

REGISTRATION OF DOCUMENTS: LAW AND PROCEDURE

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Introduction

Registration provides safety and security to transactions relating to immovable property even if the document is lost or destroyed. It ensures that every person dealing with immovable property can rely with confidence upon the statement contained in the registers maintained under the Registration Act, as a full and complete account of all transactions by which the title to the property may be affected and secure extract/ copies duly certified.² All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.³

Registration of a document *inter alia*, ensures its paper preservation and record. The Registration Act, 1908 is the law relating to registration of documents.

Of Registrable Documents

Registrable documents can be classified into two classes-

- (i) Documents of which registration is compulsory.
- (ii) Documents of which registration is optional.

Documents of which registration is compulsory⁴

Documents whose registration is compulsory are the following.

(a) *Instruments of gift of immovable property*⁵

In a case where the donor dies before registration, the document may be presented for registration after his death and if registered it will have the same effect as registration in his life time. On registration the deed of gift operates as from the date of execution.⁶ It was held by that while registration is a necessary solemnity for the enforcement of a gift

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²Suraj Lamp and Industries(P) Ltd thru Director VS State of Haryana and other, AIR 2009 SC 3077.

³The Indian Contract Act, 1872.Section 10.

⁴The Registration Act, 1908, Section 17.

⁵The Registration Act, 1908, Section 17(1a).

⁶ KalyanaSundram v. Karuppa, AIR 1927 PC 42,

of immovable property, it does not suspend the gift until registration actually takes place, when the instrument of gift has been handed over by the donor to the donee and accepted by him, the former has done everything in his power to complete the donation and to make it effective. And if it is presented by a person having necessary interest within the prescribed period the Registrar must register it. Neither death nor the express revocation by the donor is a ground for refusing registration, provided other conditions are complied with.⁷ A registered document has a lot of sanctity attached to it which cannot be allowed to be lost without following proper procedure.⁸

(b) Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property, situated in a district in which this Act is in force.⁹

A document which is plainly intended to be operative immediately is non-testamentary¹⁰. Description of a document as a will does not make it a will.¹¹ The expressions “create”, “assign”, “limit” or “extinguish” imply a definite change of legal relation to a property by an expression of will embodied in the document. It implies a declaration of will. The expression “declare” (as used in Section 17) has also to be interpreted on the same lines; it does not mean a mere declaration of fact, but connotes a writing effectuating a change of relation.¹² Whether an instrument requires registration under Section 17(1)(b) depends upon whether it operates or purports to bring about a change in legal relation in respect of some property. For purposes of Section 17 (1) (b) a distinction should be drawn between (i) a right in or to property and (ii) such rights as are merely incidental to the ownership of property and are really in the nature of powers or options which every owner is free to exercise in dealing with his property in a particular way. The latter may be described as rights in relation to the property, but strictly speaking, they are not rights in or to property. Generally, when a right in or to property is assigned, created, declared, limited or extinguished, then there must be a definite change of legal relation to the property. A settlement which does not create any right in present cannot be treated as inadmissible on the ground that it is not registered.¹³

⁷Mulla The Registration Act, 12th edition 2012 by Justice K Kannan, page 48, 49.

⁸Shanti Budhiya Vesta Patel and others VS Niramala Jayprakash Tiwari and others, AIR 2010 SC 2132.

⁹The Registration Act, 1908, Section 17(1b).

¹⁰Umrao Singh v. Lachhman, (1911) 1 LR 33 PC.

¹¹Tirugnannpal v. Poonamma, AIR 1921 PC 89.

¹²Bageshwari Charan v. Jagarnath Kuare, AIR 1932 PC 55.

¹³Zahida Begum and another VS Lal Ahmad Khan and others, AIR 2010 AP 1.

