PROOF OF DOCUMENTS

(Prepared by Chandrashekhar U., Senior Faculty Member, KJA)

PROOF OF DOCUMENTS
(Prepared by Chandrashekhar .U)

What is documentary evidence?

Documentary evidence means and includes all documents including electronic records produced for the inspection of the Court.

Document 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.

In order to prove the documents original document is to be produced. Contents of it are to be proved so also signature on the same have to be proved. When document appeals to the conscious of the Court that it is genuine, contents of the same need not be proved **(AIR 2001 SC 318 "M. Narsinga Rao vs. State of Andhra Pradesh")**.

Proof of contents of document: Mere marking of a document cannot be said to be the proof of said document. The document has to be proved in accordance with law and the same has to be appreciated in order to ascertain the genuineness of the document with other materials available on record. In that context, both the parties would get ample opportunity to counter those documents as well to submit their arguments with reference to the evidence already

recorded by the court. **S. Ravichandra vs. M/s. Elements Development Consultants, Bengaluru, 2018 Cri. LJ 4314 (Kar).**

Proof of contents of document: Normally, any party who wants to prove the content of the document is required to lead evidence by production of the original document before the court through its author. Under Section 61, the original document can be presented before the Court through the author, who created the document and it can be proved. **G. Subbaraman vs. State, 2018 Cri. LJ 2377 (Mad).**

Proof of contents of documents: The legal position is not in dispute that mere production and making of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the evidence of those persons who can **Birendra Kumar Jaiswal, 2003 (8) SCC 745: AIR 2004 SC 175; see also, Alamelu vs. State represented by Inspector of Police, 2011 (2) SCC 385: AIR 2011 SC 715.**

Proof of documents: A document is required to be produced and proved according to law to be called evidence. Whether such evidence is relevant, irrelevant, admissible or inadmissible, is a matter of trial. **Hardeep Singh vs. State of Punjab, 2014 (3) SCC 92: 2014 Cri. LJ 1118: 2014 (1) Crimes 133: AIR 2014 SC 1400: 2014 (1) Scale 241: JT**

2014 (1) SC 412: 2014 (1) Ker. LT 336: 2014 (2) ALD (Cri) 152 (SC).

Recitals in documents: The recitals in the document do not become a part of the evidence. They are assertions by a person who is alive and who might have been brought before the Court if either of the parties to the suit had so desired. This distinction is frequently overlooked and when a document has been admitted in evidence as evidence of a transaction the parties are often apt to refer to the recitals therein as relevant evidence. **Nihar Bera vs. Kadar Bux Mohammed, AIR 1923 Cal 290.**

Admissibility of carbon copy of documents: Since the carbon copy was made by one uniform process the same was primary evidence within the meaning of Explanation 2 to Section 62 of the Evidence Act. Therefore, the medical certificate was clearly admissible in evidence. That apart, there is strong, reliable and dependable evidence of the prosecution witness which clearly proves that the prosecutrix was raped by the appellant. **Prithi Chand vs. State of Himachal Pradesh, 1989 (1) SCC 432: 1989 Cri. LJ 841 (SC).**

Admissibility of carbon copy of documents: The post-mortem report is to be prepared in triplicate by pen-carbon and in the instant case also, the post-mortem report was

prepared by pen-carbon in one uniform process and as such, in view of the provisions of Section 62 of the Evidence Act, such carbon copy is primary evidence. **Md. Yakub Ali vs. State of Tripura, 2004 Cri. LJ 3315 (Guj).**

Admissibility of counterpart originals: Section 62 of Evidence Act deals with Primary evidence. Explanation 2 says that where a number of documents are made by one uniform process, each is primary evidence of the contents of the rest. Under Explanation 2, all the documents must be taken at a time under one uniform process in which case, each of such documents is a primary evidence of the contents of the rest. Printing, cyclostyle, lithography are some mechanisms which are recognized under law through which documents can be obtained under a uniform process. Thus, documents prepared under the uniform process of either printing or cyclostyle or lithography cannot be mere copies in strict legal sense of the term, in fact, they are all counterpart originals and each of such documents is a primary evidence of its contents under Sections 45 and 47 of the Evidence Act. **Surinder Dogra vs. State, 2019 Cri. LJ 3580 (J&k).**

Proof of execution of documents:

Proof of handwriting:

Except when judicial notice is taken of official signatures, the handwriting or signature of unattested documents must be

proved. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting. This can be done in the following ways:

1. By calling the writer;
2. by an expert;
3. by a witness who is familiar with the handwriting of the writer; **(AIR 1983 SC 684 "State of Bihar vs. Radha Krishna Singh")**
4. by comparison of the disputed writing, signature or seal with some other admitted or proven writing, signature or seal of the person; or
5. by admission of the party against whom the document is tendered.

Proof of sealing:

The sealing of a document can be the subject of judicial notice, proof or presumption. When the seal of a foreign notary is put on a document, a presumption regarding the genuineness of the seal of the notary can be raised.

Proof of attestation:

If a document is required to be attested by law, it must not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if

such a witness is alive and subject to the process of the Court and capable of giving evidence. **(AIR 1959 SC 443 "H. Venkatachala Iyengar vs. B.N. Thimmajamma")**

If there is no denial of execution of document, then it is not necessary to call a witness for the purpose of proving the same.

For the purpose of valid attestation of a Will under Sec. 63, it is absolutely necessary that the attesting should either sign or affix thumb impression or mark himself, as the Section does not permit an attesting witness to delegate that function to another.

In the decision reported in **2010 AIR SCW 3935 A – S.R.Srinivasa & others vs. S. Padmavathamma**, it is held that mere signature of scribe cannot be taken as proof of attestation without evidence regarding other witnesses to Will.

Scribe:

The party who sees the Will executed, is in fact a witness to it; if he subscribes as a witness, he is then an attesting witness. The scribe or writer of a document may perform a dual role; he may be an attesting witness as well as the writer.

