

LLB.3rd Semester; SCHOOL OF LAW UNIVERSITY OF KASHMIR

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LOCAL LAWS-III

Unit-III

JAMMU & KASHMIR REGISTRATION ACT

Object of the Registration Act

The purpose of the Registration Act, amongst other things, 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.

Registration is deemed to prevent fraud. The object of registering a document is to give notice to the world that such a document has been executed. Registration of a document does not confer the title over the property as mentioned in the document registered, but provides an

evidence of such transactions being registered, based on which title over the property could be established. For registration of documents relating to conveyance of properties belonging to Government, local bodies or religious institutions, “No Objection Certificate” is required from the relevant authorities concerned.

Registration of a document is notice of all the facts stated in that document. The purpose of the Jammu and Kashmir Registration Act, 1977, as disclosed in its provisions, is to provide information to people, who may deal with property as to the nature and extent of rights which a person may have affecting that property. In other words it is to enable people to find out whether any particular piece of property, with which they may be concerned, has been made subject to some particular legal obligation.

Further registration gives solemnity/seriousness of form and legal importance to certain classes of documents by directing that they shall be registered. Another purpose is to perpetuate documents which may afterwards be of legal importance; and the general purpose is to put on record and enquire what the particulars are and in case of land what obligations exist with regard to it.

The provisions of the registration Act are very carefully designed to prevent forgeries, procurement of conveyances or mortgages by fraud or undue influence - *K. Roy and Bros v. Ramanthdas*, AIR 1945, Cal 37. It

must also be noticed that, as observed by Supreme Court in the case of Lachhman Dass v. Ram Lal and Another, 1989 (3) SVV 99, that the real purpose of registration is to secure that every person dealing with property, where such document requires registration may rely with confidence upon statements contained in the document as a full and complete account of all transactions, by which title may be affected.

The object of the Registration Act, 1908, has been succinctly put forth by the Honourable Apex Court in SURAJ LAMP & INDUSTRIES (P) LTD. vs. STATE OF HARAYANA [(2009) 7 SCC 363] in the following words:

“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.”

The Jammu and Kashmir Registration Act

The Jammu and Kashmir Registration Act, was passed in 1920. Later, the Act was amended in 1977. It extended to the whole of the Jammu and Kashmir and came into force in 1978. The Act is now called as the Registration Act, 1977.

The Registration Act, 1908 (which is a Central Act), now applicable to Jammu and Kashmir with effect from October 31, the day the state will be formally bifurcated into two Union Territories.

The Jammu and Kashmir State Administrative Council (SAC) has after the JK Reorganisation Act,2019, approved creation of a new Department of Registration to provide hassle free and speedy service to people for registration of documents pertaining to property, mortgage etc. The new Department of Registration is being created under the Registration Act, 1908 (which is a Central Act), now applicable to Jammu and Kashmir with effect from

October 31, the day the state will be formally bifurcated into two Union Territories.

The Department of Registration shall function under the overall administrative control of the Revenue Department. SAC also approved appointment of Additional Deputy Commissioners and Sub-Divisional Magistrates/Assistant Commissioners Revenue to exercise the powers of Registrars and Sub-Registrars, respectively, within such jurisdiction to be notified by the Revenue Department for purposes of the Registration Act, 1908.

The new registration act also changes the authorities who control the registration of land transactions. Under the state law, the registration of such transactions had to go through the judiciary.

Definitions [Section 2]

In this Act, unless there is anything repugnant in the subject or context-

(1) "***addition***" means the place of residence, and the profession, trade, of a person described, and, in the case of a permanent resident of the state, his father's name, or where he is usually described as the son of his mother, then his mother's name and in case of married women, her husband's name;

(2) "**book**" includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book and the information storage devices like floppy disc, hard disc or compact or any other device;

(3) "**district**" and "**sub-district**" respectively means a district and subdistrict formed under this Act;

(4) omitted

(5) "**endorsement**" and "**endorsed**" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act;

(6) "**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 or grass;

(7) "**lease**" includes a counterpart, kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease;

(8) "**minor**" means a person who, according to the personal law to which he is subject, has not attained majority;

(9) "*movable property*" includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immovable property; and

(10) "*representative*" includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot.

