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**ANALYSIS OF SECTION 54 OF THE TRANSFER OF PROPERTY ACT,
1882— DETERMINATION OF SALE THROUGH THE CRITIQUE OF
BANK OF INDIA VS ABHAY D NAROTTAM & ORS.**- Sarthak Chugh¹**Abstract**

Section 54 of the Transfer of Property Act of 1882 deals with the concept of Sale. It has been defined as a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. 'Sale' implies an absolute transfer of rights. The term 'transfer of ownership' used in the section above denotes the basis of Sale. This paper aims to not only define the concept and nuances of Sale in granularity but also to view it through the lens of a landmark case on the differentiating terms of 'Sale' and 'Contract for Sale', both of which are a product of Section 54 of the Transfer of Property Act. Under the Act, only transferable immovable property can be the subject matter of a sale. Furthermore, the transfer of an immovable property may be tangible or intangible. A tangible right can be understood in the context of what can be felt by the senses and usually pertains to properties like lands, buildings, constructed structures, etc. On the other hand, intangible rights are activities carried out on an immovable tract of land but have secondary benefits that can be transferred. The most common example is the right of fisheries and mortgage debt.

Introduction**What is Sale?**

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The Oxford Dictionary of Law defines² *Sale* as a contract involving the Sale of goods or a similar contract involving the transfer of land.

By definition, it becomes clear that Sale is envisaged to include all such contractual transactions involving a voluntary transfer of goods, land, or both.

Section 4 of the Sale of Goods Act, 1930³ defines such a contract as a contract of Sale of goods whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of Sale between one part-owner and another.

This definition goes further than those above one and ropes in two fundamental prerequisites for a fulfilled and lawful sale- the presence of two or more persons and determining a price or consideration to effectuate the Sale.

Consequentially, Section 54 of the Transfer of Property Act of 1882⁴ further broadens the scope of Sale and defines it as a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. This provides the most appropriate definition of Sale as it brings the added concepts of differentials in price and the exchange of ownership into its purview.

In the general understanding of 'Sale' for a layperson, it includes a change in the hands of the ownership of a particular good or commodity, whether movable or immovable, for which a specified price is paid by the receiver of such good or commodity. For instance, A approaches B to buy his mobile phone for Rs. 50,000. B agrees. The mobile phone is now the property of A, for which B received the price above as a consideration. However, the Transfer of Property Act of 1882 (hereafter referred to as the Principal Act) recognises only the Sale of immovable property in Section 54.

Section 3 of the Principal Act⁵ provides a negative interpretation of immovable property as it does not include standing timber, grass or growing crops. However, to best understand what can

²Jonathan Law, Oxford Dictionary of Law 607 (9th Edition 2018).

³Sale of Goods Act, 1930, No. 3, Acts of Parliament, 1930 (India).

⁴Transfer of Property Act, 1882, No. 4, Acts of Parliament, 1882 (India).

⁵*Ibid.*

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be constituted as immovable property and thus be included under the aegis of Section 54, we must consider all such objects attached to the Earth. This would include trees and shrubs that rotted inside the Earth, minerals and precious stones found embedded in the Earth, and, more famously, the vast swathes of land that are the foundation of the Earth. Therefore, a sale between two or more persons to transfer the ownership of a property or land in exchange for a price in consideration is the most pertinent and essential example of the meaning of Sale under the Principal Act.

Determination of Immovable Property and the Right to Perform a Sale

To understand the context in which a particular immovable property has been referred to in a case determines its type. This case-to-case basis of recognising the property type was formulated in *Jagdish v. Mangal Pandey*.⁶ The issue before the Court was to decide whether the trees found on any piece of land were movable or immovable objects. The Court summarily opined that the intention matters more than an objective classification. If the intention was to cut the tree, it is a movable object; however, if it is to let it remain attached and rooted to the Earth, the tree forms an immovable object. In the words of the Hon'ble Judge N. N. Mithal of the Allahabad High Court:⁷

"From the above, one thing would be obvious that in the larger definition of "immovable property", a thing attached to the Earth would normally be treated as immovable property, and a tree which is attached to the Earth and seeks its nourishment and sustenance from the soil in which it stands will be deemed to be attached to the Earth with the only distinction that if it was the tree of a kind which is usually used as timber and was of sufficient size so as it could be used as such and is intended to be severed from the soil reasonably after that, it might be treated to be immovable property. Therefore, apart from the size of the trees, the relevant consideration would be whether to cut the tree or to let it remain attached to the Earth. In the former case, it will be termed as "standing timber", while in the latter, it must remain immovable property."

