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A Study on Lease and it's Kinds under the Transfer of Property Act, 1882

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ABSTRACT

Transfer of Property Act 1882, plays a vital role in the branch of 'Law of Property'. It is important that not only for the people who study law courses or doing research should study the law relating to property, but also all the citizens of India should have a basic knowledge about this law since almost maximum percentage of people in India owns their own property or rents on the property of others. Lease plays an important role in this branch of law. Chapter V from Section 105-117 of the Transfer of Property Act, 1882 talks about the lease. Thus, in this paper, I'll try to give a detailed and a simple understanding of the Lease and its various kinds.

Keywords: Lease, Transfer of property, agreement, certainty, time period.

I. INTRODUCTION

In this modern world, the life of a human beings are closely related with the Properties. Humans and Properties have become interrelated and inseparable. Humans acquires, enjoys and disposes the property their pleasure or for their needs and wants. Whatever it may be , either acquiring a property or disposing a property, a valid transfer is needed. Thus, the law that governs the property and it's transfer is called the '**Law of Property**'.

'Property exists by grace of the law. It is not a fact, but a legal fiction'

-Max Stimer

In Olden days, the transfer of the immovable properties were governed by the principles of the British Law. In 1882, **The Transfer Of Property Act** came into force. This deals with the rules and regulations which must be followed during a transfer of property between the living persons. This act deals with both transfer of movable and immovable properties, but majority of this act deals with the immovable properties only.

This act The Transfer Of Property Act, 1882 discusses about different legal terms regarding transfer of property which include Sale, Mortgage, Lease, Exchange, Gift, Actionable claims

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and etc. Thus in this paper we are going to look about a detailed study on the Lease and its kinds, which plays a vital role in the process of the transfer of property.

II. LEASE AND IT'S DEFINITIONS

Normally point this world will always prefer to own their own properties in of paying rent to someone's property. However, lease of an immovable properties can provide some benefits like low initial payments, tax reduction, low risk etc.. In a simple term, we can understand that ***Lease is simply the relationship between the landlord or landlady and his or her tenants.***

Lease is a form of a contract between these parties for a fixed period of time. This relationship between the owner and their tenants arises when the owner of the immovable property gives his property to another person for a fixed period of time and a contract was made between them. Thus, this contract includes the terms like amount of the rent, rate at which it is collected duration of the lease , purpose of the lease, etc.

When we look into the term 'Lease' legally , we can understand the term lease and it related concepts are explained in the provisions ***sections 105 to 117*** which comes under the ***Chapter V*** of the Transfer of Property Act, 1882.

According to ***Stickney and Weil***, ' A lease is a contractual arrangement calling for the user(lessee) to pay the owner (lessor) for use of an asset' ²

According to ***Mulla***, ' a lease is a contract between the lessor and the lessee for the possession and profits of land, etc., om one side and the recompense by rent or other considerations on the others' ³

Merriam- webster defines lease as a contract by which one conveys real estate, equipment, or facilities for a specified term and for a specified rent ⁴

From the definitions mentioned above, we can easily understand that a lease is nothing but a contract between a lessor and a lessee for a specific period of time prescribed in the contract.

Section 105 of the Transfer of Property Act, 1882 gives the definitions for lease, lessor, lessee, premium and rent.

It defines that, 'A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered

² Stickney and Weil 2007 p. 791 (Glossary of Financial Accounting: An Intro. To Concepts, Methods, and Use 12e)

³ <https://www.lawspice.com/WW/fullContent.html> Retrieved 13/09/2021

⁴ <https://www.merriam-webster.com/dictionary/lease> Retrieved 13/09/2021

periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.’⁵

For entering into a lease agreement, there must be a two person namely lessor and lessee.

- **LESSOR** - lessor is a person who leases or lets a property to another person. Transferor is a lessor. i.e. landlord.
- **LESSEE** - lessee is a person who holds a lease of a property. Transferee is a lessee. i.e. tenant
- **PREMIUM** - premium is an amount to be paid
- **RENT** - rent refers to a tenant’s regular payment to his landlord for using his property or land

Lease is a relationship between the lessor and lessee arising out of an agreement to pay rent and to enjoy the exclusive possession of an immovable property for a specified period and then there is an element for creating interest on the immovable property. It is a transfer of right by the owner to other person , of enjoy immovable properties

The person who does not have a right or interest or lost the right on the property cannot create any lease in favor of others , if there is any such lease is made then it is said to be void.

Sections 105 to 116 of the Transfer Of Property Act, 1882 deals with the leases but it **does not apply to the agricultural leases**. Section 117 of the act is the exception of the leases for an agricultural purposes

Most of the agricultural leases are subject to the local state laws and this is one of the main reasons why this chapter of the act is not applicable to the agricultural leases. Since this chapter of the act does not apply then section 107 of this act also does not apply, that is agricultural leases can be made orally. Here an agricultural purposes refers to tilling and cultivation cot the purpose of raising crops.

