Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

Scope of Passing of Property under Sales of Goods Act, 1930

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Received 26 September 2022; *Accepted* 08 October 2022; *Published* 18 October 2022

The phrase "passing of property in the goods" suggests that there will be a transfer of ownership in the items, which is a provision that has been made by the Sales of Goods legislation of 1930. When it comes to contracts for the Sale of goods and property, one of the most crucial concepts to understand is the transfer of ownership. It is beneficial to both the buyer and the seller in that ithelps identify their rights and liabilities. Even though the products are still in the seller's ownershipafter the property has been transferred to the buyer, the buyer is the party who is responsible for the risk associated with the items that have been sold. This article provides a general introductionto the concept of the Sales of Goods Act, 1930,[1] with particular attention paid to the transfer of property or ownership (sections 18[2] to 25[3]).

Keywords: *ownership, passing of property, sale*

INTRODUCTION

The laws that pertain to the purchase and selling of products are governed by the Sales of

[1] Sales of Goods Act 1930
[2] Sales of Goods Act 1930, s 18
[3] Sales of Goods Act 1930, s 25

Goods Act, which was passed in 1930. This regulation became effective on July 1, 1930, and it applies across India with the exception of Jammu and Kashmir. Its scope includes the entire country. It isexclusively concerned with movable property. The Sales of Goods Act which was passed in 1930,addresses a variety of different ideas, the selling or transfer of property being the most significantof these. The literal meaning of "passing of property" is the transfer of ownership of an asset in exchange for a predetermined payment. Only when the buyer receives the seller's permission to exercise their proprietary rights over the property does the ownership officially change hands. It isimportant to emphasize that the transfer of possession of things is not the same as the transfer of ownership of goods. Possession of goods indicates that the commodities are merely subject to physical control or custody, whereas ownership of goods means that the goods have legal rights. In accordance with the Sales of Commodities Act of 1930, the term "property" refers to a genericproperty in goods rather than a specific type of property. The contract of Sales revolves mostly around the transfer of ownership. As a result, it is essential to have a solid understanding of the important components and legalities that pertain to the transfer of property. As can be seen from the definition given above, the Act only applies to the Sale of goods, often known as movable property. On the other hand, the Transfer of Property Act of 1882[4] governs the Sale of real estate, often known as immovable property. It should be mentioned that the actionable claims as well as money are not included within the scope of the definition. Claims that can be pursued through legal action are known as "actionable claims," and they refer to debts or claims that can be collected on. For example, the recuperation of a refund is an actionable claim, but it is not encompassed within the scope of the term presented above. In addition, the products can be placed into a number of other categories.

GOODS UNDER SECTION 27 OF THE SALES OF GOODS ACT, 1930 (IN RELATION TO THE PASSING OF PROPERTY)[5]

The dictionary definition of goods is merchandise or property. The term "Goods" is one of the

[4] Transfer of Property Act 1882
[5] Sales of Goods Act 1930, s 27

most important clauses in the Sales Contract. Section 2(7)[6] of the Act defines "goods" as including the following: moveable property excluding money and actionable claims; Stock and shares; the growing crops, standing wood, and grass; Attached or forming a portion of the land that is agreedto be detached prior to the Sales. In State of Maharashtra v Champalal Kislal Mohta, it was determined that items attached to land are the subject of the Sales contract if they are severed priorto the Sales. For example, a resort was selling lodging and meals for a single price. The provisionof food does not fall under the definition of "goods" according to the Act, hence a reimbursementon food is not authorized if customers do not consume it. In terms of business law, the classification of products might be difficult to grasp. The goods are outlined in Section 6 of the Act. Existing, future and contingent goods are distinguished among the goods along with the rules of the passing of property.

Existing goods: [3] According to Section 6 of the Sales of Goods Act of 1930,[7] existing goods are defined as those that are extant (in existence) at the time a contract is formed. Existing products can be subdivided into the following categories: Specific Goods; Ascertained and Unascertained Goods.

