



MULLA, THE INDIAN REGISTRATION ACT. Sixth Edition. By J. R. Dhurandhar. Bombay: N. M. Tripathi. 1963. Pp. xxxvi, 411. Rs. 18/-.

The commentary needs no introduction. From the practitioners' point of view, the book is, without any exaggeration, indispensable.

The first edition by Sir D. F. Mulla appeared in 1923, the second edition, also by the same learned author, was in 1931. The third and fourth editions by Edward Millard Pratt appeared in the years 1935 and 1939 respectively. The fifth edition was published in 1950 and was revised by Sir Brojendra Lal Mitter and the edition under review is the sixth one. A commentary that has had currency in the legal world for over forty years and had gone into six editions defies review. Yet the present edition under review has certain distinguishable features from its predecessors. The cases decided by the various High Courts and the Supreme Court during the past decade, notably those pertaining to sections 17 and 49 of the Indian Registration Act, 1908, have also been incorporated in this latest edition. The comments of the learned author have a characteristic clarity and precision.

There are hardly a few sentences in each chapter which have not been supported by reported authorities. This is, at once, the merit and also the defect of the book. Throughout the book, considerations of hypothetical problems and hypothetical discussions have been assiduously avoided and in that sense the book, as will be shown presently, apart from throwing light on the grounds already explored, refuses to cut new ground. Many of the views expressed by the learned author on the provisions relating to sections 17 and 49 of the Act, have been subsequently approved by the Supreme Court and there is no reason why the subsequent learned editors should feel reluctant to express independent views on similar hypothetical problems. Is the duty of the editor simply to bring the book up-to-date by incorporating all the later decisions or can he also, as of right, as the editor, give his own colour to the views expressed by the learned author in the first edition? When persons of acknowledged legal acumen edit books on dynamic subjects should they feel inhibited to express their views, and if so, to what extent?

The Indian Registration Act, 1908, is an Act to consolidate enactments relating to the registration of documents. The method of constructing consolidating Acts is dealt with in *Bank of England v. Vagliano*;¹ *Administrative-General v. Premal*² and *Narendra v. Kamal Basini*.³ The learned author begins the commentary with a reference to these cases which is in keeping with the methods of constructing consolidating Acts.

-
1. [1891] A.C. 107, 145-46.
 2. (1895) I.L.R. 22 Cal. 788, 798.
 3. (1896) I.L.R. 23 Cal. 563.



The Indian Registration Act, 1908, unlike the Transfer of Property Act, 1882, strikes only at documents and not at transactions. This is made abundantly clear in the commentary. It is the Transfer of Property Act, 1882, that necessitates registration of transactions affecting immoveable properties; the Indian Registration Act, 1908, does not have such requirement. All that it enacts is that when a document is employed to effectuate any of the transactions specified in section 17 of the Act, such document must be registered.⁴ Under these circumstances one cannot help feeling that the discussion of the definitions of moveable and immoveable properties under section 2 should have been more elaborate and the commentary must not have been hesitant to discuss hypothetical problems.

In the elaborate commentary on section 17 of the Act, it is observed :

The strictest constructions should be placed on the prohibitory and penal sections of the Registration Act which impose serious disqualifications for non-observance of registration. Sec. 17 of the Act, being a disabling section, must be construed strictly. Unless a document is clearly brought within the purview of Sec. 17, its non-registration is no bar to its being admitted in evidence. If there is any doubt on the subject, the benefit of the doubt must be given to the person who wants the Court to receive the document in evidence; and so in spite of the rule of strict construction there is a point at which it is unnecessary to multiply technicalities.⁵

It is impossible to overemphasize the correctness of the above views. Frequently cases arise where parties seek to rely upon unregistered documents. Before excluding these unregistered documents, the courts must first direct their enquiry as to precise purpose for which these documents are sought to be exhibited. For instance, a joint family possessing many moveable and immoveable properties might have divided and the division may be recorded in an unregistered deed. At some future point of time if there is a litigation and if the division is sought to be proved by the aforesaid unregistered deed, would it be open to the court to hold that the document furnishes written evidence of a contract and under the Indian Evidence Act all oral evidence is excluded and by the force of the Indian Registration Act the writing itself affecting as it does immoveable properties is inadmissible in evidence the result being that the transaction cannot be proved. The fallacy in this logic would be obvious if we approach the question in the light of the commentary referred to above. Moreover, it has been held in *Nani Bai v. Gita Bai*⁶ that such documents, even though unregistered are admissible in evidence, they being notes or memoranda of the result of an already completed partition.

4. *Panchapagesa v. Kalyanasundaram*, A.I.R. 1957 Mad. 472; *Nireesh Chandra v. Paresh Chandra*, A.I.R. 1959 Ass. 60.

5. Mulla, *The Indian Registration Act* 28 (6th ed. by J. R. Dhurandhar 1963).

6. A.I.R. 1958 S.C. 706.



The section-wise comparative table of the present Act (16 of 1908) with the four earlier Acts, namely, Act 3 of 1877, Act 8 of 1871, Act 20 of 1866 and Act 16 of 1864, given at the beginning of the book adds to its usefulness and helps the busy practitioners to trace the relevant section of the earlier Acts at a glance.

The usefulness of the book for the practitioner is also increased by a list of local amending Acts added at the end of the book. The various sections in other Acts relating to registration are also listed at the end of the book. This also enables us at a glance to arrive at all the sections in the various Acts that have anything to do with registration. The rules made under sections 22 and 69 of the Act have also been added at the end of the book.

*S. Balakrishnan**

* Advocate, Supreme Court of India, New Delhi.