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trees, their juice or their fruit. It is therefore possible to give unrestricted effect to the reference to the juice of trees in the definition of movable property in section 2 of the Act and to hold that Exhibit A transferred an interest in immovable property.

“Concurring with the learned Chief justice I would dismiss the appeal with costs”.

[Madras High Court C.C.C. Appeal No. 30 of 1912]

## H

A copy of the Judgment of the Madras High Court in Second appeal No. 1784 of 1961 between ARMUGHA VETTIAN Appellant and ANGAMUTHU NATTAR, Respondent is published.

SRINIVASAN J ..... “In a suit by the plaintiff for declaration and possession on the basis of his being a leasee of a coconut thope; the defendant resisted the suit contending that what was granted to the plaintiff under that document was a bare-right of licence and not that of lessee, Both the courts below, having decreed the suit on the finding that the plaintiff was a lessee. in second appeal by the defendant on the question raised as to whether the plaintiff was only a licensee as was granted to the plaintiff was only a right to cut and remove coconuts and as such the suit was not maintainable.”

HELD if at the time of contract, it is contemplated that the purchaser should derive a benefit from the further growth of the thing sold, from further vegetation and from the nutriment to be afforded by the land, the contract was to be considered as for an interest in land but where the process of vegetation was over or the parties agree that the thing sold shall be withdrawn from the land, the land was to be considered as a mere warehouse of the thing sold, and the contract was for goods”.

“If it was a case where the plaintiff was to remove the goods immediately upon the grant, then this right of entry upon the land would be in the nature of licence but where he was entitled to usufruct from the trees spread over a period of time during which period the usufruct did grow out of the soil then the right to collect the usufruct would be in the nature of immovable property and would accordingly amount to a lease”,

(Judgment of the Madras High Court in Second Appeal No. 1784 of 1961).

**S.O. 251.** The assignment of the “Vahivat (Management) of assessment” contained in a bond is an assignment of a benefit arising out of immovable property within the meaning of sections 17 and 3 (now 2) of the Registration Act or else a mortgage registerable in Book 1.

(I.L.R. 19 Bom.,664)

**S.O. 252.** A document by which a person assigned his inam rights over certain lands held by mirasi tenants, including the right to recover the assessment fixed on them at Rs. 40 a year and also the right of succession to the full ownership of the lands

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should the mirasi tenure on which they were held come to an end, was held to assign a right, title and interest in immovable property of the value of more than Rs. 100, and as such, to require registration under section 17 of the Registration Act.

(I.L.R. 24 Bom., 615)

**S.O.253.** (a) A partnership agreement containing a clause that one of the partners should be solely entitled to redeem the mortgaged immovable property belonging to the partnership was held to be compulsorily registerable under section 17, as the right created by clause is a right in immovable property.

(b) The interest of a partner in partnership assets cannot be regarded as a right of interest within the meaning of section 17 (1) (b) of Indian Registration Act, 1908.

(Addanti Narayanappa and others vs. Bhaskara Kistappa and others-)

(I.L.R. A.P. April 1959.)

**S.O.254.** (a) The right to collect market dues upon a piece of land is a benefit to arise out of land within the meaning of immovable property as defined in the Indian Registration Act. Hence it is registerable in Book 1.

(I.L.R. 27 All., 462)

(b) A mortgage by a melwaramdar of future rent due to him from the ryots of the village is a mortgage of immovable property.

(Judgment of the Madras High Court in Second Appeal No. 1469 of 1907).

**S.O.255.** (a) All allowances attached to worship in Hindu temples, tasdik allowances, emoluments to village officers, whether in the shape of land, inam, or of payment in cash or grain fall under "hereditary allowances" and documents relating to them are registerable in Book 1.

(b) Documents affecting (i) purohitam mirasi rights, and (ii) the hereditary right of shaving and ear-boring reserved to certain families in villages with authority to appropriate the fees payable therefor, do not fall within the above category, but are registerable in Book 4, unless it is proved that the fees payable to the purohit, barber or ear-borer are demandable as a matter of right, and the persons requiring their services are bound to pay certain fixed amounts as fees.

(c) A term of worship in a temple is not an interest in immovable property (I.L.R. 39 Cal., 227). Where however, a document relating to a term of worship relates also to hereditary allowances, it shall be regarded as affecting immovable property and registered in Book 1.

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(d) Such statutory tolls as are levied by municipalities and district boards are not immovable property within the meaning of the Indian Registration Act and the Transfer of Property Act and leases of such tolls are registerable in Book 4.

(e) The right to collect votive offerings in a temple is not an interest in immovable property.

**S.O.256.** The undermentioned documents are registerable in Book 1 as relating to immovable property :-

(a) Lease of ferries.

(b) Lease of fisheries.

(c) Agreements securing the right of water running through channels.

(d) Agreements and releases for transferring revenue registry of lands.

(e) Agreements varying the terms of tenancy with reference to the amount of rent to be paid.

(f) Deeds declaring the fact of adoption and creating for the adopted son rights in immovable property.

(g) Documents relating to oil-mills or other machinery permanently attached to the earth.

(h) Documents relating to walls and roofs of houses which are not intended to be detached from the building and treated as materials.

(i) A bond whereby the executant borrows from the claimant a sum of money and agrees to pay the produce of certain specified lands in lieu of interest thereon.

(j) Mortgages by deposit of title deeds relating to immovable property.

(k) Licensing agreements regarding casuarina trees.

S.O. 257. In deciding whether machinery installed in a building or attached to lands is immovable property, the degree and nature of the attachment is a consideration but only a minor consideration. The more important consideration is the object of the annexation which is a question of fact to be determined by the circumstances of each case. The true test is to ascertain the intention of the person concerned in installing the machinery or attaching it to the land. The intention may be expressed or implied from the circumstances in which he attaches the machinery. In the absence of proof one way or the other the intention to be attributed is that of a person acting from motives of self-interest.

Accordingly, where land and the machinery attached to it belong to different owners and both are purchased by a third person for the purpose of carrying on a business for

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his own individual benefit, may be inferred that the intention of the purchaser is not to keep the two things apart, but to make the machinery part of land. In such a case the machinery is immovable property and a document creating a charge thereon requires registration according to law.

(Judgment of the Madras High Court in Appeal No.343 of 1942).

**S.O.258.** The sale of "Pati" earth from a particular soil, i.e., removal of the earth for a period of years, is of the nature of a lease for an advance or premium and, since it includes the benefit to arise out of land, it should be treated as relating to immovable property and be registered in Book 1 irrespective of the period for which the benefit is to be enjoyed.

**S.O.259.** The right to remove sand from a particular place has been held to be an interest in immovable property.

(I. L.R. LVI. Mad. 169-176).

**S.O. 260.** Documents evidencing agreements regarding the construction of a sluice at the cost of the executants under which the executants agree, among other things, that the work shall be done by the Public Works Department and that it shall on completion become the property of the Government, shall be registered in Book 1.

**S.O. 261.** An easement of light and air is immovable property within the meaning of the Indian Registration Act, but it must be an easement-an acquired right, not the chance of acquiring one. A document therefore which limits or extinguishes the chance of acquiring such an easement is not a document relating to immovable property.

(I. L.R 20 Bom. 744)

**S.O. 262.** An agreement where by the executant agreed to register a document affecting immovable property which formed an annexure to the agreement was held to be a mere personal covenant in Book 4 as there was nothing on the face of it to show that the accompanying document related to immovable property.

(I.L. 21 Bom. 724)

**S.O. 263.** An agreement to pay Rs. 500 a month to a lessor in consideration of receiving from him a permanent lease of portions of his zamindari, which agreement was come to before, but reduced to writing after the execution of the lease, was held not to require registration it was not inconsistent with the lease, its provisions formed no part of the holding under the lease, the payment bargained for was no charge on the property, and it was not rent or recoverable as rent but a mere personal obligation collateral to the lease,

(I.L.R 25 Mad.; 603)

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**S.O.264.** (a) Contracts for the (i) collection of minor produce such as tangedu or avaram bark, mushi seeds, leaves and the like or (ii) usufruct of trees and topes such as toddy and fruit shall be treated as leases for stamp purposes. As regards registration, however, such instruments with reference to the High Court ruling quoted under G in order 250, do not relate to immovable property are registerable in Book 4.

(b) The undermentioned classes of Government forest agreements do not relate to immovable property and are registerable in book 4:-

(i) Contract for felling and removing trees.

(ii) Contract for the collection, removal and disposal of stock subject to obligation to coppice and clear the area.

(iii) Contract for the purchase of timber/firewood to be felled/cut departmentally.

(iv) Contract for the felling/cutting and purchase of timber/firewood.

(Proceedings of the Board of Revenue, 3484, dated 15th November 1883. Judgment of the Madras High Court in C C.C. Appeal No. 30 of 1912 and proceedings of the Board of Revenue, 78 Forest, 14th April 1914).

**S.O.265.** Agreements to cut timber whether executed by owners of forests or by contractors or by both should be treated only as agreements relating to sale of goods.

(B.P. Rt. No. 8342/51, 4th December 1951),

**S.O.266.** A document under which the lessee undertakes to plant and grow casuarina trees and to pay, when the trees are cut and sold, a portion of the sale-proceeds to the lesser is a licensing agreement.

**S.O.267.** A bond by which the executant binds himself to repay a loan on a fixed date with a clause at the end that the executant and his heirs with all his property, movable and immovable, shall be liable for the recovery of the amount if the loan is not repaid as stipulated is a mere bond registerable in Book 4 and not a mortgage.

(Madras High Court C.M.A. No. 70 of 1912),

**S.O.268.** The undermentioned documents are registerable in Book 4 as not relating to immovable property:-

(a) An agreement to dig a channel or trench, which is a mere contract for service.

(b) An agreement to abide by the decision of a Panchayat or arbitrators.

(c) Powers of attorney, even when they relate to management of immovable property.

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(d) A receipt acknowledging payment of arrears of rent or of future rents.

(e) A transfer of arrears of rent due under a lease, in which no charge on immovable property is created for securing the payment of rent.

(f) A transfer of a share in a chit fund in which the manager has pledged immovable property as security for the due performance of his engagement.

(g) A release in general terms over all properties belonging to a family in consideration of specific immovable property received through a previously registered document. (G4/23356/61, dt. 30-11-62).

NOTE:- Where after a chit fund has ceased to exist, a member of the fund transfers his right to recover the amount of subscription paid by him on the security of specific immovable property, the transaction is not a transfer of a share but is of the nature of a transfer of mortgage and is registerable in Book 1.

### **Compulsorily or Optionally Registerable Documents**

**S.O.269.** As indicated by the words “nothing in clauses (b) and (c) of sub-section (2) of section 17, the exemption with regard to decrees and orders coming within the scope of clause (vi) of sub-section (2) extends only to decrees and orders affecting immovable property in the manner provided for by clauses (b) and (c) only sub-section (1) of section 17. If the decree or order affects immovable property in the manner provided for in clauses (a), (d) and (e) of sub-section(1) of section17, such decree or order is not exempt from registration as it will not come within the scope of section 17 (2) (vi). Thus a decree or order of a court which purports to effect a lease of the nature mentioned in clause (d) is compulsorily registerable.

**S.O.270.** A petition setting out the terms of an agreement in compromise of a suit stated as one of the terms that the plaintiff agreed that if she succeeded in another suit which she had brought to recover certain land, other than that to which the compromised suit related, she would grant to the defendants a lease of that land upon the specified terms. The petition was recited in full in the decree made in the compromised suit under section 375 of the Code of Civil Procedure, 1882. On a suit for specific performance of the agreement:

Held (1) that as the agreement did not effect an actual demise of the land or operate as a lease it was not “an agreement to lease” within section 2 (7) of the Indian Registration Act, 1908 so as to be required by section 17, sub-section (1) (d) to be registered, (2) that section 17, sub-section (2) (vi) which provides that section 17, sub-section (1) (b) and (c) are not to apply to a decree of a court extends to the whole of a decree, not merely that part which is operative as a decree; (3) that consequently section 49 of the Act did not preclude the decree from being given as evidence of the agreement.

(Indian Appeals, 46, 240).

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**S.O. 271.** For a document to be brought within clause (v) of subsection (2) of section 17 of the Registration Act, it is necessary not only that the document should create a right to obtain another document which will, when executed, create, etc., any right, title or interest in immovable property, but that it must not itself create, etc., any such right, title or interest.

Where a deed executed among members of a joint Hindu family effected a separation or division in status as from the date of its execution, stated that from that day forward each party should enjoy the properties in the schedule allotted to his share and provided that a partition deed in the terms mentioned therein should be executed and registered as soon as possible and that till that it should itself be in force, held that the deed came within clause (b) of sub-section (1) and not within the exception in sub-section (2), clause (v) of section 17 of the Registration Act and was inadmissible in evidence unless registered.

**S.O. 272.** The word “declare” in section 17 of the Registration Act is to be taken in the same sense, as the words “create, assign, etc.” used in the same section, viz, as implying a definite change of legal relation to the property by an expression of will embodied in the document referred to. It implies a declaration of will not a mere statement of a fact, and thus a deed of partition which causes a change of legal relation to the property divided amongst all the parties to it, is a declaration, in the intended senses; but a letter containing an admission, direct or inferential, that a partition once took place, does not declare a right within the meaning of the section. It is not the expression or declaration of will by which the right is constituted. (I. L. R. 5 Bom. 233).

**S.O.273.** (a) The strictest construction should be placed on the prohibitory and penal sections of the Registration Act, which impose serious disqualifications for non-observance of registration.

(b) An instrument to come within section 17(1) of the Act must in itself purport or operate to create, declare, assign, limit or extinguish some right, title, or interest of the value of Rs. 100 or upwards in immovable property. To come within section 17(1) (c) it must be on the face of it an acknowledgement of the receipt or payment of some consideration on account of the creation, declaration, assignment, limitation, or extinguishment of such a right, title, or interest.

(c) In a suit by a mortgagee for the sale of immovable property mortgaged in certain simple mortgage bonds for amounts severally exceeding Rs. 100, the defendant pleaded that he had made certain payments in respect of the bonds and in support of his plea relied on endorsements of payment upon them, one of which was as follows:-

“Paid on the 21st December, Rs. 3,000.” The other endorsements were in similar terms.



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Held, by the Full Bench (STRAIGHT J., doubting) that the endorsements, even if assumed to be receipts did not fall within section 17(1) (b) of the Registration Act, in as much as a receipt, unless so framed and worded as to purport expressly to limit or extinguish an interest in immovable property (which the endorsements did not), could not come within the section, and what ordinarily operated to limit or extinguish a mortgagee's interest in the mortgaged property was not the paper receipt, but the actual part-payment of the mortgage debt.

Held, also that the endorsements did not fall within section 17(1) (c) of the Act in as much as taken by themselves, they were merely memoranda made by the mortgagee, and could not be treated as acknowledgements, nor, even if assumed to be such, did they show upon their face, that they were acknowledgments of the receipt or, payment of any consideration for the limitation or extinguishment of any interest of the mortgagee in the mortgaged property.

Held, therefore, that the endorsements did not require to be registered in order to make them admissible in evidence of the payments to which they related.

(I.L.R.. 9 All.. 108).

**S.O.274.** (a) Receipts passed by a mortgagee for sums paid on account of the mortgage debt and exceeding Rs. 100 each, are not inadmissible in evidence for want of registration. The technical term "consideration" implies that the person to whom the money is paid, himself limits or extinguishes his interest in the land in consideration of such payment. Such limitation or extinction (if there can be said to be any) as results from the payment on account of the mortgage debt, is the legal consequence of such payment, and not the act of the mortgagee. The payment reduces the sum due at the time on the mortgage, and thus modifies the account between the mortgagor and mortgagee. But it does not operate to limit or confine within narrower limits the right or interest of the mortgagee in the land, which is simply to have the payment of the principal and interest secured on the mortgaged premises by some one or other of the remedies available for that purpose. Money paid on account of a mortgage debt is not the consideration for the limitation or extinction of so much of the interest in the land created by the mortgage and a receipt for such a payment need not, therefore, be registered under section 17, clause (b) of the Registration Act.

(I L.R. 4 Bom., 235, and 3 Mad., 53).

(b) An endorsement on a mortgage-bond of payment made in satisfaction of such mortgage, which payment did not purport to extinguish the mortgage, was held to be covered by clause (xi) of section 17 (2) of the Registration Act and as such not compulsorily registerable.

(I.L.R. 37 Cal., 589).



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(c) A receipt for money due upon a mortgage given in the following terms : "The bond is returned. No money remains due" does not require to be registered and the words "no money remains due" do not purport to extinguish the mortgage.

(I.L.R. 34 All., 528).

(d) If the endorsement on a mortgage deed relating to the discharge of a mortgage debt contains the words "the claim is relinquished" the document should be treated as a release.

(B.P. No.D. 13 Mis., dated 15th January, 1918).

(e) An agreement executed by mortgagee after the date of the mortgage whereby he relinquished a certain part of the principal and all interest, past and future, on the mortgage in lieu of certain services rendered by the mortgagor mortgagee was a document which required registration to make it admissible in evidence and not an acknowledgement of payment within the meaning of the exception contained in section 17 clause (n) of the Indian Registration Act, 1877 (section 17 (2) (xi) of the Act 1908).

(I.L.R. 35 All. 202)

(f) An agreement in writing by a mortgage where by he relinquishes a sum of more than Rs. 100 out of the mortgage money requires registration to make it admissible in evidence and it cannot be relied on as an acknowledgment or receipt within the meaning of section 17 (2) (xi) of the Registration Act.

(Madras High Court S.A. No. 1205 of 1915).

**S.O. 275.** A document acknowledging the receipt of money due by one person to another person on unsecured bonds and pro-notes but paid to the latter by the assignee of immovable property belonging to the former person, is registrable in Book 4 and not in Book 1.

**S.O. 276.** A document acknowledging receipt of consideration money due under a previous deed of sale of immovable property is registerable in Book 1.

**S.O. 277.** An instrument which is not testamentary, but is a family arrangement intended to be final and irrevocable and operative immediately is void as regards immovable property if it is not registered.

(Indian Appeals, Vol. 38. P. 134).

**S.O. 278.** A document which varies the amount of rent to be paid under an existing lease registered as required by section 17 (d) of the Indian Registration Act, as also the incidents of such payments, namely, the date of payment and consequences of default of payment, requires registration.

(I.L.R. 39 Cal., 284).

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**S.O. 279.** For the purpose of determining whether a document is compulsorily or optionally registerable, the value of the immovable property alone affected by the deed, shall generally be taken into account.

However all deeds of gifts and trusts either of movable or immovable property irrespective of their value are compulsorily registerable.

**S.O. 280.** A receipt granted for payment of consideration in part or in whole, in respect of a sale, mortgage or similar document of the value of one hundred rupees and upwards is, under section 17 (1) (c) of the Act, compulsorily registerable even when the amount acknowledged as received is less than one hundred rupees; and a receipt falling under section 18 (b) is optionally registrable even though by reason of interest having been charged on the deferred payments or otherwise, the sum acknowledged by the receipt as actually paid amounts to one hundred rupees and upwards.

Thus a receipt for Rs. 50 being a portion of consideration for a sale for Rs. 200 is compulsorily registrable under section 17 (1) (c) and a receipt for Rs. 102 due on account of the consideration for a sale for Rs. 90, the sum of Rs. 102 being made up of Rs. 90 plus interest up to date of payment is optionally registrable under section 18 (b).

**S.O. 281.** Sale with condition of reconveyance within certain date assignment of right to another-Validity-Whether agreements for reconveyance, require registration :—

Defendants 1 to 3 sold the suit property to one A with an agreement of reconveyance in favour of the defendants 1 to 3 executed on the same day by A. The price should be paid in any Chaitra month within ten years from the date of agreement. Later on the defendants 1 to 3 assigned their rights to purchase, to the plaintiff and the plaintiff paid them an advance but the defendants 1 to 3 committed breach of that agreement. Thereupon the plaintiff filed the suit for specific performance of the contract and also a deduction of certain amount for breach of the contract which was decreed with costs. On appeal the defendants put forward various contentions about the maintainability of the suit.

RAMACRISHNAN. J HELD, the original agreement of reconveyance of properties is merely an agreement to sell immovable property and does not involve the conveyance of an interest in immovable property. Therefore, the document which assigns such a right, cannot create new right in immovable property which the assignor did not have. Such an agreement is a valid one and it does not require registration. (Judgment of the Madras High Court reported in the Indian Law Report, Madras Services for May 1964).

**S.O. 282.** The undermentioned documents, which are not compulsorily registrable under section 17 of the Registration Act, are compulsorily registrable under the provisions of the other enactments quoted against each.

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**Documents**

Any declaration of trust relating to movable or immovable property.

Any instrument of sale or exchange of immovable property of a value less than one hundred rupees.

An instrument of mortgage of immovable property when the principal money secured by the mortgage is less than one hundred rupees.

An instrument of non- agricultural lease of immovable property for a term of one year or less.

**Provision of enactments**

Section 5 of the Indian Trusts Act, 1882.

Sections 54 and 118 of the Transfer of property Act

Section 59 of the Transfer of Property Act.

Section 107 of the Transfer of Property Act.

**S.O. 283.** (a) (i) It has been held that all field cultivation by tillage and also all garden cultivation for the purpose chiefly of procuring vegetables or fruits as food for man or beast and other products fit for human consumption by way of luxury, if not as an article of diet, should be regarded as agriculture as distinguished from horticulture for purposes of section 107 of the Transfer of Property Act. Accordingly, a lease of land for betel cultivation was held to be an agricultural lease.

(I.L.R. 24 Mad., 421).

(ii) It has been also held that agriculture does not connote tilling the soil for raising food products alone but means cultivation of the soil for any useful purpose.

(I.L.R. 45 Mad, 710-715).

(b) A lease which relates to land and to a house constructed on such land for the habitation of the lessee or for agricultural purposes shall be classified as an agricultural lease.

(c) A lease of fisheries shall be treated as a non-agricultural lease.

(d) A lease for a casuarina plantation is an agricultural lease.

(e) A lease of salt - pans is a non - agricultural lease.

**S.O.284.** (a) The language of the proviso to clause (1) (d) of section 17, viz.. “the terms granted by which do not exceed five years” has been held to mean “the terms granted by which are not for a definite period exceeding five years”. Accordingly, a muchilika executed for one fasli to remain in force until the execution of a fresh muchilika is not a lease for a definite period exceeding five years.

(I.L.R. 4 Mad. 381).

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(b) A lease for one year, containing an option of renewal for a further period of one year, is not a lease for a term exceeding one year within the meaning of clause (1) (d) of section 17 of the Act, so as to render registration thereof compulsory.

(I.L.R. 17 Cal. 648).

(c) A lease of a betel garden for an indefinite period and reserving a yearly rent is not a lease for a period exceeding five years, as either party might determine it before the expiration of that period, although it might continue beyond five years in the event of neither party determining it in the meanwhile.

(I.L.R., 24 Mad., 421).

(d) The terms of a document were as follows:—

We have taken these three fields for cultivation from you yearly (dar salne mate) on condition that we are to pay the assessment. We shall go on paying the assessment to Government so long as you give us the fields for cultivation. In consideration of this we are to have the produce of Nos. 167 and 199. As regards No. 173, we will give you half of whatever the produce may be. We have taken the land for cultivation under the above conditions. If we say anything false or unfair, or if you come to hear of any fraud or deceit on our part or if we practise such fraud or deceit, we will restore possession of the fields to you as soon as you ask us to do so. We shall raise no objection to doing so. You may let the fields for cultivation to any one you please.”

Held, on a construction of the lease, that the words dar salne mate (year to year) taken in connexion with the total absence of any date for the expiry of the tenancy suggested that the parties contemplated that the lease should operate for a period exceeding one year, and that, therefore, it was compulsorily registrable under the provisions of section 17, sub -section (1) (d) of the Indian Registration Act (XVI of 1908).

(I.L.R. 41 Bom., 458)

NOTE:- Agricultural leases, in which no term is specified but which are terminable at the option of either the lessor or the lessee, should be treated as optionally registrable as leases for one year and less, and where no such option is reserved, they should be deemed as if they extend to a period of over five years and are compulsorily registrable, irrespective of the value of annual rental.

**S.O. 285.** A lease of immovable property for the life of the lessee was held to be a lease for a term exceeding one year.

(I.L.R. 18 Bom., 109).

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**S.O. 286.** In order to exempt a lease from registration under the proviso to clause (d) of section 17 of the Registration Act, it is not necessary that an annual rent should be reserved. The proviso simply means that if an annual rent is reserved, it should not exceed fifty rupees.

(Letters Patent Appeal No. 152 of 1909, Madras.)

**S.O. 287.** Transfers of mortgages relating to immovable property shall be treated as sales of immovable property for purposes of registration and classified accordingly.

**S.O. 288.** A document affecting interest in immovable property in which the value is not ascertainable shall be treated as a document of the value of Rs. 100 and upwards for the purpose of classification.

**S.O. 289.** A partition deed shall be treated as compulsorily or optionally registrable with reference to the value of the entire property forming the subject of division though the value of the separated shares alone is taken as the value for the levy of registration fee.

### NATURE OF DOCUMENTS

**S.O. 290.** The principle adopted for determining the nature of documents for purposes of stamp duty shall, unless otherwise directed, be adopted for registration purposes also.

