

**PAPER PRESENTATION OF EXCLUSION OF ORAL EVIDENCE BY
DOCUMENTARY EVIDENCE BY SRI M.A. SOMA SEKHAR, M.A., M.B.A.,
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OFFENCES UNDER POCSO COURT, ONGOLE.**

INTRODUCTION:

Chapter VI of the Indian Evidence Act, 1872 from Section.91 to 100 deals with the exclusion of oral evidence by documentary evidence.

This Chapter holds significant importance in legal proceedings as it outlines the principles governing the use of documents to establish facts and resolve disputes.

There are somany types of evidences which are coming across in our day to day Court work.

They are:

1. Direct evidence
2. Circumstantial evidence.
3. Real evidence
4. Expert evidence
5. Hearsay evidence
6. Primary oral evidence
7. Secondary evidence
8. Oral evidence
9. Documentary evidence
10. Positive and negative evidence
11. Substantive and Non-substantive evidence
12. Prima-facie and conclusive evidence
13. Pre- appointed and casual evidence
14. Scientific evidence
15. Digital evidence
16. Electronic evidence
17. Tape record evidence

Difference between Oral by Documentary Evidence:

Oral evidence	Documentary evidence
Oral evidence means and includes all statements which are made by a witness in the court.	Documentary evidence means producing a document before the court of law and inspection is done by the court in order to know the facts.
It is a statement by a witness.	It is a statement of documents.
In oral evidence, the witness tells about the facts by speaking or with gestures.	In documentary evidence, the facts are told and it is recorded in writing.
Oral evidence is provided under Section 59 and 60 of Indian Evidence Act, 1872.	Documentary evidence is provided under Section 61 to 66 of the Indian Evidence Act.
Section 59 of the evidence says that it considers all facts as oral evidence except electronic evidence and documentary evidence. Section 60 says that oral evidence must be direct.	Primary evidence is considered as the evidence which is given in several parts like duplicate copies or as counterpart like those which is signed by the parties or photocopy of the document whereas, Secondary evidence contains certified copies, that have been made by the same mechanical process and also contain counterparts of the document against the parties.
For example- any crime has been committed by a Ram and there is a person available at the movement then whatever he heard, sees, perceive, or forms an opinion all this is considered as oral evidence.	For example- a photocopy of a document or photograph.

Exclusion of Oral and Documentary Evidence:

One of the essential standards of the law of proof is that in all cases the best proof ought to be given. Where the demonstration is exemplified in a record, the record is the best proof of the reality. The maxim of law is “*whatever is recorded as a hard copy must be demonstrated in the form of hard copy only*”.

1. SECTION 91:- EVIDENCE OF TERMS OF CONTRACTS, GRANTS AND OTHER DISPOSITIONS OF PROPERTY REDUCED TO FORM OF DOCUMENT.

The Chapter VI of Evidence Act begins with Section 91. It deals with the exclusion of oral evidence by documentary evidence. Section 91 of Evidence Act contains two exceptions, three explanations and five illustrations. Production of the document is required by this section to prove its contents. In a sense, the

rule enunciated by Section 91 of Evidence Act can be said to be an exclusive in as much as it excludes the admission of oral evidence for proving the contents of the document except in cases where secondary evidence is allowed. This Section lays down the best evidence rule, but it does not prohibit any other evidence where writing is capable of being construed differently and which shows how the parties understood the document.

Under this Section 91 of Evidence Act,

- (1) when the terms of (a) a contract, (b) a grant; or (c) any disposition of property, have been reduced to the form of a document; or
- (2) where any matter is required by law to be reduced to the form of a document, then (a) the document itself, or (b) secondary evidence of its contents, must be put in evidence.

The first part of provision refers to transactions voluntarily reduced to writing. The second part refers to those cases in which any matter is required by law to be reduced to the form of a document, e.g., sale of immovable property of the value of Rs.100/- and upwards, mortgage for an amount exceeding Rs. 100/-, a lease of immovable property for a year at least, a trust of immovable property, a gift of immovable property, etc.

In Tulsi Vs. Chandrika Prasad [AIR 2006 SC 3359], Hon'ble Supreme Court held as under :-

“Section 91 of the Evidence Act mainly forbids proving of the contents of a writing otherwise than by writing itself and merely lays down the 'best evidence rule'. It, however, does not prohibit the parties to adduce evidence, in a case, the deed is capable of being construed differently to show how they understood the same.”

