



Documents Exempted From Registration under Section 17 of The Registration Act 1908: Legal Discourse

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ABSTRACT:

The Registration Act 1908 provides provisions related to the procedure of registration of documents, the limitations of time and the expenses for registration, the consequences of non-registration of a document and the powers of the Registrar. This paper endeavours to ascertain the circumstances in which the documents that require compulsory registration under section 17 of the Registration Act could be exempted from registration with the aid of case laws. It also states the judicial reasoning on the registrability of a deed of gift by Muslims under section 129 of the Transfer of property Act 1889. It endeavours to state that the specific words contained in a instrument for transfer of property could in some cases, do not signifies the instrument rather the nature of interest purported to be created through the instrument construes the legal effect in reference to the registration of the instrument. Similarly, it provides that a contract of sale, an oral partition, an instrument in the nature of will, etc. does not require registration. The paper infers that non-registrability of any instrument covered by section 17 of the Registration act cannot restrain the parties to the instrument from obtaining any legal recourse available for instruments that are registered.

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I. INTRODUCTION:

The Registration Act, 1908 has been enacted to provide for rules relating to registration of documents, documents which shall be registered and which may be and provisions ancillary thereto. The object of Registration of a document is to provide a “legal validity” and legal effect to it.

In *Suraj Lamp & Industries (P) Ltd. v. State of Haryana*¹, Court observed:

"Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person/s presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified."

DOCUMENTS OF WHICH REGISTRATION IS COMPULSORY:

Section 17 of the Registration Act, 1908 deals with “Documents of which registration is compulsory. It states: 17. Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(a) instruments of gift of immovable property;

¹ AIR 2009 SC 3077

(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;

(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; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent; 1

[(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, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:]

Provided that the 2 [State Government] may, by order published in the 3 [Official Gazette], exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

Section 17 [(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 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.]

“If a document does not come within the purview of Section 17, its non- registration does not bar it from being produced in evidence.”² According to Sir Stephen, “...a document is any substance or matter expressed or described upon it by marks capable of being read.”³ In Indian law, **it is the matter written** and not the substance on which it is written, is said to be a document.

INSTRUMENT OF GIFT OF IMMOVABLE PROPERTY:

Section 17(1)(a) of the Registration Act provides about registration of instruments of gift of immovable property.

Section 122 of the Transfer of Property Act, 1882 states:

“Gift” is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person called the donor to the other called the donee, accepted by or on behalf of the donee.”

Section 123 of the Transfer of Property Act, 1882 mandates registration of every gift of immovable property.

In *Bhubaneshwar Naik Santoshrai v. The Special Tahsildar Land Reforms Takkali*,⁴ Court held that under Section 3 of the Hindu Adoptions and Maintenance Act, 1956, the father is bound to maintain her daughter, which includes reasonable expenses of her marriage and therefore any property given to her whether movable or immovable during marriage do not require registration under Section 123 of the Transfer of Property Act, 1882 because it is not voluntary. Thus it is not a gift where a discharge of a duty is imposed by law.

In *T. V. Kalyansundaram Pillai v. Kanuppa Mooppanar*⁵, Court held that:

1. “neither death nor express revocation by the donor is a ground for refusing registration, if the other conditions are complied with;
2. though registration is a necessary solemnity in order to the enforcement of gift of immovable property, it does not suspend the gift until registration actually takes place.”

Essentials of gift under Muslim law:

1. A declaration of gift by the donor;
2. An acceptance of gift express or implied by or on behalf of the donee;
3. delivery of possession of the subject of gift by the donor to the donee to the extent the interest conveyed is susceptible of.

In *Jannat Bai v. Firm Jane Kushalji Jethaji*⁶, Court held that **Section 17(1)(a) of the Registration Act, 1908 applies on a Muslim gift.**

Section 129 of the Transfer of Property Act, 1882 does not prevent persons governed by Muslim law to follow Section 123 of that Act and where he does execute a transfer deed, the question of registrability turns on intention.

² J.P.S. Sirohi, *Indian Registration Act* 34 (Allahabad Law Agency, Haryana, 6th edn. 2015)

³ *Ibid* at 35

⁴ AIR 1980 AP 139

⁵ AIR 1927 PC

⁶ ILR 1960 Raj. 1470

Distinction between: Hiba and Hiba-bil – ewaj:

Hiba is corollary to the term 'gift'. Gift under Muslim law if parties desire is governed by Section 123 of the Transfer of Property Act, 1882 and Section 17 of the Registration Act, 1908.