**S.O. 291.** Agreements to sell and agreements to re - sell fall within section 17 (2) (v) of the Registration Act and are therefore not compulsorily registrable. Documents which do not themselves create, declare, etc., any immediate right in the transferee to land, but which do create, declare, etc., an equitable right in him to a conveyance which shall perfect his legal right come within section 17 (2) (v) and not within section 17 (1) (b). One object of the provision in section 17 (2) (v) was to dispense with the necessity of two successive registrations in the same transaction. To give effect to the purpose of the Legislature and to prevent section 17 (2) (v) from being largely, if not entirely, illusory and inoperative, it has been found necessary to construe the right, title or interest "in land mentioned in section 17 (2) (v) as meaning the legal as distinct from the equitable right, title or interest". Under these agreements the vendee or re-vendee does not acquire any immediate legal right, title or interest in the land, but only an equitable right against the vendor or revendor to force him to convey such right, title or interest. (Advocate-General's opinion in G.O.No. 1465, Judicial, 8th October 1900.)

**S.O. 292.** A deed of cancellation or revocation is compulsorily or optionally registrable according to the nature of the original document, the terms of which are cancelled or revoked. Such documents shall be grouped with miscellaneous documents in the accounts.

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**S.O.293.** (a) Where a document which purports to be a deed of rectification of a previous document creates, transfers, limits, extends, extinguishes or records rights, it is an instrument within the meaning of the Stamp Act in so far as it relates to the rights created, transferred, limited, extended, extinguished or recorded and should be treated as compulsorily or optionally registrable with reference to the description in Schedule I - A of the Andhra Pradesh Stamp (Amendment) Act, 1922, under which it falls and to the value of the document arrived at under clause (b) or clause (g) of Article 1 of the Table of Fees.

(b) A deed of rectification which does not create, transfer, limit, extend, extinguish or record any right or liability is not an instrument as defined in section 2 (14) of the Stamp Act and should be classified as compulsorily or optionally registrable according to the nature of the original document which is rectified. Such documents shall be grouped as miscellaneous documents in the accounts.

**S.O. 294.** An agreement by which "sapindas" give their consent to a widow to adopt a son is registrable in Book 4 as distinguished from an authority to adopt which is registrable in Book 3.

**S.O. 295.** A document evidencing a declaration of trade mark shall be treated as an affidavit and registered in Book 4.

### **AGREEMENTS**

**S.O. 296.** An agreement by which the owner of a house undertook to permit the owner of an adjoining house, when he built a second storey which was in contemplation. To discharge rain water and also water used for daily household purposes on to the premises of the former, was a grant of an easement within the meaning of section 4 of the Easements Act, and did not require registration not being a transfer of ownership as contemplated by section 54 of the Transfer of Property Act.

(I.L.R 31 All. 612.)

**S.O. 297.** "An instrument by which collection of tolls is let falls under section 2 (16) of the Indian Stamp Act".

**S.O. 298.** Documents in the form appended to G.O.No. 3274, L-A,, dated 27th November 1941, executed by contractors for the removal of street sweepings dumped in the rubbish depots of a local board for a sum of money payable to the board containing also a clause that an amount is deposited with the board as security for the due performance of the contract which is to be deducted towards the licence fee payable to local body shall be treated only as agreements.

(B.P.L.Dis.L.No. 3309 of 1945, dated 5th December, 1945)

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**S.O.299.** (a) The word “hiring” is used In law in the sense of a bailment for a reward or compensation and hiring includes (1) the hiring of a thing for use, (2) the hiring of work and labour, (3) the hiring of care and service to be bestowed or performed on the thing delivered and (4) the hiring of carriage of goods from one place to another, the three last being but sub-divisions of the general head of labour and services (Wharton’s “Law Lexicon”).

Accordingly, agreements for the hire of movable property such as boots, carts, cattle, etc-, should be treated as “hiring agreements” whether they are executed by the person letting or hiring or by both.

(b) For purpose of stamp duty hiring agreements fall under Article 6 of Schedule I-A of the Stamp Act- They should not be treated as bonds even though they are attested by two witnesses.

**S.O. 300.** Agreements relating to hiring of machinery are not “leases” within the meaning of section 2 (16) of the Stamp Act. They are chargeable as “hiring agreements”<sup>1</sup> falling under Article 5 (c) of Schedule I of the Stamp Act.

(B.P. Perm- 641 (1) dated 27th April, 1966).

**S.O. 301.** By two deeds, dated 27th July, 1948 and 5th July, 1949, two simple mortgages over eight items of properties were created. As the mortgagors defaulted in payment of interest, both the debtors and the creditors entered into an agreement by which the mortgagors handed over to the mortgagee the properties so that the income therefrom may be utilized for discharging the mortgage debt after paying a sum of Rs. 200/- per mensem to the mortgagors for their subsistence.

RAMACHANDRA IYER. C J. HELD, that the document was more or less in the form of an agreement creating a fiduciary relationship between the mortgagors and the mortgagee whereby the latter bound himself by certain covenants. The document cannot be regarded as a mortgage even in the light of the explanation to article 10 to Schedule I of the Stamp Act.

(Indian Law Reports, July 1964).

**S.O. 302.** According to the recitals in a document which purports to be a family agreement whereby the executants of the document, viz., husband and wife agreed that in the interest of their minor children, the ancestral properties noted in the schedule of the document be encumbered only to meet the family expenses and any encumbrance on the properties should be executed only jointly by husband and wife and any such deed executed singly by either of them will not be binding on the properties involved and that the management of the family should be done by both together amicably.

The Board of Revenue held that the document is only an agreement, falling under Article 5 (C) of Schedule I.

(B.P RT. No. 3929 (L) dated 1st July, 1966).



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S.O. 303. "Under a deed of agreement the proposed vendors had received an advance Rs. 1,000/ and the purchasers had to pay the balance of sale price in certain installments to the vendors. The vendors had delivered possession of the property to the vendees". The Board of Revenue had held that the crucial test to determine the nature of such documents as to whether they are mere agreements or not is, whether the document itself transfers title and interest of the vendors to the vendee even though a regular sale deed is contemplated later. Such documents should therefore be treated as "Agreements to sell" and not as "Conveyance".

(B.P. Rt.No. 8238 (L) dated 15th April, 1967)

### **BOND**

**S.O. 304.** Where a document does not contain an unconditional undertaking to pay but provides that the amount will be paid with interest in six annual installments and is attested by a witness and there is no mention of indication or the date on which the installments will fall due, the document is not a "Promissory note" as defined in section 4 of the Negotiable Instruments Act (XXVI of 1881), but falls within the definition of 'Bond' under section 2 (5) (b) of the Indian Stamp Act (II of 1899), viz., an instrument attested by a witness and not payable to order or bearer whereby a person has obliged himself to pay money to another.

(Judgment of the High Court of Madras in referred case No. 42 of 1953).

### **COMPOSITION DEEDS**

**S.O. 305.** The term "composition deed" is not indeed defined in the Registration Act, but it is a well-known term of art, familiar to lawyers, and used of a transaction entered into by a debtor insolvent in embarrassed circumstances, with his creditors with the object of paying the latter a composition upon their claims. As was pointed out in *ex parte Milner* (1885) 15 C.B.D., 605 there may be a composition between a debtor and his creditors under the provisions of a Statute and there may be what is called a common law composition, not entered into under the provisions of any Statute. The insolvency or embarrassed circumstances of the debtor is one essence of composition deed. Another essential feature of it is that, where the debtor with the consent of his creditors appoints a trustee to take charge of all his property for the purpose of giving effect to the composition, the trustee is a trustee for the creditors, only to the extent of that purpose, but no right to the property itself is transferred to the creditors. The trustee holds the property for the debtor, who remains in the eye of law the owner and for the benefit of the creditors. In one sense no doubt there is a transfer of the property to the trustee and to that extent the debtor's right, title or interest is extinguished and a right is created in the trustee. But as the transfer of the right to the trustee and extinction of the right of the debtor are of a limited or qualified character, and the trustee, so far as

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the ownership of the property is concerned, is a trustee for the debtor and his creditors the legislatures would appear to have provided that a deed of this kind should not fall within the class of compulsorily registrable documents mentioned in clauses (b) and (c) of section 17 of the Registration Act. The exceptions in section 17 of the Act to clauses [b] and (c) seemed to be framed upon the principle that where either a document affects immovable property indirectly by extinguishing a right existing in favour of one person and creating a right in favour of another or where otherwise it is a document with the inherent characteristic of publicity such as a decree of a court or an award, or a grant of immovable property made by Government, it is not necessary to register it. A composition deed whereby a trustee is appointed to pay the composition out of the debtor's property is one instance of such an indirect transfer, and, moreover it is attended by a certain amount of publicity. The next exception mentioned in clause (f) is an instrument relating to shares in a joint stock company, where the assets of such company consist, in whole or in part, of immovable property. There, again, when a shareholder in the company transfers his share to another, he in effect transfers his right to or interest in the immovable property of the company, but the transfer is in that respect, and so far as it affects immovable property, indirect as in the case of a composition deed.

These considerations are sufficient to make it clear that when the Legislature says that a composition deed need not be registered it means that the deed must in substance be of the nature of a composition, not a conveyance. Where a debtor transfers his property to a creditor or creditors in consideration of his debtors i.e., where he parts with his rights absolutely, the transaction may partake the nature of a composition but in reality and substance it is not a composition but a conveyance. It is otherwise where with the consent of his creditors he parts with his property in favour of a trustee for the purpose of paying the composition upon the claims and the trustee is authorised to deal with the property for that purpose.

“Now, the deed in the present case falls within the latter description. Certain immovable and movable property of the debtor and his account books are vested in the trustee for the purpose of paying his creditors. There is no conveyance of the immovable property of the debtor to the creditors. Under these circumstances we think the lower courts were right in holding that the deed fell within the exemption clause (e) of section 17 of the Registration Act. The deed recites that the composition is for the benefit of all the creditors and all of them are to derive equal benefit from it.”

The mere fact, therefore, that a certain kind of trust enters into its constitution and character is not sufficient to take the deed out of the category of a composition deed within the meaning of clause (e) of section 17 of the Registration Act. Where the composition is either its main purpose or unchangeable characteristic and the trust is only incidental.

(I.L.R. 28 Bom., 366).

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## COUNTERPARTS

**S.O.306.** (a) The word “counterpart” is used in law in the sense of one or two corresponding copies of an instrument. In Stephen’s edition of Black-stone’s Commentaries on the Laws of England ‘counterparts’ are referred to in the following words:-

When the several parts of an indenture are interchangeably executed by the several parties that part or copy which is executed by the grantor is usually called the original, and the rest are termed counterparts.

Accordingly, the counterpart of an instrument should contain an exact reproduction of the terms of the original and it is not enough that it contains a bare reference to another document.

(b) A counterpart of a document need not necessarily bear the same date as its original (Order 228 (a) (iv)).

## DISSOLUTION OF PARTNERSHIP

**S.O. 307.** The exact nature of documents purporting to evidence a “Dissolution of partnership” whereby one or some of the partners in a firm sever their connection with the firm depends on the actual wording of the documents and the circumstances of each case. Some of the important decisions of the High Court of Madras having a bearing on the matter are given below:—

i) A document by which three of the five partners in a registered firm relinquished their rights in an immovable property owned by the firm in favour of the other two partners without effecting a dissolution of the partnership was held to be a mere release.

(Judgement of High Court, Madras in referred case No. 68 of 1964).

ii) Two persons were carrying on business in partnership. A deed of dissolution was executed subsequently between the partners. The retiring partner was not entitled to profits after a specified date. The capital invested by the retiring partner was withdrawn long before the deed of dissolution was drawn up. Held, the deed was only a DISSOLUTION OF PARTNERSHIP.

(I.L.R. March, 1958).

iii) Where two divided brothers who were parties to a document, embodied in writing which consisted of a number of payments, debits and credits, and the document was somewhat unique in character and not of the usual pattern but a multi-purpose and multifarious document representing the purported settlement between the executants of their mutual claims arising out of several transactions by way of partnerships, joint acquisitions, joint ventures and other common activities.

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Held, to be composite document, portions of which may be constructed as deed of dissolution of partnership, or deed of release and the other portions treated as mere memorandum of agreement between the parties.

### **DECLARATION OF TRUST**

**S.O. 308.** A deed recorded the terms of a non-testamentary disposition of movables for the first time. Held that as movable property can be transferred without any instrument in writing, the directions in the deed do not for the first time create or transfer any interest in the property to the transferee so as to be brought within the definition of "Settlement" because the trustees are already in possession of the property and that the document is only a DECLARATION OF TRUST.

(B.P.Rt. No. 4832, dt. 19th Sept. 1955)

**S.O. 309.** A property was purchased by certain persons for use by a "Sabha". The purchasers subsequently created a disposition in writing in favour of the "Sabha". HELD that this document creating a disposition in favour of the Sabha was only a declaration of trust as it was recited in the sale deed itself that the property was purchased in favour of the trust for the use of the Sabha.

(B.P.Rt. No. 5398. dt. 27th October, 1955)

**XA** deed which declared that a sum of Rs. 10,000 was set apart for the purpose of a school was held to be a Declaration of Trust as it was preceded by a resolution by the majority of the trustees to dedicate property in favour of the school in pursuance of the power granted to the trustees in the original settlement and that one of the charities contemplated in the settlement was the education of children.

(B.P. Rt. No. 2437/56, dt, 1st May, 1956)

### **GIFTS**

**S.O. 311.** The definition of "gift" given in section 122 of the Transfer of Property Act shall be adopted for registration purposes. Accordingly, where a document which falls within the category of "gift" as defined in the said Act, comes also within the definition of "settlement" as given in the Stamp Act, it shall be classified in the departmental accounts as a "gift" although it is chargeable with stamp duty as a settlement. A "settlement" shall be classified as a gift for registration purposes only if the disposition of property evidenced thereby is absolute and unqualified. Otherwise it shall be classified as a miscellaneous document.

**S.O. 312.** A document evidencing a voluntary disposition of property made without consideration in favour of dependents or of relatives shall be treated as a "settlement" for stamp purposes and as a gift for registration purposes, although it does not expressly stipulate that the disposition is for the purpose of providing for the dependents or the relatives.

(Note 7, under Article 58 of Schedule 1 on page 157 of the Stamp Manual, 1933).

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S.O. 313. A document by which the executant, in consideration of services already rendered or thereafter to be rendered by the claimant to the predecessor-in-title of the executant, released the claimant from payment to him of the assessment on certain land was held to be a gift of the grantee's right to assessment and not a sale as the consideration could not be regarded as "price" and that even if it could be assessed in money value it was vitiated by the fact that it was vague and uncertain as to future services; and that such a right is regarded as nibandah in Hindu Law and therefore immovable property.

(I.L.R. 34 Bom. 287).

**S.O. 314.** A document by which property is given out of natural love and affection to persons who are not dependents or relatives and not in the way of providing for claimant is a gift and not a settlement.

**S.O. 315.** Where the interest secured in a lease deed is transferred by the lessee voluntarily and without consideration to his sister out of affection towards her, the document embodying the transfer is a "gift of interest in a lease."

**S.O. 316.** A deed of settlement conveying certain properties to the settlee without power of alienation was registered at the first instance. Subsequently a document styled as "Rectification deed" was executed by which the settlee was given full power of alienation. The second deed was held to be a "Fresh settlement".

**S.O. 317.** Section 2 (24) of Indian Stamp Act defines a Settlement as a disposition of property made inter-alia for religious or charitable purpose.

Section 5 of the Endowments Act, 1966 defines charitable purpose as including a) relief of poverty or distress, b) Education, c) Medical Relief and d) advancement of any other object of utility or welfare to general public or a section thereof. Disposition of properties in favour of Institutions such as local authorities, choultries, Devasthanam etc., for charitable or religious purpose in memory of the dead or to perpetuate the name of a particular person or persons or disposition of properties in favour of Idols should be treated as gifts for charitable or religious purposes as the case may be and when such a condition is absent, it has to be treated as settlement for charitable or religious purposes.

When it is classified as a Gift, the duty chargeable will be half of the rate prescribed in Article 29 of Schedule I-A read with item No.86 of Notification No. 13 dt. 17-12-1938 in addition to transfer duty leviable. If it is classified as a Settlement, the duty livable is one half of the rate prescribed in Article 49 of Schedule I-A read with item No. 86 of Notification No. 13 dt. 17-12-1938 and no Transfer Duty is payable.

## LEASES

**S.O.318.** (a) An endorsement granting the application made upon a darkhast application for the grant of a lease of temple lands by the manager of the temple was held to be an

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agreement to lease and subject to the provisions of the Registration Act as if it were a lease.

(Madras High Court, A.A.O. 136 of 1902).

(b) A contract to lease immovable property which is compulsorily registrable under section 17 (d) affects the immovable property and cannot, if unregistered, affect the property or be received in evidence to prove the contract.

(Madras High Court, S.A. 7 of 1908).

(c) Where an agreement to lease certain immovable property was effected by two letters, one constituting the proposal and the other the acceptance, it was held the letters could not be used to prove the agreement as they had not been registered and that section 17, clause (d) of the Registration Act, applies not only to leases effected by a single document but also to those effected by correspondence.

(Madras High Court, S.A. 893 of 1914).

(d) A document by which a local board lets out a ferry in favour of a contractor, the contract being embodied in a form almost similar to that prescribed in G.O.No. 3274, L.A., dated 27th November 1941, should be treated as a lease.

**S.O.319.** Under clause (1) (d) of section 17 of the Registration Act, an agreement for a lease needs registration if the parties to such agreement intend to create a present demise. Although the agreement may contemplate a formal document being subsequently executed, the paramount intention as gathered from the whole of the instrument must prevail.

(I.L.R., 10 Bom. 101).

**S. O. 320.** A letter which contained a definition of the reduced rental, recited the area of the land demised under the lease, the nature of the interest granted by the lease, and installments in which rents were payable was held to be a non-testamentary instrument which purported to limit in future a vested interest of the value of rupees one hundred and upwards in immovable property and to be registrable as a lease.

(I.L.R. 37 Cal.. 293)

**S.O.321.** The material portion of a document was as follows :—

Received advance from C one hundred rupees for giving a lease of 1 3/4 grounds for 25 years at Rs. 3-8-0- a month.

Held that the document, although in form a receipt for an advance of rent, was in substance an agreement to lease and being unregistered was itself inadmissible in evidence.

(Madras High Court, O.S.A. 38 of 1916, Madras Law Journal, 33, page 596).

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**S.O.322.** A document worded as a perpetual lease and giving an option to the lessee alone to surrender the lease should he choose to do so shall be treated as a perpetual lease.

**S.O.323.** A document by which the claimant is given possession of lands belonging to the executant on condition that the claimant cultivates the lands and raises certain trees thereon and that when the trees commence to bear fruit the executant shall receive a portion of the usufruct, falls under the category of a lease as defined in the Indian Registration Act.

**S.O.324.** A document whereby the executant undertakes to occupy the house of the claimant for a certain period and to look after the trees in the compound for a certain period receiving a remuneration therefor from the claimant, is a lease.

**S.O.325.** A document evidencing a surrender of the right obtained by a lease the term of which has expired should be treated as a surrender of lease and not as a release.

**S.O.326.** A document purported to be a lease of a building for 21 years at an annual rent of Rs. 2,360 of which the lessor took Rs. 21,000 in a lumpsum calculated at the rate of Rs. 1,000 a year besides a sum of Rs. 50 to be paid to him every month. A sum of Rs. 760 by way of annual taxes was to be paid by the lessee every year. The lessor also received an advance of Rs 1,000 which was repayable at the end of the period of the lease. The document also contained further conditions that the lessee should improve the building by further construction spending not more than Rs. 10,000 and construct a flush-out latrine at a cost of Rs. 300. The total cost of the improvements was Rs. 10,300. Held that the cost of the improvements, viz., Rs. 10,300 should be treated as a premium for the lease.

(B.P. Routine No, 3227, dated 18th June 1946).

**S.O.327.** (i) Amounts paid before or on the commencement of lease are chargeable to duty as advance.

(ii) Rents paid in advance even after commencement of lease but before liability arises shall be taken as advance chargeable under Article 31 (c) of schedule I-A to Indian Stamp Act, 1899.

(iii) Even a month's rent paid in advance and to be set off against the rent for the last month of the lease should be treated as "Advance."

(iv) The amount representing portion of the total rent for the entire period of lease or the total rent for the entire period of lease as the case may be, if paid before the commencement of a lease, is only an advance.

(v) If the advance paid is the aggregate of the rentals for the entire period of lease and no part of rent is reserved, such lease is for money advanced where no rent is reserved. (Article 31 (b)).



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(vi) If such advance is less than the total amount of rentals for the entire period of lease, then it is a lease for advance where rent also is reserved. (Article 31 (c)).

(vii) Irrespective of the rent paid as advance, the annual rental should be calculated only on the rent reserved including part of the rent if any paid as advance. In other words annual rental will not suffer any reduction on account of the rent paid in advance though it is stated to be adjustable towards rent.

(viii) If rent is payable at specified periods, i.e., annually, half-yearly, quarterly, monthly, etc., and if it is paid after the commencement of the lease but in advance of the period to which it relates, it is only rent and not advance.

**S.O.328.** A document purporting to be a lease of a touring cinema has to be treated as a hiring agreement on the basis of the judgment, an extract from which is given below:- “On the question whether a lease of properties relating to a touring cinema, though collapsible and capable of being removed but fastened to the earth when in use, is chargeable to stamp duty under Article 35 (a) of Schedule I of the Stamp Act....”

Held, the lease is not chargeable to stamp duty as the equipment of the touring cinema does not fall within the category of immovable property. In the very nature of things, properties of the nature of a touring cinema which are collapsible and capable of being removed cannot be immovable property, though actually, some of the machinery or the poles of the tent may be imbedded in the earth temporarily. If they are permanently fixed the equipment would not form part of a touring cinema”.

### **Lease and Conveyance**

**S.O.329.** A lease of certain immovable property for ten years was executed. According to the terms of the lease, the lessee was to pay the lessor a premium of rupees one lakh and it had to be adjusted towards rent. Subsequently a deed of surrender was executed. By this surrender, the lessor was to retain the entire balance of the premium and the lessee gave up his right to the same. HELD the deed is a surrender of lease and conveyance chargeable under Articles 23 and 61.

(Judgment of the High Court of Judicature, Madras in referred case No. 24 of 1957).

### **Transfer of Lease and Agreement**

**S.O.330.** A document purported to be a transfer of lease for Rs. 50 with a stipulation to retransfer the same on payment of a certain consideration amount within a period of two years from the date of execution of the deed. This document was held to comprise two transactions under section 5 of the Stamp Act, viz., transfer of lease and agreement to retransfer.

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**S.O.331.** In a hiring agreement of movable machinery, a sum of Rs. 12,000 was paid in advance to be adjusted towards the last 12 months hire. HELD, that the amount of advance was not premium or advance as the deed did not come under the definition of LEASE.

### **Mortgages**

**S.O.332,** Documents known as “Munigutha cowles” shall be treated is usufructuary mortgages.

The following is a specimen of a document of this description;—

“The amount of principal and interest as per document executed by us in your favour on the 31st July 1891 is Rs. 53 and the amount due as per grain and cash account struck between us, both parties being present, is Rs. 27, making a total of Rs. 80. Adding to this principal Rs. 40, future interest at half a rupee for every rupee, the total comes to Rs. 120, in letters (rupees one hundred and twenty). For the above you are to enjoy for twelve years from this date to the end of Plavanga year, the income of our service inam, dry, half visam land of our ancestors, lying within the boundaries hereunder given, already in your possession and enjoyment, the rent whereof has been agreed between us to be Rs. 10 a year. The said land is situated in Vankapalam to the south of Venkapalam of Sitanagaram hamlet, attached to Anantapuram thana, Vizayanagaram Samastanam, Anakapalle sub-district, Anakapalle taluk, Vizagapatam district, Besides you will have to pay road-cess 6 annas for the said land. At the end of the period our land and document should be delivered to us.”

(Board’s Resolution No. 502 (Separate Revenue), 24th November 1897).

**S.O.333.** The following documents are illustrative cases of “additional security” falling under Article 35 of Schedule I-A of the Stamp Act :—

(i) A and his son executed a mortgage deed for Rs. 700 on 30th December 1925, in favour of B. An amount of Rs. 250 was paid subsequently to the mortgagee from the amount fetched by the sale of some of the properties included in the mortgage deed. Thus Rs. 450 only remained unpaid and the above mortgagors executed another mortgage deed on 6th June 1932 to the same mortgagee for the balance of Rs. 450 pledging the remaining properties covered for the previous mortgage deed and substituting other properties for the properties sold. The second deed, dated 6th June 1932 is a deed of additional security.

(B.P.R. No. 18, Mis. 32, dated 20th January 1933).

(ii) Out of 19 items of properties given as security by a mortgage deed the mortgagor released his rights in favour of the mortgagee in respect of 8 items. A

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document (d) was executed by the mortgagor by which certain new properties in the place of the 8 items, and the remaining eleven items of the properties previously mortgaged were offered as security for the sum of Rs. 9,000 which was the unliquidated portion of the amount of Rs. 12,750/- secured by the original instrument. The deed (d) is a deed of additional security falling under Article 35 of Schedule I-A of the Stamp Act.

(B.P.R. No. 679 Mis. dated 9th November 1935).

**S.O.334.** A security bond given to the Court under the provisions of the Civil Procedure Code was in the following terms :—

Until the disposal of my appeal in the District Court, I pledge my immovable property which is described in the schedule annexed and which is free from all encumbrances, such as mortgage, etc., to others, to the court, for Rs. 1,382-4-9 which is the amount of decree due to the plaintiff. If the result of the appeal be against me I hereby bind myself to allow the plaintiff to recover the whole amount of the said decree which I should pay by my immovable property, and, if the said property be insufficient, from me. Until the whole decree amount is discharged I will not sell or make a gift of the said property to others. I thus execute this security bond.