Specific Goods: Specific goods, as defined by Section 2(14) of the Sales of Goods Act of 1930, are those goods that the buyer has expressly recognized and determined he desires to purchase at the moment the contract of Sales is formed. For instance, Deepak would like to sell his old guitar.He placed an advertisement in the local newspaper that included the vehicle's image, manufacturer,and other pertinent information. Deepak and Rahul enter into a contract after Rahul agrees to buythe guitar. The guitar is a Specific Good in this instance.

Ascertained Goods: Sales of Goods Act, 1930, sections 20[8] to 22[9] establish a set of rules that must be followed when transferring certain property. In the case of Agricultural Market Committee v Shalimar Chemical Works Ltd.,[10] the appellant and respondent contracted for the shipment of

[6] Sales of Goods Act 1930, s 2(7)
[7] Sales of Goods Act 1930, s 6
[8] Sales of Goods Act 1930, s 20
[9] Sales of Goods Act 1930, s 22
[10] *Agricultural Market Committee v Shalimar Chemical Works Ltd* (1997) 5 SCC 516

goodsfrom Kerala to Hyderabad. According to one of the contract's clauses, the seller is not responsible for any mishaps that occur after the shipment of the goods. Alternatively, the purchaser has insured the products. It was stipulated that the goods will be shipped to Hyderabad and paid for via the bank of Hyderabad. The court determined that the place of delivery and the method and timing ofpayment were irrelevant. The transfer of ownership occurs when goods are shipped out of Kerala.

Unascertained Goods: Uncertain products are those that are not identified in detail by the buyer atthe time the Sales contract is created. Deepak wants to sell 100 oranges from his 300 oranges, buthe does not specify which oranges. This is referred to as the Sales of unknown products. In Rhodes v Thwaites, A held a log of wood and contracted with B for the Sales of wood at a specific location. B accepted the offer and stated he would collect the items after measuring them. The property is transferred to B through A's appropriation and B's consent.

Future Goods:11 In accordance with Section 2(6) of the Sales of Products Act of 1930, future goods are defined as those that, at the time of contract formation, will be "made, produced, or acquired by the buyer." It will always be an "agreement to sell" and never a real Sale when future goods are sold. For instance, Deepak has oranges in his orange grove. He offers to sell 500 oranges to a customer when the fruit is ready for Sale. This sale will occur in the near future. However, the products have been recognized in conjunction with the Sales agreement. Future products refer to such items. In the case of Union of India v K.G. Khosla & Co. Ltd,12 items were produced according to the contract's specifications. Therefore, the products qualify as "future goods" underthe Act's Section 2(6).

Contingent Goods:[13] Section 6(2) defines contingent goods as those whose Sales are reliant on theoccurrence or non-occurrence of specific circumstances. For example, 'A' has promised to sell certain items to 'B' on a specific day if 'A' receives the goods from the manufacturer before the agreed-upon date. These goods are known as contingent goods because this agreement is

[11] Sales of Goods Act 1930, s 2(6)
[12] *Union of India & Anr v KG Khosla & Co (P) Ltd & Others* 1979 SCR (3) 453
[13] Sales of Goods Act 1930, s 6(2)

contingent on certain conditions.

RULES OF PASSING OF PROPERTY[8]

Principles governing the transfer of property in goods (sections 18-25): the general rules governing the transfer of property in goods are as follows:

- Ascertainment of goods (section 18): the seller cannot transfer ownership of the goods to the purchaser if the Sales contract is for ascertained goods.

- The parties' purpose (section 19(1)[14]): ownership of the goods passes to the buyer when both parties intend to do so. In order to determine the parties' intent, the provisions of the contract, thebehavior of the parties, and the surrounding circumstances must be reviewed.[15]

Specific Goods: According to sections 20-22, the following rules govern the transfer of property in specified goods:

- Goods in the deliverable state (section 20): A state in which a buyer is obligated to accept deliveryof the products is known as a deliverable state. When a contract for the transfer of property in thegoods is unconditional, the transfer of property in the goods is deemed to have occurred at the timethe contract is made.

