

REGISTRATION OF DOCUMENTS RELATING TO IMMOVABLE PROPERTY: A TOOL TO PREVENT FRAUDS

By: Sukhdeep Kaur Billing

Govt. Mohindra College, Patiala, Billingsukhdeep@gmail.com

Property inhabits very foremost place in our lives because the concept of property is very much connected to our urge of existence. From the very inception of human existence, man's basic thread of security is ownership – to exercise exclusive control over the property. In the full sense of the word, man is born proprietor, because he is born with wants whose satisfaction is necessary to life, and with organs and faculties whose exercise is indispensable to the satisfaction of these wants. Faculties are only an extension of the person; and property is nothing but a conservatory of the faculties. To separate a man from his faculties is to cause him to die; to separate a man from the product of his faculties is likewise to cause him to die. Economists believe that property is an advantageous fact, like the human person. The law does not bring the one into existence any more than it does the other. Property is a necessary consequence of the nature of man.[1] In this paper, importance of registration of documents relating to immovable property has been discussed in amplification.

INTRODUCTION

Keeping in the view the significance of the property it is important to protect that from external interferences. Law has demarcated the property into two- movable and immovable property. This paper particularly deals with the immovable property as for the protection of the immovable property upon certain value is required to be registered under the law. The Supreme Court explaining the meaning of the term property means highest right a man can have to anything, being that right which one has, to lands, tenements, goods or chattel, which does not depend on another's courtesy; it includes ownership, estates and interest in corporate things and also rights such trademarks, copyrights, patents and even rights in personam, capable of transfer.[2] The property is broadly at odds into two categories: movable and immovable property which can be acquired by different modes: prescription, possession, act inter-vivos or a transfer between two living persons and lastly, by inheritance. Before moving further, it is important to have looked into

the connotation of immovable property. What is technically included into or excluded from it. Transfer of movable property is governed by the Sales of Goods Act, 1930 and is not a part of this discussion, thus uncared for. The voluntary alienation of immovable property between two living persons is governed by the Transfer of Property Act, 1882[3]. General meaning of the immovable property is that property which cannot be moved from place to another. The term immovable property has been defined in various Statutes like the Transfer of Property Act 1882, the General Clauses Act, 1897 and the Registration Act, 1908. The Transfer of Property Act defines that “the immovable property does not include standing timber, growing crops and the grass.”[4] The General Clauses Act, 1897, defines it as “immovable property includes land, things arising out of land, things attached to earth, or permanently fastened to anything attached to earth.”[5] Both the definitions fails to communicate the exact and meticulous meaning of the term immovable property, but the definition given under the Registration Act seems to be more apposite and reliable as it gives a holistic idea of immovable property. According to Registration Act, immovable property includes land, buildings, hereditary allowances, right to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass[6]. Thus it encompasses every minuscule right or the interest an individual might have over the object. Free disposal being the chief characteristic of the property the procedure to facilitate alienation of the property is given under T.P.A and other related statutes viz. The Registration Act, 1908. If a movable property is directly attached to the earth it will be immovable property for the purposes of the Registration Act though the attachment is not direct. The Registration Act 1864 did not contain any definition of immovable property. The first Registration Act in which the definition appeared was Act of 1866. The inclusive verb ‘includes’ shows that the definition is not intended to be exhaustive. When the legislature intends to speak exhaustively, it uses the word mean or means.

DOCUMENTS AND INSTRUMENTS: In layman's language, there is no difference between the terms “document” and “instrument”. But in legal language, there is difference between the two. As per Wharton's Law Lexicon, word “document” means, records, writings, precepts, instructions or directions. Section

29[7], defines “document” and reads that the word “document” denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matters. Similarly “document” is also defined under Section 3 of the Evidence Act, 1872. According to section 80, document means a legally enforceable document while the term instrument has been defined, under the Court fees Act 1870, as formal and legal documents. From these two sections, it has been shown that the term document is a wider term which includes the term instrument. But for the purposes of the Registration Act, the words “document” and “instrument” are used interchangeably. A multiplicity of stamp duties and registration fees on different kinds of transactions and instruments by the state governments. A total of around 65 different kinds of such charges are imposed by the states. Stamp duties imposed under the Stamp Act, 1899, are a tax on the value of instruments used in various/property transactions. They may be judicial or non-judicial. Judicial Stamp Duties or Court fees is fees collected from litigants in courts and are relatively small in magnitude. Non-judicial stamp duties are typically a onetime charge on transfer of immovable property. A registration fee is a payment made for specific service provided by the government in recording contracts and deeds. However, registration does not entitle the payee to a guaranteed legal title. In most of the states, registration fees and non judicial stamp duties account stamp duties account for nearly 95% of revenue collected by the Department[8]. Stamp duties (including registration fees) are imposed on instrument that generally fall into five major categories of instruments that relate to:

- Conveyance and property transfer
- Loan and advances
- Capital market transactions
- Daily business and commercial transactions
- Other statutes for record keeping purposes.