The bond was attested by two witnesses, but was not registered.

The order of Court “security accepted” was endorsed on it.

It was held, that the security bond amounted to a mortgage within the meaning of section 58 of the Transfer of Property Act and, not being registered, was invalid under section 59 of the Act as a mortgage and did not affect the property.

The bond was also compulsorily registrable under section 17 of the Indian Registration Act.

The words “security accepted” merely show that the court thought the security sufficient. The bond does not derive its validity from these words, and it cannot therefore be brought within section 17 (2) (vi) of the Registration Act.

(I.L.R. 31 Mad, 330).

**S.O. 335.** A deed of mortgage with possession containing a stipulation that the kist of the land mortgaged shall be paid by the claimant to the executant is only a mortgage deed. The payment of the kist must be left out of consideration.

**S.O. 336** The facts of a case were as follows :—

In pursuance of a written agreement to execute a usufructuary mortgage with a condition that if the mortgage amount was not repaid within five years the mortgagees should then have the right to retain the property as vendees, a deed of conditional sale

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was executed containing the recitals inter alia: 'As the total sum of rupees seven thousand has in the aforesaid manner been received by us from you, in accordance with our request to you and in accordance with the conditional (arrangement) come to after discussion by us, both the parties, that is, we have all jointly agreed to the condition that if we with our own moneys make payment to you in cash of the aforesaid sale consideration of rupees seven thousand on 25th June 1939, the date of completion of five years from this date, you should execute in our favour a deed of resale reconveying the undermentioned nanja land at our cost. If we fail to pay the said amount of Rs. 7,000 before the expiry of the aforesaid period of five years you shall from 26th June 1939 hold and enjoy the under mentioned property with absolute rights hereditarily from father to son, grandson and so on with rights of gift, exchange, sale, etc. After the period of five years neither we nor our heirs shall have any right or subsequent claim in respect of the undermentioned, land. By whomsoever out of us the said amount is paid on the due date, the re-sale shall be made in his favour.

Held : The two documents must be read together and the transaction amounted to a mortgage by conditional sale.

(Judgment of the High Court of Madras In Letters Patent Appeal No. 52 of 1945).

NOTE:-The judgment is printed in Registration Gazette, Vol. XXXIII pages 47 and 48.

**SO 337.** Article 35 of Schedule I-A of the Andhra Pradesh Stamp (Amendment) Act, 1922, excludes security bonds from the scope of that article. When therefore a mortgage deed is executed for the purposes specified in Article 48 of Schedule I-A of the Act. viz., by way of security for the due execution of an officer or to account for money or other property received by virtue thereof or executed by a surety to secure the due performance of a contract, the deed shall not be required to be stamped under Article 35.

**S.O. 338.** A mortgage with possession containing a clause that in the event of nonpayment of mortgage amount by certain date, the mortgagee is to enjoy the property as if sold to him, was held to be a mere mortgage with possession.

**S.O. 339.** An instrument in which specific sums have been offered as security is not a mortgage deed within the meaning of Section 2 (17) of Indian Stamp Act, 1899, as the money is not specified property."

(Rishidev Sindhi Vs. Shampur Sugar Mills - AIR. 1947, 190 P.B.)

### **Partition Deeds**

**S.O. 340.** The following ruling of the High Court of Madras illustrates when a decree or order of Court amounts to a partition :—

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To make an order chargeable with stamp duty under section 2(15) of the Stamp Act, 1899, it must effect an actual division of the property. An order declaring the rights of the parties and directing further proceedings for the ascertainment of the specific shares is not such an order.

A decree reciting a razinama made by consent of parties, allotting specific properties to the several parties and directing other parties to deliver possession is chargeable with stamp duty under Article 40 of Schedule 1A as a final order effecting partition within section 2(15). Being made by consent of parties, it is also an instrument whereby co-owners have agreed to divide property in severalty and falls within the first part of section 2(15).

(I.L.R. 35 Mad., 26).

**S.O. 341.** Property forming the subject of division among coparceners may include money and securities converted into cash. So long as the share taken by a coparcener forms a portion of the family assets, the transaction constitutes a division of the family property and the instrument which records it, falls under the definition of “Instrument of partition” provided all the co-owners concerned are equally bound by the instrument either by itself or read together with one or more similar instruments. But where the coparcener in lieu of his claim to a share takes money and renounces the claim, the document falls under the definition of “Release.”

**S.O.342.** The Extracts reproduced below from judgments of the Privy Council explain the circumstances under which an agreement to divide should be treated as a partition :-

“Certain principles, or alleged rules of law, have been strongly contended for by the appellant. One of them is, that if there be a deed of division between the members of an undivided family, which speaks of a division having been agreed upon to be thereafter made, of the property of that family, that deed is ineffectual to convert the undivided property into divided property until it has been completed by an actual partition by metes and bounds.”

“Their Lordships do not find that any such doctrine has been established, and the agreement appears to their Lordships to proceed upon error in confounding the division of title with the division of the subject to which the title is applied”.

“According to the true notion of an undivided family in Hindu Law, no individual member of that family, whilst it remains undivided, can predicate of the joint and undivided property, that he, that particular member, has a certain definite share. No individual member of an undivided family could go to the place of the receipt of rent and claim to take from the Collector or receiver of the rents a certain definite share. The proceeds of undivided property must be brought, according to the theory of an

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undivided family, to the common chest or purse, and then dealt with according to the modes of enjoyment by the members of an undivided family. But when the members of an undivided family agree among themselves, with regard to particular property, that it shall thenceforth be the subject of ownership in certain defined shares, then the character of undivided property and joint enjoyment is taken away from the subject matter so agreed to be dealt with: and in the estate each member has thenceforth a definite and certain share, which he may claim the right to receive and to enjoy in severalty, although the property itself has not been actually severed and divided.

(11 M.I.A., 75).

“They (their Lordships) propose to refer shortly to the cases which establish clearly that separation from the joint family involving the severance of the joint status so far as the separating member is concerned, with all the legal consequences resulting therefrom, is quite distinct from the de facto division into specific shares of the property held until then jointly. One is a matter of individual decision, the desire on the part of any one member to sever himself from the joint family and to enjoy his hitherto undefined or unspecified share separately from the others without being subject to the obligations which arise from the joint status; whilst the other is the natural resultant from his decision the division and separation of his share, which may be arrived at either by private agreement among the parties or, on failure of that, by the intervention of the court. Once the decision has been unequivocally expressed and clearly intimated to his cosharers, his right to obtain and possess the share to which he admittedly has a title is unimpeachable; neither the cosharers can question it, more can the Court examine his conscience to find out whether his reasons for separation were well founded or sufficient; the Court has simply to give effect to his right to have his share allocated separately from the others”.

**S.O. 343.** A document worded as a deed of partition which also recorded for the first time, the gift of certain property to the sisters already effected orally, was held to be both a partition and settlement,

**S.O. 344.** Where the parties are governed by the Madras School of Hindu Law, Mithakshara School in South India, the wife or mother cannot claim any share in the joint family property as the practice of allotting shares to females, even if it existed some distant period of time, has become obsolete in South India. In a partition between father and son, mother has no right for a share. If shares are so provided to wife or mother or daughter are to be viewed as “Settlements”.

(A.P- High Court in case No. 1016 and 1917 of 1972 between Adusumilli Seetaramamma Vs. Ernani Chalamaiah).

**S.O. 345.** A deed of partition proposes to divide the family property into two equal shares of Rs. 15,000/-each between father and son. In the document mention is also

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be made about previous gifting of cash of Rs 60,000/- to the wife (Father's wife) and Rs. 30,000/- to the son. Gifting of money which was a completed one does not change the character of the document viz., deed of partition. (B.P.Rt. No. 1573/70, dt. 15.7.70)

(B P.Rt.No.1573/70 dated 15.7.70).

**S.O 346.** According to a document, "the family is to become divided henceforth and the properties are divided into two shares viz.. Item No, 1 of A Schedule property and item No. 2 of A Schedule. The former which has been valued at Rs. 60,000/- is allowed to the share of X and his minor sons and the latter share has been valued at Rs. 5000 and taken as the share of Y. The item No. 2 of A Schedule property is to be enjoyed with full rights by Y till his life, then his wife is to enjoy for her life time. After her death one third share thereof is to go to Z who is the brother of the wife of Y. The other 2/3 share is to go to X and his minor son. Held that the document in question is a partition and settlement of the share of one of the executants.

### **Powers of Attorney**

**S.O. 347.** The undermentioned document was viewed as a mere power of attorney and not an assignment so as to require registration under section 17 of Act III of 1877:—

"A and B were joint owners. In order to collect the rent due on certain items of property situated in another place, A gave B a power of attorney under which B paid A a sum of Rs. 399 and he was also authorised to sell such land but with the concurrence of A."

**S.O. 348.** The extract from the judgement of the High Court of Madras which follows, elucidates, the distinction between a special and a general power of attorney.

"The expression 'a single transaction' in Article 48 of Schedule I to the Stamp Act (Article 42 of Schedule I-A, seems to us to apply either to a single act or to acts so related to each other as to form one judicial transaction such as all the acts necessary to perfect a mortgage or a sale of a particular property. According to this view, when a power of attorney authorizes a person to do all things and take all steps which may be necessary to complete the execution of a decree, it must, in opinion, be regarded as a general power-of-attorney. The acts to be done might be of various and numerous kinds and could not be regarded as constituting one legal transaction."

(Judgment of the Madras High Court. 9th January 1913, in C M.S.A No.56 of 1911)

**S.O.349.** (a) In documents relating to deposit of title deeds, if it is stipulated that the Mortgagee is empowered to recover the debt by sale of property mortgaged on behalf of the Mortgagor the Chief Controlling Revenue Authority held that the documents are both Deposit of Title deeds (Art.7) and General Power of Attorney given for consideration (Article 42 (e) falling under Section 6 of the Indian Stamp Act (II of 1899).



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(b) In a “deed of Mortgage and Hypothecation” for Rs. 5,000/-executed in favour of a Bank by a borrower, it was also mentioned that the Bank or its nominees were authorised as Attorney to do whatever the borrower might be required to do in respect of Mortgaged property, the document can be viewed as both a mortgage, and power of attorney for consideration falling under Section 6 of the Indian Stamp Act (Act II of 1899).

**S.O.350.** The word ‘Matter’ in Section 5 of Stamp Act, is not intended to convey the same meaning as the word ‘description’ in Section 6. The expression ‘distinct matters’ would connote something different from ‘distinct categories’. Therefore Section 5 would apply even when the instrument comprises matters of the same description.

Held, (Bhagwati, J., Dissenting) : “If one person holding several capacities each unconnected with the other executes a power in respect of all of them, the instrument should logically be held to comprise distinct matters, and should bear the aggregate stamp duty payable in respect of each of such capacities”.

(Judgment of Supreme Court in Civil Application No. 159 of 1954).

**S.O. 351.** Certain borrowers, agreed with the Board of Directors of a bank on 8th August 1967 to give the bank an irrevocable power of attorney in their favour to sell at the discretion of the bank the Schedule mentioned properties and credit the sale proceeds therefrom to the account of the borrowers in the bank and also to collect the rents from the properties, lease them out and to credit the income therefrom to the said account less taxes that may be paid thereon, till the dates of sales of the said properties. In pursuance of the above agreement the borrowers executed on 13 th August 1967, the document under consideration as an irrevocable power of attorney in favour of the bank with authority to sell the properties mentioned in the schedule and to collect the rents therefrom and pay the taxes thereon till sales.

HELD, that the document in question falls under Article 48 (e) of the I schedule of the Indian Stamp Act.

(Decision of the High Court, Madras in referred case Numbers 3 and 4 of 1965).

### **Rectification Deeds**

**S.O 352.** A document which purports to supply the omission of attestation in a previous mortgage deed should be treated as a rectification deed.

(Resolution Ms. No.4370, 17th December 1935, of the Board of Revenue (Separate Revenue))

### **Releases**

**S.O.353** (a) An endorsement made by a mortgagee on the back of the mortgage deed releasing the mortgaged property in consideration of a cash payment of Rs. 300 was held to be registrable compulsorily as a release.

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(b) A Release deed in general terms wherein only the name of Village where property is situated is mentioned and no other particulars are forthcoming, the Registering officers have to obtain the full particulars of immovable property by means of a deposition from the party and register in Book I.

**S.O.354.** The joint family property was divided between father and son even before the father died in Car accident. After his death, the property owned by him, came into the hands of his mother, his wife and his son. Subsequently the wife of the deceased by means of a document styled as a "Release" relinquish her right in favour of her son over the property of her husband to the extent of her share for a consideration of Rs. 30,000/-.

Held a deed is considered to be a "Release" only if it operates in favour of all the persons having interest in the property in question. Since the present document is in favour of only one, not all the co-owners, it is a "conveyance".

(Referred case No.83/70-High Court of A.P. dt. 18-1-1974).

**S.O.355.** A Release of Benami' should be charged at conveyance rate for a consideration equal to the value of the property mentioned therein i.e., it should be charged to Stamp duty on the values of the properties mentioned in the document. The consideration amount taken for benami release has no relevance.

**S.O.356.** A will stated that the testator's four daughters shall inherit the property taking 1/4th share each. Subsequently one of the daughters released her right in favour of the other three". This deed was held to be a "Release".

**S.O.357.** A person and his sisters came into possession of the property through a will executed by their father. The will states that the testator's four daughters shall inherit the property taking 1/4th share each. It is evident that the applicant and her sisters are co-owners of the property in question. It has not been stated any where that the property was divided by metes and bounds and each daughter allotted an identifiable share of the property. A co-owner is entitled to enjoy the property in whole or in part. In other words, each co-owner has a right to every inch of the property subject to the rights of the co owners. This would show that when one co-owner relinquishes her right in favour of the other co-owners, she is simply releasing her rights in favour of the other co-owners who have a pre-existing right in the property. The position would be different if only the property has been divided, in which case, the parties would cease to be "co-owners". The Government therefore consider that the document in question is only a "release deed".

## SALES

S.O.358. A sale containing a stipulation to resell in the event of a certain contingency, shall be treated as a mortgage by conditional sale for registration purposes and no

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application for transfer of patta need be obtained in respect of such a sale. For stamp purposes, however, the document should be treated as a sale and agreement to resell chargeable with the aggregate amount of the duties under Section 56 of the Stamp Act.

**S.O.359.** A document by which a Muslim makes over immovable property to his wife in lieu of the “Mahr” promised by him at the time of marriage shall be treated as a sale if the “mahr” promised is money and as a settlement if the “mahr” promised is immovable property, provided that in the latter case, the property transferred is the property promised in the first instance.

**S.O.360.** ‘A’ sold 1/20th share in a building to ‘B’ for a consideration of Rs. 1000/-. Sixteen days later ‘A’ relinquishes his right in the building to ‘B’ by receiving Rs. 19,000/- . The document was styled as a “Release”. The High Court of Andhra Pradesh held that in order to have a valid release both the Release and Releasor must have joint right in the entire property. ‘B’ cannot be treated as a co-owner of the entire building. It is therefore a conveyance on sale for Rs. 19.000/-.

(Referred case No. 3/1974 between B. S. Prakasa Rao Vs. Board of Revenue)

**S.O. 361.** ‘A’ Sold property to ‘B’ with a condition that in case he repays the amount after some time, the latter shall reconvey the property.

The Board of Revenue held that Art-45 of Schedule I - A applies only in case of Reconveyance of Mortgaged properties. Normally reconveyances are executed on redemption of mortgages by conditional sale. The original transaction in this case is not a mortgage by conditional sale. There is a clear condition to reconvey the property on payment of consideration specified therein. There are no recitals of a mortgage in the original transaction. It, therefore, follows that any deed executed reconveying the property previously sold is only a conveyance on sale falling under Article 20 of Schedule I-A but not a reconveyance of mortgaged property falling under Article 45 of Schedule I-A.

**S.O.362.** A deed of partition in which certain properties belonging to one of the co-owners in his own right and held by him were transferred to the other co-owner for equalization of shares was held to be a partition and conveyance.

**S.O.363.** By a document two parties who have already purchased the property in their names, agreed to take a third party as joint owner stating that the property referred to was originally purchased with the money of all the three parties in equal shares. Held, the document was a conveyance.

**S.O.364.** A deed of settlement was created by the husband in favour of his wife. The donee under the settlement deed, sold away a portion of the property settled. Subsequently a deed of release was executed by the donee in favour of the original donor in respect of the remaining property in the deed of settlement. The deed of release was held to be a conveyance.

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**S.O.365.** The concession under proviso to section 24 of the Stamp Act is applicable to cases where in addition to the entire mortgaged property, other property is also included in a deed of sale, in favour of the mortgagee.

**S.O.366.** In a document drawn up as a release the operative portion ran thus:-

“I give my one fourth share of the properties belonging to the above firms, etc. So you can add the one fourth share to your half share and enjoy the property for ever”. Held, it was a conveyance.

**S.O.367.** A person purchased certain property for a valid consideration of Rs. 3,000/- . Subsequently after 17 years, the afore - mentioned purchaser executed a release of the property in favour of the original vendor and his two sons on the ground that the property was not required by him as it belonged to the family of the releasees.

Held the document is a conveyance.

**S.O.368.** Two brothers became divided in status effecting a deed of partition. Subsequently one of the brothers executed a release deed in favour of the other, over the property allotted to the releasor in the partition deed.

Held that the deed is a conveyance and not a release.

**S.O. 369.** A sold a certain extent of land to ‘B’. Subsequently, a certain portion of the land sold, was taken away by the Court under the Land Ceiling Act, as it formed part of surplus limit of land held by ‘A’. The compensation amount was received by ‘B’ and ‘B’ executed a deed of release over that property taken away by the Court in favour of ‘A’. The deed was held to be a conveyance.

**S.O. 370.** A sale deed contained the following recitals- “The purchaser above named doth hereby agree and undertake that he will pay the balance of purchase money, viz., Rs. 50,000 retained by the purchaser as aforesaid within a period of one year from the date of sale with interest at 9 percent per annum and for the amount so due and accruing due, the vendor shall be entitled to a charge on the said property sold”. The document was executed by both the vendor and the vendee.

Held, the deed was a sale and mortgage without possession.

### **Settlements and Wills**

**S.O.371.** One of the invariable tests in coming to a conclusion as to the testamentary character of a paper is whether the paper is revocable. If it is not revocable the document is not a will.

The fact that the paper is drawn in the form of an agreement and that it is registered are circumstances to be taken into consideration, though they do not per se amount to much.

Where the document contains provisions which are not of an ambulatory character the presumption will be against the testamentary nature of the document and the fact that such provisions are expressed to operate in the future will not affect the nature of the document

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The intention of the party will be given effect to, though it is expressed in inappropriate language.

The reservation of a life interest does not of itself suffice to make the document testamentary.

Accordingly, the undermentioned document was held to be a settlement and not a will :

A deed in form purported to be an agreement and was registered. It contained no clause of revocation and declared that the executant's future debts would not be binding on the properties, and the instrument went on to provide "after my life time both of you wife and daughter-in-law" shall not only get the right due to me in the said land but also divide and enjoy in equal shares the income."

(I.L.R. 33 Mad., 304).

**S.O.372.** "Will means the legal declaration of the intentions of the testator with respect to his property which he desired to be carried into effect after his death."

(Indian Succession Act, 1865 and the Hindu Wills Act, 1870).

The tests of a valid will are :

- (i) existence of intention to take effect after the death of the testator;
- (ii) execution in accordance with the formalities prescribed by law;
- (iii) revocability ; and
- (iv) existence of some disposition of property.

The third test, i.e. 'revocability' or being revocable is independent of anything that may be done by the testator. If the others are satisfied the third necessarily follows. Hence any instrument executed in the manner required by law and disposing of property may take effect as a will provided the intention is that it should not operate till after the death of the testator. (Majumdar on Hindu Wills p.24).

"..... a will is in all cases whatever a recoverable instrument. For though a man make his testament and last will irrevocable in the strongest and most express terms, yet, he may revoke it, because his own act and deed cannot alter the judgement of law to make that irrevocable which is of its own nature revocable. A will is therefore said to be ambulatory until the death of the testator." (Williams' Law of Executors and Administrators, p.94)

"..... although a will is always revocable notwithstanding a contract not to revoke it, yet such a contract is not illegal and is binding if made for good consideration and in such form as to comply with the statute of frauds, and damages are recoverable for the breach thereof but a contract not to revoke a will cannot be specifically enforced." (Ibid p.96).

Thus, a self-imposed restriction by a testator on his powers of revocation cannot be considered as altering the nature of a document which in other respects conforms to the requirements of a will.

**S.O. 373.** The Madras High Court has held that the undermentioned document is not a testamentary instrument:—

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The deed of will executed on the 31st day of the month of March in the year 1902, which corresponds to the 7th day of the dark fortnight of Phalguna month of the year Plava, by Ramayya, son of Namatirtha Pompayya, by caste Brahmin, inamdar and resident of Kampli, Hospet taluk, in favour of Venkappa, son of Vidupanakallu Narayana Bhat, Brahman by caste, Bhatavirithi, Inamdar and resident of the same village is as follows:—

As I have no male issue and I am in old age, as the only two children that I have had died, as there is none to maintain me and my younger sister, Savitamma, and as you are my nephew, I have this day given you all the properties, movable and immovable mentioned hereunder and put them into your possession. From this day forward so long as we both live you shall maintain us and after our death you alone shall perform our obsequies and other religious observances due to us. You shall discharge the debts that I have contracted up to date, which come to about Rs. 2,000 (two thousand rupees). The yield of the land, etc., due to me you alone shall receive from this day forward. None other shall have any right whatsoever.

#### **Details of Property**

To all these immovable properties and in addition all the movable property with me ..... you alone are entitled. Out of the above mentioned immovable properties, the annual produce recoverable every year of a portion of No. 946, measuring 71 cents, assessed at Rs. 7-12-0 and known as Goravana Gaddi shall be utilized for the maintenance of Pyamma, the widow of my deceased eldest son Venkatagiriappa. After the lifetime of the said Pyamma the land and the produce of the said land shall be yours only. In case I recover from the disease that I now suffer from, the said will shall be got cancelled. In these terms I execute this will deed with my free will and consent. (Madras High Court S. A. No. 1584 of 1920)

#### **Settlement and Adoption**

**S.O. 374.** Where in a deed of Adoption, an immediate right and transfer of property in favour of the adoptees is created” which is not a legal consequence of Adoption, the document can be viewed as an adoption deed and a settlement falling under Section 6 of Indian Stamp Act (Act II of 1899).

#### **Transfer of Trust Property from Trustee to Beneficiary**

**S.O. 375.** A house site involving in a document was originally purchased by the claimant (Real owner) with his own funds but was drawn in favour of Executant (Benamidar). By present document the Benamidar is relinquishing his benami right in favour of real owner. The document is a Release of Benami right falling under Article 46 (b) of Schedule I-A to Indian Stamp Act. Where originally a Trust deed was registered and the property held In Trust is transferred in favour of a beneficiary, such documents fall under Article 53 (d) of Schedule I-A as transfer of Trust property from Trustee to beneficiary.

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## CHAPTER VIII

### FEES AND FINES

#### Valuation of Documents General

**S.O. 376.** For the purpose of calculating the registration fee a registering officer cannot go behind what is expressed in the document. It is not within his province to take into account matters other than those contained in the instrument itself or to put any interpretation in the document other than that which the terms expressly convey.

**S.O.377** (a) Unless otherwise directed, the value usually adopted for the purpose of stamp duty shall also be adopted in assessing a document to registration fee.

(b) A document so framed as to come within two or more descriptions shall, where the fees chargeable thereunder are different, be chargeable only with the highest of such fees.

**S.O. 378.** Penal clauses shall be left out of account in assessing a document to registration fee.

**S.O. 379.** Where several items of properties are valued separately in an instrument, the document shall be deemed to evidence only a single transaction. For example : (i) a sale deed in respect of several items of property in which the consideration for each item is set forth separately shall be assessed to registration fee only on the total of the several amounts of consideration as for a single sale; (ii) for a deed of lease comprising several items of properties where the rent for each property is separately mentioned, the fee shall be levied only as for a single lease ; and (iii) for transfers of several mortgages effected by a single instrument, though the stamp duty payable on the deed of transfer is, according to Board's Resolution Routine No, 1334, dated 3rd September, 1940, and B.P. Routine No. 6374, dated 20th December, 1940 - vide also Board's Resolution Mis. No. 2787, dated 11th October 1941 — the sum total of the duty payable for each of the transfers, the registration fee shall be levied on the total consideration as for a single instrument.

**S.O.380** (a) When the value of a petty transaction cannot be determined precisely, the parties shall be advised to enter the approximate value, and it shall be explained to them that otherwise they are liable to be charged the maximum fee of Rs. 25/-.

(b) The parties to an agreement regarding the use of a wall or well shall be advised to insert in the document the approximate value of the wall or well and the registration fee shall be levied with reference to such value. If, however, the parties decline to insert such value, the document shall be treated as unvalued and charged accordingly.



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**S.O. 381.** The expressions “in present or in future,” “vested or contingent” in section 17 (1) (b) of the Registration Act, point not to the value or its ascertainment, but to the right or interest in the property affected by a document.

**S.O. 382:** In estimating the number of words for which copying fee has to be levied for a district copy or for a certified copy of a document applied for at the time of registration, the probable number of words in the registration endorsements should be added to the number of words in the document.

### **Abkari Engagements**

**S.O. 383:** The registration fee for an abkari engagement whether attested or not shall be calculated on the amount which the shopkeeper binds himself to pay.

