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# **INTERLINKING THE REGISTRATION ACT WITH THE PROPERTY LAWS IN INDIA: EXPLORING THE IMPACT OF UNREGISTERED DEEDS WITH RIGHTS OF TRANSFEEE**

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## **INTRODUCTION**

Property laws in India: Property laws in India are essential laws that regulate transactions, ownership, and transfer of immovable property. It goes a long way in maintaining transparency, certainty, and legality in property transactions with the statutory aid of, The Registration Act, 1908. The relationship between the Registration Act, 1908, and property laws in India is significant, as it governs the legal rights and responsibilities associated with immovable property transfers. In this backdrop, one of the crucial questions that arise would be the impact of transfer of title through unregistered deeds on the rights of the transferee, specifically in light of the statutory requisites.

The procedures for recording documents related to the dealings of immovable properties was established by The Registration Act of 1908. Registration is aimed at achieving several goals. Firstly, it associates the ownership and the title of the property which is recorded in the Register Book of the district and minimizes fraudulent activities and enables the enforcement of legal rights. The Act establishes clearly defined circumstances which make registration necessary and what the legal consequences would be for failure to register a document. Sale instruments, gifts, mortgages, and leases of immovable property that exceed time limits are mandatory for registration under Section 17 of the Act. Unregistered documents which should have been registered are not allowed as evidence as explained in Section 49, and thus have no bearing on the rights to a particular piece of property. Many litigations progress through unregistered deeds despite the explicit legal rule which poses complicated legal challenges. The unregistered deed affects the rights of the transferee which the deed is intended to convey is the fundamental issue. This problem has been considered by the Supreme Court of India has had to analyse this problem in a variety of cases to provide elaborate conclusions on the impact of unregistered

deeds on rights of transferees.

## CHAPTER II

### The Concept and Procedure of Transfer of Immoveable Property in India

The term “Property” is derived from the Latin term “Proprius”, which means “one's own”.

Property as a concept is dynamic. It has undergone significant change and been explained in a variety of ways in the fields of society, the legislation, and various historical periods. Like all the other ideas and creations of the human intellect, the term "Property" is multifaceted and transnational.

In the case of, “*Mc Alister Versus Pritchard*<sup>1</sup>” the Supreme Court of United States asserted about the term ‘property’ that, anything and everything holding valuable rights, which are owned by a person is considered as property. Similarly in the case of “*Dixon Versus Holden*<sup>2</sup>” the United States apex court extended the meaning of word property and affirmed that, in today’s era trademark, a person’s reputation, patent and such alike are also considered as property.

“Immovable Property” includes land, buildings, hereditary allowances, rights 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.<sup>3</sup> The Karnataka High Court case, “*Shree Arcee Steel P. Ltd. v. Bharat Overseas Bank Ltd*<sup>4</sup>.” stressed about making in understand the non – exhaustive nature of the term immoveable, the court was of the opinion that, Immoveable property is those which are permanently attached to the land or are fixed to the immovable properties.

Further, multiple Indian legislations come into picture for the purpose of righteous transfer of property or correct transfer of title,

- The Property Act, establishes the regulations concerning the transfer of ownership between living individuals. It pertains to movable and non - movable property.

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<sup>1</sup> Pearl McAlister v. T.E. Pritchard, 287 Mo. 494, 230 S.W. 66 (Mo. 1921)

<sup>2</sup> Dixon v. Holden, 923 S.W.2d 370 (1996)

<sup>3</sup> The Registration Act, 1908, S.2(6)

<sup>4</sup> Shree Arcee Steel Private Limited v. Bharat Overseas Bank Limited, AIR 2005 KANT 287

However, it mainly relates to the transfer of non - movable property.

- The Registration Act, requires the registration of certain documents pertaining to the transfer of non - movable property. Sale deeds, gift deeds, and lease agreements which are of more than a year, examples of other documents required to be registered as stated in 'section 17' of the act.
- The Stamp Duty, It is the responsibility of this act to ensure that stamp duty is paid for property transfer documents. Stamp duty differs with each state and is a requirement in any legal document associated with real estate transactions.
- The Real Estate Act, RERA protects clients from unsatisfactory work by developers in real estate transactions. It focuses on project registration and compliance with rules on fair trading practices.

