

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

## **EDITORIALTEAM**

### **EDITORS**

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



#### **Dr. Namita Jain**

*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*



## Mrs.S.Kalpana

Assistant professor of Law

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS  
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **ANALYSIS ON RISKS AND CHALLENGES** **ASSOCIATED WITH MORTGAGE BY DEPOSIT OF** **TITLE DEEDS**

AUTHORED BY - S.PRIYANKA<sup>1</sup>,  
1st Year, LLM (Property Law),  
School Of Excellence In Law,

CO-AUTHOR - DR. P. BRINDA<sup>2</sup>,  
Associate Professor,  
School Of Excellence In Law, TNDALU,

## **ABSTRACT:**

Mortgage is the transfer of interest in the property to secure the debt which is defined under Section 58 (a) of the Transfer of Property Act, 1882. There are 7 types of mortgages. Mortgage by deposit of title deeds is one such type and it is a common method of securing loans in India which is governed by *Section 58(f) of the Transfer of Property Act, 1882*<sup>3</sup>. Even before The Transfer of property Act was enacted “equitable mortgages were recognised in India<sup>4</sup> Mortgage by deposit of title deeds means the mortgagor will be depositing the title deeds of an immovable property to the mortgagee with the intention to create security upon existing or future debt. Here the mortgagor is not bound to transfer ownership of the immovable property to the mortgagee. In English law, equitable mortgage is the term used for Mortgage by deposit of title deeds. The act of handing over the documents with this specific intention creates the mortgage, without needing a formal, registered mortgage deed. While offering advantages like speed, lower costs (in some states due to reduced stamp duty and registration), and ease of creation compared to registered mortgages, equitable mortgages also present certain risks. These include potential for fraud, difficulties in enforcing the security in the absence of a

---

<sup>1</sup> Ms.Priyanka.S, Ist year LLM, School of Excellence in Law, TNDALU, E-mail Id: [priyankasakthivel93@gmail.com](mailto:priyankasakthivel93@gmail.com)

<sup>2</sup> Dr. P. Brinda, Associate Professor, School of Excellence in Law, TNDALU, E-mail Id: [brindapaulraj@gmail.com](mailto:brindapaulraj@gmail.com)

<sup>3</sup>Mortgage by deposit of title-deeds — Where a person in any of the following towns, namely, the towns of Calcutta, Madras, and Bombay, and in any other town which the State Government concerned may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immovable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.

<sup>4</sup> Varden Seth Sam Vs. Luckypathy, (1862) 9 MIA 303

registered document, complexities in establishing priority of charges, and variations in state-specific stamp duty and registration requirements. Despite these challenges, equitable mortgages remain a widely used practice due to their relative simplicity and efficiency in securing financial transactions involving immovable property.

**KEYWORDS:** Mortgage, immovable, property, security, deposit of title deeds.

## INTRODUCTION:

Mortgage by deposit of title deeds, also known as an equitable mortgage, is a widely practiced method of creating a security interest in immovable property in India. In *Russel v. Russel* (1783)<sup>5</sup> it has been accepted doctrine that an equitable mortgage may be created by the deposit of title deeds with the intention of creating a security<sup>6</sup>. This mechanism offers a relatively quick and informal alternative to a traditional registered mortgage, particularly for smaller loans or situations requiring expedited financing. It is primarily governed by Section 58(f) of the Transfer of Property Act, 1882. Under this section certain territorial restrictions are imposed on the creation of a security by deposit of title deeds. It can be done only in the commercial centres specified in the section. The property may be outside the towns named which have been dealt in *Imperial Bank of India Vs. U. Rai Gyaw Thu.*<sup>7</sup> What is required by the section is that the title deeds should be deposited within the areas specified.<sup>8</sup> In *Indian Cotton Co.ltd Vs. Hari Poonjoo*,<sup>9</sup> A deposit made outside the towns specified creates no valid mortgage. While the specific mention of certain towns might seem limiting, judicial interpretations have broadened its applicability across India. This form of mortgage hinges on the deposit of original title deeds with the lender as collateral for a loan, signifying an intention to create a security interest. Nevertheless, its ease as a loan security mechanism has ensured its enduring popularity among Indian lenders and borrowers. By bypassing stamp duty and registration fees for borrowers and eliminating the need for lenders to visit the registrar's office, equitable mortgages, particularly in the context of home loans, have become a cornerstone of lending practices in India. The power given to State Governments to extend this provision beyond the original three cities has made this a widely used form of mortgage across India. This mechanism involves the borrower

