EXTRINSIC EVIDENCE: ADMISSIBILITY AND RELEVANCY

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ABSTRACT

The word Extrinsic evidence though have been criticised is still in usage but subject to some limitations though in this article only the applicability will be focussed and highlighted by defining the words like Parole, extrinsic evidence and differentiating both the terms in a court of law when there are any written agreements then the oral testimonies are considered inferior to that of the written instruments. The main research objective behind this article is to know the relevancy and application of the Extrinsic evidence in certain situations and to study the relationship between section 91 and section 92.

So especially in the contracts (contractual agreements) only the written agreements or instruments are considered as the best evidence instead of oral or other unrelated written agreements. But there are some circumstances where even other shreds of evidence are also admissible in the court of law like for interpreting some terms of the old agreements, for understanding any custom related matters and so on. The researchers in this article critically analyse the legal framework on extrinsic evidence outlining when it is admissible and when it isn't admissible by analysing various judicial pronouncements.

Keywords: Extrinsic evidence, parole, old agreements, custom

INTRODUCTION

In the words from Taylor's law of Evidence:

In Taylor's Evidence it is stated "*The rule contained in the section (section 91 of IEA) is not infringed by the admission of Parol evidence, showing that the instrument is altogether void, or never had any legal existence of binding force, either because of forgery or fraud or of the illegality of the subject matter, or for want of due execution and delivery...", "Parol evidence may be given to show that the contract in writing was really made for objects forbidden by law, that such writings were obtained by improper means as duress, that the party was incapable of contradicting by reason of some legal impediment, such as infancy, covertures, idiocy, insanity, or intoxication; or that the instrument came into the hands of the plaintiff without any absolute final delivery by the obligor or party charged."*

It was further stated that "*the rule as to the inadmissibility of Parol evidence to vary the terms of a document is not infringed by proof of any collateral Parol agreement, which does not interfere with the terms of the written contract, though it may relate to the same subject-matter...The rule as to the exclusion of Parol evidence to vary written instrument does not prevent parties to a written contract from proving that, either contemporaneously or as a preliminary measure, they entered into a distinct oral agreement on some collateral matter".*

It has been established that when the terms of any transaction are reduced to the form of a document, the production of the document itself must prove that the admission of extrinsic evidence is equivalent to the authorisation to replace another contract by the introduction of the terms to be found in that document. A rule contained in s. 92 is the rule's logical sequence in s. 91 and may well be said to be a component of it. If it is intended that no replacement of the terms of a voluntary and purposeful transaction should be permitted, it follows that no variation of the terms should also be permitted. S. 92- "Accordingly, if the terms of any contract, grant or other disposition of property are reduced in writing, whether or not such contract or grant is compulsorily required into be reduced in writing and registered, no oral evidence shall be admitted to contradict, vary, add to or subtract from the terms of that contract or grant."[1]

[1] Sumati Bala Majumder & Ors. Vs. Narendra Kumar Das, AIR 1975 Gau 43.

SECTION 91 & SECTION 92 OF THE INDIAN EVIDENCE ACT

Section 91:

Section 91 of IEA says that *"When the terms of a contract, or 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 or 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.*[2]*"*

This rule is part of the rule of 'best evidence,' and it deals with the exclusivity of documented evidence. It further states that if a contract has been reduced to a document, that document must be provided as proof that the parties' agreement is the most reliable evidence. Oral evidence is only permitted as an exception to prove the agreement, and the applicable exceptions are outlined in section 92's "exclusion of oral evidence" rule. This rule is part of the rule of 'best evidence,' and it deals with the exclusivity of documented evidence.

It further states that if a contract has been reduced to a document, that document must be provided as proof that the parties' agreement is the most reliable evidence. Oral evidence is only permitted as an exception to prove the agreement, and the applicable exceptions are outlined in section 92's "exclusion of oral evidence" rule.

Section 92:

In contrast to section 91, Section 92 operates. In particular, however, section 92 applies only where the contract has been proven in compliance with the preceding section 91. Section 91 is said to deal with "the exclusiveness of documentary evidence whereas section 92 deals with the conclusiveness and inclusiveness of documentary evidence. It supplements Section 91 by excluding extrinsic evidence that may be used to control its terms. Section 92 is, however, subject to six provisos, which largely replicate the exceptions to the Parol evidence rule at common law." Under these provisos, Parol evidence is admissible exceptionally to prove:

- Any evidence which would invalidate any document or entitle any person to any decree or order relating thereto, such as fraud, intimidation, unlawfulness, lack of due

[2] The Indian Evidence Act, 1872, No. 1, § 91.

execution, lack of capacity of any party to the contract, or error of fact or law, may be established.

