

subsequent purchase even where the original purchaser himself has not yet completed the purchase.

Lee v Butler (1893)

Y bought furniture under a credit agreement and resold them to D before he had paid all the instalments. The original seller sued him for recovery and it was held that the second buyer had obtained a good title as under credit sale agreements property in the goods passes with the payment of the first instalment.

The distinguishing feature between a hire purchase agreement and a credit sale is that whereas one is a contract of hire with an option to purchase the other is a contract of sale without any option to purchase. The hire purchase agreement is between the owner of the goods and the hirer while in a credit sale the parties are seller and buyer.

5.2.5 HIRE-PURCHASE AND CONDITIONAL SALE

Conditional Sale is an agreement for the sale of goods under which the purchase price or part of it is payable by instalments and the property in the goods is to remain in the seller (notwithstanding that the buyer is in possession) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled.

The conditional sale is the equivalent in a hire purchase agreement in that property in the goods does not pass with possession and the owner may recover the goods from a subsequent purchaser.

The distinguishing feature however is that this is really a contract of sale where payment is by instalments while the hire purchase agreement is a contract of hiring with an option to purchase.

A conditional sale is a sale right from the start but maturing on the fulfilment of certain conditions set out in the agreement while a hire purchase is a contract of hiring which becomes a sale only upon the exercise of the option to purchase. The parties in a conditional sale are seller and buyer as opposed to owner and hirer under the hire purchase agreement.

must pay the instalments under the agreement as and when they fall due. If the agreement is terminated before the option to purchase is exercised all instalments due up to the date of determination must be paid by the hirer.

- d) **Continue hiring for the agreed period:** In most agreements the hiring is for a fixed period e.g. two or three years and hiree has a right to terminate the agreement at any time before the due date. If he exercises the option to terminate then the minimum payment clause, also called depreciation clause, comes into operation and he has to pay some money in respect of depreciation of the goods. If he does not exercise his option to terminate and instead repudiates the agreement he would be in breach of contract and liable to pay damages for breach.
- e) **Notification of change of address:** If agreement requires him to record his address and the place where the goods are then he is obliged to notify the owner of any change of address and removal of the goods.

Breach of any of these duties may entitle the owner to remedies of termination of the hire purchase agreement and damages for breach of contract.

DUTIES OF THE OWNER

- a) Deliver the goods to the hirer
- b) Notification of defects of title or otherwise
- c) Indemnity; compensate the hirer for any loss or liability arising by reason of any defects in the goods.

5.2.11 TERMINATION

Under S.12 of the Act the hirer may at any time before the final payment or instalment falls due to terminate the agreement by:

- a) Giving the owner written notice of termination.
- b) Returning the goods to the owner.