---

<sup>5</sup> 1 Bro. C.C. 269

<sup>6</sup> Oldham, Mika. "The Rule in *Dearle v. Hall* and Equitable Mortgages by Deposit of Title Deeds." *The Cambridge Law Journal* 54, no. 2 (1995): 249–53. <http://www.jstor.org/stable/4508076>

<sup>7</sup> ILR 51 Cal.86=50 I.A. <https://indiankanoon.org/doc/996029/>

<sup>8</sup> *Central Bank Vs. Nusserwanji* ILR 57 Bom

<sup>9</sup> AIR 1937 Bom

depositing original title deeds of their property with the lender as collateral, creating a security interest without formal registration.

### **OBJECTIVES:**

- This study identifies and analyzes the main risks for borrowers using mortgage by deposit of title deeds in India.
- This study examines the problems lenders face when accepting mortgage by deposit of title deeds as loan collateral.
- This study compares the risks and challenges for both borrowers and lenders using equitable mortgages versus registered mortgages in India.

### **APPLICABILITY:**

In English law, equitable mortgage is the term used for Mortgage by deposit of title deeds. Equitable mortgage or mortgage by deposit of title deeds were accepted in India as equivalent to simple mortgage after the Privy Council decision in *Varden Seth v. lucky pathy* and this is still the case in districts to which the TP Act has not been extended<sup>10</sup>. The applicability of this Mortgage is now vested with the State government by notification in the official Gazette<sup>11</sup>.

### **REQUISITES OF A MORTGAGE BY DEPOSIT OF TITLE DEEDS:**

1. A deposit of title deeds
2. A intention that the deeds shall be security for the debt
3. Debt

The above three requisites have been reiterated in a Calcutta case ie *Amulya Gopal Majumdar V United industrial bank ltd* <sup>12</sup>. In this case, for a valid equitable mortgage it is not necessary that all documents of title should be deposited or that the documents deposited should show a complete title. It's sufficient if the deeds, deposited *bonafide*, relate to the property and are material evidence of title. The deposited title deeds must be genuine, pertain to the property in question, and serve as significant proof of ownership. In *K.L. Nathan Vs S.V Maruty Reddi* <sup>13</sup> Whether there is an intention that the deed shall be security for the debt is a question of fact in

---

<sup>10</sup> (1864) 9 MIA 307

<sup>11</sup> G.C.V. Subbarao, The Transfer Of Property Act text Book, 16 th edition.

<sup>12</sup> AIR 1981 Cal 404

<sup>13</sup> Supreme Court reports 1964

each case. The said fact will have to be decided on the basis of the evidence. There is no presumption of law that the mere deposit of title deeds constitutes a mortgage, for no such presumption has been laid down either in the Evidence Act or in the Transfer of Property Act. But *a court may presume under section 114 of the Evidence Act that under certain circumstances a loan and a deposit of title deeds constitute a mortgage*. But that is really an inference as to the existence of one fact from the existence of some other fact or facts. Nor the fact that at the time the title deeds were deposited there was an intention to execute a mortgage deed in itself negatives, or is inconsistent with, the intention to create a mortgage by deposit of title deeds to be in force till the mortgage deed was executed, On the facts of this case the intention to create a mortgage by deposit of title deeds can be inferred from the document dated 5th July, 1947 which was subsequently registered and in which the deposit of title deeds on May 10, 1947 was duly acknowledged.<sup>14</sup>