- Goods to be put in the deliverable state (section 21[16]): in certain contracts, the seller is required to dosomething to the goods in order to put them in a deliverable state; the property in the goods is notdeemed to have been transferred until such action is taken and the buyer is notified of the same.

- Price of goods determined by weighing (section 22): where the price of the species is to be determined by weighing, measuring, or some other method, the property in the goods

[14] Sales of Goods Act 1930, s 19(1)
[15] L Vold, 'How Far Possession Overrides Intention in Sales of Goods' (1931) 35 Dickinson Law Review
[16] Sales of Goods Act 1930, s 21

is said to have passed unless such weighing, measuring, or method is used to determine the price and the buyer is given notice of the same.

Unascertained Goods: Section 23[17] of the 1930 Sales of Goods Act, specifies the rules governing the transfer of property for unascertained goods. There are two conditions that must be met for thetransport of unidentified goods:

1) The goods must be transformed into a certain property; the sellermust distinguish the goods and set them aside to avoid ambiguity. The buyer is to be provided withprecisely chosen items. This is a unilateral act in which the seller takes the initiative.

2) Goodsmust be appropriated to the contract; an appropriation occurs when the goods are set aside with the agreement of both buyer and seller. This is a bilateral act in which both parties make the samechoice.

Goods sent on approval basis (section 24[18]): When the goods are delivered to the buyer on specificterms, such as 'approval', 'Sales on return,' or any other similar term, the property is said to be transferred when:

a) the buyer indicated his approval or acceptance to the seller;

b) the buyer actsin a way that indicates acceptance of the transaction, and

c) the buyer retains the goods even afterthe expiration of the fixed period.

Transfer of risk (section 26[19]): Unless the property is transferred to the buyer, the seller retains ownership of the products until the risk of loss or damage has passed. Whether or not the productshave been delivered, the buyer assumes all risk as soon as ownership is transferred. However, if delivery is delayed owing to either party's fault, the risk falls on the party at fault. Consequently, 'property' and 'risk' occur concurrently.[20]

[17] Sales of Goods Act 1930, s 23
[18] Sales of Goods Act 1930, s 24
[19] Sales of Goods Act 1930, s 26
[20] Rizwan Hussain, *Passing of Property and Risk in Sales of Goods* (2013)

SIGNIFICANCE AND SCOPE OF PASSING OF PROPERTY UNDER THE ACT OF 1930

When the buyer tenders the price or the seller agrees to provide the products on credit, it is commonfor commercial practices to allow the buyer to gain possession from the seller. If the buyer actually possesses the items prior to payment, he is declared bankrupt. If the buyer acquires the property, the seller becomes an unsecured creditor. Nonetheless, if a property has not been transferred, the seller may enforce his rights in rem (property rights) and return his goods. This can be done underthe condition that the seller retains title and property and is simply to transfer payment; the seller is thus able to retrieve the items in the event that the buyer becomes insolvent. When the seller falls insolvent before delivering the products for which the buyer has paid, the transfer of ownership is also crucial. If the ownership of the products has been transferred to the buyer, the buyer's rights appear to be enhanced. It must be mentioned that in the majority of cases, the risk associatedwith the goods goes with the ownership. Until ownership has transferred, the seller has no right tosue for the price of the items. However, if the buyer refuses to accept delivery or cancels the contract prior to the transfer of ownership, the seller may only claim for non-acceptance damages.[21]

