

14. That in the interest of justice the claims of compensation and refund should be allowed and also the interest as stated here before

PRAYER

It is therefore, most respectfully prayed that this petition be kindly allowed, an amount of Rs_____and interest wherever due be declared payable to the complainant by the opposite parties and the Opposite parties be directed to pay the amount as aforesaid to the complainant within 30 days of the Hon'ble Forum

Complainant

Dated _____-

Note : An affidavit in suport to be annexed

* * * * *

IN THE HIGH COURT OF DELHI AT NEW DELHI
CONTEMPT PETITION NO. _____ OF 2017
IN
CIVIL WRIT NO. _____ OF _____ 2003

IN THE MATTER OF :

1. X _____ S/o _____
R/o _____, New Delhi
 2. Y _____ W/o _____
R/o _____, New Delhi
- PETITIONERS

Versus

1. Union of India through its Standing Counsel Delhi High Court, New Delhi.
2. Land & Acquisition Collector Delhi Administration, Delhi.
3. Delhi Development Authority, through its Vice Chairman, New Delhi
4. Shri _____, Asstt. Director Task Force, DDA, New Delhi ...RESPONDENTS

Contempt Petition Under Sections 11, 12 of the Contempt of Courts Act, 1971

RESPECTFULLY SHOWETH :

1. That the President Residents Welfare Association, _____ New Delhi filed Civil writ Petition No. 2420/2003 in the High Court of Delhi at New Delhi. The respondents in the said petition were the Union of India, Land Acquisition Collector and the DDA. The said petition is still pending and awaiting final disposal.

1. That the Hon'ble court on 1.10.2003 issued notice to the respondents and granted status quo thereby restraining the respondents including D.D.A. from demolishing the construction raised in the impugned area. The said area included plot No. 1, 2, 3, 4, 21, 22, 35 and 36 belonging to petitioners named above. The above plot were in Khasra No. 78/21/2. The copy of the orders for grant of status quo are annexed herein as Annexures A-1, A-2, A-3, After the issue of Rule on 10.1.2005 (the said order is Annexure A-2) the petition has not come up for hearing.

2. That the petitioners herein the contempt petition have also annexed the site plan. The same is Annexure A-4. The Plot area belonging to the petitioners is marked. Red.

3. The respondent D.D.A. had been conducting demolition in the said area in December/1998 and January, 1999 and since the petitioners apprehended that their property might also be demolished and therefore, approached the D.D.A. several times and made them aware of the court orders and specially the orders for grant of status quo. A written representation dated 3.12.98 was also routed through the Residents Welfare Association, Vijay Nagar, Phase-I, Delhi to Deputy Director, Land, D.D.A., Delhi.

Annex. A-5 : The copy of the same is annexed as Annexure A-5 alongwith its English Translation. However, despite making the D.D.A. aware of the above/orders of grant of status quo in the Writ Petition (Civil) 2420/2003 the D.D.A. officials namely _____ alongwith Shri _____, came to the site on 4.1.99 at 3.45 P.M. and demolished the construction raised on plot No. 1, Block 'L', Plot No. 2, Block'L', Plot No. 3, Plot No. 4, Plot No. 21, Plot No. 22, Plot No. 35 and 36 belonging to petitioners.

4. That as a result of demolition the petitioners have suffered loss al all the plots had the constructions on it. The details of constructions and the damage incurred is given herein below :

5. That it will not be out of place to mention that the respondent D.D.A. had earlier in the years 2001 and 2002 demolished the construction in the area for which status quo was granted but after the petitioners apprised them of the Court orders they got constructed the building demolished by them at their expense.

5. That the petitioners herein annex as Annexure A-6, the photo graphs of the place where their building situates and have been demolished by the respondent D.D.A.

6. That as detailed above, the petitioners being the owners of plot in Khasra No. 78/21/2 who had been given status quo orders by the Hon'ble Court in Civil Writ Petition 2420/2003 titled Resident Welfare Association v. Union of India and others had every right not to get the construction demolished from the D.D.A. The said status quo is still continuing by virtue of order dated 10.1.2003 of Justice _____ and Justice _____. By not complying with the said status quo orders of the Hon'ble Court, the respondent D.D.A. has committed the contempt of court, It is worthwhile to mentiion that the following officers are the Contemnners as they were conducting the demolition. They are Shri _____ respondent no.____, Shri _____respondent no._____ and Shri _____, respondent no. _____.