Sub-Registrar and Identifying Witnesses:

A Will is not required by law to be registered Sec. 63 of Indian Succession Act, merely requires that the Will should be

attested by two or more witnesses,. Each of whom, has either seen the testator sign, or affix his mark to the Will, or has received a personal acknowledgment of his signature from the testator, and each of the witnesses should sign the Will in the presence of the testator- no matter when, but before the Will had come into operation; where before it was presented for registration, it bore the signature of only one attesting witness, the signature of sub-registrar and of another person who are proved to have signed the Will in the presence of the testator, though as registering authority or an identifying witness, after its execution had been admitted before them by the testator must be regarded as sufficient compliance with Sec. 63 Succession Act. Reference may be made to the decision reported in **AIR 2005 SC 4362 Pentakota Satyanarayana vs. Pentakota Seetharatnam.**

Summary:

Subject to the proviso, the rules regarding may be thus summarized:

i) An attested document not required by law to be attested may be proved as if it was unattested.

ii) The Court shall presume that every document called for and not produced after notice to produce, was attested in the manner prescribed by law.

iii) There is a presumption of due attestation in the case of document thirty years old. The Court may in such cases dispense with proof of attestation.

iv) Where a document is required by law to be attested, and there is an attesting witness available, then, subject to the proviso, at least one attesting witness must be called.

v) If there be no attesting witness available, or if the document purports to have been executed in a foreign country, it must be proved by other evidence that the attestation of one attesting witness at least in his handwriting, and that the signature of the person executing the document is in his handwriting of that person.

vi) The admission of a party to an attested document of its execution will, so far as such party is concerned, supersede the necessity of either calling the attesting witnesses or of giving any other evidence.

vii) If the attesting witness available denies or does not recollect the execution of the document, its execution may be proved by other evidence. But where he fails to prove the execution of the document, the document is not legally proved.

When attesting witness need not be called.

i) when the document is a registered one and its execution is not specifically denied.

ii) Even though the execution of a Will is admitted, attesting witness has to be examined. {**2008 (3) KCCR 1484 (23 and 31)**}

iii) When there is no attesting witness available.

iv) When a party to the document against whom, it is sought to be used, admits its execution.

v) When the document is not required by law to be attested.

vi) When the document is thirty years old and there is a presumption of due attestation.

vii) When document is called for and not produced.

viii) When the document is a Will admitted to probate in India, in which case it may by the probate.

Burdon to repel suspicious circumstances regarding execution of will

When there are suspicious circumstances regarding the execution of will, the onus is also on the propounder to explain them to the satisfaction of the Court and only when such responsibility is discharged, the Court would accept the Will as genuine. Refer **Shashi Kumar Banerjee vs. Chandraraja Kadamba (1973) 3 SCC 291 = AIR 1972 SC 2492, K. Lakshmanan vs. Thekkayil Padmini (2009) 1 SCC 354 = AIR 2009 SC 951, Mahesh Kumar vs. Vinod Kumar (2012) 4 SCC 387.**

Effect of Registration of Will

Registration of Will is a piece of Evidence confirming its genuineness and can confirm it a higher degree of sanctity. However the proof is as stated above. Refer **S.R. Sreenivasa vs. S. Padmavathamma (2010) 5 SCC 274.**

Guidelines as to genuineness of Will and testator's mind. Refer the edition in the case of **Navneeth Lal @ Rangi vs. Gokul, AIR 1976 SC 794.**

(a) In construing a document whether in English or in vernacular the fundamental rule is to ascertain the intention from the words used; the surrounding circumstances being considered to find out the intended meaning of such words employed therein. [927F-G]

(b) In construing the language of the Will the court is entitled to put itself into the testator's armchair and is bound to bear in mind also other matters than merely the words used like the surrounding circumstances, the position of the testator, his family relationship, the probability that he would use words in a particular sense-all as an aid to arriving at a right construction of the Will, and to ascertain the meaning of its language when used by that particular testator in that document. [927G-H, 928A]

(c) The true intention of the testator has to be gathered not by attaching importance to isolated expressions but by reading the Will as a whole with all its provisions and ignoring none of them as redundant or contradictory. [928B]

(d) The court must accept, if possible, such construction as would give to every expression some effect rather than that which would render any of 925 the expression inoperative. The court will look at the circumstances under which the testator makes his Will, such as the state of his property, of his family and the like. Where apparently conflicting dispositions can be reconciled by giving full effect to every word used in a document, such a construction should be accepted instead of a construction which would have the effect of cutting down the clear meaning of the words used by the testator. Further, where one of the two reasonable constructions would lead to intestacy, that should be discarded in favour of a construction which does not create and such hiatus. [928C-E]

(e) It is one of the cardinal principles of construction of Wills that to the extent that it is legally possible effect should be given to every disposition contained in the Will unless the law prevents effect being given to it. Of course, if there are two repugnant provisions conferring successive interests, if the first interest created is valid the subsequent interest cannot take effect but a court of construction will

proceed to the farthest extent to avoid repugnancy, so that effect could be given as far as possible to every testamentary intention contained in the Will.

Sec. 69: Proof where no attesting witness found:

The words 'can be found' in the Section are not very appropriate and must be interpreted to include not only cases where the witness cannot be produced because he cannot be traced but also cases where the witness for reasons of physical or mental disability, or for other reasons, when the Court considers sufficient, is no longer a competent witness for the purpose, as is provided in Sec. 68 of the Act.

If no attesting witness is available, it must be proved that attestation of one attesting witness is in his own handwriting and that the signature of the executants is in his handwriting. Signature includes mark.

When both the attesting witnesses were no more a line, Section 68 Indian Evidence Act cannot apply. So by applying Section 69, it has to be proved by other evidence as mentioned in Section 69. The word not found occurring in Section 69 of the Act should receive a wider purposive interpretation.

Bonds:

Although, for the purpose of the Stamp Act, it may be necessary for a bond to be attested, it is not a document required by law to be attested within the meaning of Sec. 68.

If document is not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act unless its execution by the person by whom it purports to have been executed is specifically denied. **[(2000) 7 SCC 189 – Rosammal Issetheenammal Fernandez (dead) by lrs vs. Joosa Mariyan Fernandez]** Wherein, it is held that:

> "Under the proviso to Section 68 the obligation to produce at least one attesting witness stands withdrawn if the execution of any such document, not being a will which is registered, is not specifically denied. Therefore, everything hinges on the recording of this fact of such denial. If there is no specific denial, the proviso comes into play but if there is denial, the proviso will not apply. In the present case as we have held, there is clear denial of the execution of such document by the plaintiff, hence the High Court fell into error in applying the said proviso which on the facts of this case would not apply. In view of this the very execution of the gift deed, Exhibit B-1 is not proved. Admittedly in this case none of the two attesting witnesses has been produced. Once the gift deed cannot be tendered in evidence in view of the non-compliance of Section 68 of the Indian Evidence Act, we uphold that the plaintiff has successfully challenged its execution. The gift deed accordingly fails and the findings of the High Court contrary are set aside. In view of this no rights under this document accrue to the respondent concerned over Schedule A property which is covered by this gift deed."