In Bhaskar Waman Joshi V/s. Narayan Rambilas, [(1960) 2 SCR 117], Hon'ble Apex Court held as under:-

"the question in each case is one of determination of the real character of the transaction to be ascertained from the provisions of the deed, viewed in the light of the surrounding circumstances. If the words are plain and unambiguous, they must, in the light of the evidence of surrounding circumstances, be given their true legal effect. If there is ambiguity in the

language employed, the intention may be ascertained from the contents of the deed with such extrinsic evidence as may be, by law, be permitted to be adduced to show in what manner the language of the deed was related to existing facts".

The Hon'ble Supreme Court held in **Taburi Sahai Vs. Jhunjhunwala [AIR 1967 S.C. 106]**, that a deed of the adoption of child is not a contract within the meaning of Section 91 and, therefore, the fact of adoption can be proved by any evidence apart from the deed.

Exceptions:

There are two exceptions mentioned under this rule:

1. The general guidelines are that when some content of a document is to be proved in writing, the writing itself must be produced before the court and if it is not produced then secondary evidence should be given.

Exception:- when any public officer is appointed for writing and it is seen that a particular person has acted like such an officer then in such situations, the writing by which he has been appointed need not be proved.

Example:- Suresh appears as a witness before the court, to prove that he is a civil surgeon there is no need to show the appointment order. The surgeon only needs to show that he is working as a civil surgeon.

2. **To the general guidelines of content of writing there is one more exception mentioned under this:-** At the point when a probate (the copy of will which is required to be certified by the court) has got based on a will and subsequently question emerges about the presence of that will, the mere presence of the probate will demonstrate the presence of the will and the original will require not to be produced.

(2) WILLS ADMITTED TO PROBATE : Will admitted to probate in India may be proved by the probate. A Will is neither a contract, nor a grant, nor a disposition of property. The death of the testator makes it operative. Hence, this

section does not apply to Wills.

This is another exception of the general rule of the writing to be produced itself. When on the basis of will probate has been obtained and if later, the question arises on the existence of that will, the original will is not required to be produced before the court. This exception requires to prove the contents of

the will by which the probate is granted. The term “probate” stands for the copy of a certificate with the seal of the court granting administration to the estate of the testator. The probate copy of the will is secondary evidence of the contents of the original will in a strict sense, but it is ranked as primary evidence.

The general rule laid down in this section is also subject to the exceptions laid down in the Sections 95–99 of the Evidence Act. The section has no application when the writing is not evidence of the matter reduced to writing.

EXPLANATIONS TO SECTION 91:-

1. TRANSACTIONS IN ONE OR MORE THAN ONE DOCUMENT:-

[EXPLANATION 1]: This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one. Illustration (a) to the section exemplifies this explanation. It says, if a contract is contained in several letters, all the letters in which it is contained must be proved.

2. MORE THAN ONE ORIGINAL.—[EXPLANATION 2]

This explanation runs that where there are more originals than one, one original only need be proved. Illustration (c) exemplifies the meaning of this explanation. It says, if a bill of exchange is drawn in a set of three, one only need be proved.

3. EXTRANEOUS FACTS IN DOCUMENTS.—[EXPLANATION 3]

The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact. Illustrations (e) exemplify this explanation. It says, A give B a receipt for money paid by B. Oral evidence is offered of the payment. The evidence is admissible.

Confessional of an accused:- Oral testimony to prove confession is inadmissible -AIR 1936 PC 253: 37 Cr.L.J 897.

Dying declaration: Dying declaration can be proved by a person, who heard it by oral evidence. ILR 6 Cal.659. 10 Cr.LJ 186.

Seizure List : Contents of seizure list prepared under Section.100 of Cr.P.C and be proved otherwise than by the list alone. ILR. 33 Mad. 413: 11 Cr.L.J 716: ILR 34 Mad. 349. 11 Cr.L.J. 576.

Statement before Police Officer: Oral complaint recorded by police officer signed by the complainant and counter signed by police officer. Document is inadmissible for corroboration of handwriting is not proved. AIR 1962 Guj. 214J (1962) 2 Cr.L.J.55.

Section 92:-

Exclusion of evidence of an oral agreement.

If any contract, grants or disposition of property which is required by law to be in writing in form of document and if it has been proved according to Section 91, then for the purpose of varying it, contradicting it or subtracting it parties or their representative is not required to give oral evidence and it is not admissible. Two points are proved from this Section:-

1. If any third party gives then it is admissible.
2. If any oral evidence is given which do not contradict the contract then it is admissible.