7. The cause of action in the present petition arose when the respondent D.D.A. and specially its officers respondents no. 5, 6, 7, herein were apprised of the status quo orders in Civil Writ Petition 2420/2003 (C.M. No. 3592/2003) and the concerned officers refused to comply with the orders of the court. The cause of action is still continuing as the demolition had already been done on 4.1.2003.

It is therefore most respectfully prayed that the Hon'ble Court may be pL eased to initiate contempt proceedings against the above named contemnners. It is further prayed that the Hon'ble Court may be pL eased to pass such further orders/directions as it may deem fit and proper.

Dated _____

Petitioner
Through Advocate

[**Note:** The petition must be supported by an affidavit].

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE/ CHIEF METROPOLITAN
MAGISTRATE**

COMPLAINT NO.OF 2017
U/S 12 OF DOMESTIC VIOLENCE ACT
P/S

IN THE MATTER OF :-

Smt. X W/o Late Sh. Y
Complainant R/o.....

Versus

Sh. Z S/o
Respondent R/o

**COMPLAINT UNDER SECTION 12 OF THE PROTECTION OF WOMEN FROM
DOMESTIC VIOLENCE ACT, 2005**

Sir,

It is most respectfully submitted as under:-

1. That the Respondent is the father- in- law of the Complainant who is harassing and torturing the Petitioner by illegal act of violence in order to throw her out of the matrimonial home.
2. That the Petitioner was married to Late Sh. Y onas per Hindu rites and ceremonies and thereafter started living in the matrimonial home as a joint family along with the Respondent and that out of the wedlock following two children were born who are in the care and custody of the complainant. The husband of the complainant died ondue to illness

S.No.	Name of Children	Relation	Age	Status
1	Master A	Son	8	Studying in class IV
2	Baby B	Daughter	5	Studying in class I

3. That before his death Sh. Y engaged in the manufacturing and trading of Auto parts and was having factory at rented accommodation atand was running as sole proprietor by the name and style of M/s..... and was also running a shop on ground floor.
4. That after the death of the husband of the Complainant on ...the Respondent has misappropriated the machines, tools raw materials etc. lying in the factory of the

husband of the complainant and has also trespassed into the shop, belonging to husband of the complainant.

5. That the shop of the husband and Complainant has been taken over by the Respondent who doesn't allow the complainant to enter the same and to run the same.
6. That the Respondent is economically harassing the complainant as he has taken over the shop and doesn't pay any amount to the complainant who has no money and has no earnings at all and is dependent upon the shop of her husband for maintenance
7. That not only this, the Respondent maltreats the complainant in one way or the other and abuses her in filthy language and want her to vacate the second floor of the property so that they may trespass in to the same.
8. That the Respondent threatens the Complainant with the dire consequences on not vacating the second floor of the property.
9. That hence Complainant is left with no other alternative but to file the instant complaint under Section 12 of Protection of Women from Domestic Violence Act as complainant.
10. That the complainant has domestic relationship with the Respondent as Respondent was living with the complainant before the death of her husband.
11. That the deeds and misdeeds of the Respondent are affecting the health and safety of the complainant as well as her two children as after the death of her, the Respondent wants the children to stop going to the school and be sent to an orphanage.
12. That the complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 is being filed as such by the aggrieved person.
13. That it is prayed that the Hon'ble court may take cognizance of the complaint and pass all/ any of the orders, as deemed necessary in the circumstances of the case.
14. Orders prayed for are:
 - I. Protection Order under Section 18 directing Respondent to stay away from Complainant and not to interfere in her possession of the ground floor, second floor of the property in any manner whatsoever
 - II. Residence Order under Section 19 directing the Respondent to restrain from dispossessing the Complainant from the second and the third floor of property no. (specifically shown in red in site plan enclosed) and to restraint from interfering in the possession of the Complainant on the ground floor of the property including the shop in property no.
 - III. Monetary Relief under Section 20 directing the Respondent to pay the following expenses as monetary relief
 - a. Food, clothes, medications and other basic necessities- Rs 15000 p.m.
 - b. School fees and related expenses – Rs 10000 p.m.

amounting to total of Rs 25,000 p.m.

- IV. Compensation under Section 22 for causing mental agony and physical suffering by the complainant as deemed fit by this Hon'ble Court.

PRAYER

It is, therefore, most respectfully, prayed that this Hon'ble Court be pleased to grant the relief(s) claimed herein and pass such orders as this Hon'ble Court may deem fit and proper under the given facts and circumstances of the case for protecting the Complainant from domestic violence.

