Chapter VI

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE

102. Evidence of terms of contracts, grants and other disposition of property reduced to form of document.--When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant for other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.--When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.--Wills admitted to probate in Pakistan may be proved by the probate

Explanation 1 : This Article applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Explanation 2 : Where there are more originals than one, one original only need be proved.

Explanation 3 : The statement, in any document whatever, of a fact other than the facts referred to in this Article, shall not preclude the admission of oral evidence as to the same fact.

Illustrations

(a) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

(d) A contracts, in writing with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

Contents of document. Oral evidence.--Witness could not be made to depose regarding the contents of a document for the reason that evidence of a document is the document itself.[1]

Agreement of sale--Proof.--Original agreement of sale was stated to have been lost but alleged loss not proved. Secondary evidence to prove such agreement would not be admissible, especially when no attempt was made to produce stamp vendor to prove that stamp paper was really purchased for execution of sale agreement.[2]

Novation. Document. Proof of document.--Contract between the parties was in terms of letters which was finally concluded. Any change in the terms of the contract could only be made reciprocally by the parties. No novation of the contract had taken place and Courts below had wrongly decreed the suit of the plaintiff. Decree was modified accordingly.[3]

Photostat copy of document.--The photostat copy of document being admissible as secondary evidence under Article 102 of the Qanun-e-Shahadat Order, 1984 would not debar production of photostat of agreement, reduced into writing and the same could not be regarded as oral evidence of contents of document.[4]

Character of transaction.--Pre-emptor, subject to rules of relevance and admissibility laid down in the Qanun-e-Shahadat was not precluded from giving evidence of his choice to prove the true character of the alienation. Right of the plaintiff to give evidence of his choice to prove true nature of transaction was unrestricted as he was free to show that the form of the transaction did not represent its true in herself. Court was also free to remove the outer veil to discover true reality beneath it.[5]

Written agreement.--The terms and conditions of written rent agreement could not be modified by oral agreement between the parties. Tenant's plea that he had advanced a specified amount as advance rent but such payment had not been mentioned in rent agreement. Such claim contradicted and overrode terms of rent agreement wherein it was specifically stated that rent was payable in advance and was to be paid by a specified date of each month.[6]

103. Exclusion of evidence of oral agreement.--When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last Article, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives-in-interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms :

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1. 2005 YLR 463 (b).
2. 1987 MLD 1102.
3. 2005 YLR 2007.
4. 1987 MLD 868.
5. 1990 CLC 533.
6. 1990 MLD 2247.

Proviso (1) : Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso (2) : The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3) : The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4) : The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant, or disposition of property, may be proved, except in case in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5) : Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved :

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6) : Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations

(a) A policy of insurance is effected on goods "in ships from Karachi to London". The goods are shipped in a particular ship which is lost. The fact that a particular ship was orally excepted from the policy cannot be proved.

(b) A agrees absolutely in writing to pay B Rs. 1,000 on the first March, 1984. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(c) An estate called "the Khanpur estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a mis-

is related to existing facts. But where the terms of the document themselves requires explanation then evidence can be led within the restrictions laid down in this proviso.[1]

104. Exclusion of evidence against application of document to existing facts.--When language used in a document is plain in itself, and when it applied accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration

A sells to B, by deed, "my estate at Rangpur containing 100 bighas", A has an estate at Rangpur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

COMMENTS

Principle.--The words of a written instrument must be construed according to their natural meaning, and no amount of acting by the parties can alter or qualify words which are plain and unambiguous. No principle has ever been more universally or rigorously insisted upon than that written instruments, if they are plain and unambiguous, must be construed according to the plain and unambiguous language of the instruments themselves.[2]

Under this Article evidence to show that common words, whose meaning is plain, not appearing from the context to have been used in a peculiar sense, have been in fact so used, is not admissible.[3] Where the language in its ordinary sense properly applies to the facts without any difficulty, evidence to show that it bears a different meaning will be rejected, as it contradicts the document.

Where in a lease agreement with the Government, payment of interest on arrears of rent was stipulated but mode of payment was not stipulated, the Collector was not prevented by Section 94 from deciding the mode.[4] A promissory note was not allowed to be explained away as a deposit.[5]

Scope.--Articles 104 and 105 when read with the main rule of law laid down in Article 103 clearly suggest that proviso (6) to Article 103 comes into play only when there is a latent ambiguity in a document.[6] The reason for it is that a Court has to give effect to the intention which is expressed by the words used by the parties themselves. It is only when the words are ambiguous that extraneous evidence of circumstances may be looked into.[7]