MEANING OF REGISTRATION: Law of registration is governed by the Stamp Act, 1879. Registration is the process of recording a copy of a document, transferring the title in immovable property to the office of the Registrar. Registration acts as proof that a transaction has taken place. The Registration of a document serves as a notice of the transaction, to the persons affected by the transaction. Registration also serves as an implied notice

to any person subsequently acquiring interest in the property, covered by the registered document. When a document, which is compulsorily to be registered, is not registered, it fails to confer any title given by the document.

According to Prem’s Judicial Dictionary: The term Registration includes getting made and the certain endorsements, making the Certificate of Registration and the copying of the documents in the register book and filling of the map or plans, if any, in the Registrar’s office books. Registration amount to notice.

According to Bouvier’s Law Dictionary: The word registration has a general, not a technical meaning, and indicates any list or schedule containing a list of voters.

According to Oxford Companion to Law: In Scots Law, Registration of an obligatory deed pursuant to a clause therein authorizing registration, which makes it equivalent for the purposes of enforcement to a decree of court...In Scotland deeds may be registered for one or more of three purposes: execution, preservation and publication.

According to Black’s Law Dictionary: Registration is an act of recording enrolling.

The Registration Act, 1908, does not define “Registration”. However, the meaning of this word is the soul of the law of registration and pervades throughout the warp and woof of the concerned enactment. Sections 58 to 61 of the Act, dealing with the procedure of admitting documents to registration, unequivocally imply the meaning of registration “to be” recording of the copy of a document in the registration office.[9]

In general terms, Registration is, in fact, the recording of the copy in the registrar’s office. Legally, Registration is registration in accordance with the provisions of The Registration Act, 1908.[10] The Registration Act, 1908 strikes only at documents and not transactions and if there is no document in existence, the question of an agreement which is purely oral coming within the mischief of the Law of Registration does not arise.[1]

IMPORTANCE OF REGISTRATION AND LEGISLATIVE REQUIREMENTS: Under Registration Act 1908, section 17 and 18 specially deals with the documents relating to immovable property. The

object and purpose of the Registration Act is to provide a method of public registration of documents so as to give information to people regarding legal rights and obligations arising or affecting a particular property, and to perpetuate documents which may afterwards be of legal importance, and also to prevent fraud. Registration lends inviolability and importance to certain classes of documents.[2] It is very important to note here that the Registration Act is a special law and is not applicable generally. Importance of registration lies behind the objective of Registration Act – which is to prevent people from being duped into purchasing property from a person who does not own it. Moreover, the registration of a document will give solemnity of form and legal significance to the said document in registering the same.[11] Registration department is a non-plan department. The statutory basis of the department is the Registration Act, 1908 which provides for a legal framework relating to the registration of documents. It collects revenue by way of stamp duty and registration fees on various types of documents. It also registers societies, firms, and marriages. The department also procures stores and distributes various types of stamps (judicial as well as non-judicial). The Stamp Act is a fiscal measure enacted to secure revenue for the state on certain classes of instruments. It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponents. The stringent provisions of the Act are conceived in the interest of revenue. Once that object is secured according to law, the party staking his claim on the instrument will not be defeated on the ground of the initial defect in the instrument [12]. The Registration Department is governed by a number of Acts, some of which are administered wholly by the Department (State list) and others which it administers only partially (Union list).

The Major Acts Administered by the Department: in these, the state government has the exclusive power to fix the stamp duties. These include:

- The Registration Act, 1908
- The Stamp Act, 1899
- The Societies Registration Act, 1860

Acts partially administered by the department: the Central Government sets the rates of stamp duties which are uniform across the states. These include:

- The Partnership Act, 1932

- The Special Marriage Act, 1954
- The Hindu Marriage Act, 1955
- The Christian Marriage Act, 1872

The Registration Act, 1908 also lays down the overall administrative framework for the department. Secretary-cum-Inspector General of Registration (IG) heads the Department. A Deputy Secretary, Assistant Inspector General, Section Officer and other Staff to assist. The field level set up comprises of Inspector of Registration offices, District Sub-Registrars and the supporting staff.