Complainant

Through

Advocate

VERIFICATION

Verified at Delhi on this day ofthat the contents of the paras 1 to of the above complaint are true and correct to my knowledge and nothing material has been concealed there from .

Complainant

- *To be accompanied by an affidavit*

WRITTEN ARGUMENTS IN THE EXTRADITION MATTER

IN THE COURT OF _____, ACMM, PATIALA HOUSE COURTS,
NEW DELHI

UNION OF INDIA

VS.

NEXT DATE OF HEARING – _____

WRITTEN ARGUMENTS

MOST RESPECTFULLY SHOWETH:

1. That in pursuance of order dated 22.04.2010 of Ministry of External Affairs above mentioned enquiry, in respect of request for Extradition by the Govt. of United States of America, has been initiated on the ground that the applicants are wanted in America for prosecution in respect of certain offences.

2. That it is a matter of record, which fact has also been taken note of by the Hon'ble Delhi Court in its judgment dated 21.12.2012, delivered in the matter pertaining to some legal issue involved in the matter, that the applicants are already facing trial in separate cases, registered against them, in India itself. The relevant paras no.5, 6 & 7 of the said judgment are reproduced in this regard as under:-

“5. At this juncture, it would be relevant to point out that earlier, on 19.04.2005, on the basis of information received from US Drug Enforcement Authority, joint raids were conducted by the Narcotics Control Bureau and cases were initiated against the petitioners and on the said date, the petitioners in WP (CrI) 1530 and 1531 were arrested. Three separate cases were registered against the petitioners. One case was registered in Delhi, another in Jaipur (Rajasthan) and the third one in Agra (U.P.). In Delhi, it was Case No.52/2005 under Sections 21, 22, 23 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as ‘the NDPS Act’). That case is pending before the learned Additional Sessions Judge, New Delhi. In that case, Mr X is the accused.

6. In Jaipur, Case No.34/2005 was registered under Sections 8(c), 22, 23 and 29 of the NDPS Act against X, Y and Z. In that case, the Sessions Court at Jaipur acquitted all the three accused by virtue of a judgment and / or order dated 28.08.2015 and consequently, the three accused were released from jail on 28.08.2015 after having spent more than four years in custody. The State, however, did not accept the decision of the Sessions Court and preferred an appeal before the High Court of Rajasthan, Jaipur Bench which is pending.

7. Insofar as the Agra case is concerned, it was registered as Case No.8/5/DZU/2005 under Sections 21, 22 and 23 of the NDPS Act in which Mr X is an accused. That case is still pending before the Sessions Court in Agra (U.P.). Mr A was also sought to be accused in the Agra case, but his remand was declined by the Sessions Court by an order dated 20.04.2005

and he was discharged on the ground of lack of evidence against him. As such, there is no case pending against A in India insofar as the aforesaid offences are concerned.”

It is respectfully submitted that it is a matter of record and admitted by the Union of India that the offences, for which the applicants are facing trial in this case, are different from the offences for which extradition is being sought by the USA Government in order to prosecute them there.

3. That in view of section 31(1) (d) of the Extradition Act, 1962 there is a restriction on extradition / returned of the alleged fugitive criminal to the foreign state / USA herein. The said provision of the Act is reproduced as under for ready reference:-

“(d) If he has been accused of some offence in India, not being the offence for which his surrender or return is sought, or is undergoing sentence under any conviction in India until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise;”

It is respectfully submitted that applicants have been acquitted in the aforementioned case registered in Jaipur and leave to appeal by the NCB is pending before the Rajasthan High Court. Other said case in Agra is still pending trial.

4. That, therefore, bar of section 31(1)(d) for extradition of the applicants is fully applicable in the present case.

5. That it is further respectfully submitted that the offences for which extradition of the applicants is being sought are not made out against them, since they have been falsely implicated in the matter. Moreover, they appear to be politically motivated, which fact the applicants would substantiate before this Hon'ble Court during the course of enquiry proceedings.

6. That the applicants are permanent residents of Rajasthan and as such there are no chances of their absconding or flee from justice, more particularly when they have roots in society and have other family members in this Country.

7. That it would not be out of context to mention here that the Hon'ble Delhi High Court had stayed their arrest during the pendency of the aforementioned Writ Petition, which liberty the applicants never misused. Therefore, this also shows that the applicants are not likely to abscond.

