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# **AN ANALYSIS ON ADMISSIBILITY OF AN UNREGISTERED AGREEMENT TO SELL AND AN UNREGISTERED SALE DEED IN EVIDENCE**

AUTHORED BY - G. ASWINI & R. PREETHI

## **ABSTRACT**

*All transfers are required to be in writing by the Transfer of Property Act, except for the transfer of an actionable claim, which requires registration also for their validity. Section 17 of the Registration Act mandates registration of documents effecting sale of immovable property. Any unregistered document to this effect is not generally admitted as evidence in a suit, but there are a few exceptions to this rule. In this article let's examine various legal provisions under Indian Law and judicial pronouncements, when an unregistered sale deed and an unregistered agreement to sell are admitted as evidence.*

Key words: Unregistered sale deed, Unregistered agreement to sell, Compulsory registration

## **I. INTRODUCTION**

All transfers are required to be in writing by the Transfer of Property Act, except for the transfer of an actionable claim, which requires registration also for their validity. Registration completes the transfer, but the title created by the registered instrument relates back to the date of its execution.<sup>1</sup> When the statute requires a registered deed, a transfer of title cannot be effected by an agreement, either verbal or in writing.<sup>2</sup> An unregistered document can be received as valid evidence in certain cases and under certain circumstances, in this article let's look into the legal provisions and judicial pronouncements as to when this could be done.

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<sup>1</sup> Section 47 of the Indian Registration Act, 1929.

<sup>2</sup> Narayanaswami v. Lakshmi Narashimha AIR 1939 Mad. 220=48 L.W. 959.

## II. MANDATORY REGISTRATION OF SALE DEED AND AGREEMENT TO SELL

According to Section 54 of the Transfer or Property Act, sale of an immovable property of value Rs. 100 and above can be done only through a registered instrument and section 17 of the Registration Act requires mandatory registration of sale deed. In India, with regard to registration of an Agreement to sell, the laws and regulations differ from a state-to-state basis. In some states, agreement to sell an immovable property also requires mandatory registration.

1. **Effect of Non-Registration:** Section 17 of the Indian Registration Act, enumerates the various kinds of documents that require registration. The non- registration of a compulsory registerable document has two effects:
  - (a) It cannot affect any immovable property comprised therein or confer any power to adopt, and
  - (b) It cannot be received as evidence of any transaction affecting such property or conferring any power cannot be received as evidence.
2. **Admissibility in Evidence:** Three statutory provisions bear on the admissibility in evidence of documents which are not stamped or registered, section 35, Stamp Act; section 17 and section 49<sup>3</sup>, Registration Act and section 91, Evidence Act.<sup>4</sup> Section 49 of Registration Act provides that no document requiring registration either by the Registration Act or Transfer of Property Act shall – “affect any immovable property comprised therein or be received as evidence of any transaction affecting such property unless it has been registered.”
3. **Gist of proviso of s. 49 of the Registration Act :** The proviso to Section 49 of the Registration Act which specifically provides that an unregistered document affecting immovable property and required by the Registration Act to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of

<sup>3</sup> Section 49 of Registration Act

***Effect of non-registration of documents required to be registered.-***

*No document required by section 17 (1) [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall-*

*(a) affect any immovable property comprised therein, or*

*(b) confer any power to adopt, or*

*(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:*

*Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.*

<sup>4</sup> According to S. 91 of Evidence Act the terms of a document must be proved by the document itself or by secondary evidence where it is admissible under the Act and not by oral evidence.

the Specific Relief Act or as evidence of any collateral transaction not required to be affected by registered instrument.

### **III. ADMISSIBILITY IN A SUIT FOR SPECIFIC PERFORMANCE**

An unregistered agreement can be admissible as evidence, in a suit for specific performance of a contract or as evidence of any collateral transaction not required to be effected by a registered instrument by the virtue of Proviso to S. 49 of the Registration Act.

The question as to whether an unregistered sale deed would be admissible as evidence would depend on the nature of the suit that's been instituted. In a suit for specific performance, an unregistered sale deed could be received in evidence to prove the agreement between the parties though it may not itself constitute a contract to transfer the property<sup>5</sup>.

Further, the Apex Court relied upon the proviso to Section 49 of the Registration Act that an unregistered agreement to sell in question shall be admissible in evidence in a suit for specific performance and the proviso is an exception to the first part of Section 49.<sup>6</sup> In this context let's have close look at the case of R. Hemalatha vs Kasthuri<sup>7</sup>.

#### **THE CASE OF R. HEMALATHA V. KASTHURI**

The Supreme Court discussed the admission of an unregistered agreement to sell as evidence in this case.

##### **A. Facts of the case**

In 2013, Kasthuri (Buyer) entered into an agreement to sell for purchase an immovable property from Hemalatha (Seller). According to section 17 of the Registration Act, an agreement relating to immovable property requires mandatory registration. Receiving the agreed upon payment, Hemalatha wilfully accepted the responsibility of registering the agreement after receiving the payment of the agreed amount. Neither did Hemalatha sell the property nor did she register the agreement. Aggrieved by this, Kasthuri filed a suit before the District Court.