- It is possible to show the existence of any separate oral agreement on any matter on which a text is silent and which is not inconsistent with its terms. The court will take into account the degree of formality of the document when deciding whether or not this clause applies or not (in simple words a separate oral agreement that so not inconsistent with the terms of the written contract).
- 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 (in other words a separate oral agreement constituting a condition precedent to the written contract).
- "subsequent oral agreement to rescind or modify any such contract grant or disposition of property may be proved except in cases 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 the documents (in other words a distinct subsequent oral agreement to rescind or modify the written contract.)"
- Any use or custom by which incident is usually annexed to contracts of that description and is not expressly referred to in any contract may be proved. Furthermore, provided that the annexation of that incident is not repugnant or inconsistent with the express terms of the contract. (In other words, any use or custom not specifically referred to in the written agreement).
- Any fact that demonstrates the way a document's language is related to the current reality.[3]

While clauses 1 through 5 substantially replicate current common law exclusions to the Parol proof rule, proviso 6 differs slightly. Although it appears to be an exemption to section 92, it is typically regarded as a substantive rule relating to the use of evidence of fact to aid in contract interpretation.

Support for such a viewpoint can be found in one of Stephen's writings on evidence published following the enactment of the Indian Evidence Act. Under the heading 'Article 90,' Stephen read sections 91 and 92 of Stephen's Digest jointly. However, "Article 90, while including provisos 1 to 5, did not contain proviso 6. Instead, proviso 6 was conceived as a sub-point

[3] Indian Evidence Act, 1872, No. 1, § 92.

under a separate Article 91 which dealt with 'what evidence may be given for the interpretation of documents.' Stephen further noted that Articles 90 and 91 dealt with different matters: Article 91 dealt with the interpretation of documents by oral evidence whereas Article 90 defines the cases in which documents are exclusive evidence.[4]"

DISTINCTION BETWEEN SECTIONS 91 AND 92:

1. Sec. 91 of IEA states about documentary evidence exclusively. The section is concerned with evidence pertaining to only the documentary evidence topics discussed in it. Section 92, on the flip side, is concerned about the veracity of the proof. It basically analyses various issues raised in section 91.
2. Under section 91 of the IEA, terms and conditions of the contract under oral proofs and also the grant or any such other disposal of the properties converted to the form of a record is inadmissible. When the terms are proven by the document, section 92 states that no proof of any oral agreement or declaration between the parties shall be admissible to contradict or change them. When the conditions of the contract are stated, a grant or any such other disposition of property has been proven in accordance with section 91, among other things, section 92 applies.
3. The difference b/w the sec. 91, 92 & 99, was clearly highlighted in the judgment of Bai Hira Devi v. Official Assignee, Bombay[5] by Honorable SC stating, "The final position, therefore, is that if the terms of any transfer reduced to writing are in dispute between a stranger to a document and the party to it or his representative- in- interest, despite the fact that such evidence, if believed, may contradict, undermine, add to, or subtract from the contract's wording. Sec.92 doesn't restrict both the stranger to the document and the party thereto or his representative-in-interest from leading proof of oral agreement". The authors opine that these two sections are in complement to each other. Section 91 and 92 of IEA was enacted to supplement each other. They are incomplete if interpreted exclusively. section 91 generally modify the terms of such agreements, if oral evidence is excluded; and in such case, this section 92 is not applicable to any scenario, then no other provision of IEA could be considered to exclude the evidence.

[4] Goh-Yihan, *Contractual Interpretation in Indian Evidence Act Jurisdictions: Compatibility with Modern Contextual Approach*, 13 OUCLJ 17, 48 (2013), https://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=3338&context=sol_research.
[5] Bai Hira Devi v. Official Assignee Bombay, AIR 1958 SC 448.

4. Section 92 works in accordance with sec 91 on terms and conditions of contracts, where the evidence of oral agreements is excluded, grants or other such property provisions formed by the production of such related documents; in other words, the provisions of section 92 apply to the production of the document after proof of its terms has been created under Section 91.
5. All records, whether they pretend to the disposition of rights, are subject to this 91 of IEA. In contrast to Section 92, where it applies primarily to bilateral documents, Section 91 refers to all bilateral and standardized unilateral paperwork.
6. Section 91 defines the norm of universal application, which doesn't apply only to document executors. Section 92, on the flip side, apply only to the interests of parties/members of such instruments. Clearly, Section 92 does not apply to third parties or strangers who are not obligated or influenced by the contents of the documents. Extrinsic evidence used to oppose/contradict, change, add to or delete conditions from a contract does not exclude someone who is not a party to the deal.