In Krishi Utpadan Mandi Samiti, Sahaswan, District Badaun through its Secretary V/s. Bipin Kumar and Another, [(2004) 2 SCC 283], the Hon'ble Supreme Court held that, "*Section 92 of the Act precludes a party from leading evidence contrary to the terms of a written document. To permit a party to so urge would be to give a premium to dishonesty*".

The legal principle under this section is based on the difference in quality of both oral and documentary evidence. The oral evidence in such cases will be evidence of inferior quality, when compared with superior quality of documentary evidence. In this regard,, the law is laid down in **Tamil Nadu Electricity Board and another Vs. N. Raju Reddiar and another (AIR 1996 SC 2025)** is as under:-

"Under Section 92 of the Evidence Act where the written instrument appears to contain the whole terms of the contract then parties to the contract are not entitled to lead any oral evidence to ascertain the terms of the contract. It is only when the written contract does not contain the whole of the agreement between the parties and there is any ambiguity then oral evidence is permissible to prove the other conditions which also must not be inconsistent with the written contract..."

In the case of **Ram Janaki Raman v. State (AIR 2006 SC 1106)**, it was held by the Hon'ble Supreme Court that the bar laid down by section 92 of the

Act was not applicable under the Criminal proceeding. The Hon'ble Supreme Court held as under :-

“We may cull out the principles relating to Section 92 of the Evidence Act, thus:

i) Section 92 is supplementary to Section 91 and corollary to the rule contained in Section 91.

ii) The rule contained in Section 92 will apply only to the parties to the instrument or their successors in interest. Strangers to the contract (which would include the prosecution in a criminal proceeding) are not barred from establishing a contemporaneous oral agreement contradicting or varying the terms of the instrument. On the other hand, Section 91 may apply to strangers also.

iii) The bar under Section 92 would apply when a party to the instrument, relying on the instrument, seeks to prove that the terms of the transaction covered by the instrument are different from what is contained in the instrument. It will not apply where anyone, including a party to the instrument, seeks to establish that the transaction itself is different from what it purports to be. To put it differently, the bar is to oral evidence to disprove the terms of a contract, and not to disprove the contract itself, or to prove that the document was not intended to be acted upon and that intention was totally different.

Applying the aforesaid principles, it is clear that the bar under Section 92 will apply to a proceeding inter-parties to a document and not to a criminal proceeding, where the prosecution is trying to prove that a particular document or set of documents are fictitious documents created to offer an explanation for disproportionate wealth.

Oral evidence can always be led to show that a transaction under a particular document or set of documents is sham or fictitious or nominal, not intended to be acted upon.”

Exceptions:-

Validity of document:

If any contract or grant is made between the parties and fraud is done by other party or there is a mistake of fact, or mistake of law, or the party is not competent to contract then in such circumstances oral evidence can be given and it is admissible.

Matters on which document is silent

Oral evidence can be given when the documents are silent but subject to these two conditions are there:

1. The oral evidence should not contradict the document. **Illustration** – A sells his horse to B and told about the price but the soundness of horse is not told but oral evidence can be given that horse is of sound mind because the document is silent here.

2. In allowing the proof of oral understanding the court is to have respect the level of the custom of the record. On the off chance that the report is formal, proof of oral understanding will not be permitted even on issues on which the record is silent.

Separate oral agreement as condition precedent:

In this situation, it is provided that if there is any condition precedent is constituted to the existing separate oral agreement to attaching of any obligations under a document , then it needs to be proved.

Any separate oral agreement, constituting a condition precedent to the attacking of any obligation under the document, may be proved. In the case of **Chhaganlal Kalyandas Vs. Jagjiwandas Gulabdas AIR 1940 Bom.54, Hon'ble Bombay High Court** held as under:-

“Section 92, proviso 3, speaks of the existence of a separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property which may be allowed to be proved. This clearly presupposes to my mind that in a case to which it could be applied the contract, grant or disposition of property itself remains intact, but that the condition precedent pleaded must in its very nature be extraneous to the contract, grant or disposition it self and as agreed must come into existence before the obligation attaches thereunder.”

Hon'ble Orissa High Court held in the case of **Bal Ram Vs. Ramesh Chandra (AIR 1973 Ori 13)**, the requirements of this proviso are:

1. On the matter on which the document is silent, a separate oral agreement should be related to it.
2. Such oral agreement should not be inconsistent with the terms of the document.