### **Adoption Deeds**

**S.O.384:** A fixed fee of Rs. 100/-shall be levied for the registration of an adoption deed whether or not the deed refers to immovable property to which the adoptee becomes entitled.

### **Affidavits**

**S.O.385:** The registration fees payable for a document of the type mentioned in order 295 shall be Rs. 100/- under Article I (g) of the Table of Fees.

### **Agreements**

**S.O.386.** On an agreement to sell or resell the registration fee shall be levied on the advance or earnest money and not on the intended sale amount. If, however, no advance or earnest money is mentioned in the document, the fee shall be levied, in an agreement to sell on the intended sale amount, and in an agreement to re-sell on the consideration for the original sale. (Deleted)

**S.O. 387:** The registration fee on an agreement which varies the terms of a previously registered mortgage deed shall be levied on the value of the original deed subject to a maximum of Rs. 100/-.

**S.O. 388 :** Service agreements shall, for an assessment of the registration fee, be valued as shown below:-

(a) When the wages are expressed, the total wages for the whole period of service in the case of agreements for one year or less and the average wages for one year in other cases shall be taken as the value of the document.

(b) When the wages are not expressed and the parties do not choose to express them, the amount of advance, if any, mentioned in the agreement, shall be taken as value; and when no advance is mentioned, the document shall be treated as unvalued and assessed accordingly.

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(c) When a service agreement is also a bond or mortgage, the higher of the two values-annual wages or mortgage or bond amount-shall be taken as the value of the document.

**S.O. 389.** On agreements to live as husband and wife and deeds of divorce :-

(i) In cases where consideration is expressed in such documents, that amount should be taken as the value for assessing registration fees:

(ii) If no consideration is expressed in the document, it should be-assessed to registration fees under Article 1(g) of the Table of Fees: and

(iii) Where without mentioning any consideration a penal sum is stated as payable for breach of contract, the document should be viewed as; unvalued and fee levied under Article 1(g) of the Table of Fees.

### **Annuity Deeds**

**S.O.390.** A maintenance deed, wherein the annuity is agreed to be paid to the parents with a stipulation to continue payment to the servicing parent even after the demise of one of them falls under section 25(e) of Indian Stamp Act-II of 1899.

### **Appointments in Execution of Power**

**S.O. 391.** An appointment in execution of power is not susceptible of money valuation and accordingly a fee of Rs. 100/- under Article I(g) should be levied in respect of documents of this kind.

### **Cancellation or Revocation Deeds**

**S.O. 392.** The registration fee for a deed of cancellation or revocation shall be that leviable on the original document provided that when the cancellation or revocation is in respect of a portion of the property or the value of the entire property is valued differently from that mentioned in the original document, the fee shall be levied on the value of the property as set forth in the deed of cancellation or revocation, subject to a maximum of Rs. 100/-.

**S.O. 393.** The fee for a deed of cancellation of a will shall be that leviable on the original will cancelled, subject to a maximum of Rs. 100/-.

### **Chit and Kuri Agreements**

**S.O. 394.** The fee to be levied for a chit or a kuri agreement or for a security bond executed by the manager of a chit fund or a kuri shall, when no consideration is specifically mentioned in the document, be calculated on the value of the full amount of subscriptions payable by the members of the association periodically whether fortnightly, monthly or annually, but shall in nocase exceed hundred rupees.

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## **Contracts for the Collection of Minor Produce**

**S.O. 395:** In assessing the registration fee on contracts for (i) the collection of minor produce such as tangedu or avaram bark; or (ii) the usufruct of trees and topes such as toddy and fruit referred to in order 264 (a) the value shall be calculated on the principle laid down in Order 377 (a).

### **Counterparts**

**S.O. 396:** When a document and its counterpart are presented for registration on the same day and the latter alone is registered in the first instance, the full fee shall be credited to that document and when the other document is registered the fee leviable on counterpart shall be credited to it.

(b) The registration fee on a document engrossed in diglott shall be the ordinary registration fee that would be leviable were the document drawn up in a single language, irrespective of whether the parties treat both the texts or only one of them as the entire document.

(c) The fee leviable on the counterpart of a document in diglott is governed by Article I(j) of the Table of Fees.

### **Leases**

**S.O.397.** (a) In the case of an agricultural lease in which a percentage of the produce is reserved as rent and the quantity of the produce or the value thereof is not specially stated:-

(i) if the lease is for a term less than one year the rental value shall not be deducted from the stamp, if any, borne by it. Fees shall be levied under Article 1(g) of the Table of Fees;

(ii) if the lease is for a term not less than one year or for an indefinite period and is unstamped or bears a stamp not sufficient to cover an average annual rent exceeding Rs. 100/-, the rental value shall be calculated at the maximum rent recoverable under an unstamped lease, viz., Rs. 100/-.

(b) If in an agricultural lease the lessee undertakes to perform agricultural service such as planting of trees, such service forms part of rent. If no value is assigned to such service the fee shall be levied as in clause (a) (i) in the case of a lease for a term less than one year: if it is of the kind referred to in clause (a) (ii) and the value of the rental other than service is less than Rs. 100/-, the rental value shall be taken as Rs. 100/- as in clause (a) (ii).

**S.O. 398.** Where in a lease the lessee undertakes to effect improvements by way of addition to the buildings, etc., the value of the improvements should be deemed to be a premium and added to the annual rent for assessing the registration fee payable.

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This principle is applicable for stamp purposes also (Order 326). (B.P.Rt. No. 3227, 18th June, 1946)

**S.O. 399.** A lease for an indefinite term should, whether the rent is stated to be payable daily or monthly or otherwise, be stamped under Article 31 (a) (viii) of Schedule I-A and assessed to registration fee on the average annual rent which would be payable for the first ten years if the lease continued so long.

**S.O. 400.** Mining lease containing a clause embodying an agreement to sell machinery, buildings, etc., that may be erected on the leased premises, shall be treated as evidencing two transactions requiring the total of the fees leviable for a lease and an agreement to sell and, if no value is given regarding the latter, a fee of Rs. 100/- under Article I (g) shall be levied for the agreement.

**S.O. 401.** (a) Where a lease is worded in such a manner as to show that a lumpsum paid is the rent due for the whole period of the lease paid in advance, the registration fee shall be assessed on the total lumpsum paid in advance, where the lease is granted for money advanced, whether adjustable in the rent payable or returnable after the termination of the lease or partly so adjustable and partly returnable in addition to rent reserved, the registration fee shall be assessed on the amount of advance and the average annual rent if any reserved. On the other hand if there is nothing to show that the lumpsum paid is an advance of rent for the whole period of the lease the transaction shall be considered as a lease for premium, the amount equal to the advance which is adjustable in the future rent should not be taken into account again as rent while calculating the average annual rent.

(b) The following are the illustrative cases :

(i) A lease for five years with an annual rent of Rs. 4,500 in which a sum of Rs. 22, 500/- being the rent due for the whole period is paid in advance. The registration fee shall be assessed on Rs. 22, 500/-.

(ii) A lease for five years with an annual rent of Rs. 4,500/- and a sum of Rs. 10,000/- is paid in advance of which Rs. 8000/- has to be adjusted towards rent and Rs. 2,000/- to be paid back to the lessee after the expiry of the lease period. The registration fee shall be assessed on Rs 12,900/- (the amount of advance and the average annual rent reserved) arrived at as follows :-

$$\text{Rs. } 8,000/- + 2,000/+ (4,500 \times 5) = \text{Rs. } 12,900/-$$

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(iii) A lease is granted for 5 years for a lumpsum of Rs. 10,000/- paid in advance without stating that the advance paid is the rent for the whole period of lease. The

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registration fee shall be assessed on the amount of Rs. 10.000/- treating it as premium. (I.G.s No.G1/22057-A/64, dated : 4 9.64 based on B.P.Rt.No. 74/64 dated 6.1. 64).

**S.O. 402** Transfers and surrenders of leases shall be assessed to registration fee on the amount of consideration inclusive of the value of improvements, if any, or when no consideration is expressed, on the value of the original lease.

NOTE: In the case of a transfer of lease to a third person, the payment by the transferee to the transferor (lessee) of an amount equivalent to the advance money, if any, paid by the latter to the lessor on the original lease is 'consideration' for the transfer within the meaning of this order. In a surrender of lease, however, the repayment by the lessor to the lessee of the advance or of rent prepaid is not 'consideration' for the surrender. Where only a portion of the leasehold right is surrendered without consideration, fee shall be levied on the value of the original lease.

**S.O.403** (a) A kanom deed containing an acknowledgment of receipt of the value of improvements has been held to be a mortgage with possession and in calculating the consideration the ascertained amount of compensation for the improvements shall be included.

(b) The provision for compensation for improvements in re-conveyances and releases, and surrenders and transfers of leases shall accordingly be taken into account in calculating the value in assessing the registration fee.

### **Mortgages**

**S.O.404** (a) In mortgages, only the principal secured shall be taken into consideration.

(I.L.R., 23 MAD.. 106)

(b) When, however, a further sum by way of future interest or profits is added to the principal at the time of the execution of a document and it is agreed that the whole amount shall be repaid either in lump or by installments, the registration fee shall be calculated on the total amount repayable. Thus, if A lends to B Rs. 40 and obtains a document in which it is agreed that Rs. 40/- plus Rs. 12, profit for the transaction, shall be repaid by monthly installments of Rs. 2, the registration fee is leviable on Rs. 52.

(c) In respect of mortgage deeds executed by or in favour of primary land mortgage banks under which the borrower has the option to repay the mortgage amount at any time before the expiry of the time fixed and he would have to pay the interest only up to the date of discharge of the loan, the fee shall be levied only on the principal amount as the document will not fall under clause (b) above.

### **Partition deeds and dissolutions of partnerships**

**S.O.405.** (a) (i) In the case of a partition deed or of an award by means of which property is divided, the net value of the property (i.e. the gross value minus such

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encumbrances as are charged specifically on it) shall be taken as the value for registration purposes.

(ii) In the case of a dissolution of partnership, the net value of the partnership property (i.e., the gross value minus the joint debts due from the partnership) shall be taken as the value for registration purposes. If the net value of the whole property is not expressed but only that of a specified share or of shares which bear a definite proportion to the entire partnership property, the value of the partnership property shall be calculated from that of the part. Where, however, the value expressed is that of an indeterminate share or shares, the registration fee on the dissolution shall be levied in the manner laid down in the last clause of Article 1 (g) of the Table of Fees.

(b) This principle is however not applicable to settlements and wills.

(c) In calculating with reference to Article 1 (f) of the Table of Fees the registration fee on a partition deed which affects ryotwari land, any liability specifically charged on the land shall be deducted from the true market value of the land, if mentioned, and if the net amount equals or exceeds twenty-five times the annual assessment, the fee shall be charged only on such sum of twenty-five times the assessment; if the net amount is less than twenty five times the annual assessment, the fee is chargeable on the net amount ascertained by the above process.

(d) Where the market value of ryotwari land is not mentioned in a document, the value of such land shall be taken at twenty-five times the Government assessment and added to the value of other property, if any, divided. In such a case, the amount of liabilities specially charged on the other property shall alone be deducted from the value of that property.

(e) Where the properties divided consist of ryotwari lands twenty-five times the assessment of which is given as well as other property whose market value is given, the amount paid by one sharer to the other for equalization of the shares shall be added to the share of the person receiving it and deducted from the share of the person giving it, if the market value of the property falling to the share of the person giving the amount is larger than the amount given for such equalisation.

(f) When in a partition deed or a deed of dissolution of partnership, the liabilities exceed the assets, the minimum registration fee of Rs. 10 shall be levied. Even where such a dissolution of partnership falls under the description of release also for no consideration the fee leviable shall be Rs. 10 paise alone as such a doct falls u/s 6 of the I.S. Act.

(g) Article 1 (f) of the Table of Fees requires that the value of the separated share or shares on which stamp duty is payable shall be taken as the value. In determining the value of a separated share, the principles explained hereunder shall be applied:—

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(i) The share should relate to the property which the co-owners divide or agree to divide in severalty.

(ii) Each of the following properties shall be treated as a distinct share :-

(1) Property set apart for common enjoyment whether the respective shares are specified or not and whether agreed to be divided in future or not;

(2) Property which is to revert to the co-owners at a later date and to be enjoyed by them whether the shares are specified or not; and

(3) Property agreed to be kept jointly and the produce agreed to be enjoyed in a specified ratio.

(iii) Property wholly set apart for such purposes as the maintenance of parents and the marriage of minors is not property which the co-owners divide or agree to divide in severalty.

(iv) The value of the share, not of the property, should be taken into consideration.

The principles set out above, are deductible from the definition of instrument of partition in Section 2 (15) and the provision in Article 40, Schedule-I.A to the Indian Stamp Act, and Board's Proceedings No. L.Dis. W3/3335/60, dated 24th November, 1960, No. L. Dis. W/7761/61, dated 19.3.1962, and N.L.Dis.7354/61, dated 12th Feb. 1962, as regards its valuation for stamp duty. The following are illustrative cases-

Illustration (1) :

A, B and C enter into an agreement for the division of property of the value of Rs. 1,000/- setting apart property of the value of Rs. 300/- for their common enjoyment and dividing the remainder in severalty. A's share being worth Rs. 300/-, B's Rs. 200/- and C's Rs. 200.

The value of the property set apart should be taken as one distinct share. Value of separated shares is Rs, 700/-.

Illustration (2) :

In the case cited in Illustration (1), the co-owners agree that the property set apart shall be divided in equal shares at a future date.

The value of the property set apart should be taken as one distinct share. Value of separated shares is Rs, 700/-.

Illustration (3) :

In the case cited in Illustration (1), the co-owners agree that the produce from the property set apart shall be divided in equal shares or in any other specified ratio.

The value of the property set apart should be taken as one distinct share. Value of separated shares is Rs. 700/-.



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Illustration (4) :

In the case cited in Illustration (1), the co-owners agree that the property set apart shall remain as joint for ever.

The value of the property set apart should be taken as one distinct share as this is also properly divided from the original property. Value of separated shares is Rs. 700/-.

Illustration (5) :

A and B enter into an agreement for the division of property worth Rs. 1,000/- stipulating that a portion worth Rs, 200/- shall be settled on their mother and the remainder divided in equal shares.

The value of the property settled on the mother should be excluded. Value of separated share is Rs. 400-.

Illustration (6):

In the case cited in Illustration (5), the co-owners agree that the property settled on the mother shall be for her life time and that after her death, it shall be divided in equal shares.

The property settled on the mother is property which the co-owners agree to divide in severalty, and its value should be taken as a distinct share. Value of separated shares is Rs. 600/-.

Illustration (7) :

In the case cited in illustration (5), the co-owners do not specify how the property settled on the mother shall be divided after her death.

The property settled should also be taken as a distinct share. Value of separated shares is Rs. 600/-.

Illustration (8) :

A and B enter into an agreement for the division in equal shares of property of the value of Rs. 1,000. 'A' takes property worth Rs. 800 and pays Rs. 300/- in cash to 'B' who takes property worth Rs 200/-.

The value of the share (500) not of the property, should be taken into consideration. The amount to be paid in cash should not be added to the value of the property forming the subject of division.

(BP.RT. No. 3666/63, dated: 16 11.1963).

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Note:- The Board of Revenue has held that in determining the stamp duty leviable on partition deeds containing dispositions in favour of relations or dependents, the criterion should be whether the provision is essential to the partition, and that where it is not essential etc , provision for the maintenance of parents, etc.. the document should be treated as a Settlement also under Section 5 of the Stamp Act. Provision for maintenance of parents, etc., should be assessed to stamp duty as Settlement also only be when such provision is not essential, which will depend on circumstances of each case”.

(Board Proceedings No. Rt/3666/63. dated: 16-11-63 communicated in I.G.&S. procdgs. No. G1/21065/63 dated: 25-12-63).

### **Power For Consideration**

**S.O. 406.** In respect of power of attorney given for consideration, as the stamp duty is leviable under Article 42 (e) of Schedule I-A of Indian Stamp Act (Act II of 1899), the Registration fee is also leviable on the amount of consideration at advalorem rates given in Article 1 (a) (i) to (v) of Table of Fees based on the general principle that in respect of instruments of conveyances, the value adopted for purposes of stamp duty shall also be adopted for assessing Registration Fees.

### **Ratification Deeds**

**S.O. 407.** The registration fee for supplemental deed falling under section 4 of the Indian Stamp Act shall be the same as the fee leviable upon the original document subject to a maximum of Rs. 100/-.

### **Receipts**

**S.O. 408.** The value of a receipt for payment made should be calculated with reference to the amount for which it actually purports to be a receipt, previous payments mentioned in the receipt by way of recital being excluded from the calculation.

**S.O.409.** (a) In the case of a document acknowledging the payment of money due under previous deeds of which some have been registered and others not, the fee leviable on the amount due under the registered deeds shall not exceed the maximum of Rs. 25/- prescribed in Article 1 (i) of the Table of Fees and that on the sums due under the unregistered deeds shall be at the ordinary rates under Article 1 (a) of the Table of Fees; but the total fee shall not exceed the amount leviable at the ordinary rates on the aggregate amount mentioned in the receipt.

(b) A receipt for money stipulated to be paid to a beneficiary under a registered will is chargeable with fee at ad valorem rates under Article 1 (a) and not under Article 1 (i) of the Table of Fees.

### **Rectification Deeds**

**S.O. 410.** In the case of a deed of rectification which does not create, transfer, limit, extend, extinguish or record any right or liability, the registration fee shall: (i) where no consideration for the transaction is expressed, be the same as the fee leviable on the

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original document subject to a maximum of Rs. 500/- and (ii) where the consideration is expressed be levied on the amount of consideration expressed subject to the same maximum of Rs. 100/-.

### **Releases**

**S.O.411.** (a) In a release deed previous payments mentioned should be taken into consideration in assessing the registration fee, as the relinquishment is made because of the receipt of the entire amount.

(b) In cases of benami release the registration fee shall be levied on the value of the property and not on the consideration.

### **Sales**

**S.O. 412.** A sale-deed falling within the proviso to the explanation in section 24 of the Indian Stamp Act shall be assessed to registration fee with reference to the total consideration for the sale including the mortgage debt discharged thereby.

### **Security Bonds**

**S.O. 413.** Security bonds executed under the provisions of any law or under the orders of the Government of India or of any State Government for the performance of any public duty or act in which the public are interested sometimes contain, besides the usual declaration that the executants bind themselves in a certain sum, a proviso naming (i) another sum, which may be equal to or higher than the amount named in the declaration, as the maximum amount recoverable upon breach of the conditions or (ii) a sum as the amount recoverable upon such breach in addition to that mentioned in the declaration. In assessing the registration fee on such documents the maximum amount recoverable, which in the first case is the penal sum mentioned and in the second case the total of the amounts mentioned, shall, with reference to the exception to section 74 of the Indian Contract Act, 1872, be taken as the value of the document. The same ruling applies to bail bonds, recognizances or other instruments of the same nature.

Note :- Bonds executed under the provisions of the District Boards and Municipal Acts fall under this category.

### **Wills**

**S.O. 414.** In assessing the registration fee on a will under the proviso to Article 5 (2) of the Table of Fees, the words "property dealt with" used in the proviso should be understood as referring to the property devised by the will and existing at the time of execution of the will, and any recital in the will regarding future acquisitions by the testator shall be ignored.

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### **Fee For Safe Custody Of Documents**

**S.O. 415.** The period of fifteen days during which a safe custody fee is not leviable on a document shall be calculated from the date entered at foot of the receipt as the date on which it will be ready for delivery or the date of the final certificate of registration or refusal whichever is later or when the date on which the document will be ready for delivery has been intimated by means of a notice, with reference to the probable date of the receipt of the notice by the party.

**S.O. 416.** For the levy of a safe custody fee, both the original and the duplicate or duplicates of a document shall be treated one document.

### **Fees under Article 1 (1) of the Table of Fees**

**S.O.417.** (a) For purposes of Registration Rule 34, the expression registration fee excludes the extra copying fee.

(b) In the case of documents presented for re-registration under the orders of the Registrar no extra copying fees is leviable.

(c) Stamp vendor's endorsements and certificates added under the Indian Stamp Act, on documents shall be taken into account for the purpose of levying copying fee under Article I (L) (i).

### **Continuation of Searches**

**S.O. 418.** With reference to Note 2 under Article 13 of the Table of Fees, search fees at concessional rates should be levied in respect of second and subsequent applications for the continuance of a search.

### **Fees for Certified Copies**

**S.O. 419.** The copying fee leviable under Article 14 (1) of the Table of Fees shall be calculated on the aggregate number of words in the languages and not separately on the number of words in each language in respect of documents containing words both in English and in the language of the registration sub-district.

### **Fees under Article 17 of the Table of Fees**

**S.O. 420.** The following instructions shall be observed in levying fees under Article 17 of the Table of Fees ;—

(a) Fees under Article 17 (1) (e):- (i) The fees for the intimation shall be levied in addition to the postage charges for sending intimations of the revocation of the power-of-attorney to other offices, in case such intimations are required to be sent to other offices,

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(ii) No notice fee is leviable when a power-of-attorney is revoked by a document presented for registration unless a separate notice is given in addition to the document presented for registration.

(iii) The fee is not leviable for the intimations sent in the form of a memorandum under order 99 (b).

(vi) If the fee is not paid the notice of revocation should be returned, calling for the payment of the fee.

(b) Fees under Article 17 (1) (g)-The words "In whose favour the receipt has been drawn up" do not refer to a nominee.

(c) Fees under Article 17 (1) (h). — The fee shall be levied only if there is an application for a refund. No applications need be called for.

(d) Fees under Article 17 (2) (a). — If a protest petition is received through post, unaccompanied by the fee payable, the fee shall be called for from the party and no action shall be taken on it until the receipt of the fee.

(e) Fees under Article 17 (2) (b).—The fee under Article 17 (2) (b) (iii) shall not be levied in respect of a person if fee under Article 17 (1) (b) is levied at the same time.

### **Exemption of Co-operative Societies from Fees**

**S.O.421** (a) The Government have been remitting registration fee leviable under Registration Act from time to time in respect of documents relating to co-operative Societies and Agricultural Development Banks etc. The Registering Officer shall follow the Government orders issued in this regard.

(b) Where Government grant exemption in respect of a document under Article 1 (k) of Table of Fees, no copying or endorsement fee need be levied under Article 1 (l).

### **Fees for Re-Registration and Registration on Appeal**

**S.O.422.** The full fee shall be levied for the re-registration of a document which is effected under section 24 of the Act.

**S.O.423.** If a document executed by two persons is registered inadvertently on the admission of execution by only one of the executants, it may be registered again on the admission of the remaining executant without the levy of a second fee from him, the fact being reported to the Registrar.

**S.O. 424.** When it is directed on appeal that a document which has been registered as regards some of the executants and refused registration as regards others shall be registered also as regards the latter, a second registration fee shall not be levied when

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the document is presented again for registration but copying fee at the rate prescribed in Article 14 (1) of the Table of Fees shall be levied.

### **Fines for Presentation and Appearance After the Prescribed Period**

**S.O.425.** (a) The fee for the registration of a document and the penalty, if any, leviable under sections 25 and 34 of the Act shall be collected from the party before the explanation for the delay is submitted to the Registrar. In cases in which the Registrar declines to direct registration, the fee and the fine shall be refunded to the party, and if on appeal the Registrar or a Court directs registration, the fee and fine originally levied shall be collected afresh from the party.

(b) When an executant of a document appears after the prescribed time (section 34) the registering officer shall ascertain from him the reason for the delay in appearance and after recording such reason shall call upon him to pay the penalty. Should he be unwilling to do so, the claimant shall be called upon to pay the penalty whether or not he be present at the time of the executant's appearance and the registering officer shall obtain from him an application for registration under section 34 and forward it to Registrar together with the executant's explanation for the delay. In the event of the claimant's not being present at the time of the executant's appearance, there is no objection to the executant's admission of the execution being recorded before the collection of the penalty from the claimant.

### **Procedure When Fees are Payable by Government**

**S.O. 426.** Fees for registration of documents and for searches made on behalf of Government are not paid in cash to registering officers but are adjusted in the treasury accounts by debit to the department concerned and credit to the Registration Department. The departmental officer who presents or sends the documents or who requires a search to be made should give to the registering officers a contingent bill for the amount of fees due after ascertaining the same from the registering officer. The bill should be endorsed as payable to the Registration Department by transfer of credit at the treasury, head of account to which the amount is chargeable being also specified thereon. The contingent bill will be treated as cash and sent by the registering officer to the nearest treasury, whether a district treasury or a sub-treasury, for the requisite adjustment to be made.

NOTE:- (1) In the case of documents relating to the Postal department, however the fees may be received if paid in cash.

(2) In the Forest department the fees due to the Registration department are credited by the Forest Officer himself in the Forest Account to "1030 Registration" by debit to "10. Forest" and a certificate is forwarded by the Forest officer to the registering officer

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that the amount has been credited to "1030 Registration". On receipt of the certificate the registering officer shall include the amount in his accounts of the month in which the adjustment was made. In Statement IV (a) (Chapter XXXI) of the month, the amount thus adjusted shall be specified in a foot note.

(3) The expenses of registering security bonds of ministerial officers in courts subordinate to the High Court are borne by the Government (G O.No. 254, Judicial, dated 20th February 1897). The fees for obtaining encumbrance certificates in the case of securities furnished by such officer is also borne by the Government (G.O.Ms.No. 1996, Home, dated 26th May 1937).

Contingent bills for obtaining encumbrance certificates in the case of securities furnished by ministerial officers in courts subordinate to the High Court and for the registration of their security bonds drawn by a court or by the Stamp and Revenue departments in favour of the Registration department will be sent to the registering officers in duplicate. The officer shall, immediately after a bill is cashed, return the duplicate copy after noting therein the date of encashment for incorporation in the accounts of the court or the Stamp and Revenue departments concerned.

