

IMPLICATIONS OF TRANSACTIONAL INSTRUMENTS

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I. REGISTRATION OF DOCUMENTS AND TITLES

This paper deals with the effect on the viability and sufficiency of existing modes of adjusting property relations to evidentiary and procedural rules. Such rules range over a vast field, including, as they do, provisions of the Transfer of Property Act, 1888, the Indian Registration Act, 1908, the Limitation Act, 1963, and the Indian Evidence Act, 1878. The field would be even wider if one included moveable property, and particularly, negotiable instruments or choses in action.

I propose to consider in this paper the operation and scope of the device or concept of registration as one such evidentiary or procedural rule and to examine its working to-day.

As every layman knows, a sale, mortgage or Lease of an immovable property are a complicated matters, involving much time and considerable expense. The complication arises in part because such a transaction cannot be completed simply by delivery, but mainly because of the necessity of the transferee satisfying himself of the transferor's title to the property, and of the fact that there are no prior incumbrances on the property. Any device or procedure which would simplify either of these processes would not only save a lot of time but substantially reduce the cost of conveyancing. Further, it could also result in simplifying the very drafting of a conveyance, Lease or mortgage.

What is desirable is, therefore, the simplification of investigation of title; and, secondly, the adoption of certain procedural rules and devices by which searches, etc., and requisitions of title can be made very easy. The two aspects are inter-related.

One such device is registration. By providing for the entering into one or more registers all transactions relating to property, and by keeping this register open for inspection, investigation of title, and safeguarding against the existence of any prior incumbrances, is made much easier. In such a case, registration operates as notice. It is also possible to provide for the registration of titles. In such a case a title is only registered after the Registrar investigates it. Once this is done, it is certified by the Registrar. Any further transaction requires no further investigation of title

as the certificate of the Registrar suffices. All future transactions can be effectuated with expedition, simplicity and very little expense.

In Indian law, certain documents are required to be registered and are not valid and effective unless they are duly registered; and once registered, third parties are deemed to have notice of their existence, and their contents. Registration as notice is thus known to us. What is known in English law as registration, ensures that any dealings with such property in the future only require a glance at the certificate of the registrar, and no further investigation of title is necessary. These two kinds of registration raise different issues and are considered separately.

II. REGISTRATION AS NOTICE

The law relating to the registration of documents is contained in the Transfer of Property Act, 1888. The broad scheme of the two Acts may be stated in a few words.

1. Certain transactions can only be made in writing, and require to be registered. These include a sale of tangible immovable property if the value of the property exceeds Rs. 100, or any intangible immoveable property, such as, a reversion, or a transaction relating to *profits a pendre*¹; mortgages, excluding mortgages by deposit of title deeds, if the principal money secured exceeds Rs. 100²; leases of non-agricultural land from year to year, or for a term exceeding one year or reserving a yearly rent³; and gifts of immovable property.⁴ These documents are required to be registered under the provisions of the Transfer of Property Act,⁵ and the Indian Registration Act, 1908.⁶

2. Other transactions need not be in writing to be valid; if, however, they are reduced into writing, they must be registered because they fall within the wide language of sec. 17 of the Registration Act. Illustrations of this are charges⁷ and easements;⁸ if in writing, they must be registered because they create an interest to or in land.

1. Sec. 54, Transfer of Property Act. Exchange comes in the same category. *Id.* sec. 118.

2. *Id.* Sec. 59.

3. *Id.* Sec. 107, T.P. Act.

4. *Id.* Sec. 123, T.P. Act.

5. *Supra* notes 1-4.

6. Sec. 17

7. See Mulla, *Transfer of Property Act*, 620, (5th ed. 1966).

8. See Mulla, *Indian Registration Act*. 5, (6th ed. 1963).

3. Registration involves lodging the document before the Registrar who satisfies himself that the document has been executed by the person or persons who have purported to do so. After certain formalities are complied with, the document is duly registered, and certain particulars are entered into the books and indices prescribed under the Act.⁹

4. Once a document is duly registered, it operates and binds the parties to it as from the date of execution¹⁰.

5. All persons are deemed to have notice of its existence, and contents from the date of registration.¹¹

6. Any registered document takes precedence over any unregistered document relating to that property,¹² and over any oral transaction other than a mortgage by the deposit of title deeds relating to that property, unless the oral transaction has been accompanied or followed by a delivery of possession and such a transaction is valid.¹³