### **2.1.Procedure for the transfer of property specifically immoveable properties –**

To ensure the valid transfer of property the procedure for the transfer includes, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.<sup>5</sup> Basically, the act of transferring rights concerning a property from person to another, whether presently or in the future. While the property is transferred, the transferor transfers all the rights in the property and ownership via: Relinquishment, Sale, Gift, Mortgage, Lease, or Leave and License agreement.

- Pursuant to Sec 54, there is a sale when there is a transfer of ownership by a deed, to wit sale deed or transfer deed, for a price whether paid, promised or partially paid and partially promised. There is a Sale Deed which is compulsorily required to be stamped (stamp duty) and registered (at a Sub Registrar's Office) and is for consideration. One of the consequences of the sale of property is the liability for taxation on capital gains, whether it is of long term or short, term depending upon the duration for which the property has been held.
- Section 105 of the Act sets forth the meaning of lease to be the transfer of enjoyment

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<sup>5</sup> The Transfer of Property Act, 1882, S.8.

of the property for a defined or undefined time frame in exchange of a fee that is agreed upon or is in the form of cash or goods and which shall be paid periodically or on certain events. Section 17 of the Registration Act, states that the rent agreement ought to be registered if the lease term is more than of 11 months which is not the case for other terms. Those are satisfied by an oral term of tenancy coupled with grant of possession. Payment of stamp duty and a fee for registration constitutes the process of registration. The reason for granting the lease ought to be stated in the lease document. In the case of “*Sathish Kumar versus Zarif Ahmed*”<sup>6</sup> the apex court affirmed that lease, of month - to - month basis but only for 11 months constitutes a valid lease.

- As per Section 58 of the act, “mortgage” means an interest transfer in a particular real estate immovable asset through a mortgage deed or title deeds for the purpose of guaranteeing repayment of a loan. Unlike other mortgages, a mortgage by deposit of title deed is done without registration. Occasionally, there is a covering memorandum which accompanies the title papers, which serves to assist the purpose of the deposition by way of a deposit. A mortgage by deposit of title deeds is done through deposit of title deeds without any written contract in between the parties. If a bargain or contract is made and reduced to writing, then such written agreement is subject to registration.
- Through a registered gift deed, one can transfer immovable property through registered gift deed. The gifts are made for free and for no consideration. The gift needs to be registered under the relevant provision of the act i.e. sec. 17 which makes it mandatory document for the registration and registrar to make the transfer valid. The deed of gift cannot be revoked or cancelled by the donor at a later stage unless there is a recital or is expressly mentioned in the deed. The donors ability to revoke the gift deed is provided for in Section 126 of the act.

Thus, when a property has been sold, or gifted, and once the transfer is done it has to be mandatorily is registered in the “name” of the recipient if the document or the deed falls under the preview of sec. 17. Along with this, the transfer should also be recorded in the municipal records via mutation. The respective state laws govern the payment of stamp duty on transfer.

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<sup>6</sup> Sathish Kumar v. Zarif Ahmed, (1997) 1 L.W. 763 SC.

Some states in India may or may not have equal gift deed stamp duties to general stamped duties for selling or relinquishing the property, this is different from state to state.

### CHAPTER III

#### **The Registration Act and The Transfer of Property Act - Legal Intersection and Importance**

The interdependence between the two is cardinal in admire to the validity, and enforceability of the proper of properties. This chapter highlights joint impact on property transactions with how compulsory registration can protect ownership rights and mitigate the risk of legal conflicts.

The Transfer of Property Act, 1882 (TPA) and The Registration Act, 1908 focus on the selling and the registering of the property documents in an orderly fashion. The TPA includes under Section 54, "...implies exchange of property with payment." Any property worth ₹100 or more needs a sale deed registered with the revenue or registrar office. This deed gives legal title to the property in question.

