

2026 LiveLaw (SC) 204

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
PANKAJ MITHAL; J., S.V.N. BHATTI; J.
SPECIAL LEAVE PETITION (CIVIL) NO. 9558 OF 2023; February 26, 2026

THE GENERAL SECRETARY, VIVEKANANDA KENDRA
versus
PRADEEP KUMAR AGARWALLA AND OTHERS

Transfer of Property Act, 1882; Section 105 and Section 108 — Indian Easements Act, 1882; Section 52 — Lease vs. Licence — Interpretation of Deeds — The Supreme Court set aside a High Court judgment that had re-characterized a registered 99-year lease deed as a licence - held that when the nomenclature, text, and context of a document clearly indicate a "lease simpliciter," courts should not resort to purposive construction or ex-post facto circumstances to infer a different intention - A unilateral cancellation of such a registered lease deed, without bilateral agreement or meeting conditions under Section 111 of the Transfer of Property Act, is illegal and non-est.

Construction of Documents — Literal Rule vs. Purposive Construction — Supreme Court emphasized that a contract must first be constructed in its plain, ordinary, and literal meaning - If the words are clear, the intention of the parties must be derived directly from the text. Reliance on the ex-post facto conduct of parties (such as the lessor continuing to occupy a portion not demised) is unnecessary and improper when the literal expression is unambiguous – Appeal allowed. [Relied on *Associated Hotels of India Ltd. v. R.N. Kapoor*, AIR 1959 SC 1262; Paras 15-21]

For Petitioner(s): Mr. Rutwik Panda, AOR Ms. Nikhar Berry, Adv. Ms. Anshu Malik, Adv.

For Respondent(s): Mr. Ashok Panigrahi, Sr. Adv. Mr. R. Chandrachud, AOR Mr. Dhuli Venkata Krishna, adv. Mr. Surajit Bhaduri, Adv. Mr. Aryan Singh, Adv. Mr. Piyush Negi, Adv.

J U D G M E N T

S.V.N. BHATTI, J.

1. Leave Granted.
2. We have heard Mr. Rutwik Panda, learned Counsel for the Appellant, and Mr. Ashok Panigrahi, learned Senior Counsel, for the Respondents.
3. The Civil Appeal arises from the judgment and decree dated 23.12.2022 in RSA No. 123 of 2021 (for short, "impugned judgment") in the High Court of Orissa at Cuttack. The Plaintiff in the Civil Suit No. 100/524 of 2011-2005 (for short, "Civil Suit") before the Court of Civil Judge, Baripada, is the Appellant. Respondent Nos. 1, 2 and 3 are Defendant Nos. 3, 4, and 2, respectively, in the Civil Suit.
4. The subject matter of the Civil Appeal is described in Schedule – 'A' of the plaint, which is detailed as below (for short, "Plaint Schedule Property"):

"SCHEDULE – 'A'

The land situated in Mouza - Baripada town Ward No.4 (Golapbag) under Baripada town Police station recorded in the name of the anima Bose under Khata No.6.

Plot No. Kisam Area

203 Gharabari-I Ac. 0.070

decimals”

5. Anima Bose was the owner and the possessor of the Plaint Schedule Property. She was associated with the objectives and ideals of the Vivekananda Kendra, Kanyakumari. Anima Bose died on 07.03.2007. For the present, it is apposite to refer to a few dates and events preceding the filing of the Civil Suit.