⁶AIR 1986 182.

⁷*Ibid* (Para. 12).

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Furthermore, where a thing has been permanently attached or affixed to the ground so that it becomes impossible to remove the object without harming the attachment or the ground beneath it, such a thing will be immovable. This includes doors, ceilings, windows and fans. The very basis of differentiation between a movable and immovable property is the ability to extract the property from its attachment without causing profound damage to its foundation and structure. Suppose there is relative ease in its separation from the attachment. In that case, it will be a movable object (not governed by the provisions of Section 54 of the Principal Act and outside the jurisdiction of the Act). However, if it does cause harm and is relatively difficult to separate, it will be treated as an immovable object and within the provisions of Section 54 of the Principal Act.

The intention plays a minor, yet essential, part in determining the property type. Where the object is to fix the attachment permanently or for a sufficiently long period, the presumption will be that it has become a fixture, but if the intention was to enjoy the attachment for a specific short duration and then to remove it, the presumption will be that it is still a chattel.⁸

In *Municipal Corporation of Greater Bombay and Ors. v. Indian Oil Corporation Ltd*⁹, the Court had to consider whether a petrol tank, resting on Earth on its weight without being fixed with nuts and bolts, had been erected permanently without being shifted from place to place. The Court considered the Test of permanency to evaluate. The Test considers two situations: if the chattel was movable to another place of use in the same position or if it was liable to be dismantled and retracted at a later place. If the chattel was movable to another place of use in the same position, it must be a movable property. However, if it were liable to be dismantled and retracted later, it would be treated as permanently attached to the Earth.

Essential Elements of Sale

Parties to the Sale

⁸Reema Nayak, Analysis of Movable and Immovable Property as per the Transfer of Property Act 1882, Prime Legal (Sept. 25, 2023, 4:52 PM) https://primelegal.in/2023/09/03/analysis-of-movable-and-immovable-property-as-per-the-transfer-of-property-act-1882/#_ftnref8.

⁹1991 AIR 686.

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As discussed above, for any sale to be considered lawful, there must be two parties— the seller or the vendor and the buyer or the vendee. The former owns the property, to be transferred to the latter, who, in turn, has to pay the price or give consideration to receiving the property from the former. Further, there must be the satisfaction of the following two pivotal and essential clauses to ascertain the legitimacy and eligibility of the two parties to act as the vendor and the vendee, respectively:

- a) Both the parties must be competent to contract under Section 11 of the Indian Contract Act, 1872¹⁰, i.e. those who are of the majority age, not of an unsound mind and not disqualified from contracting, and
- b) The seller must be competent, separately, to transfer the property under Section 7 of the Transfer of Property Act, 1882,¹¹ i.e. the person must either have the title or the authority over the property to transfer it.

Subject Matter of Sale

Under the Principal Act, only transferable immovable property can be the subject matter of a sale. That is to say that no movable property will be considered a subject of concern under the provisions of the Principal Act. Furthermore, the transfer of an immovable property may be tangible or intangible. A tangible right can be understood in the context of what can be felt by the senses and usually pertains to properties like lands, buildings, constructed structures, etc.

On the other hand, intangible rights are activities carried out on an immovable tract of land but have secondary benefits that can be translated. The most common example is the right of fisheries and mortgage debt.

Consideration of Price

Price is defined as the sum or amount of money or its equivalent, which a seller asks or obtains for market goods- the exchangeable value of a commodity's price is the value a seller places upon his goods/property for Sale. It is the consideration for which anything is proposed to be

¹⁰Indian Contract Act, 1872, No. 9, Acts of Parliament, 1872.

¹¹*Ibid.*

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bought or sold. Price can be differentiated from money in understanding the crux of Section 54 as "price" is a wide-ranging term used to signify any amount that can be ascertained and worked out in terms of money, such as outstanding debts. Price is fixed by the parties to the property transfer before the transfer is completed and is an ascertained sum in the contract of Sale. Anything other than money cannot be held to be considered as falling under the definition of price as envisaged under Section 54 of the Principal Act.¹²

An essential point in consideration of price as an element of transfer is that the parties can enter a clause in the contract that they wish to defer the payment of the consideration to a later date (one which corresponds to the date of the receiving of the possession of the property or at any other date as mutually convenient and decided). There shall be nothing contrary to the letter of the law in this regard.

