

Better Safe than Sorry: The Importance of Registering Lease Deeds

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The legal provisions which mandate registration of lease deeds are rarely explored. As a result, the law on registration of lease deeds is often misunderstood. While parties spend much time negotiating terms of a lease deed (lock-in period, security deposit, termination provisions), considering the costs involved, little importance is given to registering and stamping a lease deed. An unregistered lease deed can have severe legal ramifications.

In this post, we have explored the effects of non-registration of lease deeds and highlighted the limited instances wherein unregistered lease deeds can be used as evidence in a court of law.

Background

Registration is the process by which the parties executing a lease deed present the deed for registration at the office of the sub-registrar^[1] within whose sub-district the property to which the lease deed relates is situated. During the process of registration, the sub-registrar endorses the signature of every individual executing the deed and records the details of the lease deed onto a book or electronic medium.^[2]

The provisions of the Registration Act, 1908 (“**Registration Act**”) and the Transfer of Property Act, 1882 (“**TOPA**”) set out the law governing registration of lease deeds.^[3] Section 17 of the Registration Act states that leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent must be registered compulsorily. Further, section 107 of the TOPA states that a lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent can only be made by a registered instrument. All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Effects of Non-Registration of a Lease Deed

The Registration Act and TOPA lay down the effects of non-registration of lease deeds which are required to be registered.^[4]

Registration Act

The Registration Act provides that an unregistered lease deed cannot (i) affect any immovable property comprised therein, or (ii) be received as evidence of any transaction affecting such property. These effects are explored in detail below:

- *Affect any immovable property comprised therein*

A decision of the Madras High Court^[5] in as early as in 1922 had explained the meaning of “*affect any immovable property*” and the term ‘affect’ was held to be a compendious term for expressing a longer phrase ‘*purporting or operating to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest vested or contingent*’. Therefore, if a lease deed requiring to be registered is not registered, then the said lease deed will not create a leasehold right in favour of the lessee.

- *Be received as evidence of any transaction affecting such property*

Essentially, the term ‘affecting’ in this sentence has the same meaning as in (i) above and therefore, an unregistered lease deed cannot be accepted as evidence in a court of law for the transaction it purports to affect, which in our case, the lease. There are certain exceptions wherein a lease deed may be accepted as evidence in a court (analyzed in detail below).

TOPA

Section 106 of the TOPA states that in the absence of a written contract or local law or usage to the contrary, a lease of immovable property (except for agricultural and manufacturing purpose) shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by 15 (fifteen) days’ notice.^[6] Therefore, reading sections 106 and 107 of the TOPA together, an unregistered lease deed will not create a valid lease. However, if there has been a delivery of possession, payment and acceptance of rent, the same will deem to be a lease between the parties on a month to month basis which can be terminated by giving 15 (fifteen) days’ notice.

Case analysis

The position of law with respect to registration as provided in the Registration Act and the TOPA has been reiterated by the Supreme Court of India (“**Supreme Court**”) in various cases. In *Anthony v. KC Ittoop and Sons and Others* ((2000) 6 SCC 394; AIR 2000 SC 3523), the Supreme Court had considered whether an unregistered lease deed can create a lease. The Court held that an unregistered instrument cannot create a contractual lease due to the three-pronged statutory restrictions under law (put simply, sections 17 and 49 of the Registration Act and section 107 of the TOPA) but that the existence of a lease can be presumed from the conduct of the parties. The Supreme Court held: “*A transfer of right in the building for enjoyment, of which the consideration of payment of monthly rent has been fixed, can reasonably be presumed.*”

In *Burmah Shell Oil Distributing now known as Bharat Petroleum Corporation Ltd. v. Khaja Midhat Noor & Ors* (AIR 1988 SC 1470), the Supreme Court held that a lease for a period exceeding one year can only be created by a registered

instrument. In the absence of a registered instrument, the lease shall be a month to month lease. The Supreme Court held:

...since the lease was for a period exceeding one year, it could only have been extended by a registered instrument executed by both the lessor and the lessee. In the absence of registered instrument, the lease shall be deemed to be "lease from month to month". It is clear from the very language of section 107 of the Act which postulates that a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. In the absence of registered instrument, it must be a monthly lease.