6. On 23.03.1998, during the lifetime, Late Anima Bose, executed Exhibit 1 (For short, “Ext. 1”), termed as a “lease deed” in favour of the Vivekananda Kendra. The salient features of the lease deed are that Anima Bose, in her capacity as the owner, intended to lease the Plaint Schedule Property to the lessee/Vivekananda Kendra. Late Anima Bose recognised the reason for which the Plaint Schedule Property is put in possession of the Kendra, i.e., for the purpose of having a centre of the Vivekananda Kendra, and to carry out the aims and objects as per its memorandum of rules and guidelines. The lease is for 99 years. Anima Bose set out the rent at Rs. 1,000 per annum. The Kendra claims to have set up a branch centre at the subject Plaint Schedule Property. On 03.12.2003, Anima Bose cancelled the registered lease deed dated 23.03.1998. *Vide* notice dated 14.12.2003, she called upon the Kendra to surrender vacant possession of the Plaint Schedule Property. The Kendra, on 02.01.2004, replied, asserting its right to continue for 99 years under the lease deed dated 23.03.1998. Anima Bose, on 03.05.2005, executed a Power of Attorney in favour of Sujit Kumar Mohanty. The Vivekananda Kendra admits that on 09.05.2005, its possession was forcibly disturbed and taken. Anima Bose, represented by her Power of Attorney: Sujit Kumar Mohanty, executed a sale deed dated 17.01.2006, in favour of Pradeep Kumar Agarwalla and Ratandeep Agarwalla.

7. Vivekananda Kendra/Plaintiff filed a Civil Suit against Anima Bose/Defendant No. 1, Sujit Kumar Mohanty/Defendant No. 2, Pradeep Kumar Agarwalla/Defendant No. 3 and Ratandeep Agarwalla/Defendant No. 4. The Civil Suit is filed for the declaration of Plaintiff’s leasehold rights, recovery of possession, and a mandatory injunction. The averments in the plaint are summed up and stated thus:

7.1 The Plaint Schedule Property, admittedly owned by Defendant No. 1, was initially leased to the Plaintiff by Defendant No. 1 *via* a registered 99-year Lease Deed No. 890 dated 23.03.1998, under which the Plaintiff carried out spiritual and service activities and made constructions like the Ashram Building.

7.2 However, Defendant No. 1 unilaterally executed a Deed of Cancellation of Lease bearing No. 3387 of 2003 on 03.12.2003, allegedly due to prolonged illness, loss of mental stability, and the fraudulent management of her relatives.

7.3 Subsequently, on 09.05.2005, Defendant No. 2, on behalf of Defendant No. 1, forcibly and illegally dispossessed the Kendra workers, leading to the lodging of an FIR under Sections 457 and 423 of the Indian Penal Code, 1860.

7.4 Furthermore, during the pendency of the suit, Defendant No. 2 sold the Plaint Schedule Property to Defendant Nos. 3 and 4 *via* a registered sale deed No. 147 dated 17.01.2006 for Rs. 17,80,100/- (Rupees seventeen lakh eighty thousand and one hundred only).

7.5 The Plaintiff sought declarations that the 99-year lease is valid, the Deed of Cancellation is fraudulent, illegal, and void, and that the subsequent sale deed dated 17.01.2006 to Defendant Nos. 3 and 4 are not genuine and are void, and thereby praying for recovery of vacant possession and permanent injunction.

8. The suit was contested by Defendant Nos. 3 and 4. The case of the contesting Defendants is:

8.1 Defendant No. 1 had executed a lease agreement in favour of the Plaintiff but contended that she had subsequently cancelled it on 03.12.2003 due to the Plaintiff's violation of the lease terms.

8.2 The Defendants denied allegations that Defendant No. 1 lost her mental stability and that her nephew and his wife fraudulently managed the cancellation, asserting that the Plaintiff manufactured these facts to initiate the Civil Suit.

8.3 Furthermore, the Defendants claimed that the Plaintiff's possession ceased after the cancellation, and Defendant No. 1 took possession and subsequently executed a power of attorney dated 03.05.2005 in favour of Defendant No. 2.

8.4 Under this power of attorney, Defendant No. 2 sold the Plaintiff Schedule Property and building to Defendant Nos. 3 and 4 *vide* a Registered Sale Deed No. 147 dated 17.01.2006 for a consideration of Rs. 17,80,100/- (Rupees seventeen lakh eighty thousand and one hundred).

8.5 Defendant Nos. 3 and 4 asserted that they purchased the property *bona fide* after verifying the documents and actual physical possession of Defendant No. 1. Subsequently, they were delivered *khas* possession, have since mutated the land in their favour, and are paying rent.