NATURE OF REGISTRABLE DOCUMENTS: A registered document has a lot of sanctity attached to it and this sanctity cannot be allowed to be lost without following the proper procedure. A bare perusal of section 17 (b) of the Act shows that other non-testamentary instruments which purport to create, declare, assign, limit or extinguish whether in present or future, any right, title or interest in immovable property of the value Rs 100 or more has got to be registered. Apart from the fact that registration of a document gives a notice to the world that such a document has been executed, it provides safety and security to transactions relating to immovable property, prevents forgeries and frauds in regards to transactions and execution of documents.[13] Transfer of an immovable property can be validly made only by a registered sale deed and not through a sale agreement or a general power of attorney or a Will.[14] A certificate of registration is conclusive proof that the document was registered according to law.

PROTECTION OF INTERESTS OF COMMON MAN – A JUDICIAL APPROACH: The Supreme Court has been established by the Indian Constitution, 1950. It is the highest judicial tribunal of the Indian Union. In States there are High Courts and in Districts there are District Courts. Therefore, the decisions by the Supreme Court are binding on all the judicial tribunals of the country. Pre-Constitution decisions of the Privy Council are binding on all the High Court's unless they conflict with any decisions of the Supreme Court. This helped in bringing uniformity and certainty in law. With the passage of time and the active role played by the judiciary has helped in the growth of the Law of Registration in India. Indian judiciary from time to time in their pronouncements has been emphasized, re-emphasized and over-emphasized upon the significance of registration of non-testamentary instruments. A Division Bench of the Court in a ruling reported in,

Panchapagesa v. Kalyanasumdaram^[15], thus: “On account of the fact that though the Registration is a very useful and beneficial enactment, as it is extremely stringent, the Act has got to be strictly construed...”. He states that the doctrine seems at length to be settled that the mere registration of a conveyance shall not be deemed constructive notice to subsequent purchasers.^[16] Acting upon this statement, Mr. Justice Brett and Mr. Justice Mittra in *Bunwari Jha v. Ramjee Thakur*^[17] declined to accept the contention that registration was notice per se, while at the same time they refused to accede to the view that in no case can registrations be notice in itself. Whether registration is or is not notice in itself depends, we think, upon the facts and circumstances of each case, upon the degree of care and caution which an ordinarily prudent man would necessarily take for the protection of his own interest by search into the registers kept under The Registration Act. This, in order to discharge that duty the plaintiff was bound to search the register and his omission to do so would be presumed to have been a wilful abstention from the search or gross negligence, was observed by the Privy Council in *Tilakdhari Lal v. Khedan Lal*^[18]. Honourable Supreme Court in *Suraj lamp Industries (P) Ltd. V. State of Haryana*^[19] has observed that The Registration Act, 1908 was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions relating to immovable property and protection from fraud and forgery of documents of transfer. This is achieved by requiring compulsory registration of certain types of documents and providing consequences of non-registration.

In *Mathai Samuel v. Eapen Eapen*^[20], Supreme Court has very minutely observed that in a composite document, which has characteristics of a will as well as gift it may be necessary to have that document registered otherwise that part of the document which has the effect of a gift cannot be given effect to.

A very important observation has been made by the Supreme Court, in *Suraj lamp Industries (P) Ltd. V. State of Haryana*^[21], that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of General Power of Attorney sales/ Will transfers do not convey title and do not amount to transfer, nor they can be recognized or valid mode of transfer of immovable property. The Courts will not treat such transactions as completed or concluded transfers or as conveyances as

they neither convey title nor create any interest in an immovable property.

