



A brief history of Law of Registration which has been transcended to its present form

The earliest record of systematic registration in this Presidency, as disclosed on an examination of some very old and partially decayed registers in the Calcutta Registration Office made in 1914 is found in the Rule, Ordinance and Regulation passed in Council on the 9th January, 1781 and registered in the Supreme Court of Judicature in Bengal on 1st February, 1781. This Regulation of 1781 was to be in force within the Settlement of Fort William in Bengal, and its objects were to supply the want of registry of houses, lands and estates within that settlement and to prevent fraud. By Section 14 of this Regulation Mr. Edward Tiretta after whom a well known market in Calcutta is named, was appointed the first Surveyor on a salary of one thousand Sicca Rupees and in Section 35 were laid down his duties as Surveyor and Registrar of lands, houses etc. in the settlement and also as a Registrar of the memorials of deeds affecting such lands etc. The registration of memorials of deeds effected by Mr. Tiretta and his successors who combined in themselves the tripartite functions of a Surveyor of lands, houses and estates, a Registrar of Mutations in the ownership thereof and a Registrar of memorials (memoranda) of deeds affecting them. By subsequent legislation these duties have been separated, and we have now the records of houses maintained by the Municipality, the record of land and estates maintained by the Collector, and the record of transactions affecting them maintained by the Registrar of Assurances, in Calcutta.

Thereafter, through a series of Regulation and Acts the Indian Registration Act, 1908 (Act XVI of 1908) dated 18th December, 1908 came into force on 1st January 1909.

Thereafter, the word 'Indian' was omitted by Section 2 of Act 45 of 1969 and the Act is now called Registration Act, 1908. The Registration Act, 1908 is an act to consolidate the enactments relating to the Registration of documents, and it extends to the whole of India except the State of Jammu and Kashmir though the State Government may exclude any district or tracts of country from its operation.

The Regulation XX of 1812 prescribed the procedure to be adopted by a person desirous of registering any deed and obligation for the payment of money, separate register for the registration of such deeds, and also provided for the keeping of an accurate account of fees received, preparation of an index to the register books, preservation of power of attorney used in the Registration Offices and to present a true copy of the original deed which to be filed in the registry office after necessary endorsements had been made on it and entered in the register book.

Act XXX of 1838 provided for the establishment of Sub-Registry Offices other than Sadar Station and appointment of Government Officers.

The Regulation XXXVI of 1793 which came into force from 1st January, 1796 established an office for registration of deeds at the Sadar Station of each Zilla and in the Cities of Patna, Dacca and Murshidabad.

Act XVI of 1864 which came into force on 1st January, 1865 introduced, for the first time, the system of compulsory registration in India, dividing all document into two classes, viz., (1) Documents which were compulsorily registrable, (2) Documents, the registration of which was optional.

The objects of Law of Registration are (1) to provide conclusive guarantee of the genuineness of docts., (2) to afford publicity of transactions, (3) to prevent frauds, (4) to afford facility of ascertaining whether a property has already been dealt with, (5) to afford security of title deeds and facility of proving titles, in case of original deeds are lost or destroyed; but (1) the registration is not by itself absolute proof of the execution of a document, (2) mere registration does not prove title nor prove bonafides, (3) Registration does not confer validity upon an instrument which is otherwise ultra vires or illegal or fraudulent. Through the course of legislation of the Law of Registration coupled with the Transfer of property Act, 1882, as amended by Act VI of 1908, the registration of all documents of Sale, Gift and Mortgage of immovable property have been made compulsory and the registration of all leases of immovable properties other than leases granted for purpose of agriculture for a period of one year or less have also been made compulsory.

Section 17 of the Act speaks of documents of which registration is compulsory i.e., Settlement, Sale, Exchange, Release, Partition, Trust or any other transfer of immovable property and Section 18 of the Act speaks of documents of which registration is optional, i.e. Will, Acknowledgement of receipt or payment of any consideration etc. and all other documents not required by Section 17 to be registered.

The purpose of registration is to prevent fraud.

The Act hits the document and not the transaction, the Act itself is extremely stringent statute and, as such, it has got to be strictly construed.

A document, which is compulsorily registrable under Section 17 of the Registration Act cannot be used in evidence in a Court of Law unless registered.

