

Unit-3

Transfer of title

Nemo dat quod non habet- S. 27

The general rule relating to the transfer of title on sale is that “the seller cannot transfer to the buyer of goods a better title than he himself has.” If the title of the seller is defective, the buyer’s title will also be subject to the same defect. Section 27 lays down to the same effect and provides that “where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had...” This rule is expressed by the maxim “nemo dat quod non habet”, which means that no one can give what he has not got, i.e., a seller cannot convey a better title than that of his own. When the seller himself is the owner of the goods which he sells or he is somebody’s agent to dispose off the goods, he conveys a good title in the goods to the buyer. Difficulty arises when the seller is neither himself the owner nor has he any such authority from the owner to sell the goods. E.g., a person finds goods lying on the road and sells them, or a thief sells the goods after he has stolen them, or a person purchases the goods on credit or hire-purchase basis and disposes them off, or a person continuing in possession of the goods which he has already sold resells the goods. The question which in such cases arises is: Should the rights of the owner of the goods be protected and he be entitled to recover back the possession of the goods from one to whom they have been sold, or, should the buyer, who might have bought them in good faith and for value be protected and allowed to retain the goods defeating the rights and the title of the real owner?

In regard to this question, the general rule contained in section 27 is as follows:

Subject to the provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had...

Section 27, as a general rule, tries to protect the interest of the true owner when it provides that where the goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had. This rule is a manifestation of the maxim “nemo dat quod non habet”, which has been already explained above. If the title of the seller is defective, the buyer’s title will also be subject to the same defect. This rule does not imply that buyer’s title will always be a bad one. What it means is that the buyer cannot acquire a superior title to that of the seller. If a thief disposes of stolen goods, the buyer of such goods has the same title as the seller had. Similarly, where a person taking goods on hire-purchase basis sells them before he had paid all the instalments, the owner can recover the goods from the transferee, on default of payment, in the same way as he could have recovered them from the person to whom they had been given on the hire-purchase basis.

Exceptions to the rule

The above stated general rule contained in section 27, as stated in the opening words of the section itself, is “subject to the provisions of this Act and of any other law for the time being

in force.” Various exceptions to this rule have been mentioned in this Act and the Indian Contract Act and in those exceptional situations, the seller of the goods may not be having a good title to the goods, yet the buyer of the goods gets a good title to them. The exceptions are as follows:

1. Sale under the implied authority of the owner, or transfer of title by estoppel (S. 27)
2. Sale by a mercantile agent (proviso to S. 27)
3. Sale by one of joint owners (S. 28)
4. Sale by a person in possession under a voidable contract (S. 29)
5. Sale by the seller in possession of goods, the property in which has passed to the buyer (S. 30(1))
6. Sale by the buyer in possession of the goods before the property in them has passed to him (S. 30(2))
7. Re-sale of the goods by an unpaid seller after he has exercised the right of lien or stoppage in transit (S. 54(3))
8. Sale by finder of goods (S. 169, Indian Contract Act)
9. Sale by a pawnee when the pawnor makes a default in payment (S. 176, Indian Contract Act)

1. Transfer of title by estoppel- S. 27

Generally, the owner of the goods can question the title of the transferee by contending that the seller did not have a right to sell the goods. Sometimes the law of estoppel may apply against the owner of the goods and he may not be allowed to deny seller’s authority to sell. The closing words of the rule contained in section 27 are as under:

Unless the owner of the goods is by his conduct precluded from denying the seller’s authority to sell.

As noted above, sometimes the law of estoppel may apply against the owner of the goods and he may be estopped from denying seller’s authority to sell the goods. In other words, because of application of rule of estoppel against him, he may not be able to assert that the seller of the goods did not have a right to sell and thus, the buyer may have a good title even though the seller of the goods did not actually have the right to sell them. When the owner of the goods by his act or omission makes the buyer to believe that the seller of those goods has a right to sell them, subsequently he cannot deny the existence of such a right in the seller.

In the words of Lord Halsbury: “Estoppel arises when you are precluded from denying the truth of anything, which you have represented as a fact, although it is not a fact.” In reference to sale of goods, estoppel may arise in any of the following ways:¹

¹ Pollock and Mulla- Sale of Goods Act and Partnership Act, p. 120.

- The owner standing by, when the sale is effected; or
- Still more, by his assisting the sale; or
- By permitting goods to go into the possession of another with all the insignia of possession thereof and apparent title; or
- If he has otherwise acted or made representations so as to induce the buyer to alter his position to his prejudice.

M, the owner of a wagon allowed one of his employees K to have his name painted on it. M did so for the purpose of inducing the public to believe that the wagon belonged to K. C purchased the wagon from K in good faith. C acquires a good title as M is estopped from denying K's authority to sell.²

2. Sale by a Mercantile Agent- proviso to S. 27

A mercantile agent means an agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods.³ Thus as a rule a mercantile agent having an authority to sell goods conveys a good title to the buyer. But by virtue of this proviso a mercantile agent can convey a good title to the buyer even though he sells goods without having any authority from the principal to do so, provided the following conditions are satisfied:

- He should be in possession of the goods or documents of title to the goods in his capacity as mercantile agent and with the consent of the owner;
- He should sell the goods while acting in the ordinary course of business;
- The buyer should act in good faith without having any notice, at the time of the contract, that the agent has no authority to sell.