7. If a document which requires registration has not been registered, it does not affect the property comprised therein, and cannot be received in evidence.¹⁴

The principal result of this scheme is that in the case of compulsorily registrable documents, the very fact of registration operates as notice for, as the Explanation to sec. 3 of the Transfer of Property Act provides, "any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration." This Explanation was inserted in 1929 to reverse the effect of the decision of the Privy Council in *Tilakdhari Lal v. Khedan Lal*.¹⁵

Two features are basic to this scheme. First, that there are certain documents which are compulsorily registrable, and the doctrine of notice is only applicable as such under the provisions of the Transfer of Property Act to such documents if they are duly registered; if a document not compulsorily registrable is registered, it is entitled to priority over an unregistered

9. Secs. 60, 61, Indian Registration Act.

10. *Id.* Sec. 47.

11. Expln. 1. Sec 3, Transfer of Property Act. (Inserted in 1929).

12. Sec. 50, *Supra* note 9.

13. *Id.* Sec. 58.

14. *Id.* Sec. 47, Subject to the exceptions that it may be used for a suit for specific performance or as evidence of part performance.

15. (1920) 47 I.A. 239.

tered document relating to the same property,¹⁶ but would not by itself operate as notice. Whether it would operate as notice would then depend on the facts of the case and on the question as to whether the third party ought to have searched the register, and whether it could be said that his omission to do so constituted gross negligence in the facts and circumstances of the case.¹⁷ It is apparent, therefore, that the success or failure of this scheme is largely dependent on the extent to which all important transactions are required to be in writing and compulsorily registrable; if one finds a large range of documents outside this field, the efficacy of the scheme is substantially reduced.

Secondly, registration operates as notice only from the date of registration. Any delays between lodging a document for registration, and its due registration, also reduces the efficacy of the scheme. At least in Bombay city, delays of as many as 4 years are not uncommon, and have caused serious problems.

I propose first to consider the question as to whether there is any necessity to extend the range of documents required to be compulsorily registered. Before doing that, however, it is necessary to note that even the present range of documents listed in sec. 17 does not apply to the whole country. Apart from Jammu and Kashmir, which stands in a category of its own, the provisions of the Transfer of Property Act do not apply to Punjab, and it follows that documents of sale, mortgage, lease, etc., compulsorily registrable under that Act need not be registered in the Punjab.¹⁸ Registration does not, therefore, operate as a notice *ipso facto* in that area. This is (of course, a serious short-coming in the comprehensiveness of the scheme.¹⁹

The more important question is whether the list of compulsorily registrable documents is adequate. I do not propose to examine and discuss a long list of documents which ought to be included,²⁰ but merely to indicate a few, the non-inclusion of which causes considerable harm. The most wellknown example of this relates to the doctrine of *lis pendens*. Under sec. 52 of the Transfer of Property Act any transfer of property is

16. Sec. 50, Ind. Reg. Act.

17. That was the law prior to 1929: *Tilakdhari Lal v. Khedan Lal* (1920) 47 I.A. 239; and still is law where the T.P. Act does not apply, as in Punjab, or to documents outside Explan. I to Sec. 3.

18. See the cases cited in Mulla, *Transfer of Property Act*, 36, note (m) (5th ed. 1966).

19. The Law Commission has, in fact, recommended that the Transfer of Property Act should be made applicable throughout India. See Government of India, Report of the Law Commission para 90.

20. The Law Commission has considered this more exhaustively. *Id.* para 33.

subject to the results of a suit in which the right to that property is directly and specifically in issue. Any transferee of property is therefore obliged to ascertain whether any such suit is pending before he completes the transaction; his task is complicated because a suit is regarded as pending from the moment of time that a plaint is presented and until the final appeal or execution proceeding is disposed of. The necessity of simplifying this task is apparent and an obvious solution is to require some kind of registration of any such pending proceeding. This is in fact the position in England,²¹ and in parts of the old Bombay State,²² in which it is provided that a transfer is only subject to *lis pendens*, if what is called a *lis pendens* notice has been duly registered, and such a notice only affects transfers made after such registration. Unfortunately, however, such registration is only required in Greater Bombay, and there is no such requirement elsewhere.

