

Indian Institute of Management, Ahmedabad
Post Graduate Programme in Food and Agribusiness
Management (2023-25)
Course: Valuation of Land and Agribusiness

Land Registration: Presumptive vs Conclusive Title

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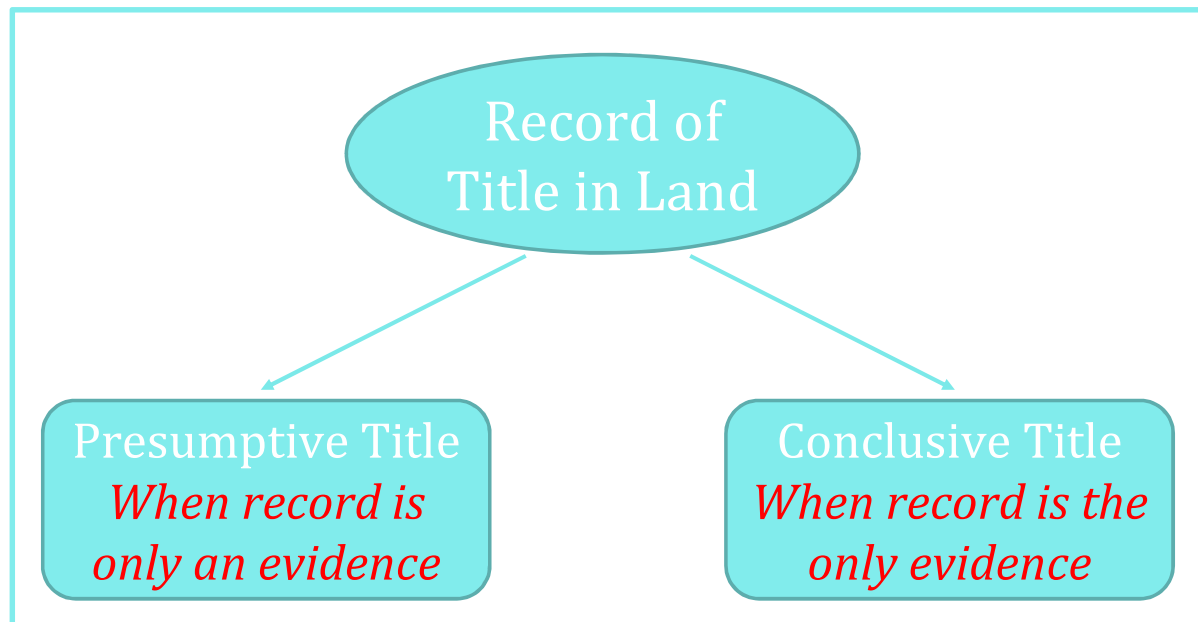
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26.11.2024

Overview of Presentation

- ❖ Basic Concepts of Land Rights and Registration
- ❖ Global Practices
- ❖ Registration System in India & Problems
- ❖ Is Conclusive Title a Solution?
- ❖ Improvements in Deed Registration System by Some Countries
- ❖ Possible Improvements in Indian System

Basic Concepts of Land Registration & Global Practices



Divisions of Land Administration Systems

Cadastre

- ❖ Started by Napoleon in Europe in 19th century
- ❖ Graphical description of land parcels through cadastral maps
- ❖ Rights are recorded against each land parcel

Land Register

- ❖ Started in Europe after industrialization
- ❖ Recording of rights in land and transactions
- ❖ Legal sanctity of recordings
- ❖ Graphical description with maps may or may not be there

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Land Register

Deed Registration System

- Parcel-wise records may not be maintained
- No investigation of legal validity of transaction
- Registration is an evidence of transaction but does not guarantee a good title
- No responsibility of registrar of legality of a registered deed.