Hiba-bil-ewaj is an exchange in the nature of Sale and thus not a gift. It must be done in a registered instrument. This is a transaction of gift for consideration so registration is mandatory.

SECTION 17(1)(b) OF THE REGISTRATION ACT, 1908:

Section 17 (1) ... (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;

In *Jiwan Ali Beg v. Basamal*⁷, Court held that “Where a document is intended to take effect from the date of execution, it is a non-testamentary instrument requiring registration under Section 17 of the Registration Act, 1908 and not a “will” notwithstanding that the word is used in the instrument.”⁸

The meaning of some of the terms of Section 17(1)(b) are:

“which purport or operate”: The word ‘operate’ in the phrase ‘purport or operate’ in this sub-section refers to immediate intention of the instrument and not to the ultimate consequences or collateral effects.⁹

“Create”: The word ‘create’ means to bring into being, to invest with a new title.

Declare”: The word ‘declare’ is ejusdem generis with the words ‘create’, ‘assigns’, or ‘limits’ which are used along with it.

Examples of documents which create or declare rights:

1. A document as a result of which immovable property which stood in the names of the parties in certain shares is to stand in their names in different shares itself declare rights in the property.¹⁰

2. That a deed purporting to bestow residence in the house and food from the rent of the house is not a declaration of an existing right of a person in respect of that house but a declaration of what his interest in that house is to be in future and therefore prima facie it requires registration under Section 17(1) (b) of the Registration Act, 1908.¹¹

3. Where recitals in a document merely declare the existence of a given state of affairs, that does not cause any change in the legal relationship to the property amongst the parties to the document, those documents do not require registration.

Distinction between Sale and contract for sale:

Section 54 of the Transfer of Property Act, 1882 states Sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part promised.

A contract for sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not of itself create any interest in or charge on such property.

Assignment: Assignment is a transfer of actionable claim and no consideration is required to be shown for assignment of decree for specific performance.¹²

Deed of Assignment does not create rights, title or interest in the immovable property. Hence it is not compulsorily registrable.

In *Ramnagina Shah v. Harihar Shah*¹³, Court held that the oral partition does not require registration. But if there is an instrument effecting a partition of immovable property, it comes under section 17(1)(b) of the Registration Act and is compulsorily registrable under that clause.¹⁴

Examples of documents which do not create or declare rights etc.:

1. A deed of adoption cannot be said to purport or operate to create an interest in immovable property by reason of the fact that as a consequence of the adoption, the adopted son may become entitled under Hindu Law to immovable property.

2. Award on mortgage declaring amount due and merely stating that on default property might be sold, Section 17(1)(b) does not apply.

⁷ 9 All. 108

⁸ J.P.S. Sirohi, *Indian Registration Act* 41 (Allahabad Law Agency, Haryana, 6th edn. 2015)

⁹ *Ibid* at 40/

¹⁰ *Lehna Singh v., Rulia*, 1953

¹¹ *Bai Parsen v. Lallunbi*, AIR 1932 Bom. 217 DB

¹² J.P.S. Sirohi, *Indian Registration Act* 45 (Allahabad Law Agency, Haryana, 6th edn. 2015)

¹³ AIR 1966 Pat. 179

¹⁴ J.P.S. Sirohi, *Indian Registration Act* 47 (Allahabad Law Agency, Haryana, 6th edn. 2015)

3. A document in which the executants declares that the land never belonged to him as he is only a benamidar contains only a recital of a fact and does not require registration.¹⁵

“Limit”: Limit’ connotes restriction of some right or interest in immovable property. Anon-testamentary instrument may limit or restrict some right or interest in some immovable property of the value of one hundred rupees and upwards and if it does not must be registered.

An agreement with the creditors not to alienate any of the persons till the debts were paid of, limits rights in immovable property.¹⁶

“Extinguish”: A deed by which a right of the value of Rs. 100 or more is extinguished is compulsorily registrable.¹⁷

“Rights, title or interest”:

A right is an interest in a property owned by a person. The owner can use this right in property for his own benefit and benefits of others.

