



***Cancellation of Deed  
or Document on the  
Ground of Forgery  
and other Grounds***

# “Deed”



A deed is a document containing the terms of an agreement, especially an agreement concerning the ownership of land or a building.

Or

A deed is a signed legal document that transfers ownership of an asset to a new owner.

# “Document”



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.

(Indian Evidence Act, 1872 Section 3)

# “Instrument”



“Instrument” includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.

(The Indian Stamp Act, 1899 Section 2(14))

(Transfer of Property Act, 1882 Section 3)



The concept of cancellation of an instrument is discussed under specific Relief. Section 31 to 33 of Specific Relief Act, 1963 deal with “Cancellation of an Instrument”.



The Relief of Cancellation of Instrument is founded upon the administration of protective justice, which is technically known as “**Quia time**”.



The administration of protective justice is for fear that the instrument may be vexatiously or injuriously used by the defendant against the plaintiff.



# **WHEN AN INSTRUMENT CAN BE CANCELLED**





Sec.31 of the Act provides as to when cancellation may be ordered as under:

(1) Any person against whom a written instrument is void or voidable and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.



# ESSENTIALS OF CANCELLATION



Following conditions should be fulfilled for cancellation of an instrument:

(i) Written instrument in question must be either void or voidable as against the plaintiff.

(ii) Plaintiff must have reasonable apprehension of serious injury from the instrument being left outstanding; and

(iii) In view of all the circumstances of the case, the Court should consider it reasonable and proper to administer the protective and preventive justice asked for.



# RELIEF FOR CANCELLATION



If the conditions requisite under section 31 are satisfied, the reliefs that can be given are:

(i) Adjudging the instrument to be void or voidable,

(ii) Ordering it to be delivered up and cancelled.



# WHO CAN SEEK CANCELLATION



Section 31 does not give a right to sue all persons for cancellation except the person against whom a written instrument if void or voidable is made and if such person has reasonable apprehension that such instrument if left outstanding may cause him serious injury. Where a stranger to an instrument seeks to have it adjudged void, he has to show that it casts a cloud upon his title.

# Quadricon Pvt. Ltd. V. Bajrang Alloys Ltd. AIR 2008 Bom 88.



Actual injury or an attempt to injure is not necessary to maintain an action under sec. 31 of the Specific Relief Act. A reasonable apprehension of a serious injury is sufficient.



# Prem singh v. Birbal (2006)5 SCC 353



There is a presumption that a registered document is validity executed. So a registered document is prima facie valid in law. The person who challenges it has to rebut the presumption.



# HOW AN INSTRUMENT CAN BE CANCELLED



Under the Act, there are two kinds of cancellation of instruments i.e., court can either cancel an instrument in part and can allow performance of its remaining part or can order it to be delivered up and cancelled. Hence an instrument can be cancelled partially or completely.



A suit for cancellation of an instrument is to be distinguished from a suit for declaration that the instrument is not binding on the plaintiff. An instrument to which the plaintiff was a party should be cancelled to enable him to establish his title when that instrument stands in the way of his doing so.



To establish the right of Cancellation of sale deed or any other document, the plaintiff must show that there has been either a mutual mistake, also a piece of oral evidence admissible to prove fraud or mistake.



# **Non payment of entire sale consideration**

# Vidyadhar v. Manikrao, (1999) 3 SCC 573



It was held that non-payment of a part of the sale price would not affect the validity of the sale. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground.



Followed in-

- Kaliaperumal vs Rajagopal & Anr AIR 2009  
SUPREME COURT 2122
- Dahiben v. Arvindbhai Kalyanji Bhanusali 2020  
SCC Online SC 562
- Yogendra Prasad Singh (Dead) through LRs v.  
Ram Bachan Devi & Ors. CIVIL APPEAL NO.10412 of 2013,  
Decided on 31-07-2023





# Burden of Proof



Burden of proof in a suit for cancellation of registered deed on the ground of forgery or other ground will be on the Plaintiff because it is settled proposition of law that the party who alleges must prove.

# Is there any time limit?



Article 59 of the Limitation Act, 1963 prescribed a period of 3 years for a suit for cancellation of an instrument computable from the date when the fact entitling the Plaintiff to have the instrument cancelled first becomes known to him.



# **Court fee-How Computed?**

# Agra Diocesan Trust Association v. Anil David and others, AIR 2020 SC 1372



“In the opinion of this court, there was no compulsion for the plaintiff to, at the stage of filing the suit, prove or establish the claim that the suit lands were revenue paying and the details of such revenue paid. Once it is conceded that the value of the land [per explanation to Section 7 (iv-A)] is to be determined according to either sub clauses (v), (va) or (vb) of the Act, this meant that the concept of “market value” – a wider concept in other contexts, was deemed to be referable to one or other modes of determining the value under sub clauses (v), (va) or (vb) of Section 7 (iv-A). This aspect was lost sight of by the High Court, in the facts of this case. The reasoning and conclusions of the High Court, are therefore, not sustainable”.



Followed in –

- **Rajendra Nautiyal v. Diwakar Jaguri and anr.** Writ Petition (M/S) No. 3643 of 2018 decided on 23-03-2022.



# CONCLUSION



A contract or an instrument totally depends upon the terms mentioned in it and when such terms are not on par with the object for which the concept of contract or instrument was introduced, instead of keeping its object at stake, the concepts of rectification and cancellation were introduced as a remedy to overcome such situation. Hence, when a discrepancy or a mistake crept in, such instrument or contract may either become void or voidable.





In an instrument or a contract wherein it was clear on the face of it or when both the parties agreed and stated that the intention behind the instrument was not clear from the instrument, in such situations, if the parties successfully established that such mistake crept in either due to fraud or mistake can rectify such instrument so as to express the actual intention behind it.



Cancellation is a term often used interchangeably with Rescission, but there is a slight difference as, only a document can be cancelled, whereas any agreement, whether oral or written can be rescinded. Hence, when there is a chance of serious injury or loss to either parties or a stranger due to any contract or instrument, on proof of the same, they can seek for cancellation of such instrument or contract.



*Thank You*