POWERS AND FUNCTIONS OF REGISTRAR

(1) Power to superintend and control Sub-Registrars

Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate. [Section 68]

(2) Power to rectify any act or omission

Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered. [Section 68]

4. Power to Hear Appeal

The registration work is carried out by the Sub-Registrars in their sub-areas according to their jurisdictional or territorial sub-divisions in each

district under the control of the Registrar posted for the aforesaid purpose at the district headquarters. If the Sub-Registrar refuses the registration or lingers it for no cogent reason or the person affected otherwise feels aggrieved from the treatment of the meted out to him at the office of the Sub-Registrar, then he may make a complaint thereof to the Registrar of the district for redressal of his grievance.

In a case, it was held that, after a document is registered, the Sub-Registrar ceases to have jurisdiction over the matter. It is only before the registration of the document that, for reasons to be recorded, the Sub-Registrar can refuse to register the document within the mandate of Section 71 of the Registration Act, 1908. However, such an order of the Sub-Registrar, refusing the registration of the document in question can be appealed before the Registrar under Section 72 of the Registration Act, 1908. [Bina Murlidhar Hemdev v. Kanhaiyalal Lokram Hemdev, AIR 1999 SC 2171]

5. Registration by Registrars in certain cases

Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.[section 30]

6. Registration or acceptance for deposit at private residence

In ordinary cases the registration or deposit of documents under this Act, shall be made only at the office of the officer authorized to accept the same for registration or deposit.

Provided that such officer may, on special case being shown, attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will. [Section 31]

In the certain cases (viz; persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend ; persons who are in jail under civil or criminal process ; and persons exempt by law from personal appearance in Court) ; the Registrar or Sub-Registrar, as the case may be, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office.[section 33]

To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar may either himself go to the house of the person purporting to be the principal, or to the Jail in which he is confined, and examine him, or issue a commission for his examination.[sec 33]

7. Enquiry before registration

No document shall be registered under this Act, unless the person executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer.

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding five times the amount of the proper registration fee, in addition to the fine, if any payable under section 25, the document may be registered.

8. Enforcing the Appearance of Executants and Witnesses

If any person presenting any document for registration or claiming under any document, which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, issue a summons requiring him to appear at the registration office, either in person or by duly authorised agent, as in the summons may be mentioned, and at a time named therein.[section 36]

9. On registering any non-testamentary document relating to immovable property, the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate. The Registrar shall also forward a copy of such document, together with a copy of the map or plan (if any)

mentioned in section 21, to every other Registrar in whose district any part of such property is situate.[section 66]

10. Powers of civil court

The Registrar may, for the purpose of any enquiry (under section 74), summon and enforce the attendance of witnesses, and compel them to give evidence, as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure.

PART III: OF REGISTRABLE DOCUMENTS

Section 17: Documents of which registration is compulsory:

Section 17 of the Indian Registration Act 1908, deals with the documents that are compulsory to be registered.

(1) The following documents shall be registered, namely:

(a) instruments of gift of immovable property:

The word gift is not defined in the Registration Act but in common parlance it is understood in much the same sense as it is defined in section 122 of the Transfer of Property Act, Which reads: “Gift is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person called donor, to

another called the done and accepted by or on behalf of done". Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the done dies before acceptance the gift is void. Section 123 of the Transfer of Property Act requires that the transfer of immovable property by way of gift must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

Thus, a document by which rights in immovable property are surrendered without any consideration is in effect a deed of gift which under section 17 (a) requires registration – *Hira singh v. Punjab Singh*, 1925 Lah 183. Section 17 (1) (a) is not attracted when the deed of gift relates to immovable property, but all instruments of gift of immovable property must be registered whatever be the value of property – *Proto Kolithah v. Mottea Kolithah*.

