

O/o the Commissioner and Inspector General of  
Registration and Stamps, A.P., Vijayawada

Cir Memo.No.S1/P/5195/2021      20/09/2021

Sub:-Registration and Stamps Dept-Regarding the noting  
/registration of the Memorandum of Deposit of Title Deed for  
the enhanced limit -instructions issued-Reg.

Ref:-SBI Deputy General Manager (B&O),Vijayawada  
Lr.No.DGM(B&O)/VIJ/361,dt:03.08.2021.

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The attention of all the DIsG, DRs and SRs in the State is invited to the subject and reference cited. In the light of the clarification sought by DGM, SBI and in view of the issues involved, the following instructions are issued.

Three requisites are essential for creating a mortgage by title deeds.

They are:

- a)Debt
- b)Deposit of title deeds
- c)An intention that the deposit of title deeds is to create security for the debt.

An equitable mortgage may cover an existing as well as a future debt. In order to accept the creation of mortgage by deposit of title deeds, the fact of delivery of the title deeds should be proved, if it is so contented.

Apart from the above two essentials, the law would strictly require that the intention to create a security thereon should exist. In the absence of the intention to create a security, the deposit of title deeds alone cannot

by itself create an equitable mortgage.

Whether the deeds were deposited with an intention to make them as security for the debt is a question of fact, and the same has to be decided just like any other fact on oral, documentary or circumstantial evidence.

Under the Transfer of Property Act, a mortgage by deposit of title deeds is one of the modes of creating a legal mortgage whereunder there will be transfer of interest in the property mortgaged to the mortgagee. A proviso has been added to Section 48 of the Registration Act by Amending Act 21 of 1929, which says:

provided that a mortgage by deposit of title deeds as defined in Section 58 of the Transfer of Property Act, 1882, shall take effect against any mortgage deed subsequently, executed and registered which relates to the same property.

When the debtor deposits with the creditor title deeds of his property with an intent to create a security the law implies a contract between the parties to create a mortgage and no registered instrument is required under S.59 as in other classes of mortgage. It is essential to bear in mind that the essence of a mortgage by deposit of title deeds is the actual handing over by a borrower to the lender of documents of title to immovable property with the intention that those documents shall constitute a security which will enable the creditor ultimately to recover the money which he has lent.

But, if the parties choose to reduce the contract to writing, this implication of law is excluded by their express bargain, and the document will be the sole evidence of its terms. In such a case the deposit and the document both form integral parts of the transaction and are essential ingredients in the creation of the mortgage. It follows that in such a case the document which constitutes the bargain regarding security requires registration under S. 17 of the Indian Registration Act, 1908, as a non-testamentary instrument creating an interest in immovable property, where the value of such property is one hundred rupees and upwards. If a document of this character is not registered, it cannot be used in evidence at all and the transaction itself cannot be proved by oral evidence either."

As per Article 7 of Schedule I-A of the Indian Stamp Act, 1899, the Agreements relating to Deposit of Title Deeds" are chargeable to stamp duty @ 0.5% of the amount secured by such deed, subject to a maximum of fifty thousand rupees. The deeds evidencing Deposit of Title Deeds may contain the recitals about previous sanction of certain loan amount already secured by execution of a document and sanction of additional/further loan facility of certain specified amount. In such a case, the chargeability will be as follows:

1) when the present document describes about the previous loan amount but contains recital that it intends to secure the additional/further loan amount now sanctioned, the amount of such further/additional loan amount alone shall be charged @ 0.5% subject to a maximum of Rs.50,000/-.

2) On the other hand, if the document, besides mentioning the previous loan, and additional loan now sanctioned, intends to secure the aggregate loan (previous + additional), then it shall be chargeable on the aggregate loan amount @0.5% subject to a maximum of Rs.50,000/-.

3) In respect of the deeds mentioned at Serial No. (1) above, if the recitals mention un-registered deed in respect of the previous loan, if such un-registered deed happens to be already duly stamped by means of Franking, e-stamping etc., Stamp duty may be charged @ 0.5% on the additional loan amount alone.

(a) If the previous unregistered deed is not duly stamped:

- In case the date of execution is within one year, and if party willing to pay the Deficit stamp duty, the SR shall collect the deficit duty without penalty under section 41 and add certificate under section 42 of the Indian Stamp Act. Then only, the present deed shall be charged with additional loan amount.

- In case the date of execution is beyond one year, the SR shall impound the previous deed (DOT) under section 33 and it shall be forwarded under Section 38(2) to the Collector to be dealt with under section 40 of Indian Stamp Act. After collection of deficit duty along with penalty, certificate has to be appended under section 42 of the Indian

Stamp Act and the certified deed shall be returned to the SR concerned. Then only, the present deed shall be charged with additional loan amount.

(b) If the previous unregistered deed is duly stamped :

- The copy of such first unregistered deed shall be scanned along with the deed for additional loan amount being registered now.

- The following certificates shall also be appended on the present and previous deeds with a view to avoid claiming of refund of stamp duty paid on the earlier agreement relating to deposit of Title deeds and also to prevent reutilization for another deed.

- Present deed (i.e. the DOT presented for registration): -

"I hereby certify that on the production of the original unregistered Agreement relating to Deposit Of Title deeds (DOT) dated: \_\_\_\_\_ executed by Sri/Smt \_\_\_\_\_ in favour of \_\_\_\_\_ in respect of property dealt with herein. I have satisfied myself that the stamp duty of Rs. \_\_\_\_\_ has been paid therefor"

Previous deed (earlier Un-registered but duly stamped Agreement relating to DOT): -

" Certified that the stamp duty borne by this document is noted on the subsequent Agreement relating to Deposit of Title deeds registered as No. \_\_\_\_\_ of \_\_\_\_\_ at SRO \_\_\_\_\_ and as such the stamp borne by this deed cannot be utilized again and also no refund of stamp duty can be claimed on this stamp".

Seshagiri Babu

Inspector General

Registration and Stamps, A.P., Vijayawada

To

DIsG, DRs(including DR(M.V & A)) and SRs in the State.

Copy to all Officers in the Office of Comissioner & Inspector General.