*(c.) Non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title or interest.*¹⁴

This clause requires an acknowledgement in the form of a receipt to be registered, but not an acknowledgement of the fact that a transaction has taken place. To be registrable under this clause a receipt must satisfy the following two conditions. First, It must be the receipt of a consideration. And second, It must on the face of it be an acknowledgement of payment or some consideration on account of the creation, declaration, assignment, limitation or extinction of an interest of the value of Rs. 100 or upwards in immovable property. The receipt must be such as to be linked with the creation etc. of a right. A mere acknowledgement of payment is not compulsorily registrable. In a suit by A against B for lands, B pleads adverse possession. B in defiance proves B's acknowledgement (in a petition to the Collector) that the gift is in her favor. The petition is not admissible and does not require registration.¹⁵ Delay in registration of gift does not postpone its operation. Section 123, Transfer of Property Act, 1882 merely requires that donor should have signed the deed of gift. Hence a gift deed can be registered even if the donor does not agree to its registration.¹⁶

*(d) Lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent.*¹⁷

A lease for one year containing an option to the tenant to renew for a further period of one year or any other term is not a lease for a term exceeding one year, and does not require registration under this clause. Under Section 107 of the Transfer of Property Act, a lease of one year or reserving a yearly rent can be made only by a registered instrument. But where the lease is only for one year with a reserved rent for the period for which it has been granted, viz. one year, it does not require registration. Transfer of Property Act, Section 107 and Registration Act Section 17(1) (d), in comparison of both these Sections would show that a lease of immovable property is compulsory registrable:

- (I) If it is from year to year, or
- (II) If it is for a term exceeding one year, or
- (III) If it reserves a yearly rent.

¹⁴The Registration Act, 1908, Section 17(1c).

¹⁵Bageshwari v. Jagannath Kuare, AIR 1932 PC 55.

¹⁶Kalyan Sundaram Pillai v. Karuppa Moppanar, AIR 1927 PC 42

¹⁷The Registration Act, 1908, Section 17(1d).

If a lease is of a very high value but is neither from year to year, nor for any term exceeding one year, reserving a yearly rent. It does not require registration under Section 17(1) (d).

*(e) Non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property, Provided that the state Government may, by order published in the official Gazette exempt from the operation of this sub section any lease executed in any district, or part of a district, the term granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.*¹⁸

Non-testamentary instruments transferring or assigning any decree or order of a Court or any award in order to create interests as mentioned in Clauses (b). A transfer of a decree or order of a court or of any award when such decree or order or award operates to create, declare, etc. any interest of the value of Rs. 100 and upwards in immovable property, requires registration. However, the State Government is empowered to exempt any leases executed which do not exceed five years and the annual rents reserved which do not exceed 50 rupees, from the operation of this Sub-section.

(f) It may be pointed out that the documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53A of the Transfer of Property Act, 1882 shall be registered if they have been executed on or after the commencement of the Registration and other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then they shall have no effect for the purposes of the said Section 53A.¹⁹

Exceptions to Section 17 (1)

The registration of the non-testamentary documents mentioned in clauses (b) and (c) of Section 17 (1) is subject to the exceptions provided in Sub-section (2) of Section 17. These are as follows:

- (i) Any composition deed, i.e., every deed the essence of which is composition.
- (ii) Any instrument relating to shares in Joint Stock Company.
- (iii) Any debentures issued by any such Company.
- (iv) Any endorsement upon or transfer of any debenture.

¹⁸The Registration Act, 1908, Section 17(1e).

¹⁹The Registration Act, 1908, Section 17(1A).

- (v) Any document other than the documents specified under clauses (e) above creating merely a right to obtain another document which will, when executed create, declare, assign, limit or extinguish any such right, title or interest.
- (vi) Any decree or order of a court.
- (vii) Any grant of immovable property by the Government.
- (viii) Any instrument of partition made by Revenue-officer.
- (ix) Any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883.
- (x) Any order granting loan made under the Agriculturists Loans Act, 1884 or instrument for securing the repayment of a loan made under that Act.
- (xi) Any order made under the Charitable Endowments Act, 1890 vesting any property in a treasurer of a charitable endowment or divesting any such Treasurer of any property.
- (xii) Any endorsement on a mortgage deed acknowledging the payment of the whole or any part of the mortgage money, and any other receipt for payment of money, due under a mortgage when the receipt does not purport to extinguish the mortgage.
- (xiii) Any certificate of sale granted to the purchaser of any property sold by public auction by Civil or Revenue Officer.

