LAND LITIGATIONS (A CASE STUDY IN INDIA)

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Abstract

Introduction: The major chunk of pending cases in India is property and land matters which cover 2/3rd of the total number of pending cases. The major reasons for occurrence of land disputes are the “lack of knowledge” and weak land laws which results in clogging of cases in the Courts. This research paper is exclusively for the state of Haryana (India). Firstly, a concept of Legal scrutiny report of documents and procedures involved in a property transaction is introduced by this research paper. Secondly, a reform of “title of property” is suggested considering the geographical, economic and social factors of the state. The information is gathered by visiting various concerned departments of Haryana.

Methodology: It is a qualitative research paper where the case analysis of the Land Legislations of certain parts of India has been discussed.

Results and Findings: This research paper will focus on the major problem of pendency of civil cases in Indian courts which mainly includes the property litigations.

Keywords: Pending Cases; Property, Land Litigation; Haryana; Title Reform

Introduction
A total of 54,995 and 5,90,343 matters were pending in the Honorable Supreme Court of India and in the State of Haryana under Honorable Punjab and Haryana High Court on June 2018 and April, 2017, respectively. The total number of backlog of cases has reached to 33 Million in India. There can be three possible reasons for the pendency of cases in any legal system; firstly, if a legal system is facing excessive red-tapes, secondly, if the judicial bodies are lacking the required workforce and lastly, an overflow of disputes in the society. As per the statement of ex-Chief Justice of India, Mr. Dipak Misra, the judges are hurriedly wrapping up their daily hearings, indicative of the frenetic attempts to wrap up the pending cases, thus, eliminating the first possible reason. Currently there are 16,728 judicial officers in Indian Judiciary whereas the sanctioned strength is 22,474 judges. This braces the second possible reason of pendency of cases in India. The major reason is found to be the increase in number of cases in a legal system.

Figure 1: This figure shows the rate of pending cases in Indian Judiciary

1 statistics from www.sci.gov.in and www.highcourtchd.gov.in
2 Report of National Judicial data grid

www.supremoamicus.org
Source: Author

As described in figure 1, the major chunk of the pending cases in Indian Judiciary are property related litigations which is about 66% or $\frac{2}{3}$rd of the total pending cases followed by 10% cases related to family disputes. This is surely a whopping figure. This research paper briefly focuses on the reasons of the major chunk of property pending cases and majorly focuses on adding some concrete solution to it.

Statement of Problem
A dispute basically arises when either of the party tries to fraud the other party with malafide intentions. According to Section 25 of IPC, “fraudulently” means “A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise”. A person faces this problem mostly because of lack of knowledge.

The major reason of lack of knowledge is that people are not aware about such tools or procedures which should be followed before purchasing a property. The literacy rate of Haryana has dipped down to 67.91% in 2018 from 76.64% in 2011 is a relevant factor to be considered for the reasons of lack of knowledge. This research paper focuses aims to enhance the Knowledge which the purchasers of property lack during various transactions of property in a simplified way.

Objective of the Study
Firstly, the purpose of this research paper is to spread awareness among the people about the various documents, formalities and procedures to be followed to safeguard themselves from any future disputes.

Secondly, this research focuses on other possible reforms which can be introduced in India to reduce the clogging of matters related to property.

The average pendency of any case in 21 High Courts of India is about 1,128 days, that is, three years and one month. It is a need of the hour to get some concrete solution to it. If there is awareness among the people in the society about the various tools to be used before buying a property and more effective laws are introduced then will surely decrease the clogging of litigations in the Courts.

Background of the Study

Scope
In order to get the desired results, this research paper can be printed in a form of a handbook which can be made available for everyone at the time of such need. Variants differing in the information according to the type of property, that is, residential, commercial and agriculture can be introduced. In addition to this, if the legal reforms mentioned in the paper are introduced then it will surely lead to a transformation in the field of litigation of property disputes in Haryana (India). Conclusively, it will reduce the arising of

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3 research of a registered NGO named “Daksh” source: www.dakshindia.org

4 Section 25, Indian Penal Code, 1860.


6 research of a registered NGO named “Daksh” source: www.dakshindia.org
disputes and decrease in litigation clogging forthwith.