In the case of **Byramjee Jeejeebhoy (P) Ltd. V. State of Maharashtra** ⁶, the Supreme Court explained that , a lease is a transfer of a right to enjoy land for a term or in a perpetuity in consideration with the price paid or promised or service or other things with value to be rendered in a periodically manner or in a specified occasions the transferor of the property.

The main subject matter of the lease is that it must be a **immovable property**. **Union of India V. Shivdayak Soin Sons**⁷ ,in this case, the court held that, the act of letting out the property

⁵ Sec. 105 of the Transfer of Property Act, 1882

⁶ AIR 1965 SC 590

⁷ AIR 2003 SC 1877

for a non-residential use would not be said to be infringe the restriction in the transfer deed on the ground that 'house' implies only residential uses.

In a lease, there can be both premium and rent, though the definition of both may be clashing. In *Fazl Ali, J V. Visweshwar Singh*⁸, it was observed the difference between the single payment at the time of settlement of property and a recurring payment during the period of the enjoyment of property by the lessee.

A lease agreement can be terminated by giving a reasonable and an acceptable proof that the landlord had otherwise assented to the tenants for continuing in the possession after the termination.

A notice to terminate the lease agreement, which is otherwise valid and does not become invalid merely because of adding something else but it should be conditional. If in a notice with terminate tenancy, there will be a threatening enhanced rent, and there a different opinion arise that whether it is conditional notice or not.

III. RIGHTS AND LIABILITIES OF LESSOR AND LESSEE

Section 108 of the Transfer of Property Act, 1882 expresses the rights and liabilities of both lessor and lessee.

(A) Rights of the Lessor

- Lessor has a right to recover the rent from the lessee as per expressed in the lease agreement.
- Lessor has the right to take back the possession of his property when the lessee breaks the terms and conditions expressed in the lease agreement.
- Lessor can also has a right to claim compensation from the lessee when there is any damage for his property due to lessee.
- Lessor can take back the possession of his property when the period for lease expires.

(B) Liabilities of the Lessor

- *Duty to disclose defects*

The Lessor has a duty to disclose the defects on the property to the Lessee before making the lease agreement.

- *Duty to deliver possession*

⁸ (1939) 7 ITR 536

After making the lease agreement, the Lessor should give the right to possession of his property to the Lessee.

- ***Covenant for a quiet enjoyment***

The Lessor should not interrupt after the lease agreement was made, when the Lessee follows the terms and conditions and pays the rent correctly as prescribed in the lease agreement.

(C) Rights of the Lessee

- ***Right to repair property***

Lessee can himself repair the property, if the Lessor neglects to do or unable to do repair. Later that amount can be deducted from the rent or can be recovered from the Lessor.

- ***Right to remove fixtures***

Lessee can himself repair the property, if the Lessor neglects to do or unable to do repair. Later that amount can be deducted from the rent or can be recovered from the Lessor.

- ***Right to have benefits of crops***

Lessor also has a right to enjoy the benefits from the property during the period of lease agreement and can collect the benefits from the crops in the property as prescribed in the lease agreement.

(D) Liabilities of the Lessee

- ***Duty to disclose facts***

Lessee should disclose all the true facts about the property to the Lessor.

- ***Duty to pay rent***

It's a duty to the Lessee to pay the rent to the Lessor as expressed in the lease agreement

- ***Duty to maintain property***

Lessee is bound to maintain the property and return to the Lessor in the same condition that the Lessor handover the property during the agreement, and the lessee should also allow the Lessor or his agent to inspect the property.

IV. ESSENTIAL CONDITIONS FOR A LEASE

Some of the essential conditions to fulfil the lease are

- 1) There should be a ***availability of two parties*** since a single party cannot execute a lease agreement.

- 2) Both parties entering into the lease agreement must be **competent to contract** by fulfilling the essential conditions for a valid contract which are expressed in section 10 of the Indian Contract Act, 1872 .
- 3) **Duration of the lease** must be expressed clearly in a lease agreement.
- 4) There must be a **consideration** from both parties that is lessor and lessee.
- 5) There must be a **acceptance** of transfer of property by a lessor and lessee.
- 6) There must be a certainty

In the case of **Jaswant Singh Mathura Singh V. Ahmedabad Municipal Corporation**⁹, the court held that, the lease creates rights and interests on enjoying the property and the tenant was entitled to remain the possession of the property until the lease is fully terminated.

In the case of **Makali Engg. Works Pvt. Ltd. V. Dalhousie Properties Ltd.**¹⁰, the court held that, for creating a legally binding lease agreement, one of the most essential elements required is that there must be a definite period unless it is a lease of perpetuity.

In the case of **B Arvind V. Government of India**¹¹, the Supreme Court had clearly explained some of the other essential ingredients for a valid lease like

- There must be a transfer of right to enjoy an immovable property
- Such transfer must be for a specific term or in perpetuity
- The transfer should be in the consideration of a premium or a rent
- The transfer should be in a bilateral transaction and there must be an acceptance of the terms of the transfer.

