INTERPRETATION OF DEEDS, DOCUMENTS

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Duty of court while interpreting a documents/ agreements:

It is the duty of Court to interpret a document of contract as was understood between the parties. The terms of the contract have to be construed strictly without attending the nature of the contract as it may affect the interest of parties adversely (2005) 123 Companies Cases 663 (SC) *Polymat India Ltd. and others vs. National Insurance Co. Ltd.*

A document has to be read as a whole and the spirit of it should be taken note of and not to be carried away by the mere letters found therein. Anyone who tries to rely on mere wordings but without keeping in mind the object and spirit of the document would be considered as a person who has thrown the baby alongwith the bath water.

J. Chandrasekaran Vs. V.D. Kesavan (Madras High Court) AIR 2013 (NOC) 316 (Mad.)

Rule of interpretation of documents/ agreements:

First and foremost principle is that whenever a document is couched in a language which is clear and definite and no doubt arises in its application to the facts, there is no need to resort to the rules of interpretation. Rules of interpretation of deeds are intended to ascertain, to the extent possible, the exact meaning of a document which is not clear and definite.

Deeds, agreements and other documents were found necessary in civilized societies in order to specify the rights and obligations of each one of the parties in respec signed to regulate inter personal relationship under general laws. But with the increasing complexities of the Direct Tax Laws, taxes are imposed on an income when it is earned or at the end of the period when such income changes into wealth or even at a point when a part of such wealth is given to another person and ultimately at the point of time when such property passes on the

death of the property holder. Hence every deed defining the title to property or an agreement regulating contractual relationship between two persons comes up for the consideration of the income-tax authorities. As such, complications of taxation laws can at time affect adversely the parties, deeds, conveyances, agreements and other documents if the language of such writings is not checked carefully with tax provision laid down by law.

Prime purpose of interpretation of a document is to ascertain the intention of the parties manifested at the time when the document was executed.

To ascertain the intention of the parties, the document must be considered as a whole. It is from the whole of the document, coupled with the surrounding circumstances, that the general intention of the party or parties is to be ascertained. Attempt must be made to gather the intention of the parties from the exact words used in the deed.

When the words used in a deed are in their literal meaning unambiguous and when such meaning is not excluded from the context and is sensible with respect to the parties at the time of executing the deed, such literal meaning must be taken. Where, the words used in a deed, if taken in its literal sense lead to absurdity and inconsistency, then an interpretation to avoid that absurdity and inconsistency should be made.

It is also a settled principle that when the intention of the maker or makers of a deed cannot be given effect to in its full extent, effect is to be given to it as far as possible. Where the intentions are sufficiently clear from the deed itself, mis-recital in some part of the deed cannot vitiate it. Anything expressly mentioned in the deed excludes another view impliedly possible.

As far as possible, effect is to be given to all words used in a document. This is yet another important principle in the interpretation of deeds. A document should be construed in its entirety. Further, if possible, it should be construed so as to give effect to every word employed therein.

The court is not at liberty to discard a word, if some meaning can be ascribed to it. Normally, the words employed in a deed should be taken in its ordinary sense, unless there are indications to do otherwise. It is also an important rule that plain words should be given plain meaning.

The Supreme Court in **Sant Ram v. Rajinder Lal (AIR 1978 SC 1601)** enunciated certain principles regarding the interpretation of a lease deed. His Lordship V.R.Krishna Iyer, J., speaking for the three Judges bench, quoting with approval from " Lux Gentium Lex – Then and Now, 1799" held as follows:-

"Two rules must be remembered while interpreting deeds and statutes. The first one is:-

"in drafting it is not enough to gain a degree of precision which a person reading in good faith can understand, but it is necessary to attain if possible to a degree to precision which a person reading in bad faith cannot misunderstand."

The second one is more important for the Third World countries. Statutory construction, so long as law is at the service of life, cannot be divorced from the social setting……."

Apex Court in **Provash Chandra Dalui v. Biswanath Banerjee (1989 Supp (1) SCC 487)** laid down the following proposition:-

"'*Ex praecedentibus et consequentibus optima fit interpretatio*'. The best interpretation is made from the context. Every contract is to be construed with reference to its object and the whole of its terms. The whole context must be considered to ascertain the intention of the parties.