THE RELATIONSHIP B/W SEC. 91 & 92 OF IEA:

It should be noted that these two sections are complementary to one another. Section 92 of IEA is complementary to and (to the extent) implicit in section 91 of the IEA, according to the landmark judgment.[6] Sec. 91 would be ineffective without Sec. 92 and the latter would be ineffective without section 91 because section 92 prohibits contradictory admission of any oral evidence, changing and adding or deleting from the terms and conditions of property documents proven in accordance with section 91. The evidence in the agreement can be considered definitive.

The bar imposed by Sec. 92 (1) applies solely when a party tries to rely on the agreement containing the transaction terms. In that scenario, the law specifies that the core and meaning of the contract must be taken from the provisions of the agreement and that no proof of any oral arrangement or declaration can be considered as being b/w the parties to that agreement for the purpose of contradicting or amending its terms. When a party claims that the transactions reported in the document were never intended to take action b/w the parties and that the agreement is forgery, the sub-section is not drawn. When any party claims that an entirely different transaction occurred and that what is written in the contract was designed to

[6] Bhawanbhai Premabhai v. Bai Vahali, (1954) 57 Bom LR 250.

have no effect, this is a cause for concern. As a result, oral evidence is admissible to show that the executed agreement was never intended to serve as an agreement, but that the parties had another agreement that wasn't reflected in the document.[7]

The rules of section 99 are crystal clear on this point. Individuals who are strangers or not parties to a contract or their representative-in-interest can give proof of any evidence tending to indicate that the document's terms change in a contemporaneous agreement, according to section 99. While it is only a difference that is specifically mentioned in section 99, there should be no doubt that the ability of a third party to adduce evidence recognized in section 99 includes the right to contradict, add to or remove from the provisions of the document. If this is the case, it would be prudent to first determine whether section 92 applies to the proceedings at all before assessing the impact of section 92's restrictions on a party's right to present oral evidence.

Section 92, as a result of the debate between the authorities and the applicable sections of the IEA, is now the legal position. The Act doe not preclude a party from attempting to show that the actual transaction in question differed from what the document or such documents in question were designed to depict. Although this can be accomplished by explaining the facts and reviewing such documents in question, oral evidence can also be used to demonstrate the true nature of the transaction, and section 92 of the Act does not prevent this.

Section 92 prohibits the use of any oral agreement or statement to contradict, change, add to, or subtract from the terms of a contract, a gift or disposition of property, or any other matter required by law that has been defined in writing, as required by Section 91. The theory states that no proof of an oral agreement or statement will be accepted until the contents of the contract have been established by the document's primary or secondary evidence.

If a transaction is reduced to writing by the parties' obligation or consent, the writing becomes the sole memorial of the transaction, and no extrinsic proof appears to be either proving the transaction separately or contradicting, varying, adding or subtracting from the terms of the document, despite the fact that the contents of the document can be proven either by primary or secondary evidence.[8]

In the case of Hiradevi v. Official Assignee Bombay,[9] the Supreme Court addressed the scope

[7] Gangabhai w/o Rambilas Gilda v. Chhabubai w/o Pukharajji Gandhi, AIR 1982 SC 20.
[8] Roopkumar v. Mohan Khedani, AIR 2003 SC 2418.
[9] Hiradevi v. Official Assignee Bombay, AIR 1958 SC 448.

of Sec. 92 of the IEA. Some of Daulatram's creditors filed a petition seeking an order declaring him insolvent due to his notice of suspension of debt payments, which had been issued. The insolvent executed a gift deed for his wife and three boys, claiming that it was both a gift and a benefit consideration transaction. The issue was whether the appellants had the right to introduce oral proof of the contract's genuine existence. The court finds that sec. 92 didn't apply to such proceedings, and the appellants were entitled to present evidence in support of their claim. Only scenarios involving the parties to the instrument or their representative-in-interest are covered by section 92. It was decided that sec.92 comes into action after the document has been created in order to prove its terms under section 91 of the Act for the purposes of excluding proof of an oral agreement. It was also pointed out that sections 91 and 92 complement each other as a result. The Honorable SC then highlighted the distinction between these two provisions by stating that some material specifies differ between them. Section 91 covers all the documents or papers, regardless of whether they appear to contain rights, while section 92 covers materials that can be defined as possessing rights.

THE SIX EXCEPTIONS

1st: If the word is clear in the context of the circumstances, the court cannot claim that the author has an intent that goes against the simple meaning of the word used in the document.

2nd: Condition 3 requires that the contract, grant, or disposition of the asset itself survive, but the precedent for the condition to be called must be essentially different from the contract, grant, or disposition itself, and agreed upon. Exists before the obligation is fulfilled.