V. KINDS OF LEASE

There are many kinds of leases followed in India. Section – 105 of the Transfer of Property Act, 1882 recognizes only three main kinds of leases namely

- Leases for a certain time
- Periodic leases
- Leases in perpetuity

(A) Leases for a certain time

The word ‘certain’ in the section means that it is fixed or capable of being made certain in the future date. The duration **must have a certainty**. Time period, terms and conditions of the lease

⁹ AIR 1991 SC 2130

¹⁰ 2006(1) California HN 419

¹¹ AIR 2007 SC 1306

must be fixed or must be certain. In this lease, fixing of date is not mandatory but there should be a certainty which is necessary for a lease agreement. A lease without certainty is said to be void.

In the case of Lord Kenyon in *Goodright D Hall V. Richardson*¹², the court stated that the certainty need not be ascertained at the time. If in the fluxion of time a day will arrive which will make it certain, that is sufficient for such a lease.

(B) Periodic Leases

Periodic leases are a kind of lease usually held for a particular period of time. This type of lease includes the lease for a particular period like lease from month to month or from year to year. Monthly lease does not mean that a lease which begins on first day of every month and expires on the last day of the month and a fresh lease is created for a next month automatically. It means a lease of uncertain duration which can be put an end by either party by giving one month's notice. Registration of lease is not necessary for this kind of lease since it is a lease for a short period.

In the case of *S.Rajeev Singh V. Punching Associates*¹³, Periodic leases has been defined as it is a lease with duration to the term is continuous from period to period. A lease for an indefinite period has generally been considered as a lease for a life, but if the rent has been paid yearly then it would be taken as a lease from year to year. Similarly, in *Venkatachellam V. Audian case*¹⁴, it was held that the lease for the year with the precondition then it would be in force until another lease is granted is a lease from year to year.

(C) Leases in perpetuity

Lease in perpetuity is a kind of lease which is held for a *longer duration*. It is also called as permanent lease or long term lease. Here, the lease is carried from generation to generation. In this kind of lease, the lessee can renew the lease after the completion of period of lease agreement.

In the case of *Commissioner of income tax, Assam V. Panbari Tea Co Ltd*¹⁵, it was held that, when the interest of the Lessor was parted for a price, then the paid price is the premium, but the periodical payment for the enjoyment of benefits is a rent, here the premium is a capital income and rent is a revenue receipt. For this lease of perpetuity, registration is mandatory.

¹² 1789 2 Term Rep462

¹³ AIR 2008 Del 56

¹⁴ 1881 ILR 3 Mad 358

¹⁵ AIR 1965 SC 1871

VI. OTHER KINDS OF LEASE

In Addition to these three main kinds of lease expressed in section 105 of the Transfer of Property Act, 1882, lease can further be classified into many kinds , namely

- Absolute Lease
- Derivative Lease
- Sales Aid Lease
- Domestic Lease
- International Lease

(A) Absolute Lease

Absolute lease can otherwise called as *primary lease*. Absolute lease can be *granted by a person who has an Absolute* right over the property. This lease can be granted for any number of years or for any time.

(B) Derivative Lease

Derivative lease can otherwise called as *sub-lease* . This kind of lease are granted by a person who himself has a *limited interest* on the property. In this kind of lease, it can never be extended beyond the time period in which the Absolute lease has executed.

In the case of *Roop Kumar V. Mahan Thedani*¹⁶, it was held that , a tenant who himself does not have a complete right over the property can never grant a valid sub-lease in favor of another.

In the case of *Lov Raj Kumar V. Daya Shankar*¹⁷, the court examined that a person who himself has no right over the property cannot create a lease on his own.

(C) Sales Aid Lease

In this kind of lease, the lessor will agree with the lessee to market the products in his property and in return the lessee will be paid for his commission

(D) Domestic Lease

When all the parties in the lease agreement belongs to a *same country*, then it is called Domestic Lease

(E) International Lease

When one or more parties of the lease agreement reside in a *different countries*, then it is called

¹⁶ 2003 (1) RCR (Rent) 615 SC

¹⁷ AIR 1986 Del 364 (368)

International Lease.

VII. CONCLUSION AND SUGGESTION

Chapter V, section 105-117 deals about the lease in the Transfer of Property Act, 1882. Lease plays an important role in the Law of Property. In this world maximum number of the peoples will own property, either their own property or enjoying someone's property by paying rent or premium. Thus, it is vital not only for the people in the law field but also each and every citizens to have a good knowledge about lease, because at one point of time every person will own a property. If a person enter into a lease agreement without knowing or without have a decent knowledge about lease, he/she may fail to have a proper lease agreement and they can easily be misguided. Lease is nothing but a contract between a lessor and a lessee for a specific period of time prescribed in the contract. There must be a clarity on the during of lease, term of lease, amount to be paid, when and how to be paid, etc. Violation of the rules, regulations, provisions, and terms prescribed in the lease agreement is punishable under law . Lease is a good think until both the lessor and lessee does their duty well. Thus from this paper, we can have a basic idea about what is lease, who is lessor, who is lessee, and their rights and liabilities and its kinds.

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