(d) Distinct oral agreement made subsequently to renew or modify the contact :

Any subsequent oral agreement to rescind or modify any such contract, grant, or disposition of property, may be proved, except when such contract of grant (i) is required to be in writing, or (ii) has been registered. Hon'ble Supreme Court in the case of **S. Saktidevi Vs. M. Venugopal Pillai [AIR 2000 SC 2633]** has considered the scope and ambit of proviso (4) of Section 92 of the Evidence Act as follows :-

“...Proviso (4) to Section 92 contemplates three situations, whereby

(i) the existence of any distinct subsequent oral agreement as to rescind or modify any earlier contract, grant or disposition of the property can be proved.

(ii) However, this is not permissible where the contract, grant or disposition of property is by law required to be in writing.

(iii) No parol evidence can be let in to substantiate any subsequent oral arrangement which has effect of rescinding a contract or disposition of property which is registered according to the law in force for the time being as to the registration of documents.”-

(e) Any usage or customs by which incidents not mentioned in any contract are usually annexed to contract

Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to such contracts, may be proved if they are not repugnant to, or inconsistent with, its express terms.

(f) Extrinsic evidence of surrounding circumstances

Any fact which shows in what manner the language of the document is related to existing facts, may be proved.

Recession or modification:

This provision permits the proof of oral agreement by which the document was either revoked or altered. When documents are executed then parties orally agree to treat it as canceled or alter some of its terms, such oral agreement is admissible.

Usages or customs :

If there is the existence of any particular usage or customs by which incidents are attached to a contract then it can be proved.

Relation of language to facts :

If any document is written then oral evidence can be given of such a document that what is mentioned in and in what circumstances it was

mentioned and how to interpret it but it should not exclusively contradict the document.

Illustrations:

(a) A policy of insurance is effected on goods “in ships from Calcutta to London”. The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy, cannot be proved.

(b) A agrees absolutely in writing to pay B Rs. 1,000 on the 1st March, 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March, cannot be proved.

(c) An estate called “the Rampure tea estate” is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed, cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B’s as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words “Bought of A a horse for Rs. 500”. B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written—“Rooms, Rs. 200 a month”. A may prove a verbal agreement that these terms were to include partial board. A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

DISTINCTION BETWEEN SECTIONS 91 AND 92 :

The two Sections 91 and 92 of Evidence Act differ in some material particulars. This distinction can be spell out as under :-

1. Section 91 deals with the exclusiveness of documentary evidence. It deals with the proof of the matters mentioned in that Section. On the other hand, Section 92 deals with the conclusiveness of such evidence. It deals with disproof of the matters mentioned in the Section.

Section 91 makes inadmissible oral evidence of the terms of a contract or of a grant, or of any other disposition of property which have been reduced to the form of a document. Section 92 provides that when the terms are proved by the document, no evidence of any oral agreement or statement shall be admitted, as between the parties, to contradict or vary them. Section 92 has application when the terms of a contract, grant or other disposition of property, among other things, have been proved in accordance with Section 91.

3. The distinction between these two Sections as well as Section 99 has been clearly brought out by the **Hon'ble Supreme Court in Bai Hira Devi Vs. Official Assignee of Bombay[AIR 1958 SC 448]** wherein it is held that, "In our opinion, the true position, therefore, is that if the terms of any transfer reduced to writing are in dispute between a stranger to a document and the party to it or his representative in interest. Section 92 does not prevent both the stranger to the document and the party there to or his representative in interest, to lead evidence of oral agreement, notwithstanding the fact that such evidence if believed may contradict, vary, add to or subtract from, its terms."

It has been further observed that "In fact, S. 91 and 92 really supplement each other. It is because S. 91 by itself would not have excluded evidence of oral agreements which may tend to vary the terms of the document, that S.92 has been enacted; and if S. 92 does not apply to a case, there is no other Section in the Evidence Act which can be said to exclude evidence of agreement set up".

Section 93:-**Exclusion of evidence to explain or amend an ambiguous document:**

If the language used in the document is defective or ambiguous, evidence cannot be given of facts which would show it's meaning.

Illustrations:-

- (a) A agrees to sell his cow to B in writing for Rs.1,500/- or Rs.2,000/-.

Evidence cannot be given to show which price was to be given.

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

In **Keshavlal Lallubhai Patel Vs. Lalbhai Trikumlal Mills Ltd [AIR 1958 SC 512]** Hon'ble Supreme Court held as under:-

"...If, on a fair construction, the condition mentioned in the document is held to be vague or uncertain, no evidence can be admitted to remove the said vagueness or uncertainty. The provisions of S. 93 of the Evidence Act are clear on this point. It is the language of the document alone that will decide the question. It would not be open to the parties or to the court to attempt to remove the defect of vagueness or uncertainty by relying upon any extrinsic evidence. Such an attempt would really mean the making of a new contract between the parties....."

