

# RECTIFICATION AND MODIFICATION OF DEEDS

## Preliminary Note

Sometimes accidental mistakes crop up in a deed which require to be corrected, or the parties may agree to modify or vary the terms of any previous deed, e.g. to reduce the rate of interest or to extend the period of payment or to extend the period of performance of contract. In all such cases, the object is achieved by entering into a supplemental agreement. This is drafted like other agreements. The former deed, which it is intended to correct or modify, should be recited, as also the mistake or agreement to modify or vary its terms. Then, in the operative part, the corrections intended to be made, or the changes intended to be introduced, should be detailed with an agreement that the original deed should be so read and construed as if such corrections or changes had been made. It is usual to add, at the end, a clause agreeing that the former deed shall remain in full force and effect subject to the variations made by the agreement, but, strictly speaking, this clause is not absolutely necessary. The original deed is called the principal deed and the agreement is supplemental to it. Usually it is expressly stated in the agreement that it is supplemental to the principal deed but this, too, is not necessary. If the parties to the agreement are not the original parties to the principal deed but their successors, recitals should be made to show the derivation of title.

### *Stamp Duty*

The supplemental deed is chargeable with the same stamp duty as an agreement. However if a supplemental deed corrects a purely clerical error then concessional rate of duty is provided for in U.P. vide Article 34-A; See similar provisions in other State amendments.

### *Registration*

If the principal deed was registered, the supplemental deed should also be registered.<sup>1</sup> If unregistered, it will remain inoperative.

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1 *Durga Prasad v. Rajendra Narain*, 49 IA 223, 41 C 493, 21 IC 750; *Dat v. Gopal*, 14 ALJ 57; *Tika Ram v. Deputy Commissioner of Barabanki*, 26 C 707, 26 IA 97; *Sadaruddin v. Chajju*, 31 A 13; *Yegnanaryana v. Suppan Chetty*, 52 MLJ 244, 100 IC 54, A 1927 Mad 111; *Afsar v. Bechalal*, 7 Luck 16, 132 IC 66, A 1931 Qudh 286.

## PRECEDENTS

### 1—Agreement Correcting Mistakes in a Sale Deed

AN AGREEMENT made on the \_\_\_\_\_ day of \_\_\_\_\_  
BETWEEN AB, etc., (hereinafter called the "vendor") of the one part  
AND CD, etc., (hereinafter called "the purchaser") of the other part;

WHEREAS by a deed of sale dated the \_\_\_\_\_ and made  
between the same persons as are parties hereto and in the same order  
(hereinafter called "the principal deed") the vendor transferred to the  
purchaser the entire property \_\_\_\_\_ in pargana \_\_\_\_\_ district  
\_\_\_\_\_ and the principal deed has been registered at No. \_\_\_\_\_ in  
Book No. \_\_\_\_\_ Volume No. 1 pages \_\_\_\_\_ to \_\_\_\_\_ in the  
Sub-Registrar's office at \_\_\_\_\_;

AND WHEREAS certain mistakes have accidentally crept in the  
principal deed which the parties have now agreed to rectify, in the manner  
hereinafter appearing.

NOW THESE PRESENTS WITNESS and the parties hereto  
hereby agree as follows:

1. That the principal deed shall be so read and construed as if—

(a) For the word "Radha Mohan Das" wherever the same occurs in  
the principal deed the word "Radha Raman Das" were substituted.

(b) Between the words "the vendor hereby transfers to the purchaser  
all that" and the words "TO HOLD the same" there were inserted the  
words "the property described in the schedule hereto."

(c) In the schedule to the principal deed for the figure and word  
"386 *bighas*" shown in the column of the area of the property sold, the  
figure and word "424 *bighas*" were substituted.

2. That as rectified and modified as aforesaid the principal deed shall  
remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have signed the  
agreement on the date first hereinbefore mentioned.

### 2—Agreement Correcting Two Previous Deeds

AN AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_  
BETWEEN AB, etc., (hereinafter called "the mortgagor") of the one part  
AND CD, etc., (hereinafter called "the mortgagee") of the other part;

WHEREAS this agreement is supplemental to the deed of mortgage made on the \_\_\_\_\_ between the same parties and in the same order and registered at No. \_\_\_\_\_ Book No. \_\_\_\_\_ and Volume No. \_\_\_\_\_ pages \_\_\_\_\_ in the Sub-Registrar's office at \_\_\_\_\_ (hereinafter referred to as "the first principal deed") and also to the deed of additional mortgage dated \_\_\_\_\_ made between the same parties and in the same order and registered at, etc., (hereinafter referred to as "the second principal deed");

AND WHEREAS in the schedule to the first principal deed the property entered as item No. 5 has by an accidental slip been wrongly described both as regards its name and also as regards the particulars of rent, revenue and profits thereof;

AND WHEREAS in the Schedule A to the second principal deed in which the same property has been included and entered as item No. 4, though the name of the village has been correctly shown, the other particulars about rent, revenue and profits have been taken from the schedule to the first principal deed and wrongly shown;

AND WHEREAS the parties have now agreed that the aforesaid mistake in the first principal deed and the second principal deed should be corrected in the manner hereinafter mentioned.

NOW THIS DEED WITNESSES and the parties hereto hereby agree as follows :

1. That the first principal deed shall be so read and construed as if in the schedule thereto for the entry at No. 5 the following entry were substituted;

\* \* \* \*

2. That the second principal deed shall be so read and construed as if in Schedule A thereto for the figures in columns 6, 7 and 8 (viz. those of rent, revenue and profits) relating to village Mirzapur, the figures " \_\_\_\_\_ " " \_\_\_\_\_ " and " \_\_\_\_\_ " respectively were substituted.

3. That as varied aforesaid the first principal deed and the second principal deed shall be fully binding between the parties and shall have full force and effect.

IN WITNESS WHEREOF, etc.

### 3—Modifying a Previous Deed by Extending Time for Performance of a Contract (One Party being Different from the Original)

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ BETWEEN the Governor of Uttar Pradesh (hereinafter called "the Governor") of the one part AND AB, etc., (hereinafter called "the buyer") of the other part;

WHEREAS this deed is supplemental to the deed of sale made on the \_\_\_\_\_ day of \_\_\_\_\_ between the Secretary of State for India in Council of the one part AND the buyer of the other part (hereinafter called "the principal deed") relating to the produce of the \_\_\_\_\_ forest;

AND WHEREAS since the passing of the Constitution of India all contracts relating to the property vested in the State for the administration of a State are to be made in the name of the Governor;

AND WHEREAS by clause 4 of the principal deed the buyer is required to convert the forest produce purchased by him and to remove the same beyond the limits of the specially fire protected area by the \_\_\_\_\_ day of \_\_\_\_\_, and to remove the same beyond the limits of the forest division and beyond such *chaukis* as may be decided on and recorded in writing by the Forest Officer before sunset on the \_\_\_\_\_ day of \_\_\_\_\_;

AND WHEREAS it has now been agreed between the parties to extend the said dates, the former of them to \_\_\_\_\_ day of \_\_\_\_\_ and the latter of them to \_\_\_\_\_ day of \_\_\_\_\_.

NOW THESE PRESENTS WITNESS and the parties hereto hereby mutually agree as follows:

(1) That the principal deed shall be so read and construed as if in clause 4 thereof "the \_\_\_\_\_ day of \_\_\_\_\_" were substituted for "the \_\_\_\_\_ day of \_\_\_\_\_" and "the \_\_\_\_\_ day of \_\_\_\_\_" were substituted for "the day of \_\_\_\_\_".

(2) That save as varied as hereinbefore provided the principal deed and all terms and conditions thereof shall continue to be binding and in full force and effect.

IN WITNESS WHEREOF, etc.

#### 4—Agreement Modifying Previous Agreement by Extending the Period of Supply of Goods

AN AGREEMENT made on the ——— day of ———, etc., which is supplemental to an agreement made on the ——— between the parties hereto and in the same order (hereinafter called “the principal agreement”).

WHEREAS under the terms of the principal agreement the said CD advanced a sum of Rs. ——— to the said AB on the terms and conditions therein specified, one of them being that during a term of five years from the ——— the said AB would if so required sell to the said CD in each year certain quantity of wheat of a certain kind and that in case of default would pay to the said CD as compensation a sum of Rs. ——— for every quintal of wheat by which the quantity delivered by him would fall short of the quantity agreed upon;

AND WHEREAS default has been made by the said AB in the delivery of the said quantity of ——— in the year ———;

AND WHEREAS the said AB has represented that the said default was due to circumstances beyond his control and requested the said CD that the term of the principal agreement be extended by two years;

AND WHEREAS the said CD has agreed to grant extension of the term of the principal agreement as prayed by the said AB and the parties have agreed that the said extension should be secured by a supplemental agreement modifying the principal agreement;

NOW THESE PRESENTS WITNESS and the parties hereto hereby agree as follows :

1. That clause ——— of the principal agreement shall be so read and construed as if for the words “five years” the word “seven years” were substituted.
2. That as varied and modified as aforesaid the principal agreement shall remain fully binding on the parties and of full force and effect.

IN WITNESS WHEREOF, etc.

#### 5—Supplementary Agreement Varying Rate of Interest on a Mortgage Debt and the Time of Payment

*(See Precedents Nos. 42 and 43 under MORTGAGE).*

**3—Modifying a Previous Deed by Extending Time for Performance of a Contract (One Party being Different from the Original)**

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ BETWEEN the Governor of Uttar Pradesh (hereinafter called “the Governor”) of the one part AND AB, etc., (hereinafter called “the buyer”) of the other part;

WHEREAS this deed is supplemental to the deed of sale made on the \_\_\_\_\_ day of \_\_\_\_\_ between the Secretary of State for India in Council of the one part AND the buyer of the other part (hereinafter called “the principal deed”) relating to the produce of the \_\_\_\_\_ forest;

AND WHEREAS since the passing of the Constitution of India all contracts relating to the property vested in the State for the administration of a State are to be made in the name of the Governor;

AND WHEREAS by clause 4 of the principal deed the buyer is required to convert the forest produce purchased by him and to remove the same beyond the limits of the specially fire protected area by the \_\_\_\_\_ day of \_\_\_\_\_, and to remove the same beyond the limits of the forest division and beyond such *chaukis* as may be decided on and recorded in writing by the Forest Officer before sunset on the \_\_\_\_\_ day of \_\_\_\_\_;

AND WHEREAS it has now been agreed between the parties to extend the said dates, the former of them to \_\_\_\_\_ day of \_\_\_\_\_ and the latter of them to \_\_\_\_\_ day of \_\_\_\_\_.

NOW THESE PRESENTS WITNESS and the parties hereto hereby mutually agree as follows:

(1) That the principal deed shall be so read and construed as if in clause 4 thereof “the \_\_\_\_\_ day of \_\_\_\_\_” were substituted for “the \_\_\_\_\_ day of \_\_\_\_\_” and “the \_\_\_\_\_ day of \_\_\_\_\_” were substituted for “the day of \_\_\_\_\_”.

(2) That save as varied as hereinbefore provided the principal deed and all terms and conditions thereof shall continue to be binding and in full force and effect.

IN WITNESS WHEREOF, etc.

interpretation of deeds of release that however wide and general the covenant of release may be, its operation must be restricted to the rights which are in contemplation or in controversy between the parties and would not cover or comprehend rights which were not in the minds of the parties at that time. The general words of a release are limited to that thing or those things which were specially in the contemplation of the parties at the time when the release was given, though they were not mentioned in the recitals.<sup>8</sup> The deed has to be construed strictly consistent with its contents and the purpose thereof.

Thus if what was released was right in a Hindu father's self acquired property it would not operate in respect of that property which the father subsequently threw into joint family hotchpotch. Likewise if what was surrendered was right to succeed to a certain estate as heir it could not amount to renunciation of the executant's contingent right of succeeding to it by survivorship as and when occasion arose.<sup>9</sup>

A deed of release should be drafted either simply as a deed poll, or as a deed to which both the releasor as well as the person in whose favour the release is made are made parties. A deed of release should be drafted generally in the same form as deeds of transfer. However if a deed is bilateral it may be construed to be a gift, while a unilateral release cannot amount to a gift.<sup>10</sup>

### *Parties*

All persons interested, whether as beneficiaries, or as trustees, or otherwise, in the subject of the release should, as a general rule, be made parties to the deed and should execute the deed. When there are several co-promisees (as co-mortgagees, co-partners, co-shares), all must join in giving a release.

### *Recitals*

The recitals in a release should show fully and precisely the circumstances upon which the release is based. This is necessary as the general words of release will be controlled by the recitals.

### *Consideration*

Unless there is a definite monetary consideration (in which case the same should be stated, and its receipt should be acknowledged), it is usual to express a release as made in consideration "of the premises", *i.e.* of the facts stated in the recitals.

8 Norton on Deeds (II Edn.) p. 206 rel. on in *Chinnathayi*, supra (also relying on Halsbury's Laws of England, III Edn., Vol 7, para 345); *Rajagopala*: supra.

9 *Chinnathayi*, supra.

10 *Commr. of Gift Tax v. Ansuya Sarabhai*, (1998) 9 SCC 194.

### *Operative Words*

No special words are necessary so long as the intention is clearly expressed: The words in general use are "release", "discharge" "relinquish". Release of a person or his property from "all suits, proceedings claims and demands", generally extinguishes all rights of action, titles, conditions, etc., then existing.

### *Release and Receipt*

There is a distinction between release and receipt. A release extinguishes a claim whereas a receipt is simply an evidence of payment.

### *Release and Gift*

Renouncement by one of the co-sharers of joint agricultural land in favour of the other cosharer was held in the undemoted case<sup>11</sup> to be a release and not a gift.

### *Execution*

The deed should be executed by all releasors (co-promisees). If some do not sign, it would ordinarily not be binding on them unless there is anything to indicate that it was intended to bind them. In all cases, in which there is an apprehension that some persons will not execute the deed, it should be provided that non-execution by any party should not affect its operation as against those who execute it.

### *Several Co-promisors*

When there are several co-promisors, a release of one does not discharge the others; therefore if it is intended to discharge all, the release should be of all the co-promisors, whether they are all made parties to the deed or not.

### *Stamp Duty*

The relevant provision is Article 55 of Schedule 1 [That has to be read with Sec.23-A]. State amendments to the Schedule should be consulted.

### *By whom Payable*

The duty is, in the absence of a contract, payable by the person making or executing the deed, i.e. the releasor (Sec. 29).

### *Registration*

A release must be registered when the amount of the claim to, or interest in, immovable property which is extinguished is of the value of Rs.100 or upwards [Sec. 17(1)(b) Registration Act].

If the release is of a right in movable property, or from a personal obligation or, is relinquishment of a personal right, it need not be registered.

<sup>11</sup> *State v. Alokik Jain*, A 1998 Raj 348.

## PRECEDENTS

### 1—Mutual Release by Two Persons

THIS RELEASE made on the \_\_\_\_\_ day of \_\_\_\_\_ BETWEEN AB, etc., of the one part AND CD, etc., of the other part WITNESSES that each of them the said AB and CD hereby releases the other of them, from all sums of money, accounts, proceedings, claims and demands whatsoever which either of them, at any time had or has by reason or in respect of (*here state business or matter e.g.*) the partnership of \_\_\_\_\_ at \_\_\_\_\_ or, the agency of sale of books heretofore held by the said AB from the said CD, or, (any act, cause, matter or thing<sup>1</sup>.)

It is hereby declared that amount or value of the claim hereby renounced is Rs. \_\_\_\_\_.<sup>2</sup>

IN WITNESS WHEREOF, etc.

### 2—Mutual Release by Three Persons

THIS RELEASE, etc., (*as in Form 1*).

WITNESSES that every one and every two of them the said AB, CD, and EF, does and do hereby release the others and each of the others of them from all sums of money, accounts, proceeding, claims and demands whatsoever which any one or two of them at any time had or has upto the date hereof against the others or either of the others of them for or by reason etc., (*as in Form 1*).

It is hereby declared (*as in Form 1*)

### 3—Release by Creditors to a Debtor, Conditional on Composition of Debts

THIS RELEASE is made on the \_\_\_\_\_ day of \_\_\_\_\_ BETWEEN AB., etc., CD, etc., EF, etc., GH, etc., (hereinafter called "the creditors") of the one part AND XY, etc., (hereinafter called "the debtor") of the other part;

- 1 If a general release from all claims is intended then these words within brackets may be used instead.
- 2 This is necessary only if the amount or value does not exceed Rs. 1,000 because beyond that value a fixed stamp duty is levied (see however local amendments to Article 55).

WHEREAS the debtor is indebted to the creditors in several sums specified against their respective names in the schedule hereto;

AND WHEREAS the creditors have agreed to accept a composition of \_\_\_\_\_ paise in the rupee in full discharge of their said debts.

NOW THIS DEED WITNESSES as follows:

1. The debtor agrees on or before the \_\_\_\_\_ day of \_\_\_\_\_ to pay to each of creditors who shall execute this deed before that date the composition of \_\_\_\_\_ paise in the rupee on his debt specified in the schedule hereto.

2. Each of the creditors hereby agrees to accept such composition in full satisfaction of his said debt.

3. If such composition be duly paid each of the creditors hereby releases the debtor from his debt.

4. This release shall be binding and effectual though not executed by all creditors and though all or any of the non-executing creditors may be paid in full.

5. If the said composition shall not be duly paid at the time and in manner aforesaid or if before the \_\_\_\_\_ day of \_\_\_\_\_ the debtor shall have been adjudged insolvent then this deed shall be void.

*The schedule herein referred to*

Creditor's name \_\_\_\_\_ Amount of debt \_\_\_\_\_ Amount of Composition \_\_\_\_\_

IN WITNESS WHEREOF, etc.

#### 4 Release of a Bond Obligation when the Bond is Lost<sup>3</sup>

TO ALL WHOM IT MAY CONCERN, I, AB, etc., send greetings.

WHEREAS by their bond or obligation dated the \_\_\_\_\_ CD,

<sup>3</sup> If the bond is forthcoming the simplest thing is to return it, but when it is lost or mislaid, the obligor may require a release. If the bond was a simple money bond, a mere receipt of the money due thereon may be sufficient, but if the bond is in English form consisting of a bond and an obligation, a release in this form may be required. When there are several joint obligors, the release in favour of one does not discharge the others (Sec. 44 Contract Act). It is doubtful if one of the joint promisees can give a valid discharge of the claims of others [Sec. 38 last para, and Sec. 45]. A release should therefore be made by all the joint promisees so that there may be no possibility of doubt about it.

etc., and EF, etc., bound themselves to the said AB for payment to him to the sum of Rs.———;

AND WHEREAS the said sum has been paid with interest in full discharge of the said bond;

AND WHEREAS the said bond having been lost or mislaid cannot be delivered up to the said CD and EF.

NOW THESE PRESENTS WITNESS that I, the said AB, for the consideration aforesaid, hereby release and for ever discharge the said CD and EF and each of them from the obligation of the said recited bond for all sums thereunder payable to me or my executors, administrators and assigns.

IN WITNESS WHEREOF, etc.

### **5—Release of a Guardian by a Minor on Becoming Major**

THIS RELEASE is made on the —— day of —— BETWEEN AB, etc., of the one part AND CD, etc., of the other part;

WHEREAS by an order of the District Judge of —— dated —— in the matter of —— minor, it was ordered that the said CD be appointed guardian of the property of the said AB during his minority;

AND WHEREAS the property of the said AB consisted of agricultural land, house property, movables, outstanding debts and cash;

AND WHEREAS since his appointment as such guardian the said CD has administered the said property diligently and kept correct accounts of the income and expenditure and has with a portion of the income so received purchased Government securities and the rest has been deposited in the Bank in his own name;

AND WHEREAS the said AB has on the —— day of —— attained majority;

AND WHEREAS the said AB has now gone through the accounts kept by the said CD and has satisfied himself as to their correctness and the said CD has delivered to the said AB all the title deeds to immovable property and the movable property and cash due to him and has transferred into his name all the securities and bank accounts and has put the said AB

in possession of all the agricultural land, house property and has delivered to him all the papers, registers, accounts, receipts and vouchers relating to the management of the said property of the said AB during the said AB's minority;

AND WHEREAS the said AB has agreed to execute the release hereinafter contained.

NOW THIS DEED WITNESSES that in pursuance of the said agreement the said AB hereby releases and forever discharges the said CD from all suits, proceedings, claims, demands or accounts whatsoever for or on account of the movable and immovable property and cash of the said AB or the management thereof or for conversion, sale, application, accumulation and investment thereof or for or in respect of the rents, profits, income or accumulation of income thereof respectively or for or in respect of any act or thing at any time done or omitted or neglected by the said CD in relation to the premises.

IN WITNESS WHEREOF, etc.

**6—Release from Certain Obligations Contained in a Contract<sup>4</sup>**

THIS RELEASE, etc. (as in Form 5).

WHEREAS by an agreement made between the parties hereto on the \_\_\_\_\_ the said CD agreed to supply 1,80,000 cubic metres of *semal* logs to the said AB.

AND WHEREAS the said AB has now agreed to release the said CD from the obligation to supply 30,000 cubic metres of *semal* out of the contracted supply hereinbefore mentioned.

NOW THIS DEED WITNESSES as follows :

(1) The said AB hereby releases the said CD from so much of his obligation under the aforesaid deed of agreement dated the \_\_\_\_\_ as relates to the supply of 30,000 cubic metres of *semal* logs.

(2) The parties hereto hereby agree that the remaining obligations under the aforesaid deed of agreement dated the \_\_\_\_\_ shall continue to be binding and of full effect.

IN WITNESS WHEREOF, etc.

<sup>4</sup> See also RESCISSION OF CONTRACT, *post*.

### 7—Release in Consideration of a Transfer

THIS RELEASE, etc., (*as in Form 5*).

WHEREAS by an agreement entered into between the parties hereto on the——— and registered on the——— the said CD agreed on the expiration of five years from the date of registration of the said agreement to transfer to the releasor certain property therein specified on certain terms therein mentioned and the releasor agreed on the execution of a deed of such transfer by the said CD to execute a deed of release releasing the estate described in the schedule hereto from every claim and demand whether by inheritance or agreement or otherwise which he might have for or about any share in the said estate other than the properties agreed to be so transferred.

AND WHEREAS in performance of the agreement hereinbefore recited the said CD has this day transferred by a formal deed of transfer the said property specified in the said agreement to the releasor on the terms therein mentioned.

NOW THIS DEED WITNESSES that in pursuance of the agreement hereinbefore mentioned and in consideration of the said transfer, the releasor hereby releases, transfers and confirms the estate described in the schedule hereto TO HOLD the same to the said CD freed from every claim and demand whether by inheritance or under any agreement or otherwise which the releasor may have had at the date of the agreement hereinbefore recited or now has against the said estate or any part of it.

*The schedule herein referred to.*

IN WITNESS WHEREOF, etc.

### 8—Deed Declaring that Executant has no Right in Certain Land Transferred to him by his Father Relinquishing all Rights under the Deed of Transfer

AN AGREEMENT made on the——— day of——— BETWEEN AB, etc., of the first part AND CD, etc., of the second part AND——— Bank having its registered office at——— of the third part;

WHEREAS the said CD in anticipation of the threatened attachment of his property in proceedings for recovery of revenue executed on the——— a fictitious deed of transfer styled a *tamlik namah* in favour of his son the said AB in respect of lands in villages X, Y and Z fully described in the schedule hereto;

AND WHEREAS the said *tamlik namah* was never intended to pass any title to the said AB and consequently the latter did not take possession or obtain mutation in respect of the land of the said villages and the same are still in possession of the said CD;

AND WHEREAS the said CD executed on the——— a deed of mortgage in favour of the Bank of the sum of Rs.——— hypothecating among other property the said lands in the villages X, Y and Z;

AND WHEREAS the Bank having come to know of the said *tamlik namah* has threatened to repudiate the said transaction of mortgage unless the said AB disclaims all rights under the said *tamlik namah*;

AND WHEREAS the said CD has requested the said AB to execute such a deed of disclaimer and the said AB has agreed to do so;

NOW THESE PRESENTS WITNESS that in pursuance of the said agreement and in consideration of the Bank's forbearance to repudiate the said mortgage the said AB hereby declares and assures the Bank that the said *tamlik namah* executed by the said CD on the——— and registered on the——— is a fictitious transaction and does not confer any title on the said AB;

AND the said AB hereby disclaims and relinquishes in favour of the said CD all rights in the said lands in the villages X, Y and Z which the said *tamlik namah* may be deemed to have conferred on him.

*The schedule herein referred to.*

IN WITNESS WHEREOF, etc.

**9—Release of a Covenant in a Deed by  
Endorsement on the Deed**

I, the within-named AB, do hereby release and forever discharge the within named CD and his heirs, executors, administrators and assigns,

from the within written covenant entered into by the said CD to, etc., (*specify the act*) (*Or, not to, etc.,*) and from all suits, proceedings, accounts, claims or demands for or on account of or in respect of the said covenant. The value of the claim renounced is Rs.-----<sup>5</sup>

Dated -----

(Sd.) AB

**10— Release from a Contract for Re-purchase Contained in a Sale Deed, in Consideration of Release from a Debt**

THIS RELEASE is made on the ----- day of ----- BETWEEN AB, etc., (hereinafter called "the vendor") of the one part AND CD, etc., (hereinafter called "the purchaser") of the other part;

WHEREAS the vendor executed a sale deed in favour of the purchaser purporting to sell to him his property in village ----- for Rs.----- and the said sale deed had been registered at No.----- in book No.----- volume No.----- on pages----- in the Sub-Registrar's office at -----;

AND WHEREAS in the aforesaid sale deed a condition was inserted that if the vendor repaid the consideration money with the expenses of execution and registration of the sale deed within twenty years from the date of the sale deed the purchaser or his heirs would re-transfer the property sold to the vendor;

AND WHEREAS as the said condition was added to the sale deed after it had been written but before registration, there is a dispute between the parties about its validity;

AND WHEREAS in view of the said dispute the vendor has agreed with the purchaser to release the purchaser of the said condition in the aforesaid sale deed in consideration of the purchaser releasing the vendor and his property from the principal and interest due under the promissory note executed by him for Rs.----- in favour of the purchaser on the -----;

NOW THIS DEED WITNESSES that in pursuance of the aforesaid agreement the purchaser hereby releases the vendor and his property

<sup>5</sup> Necessary only if it does not exceed Rs.1,000, because beyond that value a fixed stamp duty is levied (See, however, local amendments of Article 55).

from the principal and interest due to the purchaser under the promissory note dated ----- AND the vendor hereby releases and forever discharges the purchaser and his heirs from the covenant that the purchaser or his heirs shall re-transfer the property sold to the vendor on the latter repaying the purchase money with expenses of execution and registration of the sale deed contained in the aforesaid sale deed dated the ----- and from all suits, proceedings, claims or demands for or on account of or in respect of the said covenant;

PROVIDED ALWAYS, etc., (*Interpretation clause*).

IN WITNESS WHEREOF, etc.

#### 11--Release by Lessor of Breach of Lease Covenants<sup>6</sup>

THIS DEED OF RELEASE is made, etc.

(*After names of parties and recital of the lease and also of the covenants of the lease which have been broken*).

AND WHEREAS recently the lessee has committed a breach of the hereinbefore recited covenant of the said lease whereby a right of action of and of re-entry and forfeiture has or may have arisen to the lessor AND WHEREAS the lessor has agreed to execute the release hereinafter contained NOW THIS DEED WITNESSES that in pursuance of the said agreement the lessor hereby releases and waives all right and title of action, re-entry and forfeiture, and other claims and demands whatsoever which the lessor now has or might have against the lessee or any person or persons claiming under or by virtue of the said lease for or by reason of any breach of any covenant contained in the said lease by the lessee AND also does ratify or confirm the said lease PROVIDED ALWAYS that nothing herein contained shall prejudice or affect any of the rights or remedies of the lessor under the covenants, conditions and provisos of the said lease in respect of any future breach of any covenant or agreement on the part of the lessee therein contained.

IN WITNESS, etc.

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<sup>6</sup> See precedents of LEASE, *ante*.

### 12—Surrender by a Hindu Widow of her Life Estate to Accelerate Reversioner's Succession<sup>7</sup>

THIS DEED OF SURRENDER is made on the \_\_\_\_\_ day of \_\_\_\_\_ BETWEEN AB, etc., of the one part AND CD, etc., EF, etc., and GH, etc., (hereinafter called "the reversioners") of the other part;

WHEREAS the property specified in the schedule hereto of the value of Rs. \_\_\_\_\_ is the whole estate of XY the deceased husband of the said AB;

AND WHEREAS ever since the death of the said XY, AB has been in possession of the said property under his will conferring on her, only a life estate therein as a Hindu widow;

AND WHEREAS the said reversioners are the only nearest reversioners of the XY and the said AB is desirous of releasing and determining her life interest in the said property in order to accelerate the succession thereto of the reversioners.

NOW THIS DEED WITNESSES that in pursuance of such desire and in consideration of the natural love and affection of the said AB for the reversioners the said AB as life owner of the said property hereby releases and surrenders to the reversioners ALL that property described in the schedule hereto and all the rights, interest, claim and demand of her husband, the said XY thereto or therein to the intent that the said property may become immediately vested in the reversioners as absolute owners thereof.

*The schedule herein referred to.*

IN WITNESS WHEREOF, etc.

### 13—Compromise of a Threatened Claim by Government Relinquishing Land and the other Party giving up his Mesne Profits, with Indemnity Clause against Claim of Government's Lessee

THIS RELEASE made this \_\_\_\_\_ day of \_\_\_\_\_

<sup>7</sup> Strictly speaking this is a form of conveyance. The surrender should be *bonafide*, of the *whole* estate, and in favour of the *whole* body of nearest reversioners. With the statutory acquisition of absolute estate by Hindu widow under Sec. 14(1) of the Hindu Succession Act, 1956, this precedent would be relevant only in cases referred to in Sec. 14(?).

BETWEEN the Governor of Uttar Pradesh (hereinafter called "the State Government") of the one part AND AB, etc., of the other part;

WHEREAS the State Government has been in possession of the market land described in the schedule hereto and valued approximately at Rs. ----- since the year 1988 and has let out the said land to one CD for a term ending with the year -----;

AND WHEREAS AB claims the said land as his property and has served the Collector of ----- with a notice under Sec. 80 of the Code of Civil Procedure, 1908, threatening to institute a suit against the State Government for possession of the said land and for recovery of Rs. ----- on account of mesne profits;

AND WHEREAS the State Government are advised that AB has a good claim to the said land;

AND WHEREAS the State Government has agreed to relinquish all claims to the said land and to give up possession thereof in consideration of AB not taking any legal steps in the matter and withdrawing his claim to mesne profits.

NOW THIS DEED WITNESSES as follows: \* \*

1. In pursuance of the said agreement and in consideration of the premises the State Government hereby relinquishes, surrenders and transfers to AB all the rights, title and interest that the State Government may have in the market land described in the schedule hereto TO HOLD the said land to AB, his heirs, successors and assigns for ever.

2. The Governor hereby covenants with AB that the said lands shall be quietly entered upon and held and enjoyed and the rents and profits thereof received without any interruption or disturbance by the State Government or any person claiming through or in trust for it AND that it has given notice of the cancellation of the lease and of the relinquishment of all proprietary rights in the said land by the Governor in favour of AB.

3. In pursuance of the said agreement and in consideration of the relinquishment and transfer hereinbefore contained AB hereby relinquishes all claims to mesne profits in respect of the said land for the period from the date of possession of the State Government upto the date of this deed.

4. AB hereby agrees that he will indemnify and save harmless the State Government against any claims by the said CD in respect of any loss

or damage suffered by the said CD in consequence of being dispossessed of the said land before the expiry of the term of his lease and also in respect of all costs, charges and expenses which the State Government may incur or for which it may become liable in respect of any such claim.

5. PROVIDED ALWAYS and it is hereby agreed that in each of the covenants hereinbefore contained the expression "the State Government" includes its successors and assigns and AB includes his heirs, successors, representatives and assigns.

*The schedule herein referred to.*

IN WITNESS WHEREOF, etc.

**14—Release of Property from Charge  
for Maintenance under Wills**

THIS RELEASE made on the \_\_\_\_\_ day of \_\_\_\_\_ BETWEEN AB, etc., CD, etc., EF, etc., GH, etc., and JK, etc., (hereinafter called "the releasors") of the one part AND XY, etc., of the other part;

WHEREAS PQ the grandfather of the said XY executed three Wills on the \_\_\_\_\_ day of \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, and the \_\_\_\_\_ day of \_\_\_\_\_ respectively and under the said Wills provided for the payment of Rs. 1,500 per month as maintenance to each of his three daughters named RS, TU, and VW respectively and after their deaths to their respective children, and by the said Wills charged the payment of the said amounts of maintenance on the property described in lists I and II in the schedule hereto;

AND WHEREAS the said RS having died the maintenance allowance of Rs. 1,500 per mensem allowed to her has devolved on her daughter the aforesaid AB;

AND WHEREAS the said TU having died, her maintenance allowance of Rs. 1,500 per mensem has devolved on her sons and daughter the aforesaid CD, EF and GH;

AND WHEREAS the said VW having died her maintenance allowance of Rs. 1,500 per mensem has devolved on her daughter JK;

AND WHEREAS the said XY has agreed to sell the property described in list I of the schedule hereto free from all encumbrances and charges:

AND WHEREAS at the request of the said XY the releasors have agreed to release the said property from their claim for maintenance aforesaid;

NOW THIS DEED WITNESSES that in pursuance of the aforesaid agreement the releasors hereby release the said property described in list I of the schedule hereto from the charge of the hereinbefore recited maintenance allowance, created by or under the hereinbefore recited Wills of the said PQ and from every claim which the releasors or any of them have for the same.

PROVIDED THAT AND IT IS HEREBY AGREED that the expression "the releasors" hereinbefore used includes their heirs, representatives, successors and assigns.

*The schedule herein referred to.*

IN WITNESS WHEREOF, etc.

#### **15—Release of Part of Mortgaged Property from Mortgage**

*(See Form 41 under MORTGAGE)*

#### **16—Disclaimer by Members of a Joint Family of any Right in the Separate Property of a Member**

We, AB, etc., CD, etc., and EF, etc., being members of a joint Hindu family with GH, etc., hereby declare that the property purchased by the said GH under a sale deed dated \_\_\_\_\_ from XY for Rs. \_\_\_\_\_ has been purchased by him with his own separate money and is his separate property and not the property of the said joint family and each of us hereby disclaim all rights in and title to the same.

#### **17—Disclaimer of Title by a Benamidar<sup>8</sup>**

I, AB, etc., hereby declare that the property described in the schedule hereto and purchased by me at an auction sale in execution of decree No. \_\_\_\_\_ dated \_\_\_\_\_ of the court of \_\_\_\_\_ for Rs. \_\_\_\_\_

<sup>8</sup> Though under the Benami Transactions (Prohibition) Act 1988 benami transactions have been banned, a disclaimer of title by a benamidar in favour of true owner will be in order: Cf *Sankara Hali Institute v. Kishori Lal*, (1996) 7 SCC 55 (para 5). See also precedent No. 7 under SALE, *post*.

was purchased by me *benami* for CD, etc., at his instance and with his money and therefore belongs exclusively to him and I hereby disclaim all rights in and title to the same.