8.6 They highlighted that the Plaintiff never sought cancellation of the sale deed executed in their favour and, therefore, is not entitled to the reliefs sought.

9. The Trial Court framed the following issues:

(I) *Whether the suit is maintainable in its present form?*

(II) *Whether the suit is barred by the law of limitation?*

(III) *Whether the suit is bad for non-joinder of necessary parties?*

(IV) *Whether the cancellation of the lease deed by defendant no.1 Late Anima Bose was legal?*

(V) *Whether the defendant no.3 and 4 have any right over the suit building by virtue of their sale deed?*

(VI) *Whether the plaintiff is entitled to the relief as claimed?*

(VII) *Whether the plaintiff is entitled to any other reliefs?"*

On 27.02.2018, the Civil Suit was decreed, resulting in RFA No. 21 of 2018 at the instance of Defendant Nos. 3 and 4. On 05.10.2021, the First Appellate Court confirmed the judgment and decree of the Trial Court dated 27.02.2018. The High Court, by the impugned judgment in RSA No. 123 of 2021, allowed the appeal, thereby setting aside the findings of the Trial Court and the First Appellate Court, and consequently dismissing the suit.

10. For appreciating the grounds canvassed by the Plaintiff, the findings of the Trial Court and First Appellate Court are adverted to, as follows:

10.1 Maintainability: Defendant No. 1 cancelled the lease unilaterally on 03.12.2003, but sent the notice to terminate the lease afterwards on 14.12.2003, which is beyond the provisions of the Transfer of Property Act, 1882. Because the Plaintiff successfully proved the sequence of events, the suit was maintainable to seek a declaration that the cancellation was void.

10.2 Unilateral Cancellation: The original 99-year lease deed/Ext. 1 from 1998 contained no clause authorising the lessor/Defendant No. 1 to revert or cancel the lease. There is no provision in the Registration Act, 1908, to cancel a registered document unilaterally, and rights accrued by a registered document cannot be taken away by a simple deed of cancellation. Therefore, the unilateral cancellation was deemed illegal and *non-est* in the eyes of the law. Also, the defendants failed to prove that any conditions under Section 111 of the Transfer of Property Act, 1882, governing the determination of a lease were met.

10.3 Rights of the Purchasers: Defendants Nos. 3 and 4 purchased the property in 2006 during the pendency of the suit, which is subject to the doctrine of *lis pendens*. The purchasers claimed they were *bona fide* purchasers acting in good faith. However, the same was rejected because DW3, one of the purchasers, admitted during cross-examination that he had seen the encumbrance certificate and was aware of the 99-year lease in favour of the Plaintiff before buying the property through Ext. 1.

10.4 Rejection of Escheat: The Defendants argued that the Plaintiff Schedule Property should escheat to the Government since Defendant No. 1 died unmarried. The same was dismissed on the ground that there was no proof that Defendant No. 1 lacked preferential heirs, and her lease agreements made during her lifetime remained valid while the suit was *sub judice*.

10.5 Non-Compliance of Order I, Rule 8 of the Code of Civil Procedure, 1908 (for short, "CPC"): The Defendants raised the said objection for the first time in the appeal. It was never pleaded in their written statement nor raised during the trial evidence. The Civil Suit was filed by the Vivekananda Kendra, through its General Secretary, to declare the cancellation deed/Ext. 15 as void and inoperative. The Civil Suit was duly represented by authorised office bearers, and there was no violation of Order I, Rule 8 of the CPC necessitating dismissal.

10.6 Representation of Plaintiff-Society: A registered power of attorney executed by the Head Office in Tamil Nadu in favour of one Ravi Nagesh Naidu was filed in the case record on 07.09.2015. The Trial Court had properly allowed him to conduct the suit and adduce evidence based on this document. Furthermore, the Defendants had admitted to paragraph nos. 1 to 3 of the plaint regarding the description of the parties in paragraph no. 4 of their written statement.