### **MEMORANDUM OF DEPOSIT OF TITLE DEED (MoDT):**

A Memorandum of Deposit of Title Deeds (MoDT) is a document used in India in conjunction with an equitable mortgage (also known as a mortgage by deposit of title deeds). While the equitable mortgage itself is created by the act of depositing the title deeds with the intention to create security, the MoDT serves as a record of this transaction and can play a crucial role in establishing the terms of the mortgage. In *Obia Sundarachariar v Narayanna Ayyar*<sup>15</sup>, The memorandum was merely a list of the deeds deposited, and it did not need registration, although it was deposited before the money was advanced. Their Lordships of the Judicial Committee said— No such memorandum can be within the section unless on its facts it embodies such terms and is signed and delivered at such time and place and in such circumstances as to lead legitimately to the conclusion that so far as the deposit is concerned, it constitutes the agreement between the parties. In *Ishwar Das Malhotra v. Dhanwant Singh*,<sup>16</sup> The Delhi High Court took the view that— “Where the memorandum contained the terms of the contract, mentioned the amount of loan, rate of interest and details of the property in respect of which equitable mortgage was stated to have been already created, it required registration and was, therefore, inadmissible (in evidence).” Similarly, where the memorandum confirms the deposit of title deeds as security for repayment of money advanced or to be advanced, the document would not require registration.

---

<sup>14</sup> <https://digiscr.sci.gov.in/>

<sup>15</sup> (1931)33 BOMLR 878

<sup>16</sup> AIR 1985 Del 83

While a mortgage by deposit of title deeds (equitable mortgage) can be created informally, if the parties *simultaneously enter* into a *written contractual agreement* that forms an integral, *operative* part of the transaction (rather than just being evidence of it), that document *must* be registered under the Registration Act, 1908. However, as established in *Madan Lal Sobti v. Rajasthan State Industrial Development and Investment Corporation Ltd. (2006)*<sup>17</sup> An equitable mortgage has priority over a *subsequently* registered mortgage because it's considered a completed conveyance, not merely a verbal agreement to which Section 48 of the Registration Act applies. This priority is now explicitly stated within Section 48 itself, following its amendment by Act 21 of 1929<sup>18</sup>.

### **DIFFERENCE BETWEEN MEMORANDUM OF ENTRY (MoE) AND MEMORANDUM OF DEPOSIT OF TITLE DEED (MoDT)**

The terms MoDT and MoE are sometimes used interchangeably. However, there can be a subtle difference. A MoE is generally prepared by the lender as an internal record of the title deed deposit, while a MoDT is a document signed by both parties, acknowledging the agreement. However, practically, a number of issues may arise in the absence of any written evidence of the creation of such a mortgage. For instance, to prove the creation of a mortgage, one must prove the intention of the parties to create such security by deposit of title deeds. It was laid down in *Bejoy Ranjan Das vs Ajit Kumar Dutta*<sup>19</sup> that – “Whether there is an intention that the deed shall be security for the debt is a question of fact in each case. The said fact will have to be decided just like any other fact on presumption and on oral, documentary or circumstantial evidence.” It is towards this necessity that the practice of executing MoE and MoDT has evolved. The Calcutta High Court in *Kedarnath Dutt vs Shamlal Khetry*<sup>20</sup> held that a MoE is not the instrument by which an equitable mortgage is created, nor is it the evidence of creation of such mortgage. It is merely an entry recording the transaction. However, it has also been held in the above ruling as well as multiple others that, where the terms of the bargain have been reduced to writing in such a memorandum, it ceases to merely be a record and needs to be considered an instrument through which the equitable mortgage has been created.