3rd: If the unregistered split certificate is not acceptable evidence, members may submit other evidence to indicate their scope of land ownership and should consider such evidence. "

4th: Oral evidence that deviates from the terms of the certificate is acceptable to show that what was stated on the certificate was something else, not an actual transaction.

5th: Oral evidence was granted to show that the certificate of sale was executed as collateral for a loan transaction between the parties, not as a certificate of sale.

6th: One industrial dispute was settled as part of the settlement. The 1957 Industrial Dispute (Central) Regulation only provides for a written settlement. A verbal agreement may not change, amend, or replace a written settlement.

7th: Plaintiffs have sued a quarter of the price of the house that the first defendant allegedly sold to the second defendant, and the allegations are based on local customs. The transaction between the defendants was allegedly a mortgage of usufruct rather than a sale. The plaintiff, who was not a party to the transaction, had the right to provide evidence that what was described as a usufruct mortgage was not actually a usufruct mortgage, but was actually a sale.

The honourable SC in Kamladevi vs Takhatmal[10] held that "if the words are clear in the context of surrounding circumstances the court cannot rely on them to attribute to the author an intention contrary to the plain meaning of the words used in the document".

In another case Chhanganlal Kalyandas vs. Jagiiwandas Gulabdas[11] that "proviso 3 presupposes that the contract, grant or disposition of property itself remains intact, but the condition precedent pleaded must in its very nature be extraneous to the contract, grant or disposition itself and as agreed must come into existence before the obligation attaches thereunder."

IMPORTANT JUDICIAL PRONOUNCEMENTS:

In Hriday Narayan vs Shyam Kishore Singh[12] it as held "where an unregistered partition deed is not admissible in evidence, other evidence may be adduced by a member to show the extent of his landholding and such evidence has to be considered."

In Parvinder Singh vs Renu Gautam[13] held "oral evidence in a departure from the terms of a deed is admissible to show that what was mentioned in the deed was not a real transaction, but that was something different."

In Shankarlal Ganulal vs Balmukund[14] it's held "oral evidence was allowed to show that the sale deed was executed not as a sale deed but by way of security for the loan transaction between the parties."

In a Supreme Court case[15] held in a situation of industrial dispute which is compromised through settlement, such a compromise must be made through a written statement. As *The*

[10] Kamladevi Versus Takhatmal, AIR 1964 SC 859.
[11] Chhaganlal Kalyandas v. Jagjiwandas Gulabdas, AIR 1940 Bom 54.
[12] Hriday Narayan v. Shyam Kishore Singh, AIR 2002 SC 2526.
[13] Parvinder Singh v. Renu Gautam, AIR 2004 SC 2299.
[14] Shankarlal Ganulal v. Balmukund, AIR 1999 Bom 260.
[15] Fabril Gasona v. Labour Commissioner, AIR 1997 SC 954.

Industrial Disputes (Central) Rules 1957 contemplate only written settlement. No oral agreement was allowed to prove to vary, modify or supersede the written settlement.

In another Supreme Court case[16] it was stated the "plaintiff sued to recover one-fourth of the price of a house alleged to have been sold by the first defendant to the second defendant, the claim being based upon a local custom. The transaction between the defendants was ostensibly not a sale but a usufructuary mortgage. The plaintiff not being a party to the transaction was entitled to give evidence to show that what purported to be a usufructuary mortgage was not, in reality, such, but was, in fact, a sale."

In Svenska Handelsbanken vs Indian Charge Income [17] it was held as "Fraud would have to be proved by leading evidence and not by mere averments in the pleading. The material on record must be capable of spelling out at least a prima facie case of fraud."

In Krishi Utappadan mandi Samiti vs Bipin Kumar[18] it's stated as "Section 92 precludes a party who undervalued the property for the purposes of stamp duty from claiming that their own document did not reflect the market value."

In Prayya Allayya Hittlamani vs Prayya Gurulingayya Poojari[19] held as "the consent decree did not cover the entire dispute between the parties and also some vagueness remained. The factual background as also the manner in which the existence of rights had been claimed by the parties had also to be considered. Evidence could be given of such matters, Section 92 of Evidence Act was not attracted."

In Gangabai vs Chhababai[20] held as "the distinction in point of law is that the evidence to vary the terms of an agreement in writing is not admissible, but evidence to show that there is not an agreement at all is permissible. There is no rule of law to estoppel parties from showing that a paper, purporting to be a signed agreement, was in fact signed by mistake, or that it was signed on the terms that it should not be an agreement till the money was paid or something else was done, or that was intended to be a sham and not operative."

