
A CRITICAL ANALYSIS OF SECTION 54 OF THE TRANSFER OF PROPERTY ACT: OF SALES OF IMMOVABLE PROPERTY

Mahima Kumari, Chanakya National Law University, Patna

ABSTRACT

Property Law in India is regulated by Civil Procedure code and Transfer of Property Act. Property Law in India encompasses different legislations taken from different judgements, case laws, disputes over property, ownerships, transfer, rights etc. This Article attempts to critique different aspects of sales of immovable property which is mentioned in Section 54 of the Transfer of Property Act. This Article explains the provisions related to sale, essentials of a valid sale, transfer of ownership etc. The Author attempts to examine different judicial interpretations to elucidate the ambiguities that have arisen in the application of section 54 over the period of time. Overall, the critical analysis of the article will help the readers to get deeper understanding of property transaction as the author has explained the section 54 of the Transfer of Property Act by providing different case laws, judgements of courts.

1. INTRODUCTION

The Transfer of Property Act was first introduced under the British Legislation. Before 1882, there were specific provisions for the transfers by operation of law and transfer of movable property by the parties but there was no provision for transfer of immovable properties by the act of parties. Transfer by act of parties means the transfer which take place between the two parties and the transfer by operation of law includes transfer under will, inheritance and by an order of court. The main object of the Transfer of Property Act, 1882 was to give a definite meaning and make some amendments to the existing rules related to transfer of property between the parties. Before the act came into existence, the courts gave their decisions on the basis of equity, justice and good conscience and the judges were free to give their own interpretations while delivering the judgements. Therefore, their decisions were not uniform and the case laws became conflicting and confusing due to which a clear, certain and uniform law for the transfer of immovable properties were required in India¹.

Section 54 of the Transfer of Property Act defines Sale as a “transfer of ownership in exchange of a price paid or price promised to be paid”. The essential elements constituting a sale of property are transfer of ownership and money consideration. Further, a valid sale includes two parties, seller and purchaser, existence of an immovable property, money consideration i.e. seller must receive some money in exchange of transfer of property to the buyer. The section further explains the mode of transfer, registration of sale deed. The subject matter of the sale is an immovable property which is either tangible or intangible, defined in section 3 of the Transfer of Property Act. Accordingly, the immovable property includes land, benefits arising out of lands and the things attached to the earth.

2. RESEARCH METHODOLOGY

The Researcher has relied on the traditional approach of using primary sources like Books, Journals, Blogs etc. Sources like different property law books, online websites, Journals to understand the topic and further present.

¹ DR. R.K. SINHA, THE TRANSFER OF PROPERTY ACT 1-3 (22nd ed. 2023).

3. LITERATURE REVIEW

From the book titled “Mulla on Transfer of Property act” by HR Khanna and PM Bakshi, the author of the present paper read the section 54 in order to get a basic understanding of the term sale, immovable property, essentials of a valid sale etc.

From the book titled “ The Transfer of Property Act ” by Dr. R.K. SINHA , the author has followed the synopsis of the book to present the article in a proper and concise form for the reader to gain clarity on the topic.

From the book titled “ The Transfer of Property Act ” by Dr. Avtar Singh , the author has read sub- sections of the section 54 and presented the article in the simple and understandable form and the author has collected all the case laws presented in the paper for a better understanding of the topic.

From the website “ The NoBroker Times ” the author has understood the difference between The Transfer of Property Act and Indian Contract Act.

4. ANALYSIS

4.1 Section 54 – “ Sale ”

Sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised². The ownership is transferred in exchange of a consideration and such consideration is of monetary value. There is an absolute transfer of rights of a property to the transferee and no right is left with the transferor. When a sale happens, two elements are necessary, firstly the transfer of ownership and secondly, money consideration. As the transferee makes the payment to the transferor, all the rights of a property is transferred to the transferee. In order to understand sale , there has to be a distinction made with mortgage, lease and hire-purchase. In mortgage, there is a transfer of interest. In lease, there is a transfer of right to enjoyment of property and in hire-purchase, transferee is given the right to terminate the agreement. Whereas in sale, transfer of ownership is essential in consideration of a price.

² DR. AVTAR SINGH, THE TRANSFER OF PROPERTY ACT 182 (LexisNexis 2019).