In the case of *Folkes v King*⁴, F entrusted his car to a mercantile agent for sale at a stated price and not below that. The agent sold it to S, a bona fide purchaser, below the reserve price and misappropriated the proceeds. S resold the car to K, the defendant. Held, S obtained a good title to the car from the mercantile agent as he bought it in good faith and he thereby conveyed a good title to K and therefore F was not entitled to recover the car from K. In *Pearson v Rose & Young Ltd.*,⁵ the plaintiff gave possession of his motor car to Hunt, a mercantile agent, to know if the same could be sold. He did not actually authorise Hunt to sell the same. Hunt took the registration book relating to the car from the plaintiff by trick and then sold the car without the plaintiff's authority or knowledge. Hunt sold the car to X, X sold it to Y and Y sold the same to the defendants. The plaintiff sued the defendants to claim damages for conversion on the ground that Hunt had no authority to sell and, therefore, no good title could be passed to any subsequent transferee. It was observed that though Hunt got possession of the car as a Mercantile Agent but not the registration book. The sale of a second hand car without the registration book could

² O'Connor v Clark 170 Pa St. 318.

³ S. 2 (9).

⁴ (1923) 1 KB 282.

⁵ (1950) 2 All ER 1027.

not be considered to be “in the ordinary course of business”. It was held that for passing a good title, Hunt should have obtained the possession of the car as well as registration book with the consent of the owner, in the absence of which Hunt was not able to pass a good title to his transferee or the subsequent buyers.

It is also necessary that the mercantile agent must have obtained the possession of the goods or the documents of title in his capacity as a mercantile agent and not in any other capacity. If he is in possession in any other capacity, he cannot convey a good title. For example, if I am going out for a week and I leave my valuables with my neighbour for the purpose of safe custody and the neighbour, who also happens to be an auctioneer, disposes of those valuables by auction, the buyer will not acquire a good title to them because the seller did not get the possession in his capacity as a mercantile agent but as a neighbour or a bailee.

In *Staffs Motor Guarantee Ltd v British Wagon Ltd.*,⁶ Heap sold his lorry to the defendants and then took the lorry from the defendants on hire-purchase basis. Thereafter, Heap sold the lorry to the plaintiffs, falsely contending that he was the owner of the goods. Heap happened to be a mercantile agent. Heap defaulted in the payment of stipulated instalments. The defendants thereupon seized the lorry. The plaintiffs sued the defendants to recover back the lorry, contending that the plaintiffs had purchased the lorry from a mercantile agent and, therefore, they had a good title. It was held that Heap had taken the lorry from the defendants on hire-purchase basis, he was merely bailee of the lorry and not a mercantile agent and, therefore, the plaintiffs did not get a good title. Their action to recover back the lorry failed.

3. Sale by one of the Joint Owners –S. 28

If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them from such joint owner in good faith without notice of the fact that the seller has no authority to sell. It may be noted that in the absence of this provision the buyer would have obtained only the title of the co-owners and would have become merely a co-owner with the other co-owners. Hence the provision constitutes an exception to the rule- ‘no one can give what he has not got’. E.g., A, B and C are three brothers. They own a cow in common. B and C entrust the work of looking after the cow to A and leave the cow in A’s possession. A sells the cow to D. D purchases bona fide for value. D gets a good title.

4. Sale by a person in possession under a Voidable Contract- S. 29

According to section 19 and 19-A of the Contract Act, if the consent of a party to the contract has been obtained by coercion, fraud, misrepresentation or undue influence, the contract is voidable at the option of the party whose consent has been so obtained. Section 29 provides that if a person has obtained the possession of some goods under a contract which is voidable under section 19 or 19-A of the Contract Act and he sells those goods before the contract has been avoided by the party entitled to do so, the buyer of such goods acquires a good title to them. It is, however, necessary that such a

⁶ 1974 All ER 322.

buyer must have purchased the goods in good faith and without notice of the seller's defect of title. A, by misrepresentation induces B to sell and deliver to him a cow. A sells the cow to C before B has rescinded the contract. C purchases the cow in good faith and without notice of the seller's defective title. C acquires a good title.

This section does not apply to a contract which is void and not voidable, or where the seller has no title at all, for example, he has obtained the goods by theft.

5. Sale by the seller in possession-S. 30 (1)

If a seller has sold the goods and the property in the goods has passed to the buyer, the seller cannot deal with such goods. If he is still in possession of the goods and deals with them, the buyer can sue him for the tort of conversion. Section 30 (1), however, provides that if a seller having sold the goods is still in possession of the goods or of the documents of title to them, the delivery or transfer of the goods or of the documents of title under any sale, pledge or other disposition thereof by the seller or by a mercantile agent on his behalf will convey a good title to the buyer provided the buyer has been acting in good faith and he has no notice of the previous sale.