An unregistered gift deed, therefore, cannot be used to create a title to immovable property – *Rup Narain Panday v. Sheo Dagar Tewari*, 1939. An instrument of gift which effect an immediate transfer of ownership falls under this clause **though the instrument provides that whatever called upon by the done, the donor would execute a registered gift deed – S. Chinna Buddha Sahib v. Raja Subamma, 1954.**

Muslim Gifts Not Compulsory Registrable:

All instruments of gift except those executed by a Muslim are compulsorily registrable under the Act. The Apex Court in *Hafeeza Bibi v. Shaikh Fareed*, 2011, held that the position is well settled, which has been stated and restated time and again, that the three essentials of a gift under Mohammadan Law are: 1. declaration of the gift by the donor; 2. acceptance of the gift by the done and 3. delivery of possession.

Though, the rules of Mohammadan Law do not make writing essential to the validity of a gift; an oral gift fulfilling all the essentials make the gift complete and irrevocable. However, the donor may record the transaction of gift in writing.

Asaf A. A. Fyze in *Outlines of Mohammadan Law*, states in this regard that writing may be of two kinds: (i) it may merely recite the fact of a prior gift; such a writing need not be registered. (ii) it may itself be the instrument of gift; such a writing in certain circumstances requires registration. He further says that if there is a declaration, acceptance and delivery of possession coupled with the formal instrument of a gift, it must be registered. Conversely, the author says that registration, however, by itself without the other necessary conditions, is not sufficient. Thereupon the Division Bench of the Court observed: "In our opinion, merely because the gift is reduced to writing by Mohammedan instead of it having been made orally, such writing does not become a formal document or instrument of gift."

When a gift could be made by Mohammadan orally, its nature and character is not changed because of it having been made by a written document. What is important for a valid gift under Mohammadan Law is that three essential requisites must be fulfilled. **The form is immaterial if all the three essential requisites are satisfied constituting valid gift, the transaction of gift would not be rendered invalid because it has been written on a plain piece of paper. The distinction that if a written deed of gift recites the factum of prior gift then such deed is not required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to us to be in conformity with the rules of gift in Mohammadan Law”.**

The Apex Court further observed: “We find ourselves in express agreement with the statement of law from Mulla; Principle of Mohammadan Law, page 120....(i.e.).....it is not the requirement that in all cases where the gift made is contemporaneous to the making of the gift then such deed must be registered under section 17 of the Registration Act. Each case would depend on its own facts”. In this case the Supreme Court approved the views of Calcutta High Court in Nasib Ali case and the Gauhati High Court in Md. Hesabuddin case.

The Court further observed that the judgments delivered by Andhra Pradesh High Court, Jammu and Kashmir High Court and Madras High Court do not lay down the correct law - *Hafeeza Bibi v. Shaikh Fareed*, 2011.

Exemption of Muslim Gifts from registration and the Doctrine of Constructive Notice:

Registration of a document is notice of all the facts stated in that document. The purpose of the Jammu and Kashmir Registration Act, 1977, as disclosed in its provision is to provide information to people, who may deal with property as to the nature and extent of rights which a person may have affecting that property. In other words it is to enable people to find out whether any particular piece of property, with which they may be concerned, has been made subject to some particular legal obligation. Further registration gives solemnity of form and legal importance to classes of documents by direction that they shall be registered.

Another purpose is to perpetuate documents which may after words be of legal importance; and the general purpose is to put on record and enquire what the particulars are and in case of land what obligations exist with regard to it. The provisions of the Registration Act are very carefully designed to prevent forgeries, procurement of conveyances or mortgages by fraud or undue influence – *K. Roy and Bros v. Ramanthdas*, AIR 1945 Cal 37.

In *Brahma Nath v. Chandra Kali*, AIR 1961 Pat 79, Patna High Court observed: The real purpose of registration is to secure that every person dealing with property, where such dealings require registration may rely

with confidence upon the statements contained in the register as a full and complete account of all transactions by which his title may be affected unless indeed he has actual notice of some unregistered transaction which may be valid apart from registration.