In **Kandamath Cine Enterprises (P.) Ltd. V. John Philipose [AIR 1990 Ker 198]**, Hon'ble Kerala High Court held as under :-

"The learned counsel for the appellant further contended that if the terms of the contract are uncertain no evidence can be admitted to remove the said vagueness or uncertainty in view of Section 93 of the Evidence Act. It is true that if any of the terms of the document is clearly uncertain and incapable of being made certain it may not be open to the parties to attempt to remove that vagueness or uncertainty by adducing other evidence."

Section 94:-

Exclusion of evidence against the application of document to existing facts.

When the language used in the document is correct and when it applies correctly to the facts mentioned, evidence cannot be given that it is to be proved that it was not meant to apply on such facts.

Illustrations:

A sells to B by deed, 'my estate at Rampur containing 100 bighas'. A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

In **Smt. Kamala Devi Vs., Seth Takhatmal And Another [AIR 1964 SC 859]**, hon'ble Supreme Court held as under:-

“Section 94 of the Evidence Act lays down a rule of interpretation of the language of a document when it is plain and applies accurately to existing facts. It says that evidence may be given to show that it was not meant to apply to such facts. When a court is asked to interpret a document it looks at its language. If the language is clear and unambiguous and applies accurately to existing facts, it shall accept the ordinary meaning, for the duty of the Court is not to delve deep into the intricacies of the human mind to ascertain one’s undisclosed intention, but only to take the meaning of the words used by him, that is to say his expressed intentions. Sometimes when it is said that a Court should look into all the circumstances to find an author’s intention, it is only for the purpose of finding out whether the words apply accurately to existing facts. But if the words are clear in the context of the surrounding circumstances, the Court cannot rely on them to attribute to the author an intention contrary to the plain meaning of the words used in the document.”

Section 95:-

Evidence as to the document unmeaning in reference to existing facts.

When language used in a document is plain in itself, however, is unmeaning in reference to existing facts, reality or situations, proof might be given to demonstrate that it was used in an unusual or different way.

Illustrations:

A sells to B, by deed, ‘ my house in Calcutta’.

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that deed related to the house at Howrah.

In Bharmu Nagappa Naik vs Manianath Das Desai And Anr [AIR 1959 Kant 165], the terms of the surety bonds were unmeaning with reference to the orders, in pursuance of which they had been executed. It is under these circumstances that the learned Judge of the trial Court thought it fit and proper to construe the terms of these two surety bonds in the light of the orders pursuant to which these two bonds have been executed. It is submission of learned counsel that under such circumstances that it is permissible for the court under Section 95 of the Evidence Act to look into the surrounding circumstances and the order of the court pursuant to which the bonds were

executed, for properly construing the terms of the two surety bonds was accepted by Hon'ble Karnataka High Court.

Section 96:-

Evidence as to the application of the language which can apply to one of several persons.

At the point when the facts are with the end goal that the language utilized may have been intended to apply to anyone, and couldn't have been intended to apply to multiple, of a few people or things, proof might be given of certainties which shows the people or things, it was planned to apply to.

Illustrations:

(a) A agrees to sell to B, for Rs.1,000/- ' my white horse'. A has two white horses. Evidence may be given of facts which show which of them was meant.

(b) A agrees to accompany B to Haidarabad. Evidence may be given of facts showing whether Haidarabad in the Dekhan of Haidarabad in Sind was meant.

Section 97:-

Evidence as to the application of language to one of two sets of facts, to neither of which the whole correctly applies.

When the language used is applied partly to one set of existing facts and partly to another set of existing facts, but the whole of it does not apply currently to either, evidence may be given to show to which of the two it was meant to apply.

Illustration:

A agrees to sell B my land at X in the occupation of Y. A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

Section 98:-

Evidence as to the meaning of illegible characters, etc.

Evidence may be given to show the meaning of illegible or not commonly intelligible of characters, of foreign, obsolete, technical, local and provincial expressions of abbreviations and of words used in a peculiar sense.

Illustration:

A, a sculptor, agrees to sell to B, all my models. A has both models and

modeling tools. Evidence may be given to show which he meant to sell.