10.7 Non-Joinder of Necessary Parties: The Defendants argued that the suit was defective because the Class II heirs of the deceased Defendant No. 1 were not made parties. The Trial Court disagreed, stating that the Plaintiff sought relief only against the lessor and the purchasers of the property, Defendant Nos. 1 to 4. Since no relief was claimed against the heirs, they were not necessary parties. The First Appellate Court, in this regard, held that the Plaintiff had amended the plaint under Order VI, Rule 17 of the CPC, stating that Defendant No. 1 died unmarried and issue-less, leaving no heirs, and that the same was allowed by the Trial Court. Order XXII, Rule 4A of the CPC, allows courts to proceed without a legal representative if a party dies and leaves no known heirs. Furthermore, the Defendants, *lis pendens* purchasers, failed to adduce oral or documentary evidence or make suggestions during cross-examination to prove that any Class-II heirs of Defendant No. 1 actually existed.

10.8 Limitation: The suit was instituted in 2005, shortly after the Plaintiff's members were physically restrained from entering the building. Hence, the suit was well within the limitation period.

11. The High Court has framed the following substantial question of law:

“Whether during subsistence of the leasehold right in favour of the Plaintiff under Ext. 1, the sale under Ext. A in favour of Defendant Nos. 3 and 4, including possessory right, be effected?”.

The High Court noted that the finer point for consideration is whether Ext. 1 is a lease deed or a licence to administer a centre of Vivekananda Kendra, Kanyakumari. The High Court answered the substantial question of law as to *whether the sale under Ext. A in favour of Defendant Nos. 3 and 4 could be effected during the subsistence of the Plaintiff’s alleged leasehold right under Ext. 1* against the Plaintiff because Ext. 1 was held not to create a leasehold right for 99 years. Once the Plaintiff’s claim “as lessee” failed, the High Court held that the Plaintiff could not defeat the purchasers’ sale when that sale transaction was not under challenge in the suit on any other ground by Defendant No.1 or anyone claiming through her. The Trial Court framed seven issues, including (iv) the legality of cancellation of the lease deed by Defendant No.1 and (v) whether Defendant Nos. 3 and 4 had any right by virtue of their sale deed. The High Court recorded that the Trial Court answered Issue No.4 in favour of the Plaintiff, treated the cancellation as illegal/void, and decreed the Civil Suit. Subsequently, the first appeal by Defendant Nos. 3 and 4 failed, leading to the second appeal.

12. Mr. Rutwik Panda, construing Ext. 1, argues that the construction of the said Exhibit is illegal, and against the basic canons of construction of documents. The tenor of Ext. 1 is clear, and the literal construction of the Exhibit leads only to one conclusion: that the transaction between the Plaintiff and the Defendants represents a lease *simpliciter*. The non-enforcement of the rights of the lessee under a lease deed is illegal. The construction of a document to arrive at the legal implication, even if accepted as a substantial question of law and falling within the scope of Section 100 of the CPC, the construction of Ext. 1 as a licence is illegal. Therefore, he prays for setting aside the impugned judgment.

13. Mr. Ashok Panigrahi, contends that the nomenclature of Ext. 1 is not the deciding factor on the relationship between the Plaintiff and Defendant No. 1. Further, Defendant No. 1 retained possession of the first floor of the Plaintiff Schedule Property. It is because of her belief in advancing the ideals of Vivekananda Kendra that she permitted the plaintiff to establish a Kendra without actually parting with full possession and control of the premises. The High Court has rightly understood the intention of the Defendant No.1/“lessor” and dismissed the suit. The construction adopted by the High Court, in the circumstances of this case, does not warrant the exercise of jurisdiction by this Court under Article 136 of the Constitution of India.

14. We have taken note of the rival submissions and perused the record. The short point for our decision is the nature and scope of the document dated 23.03.1998/Ext. 1, namely, whether it is a lease or a licence.