---

<sup>17</sup> Goel, Shivam, *Equitable Mortgage: Essentials & Fundamentals* (March 20, 2019). Available at SSRN: <https://ssrn.com/abstract=3356930> or <http://dx.doi.org/10.2139/ssrn.3356930>

<sup>18</sup> Dr. Poonam Pradhan Saxena, *Mulla The Transfer of Property Act text book*, 13th Edition 2018

<sup>19</sup> AIR 1974 Cal 319

<sup>20</sup> 11 Beng LR (OC) 405 Couch

## **RISKS AND CHALLENGES INVOLVED IN MORTGAGE BY DEPOSIT OF TITLE DEEDS:**

Mortgage by deposit of title deeds, also known as an equitable mortgage, is a prevalent practice in India, particularly for securing smaller loans or in situations requiring quick financing. Mortgage by deposit of title deeds lacks registration and makes it difficult to go for legal complications. The possession is always vested with the mortgagor which may be understood that the property is not mortgaged for the prudent man. It's known with complete investigation. The limitation for suit on mortgage by deposit of title deeds is dealt under Article 62 of Limitation Act, 1963. The period of limitation is 12 years.<sup>21</sup> Let's see the risks and challenges of both mortgagor and mortgagee in the following.

### **RISKS AND CHALLENGES OF MORTGAGOR:**

One of the risks for mortgagor is potentially **being affected by negligence of the mortgagee.**

Wigram VC has said that gross negligence is:

a degree of negligence so gross (crassa negligentia) that a Court of Justice may treat it as evidence of fraud—impute a fraudulent motive to it—and visit it with the consequences of fraud, although (morally speaking) the party charged may be perfectly innocent.<sup>22</sup> Even though the mortgagor has paid the secured loan from the mortgagee he will be unable to get the title deeds because of negligent act of the Mortgagee. This could be clearly explained with a case i.e **State Bank of India, Ludhiana Vs Jatinder Pal Singh, 2023.**<sup>23</sup>

In this case, Jatinder Pal Singh, proprietor of M/s Sherry Knitwears, secured a ₹2 lakh credit line from SBI's Ludhiana branch in 1977, mortgaging his 100 sq yard Ludhiana property via deposit of title deeds. After clearing his dues, SBI failed to return the original sale deed, claiming it was untraceable. Despite repeated requests, Jatinder was unable to sell his property due to the missing document and filed a deficiency in service complaint with the District Consumer Forum, seeking document return and ₹1 lakh compensation. SBI argued the case was time-barred, citing the account's Non Performing Assets (NPA) status and a 2010 one-time settlement. They explained the document was misplaced during interdepartmental transfer to the SARC and their attempts to obtain a certified copy was denied because of document damage due to heavy rain. The District Forum found SBI liable, awarding costs for mental agony and

<sup>21</sup> Dr. Poonam Pradhan Saxena, Mulla The Transfer of Property Act text book, 13th Edition 2018

<sup>22</sup> Dr. Poonam Pradhan Saxena, Mulla The Transfer of Property Act text book, 13th Edition 2018

<sup>23</sup> [Appeal No.1076/2013](#)

litigation, and directing an internal inquiry. SBI's subsequent appeals to the State Commission and then the National Consumer Disputes Redressal Commission (NCDRC) were unsuccessful. The court clarified in the judgement that;

*“There is no doubt that the Petitioner was responsible for the loss of the Sale Deed. The Petitioner being entrusted with the document relating to the Property of the Respondent was required to preserve the same. The Petitioner is clearly deficient in its services by not taking reasonable steps to preserve the valuable original document of its customer causing serious prejudice.”<sup>24</sup>*

Another key challenge is the **potential for fraudulent practices**. There will always be an apprehension of the misuse of the Title Deeds of the immovable property by an unscrupulous person, by depositing the same with a bonafide lender, since an Equitable Mortgage can be created by deposit of the Title Deeds. The erosion in the value of the property if it is to be sold without the Title Deeds, would be substantial and in fact even the compensation awarded by the District Forum and maintained by the State Commission may not be sufficient to make up such erosion in the market value of the property. Moreover, if the complainant decides to take a loan by deposit of the Title Deeds of the property against the property, he will not be able to get a ready lender in the market unless the Title Deeds of the property are deposited. In fact, even a bank may be unwilling to give a loan against an immovable property unless the Title Deeds of the property are deposited with it.