6. Sale by the Buyer in possession –S. 30 (2)

This section deals with a case where the buyer is in possession of the goods but the property in them has not passed to him. It says that if a buyer has obtained possession of the goods or the documents of title to them with the consent of the seller, any sale, pledge or other disposition thereof to any person will convey a good title to the transferee provided the person receiving the goods was acting in good faith and without any notice as regards any lien or other right of the original seller in respect of those goods. In *Cahn v Pockett's Bristol Steam Channel Co.*,⁷ A sold certain copper to B and forwarded to him the bill of exchange along with the bill of lading which was endorsed in blank with a view to have the acceptance or the payment of the bill of exchange. B, who was insolvent, did not accept the bill of exchange. Instead of returning the bill of lading and the dishonoured bill of exchange to A, he transferred the bill of lading to C, who took the same in good faith and for consideration. It was held that since B has obtained the bill of lading with the consent of A, the transfer by B could convey a good title to C, and the right of A to stop the goods in transit was defeated. Buyer means a person who buys or agrees to buy. Even if a person has agreed to buy conditionally, he can convey a good title. In *Marten v Whale*,⁸ Marten agreed to buy land from Theaker and in return agreed to sell his car to Theaker. The transaction was subject to the condition that Marten's solicitors approved the Theaker's title to land. The possession of the car was handed over to Theaker who sold the same to Whale, who bought that in good faith and without notice of Marten's rights. Marten's solicitors having refused to approve Theaker's title to land, the sale was not carried out. Marten sued Whale for possession of the car. It was held that Theaker, who sold the car, had agreed to buy the same and, therefore, Whale acquired a good title to the same. It is to be noted that a person who has got merely 'an option to buy', as in a hire-purchase agreement, cannot convey a good title to a sub-buyer,

⁷1899 1 QB 643.

⁸ 1917 2 KB 480.

however bona fide, for 'an option to buy' is not 'an agreement to buy'. In order to make this exception applicable it is essential that the person must have obtained possession of the goods under 'an agreement to sell' (i.e., under 'an agreement to buy' from the buyer's point of view). In the case of *Belsize Motor Co. v Cox*,⁹ Belsize Motor Supply Co. let out a taxi-cab to Alfred Burgess Ltd. Under the hire-purchase agreement the latter were to pay an amount of 374 pounds in twelve monthly instalments. Before all instalments were paid, Alfred Burgess Ltd pledged the vehicle with Cox. Cox was held liable for conversion of the taxi-cab because Alfred Burgess Ltd., was not a person who had "agreed to buy" and, therefore, they could not convey a good title to Cox.

7. Resale by an Unpaid Seller- S. 54 (3)

According to section 54 (2), if an unpaid seller has exercised the right of lien or stoppage in transit and the buyer does not pay him, he may resell the goods after a notice to the buyer. If such a notice is not given, the seller is neither entitled to claim from the buyer any loss if the goods bring lower than the contract price nor can he retain the benefit if the goods are sold at a higher price. Absence of such a notice does not, however, effect the title of the new buyer. According to section 54 (3), when an unpaid seller has exercised his right of lien or stoppage in transit and resells the goods, the buyer acquires a good title thereto as against the original buyer, notwithstanding that no notice of the resale has been given to the original buyer.

8. Sale by Finder of Goods- S. 169, Indian Contract Act

According to section 71, Indian Contract, the finder of goods is subject to the same responsibility as the bailee. He is to take due care of the goods while they are in his possession and also to return them when their owner has been found. According to section 169 of the Indian Contract Act, however, if the owner cannot with a reasonable diligence be found or if he refuses upon demand, to pay the lawful charges of the finder, the finder may sell the goods:

- a) When the thing is in danger of perishing or of losing the greater part of its value, or,
- b) When the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

When the finder of goods sells them under the circumstances stated above, the buyer of such goods gets a good title to them.

9. Sale by Pawnee- S. 176, Indian Contract Act

Normally the pawnee of the goods is under a duty to return them if the debt secured by such goods is paid back to him. He may retain such goods until the debt and interest thereon and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged are paid to him. According to section 176, if the pawnor makes a default in the payment of the debt, the pawnee

⁹ 1914 1 KB 244.

may either sue him for the debt or may sell the goods pledged on giving the pawnor reasonable notice of the sale. Upon such a sale being made by the pawnee, the buyer of such goods acquires a good title to them.

10. Sale in Market Overt

English Law recognises an exception to the rule according to which on the sale of goods in market overt, according to the usage of market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title in the part of the seller.¹⁰ Such sale means sale in the open market by a person who generally deals in such goods. The buyer's title is protected in case of such a sale though the seller may be liable for the tort of conversion.

¹⁰ S. 22 (1), English Sale of Goods Act, 1893.