the deed is a sale deed within the meaning of the provision.¹⁵

If from the recitals in the sale deed it appears that title would only pass once after the payment of full consideration is received, the inference would be in accordance to consideration is paid, there is no transfer.

¹¹ *Lakhwinder Singh v. Paramjit Kaur*, AIR 2004 P&H 6

¹² *A Bhagyamma v. Bangalore Development Authority, Bangalore*, AIR 2010 Kar. 63

¹³ Section 3 of the Transfer of Property Act, 1882

¹⁴ *Bhartu v. Nawal*, AIR 2012 All 91

¹⁵ *Umakanta Das v. Pradip Kumar Ray*, AIR 1983 Ori 196



4) **Conveyance** – Section 54 of the Act has provided two modes in regard to the transfer of an immovable property.

- i. Delivery of Possession
- ii. Registration of sale deed

i. Delivery of Possession – Where if the property falls under the ambit of tangible immovable property and of the value of rupees one hundred and upwards transfers can only be made through a registered instrument. In regard to the transfer of immovable property which uphold the value below one hundred rupees can be transferred through a registered instrument or by delivery of the property and where this stands as optional.¹⁶ A delivery of the tangible immovable property takes place only when seller puts the buyer or any such person where as he directs in possession of the property. In a sale, these requirements of law must take place with the help of registration, attestation and a document written called as the sale deed is executed the transfer of immovable property in form sale is completed and will be binding on both of the parties.¹⁷

ii. Registration of sale deed – Where the value of the tangible immovable property is rupees one hundred or upwards, the transfer of sale of such property requires registration of the deed. Where if the property falls under the ambit of intangible immovable property of any valuation, it shall require registration for completion of sale.

A transfer of an immovable property can only be effectively executed through a registered document, mere making an agreement of sale or executing of power of attorney would not transfer right, title or interest of an immovable property.¹⁸

Where in the case of *Bishundeo Narain Rai v. Anmol Devi*¹⁹ the Supreme Court has clearly stated that where a combined reading of Section 8 and 54 of TP Act suggests that through an execution and registration of a sale deed, the ownership and all interests in the property pass to the transferee, yet that would be only on terms and conditions which has been laid down in the sale deed indicating the intention of both parties for the sale. The intention of the parties can clearly be gathered from the averments which has clearly been laid down in the deed itself or by other attending circumstances. The registration act as a prime facie proof or as the intention of the seller that he intends or agrees to transfer the ownership on the date of execution of the deed. The completion of the sale process only takes place when it has been taken place through a registered instrument and where the sale deed transferring the immovable property of the value of rupees one hundred and upwards requires registration under Section 71 of the Indian Registration Act, 1908.

V.OBJECT OF A SALE DEED

A sale deed acts as an evident instrument which establishes the title, interest and ownership over the property. This instrument also acts as an essential document in further sale by transferee as it establishes his proof of ownership of the property. A transfer of sale

¹⁶ *Arjuna Reddy v. Arjuna C Thanga*, (2006) 7 SCC 756

¹⁷ *Inder Chand v. Sethi*, AIR 2006 Raj 251

¹⁸ *G. Ram v. Delhi Development Authority*, AIR 2003 Del 120

¹⁹ AIR 1998 SC 3006



deed is executed only in accordance to the sale agreement which has been executed prior to the execution of the sale deed, and after compliance of various terms and conditions which has been mentioned in the “agreement to sale” as agreed by both parties i.e., transferor and transferee.

The buyer should clearly ensure the title of the property before the execution of sale deed and it should be the absolute responsibility of the purchaser to ensure whether any charge or any encumbrance on the particular property and in case of purchaser is purchasing the said property subject to such encumbrance. Further, subject to the agreement between both the parties, all the statutory considerations or payments should be paid such as property tax, cess, water charges and maintenance charges etc. should be obtained before the execution of the sale deed and the transferor should obtain requisite clearances, permissions and approvals in regard to the transfer or sale of the said property prior to execution of the sale deed.

VI. DIFFERENCE BETWEEN AGREEMENT TO SALE AND SALE DEED

Agreement to sale - An agreement which establish that the sale of the property is to take place in future on the terms and condition which will be has been laid down in the agreement.

In agreement to sale the no interest, right or ownership of the property does not amount to transfer to the buyer.²⁰

Section 54 of the TP Act define that contract for sale or an agreement to sale of immovable

property shall take place only in accordance with the terms and conditions are settled between the parties and does not require any registration. It does not create any interest in, or charge on such property.²¹

Sale-deed - A sale deed establishes a transfer of interest, right and ownership of the immovable property. Sale deed establishes legal title of the purchaser in regard to the absolute interest of the transferor passes to the transferee.