Given this context, the relevant question is whether the exemption of Muslim Gifts operates against the Spirit of the Registration Act or does it make the doctrine of constructive notice ineffective vis-à-vis Muslim gifts of immovable property? The answer of course will be in negative. Under the Muslim Law requirement of delivery of possession to complete a gift reinforces the doctrine of constructive notice. Muslim Law of gift attaches great importance to possession or seisin of the property gifted (Kabz-ulKamil) especially of immovable property – *Kathessa Umma v. Narayanath*, AIR 1964 SC 275. The Hedaya says that Seisin in case of gift is expressly ordained and Baille quoting from the inayah refers to the Hadis of Prophet declaring that “a gift is not valid unless possessed”. Explanatin II appended to Para 8 of Section 3 of the Transfer of property Act reads as:

Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

It follows that the actual possession operates as a constructive notice of the title. Therefore, the requirement as actual delivery of possession of

the subject matter of the gift operates as constructive notice even without the registration.

(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, to or in immovable property;

Comment:

The conditions necessary for the application of section 17 (1) (b) are:

- a. The instrument in question must be non-testamentary pertaining to immovable property;
- b. It must not be instrument of gift of immovable property;
- c. It must purport or operate to –
 - i. create, declare, assign, limit or extinguish, whether in present or in future;
 - ii. any right, title or interest, whether vested or contingent;
 - iii. to or in immovable property; and
 - iv. the property is situated in a district where the Act is in force.

Meaning of non-testamentary document was given in *Umrao Singh v. Lachman Singh*, it means a document which is plainly intended to be

operative immediately and to be final and irrevocable, is a nontestamentary document.

Scope of following words:

Create: Every non-testamentary instrument which means to or has the effect originating some right, title or interest in immovable property will be governed by the words 'create' – *Ghulam Ahmad v. Ghulam Qadir*.

Declare: In section 17, the word declare is placed along with 'create', 'limit' or 'extinguish' a 'right', 'title' or 'interest' and these words imply a definite change of legal relation to the property by an expression of will embodied in the document referred to. Therefore the word 'declare' implies a declaration of will, not a mere statement of a fact - *Ghulam Ahmad v. Ghulam Qadir*.

Assign: The term 'assign' means to convey; to transfer rights or property. Therefore, a document by which the mortgagor assigned all his rights and interest in the immovable property subject to the mortgage debt and interest thereon must necessarily be registered – *Barsik Nandi v. Gurdas Pal*.

Limit: Limit connotes restriction on some right or interest in immovable property, for instance, an agreement with the creditors not to alienate any of the property till the debts were paid of, limits rights in immovable property – *Lalji Das v. Chet Ram*.

(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;

Comment:

To attract the applicability of the above provision it has to be shown that the document in dispute is a non-testamentary instrument acknowledging receipt of a consideration on account of creation, declaration, assignment, limitation or extinction of any right, title or interest - *Ghulam Mohammad v. Shri Subhan*.

In other words, to attract this clause following two conditions must be satisfied:

- i. Document must be the receipt of consideration; and
- ii. Document, must, prima facie, be an acknowledgement of payment of some consideration on account of the creation, declaration, assignment, limitation or extinction of a right, title or interest.

(d) any partnership deed;

Comment:

Section 17 of the J&K Registration Act contemplates compulsory registration of any partnership deed. However, all that the Registration Act contemplates is the registration of a deed of partnership and not the registration of partnership as such under the Registration Act. Non

registration of a partnership under the Registration Act would not, thus, affect the partnership, its affairs and the rights and liabilities, which it or its partners have under the J&K State Partnership Act, 1996.

