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Does Registration of a Document give Notice to the Whole World?

What is the Relevant provision of law that deals with the doctrine“registration of a document give notice to the whole world”?

Sec. 3 (Explanation 1), **TP Act**. It lays down –

Registration of document is only a *constructive notice*; and, it *applies only to those who subsequently acquired* that property or fraction of interest thereof. (R. Ravichandran v. The State of Tamil Nadu, 2002-2-LW 590)

Does ‘registration of a document’ establish “notice in rem”?

No. It is not a notice in rem: Parganas Lawyers Clerks Association v. State, AIR 1986 Cal. 205.

The registration of document is only a constructive notice to a person, who subsequently acquired that property or interest or any part thereof

Does the (general) observation in Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana, (2009) 7 SCC 363 – that the ‘registration of a document give notice to the whole world’ – apply with full vigour in India?

No.

It is held in **Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana (2009) 7 SCC 363** as under:

“Registration provides information to people who may deal with a property.”

Does it work against true owner in suits on ‘Adverse Possession’ (if he has no notice as to registration of the deed)?

No.

(Arabia Bibi v. Sarbunnisa: 2011, Madras)

Does it apply, and help the accused, in a Criminal Case (cheating – for suppressing earlier mortgage)?

No.

(Kuldip Singh v. State, AIR 1954 P&H 31)

What is the object behind the Explanation to Sec. 3 TP Act?

The object of the Explanation to Section 3 is to **safeguard the interests of a third party who has (already) acquired a good title** under a previous registered instrument. (Kuldip Singh v. State, AIR 1954 P&H 31).

It **enables people to find out** whether any particular property **with which they are concerned**, has been subjected to any legal obligation or liability. (Suraj

Lamp & Industries Pvt. Ltd. v. State of Haryana, (2009) 7 SCC 363).

Registration provides information to people who may deal with a property

It is observed in *Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana*, (2009) 7 SCC 363, as under:

“Registration of a document gives notice to the world that such a document has been executed. Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person(s) presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified.”

Sec. 3 of the TP Act

Section 3 of the Transfer of Property Act defines the expression – “a person is said to have notice”.

S. 3 of the Transfer of Property Act

The relevant portion of S. 3 of the Transfer of Property Act reads as under:

” ‘a person is said to have notice’ of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it. Explanation I – Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instruments, 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 or (where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-sec. (2) of Sec. 30 of the Indian Registration Act, 1908, from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share of interest is being acquired, is situated). Provided that- (1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908, and the rules made thereunder, (2) the instrument (or memorandum) has been duly entered or filed, as the case may be, in books kept under S. 51 of that Act, and (3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under S. 55 of that Act.

Explanation I to Section 3 of the TP Act is explained in *Ranjit Singh v. Punjab State*, 2014-4 LawHerald 3533; 2014-3 RCR(Civ) 766, as under:

“19. Explanation I to Section 3 of the Transfer of Property Act clarifies that where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such party shall be deemed to have notice of such instrument as from the date of registration

The Privy Council applied this Doctrine with ‘Some Modification’

In *Tilakdhari Lal v. Khedan Lal*, AIR 1921 PC 112, while dealing with notice of registered mortgages, it was held that ‘it would not be reasonable to hold that registration was notice to the world of every deed which the register contained’ and that ‘the doctrine must be subject to some modification’. The Privy Council further observed on the doctrine ‘registration as notice to the world’ as under:

“Their Lordships find it difficult to understand how such a difference can cause the register to be notice in the one case and not in the other. In either instance the doctrine of notice must necessarily depend upon the fact that there is a public register open for inspection, to which all persons having dealings with the property can have access; in each case they have before them the means of acquiring knowledge. In India that knowledge may afford complete protection even if notice be otherwise obtained of an unregistered deed. In England and Ireland that is not the case. But the completion of the register and the penal effect of non-registration do not appear to their Lordships to be any reason for causing the register to be notice in the one case and not in the other. For these reasons their Lordships think that notice cannot in all cases be imputed from the mere fact that a document is to be found upon the register under the Indian Registration Act.”

Deems (only) ‘Constructive Notice’ of (earlier) Deed

That too to one who Subsequently Acquired the Property

In *R. Ravichandran v. The State of Tamil Nadu*, 2002-2-LW 590, it is held as under:

“37. The legal position is well settled in that every document affecting an immovable property as provided in section 17 has to be registered so that any person who wants to deal or desire to acquire interest with such property could find out encumbrances if any, the legal obligations, rights and ownership or claim over such property, and registration acts as constructive notice to a person who subsequently acquires such property or interest or any part thereof or interest or fraction of interest thereof”.

Proposition ‘as to Notice to entire world’ is Not accepted in Adv. Possn.

Claim

In *Arabia Bibi v. Sarbunnisa* (2011, *R. Subbiah, J.*), the suit property was sold only within the family members. Therefore, the co-owner against whom adverse possession was claimed was not in a position to know about the sale. She knew only at a later point of time. Hence it was held – that the registration is only a constructive notice to the person who has subsequently acquired such property; and that if the proposition that the registration is a notice to the entire world is accepted, it would defeat the legitimate right of the co-sharers.