In **State Bank Of India vs Amitesh Mazumder on 3 January, 2020.**<sup>25</sup> The complainant borrowed money from the petitioner bank, securing the loan with deposited title deeds of a property. After repaying the loan (₹13,50,000), the bank couldn't return the deeds, prompting the complainant to file a consumer complaint. The bank admitted the loan repayment and the lost deeds. The District Forum ordered the bank to pay ₹5,00,000 in compensation and ₹30,000 in litigation costs, publish the loss in three newspapers, and file a police report. The bank's appeal to the State Commission was dismissed, leading to this revision petition. The bank's counsel offered to provide a certified copy of the title deeds, a certificate acknowledging their loss, and to cover the newspaper notice cost, arguing the complainant could use revenue records to establish title. However, the commission opined that these steps wouldn't allow the complainant to realize the property's true market value without the original title deed, citing concerns about potential misuse and the substantial reduction in market value. The commission

<sup>24</sup> <https://indiankanoon.org/doc/150932722/>

<sup>25</sup> 2020 SCC OnLine NCDRC 263

upheld the lower fora's compensation award, deeming it justified and dismissing the bank's revision petition.

Unscrupulous lenders might exploit the lack of a registered document to manipulate loan terms, falsely claim default, or even refuse to return the title deeds after the loan is repaid. Borrowers must exercise extreme caution and ensure they deal with reputable lenders. Maintaining meticulous records of all transactions, including loan agreements and receipts, is crucial for protecting their interests.

In *Kamlesh Meena vs Hongkong And Shanghai Banking*, 26 August, 2022<sup>26</sup> The absence of original title documents undoubtedly casts suspicion on a property, severely diminishing its value in the eyes of potential buyers. This negative impact persists indefinitely, even after the property passes to heirs. The State Commission appears to have underestimated the practical consequences of missing title documents. Furthermore, equitable mortgages, lacking a registered deed, can lead to ownership disputes. Establishing clear ownership and possession becomes problematic, especially if the title deeds are lost or damaged, potentially creating significant legal hurdles with the lender or other parties involved”.

### **RISKS AND CHALLENGES FOR MORTGAGEE:**

**Risk of non delivery of possession by the mortgagor.** When the possession of the property is not transferred there are some chances that others can think he is the actual owner of the property without any charge or mortgage on the property. In *M. Paramasivan Pillai V. A.V.R.M.S.P.S. Ramasami Chettiar*,<sup>27</sup> it was discussed that the rights of an equitable mortgagee in India to demand possession of the mortgage property is not mentioned. The justice has stated that there is no difference in this respect between a simple mortgage and an equitable mortgage in India, and neither of the said mortgages carries with it any right to demand possession in India. In the first place the passages in Coote on Mortgage where the position of an equitable mortgagee is discussed show that unless there is an express covenant for getting possession under Certain circumstances the equitable mortgagee is not entitled to possession and it would not be correct to say that the English decisions allowing a Receiver to be appointed in the case of an equitable mortgage depended on his right to possession.<sup>28</sup>

<sup>26</sup> First Appeal No.377 of 2019

<sup>27</sup> (1933) ILR 56 MAD 915, AIR 1933 MADRAS 570

<sup>28</sup> Indian law Reports Madras(1933) volume 56, page no 290 - 295

**Enforcing the security can be challenging** in the absence of a registered mortgage deed. While equitable mortgages are legally recognized, proving the existence and terms of the mortgage in court can be more complex than with a registered mortgage. This can lead to delays and increased legal costs in case of default.

**Priority disputes** can arise if the borrower has created multiple mortgages on the same property, especially if some are registered and others are equitable. Determining the priority of claims can become a complex legal issue, potentially leading to losses for the lender holding the equitable mortgage if a prior registered mortgage exists.