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1. (1943) 19 Luck. 265.
2. AIR 1938 Nag. 604.
3. Stephen's Dig. Art. 91.
4. AIR 1996 Pat. 37.
5. 1996 AIHC 4488 Kant.
6. AIR 1954 Pat. 562 = 33 Pat. 638 (DB) + AIR 1959 Andh. Pra. 612.
7. AIR 1942 Nag. 115 (DB).

can be proved.[1] Thus, where a seller and a purchaser state that property never intended to be sold was intended by mistake in a sale-deed, it is open to the parties to show what was intended to be sold and purchased. What is sought to be rectified is not the sale-deed but the mistaken expression of the intention of the parties.[2] But where not the parties but the scribe of document after lapse of seven years stated that he had made a mistake in the document while describing boundaries of land. Such statement cannot discredit the document when other attesting witnesses of document did not support the scribe on that point.[3]

105. Evidence as to document unmeaning in reference to existing facts.--When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in peculiar sense.

Illustrations

A sells to B, by deed, "my house in Karachi".

A had no house in Karachi, but it appears that he had a house at Keamari, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house of Keamari.

COMMENTS

Articles 105, 106 and 107 deal with latent ambiguities. Articles 105 and 103 contain important exceptions to the general rule laid down in Article 102.

Principle.--Where the language of a document is plain in itself but is unmeaning in reference to existing facts evidence may be given to show that it was used in a peculiar sense. It is based upon the maxim *falsa demonstratio non nocet* (a false description does not vitiate the document). Article 107 is a part of the rule in this Article, and both the Articles must be read together.

The illustration to this Article shows that if A sells to B "my house in Karachi," and if A has no house in Karachi but has a house in Keamari of which B has been in possession since the execution of the deed, these facts may be proved to show that the deed related to the house in Keamari.

Scope.--Article 105 contains an important exception to the general rule laid down in Article 102.[4] Under this Article when the language, although plain in itself, is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.[5] Thus, where the surety bond having regard to the nature of the suit and circumstances in which the Court called upon the defendant to furnish security has

1. AIR 1930 Lah. 446 + AIR 1928 Nag. 4. (Sale).
2. AIR 1940 Lah. 236.
3. PLD 1984 Quetta 56 = NLR 1984 CLJ 168.
4. 30 Mad. 397 (DB) + AIR 1959 Andh. Pra. 612 + AIR 1954 Pat. 562 = 33 Pat. 638 (DB).
5. 1955 BLJR 93.

no meaning, it is permissible to look into the surrounding circumstances and the order of the Court pursuant to which the bond was executed, to properly construe its terms.[6]

Contradiction in deed.--Extrinsic evidence is admissible for explaining apparently conflicting statements in the body of a document and in Schedule thereto.[7] Where in case of a security bond there is no ambiguity in the terms but there is a contradiction in terms. Article 105 allows a reference to antecedent circumstances. Thus, where there is any doubt about the true construction of the Security Bond, the Bond must be considered in the light of the order directing the security to be given.[8]

Evidence of circumstances, negotiations, etc.--A case must be decided on a consideration of the contents of the document itself with such extrinsic evidence of surrounding circumstances as may be required to show in what manner the language of the document is related to existing facts.[9] Therefore where there is a document with a latent ambiguity, extrinsic evidence of user under it may be received to ascertain its meaning.[10] But extraneous evidence as to the negotiations which led up to the contract, or evidence showing what was the area of land within the specified boundaries is inadmissible in evidence.[11]

Identity of parties.--Parole evidence as to the identity of a party to a deed is admissible but in considering such evidence the *indicia* of identity afforded by the deed itself must be borne in mind.[12]

Description in more than one part of document.--Where in a grant the description of parcels is made up of more than one part and one part is true and the other false, then if the part which is true, describes the subject with sufficient accuracy, the untrue part will be rejected as *falsa demonstratio* and will not vitiate the grant. It is immaterial, in what part of the description the *falsa demonstratio* occurs.[13]

Conflict in different documents.--Where there is a conflict between the description of the property given in a compromise deed and the decree based upon it, and the measurement indicated, the former is to prevail.[14]

106. Evidence as to application of language which can apply to one only of several persons.--When the facts are such that the language used might have been meant to apply to any one, and would not have been meant to apply to more than one of several persons or things, evidence may be given, of facts which show which of those persons or things it was intended to apply to.

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6. AIR 1959 Mys. 165 = ILR 1958 Mys. 249.
7. AIR 1921 PC 40.
8. AIR 1965 Cal. 242 (DB) + AIR 1948 Mad. 302 + AIR 1934 Cal. 569 (DB) + AIR 1932 PC 131.
9. 22 All. 149 (PC).
10. AIR 1918 PC 280.
11. 41 Cal. 493 (PC).
12. AIR 1917 PC 152.
13. AIR 1918 PC 280 = AIR 1956 Pat. 349 (DB).
14. AIR 1958 Punj. 13.