It is an accepted principle of construction that the sense and meaning of the parties in any particular part of instrument may be collected '*ex antecedentibus et consequentibus*;' every part of it may be brought into action in order to collect from the whole one uniform and consistent sense, if that is possible.

As Lord Davey said in **N. E. Railway Co. v. Hastings**:-

"……the deed must be read as a whole in order to ascertain the true meaning of its several clauses, and ……. the words of each clause should be so interpreted as to bring them into harmony with the other provisions of the deed if that interpretation does no violence to the meaning of which they are naturally susceptible……"

In construing a contract the court must look at the words used in the contract unless they are such that one may suspect that they do not convey the intention correctly. If the words are clear, there is very little the court can do about it. In the construction of a written instrument it is legitimate in order to ascertain the true meaning of the words used and if that be doubtful it is legitimate to have regard to the circumstances surrounding their creation and the subject matter to which it was designed and intended they should apply."

A DEED AND ITS CHARACTER :

A. A deed may be defined as a formal writing of a non-testamentary character which purports or operates to create, declare, confirm, assign, limit or extinguish some right, title or interest.

B. There is no need to make use of any particular form in the delivery of a deed. It is well settled; that the mere retention of a deed after its execution by the maker of the deed does not of itself impair the validity of the deed or prevent its operating at once. A policy, "signed, sealed and delivered" is complete and binding as against the party executing it, though in fact, it remains in his possession unless there is some particular act required to be done by the other party to declare his adoption of it; nor is it necessary that the assured should formally accept or take away a policy in order to make the delivery complete. The registration of a deed of sale constitutes sufficient delivery of the deed.

C. When parties have deliberately put their mutual engagements into writing, in language which imports a legal obligation, or, in other words, a complete contract, it is only reasonable to presume that they have introduced into the written instrument every material term and circumstances.

"Because he was neither minded nor intended to sign a document of that character or class, as, for instance, a release while intending to execute a lease. Such a deed is void. It is clear that nothing was said to mislead them as to the nature of the instrument they were executing. It is doubtful how far they understood the nature of the deeds, but it is in my opinion clear upon the evidence that they knew that the deeds dealt in some way with their houses. This contention therefore fails".

D. The authorities in support of the proposition are, but unless actual mis-statement of the character of the deed is made the deed is only voidable.

THE GOLDEN RULE OF INTERPRETATION OF DEEDS:

The golden rule of construction is to ascertain the intention of the parties to the instrument after considering all the words in their ordinary natural sense. *(AIR 1969 SC page 9 at page 11 & 12)*. Sometimes it happens that there is a conflict between what is said in one part of the document and in another part. In such a case an attempt should always be made to read the two parts of the document harmoniously, if possible. In such a case the second part of the document has to be held as void. *(AIR 1963 SC page 890 at page 893 & 894).*

An important rule to be remembered while interpreting rules and statutes is:

"In drafting it is not enough to gain a degree of precision which a person reading in good faith can understand, but it is necessary to attain if possible a degree of precision which a person reading in bad faith cannot misunderstand".

Further, in revenue cases, regard must be given to the substance of the transaction than to mere norm. On principle, the two legal position arising from a transaction alone determines the taxability of a receipt arising from a transaction *(Refer 87 ITR page 407).*

THE FUNDAMENTAL RULE OF CONSTRUCTION:

The fundamental rule is to ascertain the intention from the words used. The surrounding circumstances are to be considered but that is only for the purpose of finding out the intended meaning of the words which have actually been

employed *(AIR 1951 SC page 139).* However, while considering a contract it is legitimate to take into account the surrounding circumstances for ascertaining the intention of the party *(AIR 1969 SC page 9).*

THE RULE OF CONSTRUCTION OF DOCUMENT IN CASE OF AMBIGUITY

If there is ambiguity in the language employed, the intention may be ascertained from the content of the deed with such extrinsic evidence as may by law be permitted to be adduced to show in what manner the language of the deed was related to existing facts. The document has to be considered as a whole for interpretation of particular word or direction. *(AIR 1966 SC page 902 and AIR 1979 SC page 533 at page 561).*

It is well settled that legal relationship resulting from a transaction cannot be substituted by I.T. authorities by any of their notions about the substance of transaction. *(66 ITR page 692 SC).*

In the case reported in *73 ITR page 702* in the case of *Juggilal Kamalapath,* it has been held as under:

"It is true that from the juristic point of view the company is a legal personality, entirely distinct from its members and is capable of enjoying rights and being subjected to duties which are not the same as those enjoyed or borne by its members but in certain exceptional cases the court is entitled to lift the veil or corporate entity and to pay regard to the economic realities behind the legal facade".

