

Compulsory Registration x

Compulsory Registration ^(short)

- Hibe must be reg.
- after death of donor.
- (a) Gift (Mond Kishore (1898) 122 TPA, vs Swayy prakash) create new title
- (b) property more than 100 Rs. declare assign. limit extinguish

(c) acknowledge of receipt

(d) lease year to year.

(e) transfer through court decree

exception lease by state Govt
less than five years
50 Rupees

(1A) - part-performance must be registered
agreement to sale. (24-9-2001)

Nothing in clause (b) & (c) of S. 17(1) applies to

- composition decree / compromise deed
- Instrument relating to shares in joint stock company
- Debentures,
- Endorsement or transfer of any debenture,
- grant by Govt
- partition by Revenue Officer
- Certificate of Sale

(v) document other than agreement to sale as right of parking

(vi) property other than subject matter of compromise decree.

Sec. 18 Optional Registration

- ① Instrument value of less than 100 Rs other than gift / will
- ② - Acknowledge of payment (will)
- ③ lease less than 1 year
- ④ Court decree less than 100 Rs.
- ⑤ Movable property.

REGISTRATION ACT

Q. 1. A on separation from his wife, settled upon her a house worth Rs. 50,000 in lieu of her right of maintenance of separate residence, through an unregistered document. On a dispute between the parties, the wife wanted to produce the said document in evidence. A raised an objection that the document required compulsory registration and as such is inadmissible in evidence. Decide the objection?

Ans. A settled upon his wife a house worth Rs. 50,000 in lieu of her right of maintenance or separate residence, on separation from her. The instrument was not got registered.

During litigation, when the wife produced the said document in evidence, objection has been raised from the side of husband that the document required compulsory registration and as such same is inadmissible in evidence.

Section 17 of Registration Act provides for compulsory registration of certain documents. Where a right is assigned by one to the other in respect of immovable property of the value of more than Rs. 100 such document is required to be registered.

Herein, the document has been executed by the husband when right of maintenance already existed in the wife.

It is well settled that family arrangement in which is mere acknowledgement of prior title does not require registration.

However, in case of family arrangement where there is either a transfer of property in fact or an arrangement which really "declares" rights in immovable property requires registration. See decision in AIR 1966 SC 292.

Q. 2. maintenance of separate residence, through an unregistered d

Q. 3. A as guardian / father of B entered into an oral agreement with C for sale of his house / suit property on 28.02.06 for a sum of Rs.1,80,000/-. Sale deed was agreed to be executed and registered on the same day. C purchased the stamp papers, paid the entire sale consideration and was handed over possession of the suit property by A and B on the same day. They also executed the sale deed in favour of C, which was taken to office of Sub Registrar on the same day i.e. 28.02.06. The sale deed, however, could not be registered. It is the plea of C that Sub Registrar informed them that there was an order of attachment against the suit property and that A and B had promised C that they will get the attachment removed and get the sale deed registered at the earliest. On failure of A and B to get the sale deed registered, C issued a legal notice to A and B on 05.02.07, whereafter A and B tried to dispossess C from the suit property.

C filed a suit seeking direction to A and B to execute fresh sale deed and prayed for relief of permanent injunction restraining A and B from disturbing possession of C.

In defence, A and B claimed that they had taken a loan of Rs.1,75,000/- from C and had executed an agreement to sell (not sale deed) in favour of C on her insistence. C had fraudulently got prepared sale deed and therefore A and B had refused to get it registered.

In evidence, C tendered the unregistered sale deed in support of her case, which was refused to be admitted in evidence by trial court on the ground that it was an unregistered document.

C challenged the order invoking Sec. 49 of The Registration Act, 1908.

Decide whether the sale deed could have been admitted in evidence or not.

Ans. Question pertains to admissibility of unregistered sale deed which was tendered in evidence by the plaintiff only during trial. Plaintiff's prayer in the suit was for decree against A and B that they should execute fresh sale deed in his favour and that they should be restrained by way of permanent injunction from disturbing his possession.

Suit is based on oral agreement to sell. Sale deed was executed but the same could not be registered the reason being that there was an order of attachment in respect of the suit property. A and B had promised that they would get the attachment removed and then get the sale deed registered.

