

Does A Receipt In One's Name Count As Possession Of The Item?

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What do the Islamic scholars say about the following issue? Zaid approaches me as he wants to buy a freezer or a motorcycle. He asked me for a loan, but I suggested instead that I could buy the freezer for him directly from the market with cash. He could then pay me back in installments, and whatever installments and profit he would have paid to the market sellers, he would pay to me instead. He agrees to it and we go to the market together, and I buy the freezer or motorcycle in cash and hand it over to him. In this situation, what is the ruling according to Shariah? And when it comes to taking possession, what does that actually mean? Do I need to take the motorcycle home for a day or two and then hand it over to Zaid, or does it mean that I should get a receipt in my own name?

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الجواب بعون الملك الوهاب اللهم هداية الحق والصواب

In the situation described, where you accompany Zaid to the market and purchase the freezer or motorcycle in cash, taking possession and then selling it to Zaid at a profit is permissible in Shariah. This type of transaction is called

Murabaha (in Islamic jurisprudence). To establish possession, it is not necessary to take the motorcycle home for a day or two. It is sufficient that the item (freezer or motorcycle) is in front of you, and the shopkeeper gives you full authority over it by saying something like, "Take your item." In this case, possession is considered to have been taken if there are no barriers preventing you from taking the item. This type of possession is called "Takhliyah" in Islamic jurisprudence. Once your possession is established, whether through physical control or through Takhliyah, you can then sell the item to Zaid. At this point, the condition of having possession before selling is fulfilled, making the subsequent sale permissible.

Creating a receipt in your name alone does not count as taking possession in a Shariah-compliant manner. When an individual is bound to disclose the cost price of an item before selling it, it is known as a "**Murabaha Sale**". The transaction mentioned in your question falls under the category of Murabaha and this is a good way to avoid interest-based transactions. However, it is always essential to meet all the basic requirements and conditions of a legitimate sale.

Definition of Murabaha:

According to the author of "Hidaya," Murabaha is defined as:

“المرا بحة نقل ما ملكه بالعقد الاول بالثمن الاول مع زيادة ربح

Translation: Murabaha is the transferal of what one gained ownership of in the initial contract with the initial price, plus the addition of profit margin.

(Al-Hidayah, Volume 3, Page 56, Published in Beirut)

Sadrus-Shariah Mufti Amjad Ali Azmi (عليه الرحمه) writes:

”جو چیز جس قیمت پر خریدی جاتی ہے اور جو کچھ مصارف اُس کے متعلق کیے جاتے ہیں ان کو ظاہر کر کے اس پر نفع کی ایک مقدار بڑھا کر کبھی فروخت کرتے ہیں اس کو مرا بحة کہتے ہیں۔“

Translation: When the cost of an item and the related expenses are disclosed and a profit is added to that and then it is sold, this type of sale is called Murabaha.

(Bahar-e-Shariat, Volume 2, Page 739,

Maktaba-tul-Madina, Karachi)

It is mandatory to take possession of a movable item before selling it. Selling an item before taking possession is not permissible.

In "Al-Binayah," the commentary of "Al-Hidaya," it is stated:

”بيع المنقول قبل القبض لا يجوز بالا جماع“

Translation: There is a consensus among scholars that selling a movable item before taking possession is not permissible.

(Al-Binayah Sharh Al-Hidayah, Volume 8, Page 229,

Published by Dar al-Kutub al-Ilmiyyah)

Sadrus-Shariah Mufti Amjad Ali Azmi (علیہ الرحمہ) mentions:

”بیع اگر منقولات کی قسم سے ہے تو بائع کا اُس پر قبضہ ہونا ضرور ہے، قبل قبضہ کے چیز بیچ دی بیع ناجائز ہے۔“

Translation: If the sold item is movable, then the seller must have possession over it. Selling an item before taking possession is not permissible.

(Bahar-e-Shariat, Volume 2, Page 625,

Maktaba-tul-Madina, Karachi)

In case of a sale at deferred payment, it is essential to specify a payment period.

In "Tanveer-ul-Absar and Durr-ul-Mukhtar," it is mentioned:

”(وصح بثمان حال) وهو الاصل (ومؤجل الى معلوم) لئلا يفضى إلى النزاع“:

Translation: A sale with an on-the-spot payment is permissible as it is the principle but sale with deferred payment is also permissible as long the payment period is clearly specified that is to prevent disputes.

(Tanweer-ul-Absar Wa Durr-ul-Mukhtar,

Volume 7, Page 49, Published in Quetta)

In "Bahar-e-Shariat," it is mentioned:

”بیع میں کبھی ثمن حال ہوتا ہے یعنی فوراً دینا اور کبھی مؤجل یعنی اُس کی ادا کے لیے کوئی ميعاد معین

ذکر کر دی جائے کیونکہ ميعاد معین نہ ہوگی تو جھگڑا ہوگا۔“

Translation: In a sale, the payment can either be immediate or deferred. If it is deferred, a specific time period should be mentioned because if it is not mentioned,

it will lead to disputes.

(Bahar-e-Shariat, Volume 2, Page 626,
Maktaba-tul-Madina, Karachi)

Sadrush-Shariah Mufti Amjad Ali Azmi (عليه الرحمہ), while discussing taking possession of subject of a sale, states:

”بائع نے مبيع اور مشتری کے درمیان تخلیہ کر دیا کہ اگر وہ قبضہ کرنا چاہے کر سکے اور قبضہ سے کوئی چیز مانع نہ ہو اور مبيع و مشتری کے درمیان کوئی شے حائل بھی نہ ہو تو مبيع پر قبضہ ہو گیا۔“

Translation: If the seller hands over the item and creates a situation where the buyer can easily take possession if he wants to, and there is nothing to prevent the possession, and nor is there any obstruction between buyer and object of the sale then the item is considered to be in the buyer's possession.

(Bahar-e-Shariat, Volume 2, Page 641,
Maktaba-tul-Madina, Karachi)

واللہ اعلم عزوجل ورسولہ اعلم صلی اللہ تعالیٰ علیہ وآلہ وسلم

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