The Act of 1908 insists on the primary importance of registering deeds and documents. As per Section 17, documents having the proper format must be executed to be legally effective. A sale deed, if unregistered, cannot be used as proof in a court of law, including the laws of the TPA assist in making real estate transactions legal and attested in unqualified terms to the security provided. This is done in order to protect all parties by ensuring that all ownership transfers are authenticated, valid, and reliable. Further, for a number of reasons, the transactions of property must be recorded in an official manner. *First*, it allows the owner to legally prove ownership which is very crucial to protecting the interests of the buyers. It is well known that a registered sale deed is the credible foundation for real business transactions, which now a days is a must for later dealings like securing mortgage loans, or selling the property. The registration of property further adds to the transparency of the property and protects the public from being deceived by allowing interested persons to verify the particulars of the property. For one, this reduces undisclosed interests or litigations that arise from claims. It further reduces the potential for fraud with a documented chain of ownership.

- In the case of, “*Sanjay Sharma versus Kotak Mahindra Bank Ltd*”<sup>7</sup>.” the apex court of India affirmed unregistered sale agreement do not constitute valid document or deed in the eyes of law and no party can admit such document or deed in the court of law for the purpose of evidentiary proof.

Further in the case of “*Suraj Lamp & Industries (P) Ltd. (2) V. State of Haryana & Another*”<sup>8</sup> it was held by the SC that, the transfer of an immovable property by sale can only take place through a deed of conveyance (sale deed). If there is no deed of conveyance, which is properly stamped and registered in accordance with the laws, then transfer of right, title, or interest in the immovable property is not possible.

Therefore, it is evident that by virtue of Section 54 of the Transfer of Property Act, there will be no transfer of right, title or interest in an immovable property of a value over Rs 100 unless the instrument of transfer is registered. Additionally, Section 47 of the Registration Act is not determinative of completion of a sale and will only apply when a compulsorily registrable instrument is registered subsequent to its execution and not prior to such registration, thus, the two statutes The transfer of Property Act and the The Registration Act goes hand – in – hand for the purpose of transfer of properties as both the statutes and their respective provisions are imperative for a valid deed or document.

## CHAPTER IV

### Unregistered Property Deeds and Transactions - Giving rise to legal challenges and implications

The registration of a transaction of any kind of property enumerated in sec. 17 is mandatory under the Registration Act of India. Property transfer is the act of transferring the ownership rights from the transferor (the individual who part with the ownership rights) to the transferee (the one received ownership rights). Once the property has been sold or transferred to the transferee, or buyer, certain rights are conferred on him as to the property. Nevertheless, if the property deed is not registered, it may incur serious legal problems, it highlights rights of

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<sup>7</sup> Sanjay Sharma v. Kotak Mahindra Bank Ltd., 2024 SCCOnline SC 4589

<sup>8</sup> Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana [2012] 1 SCC 656

transferees and the repercussions which follow in case of an unregistered property deed.

## **RIGHTS OF TRANSFEREE**

The Transfer of Property Act and the Registration Act, 1908 and the Indian Contract Act, 1872, mainly govern the rights of a transferee in property transactions. The key rights of a transferee include:

- **RIGHT OF OWNERSHIP**

Once the transferee executes a valid sale deed and obtains the property registered, he or she acquires complete ownership over the property. Ownership suffices to give the transferee the right to possess, to use and to transfer it further.

- **RIGHT OF POSSESSION**

The transferee has a right to take appropriate possession of the property upon payment of the agreed consideration. Section 55(4) of the Transfer of Property Act, 1882, gives this right the force of law and contains an enforceability.

- **RIGHT OF QUIET OF ENJOYMENT**

If all legal formalities have been fulfilled, it is the right of the transferee to use and enjoy the property without any interference from transferor or any third party.

- **RIGHT TO TRANSFER PROPERTY FURTHER**

After acquiring ownership, the transferee can sell, lease, mortgage, or gift the property to another party. However, this right is subject to compliance with legal provisions.

- **RIGHT TO SEEK LEGAL REMEDIES**

The transferee possesses the right to request legal redress when either the seller violates the contract or fails to deliver possession.

Under Section 6 of the Specific Relief Act 1963 the beneficiary can file a specific performance suit. The transferee has the right to demand compensation when a contract

breach occurs.

## **IMPLICATION OF AN UNREGISTERED DEED**

A property deed requires registration through Section 17 of the Registration Act, 1908. Various legal and financial complications will emerge because an unregistered deed remains unenforceable according to Section 17 of the Registration Act, 1908.

- **NO LEGAL RECOGNITION OF OWNERSHIP**

Without proper registration legal rights of ownership do not transfer to the receiving party from the deed. The Supreme Court of India ruled that unregistered sale deeds provide no basis for proving ownership rights.