In another judgment reported in *82 ITR page 540* the Hon'ble Supreme Court has held as follows:

"It is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. In a case of the present kind, a party who relies on a recital in a deed has to establish the truth of these recitals otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. It all that an assessee who wants to evade tax is to have some recitals, made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to

show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recital made in the documents".

THE RULE OF INTERPRETATION WHEN TWO ADMISSABLE CONSTRUCTIONS OF DOCUMENTS

It is a settled rule of interpretation that if there be admissible two constructions of a document, one of which will give effect to all the clauses therein while the other will render one or more of them nugatory, it is the former that should be adopted on the principle expressed in the maxim *ut res magis valeat quam pereat***.**

IN CASE OF CONFLICT BETWEEN EARLIER AND LATER CLAUSES OF DOCUMENT

If it is not possible to give effect all of them, the rule of construction is well established that it is the earlier clause that must override the later clauses and not vice versa *(AIR 1969 SC page 22).*

PROOF OF EXECUTION OF DOCUMENT :

When document is lost and even its copy is not available, in that case also, the evidence on ex-execution of document need to be given. Defence that original document itself was forged, it become necessary of party relying on the document to prove the execution of document. It is only after proof of execution, the party making allegation of forgery need to prove forgery.

Kashinath Yadeo Hiwarde V/s Osman Baig Sandu Baig. [AIR 2016 (NOC) 266 (BOM)]

THE SCOPE AND LEGAL EFFECT OF PROVISO AND EXCEPTION IN INTERPRETING DEEDS :

The technical rules of interpretation of provisos and exceptions, with reference to their scope and legal effect, adopted in constructing statutes should not ordinarily be imported in interpreting deeds and documents executed by laymen. In ordinary deeds, a proviso may sometimes be in the nature of an explanation of the main clause or provisions; and one must look not merely at the form of the

language but its substance, the governing idea or purpose of the deed, the context and the surrounding circumstances to father the real meaning or intention of the executant".

WHETHER NAME, RECITAL ETC OF DOCUMENT IS CONCLUSIVE :

Nomencclature of a document or deed is not conclusive of what it seeks to achieve ;the court has to consider all parts of it , and arrive at a finding in regard to its true effect.

Radials International v. ACIT (2014) 367 ITR 1/103 DTR 316(Delhi)(HC)

Recital meaning of – Normally, a recital is evidence as against the parties to the instrument and those claiming under then and in an action on the instrument itself the recitals operate as an estoppel though that would not be so on a collateral matter.

Ram Charan Das vs. Girja Nandini Devi, AIR 1966 SC page 323 at page 327

Expression "terms" meaning of - The expression "terms" used in a document would, according to Webster's New World Dictionary, mean "conditions of a contract, agreement, sale, etc. that limit or define its scope or action involved".

Ram Charan Das vs. Girja Nandini Devi, AIR 1966 SC page 323 at page 328

RECTIFICATION OF INSTRUMENT :

The Hon'ble Supreme Court has observed that Section 26 of the Specific Relief Act, 1963 provides for rectification of instruments, where through fraud or a mutual mistake of the parties, an instrument in writing does not express the real intention, then the parties may apply for rectification. However, such a relief cannot be granted by the court, unless it is specifically claimed. In Subhadra & Ors. V. Thankam, AIR 2010 SC 3031, the Court while deciding upon whether the agreement suffers from any ambiguity and whether rectification is needed, held that when the description of the entire property has been given and in the face of the matters being beyond ambiguity, the question of rectification in terms of Section 26 of the Act would, thus, not arise. The provisions of Section 26 of the Act would be attracted in limited cases only where the ingredients stated in the Section are satisfied. The relief of rectification can be claimed where it is through

fraud or a mutual mistake of the parties that real intention of the parties that real intention of the parties is not expressed in relation to an instrument. Thus, Section 26 of the Act has a limited application, and is applicable only where it is pleaded and proved that through fraud or mutual mistake of the parties, the real intention of the parties is not expressed in relation to an instrument. Such rectification is permissible only by the parties to the instrument and by none else.