In *Umakanta Das v. Pradip Kumar Ray*¹³, a stipulation in a sale deed that the price will be paid within one year, provided that 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 event of the vendee not getting the property, the price will not be paid at all. In all the above cases, the deed is a sale deed within the meaning of the section.

However, such a postponement or deferment of the payment must not validate or legitimise any payment of consideration done via unfair means or a dishonoured cheque. Such transactions, whether done before the possession of the property or upon it, shall render the transfer invalid and null. Opening on a landmark case¹⁴ on this topic, the Hon'ble Judge of the Punjab and Haryana High Court propounded that¹⁵

"It is no doubt true that Section 54 of the Transfer of Property Act defines Sale to be a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised, but from

¹²Dr. S. R. Myneni, Law of Property- Transfer of Property, Easements and Wills 303 (2nd Edition, 2022).

¹³A.I.R. 1983 Ori 196.

¹⁴80 Punj L.R. 41.

¹⁵Ibid (Paragraph 8).

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this definition, it does not follow as a matter of course that even if a transferee deceives a transferor and leads him to execute a document based on a false statement, the document should be held to constitute a valid transfer of the title of the property to the transferee who is himself a wrongdoer. If such a situation prevails, the transferees of property would be encouraged to give out false issuance in the hope of getting the property transferred in their names."

Analysis of the Modes of Sale and Determination of How Sale is Made

Section 54 of the Principal Act envisages two broad types of Sale:

- a) Sale by registered instrument and
- b) Sale by delivery of possession.

The first mode of Sale, by the registration of an instrument other than the sale deed, is used when the value of the tangible immovable property exceeds Rs. 100. In this mode of Sale, the legitimacy of the transfer of ownership shall not be held to be completed until the deed is registered. Prima facie, the sale deed will transfer the rights to the vendee.

On the other hand, delivery by possession is completed when the seller places or equips the buyer with the possession of the property, which may also be less than Rs. 100.

In the landmark case of *Mathura Prasad v. Chandra Narain*,¹⁶ the Privy Council held that there must be an accurate and not a constructive delivery of property. However, the delivery of property only amounts to a Sale if the parties to the Sale have decided otherwise. The Bench in the *vide* case also held that an accurate delivery of possession amounts to the property being received in the state and condition as was expressed to the vendee at the time of the Contract to Sale.

Therefore, it becomes abundantly clear that when the value of the property that is to be sold exceeds Rs. 100, then a registration is required. This registration must be done under the aegis of the Stamp Act, 1899¹⁷ and the Registration Act, 1908.¹⁸ The registration of the deed and its

¹⁶A.I.R. 1921 P.C. 8.

¹⁷The Stamp Act, 1899, No. 2, Acts of Parliament, 1899 (India).

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proper payment is a prerequisite for the legitimisation of the transfer of ownership from the vendor to the vendee. In a recent landmark ruling¹⁹ by the Supreme Court on the habit of parties evading the payment of stamp duty and registration fees to register their sale deed, the Court held that immovable property could be legally and lawfully transferred or conveyed only by a registered deed of conveyance. The Court further held that such transactions cannot be recognised as a valid mode of transfer of immovable property. However, while the Supreme Court held such transactions to be invalid, it also clarified that such observations were in no way intended to affect the validity of sale agreements executed in genuine transactions.²⁰

Sale and Contract for Sale as viewed through the ratio of Bank of India v. Abhday D. Narottam & O.R.S.

Contract for Sale

Section 54 of the Transfer of Property Act provides that:

"A contract for the Sale of immovable 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."

A contract for Sale, therefore, is such a contract that lays down specific terms and conditions which the vendee or the purchaser must accept. Unless such terms are accepted, there will not be any interest or charge on the property. In such an instance, the vendor is duty-bound to perform the transfer of ownership only if the contract's provisions are adhered to.

The essentials of a Contract for Sale are as follows:

a) There is an agreement between the buyer and the seller.

¹⁸The Registration Act, 1908, No. 16, Acts of Parliament, 1908 (India).

¹⁹Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana (S.L.P. (C) 13917/2009) .

²⁰Kirat Singh Nagra & Tanuj Bhushan, Supreme Court Clarifies Rules on Transfer of Immovable Property, Lexology (Sept. 26, 2023, 11:26 AM) <https://www.lexology.com/commentary/litigation/india/amarchand-mangaldas-suresh-a-shroff-co/supreme-court-clarifies-rules-on-transfer-of-immovable-property#1>.