Explanation

A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require for ever to have required registration by reason only of the fact that such document contains a recital of payment of any earnest money or of the whole or any part of the purchase money.

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 registered irrevocable power of attorney that is affirmed by separate affidavits by parties and which is made the basis of a consent decree cannot be easily revoked by merely filing police complaints disputing the genuineness of the documents.²⁰

Documents of which registration is Optional²¹

Whereas Section 17 of the Act has made registration of certain documents compulsory, Section 18 specifies documents, registration of which is optional. It provides that any of the following documents may be registered under this Act, namely:-

- (a) Instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest

²⁰ Shanti Budhiya Vesta Patel and Others VS Nirmala Jayprakash Tiwari and others AIR 2010 SC 2132.

²¹ The Registration Act, 1908, Section 18.

- whether vested or contingent, of value less than one hundred rupees, to or in immovable property,²²
- (b) Instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment; limitation or extinction of any such right, title or interest,²³
 - (c) Leases of immovable property for any term not exceeding one year and leases exempted under Section 17,²⁴
 - (d) Instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operations to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent of a value less than one hundred rupees, to or in immovable property,²⁵
 - (e) Instruments (other than wills) which purport or operate to create declare, assign, limit or extinguish any right, title or interest to or in movable property,²⁶
 - (f) Wills,²⁷
 - (g) All other documents not required by Section 17 to be registered.²⁸

Time limit for Presentation²⁹

A document other than a will must be presented within four months of its execution. In urgent necessity cases the period will be eight months, but higher fee has to be paid (Section 23-26). These limits are mandatory.³⁰ If delay is due to act of Court, it has to be disregarded.³¹ Section 23, proviso prescribed a period of four months for presenting a copy of a decree or order. It is counted from the date of the decree.

Unstamped document It the document is not sufficiently stamped its presentation is still good presentation though penalty under the Stamp Act can be levied.³²

Re-registration of certain documents³³

The section is mainly intended to deal with situations where the original presentation was by a person not duly authorized. It overrides the decision.³⁴

²² The Registration Act, 1908, Section 18(a).

²³ The Registration Act, 1908, Section 18(b).

²⁴ The Registration Act, 1908, Section 18(c).

²⁵ The Registration Act, 1908, Section 18(cc).

²⁶ The Registration Act, 1908, Section 18(d).

²⁷ The Registration Act, 1908, Section 18(e).

²⁸ The Registration Act, 1908, Section 18(f).

²⁹ The Registration Act, 1908, Section 23.

³⁰ Ram Singh v. Jasmer Singh, AIR 1963 Punj. 100.

³¹ Raj Kumar v. Tarapa, AIR 1987 SC 2195.

³² Mahaliram v. UpendraNath, AIR 1960 Pat 470.

³³ The Registration Act, 1908, Section 23-A.

Documents executed by several persons at different times³⁵

A document executed by several persons at different times may be presented for registration and re-registration within four months from the date of each execution. The registration is “partial” in regard to each party.

Documents executed out of India³⁶

Where the registering officer is satisfied that the document was executed outside India and it has been presented for registration within four months after its arrival in India, he may accept such document for registration on payment of proper registration fee. A document executed outside India is not valid unless it is registered in India.³⁷ A will may be presented for registration at any time or deposited in a manner provided in Sections 40-46. Registration of a will is optional under Section 18(e).³⁸

Place for Registering documents³⁹

Section 28 provides that documents affecting immovable property mentioned in Sections 17(1) and (2) and Sections 17 (1) (a) (b) (c) and (cc) (d) and (e), Section 17(2), etc. shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole *or some portion* of the relevant property is situated and any other document may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed or in the office of any other Sub-Registrar under the State Government at which all the persons executing desire the document to be registered. (All these documents relate to immovable property). Registration of a document elsewhere has been held to be void.⁴⁰

There is nothing in law to prohibit a person conveying property in one district and residing and owning property in another district and asking the vendee to accept a conveyance also of some small property in the district in which he resides, so that the sale-deed may be registered there and he may not be put to the trouble and expense of a journey to the other district. It is not correct to say in such a case that the sale-deed is not validly registered at the place where it is got registered.