Supreme Court has held that since the family partition deed and award of the arbitrators was reduced to writing it created new rights over the immovable property and thus was compulsorily registrable. It was held that the said agreements attracts the provision of section 17(1) of the Registration Act, 1908 and therefore is invalid for want of registration.^[22] Similar observations were also made by J&K High court, where they were refused to admit the family settlement as it was an agreement reduced to writing created new rights in the immovable property, which was not registered as per the requirements of law. Orissa High Court highlights the significance of registration of documents by saying that if a deed is not registered, there is no transfer and the property does not pass.^[23] In *B.N. Rai v. Anmol Devi*^[24], the Supreme Court held that “a combined reading of Sections 8 and 54 of the T.P.A suggests that though on execution and registration of sale deed, the ownership, title and all interests in the property pass to the purchaser unless a different intention is expressed or implied which has to be proved by the party asserting that has not passed on registration of the sale deed.”

Thus the title of the property passes on the buyer on registration of the deed of conveyance irrespective of the fact that price has been paid or promised to be paid. These pronouncements reflect the judicial attitude with respect to the sale of immovable property under T.P.A. and the value attached to the registration of sale deed. Great emphasis has been laid by the judiciary while interpreting and explaining the provisions of the Registration Act, 1908 and a very strict interpretation relating to powers of the registering officer has been taken by the courts.^[25] The Punjab and Haryana High Court ^[26] pronounced on the powers to refuse registration by the Registrar, if the document has not been properly executed and beyond its territorial jurisdiction, in view of the provisions of the sections 69, 74, 21, 23, 25, 28, 32, and 35. But in the case of *Bihar Deed Writers Association v. State of Bihar* ^[27] the Division Bench of Patna High Court considered the provisions of sections 52 and 68 of Registration Act held that:

“In our view, if a document otherwise complying with the statutory requirements and formalities is presented for registration, the registering authority is bound to

register it. It is not for the registering authority to enquire and ascertain the title to its own satisfaction. Under the T.P.A. Act, 1882, if the transferor does not have any title nor has imperfect title to the property, the transferee will either get no title or he will get an imperfect title. This will be to the prejudice of the transferee and is not of any concern to the registering authority.”

Kerala High Court [28] also observed the same on the same lines by saying that, “the Registration Act did not make any provision authorising the registering authority to assure about the title of the executants of the document before registration. The Registering authority is bound to register a document presented for registration on being satisfied of the compliance of the Registration act.”

RECENTLY, Allahabad High Court in case of Neeraj Jain v. State of U.P.[29] reiterates that “the principle seems to be that a party to litigation cannot escape liability of payment of the stamp duty under the law whenever he wants to rely on the documents in order to prove his case”. It is also said that “there is a clear embargo for the court to receive an insufficiently stamped documents in evidence or brought before the court, but at the same time section 33 authorises the court to impound an insufficiently stamped document. A combined reading of section 33 and 35 makes it clear that a document cannot be admitted in evidence as long as it remains an insufficiently stamped document. But at the same time the court has power to impound the document and once it is impounded it cannot be admitted in evidence and acted upon”.

From the above symposium, it evinces a very multifaceted state of affairs. On one side, law is so stern applied that for want of registration even family settlements, instruments relating to mortgage transactions are not held admissible in evidence and on the erstwhile, the registrar has no power under the Registration Act to enquire about the title of the vendor, possession and encumbrances with respect to the property being transacted. In corollary, the buyer is left to his own providence even after having undergone the whole process pre and post-sale transaction, meeting financial burdens of investigation of title, registration fee, stamp duty and the lawyer’s remuneration, no fortification, payback accrue on registration of the deed of conveyance. State does not endow with any assurance against defeasibility of title, deficiency in the title, rather

aims at unavoidable exaction of money without liabilities.

PROBLEMS AND GOVERNMENT INITIATIVES TO INVIGORATE THE REGISTRATION OF DOCUMENTS: Be acquainted with the main intend of the Registration Act is to protect the common man from property frauds and it is quite evident that it also serving in gratifying that aim. But at a halt, we are facing the stiff realities of life. In this day and age, the property frauds are on rise, which leads to high litigation and diffidence to the person and the property because property is commonly regarded as a tool of aggression. Some curable steps can be taken to hack it with this state of affairs.

1. **STAMP DUTY RATES:** Stamp duty is one of the mainstays of earning revenue of the government. In Jagdish Narain v. Chief Controlling Revenue Authority[30], the Allahabad High Court observed :

“The sole object of the Indian Stamp Act is to increase the revenue and its provisions must be construed as having in view only the protection of revenue. Although the provisions contained in the Act imposed pecuniary burdens and this Act is a fiscal enactment yet considering the implications involved therein its provisions must be given a construction which prevents undue hardship to the subject.”