### 18—Disclaimer of Right, Coupled with Relinquishment

AN AGREEMENT dated the \_\_\_\_\_ day of \_\_\_\_\_ BETWEEN AB, etc., CD, etc., and EF, etc., of the one part AND the Governor of Uttar Pradesh (hereinafter called "the State Government") of the other part;

WHEREAS the house mentioned and described in the schedule hereto was built by the said AB and was his separate and exclusive property;

AND WHEREAS by a deed of sale dated the \_\_\_\_\_ the said AB absolutely transferred the said house to XY, the widow of the late GH, one of the sons of the said AB;

AND WHEREAS on his appointment as \_\_\_\_\_ at \_\_\_\_\_ the State Government demanded security from the said CD and the said XY stood surety for the said CD and hypothecated the said house in favour of the State Government as security;

AND WHEREAS the said AB, being a member of a joint Hindu family, the State Government were advised that the other members of the said joint family might claim a right in the said house and might dispute the power of the said AB to sell the same to the said XY or they or the said AB might impeach the said sale on any other ground and the State Government refused to accept the security offered by the said XY as sufficient until all the members of the said joint family executed a deed of disclaimer of any right to the said house and assured the State Government that the said XY had a good and indivisible title to the said house;

AND WHEREAS the parties hereto of the first part being all the present members of the said joint Hindu family of the said AB have, in consideration of the State Government accepting the said security, agreed to execute the required deed of disclaimer and to give the required assurance;

NOW THESE PRESENTS WITNESS as follows:

(1) The parties hereto of the first part hereby state and declare that the house mentioned and described in the schedule hereto was on

the absolute and exclusive property of the said AB and assure the State Government that the transfer made by the said AB by the said sale deed of the in favour of the said XY was a valid transaction and conferred a good and absolute title on the said XY to the said house;

(2) If the said house be regarded as being part of the property of the said joint family and the said CD and EF as having a right to impeach the said transfer, the said CD and EF hereby relinquish such right and confirm the said transfer.

*The schedule herein referred to.*

IN WITNESS WHEREOF, etc..

# RESCISSION OF CONTRACT

## Preliminary Note

A contract can, by consent of parties, be rescinded and each party is thereupon released from its obligation to perform its part of such contract. The simplest way of making the rescission is to endorse the mutual agreement of the parties on the deed of contract, or if there is no deed of contract, or it is not at hand, a separate deed of rescission may be written and executed by both the parties. The deed should recite the contract, and the agreement to rescind it. In the operative part, the parties agree and declare that the contract be rescinded. The parties also release each other from their obligations. The deed must be stamped as a deed of release.

Sometimes a contract is rescinded by one party only, e.g. when a contract is voidable at the option of a party he may rescind it and restore such benefit as he may have received under the contract (Sec. 64, Contract Act). This rule is applied as a rule of equity and good conscience. But the contract must be rescinded as a whole. Such rescission may be made by bringing a suit for rescission or by communication of the repudiation to the other party (*see* Sec.66). In such cases the communication may be made by notice, but the rescission must be clear and unequivocal. The word 'rescinds' implies an express and unequivocal cancellation of contract.

A party to a contract cannot both avoid the contract and retain the benefit received under it. This rests on the principle, "One who seeks equity must do equity". Upon a voidable contract being rescinded, the avoidance is effective not from the date of rescission but from the date of the original transaction.

For rescission through court, see Sections 27, 28, 29 and 30, Specific Relief Act 1963.

## PRECEDENTS

### 1—Rescission of Contract, by Endorsement

The parties within named hereby mutually agree and declare that the within written agreement be and is hereby rescinded and each of the said parties hereby releases the other from the obligation to perform that other's part of the contract under the within written agreement.

### 2—Rescission of an Agreement, by Separate Deed

AN AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_  
BETWEEN AB, etc., of the one part AND CD, etc., of the other part;

WHEREAS by an agreement made on the \_\_\_\_\_ between the said AB and the said CD (hereinafter referred to as the principal agreement) the said AB agreed to sell and the said CD agreed to buy certain quantity of timber of the kind and quantity and upon the conditions therein mentioned ;

AND WHEREAS the said CD proposed to the said AB that the aforesaid agreement be rescinded and the parties be released from the performance of their respective parts of the contract under the said agreement and the said AB accepted the said proposal and agreed to rescind the aforesaid principal agreement;

NOW THESE PRESENTS WITNESS that in pursuance of the aforesaid agreement the parties hereto hereby agree and declare that the aforesaid principal agreement dated the \_\_\_\_\_ be and is hereby rescinded AND that each party hereby releases the other from the obligation to perform its part of the contract under the aforesaid agreement.

IN WITNESS WHEREOF, etc.

### 3—Rescission of a Contract by One of the Parties by Notice

To

AB, etc.

WHEREAS you induced the undersigned to purchase your proprietary rights in the house situate in village \_\_\_\_\_ pargana \_\_\_\_\_ District \_\_\_\_\_ for Rs. 50,000 on the representation that the same was free from encumbrances;

AND WHEREAS it has since been discovered that the said property is subject to an encumbrance of Rs. 15,000 and interest created by a simple mortgage deed executed by your deceased father XY on the-----;

AND WHEREAS the said encumbrance, though now twenty years old, has been kept alive by your acknowledging in writing under your signature the liability under the said mortgage deed in a letter written by you on the-----to Z;

AND WHEREAS as the undersigned was induced to purchase the property by your false representation the falsity of which he could not detect at that time as he had no occasion or reason to make a search in the Registration office for more than twelve years past, the contract of purchase is voidable at the option of the undersigned;

Now the undersigned hereby repudiates and rescinds the said contract of sale and calls upon you to refund to him the sum of Rs. 20,000 paid to you on account of the price of the property. The undersigned is prepared to return possession of the said property on your making a refund of the said price.

# SALE

## Preliminary Note

Sale of immovable property is defined in the Transfer of Property Act as a transfer of property in "exchange for a price paid or promised, or part paid and part promised" (Sec. 54). Almost all the High Courts in India have held that the word 'price' used in this section has the same import as in old Sec. 77 of the Contract Act [now, Sec. 2(10), Sale of Goods Act], that is, money consideration. It need not necessarily be paid in cash, but must be such as may be ascertainable in terms of money.<sup>1</sup> It may be in lieu of existing debt,<sup>2</sup> or a set-off in a decree,<sup>3</sup> or in discharge of an existing mortgage on the property sold,<sup>4</sup> or in lieu of dower.<sup>5</sup> Even if no part of consideration is paid and the whole is to be paid in future, it will still be a sale.<sup>6</sup> The price is an essential ingredient of sale. If no price is paid or promised the transaction will not be covered by the definition of sale. It is permissible, however, that the parties may agree to get the price determined in a particular manner, or they stipulate to pay the market price.<sup>7</sup> In a case, the property was transferred on the condition that all expenses of the litigation will be borne by the transferee and after successful termination of the case 50 per cent of the value will be paid to the vendor. This was upheld as a sale.<sup>8</sup> In case of part payment of price and non-payment of the balance the Patna High Court upheld the transaction as that of sale.<sup>9</sup>

"Sale" of any kind of movable property except actionable claims and money is a transfer by the seller of the property in goods<sup>10</sup> to the buyer for a price, and "price" means money consideration.<sup>11</sup> "Sale" of actionable claims is treated in a separate chapter in the Transfer of Property Act, as assignment of actionable claims, and this has been dealt with in this book also separately under "ASSIGNMENT OF ACTIONABLE CLAIMS, etc.", *ante*. In this part it is proposed to deal only with sale of immovable property and sale of goods.

1 *Madam Pillai v. Badrakali Ammal*, A 1922 Mad 311; *Rejjo v. Lajja*, A 1928 All 204.

2 *Matta Sura Reddi v. Mana Rama Narasu*, A 1937 Mad 714.

3 *Thakar Dass v. Ram Rakha Mal*, A 1937 Pun 287 (Lah).

4 *Alama Chend v. Chhajju*, A 1923 All 530.

5 *Saiful Bibi v. Abdul Aziz Khan*, 1931 ALJ 951; *Ghulam Abbas v. Mt. Razia Begum*, A 1951 All 86.

6 *Chandrashankar Manishankar v. Abhla Mathur*, A 1952 Bom 56.

7 *Ram Sundar Saha v. Kali Narain Sen Choudhury*, A 1927 Cal 889.

8 *Bem Madho v. A U. John*, A 1947 All 110; *Unnao Commercial Bank Ltd., Unnao v. Karlash Nath*, A 1955 All 393.

9 *Raj Kumar Singh v. Uchit Fatwa*, A 1951 Pat 454.

10 As defined in the Sale of Goods Act : Sec. 2 (7) read with Sec. 4.

11 Sec. 2(10) *ibid*.

## SALE OF IMMOVABLE PROPERTY

### *Law Applicable*

"Immovable property" is defined in Sec. 3 (26) of the General Clauses Act 1897, as including "land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to earth." The only difference in the Transfer of Property Act definition is that it excludes standing timber, growing crops or grass.

While trees and shrubs are expressly included in the definition of "attached to the earth" in the Transfer of Property Act, "standing timber" is expressly excluded. This is so because timber is intended to be cut away for commercial purposes, hence it is not treated as immovable property. As for machinery, furnishings and fixtures the question "depends on the circumstances of the case and mainly on two circumstances, as indicating the intention, namely, the degree of annexation and the object of the annexation."<sup>12</sup> If a thing is imbedded in the earth or attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached then it is part of the immovable property. If the attachment is merely for the beneficial enjoyment of the chattel itself, then it remains a chattel, even though fixed for the time being so that it may be enjoyed".<sup>13</sup>

"Mortgage debt" is excluded from the definition of "actionable claims" given in the Transfer of Property Act. Its sale will therefore be governed, not by the Chapter dealing with assignment of actionable claims, but by this Chapter and so is the case with the sale of all intangible rights not amounting to actionable claims, and also with grants of *profits a prendre*.<sup>14</sup>

In territories in which the Transfer of Property Act is not in force the general principles of the Act, though not its technical requirements, have been freely applied as rules of justice, equity and good conscience.<sup>15</sup>

12 *Holland v. Hodgson*, (1872) 7 C.P. 328 at 334 (per Blackburn J.). Similar view in *Leigh v. Taylor*, (1902) AC 157 at 161, H.L.; *Narayana Sa v. Balaguruswami*, A 1924 M 187; *Meghraj v. Krishna Chandra*, A 1924 A 365.

13 *Subrohmianiam Firm v. Chindambaram*, A 1940 M 527 At 529 (Wadsworth J.). Similar view in *Md Ibrahim v. N C. Fibre Trading Co.*, A 1944 M 492; *Board of Revenue v. Venkataswami Naidu*, A 1955 M 620 (FB); *Bamady v. Manorama*, A 1974 AP 226 (DB).

14 See *State of Orissa v. Titaghur Paper Mills*, 1985 Supp SCC 280, A 1985 SC 1293. (Distinction between sale of standing timber, which are goods, and grant of rights in forest land containing timber, explained).

15 *Kadir Moiddin v. Nopcar*, 26 C1; *Mohammad Abdulla v. Mohammad Yasin* 141 IC 377; *Ratanchand v. Smail*, 149 IC 853.

### *How made*

Under the Transfer of Property Act, a sale of tangible immovable property of a value less than Rs. 100 can be made either by a registered instrument, or by delivery of the property. All other sales of immovable property can be made only by a registered instrument (Sec. 54). In the territories where the Transfer of Property Act is not in force a sale may be made in any way, i.e., orally or by unregistered deed but if it is made in writing and relates to property of a value exceeding Rs. 100 then it must be registered under Sec. 17 of the Registration Act.

Delivery of property can be made in any way possible according to the nature of property. If it is in possession of tenants, symbolical possession is sufficient. If it is in possession of the purchaser himself (e.g. as mortgagee or lessee), it is sufficient if the vendor, by appropriate acts and directions, converts that possession into that of a vendee.<sup>16</sup> But in cases of transfer of equity of redemption or the lessor's right delivery is not permissible. It is therefore always safe in such cases to have a registered sale deed, even if the consideration is below Rs. 100.

When a sale is made by an unregistered deed and also possession is delivered, the vendee cannot rely on delivery of possession as a proof of sale, as the terms of the sale cannot be proved, the deed being inadmissible even for that purpose.<sup>17</sup>

Sale is different from exchange as in the former, the price paid is in money; in the latter, it is paid in kind by way of barter.

### *Contract for Sale*

Every sale of immovable property is usually preceded by a contract or an agreement for sale, i.e. agreement to sell, which means a contract that a sale of such property shall take place on the terms settled between the parties. It rarely happens that the terms are settled when the sale deed is being written. They are invariably settled before-hand and very often recorded in writing either in the form of a memorandum or a regular agreement but this is not legally necessary in India (except in Uttar Pradesh, vide U.P. Amending Act, No. 57 of 1976) and a suit for specific performance of a contract to sell or buy land, or for damages for its breach, can be instituted even if the contract is oral. It is, however, always safe to have a formal agreement drawn up in writing. This is all the more desirable because the relief of specific performance is discretionary and is not granted unless the evidence and proof of the contract is absolutely clear and certain.<sup>18</sup> Such an agreement to sell or a contract for sale (as

<sup>16</sup> *Kulachandra Ghosh v. Jogendra Chandra Ghosh*, 60 C. 384, 144 IC 155, ILR 1933 Cal 411; *Sheik Dawood v. Moideen*, 48 MI J 264, 87 IC 331.

<sup>17</sup> *Tribhovan v. Shankar*, A 1943 Bom 43.

<sup>18</sup> *K. Basavarajappa v. Tax Recovery Comm.*, (1996) 11 SCC 632.

distinguished from a contract of sale) does not by itself create any interest or a charge on the property agreed to be sold<sup>19</sup>, (Sec. 54, Transfer of Property Act). It merely creates a right in the purchaser to compel the vendor to complete the sale by a proper sale deed and this right is heritable and assignable. But, if the purchaser under a written and signed agreement to sell takes possession of the property agreed to be sold, the doctrine of part performance will prevent the vendor from ejecting him even though no sale deed has been executed (Sec. 53 A, Transfer of Property Act).

### *Hire Purchase Agreement relating to Immovable Property*

Public bodies like housing boards and development authorities often give the less affluent sections of the public the facility of buying houses and shops on hire purchase basis. Such hire purchase agreements are in the nature of **agreements to sell**, the consideration being payable in instalments, with transfer of possession. When the entire amount is so paid up the agreement to sell is implemented and a sale deed is executed. If the transferee is unable to keep up the payments or to adhere to other terms of the contract he becomes liable to ejectment and the vendor gets the right to resell, the purchaser being liable for any loss on such resale. A precedent of such a transaction has also been given, *post*. (Hire purchase agreements relating to movables have already been dealt with under the title HIRE AND HIRE PURCHASE, *ante*).

### *How Drafted and its Contents*

An agreement for sale is drafted like any other agreement. It should clearly show (1) who are the parties to the contract, (2) the subject-matter, (3) the intention to sell and buy, (4) the price agreed and how it is to be paid, (5) and other terms of the contract.

### *Parties*

The seller must be a person competent to transfer, *i.e.* (1) he must be competent to contract, *i.e.*, must be major, of sound mind, and not disqualified from contracting by any law to which he is subject, (Sec. 11, Contract Act) and (2) he must have title to the property, or authority to transfer it, if not his own (Sec. 7, Transfer of Property Act).

The buyer must be a person capable of holding property and not legally disqualified to be a transferee. Examples of persons legally disqualified are officers having duty to perform in connection with a sale (Order 21, Rule 73, C.P.C.), and Judges and Pleaders in the case of actionable claims (Sec. 136, Transfer of Property Act). A minor is not disqualified to be a transferee though he cannot enter into a contract.<sup>20</sup> If the sale has been negotiated and the

19 *Ganesh Shet v. Dr. C.S.G.K. Sethy*, (1998) 5 SCC 381 (paras 13 and 14).

20 *Ulfat Rai v. Gauri Shankar*, 33 A 657, 11 IC 20; *Munia v. Perumal*, 37 M 390, 26 IC 195; *Raghav v. Srinivas*, 40 M 308, 36 IC 931; *Collector of Merrut v. Lala Hardian Singh*, A 1945 All 156.

contract has been made by his guardian or any other person on his behalf, the actual sale deed may be executed in his favour, provided the sale deed does not contain any covenant by the purchaser. Under Hindu Law and also otherwise, a minor's guardian can enter into a contract for sale on behalf of the minor if the contract is for the benefit of the minor.<sup>1</sup>

The names of both the parties to the contract namely, the person agreeing to sell and person agreeing to purchase, would be given. Though, strictly speaking, the terms "vendor" and "purchaser" are applicable after a sale has actually been made, yet they are used in England in contracts for sale also to denote the person agreeing to sell and the person agreeing to buy. Though this is justified there by the fact that a contract for sale when completed operates as a sale in equity, and as there is no such justification in India, it would be preferable to call them either by their names or as "the first party" and "the second party", yet, in view of the practice in England and the adoption of the terms in India also both in conveyances as well as in statute, e.g. in Sec. 55, Transfer of Property Act and Sec. 13, Specific Relief Act, there is no objection to the use of the expression "vendor" and "seller", and "purchaser" and "buyer".

While in the undernoted case it has been held that such an agreement need not be signed by the purchaser,<sup>2</sup> a contrary view has been expressed in another case<sup>3</sup> wherein it has been held that a deed signed by the seller alone amounts only to his unilateral undertaking as there is nothing to show that the contract has been completed by acceptance by the purchaser. The preferable course thus is to have the deed drafted as a bilateral contract and not as a deed poll.

### *Subject Matter*

This means the property agreed to be sold. The purchaser should satisfy himself that the property he agrees to purchase is by its nature transferable and its transfer is not forbidden by law. Properties which cannot be transferred are detailed in Sec. 6 of the Transfer of Property Act. The right of a Muslim widow to retain possession in lieu of dower is not saleable.<sup>4</sup>

It is not necessary that the parcels should be described with the same precision as in a sale deed, yet a description sufficient for the proper identification of the property should be given, and in this respect it is always better to err on the side of prolixity than to err on the side of brevity.

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- 1 *Sri Kakulam Subrahmanyam v. Kurra Subba Rao*, A 1948 PC 95; *Manik Chandra v. Ramchandra*, A 1981 SC 519, (1980)4 SCC 22.
  - 2 *Mohd. Mohar Ali v. Mohd. Mamud Ali*, A 1998 Gau 92.
  - 3 *S.M. Gopal Chetty v. Raman*, A 1998 Mad 169.
  - 4 *Abdul Samad v. Alimuddin*, A 1944 Pat 174.

### *Intention to Sell and Buy*

The agreement to sell and buy should be clearly expressed. In India, where unilateral deeds are common, the agreement is generally made by the vendor to sell the property and no agreement is made by the purchaser to purchase it. The conduct of the purchaser in taking such an agreement and paying earnest money thereupon amounts to an agreement by him to buy the property, but it is always preferable to have agreement to purchase also embodied in the the deed and to have the agreement signed by the purchaser also<sup>5</sup>.

### *Price*

The price may either be fixed in a lump sum or a rate may be specified and the total price may be left for calculation at the time of the execution of the sale deed, or it may be provided that the price will be that at which the property may be valued by a particular person or in a particular manner. If a particular person is named, provision should be made for the contingency of such person's death or inability or refusal to make the valuation, otherwise the contract will fall through.<sup>6</sup> A contract, however, for sale "at a fair valuation" is valid and enforceable<sup>7</sup> and in such cases in case of disagreement between the parties or difficulty of a satisfactory valuation, the Court will make the valuation when enforcing the contract. As required by Sec. 29 Contract Act, the meaning of the agreement should be either certain or be capable of being made certain, failing which it will be void for uncertainty. Hence, preferably, the price should be mentioned in the sale deed itself.

Any contract about the manner in which the price is to be paid should be stated. In the absence of any such stipulation, the seller can insist on the payment to be made at the time of completion of the sale [Sec. 55 (5) (b)]. If price is mentioned in the sale deed as having been paid but this recital is found incorrect, the sale deed is not rendered invalid thereby; the sale stands and the price is recoverable and is a charge upon the property in the hands of the buyer.<sup>8</sup>

### *Earnest Money*

If part of the price is paid as earnest money the same may be mentioned in the agreement and a separate receipt is not necessary.

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5 *M.S. Gopal Chetty v. Raman*, A 1989 Mad. 169

6 *Faith v. Midland Rail Co.*, (1875) 20 Fq. 100

7 *Wilks v. Davis*, (1817) 3 Mer 507.

8 *Narain Prasad v. D.D.C.*, 1998 AllC 921 (All), relg. on *Baij Nath v. Paltu*, (1908) 30 All 125 (DB); *Sukalu v. Punam*, A 1961 MP 176; *Motilal v. Ugrah Narain*, A 1950 Pat 288.

### *Any Other Terms*

The insertion of all material terms, both of the agreement to sell and buy, as well as of the proposed sale deed, is very important. The terms of the agreement usually provided are the time fixed for completing the sale, the time and mode of payment of the price, the penalty for not completing the sale, the liability of the parties for expenses of the sale deed (conveyancing fee, stamp, registration, etc.), conditions about investigation of title, if the same has not been investigated before the agreement. If any covenants are to be entered in the sale deed the same may also be provided in the agreement, otherwise the vendor or purchaser may very well refuse to have them inserted, e.g. an indemnity clause against encumbrances or defect in title.

### *Encumbrances*

If the sale is to be subject to encumbrances, the encumbrances should be specified. If it is to be free from encumbrances, that fact should be stated, as the remedy under Sec. 13 of the Specific Relief Act may not be available unless the sale is expressly made free from encumbrances.

### *Investigation of Title*

The title of the vendor should be carefully examined before a contract is made. It is the duty of the vendor to inform the purchaser of any *material* defect in the property or his title thereto of which he is aware but the purchaser is not cognizant, and which the purchaser could not have himself discovered *i.e.* *latent* defects as opposed to *patent* defects [Sec. 55(i) (a)]. If the defect is such as the purchaser could easily discover himself, if he had taken reasonable care, there is no duty on the vendor. In view of this law, independently of what the vendor is bound to do, the purchaser should, in his own interest carefully inspect the property and investigate the vendor's title thereto by inspecting village or municipal records, title deeds, etc., and should also find out encumbrances by making a search of the registers in the Registration Office.

Sometimes it is not considered advisable to delay the execution of the agreement by investigation. In such cases, the agreement to purchase may be made expressly subject to the title of the vendor being found on investigation to be good and the vendor's assertion or representations about the title and encumbrances being verified. In such cases, the manner in which title is to be investigated may be agreed upon and mentioned in the agreement to avoid future trouble and disputes. If this is done, it will be better to fix the period for this purpose. Sometimes in order to avoid settling such details, parties agree that the seller should show a title to the satisfaction of the buyer's solicitor or pleader. This does not make the arbitrary opinion of the solicitor or pleader final, but the reasonable meaning of the condition is to claim the purchaser's right of investigating title with professional assistance and of refusing to

complete the sale, if the seller's title is proved to be bad.<sup>9</sup> If the seller shows that there was such a title tendered as made it unreasonable for the solicitor not to approve of it, it is sufficient even if the solicitor withholds his approval.<sup>10</sup>

Sometime the buyer agrees to accept the title as it is and this is a valid contract.<sup>11</sup> But this condition does not relieve the seller of the obligation under Sec. 55(1) (a) of disclosure,<sup>12</sup> or of giving as good a title as he can e.g., by paying off a mortgage unless the property is sold subject to it.<sup>13</sup> Nor will the condition be enforceable if he has no title at all,<sup>14</sup> and a *fortiori*, if he knows he has none [Sec. 17(1)(a), Specific Relief Act].

### *How Investigation into Title is made in the Absence of a Contract*

If the manner of investigation of title has not been agreed upon between the parties, ordinarily the vendor should be required to produce his title deeds. If he has purchased the property himself from another, he must be in possession of the sale deed. If it is not forthcoming, a copy can be obtained from registration officer. The title of his vendor should then be traced, a clue to which may be found in the sale deed itself, and, if there is no reference to it in the sale deed, it should be independently investigated. In this way, the claim should be pursued as far back as possible, and if title of the vendor and his predecessors-in-title for over a considerable period is established, the title is made out. Ordinarily the period of prescription for acquisition of title is 12 years, but as the period can always be extended by the minority or insanity of the person entitled, it is advisable not to be satisfied by title and possession of only 12 years, unless there is a very clear case of a definite and undisputed possession traceable to some title for over 12 years. In case of property entered in any public register, such as a house in a municipal or cantonment register, or agricultural land in village registers, such registers should be scrutinized, and the names of the vendor and his successive predecessors-in-title should be seen. If any name is omitted, or added the same should be satisfactorily accounted for. When a sale deed is found to have been made by the heir of a person entered as proprietor in the register, it should be ascertained whether such heir was the only heir of that person, and if there were other heirs, what became of them and of their shares in the property. This is all the more necessary in the case of Muslims amongst whom property devolves on several heirs in different small shares.

9 *Hussey v. Horne Payne*, (1879) 3 App. Cas. 311, 322.

10 *Apro v. Promotho*, 18 CWN 568, 24 IC 452; *Treacher & Co. v. Mahomedally*, 35 B 110, 71C 669.

11 *Motivahoo v. Vinayak*, 12 B 1; *Indra Narain v. Badan*, 47 IC 340.

12 *Hume v. Pocock*, (1888) 1 Ch. App. 379.

13 *Goold v. Birmigham Bating Co.*, (1888) 4 TLR 413.

14 *Motivahoo v. Vinayak*, 12 B 1.

In case it is found that at some stage the property had vested in the Government, it should either be shown how Government came to part with the title, or definite adverse possession for over 60 years (under the Limitation Act, 1908, now reduced to 30 years under the Act of 1963) should be established. If the Government's lease in favour of vendor has expired and is yet to be renewed the purchase may be expressed to be conditional on the vendor obtaining the renewal of the lease. It will be a condition precedent and until it is fulfilled there would be no concluded contract.<sup>15</sup> When the land is vacant one and of no present use to the owner, proof of adverse possession is difficult and a purchaser should not be satisfied without proof of actual title.

In tracing title through successive title deeds or entries in successive registers of property, extreme care should be taken to be satisfied as to the identity of the property as described in the several title deeds or registers. The purchaser should thus satisfy himself that the vendor has power to sell the property.

After satisfying himself about the title of the vendor and his power to sell, the next point on which a purchaser should satisfy himself is, whether there are any charges or encumbrances on the property. On this point the vendor should be questioned and his representation should be embodied in the agreement and the sale deed. As there can be no charge or encumbrances without registration, it is not difficult to find this out by a search of the registers in the registration office. Registers of at least 12 years must be searched, but it would be profitable to search the registers further back if possible, as sometimes there is a period fixed for payment in a mortgage deed, and the 12 years would run from the expiry of that period, or limitation is extended by part payment or acknowledgment. It is always advisable to have a declaration by the vendor about the encumbrances. In places where the Transfer of Property Act applies, Sec. 55 (1) (g) provides that it is the vendor's duty to discharge all encumbrances, unless the property is sold subject to them.

### *Transferability of Right or Contract*

A right to buy or sell under a contract for sale is assignable, but, though the assignee would be entitled to enforce the right, yet the assignor cannot relieve himself of the obligation, as an obligation is not assignable except with the consent of the other party. In transactions of sale of immovable property, time is not of the essence of the contract. Where, however, reciprocal promise is made by way of a 'concession' the compliance with the reciprocal obligation could be secured strictly within the stipulated time frame.<sup>16</sup>

### *Stamp and Registration*

An agreement for sale of immovable property should be stamped as an

15 *Aberfozle Plantations Ltd. v. Cherg*, (1960) AC 115, PC.

16 *Indira Kaur v. Sheo Lal Kapoor*, (1988) 2 SCC 488.

agreement with the duty, prescribed under Article 5 of Schedule I of the Indian Stamp Act. The rate is different in different States due to local amendments and it may be looked into. It need not be registered [Sec. 17 (2) (v) Registration Act] except in States where there is some local amendment as in U.P. by the U.P. Act 57 of 1976.

## SALE DEED

### *Duty to Prepare Conveyance*

In the absence of a contract to the contrary, it is the duty of the purchaser and not of the vendor, to prepare the conveyance or sale deed and to tender it to the vendor for execution at a proper time and place, and the vendor is bound to execute the same on payment to him of the amount due in respect of the price [Sec. 55 (1) (d)]. The cost of preparing the sale deed is generally borne by the purchaser but the parties may agree otherwise. In any case, even if the vendor is to bear the cost, the duty of preparing the conveyance always falls upon the purchasers, unless there is an express contract to the contrary.

### *Points to be Considered before Drafting a Sale Deed*

A conveyancer should carefully consider the following points before drafting a sale deed :

(1) Whether the vendor is competent to contract and is not suffering from any disability;

(2) Whether he is competent to sell the particular property. If he is not a full owner and has only a limited interest, he should either sell the limited interest only, if it is saleable, or should procure the consent and concurrence of the owner of the remaining interest ;

(3) If the vendor cannot sell, except under certain circumstances or without some sanction, e.g. a guardian, or a trustee, or a corporation, what these circumstances are which empower him to sell, and what are the formalities which the vendor is bound to comply with, and whether such circumstances exist and such formalities have been complied with;

(4) Whether the property from its nature is transferable;

(5) Whether the purchaser is a person capable of holding property;

(6) What is the full and correct description of property sold,

(7) What is the consideration and how is it to be paid;

(8) Whether there are any encumbrances, and what has been settled about them;

(9) Whether any particular terms are settled and whether they are legally valid. For example, they may not operate as a restraint against alienation (Sec. 10), or direction to enjoy in a particular manner (Sec. 11); and

(10) What has been settled about the cost of drawing up the conveyance, stamp duty and registration fee.

### *Form of Sale Deed*

In India, the traditional vernacular form of a sale deed is like that of a deed poll, in which the vendor directly says in the first person that he has sold such and such property to such and such person for such and such price. This is not executed by the purchaser, even though it may contain any covenants binding on the purchaser; and it has been held that the very fact of a purchaser having accepted the deed and entered into possession of the property under it makes all its conditions binding on him; but there is always the risk of the purchase being repudiated by the purchaser before taking possession. The form in use in England, which is the usual form of a deed between two parties is, however, much better and should be adopted. Though it is proper that it be signed by the purchaser also, yet that is not necessary, unless it contains any covenants by the purchaser, or any reservations from the grant (e.g. an easement over the property sold), in which case the purchaser should sign it.<sup>17</sup> As the signature of the purchaser is not, however, necessary under the law, the sale deed will be valid even without its execution by the purchaser. Even if the purchaser signs the sale deed, but does not appear at the registration and the acknowledgment is made before the Sub-Registrar by the vendor alone, the deed is not invalid.

### *Contents of a Sale Deed*

A sale deed consists of the following parts : Description of the deed, Date, Parties, Recitals, (if any), Testatum, Consideration, Receipt, Operative Words, Parcels, Exceptions and reservations (if any), Habendum, Covenants (if any), and Testimonium.

For a detailed consideration of each of these parts, the reader is referred to Part II of the Introduction, which should be carefully read. It is unnecessary to repeat here all that has been said there, and all that has been stated there fully applies to a deed of sale. He should also refer to what has been stated above under "Contract for Sale". It is necessary only to make a few additional observations.

### *Recital of Vendor's Title*

It has been stated in the INTRODUCTION, *ante*, that in a simple case, when the vendor is the absolute owner, no recital of title need be made. In such cases it would be advisable to indicate the title of the vendor in the operative part of the deed by describing the vendor as absolute owner thus: "The vendor as absolute owner hereby transfers by way of sale, etc." The advantages of

<sup>17</sup> See also Preliminary Note under EASEMENTS, *ante*.

this will be, not only to show clearly the title of the vendor, but also to indicate, without the use of words of limitation used in English conveyances, what amount of interest has been transferred to the purchaser, as when it is stated that the vendor is the absolute owner, and the deed does not show that any smaller interest is transferred, the transfer will pass the absolute ownership to the purchaser (Sec. 8). This would no doubt be the consequence even if these words were omitted, but then, if a dispute arose, it would have to be inquired what the exact rights of the vendor at the time of sale were.

### *Operative Words*

The word "conveys" is used in England and is no doubt quite sufficient but, as that word is not used in our Transfer of Property Act, it would be advisable to use the word "transfer", which is simple and equally clear and has been used in Indian statutes. To make the operative words more expressive of the transaction, we might say "transfers by way of sale".

### *Several Vendors*

Where there are several co-owners<sup>1</sup> in a property which is sold, it will be sufficient to say that "the vendors hereby transfer to the purchaser, etc." but it will be more correct, precise, and careful to say that "each of the vendors so far as relates to his own share and interest in the property hereby sold hereby transfers to the purchaser, etc." This will be all right if the whole share of each of the vendors in the property is sold, but greater care is required where the vendors sell a lesser share than they hold. For example, if A holds one half share and B and C one-fourth each in an estate and they sell one eighth to D, the question will be, out of which shares will this one-eighth share be made. If nothing is said in the sale deed, and the sale deed is executed in the ordinary terms, the transfer takes effect on all the shares proportionately to the extent of shares, and to give effect to the sale of one-eighth, one-sixteenth share will be taken from the share of A, and 1/32 from each of the shares of B and C (Sec. 47). If it is desired, that this proportion should be varied, this should be expressly provided in the operative part thus :

"The several vendors hereinbefore mentioned as to their shares hereinafter specified in the property hereby sold namely, the said A as to a 10 percent undivided share thereof, the said B as to 8 percent undivided share thereof, and the said C as to 7 percent undivided share thereof hereby transfer by way of sale to the purchaser ALL that 25 percent share in the estate, etc."

In such cases the several vendors would be entitled to the consideration also in proportion to the shares sold by them (Sec. 46).

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<sup>18</sup> Joint owners are also owners and each of them is, in the eye of law, deemed to be in possession of the every part of the composite property : *Kochkunju Nair v. Koshy Alexander*, (1999) 3 SCC 482 (para 10), A 1999 SC 2272.

### *Habendum, when several Purchasers*

If there are several purchasers it may be necessary to define the interest which each is to take under the sale. Sec. 45 of the Transfer of Property Act provides, that if the consideration comes out of a fund belonging jointly to all the purchasers, they are entitled to the same shares as they held in the fund, and, where such consideration is paid out of separate funds belonging to them, they are entitled to the property in proportion to the shares of the consideration advanced by them respectively. In the absence of any evidence of interest in the common fund or shares in which the consideration was advanced, the purchasers are presumed to be equally interested in the property. It is expressly provided by this section that these rules are to operate only "in the absence of a contract to the contrary". Therefore any express provision in the sale deed will override them, and it is necessary that if the purchasers have separate shares in the money paid as consideration, the same should be specified thus :

"In consideration of Rs. 10,000 paid to the vendor by the purchasers in equal shares (*or*, in the proportions hereinafter mentioned *viz.*, Rs. 5,000 by AB, 2,500 by CD and 2,500 by EF) (the receipt of which amount is hereby acknowledged by the vendor), etc." If this is done, it is immaterial whether the shares which the purchaser is to hold are not defined in the *habendum*, though it may be better to define them also thus :

"To hold the same to the purchasers as tenants in common<sup>19</sup> in equal shares (*or*, in the following undivided shares, *i.e.* to the said AB, one-half and to the said CD and EF one-quarter each)."