The Law Commission suggests that such a notice should be issued by the Court before which such a suit is pending when the plaint is presented, or the memorandum of appeal is filed.²³ The Report does not mention why this should be done by the Court, and not by the plaintiff, nor why the system existing in England and introduced in Bombay, should not, instead, be adopted. The Bombay system is preferable both because it avoids an additional burden on the offices of Court and eliminates the inevitable delay between the presentation of the plaint and the Court serving the notice. Further, it avoids the complications of some negligence or default in the Court serving such a notice.

Another instance where the lack of a provision for compulsory registration causes considerable inconvenience is in the field of statutory charges imposed to secure the payment of taxes. Such a charge is imposed in numerous statutes, such as the Estate Duty Act, 1953,²⁴ the Gift Tax Act, 1958,²⁵ and in numerous local revenue²⁶ and municipal statutes.²⁷ Such charges are not required to be registered. In England, however, all such charges are required to be registered, and do not bind a subsequent transferee if they are not.²⁸ An investigation by a pros-

21. Secs. 2, 3, Land Charges Act, 1925.

22. By Bombay Act 14 of 1939.

23. *Supra* note 19 para 103.

24. Sec. 74.

25. Sec. 30, but such charge does not affect *bona fide* purchasers for value without notice.

26. E.g., Sec. 56, Bom. L.R. Code, 1879.

27. See, for instance, sec. 212, Bom. Mun. Corp. Act, 1888; sec. 80, Cantonments Act, 1924.

28. See *Halsbury's Laws of England*, vol. 23, 71, 77 (3rd ed. 1958).

pective transferee to ascertain whether there are any tax arrears would be easier than an investigation into ordinary incumbrances; all the same, even this inconvenience could be avoided if such charges were made compulsorily registrable.²⁹

I do not propose to multiply examples, and shall mention only one or two more. Monthly leases were not made registrable presumably because of their vast number, and because they were not a serious incumbrance as they could be terminated by a month's notice. In large parts of urban India, the Rent Acts confer security of tenure and even monthly leases may thus be in practice a grave incumbrance.³⁰ The same can be said of the device, common at least in Bombay, of a *de facto* Lease for 11 months, expressed as a "Leave and Licence" agreement, now that several such agreements have been construed as leases.³¹ Yet another example is an agreement for the sale of land which does not create a present interest in land. Such an agreement can be specifically enforced, and a subsequent purchaser without notice of such an agreement would be involved in considerable difficulty and litigation. Such agreements were not required to be registered presumably because it was expected that they would soon after execution either fructify into a conveyance or be rescinded or cancelled. To-day, however, it is not uncommon to have a long delay between the agreement and the conveyance, during which the agreement is assigned from time to time. This is, of course, largely due to the burden of a savage³² rate of stamp duty, and the desire to minimise or even avoid,³³ its incidence. But the fact remains that a transaction which materially encumbers property remains unregistered and un-noticed.

It is clear, therefore, that it is necessary to examine afresh the list of documents which require to be compulsorily registered if the scheme of the Registration Act is to be fully effective. Such an examination must take into account contemporary economic and social conditions, and add to the list such documents as are necessary to achieve this object. It could and ought, also to consider the deletion of any documents from the existing list. For example, sales or mortgages where the consideration is

29. This aspect is not considered in the Law Commission's Report.

30. It is a matter of common knowledge that the sale of building with vacant possession may today fetch twice the price of a similar but tenanted building.

31. *Aninha D'Costa v. Parvatibai Thakur*, (1965) 67 Bom. L.R. 452, and generally Mulla, *Transfer of Property Act*, 659-60, (5th ed. 1966).

32. Ten per cent ad valorem in Greater Bombay. Two or three transactions in quick succession would result in stamp duty operating virtually as a heavy capital levy.

33. If, as is frequent in Bombay today, the ultimate purchaser is a co-operative society, for the conveyance is then wholly exempt from duty.

less than Rs. 100 are not compulsorily registrable; but the limit of Rs. 100 was fixed over 50 years ago, and if the reasons for inserting that limit are valid to-day, it is obvious that the limit should be raised to, say, Rs. 1,000. The existing limit after the fall in the real value of the rupee is almost meaningless.

