

QUERY 1 : Is Agreement to Sell (ATS) a compulsory registrable document, especially when bayana/earnest money has been paid in lieu of such agreement ?

Agreement to Sell (hereinafter referred to as 'ATS') is executed under Section 54 of Transfer of Property Act, 1882 (hereinafter referred to as 'TPA') and describes it as '*Contract for Sale*'.

Section 17(1)(b) of the Registration Act, 1908 (hereinafter referred to as 'the Act') provides for mandatory registration of any document purporting to create, assign or declare, either in present or future, any right, title or interest, vested or contingent, of immovable property with value of Rs. 100/- (or upward). However, Section 17(2)(v) further provides any document (excluding the one under sub-section 1A where possession is given) not itself creating any right or title but merely creating a right to obtain another document which will, when executed create such right or title is not compulsory registrable.

Also, the explanation to the said section further provides that a document purporting to effect a *contract for sale* of immovable property shall not be deemed to require registration due to reason of the fact that such document contains a recital of payment of earnest money.

Section 18(b) of the Act also states that an instrument acknowledging receipt of payment of any consideration on account of the creation, declaration or assignment of any such right, title or interest in any immovable property does not require compulsory registration.

However, Section 17(1)(c) states that non-testamentary documents acknowledging receipt of payment are compulsorily registrable¹.

CONCLUSION

Hence, the co-joint reading of Section 17(1)(b), 17(A), 17(2)(v) and explanation to Section 17(2) read with Section 18(b) leads to the following conclusion :-

- ATS is not compulsory registrable document. [Section 17(2)(v)]
- Registration of ATS is only required when possession of the property is transferred. [Section 17(1A)]
- ATS does not *ipso-facto* require compulsory registration when it contains any recital of any payment on account of earnest money. [Section 17 – Explanation & Section 18(b)]

* The law is similar for all the states of Haryana, Delhi and Uttar Pradesh since there is not any specific state amendment in respect of the above cited sections.

** The Sections of the Act mentioned herein have been reproduced at the end for consideration

¹ Dayal Singh v Indar Singh – (1926) 24 LW 396

QUERY 2 : What is the effect of non-registration of Agreement to Sell, so to say that whether the document will have force to claim relief of Specific Performance of Contract (under the aegis of Specific Relief Act) or can it only be used to show collateral transactions (unjust enrichment/recovery of bayana) ?

There are 3 rights transferrable in an immovable property –

- Right to ‘Ownership’ or ‘Title’
- Right of ‘Possession’ &
- Right of ‘Alienation’

As discussed in the above query, whenever a deed/document is executed for the purpose of effecting transfer of any of the above-mentioned three rights in respect of an immovable property and whose value is over Rs. 100, the said deed/document is requires mandatory registration for the purpose of Section 17(1)(b).

A document/deed which does not transfer possession of immovable property or so to say any contract for sale which entitles the beneficiary to the future right of any title or interest in respect of such immovable property is not compulsorily registrable. Unregistered ATS completely is enforceable by suit for specific performance of contract under Section 12 and other relevant provisions of Specific Relief Act, 1963².

However, in cases where in a suit for specific performance where along with right to transfer of ownership/title qua the immovable property is exercised or prayed for and subsequently possessions of such immovable property subsequent to transfer is claimed or is given prior to transfer (at the stage of executing ‘ATS’) then such deed/document is

² R. Hemlataha v Kashthuri – (2023) 10 SCC 725

compulsorily registrable as per Section 53A of TPA and 17(1A) of the Act.

This leads to the another dilemma that can the unregistered ATS be made basis for specific performance.

The Supreme Court has cleared the law on this aspect stating that though unregistered ATS cannot be looked into for seeking the protection of Section 53A of TPA but in view of Section 49 of the Act³, Specific Performance of Contract can surely be sought on the strength of unregistered ATS⁴.

Also, the Supreme Court further has held that a document which requires compulsory registration if not registered, can still be admitted as evidence of a contract in a suit for specific performance⁵.

CONCLUSION

From the principles laid down in the various decisions, dictum is summarized as such :-

- Hence, unregistered ATS can be admitted as evidence of a contract in a suit for specific performance as provided in the proviso to Section 49 of the Registration Act⁶.
- But, the possession of prospective transferee cannot be protected vide an unregistered ATS nor can the transferee seek part

³ Devinder Singh v Hari Singh – 2017 SCC OnLine Del 8036

⁴ Ameer Minhaj v Dierdre Elizabeth (Wright) Issar & Ors. – (2018) 7 SCC 639

⁵ K.B. Saha & Sons v Development Consultant Ltd. – (2008) 8 SCC 564

⁶ Gulam Murtuza Khan v Ramdas Banaji Ilame & Ors. – (2016) 2 Mah LJ 300

performance under Section 53A of TPA in view of Section 17(1A) of the Act⁷.

⁷ Balram Singh v Kelo Devi – 2022 SCC OnLine 1283

CASE LAWS

NAME & CITATION	RELEVANT PARA
Dayal Singh v Indar Singh – (1926) 24 LW 396	-----
K.B. Saha & Sons v Development Consultant Ltd. – (2008) 8 SCC 564	34
Gulam Murtuza Khan v Ramdas Banaji Ilame & Ors. – (2016) 2 Mah LJ 300	7, 8 & 9
Devinder Singh v Hari Singh – 2017 SCC OnLine Del 8036	7 & 8
Ameer Minhaj v Dierdre Elizabeth (Wright) Issar & Ors. – (2018) 7 SCC 639	10
Balram Singh v Kelo Devi – 2022 SCC OnLine 1283	17
R. Hemlataha v Kashthuri – (2023) 10 SCC 725	23 & 26

* Cases arranged chronologically year wise in ascending order

RELEVANT PROVIIONS

A. Transfer of Property Act, 1882, Section 54.

“Sale” defined.—

“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—

Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.

B. Transfer of Property Act, 1882, Section 53A.

Part performance.—

Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that, or, where there is an instrument of transfer, that the transfer has not been completed in

the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

C. Registration Act, 1908 Section 17.

(1) Documents of which registration is compulsory.—

(1)(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(1)(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

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

(2)(v) any document [other than the documents specified in sub-section (1A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, *but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest;*

Explanation.—

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

D. Registration Act, 1908 Section 18.

Documents of which registration is optional.—

Any of the following documents may be registered under this Act, namely:—

(b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

E. Registration Act, 1908 Section 49.

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

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

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

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

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