In *Hemkund Transport Service v. Union of India and Others*, 2008, J.P. Singh, J. observed:

Although section 17 prescribes the compulsory registration of any partnership deed, section 49 does not contemplate any affect of its nonregistration. Non- registration of compulsory registerable documents under section 17, entails the consequences, which are mentioned at clauses (a) (b) & (c) of section 49. This section is completely silent as to the effect of non-registration of partnership deed. Expressions ‘such property’ and ‘conferring such power’ appearing in section 49 (c), refer only to the property i.e. immovable property and power i.e. power to adopt as mentioned in section 49 (a) & (b) of the Registration Act. It, therefore, follows that the rigour of section 17 in requiring compulsory registration of a partnership deed has been diluted with the omission of partnership deed from the purview of section 49 of the Registration Act.

(e) any adoption deed;

Comment:

Under (Central) Registration Act of 1908 adoption deed is not required to be compulsorily registered; because it is not the adoption deed by which the rights of the adopted son are created; but the adoption itself

and any wording in the adoption deed cannot either create or limit any rights which the adopted son gets by his adoption. However, under J&K Registration Act 'any adoption deed' requires compulsory registration – *Vishvanath Ramji Karale v. Rahibai Ramji Karale*.

(f) any non-testamentary authority to adopt; and

Comment:

Under (Central) Registration Act of 1908 'authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will' is compulsorily registrable. However, under J&K Registration Act 'any non testamentary authority to adopt' is required to be registered compulsorily. The difference between the two is that the later is gender neutral, former is gender specific.

(g) leases of immovable property for any term exceeding one year, or reserving a yearly rent exceeding fifty rupees;

Provided that the Government may, by order published in the Jammu and Kashmir Government Gazette, exempt from the operation of this subsection any such leases executed in any district, or part of a district.

Comment:

In order to attract the section 17 (1) (g), a lease must be-

(a) of immovable property;

(b) for term exceeding one year, and

(c) must reserve a yearly rent of more than Rs. 50.

Unless the deed itself mentions the rent to be paid yearly, it cannot be said that the lease reserves yearly rent and as such the deed is not compulsory registrable – *Dharamarth Department v. L. Basant Lal*. However, a lease for two years does not cease to be a lease for a term exceeding one year merely because it provides that the tenant could be evicted, if he committed a breach of terms and is therefore, compulsorily registrable under clause (g) of section 17 of the J&K Registration Act – *Ishwar Dutt v. Sunder Singh*.

(h) 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, to or in immovable property;

Comment:

In order to attract the section 17 (1) (h), following conditions are necessary;

(a) there must be a non-testamentary instrument relating to immovable property;

(b) it must either transfer or assign;

i. any decree or order of a court or ii. any award.

(c) such decree or order or award must purport or operate;

i. to create, decree, assign, limit or extinguish, (whether in present or in future);

ii. any right, title or interest (whether vested or contingent) in such property.

In *Krishan Lal v. S. Pal Singh*, AIR 1968, S obtained a compromise decree for ejection from a house against R. S sold the property in dispute to P by means of a sale deed and also by means of an agreement transferred the decree obtained against R to P. On the basis of the sale deed and the agreement P sought to eject R from the suit property, however, R took an objection that the transfer or assignment of decree being unregistered was not receivable in evidence. It was held that document or agreement is covered under Section 17 (1) (h) and is inadmissible on account of being unregistered.

(i) any document which purports or operates to effect any contract for sale of any immovable property.

Comment:

Earlier contract for sale of immovable property was not required to be registered, however, by the Amendment Act of 2011, “any document which purports or operates to effect any contract for sale of any immovable property” is now compulsorily registrable.

(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 creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except insofar 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) any document other than the documents specified in clause (i) of subsection 1 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 [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 government; or

(viii) any instrument of partition made by a revenue officer; or

(ix) any instrument relating to loan granted under authority of cabinet order No 1547-C of 1953 dated 15th December, 1953;

(x) any order granting a loan under the Jammu and Kashmir Government Aid to Agriculturist and Land Improvement Act, 1871, or the Land Improvement Act, 1893; or instrument for securing the repayment of a loan made under that Act; or (x-a) any instrument relating to loan granted to displaced persons for construction of houses or for petty trade;

(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 instrument which purports or operates to transfer land in favour of state or a Panchayat constituted under the Jammu and Kashmir Village Panchayat Act, 2008.

