

Amendment in Section 17 of the Registration Act 1908

AMENDMENT IN SECTION 17 OF THE REGISTRATION ACT 1908

It is proposed that an amendment in the Registration Act 1908 for making “agreement to sell” compulsorily registerable be made. In the view of the fact that, there is a growing tendency to forge an agreement to sell and use it for supporting a false plea in the courts relating to interest in property. As a result, frivolous litigation is increasing. To eradicate the menace, appropriate amendments are proposed in the Registration Act 1908 to provide for compulsory registration of agreements to sell.

We have examined the related provisions, which provide for compulsory or optional registration of documents.

Brief History

Before the year 1864, there existed multiple enactments as to registration of documents in British India. There were regulations applicable to each of the provinces of Bangal, Bombay and Madras, providing for the registration of documents. In the Punjab, Judicial Circular No.201 of 1849 provided for the registration of deeds. The first complete enactment as to registration of documents was passed by Act XVI of 1864, consolidating and amending all the previous laws relating to the registration of assurances. It introduced for the first time a system of compulsory registration in British India as to certain clauses of the documents and also abolished the provisions limiting the rights of priority to registered deeds as against unregistered document of the same nature. But even under this Act, the right of priority was given to document optionally registerable and not to documents compulsorily registerable. Thus, if two documents A and B were both optionally registerable, and one of them A was registered, then A would have priority over B. But if A was compulsorily registerable and B was optionally registerable, the fact that A was registered did not entitled it to priority over B.

The law relating to registration of assurances was again consolidated and amended by Act XX of 1866. It was again amended by Act VIII of 1871. The Act of 1871 was subsequently amended by Act III of 1877. The Act of 1877 for the first time introduced a provision to give priority to registered documents irrespective of the fact that whether they were optionally or compulsorily registerable.

In 1908, a new Act namely the Registration Act, 1908 (Act No. XVI of 1908) was enacted for consolidation of enactments relating to the registration of the documents. The Act deals with cases where transactions between individuals are reduced to writing and provide for compulsory or optional registration, as the case may be, of such written instruments. It does not deal with transaction not reduced to writing.

The Act enacts provisions of law both adjective and substantive. Thus, the provision relating to the admissibility of documents in evidence (S.49 of the Act) belongs to the provision of adjective law while the provision relating to priority and compulsory registration of documents (S.17) belong to the provision of substantive law. In accordance with the general principles of interpretation of statutes, the substantive provisions will have only prospective operation and are not retrospective unless the language of the provisions makes it clear that

retrospective operation is intended, while the provisions of adjective law will be both prospective and retrospective.

The Act provides for the creation of pre-appointed evidence of transactions by getting the same entered in a public record by a competent official whose duty is to attend the parties during the registration and see that the proper persons present are competent to act and are identified to his satisfaction. The object of registering a document is, firstly, to give notice to the world that such a document has been executed, secondly, to prevent fraud and forgery and, thirdly, to secure that every person dealing with property, where such dealings require registration, may rely with confidence upon the statements contained in the register as a full and complete account of all transactions by which the title to the property may be affected.

Compulsorily Registerable Documents

Section 17 of the Act describes the documents, which are compulsorily registerable. The Section reads.

Section 17. Documents of which Registration is compulsory:—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No.XVI of 1864, or the Pakistan Registration Act, 1866, or the Pakistan Registration Act, 1871, or the Pakistan Registration Act, 1877, or this Act came or comes into force, namely:—

(a) Instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or

extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

Explanation. —In the case of an assignment of a mortgage the consideration for the deed of assignment shall be deemed to be the value for registration;

(c) non-testamentary instruments other than the acknowledgment of a receipt or payment made in respect of any transaction to which an instrument registered under clause (o) relates Added ibid which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) lease of immovable property from year to year; or for any term exceeding one year, or reserving a yearly rent:

Provided that the Provincial Government may, by order publish in the official Gazette, exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign,

limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent of the value of one hundred rupees and upwards, to or in immovable property:

(2) Nothing in clauses (d) and (c) of sub-section (1) applies to—

(i) any composition deed; or

(ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consists in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) 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

(vii) any grant of immovable property by the Government; or

(viii) any instrument of partition made by Revenue Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883, or

(x) any order granting a loan under the Agriculturists Loans Act, 1884 (XII of 1884), the Agricultural Development Bank Ordinance, 1961 (Ordinance No. IV of 1961), or under another law for the time being in force relating to the advancement of loans for agricultural purposes, or any instrument under which a loan, is granted by a cooperative society for any such purpose, or any instrument made for securing the repayment of a loan so granted; or

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage money, and any other receipt for payment of money due under a mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer; or

(xiii) any counterpart of a lease, where the lease corresponding thereto has itself been registered.

Explanation. —A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.

(3) Authorities to adopt a son, executed after the first day of January, 1872, and not conferred by a will, shall also be registered.

Sindh Addition:

2. *Amendment of section 17 of Act XVI of 1908.*—In the Registration Act, 1908, in its application to the Province of Sindh, in section 17, after clause (e) the following shall be added:—

(f) Power of attorney when authorizing the attorney to sell any immovable property.”

Similarly, Section 18 prescribes the documents which are optionally registerable. The Section reads.

Section 18. *Documents of which registration is optional:* —Any document not required to be registered under section 17 may also be registered under this Act.

This Section pertains to the registration of those documents which do not require compulsory registration. The non-registration of such documents however will not affect their validity or admissibility in evidence, but in certain cases, may affect rights of priority.