Discussion of “Property”

By Jurists
“Salmond” classifies law of property to be a ‘right in rem’ which is a proprietary right; the ‘rights in personam’ is distinguished from it as the law of obligation.

Austin states that property includes all assets whether personal or proprietary and it is a holding of greatest enjoyment for human beings.

Hobbes and Blackstone supports the property which is entitled by law offered to the public i.e. Legal rights.

Position of Property in India
The term “property” has not been defined anywhere in the Constitution of India and it is very difficult to give a conclusive definition of property. However, the word is taken of the same meaning in Article19 (1)(f) and Article 31(2), which means that property which can by itself be acquired, disposed of or taken possession.

The Supreme Court of India has explained the term “property” in various cases but in the case of State of West Bengal v. Subodh Gopal, 8 Supreme Court gave a wide explanation to the term “property”. 9 According to the Apex Court, property can be understood as anything that is influenced by private appropriation and also enjoyments of it. In legal sense, these are the rights of the owner which the owner can practice against the whole world during the use or enjoyment of the property.

Real Estate (Regulation and Development) Act, 2016
This act was introduced for the promotion and regulation of the real estate sector followed by protecting the interests of the consumers in this sector. This act introduced a concept of “Real Estate Regulatory Authority” to exercise the powers conferred on it to achieve the objectives of the act.10 Highlighting some of the sections of this act, according to Section 3(1), it safeguards the consumer from unregistered real estate projects in the market, under this section, government has made it mandatory for all the promoters of real estate to get every project registered before offering them to the consumer, which further implies certain rights and duties on the consumer as well provided in the “Real Estate (Regulation And Development) Act, 2016”.11 This act further specifies certain functions and duties on the promoters.12 Though, the position of consumers in such property transaction has improvised but at the same time it has not reached to its appropriate level. The “Real Estate (Regulation and

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8 AIR 1954 SC 92
9 id.p. 101 these observations have been quoted in MC Setalvad, The Indian Constitution, 1950-1965, pp. 124-25 (1957)
10 Chapter (iv), section 20 of Real Estate (REGULATION AND DEVELOPMENT) Act, 2016
11 Section 3(1) of Real Estate (REGULATION AND DEVELOPMENT) Act, 2016
12 Chapter (iii) of Real Estate (REGULATION AND DEVELOPMENT) Act, 2016
Development) Act, 2016” is universally applicable to all the states of India except Jammu and Kashmir.\(^{13}\)

**Haryana Real Estate Regulatory Authority (HRERA)**

This research paper exclusively focuses on the state of Haryana (India). According to the Chief Minister of Haryana, the State is among the fastest developing states of the country. The urbanization of Haryana has grown at the rate of 4.42% per annum in the last 10 years. For such a developing State, two regulatory bodies have been introduced for the transparency and harmonizing the state which constitutes a body one for the district of GURUGRAM and other for the rest of Haryana.\(^ {14}\) Therefore, the state of Haryana has introduced two Real Estate Regulatory Authorities in Haryana. As provided in Section 20, the appropriate government may, if it deems fit, may establish more than one Authority in a State or Union Territory, as the case may be.\(^ {15}\)

**Methodology**

This Qualitative Research paper. The research is done to provide mainly two solutions to the problem:

**Section 1:** It deals with providing the list of required documents and procedures involved in getting those documents in the form of LSR’s.