- **PROPERTY CANNOT BE SOLD OR MORTGAGED**

Due to the lack of ownership recognition by law the recipient lacks the ability to execute valid sales or mortgages or transfers of ownership. Banks as well as financial institutions refuse to provide mortgage loans on these properties.

- **LACK OF LEGAL PROTECTION**

An unregistered deed provides less support to the transferee's court position when property disputes occur. Section 49 of the Registration Act, 1908 determines court evidence rules by stating that unregistered documents lack title evidence for property ownership.

- **HIGHER RISKS OF FRAUD AND DISPUTES**

The chance of property ownership problems rises because an unregistered property deed exists. Another buyer can find out the seller tricked them because they sold the same land to many buyers. The sellers legal heirs attempt to stop the new property holder from taking title, Encroachments and adverse possession claims.

- **INELIGIBILITY FOR GOVERNMENTS BENEFIT AND TAX EXEMPTIONS**

Benefits through government subsidies and property buyer programs become

accessible only when you submit registered property documents. A tax break exists for home loan holders under Section 80C of the Income Tax Act 1961. Government subsidies and schemes for property buyers.

- **LIABILITY FOR PENALTIES AND LEGAL CONSEQUENCES**

Non-registration of the deed may attract penalties under *Section 23* of the *Registration Act, 1908*. Additionally, the transaction may be considered legally void in certain cases.

- **RISK OF EVICTION BY ORIGINAL OWNER**

When disagreements emerge about a transaction the original property owner (transferor) might remove the transferee since they claim the sale process never finished according to legal standards.

## **LEGAL REMEDIES FOR UNREGISTERED DEED**

- **FILING OF SUITS FOR SPECIFIC PERFORMANCES**

The transferee possesses the right to initiate legal proceedings under the Specific Relief Act 1963 for compelling the seller to finalize the property registration according to the agreement.

- **EXECUTION OF FRESH SALE DEED**

The purchaser has the right to request the seller to create a new sale deed followed by registration. The court is available to the transferee when the seller refuses to execute the new sale deed and registration.

- **LEGALIZATION THROUGH COURT DECREE**

A court can take legal action to order property title registration in favor of the transferee when a seller fails to cooperate.

- **ADVERSE POSSESSION CLAIMS**

Under Article 65 of the Limitation Act, 1963, a transferee can gain ownership of

property by adverse possession when they continuously hold it without interruption for longer than 12 years.

Therefore, property deed registration stands as a vital legal requirement which verifies the rights of the transferee while validating property transfer deals. A deed without proper registration creates multiple serious consequences because it results in the loss of ownership rights and legal conflicts that can incur major financial costs. Before buying property buyers need to make sure their sale deed gets registered under the Registration Act, 1908 for safeguarding their legal position together with their financial integrity.

## **CHAPTER V**

### **The rights of Transferee – Implications Faced by Transferee when Property Deed go Unregistered**

Real estate transactions are among the most important legal and financial activities carried out by people, companies, and institutions. One of the most crucial parts of real estate transactions is the issuance and registration of property deeds, which comes after the legal portion of the transaction. In principle, deeds of properties are the primary and legal proof of ownership interests to properties and define the rights and obligations of the concerned parties. Still, for a number of reasons, most property transactions are done by using unregistered deeds of transfer, thus giving rise to a plethora of legal dilemmas and disputes. This paper does the exploration of the legal aspects and consequences of unregistered property deeds and property transactions.

#### **Legal Challenges of Unregistered Property Deeds**

- The courts treat unregistered property deeds as weak legal documents which presents one of the primary legal challenges. Most jurisdictions operate under the assumption that an unregistered property transaction does not give rise to a legal title. Therefore, in the event of a dispute, a party with an unregistered deed is unlikely to have any means of rights enforcement under the law.
- Such unrecorded transactions open avenues to fraudulent activities. Because unsanctioned deeds lack formal registration, dishonest sellers could potentially sell the same property to numerous buyers. Registered buyers typically have the

better claim in law, while other buyers with unrecorded deeds risk losing much money.