Section 17(2)(v) provides that a document, not in itself creating a right in immovable property of the value of Rs.100/- and upwards, but merely creating a right to obtain another document which will, when executed, create any such right, need not be registered. An agreement for sale in the usual form acknowledging receipt of earnest and providing for the execution of a regular sale-deed on payment of the balance purchase-money, is a document of this kind.

An agreement to sell in respect of an immovable property containing recites as to payment of price, is not compulsorily registerable. In the case of *Muhammad Akram v Muhammad Saleem* (PLD 1964 {W.P.} Lahore-490), it was held that an agreement to sell does not create any present right in property. It only recites an agreement arrived at between the parties that the plaintiff-respondent would transfer the property in dispute to the defendants-appellant either by registration of a documents of a mean of a mutations. It is not a document requiring registration.

Under the Indian Registration Act, agreement to sell is not compulsorily registerable. But where it was stipulated in the document that “whenever it is desired, a regular registered sale deed would be executed in favour of the vendee or his nominee”, it was held that the document was an agreement to sell as it did not constitute a transfer so as to be eligible to registration under Registration Act, 1981. Law Summary 265(276) (AP). (The A.I.R. Manual-Volume 30, Page 786)

It is further held by Indian High Court that Power of Attorney purporting to create an interest in immovable property of the value of Rs.100/- or more, must be registered. (1907) 35 Cal 845(848 849) (SB) (The A.I.R. Manual-Volume 30, Page 796)

It is further mentioned that Section 50 of the Act entitles the party to enforce the contract under the unregistered documents in a suit for specific performance. This Section defines the status of registration of documents relating to land against unregistered documents as follows:—

Section 50. *Certain registered document relating to land to take effect against unregistered documents.*—(1) Every document of the kinds mentioned in clauses (a), (b), (c) and (d) of section 17, sub-section (1), and every document registerable under section 18, in so far as such document affects immovable property or acknowledge the receipt or payment of any consideration in respect of any transaction relating to immovable property shall, if duly registered; take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not:

Provided that the person in possession of the property under an unregistered document prior in date, would be entitled to the rights under section 53-A of the Transfer of Property Act, 1882 (IV of 1882) if the conditions of that section are fulfilled:

Provided further that the person in whose favour an unregistered document is executed shall be entitled to enforce the contract under the unregistered document in a suit for specific performance against a person claiming under a subsequent registered document, subject to the provisions of clause (b) of section 27 of the Specific Relief Act, 1877.

(2) Nothing in sub-section (1) applies to lease exempted under the proviso to sub-section (1) of section 17 or to any document mentioned in sub-section (2) of the same section, or to any registered document which had not priority under the law in force at the commencement of this Act.

In the light of provisions of Sections 17, 18 and 50 of the Registration Act, 1908, it is obvious that the agreement to sell is not complete transaction and does not create any right on property till fulfillment of the terms and conditions of the agreement. However, due to tendency in the society of making false and forged documents, such as agreement to sell, and then using it in support of false plea in Civil Courts for establishing the right in property, it is desirable to amend Section 17 of the Registration Act by inserting the agreement to sell as compulsory registerable. It will operate as an effective check to prevent the abuse of an agreement to sell. It may be pointed out that the Province of Sindh has already added a new provision in section 17 for making the Power of Attorney to sell any immovable property, as compulsorily registerable. The added provision of Sindh Government is as follows:—

Sindh Addition:

2. *Amendment of section 17 of Act XVI of 1908.*—In the Registration Act, 1908, in its application to the Province of Sindh, in section 17, after clause (e) the following shall be added:—

“(f) Power of attorney when authorizing the attorney to sell any immovable property.”

It is further proposed that the addition of Sindh Province in section 17 of the Registration Act may also be followed by the other provinces and be added in Federal statute (the Registration Act, 1908). The Registration Authorities in Punjab Province are already following this provision through general instructions. Thus, Clauses (f) and (g) may be added to Section 17 of the Registration Act as follows:—

Section 17

“(f) Power of attorney when authorizing the attorney to sell any immovable property.”

(g) “An agreement to sell of immovable property.”

Draft amended bill follows: —

A

BILL

to amend the Registration Act, 1908

WHEREAS it is expedient to amend the Registration Act, 1908 (Act XVI of 1908) for the purpose hereinafter appearing;

It is hereby enacted as follows.

1. Short title and commencement. — (1) This Act may be called the Punjab Registration (Amendment) Act, 2017.

(2) It shall come into force at once.

2. Amendment of Section 17, XVI of 1908. — In the Registration Act, 1908 (XVI of 1908), in section 17, in sub-section (1), after clause (e), the following clauses shall be added, namely:-

“(f) power of attorney when authorizing the attorney to sell any immovable property.”

“(g) an agreement to sell of immovable property.”

Conclusion

Considerable litigation in courts is on account of forged documents, such as agreements to sell, therefore, there is a need to make it compulsorily registerable. Such a measure will check the frivolous litigation, thereby saving the precious time of courts and resources of litigant public. In this regard an amendment has already been made by the Government of Sindh for compulsory registration of the power of attorney, when authorizing the attorney to sell any immovable property. The amendments are timely and would be useful, however in doing so, it may be ensured that the measure does not lead to double payment of stamp duty,

first at the time of registration of the agreement to sell and against at the time of registration of sale deed. We'll have to see if any corresponding amendment is required in Stamp Duty Act, Registration Rules, etc.