Section 18

Documents of which registration is optional:

Any of the following documents may be registered under this Act, namely:

(a) leases of immovable property from year to year or for any term below one year, and receiving a yearly rent of rupees fifty or less and leases exempted under section 17;

(b) 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;

(c) wills; and

(d) all other documents not required by section 17 to be registered.

Comments:

The registration of following documents are optional:

(a) leases not covered under section 17 (1)(g);

(b) instruments affecting change in legal relation in movable property;

(c) wills because they are recoverable by subsequent declaration of the testator.

In other words, all the documents which does not fall under section 17(1) are not compulsorily registered.

Section 18-A

Document for registration to be accompanied by true copy thereof:

Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document presented to him for registration unless such document is accompanied by a true copy thereof.

Part XII

Of Refusal to Register

Section 71

Reasons for refusal to register to be recorded.- (1) Every Sub-Registrar refusing to register a document, except on the grounds that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his book No. 2. and endorse the words "registration refused" on the document; and, on application made by any person executing or

claiming under the document shall without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

Section 72

Appeal to Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution.-

(1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the registrar may reverse or alter such order.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure

prescribed in sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

Bina Murlidhar Hemdev v. Kanhaiyalal Lokram Hemdev, AIR 1999 SC 2171:

In this case, it was held that, after a document is registered, the Sub-Registrar ceases to have jurisdiction over the matter. It is only before the registration of the document that, for reasons to be recorded, the Sub-Registrar can refuse to register the document within the mandate of Section 71 of the Registration Act, 1908. However, such an order of the Sub-Registrar, refusing the registration of the document in question can be appealed before the Registrar under Section 72 of the Registration Act, 1908.

The question that arose for adjudication in this case was the following: Whether a person admitting the execution of series of documents before the Sub-Registrar can afterwards raise a question that his initials were there only on some of the pages and not on all the pages?

It was held that, a person executing and admitting series of documents before the Sub-Registrar cannot afterwards deny the existence of some of documents bearing his signatures, while admitting the others.

Section 73:

Application to Registrar where Sub-Registrar refuses to register on ground of denial of execution.-

(1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document or his representative, assign or agent authorised as aforesaid may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

Section 74:

Procedure of Registrar on such application.- In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, the Registrar shall, as soon as conveniently may be, enquire-

(a) whether the document has been executed;

(b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

Section 75

Order by Registrar to register and procedure thereon.- (1) If the Registrar finds that the document has been executed and that the requirements have been complied with, he shall order the document to be registered.

(2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59, and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

(4) The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compel them to give evidence, as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be

paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure.

Section 76

Order of refusal by Registrar.-

(1) Every Registrar refusing-

(a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

(b) to direct the registration of a document under section 72 section 75,

shall make an order of refusal and record the reasons for such order in his Book No. 2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

(2) No appeal lies from any order by a Registrar under this section or section 72.

Section 77

Suit in case of order of refusal by Registrar.-

(1) Where the Registrar refuses to order the document to be registered, under section 72, or section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections (2) and (3) of section 75 shall, *mutatis mutandis* apply to all documents, presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such.

The Government may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar, and may authorise any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate:

Provided that no such authorisation shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act. [section 7]

Commentary

Registration of documents of immovable properties is compulsory according to Section 17 of the Indian Registration Act,1908 and Section 54 of the Transfer of Property Act,1882. However, there are certain circumstances under which the registering authority can refuse registration of documents under the Indian Registration Act, 1908. The refusal could be on the ground of jurisdiction of the sub-registrar or for non-compliance of rules and procedure. Some of the grounds on which there could be a refusal by the sub-registrar to register a document are listed below:

- The document has corrections, alterations, erasures, interlineations blanks, which are not attested by the executant.
- The description of the property is insufficient to identify and the document is not accompanied by a copy of the map, plan as required under the relevant provisions.
- The document is presented after prescribed time limit.
- The document is presented by a person who has no right to present it.
- The executants or their authorised representative, assigns, agents did not attend to registration within the prescribed time.