This has also been reiterated in the more recent case of *Park Street Properties (Pvt.) Ltd. v. Dipak Kumar Singh and Ors.* (AIR 2016 SC 4038) where it was held that in the absence of registration, a month-to-month lease is created which is governed by section 106 of TOPA.

Therefore, on a reading of the provisions of law and the view of the Supreme Court, it is clear that any lease for a period exceeding one year can only be made by way of a registered instrument. However, a presumption of the existence of a lease can be made from the actions of the party (delivery of possession, payment of rent, etc.). Such a relationship shall be governed by statutory provisions of law under TOPA. The duration of such a lease shall be on a month to month basis, which can be terminated by either party with 15 (fifteen) days' notice.

Unregistered Lease Deed as Evidence in a Court of Law – Exceptions Provided Under Law

The proviso to section 49 of the Registration Act sets out two exceptions wherein an unregistered lease deed can be received as evidence – (i) where it is received as evidence of a contract in a suit for specific performance under the Specific Relief Act, 1877; (ii) where it is received as evidence of any collateral transaction not required to be affected by registered instrument.

For the first exception, where one party declines to appear before the sub-registrar for registration of the lease deed, the other party may use the unregistered lease

deed as evidence before a court to seek an order directing the first party to appear before the sub—registrar for registration.^[7]

For the second exception, “*collateral transaction*” means any purpose other than the purpose for which a registered document is used.^[8] For example, an unregistered lease deed can be used to determine the purpose of leasing (commercial or residential), relationship between the parties, the date of taking the property in possession but not to prove the terms of the lease such as duration, right to sub-lease etc. The courts have further held that if a document is inadmissible in evidence for want of registration, then none of its terms can be admitted in evidence and using such a document for the purpose of proving an important clause would not be using it as a collateral purpose.

Arbitration Clauses under a Lease Deed

As mentioned above, the contractual terms stated in an unregistered lease deed for a term exceeding one year cannot be relied on by the parties as the lease deed will be void. However, there is one exception – an arbitration clause. In *SMS Tea Estates Private Limited v. Chandmari Tea Company Private Limited* ((2011) 14 SCC 66), the Supreme Court had held that the arbitration agreement in the lease deed is a collateral term relating to the resolution of disputes and independent of the other terms of the contract. It further held that the arbitration clause is unrelated to the transaction affecting the immovable property contained therein and therefore even if the deed is challenged as not valid or unenforceable, the arbitration agreement would remain unaffected for the purposes of resolution of disputes arising with reference to the deed.

Err on the Side of Caution

As seen above, the importance of registering lease deeds cannot be overstated. Very often, in order to save costs of stamping and registration, parties decide not to register their lease deeds. When all is well, there is nothing to worry about. However, in case a dispute does arise, parties will not be able to rely on the unregistered lease deed on account of it being void. More importantly, in the absence of a registered lease deed, the lease (in cases where there has been

delivery of possession and payment of rent) is deemed to be on a month-to-month basis that can be terminated by giving 15 days' notice. Given all the legal issues that stem from unregistered lease deeds, parties should register their lease deeds if the relationship is for a year or exceeds a year.

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[1] Officers appointed under the Registration Act by the State Governments.

[2] Historically, the Registration Act aimed to achieve the following: (i) retrieve copies of lost, destroyed or misplaced agreements, (ii) serve as a proof of execution as the execution is admitted by the executant, (iii) help obtain details of past transfers in relation to a property in order to confirm title and thus prevent fraudulent transactions.

[3] See, Section 17(1)(2) of the Registration Act and Section 107(1) of the Transfer of Property Act, 1882.

[4] See, Section 49 of the Registration Act.

[5] *Atluru Saraswatamma v. Atluru Paddayya and Ors*, AIR 1923 Mad 297.

[6] See, Section 106 of the TOPA. A lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice in the absence of a contract or local law or usage to the contrary.

[7] See, *Kalavakurti Venkata Subbaiah vs Bala Gurappagari Guruvi Reddy*, (1999) 7 SCC 114

[8] Mulla The Registration Act, by Justice K Kannan, 13th Edition, 2016.