However, there should be no fraud or collusion. Smallness of the area does not necessarily lead to inference of fraud.⁴¹ A copy of a decree or order may be registered with the Sub-Registrar within whose sub-district it was made. If the decree or order does not affect immovable property. It

³⁴Jambu Prasad v. Mohammed Aftab Ali Khan.(1914) ILR 37 All 49).

³⁵ Registration Act, 1908, Section 24.

³⁶ Registration Act, 1908, Section 26.

³⁷Nainsukhdas v. Gowardhandas, AIR 1948 Nag. 110.

³⁸ The Registration Act, 1908, Section 27.

³⁹ Registration Act, 1908, Section 28

⁴⁰HarendraLal Roy Chowdhuri v. HariDasi Debi, (1914) ILR 41 Cal. 972, 988 PC.

⁴¹MullaThe Registration Act,12th edition 2012 by Justice K Kannan, page 224.

may be presented for registration in the office of any other Sub-Registrar under the State Government at whose office all persons claiming under the decree or order desire it to be registered.

Registration in certain Cities

In any city comprising a Presidency town or in Delhi, a document relating to properly situated anywhere in India may be registered⁴². Delhi was added by Amendment Act 45 of 1969. Registration is permitted in cases of necessity under extraordinary circumstances, at the residence of the executants.⁴³

Persons to present documents for registration⁴⁴

Such persons who can present documents for registration at the proper registration office as are follows:

- (i) Some person executing or claiming under the same, or in the case of a copy of a decree or order, claiming under the decree or order, or
- (ii) The representative or assign of such person, or
- (iii) The agent of such person, representative or assign, duly authorized by power of attorney executed and authenticated in the manner hereinafter mentioned.

It is the immaterial whether the registration is compulsory or optional, but if it is presented for registration by a person other than a party not mentioned in Section 32, such presentation is wholly inoperative and the registration of such a document is void.⁴⁵ However, Section 31, 88 and 89 provide exceptions to this requirement.

For the purpose of Section 32, a special power of attorney is required as provided under Section 33. A general power of attorney will not do. Section 33 requires that a power of attorney, in order to be recognized as giving authority to the agent to get the document registered, should be executed before and then authenticated by the Registrar within whose district or sub-district the principal resides.⁴⁶

Enquiry before registration by Registering Officer

For registering a document the persons executing such document or their representatives, assigns or authorized agents must appear before the registering officer within the time allowed for presentation.⁴⁷ In Section 34, the expression "person executing" not only includes the agent who has signed (with authority), but also the principal who is a party.⁴⁸ It is the compliance with the provisions of Sections 34, 35, 58 and 59 of the

⁴² Registration Act, 1908, Section 40.

⁴³ Registration Act, 1908, Section 31

⁴⁴ Registration Act, 1908, Section 32.

⁴⁵ Kishore Chandra Singh VS Ganesh Prashad Singh AIR 1954 SC 316.

⁴⁶ Registration Act, 1908, Section 32 to 35.

⁴⁷ Registration Act, 1908, Section 34.

⁴⁸ Puran Chand v. ManmothoNath, AIR 1928 PC 38.

Act, which really constitutes registration and not the presence of the certificate. Hence, subsequent acts of the Registrar which are ministerial acts, cannot affect the validity of the registration and the absence of final certificate of registration under section 60 cannot affect its validity.

- (I) A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration.⁴⁹
- (II) As between two registered documents, the date of execution determines the priority. Of the two registered documents, executed by same persons in respect of the same property to two different persons at two different times, the one which is executed first gets priority over the other, although the former deed is registered subsequently to the later one.⁵⁰

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⁴⁹Registration Act, 1908, Section 47.

⁵⁰K.J. Nathan v. S.V. Maruthi Rai, AIR 1965 SC 430