PRAYER:-

In view of foregoing, it is most respectfully prayed that extradition of the above named applicants by the requesting state may kindly be denied and the fugitives may kindly be discharged from the matter.

New Delhi

Dated:

Applicants
(X, Y and Z)

Through
Counsel

PART B : CONVEYANCING

Definition of Conveyancing

The art of 'conveyancing' is of English origin. The word 'to convey' means to transfer or to make over. The word conveyancing means an instrument or deed through which one or more living person transfer his or their interest in present or in future in or upon an immovable property to one or more living persons. In other words conveyance means an act by which property is conveyed or voluntarily transferred from one person to another by means of a written instrument and other formalities. Section 2(10) of the Indian Stamp Act, 1899 defines the term 'conveyance' as:

Conveyance includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I.

History of Conveyancing

In ancient times, in England the deed writing was optional continued to remain optional until the time of King Charles II, particularly the case in which the deed was required not to be under seal. Writing was required only in the great matter of importance. It was only during the reign of King Charles II that the British Parliament enacted in 1677 a legislation requiring writing for creation and transfer of the interest in landed property with an exception in case of lease for less than three year. The Real Property Act of 1845 required all grants of landed interest to be made by writing which came to be known as 'conveyancing'. The present form of conveyancing is based on the Conveyance of Land Act of 1845 and the Law of Property Act of 1925.

In India the forms of conveyancing are based on the present English forms. No legislation in India has ever been passed on the law of conveyancing. Conveyancing in India is not unknown as the word, '*Qabuliyatnama*', '*Jagirdar*', '*Muafidar*' and '*Charpatra*', etc., are occurring from ancient days in the Indian literatures. Thus, as in England and so in India, too, there are two types of Deeds, viz., 'Deed Poll' and 'Indenture'. *Charpatra* (Redemption of rent), *Jagir* grants, *Quabuliyats*, etc, were all the seal of the grantor. The Deed Poll is a document which is executed unilaterally in the first person while an indenture is bilateral or multilateral deed. Bonds, Power of Attorney and Wills are 'Deed Polls'. Mortgages, sales and gifts can also be unilateral and so these are 'Deed Polls', while a deed of Lease is a bilateral document to be executed by the Lessor and Lessee both and so it is an 'Indenture'.

The Position of Drafting in India

The condition of drafting of conveyancing in mofussil India is deplorable. It is only in the then Presidency Towns (metropolitan cities) of Bombay, Calcutta and Madras the work of drafting of the conveyancing remained in the hand of solicitors and barristers well trained in

the field of drafting on the lines of English conveyancing and it still continues on the same pattern and is satisfactory. But in the Mofussil Towns the task of drafting of conveyancing remained and continues to remain in the hands of 'deed writers', 'scribes' or 'scribers' who have no legal knowledge but have adopted the profession of deed writing. So, the deeds in Mofussils generally and commonly suffer from so many defects and sometimes these defects become incurable.

Deed

In a broad sense the 'deed' means something done or performed which is synonymous with 'act'. In legal sense, deed means a solemn act denoting document, and it may be defined as an instrument written on parchment or on a paper executed, signed, sealed and delivered by the executant. A document or an instrument through which a present or future interest in an immovable property is transferred by one or more living persons to another living person or persons is called deed. It is called a deed because it is considered the most solemn and authentic act that a person can possibly perform in relation to his property. Statements made in deeds may amount to admission and may operate as estoppel in certain circumstances.

In Halsbury's Law of England, a deed has been defined as an instrument written on parchment or paper expressing the intention of some persons named therein who make assurance of some interest in property, or of some legal or equitable right, title or claim, or undertake or enter into some obligation, duty or agreement enforceable at law or in equity, or to do some other act affecting the legal relation or position of a party to the instrument.

Historically, in England, deeds were classified into (a) Deed Poll, and (b) indenture deed.

Deed Poll

As the old practice in England was to indent or cut a document which indicated towards executant of the deed; and when deed was polled or cut at the top or at the bottom it was known as 'Deed Poll'. It was called Deed Poll or single deed because it was executed by one party only. A bond, a power of attorney, and a will are the best examples of Deed Poll. It is an executed contract of conveyance made by the grantor alone.

Indenture Deed

Under the old practice of drafting of deed in England, the mark of cut or indent indicated towards the executant of the deed. A deed is technically called an 'indenture' or 'deed indented', because the old-practice in England was to cut or intend for the purpose of tally. The old practice was to write two copies of the deed upon the same piece of parchment or substance with some words or terms or letter of alphabet were so written that when one copy was separated from the other, the substance or the parchment was so cut or indented so as to leave half of the word or letter in one copy and the other half in another copy, so as to fit or aptly join its counterpart from which it was supposed to have been cut, indented or separated.

