BLOGS

Sale under Transfer of Property Act

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‘**Sale**‘ under TPA is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Following are the essentials of a valid sale under TPA:

1. The seller must be a person competent to transfer. The seller should be either the owner of the property or should have the authority to dispose of it.
2. The buyer must be a person competent to the transferee.
3. The subject matter must be a transferable immovable property which can be tangible or intangible.
4. There must be a transfer of ownership
5. The transfer must be in exchange for a price. ‘Price’ in the ordinary sense connotes money consideration for the sale of the property. The price must be paid or promised or partly paid.

Sale under TPA how effected

There must be a registered conveyance in the case of i) tangible immovable property of the value of Rs. 100 and upwards; ii) a reversion or other intangible thing of any value. Generally, a sale takes place via a validly executed sale deed which is in writing, properly attested and registered.

In case of property of nominal value, the sale of the property could be completed by simple delivery of possession of such property or by a registered instrument. If there is no registration of the sale deed, no property passes as there is no transfer.

Contract for sale

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property. Thus the title in the property passes only upon the delivery of possession or registration of the document. In a contract for sale, some equities do arise in favour of the transferee.

The distinction between sale and contract of sale

1. A sale under TPA of immovable property is a transfer of ownership. A contract for the sale of immovable property is a mere agreement that a sale of the property is to take place in the future on terms settled between the parties
2. A sale under TPA creates a right in rem. A contract for sale creates a right in personam.

Rights and liabilities of buyer and seller.

In the absence of a contract to the contrary, the buyer and the seller of the immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following or such of them as are applicable to the property sold-

1. The seller is bound-

(a) to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

(b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

(c) to answer to the best of his information all relevant questions put to him by the buyer with respect to the property or the title thereto;

(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;

(f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and,except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing.

1. The seller is entitled-

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.

1. The buyer is bound-

(a) to disclose to the seller any fact as to nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

(b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs. **Provided** that, where the property is sold free from encumbrances, the buyer may retain out of the purchase money the amount of any encumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

(c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

(d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal money due on any encumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

1. The buyer is entitled-

(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in the value of, the property, and to the rents and profits thereof;

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contractor to obtain a decree for its rescission.

Marshalling by the subsequent purchaser

If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is, in the absence of a contract to the contrary, entitled to have the mortgaged-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgagee or persons claiming under him or of any another person who has for consideration acquired an interest in any of the properties.

Rule of marshalling does not apply between two purchasers, but where out of the two mortgaged properties, one is sold to a purchaser free from mortgage. And second, is sold to another purchaser subject to the mortgage, the first purchaser can marshal and require the mortgagee to proceed against the property in the hands of the second purchaser.

The subsequent purchaser can claim the right of marshalling

only if the interest of the prior mortgagee or persons claiming under him or any other person who has for consideration acquired an interest in any of the properties is not affected thereby.

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