Exceptions to strict proof of execution and attestation:

When a document is called for and not produced after notice to produce the document is given, the Court will

presume that it was attested. Stamped and executed in the manner required by law.

Primary Evidence:

Documents must be proved by producing them at trial. Section 62 of Indian Evidence Act defines primary evidence which means a documents itself produced for inspection of Court.

Secondary evidence of the contents of private documents is admissible only if the original document is not in existence or not available. Therefore, it is usually necessary to account for the absence of the original and for this purpose, proof of primary evidence is not available may be required.

What is secondary evidence?

They are;

1. Certified copies of documents;
2. copies made from the original by a mechanical process which ensures the accuracy of the copy, and copies compared with such copies;
3. copies made from or compared with the original
4. counterparts of documents as against the parties who did not execute them; and
5. oral accounts of the contents of a document given by some person who has himself seen it.

The contents of documents can be proved by oral evidence. However, the contents must be proved by admissible evidence. If the truth of the facts stated in the documents itself is in issue, then, proof of execution of the document should not be equated with the proof of facts stated in the document. In this regard, the decision of the Apex Court reported in **AIR 1985 SC 955 "Hawaldar Singh vs. State of U.P."** may be relied upon.

In the decision reported in **2010 AIR SCW 6362 – M.Chandra vs. M. Thangamuthu,** it is held that:

> "It is true that a party who wishes to rely upon the contents of a document must adduce primary evidence of the contents, and only in the exceptional cases will secondary evidence be admissible. However, if secondary evidence is admissible, it may be adduced in any form in which lit may be available, whether by production of a copy, duplicate copy of a copy, by oral evidence of the contents or in another form. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. It should be emphasized that the exceptions to the rule requiring primary evidence are designed to provide relief in a case where party is genuinely unable to produce the original through no fault of that party"

Production of Certified Copy:

Mere production of a certified copy of a document more than 30 years old, is not sufficient to raise a presumption

under Sec. 90 of Evidence Act, regarding the genuineness or execution, although, the certified copy may be used to prove the contents of the document. Mere production of a certified copy of the registered document would not amount to proving the original deed by way of secondary evidence. Refer the decision reported in **AIR 1935 PC 132 – Basant Singh vs. Brij Raj Saran and AIR 1956 SC 305 – Harihar Prasad vs. Deo Narain. AIR 2007 SC 2577 – Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale. AIR 2004 SC 4830 Cement Corporation of India Ltd. vs. Pury.**

Proof of lost or destroyed documents:

Secondary evidence can be accepted by the Court for the existence, condition or contents of a document if the original has been lost or destroyed. In this regard, the decision reported in **AIR 1979 SC 1567 "Aher Rama Gova vs. State of Gujarat"** may be relied upon. The loss of original must be proved. In this regard, the decision reported in **[(1962) 1 SCR 827]** in the case of **State of Bihar vs. Karam Chand Thapar** may be relied upon.

Secondary evidence can be accepted by the Court for the existence, condition or contents of a document; 1) when the original appears to be possession or power of the person against whom the document is to be in the possession or power of the person against whom the document is sought to

be proved, or of a person not subject to the power of the Court or of any person legally bound to produce it, who has not it despite being given the required statutory notice, 2) when the party offering such evidence cannot, though no default or neglect of his own, produce the original in reasonable time. **(**relevant decision – **AIR 1975 SC 1748 "Ashok Dulichand vs. Madhavlal Dube")** 3)when the original document is not easily movable, 4)when the original document comprises numerous accounts or other documents which cannot be conveniently examined in Court and the fact to be proved is the general result of the whole collection.

If a document is written by hand by the executant himself and produced before the Court, such document is called as Holograph/Autograph. If it is written by a scribe and relied upon, such document is called "Onmatic" document. There exists another type of document called as Symbolic document.

Admissibility of certified copies obtained under RTI Act.

The documents obtained under RTI Act can be admitted as secondary evidence, as they are obtained under a particular enactment, which fall within ambit of by "any other law in force in India"

Photocopies of documents

The photocopies which are exhibited were not public documents. Therefore Section 65 (e) does not apply. Though the seal and signature of the manager on those photocopies mention it as 'certified copy', in fact it does not fall within the meaning of certified copy as referred under Section 65(e) or 65(f), nor such certificate found on the exhibits satisfies the mandate of Section 4 of Banker's Book Evidence Act. Refer **G. Subbaraman vs. State 2018 Cri. LJ 2377 (Mad).**

Proof of Call Records

The information contain in the call records is stored in huge servers which cannot be easily moved and produced in the Court. Hence, printout taken from the computers/servers by mechanical process and certified by a responsible official of the service-providing company can be led in evidence through a witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge. Irrespective of the compliance with the requirements of Section 65-B, which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely, Sections 63 and 65. It may be that the certificate containing the details in sub-section (4) of Section 65-B is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law

permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely, Sections 63 and 65 of the Act. **State (NCT of Delhi) vs. Navjot Sandhu @ Afsan Guru, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: AIR 2005 SC 3820: 2005 Cri. LJ 3950: (2005) 122 DLT 194 (SC); overruled in Anvar P.V. vs. P.K. Basheer, (2014) 10 SCC 473: AIR 2015 SC 180.**

Section 65-B

Admissibility of electronic evidence:

The applicability of procedural requirement under Section 65-B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in absence of certificate under Section 65-B(4) of the Evidence act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65-B(4) is not

always mandatory. Accordingly, the legal position was clarified on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65-B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by the Court wherever interest of justice so justifies. **Shafhi Mohammad vs. State of Himachal Pradesh, 2018 Cri. LJ 1714 : 2018 (1) Crimes 125: 2018 (2) Scale 235: AIR 2018 SC (Cri) 417 : 2018 (3) All Rent Cas 702 : (2018) 2 SCC 807: AIR 2018 SC 714.; see also, Sonu @ Amar vs. State of Haryana, 2017 Cri. LJ 4352 : 2017 (8) Scale 45 : (2017) 3 SCC (cri) 663: (2017) 8 SCC 570 : 2017 (3) Crimes 234.; Kishin T. Punjabi vs. Suresh Kothari, 2020 (5) KCCR SN 53.**

