



APAC NEWSLETTER

Legal, Compliance and ESG

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7<sup>th</sup> October 2022

*Dear Readers, we bring to your reading and attention following topics:*

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## A. Case Law update on Indian Evidence Act, 1872

- Vivek Ugale, Senior Officer (Legal)

### ➤ **Indian Evidence Act, 1872**

#### ***Case Details:***

Balram Singh Vs. Kelo Devi

Decided by the Hon'ble Supreme Court of India on 23rd September 2022

Civil Appeal No: 6733/2022

#### ***Facts:***

In this case the Kelo Devi (Hereinafter referred to as "Respondent") instituted an original suit before the trial court for a permanent injunction. The said suit was filed on the basis of an unregistered agreement to sell. The original plaintiff Kelo Devi sought a permanent injunction restraining the defendant from disturbing her possession in the suit property. In the said suit the appellant Mr. Balram Singh filed a counter claim seeking the decree of possession. The trial court dismissed the suit filed by the original plaintiff and refused to grant permanent injunction and allowed the counter-claim of the defendant on the ground that the original plaintiff could not prove the agreement to sell.

The first appellate Court as well as the Allahabad High Court had set aside the judgment and decree passed by the trial Court and consequently passed the decree of the suit for a permanent injunction against the defendant i.e., Mr. Balram Singh.

#### ***Finding:***

Supreme Court opined that "the plaintiff might not succeed in getting the relief of specific performance of such agreement to sell as the same was unregistered, the plaintiff filed a suit simplicitor for permanent injunction only. It may be true that in a given case, an unregistered document can be used and/or considered for collateral purpose. However, at the same time, the plaintiff cannot get the relief indirectly which otherwise he/she cannot get in a suit for substantive relief, namely, in the present case the relief for specific performance. The plaintiff cleverly prayed for a relief of permanent injunction only and did not seek for the substantive relief of specific performance of the agreement to sell as the agreement to sell was an unregistered document and therefore on such unregistered document/agreement to sell, no decree for specific performance could have been passed. The plaintiff cannot get the relief by clever drafting."

## **B. Information on Witness and Its Importance**

- ***Yogesh Babar, Manager (Legal)***

### **WITNESSES AND ITS IMPORTANCE**

***Introduction*** – A witness is a person who has personally seen/witnessed the happening of any event. The event could be an incident or execution of any document or instrument. Witness requirement is part of legal requirement as stipulated in the Evidence Act and other applicable laws. The purpose of law which requires witnessing of any document like mortgage deed or any contract is that, if any dispute arises with regard to execution of mortgage deed, independent witness can give his /her evidence. Hence the requirement is to have independent witnesses.

#### ***Who can be a Witness in execution of documents?***

Any person, connected or not, can sign a document as a witness. A witness is a person who testifies about facts in dispute between the parties in a case. In a legal contract/document, a witness is someone who watches the document be signed by the person who executed the document/contract, and they are being witness for and who verifies its authenticity by signing their own name on the document as well.

#### ***Why witnessing a document is necessary?***

Having a witness helps to reinforce the validity and authenticity of the document by adding an additional security to the contract, in case if it gets challenged or questioned in the court. For example, when a document is signed by a neutral, third-party witness, it helps to prove that the document was signed willingly and not through undue influence, coercion, or by force.

#### ***What are the benefits of having a Witnesses?***

Though witnesses aren't always a requirement for executing a legal document, they can help solidify and authenticate the contract by providing proof that the signatures are legitimate and consensual. When they are required, they're an important part of ensuring that the legal document is legally sound when it needs to be, keeping you from having to face the repercussions of having an invalid.

#### ***Conclusion –***

The witness forms an integral and important part of the execution of any document or contract. Therefore, if any dispute arises the witnesses saves the right of the aggrieved party from being exploited. Hence it is necessary that witnesses are properly mentioned on the documents with correct name and proper signature, so that the authenticity of the person of being a valid witness is not challenged. Therefore, we should be very cautious while mentioning the name and KYC

details of the witness and while taking their signature on the document so that our right is protected from being challenged.