If the fund out of which the price is paid is a joint undivided fund and the purchasers are to hold the property not as tenants in common, but as Joint Tenants as in the case of a purchase by a joint Hindu family, it is unnecessary to say anything about the consideration, and in the *habendum* it is sufficient to name the purchasers with or without the addition of the word 'jointly', thus "To hold the same to the purchasers (*or*, purchasers jointly)."

### *Words of Limitation*

It is sufficient to say "To hold the same to the purchaser absolutely forever" or "as absolute owner". Even the words "by way of sale" after the word "transfer" in the operative part are not necessary, as "sale" implies absolute transfer of ownership.

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<sup>19</sup> The distinction between "tenants in common" and "joint tenants" mainly is that the rule of survivorship applies to joint tenants, while it does not to tenants in common. Tenants in common have fixed defined shares (See Preliminary Note under PARTITION, *ante*).

### *Conditions*

If there is any condition (e.g., payment of rent, revenue or mortgage amount by the purchaser) subject to which the sale is made, the same should be expressed immediately after and as part of the *habendum*, thus, "subject to the payment of, etc.", or, if there are several conditions, "subject to the conditions hereinafter mentioned" (mentioning the conditions as covenants).

### *Sale of Joint Hindu Family property*

See Preliminary Notes on MORTGAGE AND NEGOTIABLE INSTRUMENTS, *ante*.

### *Sale by Government*

In all sales of land by Government it is usual to add in the *habendum* that the purchaser is to hold the land "subject to the payment of such land revenue, cesses and taxes as are or may be assessed or imposed on the said land", unless it is intended that the land should always be revenue free and tax free, which is rarely the case. If the condition is not added the right of Government to assess the land to revenue or to impose a land tax on it in future may be disputed by the parties.

In case of transfers whether by way of sale or lease by Government the various restrictions contained in Sec. 10 to 17, Transfer of Property Act are not applicable, in view of the provisions of the Government Grants Act (This Act is subject to various State amendments).

### *Sale of Leasehold Property*

In the *habendum* of the sale deeds relating to leasehold property, the purchaser is to hold the land, not absolutely forever, but, "for the residue of the term of the said lease, subject to the rent reserved by the lease and to the covenants and conditions contained in the said lease to be performed and observed by the lessee".

## COVENANTS IN A SALE DEED

### *Implied Covenants*

The usual covenants in a sale deed are covenant for title, covenant for quiet enjoyment, covenant against encumbrances and covenant for further assurance. In India, in every sale, it is implied that the seller covenants that the interest which he professes to transfer to the buyer subsists and that he has power to transfer the same [Sec. 55 (2)]. It has been held that even if the buyer knew of any defect in the seller's title at the time of contract, still he may, under this implied covenant, hold the seller responsible if he is dispossessed by

reason of such defect in title, and may claim either damages or return of the price.<sup>20</sup> This implied covenant amounts to an absolute warranty of title proposed to be transferred. For example, if a seller transfers land as his absolute property and it turns out to be his occupancy holding, or if he sells a mortgagee's interest and it is found out that mortgage was invalid, if dispossessed or disturbed by a person entitled, the buyer is entitled to return of his purchase money or to damages.

### Exception

But in a sale made by a person in a fiduciary character (e.g. a trustee or a guardian), no such covenant for title is implied. The only covenant in such cases is, that the seller has done no act whereby the property is encumbered or whereby he is hindered from transferring it [Proviso to Sec. 55 (2)].

### Express Covenants

In places where the Transfer of Property Act is in force, it is, therefore, unnecessary to insert an express covenant for title unless it is intended to enlarge or restrict the covenant or to make special provisions for the case of breach. Such enlargement or restriction of the implied covenant by express contract is permissible, as the implied covenant arises only "in the absence of a contract to the contrary". But all such express covenants should be clear, unequivocal and definite. Though ordinarily an express covenant overrides an implied covenant on the same subject,<sup>1</sup> yet it has been held that the implied covenant cannot be got rid of, except by clear and unambiguous expression, and, in the absence of such clear expression, an express covenant will be held to be over and above the implied covenant.<sup>2</sup> The express covenant, in order to override the implied covenant, must be on the same subject; therefore a covenant for quiet enjoyment only will not exclude the implied covenant for title. For instance, an express covenant that in case of any dispute arising about the possession of the land, the seller will have it settled,<sup>3</sup> and an express covenant in a sale of mortgagee's interest that the seller will make good any sums found to have been paid to him by the mortgagor,<sup>4</sup> were held to be only

20 *Kalka v. Namdar*, 1933 ALJ 938, A 1933 All 389; *Basaradi v. Enajaddi*, 25 C 298; *Mohamad Ali v. Venkatapatri*, 30 MLJ 449, 60 IC 235; *Muhammad Ibrahim v. Nakched*, 7 ALJ 752, 6 IC 890; *Subharya v. Rajagopala*, 38 M 887, 23 IC 570; *Shahu Avidesh v. S. Zakaul Husnain*, A 1944 All 243; *Deep Chandra v. Rukuddaula Shamsher Jang Nawab Mohammad Sajjad Ali Khan*, A 1951 All 93 (FB); *Shanker Lal v. Jethmal*, A 1961 Raj 196; *Dr. Gwasha Lal v. Karter Singh*, A 1961 JK 66.

<sup>1</sup> *Subramania v. Sammath*, 21 M 69.

<sup>2</sup> *Mohamad Ali v. Venkatapatri*, 30 MLJ 449, 60 IC 235; *Digambar v. Nishikala*, 8 IC 91; *Kashirao v. Zabu Pandu*, 147 IC 842, A 1933 Nag 364.

<sup>3</sup> *Raghava v. Samacharir*, 1914 MWN 57, 21 IC 42.

<sup>4</sup> *Bala Gurumurthy v. Ramakrishna*, 41 MLJ 267, 69 IC 473, A 1921 Mad 277.

express covenants for quiet enjoyment which did not override the implied covenant for title. Similarly, the covenant that in case any person came forward as a co-partner or co-sharer and brought a claim and the property passed out of the vendee's hands or if an encumbrance was found, the vendor should refund the price with costs was held by the Privy Council not to override the implied covenant for title so as to negative the claim of the vendee for a sum larger than price paid by him to discharge a prior encumbrance.<sup>5</sup> Likewise the implied covenant was held not to be excluded in a case where the express covenant referred to ouster by a partner or cosharer while the vendee was actually ousted by a reversioner of a Hindu widow.<sup>6</sup> The High Court held that "in order to exclude the operation of the statutory liability of the vendor, a contract, covenant or agreement must so clearly be inconsistent with the statutory rules as to lead to the inference that it had been made to qualify the generality of the law". Express provision may be necessary if the seller is to pay any interest on the price, in case the title is found to be defective, or if provision for the refund of the proportionate price is to be made, in case of the purchaser losing a fraction of the property sold.

Although, as in those territories also where the Transfer of Property Act is not in force, its principles apply and therefore, the implied covenant for title will be available, yet it is safer to have an express covenant for title and quiet possession.

### *Quiet Enjoyment*

A general covenant for quiet enjoyment is not implied by the Transfer of Property Act and can, therefore, attach only by express covenant.

Though in case of disturbance by a stranger having a better title than the vendor, a purchaser can sue his vendor on the implied warranty of title even if there is no express covenant for quiet enjoyment, yet there is a distinct advantage in having an express covenant for quiet enjoyment, and that is in the matter of limitation. An implied covenant for title by a vendor who has no title is broken on the day the sale is made and a suit upon it should be filed within three years of the sale (Article 55, Limitation Act, 1963), and when disturbance actually takes place after six years, the purchaser may find that he has no remedy against the vendor. If, however, there is an express covenant for quiet enjoyment, it is not broken until the purchaser is actually disturbed.

But in order to be fully effective the covenant should be against disturbance, not by the vendor and persons claiming under him, but also against all persons showing paramount title, i.e. against lawful disturbance by any person whomsoever. As regards strangers, a vendor can, of course, covenant against *lawful* disturbance and not against tortious disturbance for which the purchaser has his own remedy against the tort-feasor; but against himself and persons claiming under him he should be liable for *all* kinds of disturbance.

5 *Bhagwati v. Banarsidas*, 50 A 371, 55 IC 135, 108 IC 687, A 1928 PC 98.

6 *Nand Ram v. Parshottam Das*, 145 IC 615, 1933 ALJ 201, A 1933 All 203.

### *Encumbrances*

Sec. 55 (1)(g) makes the seller bound to discharge all encumbrances on the property existing on the date of sale, unless the property is sold subject to such encumbrances. It follows that, if nothing is mentioned in the deed about encumbrances, the provisions of the Transfer of Property Act in Sec. 55 (1)(g) and 55 (2) will imply a contract that there are no encumbrances, and if there are found to be any, the seller must discharge them. For this reason, it is not necessary for the seller to say that he transfers the property free from encumbrances. But if there are encumbrances, it would be better to provide whether the sale is subject to them and the purchaser is liable to discharge them, or the sale is free from encumbrances and the vendor will himself discharge them. In the former case, there should further be a covenant by the purchaser to indemnify the vendor from any claim under the encumbrances.

If there is an express covenant against encumbrances, the seller will not be able to show that the buyer knew of the encumbrances at the time of sale and cannot sue on that covenant, because he would be barred by Sec. 92, Evidence Act from proving this.<sup>7</sup> It is therefore always advantageous to have an express covenant.

### *Covenant for Further Assurances*

A covenant for further assurance which was always expressly mentioned in England is not mentioned now as it is implied in a sale "as beneficial owner". As there is no such implied covenant in India, the covenant may be expressly mentioned, though the occasions for its enforcement are very rare. Such covenant is to do all necessary acts and things as may reasonably be required by the purchaser to assure the property purchased by him in the manner intended by the sale. Under this covenant, a vendor who has sold a defective title can be called upon to convey such title as he afterwards acquires, even though he acquires it by purchase for consideration, and, can be required to complete the title or to discharge the encumbrances. He can also be compelled to produce title deeds, or to defend his title if any third party assails it.

Sec. 43, Transfer of Property Act provides that when a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer it for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. The subsequently acquired interest does not automatically become included in the sale but this can only be claimed by the purchaser *at his option*. Therefore, the purchaser may require the vendor to execute a deed of transfer of such subsequently acquired right. Sec. 13(1)(a) of the Specific Relief

<sup>7</sup> *Thammineni v. Dhavala*, A 1945 Mad 205

Act, 1963 makes a statutory provision for this right and no express contract of further assurance is therefore necessary in India for this purpose, nor for the right to compel the seller to discharge encumbrances (Sec. 13(c), Specific Relief Act, 1963). Still a careful conveyancer would consider it safer to include an express covenant for further assurance in all sale deeds.

### *Other Implied Covenants*

In addition to the covenant mentioned above, there are certain other rights and liabilities of the vendor and purchaser which are, in the absence of a contract to the contrary, implied by the statute (Transfer of Property Act). They are as follows :

#### *(1) Apportionment of Rent between Vendor and Purchaser*

If the vendor is authorised to receive any rent or other fixed income from the property sold, the rent or income shall be deemed to accrue day by day, and he will be entitled to the proportionate rent or income upto the date the transfer takes effect, and the purchaser, to the proportionate income after that date, but the rent or income will remain payable on the days appointed for payment (Sec. 36).

#### *(2) Apportionment of Right in Properties sold to Different Persons*

If, by reason of a sale or several sales, a property is severed and several portions pass to several persons, the benefit of an obligation relating to the property as a whole shall also pass proportionately to the several owners, e.g. the rent will be apportioned, but if the obligation is indivisible, it shall be performed for the benefit of such one of the several owners as they shall jointly designate for the purpose (Sec. 37).

#### *(3) Duty to Deliver Possession*

The vendor is bound to give, on being so required, the purchaser or his nominee, such possession of the property as its nature admits [Sec. 55(1) (f)]. In case of a share in joint property, no actual delivery of possession is possible, but the purchaser acquires the right of joint possession or joint enjoyment as his vendor enjoyed and a right to demand partition. If the share is a share in a dwelling house belonging to an undivided family, the purchaser will not be entitled to joint possession (Sec. 44, second paragraph).

#### *(4) To Pay Rent*

All public charges and rents are to be paid by the vendor upto the date the property passes to the purchaser and by the purchaser thereafter [Secs. 55(1)(g) and 55(a) (d)].

### (5) *To Discharge Encumbrances*

If the property is sold free from encumbrances, the vendor is to discharge the encumbrances, and pay interest; if it is sold subject to encumbrances, the purchaser is to discharge the encumbrances, and pay interest after the date of passing of ownership in the property to him (*ibid*).

### (6) *Title Deeds*

The vendor is bound, on payment of price by the purchaser, to deliver to the purchaser all title deeds, unless the vendor retains any part of the property comprised in the title deeds, in which case he is entitled to retain the title deeds, or, where the property is sold to different purchasers, in which case the title deeds are retained by the purchaser of the lot of greatest value [Sec. 53(3)].

### (7) *To Produce Title Deeds*

The seller, or the purchaser of the lot of the greatest value retaining the title deeds is bound to produce them and to furnish copies to the purchaser at the latter's cost [Sec. 55(3)].

### (8) *Charge for Unpaid Price*

The vendor is entitled to a charge on the property in the hands of the purchaser for any unpaid purchase money, and for interest on the same, from the date on which possession has been delivered to the purchaser.

### (9) *Right of Rents and Profits*

Rents and profits of the property belong to the vendor till the ownership of the property passes to the purchaser, and thereafter to the purchaser [Secs. 55(4)(a), 55(6)(a)].

### (10) *Right to Increase in Value*

Any increase in value of the property, after ownership has passed to the purchaser, belongs to the Purchaser [Sec. 55(6)(a)].

### (11) *Charge for Price Paid and Earnest Money*

Unless the purchaser has improperly declined to accept delivery, he is entitled to a charge on the property for the amount of any purchase money paid by him and for interest on such amount, and, when he properly declines to accept delivery, also for earnest money and for cost of a suit for specific performance, if awarded [Sec. 55(6)(b)].

No express provision regarding the above matters need be made in the sale deed, unless—

(1) It is intended to vary or modify such rights and liabilities as are implied under the above provisions;

(2) The property is situate in a territory in which the Transfer of Property Act is not in force. Although, as the general principles of the Act have been held to apply in such territories also, the above provisions, which only lay down common sense principles, will apply, yet in order to be on the safe side an express provision about any matter on which the parties intend to stipulate may be inserted.

It would thus appear that in a simple deed of sale no covenants are necessary where the Transfer of Property Act applies.

### SPECIAL COVENANTS

In addition to the usual covenants, which are either implied in every sale or are expressly entered, special covenants about any matter connected with the sale or the property sold may be entered into by the parties in particular cases. They are purely matters of contract. The parties are at liberty to enter into any contract, provided the same is legally enforceable at law, i.e. it is not one of the agreements which is void under the Contract Act, or a contract which will not be enforceable under the Transfer of Property Act [ Secs. 10 and 11. See however, Government Grants Act, Secs.2 and 3, in respect of transfers by Government].

#### *Condition Restraining Alienation*

A condition restraining the purchaser or his successor from parting with, or disposing of, his interest in the property is void, if the restraint is absolute, but if the restraint is partial, e.g. a prohibition of alienation to a particular class, or a condition not to sell out of the family, the condition is valid.<sup>8</sup> But a restraint of alienation for a particular period or time is void, as it is not a partial restraint but an absolute one though limited in point of time (Sec 10).

A plot in an industrial estate was sold to an intending entrepreneur by an Industrial Development Corporation subject to the following conditions .

"That the allottee shall start on the said site construction of the building for setting up the aforesaid industry within a period of six months and complete the construction thereof within two years from the date of issue of the allotment letter, the plans of which shall be in accordance with the rules made and with the directions given from time to time by the Town and Country Planning and Urban Estates Department in this respect and approved by the Director, Town & Country Planning Department or any other officer duly authorised by him in

<sup>8</sup> *Mohammad Raza v. Mst. Abbas Bandi*, 7 Luck 257, 36 CWN 734, 59 IA 236, 1932 ALJ 709, 137 IC 321, A 1932 PC 158; *Ratanlal Kanhaiyalal Bania v. Ramamujdas Ranchandra*, A 1944 Nag 187; *Mahamud Ali Majumdar v. Brikodar Nath*, A 1960 Assam 178.

this behalf. Further, the allottee shall complete the erection and installation of machinery and commence production within a period of three years from the date of allotment of the plot, failing which the plot shall be liable to be resumed by the Corporation:

Provided that the time under this clause may be extended by the MD, HSIDC Ltd., in case the failure to complete the building and commencement of production by the stipulated date was due to reasons beyond the control of the allottee.

The Corporation shall also have the right to call for periodical reports every six months from the allottee starting from one year after the date of delivery about the progress in implementation of the project and if, after hearing the allottee, in the opinion of the MD, the progress is found to be unsatisfactory, he may order the plot resumed".

It was held<sup>9</sup> that the clause was not hit by Sec. 11, Transfer of Property Act as that section is attracted only when an absolute interest is created in favour of the vendee. Moreover such a clause is saved by Sec. 31 read with Illustration (b) thereof. It was further held that the contract of sale in such a case was not assignable without the consent of the vendor.

### *Restriction on Enjoyment*

Though a restriction that the property sold shall be enjoyed in a particular manner is void, yet an exception has been made in Sec. 11 in favour of any direction made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property. Such a condition would be enforceable even against a transferee of the purchaser with notice, provided it is a negative covenant, e.g. a covenant not to build or not to do any act (Sec. 40) but, not an affirmative covenant, e.g. a covenant to pull down, when required by the vendor, rooms over a passage between the house of the vendor and the house sold.

### *Sale of Flats and Apartments : Development Agreements*

Various such restrictions on enjoyment of the property transferred are now usually imposed in the case of flats or apartments sold to different persons. These restrictions are for the mutual benefit of the various transferees. Some States have enacted special statutes for apartments (Maharashtra, Karnataka, Delhi, Gujarat, W. Bengal, U.P. etc.) Some aspects of such transactions relating to ownership of flats have been dealt with by the Courts in the undernoted cases.<sup>10</sup> Several systems are in vogue in this regard. One, the requisite number

<sup>9</sup> *Indu Kakkar v. Haryana S.L.D.C.*, (1999) 2 SCC 37, A 1999 SC 296; Following *Khordah Co. v. Rayman & Co.*, A 1962 SC 1810.

<sup>10</sup> *Ramesh Himmatlal Shah v. Harsukh Jadhavji Joshi*, (1975) 2 SCC 105; A 1975 SC 1470; *Vrajlal v. Jaswanthlal*, A 1977 Guj 131; *Contessa Knitwear v. Udyog*

under the applicable cooperative societies law (which differs from State to State) forms a cooperative society which acquires a large plot of land on either ownership or long lease basis. They then divide it into several plots which are distributed among members of the society by mutual consent, and the members then build houses on them. The roads dividing the plots, common spaces, lift, staircase and other amenities including provision for society's servants like guard, liftmen, etc. are agreed upon between them. Another system is for the owner or developer of the big plot to float a scheme. He undertakes to construct the flats or shops but enters into agreements with intending purchasers in advance and obtains the sale consideration from them in agreed instalments. Here arrangements in regard to common spaces and other amenities, including formation of a co-operative society as above, are settled in advance by the builder, while the purchasers accept them as part of the bargain. Whatever the system adopted, suitable deeds can be drafted by modification and adaptation from the given specimens of agreement to sell, sale deed, lease deed, power of attorney etc. Relevant State laws on flats and on co-operative housing societies, town planning, building regulations, etc. should be consulted. See also Forms No. 42, 43 and 45(a) & (b), *post*; on development agreement, see footnote to Form No. 24 and 45(a), *post*.

### *Contract of Pre-emption*

A contract of pre-emption is sometimes entered in a sale deed. Such a contract, amounting only to a partial restraint on alienation, is not void, nor does it offend against the rule of perpetuity, if the pre-emptor is to purchase the property at the market price, but it will be void if the pre-emptor is given the right to purchase it at a specified price which is below market price.<sup>11</sup> Such a contract, besides being binding on the parties and their legal representatives, creates an obligation arising out of the contract and is enforceable under Sec. 40 against a purchaser for value with notice or against a gratuitous transferee. However, the benefit of a covenant for pre-emption cannot be transferred [Sec.6(d)], because the transfer of such a right to an outsider defeats the very object of the right of pre-emption, namely to prevent the introduction of strangers as cosharers or neighbours.

### *Exception in respect of sales on behalf of the Government*

All sales on behalf of the Government, however, are exempted from the provisions of the Transfer of Property Act, and all provisions, restrictions,

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*Mandir Co-operative Housing Society*, A 1980 Bom 374; *Mulshandhar v. Juvansingh*, A 1980 Guj 62 (FB); *CSR Estates Flat Owners' Association v. Hyderabad Urban Development Authority*, A 1999 AP 61.

11 See 70th Report (on Transfer of Property Act) of the Law Commission of India (1977) headed by Chief Justice Gajendragadkar, relying (in paras 9A, 10, 11, 12, 29 and 30 of Chap. 17) on English and Indian cases.

conditions and limitations contained in any such sale or other transfer or grant shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the legislature to the contrary notwithstanding (Sec. 2 and 3, Government Grants Act, 1895: See also local amendments e.g. U.P.). Therefore, any conditions can be imposed on a sale of Government land, though such conditions may not be valid in case of a private land, e.g. condition about enjoyment of the land, Sec. 41, Land Acquisition Act also provides for certain restrictive covenants in regard to land acquired for companies.

### *Examples of Special Covenants in Special Cases*

#### *Property subject to Liabilities*

If the property sold is subject to restrictive covenants, the purchaser must covenant with the vendor to observe the restrictions, if the vendor will still remain liable after the sale. In other words, the purchaser must give the vendor sufficient indemnity in respect of the restrictive covenants.

#### *Sale of Equity of Redemption*

In a sale of equity of redemption or of a property subject to a mortgage, the purchaser must give an indemnity to the vendor against the claim of the mortgagee.

#### *Sale of Leasehold*

In case of sale of lessee's rights, the vendor remains liable to pay rent and to perform the covenants and conditions of the original lease, unless the sale is made with the consent of the lessor and the lessor releases the vendor. The purchaser should, therefore, give an indemnity to the vendor against breaches of covenants in the lease. The vendor should also covenant that he has done nothing to incur forfeiture or to invalidate the lease and that rents have been paid and all covenants performed by him upto the date of sale.

#### *Restrictive Covenants*

When a person sells part of his property, and retains adjoining property, and desires to protect the latter from being depreciated by acts of the purchaser, the purchaser may be required to enter into covenants restricting his right to use the property purchased by him in any manner agreed upon. Such restrictions may be for the benefit of the vendor, or, in case the vendor sells his property in lots, for the benefit of the other similar purchasers. Such restrictive covenants are usually called for where portions of land are sold to different persons for building purposes in pursuance of a general scheme of development. It has already been stated above that such covenants are binding on transferees with notice under Sec. 40, Transfer of Property Act, if they are of

a negative character, but covenants of an affirmative character are not binding on transferees. (Also see Sec. 11). In case of sales of different parts of a property to different persons, such restrictive covenants may be enforced by one purchaser against another, if (1) both derive title under a common vendor, (2) before selling the lands now owned by them the vendor laid out his estate or a defined portion of it for sale in lots, subject to restrictions intended to be imposed on all the lots, and consistent only with a general scheme of development, (3) the restrictions were intended by the common vendor to be, and were, for the benefit of all the lots, and (4) both the purchasers purchased on the footing that the restrictions were to enure for the benefit of the other lots.<sup>12</sup>

In *Anil Sen Gupta v. Dharendra Nath Basak*,<sup>13</sup> there was an identical covenant in the deed of transfer in favour of each transferee in the following form:—

“To construct his building at least 10 feet off from the road constructed by the landlord and which is at least 15 feet in width and to keep at least 8 feet of land open on each side of the premises and to keep 10 feet land open on the back and altogether to keep at least one half of the demised premises open at all times from any structures thereon and not to plant any tree from which timber may be made in the space reserved as open on the four sides of demised land.”

This restrictive covenant was wider than the restrictions imposed by the municipal building regulations. It was held to be nonetheless binding on the respective transferees and to be enforceable by each against the others.

It is, therefore, necessary that, in all such cases, full facts which necessitate such restrictive covenants should be recited and the object of having such covenants clearly expressed. The covenants should also be clearly worded, so as to avoid future disputes. In addition to such covenants by the purchaser with the vendor, a declaration that the purchaser shall be entitled to the benefit of similar covenants entered into by the other purchasers, and that, as regards any lot sold and conveyed, the vendor shall be subject to like restrictions, should be entered in the sale deed.

### *Interpretation Clause*

So far as sale is concerned it is not necessary to mention the heirs, successors, and assigns of the vendor or purchaser. The moment a vendor

<sup>12</sup> See in this connection *Venkiah v. Krishnamoorthy*, (1915) 38 M. 141; *Cooveryi v. Bhanji*, (1880) 6 B 528; *Torbay Hotel v. Jenkins*, (1927) 2 Ch 225 at 240; *Chambers v. Randall*, (1923) 1 Ch 149 at 156, (1922) All ER Rep 565; *In Re Wembley Park Estate Co's Transfer*, (1968) 1 All ER 457; See, however *Bhagwat Prasad v. Damodar Das*, A 1976 All 417.

<sup>13</sup> (1998) 8 SCC 547.

transfers his property, it vests in the purchaser, and the vendor is completely divested of it. His heirs can never claim it back and the purchaser's heirs take it in the ordinary course without any contract of the vendor to that effect. The necessity of the mention of heirs, etc., arises only in case of covenants. In the case of some covenants which are personal, the personal heirs are bound without being expressly mentioned, but not necessarily the assigns, nor can the assigns of the covenantee enforce them. There are certain covenants which run with the land, i.e. they can be enforced by any one in whom the property sold vests for the time being. Such is the implied covenants of title by the vendor [Sec. 55(2), Transfer of Property Act]. In the case of such covenants, successors and assigns need not be expressly mentioned. Therefore, it would appear that it would be only in a rare case that the mention of successors and assigns will really be necessary and they will be bound generally, even if not mentioned, but it is always safe to make an express provision, and at least no harm is done by doing so. This is done either shortly by adding to the description of parties in the beginning the words "which expression shall where the context so requires or permits include his heirs, successors, representatives and assigns", or, by inserting a separate Interpretation Clause at the end thus:

"It is hereby agreed that wherever such an interpretation would be requisite in order to give the fullest scope and effect legally possible to any covenant or contract herein contained, the expressions "the vendor" and "the purchaser" hereinbefore used include respectively the heirs, successors, representatives and assigns of the vendor and the purchaser."

#### *Stamp Duty*<sup>14</sup>

Stamp duty is levied on a sale deed of immovable property, not being a sale deed of interest under a mortgage deed, as in Art. 23.

If property is sold subject to a mortgage the amount of the mortgage will be considered to be part of consideration (Sec. 24). If the property is sold to the mortgagee the stamp duty payable will be on the total consideration *minus* the duty already paid on the mortgage deed (proviso to Sec. 24).

In the case of sale of interest secured by a mortgage deed, the duty is payable by the person making or executing the instrument. In all other cases of sale, the duty is payable by the purchaser (Sec. 29).

#### *Registration*

It is compulsory if the value of the interest sold is Rs.100 or more, otherwise not.

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<sup>14</sup> See also local amendments in Indian Stamp Act, 1899.

## SALE THROUGH POWER OF ATTORNEY

In metropolitan and other bigger cities Development Boards or Authorities have been created by the State Governments for planned development of the cities. These Authorities acquire land to develop and then give on long lease to actual users. Therefore in the lease of land, houses or flats for housing and other purposes, a clause is inserted by which the lessor is prohibited to transfer the property. In such cases many transactions take place without execution of a sale deed between the parties.

The transferor receives the sale consideration, transfers possession to the purchaser and executes a power of attorney and some other documents in his favour. The power of attorney is irrevocable. An agreement to sell or a mere receipt for the sale consideration, the receipt itself mentioning the broad details of the proposed transfer, is issued by the transferor. Thereafter because of the provisions of section 53-A of the Transfer of Property Act, the transferee obtains valuable rights by virtue of "part performance" of the contract. Section 53-A is as follows :—

"Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract :

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

By the power of attorney the transferee gets right to enter into subsequent transactions of transfer etc. He has got an indefeasible right to defend his

possession from the transferor though not against a transferee without notice, (vide the proviso quoted above). The power of attorney being coupled with an interest and for consideration is in law irrevocable.

Sometimes the transferee also obtains from the transferor a will. Under that will the transferor bequeaths the property in favour of the transferee. Such a will is however, *not advisable* from the point of view of the transferee as it is always revocable and comes into effect only upon the death of the testator.

Although this informal mode of transfer is *not recommended*, specimen forms are given here by way of recognising the reality.

For giving effect to such transactions the following documents are normally needed :

1. Agreement for sale.
2. Power of Attorney.
3. Special Power of Attorney
4. Possession Letter.
5. Will.

## SALE OF GOODS

### *Law Applicable*

The statutory provisions relating to the sale of goods were formerly contained in a Chapter of the Contract Act. In 1932, a special Act, called the Sale of Goods Act, was enacted by which the law relating to the sale of goods was amended and defined. This Act has replaced the Chapter on Sale in the Contract Act, but the other sections of the Contract Act governing contracts generally are applicable to contracts of sale of goods also (Sec.3, Sale of Goods Act).

### *Sale and Agreement*

Where the property in the goods is transferred from the seller to the buyer, the contract is called a *sale* but, where the transfer is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is an *agreement to sell* [Sec. 4(3)]. When the time elapses or the conditions are fulfilled, the property in the goods is transferred and the agreement becomes a sale,—an executory contract becomes an executed contract. Goods existing at the time of sale as well as future goods, i.e. those which are expected to arrive, or to be produced, or to be manufactured or made by the seller, may be sold. In the case of the latter, the contract of sale operates as an agreement to sell. A reference may also be made to Sec. 25 of the Sale of Goods Act. A seller may reserve a right of disposal of the goods by consigning, them in his own

name or that of an agent as a consignee, or by taking the bill of lading to his own order. In both the cases the property is not appropriated to the contract and the seller retains the right to deal with the goods.<sup>15</sup>

For difference between a contract of sale of goods and a contract for works and services see the undernoted cases<sup>16</sup> in which the question assumed importance in connection with liability to sales tax. The contracts were for manufacture and supply of wagons, etc., and their incidents were discussed in these cases.

### *How made*

Subject to the provision of any law for the time being in force, sale or an agreement to sell may be made either in writing, or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of parties [Sec. 5(2)]. Writing is not, therefore, necessary in any case, whatever may be the nature or value of the goods. Sales are made orally every day by the purchaser paying the price and the seller delivering the goods. Even in cases when the sale is made on credit, formal deed is rarely drawn up. For law on auction of unredeemed pawned goods see the undernoted case.<sup>17</sup>

### *Agreement to Sell*

An agreement to sell is generally drawn up in writing when the property is of large value, or is not in existence at the time of the agreement, though this is not legally necessary.

Such an agreement is drafted like an ordinary agreement. The parties are the seller and the buyer, both of whom must be persons capable of making a contract. The property to be sold, the price fixed, the time and manner fixed for payment of the price and for delivery of property, should be clearly specified, and any other conditions agreed upon e.g. the condition about warranty, and about quality or fitness of the goods sold, should be clearly mentioned as covenants. As to time of delivery, it is always safe to express or to indicate clearly whether it is to be of the essence of the contract or not, as the working out of the rights of the parties often depend on that question, and sometimes, when the terms of the contract are not explicit, it becomes difficult to determine whether the parties had intended to regard time as of the essence of the contract or not. Time fixed for payment is generally regarded as not being of the essence of the contract, unless there is an express contract to that effect (Sec. 11). Therefore, if it is intended to make the time of payment as of the essence of the contract, an express covenant to that effect will be necessary.

15 *Carona Sahu Co. Pvt. Ltd. v. State of Maharashtra*, A 1966 SC 1153.

16 *C.C.T. v. Hindustan Aeronautics Ltd.*, (1972) 1 SCC 395; *State of Gujarat v. Variety Body Builders*, (1976) 3 SCC 500; *State of Gujarat v. Kailash Engineering Co.*, (1967) 1 SCR 543; *Union of India v. C I Machinery Co.*, (1977) 2 SCC 847.

17 *Karnataka Pawnbrokers Association v. State of Karnataka*, A 1999 SC 201.

### *Condition or Warranty*

A stipulation or covenant with reference to the goods may be either in the nature of a condition or of a warranty. The difference between the two is important. A condition is a stipulation essential to the main purpose of the contract, the breach of which empowers the other party to repudiate the contract; a warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives the other party a right to claim damages, but not to repudiate the contract (Sec. 12). The covenants should be so framed as to indicate clearly what they are intended to be. It is neither necessary, nor sufficient, to say that a particular covenant is to be a condition or a warranty, and if a stipulation is essentially a condition it will not become a warranty by the parties calling it a warranty [Sec. 12(4)]. A breach of contract as to the goods being of merchantable quality and the failure to deliver part of the goods contracted to be sold amounts only to breaches of warranty and not of condition.<sup>18</sup>

### *Title to Goods*

There is in every contract of sale of goods an implied warranty of title of the seller and of freedom from encumbrances, and an implied contract for quiet enjoyment, just as in a contract of sale of land. The implied warranty is provided by Sec. 14 and consists of—

(a) in case of sale, an implied condition that the seller has a right to sell the goods, and in the case of agreement to sell that he will have a right to sell at the time when the property is to pass;

(b) an implied warranty that the buyer shall have and enjoy quiet possession of the goods; and

(c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before, or at the time when, the contract is made.

An express contract on these points is not necessary, unless it is intended to vary the above implied conditions.

### *Other Implied Covenants*

The other conditions implied in every contract for sale, besides the warranty for title above referred to, are—

(a) In a contract for sale of goods by description, that the goods shall correspond with the description (Sec. 15);

(b)<sup>19</sup> Where the buyer expresses the purpose of his requirement and relies on the seller's skill or judgment, that the goods shall be reasonably fit for such purpose. (except in the case of a patented article) [Sec. 16(1)];

<sup>18</sup> *Harnarain v. Firm Radha Kisan*, A 1949 Nag 178.

(c) Where goods are bought by description, that the goods shall be of merchantable quality, except that when the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed [Sec. 16(2)];

(d) In case of sale by sample, that the bulk shall correspond with the sample in quality, that the buyer shall have reasonable opportunity of comparing the bulk with the sample, and that the goods shall be free from any patent defect rendering them unmerchantable (Sec. 17). No express contract about these matters is necessary, unless it is desired to vary the implied conditions.

### *Rights and Liabilities of Seller and Buyer*

The rights and liabilities of the seller and buyer under a contract or agreement to sell are provided for in the Sale of Goods Act, but it is open to the parties to negate or vary them or any of them by express contract (Sec. 62); hence any such contract should be expressly and clearly made and mentioned in the deed of contract.

Power of re-sale in case buyer does not take delivery may be given in any form, and although ordinarily the power can be exercised only within a reasonable time, there is nothing illegal in an express agreement that it may be exercised *at any time*, even after an unreasonable lapse of time.<sup>19</sup> Clause for forfeiture of earnest money on breach of contract by vendee is not invalid.<sup>20</sup>

### *Trade Usage*

Certain conditions attach to sales of certain commodities by usage or custom of the trade and such usage or custom also overrides the provision of the Act, if the usage is such as to bind both parties (Sec. 62).

### *Stamp Duty*

An agreement for sale is chargeable like any other agreement.