- The sub-registrar is not satisfied as to the identity of the person appearing before him as executant or he is not identified to the satisfaction of the sub-registrar.
- The date of execution is not mentioned in the document or correct date is not possible to be ascertained or the date of execution is altered making it impossible to ascertain.
- The Sub-registrar is not satisfied as to the right of person appearing as agent or representative or assignee.
- The execution is not admitted by person said to have executed or his agent.
- The person supposed to have executed the document is a minor, idiot, lunatic, not competent to contract.
- In case where the executant is dead and the execution by such deceased person is denied by his representative or assignee.
- In case of more than one representative of the deceased and when some of them admit the execution and others deny the execution, it will be treated as refusal and registration may be refused.
- The death of the person who is supposed to have executed is not conclusively proved when the document is presented by his representatives or assignees.
- The sub-registrar is not satisfied as to the fact of execution of Will presented after the death of the testator or donor.

- The prescribed fee, penalty under any other law in force for time being has not been paid

Refusal Endorsement

If the refusal is on grounds other than denial of execution, the Sub-registrar is required to endorse the document "Registration refused" and also record his reasons in prescribed books. The person executing the document or any person claiming under such document may request the sub-registrar to provide him a copy of the reasons for refusal, which shall be furnished without unnecessary delay and no fee shall be charged. In this connection, Section 71(1) of the Indian Registration Act is relevant.

When a document is refused to be registered and endorsed accordingly, the recourse open to the aggrieved person is to file an appeal to higher authorities and orders thereon obtained.

APPEAL TO THE REGISTRAR

When the registration of a document is refused on grounds other than want of jurisdiction or on denial of execution, the aggrieved party may appeal in writing to Registrar of the District or Officer in charge, District Registrars office, along with a copy of refusal order and the document. The appeal may be presented by the appellant himself or agent or through his advocate. The appeal shall be preferred within 30 days from the date of refusal order.

If the document is in possession of some other person, other than appellant and requires time to present such documents the registrar will grant time.

Further, in cases where the sub-registrar is satisfied that the executant is deliberately keeping away to avoid registration or has gone to a distant place and not likely to return within prescribed time to admit registration, the sub-registrar may refuse to register the document treating the absence of the executant as denial of execution.

In case the sub-registrar refuses registration for reasons of denial of execution the persons claiming under such document or their agents may appeal in writing to the registrar within 30 days of the order of refusal supported by a copy of the reasons for refusal and the document along with verification of the statements made in the appeal.

In the case of denial of execution, only the claimant under such document or his agents shall appeal and the application shall be duly verified. In other cases the appeal may be filed by the executant or claimant or his agent. In the case of refusal to register the Will after the death of the testator by the sub-registrar, the appeal can be filed by the executor of the will before the Registrar.

The registrar will conduct enquiry, as to the execution, compliance of various laws, proper payment of stamp duty and after being satisfied

shall order for the registration of the document. In case if he finds reasons for refusal are correct, he may also refuse the registration.

In case of appeals, on the grounds of insufficient details to identify the property, Registrar has no power to call for further description of the property.

The condition of enclosing a copy of the reasons for refusal by sub-registrar against which appeal or application is preferred, may be waived by the registrar and decide the case based on merits and demerits.

If the registrar reverses the order of the sub registrar and orders for registration of the documents, such document has to be presented for registration within 30 days of such order. The concerned sub registrar shall obey the order and shall proceed with the registration. The registration of such document shall be operative from the date on which it was first presented for registration and refused and not from the date of actual registration.

Refusal by Registrar

The Registrar may refuse the registration for want of jurisdiction or that, the document has to be registered in sub-registrar office, or for the reasons recorded by the sub registrar, he shall record the reasons for refusal in records and furnish a copy of such reasons to the party. The aggrieved party may approach the civil court within whose limits

the office of registration is located. Such appeal has to be done within 30 days of the Order of refusal by the registrar.