Necessity of certificate:

An electronic record is not admissible unless it is accompanied by a certificate as contemplated under Section 65-B(4) of the Indian Evidence Act. **Sonu @ Amar vs. State of Haryana, 2017 Cri. LJ 4352 : 2017 (8) Scale 45: (2017) 3 SCC (Cri) 663: (2017) 8 SCC 570: 2017 (3) Crimes 234.**

Necessity of certificate:

For the purposes of taking cognizance, the Magistrate can look into in electronic evidence which is not accompanied

by a certificate. **B.S. Yediyurappa vs. State of Karnataka, 2020 (4) KCCR 2649.**

Need for production of certificate:

The High Court erred in coming to the conclusion that the failure to produce a certificate under Section 65-B(4) of the Evidence Act at the stage when the charge-sheet was filed was fatal to the prosecution. The need for production of such a certificate would arise when the electronic record is sought to be produced in evidence at the trial. It is at that stage that the necessity of the production of the certificate would arise. **State by Karnataka Lokayukta Police Station, Bengaluru vs. M.R. Hiremath, 2019 Cri. LJ 3255 : (2019) 7 SCC 515: 2019 (5) Scale 26: 2019 (4) KCCR 3641: 2019 (3) AKR 337: 2019 (5) Kant LJ 401: 2019 (2) Mad LJ (Cri) 676: AIR 2019 SC 2377: AIR Online 2019 SC 310.**

Non-production of certificate:

The Court emphasised that non-production of a certificate under Section 65B on an earlier occasion is a curable defect. **Union of India vs. Ravindra V. Desai, (2018) 16 SCC 272: AIR 2018 SC 2754.**

Non-production of certificate:

The crucial test is whether the defect could have been cured at the stage of marking the document. Applying this

test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. **Sonu @ Amar vs. State of Haryana, (2017) 8 SCC 570: AIR 2017 SC 3441: (2017) 3 SCC (Cri) 663.**

BURDEN OF PROOF

So far as burden of proof with regard to the pleading is concerned, it never shifts but burden of proving evidence shifts and go on shifting. This is called Onus. **(AIR 1964 SC 136)**.

In the case of proof of Will, if a party pleads coercion, then the burden is on him to prove the same. In this regard, the decision of Apex Court reported in **AIR 2008 SUPREME COURT 300 "Savithri vs. Karthyayani Amma"** is relevant, wherein at para No.15, it is held that:

> "We may, however, notice that according to the appellants themselves, the signature of the testator on the Will was obtained under undue influence or coercion. The onus to prove the same was on them. They have failed to do so. If the propounder proves that the Will was signed by the testator and he at the relevant time was in sound disposing state of mind and understood the nature and effect of disposition, the onus stands discharged. For the aforementioned purpose the background fact of the attending circumstances may also be taken into consideration". [**See B. Venkatamuni vs. C.J. Ayodhya Ram Singh**

and Others (2006) 11 Scale 148]. 2006 AIR SCW 6115

Doctrine of reverse burden:

Hon'ble Apex while dealing with presumption and doctrine of reverse burden has held in the case reported in **AIR 2008 SUPREME COURT 2467 "Harendra Sarkar vs. State of Assam"** that

> "In this case, no such question was raised. At no stage any such complaint was made that the investigation carried by the investigating authorities was not proper or fair. Ordinarily, the court shall not raise such a presumption unless appropriate materials are brought on record. The court may or may not raise a presumption that an official act having been done was not in due course of its business, but in a criminal case, no presumption should be raised which does not have any origin in any statute but would cause great prejudice to an accused."

Burden of proof is distinct from onus of proof. In this regard the decision of Apex Court reported in **AIR 2006 SC 1971 in the case "Anil Rishi vs. Gurbaksh Singh"** is relevant, wherein at head note B that

> "There is another aspect of the matter which should be borne in mind. A distinction exists between a burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof has greater force, where the question is which party is to begin. Burden of proof is used in three ways : (i) to indicate the duty of bringing forward evidence in support of a proposition at

> the beginning or later; (ii) to make that of establishing a proposition as against all counter evidence; and (iii) an indiscriminate use in which it may mean either or both of the others. The elementary rule is Section 101 is inflexible. In terms of Section 102, the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to show the circumstances, if any, which would disentitle the plaintiff to the same."

When the parties adduce evidence, the burden of proof looses its importance, in this regard, the decision of Apex Court reported in **AIR 2006 SC 3626 – "Standard Chartered Bank vs. Andhra Bank Financial Services Ltd."** is relevant.

PRESUMPTIONS

There are two types of Presumptions. One is Presumption of Law and another is Presumption of Fact. To have a better understanding of the same, one must read Secs.8, 86, 87, 88, 88(A), 90, 90(A), 113(A) and 114 of Evidence Act. So, far as presumption of law is concerned there are two types of presumption of law -one is rebuttable i.e. Compelling Presumption and another is irrebuttable Presumption i.e. Conclusive Presumption. This is well discussed in **AIR 1979 SC 1848 Para 21**.

Some of the important decisions on presumption under Sec 114 of Indian Evidence Act are as follows:

a) **AIR 2008 SC 391 "Sitaram vs. State of Jharkhand"**, wherein, it is held that:

> "S. 133 of the Evidence Act expressly provides that an accomplice is a competent witness and the conviction is not illegal merely because it proceeds on an uncorroborated testimony of an accomplice. In other words, this section renders admissible such uncorroborated testimony. But this section has to be read along with S. 114, illustration (b). Illustration (b) to S. 114 in express terms says that accomplice is unworthy of credit unless he is corroborated in material particulars. The statute permits the conviction of an accused on the basis of uncorroborated testimony of an accomplice but the rule of prudence embodied in illustration (b) to S. 114 of the Evidence Act strikes a note of warning cautioning the Court that an accomplice does not generally deserve to be believed unless corroborated in material particulars. In other words, the rule is that the necessity of corroboration is a matter of prudence except when it is safe to dispense with such corroboration. Although S. 114, illustration (b) provides that the Court may presume that the evidence of an accomplice is unworthy of credit unless corroborated, 'may' is not 'must' and no decision of Court can make it must. (Paras 15, 16)
>
> As regards nature of corroborative evidence that is necessary. It is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction. All that is required is that there must be some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it. The independent evidence must not only make it safe to believe that the

> crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or complainant that the accused committed the crime. The corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another. The corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime. Were it otherwise, 'many crimes which are usually committed between accomplices in secret, such as incest, offences with females (or unnatural offences) could never be brought to justice".