**Section 2:** It deals with the changes and amendments which can improvise the working of the property litigations in India. This research is purely academic. Various policies and acts introduced or followed around the globe have been studied. Haryana needs a “Property title reforms”,
the research paper suggests a reform which can be implemented in Haryana to improvise the status of “title of properties” which is the major dispute in properties of Haryana. The policies which have been researched includes Building Act of France; Rural Zones Act, Denmark; United Kingdom’s urban planning and Development programme; Town Planning Ordinance of Japan; and other local laws of India which includes Rajasthan Urban Land (Certification of titles) act 2016.

Results and Findings
Section: 1
These are some of the important documents which a buyer needs to check before buying a property. The procedures involved in getting such documents have been elaborated in APPENDICES.

- **Title of property/Title of ownership/Title search**

According to Austin a prominent jurist, “Ownership” means a “right in rem” which means a right which can be practiced everyone in the ambit of law.

According to Salmond, “ownership” is an individual right which is exclusive of all others.

According to my study, it is the document of utmost importance as it ensures the ownership of the property. In most of the cases of property, title of ownership is the main dispute. To check the status of the property it can become the greatest proof.

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16 1969, w.e.f. 1st January, 1970
17 Town and Country Planning Act of 1968
18 Building Land Development projects enacted in 1968.

**Appendices 1: Commercial Property**

In case of “Shops or showrooms” to check the title of ownership refer to Appendices 1.1 Step 1 and 3 of the LSR’s provided.

In case of “Godowns/warehouses” refer to Appendices 1.2 Step 1 of the LSR’s provided.

In case of “Malls/shops in malls” refer to Appendices 1.3 Step 2 and 4 of the LSR’s provided.

In case of “Factories” refer to Appendices 1.4 Step 1 and 2 of the LSR’s provided.

**Appendices 2: Residential Property**

In case of “Flat in a building” refer to Appendices 2.1 Step 1 of the LSR’s provided.

In case of “House” refer to Appendices 2.2 Step 1 and 2 of the LSR’s provided.

In case of “Plot/land for house” refer to Appendices 2.3 Step 1 and 2 of the LSR’s provided.

In case of “Independent floors in a house” refer to Appendices 2.4 Step 1 and 2 of the LSR’s provided.

**Appendices 3: Agriculture Land**

In case of “Agriculture land” refer to Appendices 3 Step 1 of the LSR’s provided.

- **Occupation Certificate**

According to “Real Estate (Regulation And Development) Act, 2016” occupancy certificate means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority
permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity. In simple words, occupation certificate certifies the occupation of land to which the land will be used in the future. In case of Re-allotment of properties, it is very important to check the OC certificate.

- **DPC certificate/ Approved building plan certificate**

It is the certificate which certifies that the building made is safe for human use. It is mandatory for every building with more than two storeys.

- **Non Encumbrance Certificate/ No Dues Certificate**

This certificate certifies the dues or encumbrances over the property. The dues over a property can be from banks or from private lenders. In most of the cases, it is found that there are some dues which are left by the seller for the buyer and the dues has to be incurred by the buyers in this case. For instance, electricity bills, property tax etc.

- **No Objection Certificate(NOC)**

This certificate certifies the property to free from any objections laid down by various government bodies, local bodies or the bodies or organizations of the society. For instance: Storm Water and Drain, Airport authority, pollution department etc.,