**C. Update: Insertion of Rule 55-A for Registration of Documents in  
the State of Tamil Nadu**

- ***Ritu Uplap, Assistant Manager (Legal)***

The Commercial Taxes and Registration Department, Tamil Nadu has introduced Rule 55A in the Registration Rules, 1914 under the Registration Act, 1908.<sup>1</sup>

The said rule 55A stipulates that the Registrar shall not register document relating to immovable property unless the concerned parties submit along with such document, the original title deed, and an encumbrance certificate. However, the said rule is further subject to the following provisos:

- i. The Registrar shall not register a document relating to an immovable property, if there exists an encumbrance as to mortgage, attachment order, sale or lease agreement over the concerned property, and the time for filing suit in such cases has not lapsed or NOC is not received or raising of attachment is not done, whichever applicable.
- ii. If the property is an ancestral property and original title document is not available, then the parties can submit to the registrar the revenue documents such as patta or tax receipt.
- iii. If the original title document is lost, then the parties have to submit to the registrar non-traceable certificate along with advertisement in the local newspaper as to notice of loss.
- iv. Submission of original title document will not be necessary where the party concerned is the Government or a Statutory Body.

In such cases as introduced in the said Rules by way of amendment, the Registrar is to take care of the following:

- The Registrar must ensure that description of property mentioned in the document presented for registration conforms with description of property mentioned on original title documents submitted in this respect. After being satisfied that the details are same, the Registrar shall verify such title document by affixing his signature and date along with inscribing 'verified' on the first page of such title document, and a scanned copy of the first page so verified shall be kept as a reference document.
- In case where revenue records are produced by the parties under the said Rule, the same shall be scanned as the main document.

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<sup>1</sup> [Notification - 5 September 2022.pdf](#)

- In case where non-traceable certificate and advertisement as required are submitted by the parties under the said rule, the same shall be scanned as reference document.

Vide the said amendment, the Government of Tamil Nadu has taken a positive step towards strengthening the process of registration by avoiding fraud and at the same time made it convenient for the concerned parties by providing alternatives in certain cases. However, the amended rule does not give certification of validity to the documents. Thus, though the Government has paved the way to simplify the process of registration, to safeguard the interest of APAC, ensuring that proper due diligence is done by ascertaining title flow, ownership, adhering to TSR requirements ensuring collection of title chain documents, revenue records, tax receipt for 13 years must continue to be of paramount importance.

#### **D. INTERNAL UPDATE**

**- Legal Team**

##### ***Introduction:***

On 14th September 2022, the Legal Team had conducted a Training Programme for all the Branch Managers, Credit Managers and State Heads. The Objectives of the said training were as under:

- Educating Branch Officials on key KYC requirements.
- Educating Branch Officials on Sanction Letter and Loan Agreement.
- Educating Branch Officials on Title Search and Mortgage Creation.
- Avoid QC Queries and TAT.
- Avoid Legal and Reputation Risk to APAC.

At the time of the said Training, a PPT presentation, KYC Policy, and APAC's TSR Process were rolled out for a better understanding of the above objectives.

##### ***Aftermath of the Training Session:***

- A reduction in overall number of QC Queries has been observed. However, the number of queries may be reduced further with such regular sessions and reminders.
- Requirements of Branches in Tamil Nadu were duly taken into consideration and accordingly, format for affidavits dealing with production of damaged documents and difference in name was provided. Further, the format for Equitable Mortgage Deed was also provided for cases wherein all the title documents will be made available.

**Branches are advised to take the note of the following while doing documentation:**

| <b>Sr No.</b> | <b>DOS</b>  | <b>DONTS'</b>  |
|---------------|---|--|
| 1.            | Adherence of KYC Policy.  | Non-adherence of KYC Policy is strictly not allowed  |
| 2.            | Masking of Aadhar Number  | Aadhar Number should not be left without masking.  |
| 3.            | All the details/fields on financing documents should be duly filled.  | No columns/details should be left blank or unfilled.   |
| 4.            | Details of borrowers on financing documents, TSR and KYC to be the same.  | Do not fill contradictory details of the Borrower(s) on the financing documents.             |
| 5.            | Payment of proper stamp duty before execution.  | Improper stamp duty should not be paid.  |
| 6             | To check that the Borrower(s) are duly signing the financing documents and other documents as needed at the time execution. | Spaces where Borrower(s)' sign is needed, should not be left blank at the time of execution. |
| 7             | Make sure all the changes are made in document before execution.  | No changes by hand, whitener or otherwise to be made on the document after registration.     |
| 8             | E-signature is put after duly checking the documents.   | There shouldn't be duplicity in e-signed documents and manually signed documents.            |

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