A witness cannot be showed to explain he meaning of document unless he happens to be an expert. **AIR 1939 Bom. 339: 40 Cr.L.J. 891.**

In Laxminarayan Vs. Returning Officer [(1974) 3 SCC 425], Hon'ble Supreme Court held that the notes of speeches taken down in short hand are acceptable in evidence. Hon'ble Supreme Court held as under:-

“It could not be said that merely because the notes of speeches were in shorthand they would not be admissible in evidence and that they should have been recorded in a language which could be understood by the adverse party. According to Section 98 of the Evidence Act, evidence may be given to show the meaning of illegible or not commonly intelligible characters or of abbreviations etc. Notes in shorthand may be said to in 'not commonly intelligible characters' and 'abbreviations.’”

Section 99:-

Who may give evidence of an agreement varying term of the document?

Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the documents.

Illustration:

A and B make a contract in writing that B shall sell to A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months credit shall be given to A. this could not be shown as between A and B, but it might be shown by C, if it affected his interests.

In Bageshri Dayal V/s. Pancho, [(1906) 28 Allahabad 473], it is held that, ' '...in section 92, oral evidence by the parties to a contract is prohibited but the principle given therein does not apply to third parties. Oral evidence by third parties is thus made applicable by Section 99".

In Hiradevi V/s. Official Assignee, Bombay, [AIR 1958 SC 448], it is held by Hon'ble Supreme Court as under:-

“Section 99 provides that " persons who are not parties to a document or their representatives in interest may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document." Though it is

only variation which is specifically mentioned in Section 99 , there can be no doubt that the third party's right to lead evidence which is recognized by Section 99 would include, a right to lead evidence not only to vary the terms of the document, but to contradict the said terms or to add to or subtract from them.”

In this case, Hon'ble Apex Court further held as under:-

"in view of Section 99, persons who are not parties to the document or their representatives in interest, may give evidence of facts to show a contemporaneous agreement varying the terms of the document".

In the case of an alienation of land in which a document has been executed purporting to be a deed of gift or mortgage, it is open to a third party claiming to exercise a right of preemption to prove that the transaction was in reality one of sale, and that the document sought to be impugned was executed in order to conceal its real nature and to defraud him of his legal rights.

Section.100:-

Saving of provisions of Indian Succession Act relating to Wills:

Nothing in this Chapter contained shall be taken to affect any of the provisions of the Indian Succession Act, 1865 (now Act 39 of 1925) as to the construction of wills.

The burden to prove that Will was forged or that it was obtained under undue influence or coercion or by playing a fraud is on the person who alleges it to be so (**Daulat Ram Vs., Sodha, AIR 2005 SC 233 (234) : (2005) 1 SCC 40 : 2004 AIR SC W 6523: 2005 (2) Civ. LJ 156)**

2023 (2) ALT (CCLII) SC 77, Execution of Will:

The presumption under Section.90 of Indian Evidence Act as to the resubmitting of documents more than 30 years of age is in applicable when it comes to be proof of Will, which have to be proved in terms of Section. 63 (C) of Indian Succession Act, 1925 and Section.65 of Indian Evidence Act.

Conclusion:

Sections. 91 and 92 define the cases in which documents are exclusive evidence of the transactions which they embody. Sections. 93 to 98 deals with rules for construction of documents with the aid of extrinsic evidence. Sections

93 to 99 deal with the interpretation of documents by oral evidence. Overall provisions of this chapter revolve around enriching sanctity of best evidence rule. The provisions of this chapter are guiding principles while dealing with evidence on record.

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Ongole.

**PAPER PRESENTATION AS TO PRESUMPTION OF DOCUMENTS BY SRI
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SPECIAL JUDGE FOR SPEEDY TRIAL OF OFFENCES AGAINST WOMEN
CUM- II ADDITIONAL DISTRICT AND SESSIONS JUDGE, ONGOLE.**

INTRODUCTION:

Presumptions plays a crucial role in a legal proceedings, aiding in the establishment of facts. Sections. 79 to 90 of the Indian Evidence Act, 1872, speaks about presumptions as to documents. These sections outline situations where certain presumptions can be made regarding authenticity, execution and contents of documents, simplifying the burden of proof in court proceedings for arriving to right conclusion.

79 to 90-A Indian Evidence Act deals with Presumptions as to Documents.

Section 79: Presumption as to genuineness of certified copies:-

The Court shall presume to be genuine every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer of the Central Government or of a State Government, or by any officer in the State of Jammu and Kashmir who is duly authorized thereto by the Central Government:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

Certified copy issued without complying with the provisions of law, Court is not bound to draw the presumption in regard to genuineness: AIR 1959 SC 960: 1959 Cr.LJ 1223.

Letter not signed by Chief Secretary. Letter signed by some other officer for him does not attract the presumption: AIR 1922 Cal 298: 24 Cr.LJ 111.