It is hereby suggested that, there is avoidance of registration of documents due high rates of registration; the rates should be lower down so that people should feel free from burden of getting the documents registered done. It should be in their reach to spend the money on registration.

2. **HUGE COSTS:** In order to save the government’s huge costs of printing judicial and non-judicial stamps and commission to stamp vendors as also to prevent fraud and avoidable hassles to the public, the Indian Stamp Act, 1899 and the Court-fees Act, 1870 need suitable amendments to provide for payment of stamp duty on instruments and court-fee on documents to be filed in courts through alternative modes of payment.
3. **UPDATING LAND RECORDS:** As a legacy of British rule, Indian land records database is one

of the best in the world. But Land Administration in India deteriorated during the post independence period partly because of declining share of land revenue in own-tax revenues of state governments. Regular land surveys no longer happen. With the Central government initiative COLR Project (Computerized of Land Records) updating of land records started in eight districts in 1988-89 in different states of the country with central government funding. The main objectives of this project are:[31]

- Creating a database of basic land records
- Facilitating issuing of copies of records
- Reducing work load by elimination of drudgery of paper work
- Minimizing the possibilities of manipulation of land records
- Creating land management information system

After the review of this project in 2004, it was said that the work done was highly distorted. So, hereby, it is suggested that up gradation should be done in segments by highly qualified staff. It also involves higher element of corruption among the officials to temper with the records, which results into the breach of peace in the society.

4. **COMPUTERIZATION OF LAND RECORDS:** In the era of Information Technology, we should take advantage of fast and less time intense processes to deal with the cumbersome physical processes of registration. Computerisation of land registration systems will ultimately endow with authenticity to the land records; will help in preventing frauds as inspection of material will be a click away. It will significantly improve citizen interface and provide immediate electronic delivery of documents.
5. **TRAINING OF STAFF OF REGISTRATION DEPARTMENT:** Extensive system reforms cannot be brought about without adequate motivation within the organisation. To use these new technologies effectively, Information Technology Department carries out a large scale and well designated training programme. Training programs should be conducted regularly so that the staff stay well versed with the changing technology.

6. **SHORTAGE OF STAMPS:** The main reason for stamped paper scams is that they are printed in bulk. These stamps are required to be fixed on heavy paper books and on each page, which is again a very time consuming process. Due to all these problems, artificial shortage of stamps and stamped papers, occasionally created by agents, leading to their sale in black market. This is again putting extra burden on the pockets of common man and adversely hitting the revenues of the state government. It is suggested that, there must be change in the mode of payment of court fees and it must be payable through demand drafts, banker's cheque.
7. **ROOT LEVEL AWARENESS:** To shun the frauds, it is obligatory that the common man must be responsive of their rights which are given to them legislatively. Like under the Registration Act, it is said that all registers of the documents shall be open to the inspection of any person applying to inspect the same and copies of such documents shall be given to all persons applying for such copies. But this involves a burdensome route which to high extent has been avoided by the people; moreover the general public is not aware of the same. Hereby, it is suggested that this provision should be used more often to avoid the unexpected situations by giving information to the people who are coming for registration. Frauds relating to property leads to the breach of peace in the society, so there is a need to address this issue very seriously. It is also, hereby, suggested that there must be amendment in the Registration Act to inspect the document without any hitch.
8. **INSURANCE OF TITLE:** We suggest involving the insurance industry in India as a part and parcel of the registration mechanism to actuate. The languishing system in this country. Insurance of property title could be made mandatory on the lines of third-party insurance for vehicles. The party would be required to get the title insured to get it registered. Once insured, the party would be assured of compensation in case of any losses incurred due to alternative claims and other disputes. It would safely shift the burden of title guarantee from the state to the private agencies[32].
9. **GRANT OF POWER TO REFUSE REGISTRATION:** This is the main lacuna in the

Act, that a registrar has no power to refuse registration in case of imperfect title. By making amendments, it is hereby, it is suggested that the registrar should be granted vast powers to inspect and to refuse registration in case of doubt.

FINISH NOTE: The suggestions given, to get better the implementation of the Registration Act is the much needed and awaited, should be a part of the administrative machinery. On the part of judiciary, there must be clear demarcation between the documents and their requirement for registration. We need a new synchronised system to do away with the loopholes of our current system. Much could be corrected by the computerized property records and compulsory insurance of the title.

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