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<table>
<thead>
<tr>
<th>Serial No.</th>
<th>Name Of The Document</th>
<th>Purpose</th>
<th>Origin/Photocopy</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>CONVEYANCE DEED</td>
<td>a conveyance deed transfers property in the case of a gift, lease, mortgage, or exchange</td>
<td>Original</td>
</tr>
<tr>
<td>2</td>
<td>Receipt of payment</td>
<td>To check if there are any backlogs in the property.</td>
<td>Photocopy</td>
</tr>
<tr>
<td>3</td>
<td>Possession certificate</td>
<td>to know that the applicant who is putting an application for transfer of plot is genuine allottee of the plot</td>
<td>Photocopy</td>
</tr>
<tr>
<td>4</td>
<td>No objection certificate</td>
<td>To ensure that there is no objection from the dept.</td>
<td>Photocopy</td>
</tr>
<tr>
<td>5</td>
<td>ALLOTMENT LETTER</td>
<td>to know that the applicant who is putting an application for transfer of plot is genuine allottee of the plot</td>
<td>Photocopy</td>
</tr>
<tr>
<td>6</td>
<td>NO DUES CERTIFICATE</td>
<td>to know that the applicant who is putting an application for transfer of plot is genuine allottee of the plot</td>
<td>Photocopy</td>
</tr>
<tr>
<td>7</td>
<td>Layout from HUDA</td>
<td>To check the location of the plot</td>
<td>Photocopy</td>
</tr>
<tr>
<td>8</td>
<td>Transfer permission</td>
<td>To ensure the valid transfer of the plot</td>
<td>Original</td>
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<td></td>
<td>certificate</td>
<td>property</td>
<td>Photo copy</td>
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<tr>
<td>9</td>
<td>Title of ownership</td>
<td>To check the good title</td>
<td>Photo copy</td>
</tr>
<tr>
<td>10</td>
<td>Indemnity bond</td>
<td>Bond of sale</td>
<td>Originial</td>
</tr>
<tr>
<td>11</td>
<td>Completion certificate</td>
<td>To check if the property is complete as per the norms of huda</td>
<td>Originial</td>
</tr>
</tbody>
</table>

**Figure 2:** This figure shows the most common documents to be checked in a property transaction

**Source:** Author

**Section: 2**
This research paper strongly suggests to introduce a “PROPERTY TITLE REFORM” in Haryana, an act similar to Rajasthan Urban Land (Certification of titles) Act 2016. According to the economical, geographical and social factors this act suits the best to the state of Haryana which will reduce the disputes in properties and will act as a property title reform in the state.

Property title reform: The title guarantees the ownership of an immovable property. The most common reason of any property litigation is the title of the property, that is, the “ownership title” of the concerned property. To regulate the “Titles” of property in a state there should be an authority which rectifies the fraudulent land/property titles which exist in the State. This will clarify the titles of the property/ownership and will restrain the fraudulent agents to claim the properties of others. This reform can reduce the occurrence of disputes to 65% if worked in an appropriate manner.

“**Property Title Reform**” is an effort to provide a solution to clogging of property disputes in Indian Courts from the grass root level. If the titles of the properties will be clear then there will be less number of disputes and with the less number of disputes related to properties, it will help Indian Courts to free up from the chunks of pending cases.

**Objective:** During a transaction of property, persons are generally are in a state of dilemma that whether the title of the property is real or not. In simple words, whether the seller has the right to sell it or not. Due to the successive transfers, the documents representing the title of the property become a lengthy legal phraseology. This legal phraseology becomes the base of the title of property for the seller. The objective of such Act is to safeguard the transfere from such fraudulent transactions and to ensure hassle free transactions in the state. 20

**Conclusion**
Indian judicial system is paralyzed due to the delay in disposal of cases. In today’s time, Indian society is facing many issues which are more serious and heinous in nature than the cases related to properties and which needs a speedy disposal. The need of the hour is to reduce the load of cases in the Courts by framing effective solutions to it. This research paper has focused on the major problem of pendency of civil cases in Indian courts which mainly

20 objectives of Rajasthan Urban Land (Certification of titles) act 2016
includes the property litigations. With the discussion of the problem, it provides two solutions to it. Firstly, simplifying the documents and procedures to check the genuineness of the seller and the property in the form of a handbook. If buyer will be aware about certain documents and procedures involved in checking the status of the property, then it will safeguard them from getting into any scam or fraud and attracting any litigation to them. Secondly, application of a “Property title reform” in Haryana. If the Haryana Government introduces an act similar to Rajasthan Urban Land (Certification of titles) Act 2016 then it will eliminate the problem of litigation clogging from the ground level. It can be found to be a very effective way to eliminate such problem.

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