Carbon copy of Government Order cannot be treated as a duly certified copy: ILR 1945 All 644.

Deepak Gupta, Aniruddha Bose., J.J., C.A.No.6706/2013 dt: 11.09.2019

Indian Evidence Act Sec.62 signed carbon copy prepared in the same process as the original document is admissible in evidence as the original document as per Section.62 of Indian Evidence Act.

Section 80: Presumption as to documents produced as record of evidence:-

When-ever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorised by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume that the document is genuine; that any statement as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

Section.80 does not deal with the question of admissibility, it dispenses with the necessity of a formal proof by raising the statutory presumption: AIR 1929 Cal 617: 30 Cr.LJ 993.

Memo of evidence: Memo of identification proceedings held by the Magistrate Under Sec.164 Cr.P.C it is inadmissible without proof: AIR 1963 All 308 (1963) 2 Cr.LJ 1; AIR 1964 All 290: (1964) 2 Cr.LJ 1: 1984 Cr.LJ 527 (Cal.).

Memo of evidence must fulfill the following requirements:

- (1) It is a memo of evidence.
- (2) Evidence is tendered by a witness.
- (3) Evidence given in judicial proceedings or before an offer authorized by law to take it: AIR 1964 All 290: (1964) 2 Cr.LJ 1.

Recital in a judgment of a statement made by a witness cannot be accepted as evidence under Section.80 is meant to be used when a memo of evidence is produced without the person who gave the evidence being examined as a witness of the trial: AIR 1964 All 290, 294: (1964) 2 Cr.LJ.1

Evidence of witness:- The only way to prove deposition is to prove under the provisions of Sec.80. AIR 1933 Cal.190: 34 Cr.LJ 430; 13 Cr.LJ 569.

Recorded deposition not read over to the deponent. It cannot be admitted for use against the witness: 8 Cr.LJ 116, see also 13 Cr.LJ 569, 571: AIR 1923 Nag 39: 23 Cr.LJ 500.

Deposition of a witness handed over to him for his perusal. Section.278 (1) (Old Section.360 (1)) Cr.P.C complied with AIR 1926 Pat. 232, 237, 27 Cr.LJ 484.

Certificate by Judge that deposition was read over to or by a witness is not essential for raising the presumption under Sec.80: AIR 1919 Cal.514: 20 Cr.LJ 324.

Judge did not himself record the evidence. Evidence taken down under the personal direction and superintendence of the Judge in his presence. Deposition read over and interpreted to witness. Trial not vitiated: AIR 1934 Cal. 636 35 Cr.LJ 1479.

Committing Magistrate certified on the deposition sheet that the deposition was read out to the witness and that the witness admitted it to be correct, Court is bound to accept it as correct until it is proved to be untrue-AIR 1952 SC 214: 1952 SCR 812: 1952 Cr.LJ 1131,

Deposition not read over to witness. Deposition produced in trial for perjury. The irregularity does not vitiate conviction-AIR 1950; All 501: 51 Cr.LJ 1346 ILR 6 Cal 762, ILR 28 Mad 308; 2 Cr.LJ 756 and AIR 1924 Cal 705: 25 Cr.LJ 1027 dissented.

Court not competent to try the case. Presumption under sec. 80 does not attach to the record of evidence. AIR 1955 Cal 535: 1955 Cr LJ 1348.

Statement and confession of an accused:- A statement and a confession of an accused recorded by a Magistrate is presumed to be genuine- AIR 1963 All 308: (1963)2 Cr.LJ 1; AIR 1936 Pat 11: 36 Cr.LJ 235 AIR 1938 Lah 477: 39 Cr.LJ 864.

A Magistrate recording a statement under sec. 164, CrPC need not be examined. AIR 1936 Pat 11:36 Cr.LJ 235; AIR 1938 Lah 477: 39 Cr.LJ 864. See also 1941 Pat WN 622.

Confession. All necessary questions to satisfy that confession was voluntary. Necessary certificate appended. Examination of Magistrate to prove confession unnecessary- 1981 Cr LJ 628 (SC).

If the accused pleads not guilty and retracts the confession, there is no presumption that confession was voluntary- AIR 1943 Cal 625, 627-628.

Magistrate not acting nor purporting to act under sec. 164 or sec. 364, Cr.P.C and nothing tendered in evidence as recorded. Oral evidence of the Magistrate is inadmissible-AIR 1936 PC 253.

Dying declaration:- Dying declaration can be admitted in evidence without examining the recording Magistrate: AIR 1934 All 340.