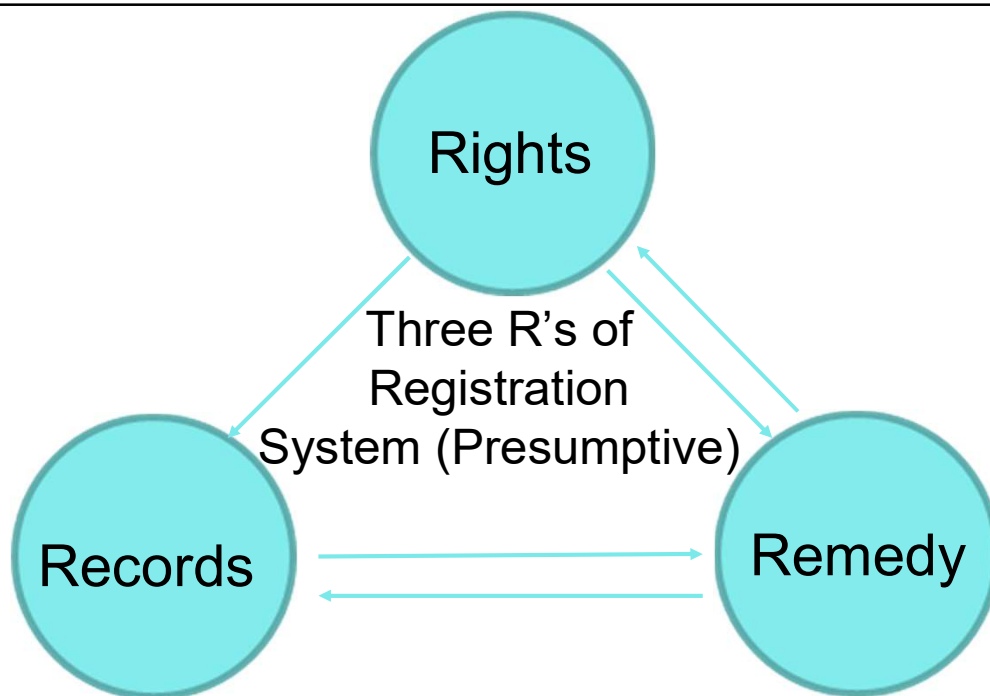
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Land Register

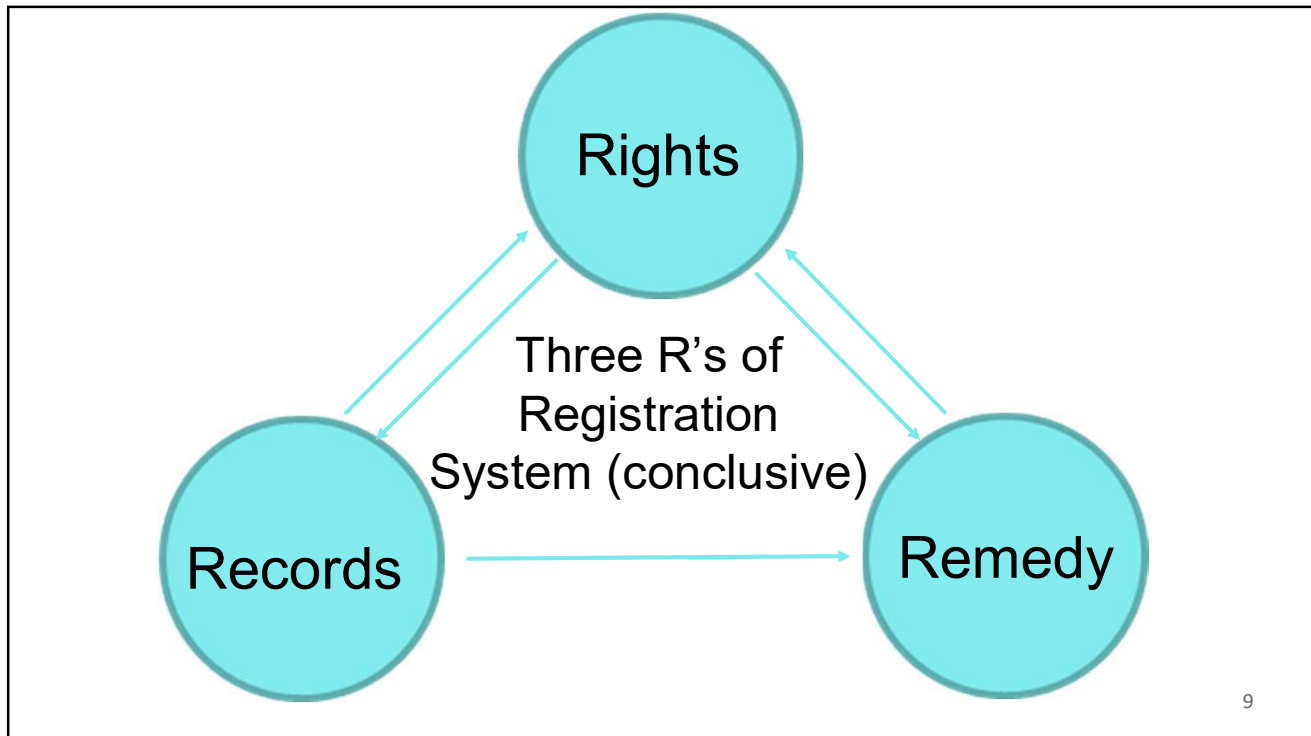
Conclusive Title System

- Parcel-wise record of rights is maintained
- Registration only after investigation of Legal validity
- Registration is conclusive proof of title
- Rights are determined based on Registration only
- State compensates for defects in land register