(G.O.Ms.No. 961, Finance, 12th December 1925 and Ms.No. 636, Finance, 6th August 1926).

**S.O. 427.** In all cases where fees are payable to this department by other departments of Government, but are not actually paid by means of contingent bills, at the time documents are presented for registration or applications for searches are received, provisional receipts acknowledging the receipt of the documents or applications as the case may be shall be granted, specifying therein the amount due to be adjusted by means of a contingent bill. When the contingent bill itself is received subsequently, a note of the adjustment made shall be added on the counterfoil of the receipt granted and attested by the registering officer.

**S.O.428.** (a) In all cases of acquisition by private treaty of land for public purposes, documents should be executed and registered, the fees therefor being borne by the Government. Such documents need not be on stamped papers.

(b) Fees for searches for encumbrances in respect of such land shall be payable at the ordinary rates and shall likewise be borne by the Government.

(G.Os.No.999, Revenue, 1st May 1920 and No.1308, Revenue, 7th June 1920).



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## CHAPTER IX

### Implications of other Acts on Registration Urban Land (Ceiling and Regulation) Act, 1976

**NOTE :** The U.L. (C & R) Act, 1976 was repealed w.e.f. 27.3.2008 vide G.O. Ms. No. 603, Revenue (U.C-1) Dept., dt. -4-2008 As per Govt. Circ. Memo. No. 17377/UC-1 (1) / 2008 (1) / 2008-1, Rev (UC-1) Dept., dt. 24-4-2008 communicated in C & 1.G's Endt. No. G1/6421/2008, dt. 9.5.2008 the net effect is as follows :

- A) Lands declared as surplus and taken over by Govt. will be saved.
- B) Lands exempted under section 20 shall be saved.
- C) Cases pending at different stages before any court or authority shall stand abated. Hence the S.Ps from 429 to 447 are not published here.

#### Income Tax Act

**Note :** Sections 230-A and 269-P of Income Tax Act, 1961 and Rule 48G are not in vogue now. Hence the standing orders from 448 to 454 are not published here.

#### Co-operative Societies Act.

**S.O. 455.** The extracts of Section 36, 111 (i) to (3), and 133 of the Andhra Pradesh Co-operative Societies Act (Act No. 7 of 1964) as subsequently amended by the Andhra Pradesh Co-operative Societies (Amendment) Act, 1966 (Act No.14 of 1966) and also Rule 32 and form B (Declaration creating charge) prescribed thereunder are printed in the Registration Manual (part-I).

**S.O. 456.** The provisions of the Andhra Pradesh Co-Operative Societies Act, 1964 possess over-riding effect over the provisions of the Indian Registration Act, 1908 and as such the registration of the "declaration" has to be proceeded with even if they are transmitted by post without having the necessity of following the instructions contained in sections 32, 34, 58 and 59 of the Indian Registration Act, 1908.

**S.O.457.** The Registering Officers shall observe :

i) the declarations may be accepted for registration, if they are received by post within four months from the date of execution.

ii) There is no provision either in the Indian Registration Act or in the Co-operative Societies Act entitling the Sub-Registrar to call for the fee from the Society when it has not been received along with the declaration. Therefore, in cases of return of documents without registration, the fact of non-receipt of fee if not exempted may be intimated. If the requisite fee, if not exempted, is not received along with the declaration or within fifteen days after receipt of the declaration, it may be returned unregistered. There is no provision for refusal in such cases.

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iii) A separate register called the "Register showing the particulars of Declarations Received under section 36 of the Co-operative Societies Act, 1964,' (in the proforma in Annexure at the end of this standing order) should be opened forthwith and all the declarations received should be accounted for in the first instance in this register before making entries in Account-A.

iv) The Registering Officers should adopt the following sample endorsement to be made on the declarations.

"Received by post and also a fee of Rs ..... from the ..... Co-operative Society ..... in the Office of the Sub-Registrar/Registrar ..... on (date).

Signature of Registering Officer

v) The fee received should be noted in the first instance in the separate register mentioned under instruction (iii) above and subsequently credited to Account-A on the date on which the document is admitted to registration.

vi) The registration certificate should be added on the declarations as usual.

vii) Receipts should be drawn up and issued as soon as the declaration is admitted to registration i.e., after it is entered in Account-A.

viii) If the requisite cost of postage for return of the declarations by post is received from the society or from the person sending the declaration to the Registering Officer it may be returned by Registered Post. If the cost of postage is not received the declarations may be returned by post "Service unpaid".

ix) According to Section 111 (3) of the Co-operative Societies Act, 1964' as amended, only the registration of the documents relating to Agricultural Development Banks is exempted but a copy of the instrument is required to be filed in the books maintained under Section 51 of the Indian Registration Act. Therefore, indexes have to be prepared for documents of Land Mortgage Banks as in the case of Loan orders etc.

### **Annexure**

Register showing the particulars of declarations received under Section 36 of the Co-operative Societies Act, 1964.

### **Proforma**

1. Serial No.
2. Date of receipt.
3. Name of the Society from the which received.

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4. Name of the executants with additions.
  5. Name of the Claimants with additions.
  6. Value of the transaction.
  7. Date of execution,
  8. Amount of fees received.
  9. Date of receipt of the fees.
  10. Date of admission to Registration.
  11. Document No. and Year if registered.
  12. Date of return when returned unregistered.
  13. Initials of the Registering Officer.
  14. Remarks.

**The Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings)  
Act, 1973**

S.O.458. (a) Any document relating to alienation of any land or creation of trust in respect of any land shall be accompanied with a declaration in duplicate by the transferor to the effect that he does not exceed the ceiling area and in case, he is a member of a family unit, the holdings of all the members of the such family unit in the aggregate do not exceed the ceiling area.

(b) The Registering Officer shall forward one copy of the declaration to the concerned Revenue Divisional Officer.

**The Andhra Pradesh Assigned Lands  
(Prohibition of Transfers) Act, 1977**

S.O. 459. Any land assigned by the Government to a Landless poor person for cultivation or as a house site shall not be transferred. The Registering Officer may satisfy himself that the property involved in a document is not an assigned land by duly getting it incorporated in the document by the transferor.

**The Andhra Pradesh Scheduled Areas Land  
Transfer Regulation Act, 1959.**

S.O. 460. Since transfer of immovable property situated in the Agency Tracts by a member of Scheduled Tribe to a non-member is prohibited, the Registering Officer shall ensure by duly incorporating in the document that the property involved is not situated in the Agency tracts nor is it transferred to a non-tribal.

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## CHAPTER X

### **FUNCTIONS UNDER STAMP LAW AND VALUATION OF PROPERTIES**

#### **Stamp Borne by Documents**

**S.O.461.** (a) Under section 33 of the Indian Stamp Act, 1899, it is the duty of a registering officer to examine every document produced before him in the performance of his functions in order to ascertain whether it is chargeable with stamp duty and, if so, whether it is stamped with a stamp of the value and description required by the law in force.

(b) When the document is not duly stamped he shall impound it as prescribed in Registration Rule 32 (ii) and (iii). subject to the instructions contained in Registration Rule 33.

(c) When a document written on an insufficient stamp is registered by a registering officer, he is liable to be required to make good the stamp duty lost to Government.

(d) Under section 35 of the Indian Stamp Act, no instrument chargeable with duty can be acted upon or registered unless it is duly stamped and under the Act, a document which is not duly stamped at the time of its execution can be acted upon or registered only in the following cases:-

- (i) Where a document bears the certificate prescribed by section 32 (3) ; and
- (ii) Where it bears the certificate prescribed by section 42 (1).

When, therefore, a party presents informally for registration an insufficiently stamped document and on being informed of the deficiency of stamp duty and advised to draw up a fresh deed, purchases a new stamp to cover the deficiency and copies into it the first portion of the document altering the date of execution and striking out the portion from the original sheet, the alteration has no legal effect and, as the document as first drawn was insufficiently stamped, the alteration cannot render it "duly stamped" for the purpose of section 35. Documents altered in this manner shall be impounded.

(e) Registering Officers shall examine the stamp vendor's endorsement on each sheet of a document and report to the District Registrar having jurisdiction over the vendor cases in which he sold stamps worth more than Rs. 5,000/- to one individual or stamp denomination of more than Rs. 500/-.

(f) According to rule 6 (2) of Indian Stamp Rules, 1925, a stamped paper on which the stamp has been engraved or embossed, purchased, by or for the use of a person shall be used only by that person or his legal representative or duly authorised agent of such person. The Registering Officer shall not admit to registration, the document

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written on stamp papers in contravention of the above Rule. According to sub-rule 8 of Rule 39 of the Rules for supply and distribution of stamps when a stamp is purchased for the use of any person, other than the person who tendered the money for it, the vendor ought to enter on stamp paper the name and residence of such other person also. The registering officer shall not admit to registration the document written on stamp paper purchased through another, when the name of the person for whose use the stamp paper was purchased was not entered on the stamp paper. The registering officer should bring the neglect of Vendor to the notice of the concerned licensing authority.

(g) Stamp Vendors have been prohibited from writing documents. Cases of breaches in this regard shall also be brought to the notice of the concerned District Registrar by the registering officers.

### **Impounded Documents**

**S.O.462.** (a) (i) All Registerars are “Collectors” in respect of the powers specified in sections 38 (2), 40, 42, 48 and 56 of the Indian Stamp Act, 1899, within the limits of their respective jurisdictions in regard to instruments presented to or impounded by them or officers subordinate to them.

(Board’s Proceedings 65/1259-R- (Separate Revenue), 20th September, 1918).

(ii) Each Registrar shall maintain a register (Form Registration II-27) showing particulars of all documents dealt with by him under the Indian Stamp Act whether presented in his own office either for registration or in connexion with proceedings under section 72 to 74 of the Registration Act, or whether impounded by a Sub-Registrar in his district and submitted to him for adjudication. All correspondence relating to such documents shall be ledgered in this register | Order 1248 (4) | and not in the general series in the current register and shall be distinguished by the letter I prefixed to the number assigned in the register, this number being given to all the correspondence in a single file. The disposals shall be maintained in a distinct record bundle.

(iii) The Register shall be checked by the Registrar once in every month and he shall record the fact of such checking in the register with dated signature.

(iv) Outstanding entries of previous years shall be brought forward in this register at the beginning of each calendar year.

(b) In every sub-office a register (Form Registration II-26) shall be maintained in which every document impounded shall be entered on the date on which the registering officer decides to impound the same.

(c) (i) A document impounded by a Sub-Registrar shall be forwarded to the Registrar to whom he is subordinate together with an extract (Form V) of columns 1 to 8 of the register mentioned in clause (b), signed and dated by the registering officer. A copy of

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the document shall also accompany the extract, if such a copy has not been already submitted to the Registrar. No covering letter is necessary.

(ii) The Registrar, if he is of opinion that a document forwarded to him is not duly stamped shall communicate to the parties to the document his provisional decision as regards the deficit stamp duty and penalty proposed to be levied on the document and call upon them to show cause why the deficit duty and penalty should not be levied. A reasonable time shall be given to them to file their representation if any. The Registrar shall take into account such representation if any and pass a final order. It shall be a speaking order containing the full facts of case, the pleadings of the parties and the reasons for the levy of deficit duty and penalty. The order shall be communicated to the parties direct with a copy to the concerned Sub-Registrar.

(iii) On receipt of this intimation the Sub-Registrar shall communicate the decision to both the claimant and the executant requiring the payment to him by either of them of the amount.

(iv) The amount shall be brought to account in Account 'C' and shall be remitted to the treasury in a separate challan, the stamp duty being credited to this head.

“0030” Stamps and Registration fees,

‘02’ Stamps Non-Judicial

‘103’ Duty on impressing documents

and the penalty to the head :-

‘0030’ Stamps and Registration fee

‘02’ Stamps Non-Judicial ‘800’ Other receipts.

If a lumpsum is levied in lieu of deficit stamp duty and penalty, the deficit duty leviable shall alone be credited as “duty” and the balance as “Fines and Penalties”.

(v) A receipt in Form Registration II-38 and 39 Receipt for documents and fees - shall be granted for the amount received.

(vi) The fact of the payment of the deficit duty and penalty, if any, shall be reported immediately to the Registrar with particulars of the name and residence of the payer (Section 42 (1) of the Indian Stamp Act- 1899) and the date of payment.

(vii) The receipt issued by the Treasury Officer for the remittance of the amount shall also be sent to the Registrar in due course.

(viii) On receipt from the Sub-Registrar of the intimation of payment the Registrar shall endorse the document as required by section 42(1) and return it to the Sub-Registrar. Rubber stamps for endorsing those particulars are supplied to Registrars in whose offices the number of documents impounded in a year amounts to not less than 100.

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(ix) If the parties do not respond to the notice issued under sub-clause (iii) within a reasonable time or if the party liable to pay the deficit stamp duty and penalty under section 29 of the Indian Stamp Act declines to pay the amount and the other party to the transaction is unwilling to do so, the matter shall be reported to the recovery being effected under the provisions of section 48 of the Act.

(d) When, under exceptional circumstances, an impounded document has to be forwarded to the Registrar before the admission of execution from the executant is obtained, a note shall be entered in the extract drawing attention to the stage at which the document was impounded and the necessity for its return after adjudication before the expiry of the time prescribed for the appearance of the parties to admit execution.

(e) The Registrar shall be reminded when a document is about to be time-barred for registration.

(f) When a Sub-Registrar, whose office is situated at the headquarters of the Registrar, forwards an impounded document to him, the cover containing the document shall bear in red ink, a superscription to the effect that it contains a document and the acknowledgment of the receipt of the cover shall be obtained in the local delivery book. When a document is sent by post, it shall be sent registered and the receipt furnished by the post office shall be filed in the file book of postal receipts.

(g) A Sub-Registrar shall explain to the presentant of a document impounded the provisions of sections 46(1) of the Indian Stamp Act and ascertain whether he desires any copy to be made of the document under clause (2) of that section; but a written statement need not be recorded from the presentant on this point.

**S.O. 463.** The Chief Controlling Revenue Authority held that the stamps filed before any public officer without having particulars to be noted under Rule 30 (2) of Stamp Rules i.e., Stamp Vendors Endorsement in his own hand on the face of every stamp he sells just below the Stamp impression, Serial No., Date of sale, Name and residence of the purchaser and if it is purchased for any person other than the person who tenders the money for it, the name and address of such other person and also the value of stamps in full in words and in his own ordinary signature, shall be impounded as not properly stamped.

(Boards reference No. 921/0/67-1 dated: 5-3-1967)

**S.O. 464.** Documents written in contravention of Rule 6 (2) of the Indian Stamp Rules, 1925 shall be treated as un-stamped and impounded.

**S.O. 465.** The power to impound an instrument can be exercised under Section 33 (1) of the Indian Stamp Act, 1899 only when that instrument is produced before the



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Registering Authorities in the performance of their functions I e., only so long as the function is not performed or completed and not after completion of such function i.e., Registration etc. (Madhya Pradesh AIR 1966).

**S.O. 466.** Where a document is deficitly stamped, on the face of it the Registering Officer has to ascertain from the party orally in the first instance, without impounding it straight away, whether he will be willing to have the document adjudicated under section 41 and 42 of Indian Stamp Act. If so, he may collect deficit duty after obtaining an application under Section 41 and adjudicate it.

**S.O. 467.** The District Registrar can also entertain application under Section 41 of Indian Stamp Act if presented to him direct. If there is no request from the party under Section 41, the Sub-Registrar can impound the document for the reason that it is deficitly stamped on the face of it.

The Registrar may after levying the deficit duty and penalty and adjudication, transfer it to the Sub-Registrar to register the deed if otherwise in order and make a reference to the Collector under Section 47 (A), if Market Value adopted by the party is less.

**S.O. 468.** When a Registering Officer finds a document as insufficiently stamped on the face of it, though he may not be definite about the precise extent of deficiency, and feels a reference to a District Registrar for clarification is necessary, he may first impound the document and seek clarification.

**S.O.469.(a)** (i) All Registrars are "Collectors" in respect of the powers specified in sections 31, 32 and 41 of the Stamp Act also.

(B.P. Mis. No. 1226, 8th July 1944 and Mis. No. 1540, 29th August 1944).

(ii) Separate registers shall be maintained in forms 'W and \*X' for ledgering the daily transactions relating to sections 31 and 32 and those relating to section 41 of the Stamp Act. The serial numbers assigned in column (1) of the registers shall commence and terminate with each calendar year.

(iii) The abstract of the instrument furnished, the application as well as any affidavit or other evidence filed by the parties or other papers that may be called for under sub-section (2) of section 31 or section 41 of the Stamp Act shall be filed in separate files (one for section 31 and another for section 41) designated "File of correspondence relating to the instruments certified under sections 31 and 32 or under sections 41 and 42 of the Stamp Act," as the case may be. Each paper shall be paged in ink as soon as it is pasted in the concerned file.

(iv) In the applications put in by parties the names of the executants of the instruments and of the persons claiming thereunder, together with their additions shall be caused to be mentioned.

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(v) The duty paid under section 32 or section 41 and the fee levied under section 31 shall be remitted into the treasury in a separate challan under the heads of account,

'0030' Stamps and Registration fees,  
'02' Stamps Non-Judicial,  
'103' Duty on impressing of documents,

and '0030' Stamps and Registration fees,  
'02' Stamps Non-Judicial,  
'800' Other receipts.

respectively on the dates on which the office collections under the Indian Registration Act are remitted. Duty collected under section 32 or 41 shall be shown separately in the challan. The amount remitted with the date of remittance shall be noted in red ink in the registers prescribed under sub-clause(ii) with the initials and date of the officer remitting the amount into the treasury.

(vi) A receipt in form Registration 39 and 39-Receipt for documents and fees - shall be granted for the amount received.

(vii) The Registrar while on tour in connexion with the inspection of sub-registry offices may take with him the registers prescribed in sub-clause (ii) for acceptance and disposal of the applications received under sections 31 and 32 or section 41 of the Stamp Act and grant receipts from the document and fee receipt book of the Sub-Registry office where he may camp. The adjudication fee and the stamp duty collected shall be ledgered in Account 'C' of that Sub-Registry Office and the Sub-Registrar concerned shall remit the amount into the Treasury in a special challan separately prepared therefor on the date prescribed for remitting his office collections and submit the special challan after remittance to the Registrar who shall file it in the file of correspondence prescribed in sub-clause (iii) with cross reference wherever necessary after noting the amount so remitted along with the name of the Sub-Registrar who remitted the amount in the registers referred to in sub-clause (ii).

(viii) Registrars shall submit by the 10th of April each year a statement showing the number of cases dealt with and the amount of stamp duty and penalty realized by them during the financial year ending 31st March of the year in exercise of their powers under sections 31, 32, 37, 40 and 41 of the Indian Stamp Act.

(ix) The registers and files referred to in sub-clauses (ii) and (iii) shall be preserved permanently.

(b) The certificate to be added under section 32 of the Stamp Act shall be in the form prescribed below:-

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**Certificate Under Section 32 of Act II of 1899.**

I hereby certify that the full duty of Rs. .... with which the instrument is chargeable has been paid.

Office.

Signature.

Station:

Designation.

The certificate mentioned in sections 41 and 42 shall be in the following form:-

**Endorsement Under Sections 41 and 42 of Act II of 1899**

File No: ..... Dated : .....

I hereby certify that the proper/deficit stamp duty of Rs ..... (Rupees ..... ) has been levied in respect of this instrument from ..... (Name and address) on the basis of the agreed Market Value/consideration of Rs. .... being higher than the consideration / agreed market value :

Registrar/Collector  
under the Indian Stamp Act.

Note:- Delete whichever is inapplicable.

NOTE:- Applications under section 31 and 41 of the Indian Stamp Act should be stamped with a court fee of Re. 1/- under Article 10 (k) of Schedule II of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956.

**S.O. 470.** Though Section 40 of the Indian Stamp Act, 1899 does not in terms state that the opinion of the Collector should be expressed and implemented after giving a notice to the party, yet the principles of natural justice require that it should be done so. The Collectors as defined under Section 2 (9) of the Indian Stamp Act, 1899 shall see that in all cases involving proceedings under Section 40, a notice is issued to the party concerned before final orders are passed. They shall also see that an order in the form of a judgement is issued in such cases. The reasons should also be recorded in the order in which they levied penalty. (Full Bench 1956 ALT-I-1957 - Boards L. Dis 683/W/64 dt. 20-2-1965).

**S.O. 471.** Section 41 and 42 of Indian Stamp Act do not distinguish between registered and unregistered documents. A Registrar (Collector) cannot refuse to accept the document under the said sections on the plea that the documents were already registered. He can proceed under the said Sections if he is satisfied that the omission to duly stamp the document was occasioned by accident, mistake or by urgent necessity. Otherwise he can impound the document and deal with it under Section 40 and 42.

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**S.O.472.** (i) An instrument which is executed or first executed by any person in India outside the State of Andhra Pradesh on the stamp papers of value prescribed by the said State, and which is not chargeable with a higher duty in the State is not covered by clause (b) of the first proviso to section 3 read with section 19-A of the Indian Stamp Act, 1899. No duty is payable in this State for such instrument. If the duty paid in the other State is less than the duty chargeable in this State, the difference has to be collected in this State.

(ii) Rule 3 (iii) of the Indian Stamp Rules, 1925 comes into operation only when the instrument is executed or first executed in this State or if the duty paid on the instrument executed in any other State of India is less than the duty chargeable in this State on the said instrument.

(iii) Items (i) and (ii) above do not however apply to documents executed outside India and thereafter received in the State of Andhra Pradesh, such documents are governed by the provisions of section 18 of the Indian Stamp Act. They have to be presented to the Collector for stamping under the said section. But, if any such document is produced before a Collector for adjudication also under section 31, it has to be adjudicated. If it is produced before the Collector after the time prescribed in section 18, if the Collector is satisfied, he may proceed under section 41 and 42 to validate the document.

**S.O.473.** Person against whom Collector should proceed to recover stamp duty and penalty.

On the question who is the person against whom the Collector has to proceed under section 18 of the Indian Stamp Act (II of 1899) by way of recovering the stamp duty and penalty as arrears of land revenue in circumstances where deficitly stamped documents have been produced in Court or have come before the court in the performance of its functions and have been impounded and sent by the Judge to the Collector for action under section 40 of the Act. It is viewed that, following the clues afforded by sections 17 and 62 of the Stamp Act and reading together sections 35, 40 and 61 of the Act, the executant of such document is the person against whom the Collector should proceed under sections 40 and 48 of the Act for collecting the stamp duty and penalty.

**S.O. 474.** (i) The Chief Controlling Revenue Authority can interfere with the orders of a Collector before the certificate is issued under section 42 of the Stamp Act but once the certificate has been appended, the Chief Controlling Revenue Authority cannot exercise its powers under Section 56(1) of the Act. If the Collector had adjudicated a document wrongly, and issued a certificate under section 40 (1) (a) which cannot be sustained, it will be open to the High Court, when the matter is brought to its notice by appropriate proceedings to annul the certificate and direct the Collector to adjudicate a fresh according to law.

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(ii) A certificate under section 40 (1) (a) will arise only in cases where, it is held that the document is duly stamped or is not chargeable with stamp duty. Such a certificate is final under section 40 (2). The party concerned is, therefore, most unlikely to agitate against such a certificate. Only Government may have a grievance, if the document is considered to be chargeable with a higher stamp duty. In such cases, there is no provision for making any reference to the High Court under section 57 (1) of the Stamp Act. The broad position that a certificate under section 40 (1) (a) is final is reasonable as the Collector is Government Officer under the executive control of the Government and it would be anomalous to provide for a reference to the High Court by the Government against the orders of their own officers. The Government interest can be safe-guarded by the Collector adjudicating carefully in a judicial manner.

(iii) Giving grossly improper certificates under section 40 (1) (a) will entail liability to punishment and the loss will also be liable to be recovered from the officers concerned. This can be avoided by Collectors exercising their judgment carefully before issuing the certificates.

**S.O.475.** (i) In cases where the document has been returned to the party after registration, the document cannot be called for and impounded.

(ii) As regards a document that is, on the face of it, insufficiently stamped and which has been inadvertently registered but not returned to the party, there is nothing irregular in impounding it under section 33 (1) of the Stamp Act. The document, in such a case, had been presented to the Registering Officer for registration and, therefore, has come to him in the performance of his duties. The position continues to be so till it is returned to the party, the return of the document to the person concerned after registration being a statutory obligation under section 61 (2) of the Registration Act. Till the document is returned under the said section it cannot be said that the document has not come to the Registering Officer in the performance of his duties. The fact that registration has been completed (though the document is insufficiently stamped) does not alter the position that the document has come to the registering officer in the performance of his duties. So, such a document can be impounded after registration, provided it has not been returned to the party.

### **Certification Under Section 16 of the Stamp Act**

**S.O.476.** (a) All registering officers are "Collectors" for the purposes of exercising the powers conferred by section 16 of the Stamp Act.

(b) An application (Form V) made to a registering officer under that section shall be stamped with court fee of rupee one.

(c) (i) A certificate under section 16 is required in respect of the documents of the following nature :—

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(1) counterparts, (2) duplicates, (3) supplemental deeds, (4) sales in favour of mortgagees stamped under the last proviso to section 24 of the Stamp Act, (5) further charge with possession on simple mortgage, (6) auxiliary, collateral, additional and substituted security, (7) lease, partition and settlement stamped under the provisions to articles 31, 40 and 49 respectively of Schedule I-A and (8) lease deeds executed in favour of mortgagees without possession falling under the explanation to Article 35 of Schedule I-A to the Stamp Act.