Title denotes the fact of the existence of a right in property, It creates, transfer and extinguish rights.

The word interest is wider in scope than the word right.

“... when at the time of the contract it is contemplated that the purchaser should derive a benefit from the further growth of the thing sold, from further vegetation and from the nutriment to be afforded by the land, the contract is to be considered as for an interest in land.”¹⁸

SECTION 17(1)© : RECEIPT OF CONSIDERATION:

Section 17(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; and

This clause requires an acknowledgement in the form of a receipt to be registered. When a vendor made a receipt in favour of the vendee stating that on receipt of the consideration money he had sold a land to the vendee, it was held that the receipt fell within Section 17(1)© of the Registration Act, 1908 and was not provable by oral evidence.”¹⁹

SECTION 17(1)d): REGISTRATION OF LEASE OF IMMOVABLE PROPERTY:

Section 17 (1) ...(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent; I

A lease requires registration only if :

1. it is from year to year or
2. for a term exceeding one year or
3. if it reserves a yearly rent.

If any person inducted into possession under a non-registered deed, pays rent, and the same is accepted by the landlord, a lease is created and is terminable under Section 106 of the Transfer of Property Act, 1882 from month to month or from year to year, as the case may be.

“When the lessor transferred to the lessee rights in the demised premises indefinitely subject only to the latter continuing to pay the rent, this means that the lease was for a term exceeding one year. On this conclusion it required registration under Section 17 of the Registration Act.”²⁰

A mortgage deed is compulsorily registrable in view of the section.²¹

“Creation of an easement does not require registration.”²²

In *Satyapramoda Thirthaswamilavaru v. Gunnaya*²³, Court held that **the compromise decree which operates as a lease requires registration under Section 17(1) (d) of the Registration Act, 1908.”**

Section 17(2)

Section 17 (2) Nothing in clauses (b) and (c) of sub-section (1) applies to— (i) any composition deed; or (ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or (iii) any debenture issued by any such Company and not

¹⁵ J.P.S. Sirohi, *Indian Registration Act 50* (Allahabad Law Agency, Haryana, 6th edn. 2015)

¹⁶ *Ibid* at 55.

¹⁷ *Ibid* at 55.

¹⁸ J.P.S. Sirohi, *Indian Registration Act 58* (Allahabad Law Agency, Haryana, 6th edn. 2015)

¹⁹ *Ibid* at 84.

²⁰ *kishore Chand v. Dharam Pal*, IR 1968 p& h 385 AT 387

²¹ *Arumughachamy Nadar b. Deivanaiammam’ammal*, AIR 1999 Ori. 204

²² *Hamir Ram v. Varsing Ramal*, AAIR 1998 Guj. 165

²³ AIR 1982 AP 24

creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) 1 [any document other than the documents specified in sub-section (1A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court 2 [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding]; or

(vii) any grant of immovable property by 3 [Government]; or

(viii) any instrument of partition made by a Revenue-Officer; or (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; or

(x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or 4

[(xa) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or]

(xi) 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; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer. 5 [Explanation.—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]

In *Jagdish Chander Sinha v. Kameshwar Singh*²⁴, Court held that “if the properties forming part of the compromise were not outside the scope of the suit, the compromise in order to be lawful, has got to be registered.”²⁵

SECTION 18: DOCUMENTS OF WHICH REGISTRATION IS OPTIONAL:

Section 18. Documents of which registration is optional.—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, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;

(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;

(c) leases of immovable property for any term not exceeding one year, and leases exempted under section 17; 6

[(cc) 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, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;]

(d) 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; (e) wills; and (f) all other documents not required by section 17 to be registered.

SECTION 19: DOCUMENTS IN LANGUAGE NOT UNDERSTOOD BY REGISTERING OFFICER:

Section 19. Documents in language not understood by registering officer.—If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district he shall refuse to register the documents, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy.

²⁴ AIR 1953 Pat.178

²⁵ J.P.S. Sirohi, *Indian Registration Act 97* (Allahabad Law Agency, Haryana, 6th edn. 2015)

II. CONCLUSION:

The Registration Act, 1908 provides for mandatory registration of some documents and optional registration for others.

The object of registration is to give legal effect to the documents. The objective of compulsory registration is to give legal effect to documents which are of substantive value.