

ECONOMIC AND COMMERCIAL LAWS

PART – B

LESSON – THREE

LAW RELATING TO REGISTRATION OF DOCUMENTS

INTRODUCTION

Registration act – 1908 provides for registration of certain documents. Following are the purpose or objective of registration of documents.

1. To give notice to the world that such a document has been registered and to serve as a source of information regarding the execution of the document and its existence;
2. To prevent fraud and forgery with the purpose of providing good evidence of the genuineness of the written document ; and
3. To secure the interest of the person dealing with any immovable property where such dealing requires registration.

DOCUMENTS FOR WHICH REGISTRATION IS COMPULSORY AND OPTIONAL

[SECTION 17 & 18]

FOR WHICH REGISTRATION IS COMPULSORY (SECTION 17)	FOR WHICH REGISTRATION IS OPTIONAL(SECTION 18)
1. Instrument of gift of immovable property which value exceeds rupees 100 = must be registered. 2. Transfer of any non- testamentary instrument of value exceeding rupees 100 must be registered. 3. Any consideration for transfer of non- testamentary instrument of value exceeding rupees 100 must be registered. 4. Any court order, decree ,judgement regarding any immovable property of value exceeding rupees 100 must be registered. 5. In case of lease if lease period is more than 1 year , then it must be registered.	1. If any immovable property is less than rupees 100 then it is optional to be registered. 2. Transfer of any non-testamentary instrument of value less than rupees 100 then it is optional to be registered. 3. Any consideration for transfer of non- testamentary instrument is if less than 100 rupees then it is also optional for registration. 4. Any court order , decree , judgement regarding any immovable property of value less than 100 , then it is also optional for registration . 5. In case of lease if lease – period is less than 1 year , then it is also optional for registration . 6. There is no need of registration of will.

PROVISIONS FOR REGISTRATION

PLACE OF REGISTRATION –

Where the immovable property situates i.e. in which area the property situated it must be registered by sub-registrar of that area. [section 28]

Section 29 provides that documents pertaining to any property other than immovable property may be presented for registration in the office of Sub-Registrar in whose sub-district the document was executed.

TIME LIMIT – [SECTION 23,24,25 AND 27]

The non – testamentary instrument of immovable property should be registered within 4 months from the date of execution.

There is no time-limit for registration of will.

DOCUMENTS EXECUTED OUTSIDE INDIA [SECTION 26]

AS per section 26, where the registrar is satisfied that the document was executed outside India and it has been presented for registration within 4 months after its arrival in India, he may accept such document for registration on payment of proper registration fees.

A document executed outside India and which requires compulsory registration , is not valid unless it is registered.

PRESENTATION FOR REGISTRATION –

The non – testamentary instrument should be presented before Sub-Registrar for registration .

WHO CAN PRESENT –[SECTION 32]

Any document to be registered under this Act , whether such registration is optional or compulsory , shall be presented before the Sub – Registrar by any of the following persons-

1. Some person executing or claiming under the document.
2. The representative or assign of such person.
3. The agent of the aforesaid person , duly authorised by special power of attorney.

It is immaterial whether the registration is compulsory or optional; but if it is presented for registration by a person other than a party not mentioned in section 32, such presentation is wholly inoperative and the registration of such a document is void.

RE-REGISTRATION OF CERTAIN DOCUMENTS [SECTION 23A]

Sometimes , a document requiring registration may be accepted for registration by Registration from a person not duly empowered to present the same and may be registered , in such a case , any person claiming under such document may present such document , in accordance with the provisions of the Registration Act , for registration in the office of the Registrar of district in which the document was originally registered . He can ,however ,do so within 4 months from his first becoming aware of such document is invalid.

When such a document is presented for re-registration , the Registrar shall register the same as if it has not been previously registered . The document , if duly re-registered in accordance

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with the provisions of Section 23 a , shall be deemed to have been duly registered for all purpose from the date of its original registration.