Under Section 73, the application has to be made before the Registrar, and it is, therefore, the Registrar who can entertain the application against the order of the Sub Registrar refusing to register a document on the ground of denial of execution. [Section 75](#) of the Act empowers the Registrar to pass orders for registration of a document.

An inquiry under [Section 74, Registration Act](#) should be made by the Registrar himself. He cannot delegate his power to anyone else. A Sub Registrar holding such an inquiry under an order of the Registrar cannot be said to be acting in execution of the [Registration Act](#) in any proceeding or inquiry under that Act. An order for the prosecution under [Section 82, Registration Act](#) of a witness who gives evidence before the Sub Registrar in such an inquiry is wrong in law.

The provisions of [Section 74](#) are mandatory and the District Registrar has no jurisdiction to refer the matter to his Deputy, the Sub Registrar, and if it is so referred, any proceedings or order made by the Sub Registrar ordering the petitioner to be prosecuted is illegal. [Section 74](#) provides for the procedure how the Registrar has to proceed on an application under [Section 73](#) of the Act.

Part XIV

Of Penalties

81. **Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure.-** Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who being charged with the endorsing, copying, [translating, registering or filling a true copy of any document]presented or deposited under its provisions, endorses, copies, translates [registers or files a true copy of such, document] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury, as defined in the Ranbir Penal Code, to any person, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

82. **Penalty for making false statements, delivering false copies or translations, false personation, and abetment.-**
Whoever,-

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act; or

(b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan; or

(c) falsely personates another, and in such assumed character presents any document or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act; or

(d) abets anything made punishable by this Act;

shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

83. **Registering officers may commence prosecutions.**- (1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector General, the Registrar or the Sub-Registrar, in whose territories district or sub-district, as the case may be, the offence has been committed.

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class.

84. **Registering officers to be deemed public servants.-** (1)

Every registering officer appointed under this Act shall be deemed to be a public servant within the meaning of the Ranbir Penal Code.

(2) Every person shall be legally bound to furnish information to such registering officer then required by him to do so.

(3) In section 229 of the Ranbir Penal Code the words "judicial proceeding" shall be deemed to include any proceeding under Act.

In the case of, *Hafeeza Bibi & Ors. v. Shaikh Farid*, (2011) 5 SCC 654, the Supreme Court of India held that, the position in regards to gift(s) under Muslim law is well settled and the same has been stated and restated time and again, that is, there are three (3) essentials of a gift under the Muhammadan law, these are: (1) Declaration of the gift by the donor; (2) Acceptance of the gift by the donee; and (3) Delivery of possession. Though rules of Muhammadan law do not make writing essential to the validity of a gift, an oral gift fulfilling all the three (3) essentials makes the gift complete and irrevocable. However, the donor may record the transaction of gift in writing.

8. If a Muslim gifts an immovable property to a Hindu by way of a written document, does it require registration? No.

APPEALS

Procedure when Registration is refused:

Every Sub-Registrar refusing to register a document shall make an order of refusal and record his reasons for such order in book II. He should endorse the words 'Registration refused' on the document. In an application made by a person executing or claiming under the document the Sub-Registrar shall without payment and unnecessary delay give him a copy of the reasons so recorded. When the Sub-Registrar has refused to register a document on the ground that the executor denies its execution, any person claiming under such documents, may within 30 days after making the order of refusal, apply to the concerned Registrar accompanied by a copy of the order of refusal of the Sub-Registrar. The statements in the application shall be verified by the applicant in the prescribed manner. In such cases, and also where such denial of execution is made 'before the Registrar himself the Registrar shall, enquire whether the provisions of law have been complied with by the applicant. If the Registrar finds that the document has been executed and the said legal requirements have been complied with he shall order the document to be registered.

If the document is presented for registration within 30 days, after the making of such order, the sub-registrar shall obey the same and shall register it as prescribed. Such registration shall have effect as if the document had been registered when it was first duly presented for registration.