4.2 ESSENTIALS OF A SALE

The essential elements of a sale are –

- a. Parties
- b. Subject matter
- c. Money consideration
- d. Conveyance

There must be two parties for a valid sale and both the seller and purchaser must be competent to enter into the contract i.e. of sound mind and have attained the age of majority. The person transferring the property is called Transferor and the one purchasing the property is the Transferee. Transferor must be the owner of the property which he is selling otherwise it cannot be a valid sale. Transferee must not be disqualified by the law from purchasing the property. The Transfer of property act deals with the subject matter of immovable property only. The price is an essential element of a sale which must be ascertained. Adequacy of consideration is not a relevant factor for a valid sale. In the case of *Hakim Singh vs. Ram Snehi AIR 2001*³, it was held that even if the consideration is less than the market value of the property, it will be a valid sale⁴. Section 54 has given two modes of transfer of immovable property. Firstly, Delivery of possession which means transference of physical control of property to buyer. In the case of *Mohiuddin vs. President, Municipal Corp, Khargone*⁵, a piece of land was sold for less than 10rs with unregistered sale deed and there was no prove of physical possession of the property. The court held there was no transaction of the property⁶. Secondly, Registration of sale deed, says if the tangible immovable property is of value more than 100rs or intangible immovable property, it requires registration of sale for the completion of the sale. Registration of the sale is important as it accentuates the intention of the seller that he wants to transfer the ownership of the property.

³ Hakim Singh v. Ram Snehi, AIR 2001 All 231.

⁴ DR. AVTAR SINGH, THE TRANSFER OF PROPERTY ACT 187 (LexisNexis 2019).

⁵ Mohiuddin v. President Municipal Corp Khargone, AIR 1993 MP 5.

⁶ DR. AVTAR SINGH, THE TRANSFER OF PROPERTY ACT 189 (LexisNexis 2019).

4.3 SUIT ON THE BASIS OF ORAL SALE

The claim of a property on the basis of the oral sale is not recognised under law. There are only two modes of transfer which is recognised under the law i.e. delivery of possession and registration of sale.

4.4 CANCELLATION OF SALE DEED

Transferor cannot cancel a sale deed unilaterally once registered by executing a deed of cancellation. If the transferor wants to cancel a sale subsequent to the registration, he will have to approach civil court under the specific relief act, 1963 or he has the option of buying back the property from the transferee.

4.5 CONTRACT OF SALE

It means that the contract sale of immovable property shall take place according to the terms agreed to by both the parties. Every sale contains a preceding contract of sale and upon its execution, the property is transferred from transferor to transferee. In order to have an evidence and permanent proof of their intention, they enter into an agreement that the property would be sold to the other contracting party and to nobody else. This agreement is called contract for sale⁷.

In *Jagan Nath vs. Jagdish Rai*⁸, there was an agreement to sell an immovable property to a person (P1). Subsequently, the owner entered into another agreement to sell the same property to another person (P2). It was established that the subsequent purchaser is a bona fide purchaser for value without notice of earlier, agreement. The supreme court held that P1 would not be entitled to any relief of specific performance against P2⁹.

4.6 DIFFERENCE BETWEEN SALE AND CONTRACT OF SALE

- In Sale, there is a transfer of ownership in exchange of price paid or promised to pay whereas in a Contract of sale, there is a contract between the parties that

⁷ DR. R.K SINHA, THE TRANSFER OF PROPERTY ACT 246 (Central Law Agency 2017).

⁸ *Jagan Nath v. Jagdish Rai*, AIR 1998 SC 2028.

⁹ DR. R.K SINHA, THE TRANSFER OF PROPERTY ACT 246 (Central Law Agency 2017).

the sale will take place on the agreed terms.

- In sale, there is a transfer of ownership to the transferee with immediate effect but in a contract of sale, it does not create any interest or charge on the property in question.
- In both, there is an underlying contract as no transfer can take place without an express or implied contract.

4.7 DIFFERENCE BETWEEN SALE AND EXCHANGE

- In sale, there is a transfer of ownership in exchange of a price paid or promised but in exchange, there is a transfer of ownership of one property in exchange of transfer of ownership of another property.
- In sale, consideration is money but in exchange, the consideration is property. There is an absolute transfer of ownership in both.

4.8 DIFFERENCE BETWEEN SALE AND GIFT

- In sale, money is the consideration but in Gift, there is no consideration neither in terms of money or anything of any value¹⁰.

5. CONCLUSION

The motive behind writing the article is to give a basic understanding of section 54 of Transfer of Property Act to the readers by providing different case laws. There are different issues which is addressed in the articles related to sale, parties involved, modes of transfers etc. By understanding section 54 of The Transfer of Property Act, both buyers and sellers can protect their rights and interests, facilitating smoother and legal transfer of property.

¹⁰ DR. R.K SINHA, THE TRANSFER OF PROPERTY ACT 249 (Central Law Agency 2017).

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