Whether revenue record is document of title?

No: In this regard, the decision of Apex Court reported **in AIR 2008 SC 901 "Gurunath Manohar Pavaskar vs. Nagesh Siddappa Navalgund"** is relevant, wherein it is held that:

> "A revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/ or continuity thereof both forward and backward can also be raised under Section 110 of the Indian Evidence Act. The Courts below, were, therefore, required to appreciate the evidence keeping in view the correct legal principles in mind."

When and how the adverse inference is to be drawn?

It is a bounden duty of the parties to the proceedings to produce best available evidence before the court. If not produced, adverse inference is to be drawn **(AIR 1970 SC**

688, AIR 1974 SC 2367, AIR 1977 638). Before drawing adverse inference court has to see that though the document is available but not produced then only adverse inference is to be drawn. Party asserting that he is not in position of document so sought to be produced have to prove the same **(AIR 1968 SC 1413)**.

AIR 2007 SC 2025 "Adivekka vs. Hanamavva Kom Venkatesh".

Whether non-examination of IO or SO is fatal? Whether adverse inference can be drawn?

Yes. Relevant decision is reported in **AIR 2008 SC 932 "State of U.P. v. Punni",** wherein it is held at head note A that:

> "Evidence Act (1 of 1872), S.3, S.114 - Penal Code (45 of 1860), S.399, S.402 - EVIDENCE - DACOITY - WITNESS - Non-examination of witness - Adverse inference - Case of attempt to commit dacoity - Station House Officer who had prepared plan to prevent dacoity and nabbed dacoits - Had also dictated F.I.R. - Not examined by prosecution - I.O. also not examined - Non-examination of S.O. and I.O. held was fatal to prosecution."

Whether continuous living of a lady with another after death of her husband if borne out of records can be considered to raise presumption of Marriage?

Yes: the relevant decision is reported in **AIR 2008 SC 1193 "Tulsa vs. Durghatiya"**, wherein it is held that:

> "the continuous living together of Lolli and Radhika has been established. In fact the evidence of the witnesses examined by the plaintiff also established this fact. The conclusion of the first appellate court that they were living together when Mangal was alive has not been established. The evidence on record clearly shows that Lolli and Radhika were living together after the death of Mangal".

Whether certificate of posting is sufficient to raise presumption of service?

No: Relevant decision is reported in **AIR 2006 SC 825 "State of Maharashtra vs. Rashid Babubhai Mulani"**, wherein it is held that:

> "Certificate of posting obtained by a sender is not comparable to a receipt for sending a communication by registered post. When a letter is sent by registered post, a receipt with serial number is issued and a record is maintained by the Post Office. But when a mere certificate of posting is sought, no record is maintained by the Post Office either about the receipt of the letter or the certificate issued. The ease with which such certificates can be procured by affixing ante-dated seal with the connivance of any employee of the Post Office is a matter of concern. The Department of Posts may have to evolve some procedure whereby a record in regard to the issuance of certificates is regularly maintained showing a serial number, date, sender's name and addressee's name to avoid misuse. In the absence of such a record, a certificate of posting may be of very little assistance, where the dispatch of such communications is disputed or denied".

THUMB IMPRESSION

Document executed by illiterate person. Such person who has put the thumb impression need not say that it is his thumb impression. Suffice to say that this is the document on which he put thumb impression. Marking of thumb impression as exhibit is wrong **(AIR 1963 Rajasthan 84 – Bheek Chand vs. Parbhuji)**.

Execution of a document by pardhanashin woman.

Pardanashin lady has to admit the contents of the document. In India pardahnashin ladies have been given a special protection in view of the social conditions of the times; they are presumed to have an imperfect knowledge of the world, as a result by the pardah system they are practically excluded from social intercourse and communion with the outside world. AIR 1925 PC 204, Rel. on. **– AIR 1963 SC 1203 "Kharbuja Kuer vs. Jangbahadur Rai".**

How to prove the Photographs?

By producing both photographs and their negatives. By examining the photographer, a person who has developed the photographs. If other side admits the contents of the photographs, then negatives need not be produced. In case of digital photographs, production of photos and CD is necessary.

If the photograph confronted is admitted, then it can be said that photograph has been proved. There may be possibility of tricking the photograph. To avoid the tricking Court has to be more cautious. This is well discussed in **(1991 Cr.L.J. 978, AIR 1968 SC 938, AIR 1976 Bombay 204)**.

XEROX COPIES

Unless the original is perused, a Xerox copy with signature cannot be marked **(AIR 1994 SC 591 – Government of Andhra Pradesh vs. Karri Chinna Venkata Reddy and others)**
(AIR 1976 Orissa 236).

In the decision reported in **1990 (2) ALT 171 – K. Neelamma vs. B. Suryanarayana,** it is held that whenever Xerox copy is produced, the duty of the Court is to be much more cautious than when a copy is produced under other mechanical process.

In the decision reported in **AIR 2007 SC 1721 :J. Yashoda vs. K. Shobha Rani"** wherein, it is held that:

> "Evidence Act (1 of 1872), S.63, S.65(a) - EVIDENCE - DOCUMENTS - Secondary evidence - Admissibility - Documents in question were admittedly photo copies - There was no possibility of said documents being compared with original as same were with another person - Conditions in S. 65(a) had not been satisfied -

Documents cannot be therefore, accepted as secondary evidence."

Referring Xerox copies without comparing original is not proper.