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Global Practices

- ❑ Almost equal following of both systems in the world
- ❑ Among top ten economies:
 - The USA, Japan, Italy, France, India, and Brazil- Deed Registration
 - Germany, the U.K., China – Title Registration
 - Canada- Both Systems are prevalent in different provinces

Registration System in India & Problems

Record of Rights- Cadastre

- Introduced by the British in 1822, to assess and collect land revenue
- Parcel-wise record of ownership and other rights.
- Maintained under Land Revenue Acts of States.
- Entries in the ROR are presumed to be true.
- A quasi-judicial process to update records

Deed Registration In India

- Introduced in India in India in 1793
- Registration Compulsory for most transactions
- Exemptions- Inheritance, family settlement, court decree, government grant etc.
- Purchaser Responsible for verification of title
- Granter-Grantee and Tract-wise Indexes
- No efforts to reform more than a century old Registration Act 1908

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Problems with Land Administration in India

- Two-third of cases in civil courts relate to land
- Large pendency of cases before revenue officers.
- Search of multiple records to ascertain title
- No Record of rights in most urban areas
- No way to know civil litigation relating to a land
- Complex process for registration & entry in ROR
- Digitization did not improve services to people

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Is Conclusive Title a Solution?

Is Conclusive Title a Solution?

Why ?

- ❖ Both systems support strong land markets
- ❖ No study showing that Conclusive Title System is a solution to all our land related problems
- ❖ Security of land titles can be enhanced in a deed registration system also by making appropriate modifications in law and procedures.

Is Conclusive Title a Solution?

How?

- ❖ Wide-ranging changes in the present legal principles.
- ❖ New legal rules may not be accepted by the civil courts as happened in the USA and England.
- ❖ Many laws will require amendments
- ❖ Will involve huge effort by governments. Since 2008 no state could implement it.

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Efforts to introduce Conclusive Title

- DoLR circulated Draft Land Titling Act 2012
- Land Titling- A Road Map 2014, Report of an Expert Committee of DoLR
- The Rajasthan Urban Land (Certification of Title) Ordinance, 2008
- Rajasthan Urban Land (Certification of Titles) Act, 2016

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Efforts to introduce Conclusive Title

- Decision to enact Land Title Act for Chandigarh UT
- Maharashtra Land Title Bill, 2019
- Model Land Titling Act 2019 by NITI Aayog
- The Andhra Pradesh Land Titling Act, 2022
- The Andhra Pradesh Land Titling Repeal Act, 2024

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Improvements in Deed Registration System by Some Countries

The USA

- ❖ Experiment with Title Registration failed
- ❖ Introduction of Title Insurance
- ❖ Enactment of Marketable Title Acts by many states to eliminate certain old interests in the property by putting a time limit on their continuation

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France

- ❖ Introduction of 'Real Estate File'
- ❖ Notary is responsible for ascertaining status of Title
- ❖ He can be sued for his negligence
- ❖ Damage claim against government for any incorrect information by registry

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The Netherlands

- ❖ Single agency for cadastre and registry
- ❖ Cadastre used as index for registry
- ❖ Registration mandatory for transfer of title
- ❖ Notary is responsible for ascertaining status of Title
- ❖ Registrar informs the parties any illegality in the transaction noticed by him. Parties may withdraw the deed or may go ahead with the registration.

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The Netherlands (cont.)

- ❖ Compensation to true owner suffering loss due to protection to good faith buyer.
- ❖ Legal protection to person buying property in good faith based on last registered deed.

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Possible Improvements in Indian System

Possible Improvements

Registration Act

- Remove all exemptions from registration
- Description of property on the basis of ROR
- Objection by Registrar in case of apparent illegality
- Compulsory registration of court decrees
- Compulsory registration of pending litigation
- Deed Registration on PPP Model.
- Implement Electronic Conveyancing

Possible Improvements

Cadastre/Record of Rights

- Creation of updated ROR for urban areas
- Integration of deed registry and ROR systems
- Incorporation of phone, email, current address, Aadhar in records.
- Easy access to ROR like bank accounts. Right to update information and enter mutations.
- Allow private surveyors to demarcate and make maps

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Possible Improvements

General

- Instead of copying a foreign model, make improvements in our system
- Digitization with Business Process Re-engineering
- Online Dispute Resolution
- Participation of private sector in Land-related services

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Thanks!

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