This practice of indenting of deeds is no more in England and at present indenture means a deed between two or more parties importing the meaning of executed contract of conveyance made under seal. A deed of Lease, a mortgage deed and a partnership deed were the best example of indenture deed according to old practice in England.

Distinguish between Deed Poll and Indenture Deed

1. Deed Poll and Indenture both are executed contract and are always in writing.
2. Both are deeds of conveyance and muniment of record of title, and used as documentary evidence if needed.
3. Deed Poll or single deed is a unilateral document executed by one party only, while Indenture deed is bilateral or multilateral document executed by two or more than two parties.
4. A Deed Poll is generally written in the first person while an Indenture deed is always written in the third person. In other words, in a Deed Poll, the grants and the covenants of the grantor are in the first person, while in an Indenture, grant and covenants are in the third person.
5. A Deed Poll may be commenced with the expression, 'Know All Men By These Presents' or 'To whomsoever it May Concern' or straightway 'I, so and so, Send These Greeting or Presents', while in an Indenture deed, the opening words are – 'This Indenture of.....' or 'This Deed of.....' or 'This Instrument of.....' etc.
6. Historically, in England, the difference between a Deed Poll and an Indenture deed was an interesting one, but at present there is no such difference and both are indiscriminately used for each other. The difference is only for phraseology but of no practical importance.
7. The old concept of difference between the Deed Poll and an Indenture as, historically, was maintained in England had never found place in India. It is because an indenture relating to real property in England was required to be made under seal which never was a requirement in India.

Document

Documents means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means intended to be used, or which may be used, for the purpose of recording that matter (sec. 3, Indian Evidence Act 1872).

Documentary evidence is an important piece of evidence of which the Court, Jury and Tribunal take judicial cognizance.

Deed, Conveyance and Deed of Conveyance

The term 'Deed', 'Conveyance' and 'Deed of Conveyance' or 'Conveyancing' are frequently used interchangeably to denote one and the same legal concept, and each is being commonly understood to mean an instrument in writing whereby the grantor conveys to the grantee some right, title or interest in or upon some real property. Thus, by the aforesaid expressions, we mean each of them as document, indenture or instrument in writing. So, the terms, 'conveyance', 'conveyancing', 'deed of conveyance' or 'conveyancing', 'deed', 'document', 'indenture' and 'instrument' are interchangeable for the purpose of drafting of documents.

Object and Function of Conveyancing

Movable property may be physically given and taken by actual delivery, while this is not possible in case of property in case of immovable properties. Thus, conveyancing is that branch of the law of transfer of property which deals with the mode and form of transfer to which both- the transferor and the transferee have agreed upon. Its main object is to enable the owners of real property to make voluntary transfers of their right, title and interest therein for some specific purpose and for a specified period. Such transfers are not otherwise possible than by conveyancing.

It incorporates the expressions of the intention of the parties to the deed of conveyance so that accordingly it shall take effect. In case of any doubt, dispute, ambiguity and susceptibility, the real intention of the parties may be discovered from the words, phrases and the expression used in the deed. A transferor may have passed the property intending to pass; but if he has not expressed himself in suitable words of the language, the deed may be defective or susceptible of two or more constructions; and so the benefits of the transfer may be lost to the transferee. Secondly, where any adverse claimant interposes before the transferee, may get actual legal possession of the transferred property, it may be quite possible that the transferor with all his willingness may not be able to help the transferee.

It helps the Court and judicial tribunals to determine any dispute if subsequently arises between the parties to the deed. It serves the purpose of both- the transferor and the transferee in protecting their interests. It protects the interests of the transferee from any precedent and /or subsequent acts or omissions of the transferor or any other person claiming through or under him against the expressed intention of the grant and the covenant of the deed; and likewise, the interest of the transferor is also protected from any subsequent acts or omissions of the transferee. It is a document of title to the property and forms the basis of a record of rights maintained by the Government. It is, also, a documentary piece of evidence.

COMPONENTS OF DEEDS

Drafting of a deed involves the law by which parties are governed, effect of the transaction and certainty and clarity by using appropriate words and expressions. An ordinary deed of transfer may conveniently be divided into the following parts: Description of the deed; Date; Parties; Recitals; Testatum; Consideration; Receipt; Operative words; Parcels; Exception and Reservations (if any); Habendum; Covenants (if any); Testimonium. The part of the deed which precedes the habendum is termed "the premises". Each of these parts will now be separately considered.