Though the Law Commission has considered some of these aspects, it does not appear that these particular individual examples were considered from this point of view.

III. THE EFFECT OF DELAY

The second feature which I feel materially impairs the efficacy of this scheme is the fact that great delays occur between the execution of the document, and its being presented for registration, and its due registration. I would not venture in the absence of statistical data to state whether such delays are common elsewhere in India, or how great they are; in Greater Bombay, however, it is well-known that a document frequently takes two, three or even four years to be registered even after it is presented, and execution is duly admitted. And this is where there is no complication such as insufficiency or alleged insufficiency of stamp. Where there is any insufficiency, the document may be impounded, and there would start the whole gamut of Stamp Act proceedings; where this reaches the stage of Reference to the High Court, it may be eight or ten years before the document is duly registered.

The relevance of such delay is two-fold. Where the delay is purely bureaucratic, neither the transferor nor the transferee is responsible for it. Yet, during that period, the document does not operate as notice, and a subsequent transferee may obtain priority over him. Secondly, during this period, the register is incomplete, and third parties remain ignorant of the transaction; it may not in any particular case prejudice them as in any transaction they may enter into with respect to that property they would not be affected by notice of the earlier instrument. On the other hand, they would be prejudiced if their transaction is oral, or also requires registration, because a subsequent registered document enjoys priority over unregistered documents³⁴ and oral transactions³⁵ and between registered documents, that which is first executed would enjoy priority.³⁶

Delay of this order are caused partly for administrative reasons, and partly by using the machinery of the Registration Act for purposes of tax

34. Sec. 50, Ind. Reg. Act.

35. *Id.* Sec. 48, unless the oral transaction is valid and completed by delivery of possession.

36. *Id.* Sec. 47, See also Mulla, *Indian Registration Act*, 163, (6th ed. 1963).

collection. These two causes require separate consideration, but before I do that I should like to emphasise that though the Registration Act prescribes a period of four months within which a document must be presented for registration,³⁷ it prescribes no period for the completion of registration, and it is settled law that a registration after even a long delay would be valid.³⁸ If a period were prescribed, it would at least act as a spur to the Registrar's department to act with expedition.

To appreciate the bureaucratic delays, it is necessary to note the duties of the Registrar. The most important is the task of satisfying himself that the document was executed by the person who is said to have executed it; it,³⁹ this is done by the executant going to the Registrar and admitting execution. The Registrar then satisfies himself that the property has been adequately and properly described;⁴⁰ and in Greater Bombay this is done by sending the document to the office of the Collector for scrutiny. It then comes back to the registry office concerned, and the actual work of registration is done, viz. it is endorsed, and the particulars thereof are entered in the various registers and indices prescribed. Thereafter, if the provisions of Part XI-A of the Act relating to photo-copying are applicable, the document is sent to the local Government Photo Registry, where it is duly photographed.

Each of these stages produces delay. The principal cause is, of course, the inefficiency of many Government offices to-day, resulting in part from the attitude of the staff and in part from the primitive conditions of work, and equipment.⁴¹ The only solution to this problem is for the State Governments to improve the work of this department.

I should like, however, to mention one point in this procedure, and that is relating to admission of execution. It is, itself, productive of some delay when there are several executants, and takes up a fair share of the time of the Registrar or Sub-Registrar. It has been held that it does not,

37. *Id.* Secs. 23-27. The period operates from execution, or, in the case of a document executed abroad, from its arrival in India. The Law Commission has recommended the reduction of this period to one month; para 49.

38. *Sah Mukhun Lall Pandav v. Sah Koondun Lall* (1875) 2 I.A. 210, 218; *Shama Charan Das v. Joyenoolah* (1885) 11 Cal. 750).

39. Sec. 34, Ind. Reg. Act.

40. *Id.* Secs. 21, 22.

21. E.g., Under sec. 58, a complicated endorsement has to be made on each instrument running into 10 to 12 lines. Some years ago, the Registry at Bombay had a skelton rubber stamp which contained the form, and only the details had to be filled in by hand. That stamp has now disappeared and every word has now to be written by hand.

by itself, prove execution;⁴² further, the Registrar usually does not know the executant, and states that the executant is identified to him by a person known to him, and that person is usually an advocate or attorney's clerk.⁴³ It would, I think, simplify matters all round if executants were given an option to admit execution before, say, a Notary; where admission of execution has been attested by a Notary, the Registrar can accept it without any investigation.

