

Selling A Moveable Object Without Acquiring Its Possession Is A Sin

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What do the Islamic scholars say about the following: will a person be a sinner if he sells a moveable (منقول) item before acquiring its possession?

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الجواب بعون الملك الوهاب اللهم هداية الحق والصواب

Sale of a moveable (منقول) item before acquiring its possession is an invalid sale (البيع الفاسد) and it is an impermissible and sinful action as well for the beloved Prophet صلى الله عليه وآله وسلم has forbidden us from doing so. However, sale of an immovable item as long a buyer does not fear its annihilation and destruction, is allowed even before acquiring its possession and there is nothing wrong in this sale.

Hazrat Abdullah Bin Abbas رضى الله تعالى عنها narrates that the beloved prophet صلى الله عليه وآله واصحابه وسلم has said:

“من ابتاع طعاما فلا يبعه حتى يقبضه، قال ابن عباس: وأحسب كل شيء بمنزلة الطعام”

Translation: if one buys grain, he should not sell it before acquiring its possession. Hazrat Ibn-e-Abbas رضى الله تعالى عنه says, “I believe everything is like grain (in this regard)”

(Sahih Al-Muslim, Vol 3, Page 1160, Beirut)

Hazrat Allamah Mufti Ahmed Yar Khan Naeemi while explaining the above hadith writes in his book Miratul Manajih:

”اس حدیث سے آج کل کے بیوپاری عبرت پکڑیں کہ کپڑے کا جہاز ولایت سے چلتا ہے، ابھی کراچی بندر گاہ پر نہیں پہنچ پاتا کہ کئی جگہ اس کی فروخت نفع سے ہو چکتی ہے، بعد میں پھر ان کے دیوالیے ہوتے ہیں۔۔۔ بغیر قبضہ کی کوئی چیز کی تجارت ہرگز نہ کرنی چاہیے کہ یہ شرعاً گناہ بھی ہے اور سخت نقصان کا باعث بھی۔“

Translation: Traders in our times should heed the lesson from this hadith because (the practice is) as soon a ship carrying fabrics sets sail for Karachi and before it reaches Karachi port, it is sold multiple times for profit and then the trades go bankrupts..... one must not sell anything before acquiring its possession as it is not only a sin but also a cause of great loss.

(Miratul Manajih, Vol 04, Page 267, Naeemi Kutub Khana, Multaqatan)

It is mentioned in Hidayah regarding selling a moveable and immoveable property before acquiring its possession:

”من اشتری شیئاً مما ینقل ویحول لم یجز له بیعه حتی یقبضه؛ لأنه - علیہ السلام - نہی عن بیع ما لم یقبض؛ لأن فیہ غرر انفساخ العقد علی اعتبار الهلاک، ویجوز بیع العقار قبل القبض عند أبي حنيفة وأبي يوسف... لهما أن رکن البیع صدر من أهله فی محله، ولا غرر فیہ؛ لأن الهلاک فی العقار نادر بخلاف المتقول، والغرر المنهي عنه غرر انفساخ العقد، والحديث معلول به، عملاً بدلائل الجواز“

Translation: if one buys an object which can be moved from one place to another, he is not allowed to sell it before acquiring its possession because the beloved prophet صلی اللہ علیہ وآلہ وسلم has forbidden us from selling before possession and the reason is there exists a risk of abrogation of a contract (غرر انفساخ العقد) if the subject of the sale perishes. However, according to Imam Al-Azam Abu Hanifah and imam Abu Yusuf the sale of an immoveable item is permissible even before acquiring its possession. Their argument is as the rukn of a sale has been executed in its place by the capable and there exists no risk (غرر) because annihilation is very rare in immovable objects unlike movable objects. And the risk (غرر)

we have been prohibited from is a risk of abrogation of a contract and because of arguments of permissibility, hadith will also be interpreted in accordance with this reason (علة).

(Hidayah, vol 3 page 59, Beirut)

The book Durrul Mukhtar while explaining rulings that a Fasid sale is a sin and it must be revoked writes:

”يجب (على كل واحد منهما فسخه قبل القبض) -- (أو بعده مادام) المبيع بحاله - جوهره

(في يد المشتري إعدام الفساد) لانه معصية فيجب رفعها - بحر“

Translation: Revoking a fasid sale is incumbent upon both the parties before the possession of object (بيع) and even after the possession as long it is in the possession of the buyer and is intact and this cancellation is to eliminate the evil because it is a sinful action therefore the elimination is compulsory.

(Durrul Mukhtar ma Raddul Muhtar, Vol 5, page 91, Beirut)

Ala Hazrat Imam-e-Ahle-Sunnat As-Sha Imam Ahmed Raza Khan while mentioning the ruling pertaining to selling an immovable property without its possession writes in Fatawa Razaviyya:

”جائداد غير منقولہ لے کر پیش از قبضہ غیر بائع کے ہاتھ بیع کر دی تو جائز ہے۔“

Translation: If one purchases an immoveable property and sells it to someone other than the seller before acquiring its possession, it is allowed.

(Fatawa Razaviyya, Vol 17, Page 594, Raza Foundation, Lahore)

Likewise, Sadrush Sharia Badrut Tariqah Hazrat Amjad Ali Azami رحمة الله تعالى عليه writes in Bahar e Shariat:

”جائداد غير منقولہ خریدی ہے اُس کو قبضہ کرنے سے پیشتر بیع کرنا، جائز ہے کیونکہ اس کا ہلاک ہونا بہت

نادر ہے اور اگر وہ ایسی ہو جس کے ضائع ہونے کا اندیشہ ہو تو جب تک قبضہ نہ کر لے بیع نہیں کر سکتا مثلاً بالا خانہ

یادریا کے کنارہ کا مکان اور زمین یا وہ زمین جس پر ریتا چڑھ جانے کا اندیشہ ہو۔“

Translation: if one has purchased an immoveable property, it will be allowed for him to sell it before acquiring its possession as it seldom perishes but if he fears that it might perish, he will not be allowed to sell it unless he has acquired its possession and the example of perishable property would be a room over a ground floor, a house or land at a river bank or a piece of land one fears will subsequently be overtaken by sand.

(Bahar e Shariat, Vol 02, Page 747, Maktaba Tul Madinah)

While mentioning the ruling regarding selling moveable objects before getting them into possession, Mufti-e-Azam Pakistan Mufti Waqar-ud-Deen رحمۃ اللہ تعالیٰ علیہ writes in his book of Fatawas:

”بہر صورت قبضے سے پہلے منقولات کو فروخت کرنا بیع فاسد ہے۔ اور بیع فاسد کرنے والا گناہگار ہے۔“

Translation: In any case, selling a moveable object before acquiring its possession is a Fasid sale (البيع الفاسد) and perpetrator of it is a sinner.

(Waqar ul Fatawa, vol 03, Page 266, Bazm-e-Waqar-ud-Deen)

واللہ اعلم عزوجل ورسولہ اعلم صلی اللہ تعالیٰ علیہ وآلہ وسلم

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