

Digitalisation of Land Documents and Transfer of Property Act,1882:



Myth and Reality

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Introduction:

Access to land or land rights has far-reaching implications on various aspects of life, including livelihoods, industrial development, and socio-economic progress. Land ownership is typically established through the possession of land, The possession is crucial as it safeguards the rights of the title holder from any competing claims made by others regarding the property. In India, land ownership is primarily established through a registered sale deed. other documents used to establish ownership include the record of rights like Chitta, Adangal property tax receipts, and survey documents. These records collectively contribute to establishing and validating land ownership in the country. However, these documents are not a government-guaranteed title to the property, but only a record of the transfer of property. During such transactions, the onus of checking past ownership records of a property is on the buyer.

Transfer of Property Act, of 1882 is the comprehensive legislation dealing with the transfer of property. This Transfer of Property Act, of 1882 stipulates that the right, title, or interest in an immovable property or land can only be transferred through a registered instrument. The Registration of documents is governed by the Registration Act, of 1908. Today the government's move to digitise land records is set to transform the country's age-old land management system is an initiative, under the 'Digital India' programme, which involves conversion of paper-based records into electronic formats. In Conveyancing the paper work is overwhelming. Property transactions involve many Physical documents, like property deeds, details of mortgages, charge etc. Digitalisation in Land documents if done well can speed up the process a lot. The success of the effort depends on the support from administrative and Legislative sides. This paper is on the Digitalisation of Land document and Transfer of property Act,1882 -Myth and Reality- discuss about the existing Statutory provision and Present effort of Digitisation of Land Records and also suggest measures to speed up the process

Transfer of Property Act, 1882

Transfer of Property Act, 1882 is a comprehensive legislation dealing with the transfer of property. Transfer of property is an “ Act by which a living person can convey the property, in present or in future, to one or more other living persons, or himself, or himself and one or more or other living persons, and to transfer property is to perform such act.” The Transfer of Property Act 1882 was enacted on the 17th of February 1882 and officially came into force on the 1st of July 1882. This Act covers both movable and immovable property, mostly it deals about immovable property. The following kinds of transfers are dealt with under this Act. (1) Sale (2) Mortgage (3) Lease (4) Exchange and (5) Gift. Here the transfer by sale discussed in detail.

Sale

Sale is defined as the ***“transfer of ownership in exchange for a price paid, or promised, or part-paid and part-promised”***¹. This implies that a transaction amounts to a sale when one party transfers ownership to the other and the other party pays some amount or promises to pay some amount in return. A "transfer of ownership" by a person means a transfer by such person of his rights and interests in the property in full and permanently. Therefore, the two basic elements that constitute a sale are the transfer of ownership and money consideration. Further, this Section provides two specific methods for how a sale can be made and executed. According to this Section, a sale can be completed by a “registered instrument” in cases of the property where the value is more than Rs 100/-. If the property worth is, below Rs100/- then it may be transferred by handing over the Possession.

However, it is important to note that not all transactions require mandatory registration under the Registration Act, 1908. There are exceptions including land acquisition by the Government, court decrees, land orders, family Partitions, and property leases for durations less than one year. Due to the exemption of family partitions from registration, many property divisions remain unrecorded, leading to uncertainties regarding the 'true possession' of the property. This often results in legal disputes on ownership.

Registration Act, 1908

The Registration Act, 1908, is the primary law that regulates the registration of land-related documents. Therefore, currently, all sale deeds relating to land or immovable property transfer are registered under the Registration Act, of 1908. As per the Registration Act, 1908² Rule 55 A states, if a document to be registered the following rules are to be complied

1. If the previous **original deed is lost**, the registering officer shall register it only on producing a non-traceable Certificate issued by the police, along with an advertisement published in the local newspaper as to the notice of loss of the previous original deed.

2. If the previous **original deed is not available** as the property is an ancestral one, the registering officer shall not register such document, unless any revenue record is produced evidencing the applicant's right over the subject property such as a patta copy issued by the Revenue Department or tax receipt.

3. If the property belongs to Government or statutory body producing the previous original deed shall not be necessary

As per first part of the rule if the original deed is lost, we have to file a complaint before the Police and obtain a non traceable certificate issued by the Police Department. We have to publish an advertisement in Local news papers as to the notice of loss of previous original deed.

As per second part of the rule if the original deed not available then we have to submit Revenue records like chitta, Adangal and Property tax receipts

Land Documents:

Today, land ownership can be determined through a set of documents stated as below

1. Record of Rights (RoR),
2. Spatial Land records (maps), and
3. Transaction details (sale deeds)

a). The record of rights (RoR) is the primary record that shows how rights on land are derived by the land owner and records of the property's transactions from time to time.

² The Tamil nadu government had earlier passed a circular in this regard and it has been made a legal statute now after including it in the Tamil Nadu government Gazette,

- b). Survey maps (Spatial land records) It encompass specific information about a property that is visually represented on a map. These records include details such as land boundaries, plot area, connectivity with roads, presence of water bodies, information about the surrounding areas, land use classification (agricultural, residential, commercial, etc.), and the topography of the land.
- c) The registered sale deed is to prove that the property has been sold from one person to the other. Showing details of ownership of Property.

Three different state departments Revenue, Registration and Survey and Settlement department are responsible for each of the above data on land records. In the presence of multiple agencies responsible for registration and maintenance of records, it is difficult to ensure that survey maps, textual data, and registration records match with each other and are updated. In addition, People have to approach several agencies to get complete information on land records. Most of these departments work separately and failure to update of records by any one of them makes the records of the others outdated.

Conclusion:

Over the past three decades, the central government has undertaken several initiatives to enhance the quality and accessibility of land records through the implementation of various schemes. One such scheme, was the Computerisation of Land Records scheme, which aimed to computerize land records across the country. In 2008, these individual schemes were consolidated into a centrally sponsored program known as the National Land Records Modernization Programme (NLRMP). Again the National Land Records Modernization Programme (NLRMP) has been renamed as the Digital India Land Records Modernization Programme (DILRMP) and is now a component of the broader Digital India initiative. In April 2016, the scheme was converted into a Central Sector Scheme, leading to its implementation by the central government with full funding from the centre. As per the recent updates 95% works completed. A coordinated effort between various departments, namely Archaeological, Survey, Revenue and Registration department of Central /State Government and Join committee oriented appraisal with the Assistance of Technology alone will make a real success, in this case it will lead from myth to Reality.

Reference:

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2. RoR in Practice and Coding Scheme in Major States, National Informatics Centre,
. ... Ministry of Communications and Information technology, November
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3. “Land Titling- A Road Map”, Report of the Expert Committee formed by
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