NOTE :- A certificate is unnecessary in respect of transfer of mortgage.

(ii) a) The certificate on item (4) above, shall be in the following form:-

“I hereby certify that on the production of the mortgage deed executed in favour of the vendee/or of the person from whom the vendee has obtained the mortgage rights/ in respect of property dealt with herein I have satisfied myself that the stamp duty of Rs ..... has been paid therefor.”

NOTE :- The amount of duty actually paid on the original instrument shall be entered.

NOTE :- The amount of duty actually borne by the document should be mentioned in the certificate added under section 16 of Indian Stamp Act irrespective of the fact whether the abatements of stamp duty given is less than that actually borne by the document.

(b) The certificate in respect of item (8) shall be the same as in clause (a) above with the word “lessee” substituted in the place of “vendee” wherever that word occurs.

(c) The certificate entered on documents other than those mentioned in items (4) and (8) shall be in the following form :-

“I hereby certify that on the production of the original instrument, I have satisfied myself that the stamp duty of Rs..... has been paid therefor.”

(d) Copies of original documents or their counterparts can be admitted in evidence under section 16 of the Stamp Act only in rare and exceptional cases, where the party declares that the original documents are either lost or cannot be produced. In such cases, the forms of certificates prescribed in clause (c) (ii) above shall be altered suitably.

(e) For the purpose of calculating the stamp duty payable on the instrument on which the certificate referred to in clause (c) is added the duty payable on the original instrument under the law then in force and in the case of a partially discharged mortgage, the duty payable on the undischarged amount due in accordance with the law in force at the time of the execution of the mortgage shall alone be deducted.

NOTE:1) The rates of stamp duty payable prior to 1st April 1922 are those mentioned in Schedule I of the Stamp Act.

(2) The rates in Schedule I-A of the Stamp Act came into force on 1st April 1922.

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(3) The Andhra Pradesh (Andhra Area) Stamp (increase of duties) Act 1943 enhancing rates in respect of certain instruments came into force on 1st October 1943.

(4) The Indian Stamp (Andhra Pradesh Extension and Amendment) Act, 1959, extending the Indian Stamp Act 1899 in force in the Andhra area to the transferred territories came into force from 1st April 1959.

(5) The Andhra Pradesh Stamp (increase of duties) Act 1967, enhancing the rates in respect of certain instruments came into force from 20th October 1967.

(6) The Indian Stamp Act (Andhra Pradesh Amendment) Act 1974, substituting Schedule I-A of the Stamp Act came into force from 1st June 1974.

(7) The Indian Stamp (Andhra Pradesh Amendment) Act 1971 prescribing the levy of stamp duty on the market value in respect of certain instruments came into force from 16th August 1975.

### **Transfer Duty Payable to Local Authorities**

**S.O.477.** (a) Under section 261 of the Municipal Corporation of Hyderabad Act, 1955, section 60 of the Cantonment Act, 1924, section 110-A of the Andhra Pradesh (Andhra area) District Boards Act 1920, Section 120 of Andhra Pradesh Municipalities Act, 1965, and section 73 of Andhra Pradesh Gram Panchayat Act 1964, a duty in the form of surcharge on the duty imposed by the Indian Stamp Act 1899, is payable on certain instruments of transfer of property.

(b) The relevant sections of the Acts mentioned above, the rules framed thereunder, gists of the notifications prescribing the rates of duty and the instructions to be followed in the matter of collection, accounting, check and payment of the duty to the local bodies concerned are set forth in Appendix XII.

### **Court fee Stamps on Documents Executed in Pursuance of an Order of a Court.**

**S.O.478.** (a) When admitting to registration a document executed in pursuance of an order of a court the registering officer shall ensure that, apart from the duty chargeable under the Indian Stamp Act, the requisite court-fee labels have been affixed thereto as required by section 6 of the Court Fees Act, 1956.

(b) Appendix XIII contains a list of cases commonly dealt with in registration offices, where court-fee is payable.

Note :- The fee chargeable under Article 6 of Schedule II to the Court fees Act (VII of 1870), as amended by the Madras Court Fees (Amendment) Act, 1922 (Madras Act V of 1922), in respect of security bonds hypothecating property executed in pursuance of orders of courts under the Code of Civil Procedure, 1908 (V of 1908), has been remitted.

(G.O. Ms. No. 1732, Home, 1st May 1937).



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## **Cancellation of Adhesive Court Fee Stamps**

**S.O. 479.** Registering officers shall ensure that all adhesive stamps affixed to documents presented for registration are dealt with in accordance with the instructions contained in Chapter VII of the Standing Orders of the Board of Revenue in the Andhra Pradesh Stamp Manual.

### **Functions Under Sections 41 and 42 of the Stamp Act**

**S.O.480.** (a) All Sub-Registrars have been appointed as “Collectors” for the purposes of sections 41 and 42 of the Indian Stamp Act.

(b) A written application under section 41 should be taken by the Sub-Registrar from the party. It should be serially numbered and maintained in the form of a file.

(c) Applications and petitions under section 41 need not be stamped with court fee labels.

(d) When the application under section 41 of the Stamp Act is presented, the Sub-Registrar should verify that the document has been executed and that it has been brought to him within a year of its execution. It should be noted that the time for presentation and admission of execution fixed under the Registration Act will continue to be in force without any change on account of the appointment of the Sub-Registrars as “Collectors” under sections 41 and 42.

(e) The Sub-Registrar will determine the stamp duty (inclusive of transfer duty) payable and receive the amount in cash from the party and remit it under proper head of account.

(f) The Sub-Registrar will then endorse a certificate on the document under section 42 as given under standing order 469.

(g) The Sub-Registrars may exercise powers under section 41 in respect of cases not only of “urgent necessity” but also in regard to cases of “accident” and “mistake”.

(h) Copies of documents need not be obtained with application under section 41. However, when a document certified by Sub-Registrar under section 42, is admitted to registration, the registration number of the document, year, book and volume number in which the document is copied should be noted on the application.

(i) As regards sales in favour of Mortgagees two applications, one under section 16 and the other under section 41 should be obtained and the certificate under section 16 should be added first and signed by the registering officer. Then the certificate under section 42 should be added and signed by the registering officer. Both the applications under section 16 and 41 should be filed in the file of petitions.

(j) The seal of the office shall be affixed to the certificates added under section 42 on the documents dealt with by Sub-Registrar.

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**S.O.481.** (a) Documents presented may have to be kept pending registration due to various reasons such as delay in appearance of parties, enforcement of appearance of parties, want of proper payment of stamp duty, for production of Income Tax Clearance Certificate or Urban Ceiling permissions, for seeking clarification on chargeability of fees or stamp or on procedure etc. In the case of deficitly stamped documents, the pending document is entered in the impounded documents register (S.O. 462 (a) (ii)) after impounding and transmitted to the Registrar for adjudication. In respect of ascending documents where clarification is required, entries in the Minute Book are entered and a reference submitted to the Registrar. For documents where appearance of parties is expected the stage is watched after making entries in the Minute Book.

(b) For references submitted to the Registrar on pending documents “Register of references on Pending Documents” shall be opened in Registrars’ Offices with the following proforma for recording references received from their Subordinate Offices on pending documents to watch progress of disposal and as a ready reckoner for picking up precedents. This Register should be submitted by the concerned Assistant once a month to the Registrar for scrutiny as in the case of Register of documents adjudicated.

### **PROFORMA**

Register showing the references received on pending documents etc.

1. Serial No.
2. Date
3. From whom received—Number and Date.
4. Number and year of the document.
5. Nature and value of the document as opined by the Sub-Registrar.
6. The points on which the reference was made, Stamp duty borne and Registration fee levied.
7. Date of references if any to the Sub-Registrar or the Inspector General.
8. Dates of reminders.
9. Date of receipt of reply with Number and Date from the Sub-Registrar or Inspector General.
10. Final orders of the Registrar with Date.
11. Initials of the Registrar with dates.
12. Initials of the Record Assistant with date.

### **Undervaluations and Offences under the Stamp Law**

**S.O.482.** (1) When it appears to a Sub-Registrar that the value of a transaction embodied in a document presented to him for registration, is not set forth truly, he shall refer to

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the entries of the previously registered documents in the Register of Holdings or the Municipal Town Property Register, as the case may be. In cases where the Register of Holdings or the Municipal Town Property Register is not maintained, particulars of previously registered documents shall be ascertained from the parties and the entries of those documents in the register books shall be referred to.

(2) If, on a scrutiny of the records mentioned in instruction 1, he has reason to believe that all the facts and circumstances relating to the changeability of the instrument with stamp duty are not fully and truly set forth in the instrument, he shall record statements from all the parties connected with the document, viz., the executants, claimants, attesting witnesses, identifying witnesses, the scribe and the village officers, if any present, with a view to elicit information as to the real value of the property or the amount of consideration etc., on which the stamp duty payable on the document depends.

(3) If there is a substantial difference between the value of the consideration, etc., expressed in the document presented for registration and that expressed in the previously registered documents, the reasons for the disparity shall be ascertained from the parties during their examination and any evidence adduced by them to show that the value or consideration entered in a document is a true one, shall be taken into consideration.

(4) If, after a document has been registered, (i) a Sub-Registrar receives from a party a petition alleging that the offence of undervaluation has been committed in respect of that document, or (ii) a petition containing similar allegations is forwarded to a Sub-Registrar under instruction 6, he shall proceed as laid down in instructions 1 to 3 and 5, with the only difference that in these cases he has to issue notices to the several parties mentioned in instruction 2 for their appearance. A notice shall also be issued to the petitioner, calling upon him to appear on a specified date and substantiate his allegations with the necessary oral and documentary evidence.

(5) If, from the examination of the parties and all facts and evidence available, the Sub-Registrar is satisfied that a case of under valuation with intent to defraud the Government is made out, he shall register the document and submit to the Registrar a detailed report setting out all the facts and circumstances of the case and his views on the question whether prosecution of the parties should be sanctioned with the reasons therefor. The original copies of the previously registered documents and other papers shall accompany the report. If he finds that no case of undervaluation is made out, he shall record the petition, if any, in case it is addressed to him and inform the petitioner of the fact; in case the petition is one received from the Registrar, he shall submit the petition to the Registrar with his report.

(6) A Registrar shall, on the receipt of a petition alleging that the offence of undervaluation has been committed in respect of a specified document, forward it to the Sub-Registrar concerned for enquiry and remarks.

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(7) On the receipt of a report from a Sub-Registrar, under instruction (5), the Registrar shall carefully examine all the records of the case. He may also obtain the opinion of the revenue, municipal or local board authorities regarding the value of the property, forming the subject-matter of the transaction.

(8) (a) If the Registrar is of opinion that there is no substance in the petition, the petition shall be recorded. A final order to the effect that the petition has been recorded shall be communicated to the petitioner, if the petitioner has taken any steps to prove the allegations in his petition.

(b) If, on the other hand, he is satisfied that there is an intention to defraud the Government and that the material on hand will be sufficient to secure a conviction, he shall pass orders sanctioning a prosecution in the form prescribed if the party is unwilling to compound the offence.

(9) He shall, thereafter prepare a complaint as expeditiously as possible, and in consultation with the local Assistant Public Prosecutor, if necessary, and send it to the magistrate having jurisdiction to try the case.

(10) The Collector should be requested to direct the Assistant Public Prosecutor to conduct the prosecution.

(11) All papers relevant to the case together with a copy of the order sanctioning prosecution should be sent to the Magistrate along with the complaint. Copies of all such papers shall be sent to the Sub-Registrar concerned. A copy of the complaint to the Magistrate together with a copy of the order sanctioning prosecution shall be sent to the Collector of the district.

(12) The Registrar and the Sub-Registrar should give necessary instructions to the Assistant Public Prosecutor for the proper conduct of the case.

(13) The result of the case should be reported to the Inspector-General in due course, with a copy of the judgment.

(14) (a) An offence under section 64 of the Stamp Act can be compounded (i) in the first instance, when the offence is brought to the notice of the Registrar, and (ii) by staying proceedings, after prosecution has been sanctioned.

(b) On the original document which was undervalued and in respect of which the offence under section 64 of the Indian Stamp Act, 1899, was compounded or the persons responsible for the undervaluation of the said document prosecuted, a note shall be added in the following form if the said document is available:

“The value of the property/the consideration is Rs. .... as determined by ..... court in his order/its judgment No. .... dated ..... and a compounding fee/fine of Rs. .... was levied.

Registrar’s Office or

Signature(with date)

Sub-Registrar Office

(Sub) Registrar.

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Similar notes shall be entered in the index entries and at foot of the entry of the document or on the fly leaf, with necessary cross reference in the register book by the Registrar or by the Sub-Registrar under the orders of the Registrar, as the case may be.

(15) (a) Registrars shall on the 10th January, 10th April, 10th July, and 10th October each year, submit to the Inspector-General a quarterly statement showing prosecutions sanctioned in respect of offences falling under this order.

(b) The statement shall contain the following particulars :—

(i) Serial number;

(ii) Number of the document and the name of the office to which it relates;

(iii) Nature and value of the transaction ;

(iv) Nature of the offence committed;

(v) Date on which prosecution was sanctioned; and

(vi) Result of prosecution with the names of offenders punished and the punishments imposed.

(c) Cases compounded should also be included in the statement.

**S.O.483.** When a Sub-Registrar has reason to believe that all the circumstances affecting the stamp duty have not been truly set forth in a document although the document appears to be sufficiently stamped with reference to the matter appearing on the face of it he shall report the matter to the Registrar. Any other kind of breach or violation of the stamp law or rules framed thereunder shall be reported by him to the Revenue Divisional Officer, through the Registrar of the district.

NOTE:- All the District Registrars have been appointed as “Collectors” under the Indian Stamp Act for the purpose of Sections 31, 32, 38 (2), 40, 41, 42, 48 and 56. They are also empowered to sanction prosecutions under section 70 and stay or compound such prosecutions for offences under Stamp Act.

(Vide section 2 (9) and 70 of the Indian Stamp Act contained in Andhra Pradesh Stamp Manual).

**S.O. 484.** The District Registrars, etc. must bear in mind the following points in dealing with cases relating to undervaluation of documents : —

(i) There must be an enquiry in which the District Registrars or the Assistant to District Registrars etc.. should examine the petitioner, if any, the parties to the documents, the attesting witnesses, the identifying witnesses, the scribes of the documents and other persons who are likely to be acquainted with the facts and

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circumstances relating to the value of the properties or the amount of consideration, as the case may be.

(ii) Persons who are likely to be experts in the valuation of properties may also be consulted, if they are available.

(iii) Information regarding valuation of properties by Revenue, Panchayat or Municipal authorities.

(iv) Personal inspection of the properties should be made, if necessary.

(v) The enquiries and inspections mentioned above including examination of witnesses and obtaining statements may be done either by the Sub-Registrar or by the District Registrar or Assistant to District Registrars etc. The District Registrar or the Assistant to District Registrars etc., can examine additional witnesses, if necessary.

(vi) After observing the above procedure, the District Registrar as Collector must arrive at a fair value of the properties or a proper conclusion as to the consideration paid as established by proper evidence. In arriving at the value, the officers shall have regard for all factors determining the value under section 47-A and Rules framed thereunder.

(vii) After arriving at the valuation in the manner mentioned above, an order should be issued to the parties informing them that the amount of consideration or the value of the properties mentioned in the document has been arrived at as so much amount and offering to compound the offence of undervaluation if a suitable amount (to be fixed by the District Registrar) is paid as compounding fee. The relevant sections of the Stamp Act under which the offence has been committed should be quoted in the order. This order should be so drafted as to bring out the fact that the District Registrar as Collector had applied his mind to the facts of the case and all other relevant factors before arriving at his conclusion regarding the amount of consideration or the value of the property and that the conclusion has been arrived after an enquiry made by him. If the parties do not agree to get the offence compounded by paying the compounding fee fixed by the District Registrar, the District Registrar must consult the local Law Officer and launch prosecution against the offenders.

**S.O.485.** The District Registrar has no power to levy and collect compounding fee in the absence of consent from the party. The compounding fee is levied in lieu of prosecution when the party accepts the department's offer to levy a compounding fee. If the offer is not accepted by the party there cannot be any unilateral levy and collection of compounding fee.

**S.O.486.** (a) At the Court, proper evidence must be let in, to prove that an enquiry was duly conducted by the District Registrar, that the special features pointed out by the

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accused, if any, were duly considered, that the concerned authorities like Revenue, Panchayat or Municipal authorities were consulted along with the guidelines supplied by the Revenue Department, that witnesses were examined and that a final valuation was arrived at in a proper manner. Valuation of adjacent properties and the properties in question with reference to the previous transactions should be proved by filing certified copies of documents after consulting the Assistant Public Prosecutor in this regard.

(b) The District Registrars should contact the Law Officer concerned in each case of prosecution and place before them all the facts of the case so as to ensure successful prosecution.

**S.O.487.** (a) Registrars have been empowered by the Board of Revenue to sanction prosecution under section 70 of the Stamp Act in cases of undervaluation (Note (2) under section 70 of the Stamp Act), and under Standing orders 101 and 102 in the Stamp Manual, they are competent to sanction prosecution, and to stay such prosecution or compound any offence.

(b) On receipt of a report regarding undervaluation of documents. Registrars shall promptly sanction prosecution of the offenders after satisfying themselves that a prima facie case has been made out. The instructions in orders 482 shall be closely followed, The order sanctioning the prosecution shall be in the following form:-

Form for sanctioning prosecution under section 70 (1) of the Indian Stamp Act.

Under section 70(1) of the Indian Stamp Act, 1899 (Act II of 1899) and In virtue of the powers conferred by Board Standing Order 101 issued under the powers delegated by Government Notification No. 558 dated 6-10-1914 published on page 1454 of Part-1 of the Fort Saint George Gazette dated 6-10-1914, the District Registrar of (name of the District) after perusing all facts and records relating to the alleged offences placed before him and after satisfying that a PRIMA FACIE case has been made out, hereby sanctions the prosecution of ..... (names of offenders) for an offence under Section 64 read with Section 27 of the Indian Stamp Act as they have failed to set forth fully and truly\* ..... in the document ..... Dated ..... and executed by ..... in favour of ..... with a view to evade the payment of proper stamp duty to Government.

Station:

Registrar

Date :

\*Here enter 'the value of the property', 'the consideration amount', etc., on which the stamp duty depends, according to the facts of each case.

**S.O.488.** (a) All papers relevant to the case together with a copy of the order sanctioning prosecution should be sent to the Magistrate concerned along with the complaint. Copies of all such papers shall be sent to the Sub-Registrar concerned. A copy of the



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complaint to the Magistrate together with a copy of the order sanctioning prosecution shall be sent to the Collector of the district.

(b) The District Registrar and the Sub-Registrar should give necessary instructions to the Assistant Public Prosecutor for the proper conduct of the case.

**S.O.489.** (i) Where a prosecution launched by this department for an offence of undervaluation of properties in documents or for any other offences has failed, the District Registrar should immediately obtain a copy of the judgment from the court as well as the opinion of the law officer concerned as to whether it is a fit case for appeal and submit them at once to the Inspector-General, with his own remarks on the point whether an appeal may be filed or not. The reasons for which an appeal could be preferred should be set forth in detail. The matter should be treated as most urgent at all stages. Decisions regarding the filing of appeals have to be taken by the Inspector-General and orders of Government for filing appeals have to be obtained well in time, before the last date for filing appeal is over.

(ii) The District Registrars should invariably ascertain and report the last date on or before which the appeal is to be filed and also the court in which such appeal is to be filed.

**S.O.490.** The District Registrars and Assistant to District Registrars were conferred with the powers under Section 2 of Andhra Pradesh Revenue Enquiries Act, 1893 to summon witnesses and produce records etc., in cases of undervaluations.

(G.O.Ms. No. 109 Revenue Dept, dt. 3-1-1967 and G. O. Ms. No. 589 Revenue (U) Department dt. 28-9-1968).

**S.O.491.** Where the parties died after giving their consent to compound the offence and before payment of composition fees the "Collector" under Section 2 (9) of Indian Stamp Act, 1899 can proceed against the Estate of the deceased.

(Boards G.No. U3/2373/72 dt. 6-9-1972).

**S.O.492.** The value of the properties or consideration as determined and set-forth in the compounding orders of the Officer as "Collector" under the Indian Stamp Act, 1899 (Act II of 1899) or as set-forth in the judgement of the court shall be noted on the original document if available and in the language of the document at foot of the entry of the document or on the fly leaf with necessary cross reference in the Register Book and in red ink in index entry.

The note shall be in the following from :-

"The value of the property/the consideration is Rs. .... as determined by the Deputy Inspector General/Registrar/Assistant to District Registrar

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as "Collector" under the Indian Stamp Act 1899/by court in his order/it's judgement number ..... dated ..... and a compounding fee/fine of Rupees ..... was levied.

(Sub) Registrar's Office.  
(SEAL)

Signature of  
(b) Registrar with date.

### **Market Value Under Section 47-A**

**S.O.493.** (a) In order to combat undervaluation and consequent evasion of stamp duty a new provision, section 47-A, was introduced in the Indian Stamp Act, 1899, in its application to the State of Andhra Pradesh. It is in force with effect from 16-8-1975. This Section is made applicable to Conveyance, Exchange, Gifts, Partition and Settlement. According to this provision whenever any document of above nature is presented for registration and if the Registering Officer has reason to believe that true market value has not been set-forth, he shall send a reference to the 'Collector' after registration. The 'Collector' in turn shall determine the correct market value and recover the loss in stamp duty, if any. (A new amendment that the document should be kept pending till the Collector finalizes action under section 47-A is in the offing. 'Releases' are also being included for this purpose under that Section).

(b) According to Section 47-A of Indian Stamp Act, 1899, where a Sub-Registrar has reason to believe that the market value of property involved in a document coming within the purview of that section has not been truly set-forth, he has to take appropriate action. In order to exercise his reasoning fairly and justly, without being capricious, he is equipped with details of the values of properties, rural and urban. These values are fixed after elaborate enquiries, spot inspections, verification of Revenue and Municipal Records, previous registration statistics and detailed consultations with all these who were likely to be familiar with values such as Revenue and Municipal Officials, Village Officers, Panchayat Executive Officers etc. After ascertaining the values as above they are noted in Registers intended for both rural and urban areas which are known as 'Basic Registers'. The Registering Officer will consult these registers while determining the market value for documents presented before him. The values in these registers are subject to revision from time to time.

(c) As regards buildings and constructed portions, the Inspector General of Registration and Stamps provides the Registering Officers with guidelines based on nature of construction, facilities available, age of the building etc., after getting the particulars from Roads and Building Authorities. These guidelines are also revised from time to time.

**S.O.494.** Where the party adopts higher market value than that given in the Basic Register the value given by the party shall be taken for levy of stamp duty and fees.

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**S.O. 495.** If a document affects properties in two or more Sub-Districts the statement filed by the party should be sent to the concerned Sub-Registrar for verification, without returning the document to the party until the report of verification is received. If on verification the value is found to be correct a notice may be given to the party to take delivery of the document. If not, reference under section 47-A has to be sent to the Collector if the party is unwilling to adjudicate it under section 41 of Indian Stamp Act, 1899. As regards documents presented under section 30 since the Registrar is the custodian of Basic Registers. They can verify Basic Registers and calculate Market Value,

**S.O.496.** When lands with standing crop is alienated, the Sub-Registrar shall apply his local knowledge to assess the value of standing crop concerned.

**S.O.497.** No reference under section 47-A is necessary where the value declared by the party is less than the one determined by the Sub-Registrar but the stamp is sufficient on the value arrived at by the Sub-Registrar.

**S.O.498.** Regarding site value of a flat in a multi-storied building, it should be with reference to the recital in the document i.e., if no right is created in the site, it need not be taken into account. If a joint right is created, the value should be assessed proportionately.

**S.O.499.** Rectification deed altering Survey No., Sub-Division No. of a previously registered deed without altering the extent and boundaries may be treated as rectification deeds and charged to stamp duty on the difference of value, if any.

**S.O.500.** Before revealing the market value to the registering public as noted in the Basic Registers, the Registering Officer should first ascertain from the party, the value that he is going to purchase. If the value of the party appears to be higher than the values of the Basic Register the Registering Officer may allow him to adopt the actual value for which the party is purchasing. If the value of the party seems to be lower than the value of the Basic Register the party may be informed to adopt the value as noted in the Basic Register.

**S.O.501.** 47-A does not make a distinction between immovable and movable properties. The word "property" given in that section does not necessarily confine to immovable property alone. Its meaning is elastic to cover movable property also under its scope. While guidelines on the values of immovable property can be possible through Basic Registers on specific and clear guidelines over movable are possible in view of the complexities of moveable properties. The Registering Officer has to therefore, apply his local knowledge and determine the probable market value. If in his opinion, the value kept by the party on movable property is reasonable and fair, he may register it. On the contrary, if the value in the considered opinion of the Registering Officer is less, he may after registration take recourse to 47-A.

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**S.O.502.** Where a mention in the document is made referring to land with survey number as forming part of “Grama Kantham” the market value fixed for house sites should be adopted.

**S.O.503.** The Registering Officer may contact the Executive Officers of Panchayats and Municipal Authorities to secure the particulars such as nature of construction, age, assessment numbers, plinth area etc., which are helpful to them in checking malpractices committed by the parties by furnishing false information in the documents in respect of buildings.