Sale deeds of movables are in most States chargeable with the same duty as sale deeds of immovable property, as both are included in the definition of conveyance as given in the Stamp Act. (State Amendments should be consulted). But where the conveyance recites that movables have already been transferred by delivery, they do not pass under the conveyance and are not liable to duty [(See arguments and discussion in *In Re Reference from the Board of Revenue under Sec. 46 of the Stamp Act, 1879* (corresponding to Sec. 57 of the Stamp Act 1899, now in force) 11 R 23 Cal 283)].

### *Registration*

Not compulsory.

19 *Ralli Bros. v. Firm Bhagwandas*, A 1945 Lah 35.

20 *Municipal Committee, Khurai v. Firm Kalu Ram*, A 1944 Nag 73

# GENERAL FORMS OF DIFFERENT PARTS OF A SALE DEED

## Formal Parts<sup>1</sup>

### *Recitals of Title*

*See General Forms of Recitals under MORTGAGE ante.*

### *Introductory Recitals*

#### *1. Contract of Sale of Freehold Property*

WHEREAS (by an agreement dated————)the vendor has agreed to sell to the purchaser the property described in the schedule hereto (*or*, the property hereby intended to be transferred) free from encumbrances (except as hereinafter mentioned) for the sum of Rs.————.

#### *2. Contract of Leasehold Rights*

WHEREAS the vendor has agreed with the purchaser for the sale to him for the sum of Rs.————of the premises comprised in the hereinbefore recited lease (*or*, several or respective leases hereinbefore recited) for all the residue now unexpired of the term thereby granted subject to the rent reserved by and the covenants and conditions contained in the said lease (*or*, leases).

#### *3. Alternative Shorter Form*

WHEREAS the vendor has agreed to sell to the purchaser for the sum of Rs.————all his rights and interests under the aforesaid lease.

#### *4. Recital where Vendor is not the Original Lessee*

WHEREAS the vendor in whom the property comprised in the hereinbefore recited lease is now (*or*, where there have been several successive assignments, has become) vested as estate owner in respect of the said term of——years has agreed with the purchaser for the sale to him of his estate in the said property for the sum of Rs.————.

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<sup>1</sup> See also General Forms (immediately after INTRODUCTION *ante*).

5. *Contract for Sale of both Freehold and Leasehold Properties*

WHEREAS the vendor as owner of the property described in the first schedule and as lessee of the property described in the second schedule hereto has agreed with the purchaser for the sale to him of the property described in the first schedule hereto and of his rights and interests in the property described in the second schedule hereto under the lease hereinbefore recited for the sum of Rs. ———.

6. *Contract by Trustees*

WHEREAS the vendors as trustees under the said Will of said AB deceased and in exercise of the power of sale therein contained have agreed, etc. (*as in para 1*).

7. *Contract when both Parties are Trustees*

WHEREAS the vendors as trustees under the said Will of said AB deceased and in exercise of the power of sale therein contained have agreed to sell and the purchasers as the present trustees of a settlement dated——— and in exercise of the powers therein contained have agreed to purchase, etc.

8. *Contract by Mortgagee under Power of Sale*

WHEREAS the vendor in exercise of the power conferred on him by the said mortgage in that behalf has agreed with the purchaser for the sale to him of the property mentioned in the schedule hereto free from encumbrances for the sum of Rs. ———.

9. *Contract of Sale with Consent of Another*

WHEREAS the vendor (with the consent hereby testified of the said AB) has agreed, etc.; *or*,

WHEREAS the vendor has agreed, etc. (*as in para 1*);

AND WHEREAS the said AB (being the next reversioner of the said———) has given his consent and concurrence to the said sale.

10. *Sale by Auction*

WHEREAS at an auction held by the Collector of ——— on the——— the said property was put up to sale and at such sale the

purchaser being the highest bidder was declared purchaser of the same for Rs.-----.

*11. Contract of Assignment of Contract of Sale*

WHEREAS one XY contracted with the vendor for the sale to him of the property described in the schedule hereto free from encumbrances for the sum of Rs.-----but no sale deed thereof has yet been executed AND WHEREAS the vendor has agreed with the purchaser to transfer to him the benefit of the said contract upon the term of the purchaser paying to him, the vendor, the sum of Rs.-----and paying direct to the said XY the said sum of Rs.-----at the time of the execution of the sale deed.

*12. Agreement to have Sale Deed in Favour of Another Person*

WHEREAS the vendor has agreed with the said AB to sell to him, etc. (as in para 1).

AND WHEREAS the said AB has assigned the benefits of the said contract to the purchaser and has therefore requested the vendor to execute a sale deed in favour of the purchaser.

(or, AND WHEREAS the said AB has requested the vendor to execute a sale deed in pursuance of the said agreement in favour of the purchaser).

*13. Agreement about payment of Price by Instalments with Interest<sup>2</sup>*

WHEREAS it has been agreed that the said sum of Rs.----- shall be payable as follows :

The sum of Rs.-----upon the execution of this deed, the sum of Rs.-----at the time of registration of this deed, and the balance thereof in four annual instalments of Rs.-----each on the-----day of-----in each year beginning from the-----day of-----next with interest on the principal sum for the time being remaining unpaid

<sup>2</sup> Ordinarily this recital is not necessary as the details of the consideration can be fully set out in the witnessing clause. It may, however, be considered proper for the sake of clearness to have the agreement about payment of the price separately recited, and this would be so when the details are lengthy or complicated.

at the rate of \_\_\_\_\_ per cent per annum to commence from the date of this deed and to be payable annually with the instalments of the principal.

*14. Payment Partly to Vendor, Partly to his Nominees and Partly Credited by Purchaser to himself*

WHEREAS it has been agreed that out of the said sum of Rs. \_\_\_\_\_ the sum of Rs. \_\_\_\_\_ should be paid by the purchaser to the vendor at the time of the registration of this deed, the sum of Rs. \_\_\_\_\_ should be retained for payment to XY, the creditor of the vendor on account of a mortgage deed dated \_\_\_\_\_, and the sum of Rs. \_\_\_\_\_ should be credited by the purchaser to himself on account of the principal and interest due to him from the vendor under a bond dated \_\_\_\_\_.

*15. Legal necessity to Sale by Hindu father*

WHEREAS the vendor is in need of Rs. \_\_\_\_\_ for the expenses of the marriage of his daughter (*or*, for sending his eldest son XY to the Indian Institute of Technology at \_\_\_\_\_ for higher education) (*or*, for payment of land revenue due for the year \_\_\_\_\_ in respect of the land \_\_\_\_\_ which belongs to the said joint family).

*16. Antecedent Debt of Father*

WHEREAS the vendor's deceased father had borrowed Rs. \_\_\_\_\_ from AB, etc., on a bond dated \_\_\_\_\_ and Rs. \_\_\_\_\_ from CD, etc., on a promissory note dated \_\_\_\_\_ and a sum of Rs. \_\_\_\_\_ is now due to the said AB and a sum of Rs. \_\_\_\_\_ to the said CD on account of the said loans; AND WHEREAS the said AB and CD are pressing for payment of the same and threaten to bring suits for their recovery; AND WHEREAS the vendor not being able to obtain a loan to pay off the said debts on satisfactory terms has agreed with the purchaser to sell to him the said property for the sum of Rs. \_\_\_\_\_ in order to pay off the said debts.

*17. Valuation of Machinery and Trees*

WHEREAS by the said agreement it was agreed that all trees standing on the said land (*or*, the plant and machinery of the said Sugar Mills) shall be purchased by the purchaser at a valuation to be made as therein mentioned and the said trees (*or*, plant and machinery) have accordingly been valued at Rs. \_\_\_\_\_.

*18. Apportionment of Rent of the Property sold*

WHEREAS it has been agreed between the parties that the apportioned part of the annual rent payable by the tenant for the part of the land agreed to be sold shall be Rs. \_\_\_\_\_ and the said tenant has also agreed to this apportionment (*or*, but that the consent of the tenant is not required to this apportionment).

*19. Apportionment of Rent Payable on Account of Property sold*

WHEREAS it has been agreed between the parties, with the consent of the lessor, that the apportioned part of the annual rent payable under the aforesaid lease for which the purchaser should be liable on account of the property hereby sold shall be Rs. \_\_\_\_\_.

*20. Agreement for Joining the Mortgagee*

WHEREAS it has been agreed that out of the said price a sum of Rs. \_\_\_\_\_ shall be paid to the mortgagee and that the mortgagee shall join in this deed in manner hereinafter appearing;

[*or*, that the said price of Rs. \_\_\_\_\_ shall be paid to the mortgagee in part discharge of the said mortgage debt (*or*, that out of the said price of Rs. \_\_\_\_\_ a sum of Rs. \_\_\_\_\_ shall be paid to the mortgagee in part discharge of the said debt) (*or*, that the whole of the said price shall be paid to the vendor and the mortgagee shall release the said property from his security), and that the mortgagee shall join in this deed in the manner hereinafter appearing].

*21. Sale of Freehold Right*

The vendor is the absolute owner of the property described in the schedule with unlimited freehold rights subject only to the mortgages hereinafter referred to but otherwise free from encumbrances.

*22. Sale when Mortgagee Joins*

The vendor has agreed to sell to the purchaser his absolute ownership rights in the property free from encumbrances for Rs. \_\_\_\_\_ and B, the lender has agreed to join in for the purpose of discharging mortgages.

*Consideration, Receipt*

*See General Forms (immediately after Introduction) ante.*

## **Parcels**

*See General Forms (immediately after Introduction), ante.*

## **Exceptions and Reservations**

### **1. Heading**

- (a) Excepting and reserving to the vendor, etc.; *or*,
- (b) Subject nevertheless to the exceptions and reservations hereinafter contained.<sup>3</sup>

### **2. A right of way**

Except and reserving to the vendor absolutely full and free right and liberty at all times and for all purposes connected with the use and occupation of his house to the west of the said land, with or without horses, carts, carriages and motor and other vehicles, whether used for pleasure or for trade or business purposes, and either laden or unladen, and whether belonging to the vendor or to his visitors or to persons residing in that house or to persons coming to transact business with him, to go, pass and repass along over and upon the path marked ABC on the said plan which leads from the said house to the public road called the

### **3. Minerals with Right of Surface Working<sup>4</sup>**

Except and reserving to the vendor the absolute ownership of all mines and minerals in or under the land hereby sold with full liberty and power at all times to enter upon the said land or any part thereof to search for, dig, raise, make merchantable and carry away the said mines and minerals, and with full liberty and power to make, sink, maintain and use all such pits, shafts, levels, drains, watercourses and reservoirs and to construct, erect, maintain and use all such spoil, tanks, rail road, tram roads and other roads, bridges, building works and conveniences over the said land or any part thereof as may be necessary or convenient for all

<sup>3</sup> This form (b) will be suitable where either the exceptions and reservations are numerous or lengthy and detailed, or themselves subject to exceptions and savings, which can be more properly put in as provisos to the covenants containing the exceptions and reservations. In a simple case the exceptions and savings may be added after the parcels and the Form (a) above should be used.

<sup>4</sup> On mines and minerals, consult the Mines and Minerals (Regulation and Development) Act 1957 and the rules made thereunder.

or any of the purposes aforesaid from time to time, subject, nevertheless to payment to the purchaser or his successor in title and his and their lessees and tenants reasonable and adequate compensation for all damages thereby done or occasioned to the said land or any buildings thereon.

#### 4. Minerals with Right of Underground Working<sup>5</sup>

Except and reserving to the vendor the absolute ownership of all mines and minerals in and under the said land hereby sold with full power and authority to work and get the same mines and minerals by underground workings only and without entering upon or in any manner affecting or exercising any rights or provisions whatsoever in or over the surface of the said beds (and making compensation, as in Para 3).

#### 5. Reservation to Take Water

Except and reserving to the vendor and all persons, occupying the vendor's house to the west of the said land marked on the plan by red colour with full and free right and liberty at all times hereafter of taking the water from the well (or, tank) distinguished on the said plan by blue colour with liberty from time to time to pass and repass upon the said land for the purpose of taking and bringing water from the said well to the said house.

#### 6. Right of Using Staircase

Except and reserving to the vendor the full and free right of using the staircase marked on the said plan by blue colour for the purpose of going to and coming from the upper storey of the vendor's house adjoining the said house hereby sold on the west and marked on the said plan by red colour.

#### 7. Right of Way

In pursuance of the agreement herein and in consideration of Rs. ——— paid by the purchaser to the vendor (who acknowledges the receipt of the same), the vendor conveys to the purchaser by way of sale his rights of absolute ownership in the property described in the schedule, excepting the mines and minerals under that land, but together with the benefit of—

<sup>5</sup> *Ibid.*

- (a) the right of way granted by the deed dated \_\_\_\_\_ between A and B;
- (b) restrictive covenant contained in deed dated \_\_\_\_\_ between \_\_\_\_\_ and \_\_\_\_\_, but subject to;
- (c) restrictive covenant contained in the deed dated \_\_\_\_\_ between \_\_\_\_\_ and \_\_\_\_\_;
- (d) right of way granted by the deed dated \_\_\_\_\_ between \_\_\_\_\_ and \_\_\_\_\_.

## ***Habendum***

### *1. Ordinary Form*

TO HOLD the same to the purchaser absolutely for ever (*or*, as absolute owner).

### *2. Several Joint Purchasers*

TO HOLD the same to the purchasers absolutely forever as joint owners.

### *3. Several Persons in Equal Shares*

TO HOLD the same to the purchasers absolutely forever as owners in common in equal shares.

### *4. Several Persons in Unequal Shares*

TO HOLD the same to the purchasers absolutely forever as owners in common in the following undivided shares, i.e. to the said AB one-third share, to the said CD, one-half share and to the said EF one-sixth share.

### *5. Several Persons in Different Portions*

TO HOLD the same to the purchasers as absolute owners in separate portions specified below, that is to say the portion shown as coloured red on the plan hereto to the said AB and the portion shown as coloured green to the said CD.

### *6. Subject to Payment of Dues*

TO HOLD the same to the purchaser absolutely for ever (*or*, as absolute owner) subject to the payment of such land revenue, cesses and taxes as may be assessed or imposed thereon.

### 7. *Subject to Obligations*<sup>6</sup>

TO HOLD, etc., the same to the purchaser absolutely for ever (*or*, as absolute owner) subject to the obligations and restrictions hereinafter expressed and imposed upon the purchasers as obligations intended to be binding in perpetuity on the property hereby sold.

### 8. *Subject to Mortgage*<sup>7</sup>

TO HOLD etc., subject to the hereinbefore recited mortgage and the principal sum of Rs. \_\_\_\_\_ now owing on the security thereof and the interest due or to become due on such sum.

### 9. *Subject to Easements*<sup>8</sup>

TO HOLD, etc., subject to the rights and easements to which the said property is now subject as aforesaid (*or*, to the rights and easements vested in the owners of adjoining property under or by virtue of the deeds specified in the schedule B hereto).

### 10. *Leasehold Property*

TO HOLD the same to the purchaser for all the residue now unexpired of the said term of \_\_\_\_\_ years granted by the said lease subject henceforth (*or*, as from the \_\_\_\_\_) to the payment of rent reserved by, and the performance and observance of the covenants on the part of the lessee contained in the said lease.

### 11. *Sale of Part of Leased Property and Apportionment of Rent*

TO HOLD, etc., subject if and so far as subsisting, to a lease dated \_\_\_\_\_ whereby the said property (together with other property not sold) was demised to XY, etc., at the yearly rent of Rs. \_\_\_\_\_ of which the yearly rent of Rs. \_\_\_\_\_ shall be the apportioned part to be henceforth payable in respect of the said property hereby sold and with the benefits of such apportioned rent and all powers and rights for the

6 When any restrictive covenants on the enjoyment of the property are made they should be inserted in particular as covenants but referred to in the habendum also as in this form.

7 When property is sold subject to an encumbrance the mortgage should be mentioned in the recitals.

8 If there are any easements in favour of third persons to whom the property is subject, the same should be recited in the recitals, or if there are several deeds creating such easements, the same should be mentioned in schedule.

recovery thereof and of the covenants and conditions by the lessee contained in the said lease so far as the same relate to the property sold.

### 12. *Partly Leasehold and Partly Freehold*<sup>9</sup>

TO HOLD the said land for all the residue, etc., (*as in Form 10*) and the said house and other buildings absolutely for ever but subject to such covenants in the aforesaid lease as may relate to such house and buildings.<sup>10</sup>

### 13. *Where Mortgagee also joins and gives up his Mortgage*

TO HOLD, etc. (*as in para 1 above*) discharged from all principal moneys and interest intended to be secured by and from all claims and demands under the hereinbefore recited mortgage.

### 14. *Restricting Implied Grant of Easement, etc.*<sup>11</sup>

TO HOLD, etc., subject to the provision and declaration hereinafter contained, that is to say, PROVIDED ALWAYS and it is hereby declared that the purchaser shall not be entitled to, etc. (*state the rights which are not to pass*), and the sale shall not be deemed or construed to imply the grant of any such right or thing.

### 15. *Exceptions and Restrictions Mentioned with Parcels*

TO HOLD, etc., subject to the exceptions and reservations hereinbefore mentioned.

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9 For instance, where land is taken on lease for building a house and a house is built thereupon, and both are sold.

10 Sometimes a building lease contains a covenant that in case of breach of a condition the lease would be determined and the buildings will also vest in the lessor. In such cases this will be necessary.

11 Under Sec. 8 of the Transfer of Property Act certain rights and things implied by it go with the property "unless a different intention is expressed or necessarily implied". If it is intended that any such right or thing should not be transferred to the purchaser, the same should be expressly excepted from the sale. If the rights and things are several it would be more convenient simply to say "subject to the provisions and declaration hereinafter contained" and to mention all such rights in the provisos after the covenants.

16. *Exceptions and Restrictions not Mentioned with Parcels*<sup>12</sup>

TO HOLD, etc., subject to the exceptions and reservations hereinafter contained that is to say,

The vendor reserves,

(1)

(2)

(3)

etc., etc.

17. *Subject to Terms and Conditions*

TO HOLD, etc., subject to the several terms and conditions hereinafter contained.

18. *Sale of Mortgagee's Right*

TO HOLD, etc., subject to such right or equity of redemption as is now subsisting in the said property under or by virtue of the hereinbefore recited deed of mortgage.

19. *Sale on Trust*

TO HOLD the same to the purchaser on trust for the said hospital.

Or,

TO HOLD the same to the purchaser upon trust that the income of the said property shall be used by the purchaser for, etc.

Or,

TO HOLD the same to the purchaser upon trust that the said land shall be used for building a school under the scheme hereinbefore mentioned and on the constitution of a proper trust for the said school the said land shall form part of the property of the said trust.

*Production of Title Deeds*<sup>11</sup>

1. *Covenant by Vendor when Deeds Retained by him*

The vendor will upon every reasonable request of the purchaser and

<sup>12</sup> Exceptions and reservations are generally mentioned after the *Parcels*; but if they are long, it may be convenient to mention them separately after the *habendum*. In the former case para 15 and in the latter para 16 of the *habendum* should be used.

at the cost of the person making the request produce all or any of the documents of title relating to the property sold which are specified in the schedule hereto and which have been retained by the vendor and furnish such true copies or extracts therefrom as the purchaser may require, and will, in the meantime, keep the said documents safe, uncanceled and undefaced unless prevented from so doing by one or other inevitable accident.

### 2. *Covenant when Deed Retained by Another Purchaser*

It is hereby agreed that as the documents of title specified in the schedule hereto relating to the property hereby sold cover also other properties which have been sold by the vendor to the other persons, all the said documents shall be delivered to XY one of the other such purchasers.

AND the vendor covenants with the purchaser that the said XY will upon any reasonable request, etc., (*as in Form 1, substituting the words which have been/will be delivered to the said XY for the words "which have been retained by the vendor"*).

### 3. *Covenant of Indemnity by Purchaser retaining Title Deeds*

The documents of title specified in the \_\_\_\_\_ schedule hereto having been delivered to the purchaser, the purchaser hereby covenants with the vendor that he will upon every reasonable request of the purchaser of any other property covered by the said documents, and at the cost of the person making the request, produce all or any of the said documents and furnish such copies, etc., (*as in Form 1*). AND further agrees to keep the

13 These covenants are implied by Sec. 55 (3) and need not be entered in territories where the Transfer of Property Act is in force. Under the said sub-section if properties covered by a document of title are sold to different persons the purchaser of the property of the highest value has the right to have the title deeds and he is bound to produce them. But the parties may agree that the title deeds may be retained by any other purchaser, in which case an express covenant that he shall produce them and grant copies should be entered. In such cases, Form 2 may be employed. As such purchaser will not generally be a party to other sales, the covenant can be on behalf of the vendor alone, and the vendor should obtain a covenant of indemnity from the purchaser relating to the title deeds (*as in Form 3*). This will be necessary only where the Transfer of Property Act is not in force or where any purchaser other than that of the greatest value retains the title deeds. As there may be a dispute as to what title deeds a person has in his possession it is always safe to specify the documents in the sale deed.

vendor indemnified against any compensation or damages he may have to pay and all costs he may have to incur by reason of the purchaser's default in fulfilling this obligation.

#### 4. *Acknowledgment of Title Deeds*<sup>14</sup>

The vendor hereby acknowledges that he has retained possession of the documents of title mentioned in the----- schedule hereto which relate to the property hereby sold and to other property.

### ***Special Covenants***

#### 1. *Title*<sup>15</sup>

The vendor hereby covenants with the purchaser that he is the owner of the property hereby sold and has power to sell the same;

(Or, The vendor hereby covenants with the purchaser that the title which is hereby transferred subsists and that he has power to transfer the same.)

#### 2. *Quiet Enjoyment*

The vendor hereby covenants with the purchaser that the said premises shall be quietly entered into and upon and held and enjoyed and the rents and profits received therefrom by the purchaser without any interruption or disturbance by the vendor or any person claiming through or under him and, without any lawful disturbance or interruption by any other person whomsoever.

#### 3. *Against Encumbrances*<sup>16</sup>

The vendor hereby covenants that the property hereby sold is free from encumbrances (except those hereinbefore mentioned, or, mentioned in----- schedule hereto, subject to which this sale is made).

14 This acknowledgment will be of advantage to avoid future dispute about the number and character of title deeds in possession of the vendor. When the vendor retains any title deeds it is always safe to specify them in the sale deed.

15 A covenant for title is implied by Sec. 55(2) and is not strictly necessary except in territories where the Transfer of Property Act is not in force (See Preliminary notes)

#### 4. *Further Assurance*<sup>17</sup>

The vendor will at the cost of the person requiring the same execute and do every assurance or thing necessary for further or more perfectly assuring the said property to the purchaser his heirs or assigns, as by him or them shall be reasonably required.

#### 5. *Limiting Liability under Implied, Covenant for Title*

It is hereby agreed that the liability of the vendor under the implied covenant for title shall be limited to the amount of the sale price, *i.e.* Rs. \_\_\_\_\_

*Or,*

In case the purchaser is deprived of the whole or any part of the property hereby sold by reason of any defect found in the title of the vendor or of any encumbrance or charge on the same to which this sale is not subject the vendor will pay to the purchaser by way of damages the whole amount of the sale price or such part of it as shall bear the same proportion to the whole as such part of the property shall bear to the whole property, as the case may be with interest from the date of the purchaser's dispossession at the rate of \_\_\_\_\_ per cent per annum, and that the liability of the vendor under his implied covenant for title will not extend any further.

#### 6. *Contracting out of Implied Covenant*

It is hereby agreed that the vendor gives no warranty of his title and the warranty implied by law shall not apply and that the purchaser accepts such title as the vendor has.

#### 7. *Several Liability of Several Vendors*

It is hereby agreed between the parties hereto that the liability of the vendors for breach of the implied covenant for title shall not be joint and several but each vendor shall be liable only in respect of his share in the said property (*or*, the portion of the said property which belongs to him).

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<sup>16</sup> See Preliminary notes.

<sup>17</sup> This covenant is not strictly necessary but as a precaution a careful conveyancer would insert it (*See* Preliminary notes).

8. *Covenant by a Person Selling in Fiduciary Character*<sup>18</sup>

The vendor hereby covenants with the purchaser that he has done no act whereby the property hereby sold is encumbered or whereby he is debarred from transferring it to the purchaser.

9. *Covenant by Vendor for Title*<sup>19</sup>

The vendor hereby covenants with the purchaser that the interest which is hereby transferred to the purchaser subsists and that he has the power to transfer it.

10. *Cost of Repairing Road or Staircase in which Right of Passage is Reserved*

It is hereby agreed that in consideration of the right of passage hereinbefore reserved the vendor will pay to the purchaser every year half the cost incurred by the latter in maintaining in proper repairs the said staircase (or, the said road) the amount of such cost in case of disagreement to be determined by arbitration.

11. *Covenant not to Build but to Keep Land Open*

The purchaser hereby covenants with the vendor that he will not erect any wall or other building upon the land hereby sold to the North of or opposite to the window recently constructed in the Northern wall of the house shown on the plan by red colour nearer to the said wall than the dotted line shown on the said plan between points A and D nor erect any building upon or overhanging the said land coloured blue on the said plan but such land shall always be kept open.

12. *Covenant for Assistance in Mutation*

The vendor will support any application made by the purchaser for mutation of names on the property hereby sold and will at the cost of the person requiring the same do all that he may be required to do for obtaining mutation in favour of the purchaser.

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18 This is not strictly necessary where the Transfer of Property Act applies as it is implied by the proviso to Sec. 55 (2). In fact, in case of persons in fiduciary character this is the only covenant of title implied by law.

19 A person in fiduciary character, e.g. guardian or trustee does not necessarily enter into a covenant of title nor is such covenant implied, but a purchaser may insist and the vendor may agree to guarantee the title by an express covenant in the deed.

### 13. *Covenant for Mutation at Vendor's Expense*

The vendor will at his own expense get mutation of names made in the village registers in favour of the purchaser in respect of the property hereby sold.

### 14. *Contract of Pre-emption*<sup>20</sup>

The purchaser shall not sell the said property to any person other than the vendor unless he has first offered the same to the vendor and the vendor has declined or neglected to purchase the same at the price offered by such other person.

### 15. *Covenant about Party Walls of House*

It is hereby agreed that all walls separating the house hereby sold and the house of the vendor adjoining it on the West shall be deemed to be party walls and shall be maintained and repaired at the joint cost of the parties.

### 16. *Agreement to Pay Price Reserved for Future*

The purchaser will pay the said sum of Rs. \_\_\_\_\_ being the balance of the said price to the vendor on the \_\_\_\_\_, (or, in the following instalments), and will in the meantime pay interest thereon or on so much thereof as for the time being remains unpaid at the rate of \_\_\_\_\_ per cent per annum.

### 17. *Cost of Stamp and Registration*<sup>1</sup>

It is hereby agreed that the cost of stamp on and registration of this deed shall be borne by the vendor (or, by the vendor and the purchaser in equal shares).

### 18. *Payment of Mortgage Money*

The purchaser hereby covenants with the vendor that the purchaser will pay to the said mortgagee or his successor in title, on such payment

<sup>20</sup> See Preliminary notes.

<sup>1</sup> Under Sed. 29 (c) of the Stamp Act it is the purchaser who has to bear this cost. But this is subject to a contract to the contrary. This form is to be used in case of a contract to the contrary.

being lawfully demanded, all his dues under the aforesaid deed of mortgage, and will at all times keep the vendor indemnified against the same and against all suits proceedings, costs, charges, claims and demands whatsoever in respect thereof.

*19. Indemnifying Against Restrictive Covenants<sup>2</sup>*

The purchaser hereby covenants with the vendor (with the object of affording to the vendor and his representatives a full and sufficient indemnity, but not further or otherwise),<sup>1</sup> that the purchaser will at all times hereafter duly perform and observe the covenants by the vendor and restrictive provisos of the said deed of, etc., (*nature of deed*) contained in relation to the property hereby sold and will at all times keep the vendor and his representatives indemnified against all suits, proceedings, costs, charges, claims and demands in respect of the said covenants and restrictive provisos or any of them.

*20. Reserved to Vendor to Destroy Access of Light*

It is hereby agreed and declared that the access and use of light from and over the adjoining property of the vendor to and for the Land hereby sold and any building for the time being erected and standing thereupon shall henceforth be enjoyed by the purchaser and his successors-in-title under and by virtue only of the consent hereby given of the vendor and that the vendor or his successors-in-title or owners or occupiers of the adjoining property shall be at liberty at any time hereafter to interfere with or destroy such access or use of light by making erections on buildings or altering existing buildings on such adjoining land without any formal revocation of the consent hereby given.

*21. Restrictive Covenant by Purchaser*

The purchaser and his successors-in-title will at all times hereafter

<sup>2</sup> Sometimes the property sold is subject to restrictive covenants contained in the sale deed by which the vendor had himself purchased the property. Such covenants should now be performed by the purchaser and the vendor should be indemnified against the consequence of the purchaser's non-performance.

<sup>3</sup> The words within brackets are necessary to prevent the vendor from enforcing the performance of covenants or claiming damages even if he has not suffered any damage.

observe and perform the following stipulations and regulations in relation to the land and property hereby sold (*or*, the stipulations and regulations in relation to the lands and property hereby sold contained in the \_\_\_\_\_ schedule hereto).

## *22. Form of Restrictive Covenant to be annexed to Land*

The purchaser to the intent and so as to bind (so far as practicable) the land hereby sold into whosoever hands the same may come and to benefit and protect the other land delineated on the plan hereto annexed (but not so as to render the purchaser personally liable to damages for any breach of covenant committed after he shall have parted with all interest in the property in respect of which such breach shall occur)<sup>4</sup> hereby covenants with the vendor as follows:-

### *23. Covenant for Sale to be Void on Nonfulfilment of Condition of Building*

PROVIDED ALWAYS and it is hereby agreed that if the purchaser shall make default in erecting and completing in accordance with the covenant by the purchaser in that behalf hereinbefore contained and within the time hereinbefore specified the said buildings or any of them so to be erected and completed as aforesaid the sale hereby made shall be void and the said land shall immediately thereupon vest in the vendor, and all materials then standing or lying upon the said land if not removed by the purchaser within two months shall become the property of the vendor.

### *24. Assignment of Restrictive Covenant*

The vendor (so far as he is able) assigns to the purchaser the benefit of the restrictive covenant contained in the deed dated \_\_\_\_\_ between \_\_\_\_\_ and \_\_\_\_\_ (so far as it is subsisting and capable of being enforced).

### *Agreement to Sell*

#### *1. Investigation of Title*

(a) The title shall begin with a sale deed dated \_\_\_\_\_ and the purchaser shall not inquire into or require the production of the earlier title.

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<sup>4</sup> The words in the brackets will be necessary if the personal liability of the covenantor is to be limited.

(b) The title shall begin with the Will of XY, etc., dated \_\_\_\_\_ and the purchaser shall *presume* that the said XY was on the \_\_\_\_\_ absolute owner of the property.

(c) The vendor has been in undisturbed possession of the property for over 30 years without acknowledging the title of any other person and the purchaser shall assume that the vendor has acquired title by prescription.

(d) The vendor's title is well known and shall be accepted by the purchaser.

(e) The vendor's title shall not be investigated beyond 30 years.

(f) Certified copies of deeds by the purchaser shall be accepted in place of the original.

## 2. Price Fixed by Valuation

(a) The price of the trees shall be fixed according to a valuation of the said trees to be made by \_\_\_\_\_ and in case of his refusal, neglect or inability to make a valuation by \_\_\_\_\_.

(b) The price shall be Rs. \_\_\_\_\_ for the house and such price for the furniture and fixture according to a valuation by \_\_\_\_\_ and (*as in (a) above*).

## 3. Reservation of Minerals

The property is subject to a reservation of mines and minerals and power of working the same contained in a sale deed dated \_\_\_\_\_.

## 4. Reservation of Way in Favour of Vendor

The sale shall be subject to reservation to the vendor of a right of way for all purposes over the property to be sold between the points marked A and B on the plan annexed hereto.

## 5. Exception of Light and Air

The purchaser shall not be entitled to any right or easement of light or air otherwise which would restrict or in any way interfere with the due use for building or for any other purpose on or of the adjoining land of the vendor.

## 6. Restrictive Covenants

(a) The property is agreed to be sold subject to the restrictive covenants contained in a deed of sale dated \_\_\_\_\_ a copy of which has

been supplied to the purchaser and will be attached to the sale deed (*or*, and the covenants shall be entered in a schedule to the sale deed).

*New Restrictive Covenants*

(b) The property is agreed to be sold subject to the restrictions and explanations set out in the schedule hereto.

*7. Power of Attorney*

The vendor being in England the sale deed will be executed by his attorney under a power of attorney duly executed by the vendor.

*8. Vendee to obtain permission (Cantonment land)*

The vendee undertakes to obtain permission from the Military Estates Officer for the sale.<sup>5</sup>

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<sup>5</sup> *Rameshwar Swaroop v. Saroj Tyagi*, A 1998 SC 3389 (if the permission granted by M.E.O. is subject to the power of resumption of the land, the vendee cannot resile from the agreement on the ground that the permission was not unconditional. As the parties knew that the property was situated in the Cantonment area, hence the liability for resumption was implied.)

## PRECEDENTS OF AGREEMENTS<sup>1</sup>

### 1—Agreement to Sell a House<sup>2</sup>

AN AGREEMENT made on the \_\_\_\_\_ day of \_\_\_\_\_  
BETWEEN AB, etc., (hereinafter called "the vendor") of the one part  
AND CD, etc., (hereinafter called "the purchaser") of the other part.

WHEREBY the parties hereto mutually agree as follows :

(1) The vendor will sell and the purchaser will buy ALL that, etc.,  
(*describe the house*) with all the rights belonging or appurtenant thereto.

(2) The sale will be free from encumbrances.

(3) The price will be Rs. \_\_\_\_\_ of which Rs. \_\_\_\_\_ has  
been paid by way of earnest money to the vendor (the receipt of which  
the vendor hereby acknowledges) and the balance shall be paid at the  
time of execution of the sale deed.

(4) The title of the vendor as absolute owner shall be accepted by  
the purchaser without any further investigation (*or*, the vendor shall deliver  
to the purchaser within one month certified copies of all documents of his  
title to the said property, of the Municipal register in which the said property  
is entered, and any other documentary evidence proving his title, and this  
agreement is subject to the purchaser's pleader being satisfied as to the  
absolute title of the vendor).

(5) The property is believed and shall be taken to be correctly  
described and is sold subject to all *outgoings*<sup>3</sup>, easements, restrictions  
and rights affecting the same and if any error, misstatement or omission  
shall be discovered the same shall not annul the sale nor shall any  
compensation be allowed in respect thereof.

1 In these precedents only general covenants are given. If there is any special covenant on any subject, the same should be expressed. Some general forms of clauses relating to special covenants have been given before (pp. 787 to 792). See also footnote below Form Nos. 24 and 45(a), *post* explaining 'development agreements' relating to land.

2 The agreement should be bilateral. A unilateral agreement may be treated as a mere gratuitous 'undertaking' : *S.M. Gopal Chetty v. Ramesh*, A 1998 Mad 169.

3 Meaning 'expenditures' (Black's Law Dictionary, 1990 edn. p. 1101).

(6) The vendor will reserve to himself a right of way for his adjoining house for all purposes over the property agreed to be sold between the points marked A and B on the plan attached herewith.