15. The expressions “lease” and “licence” are the subject of reported decisions, and the often-quoted paragraph in *Associated Hotels of India Ltd. v. R.N. Kapoor*¹ sets out the ingredients of a lease and a licence, as well as the distinction between these two conceptual legal terms. The relevant paragraph is excerpted below:

“28. There is a marked distinction between a lease and a licence. Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised. Under Section 108 of the said Act, the lessee is entitled to be put in possession of the property. A lease is therefore a transfer of an interest in land. The interest transferred is called the leasehold interest. The lessor parts with his right to enjoy the property during the term of the lease, and it follows from it that the

¹ AIR 1959 SC 1262

lessee gets that right to the exclusion of the lessor. Whereas Section 52 of the Indian Easements Act defines a licence thus:

“Where one person grants to another, or to a definite number of other persons, a right to do or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.”

Under the aforesaid section, if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a licence. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission, his occupation would be unlawful. It does not create in his favour any estate or interest in the property. There is, therefore, clear distinction between the two concepts. The dividing line is clear though sometimes it becomes very thin or even blurred. At one time it was thought that the test of exclusive possession was infallible and if a person was given exclusive possession of a premises, it would conclusively establish that he was a lessee. But there was a change and the recent trend of judicial opinion is reflected in *Errington v. Errington* [(1952) 1 All ER 149], wherein Lord Denning reviewing the case-law on the subject summarizes the result of his discussion thus at p. 155:

xxx xxx xxx

The following propositions may, therefore, be taken as well established : (1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form; (2) the real test is the intention of the parties — whether they intended to create a lease or a licence; (3) if the document creates an interest in the property, it is a lease; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and (4) if under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease.”

(Emphasis supplied)

16. Relying on the above reasoning, this Court in *Mrs M.N Clubwala and another v. Fida Hussain Saheb and others*² held that the decisive consideration in determining whether an agreement creates the relationship of lessor and lessee or merely that of licensor and licensee is the intention of the parties. This intention has to be ascertained on a consideration of all the relevant provisions in the agreement.

17. In *Annaya Kocha Shetty (Dead) Through LRs v. Laxmi Narayan Satose, Since Deceased Through LRs and others*³, a Bench consisting of both of us, referred to the broad principles with respect to the construction of deeds and tools adopted:

“**17.** The guide to the construction of deeds and tools adopted can broadly be summarised as follows:

17.1 The contract is first constructed in its plain, ordinary and literal meaning. This is also known as the literal rule of construction.

17.2 If there is an absurdity created by literally reading the contract, a shift from literal rule may be allowed. This construction is generally called the golden rule of construction.

17.3 Lastly, the contract may be purposively constructed in light of its object and context to determine the purpose of the contract. This approach must be used cautiously.”

² 1965 AIR SC 610

³ 2025 INSC 466

18. On the above legal terms, and the established canons of interpretation, we excerpt the following clauses from Ext. 1 for arriving at the nature of the said exhibit:

“Whereas the LESSOR, after her retirement, has been associated with Vivekananda Kendra organization very much and therefore, she intends to lease out the land and building mentioned in the scheduled below to the Lessee.

NOW THIS DEED WITNESSES AS FOLLOWS:-

1. The Lessor hereby demises to the Lessee for the purpose of having the office of Vivekananda Kendra and for carrying out the very aims and objectives of the said Kendra as per the memorandum of rules and guidelines and for no other purpose, all that plot of land describe in the schedule hereto together with all buildings and trees thereon, to hold to the same to the lessee from the 1st day of March, 1998 for 99 years paying therefore in consideration of the rent hereby reserved and of Lessor’s covenants herein after contained, during the said term, on yearly rent of Rs. 1,000/- (Rupees one thousand only). 2. The lessor shall pay the ground rent to the proper authority every year. xxx

a) The Lessor is to occupy the first floor of the building as usual.

b) The Lessor shall not do anything by which other person or persons can make any sort of use, occupy or making otherwise claim in respect of the set premises and the entire premises as per schedule given below shall be used exclusively by the lessee.

xxx

1. That whatever such an interpretation would be necessary in order to give the fullest scope and effect legally possible to any covenant or any contract here in after given, the expression of the lessor herein before used shall include the owner for the time being and the expression of the Lessee herein before used shall include her heirs, successors, administrators and permitted assigns.”