In the decision reported in **2010 AIRSCW 5200= ILR 2011 Kar 1 – Shalimar Chemical Works Ltd. vs. Surendra Oil and Dal Mills**, it is held that:

"On a careful consideration of the whole matter, we feel that serious mistakes were committed in the case at all stages. The trial court should not have "marked" as exhibits the xerox copies of the certificates of registration of trade mark in spite of the objection raised by the defendants. It should have declined to take them on record as evidence and left the plaintiff to support its case by whatever means it proposed rather than leaving the issue of admissibility of those copies open and hanging, by marking them as exhibits subject to objection of proof and admissibility"

In the decision reported in **2010-KCCR-2-816 – Himatsingka Seide Ltd., Bangalore vs. Shambappa Basappa**, it is held that:

"In case of xerox or photo copy, Section 63 of the Evidence Act requires that, the said copy must itself ensure that it is accurate copy, such as competent authority certifying the copy as accurate copy of the original. Hence, the photo copy by itself may not be admissible, but if it is proved that it is made from the original, it is admissible."

In the decision reported in **AIR 2011 S C 1492 – H.Siddiqui vs. A. Ramalingam,** it is held that:

> "In a case where original documents are not produced at any time, nor, any factual foundation has been led for giving secondary evidence, it is not permissible for the Court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non-production of the original is accounted for, so as to bring it within one or other of the cases provided for in S. 65. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The Court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon. Where the respondent had merely admitted his signature on the photocopy of the power of attorney and did not admit the contents thereof and the trial Court without examining whether contents thereof had probative value decreed the suit for specific performance, the approach of trial Court was held to be improper."

Certified copies of the document can be received on record.

What is the scope of confronting public documents such as RTC, mutation extract etc and also Xerox copies?

Under Sec. 145 of Evidence Act, only previous statement of witness, scribe incase of any document, letter etc and addressee, beneficiary under any document can be confronted.

Since, RTC and other documents though pertain to the witness cannot be confronted if we go through the language of Sec. 145 Evidence Act.

In the decision reported in **AIR 1922 PC 409 – Baikuntha v. Prasannamoyi**, it is held that:

> "Where the purpose of the production of the document at the time of cross-examination of a witness seemed to have been well understood by him and from the record of his deposition it was manifest that after being shown the document, he was directly asked whether it was not a fact that he was not at a particular place on the alleged date as was clear from the document and where on re-examination no attempt was made to elicit any explanation. Held, the witness was properly contradicted."

In the decision reported in **AIR 1915 PC 7 – B. G. Tilak vs. Shrinivas,** it is held that:

> "Civil Cause must be conducted in the ordinary and regular way, and judged of by the evidence led therein. Under S. 33 evidence given by a witness in a previous criminal trial is relevant for the purpose of proving in a subsequent proceeding the truth of the fact which it states, but this is permissible when the witness is dead, or cannot be found or is incapable of giving evidence, or is kept out of the way, etc. But there is no warrant whatsoever for using such evidence for the purpose of either contradicting or discounting the evidence of the witnesses, given in the Civil Suit, unless the particular matter or point had been placed before the witness as one for explanation in view of its discrepancy with the evidence then being tendered."

In Land Acquisition cases – It is not necessary to produce the original sale deeds to compare the market value of the landed property adjoining the land which is acquired by the Government. Certified copy of the Sale Deed is sufficient and it can be admitted in evidence u/s 51A of Land Acquisition Act **– AIR 2004 SC 4830 "Cement Corporation of India Ltd. vs. Purya"**

In the decision reported in **AIR 2004 SC 313 – Chaudhari Ramjibhai Narasangbhai vs. State of Gujarat,** it is held that:

> "Witnesses can only be contradicted in terms of Section 145 of the Evidence Act by his own previous statement and not with the statement of any other witness. (See Mohanlal Gangaram Gehani v. State of Maharashtra (AIR 1982 SC 839). As was held in the said case, Section 145 applies only to cases where the same person makes two contradictory statements either in different proceedings or in two different stages of a proceeding. If the maker of a statement is sought to be contradicted, his attention should be drawn to his previous statement under Section 145 of the Evidence Act only. Section 145 has no application where a witness is sought to be contradicted not by his own statement but by the statement of another witness."

In the case of **Tukaram Ganu Pawar vs. Chandra Atma Pawar,** reported in **TLKAR 2005 page 616**, it is held that:

> "It is clear from Order 13, Rule 2 of the CPC read with section 145 of the Indian Evidence Act, 1872 that what

can be produced during cross-examination, to confront a witness to contradict him, is only his previous statement in writing or reduced into writing. A witness cannot therefore be confronted in cross-examination (without previous production as per law) a document executed by someone else. In this case, therefore, the document allegedly executed by petitioner's father, ought not to have been permitted to be confronted to petitioner in his cross-examination, without prior production as required by law".

In the case of **Amarnath vs. Puttamma,** reported in **ILR 1999 Kar 4634** in it is held that:

"Order 13 of CPC makes it clear that all documents on which the parties intend to rely on as substantive evidence, should be produced either with the pleadings or before settlement of issues, (In summary proceedings, where issues are not framed, the documents should be produced before commencement of evidence), or thereafter with an application assigning reasons for non-production. Parties may however produce a document for the limited purpose of confronting it to a witness during his cross-examination to contradict him or to refresh the memory of a witness. It is clear from Order 13, Rule 2 of the CPC read with Section 145 of Evidence Act, 1872 that what can be produced during cross-examination, to confront a witness to contradict him, is only his previous statement in writing or reduced into writing. A witness cannot therefore be confronted in cross-examination (without previous production as per law) a document executed by someone else. In this case, therefore, the document allegedly executed by petitioner's father, ought not to have been permitted to be confronted to petitioner in his cross-examination, without prior production as required by law."

Xerox copy of the document can be produced as secondary evidence only if necessary foundation is made as per the provisions of Secs 63 and 65 of the Evidence Act by calling the other side to produce the original document. However, this could be done only if Xerox copy is produced according to law as held in the decision, reported in **2006 (1) KCCR 284** in the case of **Gafarsab alias Sati Gafar Sab vs. Ameer Ahmad.**

Xerox copy of the certified copy of a document cannot be marked as it does not come within the purview of Sec.63 of Evidence Act.,as held in the decision reported **1991-CALWN-96-529- Kabita Bose vs. Timir Baran Haldar.**

The latest decision on the point is reported in **2011 (4) SCC 240 in the case of H.Siddiqui vs. A.Ramalingam,** wherein, at para 12, it is held that:

> "In our humble opinion, the Trial Court could not proceed in such an unwarranted manner for the reason that the respondent had merely admitted his signature on the photocopy of the power of attorney and did not admit the contents thereof. More so, the court should have borne in mind that admissibility of a document or contents thereof may not necessary lead to drawing any inference unless the contents thereof have some probative value."