A sale mandates registration of an immovable property is of the value of rupees one hundred and upwards.

Agreement to sale – Delivery of possession, not confer any right, title or interest in the property, however, it certainly enables the agreement holder to protect his possession, in terms of Section 53-A of the TP Act, subject to completion of the necessary requirements of law. An agreement holder, who has been ready and willing to perform his part of the contract and has taken step in furtherance thereto, can protect his possession.²²

To constitute a valid sale, ownership has to be transferred for the price paid or promised to be paid or partly paid and partly promised.

Therefore, future payments of price does not arrest the passing of title by a registered instrument. If the parties so contract it may be postponed, unless the payment of full consideration is made. In the absence of contract, the title gets conveyed, as soon as the document, with the stipulation of consideration, is registered. The mode of transfer of ownership in view of tangible immovable property, above rupees one hundred can be made only by a registered instrument.²³

²⁰ *Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra*, 2004 (8) SCC 614

²¹ *Raheja Universal Ltd v. NAC Ltd.*, (2012) 4 SCC 148

²² *Devinder Singh v. Fateh Jung Singh and Others*, AIR 2018 P&H 70

²³ *G. Hampamma v. Kartigi Sajjivalda Kalingappa and Anr*, 1990 AIR (Karnataka) 128



“Agreement to sale” is not same as “Sale”- It is no doubt true than an “agreement to sale” is not the same as “sale” and the titled to the property, agreed to be sold, stills vests with the seller (only in accordance with agreement to sale) but in case of sale title to the said property vests with purchaser. An “agreement to sale” is an executory contract, whereas sale” is an executed contract.²⁴

VII.MODE OF EXECUTION TO SALE

Once a sale deed is executed the process of sale of an immovable property will require to undergo the process of registration for completion of the sale. As stated, writing, attestation and registration are the major principles to constitute a valid sale of a property, whose value is more than one hundred rupees. Transfer of ownership cannot take place without the process of registration.²⁵ When the value of the property is of a lower value the sale can be accomplished through delivery of the property. In regard to the minimal value, the formality of attestation and registration does not stand as a main criterion and where this stands as a discretionary part of parties.²⁶ As stated, once the major principles are fulfilled the transfer of immovable property in form of sale is completed and where both parties are binding to the sale executed. Therefore, in regard to a suit for presumption can only be filed only after the completion of the sale, if filed prior to the process of registration, will be considered as

premature.²⁷ Once registration takes place, the ownership transfers effectively from the date of execution of the sale deed²⁸, unless we find a there is an intention of the parties to contrary.²⁹

As the courts have been stating that in many cases regarding the general rule of passing of ownership is only through the process of registration and where the registration process clearly establishes the intention of the both the parties i.e., transferor and transferee as expressed in the contract. Where there are few circumstances in which intention cannot be gathered through the registered documents³⁰ or appears ambiguous³¹, in those situations where an extraneous evidence is admissible for the courts to draw a conclusion. Where Section 17 of the Act³² clearly states that the documents which is to be registered.

VIII. NON – PAYMENT OF SALE CONSIDERATION IN REGARD TO A CONDITIONAL SALE M O D E E D O F S A L E C O N S I D E R A T I O N

Where the payment of price does not attract as the main price to a validity of the sale, i.e., it is not *sine qua non* for the process of completion of a sale.³³ In the case of *Hara Bewa v. Banchandilal*³⁴ the court has clearly stated that the whole interpretation in regard to the Non-payment of a sale consideration can be clarified through the recitals in the sale deed which are indecisive, surrounding

²⁴ *B.R Koteswara Rao v. G. Rameswari Bai @ G. Rameswari Devi and Anr*, 2004 AIR AP 34

²⁵ *Lakshmi Narain Banwal v. Jagdish*, AIR 1991 Pat 99

²⁶ *Arjuna Reddy v. Arjuna C Thanga*, (2006) 7 SCC 756

²⁷ *Ram Sran Lali v. Domini Kuer*, AIR 1961 SC 1747

²⁸ *Kameshwar Choudhary v. State of Bihar*, AIR 1998 Pat 141

²⁹ *Kaliaperumal v. Rajgopal*, AIR 2009 SC 2122

³⁰ *Prem Singh v. Distt Board of Rawalpindi*, AIR 1934 Lah 917

³¹ *Bishudeo Narain Rai v. Anmol Devi*, AIR 1998 SC 3006

³² The Registration Act, 1908

³³ *Shiva Narain Sab v. Baidya Nath Tewari*, AIR 1973 Pat 386

³⁴ AIR 1957 Ori 243



circumstances or conduct of parties are the relevant factors to decide the validity of sale. When a sale deed was registered with the “**condition**” that the right, title and interest will only pass once the payment of balance consideration is paid. As the sale condition was never fulfilled, hence no legal right, title and interest will be passed and where this never amounts to valid sale.