**S.O.504.** Normally in transfers only property transferred is described in the schedule, although in the operative portion of the document a stray clause, that all those things attached and associated with land such as rock, mine, water, trees etc., are transferred with the land, is also incorporated. In such cases value of the property alone may be taken. But where in addition to immovable property specific mention of trees is also made, then the Registering Officer should ascertain the value of such trees and satisfy himself. If the value thus given is not to the satisfaction of the Registering Officer, he may send a reference to the Collector under section 47-A.

**S.O.505.** If the parties indemnify a sale market value need not be adopted as such documents do not fall under the purview of Section 47-A.

**S.O.506.** As provisions and Rules that are applicable as to the levy of stamp duty will MUTATIS-MUTANDIS apply for the levy of Transfer of Property Tax or Transfer duty, the collection of Transfer of Property Tax or Transfer Duty is also necessary in respect of cases referred under section 47-A.

**S.O.507.** In respect of ‘Conveyance’ the highest value among :—

- a) Consideration as mentioned in the document
- b) Parties estimated value
- c) Eighteen times the annual rental value

d) Market value as calculated by the Registering Officer, should be considered for the payment of stamp duty including Transfer duty or Transfer of Property Tax and Registration Fees.

**S.O.508.** If a party is unwilling to adopt market value of the Basic Registers, the Sub-Registrar cannot refuse registration but should take action under section 47-A of Indian Stamp Act, 1899.

**S.O.509.** In the case of any omission of certain survey number in Basic Register the value given for the adjacent survey number of similar classification may be adopted.

**S.O.510.** Market Value Scheme is applicable only to the properties situated in the State of Andhra Pradesh.

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**S.O.511.** (a) Transfer of mortgage decree can be viewed as conveyance of court decree and so falls under section 47-A of Indian Stamp Act.

(b) Sale of life interest is a conveyance and it attracts provisions of Section 47-A of Indian Stamp Act, 1899. But it will not be fair to adopt the values of Basic Registers on the property involved because actual land is not transferred and only life interest or a benefit to arise out of land is transferred. In such cases the Registering Officer has to rely on the local knowledge and determine market value and take appropriate action under section 47-A if necessary.

**S.O.512.** Cases under section 47-A can be referred if for any reason omission occurred even after a period of 2 years from the date of registration.

**S.O.513.** The Municipal Taxes are based on Annual Rental Value. The Taxes will be on the prescribed ratio to the Annual Rental Value assessed by the Municipal authorities. Hence the parties can reduce the Annual Rental Value to be furnished against item 10 of Annexure I-A to the Rules, the Registering Officer may ascertain the ratio and give necessary guidance to the parties.

**S.O.514.** According to Section 27 of Indian Stamp Act, 1899, the consideration if any and the market value of the property dealt with should be furnished in the document. The market value of the property shall invariably be mentioned in the document presented for registration. The Officers such as Assistant to District Registrars and others who detect, failure to send references under section 47-A by Sub-Registrars shall be reported to the Inspector General through his District Registrar.

**S.O.515.** Value mentioned in the sale deeds may be accepted where lands, sheds, buildings and other structures are sold or purchased by the concerns wholly owned by the Government provided the sale deed is executed within 6 months of fixation of rate by the Board of the respective Government owned concern.

(Govt. Memo. No. 2102/U2/76 dated 28-7-76).

**S.O.516** (a) When a party is willing to pay the additional duty, payable on the basis of Market Value arrived at by the Sub-Registrar with reference to guidelines furnished to him, no reference under section 47-A is necessary. The party can proceed under section 41. If the party is unwilling to avail himself of the opportunity and insists that the market value furnished by him is correct then only a reference under section 47-A has to be made.

(b) It may be possible for a party who was unwilling at the time of admission to accept market value as a result of which a reference under section 47-A of Indian Stamp Act is made, subsequently agree for payment of deficit duty. If the date of execution does not exceed one year, the Sub-Registrar, to whom the party approaches,

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may take an application under section 41 of Indian Stamp Act, 1899, as he himself, is empowered to levy the deficit duty. If the date of execution exceeded one year, the action is possible under section 40 of Indian Stamp Act, for which only the District Registrar is competent. The party may be advised to approach the District Registrar who may take action under section 42 after levying deficit duty and penalty. After action either by the Sub-Registrar under section 41 or under section 40 by the District Registrar, the concerned officer may write to the Collector under Section 47-A of Indian Stamp Act to withdraw the reference already made.

(c) In Account-A in Column "Value of the Document" consideration or Market value whichever higher should be noted for sales. Where the consideration is less than the Market Value it should be shown in the column "Nature of the Document". For other documents the market value should be shown in the column "value of the document". When the party files an application under section 41 volunteering to pay the deficit duty for the enhanced value, the difference in value should be written by means of a plus entry while admitting the document to registration. In Index-II also the Market value and consideration should be noted.

(d) In the certificate to be added under section 42 of Indian Stamp Act the market value may also be noted along with the deficit stamp duty levied.

**S.O.517.** (a) The Registering Officers are strictly cautioned that the extracts of Basic Registers should be kept under their personal custody. They alone should handle them but not the Assistants, Temporary Section Writers and Attenders. (The values should be told by the Sub-Registrars but not his staff).

(b) The Registering Officers tender themselves to action if they are reluctant to show the extracts of Basic Register and do not reveal the correct values to the Registering public.

(c) The extract of Basic Registers have to be shown to the interested persons.

(d) As regards furnishing of information to the other Department, the Sub-Registrars have to advise the other Departments to depute responsible members of their establishment with a letter addressed to concerned Sub-Registrar's office to collect the relevant data from the Basic Registers.

(Govt. Memo No. 4179/U2/75-1 dated 24-9-1975).

**S.O.518.** The Senior Assistant in charge of market value shall calculate market values of properties with reference to Basic Registers and guidelines laid down for arriving market value of buildings and Sub-Registrars are responsible for the calculation of stamp duty on the market values so calculated by Senior Assistants. The Senior Assistant shall assist the Sub-Registrar in all the correspondence relating to Market

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Value including transmission of references under section 47-A. Whenever Market Value is not correctly calculated by Senior Assistant, disciplinary action shall be initiated against him by the District Registrar. The Sub-Registrar should test check 10% of the documents in respect of which market values are calculated by Senior Assistant, satisfy himself that the Senior Assistant correctly calculated the market value. More documents should be test checked if the Senior Assistant is not properly calculating the values. If the work of the Senior Assistant is found unsatisfactory, the Sub-Registrar should not hesitate to bring it to the notice of the Registrar immediately. They should affix the dated initials on the documents concerned in token of check in the Register prescribed.

**S.O.519.** Some parties may claim that the Sub-Registrars are merely admitting the documents based on stamp duty with reference to consideration and the Registering Officer never informed them or explained to them the duty payable on market value. Whereas the Registering Officers may refuse this claim. To overcome this assertion and refusal a specimen form given below may be obtained from the parties signifying their acceptance or denial of market values as assessed by the Registering Officer. The consent letter may be obtained in duplicate when the party declines to adopt market value and furnish one copy to the Collector along with a reference under section 47-A to the Collector and second copy should be filed in the file book along with Annexure I-A.

### Proforma

To

The Sub-Registrar,

.....

Today I have presented a document (Sale/Gift/Settlement/Exchange/Partition) for a value/consideration of Rs. .... The Registering officer informed that the market value of the property dealt with in the document comes to Rs. .... I am not agreeing with the market value as assessed by the Sub-Registrar. I, therefore, request you to kindly register the document on the value/consideration amount as expressed in the document only subject to reference to Collector under section 47-A for the determination of proper Market value of the property. I am prepared to pay deficit stamp duty if any decided by the Collector.

Yours faithfully,

Executant/Claimant.

NOTE:- Claimant's signature also should be obtained in the duplicate of the Annexure I-A to be filed in the office records by adding the following lines :— "I am agreeing with



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the details of description of property and all details regarding annexure I-A which is now incorporated in the document are truly and correctly set forth.

**S.O.520.** (a) Copies of Annexures I-A and I-B can be granted to the Government Departments.

(b) Copies of Annexure I-A alone can be granted to private individuals. However Annexure I-B should not be given to them.

(c) Copies need not be given on stamp papers to Government Departments in view of exemption (a) under Article 21 of Schedule I-A to Indian Stamp Act, 1899. Copy of Annexure I-A intended for private individuals should be prepared on Non-Judicial stamp worth Rs. 2-50 as the original is not chargeable with duty.

(d) Note (2) under article 14 of Table of Fees is applicable in the case of Government Officers who may search the registers or take copies of entries for bonafide public purposes.

(e) Fees under articles 13 to 15 have to be levied while granting copies to Government Departments as well as private parties. Only Police Officials need not pay any fees when copies are required by them for bonafide public purpose.

**S.O.521** (a) In respect of the documents where the party adopts lower value and agrees to accept the values shown in the basic register but where the value has certain fractions of amount exceeding (whole) hundreds; such fractions of amount upto Rs. 50/- exceeding hundreds can be ignored by the Registering Officer and where the calculations exceed Rs. 50/- above (whole) hundreds, the actual Market Value has to be taken into consideration.

### Illustrations

i) When the total value of the document as per the Basic Register is Rs 612/-, the Registering Officer can reduce this value to Rs. 600/-. If its value comes to Rs. 651/- the value has to be taken as Rs. 651/- for the purpose of determination of stamp duty and registration fee.

ii) A property whose market value comes to Rs. 1138 the value can be taken to be Rs. 1100/- for the purpose of determination of stamp duty and registration fee. If on the other hand. the value after the calculation shows a figure of Rs. 1156/- it has to be taken as Rs. 1156/- only.

iii) In case of a property whose value comes to Rs. 2049/- it can be taken to be Rs. 2000/- and if the value is calculated to be Rs. 2085/- it is to be taken as Rs. 2085/- only.

(b) References contemplated under section 47-A must be sent once in a fortnight i.e., on 1st and 15th of each month. The Sub-Registrar may use his discretion upto 10% in the case of petty transaction not exceeding the market value of Rs. 1000/-. In

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other cases 5% margin to a maximum market value of Rs. 500/- may be allowed provided no reference is necessary where the difference in duty (excluding transfer duty) is Rs. 25/- or less.

**S.O.522.** The Assistant to District Registrars may select spot inspections of the buildings whose value is of Rs. 15,000/- and above. They shall inspect atleast 25% of the buildings registered in his Head quarters and also in the major towns.

**S.O.523.** The Basic Registers shall be maintained permanently and accounted for in the “Permanent Record Register”.

**S.O.524.** No certificate need be added on the document which has been already registered and returned when the Collector levies the deficit duty under rule 7 or the Court passes an Order under Rule 12. A note shall however be added at the foot of the entry of the document in the Register and in the Index-II on receipt of such orders.

**S.O.525.** File of Annexure I-A filed under Explanation 2 to Rule III of Andhra Pradesh Prevention of Undervaluation Rules shall be preserved for 12 years.

**S.O.526** A register of documents referred to the Collector under section 47-A in the following proforma shall be maintained In each Registration office.

REGISTER OF DOCUMENTS REFERRED TO (a) District Collector (b) District Revenue Officer and (c) Sub-Collector or Revenue Divisional Officer, as the case may be under section 47-A of the Indian Stamp Act, 1899.

1. Sl. No.
2. Date.
3. File No.
4. Document No.
4. a) Location of property or properties registered. (Mention name of village and taluk. If there are two or more villages bearing the same name, give the firka in which it is located along with Revenue Code No. of Village or Census Code No. of 1981).
5. Date of presentation.
6. Name and address of presentant.

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7. Date of execution.
  8. Names and addresses of executants.
  9. Names and addresses of claimants.
  10. Nature of the document.
  11. Market value (and consideration if any) as mentioned in document.
  12. Stamp borne by the document.
  13. Nature, Market value in the opinion of the Registering Officer together with the Stamp duty payable.
  14. Deficit stamp duty.
  15. Details as to how the value in Col. 13 is arrived at.
  15. a) Date of submission of document with form-I under Rule 4 to a) District Collector b) District Revenue Officer c) Sub-Collector or Revenue Divisional Officer (as the case may be) (write Headquarters of Sub-Collector or Revenue Divisional Officer).
  16. No. and Date of Collector's order or District Revenue Officer's or Sub-Collector's or Revenue Divisional Officer's under rule 7 (as the case may be).
  17. Date of receipt of order.
  18. Gist of Collector's order (here mention the market value or consideration finally determined by (a) District Collector (b) District Revenue Officer (c) Sub-Collector or Revenue Divisional Officer (as the case may be) along with the amount of deficit stamp duty to be collected.
  19. No. and Date of order of appellate authority (Revenue Authority).
  20. Date of receipt of the order.
  21. Gist of the order of the (Revenue authority) appellate authority.
  22. Amount of deficit stamp duty collected.
  23. Challan No. and Date of remittance in State Bank of Hyderabad or State Bank of India.
  24. Remarks.
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## CHAPTER XI

### EXAMINATION OF EXECUTANTS AND WITNESSES

#### General

**S.O. 527.** In examining a person under the provisions of the Registration Act, it is not absolutely necessary to put him on oath. Section 63 of the Act leaves the matter to the discretion of the registering officer. Whether the administration of an oath is necessary or not in any case will depend on the connected circumstances.

**S.O. 528.** The examination of a party by a registering officer is, under section 34 of the Act, confined to matters pertaining to (1) the fact of execution, (2) the identity of parties and (3) the authority of those who appear as representatives, assigns or agents. It is not within the province of a registering officer to compel a party to make a statement regarding the receipt of consideration although he is bound to record a voluntary admission of receipt of consideration.

#### Pardahnashin and Gosha Ladies

**S.O.529.** (a) A registering officer or a commissioner appointed by him has no power to demand in the case of a pardahnashin lady the withdrawal of the pardah.

(b) A registering officer or the commissioner appointed by him must be satisfied that the pardah lady whose evidence is required is the person actually examined and must himself hear what she says. He shall take care to obtain the admission of execution from the executant's own lips. The mere statement of relatives or other persons accompanying her is not sufficient. The terms of the document shall be explained to the executant and if, while admitting execution, she objects to any of the terms, such objection shall be recorded in the deposition book by the Sub-Registrar or in a separate sheet by a commissioner.

(c) The examination referred to in section 33 and 38 of the Act is not a "face to face" examination in the case of a pardha lady, in the sense that the registering officer or commissioner sees the face of such lady. Her evidence or admission may be given from behind a pardah or screen or a partially closed door or from within a closed palkee or any other form of concealment, but she must give her evidence or make her admission direct to the registering officer or commissioner who must record what she says, not what somebody else (as for instance a hammamnee) says she says. An exception to this rule is when a sworn interpreter is employed in a case in which the evidence or admission has to be recorded by a person ignorant of the language spoken by the pardah lady.

(G.O.No. 995, Judicial, 13th May 1895)

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(d) For the examination of a gosha lady who may decline to appear before a registering officer, it is therefore necessary to engage the services of a hammamnee who will act as an interpreter.

(e) Whether the hammamnee identifies the lady or not, her signature shall be taken invariably in the registration endorsement after recording a deposition from her as to any special marks of identity of the lady behind the pardah who admits execution of the document and as to the thumb impression having been obtained from, and the consideration amount, if any, having been paid to the same lady.

**S.O.530.** (a) A gosha lady may be permitted to present a document for registration or to receive or make payment of consideration money or to receive or deliver goods through a hammamnee. The registering officer may satisfy himself as to the fact of presentation by the lady or the receipt or payment of consideration money or the receipt or delivery of goods by the lady by putting questions and hearing her replies although he may not see her in either case their depositions shall also be recorded.

(b) The services of the identifying witness shall also be utilized to help the hammamnee in obtaining the thumb-impression of a gosha executant.

### **Admission of Execution**

**S.O.531.** (a) The admission required under section 35 of the Registration Act (XVI of 1908) is admission of the execution of the document. It is not enough for the person, who is the ostensible executant to admit his signature on a paper on which, it may be, the document is ultimately engrossed. The identity of the paper on which the signature occurs is not sufficient. If a man says that he signed a blank paper on the representation that it was required for presenting a petition or if a man signs a completed document on the representation that his signature or thumb impression is required as an attesting witness, that admission of the signature or thumb-impression in those circumstances cannot be construed to be an admission of the execution of the document. Far from its being an admission it is a clear and unambiguous denial of the execution of the document. He must admit, in order to attract the provisions of section 35 (1) of the Act, that he signed the document, viz., a sale deed or a mortgage deed or a lease deed as the case may be. The power of a court under section 77 of the Act is the same as that of the Registrar whose duty it is to register the document. The same considerations should guide the court in directing registration under section 77 which guide also the Registrar. Where, however, a person though admitting his signature to the particular document, viz., a sale deed, a mortgage deed or a lease deed, etc., presented for registration, states that he signed it as he was put in such fear of bodily injury to himself or to those in whom he is interested as to bring the case within the offence of extortion as defined in the Indian Penal Code, the registering officer is bound to register, for the reason that the execution of the document is admitted by the executant and that

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the objection which affects the validity of the document as between the parties thereto cannot be enquired into and adjudicated upon by the registering officer.

(b) Where a person admits his signature to a document but states that the date of the document, that is, the date from which the transaction evidenced by it is to take effect, or some other material provision contained therein has, since its execution, been altered fraudulently, the registering officer shall refuse to register, because the alleged executant denies execution of the fraudulently altered document and the admission as to the signature is only an admission of the execution of the original or unaltered document to which such signature was affixed.

(c) Where a person admits his signature to a document with knowledge of its contents at the time of execution, but is unwilling to correct the date of the document which is obviously incorrect, being anterior to the date of purchase of the stamp paper on which it is written as shown by the endorsement of the stamp-vendor, the document shall be refused registration for the reason that it is on its face false and no admission of execution would justify that registration.

(G.O.No. 1198, Judicial, 28th June 1892)

(d) A registering officer cannot register a document whose execution is not admitted by the alleged executant. Execution of a document consists in signing a document written out and read over and understood and does not consist of merely signing a name upon a blank sheet of paper. To be executed, a document must be in existence; where there is no document in existence, there cannot be execution. Where an executant clearly says that he signed on a blank paper and that the document which he had authorised is not the document which he contemplated, the statement is a denial, and not an admission of execution.

(C.W. Notes Supplement, 1917, page 40. Patna)

**S.O.532.** With reference to Registration Rule 151 (i), the responsibility for determining whether the executant of a document is in a fit state of mind rests primarily with the registering officer, but in the case of a will or other document registered at a private residence when the executant is ill, a deposition shall, where possible, be recorded from him testifying to the fact that he is conscious of what he is doing.

### **Depositions**

**S.O. 533.** (a) The “Deposition books” referred to in Registration Rule 151 (ii) shall be bound books obtained on indent from the Superintendent of Stationery.

(b) Before a book is brought into use, it shall be paged throughout in ink and the number of pages in the book shall be certified on the flyleaf by the registering officer.

S.O.534. When the execution of a document is denied, the statements of witnesses who are examined to prove the identity of the alleged executant shall be recorded in

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the deposition book, the signatures of the witnesses being obtained at the foot of the depositions. The signatures need not be taken on the back of the documents.

### **Attesting Witnesses as Consenting Parties**

**S.O.535.** The question whether an attesting witness is a consenting party is one of fact to be decided according to the circumstances of each case. If a document recites that the consent of persons other than those who have signed as executants has been obtained to the transaction entered into by the persons calling themselves the executants, and such persons have signed the documents in token of their assent to the transaction, the persons who have given the consent should also be regarded as executants and their admission of execution recorded on the document. Accordingly, unless it is clear from the document itself that the witness has signed it in token of his assent to the transaction a registering officer need not examine an attesting witness as an executant.

### **Identity of Parties**

**S.O.536.** The identity of a party appearing before a registering officer shall, if practicable, be proved by the testimony of persons who are personally known to the registering officer himself or, when this testimony is not procurable, by the most trustworthy evidence available. The attesting witnesses to a document need not necessarily be examined in connexion with identification, since what is ordinarily required is not proof of execution but proof of identity. Moreover, it may often be inconvenient for such witnesses to proceed to the registration office from their villages, and they may, after all, be strangers or obscure persons with whose testimony the registering officer may not be satisfied.

**S.O.537.** (a) Registering officers shall guard against false personation in the registration of a document. In a village there are sometimes several persons bearing the same name or a person has several aliases. Whenever therefore, an identifying witness is examined, the enquiry shall be sufficiently specific to admit of the detection of false personation and of fixing the responsibility on a witness who may mislead a registering officer.

(b) Each identifying witness shall be asked to state the name and address of the person to be identified and also whether he is the person referred to in the document as the claimant or executant, as the case may be.

(c) It shall also be ascertained how the knowledge of the witness was acquired and for what period the witness has been acquainted with the party. An acquaintance formed in the registration office, while registration proceedings are going on, is not a sufficient qualification for an identifying witness. The testimony of an identifying witness shall be rejected if he has had no personal acquaintance but has merely been told the party's name for the purposes of the identification.



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(d) In cases where a witness bears a relationship to the party, the fact shall also be ascertained and noted in the addition of the witness.

(e) Care shall be taken that identification does not become a trade among the petition-writers, menials and hangers-on of an office. The testimony of persons who make such a trade shall not be accepted.

(f) When an identifying witness is also an attesting witness to a document, the registering officer shall satisfy himself that the signature or the identifying witness corresponds with the signature in the document.

(g) The thumb-impression of an identifying witness shall be taken as contemplated by Registration Rule 63 (i) if the registering officer has any doubts as regards the identity of a witness.

(h) Registrars shall during their inspection of sub-offices note whether the instructions in this Standing Order are followed by Sub-Registrars and bring to the notice of the Inspector-General any cases of infringement.

### **Thumb-Impressions**

S.O. 538. (a) The system of obtaining thumb-impressions for the identification of parties shall be worked with tact so as not to cause unnecessary offence or annoyance to the persons whose thumb-impressions are required.

(b) Two slabs shall be used in each office. A dufter cloth shall be made available to parties for wiping off the ink from the thumb, and in important stations to which respectable parties are likely to resort, turpentine and soap shall also be kept handy.

(c) The impressions should be clear and distinct. Rolled impressions are always preferable, but in the case of women, plain impressions may be accepted.

**S.O.539.** A registering officer may, in his discretion, dispense with a thumb-impression in the case of persons who can sign their names.

**S.O.540.** (a) Whether finger impressions are taken or not, the signatures of the parties shall invariably be obtained in the thumb-impression register.

(b) Whenever thumb-impression of a person is dispensed with, signatures of the identifying witnesses should also be obtained in the thumb impression register, suffixing the words I.W. 1 or I.W.2 as the case may be (I.G's Proceedings G1/10628-A/67, dated 18-4-67).

**S.O. 541.** The impressions shall be taken under the personal supervision and in the immediate presence of the registering officer himself who should be able to depose to that effect before a court when necessary. The duty shall not be delegated.

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**S.O.542.** (a) In the thumb-impression register the impressions shall be obtained in the serial order of the document numbers.

(b) In the column provided for the purpose, the number, book and year of the document in connexion with which an impression is taken shall be entered by the registering officer. In the case of an attested power-of-attorney, the number assigned to the power attested and the date of execution or attestation shall be entered.

(c) Where the depositor of a sealed cover is not known personally to the Registrar, his thumb impression shall be taken both on the sealed cover and in the thumb-impression register. Where he is personally known, a note to that effect shall be entered both on the cover and in the thumb-impression register.

(d) If a signature, in the thumb-impression register is in a language not commonly used in the sub-district and not understood by the registering officer he shall ascertain from the party what letters the signature contains and shall translate them Into English in the thumb-impression register immediately below the signature.

(I.G's Proceedings G4/31562. A/67, dated 2-12-67).

**S.O. 543.** Except in the case of impressions obtained in the thumb-impression register or on the slips at the private residence the digit and the hand from which an impression is obtained shall be specified wherever an impression is taken, even though the impression is that of the left thumb.

**S.O. 544.** When an impression is not clear and a second or third impression is therefore taken, the indistinct impressions shall not be cancelled, but shall be noted as "first impression", "second impression" and so on, all the impressions being bracketed together.

**S.O.545.** (a) When a person executes a document in different capacities, only one impression need be taken in the endorsement though he affixes more than one signature to the endorsement.

(b) When the same person is the executant of more than one document it is unnecessary to obtain a separate impression in the thumb-impression register in respect of each document provided that all the documents are registered at the same time. The numbers of all the documents shall be noted against the impression in the column intended for the purpose in the register.

**S.O.546.** In the case of a document executed by more than one person bearing the same name, the name of the father also shall be entered against the impression of each executant in the register of thumb-impressions.

**S.O.547.** Thumb-impressions of persons other than executants shall be distinguished by the symbols "I.W." for identifying witnesses, "Ct." for claimants and so forth, against the entry in the register of thumb-impressions.

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**S.O. 548.** When impressions appearing on the same page have been obtained by more than one officer, the impressions shall be serially numbered in roman figures and each officer shall enter a separate certificate at foot in the following form:-

“Impressions (I to VI) on this page have been affixed in my presence and under my supervision by the persons whose names are entered next to them.

(Signed) .....

Dated

Sub-Registrar.

**S.O. 549.** If a person whose impression is taken bears personal marks of identity, such as natural deformities or other permanent peculiarities, which can be noted without enquiry, and the registering officer considers it desirable to keep a record of them as additional marks of identity, a brief note shall be made by him below the party's signature or name in the thumb-impression register.

**S.O. 550.** When an executant of a document refuses to affix his signature in the endorsement, his thumb impression shall be obtained against his signature in the deposition book containing his statement regarding his refusal to affix his signature.

**S.O. 551.** When there are two or more executants to a document, the thumb-impression obtained from each shall be numbered with Arabic numerals in brackets thus “(1)” “(2)”, in the endorsement on the back of the document, the corresponding numbers being entered against the impressions in the register.

