

## **Sale by Non-Owner**

Generally, only the owner of the goods can sell the goods. If the seller is not the owner of the goods, the buyer cannot become the true owner even though he has paid value for the goods. This protects the true owner of the goods. The maxim 'nemo dat quod non habet' means that no one can transfer a better title than he himself possesses.

### **EXAMPLE**

C steals a radio and sells it to B. B buys it without notice that C is not the true owner. The true owner can recover it from B.

### **Exceptions**

The following are cases under which a non-owner can sell the goods and the buyer becomes the true owner of those goods:

#### **1. Person not the Owner**

When the owner of the goods, by his words or conduct or act or omission, causes the buyer to believe that the seller has the authority to sell them, he cannot afterwards deny the seller's authority to sell. The buyer in such a case gets a better title than the seller. [Sec. 27 Para 1]

### **EXAMPLES**

- a. C sold his father's car in his presence to B. His father did not object. Later, father cannot deny his son's authority to sell. The sale is valid.
- b. M, owner of a wagon, allowed his employee K to have his name painted on it. M wanted to show the public that the wagon belonged to K. C purchased the wagon from K in good faith. C gets a good title. (O' Connor vs. Clark)

## **2. Mercantile Agent**

When a mercantile agent is, with the consent of the owner, in possession of goods or documents of title to goods, any sale made by him in the ordinary course of business shall be valid provided the buyer acts in good faith and without notice that the seller had no authority to sell. [Provisio to Sec. 27]

### **EXAMPLES**

F gave his car to a mercantile agent for sale at a stated price. The agent sold the car to S below the stated price. S resold the car to K. Held, S transferred a good title to K and F was not entitled to recover the car. (Folks vs. King)

## **3. Joint Owner**

When one of the joint owners, having possession of the goods by permission of the co-owner, sells the goods, a buyer gets a good title to the goods provided the buyer buys them in good faith and without notice that the seller's title was defective at the time of contract. [Sec. 28]

### **EXAMPLE**

A, B and C are three brothers. They jointly own a cow. B and C leave the cow for look after in A's possession. A sells the cow to D. D gets a good title.

## **4. Possession in Voidable Contract**

When a person has obtained possession of the goods under a voidable contract and sells them before the contract has been cancelled, the buyer of such goods acquires a good title provided the buyer acts in good faith and without notice of the seller's defect of title. [Sec. 29]

### **EXAMPLE**

A buys a horse from B by fraud. A sells the horse to C before cancellation of contract by B. C gets a good title.

## **5. Seller in Possession after Sale**

When a person has sold goods but continues to be in possession of them or of the documents of title thereto, he may sell them to a third person and if such person obtains delivery thereof in good faith and without notice of the previous sale, he gets a good title to them although the property in the goods has passed to the first buyer. [Sec. 30(1)]

### **EXAMPLE**

B buys goods from A but leaves those goods with A. A fraudulently sells the goods to C. C gets a good title to the goods.

## **6. Buyer in Possession before Sale**

When the buyer obtains possession of the goods before the property in such goods has passed to him with the consent of the seller, he may sell them to a third person and if such person obtains delivery of the goods in good faith and

without notice of any lien of the original seller, he will get a good title. [Sec. 30(2)]

### EXAMPLE

A agreed to buy a car if his advocate approved. A obtained possession of a car and sold it to B. But the advocate disapproved. It was held that the buyer has got a good title. (Marten vs Whale)

### 7. Unpaid Seller

When an unpaid seller who has a right of lien or stoppage in transit, resells the goods, the buyer gets a good title to the goods as against the original buyer in spite of the fact that no notice of resale has been given to the original buyer. [Sec. 54(3)]

### EXAMPLE

A sells a sofa set to B for Rs. 10,000. B pays Rs. 4,000 as advance and promises to pay the remaining balance at the time of delivery. B does not pay the balance for several days. A sells the sofa set to C. C gets a good title.

### 8. Finder of Lost Goods

A finder of lost goods can sell the goods under certain circumstances and the buyer will get a good title. [Sec. 169]

### EXAMPLE

A finds a lost horse. The horse falls sick. A spends Rs. 1,000 on treatment. B, the owner of the horse, refuses to pay to A. A sells the horse to Z. Z gets a good title.

### 9. Pledgee

A pledgee can sell the goods under certain circumstances and the buyer will get a goods title. [Sec. 176]

### EXAMPLE

X pledges his tractor to Y and borrows Rs. 5 Lac. X does not pay the loan. Y sells the tractor to Z. Z gets a good title.

### 10. Exceptions under other Acts

A non-owner can transfer a better title in the following cases:

- In case of insolvency of individuals and companies, the official receiver can convey a better title to the buyer.
- In case of negotiable instruments, the holder in due course gets a better title than that of transferor.

### EXAMPLES

- A becomes insolvent. B, the official receiver of A, sells some goods of A to X. X gets a good title to goods.
- A steals a bill of B and endorses the same to X under the circumstances