A) DESCRIPTION/NAME/TITLE OF THE DEED

All deeds should be described by the name of the transaction which they evidence, such as "THIS DEED OF MORTGAGE", "THIS DEED OF SALE", "THIS LEASE", "THIS DEED OF GIFT", etc. When the deed is of a complex character and evidences different transactions known by different legal names, or the conveyancer is not sure what name should properly be given to it, it would be best to describe it simply as "THIS DEED". The description is usually written in capitals.

B) DATE AND PLACE

After the description of the deed is stated, the date on which it is executed, thus:

"THIS LEASE made on the first day of February one thousand nine hundred and ninety nine."

The date of a deed is the date on which it is signed by the party or parties executing it. When there is only one party to a deed, as in the case of Deed Poll, or when all the parties sign it on one and the same date, or when, though there are several parties to a deed, all do not sign and those who sign do so on one date, there is no difficulty. But if several parties to a deed sign it on different dates, the question is which date should be entered as the date of deed. The practice is to regard the last of such dates as the date of the deed.

The date should, in order to avoid mistake and risk of forgery, be written in words and not in figures. Figures may be added within parenthesis.

In every case in which a deed is executed by more than one person, the date on which each signs the deed must be shown in the deed, preferably against his signature.

The place where the deed is executed must be specified very clearly and generally at the start of document.

C) PARTIES TO THE DEED

1. Transferee

After the date, the names and description of the parties to the deed are mentioned. Who are the necessary and proper parties to a deed depends on the circumstances of each case. Although a transferee is not a necessary party, and a deed will not be invalid or ineffective if he is not mentioned as such, except in the case of a Lease, he is certainly a proper party. It is always advisable to make him a party.

2 Third person

Sometimes it is necessary or expedient, in order to validate a transfer or to give a complete title to the transferee, or to avoid possible disputes or doubts in that regard, to obtain the consent or concurrence of a third person. In such cases, such third person may also be joined as parties.

3. Description

Full description of the parties so as to prevent difficulty of identification should follow the name. In India, parentage, occupation and residence including Municipal or survey number, street and city and in the case of resident of a rural area the village, sub-division, tehsil and/or development block are generally regarded as sufficient to identify a man, but if there is any other description which is sufficient, the same may be normally adopted. Where the transferor is as member of a scheduled caste or scheduled tribe for whose protection the statute places restrictions on his right to transfer it may be necessary to mention such caste or tribe while reciting the fact of permission for the transfer having been obtained from the competent authority.

4. Juridical Person

A party to a transfer need not be a living individual but may be a company, or association or body of individuals or an idol or a corporation sole or aggregate, or in fact, any juridical person capable of holding property and entering into contracts.

5. Idol

As an idol has to act through some natural person, the name of the latter should be disclosed.

6. Reference Labels of Parties

In order to avoid the repetition of the full name and description at every place, the parties are generally referred to in the body of the deed by some easy and convenient names which generally have reference to the character in which they join the deed, such as 'the vendor', 'the purchaser', 'the lessor', 'the lessee', In order to avoid mistakes in writing words resembling each other for opposite parties, e.g., a combination of 'mortgagor' and 'mortgagee' or 'vendor' and 'vendee', they prefer to use a combination of 'borrower' and 'mortgagee', or 'vendor' and 'purchaser'. If no such name is adopted, the parties can be referred to as 'the party of the first part' (or 'the first party'), 'the party of the second part' (or 'the second party'), 'the said AB', 'the said CD', but it is always preferable to give each party some short name for reference. Whatever short name is adopted the party should be referred to throughout by the same name.

The form, in which the parties will be described in the beginning of the deed, would thus be as follows:

"This SALE DEED is made on the _____ day of _____ BETWEEN AB, etc. (hereinafter called 'the Vendor') of the one part and CD, etc., (hereinafter called 'the Purchaser'), of the other part."

If the transferor along is made a party, this clause will run as follows:

“The SALE DEED is made on the _____day of _____by AB etc., (hereinafter called ‘the Vendor’)”.

If there are more than two parties, instead of the words “of the one part” and “of the other part” the words “ of the first part”, “of the second part”, “of the third part”, etc., should be used.