EFFECT OF REGISTRATION OF DOCUMENTS [SECTION 47 & 48]

A registered document operates from the time from which it was intended to operate and not from the date of registration. [SECTION 47]

As b/w two registered documents, the date of execution determines the priority. Of the two registered documents ,executed by same persons in respect of the same property to two different persons at two different times, the one which is executed first gets priority over the other , although the former deed is registered subsequently to the later one.

A non-testamentary registered document, relating to property, takes effect against any oral agreement relating to such property . However, when the oral agreement is accompanied by delivery of possession, then the oral agreement will prevail the registered document.[section 48]

EFFECT OF NON-REGISTRETION OF DOCUMENT [section 49]

A document which is compulsorily registrable but is not registered , fails to take effect and is void as regards immovable property, it cannot effect any immovable property comprised therein . Further it cannot confer any power to adopt.

An unregistered document cannot be received as evidence of any transaction effecting such property or conferring such power. However such a document may be received as evidence of :

1. A contract in a suit for specific performance ; or
2. Part performance of a contract as per section 53 A of Transfer Of Property Act .

REFUSAL BY REGISTRAR TO REGISTER DOCUMENTS [SECTIONS 71-75]

1.REFUSAL FOR REGISTRATION TO REGISTER THE DOCUMENT TO BE RECORDED [SECTION 71]

Every Sub-Registrar refusing to register the document , except on the ground that the property to which the document relates is not situated within its sub-district, shall make an order of refused and shall record the reasons for such order.

It may be noted that under-valuation of stamp duty is not a valid ground for refusing the registration of a document. In such a case , the Sub-Registrar can guide the person to affix proper stamps before he can register the documents presented. If the sub-registrar is doubtful as to the proper value of stamps affixed, he can refer the case to the Collector of Stamps to be adjudicated.

2.APPEAL TO REGISTRAR FROM ORDERS OF SUB-REGISTRAR REFUSING REGISTRATION ON GROUND OTHER THAN DENIAL OF EXECUTION OF DOCUMENT [SECTION 72]

An appeal shall lie, against order of Sub-Registrar refusing to register a document, to the Registrar to whom such Sub-Registrar is subordinate. However, the appeal shall not lie where the refusal is made on the ground of denial of execution of a document. The appeal can be presented to the Registrar within 30 days from the date of the order of Sub-Registrar.

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If the registrar directs the documents to be registered and the document is duly presented for registration within 30 days after the making of such order, the Sub-Registrar shall register the same.

Such registration shall take effect as if the document has been registered when it was first duly presented for registration

APPEAL TO REGISTRAR WHEN SUB-REGISTRAR REFUSED TO REGISTER THE DOCUMENTS ON THE GROUND OF DENIAL EXECUTION [SECTION 73,74&75]

Where the Sub-Registrar has refused to register a document on the ground of denial of execution, then any person claiming under such document may, within 30 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.

Where such an appeal is made to the Registrar, then he shall enquire to find out whether the document has been really executed or not. If the registrar finds that the document has been executed, he shall order the document to be registered. If the document is duly presented for registration within 30 days after the making of such order, the Sub-Registrar shall register the same.

Such registration shall take effect as if the document has been registered when it was first duly presented for registration.

POWERS AND DUTY OF REGISTRAR –

The main work or duty of registrar is to maintain books in registered office.

Book 1- The register related to non-testamentary instrument.

Book 2- To maintain the reasons for non-registration.

Book 3- To maintain register related to testamentary instrument or will.

Book 4- To maintain miscellaneous registers.

Book 5- To maintain registers related to deposits.

NOTE –

1. If the sub-registrar refuses the registration of documents then-book 2
2. The appellate party must be file suite against the sub-registrar under registrar within 30 days from the date of decision given by sub-registrar.

LAW RELATING TO REGISTRATION OF GIFT DEED -

If the donor dies before registration of the gift deed, the gift deed may be presented for registration after his death and if registered, it will have the same effect as registration in his life time.

Delay in registration of a gift does not postpone its operation, section 123 of the Transfer Of Property Act 1882 merely requires that donor should have signed the deed of gift. Hence a gift deed can be registered even if the donor does not agree to its registration.

[Renkata Rama Reddy