(7) The purchaser shall in the sale deed enter into the restrictive covenants set out in the second schedule hereto for the benefit of the adjoining property of the vendor.

(8) The purchase shall be completed on the \_\_\_\_\_ day of \_\_\_\_\_ by the purchaser paying the balance of the price and the vendor executing the sale deed.<sup>4</sup>

(9) All expenses for preparation of the sale deed and the cost of stamp and registration charges shall be borne by the purchaser.

(10) If from any default of the purchaser the purchase shall not be completed on the date fixed, the purchaser shall pay interest on the unpaid balance of the price at \_\_\_\_\_ per cent per annum upto the date of completion of sale.

(11) If the purchaser shall fail to comply with the terms and conditions of this agreement his earnest money will be forfeited and the vendor will be at liberty to resell the property and recover the deficiency in price and expenses of resale from the purchaser (or, if the deficiency in price and expenses of resale exceed the amount of earnest money, recover the excess) and any excess in price on resale shall belong to the vendor.

IN WITNESS WHEREOF, etc.

## 2—Agreement for Sale of Leasehold

AN AGREEMENT made, etc., (as in Form 1).

WHEREBY the parties hereto mutually agree as follows :

1. The vendor will sell and the purchaser will buy ALL, etc., as the same are held for the residue of a term of \_\_\_\_\_ years from the \_\_\_\_\_ day of \_\_\_\_\_ granted by a lease dated the \_\_\_\_\_ and made between XY,

<sup>4</sup> In regard to contracts for sale of immovable property, time is not of the essence of the contract : *Ardeshir H. Mana v. Flora Sassoon*, A 1928 PC 208, 55 I.A. 360.

However in a contract of reveyance, time is of the essence : *Bismillah Begum v. Rahmatullah Khan*, (1998) 2 SCC 226, A 1998 SC 970, reiterated in *Babu Ram v. Indra Pal Singh*, (1998) 6 SCC 358 (para 37), A 1998 SC 3021.

etc., of the one part and the vendor of the other part at the yearly rent of Rs. ---, --- and subject to the covenants and conditions therein contained and on the part of the lessee to be observed and performed.

2 and 3. (*As in Form 1*).

4. The purchaser having seen a certified copy of the said lease shall be deemed to have full notice of the contents thereof and of the state of the property as to repairs, insurance and all other matters, and shall accept for the last rent accruing due previously to the date fixed for completion of the sale as conclusive evidence of the performance and observance of all the covenants and conditions contained in the said lease and of the effectual waiver of breach of any covenant or condition upto the date of actual completion without proof of title or authority of the person giving the receipt.

5. (*as 4 in Form 1*).

(*Rest mutatis mutandis as in Form 1*).

### 3—Agreement for Hire Purchase of House

THIS AGREEMENT TO SELL entered on this --- day of --- month --- year between the --- Authority --- through its --- (hereinafter referred to as "the Vendor") of the one part.

AND

AB, etc., (hereinafter referred to as "the Purchaser") of the other part.

Whereas the Vendor is a body corporate duly constituted under the provisions of law to promote and secure the development of land according to plan, and has acquired in the interest of public at large according to provisions of the Land Acquisition Act and has constructed/shall construct a house under the --- scheme and shall also transfer the land of the said house as freehold land in favour of the Purchaser.

And Whereas the Purchaser has applied to purchase the house with land and has also deposited the requisite amount towards his registration.

And Whereas the house No. --- bearing an area of --- sq. mt. in --- Scheme --- was allotted by the Vendor on hire purchase basis for a total sale consideration for Rs. --- payable by the Purchaser to the Vendor and the Purchaser has agreed with the Vendor to purchase it on the terms and conditions hereinafter contained :

NOW THIS DEED WITNESS AS FOLLOWS :

1. That the Vendor will sell the house with land No. ——— bearing an area of ———sq. mt. situated in ———scheme ———more specifically described in the Schedule at the foot of this deed in favour of the Purchaser as freehold property for a consideration for Rs. ——— along with all the rights, fixtures and appurtenants thereto in favour of the Purchaser free from all encumbrances.

2. That the Purchaser has made part payment of sale consideration amount to the Vendor amounting to Rs. ——— so far, and the balance amount shall be obtained by the Vendor from the purchaser in ——— equal monthly instalments payable in advance within the first week of each calendar month.

3. That possession of the house hereby agreed to be sold in favour of the Purchaser has been delivered to the Purchaser.

4. That the Purchaser shall from time to time and at all times during the said term of ———years pay and discharge all rates, charges and assessments of whatsoever description which are now or which may at any time in future during the said term be assessed, charged or imposed according to law by any authority duly constituted and authorised to do so regarding the said land with house.

5. That upon payment of all the instalments in respect of the demised property by the Purchaser, the Vendor will execute a sale deed of the said house with land in favour of the Purchaser.

6. That all the expenses for preparation of sale deed and incidental charges for the registration of the document including stamps, fees and any other expenses whichsoever it may be required, shall be borne exclusively by the Purchaser.

7. That the Purchaser shall abide by all the rules and regulations made in this regard by the Vendor including the provisions contained in any Government orders of the State Government of ———as issued from time to time which shall be fully applicable and binding upon the Purchaser.

8. That during the pendency of this agreement the Purchaser shall not make any addition or alterations in the house or its structures and shall not in any manner reduce the open spaces provided in or around the said house or structures without the written permission of the Vendor.

9. That in case the Purchaser commits default in payment of three successive instalments or otherwise fails to comply with the terms and conditions of this agreement, this agreement shall stand terminated and the instalments paid shall be forfeited and the Vendor shall be at liberty to re-sell the aforesaid demised house with land and also recover any deficiency in the price obtained from such resale and the expenses of resale from the Purchaser.

10. That during the pendency of this agreement the Purchaser shall not in any manner transfer the possession of the house to any other person or let out the whole or any part of the said house without the previous written consent from the Vendor.

11. That the Purchaser shall keep the said house in good and substantial repair and shall use the house and land for residential purposes only and shall not at any time carry on or permit to be carried on in the said house or any part thereof any trade or profession or establish any office or otherwise contravene the land use as provided in the Master Plan.

12. The Purchaser shall also not use or permit to be used the said land or house for public religious purposes in any manner.

13. That in view of the fact that to promote and secure the development of ——— (name of area), the land was acquired according to provisions of the Land Acquisition Act and the valuation of the aforesaid plot was fixed according to the then rates at the time of allotment and compensation granted to the former owners of the land, but references, appeals and writ petitions are pending before courts of law and in case of any increase in compensation, solatium or in the rate of interest payable to former owners of the land the liability to pay the aforesaid increased amount of compensation solatium or interest shall automatically shift upon the Purchaser according to the proportion of the land in the lay-out-plan and the Purchaser shall make payment as per demand letter issued by the Vendor in this regard.<sup>5</sup>

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<sup>5</sup> On a clause for escalation of cost see also footnote to the precedent on Works Contract under AGREEMENT, *ante*; Also see *Indore Development Authority v. Sadhana Agarwal*, (1995) 3 SCC 1 (case law); *Shiv Pal Karan v. State*, A 1988 All 268.

14. That in case of any dispute regarding the terms of this agreement the Chairman of the Vendor Authority shall be sole arbitrator whose decision shall be final and binding on both the parties.

15. That the courts established in the local limits of district----- shall have exclusive jurisdiction to try any suit or entertain other legal proceeding in respect of or arising out of this agreement.

16. That the terms "Vendor" and "Purchaser" hereinbefore used in this deed shall respectively mean and include the Vendor Authority itself and its administrators and the Purchaser and his legal representatives, heirs, successors and assigns.

*The schedule herein referred to.*

IN WITNESS WHEREOF-----for and on behalf of the Vendor and the Purchaser have signed this deed on the dates mentioned against their respective signatures.

## PRECEDENTS OF SALE DEEDS<sup>6</sup>

### 1—Simple Deed of Sale of a House, without Recitals

THIS DEED OF SALE made on the-----day of-----  
BETWEEN AB, etc., (hereinafter called "the vendor") of the one part  
AND CD, etc., (hereinafter called "the purchaser") of the other part.

WITNESSES as follows :

1. In consideration of the sum of Rs. -----paid by the purchaser to the vendor on the-----day of----- (the receipt of which the vendor hereby acknowledges) the vendor as owner hereby transfers to the purchaser by way of sale ALL that *pucca* house standing on the land measuring 27 metres by 10 metres fully described in the schedule hereto annexed and thereon shown with its boundaries coloured red TO HOLD the same to the purchaser as absolute owner.

2. The vendor hereby covenants with the purchaser as follows :

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<sup>6</sup> These precedents contain ordinary conditions. If any special covenants are agreed, they should be added. Forms of different kinds of such covenants are given on pp.787-792 *ante*.

(1) The said premises shall be quietly entered into and upon and held and enjoyed and the rents and profits received therefrom by the purchaser without any interruption or disturbance by the vendor or any person claiming through or under him and without any lawful disturbance or interruption by any other person whomsoever;

(2) The vendor will at the cost of the person requiring the same, execute and do every such assurance or thing necessary for further more perfectly assuring the said premises to the purchaser, his heirs or assigns as may reasonably be required;

[(3) The interest hereby transferred subsists and the vendor has power to sell the same;

(4) The property hereby sold is free from encumbrances]<sup>6</sup>.

3. PROVIDED ALWAYS and it is hereby agreed that wherever such an interpretation would be requisite to give the fullest possible scope and effect to any contract or covenant herein contained the expressions "the vendor" and "the purchaser" hereinbefore used include their respective heirs, legal representative, successors and assigns.

*The schedule herein referred to*

(Description of the property)

IN WITNESS WHEREOF the parties hereto have signed this deed on the dates mentioned against their respective signatures.

**2—Sale Deed, when Part of Consideration Retained by Vendee for Payment to a Prior Mortgagee and part Agreed to be Paid Afterwards, with Recital of Title**

THIS DEED OF SALE is made on the, etc., (*as in form 1*).

WHEREAS the vendor is owner of the land described in the schedule hereto.

AND WHEREAS by a mortgage bond dated the \_\_\_\_\_ executed by the vendor in favour of one EF the said land was mortgaged to secure the principal sum of Rs. \_\_\_\_\_ and interest in accordance with the covenants therein contained.

<sup>6</sup> (3) and (4) are not strictly necessary where the Transfer of Property Act applies vide Sec. 55 (2), Transfer of Property Act.

AND WHEREAS the said principal sum of Rs.——— with interest thereon from the date of the aforesaid bond upto the date hereof remains owing on the security of the said bond;

AND WHEREAS the vendor has agreed with the purchaser for the sale to him of the said land free from encumbrances for the sum of Rs.——— of which the sum of Rs.——— has been agreed to be retained by the purchaser for the redemption of the said mortgage of the said EF.

NOW THIS DEED WITNESSES as follows :

1. In consideration of the price of Rs.———, out of which the sum of Rs.——— has been paid by the purchaser to the vendor (the receipt of which the vendor hereby acknowledges) and the sum of Rs.——— has been retained by the purchaser for payment to the said EF in pursuance of the aforesaid agreement and the remaining Rs.——— will be paid by the purchaser to the vendor within three months, the vendor hereby transfers by way of sale to the purchaser ALL that property described in the schedule hereto TO HOLD the same to the purchaser as absolute owner.

2. The vendor hereby covenants with the purchaser as follows :

(1) }  
(2) } (as in Form 1)

(3) The said premises are free from encumbrances except the encumbrance created by the aforesaid mortgage deed;

(4) If the amount due to EF mortgagee on the said mortgage bond dated——— on the date of execution of this deed is found to exceed Rs.——— the vendor will pay the excess to the purchaser with interest at——— per cent per annum from the date hereof.

3. The purchaser hereby covenants with the vendor as follows :

(1) He will pay the said sum of Rs.——— to the vendor within three months from the date hereof; and

(2) He will at all times keep indemnified the vendor and his estate from and against the claim of the said EF under the aforesaid mortgage deed dated the———.

4. PROVIDED ALWAYS, etc., (Interpretation clause as in Form 1).

*The schedule herein referred to*

IN WITNESS WHEREOF, etc.

### 3—Sale Deed where Consideration Partly Paid, Partly Retained for Creditors and Partly Set Off

THIS DEED OF SALE is made, etc., (*as in Form 1*).

WHEREAS the vendor borrowed Rs. \_\_\_\_\_ from the purchaser on an interest of \_\_\_\_\_ per cent per annum and by a deed of mortgage dated \_\_\_\_\_ mortgaged the property described in schedule B hereto to secure the said loan of Rs. \_\_\_\_\_ and interest;

AND WHEREAS a sum of Rs. \_\_\_\_\_ is now due on account of the said loan and interest thereon;

AND WHEREAS the vendor being the owner of the property described in schedule A hereto has agreed to sell and the purchaser has agreed to buy the said property for a consideration of Rs. \_\_\_\_\_;

NOW THIS DEED WITNESSES as follows :

1. In consideration of the said sum of Rs. \_\_\_\_\_ out of which the sum of Rs. \_\_\_\_\_ has been retained by the purchaser in full satisfaction of his claim under the aforesaid deed of mortgage (from which the purchaser hereby releases the vendor and the said property mentioned in schedule B)<sup>7</sup> and the sum of Rs. \_\_\_\_\_ has been retained by him for payment to the various creditors of the vendor whose names and particulars of whose debts are set forth in schedule C hereto annexed and the balance of Rs. \_\_\_\_\_ has been paid at the time of the execution of this deed by the purchaser to the vendor (the receipt whereof the vendor hereby acknowledges) the vendor hereby transfers, etc., (*as in Form 2*).

2. The vendor hereby covenants etc., (*as in Form 1*).

3. The purchaser hereby covenants with vendor as follows :

(1) The purchaser will pay the sum of Rs. \_\_\_\_\_ to the various creditors of the vendor named in the schedule C hereto and will at all times hereafter keep indemnified the vendor and his estate from and against the claims of such creditors to the extent of the amounts respectively mentioned against the name of each in the said schedule C.

4. In consideration of the transfer by the vendor hereinbefore contained the purchaser hereby releases the vendor and his estate from

<sup>7</sup> If the property mortgaged is the same which is sold, Form 34, *post*, may be adopted.

every obligation concerning the said sum of Rs. \_\_\_\_\_ lent by the purchaser to the vendor as hereinbefore recited and any interest thereon whether such obligation is imposed by the deed of mortgage hereinbefore recited or not.

5. PROVIDED ALWAYS, etc., (as 3 in Form 1).

*The schedule A, B and C herein referred to*

IN WITNESS WHEREOF, etc.

**4—Sale Deed when Part of Consideration is Paid before Execution and Part is Agreed to be Paid after Registration**

THIS DEED OF SALE, etc., (as in Form 1).

WITNESSES as follows:

1. In consideration of the sum of Rs. 10,000 part of the price of Rs. 65,000 paid before the execution of this deed by the purchaser to the vendor (the receipt of which the vendor hereby acknowledges) and of the sum of Rs. 55,000 being the remainder of the said price to be paid by the purchaser to the vendor within two months from the registration of the deed, the vendor as owner hereby transfers, etc., (as in Form 2).

2. The vendor hereby covenants with the purchaser as follows :

(1) and (2) (as in Form 1).

(3) The said premises are free from encumbrances, charges, claims and liens except the lien in favour of the vendor in respect of the sum of Rs. 55,000 being the unpaid balance of purchase money due hereunder.

3. The purchaser hereby covenants with the vendor that he the purchaser will pay to the vendor within two months of the registration of this deed the sum of Rs. 55,000.

4. PROVIDED, etc., (as in 3 of Form 1).

*The schedule herein referred to.*

IN WITNESS WHEREOF, etc.

**5—Sale Deed where a Portion of the Price is Left for a Creditor  
(who is also a Party to the Sale Deed)**

THIS DEED OF SALE made on the \_\_\_\_\_ day of \_\_\_\_\_  
BETWEEN AB, etc., (hereinafter called "the vendor") of the first part

AND CD, etc., (hereinafter called "the creditor") of the second part AND EF, etc., (hereinafter called "the purchaser") of the third part.

WHEREAS the vendor being the owner of the property described in the schedule hereto has agreed to sell and the purchaser has agreed to buy the said property for the sum of Rs. \_\_\_\_\_;

AND WHEREAS the purchaser being unable to pay more than Rs. \_\_\_\_\_ of the said purchase money at the date of these presents, and the vendor being indebted to the creditor to the extent of Rs. \_\_\_\_\_ and upwards it has been agreed between the vendor and the purchaser that the purchaser shall pay the balance of the said purchase money, namely Rs. \_\_\_\_\_ to the creditor in part discharge of the vendor's said debt to the creditor together with interest at the rate of \_\_\_\_\_ per cent per annum till payment.

NOW THIS DEED WITNESSES as follows :

1. In consideration of the sum of Rs. \_\_\_\_\_ paid by the Purchaser to the Vendor on or before the date hereof (the receipt of which is hereby acknowledged) and of the sum of Rs. \_\_\_\_\_ to be paid by the purchaser with interest at the rate aforesaid to the creditor for the credit of the vendor in the manner hereinafter agreed the vendor hereby transfers, etc., (*as in Form 2*).
2. The vendor hereby covenants with the purchaser, etc., (*as in Form 1*).
3. The purchaser hereby covenants with the vendor that the purchaser will pay to the creditor the said sum of Rs. \_\_\_\_\_ within \_\_\_\_\_ years from the date of these presents and will in the meantime pay to the creditor interest thereon or on so much thereof as may for the time being remain unpaid at the rate of \_\_\_\_\_ per cent per annum and will indemnify the vendor from any claim or demand in respect of the same or any part thereof.
4. The creditor hereby covenants with the vendor that if the purchaser pays to the creditor interest at the rate aforesaid upon the said sum of Rs. \_\_\_\_\_ and pays the whole of the said sum to the creditor within a period of \_\_\_\_\_ years from the date of these presents the creditor will not require payment from the vendor of the said sum of Rs. \_\_\_\_\_ or any interest thereon and will give the vendor credit for such payments on account for discharging in part the vendor's debt to the creditor.

5. The vendor hereby covenants with the creditor that if the purchaser makes default in paying the said sum or in paying interest thereon in accordance with the covenants hereinbefore contained the vendor will himself pay such sum to the creditor or so much thereof as may be unpaid together with interest at the rate aforesaid.

6. PROVIDED ALWAYS and it is hereby agreed between the vendor and the purchaser that nothing herein contained shall affect or amount to a release of the charge to which the vendor is entitled under the law for the said sum of Rs. \_\_\_\_\_ or such part thereof as may remain unpaid and for interest thereon at the rate aforesaid until the said sum with interest has been paid in full by the purchaser as hereinbefore provided.

7. PROVIDED ALSO, etc., (*as in 3 of Form 1*).

*The schedule herein referred to.*

IN WITNESS WHEREOF etc.

**6—Sale Deed-Consideration Agreed to be Paid in a Particular Way**

THIS DEED OF SALE made, etc., (*as in Form 1*)

WITNESSES as follows :

1. In consideration of the sum of Rs. \_\_\_\_\_ agreed to be paid by the purchaser to the vendor in the manner hereinafter provided the vendor as proprietor hereby transfers, etc., (*as in Form 2*).

2. The vendor hereby covenants, etc., (*as in Form 1*).

3. The purchaser hereby covenants with the vendor as follows :

(1) That he will pay the aforesaid consideration of Rs. \_\_\_\_\_ etc., (*describe the mode of payment agreed upon*).

4. PROVIDED, etc., (*As in 3 of Form 1*).

*The schedule herein referred to.*

IN WITNESS WHEREOF, etc.

### 7—Sale Deed by *Benamidar* and *Beneficiary*<sup>8</sup>

THIS DEED OF SALE is made on the \_\_\_\_\_ day of \_\_\_\_\_ BETWEEN AB, etc., (hereinafter called "the *benamidar*") of the first part AND CD, etc., (hereinafter called "the vendor") of the second part AND EF, etc., (hereinafter called "the purchaser") of the third part.

WHEREAS the property described in the schedule hereto was purchased by the vendor from one XY under a deed of sale dated \_\_\_\_\_ but as the vendor was then in Government service and under the rules of his service was not competent to make the purchase without permission of the Government, the purchase was made fictitiously in the name of the *benamidar* for and on behalf of the vendor;

(or, WHEREAS as the *benamidar* hereby admits the property described in the schedule hereto really belongs to the vendor although the name of the *benamidar* is fictitiously recorded in the revenue records as the owner thereof);

AND WHEREAS the vendor has agreed with the purchaser to sell the said property to him for the sum of Rs. \_\_\_\_\_;

AND WHEREAS the *benamidar* has, at the request of the vendor agreed to join in the sale of the said property for the purpose of perfecting the title of the purchaser thereto;

NOW THIS DEED WITNESSES as follows :

1. In pursuance of the said agreement and in consideration of the said sum of Rs. \_\_\_\_\_ paid before the execution hereof by the purchaser to the vendor (the receipt whereof the vendor hereby acknowledges) the vendor hereby transfers to the purchaser and at the request of the vendor the *benamidar* hereby releases to the purchaser ALL that, etc., (*as in Form 2*).

2. The vendor hereby covenants with the purchaser (*as in 1 of Form 1*).

3. The *benamidar* likewise covenants with the purchaser that the said premises shall be quietly entered upon and held and enjoyed and the rents and profits received by the purchaser without any interruption by him or any one claiming through or under him.

<sup>8</sup> The Benami Transactions (Prohibition) Act 1988 does not in any way affect the *benamidar*'s voluntary offer to join in such a transaction: See foot note under precedent No.17 under RELEASE, *ante*.

4. The vendor and the *benamidar* respectively each for himself but not for the other, covenant with the purchaser that he will at the cost of the person requiring the same execute and do every assurance or thing necessary for further or more perfectly assuring the said premises to the purchaser, his heirs or assigns as by him or them shall reasonably be required.

5. PROVIDED ALWAYS (*as in 3 of Form 1*)

*The schedule herein referred to.*

IN WITNESS WHEREOF, etc.

### 8—Sale Deed by a Pardanashin Lady under the Terms of a Compromise in Lieu of a Decree

THIS DEED OF SALE is made, etc., (*as in Form 1*).

WHEREAS—

(1) In suit No. \_\_\_\_\_ of \_\_\_\_\_ pending in the Court of the \_\_\_\_\_ a joint decree was passed on the \_\_\_\_\_ in favour of EF, GH, JK and the purchaser against the vendor and her deceased husband for Rs. \_\_\_\_\_ with costs and interest from the date of suit upto date of realisation;

(2) By virtue of the consent decree passed by the Court of \_\_\_\_\_ in Suit No. \_\_\_\_\_ of \_\_\_\_\_ *in re* : EF and 4 others versus CD, the purchaser became solely and wholly entitled to realise the money due under the decree passed in Suit No. \_\_\_\_\_ of \_\_\_\_\_ aforesaid;

(3) The said husband of the vendor having since died the vendor became the heir and owner of the property left by him;

(4) On the \_\_\_\_\_ the purchaser applied for execution of the decree in Suit No. \_\_\_\_\_ of \_\_\_\_\_ aforesaid against the vendor for Rs. \_\_\_\_\_ ;

(5) The vendor after consultation with her near relations and legal advisers and after fully understanding and realising the effect of the transaction on her interest and considering it to be for her benefit entered into a compromise with the purchaser whereunder the aforesaid decree was agreed to be satisfied by the vendor executing in favour of the purchaser this sale deed in respect of the property mentioned in the schedule hereto in full satisfaction of the amount of the aforesaid decree;

(6) The said compromise has been embodied in a petition dated-----presented jointly by the vendor and purchaser to the court of the-----and duly verified and recorded by the presiding officer of the said court on the-----;

NOW THIS DEED WITNESSES as follows :

1. In pursuance of the agreement in the said compromise and in consideration of Rs.-----credited by the purchaser towards full satisfaction of his aforesaid decree the vendor hereby transfers to the purchaser, etc., (*as in Form 1*).

2. The vendor hereby covenants, etc., (*as in Form 1*).

3. The purchaser hereby covenants with the vendor that he will immediately after the registration of this deed certify satisfaction of the said decree to the Court in which the said execution application is pending.

4. PROVIDED ALWAYS, etc., (*as in 3 of Form 1*).

*The schedule herein referred to.*

IN WITNESS WHEREOF, etc.

### 9—Sale Deed by Attorney<sup>9</sup>

THIS DEED OF SALE is made, etc., (*as in Form 1*).

WHEREAS the vendor is the owner of the property described in the schedule hereto under a deed of sale dated the-----executed by one EF;

AND WHEREAS the vendor by a deed dated the-----and registered at the office of-----on the-----appointed XY his attorney to sell the said property to receive and give receipt for the purchase money thereof and to execute and present for registration deed of sale thereof;

AND WHEREAS the vendor by the said XY his attorney has agreed with the purchaser for the sale to him of the said property for the sum of Rs.-----.

NOW THIS DEED WITNESSES as follows :

---

<sup>9</sup> The sale should be in the name of the vendor and not in that of his attorney.

1. That in pursuance of the aforesaid agreement and in consideration of Rs.----- paid by the purchaser to the said XY as such attorney as aforesaid (the receipt of which the vendor by the said XY hereby acknowledges) the vendor by the said XY as such attorney as aforesaid hereby transfers, etc., (as in Form 1).

2. The vendor by the said XY as such attorney as aforesaid hereby covenants with the purchaser as follows :

*Rest as in Form 1.*

### 10—Sale by Guardian of a Minor<sup>10</sup>

THIS DEED OF SALE is made on the----- BETWEEN AB, etc., a minor acting through XY, etc., his mother and natural guardian (or, his guardian appointed by the District Judge of----- by an order dated-----) (hereinafter called “the vendor”) of the one part AND CD, etc., (hereinafter called “the purchaser”) of the other part.

WHEREAS the vendor is the owner of the property described in the second schedule hereto;

AND WHEREAS the vendor is a minor and is indebted to the several persons named in the first schedule hereto and the burden of interest on the said debts is increasing;

AND WHEREAS in order to pay off the said debts the said XY has agreed on behalf of the vendor to sell to the said CD the property described in the second schedule hereto for the sum of Rs.----- (AND WHEREAS the District Judge of----- has by an order dated----- permitted the said XY to make the said sale).

NOW THIS DEED WITNESSES as follows :

1. (*As in Form 9, substituting “guardian” for “attorney”*).

2. The said XY for and on behalf of the vendor hereby covenants with the purchaser as follows :

(1) The vendor is the owner of the property described in the said schedule and is competent to transfer the same.<sup>11</sup>

10 With regard to a minor's undivided interest in joint Hindu family property, see discussion in *Sri Narayan Bal v. Sridhar*, (1996) 8 SCC 54 explaining the scheme of Secs. 6, 7 and 8 Hindu Minority & Guardianship Act.

11 This may be required from the guardian personally as the sale being made by a guardian there is no implied covenant for title by the vendor under Sec. 55(2), Transfer of Property Act.

(2) and (3) (*as in 1 and 2 of Form 1*).

5. Interpretation clause (*as in Form 1*).

*The schedules herein referred to.*

IN WITNESS WHEREOF, etc.

### 11—Sale by a Person on His Own Behalf and as Guardian of a Minor

THIS DEED OF SALE is made on the \_\_\_\_\_ BETWEEN AB, etc., and CD, etc., a minor acting by his guardian the said AB (hereinafter jointly called "the vendors") of the one part AND XY, etc., (hereinafter called "the purchaser") of the other part;

WHEREAS the vendors are joint owners of the property described in the schedule hereto;

AND WHEREAS the said CD is a minor and the said AB is the certificated guardian of his property appointed by order of the District Judge of \_\_\_\_\_ dated \_\_\_\_\_;

AND WHEREAS the said AB acting for himself and as guardian of the said CD has agreed with the purchaser for the sale to him of the property described in the schedule hereto for the price of Rs. \_\_\_\_\_;

AND WHEREAS the District Judge of \_\_\_\_\_ has by an order dated the \_\_\_\_\_ permitted the said AB to make the said sale in respect of the share of the said CD;

NOW THIS DEED WITNESSES as follows :

1. In pursuance of the aforesaid agreement and in consideration of the sum of Rs. \_\_\_\_\_ paid by the purchaser to the said AB (the receipt of which the vendors hereby acknowledge) the vendors hereby transfer, etc., (*as in Form 1*).

2. *As in Form 10*, substituting "acting for himself and as guardian of the said CD" instead of "for and on behalf of the vendor".

3. (*As in Form 1*).

*The schedule herein referred to.*

IN WITNESS WHEREOF, etc.

### 12—Sale on behalf of a Mentally Ill Person

THIS DEED OF SALE is made on the \_\_\_\_\_ BETWEEN AB, etc., a mentally ill person acting through XY, etc., manager of his estate (hereinafter called "the vendor"), etc., (*as in Form 1*).

WHEREAS by an inquisition<sup>12</sup> taken before the District Judge of Agra, the vendor was found to be a mentally ill person and by order of the said Judge dated \_\_\_\_\_ the said XY was appointed to be the manager of his estate.

AND WHEREAS it is necessary to raise a sum of Rs. \_\_\_\_\_ to pay off the debts of the vendor which amount approximately to Rs. \_\_\_\_\_ and to defray the necessary expenses for the maintenance and support of the vendor and his family.

AND WHEREAS by an order dated the \_\_\_\_\_ the said District Judge has authorised the said XY to raise the said sum of Rs. \_\_\_\_\_ by sale of the property of the vendor described in the schedule hereto.

AND WHEREAS the said XY has agreed to sell to the purchaser the said property for the sum of Rs. \_\_\_\_\_

NOW THIS DEED WITNESSES as follows :

1. In pursuance of the said agreement and the order aforesaid and in consideration of the sum of Rs. \_\_\_\_\_ paid by the purchaser to the said XY as such manager as aforesaid (the receipt of which the vendor by the said XY hereby acknowledges) the vendor acting by the said XY as such manager as aforesaid hereby transfers to the purchaser ALL that, etc., (*as in Form 1*).

2. The said XY, etc., (*as in Form 10*).

3. (As in Form 1)

*The schedule herein referred to.*

IN WITNESS WHEREOF, etc.

### 13—Sale of Joint Family Property by Father for a Legal Necessity and Antecedent Debt

THIS DEED OF SALE is made on, etc., (*as in Form 1*).

## WHEREAS--

(1) The vendor and his minor sons EF, GH and JK form joint Hindu family governed by the Mitakshara School of Hindu Law;

(2) The property mentioned in the schedule hereto is the joint ancestral property of the said family;

(3) The vendor also carries on the business of *Khandsari* (sugar manufacture) which is his ancestral business;

(4) For the purpose of the said business the vendor borrowed Rs. \_\_\_\_\_ from the purchaser on a promissory note dated the \_\_\_\_\_ and the amount of the said loan with interest now due to the purchaser comes to Rs. \_\_\_\_\_;

(5) The vendor is now in need of Rs. \_\_\_\_\_ for the following purposes, viz. Rs. \_\_\_\_\_ for the marriage of his daughter XY to be celebrated in the month of \_\_\_\_\_ next, Rs. \_\_\_\_\_ for payment of Government revenue in respect of the said family's land in villages \_\_\_\_\_ and Rs. \_\_\_\_\_ for the preliminary expenses of sending his son GH to England for education in Electrical Engineering; and

(6) As there is no other means of raising the said money the vendor has, in order to pay off the said loan and to raise a sum of Rs. \_\_\_\_\_ for the above mentioned purposes, agreed with the purchaser to sell to him the said property described in the schedule hereto for the sum of Rs. \_\_\_\_\_;

## NOW THIS DEED WITNESSES as follows :

1. In consideration of the sum of Rs. \_\_\_\_\_ due to the purchaser on account of the said loan (from which the purchaser hereby releases the vendor) and of the sum of Rs. \_\_\_\_\_ to be paid by the purchaser to the vendor at the time of registration of this deed, the vendor hereby transfers, etc., (*as in Form 2*).

2. *As in Form 1.*

3. *As in Form 1.*

*The schedule herein referred to.*

IN WITNESS WHEREOF, etc.

#### 14—Sale by Manager of Joint Family, other Members joining

THIS DEED OF SALE is made on the \_\_\_\_\_ day of \_\_\_\_\_ BETWEEN AB, etc., EF, etc., GH, etc., and JK, etc., a minor acting through the said AB, the manager of his joint family (hereinafter called the "Vendors") of the one part AND CD, etc., (hereinafter called "the purchaser") of the other part.

WHEREAS

(1) LM was the common ancestor. He had two sons X and Z both now dead. The said AB and EF are the sons of the said X and the said GH and JK are the sons of the said Z;

(2) The said AB, EF, GH and JK form a joint Hindu family governed by the Mitakshara school of Hindu law and the said AB is the manager;

(3) *As in para 2 of Form 13;*

(4) The said family also owns and carries on through the said AB an ancestral business of *Khandsari*;

(5) *As in 4 of Form 13, substituting "the said AB" for "the vendor";*

(6) *As in 5 of Form 13 substituting "the vendors" for "the vendor", "the said AB's daughter" for "his daughter" and "the said GH" for "his son GH";*

(7) The purchaser has made bonafide enquiries both as regards the ancestral nature of the business as well as the existence of the legal necessity. He has satisfied himself that the business of the family is ancestral and that the money is needed for the purpose aforesaid.

*Rest as in Form 13, substituting "vendors" for "vendor".*

#### 15—Sale by Several Joint Owners (Tenants in Common or Joint Tenants)<sup>13</sup>

THIS DEED OF SALE is made, etc., (*as in Form 1*).

WHEREAS the vendors are owners of the property described in the schedule hereto as tenants in common in equal shares (*or*, as joint tenants) and they have agreed to sell the same to the purchaser at the price of Rs. \_\_\_\_\_ ;

<sup>13</sup> On distinction between joint tenants and tenants in common, see Preliminary Note, *ante*.

NOW THIS DEED WITNESSES as follows :

1. In consideration of Rs. \_\_\_\_\_ paid by the purchaser to the vendors (the receipt of which the vendors hereby acknowledge) each of them the vendors so far as relates to his own share, estate or interest in the property hereby sold (but so as to make each of them liable by way of damages in respect of every breach of implied covenant to the extent of one-third only of such damages) hereby transfers, etc.

*(Rest as in other forms).*

### 16—Sale of Insolvent's Property by an Official Receiver

THIS DEED OF SALE is made on the \_\_\_\_\_ BETWEEN AB, etc., Official Receiver for the district of \_\_\_\_\_ (hereinafter called "the vendor") of the one part AND CD, etc., (hereinafter called "the purchaser") of the other part.

WHEREAS on the date of the order next hereinafter recited XY, etc., was absolute owner of the property described in the schedule hereto;

AND WHEREAS by an order of the District Judge of \_\_\_\_\_ made on the \_\_\_\_\_ day of \_\_\_\_\_ the said XY was adjudicated insolvent and the vendor was appointed receiver of his estate;

AND WHEREAS the vendor as such receiver as aforesaid has agreed to sell the said property to the purchaser at the price of Rs. \_\_\_\_\_;

NOW THIS DEED WITNESSES that in pursuance of the aforesaid agreement and in consideration of Rs. \_\_\_\_\_ paid by the purchaser to the vendor (the receipt of which the vendor hereby acknowledges) the vendor as official receiver and by virtue of the powers conferred on him by law in this behalf hereby transfer, etc.