Section 16 of the Contract Act provides that a Contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to obtain an unfair advantage over the other. If there are facts on the record to justify the inference of undue influence, the omission to make an allegation of undue influence specifically, is not fatal to the plaintiff being entitled to relief on that ground; all that the Court has to see is that there is no surprise to the defendant. In Hari Singh v. Kanhaiya Lal, AIR 1999 SC 3325, it was held that mere lack of details in the pleadings cannot be ground to reject a case for the reason that it can be supplemented through evidence by the parities. In State of Bihar & Ors. v. Radha Krishna Singh & Ors. AIR 1983 SC 684, the Court held that admissibility of a document is one thing and its probative value quite another – these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and weight of its probative value may be nil. The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little. Reiterating the above proposition in Madan Mohan Singh & Ors. v. Rajni Kant & Anr., AIR 2010 SC 2933, Court held that a document may be admissible, but as to whether the entry contained therein has any probative value may still be required to be examined in the facts and circumstances of a particular case.

Joseph John Peter Sandy v. Veronica Thomas Rajkumar and Anr. AIR 2013 SUPREME COURT 2028.

THE ESSENCE OF CONTRACT IN CASE OF SALE DEED :

Time being the essence for the sale deed to be executed has not to be confused with the time schedule under an agreement to sell, if before the execution of the

sale deed a time is stipulated for further payments to be made. The time fixed for further part sale consideration to be paid, is reflective of the intention of the parties that it was of the essence of the contract that by the agreed fixed date a further amount would be paid .

Syed Aijaj Hasan vs. Malik Mohammed Tahseen AIR 2014 Delhi 104

WILLS :

LEGAL POSITION IN MATTERS OF PROOF OF DOCUMENTS – WILLS :

The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved one must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of Evidence Act are relevant for this purpose. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, sections 59 and 63 of the Indian Succession Act are also relevant. The question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he put his signature to the will knowing what it contained? Stated broadly, it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would *prima facie* be true to say that the will has to be proved like any other document except as in the special requirements of attestation prescribed by section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

GENUINENESS OF WILL :

Whenever the execution of a will is denied, burden is always on the propounder to ward off all suspicious circumstances surrounding the will. Execution of Will one of attesting witnesses at least must be examined to prove genuineness of Will.

Chennappa Gowda and others v. N.C. Rajashekara and others. AIR 2016 (NOC) 622 (KAR).

ESSENTIAL OF WILL AND HOW TO DISTINGUISHES WILL FROM GIFT :

Will is an instrument whereunder a person makes a disposition of his properties to take effect after his death and which is in its own nature ambulatory and revocable during his lifetime. It has three essentials.

(1) It must be a legal declaration of the testator's intention; (2) That declaration must be with respect to his property; and (3) the desire of the testator that the said declaration should be effectuated after his death.

The essential quality of testamentary disposition is ambulatoriness of revocability during the executants lifetime. Such a document is dependent upon executants' death for its vigour and effect. In the case of a Will, the crucial circumstances is the existence of a provision disposing of or distributing the property of the testator to take effect on his death. On the other hand, in case of a gift, the provision becomes operative immediately and a transfer in praesenti is intended and comes into effect. A Will is, therefore, revocable because no interest is intended to pass during the lifetime of the owner of the property. In the case of gift, it come into operation immediately. The nomenclature given by the parties to the transaction in question is not decisive. A Will need not be necessarily registered. The mere registration of 'Will' will not render the document a settlement. In other words, the real and the only reliable test for the purpose of finding out whether the document constitutes a Will or a gift is to find out as to what exactly is the disposition which the document has made, whether it has transferred any interest in praesenti in favour of the settlees or it intended to transfer interest in favour of the settlees only on the death of the settlors.