**S.O. 552.** Thumb-impressions taken for office record by a commissioner shall be on separate slips and shall be forwarded to the registering officer who issued the commission along with the commissioner's report.

**S.O. 553.** When in the course of registration or refusal an impression contemplated in Rule 63 (i) in respect of any document or in respect of any executant has either not been obtained or has been obtained in any place other than that which it would ordinarily occupy in accordance with its serial order, a reference to that document or executant and to the reason for not obtaining the impression, or to the place where it has been obtained if it has been obtained elsewhere shall be indicated briefly, as shown in the margin, in the ordinary thumb-impression register in the appropriate place. When the reference is only to one or more several executants of a document, the name of the executant or executants shall be noted. In the latter case a cage need not be reserved for the entry of the reference if it can be entered at the foot of the page of the thumb-impression register.

1321 Personally known.

1323 Narayanaswami, personally known.

1325 Person suffering from leprosy.

1400 Vide page of P.A. book Vol.

1500 Ramaswami-vide Page of this

1507 Commissioner, Corporation of Hyderabad, exempted from personal appearance.

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**S.O.554.** The completed volumes of thumb-impression registers shall be maintained in locked record receptacles containing the completed register volumes. The current volumes shall be kept either in the iron safe or in the cash-box of the registering officer.

**S.O.555.** When a thumb-impression register is forwarded to a court with reference to Registration Rule 148, a note signed and dated by the registering officer shall be made under the last impression as follows:- “sent to ..... court on ..... and where such a register is in current use, another register shall be brought into use in its place. A register only partially filled shall, on return by the court, be used for taking impressions subsequent to the closing of the register then current with a note signed and dated by the registering officer showing where the intervening impressions are to be found.

### **Thumb- Impressions-How to Take Them**

**S.O.556.** In some cases the thumb-impressions are contested as forgeries and the parties have to resort to the law courts to establish their claim or right. In all such cases it is the thumb-impression which offers proof or disproof of the allegations. In many cases, there may be no evidence other than the thumb-impression itself to prove or disprove a claim. It is thus in the interests of the parties to ensure that the impression is taken properly, Registering Officers should insist on the thumb-impression taken on documents being clear enough for study and comparison and for presentation as evidence in court (if necessary should arise later on for this to be done).

**S.O. 557.** Comparisons of thumb-impression are effected by visual examination of all the ridges of the disputed print with the comparison sample. The identity should be established fully, with regard to the pattern and ridge characteristics. Thus, it is necessary that the thumb-impressions affixed on records or documents should be clear and well defined, so as to afford a large number of clear ridges for comparison with sample at any later date. The more clear the print on the document, the better are the chances of specific opinion being given.

**S.O.558.** (a) Materials and apparatus : The materials and apparatus required for taking thumb-impressions or fingerprints are :—

1) A slab measuring about 6 inches by 4 inches on which to spread the ink. It may be glass, a sheet of smooth copper, brass or tin. The slab should be mounted on a wooden base of 1½ inches thickness.

2) A rubber roller, such as is used by photographers, for spreading ink on the slab. (It may be 4 inches along and 1 ½ inches or 2 Inches in diameter. The rubber rollers used by the printers for taking proofs answers this purpose.)

3) Black printer’s ink (heavy paste) is the best medium for taking thumb-impressions or fingerprints.

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(b) A thin film of ink is spread and rolled into a film of uniform thinness on the dust-free slab. The thumb is rolled on it, from side to side, in one complete and light movement, when the elevated lines (ridges) on the thumb get inked and the depressions (furrows) in between the ridges do not get inked. When the inked thumb is rolled on paper (kept stretched on a level board), a clear reproduction of the pattern and the minute characteristics found on it are obtained.

(c) Fluid inks such as writing ink or stamp-pad ink or highly unsatisfactory for taking thumb-impressions, as they not only ink the ridges but also run into the furrows with the result that when prints are taken on paper they appear highly smudged.

(d) A suitable stand or table with the edges cut square on which the impressions can be taken is also required.

**S.O.559.** (a) Method of taking prints:- The first step in taking thumb impressions or finger prints is to ink the slab properly. A small quantity (i.e., about quarter inch length) of Printing ink shall be squeezed from the tube (in which it is supplied) on to the slab. Before the impression is taken on the document or record, a test print may be taken to see the depth of the ink. If the impression is faint, more ink should be spread on the slab. If there is too much ink on the plate, some of it can be removed by placing a sheet of paper on the plate passing the roller over it, discarding the paper, and rerolling on the slab.

(b) The second step is to have the subject stand in front of and at fore-arm length from the inked slab. The operator should stand to the left and in front of the subject. The fingers should be folded into the palm of the hand, leaving the thumb extended. The fixture of the end joint, should be just within the edge of the plate. The thumb should be placed on the inked slab, so that the edge of the thumb nail is at right angles to the plate. The bulb surface should be gently rolled from one nail boundary to the other. Having thus inked the thumb, it should be rolled on the record or document at the desired place in the same manner.

(c) If consideration is given to anatomical structure of the fore-arm more satisfactory prints will be secured. This requires that the thumb and the fingers be always rolled away from the body of the person who is being finger-printed.

(d) In the way mentioned above clear prints of the thumb or if necessary all the fingers may be taken. The prints should be black, sharp in pattern, with ridges that can be counted and studied easily.

**S.O.560.** It is impossible to obtain good results with dirty slabs and rollers. The thumb or fingers should not be rolled over the same part of the plate without the plate having been re-rolled with the roller.

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**S.O.561.** Before the impressions are taken the thumb or finger should be thoroughly cleaned to remove all traces of perspiration which, if allowed to remain on the skin surface, would blur the impression and make it indistinct. When rolling the thumb or finger, light and even pressure should be applied.

**S.O. 562.** If the thumb or finger is not completely rolled, the impression might not contain the full design or pattern found on the bulb surface of the thumb or finger.

### **Representatives**

**S.O. 563.** When the executant of a document is dead, his representative or assigns should, under section 35 (1) (c) of the Act, appear personally before the registering officer and admit execution. There is no provision in the Act authorizing an agent to appear in such cases. Where a representative is a minor, his guardian should appear on his behalf.

**S.O.564.** (a) The "Personal law" referred to in the definition of "minor" in section 2(8) of the Act is the law prescribed in the Indian Majority Act, 1875, and the age at which minority ceases shall be determined with reference to the provisions of section 3 of the Act. Accordingly the period of minority of a person domiciled in India shall be held to terminate on the completion of the eighteenth year, except in the case of a minor for whom a guardian has been appointed by a Court of Justice or the management of whose property has been assumed by the Court of Wards, who attains majority on the completion of the twenty-first year.

(b) The period of minority laid down in section 3 of the Indian Majority Act does not apply under section 2 when a person is acting in matters of marriage or adoption. When a person is acting in respect of such matters, the personal law applicable to him will not be the Indian Majority Act but the law to which he would be subject if that Act had not been passed i.e., the Hindu or Muslim law. A deed relating to such matters shall not therefore be refused registration if the executant is a major under the personal law to which he is subject i.e, the Hindu Law by which minority ceases with the end of the fifteenth year.

(Advocate-General's opinion, 17th July 1903-G.O.No 482, Judicial 16th March 1904)

**S.O.565.** An assistant shall not when placed in charge of a sub-office conduct enquiries contemplated by Registration Rule 61 when an officer of the grade of sub-Registrar or Probationary Sub-Registrar is expected to join within ten days from the date of presentation of the document.

**S.O.566.** When the widow of a deceased person who had executed a deed of gift was his representative, it was held that she was qualified to admit execution under section 35, although she was also the donee under the deed.

(I.L.R. 33. Cal., 584)

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## Documents Executed by Firms and Companies

**SO.567.** (a) In the case of contracts entered into by a firm it is sufficient, in order to bind the whole firm, for one of the partners to execute the document by affixing the usual title of the firm. There is, therefore, no objection to this partner's affixing the name of the firm in the admission endorsement. The addition to be made by the registering officer, under section 58(i) (a) shall be worded as follows :- "Represented by ..... one of the partners of the firm".

(b) So far as a director of a registered company is concerned, any director can admit execution of the document.

(Government Solicitor's opinion, 30th August 1911)

### Enquiry Under Rule 61

**S.O. 568.** Enquiry under Rule 61 relates to non-testamentary documents which are presented for registration after the death of the executant or the executant of which dies after presentation and before admission of execution.

**S.O.569.** (a) An application for an enquiry under Rule 61 shall be in writing.

(b) Proof of death of executant shall be obtained.

(c) The application shall contain the full particulars of the deceased, the addresses of the representatives or assigns and the distance of the village from the office.

(d) Necessary fees, batta, travelling allowance to the representatives shall be collected from the presentant.

**S.O.570.** If on the date of presentation of the document, any one claiming to be the representative, assign or agent of the deceased is present in the office, and if the Registering officer is satisfied of the representative character, he may examine him.

**S.O. 571.** Such of those representatives as appear voluntarily maybe examined by the Sub-Registrar. Summons may be issued to the representatives whose appearance has to be enforced.

**S.O. 572.** A notice of the fact of the intended enquiry shall be exhibited in the office premises and copies of such notice shall be sent to village panchayats or Municipal authorities concerned where the deceased resided and also to the said authorities in whose jurisdiction the property affected by the document is situated by registered propered post for exhibiting in their notice boards.

**S.O. 573.** The scope of enquiry under Rule 61 is limited. It is one of admission of execution by the representatives or assigns of the deceased.



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**S.O. 574.** The depositions from the representatives or assigns shall be obtained in the deposition book.

**S O. 575.** The signature and additions of every representative or assign admitting execution shall be obtained on the document as required by section 58 (d) of the Registratioin Act, 1908.

**S.O.576.** (a) With reference to Rule 61 a document shall be registered only if all the representatives appear and admit execution. If even one of the representatives denies execution, the document shall be refused registration in toto.

(b) Whenever the Executants or their Representatives or Assignees after the death of the Executants of a Non-Testamentary document, appear and deny execution either before a Senior Joint Sub-Registrar in Registrar Offices or before a Grade-I Sub-Registrar invested with powers of a District Registrar, he should not refuse registration as to the person so deny but proceed further by converting the cases into original enquiries under Section 74 of the Registration Act, 1908.

**S.O.577.** (a) The record of each day's proceedings in respect of a document which is presented for registration after the death of the executant or the executant of which dies before admitting execution shall be noted in a case diary maintained in form Regn. II-87, separately for each document.

(b) All the records connected with the enquiry under rule 61 with the exception of depositions which must be recorded in the "Deposition Book" [Rule 151 (ii)] shall, at the conclusion of the inquiry, be stitched together chronologically with a facing sheet indicating the number and year of the document to which the inquiry appertains, followed by a table of contents giving the date and a brief abstract of each document in the file. Cross-reference to any deposition which may have been taken shall appear in the record in the appropriate place.

(c) The records shall be preserved for thirty years.

### **Exemptions Under Section 88 of the Registration Act**

**S.O.578.** (a) Section 88 (1) of the Act provides that it shall not be necessary for any officer of Government or for any of the public functionaries specified therein to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him or in his favour in the official capacity or to sign as provided in section 58.

Section 88 (3) requires that the registering officer to whom such an instrument is presented for registration shall satisfy himself of the execution and provides that he may, if he thinks fit, refer to such officer or functionary for information respecting the same.

The reference to the Government officer or functionary is not obligatory in every case, but the registering officer shall satisfy himself by the most convenient means

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possible of the genuineness of the signature of the exempted person. For example, when a document is forwarded by a Government officer with a covering letter [rule 25 (ii)], stating that it was executed by himself and asking for its registration, the letter should ordinarily suffice; again the registering officer may be acquainted with the signature of the officer and no reference is then necessary. If a document is presented by a private individual who is a party to the document, a brief enquiry from him or from his identifying witnesses may be sufficient. It is only when the registering officer has no such easy means of satisfying himself that he should make a reference to the officer concerned.

Where an officer or functionary notified his intention of presenting through a messenger in more offices than one a number of documents executed by himself, he shall be requested to send in advance to each of the registering officers concerned a specimen of his signature so as to enable the latter to satisfy themselves as to the genuineness of the signatures on the documents.

(b) The instructions contained in clause (a) shall apply to the registration of documents executed by persons exempted from personal appearance under other enactments.

**S.O.579.** (a) The extract reproduced below from the opinion given by the Advocate-General explains the significance of the terms "Officer of Government" used in section 88 (1) :—

(i) "..... an 'Officer of Government' does not cease to be an 'Officer of Government' for the purposes of section 88 of the Registration Act ..... and so lose the right to exemption from attendance personally, or by an agent, at a registration office on being appointed President of a Municipality or of a Local Board, notwithstanding that the registration proceedings are in connexion with an instrument executed by him in his capacity as President".

(G.O.No. 1704, Judicial, 4th November, 1898).

(b) An Official Receiver is an officer of Government, for the purposes of section 88 of the Registration Act.

(G.O Ms.No. 1996, Law (General), 12th June 1935).

(c) The following officers should also be deemed to be officers of Government for purposes of section 88 (1) of the Registration Act :—

(i) Officers of Government whose services are lent to local bodies or who perform other duties retaining a lien on Government posts, such as Commissioners of Municipalities, Liquidators of Co-operative Societies and managers of estates under the superintendence of the Court of Wards.

(ii) Commissioners of Municipalities whether holding a lien on Government posts or not.

(G.O.No. 2241, Revenue, 2nd September, 1938)

(iii) Commissioners of Corporations of Hyderabad, Vizag and Vijayawada.

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## CHAPTER XII

### POWERS OF ATTORNEY

**S.O. 580.** A Registrar may attest a power-of-attorney executed by a person residing in any part of his district.

**S.O. 581.** Registering officers are authorised to attest powers-of-attorney executed in the Andhra Pradesh State for the registration of documents in Jammu and Kashmir.

(G.O.No.817, Judicial, 20th April 1895).

**S.O. 582.** The word 'resides', which occurs in sub-clause (a) of clause (1) of section 33 of the Registration Act is nowhere defined in the Act itself but may fairly be interpreted by Explanation I to section 20 of the Code of Civil Procedure, 1908, which is as under :—

Explanation:- Where a person has a permanent dwelling at one place and also a temporary residence at another place he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

**S.O.583.** (a) Every power to be attested must, under section 33(1) (a) of the Act, be executed before a registering officer. The only exception to this rule is when a power of-attorney is executed by a person exempted under the proviso to that section from attendance at a registration office for execution of the power [Registration Rule 49 (ii)].

(b) If, by mistake, a principal has already signed a power, his signature shall be obtained in the presence of the registering officer below the first signature and he shall be required to enter below the latter signature the date of the same.

(c) The date inserted in a power-of-attorney shall correspond with the date of its attestation when it is executed before a registering officer.

**S.O.584.** (a) When a power-of-attorney which has not been executed before a registering officer is presented for authentication [Registration Rule 49(ii)], the finger impression of the executant shall, when necessary (Registration Rule 63) be taken against the executant's signature in the endorsement of authentication.

(b) When a finger impression is taken against the signature of an executant of a power-of-attorney under Registration Rule49(i) or under clause (a) of this order, the impression shall also be taken in the thumb-impression register.

NOTE:- Execution by a gosha lady of a power-of-attorney behind, a pardah and out of the sight of the registering officer is not execution in the presence of the registering officer. In such cases the form of attestation endorsement shall be that prescribed by Registration Rule 49 (ii).

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(c) The thumb-impressions obtained from parties on the powers-of-attorney authenticated under Registration Rule 49(i) or 49(ii) need not be initialed and dated by registering officers.

**S.O.585.** (a) Whenever a power of attorney is executed by a person in more than one capacity, as in the case of a person executing it for himself and as guardian of his minor son, a second signature shall be obtained from the executant indicating his execution in his representative capacity, e.g., as guardian of the minor.

(b) In such cases it is not necessary to bring out the dual capacity of the executant in the endorsement of attestation made by registering officers under Rule 49 (i).

**S.O.586.** (a) The number assigned to the abstract referred to in Registration Rule 55 (i) shall also be entered at the top of the attestation endorsement prescribed in Registration Rule 49. In the case of Powers of attorney presented with duplicates only one number should be assigned, the number of duplicates being noted under the number assigned to the power in column 1 of the abstract.

(b) When a power of attorney is attested at different times, a fresh abstract should be prepared and a fresh serial number entered in the endorsement for every separate attestation.

**S.O. 587.** The Registering Officer attesting Power of Attorney shall mention the name of the Station below their signatures after completion of endorsements of attestation prescribed in Registration Rules 49 (i) and (ii), as the case may be.

**S.O. 588.** For the purpose of Registration Rule 50 (i) a special power is one by which the agent is authorised to act in a single office. Accordingly a power by which the agent is authorised to appear in more than one office, should for the purpose of Rule 50 (ii) be deemed to be a general power.

**S.O. 589.** When a power has been attested by an officer and there is nothing on the face of it to show that it has not been properly attested, it shall be accepted and acted upon by the receiving officer. Any defect in the procedure of the attesting officer, e.g., omission to affix the seal or the date, is not a valid ground for refusing to accept the power.

**S.O. 590.** An endorsement by a registering officer on a power of attorney shall be so made as to leave a margin on the left hand side in the front and on the right hand side at the back of the paper so as to avoid the entries being hidden by the butts of the file book when the powers are pasted in the latter office Order 599).

**S.O. 591.** A certified copy of a power-of-attorney shall not be accepted and acted upon by a registering officer unless it is an attested copy of a general power deposited in a High Court under section 4 of the Powers-of-Attorney Act.

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**S.O. 592.** A document executed by an agent on behalf of a principal, including in that category, documents which purport to be executed by principals and are signed by the agents on behalf of such principals as well as those which purport to be executed by agents, as such on behalf of principals and are signed by the agents, may be accepted for registration without requiring the production, by the agent, of a power of attorney attested as prescribed by section 33 of the Registration Act.

**S.O. 593.** Powers of attorney for purposes of sections 42 and 44 of the Indian Registration Act need not be attested as laid down in section 33. But there is no objection to the acceptance of power so attested. In the case of powers not so attested, those of the following descriptions may alone be recognized :—

- (i) Vakalatnamas mentioned in Order, 648(a),
- (ii) Powers-of-attorney registered under the Indian Registration Act, and
- (iii) Powers-of attorney executed before and authenticated by any of the functionaries or court mentioned in section 85 of the Indian Evidence Act.

None of these powers, however, should be acted upon unless it contains a specific authorization by the principal as regards the deposit or the withdrawal of his will. If the holder of a power which does not contain such a specific authorization seeks to deposit or withdraw a sealed cover, the Registrar should refer to the principal, by registered post, to ascertain whether the power was intended to cover such deposit or withdrawal and should not act on the power except upon an affirmative reply. In the reference to the principal, it may be made clear that the enquiry is made in his own interests.

**S.O.594.** (1) According to Registration Rule 54, a Registering officer is authorised to authenticate a power of attorney for registration purposes only and he shall refuse to authenticate a power entirely unconnected with registration. "Registration purposes" means and includes cases in which the principal or principals authorize the agent/agents to procure registration on his/their behalf, of documents executed by him/them, in Registration offices.

(2) Generally a power of attorney may be brought to the registering officer for (i) authentication (ii) registration (iii) both authentication and registration. In case (i) above, the principal authorizes the agent to present on his behalf the document or documents executed by him, in the concerned Registration offices under Section 33 of the Indian Registration Act, to admit execution and do the allied acts therefor.

Illustration I :- 'A' executed a sale deed on 1-2-1965 in favour of 'B' and authorised 'C' by a power of attorney to present the sale deed before the registering officer and do all acts necessary on his behalf to complete the registration of the sale deed.

In case (ii), the principal authorizes the agent to do some other acts excluding those mentioned above viz., to execute documents on his behalf and get such documents registered or to receive amounts due to the principal in Courts etc.

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Illustration-II :- 'D' authorised 'E' to enter appearance in Civil, Criminal and Revenue Courts on his behalf to file suits, to execute documents and get them registered to receive consideration money and do all acts necessary on his behalf.

In respect of case (iii) above, the Principal authorizes the agent to do the acts mentioned in cases (i) and (ii) above. Then the Registering office has to first authenticate and then register such powers of attorney.

Illustration-III:- 'G' empowered by means of a power of attorney, his agent 'H' to appear on his behalf in Civil Courts to contest the suits pending, to execute necessary documents, get them registered and also to file them in the relevant courts. 'G' also authorised 'H' to procure registration of the documents executed by him (G) in the concerned Registration offices and do all acts necessary on his behalf to complete their registration.

**S.O. 595.** In permitting an agent under a power-of-attorney to act on behalf of a principal in proceedings under the Indian Registration Act, registering officers shall be guided by the rulings and opinions extracted below :-

#### A

"When the terms of section 32 are considered with due regard to the nature of registration of deeds, it is clear that the power and jurisdiction of the Registrar only come into play when he is invoked by some person having a direct relation to the deed. It is for those persons to consider whether they will or will not give to the deed the efficacy conferred by registration. The Registrar could not be held to exercise the jurisdiction conferred on him, if hearing of the execution of a deed, he got possession of it, and registered it, and the same objection applies to his proceeding at the instigation of a third party, who might be a busy-body. Now it seems to their Lordships that when the deed was presented on November 4th, 1889, it was presented by a volunteer, and the Registrar's minute shows that he proceeded to register at the request of one whom he knew to derive his power of-attorney from a dead man. Nor is it possible to treat this action of the Registrar as compliance with the request made on October 16th, 1889, when the principal was alive. Not only had the deed in fact been executed afresh on October 24th, but it was presented afresh on November 4th, as the minute itself bears and even assuming the continuity of the proceedings, the death of the applicant brought it to an end. The Registrar, indeed, did not merely disregard section 32, for he proceeded to accept the admission of the alleged attorney as a good admission of the execution of the deed, although section 34 requires in the case of a deceased the admission of the representative or assign.

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“Their Lordships were referred to two decisions of this Committee in support of the appellants’ contention. Neither case gives any countenance to the view that the absence of any party legally entitled to present a deed for registration is a defect in procedure falling under section 87. In both those cases, the Registrar was throughout moved by a person having title, and was exercising his jurisdiction. The difference is, in their Lordships’ judgment, vital. They therefore hold the registration of this deed to have been illegal.”

(Judgment of the Privy Council-Indian Appeals XXVIII 22-23).

### **B**

“One Daulat Ram, after selling certain immovable property to Musammat Ram Bai, the mother of the plaintiff, on the 6th August 1900, sold the same property again on the 12th August 1900 to the defendant. The latter sale-deed was duly registered on the 30th August 1900, and on the same day the sale-deed of the 6th August 1900 was presented for registration by a pleader acting under a power-of-attorney from Musammat Ram Bai. The power of attorney admittedly was not executed or authenticated in accordance with the provisions of section 33 of the Registration Act. The registering officer, however, took no notice of the defect; and after summoning Daulat Ram who admitted execution, registered the sale-deed of the 6th August on the 17th November 1900.

“Held that the document of the 6th August had not been legally registered. The terms of sections 32 and 33 of the Indian Registration Act are imperative and proper presentation by an authorised agent is an indispensable foundation of the registering officer’s jurisdiction; nor was the error of the Sub-Registrar a mere defect in procedure that could be cured by section 87 of the Indian Registration Act or by the fact that the executant, when summoned by the registering officer, consented to the registration of the sale-deed of the 6th August.”

(I.L.R. 28 All. 707.)

### **C**

“A document was presented for registration by the agent of a pardahnashin lady acting under a power of attorney authorizing him generally to present documents for registration on behalf of his principal. The power of attorney was not executed in the presence of the Sub-Registrar; but the Sub-Registrar had gone to the house of the executant, questioned her, and satisfied himself that the power of attorney had been voluntarily executed and had endorsed the power of attorney with a statement that he had so satisfied himself.”



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“Held that the power of attorney was properly executed and authenticated within the meaning of section 33 of the Indian Registration Act, 1877 and the document presented by the executant’s agent was validly presented.

(I.L.R. 32 All. 179).

**D**

Four persons jointly executed a power of attorney authorizing an agent to present for registration documents executed “by all or by some” of them. This power, which was executed and authenticated in the manner required by section 33 of the Indian Registration Act and presented to the Sub-Registrar along with a document to be registered, was repudiated by two of the executants who declared that they had cancelled it. The question was whether the power of attorney could be recognized and whether the document presented for registration under its authority could be registered.

The Advocate-General gave the following opinion :-

“The registering officer was right in refusing to act upon the power of attorney presented to him, seeing that one of the four persons who executed it has died or cancelled it and another has given notice that it is no longer in force.”

(G.O. No. 45, Judicial, 11th January 1879).

**E**

Five Malayalee women executed a general power of attorney authorizing two male members of their tarwad to present for registration in the registration offices in the Kozhikode district all the documents executed by the five women and the two agents jointly, or by one of the two agents and one or more of the five women jointly, or by the five women jointly or severally, or, after the death of one or more of the women, by the surviving women jointly or severally, and also to admit execution by them of such documents etc. One of the five women having died, the registering officers in the district refused to recognize the agents and to act on the power, on the authority of the opinion of the Advocate General in extract D. The Advocate-General gave the following opinion :-

“In my opinion the power of attorney in question holds good, not-with standing the death of one of the parties by whom it was executed.

2. The ordinary rule of law, of course, is, that a power of attorney or any other delegation of authority by a principal to an agent, is revoked by the death of the person executing the power or giving the authority. When the power is executed, or the authority given, by several persons jointly, the presumption is that the power, or authority, is