This can be sustained by way of illustration – Where A and B registered a sale deed on a condition that once the balance amount is paid by B to A as per the terms and condition that the right, interest and title will pass to B. As the said amount was never paid in accordance to the sale condition, hence no legal right, interest and title will be passed, which cannot be declared in their favour when the second part of the registration sale deed regarding payment of balance amount was not fulfilled within a stipulated period, as the time is the essence of the contract. When the right, interest and title did not pass, then possession of the suit land cannot be delivered.³⁵

So, in regard to a “**conditional sale deed**” it is a major factor that to take a note of it through the recitals of the sale deed it appears that the title would pass after payment of the full consideration, the interreference to this would be until the condition is fulfilled the transfer would not take place. Even though the sale transaction is not valid, transfer is not affected in the view of non – payment of sale consideration but that itself will not get the registered sale deed cancelled automatically before the registering authorities namely sub-register unless and until the affected person invokes the provision of Section 31 of the Specific Relief Act for cancellation of the registered sale deed on the ground that sale is

not valid for the non-payment of sale consideration as per the terms and condition in accordance the sale deed. In good faith if the vendor has delivered possession to the purchaser on the date of sale deed, if the purchaser fails to fulfil the condition, the vendor is at his liberty to seek for cancellation of the sale as well as for re-delivery of the possession from the purchaser.

IN REGARD TO A NON – CONDITIONAL SALE DEED OF SALE CONSIDERATION

Where in non-conditional sale deed specifically in regard to the “**payment or sale consideration**”, where the registration has been taken place and legal right, interest and title has been transferred in accordance to the sale deed. Price paid or part paid and part promised clearly states that the actual payment of whole of the price at the execution of the sale deed and is not *sine qua non* for completion of the sale deed. Thus, price constitutes an essential ingredient in process of transaction of a sale. Although, the whole consideration amount is not paid and but if the document states that the price has been received in accordance to “**understanding of the parties**” or in “**good faith**” if executed and thereafter duly registered, then the sale would be considered as a valid sale and also transfers the legal right, interest and title of the property to the purchaser.

Where in the case of *Vidyadhar v. Manikrao*,³⁶ the Supreme Court held that “price paid or promised or part paid and part promised” indicates that payment of the whole of the price at the execution of the sale deed and is not *sine qua non* for completion of the sale. Even if the whole of the price is

³⁵ *Ramesh v. Kasi Rao @ Kasi Prasad and Anr*, 2003 51 BLJR 549

³⁶ (1999) 3 SCC 573



not paid, but the document is executed, and thereafter, registered, the sale would be complete, and the title would pass on to the transferee under the transaction. The transaction having been executed through a registered instrument, was in the public domain, and in the knowledge of the vendor right from the beginning. The non – payment of part of the sale price would not affect the validity of the sale. Once the title of the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground. In order to constitute a “sale”, the parties must intend to transfer the ownership of the property, on the agreement to pay the price either in present or in future.

The intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record. In regard to this we just need to observe that the vendor has already agreed to the transfer and where the appearance of the parties clearly states the interest of the vendor to sell the property to the purchaser and anyhow this not brought into to the dispute. The only dispute now sought to be raised is that the vendor has not received the entire sale consideration or part of sale consideration is not paid and where this does not provide a ground for cancellation of the sale deed.

The remedies lie with regard to the non-payment of sale consideration is only for recovery of sale consideration but the vendor cannot seek for cancellation of the registered sale deed.

CONCLUSION

A sale deed plays a vital role in process of transfer of an immovable property and where the deed acts as an evidencing instrument in regard to transfer of right, interest and title of the property. The intention of the parties can

be clearly gathered in regard to the averments in the sale deed itself or by other occurrences. It is the responsibility of the buyer to ensure the title of the property and also to check whether any encumbrance on the property and check the status of the property at the sub-registrar’s office before the execution of the sale deed. The remedies lie with regard to the non – payment of sale consideration in a conditional sale deed, the vendor is at his liberty for cancellation of sale deed and in case of good faith if the vendor has delivered the possession on date of sale deed he has the authority for re-delivery of the possession from the purchaser. In regard to non – conditional sale deed of sale consideration the remedies lie with vendor is to only seek for recovery of the balance amounts and cannot seek for cancellation of the registered sale deed.

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