When the facts relating to the document are fully written and admitted by parties to the document, one party's opinion regarding the facts is of no avail.

A document, which is registered under the Registration Act, takes effect, as a result of registration, from the date of execution prospectively, Registration of the document in violation of the Act nullifies the registration of the document, but does not nullify the transaction which is the subject of the document.

The object of registering a document is to give notice to the World that such a document has been executed, to prevent fraud, and forgery and to secure a reliable and complete account of all transactions effecting the title of the property.

Admission of signature may be quite good execution of the document from the point of view of the Registration Act. If a man signs a document, which he intended to sign, but was misled as to its contents and terms or signs a document under misapprehension of its legal effect, it would amount to execution of the document at least as far as the Registration Act is concerned.

Now, I deal with some important features of the Registration Act.

- (a) 'Addition' means place of residence, profession, trade, rank title of a person described etc.
- (b) Immovable property includes land, building, hereditary allowance rights to ways etc. including things attached to the Earth,

- (c) Movable property includes standing timber, growing crops, grass, property of every other description, except immovable property.
- (d) Non testamentary documents must contain a description of property sufficient to identify the same.
- (e) Documents must be presented within four months from the date of execution and such documents may be presented beyond four months but not exceeding eight months from the date of execution on payment of fees and fines as applicable.
- (f) Execution of document must be admitted within four months from the date of its execution and execution may also be admitted beyond four months but not exceeding eight months subject to payment of fees and fines and also beyond eight months but not exceeding twelve months from the date of execution subject to payment of fees and fines in cases of documents presented beyond four months but not exceeding eight months on payment of fees and fines.
- (g) No time limit prescribed for presentation and admission of execution thereof of 'Will'.
- (h) Jurisdiction for registration of any immovable property is decided if whole or some portion of property is situated within the registration jurisdiction of Registering Officer.
- (i) Registrar of Assurances has the jurisdiction for registration of any property situated in West Bengal as amended recently.
- (j) Documents may be presented for registration, by the executant, claimant or their representatives or assigns, agents.
- (k) Registration may be procured by Commission in cases the executants are ill, confined in jail and Pardanashin Ladies and also through summons.
- (l) Documents executed by Government Officers or certain public functionary are exempted from personal appearance in Registration Offices to admit execution.
- (m) Registration of documents cannot be made if the executant is minors, idiot, lunatic, dead and if denies execution but in cases of death, the representatives/assigns may admit execution, and in cases of denial of execution appeal lies with the District Registrar and thereafter in Civil Court.
- (n) A document operates from the date of execution and not from the date of registration.
- (o) There are five Register Books in Registration Offices:
 - (1) Book-I - Register of non-testamentary doct. relating to immovable property.
 - (2) Book-2 : Record of reason for refusal to Register.
 - (3) Book-3 : Register of Will and authorities to adopt.
 - (4) Book-4 : Miscellaneous Register.
 - (5) Book-5 : Register of deposit of Wills (for District Registration Offices only).

- (p) Index books I & II for Book I and 3, 4, 5 for Book 3, 4 & 5 respectively.
- (q) Presentation, admission of execution and identification of the executants must be recorded on the document.
- (r) Copies of documents may be obtained on application and payment of fees by any person in respect of Book I but in respect of Book 3, the testator only and after death any person on production of proof of death and Book 4 by the persons in the document, only.
- (s) Registration Certificates are endorsed for the purpose of publicity where and in which Book it was registered.
- (t) If land of several districts including land of own jurisdiction of the Registering Officers are transferred in a document copies of document are sent to respective District Registrar for record except the district of his own jurisdiction.
- (u) Making false statement, delivery a false copy/ translation of a document making false personification before Registering Officer is punishable offence under I.P.C. and shall be punishable with imprisonment for a term which may extend to 7 years or with fine or with both.
- (v) Documents other than Will remaining unclaimed in any Registration Office for a period exceeding 2 years from the date of registration, i.e., Registration Certificate endorsed, may be destroyed.

Registering Officers are also responsible to consider the applicability of provision of Section 230A, 269 UL of the I.T. Act 1961, Section 26 of the U.L. (C+R) Act 1976, Section 5 & 14 of the W.B.L.R. Act, 1955 before registration.

for m. a. S. Saly
[Signature]
[Signature]