19. If the words in a contract/deed are clear, there is very little the courts must do in the construction of the contract in determining the intention of the parties.⁴ In furtherance of determining the intention, the deed must be read as a whole to ascertain the true meaning of its clauses, and the words of each clause should be interpreted harmoniously. This intention must be derived directly from the plain and ordinary meaning of the text itself. Furthermore, these words should be understood exactly as the intended parties would commonly use them. The covenants must be applied precisely as written, neither diluted into irrelevance nor stretched beyond their original scope.⁵ If the construction of the contract/deed, through its words and context, does not provide the court with the parties’ intention, the court may have regard to the circumstances surrounding its creation and the subjectmatter to which it was designed and intended to apply.

20. In the present case, the impugned judgment refers to the ex-post facto conduct of the parties to determine the intention of the parties while executing the “lease deed”. For instance, in paragraph 21, the impugned judgment relies on the plaintiff’s witnesses’ cross-examination to establish the nature of possession and occupation of Defendant No. 1. It must be noted that while the circumstances of a deed are not the safest guide for interpreting a crystallised document, courts may rely on it when the document’s purport is unclear through literal construction. However, courts must exercise far greater restraint when inferring the parties’ intention from circumstances arising after the creation of the terms. For, the conduct may not be in tandem with either the literal expression or the purpose of the document.

⁴ N.E Railway Co. v. Hastings, 1900 AC 260

⁵ (1827) U.S. LEXIS 394; 25 U.S. 213.

20.1 The lessor bound herself by using the words (i) “The Lessor hereby demises to the Lessee”; (ii) “all that plot of land describe in the schedule hereto together with all buildings and trees thereon, to hold to the same to the lessee from the 1st day of March, 1998 for 99 years paying therefore in consideration of the rent hereby reserved and of Lessor’s covenants herein after contained, during the said term, on yearly rent of Rs. 1,000/- (Rupees one thousand only)”; (iii) “The Lessee can make necessary alterations, construction on the existing building or on the open space for carrying out its activities properly.”; and lastly, (iv) “That whatever such an interpretation would be necessary in order to give the fullest scope and effect legally possible to any covenant or any contract here in after given, the expression of the lessor herein before used shall include the owner for the time being and the expression of the Lessee herein before used shall include her heirs, successors, administrators, and permitted assigns.” The above clauses in Ext. 1 denote that the Plaintiff is a lessee, and Ext. 1 satisfies the meaning of a lease deed. Unless the parties agree bilaterally, disturbing the Plaintiff’s possession is illegal.

20.2 Further, the impugned judgment’s reliance on the lessor’s occupation of the first floor does not imply that Ext. 1 is a licence because exclusive possession is assessed *vis-à-vis* the demised portion, and not the portion excluded from the scope of the Ext. 1-agreement.

21. Thus, in the case at hand, the reason for ignoring literal construction is not convincing to us. We note that interpreting intention through purposive construction or through ex-post facto circumstances is unnecessary when the intention is understood from the plain and ordinary meaning of the text. There is no doubt that the nomenclature alone of the document is not the decisive factor of the nature of a document; it is the text and the context that point to the obligations undertaken by the parties to a written document. In the case at hand, the document’s nomenclature, text and context lead to only one conclusion: that Defendant No. 1 entered into a 99-year lease deed. Thus, the unilateral cancellation, in the facts and circumstances of this case, is illegal, and it should be understood as having interfered with the right of the Plaintiff to remain in possession of the Plaintiff Schedule Property for 99 years. Therefore, the prayers, as made, are available and are rightly granted by the Trial and First Appellate Courts.

22. For the above reasons, we do not agree with the High Court’s view. The impugned judgment is set aside. Defendant Nos. 3 and 4 are vendees from the first Defendant, and rights which are preserved and protected in favour of the lessor are allowed to be enjoyed by Defendant Nos. 3 and 4.

23. The Civil Appeal is allowed in the above terms. No order as to costs.

Pending application(s), if any, stand disposed of.