In a composite document, which has the characteristics of a Will as well as a gift, it may be necessary to have that document registered otherwise that part of the document which has the effect of a gift cannot be given effect to. Therefore, it is not unusual to register a composite document which has the characteristics of a

gift as well as Will. Consequently, the mere registration of document cannot have any determining effect in arriving at a conclusion that it is not a Will. A 'Will' need not necessarily be registered. But the fact of registration of a 'Will' will not render the document a settlement.

Mathai Samuel & Ors. V. Eapen Eapen (Dead) by LRs. & Ors. AIR 2013 SUPREME COURT 532

WHAT IS EVIDENTARY VALUE OF UNREGISTERED PARTITION DEED – NOT STAMPED?

A Unregistered partition deed which is not properly stamped is not admissible in evidence under Ss. 17 and 49 of Registration Act. Document already held as inadmissible, seeking expert opinion to prove signature of executants, not necessary.

Amar Singh v. Bhojram Son of Hiraram adopted Son of Bhaiyalal

AIR 2014 (NOC) 167 (Chh.)

It was held that there is no provision of law requiring **FAMILY SETTLEMENTS** to be reduced to writing and registered, though when reduced to writing the question of registration may arise. Binding family arrangements dealing with immovable property worth more than rupees hundred can be made orally and when so made, no question of registration arises. If, however, it is reduced to the form of writing with the purpose that the terms should be evidenced by it, it required registration and without registration it is inadmissible; but the said family arrangement can be used as corroborative piece of evidence for showing or explaining the conduct of the parties.

Subraya M.N. v/s Vittala M.N. & ors (2016) 8 Supreme Court 705.

S. 49 : Capital gains – Previous owner – Cost of acquisition – Merely mentioning in sale deed that property was free from all encumbrances was not material and thus, was not a correct interpretation of the legal position :

The husband of the assessee inherited the property from his father by virtue of a will, who later transferred the same to the assessee. One of the sisters of the assessee's husband filed a suit against the will and ended up in a compromise with a share of 30 per cent in the property. While computing capital gains tax liability on sale of property by the assessee, she considered the 'sale

consideration' excluding the share of the sister-in-law. The AO and the CIT (A) observed that, the recital stated in the sale agreement stated that, the property was free from all encumbrances. Accordingly, they considered the sale consideration without excluding sister-in-law's share because when the property was inherited by assessee's husband from his father, there was no dispute and he had transferred the property free from all burden /encumbrances. On appeal, the Tribunal held that merely deciding the issue on the basis of recital in the sale deed that the property was free from all encumbrances was an incorrect legal interpretation of the legal position. Further, the assessee had stepped into the shoes of her husband for all intents and purposes. Thus, she could not have acquired a better title than her husband and the cost of acquisition of the property was required to be taken accordingly i.e 70 per cent share in the property. (AY. 2012-13)

Rama Vohra (Smt.) v. ITO (2017) 57 ITR 694 (Delhi) (Trib)

S. 4 : Income chargeable to tax - Diversion of income by overriding title - Acted only broker - For determination of taxable income, written agreement is not relevant, conduct of parties can be considered accordingly only income that has actually accrued to the assessee is taxable. [S. 5,145]

Dismissing the appeal of the revenue the Court held that ;The income that has actually accrued to the Respondent is taxable. What income has really occurred to be decided, not by reference to physical receipt of income, but by the receipt of income in reality. Given the fact that the Respondent had acted only as a broker and could not claim any ownership on the sum of Rs. 14,73,91,000/ - and that the receipt of money was only for the purpose of taking demand drafts for the payment of the differential interest payable by Indian Bank and that the Respondent had actually handed over the said money to the Bank itself, we have no hesitation in holding that the Respondent held the said amount in trust to be paid to the public sector units on behalf of the Indian Bank based on prior understanding reached with the bank at the time of sale of securities and, hence, the said sum of Rs. 14,73,91,000/ - cannot be termed as the income of the Respondent. In view of the above discussion, the decision rendered by the High Court requires no interference .

DCIT v. T. Jayachandran (2018) 165 DTR 176/302 CTR 95 (SC),
CIT v. HDFC Bank Ltd (2018) 165 DTR 176/302 CTR 95 (SC)
CIT v. State Bank of India (2018) 165 DTR 176/302 CTR 95 (SC)
CIT v. Indian Bank (2018) 165 DTR 176 /302 CTR 95 (SC)