D) RECITALS

Recitals are of two kinds: (1) Narrative Recitals, relates to the past history of the property transferred and set out facts and instruments necessary to show the title and the relation of the parties to the subject-matter of the deed; and (2) Introductory Recitals, which explain the motive for the preparation and execution of the deed.

Form of Recitals

Recitals generally begin with the word ‘WHEREAS’, but, when there are several recitals, one can either repeat the word before every one of them, by beginning the second and subsequent ones with the words ‘AND WHEREAS’, or divide the recitals into numbered paragraphs with the word ‘WHEREAS’ at the top.

E) Testatum

The next part of a deed consists of the operative part. It commences with a witnessing clause termed the ‘testatum’, which refers to the introductory recitals of the agreement (if any) and also states the consideration (if any) and recites acknowledgement of its receipt. The witnessing clause usually begins with the words ‘NOW THIS DEED WITNESSES’. These words of testatum are of no importance as affecting the operation of the deed and their sole use is to direct attention to the object which the deed is intended to serve several objects, use the words ‘as follows’ after the testatum, thus:

‘NOW THIS DEED WITNESSES AS FOLLOWS:’

F) CONSIDERATION

As contracts are necessarily for consideration (Sec. 10 of the Contract Act), it is advisable to express the consideration. This is necessary in many cases of transfer for ascertaining the stamp duty payable on the deed as Sec. 27 of the Indian Stamp Act requires that the consideration should be fully and truly set forth in the deed. The penalty for omission to comply with this requirements is a fine which may extend to RS. 5,000 (vide Sec. 64).

G) RECEIPT

Acknowledgment of receipt of consideration may be embodied in the deed itself instead of passing a separate receipt. Thus:

“NOW THIS DEED WITNESSES THAT in pursuance of the aforesaid agreement and in consideration of Rs. _____paid by the purchases to the vendor before the execution hereof, the receipt of which the vendor hereby acknowledges”.

H) OPERATIVE WORDS

Then follow the real operative words which vary according to the nature of the estate and of the transaction.

I) PARCELS

This is a technical expression meaning description of the property transferred and it follows the operative words. Care must be taken, on the one hand, to include in the particular description or in general words, all the lands, etc., which are intended to pass so that no doubt may arise as to the extent and operation of the deed; and on the other hand not insert words which will pass more than what is intended.

Map: Sometimes it is necessary to have a map or a plan of the property in order to avoid mistake about its identity and to indicate the actual property conveyed with greater definiteness and precision. A map referred to in a transfer deed is treated as incorporated in the deed, and if it is drawn to scale and demarcates the boundaries clearly it is not permissible to attempt to correct them with reference to revenue records.

Great care should be taken in describing the property, as a slight mistake or omission may cause immense loss to a party and if the property is described both in the body and the schedule, a conflict between the two should be carefully avoided.

J) EXCEPTIONS AND RESERVATIONS

All exceptions and reservations out of the property transferred should follow the parcels.

An exception is something in existence at the date of transfer which, if not expressly excepted, would pass with the property as described in the parcels, such as trees.

A reservations is something not in existence at the date of the transfer but is newly created by the grant, e.g. when the vendor reserves a right of way over the property. But since both 'excepting and reserving' are used in practice it is immaterial whether what follows is an exception or a reservation.

K) HABENDUM

This is familiar 'to have and to hold' (in Latin, *habendum et tenendum*) clause of the English precedents. In India such phrases as 'to have and hold' or such expressions as 'to the use of the purchaser' are not strictly necessary but there is no harm in continuing the established practice.

L) COVENANTS AND UNDERTAKINGS

If the parties to a transfer enter into covenants, such covenants should be entered after the Habendum. While drafting covenants, regard should be had to the statutorily implied covenants which operate subject to any contract to the contrary. Where several covenants follow each other, they may run on as one sentence, each being introduced with the words 'and also' or by the words 'First', 'Secondly', etc. or they may be set out in paragraph form with the heading.

‘THE VENDOR HEREBY COVENANTS WITH THE PURCHASER AS FOLLOWS:’

It is better to put in the transferor’s and the transferee’s covenants separately, and any covenants mutually entered into by the parties with each other may be inserted separately. If the transferor’s and transferee’s covenants are separately mentioned in the deed, care should be taken that no covenant which should really by the covenant of one party is entered in the covenants of the other. For example, if a lessee is given the right to cut trees of a certain kind and not to cut tree of a different kind, the latter covenant is a covenant by the lessee and the former is a covenant by the lessor and both should not be inserted in one covenant by either. When it is found inconvenient or awkward to split up, what really is one covenant into two parts, it is better to insert such a covenant as a mutual covenant by the parties.