The more serious causes of delay arise from what I feel is the misuse of the machinery of registration for tax collection. And I shall mention only two illustrations, one an old one, and the other more recent. The older instance relates to the provisions of the Stamp Act under which a Registrar is a public officer within the meaning of sec. 35 of the Indian Stamp Act, 1899;⁴⁴ and that section provides that any document requiring to be stamped cannot be registered unless it is duly stamped. If it is not, the Registrar must impound it, and send it in original⁴⁵ to the Collector. The Collector would thereafter levy deficit duty and penalty on the instrument, and return it to the Registrar.⁴⁶ During this period which may, and frequently does,⁴⁷ take several years, the document which may, and frequently does,⁴⁷ take several years, the document remains unregistered. It is not, however, invalid or ineffective *in toto*, for it would revive in full vigour and operate once deficit duty and penalty are paid. As a large number of documents never figure in litigation it is, probably, necessary to have some power of controlling registration of unstamped or insufficiently stamped documents simply to ensure that documents are not always under-stamped or un-stamped. But the present machinery has the effect of materially impairing the efficacy of registration. Further, it casts the burden of scrutinising the adequacy of stamps on an already overworked department. If it concludes that the document is not duly stamped, the Stamp Authorities, to whom it is sent, would

42. See Mulla, *Indian Registration Act*, 239 (6th ed. 1963) (The Law Commission has recommended the contrary, viz., that the Registrar should actually check attestation, etc., and that his certificate to that effect should be regarded as conclusive.)

43. It is common in Bombay for an attorney to introduce his clerk to the Registrar. That clerk, thereafter, introduces to the Registrar all the attorney's clients who may have to admit the execution of documents from time to time whom he knows only because his employer tells him so. On the occasion that the attorney himself has to admit execution, the same clerk introduces him to the Registrar!

44. There are corresponding provisions in local Acts.

45. Sec. 38(2), Ind. Stamp Act.

46. *Id.* Sec. 40(3).

47. At least in Bombay if the parties appeal to the Chief Controlling Revenue Authority and then demand a reference to the High Court.

scrutinise it afresh, thus duplicating work. A simple solution which would at the same time protect the interests of the Revenue, avoid this duplication and eliminate any delay in registration would be to require that all documents which are compulsorily registrable must be adjudicated and certified as to the proper stamp⁴⁸ before being presented for registration. This process would, it is submitted, materially simplify the procedure.

A more recent instance of such mis-use of the Registration machinery is sec. 230-A of the Income Tax Act, 1961, which provides that no document transferring immoveable property valued at more than Rs. 50,000 can be registered unless the transferor produces a certificate from the relevant authority stating that he has paid or made satisfactory provision for meeting all his existing liabilities for the payment of no fewer than six taxes, viz., Excess Profits Tax, Business Profits Act, Income-tax, Wealth Tax, Expenditure Tax,⁴⁹ and Gift Tax. It is true that this provision does not affect small transfers,⁵⁰ it is also true that the interests of the revenue must be protected. What is objectionable, however, is the use of the Registration machinery for the purpose. It is important to note that the transaction is not invalid for want of such a certificate would only, so to speak, suspend the completion of the transaction. He could produce it after several months or even years, and the registration would, when made, relate back to the date of execution. During the interregnum the registrar is incomplete; third parties entering into oral transactions may run the risk of being postponed to this transferee, and the transferee through no fault of his own, does not get the benefit of the Registration Act as his transaction would not operate as notice to others till it is duly registered. It should not be impossible to devise a machinery which would protect the interests of the revenue without these grave consequences on innocent parties.

48. Under secs. 31 and 32 of the Ind. Stamp Act, adjudication may be before or after execution; and a certificate that the proper stamp has been paid is final. There are corresponding provisions in local Acts. This procedure is freely availed of by parties who wish to know their precise position, and who do not want to take the risk of a penalty.

49. This tax has, of course, been since repealed.

50. If one remembers that property values in many urban areas, even in the remote suburbs, exceed Rs. 100 per sq. yard, even a small plot of 500 sq. yards would involve a consideration of Rs. 50,000.