[16] Bageshri Dayal V. Pancho, (1906)28 All 473.
[17] Svenska Handelsbanken v/s Indian Charge Income, AIR 1994 SC 626.
[18] Krishi Utappadan Mandi Samiti v/s Bipin Kumar, AIR 2004 SC 1850.
[19] Prayya Allayya Hittlamani v/s Prayya Gurulingayya Poojari, AIR 2008 SC 241.
[20] Gangabai V. Chhababai, AIR 1982 SC 20.

ADMISSIBILITY OF EXTRANEOUS EVIDENCE:

In Kailash Chandranath vs Sheikh chhenu[21] it was stated as follows- a receipt alleging that simple interest was to be charged rather than compound interest (although the mortgage bond contained provisions for payment of compound interest) was held to be admissible as evidence. Consequently, the receipt did not require registration and was admissible as proof. This operated as a waiver.

NON-ADMISSIBILITY OF EXTRANEOUS EVIDENCE:

Under the circumstances of the lease extension clause, if the lessee wishes to renew the lease extension clause, then he shall make a written notice prior to three months before the agreement comes to an end. If such covenant is not followed by the lessee and he wishes to rely on the oral agreement about the extension of the lease agreement between himself and the lessor then it was held that such types of agreements are inadmissible. Similarly, oral evidence was not permitted to demonstrate that the lessee was supposed to be another individual than the one stated in the deed. Another licenced instrument must be used to render a modification of the rent set by a registered leasing deed. In a different agreement, the rent was raised.

Parole proof of use or tradition is admissible. Such proof is gathered for the purpose of describing or presenting words used in contractual contracts, insurance agreements, negotiable instruments, and other similar forms of writing. The terms of the agreements shall be defined and enacted in such a way that the parties shall accept them and the agreement shall depict the true meaning of the intention of the parties. However, it is often with this qualification that the rule of admitting proof of use must be taken, that the written contract should not be inconsistent with the oral agreement. The written instrument should never, either expressly or by implication, be permitted to differ or contradict.

ADMISSIBILITY OF EXTRINSIC PAROL EVIDENCE:

- "Where at the time of letting some premises to the defendant, the plaintiff had read the terms from pencil minutes, and the defendant had acquiesced in these terms, but had not signed the minutes" and

[21] Kailash Chandra Nath v/s Sheikh Chhenu, (1914) 42 Cal 546.

- "Where, upon a like occasion, a memorandum of agreement was drawn up by the landlord's bailiff the terms of which were read over, and assented to, by the tenant, who agreed to bring a surety & sign the agreement on a future day but omitted to do so"

In all these instances the court held that Extrinsic parol evidence was admissible, since the writing only amounted, either to mere unaccepted proposals or to mere minutes which could not be construed as memoranda, which the parties themselves intended to operate as a record of their agreement.[22]

Extrinsic parol evidence in criminal cases:

The same rule prevails in criminal cases; and therefore, "if a person is indicted for stealing a bill or other written instrument, its identity may be proved by Extrinsic parol evidence, though no notice to produce it has been served on the prisoner or his agent. If, however, the indictment is for forgery, and the forged instrument be in the hands of the prisoner, the prosecutor must serve him or his solicitor, with a notice to produce it, before he can offer secondary evidence of its contents."

Existence of partnership:

The fact of the existence of a partnership may be proved by Extrinsic parol evidence of the acts of parties without production of the deed.

Occupation of land:

if the fact of the occupation of land is alone in issue, without respect to the terms of the tenancy, this fact may be proved by any competent Extrinsic parol evidence, such as payment of rent, or the testimony of a witness, who has seen the tenant occupy, notwithstanding it appears that the occupancy was under an agreement in

Telex instructions:

The Extrinsic parol evidence rule applies to formal documents in which the parties have conclusively embodied their intentions. The rule which states that it is not permissible to adduce extrinsic evidence where the intention of the parties has been reduced to writing does

[22] Sarkar, The Indian Evidence Act, 1872, (18th ed.).

not apply to written payment instructions sent by telex in circumstances where the recipients need formal documentation.

CONCLUSION :

So, it can be concluded that documentary proof holds more significance than oral testimony. The court is bound to consider documentary evidence over oral testimony. Except under such circumstances, oral evidence will also be considered if the parties could adduce the facts under given legal requirements. Under any circumstances, if the court of law allows the proof which cannot be adduced or generated, then the other party will suffer because of the inadmissible evidence adduced against them. In light of the sections above, if any such proof is denied to be adduced, then the party having the right to adduce such evidence shall be deprived of their rights.