*(Rest as in other Forms).*

### 17—Sale by Liquidator of Land of a Company in Voluntary Liquidation <sup>14</sup>

THIS DEED OF SALE is made on the \_\_\_\_\_ day of \_\_\_\_\_ BETWEEN the \_\_\_\_\_ Company Limited, in liquidation (hereinafter

<sup>14</sup> In spite of winding up, whether voluntary or by order of the Court, the property of the Company remains vested in the Company and does not vest in the

called "the Company") acting through AB, etc., its Liquidator of the one part AND CD, etc., (hereinafter called "the purchaser") of the other part.

WHEREAS at an extraordinary general meeting of the Company held on the \_\_\_\_\_ day of \_\_\_\_\_, it was resolved by a special resolution duly passed that the Company should be wound up voluntarily and the said AB was appointed the Liquidator of the Company for the purpose of such winding up;

AND WHEREAS the creditors of the Company at a duly convened meeting held on \_\_\_\_\_ passed a resolution confirming the appointment of the Liquidator;

AND WHEREAS the land described in the schedule hereto is the property of the Company and the said AB as such Liquidator as aforesaid and on behalf of the Company has agreed to sell the said land to the purchaser for Rs. \_\_\_\_\_

NOW THIS DEED WITNESSES as follows :

1. In consideration of Rs. \_\_\_\_\_ paid by the purchaser to the said AB as such Liquidator as aforesaid (the receipt of which the said AB on behalf of the Company hereby acknowledges) the Company acting by the said AB hereby transfers, etc.

(Rest as in other Forms)

### 18—Sale by Liquidator of Land of a Company in Compulsory Liquidation

THIS DEED, etc. (as in Form 17).

WHEREAS by an order dated the \_\_\_\_\_ passed

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Liquidator or Official Liquidator. (Unlike the Official Receiver of the estate of an insolvent as in Form No. 16 above). The sale should, therefore, be in the name of the Company and not the Liquidator, though it is made through the Liquidator. The Liquidator should, therefore, not be made a party to the deed. An Official Liquidator cannot sell the Company's property except with the sanction of Court : Sec. 457 (1) (c). But a Liquidator of a Company in the case of members' voluntary winding up may sell with the sanction of a special resolution of the company : Sec. 512 (1) (a). A covenant to the effect that the Liquidator has done nothing to charge or encumber the estate and one about production of title deeds are added but they are implied by section 55 (2) and Sec. 55 (3) Proviso. They should be added where Transfer of Property Act does not apply.

by Hon'ble Mr. Justice \_\_\_\_\_, a Judge of High Court at \_\_\_\_\_ in the matter of the company it was ordered that the company be wound up by the Court under the provisions of the Companies Act, 1956 and the said AB was duly appointed liquidator of the Company for the purpose of such winding up;

AND WHEREAS by an order dated the \_\_\_\_\_ the Hon'ble Mr. Justice \_\_\_\_\_ authorised the said AB to effect a sale of the property described in the schedule hereto belonging to the Company by private contract and for the price of Rs. \_\_\_\_\_;

AND WHEREAS the said AB in the name and on behalf of the Company has agreed with the purchaser for the sale to him of the said property described in the schedule hereto for the sum of Rs. \_\_\_\_\_.

NOW THIS DEED WITNESSES (as in Form 17).

### 19—Sale Deed by Treasurer, Charitable Endowments

THIS DEED OF SALE is made, etc., (as in Form 1).

WHEREAS the property described in the schedule hereto and forming part of the Moradabad High School Endowment Trust Fund was vested in the vendor by the Government of the Uttar Pradesh by G.O. No. \_\_\_\_\_ dated \_\_\_\_\_;

AND WHEREAS the said Government by G.O. No. \_\_\_\_\_ dated \_\_\_\_\_ authorised the vendor under Sec. 10 of the Charitable Endowments Act, 1890, to sell the said property through the Collector of Moradabad;

AND WHEREAS the vendor acting through the Collector of Moradabad has agreed to sell and the purchaser has agreed to purchase the said property for the sum of Rs. \_\_\_\_\_ which sum has been deposited by the purchaser in the Government Treasury at Moradabad to the credit of the vendor;

NOW THIS DEED WITNESSES that in consideration of Rs. \_\_\_\_\_ paid by the purchaser as aforesaid (the receipt of which the vendor hereby acknowledges) the vendor transfers, etc.,

(Rest as in other Forms)

## 20—Sale by Trustees

THIS DEED OF SALE is made on the \_\_\_\_\_ day of \_\_\_\_\_  
 BETWEEN AB, etc., CD, etc., EF, etc., trustees of the Arya Charitable  
 Hospital, Agra (hereinafter called "the vendor") of the one part AND  
 GH, etc., (hereinafter called "the purchaser") of the other part..

WHEREAS—

(1) Under a deed of sale dated \_\_\_\_\_, PQ, RS and TU the  
 then trustees of the said Arya Charitable Hospital, Agra (hereinafter called  
 "the said hospital") purchased from one XY the land described in the  
 schedule hereto for Rs. \_\_\_\_\_ from the funds of the said hospital  
 and the said land vested in the said trustees in trust for the general purposes  
 of the said hospital;

(2) By an order of the District Judge, Agra, dated \_\_\_\_\_ the  
 said trustees were removed from the trusteeship of the said hospital and  
 the vendors were appointed trustees thereof and the whole of property  
 of the said trust including the said land vested in the vendors;

(3) The said land was purchased for extending the eye-ward of the  
 said hospital but at a general meeting of the governors of the said hospital  
 who were appointed by the aforesaid order of the District judge  
 dated \_\_\_\_\_ for the management and administration of the hospital  
 affairs it was unanimously resolved that an eye-ward was no longer required  
 and that the said land was not required for any other purpose of the said  
 hospital and that it was for the benefit of the said hospital that the same  
 should be sold;

(4) The said District Judge of Agra has by an order dated \_\_\_\_\_  
 authorised the vendors to sell the said land; and

(5) The vendors have therefore agreed to sell the said land to the  
 purchaser for Rs. \_\_\_\_\_;

NOW THIS DEED WITNESSES as follows :

1. In pursuance of the said agreement and in consideration of  
 Rs. \_\_\_\_\_ paid by the purchaser (the receipt of which the vendors hereby  
 acknowledge) the vendors under the direction of the said governors and  
 under the said authority of the said District Judge of Agra and as trustees  
 hereby transfer to the purchaser, etc., (as in Form 2).

(Rest as in other Forms).

### 21—Sale by One Tenant in Common or Joint Tenant to Another

THIS DEED OF SALE is made, etc., (*as in Form 1*).

WHEREAS under a Will dated the \_\_\_\_\_ of XY who died on the \_\_\_\_\_ and whose said Will was proved<sup>15</sup> in the Court of the District Judge of \_\_\_\_\_ on the \_\_\_\_\_ the parties hereto are owners in possession of the property described in the schedule hereto as tenants in common in equal shares (*or, as joint tenants*)<sup>16</sup>;

AND WHEREAS the vendor has agreed to sell his share and interest in the said property to the purchaser at the price of Rs. \_\_\_\_\_.

NOW THIS DEED WITNESSES as follows ;

1. In consideration of the sum of Rs. \_\_\_\_\_ paid by the purchaser to the vendor (the receipt of which the vendor hereby acknowledges) the vendor hereby (*in case of tenant in common*) transfers, (*or, in the case of joint tenant*, releases and transfers) to the purchaser ALL the said estate and interest of the vendor of and in ALL that property described in the schedule hereto TO HOLD the same to the purchaser absolutely to the intent that the purchaser may henceforth become the sole and absolute owner of the said property freed from any estate or right of the vendor therein.

(*Rest as in other Forms*).

### 22—Sale to Several Persons Purchasing as Tenants in Common (in Equal or Unequal Shares)

THIS DEED OF SALE is made, etc., (*as in Form 1*).

WHEREAS the vendor is owner of the property described in the schedule hereto and has agreed to sell the same to the purchasers for Rs. \_\_\_\_\_ ;

*[If the sale is to be made in unequal shares, AND WHEREAS the purchasers have provided the said purchase money in the shares and*

<sup>15</sup> Taking out a probate is not compulsory in the case of Muslim wills at all, or in the case of wills of Parsis, Hindus, Sikhs, Jains and Buddhists except in Presidency towns, etc. (See Preliminary Note of WILS, *post*.)

<sup>16</sup> On distinction between joint tenants and tenants in common, see Preliminary Note, *ante*.

proportions following namely, the said AB Rs.----- the said CD Rs.-----, and the said EF Rs.----- and have requested that the said property should be transferred to them in the proportions hereinbefore appearing].

NOW THIS DEED WITNESSES as follows ;

1. In consideration of Rs.----- paid to the vendor by the purchasers in equal shares [(or, in the proportions hereinbefore mentioned) (the receipt of which is hereby acknowledged)] the vendor hereby transfers to the purchasers ALL that property described in the schedule hereto TO HOLD the same to the purchasers as absolute owners in equal shares (or, in the following undivided shares that is to say the said AB one-half and the said CD one-third and the said EF one-sixth.

*(Rest as in other Forms).*

### **23—Sale Deed when Different Portions of Properties are Sold to Different Purchasers**

THIS DEED OF SALE is made, etc., *(as in Form 1)*.

WHEREAS the vendor being owner of the property described in the first schedule hereto has agreed with the purchasers for the sale to them of the said property in different portions as detailed against the names of the several purchasers in column 2 of the second schedule hereto for the prices respectively specified in column 3 thereof, the total of which is Rs.-----;

NOW THIS DEED WITNESSES that in pursuance of the said agreement and in consideration of the total sum of Rs.----- paid before the execution of these presents by the purchasers in the proportions specified against their names in column 3 of the second schedule hereto (the receipt of which the vendor hereby acknowledges) the vendor hereby transfers to purchasers ALL the property described in the first schedule hereto TO HOLD the same to the purchasers in separate portions as specified against the names of the several purchasers in column 2 of the second schedule hereto, the position of each of such portions being more clearly delineated on the map hereto annexed by the area of such portions shown thereon in separate colours specified against the name of each purchaser in column 4 of the second schedule hereto.

*(Rest as in other Forms).*

*The first schedule herein referred to*  
(Description of the whole property)

*The second schedule herein referred to*

Names of purchasers	Portions of property sold to each purchaser	Price paid by each purchaser	Colour by which the portion of each is shown on the annexed map
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IN WITNESS WHEREOF, etc.

### 24—Sale to Sub-Purchaser<sup>17</sup>

THIS DEED OF SALE is made on the \_\_\_\_\_ day of \_\_\_\_\_ BETWEEN AB, etc., (hereinafter called "the vendor") of the first part AND CD, etc., (hereinafter called "the purchaser") of the second part AND EF, etc., (hereinafter called "the sub-purchaser") of the third part;

WHEREAS the vendor being the absolute owner of the property described in the schedule hereto has agreed to sell the same to the purchaser for Rs. 50,000 and the purchaser has agreed to resell the same to the sub-purchaser for Rs. 60,000;

NOW THIS DEED WITNESSES as follows :

1. In consideration of Rs. 50,000 paid by the sub-purchaser to the vendor under the direction of the purchaser and of Rs. 10,000 paid by the sub-purchaser to the purchaser (the receipt of which sums respectively, the vendor and the purchaser hereby acknowledge) the vendor, by the

<sup>17</sup> When before the execution of a sale deed the purchaser has agreed to resell the property to a third person, it is unnecessary to have two sale deeds and the seller may be requested to execute a deed in favour of the sub-purchaser in this form. Sometimes now-a-days the owner enters into a contract with a developer or builder for development of land. The land is not sold outright to the latter but possession is given to him with permission to build apartments or shops, etc. The developer is given the right to finalise deals for sale, to the ultimate purchasers, of the apartments or shops so built. The sale deeds are then executed either by the owner alone or by the owner and developer jointly [as in *Ajmera Housing Corporation v. Amrat Patel*, (1998) 6 SCC 500, para 3] to those ultimate purchasers directly. See also Forms No. 42, 43 and 45, *post* and Preliminary Note, sub head "Sale of Flats and Apartments, Development Agreements", *ante*.

direction of the purchaser, hereby transfers, and the purchaser hereby confirms, to the sub-purchaser ALL that, etc., TO HOLD the same to sub-purchaser absolutely for ever;

*(Covenants as usual between vendor and sub-purchaser). The purchaser need not enter into any covenants except the following:*

“The purchaser covenants with the sub-purchaser that the purchaser has not created any encumbrance or charge on the said property.”

*(Rest as in other Forms).*

## 25—Sale Deed of Government Land Sold at an Auction Sale

THIS DEED OF SALE is made on the———day of———  
BETWEEN the Governor of West Bengal (hereinafter called “the vendor”) of the one part AND CD, etc., (hereinafter called “the purchaser”) of the other part.

WHEREAS—

(1) The land described in the schedule hereto vests in the State of West Bengal for the purpose of the Government of West Bengal;

(2) The said land was put up to auction sale by the Collector of district on behalf of the Government of West Bengal and the purchaser’s bid of Rs.———being the highest was accepted;

(3) The said sale has been confirmed by the said Government by G.O. No.———dated———;

(4) The purchaser has deposited the said sum of Rs.———into the Government Treasury at———to the credit of the said Government;

NOW THIS DEED WITNESSES as follows :

1. In pursuance of the said auction sale and in consideration of the sum of Rs.———paid by the purchaser as aforesaid (the receipt of which the vendor hereby acknowledges) the vendor hereby transfers to the purchaser the land described in the schedule hereto TO HOLD the same to the purchaser as absolute owner subject to the payment of such Government revenue, cesses and taxes as may be assessed or imposed thereon.

2. *As in Form 1.*

PROVIDED ALWAYS and it is hereby agreed that in each of the covenants herein contained the expression "the vendor" hereinbefore used includes his successors and assigns and the expression "the purchaser" hereinbefore used includes his heir, representatives, successors and assigns.

*The schedule herein referred to.*

IN WITNESS WHEREOF, etc.

## 26—Sale of Leasehold Land

THIS DEED OF SALE is made, etc., (*as in Form 1*).

WHEREAS the vendor is in possession of all the land described in the schedule hereto under a lease dated \_\_\_\_\_ granted to the vendor by EF, etc., at the yearly rent of Rs. \_\_\_\_\_ for the term of \_\_\_\_\_ years subject to covenants by the lessee and conditions therein contained;

AND WHEREAS the vendor has agreed with the purchaser for the sale to him for the sum of Rs. \_\_\_\_\_ of the land described in the schedule hereto and comprised in the aforesaid lease;

NOW THIS DEED WITNESSES as follows :

1. In consideration of the sum of Rs. \_\_\_\_\_ to be paid at the time of the registration of this deed by the purchaser to the vendor, the vendor as lessee hereby transfers to the purchaser ALL the said land described in the schedule hereto and comprised in the aforementioned lease TO HOLD the same to the purchaser for the residue now unexpired of the said term of \_\_\_\_\_ years subject henceforth to the payment of the rent reserved by and the performance and observance of covenants and conditions on the part of the lessee contained in the aforesaid lease.

2. The vendor hereby covenants with the purchaser as follows :

(1) That the rents, covenants and conditions by and in the said deed of lease reserved and contained have on the part of the vendor been duly paid and observed and performed up to the date hereof and that he has done nothing to incur forfeiture or to invalidate the lease;

(2) That the land hereby transferred shall be quietly entered into and upon and held and enjoyed either in its present state or by having house or bungalow built upon it without any interruption or disturbance by the vendor or any person claiming through or in trust for him;

(3) That the vendor will at the cost of the person requiring the same execute and do every such assurance or thing necessary for the further or more perfectly assuring the said property to the purchaser, his successors and assigns as by him or them shall be reasonably required.

3. The purchaser hereby covenants with the vendor (FIRST) that he the purchaser will at all times hereafter during the subsistence of the said lease pay the yearly rent reserved by the said lease and observe and perform all the covenants and conditions contained in the said lease and henceforth on the part of the lessee to be observed and performed, AND (SECONDLY) that he will always hereafter keep indemnified the vendor from and against the payment of the said rent and the observance and performance of the said covenants and conditions and all actions, claims and demands whatsoever for or on account of the same or in any way relating thereto.

4. PROVIDED ALWAYS, etc., Interpretation clause-(as in Form 1).

*The schedule herein referred to*

IN WITNESS WHEREOF, etc.

## **27—Sale of Lessee's Rights in Land and of Proprietary Rights in House Standing thereon**

THIS DEED OF SALE is made, etc., (as in Form 1).

WHEREAS—

(1) By a lease dated the \_\_\_\_\_ the land described in the schedule hereto was demised by the owners in favour of XY for the term of ninety years from the \_\_\_\_\_ at the annual rent and on the terms and conditions specified in the said lease ;

(2) The said XY constructed a bungalow on the said land ;

(3) By a sale deed dated the \_\_\_\_\_ the said XY sold the aforesaid bungalow, out-houses and buildings standing on the said land and also assigned all his lessee's rights in the said land under the aforesaid lease to the vendor;

(4) The vendor has agreed with the purchaser to assign the said lessee's rights and to sell the said bungalow, out-houses, buildings, etc., for a total price of Rs. \_\_\_\_\_.

NOW THIS DEED WITNESSES as follows :

1. In pursuance of the said agreement and in consideration of the sum of Rs. ———— paid by the purchaser to the vendor (the receipt of which the vendor hereby acknowledges) the vendor as lessee hereby assigns to the purchaser ALL the land described in the schedule hereto and delineated on the plan hereto annexed and thereon shown as coloured red TO HOLD the same to the purchaser for the unexpired residue of the term of the lease subject henceforth to the payment of the rent thereby reserved and to the covenants and conditions therein contained and on the part of the lessee to be observed and performed.

2. In further pursuance of the said agreement and for the consideration aforesaid the vendor as owner hereby transfers to the purchaser ALL that bungalow, outhouses and buildings standing upon the aforesaid land and described in the schedule hereto TO HOLD the same to the purchaser as absolute owner but subject to such covenants in the aforesaid lease as may relate to such bungalow and buildings.

3,4 and 5 (*As in 2, 3 and 4 of Form 26*).

*The schedule herein referred to*

IN WITNESS WHEREOF, etc.

**28—Sale of Leasehold Property (Another Form)**

WHEREAS, etc. (*as in Form No. 26*)

AND WHEREAS etc. (*as in Form No. 26*).

NOW THIS DEED made on the ——— day of ——— BETWEEN the aforesaid lessee AND XY, etc., (hereinafter called "the Purchaser").

WITNESSES that in consideration of Rs. ——— paid by the purchaser to the lessee (the receipt of which is hereby acknowledged) the lessee hereby assigns to the purchaser ALL that property comprised in the aforesaid lease TO HOLD the same to the said purchaser for the residue now unexpired of the term of ——— years therein mentioned, subject to the payment of the rent and performance and observance of the lessee's covenants and conditions reserved and contained in the said lease AND the purchaser hereby agrees to keep the lessee, his heirs, executors

and successors indemnified against the said rent, covenants and conditions and all such proceedings, claims and expenses in respect thereof.

IN WITNESS WHEREOF, etc.

**29—Sale of Leasehold Property, the Lessor also Joining to Release the Lessee and to take New Covenants from the Purchaser**

THIS DEED OF SALE is made on the \_\_\_\_\_ day of \_\_\_\_\_ BETWEEN AB, etc., (hereinafter called "the vendor") of the first part AND CD, etc., (hereinafter called "the purchaser") of the second part AND EF, etc., (hereinafter called "the lessor") of the third part.

WHEREAS (as in Form 26 substituting the words "the lessor" for the words "EF, etc."):

AND WHEREAS the lessor agreed to release the vendor from the rent and covenants and conditions on his part entered in the said lease and to accept the said rent and the performance of the said covenants from the purchaser:

NOW THIS DEED WITNESSES as follows:

1. In consideration of, etc., (as in Form 26).
2. As in Form 1.

3. In consideration of the covenant by the purchaser hereinafter contained and of the premises the lessor hereby releases the vendor, his estate and effects from all liability in respect of the rent reserved by and the covenants and conditions contained in the aforesaid lease and all claims and demands in respect of any breach whether present or future of any such covenant or conditions.

PROVIDED that the release hereinbefore contained shall not affect the said covenants and conditions so far as the same are binding on the said demised property and the persons from time to time in possession thereof but have effect only as regards the personal liability of the vendor, his heirs, executors and successors thereunder.

PROVIDED ALSO that neither the said release nor anything herein contained shall prejudice or affect the right of the lessor or his heirs, executors, successors and assigns to re-enter upon the said demised

property for non-payment of rent or breach of covenants or conditions reserved and contained in the said lease;<sup>18</sup>

4. The purchaser hereby covenants with the lessor henceforth to pay the rent reserved by the aforesaid lease on the days and in the manner therein provided and to observe all the covenants and conditions therein contained and on the lessee's part to be performed and observed and also agrees that the lessor, his heirs, executors, successors and assigns will have the power of re-entry provided in the said lease under circumstances therein stated.

5. PROVIDED ALWAYS, etc. (*As 3 in Form 1, adding reference to the lessor*).

IN WITNESS, etc. (*As in other forms*).

### 30—Sale of Part of Leasehold Property held under One Lease, Rent being Apportioned

THIS DEED OF SALE is made, etc., (*as in Form 1*).

WHEREAS by a deed of lease dated the \_\_\_\_\_ day of \_\_\_\_\_ one PQ. etc., demised ALL that, etc., to the vendor for the term of \_\_\_\_\_ years from the \_\_\_\_\_ at the yearly rent of Rs. \_\_\_\_\_ and subject to the covenants and conditions therein contained.

AND WHEREAS the vendor has agreed with the purchaser for the sale to him of the property described in the schedule hereto being part of the property comprised in the said lease for Rs. \_\_\_\_\_ subject to the yearly rent of Rs. \_\_\_\_\_ part of the said yearly rent of Rs. \_\_\_\_\_ and on the terms and conditions hereinafter contained.

NOW THIS DEED WITNESSES as follows :

1. In consideration of the sum of Rs. \_\_\_\_\_ to be paid at the time of the registration of this deed by the purchaser to the vendor, the vendor as lessee hereby transfers to the purchaser ALL the said land described in the schedule hereto and comprised in the above mentioned lease TO HOLD the same to the purchaser for the residue now un-expired of the said term of \_\_\_\_\_ years subject to the yearly rent of Rs. \_\_\_\_\_ reserved by the lease and to the performance and observance of the

<sup>18</sup> This proviso may be omitted if the lessor also agrees not to enforce any penalty against the property on account of any past breach.

covenants and conditions on the part of the lessee contained in the aforesaid lease.

2. The vendor hereby covenants with the purchaser (*as in Form 26*).

3. The vendor and the purchaser hereby covenant with each other as follows:

(1) The vendor will pay Rs. \_\_\_\_\_ and the purchaser Rs. \_\_\_\_\_ out of the said yearly rent of Rs. \_\_\_\_\_ reserved by the said lease.

(2) The purchaser and the vendor will perform and observe all the covenants and conditions contained in the said lease and on the part of the lessee to be performed and observed so far as the same relate the premises hereby sold and those not hereby sold respectively.

(3) The purchaser and the vendor will indemnify each other against all claims and demands for or on account of the non-payment of the said rent and the non-performance of the said covenants and conditions so far as they relate to the portions of the property comprised in the said lease belonging to them respectively.

(4) All moneys which may become payable either to the vendor or the purchaser under the respective covenants or indemnity hereinbefore contained shall be a charge on the portion of the property comprised in the lease belonging to the other of them.

(5) Interpretation clause-(*as in Form 1*).

*The schedule herein referred to.*

IN WITNESS WHEREOF, etc. (As in other Forms)

### 31—Sale of Leasehold Property, when Rent is Apportioned with the Consent of the Lessor

THIS DEED OF SALE is made on the \_\_\_\_\_ day of \_\_\_\_\_ BETWEEN AB, etc., (hereinafter called "the vendor") of the first part AND CD, etc., (hereinafter called "the purchaser") of the second part AND PQ, etc., (hereinafter called "the lessor") of the third part.

WHEREAS (*as in Form 30*, substituting the words "the lessor" for "one PQ, etc.");

AND WHEREAS the vendor has agreed with the purchaser for sale to him of the property described in the schedule hereto being part of the property comprised in the said lease for Rs. \_\_\_\_\_;

AND WHEREAS it has been agreed between the vendor and purchaser with the consent of the lessor that the said yearly rent of Rs. ----- reserved by the said lease should be apportioned between the part of the demised property sold to the purchaser and that remaining with the vendor in the manner hereinafter appearing;

NOW THIS DEED WITNESSES as follows :

1. *(As in Form 30)*

2. *(As in Form 26)*

3. The parties hereto hereby agree as follows :

(1) The yearly rent reserved by the said lease shall be apportioned in such manner that Rs. ----- shall henceforth be payable in respect of the property hereby sold and Rs. ----- in respect of the remaining property comprised in the said lease and the covenants and conditions on the part of the lessee contained in the said lease shall be so read that no breach of any covenant or conditions on the part of the vendor shall give rise to any right of re-entry on the premises hereby sold to the purchaser.

(2) The rights, powers and remedies conferred on the lessor by the lease or otherwise shall continue in full force, but shall extend and apply to the hereby apportioned part of the said rent and the said several parts of the property for which such apportioned parts of the rent are hereby expressed to be payable as fully as they applied to the whole of such rent and the whole of such property.

(3) Interpretation clause *(as in Form 29)*.

*The schedule herein referred to.*

IN WITNESS WHEREOF, etc. *(As in other forms)*

**32--- Sale of Factory with Business on  
"As Is, Where Is" Basis<sup>19</sup>**

THIS SALE DEED is made on ----- between ----- a company within the meaning of the Companies Act 1956 and having its registered office at ----- (hereinafter called "the Vendor") of the one

<sup>19</sup> A somewhat similar transaction is the subject of decision of stamp duty in *Duncan Industries Ltd. v. State of U.P.*, A 1998 All 72.

part AND ----- a Company within the meaning of the Companies Act 1956 and having its registered office at ----- (hereinafter called "the Purchaser") of the second part.

WHEREAS the Vendor had obtained ----- acres of land situated at ----- on lease by a deed dated ----- from ----- Development Authority (hereinafter referred to as "the Development Authority") for a period of ----- years on an annual rental of Rs. ----- for the purposes of setting up a ----- factory on the terms and conditions contained therein;

AND WHEREAS the Vendor installed a ----- factory on the above said land consisting of a manufacturing plant with an aggregate installed capacity of ----- and has been engaged in the business of running of the said factory and selling its products;

AND WHEREAS the Vendor has agreed to sell his above said business as a going concern on "as is, where is" basis and the purchaser has agreed to purchase it which comprises :

(a) the said land together with the plant described in the Schedule hereunder;

(b) the power plant and all other movable capital assets including vehicles, furniture, air conditioners, stand-by systems, pipelines and railway siding relating to the said factory;

(c) all stocks of raw material, finished and semi-finished goods, work in process, stores and spares of all kinds relating thereto;

(d) all other current assets including cash in hand, book debts, outstanding claims, bills, and loans and advances relating thereto;

(e) all industrial licences, import licences, excise licences, storage licences, factory licences, permissions and all other tangible and intangible benefits pertaining thereto, with the research and development registration for Research and Development Centre to the extent transferable and relating exclusively to the said business;

(f) all rights in leaseholds and tenancies pertaining to the said business to the extent transferable;

(g) the technology package comprising technical information, drawings, designs, reports, operating manuals, process know-how, trade

marks, formulas, efficiency improvement techniques, pollution control and environmental control manuals and instructions as are owned by the Vendor on this date and/or used by the Vendor in the said business with free rights to use and disclose in India as on the date hereof;

(h) all current liabilities relating exclusively to the said business;

NOW THIS DEED WITNESSES as follows :

1. That in consideration of the sum of Rs. \_\_\_\_\_ paid by the Purchaser to the Vendor, the receipt whereof the Vendor does hereby acknowledge, the Vendor does hereby grant, transfer, convey, assure and assign unto and in favour of the Purchaser ALL THAT premises, buildings, lands, immovable structures more fully and particularly described in the Schedule hereunder together with all property rights, title and interests mentioned hereinabove TO HAVE and TO HOLD unto the Purchaser the said business including the said factory as a going on concern on "as is, where is" basis on this day, absolutely and for ever free from all encumbrances, charges, liens, attachments or trusts of whatsoever nature.

2. That the Vendor has handed over possession of the said business and factory together with all movable assets comprised in the above said business to the Purchaser.

3. That the Vendor and Purchaser have executed a separate agreement with the Development Authority to ensure that the Purchaser shall pay directly to the Development Authority the enhanced rent of Rs. \_\_\_\_\_ per annum payable in respect of the said land for the remainder of the period of lease.

4. That the Vendor hereby covenants with the Purchaser that notwithstanding any act, deal, matter or thing whatsoever that the Vendor may have made, done, committed and/or knowingly or willingly suffered to the contrary, the Vendor now has good right, full power and absolute authority to convey and transfer all the lands, buildings, premises, immovable structures, movable properties, rights and interests, etc., hereby conveyed or transferred or expressed or intended so to be unto and to the use of the Purchaser in the manner aforesaid and the Purchaser shall from time to time and at all times hereinafter peaceably and quietly possess and enjoy the said properties without any hindrance, interruption, disturbance, claims or demands whatsoever from or by the Vendor or by any person claiming through the Vendor.

5. That the Vendor does hereby covenant with the Purchaser that the Vendor shall and will from time to time and at all times hereafter at the request and expenses of the Purchaser, its successors or assigns make, do, acknowledge and execute or cause to be done, execute all such acts, deeds and things whatsoever for further more and effectively or satisfactorily assuring the aforesaid properties unto the Purchaser as shall be reasonably required.

6. That the Purchaser covenants to the Vendor to be bound by all the covenants and obligations cast upon the Vendor as the Lessee of the said land and to indemnify and hold the Vendor harmless from any breach thereof.

*The schedule herein referred to :*

IN WITNESS WHEREOF etc.

### 33—Sale of Mortgagee Rights under a Usufructuary Mortgage

THIS DEED OF SALE is made, etc., (*as in Form 1*)

WHEREAS by a deed of mortgage dated———, one XY usufructuarly mortgaged the property mentioned in the schedule hereto to the vendor for Rs.———.

AND WHEREAS the vendor has agreed with the purchaser to assign and transfer to him the said mortgage debt and all his right, title and interest under the hereinbefore recited deed of mortgage for the sum of Rs.

NOW THIS DEED WITNESSES as follows :

1. In pursuance of the said agreement and in consideration of the sum of Rs.——— paid on or before the execution of these presents by the purchaser to the vendor (the receipt of which the vendor hereby acknowledges) the vendor hereby assigns to the purchaser ALL THAT principal sum of Rs.——— secured by the hereinbefore recited deed of mortgage and the full benefit of all powers, rights, remedies and securities contained in the said deed of mortgage and thereby expressly or impliedly conferred upon the vendor TO HOLD the same to the purchaser absolutely.

2. In further pursuance of the said agreement and for the consideration aforesaid the vendor hereby transfers to the purchaser ALL that property comprised in the said deed of mortgage and set forth in the schedule hereto and all the estate, right, title and interest of the vendor to and upon the same TO HOLD the same to the purchaser subject to such right or equity of redemption as is now subsisting in the said property under or by virtue of the said deed of mortgage.

3. The vendor hereby covenants with the purchaser as follows :

(1) and (2) (*as in Form 1*).

(3) The vendor has not at any time hereinbefore done or executed or knowingly suffered or been party or privy to anything whereby the said principal sum and the property hereby respectively assigned and transferred or any part thereof respectively is, can or may be released, affected or encumbered in any way howsoever.

4. PROVIDED ALWAYS, Interpretation clause, etc. (*as in Form 1*).

*The schedule herein referred to.*

IN WITNESS WHEREOF, etc.

### 34— Sale of a Mortgaged Property to the Mortgagee

THIS DEED OF SALE, etc. (*as in Form 1*).

WHEREAS the vendor is the owner of the property described in the schedule hereto;

AND WHEREAS by a deed dated \_\_\_\_\_ the said property was usufructually mortgaged to PQ the ancestor of the purchaser for the sum of Rs. \_\_\_\_\_ by XY the ancestor of the vendor;

AND WHEREAS the said sum of Rs. \_\_\_\_\_ is still due and owing under the said usufructuary mortgage deed;

AND WHEREAS the vendor has agreed with the purchaser for sale to him of the said property for the sum of Rs. \_\_\_\_\_ and it has been agreed that out of the said sum of Rs. \_\_\_\_\_ the sum of Rs. \_\_\_\_\_ shall be retained by the purchaser on account of his debt due under the said mortgage deed.

NOW THIS DEED WITNESSES as follows :

1. In pursuance of the said agreement and in consideration of the said sum of Rs. \_\_\_\_\_ retained by the purchaser in full satisfaction of

the mortgage debt remaining due and owing to him upon the said mortgage deed (which mortgage debt the purchaser hereby declares to be fully satisfied accordingly and from which the purchaser hereby releases the vendor) and also in consideration of the sum of Rs. ———— paid to the vendor by the purchaser in cash before the execution of these presents (the receipt of which sum the vendor hereby acknowledges) the vendor hereby transfers by way of sale to the purchaser ALL his rights, title and interest in the property described in the schedule hereto TO HOLD the same to the purchaser (*rest as in Form 1*).

### 35—Ditto, Another Form

THIS DEED OF SALE is made, etc., (*as in Form 1*).

WHEREAS the vendor is the owner of the property described in the schedule hereto.

AND WHEREAS the same property is subject to a mortgage made in a deed dated ———— by PQ the deceased father of the vendor in favour of XY the predecessor-in-title of the purchaser for securing the sum of Rs. ———— and interest thereon at the rate specified in the deed of mortgage;

AND WHEREAS a sum of Rs. ———— is now due to the purchaser on account of principal and interest due under the said mortgage;

AND WHEREAS the vendor has agreed with the purchaser for the sale to him of the said property for the sum of Rs. ———— out of which the purchaser is to pay Rs. ———— in cash to the vendor and to credit the remaining sum of Rs. ———— towards his said debt from which the purchaser has agreed to release the vendor;

NOW THIS DEED WITNESSES as follows;

1. In pursuance of the said agreement and in consideration of Rs. ———— paid by the purchaser to the vendor (the receipt of which is hereby acknowledged) and of the release by the purchaser hereinafter contained the vendor hereby transfers to the purchaser the said property described in the schedule hereto TO HOLD the same absolutely freed from all rights or equity of redemption and from all claims and demands of the vendor under the said mortgage.

2. The purchaser hereby releases the vendor from liability of the said debt due under the aforesaid mortgage deed and from all suits, costs, claims and demands whatsoever in respect thereof or otherwise under the said mortgage.

3. The purchaser hereby declares that the said mortgage shall forthwith merge in the absolute title hereby transferred to him and shall be deemed to be forever extinguished.

*(Rest as in other Forms).*

### 36—Sale of Mortgaged Property, Mortgage to be Satisfied out of Consideration, Mortgagee Joining

THIS DEED OF SALE is made on the \_\_\_\_\_ day of \_\_\_\_\_ BETWEEN AB, etc., (hereinafter called "the vendor") of the first part AND XY, etc., (hereinafter called "the mortgagee") of the second part AND CD, etc., (hereinafter called "the purchaser") of the third part.