A mortgage by deposit of title deeds is a completed transfer, and not an oral agreement. This is now made clear by section 58(f) of TP Act, 1882. The proviso to section 48 of the Registration Act, 1908 as inserted by Act 21 of 1929, enacts that a mortgage by deposit of title deeds shall take effect as against any mortgage deed subsequently executed and registered relating to the same property; similarly, an earlier mortgage by deposit of title deeds would have priority over a subsequent sale. The judgment in an old Bombay case suggests that a formal registered mortgage being a legal “mortgage” would have priority over an “equitable mortgage.” In *Imperial Bank of India Vs. U Rai Gyaw*<sup>29</sup>, Lord Dunedin said: “It is to be observed that there is here no distinction between a legal and equitable mortgages as in English law, where the *legal mortgage will always prevail against the equitable unless the holder of the legal had done or omitted to do something which prevents him in equity from asserting his paramount rights*”.<sup>30</sup>

Furthermore, **variations in state-specific stamp duty and registration requirements** can create confusion and potential legal complications. While the deposit of title deeds itself does not typically require registration, some states may require registration of a memorandum of deposit or other related documents, leading to stamp duty implications. Lenders must be aware of the specific regulations in the relevant state to ensure compliance and avoid future legal issues.

**Registration of Mortgage by deposit of title deeds in India is a complex legal terrain.** Section 59 of the Transfer of Property Act, 1882 (TPA)<sup>31</sup>, mandates a registered instrument,

---

<sup>29</sup> ILR 51 Cal.86=50 I.A

<sup>30</sup> Dr. Poonam Pradhan Saxena, Mulla The Transfer of Property Act text book, 13th Edition 2018

<sup>31</sup> The Transfer of Property Act, 1882 bare Act

signed and attested, for mortgages exceeding one hundred rupees, explicitly excluding mortgages by deposit of title deeds (equitable mortgages). In Tamilnadu, The Registration Act, 1908, further requires registration for instruments creating rights and liabilities in immovable property (Section 17)<sup>32</sup>. However, *this provision's application to equitable mortgages is nuanced, as they aren't typically considered "transfers of property" under the Registration Act*. If the agreement's terms are written down, that document becomes the instrument creating the mortgage and requires registration under Section 17. In Andhra Pradesh, under Section 17 for mandatory registration i.e Non-testamentary instruments which acknowledge the re-receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title, or interest.<sup>33</sup> This difference is stamp duty and registration creates ambiguity.

In practice, equitable mortgages involve the mortgagor depositing title deeds with the mortgagee, often accompanied by a written undertaking of their intent. Lenders may also create a Memorandum of Entry (MoE) to record this deposit.

In *State of Haryana v. Navir Singh*,<sup>34</sup> The Supreme Court clarified that the title deed deposit itself creates the equitable mortgage under Section 58(f) of the Transfer of property Act, 1882. The Court further stated that the MoE and undertaking are not mandatory for creation, serving only as evidence of the deposit, not as the creating instruments themselves.

Despite judicial clarity, Indian lenders face a complex regulatory environment for equitable mortgage registration due to the concurrent nature of property registration legislation (Schedule VII of the Indian Constitution). This has resulted in diverse state-level regulations. Some states, such as Maharashtra, Gujarat, and Karnataka, mandate notifying the sub-registrar via a Notice of Intimation (N.I) for equitable mortgages under Section 89B of their respective Registration Acts. However, many other states, including Delhi, Haryana, and Telangana, lack specific N.I provisions for equitable mortgages. This regulatory inconsistency creates significant challenges for multi-state lenders, as varying rules, filing processes, and limited public access to updated regulations increase the risk of non-compliance in financing transactions. Such non-compliance can severely impair a lender's ability to enforce their security interest if a borrower

---

<sup>32</sup> Stamp duty registration fee manual Tamilnadu (TNREGI)

<sup>33</sup> Stamp duty registration fee manual Andhra Pradesh\_

<sup>34</sup> AIR 2014 SC 339

defaults.