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- b) The agreement is about a future sale.
- c) It does not create any interest in the property.
- d) It does not create any charge on the property.
- e) There must be a consideration in the price to be paid.

The Case in Question

In the present situation, it becomes pertinent to differentiate between Sale and Contract of Sale. The former involves a direct transfer of ownership in exchange for a consideration. However, in the latter, the transfer of ownership is contingent upon the satisfaction and the fulfilment of specific terms and conditions.

The video case of Bank of India vs Abhay D. Narottam involves such an agreement to transfer, and the question which was before the Hon'ble Court to consider was whether such an agreement to transfer creates an interest in the property itself or whether it merely indicates a future possibility of there being a transfer of ownership?

The facts of the case were that the Respondent had removed two sets of debt from the appellant bank. The first was an overdraft on his account, the dues of which were attaining interest but were unpaid at the time of the institution of the suit, and separately, another set of debt was a loan of money against which the Respondent had mortgaged his land. The case primarily deals with the inability to repay dues. However, it has an underlying question of to what extent a promise or an agreement to sell can be considered collateral to a debt. The Respondent had two sets of properties the suit and the Court brought into doubt.

The first was the mortgaged piece of land for the loan that the appellant bank issued. The second was an apartment flat that was merely promised or agreed to be sold to the Respondent by a third person. However, the transfer of the title deed or any other ownership documents, let alone the deed's registration, had yet to occur. Answering the validity of the two tracts of property, the land and the flat, the Hon'ble Justices Ruma Pal and C. K. Thakkar opined in the 6th paragraph of the decree:

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"The Court held that so far as the flat was concerned, there was no prior charge created in favour of the appellant Bank as there had been no charge registration under Section 125 of the Companies Act, 1956. As far as the land was concerned, it was held that since there was only an undertaking to create a mortgage by Respondent, there was no question of the land being security created in favour of the appellant Bank by Respondent 2." ²¹

The reasoning of the Court is different in terms of understanding the basis of Sale and Contract of Sale as envisaged under Section 54 of the Transfer of Property Act. It says that an agreement to Sale does not create a charge or an interest to Sale, i.e., it does not fixate the parties to the contract to go forward with the transaction mandatorily. It merely creates a future interest which is contingent upon the fulfilment of the underlying terms and conditions.

The debt-ridden Respondent was relieved of discharging both the properties to the Appellant Bank when the Hon'ble above Justices provided their ratio decidendi in Paragraphs 10 and 11 of the decree as:

"10. Regarding the land, we agree with the learned Judge that a mere undertaking to create a mortgage is insufficient to create any interest in any immovable property.

11. As far as the flat is concerned, it needs no authority to say that a contract for the Sale of immovable property does not create any interest in or charge over such property. This is provided in Section 54 of the Act and is well-settled law. In this case, the agreement for Sale, which Respondent deposited with the appellant Bank, was not an agreement by which Respondent agreed to sell the property to a third party but an agreement to sell the flat to Respondent. No interest was created in favour of Respondent by this agreement for Sale, which could have been transferred by way of security to the appellant Bank. There is no question of the appellant Bank having any charge over such non-existent interest."

Conclusion

²¹*Ibid.*

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Section 54 of the Transfer of Property Act goes further than only defining Sale; it talks about a lot of other nuances, and the analysis of that, as has been done in this paper, is fundamental to have a holistic understanding of the concept of Sale, Contract for Sale and how crucial a role the parties play in the transfer of ownership. It also becomes pertinent to understand the duties of the buyer and the seller. As has been discussed before, the competency is decided by the statutory obligations levied on the parties inter-se; however, there are underlying duties which govern the acts of both the vendor and the vendee. These duties are more in favour of the vendor since it becomes their responsibility to ensure consideration is received and the property changes the hands of ownership to ensure a legal and legitimate transfer.

The change of ownership can only occur when the registration of the title deed is done successfully. Even if the vendee is put in possession of the property and the consideration is received in terms of a fair monetary value, the title deed must be registered to effectuate a legal transfer.

For instance, A agrees to sell a house to B and, consequently, put B in possession. Subsequently, B paid the price, and the Sale was completed, but registration still needs to be made. Can A recover the house from B because the Sale is void? It was held that neither in law nor in equity can A claim the property and cannot rescind the contract. A must register the property.

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