##### **B. Judgement given by the District Court**

It was argued by the petitioner (Buyer) that she was always ready and willing to perform

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<sup>5</sup> S. Kaladevi v. V.R. Somasundaram & Ors, AIR 2010 SC 1654.

<sup>6</sup> R. Hemalatha v. Kashthuri, 2023 SCC OnLine SC 381.

<sup>7</sup> 2023 SCC OnLine SC 381.

her contractual obligations, and she relied on section 49 (a) and (c) an unregistered document that is admissible in evidence in a suit for specific performance which falls under first exception to proviso of section 49 of the Registration Act.

It was contended by the defendant (Seller) that according to the amendment made by the Tamil Nadu Amendment Act, 2012 section 17(1)(g) was inserted, hence any agreement relating to an immovable property valued at Rs. 100 or above requires mandatory registration and the explanation of section 17(2) provided that a document to effect sale of immovable property would not require registration was deleted by the state amendment Act.

In the light of the above statutory provisions, the district court has taken the view that an unregistered agreement to sell is not admissible as evidence. The Petitioner (Buyer) went for an Appeal before the High Court being aggrieved by the decision of the trial court.

### **C. Judgement of the High Court**

Relying upon the Proviso of section 49 of the Registration Act, the High Court had set aside the order passed by the trial court. Aggrieved by the order of the High Court, the Hemalatha (seller) went for an appeal before the Supreme Court.

### **D. Supreme Court's Verdict**

The final issue before the Supreme Court was whether an unregistered agreement to sell can be admitted as evidence in a suit for specific performance? It was observed that there was no subsequent amendment to section 49 of the Registration Act despite the addition of section 17(1)(g) of the Registration Act. The Supreme Court upheld the order of the High Court that an unregistered agreement would be admissible as evidence in a suit for specific performance according to the Proviso of Section 49 of the Registration Act.

Further, the Court noted that the only exception to Section 49 is section 17 (1A) of the Registration Act. Any other document that is not covered under section 17 (1A) is covered under section 49 of the Registration Act.

## **IV. ADMISSIBILITY IN A SUIT TO COMPEL REGISTRATION**

Where the registration of sale deed is refused and a suit seeking direction for registration is filed, all the documents relating to the sale are admissible as evidence in light of section 77 of the Registration Act<sup>8</sup>. An issue as to the execution of the unregistered sale deed is questioned,

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<sup>8</sup> Section 77 of Registration Act, **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 a decree 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,

then such unregistered sale deed is admissible in evidence. In such a suit, the Supreme Court noted that an unregistered sale deed can be admitted in determining the execution of the sale deed.<sup>9</sup>

## V. ADMISSIBILITY IN A COLLATERAL TRANSACTION

An unregistered sale deed or agreement to sell may be admitted as evidence in a collateral transaction that does not require registration for its effect. In other words, the document cannot be relied upon the transaction which requires registration to give effect.

### COLLATERAL TRANSACTION

A collateral transaction is admissible in evidence provided:

- a) Must be independent or divisible from the transaction to effect which the law requires registration, and
- b) It must not be transaction by itself is required to be effected by a registered document.<sup>10</sup>

A collateral purpose as referred to in Section 49 of the Indian Registration Act must be for any purpose other than that of creating, declaring, assigning, limiting or extinguishing the right to immovable property. An unregistered document is admissible in evidence of a transaction that is “affecting” the property and is “collateral” to the main purpose or object of the document.<sup>11</sup> Neither the terms nor for the purpose of proving an important clause under such a document can be admitted in evidence as collateral purpose if the document would require registration under law.

For collateral transactions which does not require registration, it can be received as evidence. A purposive interpretation and strict construction ought to be given against the reception of certain unregistered documents.<sup>12</sup>

An unregistered sale deed cannot be used to prove possession.<sup>13</sup> The unregistered sale deed is

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*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 documents shall be receivable in evidence in such suit.*

<sup>9</sup> S. Kaladevi v. V. R. Somasundaram & Ors, AIR 2010 SC 1654.

<sup>10</sup> Pg 362, 363 Mulla registration act

<sup>11</sup> 363 Mulla registration act

<sup>12</sup> PSG Industrial Institute v. R. Randhir Singh, 1997 (3) ALT 473.

<sup>13</sup> Ruckmangathan vs Ramalingam (1998) 1 MLJ 114.

admissible in evidence for the collateral purpose to the limited extent of showing possession of the plaintiff.

An unregistered sale deed can be received in evidence in a suit filed for specific performance provided it is impounded by the Court or the Collector under Section 33 of the Stamp Act.<sup>14</sup> To substantiate the plea of part performance of contract, an unregistered document can be received as evidence, whether it can be a contract of sale or lease or mortgage. The document serves as evidence of the part performance of a contract.

## **VI. CONCLUSION**

It is the judicial pronouncements that have thrown light on to what kind and nature of unregistered sale deed and unregistered agreement to sell are admissible as evidence. Apart from this, the courts have invoked the principles of equity to safeguard the interests of such persons by granting them relief of specific performance.

Where there is a statutory mandate as to registration of transactions involving immovable property, it is always prudent to register such documents. Registration provides authenticity, validity, protection from fraud and, more importantly, a registered document serves as important and most reliable evidence in any legal dispute.

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5. The Transfer of Property Act, 1882.