IV. REGISTRATION OF TITLES—A SUGGESTION

Compared to some of the suggestions made in the earlier part of this paper relating to notice, what is proposed in this part is almost revolutionary. For registration of titles, if achieved, would have far-reaching consequences, making dealings in immoveable property almost as simple as selling a motor car. It is not, however, simple and involves the creation of a machinery for State investigation of title, and so on. In view of the difficulties of creating a new machinery of this kind, with the attendant expense, training, etc., I would not have ventured to suggest it at this stage in India but for the fact that a machinery already exists of a rudimentary kind, viz., the departments maintaining the Records of Rights. A slight improvement of this machinery, and some basic changes in its structure, would give us all the benefits of this system of registered and certified titles at comparatively little cost.

The best way to approach this problem is first to look at the system as it exists to-day in England, and to consider its advantages. I then consider the existing machinery in India relating to the Records of Rights, and suggest the broad changes that would have to be made in that machinery in order to create the system of registration of titles.

In those parts of England where registration of title has been made compulsory,⁵¹ every owner of land must apply to the Registrar for the registration of his title. On receiving the application, the Registrar scrutinises it, and may call for information from the applicant, submit requisitions to him, etc. In other words, he scrutinises the title of the applicant with the same care which a purchaser would use. He may also carry out searches, and state a case to the Court for its determination. By advertisement and notice he also calls upon any interested person to object and hears him. After he is satisfied about the title, he registers the land, and issues what is called a "Land Certificate". This document takes the place of the title deeds and all future transactions are based on this document.

The scheme also incorporates provisions for the registration of other transactions affecting title such as charges, incumbrances, etc., and a glance at those registers gives a complete up-to-date picture relating to any particular property. Any purchaser or future mortgagee can rely on the register with impunity, for the scheme also sets up an insurance fund which is used to compensate any persons who suffer any loss by reason of an error in the register.⁵²

51. Even today, 40 years after the scheme was first introduced, less than half the country is covered. This shows the complexity of the scheme, which I do not wish to underestimate.

52. In practice, the insurance fund has rarely had to be used.

The scheme is simple in concept, and does not radically alter any provisions of law. But the advantages conferred by the system are enormous. To begin with, the purchaser does not even have to investigate title. The Land Certificate is final, and all the necessary investigation has already been made by the Registrar before issuing the certificate. An inquiry which is frequently labourious and expensive, and invariably time-consuming is eliminated. The document to be drawn up is simple, for there is no need for complex recitals, etc.⁵⁴ Finally, and this is most important, reliance on the records of the Registrar is absolutely safe for there is an indemnity or insurance fund which secures any purchaser against any loss that he may incur by reason of any error or omission in the Records. The advantages of the system were enumerated by Vaughan Williams, L.J., in *Attorney-General v. Odell*:⁵⁵

The advantages of such simplification in India where literacy is low, and standards of conveyancing are rudimentary, can hardly be exaggerated.

The core of this system is a department which not only registers titles but investigates them; it follows that it must be technically equipped to do so, and an appropriate machinery must be created to ensure that it would bring to this task independence and adequate legal skill. A combination of the working of the Registration machinery and the existing machinery for the maintenance of the Records of Right, with a few changes, would enable the system to function.

Records of Rights are maintained in all parts of the country. The provisions in the various State Acts for such Records are generally similar though they differ in detail, and the broad features of the system as enacted in the Bombay Land Revenue Code, 1879⁵⁶ are in force in most parts of the country. The Code provides that a Record of Rights must be maintained in every village,⁵⁷ and city,⁵⁸ in which must be entered the names of all holders, occupants, owners or mortgages of land, and of the nature and extent of their respective interests and any conditions or liabilities attaching to such interests; that any person acquiring such interest whether by succession, survivorship, inheritance, partition, transfer or

53. *Halsbury's Laws of England*, vol. 23, 159 (3rd ed. 1958).

54. The English Act prescribes simple forms. In India, where even the surviving complications of the English law of Real Property do not exist, the forms can be even simpler.

55. (1906) 2 Ch. 46, 70.

56. These provisions were originally enacted in the Record of Rights Act, 1903, but were transferred to the Code by Bom. Act 4 of 1913.