As far as Section 85 is concerned, summary of position as to who should give evidence in regard to power of attorney

is very well stated in the case of **Mrs. Saradamani Kandappan vs. Mrs. S. Rajalakshmi – (2011) 12 SCC 18 = AIR 2011 SC 3234.** The following observations are made, they are:

(a) An attorney-holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney-holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney-holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney-holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney-holder, necessarily the attorney-holder alone can give evidence in

regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney-holders or persons residing abroad managing their affairs through their attorney-holders.

(e) Where the entire transaction has been conducted through a particular attorney-holder, the principal has to examine that attorney-holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney-holder had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney-holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his "state of mind" or "conduct", normally the person concerned alone has to give evidence and not an attorney-holder. A landlord who seeks eviction of his tenant, on the ground of his "bona fide" need and a purchaser seeking specific performance who has to show his "readiness and willingness" fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such

attorney even with reference to bona fides or "readiness and willingness". Examples of such attorney-holder are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad.

Section 85 of the Indian Evidence Act provides that the could shall presume that every document purporting to be a power of attorney, and to have been executed before, and authenticated by, a Notary Public or any Court, Judge, Magistrate, Indian Consul or Vice Consul or the representative of the Central Government was so executed and authenticated. Section 85 cannot be read in isolation to the specific provision as contained under Section 14 of the Notaries Act.

TAPE RECORDED STATEMENT

Whether tape recorded statement is admissible in evidence?

Yes. The person who speaks must identify that it is his voice. Accuracy of the recording must be proved. Such statement must be free from tampering. Subject matter of statement must be relevant **(AIR 1968 SC 147 "Yusufalli Esmail Nagree vs. State of Maharashtra".**

> "(B) Criminal P.C. (5 of 1898), S.162 - POLICE OFFICERS - CONFESSION - Offence under S. 165 - A Penal Code-Trap laid-Use of tape-recorder to record conversation between accused and complainant -Mike kept concealed in outer room and tape recorder kept in inner room-Police Officer also in inner room - Accused not aware of police officer or that his conversation was being tape recorded -Conversation held was not hit by S. 162 and was admissible".

(AIR 1964 SC 72, AIR 1976 Calcutta 99).

Court should guard against Bentri Loquism i.e. imitation of voice. Reference may be made to latest decision reported in **AIR 2010 SC 965 Tukaram S. Dighole vs. Manikrao Shivaji Kokate.**

NEWS PAPER ITEMS

So, far as the news paper items are concerned it is neither primary nor secondary evidence but it is second hand secondary evidence. Therefore, the news paper items cannot be admitted in evidence unless the original manuscript is produced **(AIR 1994 SC 1733 "Quamarul Islam vs. S. K. Kanta",** wherein at head note D it is held that:

> "Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled. Newspaper, is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under the Evidence Act. Where the speech alleged to be delivered by the returned candidate during

election campaign was published in a newspaper but neither the reporter who heard the speech and sent the report was examined nor even his reports produced, the production of the newspaper by the Editor and Publisher by itself cannot amount to the contents of the newspaper reports. Though the advertisement or message published in a newspaper contained in appeal on ground of religion, when the original manuscript of the advertisements or the messages was not produced at the trial and no witness came forward to prove the receipt of the manuscript of any of the advertisements or the messages or the publication of the same in accordance with the manuscript, and there was no satisfactory and reliable evidence on the record to even establish that the same were actually issued by or at the instance of the returned candidate, the evidence of the election petitioner himself or of the Editor and Publisher of the Newspaper to prove the contents of the messages and advertisements in the newspaper could not be admitted and relied upon as evidence of the contents of the statement contained therein and could not be used against the returned candidate".

The Court cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence *aliunde*. A Report in a news paper is only hearsay evidence. A news papers not one of the documents referred to in Section 78(2) of Evidence Act. Refer **Laxmi Raj Shetty vs. State of T.N. (1988) 3 SCC 319=AIR 1988 AC 1274.**

COUNTER PART

Counter Part means duplicate of original. So, far as evidentiary value attached to such document is to the effect

that parties are bound by the contents of counter part signed by both the parties. For example Lease Deed, one retained by the land lord and one given to the tenant **(AIR 1977 Rajasthan 155, AIR 1996 Madras 147)**.

VIDEO CONFERENCING

Whether video conferencing is permissible?

Yes: So, far as video conferencing is concerned it is a latest technological invention. It enables the Court to record the evidence without bringing the accused to Court. Evidence recorded through video conferencing is admissible in evidence **(AIR 2003 SC 2053 "State of Maharashtra vs. Praful B. Desai" Headonte D)**.

Whether call records of mobile phone received from the operator is admissible in evidence?

Yes: It is admissible. Refer the decision reported in **AIR 2005 SC 3820P State (N.C.T. of Delhi) vs. Navjot Sandhu",** wherein, at, it is held at para nos. 15,18,19 that:

> "The call records relating to cellular phones are admissible and reliable and rightly made use of by the prosecution. In the instant case the computer, at the first instance, instead of recording the IMEI number of the mobile instrument, had recorded the IMEI and cell ID (location) of the person calling/called by the subscriber. The computer rectified this obvious error immediately and modified the record to show the correct

details viz., the IMEI and the cell ID of the subscriber only. The document is self-explanatory of the error. A perusal of both the call records with reference to the call at 11 : 19 : 14 hours exchanged between 9811489429 (Shaukat's) and 9811573506 (Afzal's) shows that the said call was recorded twice in the call records. The fact that the same call has been recorded twice in the call records of the calling and called party simultaneously demonstrates beyond doubt that the correctness or genuineness of the call is beyond doubt. Further, on a comparative perusal of the two call records, the details of Cell I.D. and IMEI of the two numbers are also recorded. Thus, same call has been recorded two times, first with the cell ID and IMEI number of the calling number (9811489429). The same explanation holds good for the call at 11 : 32 : 40 hours. Far from supporting the contention of the defence, the above facts, evident from the perusal of the call records, would clearly show that the system was working satisfactorily and it promptly checked and rectified the mistake that occurred. It was not suggested nor could it be suggested that there was any manipulation or material deficiency in the computer on account of these two errors. Above all, the printouts pertaining to the call details exhibited by the prosecution are of such regularity and continuity that it would be legitimate to draw a presumption that the system was functional and the output was produced by the computer in regular use, whether this fact was specifically deposed to by the witness or not."