The execution of the sale deed did not confer any right in favour of A in respect of immovable property. Section 17 of Registration Act provides for compulsory registration of certain documents. Where a right is assigned by one to the other in respect of immovable property of the value of more than Rs. 100/-, such document is required to be registered. When provisions of section 17 were not attracted, the document i.e. unregistered sale deed was admissible in evidence, trial Court could not refuse to admit the same in evidence on the ground that same was an unregistered document.

Q. 4. 'S' the sister of 'B' filed a suit for partition of properties left behind by their father, who had expired interstate. Their mother had predeceased their father and there was no other legal heir. The subject matter of the suit were two flats. One flat was at Dwarka and the other one was at Model Town. During pendency of the suit, the parties arrived at a settlement. As per settlement, 'S' was given the flat at Dwarka while 'B' became the exclusive owner of the flat at Model Town.

The flat at Model Town was much costlier than the flat at Dwarka. 'B' owned a flat at Mayur Vihar. In order to compensate 'S', 'B' also surrendered his rights in a small flat at Mayur Vihar in favour of 'S'. Decide, as to whether such a decree shall require registration under the Registration Act?

Ans. The subject matter of the suit are two flats. The flat situated in Mayur Vihar was not subject matter of the suit filed by the sister against the brother.

Section 17 of Registration Act provides as to which document requires compulsory registration.

Sub-section (2) of Section 17 provides (2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

“xxxxxxxx

- (i) 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

xxxxxxxx”

A plain reading of the said provision clearly shows that a property which is not the subject matter of the suit or a proceeding would come within the purview of exception contained in clause (vi) of sub-section (2) of Section 17 of the Act. Therefore, where a compromise is entered into in respect of an immovable property, comprising other than that which was the subject matter of the suit or the proceeding, the same would require registration.

If the consent terms create a right for the first time as contra distinguished from recognition of a right, registration thereof would be required, if the value of the property is Rs. 100/- and upwards. See decision in *Bhoop Singh v. Ram Singh Major and Others* ((1995) 5 SCC 709).

It is for the Court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the Court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest in *praesenti* in immovable property of the value of Rs. 100/- or upwards in favour of other party for the first time, either by compromise or pretended consent. If latter be the position, the document is compulsorily registrable. See decision in *Bhoop Singh (supra)*, where Hon'ble Apex Court while referring to *Gurdev Kaur v. Mehar Singh* (AIR 1989 PandH 324) and *Ranbir Singh v. Shri Chand* (1984 Pun LJ 562) as also a decision of the Bombay High Court in *Sumintabai Ramkrishna Jadhav v. Rakhmabai Ramkrishna Jadhav* (AIR 981 Bom 52) held as under:

In *K. Raghunandan v. Ali Hussain Sabir*, AIR 2008 SC 2337, while relying on decision in *Bhoop Singh's* case, Hon'ble Apex Court has held that if a right is created by a compromise decree or is extinguished, it must compulsorily be registered. Clause (vi) is an exception to the exception. If the latter part of Clause (vi) of sub-section (2) of Section 17 of the Act applies, the first part thereof shall not apply.

In *K. Raghunandan v. Ali Hussain Sabir*, AIR 2008 SC 2337, while relying on decision in *Bhoop Singh's* case, Hon'ble Apex Court has held that if a right is created by a compromise decree or is extinguished, it must compulsorily be registered. Clause (vi) is an exception to the exception. If the latter part of Clause (vi) of sub-section (2) of Section 17 of the Act applies, the first part thereof shall not apply.

Q. 5. Shiv Kumaran presented a document written in Tamil for registration. The Registering Officer refused to register it on the ground that he did not know the language. Advise Shiv Kumaran.

Ans. Section 19 of Registration Act provides that where any document duly presented for registration is in a language which the registering officer does not understand, and which language is not commonly used in that district, he shall refuse to register the document. For registration of such a document, same should be accompanied by a true translation into a language commonly used in the district and also by a true copy.

Herein, facts do not reveal that Tamil was not commonly used in the district where the document was presented for registration. If it was also so, and its translation into a language commonly used in the district and its true copy were required to be submitted with the document. In case of non compliance with this provision of section 19 of the Act, Registrar could refuse to register the document. But Registrar could not refuse to register document simply on the ground that he did not know Tamil language.