57. Sec. 135-B, Bombay Land Revenue Code 1879.

58. See Gupte, *Bombay Land Revenue Code*, 749. (4th ed.).

otherwise, must report that fact to the village accountant,⁵⁹ failure to so report attracts a penalty;⁶⁰ on receiving such a report, the village accountant makes what is called a mutation entry in the record, and posts it up on the notice board, and gives notice to all persons whose names appear on the Record or who he has reason to believe are interested; if any objections are raised, the question is decided by a revenue officer, with one right of appeal to a superior officer.⁶¹ The authorities are required to give a certified copy of the register on an application being made, and it is provided that no suit relating to the land in question can be filed unless such a certified copy is annexed to the pleadings;⁶² it is further provided that an entry in the record of rights is to be presumed to be correct, unless the contrary is proved.⁶³

These records are maintained for the purposes of revenue collection, and it is settled law that they do not directly affect title or prove it.⁶⁴ It had originally been held that no particular importance could be attached to them, and they were to be treated as any other evidence,⁶⁵ but later decisions have stressed the fact that such entries are made after the most careful inquiries, and that they constituted cogent, though not conclusive, evidence of their contents.⁶⁶ The introduction of the provision that such entries must be presumed to be true unless the contrary is proved materially enhances their value, and it has been held that the provision must be given its full effect.⁶⁷

Further, in rural India, where title deeds and conveyancing generally are less common, these revenue records are of the most vital importance for in many cases an owner or occupant has no document of title at all. And the importance of revenue records has been increased by recent land reform legislation under which lands have been transferred to tenants, fragmented holdings have been consolidated, and lands in excess of ceiling areas distributed to tenants, or other landless persons. In all such cases the transfer is effected by a revenue authority, and the transferee derives his title from a *sanad* or certificate issued by such an authority, and such a

59. Sec. 135-C, Bombay Land Revenue Code 1879.

60. *Id.* Sec. 135-F.

61. *Id.* 135-D.

62. *Id.* Sec. 135-H.

63. *Id.* Sec. 135-J. This was inserted for the first time in 1913.

64. *Nageshar Baksh Singh v. Ganesha* (1919) 47 I.A. 57, 69-70, approving *Bhagoji v. Bapuji* (1888) 13 Bom. 75; *Nirman Singh v. Lal Rundra Partab Narain Singh* (1926) 53 I.A. 220, 227.

65. *Nageshar Baksh Singh v. Ganesha*, *Id.*

66. *Gangabai v. Fakirgowda* (1929) 57 I.A. 61.

67. *Shankarrao v. Shambhu* (1941) 43 Bom. L.R. 1, A.I.R. 1940 P.C. 192.

sanad or certificate is conclusive evidence of such purchase.⁶⁸ Even in urban areas, such a situation arises if a Town Planning Act is applicable, and a Town Planning Scheme is made thereunder, for in such a case the right of an owner to a reconstituted plot is derived from the *sanad* issued by the Town Planning Officer.⁶⁹

If changes of two kinds are made the existing machinery can be readily adapted to make it suitable for the purpose of registration and certification of titles. The first is to change and strengthen its personnel to enable them to adjudicate upon legal issues. This can be done either by changing the personnel at all levels or, more conveniently, by providing legal personnel at, any, the Taluka, or District level, to whom any questions could be referred. There could also be a provision for one appeal to a higher judicial authority. Suitable changes of procedural kind would also be necessary to ensure that all interested persons are effectivly heard before any mutations are made. The second major change would be administrative in character and that would transfer the present duties of the Registrar's office to the department dealing with the Record of Rights. It would, of course, also be desirable to set up an insurance fund financed from a part of the registration fees received to compensate any innocent persons who suffer a loss by relying upon the register.

V. CONCLUSION

The conclusion of this paper can be stated simply. There is need for a complete re-examination of the machinery of Registration with a particular emphasis on the practical aspects. It is also necessary to explore and adopt all devices to make compulsory registration applicable to all documents which affect the title to land, and to expedite the process of registration. It is also useful to consider adopting the system of registration and certification of titles; for though it is not a simple system to adopt, the advantages of its adoption are great.

68. See, e.g., Sec. 32 M, Bombay Tenancy and Agricultural Lands Act, 1948; Sec. 24, By. Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

69. This is so under the Bombay Town Planning Act, 1954. See sec. 53(b).