- Without the existence of formal registration, demonstrating ownership of a property becomes arduous, if not impossible. To prove ownership in the courts, one has to resource a significant amount of evidence, which in the case of an unregistered deed is very difficult. This situation can result in considerable property disputes accompanied with prolonged periods of litigation.
- An unregistered property deed will limit how an owner can sell or encumber a property. Unregistered documents deal with much of the financing paperwork which proves problematic for banks and other institutions because they need registered documents to provide loans or mortgages. Therefore, owners of unregistered deeds may find it more difficult to obtain funds or sell the property within legal boundaries.
- Usually, governments pay for purchasing lands through compensatory payments, rehabilitation schemes, and property subsidizations. Unfortunately, those with unregistered heritable deeds may be missing out on benefits of compensation schemes because their ownership is not recorded. This presents issues for some people such as major losses financially in compulsory land acquisition or redevelopment of the region by the government.

### **Implications of Unregistered Property Transactions**

- **Impact on Real Estate Market**

Notarised deals involving real estate shift and move to an unregulated jurisdiction due to the present-day lack of control. This produces a corresponding informal sector in addition to real distortion within the realms of economy and society. These factors decrease clarity, enhance the chances of conflicts, and retard progress toward forming a sound and effective real estate market.

- **Legal and Financial Risks for Buyers**

Individuals who buy properties without registered deeds invite both legal and financial risks. If

there are disagreements, their investment is at stake, and establishing proprietorship becomes problematic. Furthermore, they run the risk of being penalized or legally prosecuted for the undisclosed transaction if the relevant authority comes across it.

- **Revenue Loss for Governments**

Sales of real estate profits the government considerably through stamp duty, registering fees, and taxes on the purchased property. It leads to negative consequences when those transactions are left unregistered because the government loses a big amount of revenue, in turn stunting the growth of public infrastructure and improving basic public services. To control these unregistered transactions, government authorities infrequently take harsh actions and punish defaulters to ensure compliance.

- **Inheritance and Succession Complications**

The unregistered property deeds pose challenges in inheritance and succession matters for individuals. Proving one's legal claim to the property has always posed a challenge for legal heirs, claiming the heirs as the primary challengers. This may result in extended legal conflicts and disputes among families.

- **Increased Burden on Judicial System**

Property transactions that are not registered lead to disputes which increase the backlog of cases at the court's disposal. Since unregistered deeds are unlawful, the courts have no other choice but to seek additional proofs and additional testimonies in trying to resolve such cases. This puts additional burden on the judiciary system and results in unjustified delay in justice for the victims.

### **Steps to Overcome Problems Resulting from Unregistered Deeds**

- **Compulsory Registration and Public Awareness**

There must be appropriate regulation that requires the way in which the sales of properties are to be registered. There must be appropriate mechanisms to inform buyers and sellers of the consequences that are associated with their actions, unregistered transactions and advantages of registering them suitably.

- **Going Out of One's Way for Registration**

People are not willing or cannot register property transactions due to time-consuming and cumbersome registration process. Procedural simplification steps like being of lower cost of money and time, and submitting records electronically can induce voluntary compliance and generate fewer unregistered transactions.

- **Consolidation and Clarity in Land Records**

Free and clear land records of ownership claims and complaints from customers due to ownership claims will prevent fraud and complaints from customers due to ownership claims. Electronic land registries and the use of blockchain technology provide security against copying and provide assurance of authenticity up to the point the property sold is included.

- **Create a Legal Framework for Unregistered Dealings**

There are certain cases where there is justification as to why certain parties cannot be allowed to register property transactions. Governments must make provision for persons in such a way that they can register unregistered property transactions within a period that is not exorbitant and the charge or fee levied.

## **CHAPTER VI**

### **CONCLUSION**

The Registration Act forms the backbone of The Transfer of Property Act, Legal documents are registered following the provisions of the Registration Act of 1908 which includes specific policies and practices for the registration of legal documents. Registration is the process of obtaining an official holding of an original document and some other relevant details.

Considering the straightforwardness with which future conflicts or problems stemming from transactions can be mitigated, the registration of a legal document is one of the most critical steps in a legal transaction. Legal documents include real estate, insurance claims, loans, business contracts, among others that greatly impact our day-to-day living. Therefore, the judicial precedents set forth acts as wake up call for the general people who still chooses to

ignore the essential process of registration for the documents which holds compulsion for the same.