Explanation I of Sec. 3 of the Transfer of Property Act is Explained in this decision as under:

“29. On going through the dictum laid down in the above judgments relied on either side, I am of the opinion that the registration of document is only a constructive notice to a person, who subsequently acquired that property or interest or any part thereof or interest or fraction of interest thereof. In this regard, it would be proper to refer **Explanation I of Sec. 3 of the Transfer of Property Act**, which reads as follows: “Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, **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 or,”

Thus, it is clear that the registration is only a **constructive** notice to the **person who has subsequently acquired such property**. If the submission of the learned counsel for

defendants 1, 3, 5 and 7 that the registration is a notice to the entire world is accepted, **it would defeat the legitimate right of the co-sharers** when the property was sold without their knowledge. Further, I find that the subject property was sold only within the family members and therefore, as contended by the learned counsel for the plaintiff, she might have been in a position to know about the same only at a later point of time. Moreover, the judgments relied upon by the appellants deal with the alienation of the property to the strangers. Further, I do not find any evidence in this case with regard to open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of other co-owner, namely, the plaintiff in this case so as to constitute ouster. Therefore, in my considered opinion, the principle of ouster cannot be applied in this case. The courts below have correctly appreciated the evidence and the documents adduced by the parties. The concurrent findings of the courts below reflect the evidence on record.”

In KS Natraj v. NIL, 2020-2 KarLJ 356 (B.V. Nagarathna, Suraj Govindaraj, JJ.) it is observed as under:

“20. The most important purpose of registration is to secure that persons dealing with the property, where such dealings require registration, may rely upon the statements contained in the register of the Registrar of Assurances with confidence that the full and complete account of all transactions relating to or affecting the property is covered in such register.”

Apply When Wilful Abstention from Making (expected) Enquiry

In *Godhan Son of Pola v. Ram Bilas*, AIR 1995 All. 357, it is observed as under:

(22) FROM the reading of this provision along with Explanation-I, it comes out that the person is said to have notice of a fact when he actually knows that fact, or when but for wilful abstention from making such enquiry which a person normally ought to have made he would have known it. In such cases the persons can also be deemed to have notice. According to Explanation-I, where law requires a transaction to be recorded or to be entered in, completed by registered deed then in respect of such transactions which satisfy two conditions i. e. a requirement of law that transaction is to be entered into by registered instrument only and the same has been completed by registered document, then persons shall be deemed to have knowledge of that instrument from the date of registration. The registration of the document has (sic) taken to complete notice to world at large. The agreement to sale immoveable property of value of more than Rupees One Hundred, under the Transfer of Property Act, is required to be entered into by the registered document.”

Sec. 3 TP Act Notice is on immovable property; & It is not a Notice In Rem

In truth, the proposition, ‘registration of a document gives notice to the world’ is not followed in India. In *Parganas Lawyers Clerks Association v. State*, AIR 1986 Cal. 205, it is held as under:

“(30) THE notice contemplated under Explanation 1 of S. 3 of the Transfer of Property Act by registration of a document relates to transactions with regard to immovable property which is required by law to be and has been effected by a registered instrument and that also for a person acquiring such property or any part or share or interest in such property. It is not a notice in rem. Testamentary documents do not come within the purview of the notice as contemplated by the said section.

As regards the object of the Explanation to Section 3, it is observed as under:

It enables people to find out whether any particular property **with which they are concerned**, has been subjected to any legal obligation or liability. (*Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana*, (2009) 7 SCC 363).

The object of the Explanation to Section 3 is to **safeguard the interests of a third party who has (already) acquired a good title** under a previous registered

instrument. (Kuldip Singh v. State, AIR 1954 P&H 31).

Explanation to Section 3 TP Act in Criminal Matters

In a criminal matter, in Kuldip Singh v. State, AIR 1954 P&H 31, it was observed as under:

1. "It was contended that the registration of a document which must under law be registered is constructive notice to the whole world and, therefore, Moti Parshad must be deemed to have had notice of the previous mortgages, and, therefore, it could not be said that Moti Parshad had been cheated since, in law, he already knew the factum of the previous charges.
 2. My brother Soni thought that this point was of some importance and should be considered by a larger Bench and we have, therefore, heard arguments of counsel on this point and also the other points arising in the case.
 3. The argument of Mr. Sibal who appeared on behalf of the petitioner is based on the wording of Sections 3 and 55, T. P. Act.
- Explanation I to Section 3 reads as follows :
 - "Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, 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."
 - Section 55(1)(a) is in the following terms :
 - "The seller is bound to disclose to the buyer any material defect in the property or in the sellers title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover."
 - Mr. Sibal contends that the previous, mortgages were effected by means of registered deeds and, therefore, by virtue of the explanation to Section 3, Moti Parshad must be deemed to have had notice of these mortgages. Further Moti Parshad could by exercising ordinary care have discovered that the property which he was purchasing formed part of a much larger estate which was already under mortgage. Therefore, Kuldip Singh was not bound to disclose to him the previous charges and Moti Parshad must be deemed in law to be aware of them, and, that being so, Moti Parshad was not cheated, for no representation was made to him.
 - 4. The Transfer of Property Act deals with the rights of individuals in the property which is the subject-matter of any transaction. It is not concerned with whether a person has been cheated or not. The object of the explanation to Section 3 is to safeguard the interests of a third party who has acquired a good title under a previous registered instrument but it does not in any way alter or modify the criminal liability of a person who deliberately suppresses certain facts or misstates certain facts. If A has sold some property to B by a registered deed and he then sells it again to C, C cannot acquire a good title in the property because he must be deemed to have had notice of the previous registered sale deed in favour of B but nevertheless he was made to part with money on a misrepresentation made by A and therefore A is guilty of the offence of cheating. This is the case which is mentioned in illst. (i) to Section 415, Penal Code. The doctrine of constructive notice cannot be imported into criminal law for the purpose of determining whether a person is guilty of the offence of cheating or not."
 - Written by Jojoy George Koduvath Advocate