In *A.B. Govardhan Vs P. Ragothaman 2024*<sup>35</sup> case involving two appeals against Madras High Court decisions, the Supreme Court reversed the High Court's rulings and upheld the Single Judge's finding (with a minor interest rate reduction) that a valid mortgage by deposit of title deeds existed. The case stemmed from a ₹10,00,000 business loan, initially structured with two registered mortgages and four promissory notes due to stamp duty concerns. Upon default, a subsequent agreement (June 24, 2000) saw the respondent provide a title document as security for the ₹11,00,000 debt, agreeing to execute a sale deed and re-mortgage the property. After the respondent failed to fulfill these commitments, the appellant filed suit. While the Single Judge found an equitable mortgage, a High Court Division Bench overturned this, deeming the plaint to be insufficient. The Supreme Court disagreed, affirming the Single Judge's correct factual interpretation and emphasizing that the June 24, 2000 agreement constituted a valid mortgage under Section 58(f) of the Transfer of Property Act, as depositing title deeds with security intent creates a mortgage without requiring registration under Section 59. The agreement was deemed a mere record of a completed transaction, not a new instrument. Finally, noting procedural irregularities in the High Court's handling, the Supreme Court imposed costs on the appellant for the wasted judicial time.

### CONCLUSION:

Mortgage by deposit of title deeds, while a traditional method, presents several significant disadvantages in the modern financial landscape. The absence of a formal registered document makes it difficult to establish clear ownership rights and enforce the mortgage agreement in case of default. Secondly, it poses significant risks for mortgagee, as it provides limited recourse in the event of mortgagor default. The mortgagee's primary recourse is to sell the property, which can be a time-consuming and uncertain process. Moreover, this method can be susceptible to fraud and disputes due to the informal nature of the arrangement. I would like to conclude by saying that mortgage by deposit of title deeds has risks and challenges as other types of mortgages but it can be avoided by taking due care and diligence. So nowadays the parties prefer to register the mortgage by deposit of title deeds in order to prevent the risks.

---

<sup>35</sup> [SCC OnLine SC 2284](#)

**REFERENCES:**

1. Dr. Poonam Pradhan Saxena, Mulla The Transfer of Property Act text book, 13th Edition 2018,
2. G.C.V. Subbarao, The Transfer Of Property Act text Book, 16 th edition.
3. The Transfer of Property Act, 1882 bare Act

**Case laws:**

4. Varden Seth Sam Vs. Luckypathy, (1862) 9 MIA 303
5. 1 Bro. C.C. 269
6. 11 Beng LR (OC) 405 Couch
7. AIR 1974 Cal 319
8. Appeal No.1076/2013
9. 2020 SCC OnLine NCDRC 263
10. First Appeal No.377 of 2019
11. (1933) ILR 56 MAD 915 ; AIR 1933 MADRAS 570
12. ILR 51 Cal.86=50 I.A.
13. Central Bank Vs. Nusserwanji ILR 57 Bom
14. AIR 1937 Bom
15. (1864) 9 MIA 307
16. AIR 1981 Cal 404
17. AIR 1985 Del 83
18. (1931)33 BOMLR 878
19. AIR 2014 SC 339
20. SCC OnLine SC 2284

**Journals and Articles:**

21. <https://digiscr.sci.gov.in/>
22. Stamp duty registration fee manual Tamilnadu (TNREGI
23. Stamp duty registration fee manual Andhra Pradesh
24. Supreme Court reports 1964
25. Oldham, Mika. "The Rule in Dearle v. Hall and Equitable Mortgages by Deposit of Title Deeds." *The Cambridge Law Journal* 54, no. 2 (1995): 249–53.
26. <http://www.jstor.org/stable/4508076>
27. Indian law Reports Madras(1933) volume 56, page no 290 - 295

**Online sources:**

28. <https://indiankanoon.org/doc/996029/>