The documents which require registration i.e. gifts, mortgage deeds, if the value of the property is more than Rs.100/-. Will is not a compulsorily registrable document.

Whether registration of a document dispenses the proof?

The answer would be no **(AIR 2004 SC 436 "Bhagat Ram vs. Suresh")**

HOW TO PROVE TELEGRAM

In anybody can send the telegram. If the telegram is challenged it is the duty of the parties asserting it to produce the confirmation letter for having sent the telegram and its contents. For example, the corporate sector takes more precaution while sending the telegrams. When a telegram is sent it should be followed by a letter who has sent the telegram. Care is taken in corporate sector to send a copy of the letter followed by telegram. The absence of such letter, no evidentiary value can be attached to the telegram. Letter of confirmation of sending telegram and its contents is must **(AIR 1993 SC 2633)**.

EVIDENTIARY VALUE ATTACHED TO VOTERS LIST

Voters list is a public document. Certified copy of the same can be received and marked. **(AIR 1991 Orissa 166, AIR 1980 Allahabad 174)**.

Identity card issued by the election commission – No evidentiary value can be attached with regard to the date of birth mentioned in the identity cards as it is a self serving statement **(AIR 2004 SC 230 "Sushil Kumar vs. Rakesh Kumar")** wherein at head note E, it is held that:

Evidence Act (1 of 1872), S.3DATE OF BIRTH - EVIDENCE - Date of birth - Proof - Entry in Voter List and

Election Identity Card issued by Election Commission - Not conclusive to infer whether a candidate was disqualified being underage on date of filing nomination paper.

DEPOSITIONS IN EARLIER PROCEEDINGS

To prove the statement of a witness in earlier proceedings with regard the admission true copy cannot be confronted. Certified copy of the deposition can be confronted. If such deposition is admitted it has evidentiary value **(AIR 1974 SC 117 "Biswanath Prasad vs. Dwarka Prasad")**.

However, if the witness in earlier proceedings has deposed that he is the owner of Vidhana Soudha and if such deposition is produced in subsequent proceeding it cannot be relied upon **(AIR 1974 SC 280 "Krishnawati vs. Hans Raj")**.

So, far as sale deeds are concerned registration is compulsory. If an unregistered sale deed is produced for collateral purpose (purpose other than the enforcing) it can be received on record **(AIR 1936 Calcutta 130)**. This decision still holds good.

In case of sale deeds, if there is a change in date of execution and date of registration. The date of execution is to be taken into consideration as it to relates back to the date of execution **(AIR 1998 Patna 1), (AIR 1961 SC 1747 – Ram Saran Lall vs. Domini Kuer)**

So, far as gift deeds are concerned attestation is necessary and it is to be proved in accordance with law. To prove the same examination of at least one attesting witness is necessary **(AIR 1975 Patna 140)**.

In case of gifts by Mohammedan acceptance by donee is must **(AIR 1981 Kerala 176)**.

Whether information relating to how a judge has come to conclusion in a particular case can be sought under Right to Information Act?

No. Refer the decision reported in **AIR 2010 SC 615 Khanapuram Gandaiah vs. Administrative Officer,** wherein, it is held that:

> "Definition of 'information' u/S. 2 (f) shows that an applicant under Section 6 of the RTI Act can get any information which is already in existence and accessible to the public authority under law. Of course, under the RTI Act an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc., but he cannot ask for any information as to why such opinions, advices circulars, orders, etc. have been passed, especially in matters pertaining to judicial decisions. A judge speaks through his judgments or orders passed by him. If any party feels aggrieved by the order/judgment passed by a judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant can be allowed to seek information as to why and for what reasons the judge had come to a particular

decision or conclusion. A judge is not bound to explain later on for what reasons he had come to such a conclusion. Moreover, in the instant case, the petitioner submitted his application under Section 6 of the RTI Act before the Administrative Officer-cum-Assistant State Public Information Officer seeking information in respect of the questions raised in his application. However, the Public Information Officer is not supposed to have any material which is not before him; or any information he could have obtained under law. Under section 6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the "Public authority" under any other law for the time being in force. The answers sought by the petitioner in the application could not have been with the public authority nor could he have had access to this information. A judge cannot be expected to give reasons other than those that have been enumerated in the judgment or order. Application before public authority seeking such information is therefore per se illegal, unwarranted. (Paras 6, 7)

A judicial officer is entitled to get protection and the object of the same is not to protect malicious or corrupt judges, but to protect the public from the dangers to which the administration of justice would be exposed if the concerned judicial officers were subject to inquiry as to malice, or to litigation with those whom their decisions might offend. If anything is done contrary to this, it would certainly affect the independence of the judiciary. A judge should be free to make independent decisions"

Whether Court can compare the signature and form an opinion itself as to identity of handwriting and signature?

No. It is not proper on the part of the Court to compare the signature under Sec. 73 of Evidence Act. Relying upon the

decision reported in **AIR 1979 SC 14-Palirams** case, it is held in **Thiruvengada Pillai** case that the Judge should not take the risk of comparing the disputed writing with the admitted writing without the aid of evidence of any expert**.** Though Sec. 73 of the evidence Act states that the Court is the expert of experts, prudence demands that such disputed signature/handwriting is referred to an expert and his opinion and evidence is considered. Refer **AIR 2008 S C 1541 - Thiruvengada Pillai vs. Navaneethammal.** Also refer the decisions reported in **2009 (5) Supreme 674** in the case of **G. Someshwar RAO vs. Samineni Nageshwar RAO, 2010-KCCR-1-683= 2010-AIRKARR-1-419-ISHWAR S/o Mahadevappa Hadimani vs. Suresh S/o Rachappa Pattepur**

Right of nominee:

Nominee has exclusive right to receive amount lying in account of deceased depositor. He however does not become exclusive owner thereof. Money received by nominee would devolve as per rules of succession. Refer the decision reported in **2010 AIR SCW 6842 – Ram Chander Talwar & Ors vs. Devender Kumar Talwar & others.**

* * * * *_____/* * * * *

****