As a result of the transfer of property, both the seller and the purchaser have recourse against a third party who has harmed or destroyed the items. However, property alone will rarely prove decisive. Typically, it is coupled with a possession right or a contractual right against a third party. For goods damaged at sea, the person who may file a lawsuit is the holder of the bill of lading, who has contractual rights both against the shipowner and the commodities. The House ofLords has determined that a property interest is required in order to bring a tort case against third parties. Tracing also demonstrates the significance of the transfer of property. This privilege arisesas a result of the Romalpa case, which allows the seller to obtain an equitable right to trace the revenues from the buyer or subsequent recipients if the buyer sells products of which the seller retains ownership.[22]

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[21] Praful R Desai, 'The Sales Of Goods Act 1930' (1992) 34 JSTOR 149-151

[22] 'Analysis of passing of property in contract' (*Legal Service India*) <https://www.legalserviceindia.com/legal/article-9008-analysis-of-passing-of-property-in-contract.html> accessed 25 September 2022

CASE LAWS UNDER PASSING OF PROPERTY

In Hoogly Chinsurah Municipality v Spence Ltd,[23] Hoogly Chinsurah Municipality agreed with Spence Ltd to purchase a tractor on the premise that it would reject the tractor if it was not satisfied.The municipality possessed the tractor for a month and a half before rejecting it. The lawsuit wasbrought due to Spence Ltd.'s refusal to accept it. The court ruled, in dismissing the appeal, that themunicipality had not only used the tractor for a fair period of time but had also used it. Therefore,the municipality now owned the tractor, and they could no longer reject it.

In the case of Multanuak Chempalal v C.P. Shah & Co.,[24] Section 26 of the Sales of Goods Actof 1930 was examined, and it was determined that the risk does not pass until after the property has been transferred. Thus, the parties may engage in a contract that stipulates the transfer of risk prior to the transfer of property.

In Badri Prasad v State of Madhya Pradesh,[25] the appellant entered into a contract regarding specific Madhya Pradesh forests. He was permitted to cut teak trees with a girth of more than 12 inches. After the passage of the Abolition of Proprietary Rights (Estates, Mahals, and Alienated Lands) Act, the appellant was unable to use his contractual right to cut down trees.

He filed a lawsuit seeking particular execution of the contract based on the following grounds:

- The State did not acquire ownership of the forest and trees under the Act;
- Even if they had vested, the standing timber sold to the appellant never vested in the State;

Regardless, a new contract was executed on February 5, 1955, and the appellant is entitled to its specific performance. According to the Act, the court ruled that the forest and trees belong to the state. The plaintiff was permitted to cut down teak trees with a girth of more than 12 inches. However, it was necessary to determine which trees will fall into that Description.

[23] *Municipal commissioners of the hooghly chinsurah municipality v Spence ltd* AIR 1978 Cal 49
[24] *Multanmal Chempalal v CP Shah & Co* AIR 1970 Kant 106
[25] *Badri Prasad v State of Madhya Pradesh & Anr* 1970 AIR 706

According to Section 9 of the Sales of Goods Act, they will not be deemed goods until this is determined.

CONCLUSION

The Sales of Products Act of 1930 provides information on a few different perspectives about the transfer of property that takes place throughout the course of a contract relating to the Sales ofgoods. The parties to a contract are provided with a number of guiding principles under the Salesof Goods Act of 1930, which are used to determine the buyer's and seller's respective rights and responsibilities. When the goods are transferred from the seller to the buyer, this symbolizes the transfer of ownership from one party to another. This is an entirely different idea than that of having possession of things, which solely refers to having custody of the items in question. Underthe terms of the Act, the buyer might become liable for the loss or damage of the products even before he becomes the owner of them. This is the case in situations in which the risk passes to thebuyer before the property does. On the other hand, if the delivery of the goods is delayed due to the fault of the seller or the parties otherwise agree for the risk to transfer subsequent to the transferof property, then the seller is still liable for the loss and damage of the goods even after he has lostthe ownership of the goods. This is the case even if the parties otherwise agree to the risk to transfer subsequent to the transfer of property.