WHEREAS

(1) The vendor is the absolute owner of the property described in the schedule hereto;

(2) By a deed of mortgage dated \_\_\_\_\_ the vendor mortgaged the said property to the mortgagee to secure payment of Rs. \_\_\_\_\_ with interest at the rate therein mentioned;

(3) The amount now due under the said mortgage deed on account of the principal and interest is Rs. \_\_\_\_\_;

(4) The vendor has agreed to sell the said property to the purchaser free from encumbrances for Rs. \_\_\_\_\_;

(5) It has been agreed between the parties hereto that out of the aforesaid sum of Rs. \_\_\_\_\_ the sum of Rs. \_\_\_\_\_ shall be paid to the mortgagee and that the mortgagee shall also join the deed;

NOW THIS DEED WITNESSES as follows:

1. In consideration of the sum of Rs. \_\_\_\_\_ paid by the purchaser as follows viz., the sum of Rs. \_\_\_\_\_\* by the direction of the vendor to the mortgagee (the receipt of which sum the mortgagee hereby acknowledges) and the sum of Rs. \_\_\_\_\_ to the vendor (the receipt of which sum and the payment of the sum of Rs. \_\_\_\_\_ to the mortgagee the vendor hereby acknowledges) the vendor as owner

hereby transfers and the mortgagee as mortgagee and by the direction of the vendor hereby transfers and releases to the purchaser ALL that, etc., TO HOLD the same to the purchaser as absolute owner discharged from all the principal money and interest secured by the aforesaid mortgage and from all claims and demands thereunder.

*(Rest as in other Forms).*

### 37—Sale of Mortgaged Property, Mortgagee Joining and Releasing Vendor on Purchaser Agreeing to Pay the Mortgage Money

THIS DEED OF SALE, etc., *(as in Form 36).*

(1), (2) and (3) *(Same as in Form 36).*

(4) The vendor has agreed to sell the said property to the purchaser subject to the said mortgage but free from all other encumbrances at the price of Rs.

(5) The mortgagee at the request of the vendor and the purchaser and in consideration of the covenants by the purchaser hereinafter contained has agreed to join in this deed for the purpose of releasing the vendor in manner hereinafter appearing.

NOW THIS DEED WITNESSES as follows :

1. In consideration of Rs.-----paid by the purchaser to the vendor (the receipt of which the vendor hereby acknowledges), the vendor hereby transfers, etc., TO HOLD the same to the purchaser subject to the aforesaid mortgage and the principal thereby secured and all interest now due and henceforth to become due in respect thereof.

2. The purchaser hereby covenants with the mortgagee to pay to him on the----- day of----- next the said sum of Rs.----- now due under the aforesaid deed of mortgage and to pay in the meantime and until the whole of the said amount has been paid interest on the said amount or on so much thereof as shall remain for the time being payable at the rate of----- percent per annum by equal half yearly payments on the----- and the----- in each year.

3. The mortgagee hereby releases the vendor from his covenant to pay principal and interest contained in the aforesaid deed of mortgage and from all claims and demands under or in respect thereof.

4 and 5. Covenants and Interpretation clause-(*as in clauses 2 and 3 of Form 1*, (however, in covenant no 2 (4), for the word "encumbrances" the words "any other encumbrances" shall be substituted and in clause 3, reference to the mortgagee shall be added).

### 38 Sale of Mortgaged Property, Mortgagee Relying on the Rest of the Security and Releasing the Property Sold

THIS DEED OF SALE, etc., (*as in Form 36*).

WHEREAS

(1) (*as in Form 36*);

(2) (*Same as in Form 36, adding the words "together with other properties" after the words "the said property"*);

(3) The vendor has agreed to sell the said property to the purchaser for Rs. ———— ;

(4) The mortgagee being satisfied that the other property comprised in his mortgage is sufficient security for the money due to him thereunder has agreed to join herein to release the property hereby intended to be sold.

NOW THIS DEED WITNESSES as follows :

1. In consideration of Rs. \_\_\_\_\_ paid to the vendor by the purchaser (the receipt of which the vendor hereby acknowledges) the vendor as owner, etc., (*as in Form 36*).

2. The mortgagee who retains possession of the several documents specified in the second schedule hereto will, upon every reasonable request of the purchaser, and at the cost of the person making the request, produce all or any of such documents and furnish such true copies or extracts therefrom as the purchaser may require and will, in the meantime, keep the said documents safe and undefiled unless prevented from so doing by one or other cause beyond his control.

3. Covenants and Interpretation clause-(*as in Form 1*).

### 39 Sale of Mortgaged Property by Mortgagee under Power of Sale given by the Mortgage Deed

THIS DEED OF SALE is made, etc., (*as in Form 1*).

WHEREAS by a deed of mortgage dated the \_\_\_\_\_ and made between AB, etc., of the one part and the vendor of the other part the property described in the schedule hereto with other property was mortgaged to the vendor for securing the principal sum of Rs. \_\_\_\_\_ and interest;

AND WHEREAS by the aforesaid deed of mortgage it was agreed that the mortgagee should in certain events (which have happened) have power to sell without the intervention of the Court the property comprised in the said mortgage or part thereof for the realisation of the money due to him under the said mortgage;

AND WHEREAS on the \_\_\_\_\_ the vendor has served on the said AB a notice in writing requiring payment of the principal money secured by the aforesaid mortgage and default has been made by the said AB in payment thereof for more than three months after service of the said notice (or, AND WHEREAS a sum of Rs. \_\_\_\_\_<sup>20</sup> due on account of interest under the said mortgage deed has been in arrears for over three months);

AND WHEREAS the vendor having power of sale under the aforesaid provision of the said mortgage deed and under Sec. 69 of the Transfer of Property Act, 1882, has agreed to sell to the purchaser the property described in the schedule hereto for the sum of Rs. \_\_\_\_\_;

NOW THIS DEED WITNESSES as follows :

1. In consideration of the sum of Rs. \_\_\_\_\_ paid by the purchaser to the vendor (the receipt of which the vendor hereby acknowledge) the vendor as mortgagee in exercise of the hereinbefore recited power of sale hereby transfers, etc., TO HOLD the same to the purchaser as absolute owner freed from all right of redemption and from all claims whatsoever under the aforesaid deed of mortgage.

*(Covenants and provisos as necessary).*

#### **40—Sale Deed, Vendor Reserving a Right of Way on the Land Sold for the Benefit of a Third Person**

THIS DEED OF SALE, etc., (as in Form 1).

<sup>20</sup> This should be over Rs. 500, Sec. 69, Transfer of Property Act. The mortgagee has also an alternative power of appointing a Receiver of the income of the property, vide Sec. 69 A.

WITNESSES as follows :

1. In consideration, etc., the vendor as owner hereby transfers to the purchaser ALL THAT, etc.

RESERVING nevertheless to XY, etc., a perpetual right of way in common with the purchaser at all times and for all purposes from and to the public highway on the ———— over and across that portion of the road running from the main gate to the house hereby sold which is marked on the plan annexed hereto by letters ABC throughout the length of their respective plots subject to the payment by the said XY of a fair proportion of the expenses of maintaining and keeping the said way over and across the aforesaid portions of the said road in repair TO HOLD, etc.

*(Covenants and provisions as necessary)*

#### **41 Sale of Property Subject to Restrictive Covenants**

THIS DEED OF SALE is made, etc., *(as in Form 1)*.

WHEREAS by a deed of sale dated ———— the property hereby intended to be sold was with other property purchased by the vendor from PQ, etc., and under the said deed of sale the vendor entered into certain covenants and stipulations about the user of the said property and otherwise;

AND WHEREAS the vendor has agreed with the purchaser for the sale to him for the sum of Rs. ———— the property described in the schedule hereto subject to covenants and stipulations as hereinafter expressed.

NOW THIS DEED WITNESSES as follows :

1. In consideration, etc., *(as in Form 1) adding*, "subject to the said covenants and stipulations contained in the said deed of sale dated ————".

2. The purchaser hereby covenants with the vendor but by way of indemnity only that he will at all times hereafter duly perform and observe the said covenants and stipulations on the part of the vendor contained in the said deed of sale and will keep the vendor and his representatives indemnified against all suits, proceedings, costs, claims and demands whatsoever in respect of the said covenants and stipulations.

3. Covenants and Interpretation clause, etc. *(as in Form 1)*.

**42—Sale by Housing Board or Development Authority<sup>1</sup> of a Plot of Land, Part of an Estate laid out in Building Lots, Sold Subject to Restrictive Covenants by the Purchaser**

THIS DEED OF SALE is made on the \_\_\_\_\_ day of \_\_\_\_\_ BETWEEN the \_\_\_\_\_ of \_\_\_\_\_ (hereinafter called "the Board"/ "Authority") of the one part AND CD, etc., (hereinafter called "the purchaser") of the other part.

WHEREAS—

(1) By a resolution dated \_\_\_\_\_ the Board/Authority resolved that the plot of land measuring about \_\_\_\_\_ acres situate at \_\_\_\_\_ and delineated on the plan annexed hereto which vested in the Board/ Authority should be laid out in thirty lots as shown on the said plan for building purposes and roads be constructed and main sewers be laid beneath the same to the intent that each of the said lots should be used for building a dwelling house according to a general building scheme and that the owner or occupier for the time being of each such lot should be bound by the stipulations and restrictions contained in the second schedule hereto for the benefit and protection of the owner or occupier of every other of the said lots and of the Board/Authority.

(2) The Board/Authority put the said lots to auction sale on the \_\_\_\_\_ day of \_\_\_\_\_ at which sale lot Nos. \_\_\_\_\_ were sold at the price of Rs. \_\_\_\_\_ subject to the stipulations and restrictions contained in the second schedule hereto.

NOW THIS DEED WITNESSES as follows :

1. In consideration of the sum of Rs. \_\_\_\_\_ paid to the Board/Authority by the purchaser (the receipt of which the Board/Authority hereby acknowledges) the Board/Authority hereby transfers to the purchaser ALL that piece of land fully described in the first schedule hereto and delineated on the plan annexed hereto and thereon coloured red marked lot No. 30 TO HOLD the same to the purchaser subject to the

<sup>1</sup> The vendor can also be a municipal corporation or improvement trust. In that case "Corporation" or "Trust" may be mentioned in place of "Board/Authority" wherever occurring. The same form can be adapted with suitable modifications for sale by private builders, whether of plots or of built apartments. See also footnote under Form No. 24, *ante* and Form No. 45(a) *post* explaining "development agreements".

performance and observance of the stipulations and restrictions specified in the second schedule hereto so far as the same are binding upon the purchaser.

2. The vendor hereby covenants, etc., (*as in Forms 1*).

3. The vendor as to the plot of land remaining vested in it to which the stipulations and restrictions mentioned in the second schedule hereto relate and the purchaser as to the land hereby sold hereby mutually covenant with each other and the purchaser also hereby covenants with the owner or owners for the time being of any other land to which the benefit of the said stipulations and restrictions is attached to perform and observe the said stipulations and restrictions mentioned in the second schedule hereto, but so that the said covenants shall not be personally binding upon the Board/Authority and the purchaser respectively except during the time of his or its respective ownership of the pieces of land whereto the same respectively relate.

4. It is hereby agreed that unless there is anything repugnant in the subject or context the expression "the Board"/"Authority" used herein shall include its successors and assigns and the expression "the purchaser" shall include his heirs, representatives, successors and assigns.

*The first schedule herein referred to*

(Description of the land sold)

*The second schedule herein referred to*

### *Covenants*

1. The purchaser will observe the building line shown upon the said plan except in regard to ordinary structural dressings, bay-windows or porches. No erection or building or portion thereof except as aforesaid shall project upon or overhang the space between the building house and road boundary as marked in the said plan.

2. The purchaser will within \_\_\_\_\_ months from the date of this sale deed erect and afterwards maintain on the said land one side wall as shown on the said plan and marked \_\_\_\_\_ within the boundary.

3. Fences adjoining the road and side fences so far as such side fences lie in front of the building line shall be dwarf walls not exceeding \_\_\_\_\_ metres in height with such irons thereon not exceeding

on the whole—metres in height as shall be approved by the vendor's officers authorised in that behalf. All other fences shall be brick walls centimetres thick and—metres high and not more than metres above the level of the footpath.

4. The purchaser will within months build a dwelling house on the said land on an area of not less than square metres and according to the elevations and plan approved by the

5. The purchaser shall not make any alteration in the elevations or plan of the said building except with the previous consent of

6. The purchaser shall not use the house to be built on the said land or any part thereof otherwise than as a dwelling house and shall not use any part of the said land for carrying out any trade or business.

7. If any part of the said land shall be used for roads or approaches, the purchaser shall pave, make and complete at his own expense such roads or approaches to the satisfaction of the Board/Authority.

IN WITNESS WHEREOF, etc.

**43—Deed of Mutual Covenants by Purchasers of various parts of a Building Site Leased out under a Building Scheme of Statutory Body for Observance of Restrictive Stipulations, the Vendor Covenanting in respect of Unsold Lots**

THIS DEED is made on the day of BETWEEN the several persons who have or hereafter shall have signed their names in the first schedule hereto (all of them being hereinafter collectively referred to as the purchasers) of the one part AND the Municipal Board of (hereinafter called "the Board") of the other part.

WHEREAS

- 2 If the vendor is a Housing Board, Improvement Trust, Development Authority, or Housing Cooperative Society, then suitable words may be substituted as in Form No. 42, *ante*. The same form can be adapted with suitable modifications for sale of apartments by a co-operative society to its members by separate similar sale deeds (without the intervention of any local body or other authority). The provisions of various Apartments/Flats Ownership Acts in force in the States concerned may also be consulted (e.g., in U.P., Maharashtra, Karnataka, Delhi, W. Bengal, Gujarat).

(1) (*As in Form 42*) ; AND

(2) The Board has sold or intends to sell the said lots upon the term that the respective purchasers of the respective lots shall enter into and become bound by the said stipulations and restrictions and that the Board shall enter into and become bound by the same to the extent hereinafter appearing;

NOW THIS DEED WITNESSES as follows :

1. Each of the purchasers for himself, his heirs and assigns, to the intent that this covenant shall bind the lot purchased by him and the owner or owners thereof for the time being and all persons claiming through/ under or in trust for him or them and shall enure for the benefit and protection of any and all other lots delineated on the said plan and the owner or owners of such other lots and all persons claiming through under or in trust for such owner or owners, subject nevertheless as in clause 4 hereof mentioned, hereby covenants with every other of the purchasers, his or her heirs and assigns, and also as a separate covenant with the Board, its successors and assigns, that the covenanting purchaser will at all times hereafter perform and observe the stipulations and restrictions contained in the second schedule hereto so far as regards the lot purchased by or belonging to the covenanting purchaser.

2. In respect of any lot not sold by the Board and not entered in the first schedule hereto the Board and its successors and assigns shall be deemed to have entered into and become bound by the said stipulations and restrictions so far as they are of a negative character as if it was for the time being the purchasers of such lot.

3. The Board hereby covenants that if and when any of the lots remaining unsold shall be sold it shall be sold upon the term that the purchaser thereof shall sign his name in the first schedule hereto.

4. Neither the Board nor the covenanting purchaser nor their representatives or successors shall be liable for any breach of stipulations or restrictions contained in the second schedule hereto which may happen after they have disposed of the lot or lots in respect of which such covenant has been entered.

*The first schedule herein referred to*

No. of lot on plan	Name of purchaser	Signature of purchaser	Witness signature	Date of signature
-----------------------	----------------------	---------------------------	----------------------	----------------------

*The second schedule herein referred to*

(Stipulations and Restrictions)

IN WITNESS WHEREOF— for and on behalf of the Board has signed this deed and the Board has affixed its common seal on this deed on the date first hereinbefore mentioned and the respective purchasers have put their signatures on the dates set opposite to their respective signatures in the first schedule hereto.

#### **44—Deed of Cancellation of a Sale, with Reconveyance by Purchaser**

THIS DEED, etc., (*as in Form 1*).

WHEREAS by a deed of sale dated the— registered in the office of the— on the— the vendor transferred the property described in the schedule hereto to the purchaser for a consideration of Rs.— retained by the purchaser to be applied in manner therein specified;

AND WHEREAS one EF represented to the vendor that under the law of pre-emption he had a preferential right of purchase as against the purchaser and offered to purchase the said property for the said price;

AND WHEREAS the vendor has been advised that the claim of the said EF is valid and to avoid future litigation it would be better to cancel the sale made in favour of the purchaser under the aforesaid deed of sale and to transfer the property in favour of the said EF;

AND WHEREAS the purchaser has agreed with the vendor to have the aforesaid deed of sale cancelled and to reconvey the said property to the vendor in consideration of the vendor releasing the purchaser from the obligations arising under the covenants by the purchaser contained in the aforesaid deed of sale.

NOW THIS DEED WITNESSES that in pursuance of the said agreement and for the consideration aforesaid the parties hereto hereby agree that the aforesaid deed of sale be and is hereby cancelled AND the purchaser hereby reconveys and transfers to the vendor ALL the property described in the schedule hereto TO HOLD the same to the vendor for ever;

AND the vendor hereby releases the purchaser from the obligation under the covenants by the purchaser contained in the aforesaid deed of sale;

PROVIDED ALWAYS, etc.

*The schedule herein referred to.*

IN WITNESS WHEREOF, etc.

#### 45(a)—Development Agreement<sup>3</sup>

This AGREEMENT is made at ----- on this ----- day of ----- between AB, etc., hereinafter referred to as "the Owner" of the one part and CD etc., hereinafter referred to as "the Developers" of the other part;

WHEREAS the Owner is the proprietor in possession of land being plot No. ----- etc., situated at ----- fully described in the Schedule hereunder and desires to develop it by constructing a building thereon on Flat Ownership basis;

And Whereas the Developers have offered to develop the said land on the following terms and conditions :

<sup>3</sup> The documentation normally effected for a development of any land are (1) Development Agreement and (2) Allotment Agreement :—

Development Agreement is between the owner of the land (site) or old (to be pulled down) building and the developer. Under this agreement the owner gives the developer the right to build a multistoreyed complex (of flats or offices, shops etc.) and to allot them (generally, even before the construction is complete) to the prospective purchasers. The owner promises to execute transfer deeds direct to such allottees chosen by the developer, though the sale money from the allottees is received by the developer. (The allottees are also made members of a co-operative society or other like association with common mutual obligations among themselves as set out in the allotment agreements) :

The Allotment Agreement is between the developer and each allottee.

NOW THEREFORE IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS :

1. The Owner hereby agrees to entrust and hand over to the Developers the work and right of development of the said land on the terms contained herein.

2. The Developers hereby agree to develop or cause to be developed the said property for and on behalf of the Owner on the terms mentioned herein and as permitted by the concerned authorities, by constructing a building thereon and other premises on Flat Ownership basis and then to sell the said land to the Developers' own nominees. The Developers agree that they will obtain at their own cost and on their responsibility but in the name of the Owner and on his behalf whatever other permissions are required from any authority to develop the property.

3. The Developers will pay to the Owner a sum of Rs. \_\_\_\_\_ as consideration and out of it pay Rs. \_\_\_\_\_ as earnest money in part payment on execution of this Agreement and the balance of Rs. \_\_\_\_\_ will be paid in the following manner :

*(Payment details)*

4. The Developers shall not start any work on the said property unless the requisite permissions and certificates are issued by the concerned authorities.

5. Any external development of the said site and any construction thereon shall be at the cost and risk of the Developers. The Developers shall be at liberty to make necessary applications for the purpose of obtaining requisite permissions for the said work to the authorities concerned at their own cost in the name of the Owner, and the Owner shall join in such applications but the responsibility of obtaining such permissions will be on the Developers and at their cost.

6. The Owner hereby gives licence and permission to the Developers to enter upon the said land and the authority to commence, carry on and complete development thereof (including laying of roads, drainage, sewerage, water pipes and electricity cables) in accordance with duly sanctioned building plans.

7. If the Developers or their agents commit any breach of any of the terms and conditions of this Agreement then the Owner may terminate this

agreement and forfeit all moneys paid thereunder and on such termination the license and permission given to the Developers as aforesaid shall stand revoked.

8. The Owner shall at the request of the Developers sign and execute from time to time any amended plans that may be required and other applications for construction of any structures on the said land for being sanctioned and approved by any authorities provided that all costs, charges and expenses incurred in this connection shall be borne and paid by the Developers alone.

9. The Developers shall indemnify and keep indemnified the Owner from and against all civil, criminal or administrative proceedings, fines, penalties, and all costs, charges, expenses, and damages incurred or suffered by the Owner in the course of such development.

10. The Owner shall, if required by the Developers, execute a power of attorney in favour of the Developers or their delegate giving all necessary powers for carrying out the work of development in all respects.

11. The Developers shall be at liberty to sell or allot the flats or any other structures in the building to be constructed on the said land to any parties at such price and on such terms and conditions and provisions as the Developers may think fit subject to any terms that may be imposed by any authority. All such allotments shall be made by the Developers at their own risk and they alone shall be liable and responsible to such party or parties in connection with all dealings between them and such purchasers or allottees.

12. The Developers shall be entitled to put up or permit to be put up any hoardings or boards upon the said property advertising that the said complex is being developed by them, but shall not mention the name of the Owner in any manner. The Owner will be entitled to remove the board or hoardings forthwith if the Developers mention the Owner's name therein.

13. The Owner shall directly execute and deliver a deed or deeds of conveyance in favour of the Developers or their nominees including a co-operative society of purchasers of flats and other premises erected by the Developers. The Developers hereby agree to join in such Deeds as Confirming Party if required.

14. The Developers shall for any period after the date of this Agreement pay all Municipal and other taxes and all other charges, rates or cesses that may be levied by any authority in respect of the said building on the Owner.

15. The Developers shall indemnify the Owner and keep him indemnified against all losses, damages, costs, charges, expenses that may be incurred or suffered by the Owner on account of any breach of any of these terms and conditions.

IN WITNESS WHEREOF ETC.

#### 45 (b)—Agreement of Allotment

This Agreement is made at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ between AB etc., \_\_\_\_\_ (hereinafter referred to as the "Developer" which expression shall, unless the context otherwise requires, be deemed to include its executors, successors and assigns) of the one part acting through its Attorney; AND CD etc., \_\_\_\_\_ (hereinafter referred to as "The Allottee" which expression shall, unless the context otherwise requires, be deemed to include its successors, assigns, administrators) of the other part acting through \_\_\_\_\_.

WHEREAS the Developer is developing a plot of land admeasuring \_\_\_\_\_ in \_\_\_\_\_ approved for commercial use by constructing thereon a multistoried commercial complex called "\_\_\_\_\_" in accordance with the building plans as approved by the \_\_\_\_\_ (site plan enclosed as schedule-1).

AND WHEREAS the Allottee has applied to the Developer for the allotment of office space in \_\_\_\_\_ admeasuring \_\_\_\_\_ sq. metres (Super Area), more or less, at site on \_\_\_\_\_ floor in the (name of complex) which is under construction, (hereinafter referred to as the "Premises").

AND WHEREAS the Allottee has inspected the plot, tentative building plans, and other documents relating to title and competency of the Developer.

AND WHEREAS the Developer has represented to the Allottee that the Developer is the rightful owner and in possession of the land on which the Developer proposes to build the said complex;

NOW THEREFORE IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS :

1. That the Developer hereby allots to the Allottee the "Premises" in \_\_\_\_\_ measuring in the aggregate super built up area of approximately \_\_\_\_\_ sq. metres on \_\_\_\_\_ floor(s) being constructed in the (*name of complex*), as more particularly described in schedule II hereto, (@ Rs. \_\_\_\_\_ per sq. metre.
2. That the aforesaid price shall remain fixed and shall not be subject to change notwithstanding escalation in the cost of material and labour during the period of construction and also includes the cost of Fire Fighting and Electric Sub-station, but subject to clause 12 thereof.
3. That the above price is also inclusive of the External Development Charges (EDC) as laid down by the \_\_\_\_\_ which is Rs. \_\_\_\_\_ per acre, as on date. However in case there is any enhancement in the above EDC charges, the same shall be charged on pro rata basis of the saleable area of the Allottee.
4. That the aforesaid area is tentative and subject to change, as per Clause-14 hereof.
5. That if there are any additional levies, rates, taxes, charges, cesses or fees as assessed and attributable to the Developer as a consequence of Government statutory or other local authority's orders or statutory provision the same, if applicable, shall also be paid by the Allottee(s).
6. That the Allottee agrees that for the purpose of calculating the sale price in respect of the said "Premises" in the said Complex, the super area shall include the covered area, inclusive of the columns and walls, the area utilised for common use services and facilities, that is to say, areas under staircases, circulation areas, walls, lifts, shafts, passages, corridors, and lobbies. The ownership of the terrace above the top floor shall remain with the Developer.
7. That the Allottee has agreed to pay a sum of Rs. \_\_\_\_\_ only being the booking amount of the sale price of the said "Premises", the receipt of which the Developer hereby acknowledges, and the Allottee shall pay the remaining sale price as per the Instalment schedule described in Annexure-III hereto or as and when demanded by the Developer.
8. That the Allottee shall pay to the Developer by cheque/demand draft payable at \_\_\_\_\_ in instalments as detailed in Annexure-III and other sums payable under this Agreement and agreed to be paid by the Allottee.

9. That the timely payment of instalments and other charges mentioned herein are of the essence of this Agreement. It shall be incumbent on the Allottee to comply with the terms of payment and other terms and conditions for sale. In case of any breach of the terms of this Agreement, including delay in the payment of instalments and other charges as specified herein, the Allottee shall be liable to pay interest calculated from the due date of outstanding amount at the rate of 15% per annum compounded at the time of every succeeding instalment.

10. However, if the Allottee fails to pay the instalments and other charges with interest within three months from the due date of the outstanding amount, the Developer may forfeit the amount of earnest money (which is 10% of the sale consideration) deposited by the Allottee with the Developer, and the allotment shall thereupon stand cancelled and the Allottee shall be left with no lien, right, title or claim whatsoever in the said "Premises" and the Developer shall be entitled to resell the said "Premises" at its sole discretion. The amounts, if any, paid over and above the earnest money, shall however, be refunded to the Allottee by the Developer without any interest or compensation whatsoever.

11. That the Developer shall adjust the instalment amount received from the Allottee, first towards interest due, if any, and then towards the sale consideration of the "Premises". The sale deed shall however be executed only after all the outstandings under various heads herein have been paid in full.

12. That at present the fire safety measures at the said ----- Complex have been provided as per existing Fire Safety Code/Regulations. If, however, due to any subsequent legislation, Government Regulations, orders, directives or guidelines, or if deemed necessary by the Developer, any further fire safety measures are undertaken, the proportionate charges in respect thereof shall also be payable on demand by the Allottee.

13. That the Developer shall undertake the maintenance of the said Complex either by itself or with the help of a MAINTENANCE AGENCY appointed by the DEVELOPER. For this purpose the Allottee agrees to sign a separate Maintenance Agreement which shall contain the full scope of Maintenance of the Complex and shall pay the maintenance

charges as decided by the Developer or the Maintenance Agency appointed by the Developer calculated on the super area basis purchased by the Allottee.

14. That the Allottee has seen and accepted the Building Plans, Building Designs and specifications shown to him and agrees that the Developer may make such variations, additions, deletions, alterations and modifications therein as may be directed by any competent authority, and the Allottee hereby gives his consent to such variations, additions, deletions, alterations and modifications. Further if as a result of the above mentioned alterations, there is either reduction or increase in the super area of the said "Premises" in the Complex or its location, no claim, monetary or otherwise, will be raised or accepted by either party except that the original agreed rate per sq. metre and other charges will be applicable on any increase or decrease in area. The Developer shall be liable to refund without interest only the extra price and other proportionate charges recovered from the Allottee. Likewise, the Developer shall be entitled to recover from the Allottee the additional price and other proportionate charges, as the case may be, without interest.

15. That the Developer confirms that the said Complex is to be a fully air-conditioned building and to have hundred percent generator based power back-up.

16. That the possession of the "Premises" shall be delivered to the Allottee in \_\_\_\_\_ years time from the date of signing of this Agreement, provided all amounts due and payable by the Allottee under this Agreement are paid to the Developer. Further, that the Developer shall give notice to the Allottee about the date of handing over possession, and the Allottee shall through its authorised representative take possession of the "Premises". That the parties agree that in the event of the Allottee failing to accept and taking over possession of the "Premises" by such date as intimated to him by the Developer, the possession of the said "Premises" shall be deemed for the purposes of this Agreement to have been handed over by the Developer to the Allottee on the said date.

17. However, if the completion of the "Premises" is delayed for reasons of *force majeure* including go slow, work to rule, strike, lockout, civil commotion or by reasons of war or enemy action, terrorist action or any act of God, or delay in grant of completion or occupation certificate

by the Government or any other public or competent authority or for any reason beyond the control of the Developer, the Developer shall be entitled to a reasonable extension of time of delivery of possession of the said "Premises" in the said Complex.

18. (a) The Allottee agrees that after receiving the written notice from the Developer regarding the possession of the "Premises" in the said Complex the Allottee fails or neglects to take possession of the "Premises" within 90 days of service of the notice, the Allottee shall be liable to pay holding charges equivalent to 75% of the Maintenance Charges, and the "Premises" shall lie at the risk and cost of the Allottee after the expiry of the said period of 90 days. The holding charges shall be in addition to the amount payable by the Allottee as its share of the Government, municipal charges and maintenance charges.

(b) That the Developer shall execute the Sale Deed and have it registered in favour of the Allottee within a reasonable time after completion of the construction of the said "Premises" in the said Complex and after receipt from the Allottee of the full sale consideration and other dues, as also the Maintenance Charges as mentioned herein and the full cost of the registration charges, miscellaneous expenses and any other charges as mentioned in this agreement.

19. That it is mutually agreed that save and except in respect of the said "Premises" hereby agreed to be acquired by the Allottee, the Allottee shall have no claim, right, title or interest of any nature or kind whatsoever except right of ingress and egress over or in respect of land, open spaces and all or any of the common areas and basement in the said Complex, the possession whereof shall remain with the Developer who will maintain and upkeep the same until the same are taken over by any other body or by any legally constituted association of all the Allottee of the said Complex. This is subject to the provision of any Act relating to apartments governing the said Complex or rules framed thereunder, which shall govern the rights, title and obligations covered by this clause.

20. The Maintenance Charges shall *inter alia* include the following:

(a) **Open Area Maintenance Charges** : These charges relate to the maintenance of open spaces within the boundary wall of the said Complex, such as maintenance of compound wall, landscaping,

electrification, water supply, tubewell, sewerage, drainage, roads and paths and other services including security and open car parking within the boundary walls but not outside the building.

(b) **Common Area Maintenance Charges** : These charges relate to the operation and maintenance of various services in the common areas viz., lifts, fire fighting equipment and other services inside the building including security, common area house-keeping, garbage disposal, etc. However, the maintenance of the area inside the Allottee's office space/ Premises is the responsibility of the Allottee.

(c) **Maintenance charges of Basement and Common Services in the Basement** : These charges shall inter alia relate to maintenance and operation of various services in the basement like Diesel Generating Sets, Air Conditioning Plant, Electric Sub Station, Pumps, Fire Rooms and other services including Car Parking and Security in the Basement.

21. That the Developer shall maintain the said Complex for a period of three years and shall recover the maintenance charges for the same from the Allottee six months in advance before handing over possession of said "Premises" and the Allottee hereby agrees to pay maintenance charges in advance for the first one year.

22. That the tentative cost of maintenance charges per sq. metre per month works out to ————. The cost shall be determined six months before the handing over of possession of the premises taking into consideration the cost index increase of fuel rates, electricity rates and Minimum Wages then prevailing.

23. That the Allottee shall also pay before the due date the meter hire charges and the bills of consumption of electricity as recorded in the meters provided separately for recording consumption of power and electricity in the "Premises".

24. That the right of the Allottee to use the common facilities and services shall be subject to the payment of the maintenance charges as mentioned above and as decided by the Developer or the Maintenance Agency appointed by the Developer. Should these maintenance charges be not paid regularly or in the form as decided by the Developer or the Maintenance Agency appointed by the Developer, the Allottee shall have no right to use the common facilities or services. In other words, this right

is not an integral part of sale and the same shall be available only on regular payment of the charges as envisaged herein.

25. That in the interest of all Allottees and other lawful Occupants of all premises comprised in the Complex, the Developer or the Maintenance Agency appointed by the Developer shall have the authority to deal with unlawful entrants, loiterers, peddlers, etc. and in order to deal more effectively with the security of the Complex and maintenance of order therein, to regulate and restrict their entry at the outer gate itself. In case of insistence by any person to enter, the security staff of the Complex will be at liberty to call upon the Allottee or other Occupant to come to the gate and personally escort such person from the gate to his office space and assume the responsibility of escorting them out as well.

26. That the internal security of the "Premises" and of its occupants or visitors or of the material kept therein and their safety shall be sole responsibility of the Allottee.

27. That Developer shall be entitled to connect the electric, water, sanitary and drainage fittings on the additional building(s) allowed on the additional land being attached to the said Complex, with the existing electric, water, sanitary and drainage sources but at the Developer's own cost.

28. That from the date of possession of the "Premises" the Allottee shall be responsible for the insurance of his "Premises" against fire, earthquake, riots, civil commotion, militant action etc., and of any persons and things in the Premises.

29. That the Allottee can assign, transfer, lease or part with possession of the "Premises" with the prior consent of the Developer, which consent shall not be unreasonably withheld. In such an event it shall be the responsibility of the Allottee to continue to pay any charges pertaining to the "Premises" of whatsoever nature payable under this Agreement to the Developer. Further the Allottee shall not sub-divide the "Premises" in parts without the prior consent of the Developer except any partition, additions, alterations as stipulated in clause 38 hereunder.

30. That the Allottee shall carry out day to day maintenance of the "Premises" and the fixtures and fittings installed therein and the normal maintenance, including painting and distemping and polishing the interiors, of the "Premises" at its own cost.

31. That the Allottee shall permit the Developer or the Maintenance Agency so appointed by the Developer and their agents at all reasonable hours, to enter the "Premises" for the purpose of inspection or maintenance.

32. That the Allottee shall use the "Premises" for office purposes only and not carry on or permit to be carried on in the "Premises" or in any part thereof any activities which shall be or are likely to be unlawful, obnoxious or to cause nuisance, annoyance or disturbance to other occupants of the Block wherein the "premises" are situated or store any goods of hazardous or combustible nature or which are so heavy as to affect the construction or the structure of the said Block or any part thereof or in any manner interfere in the common use. The usage of the "Premises" for office shall be unrestricted and uninterrupted and shall be made available at all times of day and night to the Allottee, its employees, servants, representatives, customers, visitors and invitees.

33. That the Allottee shall display its name and address of its registered office only at such places as mutually decided between him and the Developer and not put up any name or sign board, publicity or advertisement material on the external facade of the block or anywhere in the common areas without the prior approval of the Developer in writing.

34. That the Developer shall plan and distribute its electrical loads in conformity with the electrical systems installed by the Developer.

35. That should any modifications, additions, alterations be required in the fire fighting equipment, electrical and other systems installed, the Developer shall if feasible make such changes and be entitled to recover from the Allottee all additional costs on this account.

36. Except in the event of a mechanical defect or electrical failure or for any reason beyond its control, the Developer or Maintenance Agency shall provide air-conditioning facilities and the lift facilities to the "Premises" during the normal office hours i.e. between --- on all week days except -

37. That subject to the Allottee paying all amounts mentioned herein and observing and performing the terms, conditions and covenants contained herein he shall be entitled to hold, use and enjoy the "Premises" and every part thereof without any interruption by the Developer or any person or persons claiming under it or for or on its behalf.