Sometimes the terms and conditions of a transfer cannot be conveniently separated into transferor’s covenants and transferee’s covenants. In such cases, it would be better to include all the covenants under one head as parties’ covenants thus:

‘THE PARTIES AFORESAID HERETO HEREBY MUTUALLY AGREE WITH EACH OTHER AS FOLLOWS:’

M) TESTIMONIUM

The last part of a deed is the testimonium which sets forth the fact of the parties having signed the deed. This is not an essential part of the deed, but as it marks the close of the deed there is no harm in continuing the established practice. The usual English form of testimonium is as follows:

‘In witness whereof the parties hereto have hereunto set their respective hands and seals the day and year first above written.’

The use of seals is not common in India except in cases of companies and corporations, and the proper form in simple language would be somewhat as follows:

‘In witness whereof the parties hereto have signed this deed on the date first above written.’

N) SIGNATURES AND ATTESTATION

After testimonium should follow the signatures of the executants and those of attesting witnesses. If executant is not competent to contract or is a juristic person, the deed must be signed by the person competent to contract on his or its behalf.

* * * * *

WILL

Section 2(h) of the Indian Succession Act, 1925 defines Will as:

“Will means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.”

Section 2(b) of the Indian Succession Act, 1925 defines Codicil as:

“Codicil is an instrument made in relation to a will, and explaining, altering or adding to its disposition, and shall be deemed to form part of the will.”

- There is no standard form prescribed by law regarding drafting a will.
- The language of the will should be clear and unambiguous.
- The properties should be described with complete clarity.
- A will is drafted in first person.
- Details of the testator to be mentioned clearly. (Name, Age, Occupation, Address etc.)
- Details of bequeath, to whom and which property is given.
- Details of the executor if any.
- Previous testaments if any.
- Sound state of mind of testator.
- Signature and attestation. Signature of the testator and attesting witnesses(with their details)
- No stamp duty is required to be paid on a will.
- Will is not required to be compulsorily registered, it is optional.

WILL

THIS IS THE LAST WILL TESTAMENT of me, Sh. XYZ S/o Sh. ABC R/O 13, PQS APPARTMENTS, ROHINI, DELHI- 110085 made at....(Place) on....(Date).

That life is uncertain and this is my last Will by way of which I bequeath voluntarily and out of my own free will in a sound state of mind, my self acquired properties to the beneficiaries as described hereunder.

WHEREAS I was married to....(name) on....(date) and is living happily for Years and out of the wedlock we have two children, a son(name) aged... and a daughter aged.....

AND WHEREAS my son is happily married to....(name) and out of the wedlock, they are blessed with one child..... (name) aged.... and are residing at(address).

AND WHEREASmy daughter is married to...(name) and out of the wedlock they are blessed with one child....(name) aged... and are residing at...(address).

In my lifetime I have built my movable and immovable properties out of my own sources and, therefore, I am the absolute owner of the properties hereunder.

IMMOVABLE PROPERTY

1. Residential property bearing no.admeasuring
2. Shop No.admeasuring.....
3. Shop No.admeasuring.....
4. Shop No.admeasuring

(hereinafter called the Immovable Property)

MOVABLE PROPERTY

All my household and personal belongings at

FD's if any

Gold Details etc.

(hereinafter called the Movable Property)

I HEREBY WISH that my abovementioned property should devolve in the following manner:

That my property bearing no.....would devolve on to my wife....absolutely and unconditionally and she shall deal with the said property in any manner as she likes and my children will have no claim on this property whatsoever.

That my property bearing no..... and my all movable property would devolve on to my son..... absolutely and unconditionally and none of my legal heirs shall have any claims on this property whatsoever.

That my daughter is happily married and is well settled in her matrimonial home and she does not need any financial support for survival after my death.

That my present will is drafted in my presence and upon my instructions and contents of my will have been read out to me in my own vernacular.

I declare the contents of this Will to be my last Will arrived at by me in sound state of mind.

IN WITNESSES WHEREOF I..... have signed this will hereunder on thisDay of, 20...at...in the presence of the following witnesses who are also attesting this will in my presence and at my request.

Sign

TESTATOR

Signed by the above named testator in our presence at the same time and each of us has in the presence of the testator signed our name hereunder as an attesting witness

1. Name and details of Witness 1
2. Name and details of Witness 2

Sign

Sign