



CAIIB PAPER-4

Module-D Unit-24

**BANKING REGULATIONS AND
BUSINESS LAWS (BRBL)**



CAIIB Paper 4 (BRBL) Module D Unit 24-Transfer of Property Act, 1882

Sale of Immoveable Property

- Section 54 of the Transfer of Property Act defines sale as “Sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised”.
- The sale of tangible immoveable property for a consideration exceeding Rs. 100/- can be made only by a registered instrument.
- Delivery of tangible immoveable property takes place when the seller places the buyer (or such person as directed by the buyer) in possession of the property.

Mortgage of Immoveable Property

- A mortgage is the transfer of an interest in specific immoveable property to secure the payment of money given by way of loan or to secure the performance of an engagement which may give rise to a pecuniary (monetary) liability.
- The transferor is called a mortgagor. The transferee is called a mortgagee. The principal money and interest secured is called the mortgage-money. The instrument (if any) by which the transfer is effected is called a mortgage-deed. (Section 58a)

Simple Mortgage

According to Section 58(b) of the Transfer of Property Act, a simple mortgage is a transaction whereby, ‘without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage money and agrees, expressly or impliedly, that in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold by a decree of the Court in a suit and the proceeds of the sale to be applied so far as may be necessary in payment of the mortgage money.’

Features of simple mortgage

- The mortgagor does not deliver possession of the mortgaged property to the mortgagee.
- The mortgagor binds himself personally to pay the mortgage money.

The mortgagor agrees that in the event of his failing to pay according to his contract, the mortgagee shall have a right to get the mortgaged property sold and recover his dues.

Mortgage by way of conditional sale

As per Section 58(c) of the Transfer of Property Act, a mortgage by way of a conditional sale of the property is a transaction whereby the mortgagor ostensibly sells the mortgaged property on the condition that on default of payment of the mortgage money

on a certain date, the sale shall become absolute, or on such payment being made the sale shall become void

Essential features

- The sale is ostensible and not real.
- If the money is not repaid on the agreed date, the ostensible sale will become absolute upon the mortgagee applying to the Court and getting a decree in his favour.
- On such payment being made the sale shall become void, or the buyer (mortgagee) shall transfer the property to the seller (mortgagor).

Usufructuary mortgage

According to Section 58(d) of the Transfer of Property Act, 'a Usufructuary mortgage' is a transaction in which

- The mortgagor delivers possession or expressly, or by implication binds himself to deliver possession of the mortgaged property to the mortgagee; and
- Authorises the mortgagee to retain such possession until payment of the mortgage money and
- To receive the rents and profits accruing from the property and
- Appropriate the same towards the payment of interest or mortgage-money or both.

English mortgage

Where the mortgagor binds himself to repay the mortgage money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage money as agreed, the transaction is called an English mortgage. (Section 58e)

Essential features

- The mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee.
- Subject to a condition that he will re-transfer it to the mortgagor upon payment of the mortgage money.

Equitable mortgage

As per Section 58 (f) of the statute, where a person in any of the following towns, namely, the towns of Calcutta, Madras and Bombay and in any other town which the State Government concerned may by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immovable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title deeds.

Essentials

- The mortgagor delivers to a creditor or his agent documents of title to immovable property.
- With intent to create a security thereon.
- The delivery of documents of title is done in the aforesaid towns or a town specified by the State Government.
- The property given as a mortgage may or may not be situated in the notified town

Anomalous Mortgage

According to Section 58(g) of the Transfer of Property Act, 'a mortgage which is not a simple mortgage, a mortgage by conditional sale and usufructuary mortgage and English mortgage or a mortgage by deposit of title deeds within the meaning of this Section, is called an 'Anomalous Mortgage.

Essential features

- It must be a mortgage as defined by Section 58 of the Transfer of Property Act.
- It is negatively defined and should not be anyone of the mortgages listed above.

Anomalous mortgages are usually a combination of two mortgages. Examples of such mortgages are:

- ✓ Simple and usufructuary mortgage, and
- ✓ An usufructuary mortgage accompanied by conditional sale.

Sale Without Court Intervention

- Where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Mohammedan or Buddhist or a member of any other race, sect, tribe or class from time to time specified in this behalf by the State Government, in the official gazette
- Where a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage-deed and the mortgagee is the Government
- Where a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage-deed and the mortgaged property or any part thereof was, on the date of the execution of the mortgage-deed, situated within the towns of Kolkata, Chennai, Mumbai, or in any other town or area which the State Government may, by notification in the official gazette, specify in this behalf.

Enforcement Of Mortgages Through Court

After the enactment of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, recovery of debts of Rs. 20 Lakh and above due to banks and financial institutions can be commenced in the Debts Recovery Tribunals. If the banks and financial institutions advance loans/facility below Rs. 20 Lakh, and if they were secured

by a mortgage on the borrower's immovable properties, the lender has to file a civil suit for the recovery of his dues by enforcement of the mortgage.

While filing the civil suit the following aspects may have to be kept in view:

- The suit shall be instituted in the court of the lowest jurisdiction where it can lie.
- The suit shall be instituted in the jurisdiction of the court where the mortgaged properties are situated.
- All puisne mortgagees (subsequent mortgagees) shall be impleaded as defendants.
- If there is more than one mortgage in favour of the lender filing the suit, he shall sue on all debts unless a leave of the court is obtained for filing separate suits
- If personal covenant of the mortgage is to be enforced, it must be ensured that the claim is within limitation
- While executing the mortgage decree, the decree holder can bring the properties mortgaged to sale without first seeking an order of attachment from the Court.

The lender can also prefer recourse against the mortgaged property under SARFAESI Act for recovery of dues above Rs. 1 lakh irrespective of the type of mortgage.

Leases Of Immoveable Property

- A lease is a transfer of a right to enjoy the property for a certain time (express or implied) or in perpetuity (that is forever), in consideration of a price paid or promised or any other thing of value, to be given periodically to the transferee by the transferee.
- The transferor is called 'the lessor', the transferee is called the 'lessee', the price is called the premium, and the money or any other thing to be given is called the rent.
- A sale is an absolute transfer of property. A lease is a partial or limited transfer of property. In a lease, there is a transfer of the right to enjoy such property. Thus, in case of a lease, there is a separation between ownership and possession.

Duration of Certain Leases in Absence of Written Contract

In terms of Section 106 of the Transfer of Property Act 1882, In the absence of a contract or local law or usage to the contrary,

- A lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and
- A lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

Actionable Claim

- Actionable claim' means a claim to any debt (other than a debt secured by mortgage, hypothecation or pledge). Or to any beneficial interest in movable property, not in possession, either actual or constructive, which the Civil Courts recognize as giving reliefs, whether such debt or beneficial interest be existing, accruing, conditional or contingent.
- The transfer of an actionable claim whether with or without consideration, can be done only by the execution of an instrument in writing signed by the transferor. There is no mandatory requirement of giving notice to the debtor before the transfer of the actionable claim.

Example: A owes money to B. B transfers the debt to C. A is not aware of the same. B then demands the debt from A. A pays B. The payment is valid, and C cannot sue A for the debt.

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