38. That the Allottee shall be free to carry out at his own cost but without damaging the main structure of the "Premises"/Block as well as the False Ceiling/Sprinkler system provided inside the "Premises", any erection of internal partitions and other internal alterations and additions which are not visible from outside, as may be considered by him to be necessary for his business:

PROVIDED THAT if any such additions or alterations, require the prior approval or permission of any Municipality or any other local body or other Authority, the Allottee shall not carry out such additions or alterations or erections except after obtaining the approval or permission or complying with the rules and regulations, of such Municipal or local body or Government authority.

39. That if any amount payable by the Allottee under this Agreement shall be in arrears and unpaid for a period of 30 days after the same has become due, or if the Allottee shall omit to perform, observe any covenant or condition under this Agreement and shall continue to do so for 30 days after written notice received in respect thereof, or the Allottee is adjudicated an insolvent, the Developer may forthwith re-enter upon the Premises or upon any part thereof and this agreement shall stand determined but without prejudice to any claim which the Developer may have against the Allottee in respect of any such breach, non-performance or non-observance of such covenants or conditions.

40. That all costs, charges and expenses payable on or in respect of this agreement and on all other instruments and deeds to be executed pursuant to this agreement, including stamp duty and registration charges on this agreement and the sale deed to be executed, shall be borne by the Allottee.

41. That the Allottee shall comply with all legal requirements for purchase of immovable property, wherever applicable, after execution of the agreement herein and sign all applications, forms, affidavits, undertakings etc., for the said purpose. This includes in particular the requirements of Sec. 269 UC of the Income Tax Act if so applicable and the Allottee shall sign any Form as and when required by the Developer.

42. This agreement constitutes the entire agreement between the parties and revokes and supersedes all previous discussions, correspondence and

agreements, if any between the parties, concerning the matters covered herein. The terms and conditions embodied in this Agreement shall be incorporated in the sale deed and shall form part thereof.

43. That the Allottee shall abide by the laws of the land including any local enactments in respect of this agreement and the "Premises". The Developer may, after notice in writing to the Allottee, inspect the "Premises" from time to time at frequencies considered necessary by the Developer and should there be any contravention, the Allottee will ensure compliance with the requirements as per the applicable laws. Any penalties levied by the Government, State, Municipal Body etc., as a result of non-compliance by the Allottee in respect of the "Premises" will be borne by the Allottee.

44. That any notice, letter or communication to be made, served or communicated unto the Developer under these presents shall be deemed to be duly made, served or communicated only if the notice or letter or communication is addressed to the Developer at the address shown above or changed addresses as may be intimated by the Developer in this behalf and sent by registered post. Similarly any notice, letter or communication to the Allottee shall be deemed to be made, served or communicated only if the same are addressed to the address of the Allottee as mentioned above, and thereafter when the corporate office of the Allottee is shifted to the "Premises" at the said address and sent by registered post.

IN WITNESS WHEREOF ETC.

#### 46(a)—Agreement for Sale

*(For Sale through Power of Attorney)*<sup>4</sup>

This Agreement to Sell is made at \_\_\_\_\_ on \_\_\_\_\_  
BETWEEN AB, etc., \_\_\_\_\_ (hereinafter called the First Party) of the  
one part and CD, etc., \_\_\_\_\_ (hereinafter called the Second Party) of  
the other part.

The expressions "First Party" and "Second Party", wherever they occur in the body of this agreement shall except where the context otherwise requires, include their respective successors, executors, administrators, and assigns.

<sup>4</sup> See, Preliminary Note.

Whereas the First Party is the owner and in possession of Flat No. \_\_\_\_\_ with reserved parking situated at \_\_\_\_\_ allotted by Development Authority, vide \_\_\_\_\_

And Whereas the First Party has agreed to sell, transfer and convey his rights, interests, liens and title in the said flat to the Second Party for a consideration of Rs. \_\_\_\_\_ ;

And Whereas the Second Party has agreed to purchase, acquire and possess the same from the First Party on the following terms and conditions;

NOW THIS AGREEMENT WITNESSES AS UNDER :

1. That the entire sale consideration amount has been received by the First Party from the Second Party prior to the execution of this agreement. The First Party has received payment as under :—

Amount	Draft/Pay order/ Cheque No.	Drawn on

2. That the First Party has delivered vacant peaceful physical possession of the said flat unto the Second Party at the spot along with all the original documents related thereto.

3. That the First Party has assured the Second Party that he is the sole and absolute owner of the said flat (with leasehold rights in the land, beneath it) and that the same is free from all encumbrances or agreements, or court injunctions, attachments or disputes.

4. That the First Party shall not have any rights, interest or liens on the said property henceforth and the Second Party shall be its sole owner henceforth for all intents and purposes and the Second Party only shall henceforth be liable and responsible for all the dues and demands in respect thereof from the date of the execution of this Agreement. However, if any dues in respect of the said flat be found outstanding for any period prior to the execution of this agreement the same shall be borne and paid by the First Party.

5. That the First Party shall authorise the Second party to apply for and get the execution of conveyance deed, the permission for the transfer

of the said flat and lease-hold rights in the land thereunder in favour of the Second Party or his nominee and execute proper deed(s) for conveying the same in favour of the Second Party or his nominee within one month from the date of grant of sale permission and to get the same registered in the office of the competent registering authority anywhere in India, at the cost of the Second Party.

6. That all the expenses whatsoever for the transfer of the said flat including Municipal/Corporation taxes, stamp duty, court fee, registration fee, any charges levied by the Development Authority for uncared increase or other fees or charges shall be borne by the Second Party.

7. That on instructions from Second Party, the First Party has appointed him (*or*, his nominee, EF, etc.) as attorney for the management, control and supervision of the affairs of the said flat and for the completion of the sale, transfer, registration of the said property in favour of the Second Party or his nominee. The First Party shall not cancel, withdraw or revoke the powers conferred upon said attorney.

8. That the First Party hereby declares that all payments due prior to execution of this agreement, payable to the Development Authority as claimed by it have been paid by the First Party as on the date of the execution of this deed and no amount in respect of the flat is due and payable to the said authority or any other statutory, local or other authority or undertaking for any electrical or water connection, etc., secured by the First Party.

9. That the First Party shall assist the Second Party in obtaining the Income Tax Clearance Certificate in FORM-34A under the provisions of Sec. 230-A(1) of the Income Tax Act 1961 or any amendments to it from time to time, to sell the property in favour of the Second Party or his nominee(s) as and when required.

10. That the First Party assures the Second Party that the property hereby agreed to be sold is his self-acquired property and as such he is competent to sell the same and that if someone else establishes any right title or interest in the said property as owner or otherwise, then the First Party shall be liable and responsible to make good any loss thereby suffered by the Second Party.

11. That the First Party shall assist the Second Party in obtaining permission to sell the said property in favour of the Second Party or his nominee from the said Development Authority or any other concerned authority.

12. That the Second Party is hereby authorised to nominate any person in whose favour the First Party shall execute and register a valid Sale Deed/Deed of Apartment and/or Lease/Sub-Lease Deed for the Flat without any further permission or consent or payment of any amounts from the Second Party to the First Party. Such nomination shall be absolutely binding on the First Party and all persons claiming through him.

13. That the Second Party is hereby authorised to assign all his rights, title and interest under this Agreement in favour of any person without any further permission or consent from or payment of any amount to the First Party. Such assignment shall be absolutely binding on the First Party and all persons claiming through him.

14. The First Party hereby undertakes, pending completion of the sale, to pay revenue, ground rent, house tax, municipal taxes, water and electricity charges etc., till the date of this Agreement whether assessed, demanded or levied at present or any time in future and not to mortgage, equitably mortgage, lease, or rent out, charge or encumber or otherwise deal with the said Flat to the detriment of the Second Party and his rights thereunder.

15. That all the relevant original documents in respect of the said Flat have been handed over by the First Party to the Second Party.

16. That this Agreement to Sell is irrevocable, and binding on both the parties and their respective heirs, successors and assigns.

17. *Arbitration Clause*

18. That all disputes shall be subject to the jurisdiction of courts at \_\_\_\_\_ only.

IN WITNESS WHEREOF, etc.

#### **46(b)—Power of Attorney**

*(For Sale through Power of Attorney)*

Be it known to all whom it may concern that I, AB, etc., do hereby nominate, appoint and constitute CD, etc., \_\_\_\_\_ as my lawful

and legal attorney and authorise him to lawfully do all or any of the following acts, deeds and things for and on my behalf and in my name in respect of my flat/plot, etc., - ----- allotted in my favour by -----Development Authority/Housing Board.

1. To have the physical possession of the said flat/plot and to represent me before any office/authority or the State or Central Government or local authority or development authority or the water or sewerage authority or the police or any court in connection with the said flat/plot in any matter whatsoever and to make any statement, application, affidavit or undertaking for and on my behalf and in my name in respect of the said flat/plot or any matter connected therewith or incidental thereto.

2. To get connected, stopped, transferred any water, sewer or electric power connection or any other service in the said flat/plot and for that purpose to do all acts, deeds and things which may be considered to him necessary for the same including the tendering of securities and payments and receiving refund of the excess, if any, in his own name or in my name as may be considered necessary or expedient.

3. To pay the lease money, ground rent, house tax or any other dues in respect of my said flat or the land beneath the same (or, my said plot) and to get the receipt thereof in his own name or in my name as may be considered necessary or expedient.

4. To get the lease deed or any supplemental deed or conveyance deed of the said flat/plot from the office of the ----- Authority (etc.) in this regard and to sign it and get the same registered in the office of the Registrar or Sub-Registrar concerned.

5. To make any additions or alterations in the existing structure after seeking permission from the ----- Authority and for the purpose to apply for and get plan(s) sanctioned if required and get the authorised quotas of building materials and engage any Architect or labour or contractor for the purpose.

6. To get the property assessed for house tax, to pay the same and to get the refund thereof if paid in excess under his own signature and in his name or in my name as he may consider necessary or expedient.

7. To deal with all relevant matters with all the local, competent, revenue and other authorities in respect thereof.

8. To let out the said flat/plot in full or in part to any intended tenant(s), to receive rents in his own name and appropriate the same as he deems fit and issue receipts thereof, under his own signature and deal with the tenant(s) in any lawful manner.

9. To negotiate, agree to sell or dispose of or transfer by way of exchange, sale, lease (whether permanent or for a fixed period or from year to year or month to month) in accordance with law, the flat/plot or any part thereof on such terms as he may in his sole discretion deem fit and proper, with any person whatsoever and to enter into and sign any agreement with any intending transferee, to receive earnest money, consideration amount or premium amount in his own name and give receipts therefor.

10. To apply for and get Income Tax Clearance Certificate, if so required, for the sale or otherwise transfer of my said flat/plot from the office of the concerned Income Tax Officer in form 34-A under the provisions of section 230-A(1) of the Income Tax Act 1961, or any other provision of the Income Tax Act as may be then applicable and for that purpose to do all acts, deeds and things which may be considered necessary for the purpose.

11. To apply for and get permission for sale or No Objection Certificate or other requisite permissions from the office of any authority in this regard for the sale or otherwise transfer of my rights, share, interests, liens and titles in the said flat/plot or any part thereof, in favour of any intending purchaser or his nominee(s).

12. To execute, sign and present for registration before proper Registering Authority, a proper Sale or other Conveyance Deed for conveying my rights, interests, liens and titles in the said property or any part thereof, in his own name or in favour of the intending purchaser(s) and for the purpose of conveying the same absolutely and for ever, in favour of the intending purchaser(s) or his nominee(s), to do all other acts, deeds and things which may be considered necessary for the purpose including but not limited to receiving and appropriating the consideration thereof, and to admitting the receipt thereof, and delivering the possession thereof, to said purchaser(s) or his nominee(s), either physical or constructive as may be feasible.

13. To institute or defend any suit or other proceeding in any court of law in any matter concerning my said flat/plot or any matter connected

therewith or incidental thereto and for that purpose to appoint any advocate, or attorney and to make any statement, application, affidavit or undertaking for and on my behalf and in my name.

14. To apply for insurance of the said premises or any fittings or fixtures or appliances or other articles stored or found therein and to make, pursue and receive the amounts of all claims therein from the insurer under his own signature.

15. To apply and get freehold certificate of the said flat from the concerned authority and for the purpose to make any application, affidavit, undertaking, indemnity bond or declaration and execute conveyance deed before the competent authority and pay the requisite fee or other charges, if any.

16. To execute, sign, affirm, verify, institute and present all kinds of plaints, writs, complaints, petitions, revisions, written statements, appeals, applications, affidavits etc., in any Court of Law *i.e.* Civil Criminal or Revenue and/or Tribunal or arbitration on or in any matter concerning my said flat plot or any matter connected therewith or incidental thereto, and further to do the above in his own name as, when and where the same is relevant or pertinent.

17. To execute a ratification deed of any deed(s) executed in respect of the said flat/plot and to get the same registered in the office of any competent Registering Authority.

18. To appoint any other person(s) in my name as my attorney authorising him/her/them to do all or any of the acts, deeds and things, whether specifically mentioned herein or not, which in the opinion of my said attorney ought to be done, executed or performed, in respect of my said flat plot or any matter connected therewith or incidental thereto, and to cancel, withdraw or revoke the powers conferred upon the attorney(s) so appointed.

19. The attorney appointed by him under the last foregoing clause shall have the authority to execute Power of Attorney in favour of any other person(s) conferring all the powers conferred on my attorney by me. Such attorney so appointed shall also have similar power, and so on.

20. To mortgage the said flat/plot as per law, by way of deposit of title deeds or otherwise, and to sign on all relevant documents, to receive the mortgage amount and to complete all other formalities in this regard.

21. To apply for and get mutation from any one or more of the appropriate authorities such as, \_\_\_\_\_ Development Authority, \_\_\_\_\_ Municipal Corporation, Sewer and Water Supply Authority, Electricity or any other undertaking/authority for the flat/plot ownership, house tax, water or electric connection in the name of the purchaser.

22. To mortgage, assign, encumber, transfer in any other manner whatsoever the said property in favour of any person(s) or financial institution(s).

23. That my attorney is also authorised to raise loan for any purpose whatsoever and also to stand as guarantor and thus mortgage, assign, encumber the said property to secure the loan amount.

24. To do all such things which may be conducive to the effectual performance of the aforesaid functions.

25. This Power of Attorney shall be irrevocable.

I do hereby unconditionally agree, declare and undertake to ratify all acts, deeds and things lawfully done by my attorney in exercise of power or authority under this Deed, as if the same had been done by me and the same shall be binding on me, my heirs and my successors-in-interest.

And I, the executant, do hereby specifically affirm that the acts, deeds and things lawfully done or got done by my attorney or any other person appointed, authorised or retained by him, by virtue of this power of attorney, in respect of the said flat/plot, be construed as acts, deeds and things done by me.

IN WITNESS WHEREOF etc.

*Or;*

KNOWN ALL MEN BY THESE PRESENTS That, I, AB, etc., do hereby constitute and appoint CD, etc., as my attorney (hereinafter referred to as the said Attorney) in my name and on my behalf to execute or do all or any of the acts or things hereinafter mentioned.

WHEREAS I am owner and was in possession of a house No. \_\_\_\_\_ which is briefly described in the schedule hereto;

AND WHEREAS by an agreement dated \_\_\_\_\_ executed by and between me and the said Attorney I have contracted with the said Attorney to sell the above said house to him;

AND WHEREAS in consideration of Rs. \_\_\_\_\_ received by me from the said Attorney I have delivered vacant possession of the said house to the said Attorney;

AND WHEREAS due to certain reasons I am for the present unable to execute a sale deed in favour of the said Attorney;

AND WHEREAS the said Attorney has requested me to execute this irrevocable Power of Attorney in his favour to which I have agreed;

NOW THESE PRESENTS WITNESS as follows:—

In consideration of the said sum of Rs. \_\_\_\_\_ (the receipt whereof I hereby acknowledge) and in pursuance of agreement dated \_\_\_\_\_ executed between me and the said Attorney, I hereby nominate, authorise and empower the said Attorney as my lawful attorney for me and on my behalf to do the following acts, deeds and things, that is to say—

1. To manage and administer the said house;
2. To let out the said house and collect rents from tenants if any, of the said house and to give receipts for the same and to eject tenants from and settle new tenants in the said house whenever he considers fit and to take all necessary legal steps which may be considered necessary by him;
3. To appoint and employ any agent or servants as may be considered by him to be necessary for any of the purposes aforesaid or purposes hereinafter mentioned on such terms as to remuneration, commission or otherwise as the said attorney may think proper and from time to time to dismiss or discharge them, and to appoint or employ others in their places;
4. To sell, mortgage or otherwise transfer or give on licence or to deal otherwise with or in respect of the said house and to receive any consideration therefor and to grant receipt or effectual discharge for the same, and where he considers necessary, to execute and sign and get registered the deeds necessary to complete the transaction;
5. To negotiate in my name and on my behalf with any prospective purchaser, mortgagee, lessee or other transferee or licensee of the said house and to execute any contract with any such person when needed.

6. In my name and on my behalf to institute or contest or enter into suits or petitions, or compromise, or refer to arbitration and accept or contest all awards of arbitration in any matter in respect of the said house;

7. In my name and on my behalf to sign and execute all complaints, written statements, petitions and applications in respect of the said house and to sign and subscribe my name thereto.

8. In my name and on my behalf to appoint legal practitioner and other agent for due pursuing of any matter in respect of the said house;

9. In my name and on my behalf to appear before all registering authorities and thereto present for registration and admit execution and otherwise procure valid registration of all documents in respect of the said house or executed as aforesaid by him on my behalf;

10. To deposit all rates, taxes and charges relating to the said house;

11. To accept service of any summons, notice or writ issued by any court or officer against me in respect of the said house;

12. Generally to act as my attorney or agent in relation to the matters aforesaid and all other matters in respect of the said house in which I may be interested or concerned and on my behalf to execute and do all deeds, acts and things as fully and effectually in all respects as I myself would do if personally present.

AND I hereby for myself, my heirs, executors, administrators and legal representatives ratify and confirm and agree to ratify and confirm whatsoever the said attorney shall do or purport to do by virtue of this deed.

### *Schedule*

(Description of house)

IN WITNESS WHEREOF, etc.

### **46(c) -- Special Power of Attorney** (For Sale through Power of Attorney)

Be it known to all to whom it may concern that I, AB, etc., do hereby nominate, constitute and appoint CD, etc., as my Special Attorney in respect of Flat No. --- with reserved parking situated at allotted by --- Development Authority, vide :

To manage, control and supervise the affairs of my said property and for the purpose, to have the physical possession thereof, to represent me before any office/authority of any State or Central Government (including police department), authority or local authority which may be connected or concerned with the said flat in any manner whatsoever and to make any statement, application, affidavit or undertaking for and on my behalf and in my name in respect of the said flat or any matter connected therewith or incidental thereto.

The acts, deeds and things lawfully done or got done by my attorney by virtue of these presents for any purpose aforesaid shall be construed as acts, deeds and things done by me.

That this special power of attorney shall be irrevocable.

IN WITNESS WHEREOF I, the executant, have put my hands on these presents in the presence of the following witnesses—

**46(d)—Possession Letter**

*(For Sale through Power of Attorney)*

BE IT KNOWN TO ALL THAT I, AB etc., do hereby hand over the vacant physical possession of Flat No. \_\_\_\_\_ with reserved parking situated at \_\_\_\_\_ to CD, etc., as per terms and conditions of the Agreement to sell dated \_\_\_\_\_.

Place :

Date :

WITNESSES :

1.

POSSESSION HANDED OVER

(Sd/-) AB, etc.

2.

POSSESSION TAKEN OVER

(Sd/-) CD, etc.

## 46(e)—Will

*(For Sale through Power of Attorney)*

This WILL is made and executed here at \_\_\_\_\_ on \_\_\_\_\_ by AB, etc. (hereinafter called "the Testator") of the one part in favour of CD, etc., (hereinafter called "the Executor") of the other part

WHEREAS I (the said AB) am owner and in possession of Flat No. \_\_\_\_\_ etc., with lease hold rights in the land there under and reserved parking, allotted by \_\_\_\_\_ Development Authority, vide \_\_\_\_\_

I of my own volition hereby make this WILL that after my death my rights, shares, interests, liens and titles in the said flat shall devolve on the Executor who may then get the same mutated or substituted and transferred in his own name as owner and lessee, in the records of the Development Authority, \_\_\_\_\_ Municipal Corporation, \_\_\_\_\_ Electricity undertaking or any other concerned authorities on the basis of this WILL or its certified true copy.

That I further declare that if the said Executor predeceases me, then my rights, interests, liens and titles in the said flat shall devolve on the legal heirs of the EXECUTOR, who may then get the same mutated and transferred in his/her own name as owner and lessee/s in the records of the concerned authorities on the basis of this WILL, without any objection by my legal heirs and successors. I hereby declare that my other legal heirs have no right or title in the subject-matter of this will and that the same is my self acquired personal property.

That I further declare that this is my FIRST and LAST WILL in respect of the said flat and the land beneath the same and it has been executed by me of my own consent, without any force, fraud, compulsion, coercion or allurement from any quarter whatsoever, while in possession of sound health and disposing mind.

This WILL has been made specifically in respect of the said property only, and this WILL shall not be construed to extend to or relate to any of my other properties in any manner whatsoever.

IN WITNESS WHEREOF, I, the TESTATOR have put my hands on this WILL on the date, month and year hereinabove first mentioned in the presence of the following witnesses who have signed and attested the WILL in my presence.

WITNESSES:

(Testator)

1.

## SALE OF GOODS

### General Forms of Miscellaneous Clauses in a Contract for the Sale of Goods

#### 1. *Time*<sup>1</sup>

The time hereinbefore mentioned within which the buyer is to pay for the said goods shall be of the essence of this contract.

#### 2. *Condition*

It is hereby agreed that the stipulation hereinbefore contained as to the quality of the goods is a condition of the contract the breach of which shall give the buyer the right to treat the contract as repudiated.

#### 3. *Warranty*

It is hereby agreed that the stipulation hereinbefore contained as to the quality of the goods is not to be regarded as a condition but as merely a warranty the breach of which will not give the buyer the right to repudiate the contract.

#### 4. *Goods to be Manufactured According to Specifications*

The said \_\_\_\_\_ shall be manufactured in a good workmanlike manner according to the specifications of the best material and to the entire satisfaction of the buyer. If the buyer shall in good faith be dissatisfied with the said \_\_\_\_\_ on delivery he shall be entitled to reject the same.

#### 5. *Effect of Non-conformity with Contract*

It is hereby agreed that the failure by the seller to perform any material part of this contract shall entitle the buyer at his option either within \_\_\_\_\_ days after delivery thereof to reject the goods and repudiate the contract or to retain the goods subject to a right to compensation or damages for breach of contract.

#### 6. *Sample*

The said \_\_\_\_\_ shall correspond with the sample which has been sealed by the buyer and placed with the seller.

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1 See Preliminary Note.

### *7. Description*

The description hereinbefore given of the said goods has been given only by way of identification thereof and not so as to constitute this contract as a sale by description.

### *8. Acceptance and Rejection*

The buyer may return the goods within \_\_\_\_\_ days of delivery if they are not according to the contract giving notice to the seller in what respects they are not according to the contract. If the goods are not returned within the said period the buyer shall be bound to accept them.

### *9. Delivery when Goods with Bailee*

Delivery shall be sufficient if made by the seller handing to the buyer a delivery order on \_\_\_\_\_ or transferring to the buyer the warrant of the said \_\_\_\_\_ for delivery of the said goods.

### *10. Risk in Transit*

The said goods shall be delivered to the buyer at \_\_\_\_\_ provided that from the time of despatch thereof from the seller's place and until such delivery the risk of any loss and damage to or deterioration of the said goods from whatever cause shall be borne by the buyer.

### *11. Lien*

The seller shall be entitled to retain possession of the said goods until payment in full.

### *12. Trial of Machinery*

The said machine shall within \_\_\_\_\_ days after delivery be tried by the buyer by working it in the proper and usual manner during a period of \_\_\_\_\_ days. If it shall fail to work efficiently the buyer may reject it. If the buyer fails to make such trial, or the trial does not disclose any defects, the buyer shall be bound to accept it.

### *13. Prevention of Delivery by Strike, etc.*

Should the seller be prevented from delivering the goods at the time hereby fixed by reason of lock out, strike, riot, mutiny, fire or any other unexpected cause beyond his control, the time for delivery shall be extended

until the operation of such cause has ceased or the seller may at his option cancel the contract by giving notice to the buyer in writing before the expiry of the period fixed for delivery.

### PRECEDENTS OF SALE OF GOODS

#### 1—Agreement between a Manufacturer and a Wholesale Dealer for Exclusive Supply of Goods Manufactured<sup>2</sup>

AN AGREEMENT made on the ----- day of ----- BETWEEN AB, etc., (hereinafter called "the seller") of the one part AND CD, etc., (hereinafter called "the buyer") of the other part,

WHEREBY it is agreed as follows :

1. The seller will sell and the buyer will buy the whole of the seller's existing stock of ----- at the price of Rs. ----- per -----;

2. The seller agrees with the buyer that he will not for the period of one year from the date hereof make or sell for or to any person (including any firm or company) other than the buyer at ----- any ----- similar in pattern and description to any of those hereby agreed to be sold.

3. If the buyer at any time or times during the period of one year from the date hereof require a further supply of any ----- manufactured in accordance with any of said pattern the seller will manufacture and sell the same to the buyer at the same price per ----- as the buyer is to pay for the seller's existing stock.

4. All goods to be supplied under this contract shall be paid for in cash upon delivery.

IN WITNESS WHEREOF, etc.

#### 2—Agreement for the Manufacture and Supply of Furniture

AN AGREEMENT, etc., (as in Form 1).

WHEREBY it is agreed as follows :

1. The seller will make and sell to the buyer and the buyer will buy from the seller the furniture detailed in the schedule hereto.

<sup>2</sup> For agreement between manufacturer and marketer, see under AGREEMENT, precedent No. 25.



instalments and on such dates as the buyer may from time to time order provided that such orders should be served on the seller at least one week before the date fixed for delivery of any instalment.

3. The buyer shall pay for the wheat supplied by the seller at the rate of Rs. --- per quintal. Payments for each instalment shall be made within one week of the delivery.

4. If any wheat supplied by the seller is not according to the sample, the buyer will have the option to be exercised within one week of delivery of either rejecting the same and purchasing the same quantity of wheat from the market at the risk of the seller or accepting the same on such reduced rate of price as may be mutually agreed upon.

5. The time fixed for delivery of any instalment of wheat shall in each case be regarded as of the essence of the contract, and if the seller shall fail to deliver the wheat on such date, the buyer may annul the whole of this contract and purchase the wheat from any other person including any firm or company and claim the difference in price and any expenses and damages incurred by him from the seller.

IN WITNESS, etc.

#### 4—Agreement to Sell Business with Goodwill-

AN AGREEMENT, etc., (as in Form 1).

WHEREBY it is agreed as follows :

1. The seller will sell and the purchaser will buy \_\_\_\_\_.

(1) The goodwill of the business of \_\_\_\_\_ now carried on by the seller at \_\_\_\_\_ under the firm name of \_\_\_\_\_ and the right to use the said firm name and to represent the seller as carrying on the said business in succession to the seller.

(2) The benefit of all contracts and engagements entered into with the seller in respect of the said business and all book debts now owing to the seller in respect of the said business.

(3) All the office furniture and shop equipment, plant, machinery, motors, and vehicles and other things specified in the inventory attached hereto except the stock-in-trade which shall be on the business premises or in use in connection with the said business on the date hereinafter fixed for completion of the sale (hereinafter called "the date of completion").

2. The purchase price shall be Rs. \_\_\_\_\_ of which Rs. \_\_\_\_\_ shall be paid to the seller upon execution of this deed and the balance by instalments in the manner hereinafter provided, that is, etc.

3. The stock-in-trade of the said business upon the business premises on the date of completion other than the stock sold but not yet removed shall be taken over and purchased by the buyer at a valuation to be made at the joint expense of parties by \_\_\_\_\_ but the completion of the sale shall not be delayed on account of waiting for such valuation.

4. The sale shall be completed on the \_\_\_\_\_ day of \_\_\_\_\_ and, on the payment of the balance of the purchase price with the price of the stock-in-trade according to valuation, the seller will permit the buyer to enter into possession of the business premises and will deliver to him the property hereby agreed to be sold.

5. Upon completion of the sale, the seller will, if required by the buyer, and at the buyer's expense, execute a proper deed of transfer of the premises and shall send to the customers of the seller in connection with the said business a circular announcing the transfer of the goodwill and business to the buyer.

6. The seller will carry on the said business at his own risk and for his own benefit until the completion of sale.

7. All books of account and of reference to customers and other documents shall on completion of the sale be delivered to the buyer.

8. If completion does not, by reason of the buyer's default take place within one month of the date hereinbefore fixed therefor, the seller will be at liberty to determine this agreement and to forfeit the said deposit.

9. No error, mis-statement nor omission in the description of the premises hereby agreed to be sold shall be a ground for avoiding the sale but such compensation shall be paid therefor as may be fixed by AB who shall be the arbitrator for this purpose.

10. The seller shall not, at any time during a period of \_\_\_\_\_ years of, <sup>1</sup> after the completion of the sale, carry on, either solely or as agent for or partner with any other person or persons, directly or indirectly, the business of a \_\_\_\_\_ or be in any way concerned or interested in any

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1. The restraint is protected by Exception I to Sec. 27 Contract Act

similar business within a radius of \_\_\_\_\_ kms from \_\_\_\_\_ aforesaid.<sup>4</sup>

IN WITNESS, etc.

### 5 —Sale of Standing Timber

THIS SALE DEED made on the \_\_\_\_\_ day of \_\_\_\_\_ BETWEEN AB, etc., (hereinafter called "the seller") of the one part AND CD, etc., (hereinafter called "the buyer") of the other part.

WITNESSES as follows :

1. The seller hereby sells to the purchaser the following timber trees standing on the plots mentioned in the schedule hereto that is to say, fifty *Shisham* trees, twenty *Deodar* trees, forty *Jamun* trees, fifty old Mango trees, and thirty *Tun* trees.

2. The trees hereby sold have been marked by the seller and shown to the buyer on the spot. The remaining trees on said plots have been counted in the presence of buyer and the number of trees on each plot has been noted against the same in the schedule hereto. The buyer shall not cut any of such remaining trees.

3. The price fixed is Rs. \_\_\_\_\_ of which Rs. \_\_\_\_\_ shall be paid on the execution of this deed and the balance on the \_\_\_\_\_ day of \_\_\_\_\_

4. The seller grants to the buyer, his sub-buyer, if any, his or his sub-buyer's agents, servants, workmen and labourers full and free liberty to enter upon the said plots to fell and cut down, grub up and work up the said trees and also to have free ingress and egress with or without horses, carts, tractors, trollies, trucks and other means of transport to enter into and upon the said plots for the purpose of taking and carrying away the said trees and wood, and also to sink saw-pits in such places as shall be appointed by the seller or his agent.

5. The whole of the timber shall be cut down and removed from the said plots within \_\_\_\_\_ months from this date and anything remaining on the land after that date shall vest in the seller. The buyer shall also fill up any saw-pits sunk by him and shall clear the land within the said period.

<sup>4</sup> Specification of limits is necessary under the said Exception. They should be reasonable.

6. The trees shall be felled close to the ground with as much care as possible in a proper customary and workman like manner and at the sole cost of the buyer and no trees shall be rooted up without the consent of the seller.

7. The buyer shall pay compensation to the seller for all damage done to the remaining timber or to cattle on the land and for all losses or damage that the seller or his tenants may sustain by the carelessness or negligence of the buyer, his sub-buyers, his or his sub-buyer's agents, workmen, labourers or servants.

*The schedule herein referred to.*

IN WITNESS, etc.

### **6—Sale of Business as a Going Concern with Goodwill and Stock-in-Trade and also of Lease-Hold Rights in Business Premises<sup>5</sup>**

THIS SALE DEED is made, etc., (*as in Form 5*)

WHEREAS -

(1) By a deed of lease made on the \_\_\_\_\_ day of \_\_\_\_\_ between EF as lessor and the seller as lessee the house and land situate at \_\_\_\_\_ and fully described in the said deed of lease and now in the occupation of the seller was leased out to the seller;

(2) The seller now carries on the business of \_\_\_\_\_ on the said demised premises;

(3) The seller has agreed to sell to the buyer for the price of Rs. 57,000 and on the terms and conditions hereinafter mentioned all the rights in the said premises under the aforesaid deed of lease for the remaining term of the said lease AND also all his interest and goodwill in the said business of \_\_\_\_\_ AND also the book and other debts and rights in the contracts of the said business which are more particularly described in the books of accounts and other books which have been delivered to the purchaser AND also all office furniture and shop equipment, etc., other than the stock in trade present on the date of completion of sale;

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5 The rent control law in force in the State should be consulted in respect of transfer of lease-hold rights in the premises.

(4) The seller has also agreed for sale to the buyer all his other stock in trade of the said business, present on the said business premises on the date of completion of sale at a valuation to be made by one XY as arbitrator and the said XY has now valued the said stock in trade at Rs. 1,22,000.

NOW THIS DEED WITNESSES as follows :

1. In pursuance of the aforesaid agreement and in consideration of the price of Rs. 1,79,000 paid by the buyer to the seller (the receipt of which the seller hereby acknowledges) the seller hereby transfers to the buyer

(i) All the said house and land described in the schedule hereto and comprised in the aforementioned lease TO HOLD the same to the buyer for the residue now unexpired of the term of the said lease subject henceforth to the payment of the rent reserved by the said lease and the performance and observance of covenants and conditions on the part of the lessee contained in the aforesaid lease; and

(ii) All the beneficial interest and goodwill of the seller in the said business of \_\_\_\_\_ AND also all the book and other debts to which the seller is now entitled on account of the said business with all the securities for the said debts and the full benefit of all contracts entered into with, or orders given to, the seller in connection with the said business AND also all the stock in trade, goods, fittings, articles and things, etc., belonging to the seller and relative to the said business TO HOLD the same to the buyer absolutely.

2. The seller hereby agrees as follows :

(i) that he will not during the term of \_\_\_\_\_ years from the date hereof either solely or as agent for or partner with any other person or persons, directly or indirectly, carry on the business of \_\_\_\_\_ or be in any way concerned or interested in any similar business within a radius of \_\_\_\_\_ kms. from \_\_\_\_\_ aforesaid ;

(ii) that the amount and particulars of the debts due and owing to and from the seller on account of the said business and the particulars of the contracts and engagements to which he is liable in respect of the said business are correctly stated and set forth in the books of account and other books delivered to the buyer and that the seller will indemnify the buyer against all sums he may have to pay on account of such debts, contract or engagement in excess of the amounts shown in the said books.

3. The buyer hereby agrees as follows :

(i) that he will pay the rent reserved in, and observe and perform terms and covenants of, the said deed of lease and on his part to be observed and performed and shall keep the seller indemnified against all rents, claims or demands on account of any omission on his part to pay the rent or observe or perform the said covenants.

(ii) that he will pay every debt and sum of money appearing in the said books of account for which the seller is liable and shall perform all the contracts and engagement hereinbefore mentioned and shall at all times keep the seller indemnified against all claims and liabilities in respect thereof.

*The schedule herein referred to.*

IN WITNESS, etc.