Magistrate not authorized by law to record a dying declaration. Presumption under Sec.80 not available. AIR 1941 Rang 301.

A certificate by the Magistrate under sec.164 Cr.P.C raises presumption under sec.80. AIR 1952 TC 305.

Person questioning to rebut the presumption. AIR 1952 SC 214; 1952 Cr.LJ 1131.

Section 81: Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents:-

The Court shall presume the genuineness of every document purporting to be the London Gazette or any Official Gazette, or the Government Gazette of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament of the United Kingdom printed by the Queen's Printer and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

Presumption as to Gazettes: Reports and Gazettes do not the truth of their contents. 44 CWN 873. But the court will presume that the Notification published in the Official Gazette of the Government is genuine- AIR 1952 HP 74: 1952 Cr LJ 1712.

In order to attract this presumption the Gazette need not be formally tendered in court either. It will suffice if the same is before the court- AIR 1925 Lah 299; 26 Cr.LJ 1078; AIR 1931 Lah 273; 32 Cr.LJ 1227.

The presumption under sec. 81 is, however, a rebuttable presumption-

1950 Nag 203: 51 Cr LJ 1372.

Presumption as to newspaper:- Under this section there is no presumption that a certain newspaper was printed or published by a person by whom it purports to be so printed or published. The fact of printing and publication must be proved by producing an authenticated copy of a declaration made under the Press and Registration of Books Act (Act 25 of 1867)-ILR 36 Mad 457.

Genuineness of a specimen of a newspaper actually produced is available under sec. 81-AIR 1930 Lah 371: 31 Cr.LJ 168. The newspaper report is inadmissible in evidence unless the maker is examined AIR 1961 Punj 215: 1961 Cr LJ 710; AIR 1971 Cal.53.

Newspaper reports per-se do not constitute legally acceptable evidence-

B. Singh Vs., Union of India (2004)3 SCC 363: AIR 2004 SC 1923.

Presumption as to other documents.-There is a presumption of genuineness in respect of an order sheet of a Judicial Officer-AIR 1937 Pat 534; 39 Cr.LJ 103.

Original sanction for prosecution is presumed to be genuine. Proof of signature of the officer need not be demanded - AIR 1951 All 816; 1952 Cr.LJ 1474.

Section 81-A: Presumption as to Gazettes in electronic forms:-

The Court shall presume the genuineness of every electronic record purporting to be the Official Gazette, or purporting to be electronic record directed by any law to be kept by any person, if such electronic record is kept substantially in the form required by law and is produced from proper custody.

2019 (10) SCC 623., Rajender and others., Vs., State of N.C.T of Delhi.,

2017 (17) SCC 570., Call data recorded cannot be said that they are proved certification under Section.65-B of Indian Evidence Act is required.

2020 (7) SCC 1, 2014 (10) SCC 473.,

Section.65-A and 65-B of Indian Evidence Act compete written certificate Under Sec.65-B of Indian Evidence Act.

Section 82: Presumption as to document admissible in England without proof of seal or signature:-

When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims, and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

An affidavit sworn before a Notary Public in the U.S.A certified under seals of country clerk and clerk of the Supreme Court, New York. It is forwarded under certificate of Consulate – General of Indian in New York. The affidavit is authentic and admissible in evidence. AIR 1967 Cal. 636.

Probate granted by the Probative Division of the High Court of England certified copy is admissible in evidence: AIR 1959 Mad. 410.

Declaration of power of attorney taken before the Chief Presidency Magistrate, Glasgow and authenticated by his certificate and seal, and also by a notarial certificate proves the execution of power- ILR 22 Cal.491.

Section 83: Presumption as to maps or plans made by authority of Government:-

The Court shall presume that maps or plans purporting to be made by the authority of the Central Government or any State Government] were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Thak and survey maps are evidence of possession and not title- AIR 1922 PC 325: 11 IC 542 (PC).

A Municipality to which Calcutta Survey Act is made applicable, prepares a map. Statutory presumption of correctness is available – AIR 1937 Pat. 567.

No presumption of accuracy is available about maps prepared by a private person without the authority of the Government- AIR 1966 SC 644. (1966) 1 SCR 430.

Plan signed by the Executive Engineer and S.D.O. (P.W.D) is presumed to be genuine- 38 Cr.LJ 438: AIR 1937 Lah 155.

Section 84: Presumption as to collections of laws and reports of decisions:-

The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the Courts of such country.

Report of judicial pronouncement appearing in a newspaper has no presumption under Section.84. AIR 1969 Cal.451: 73 CWN 457: 1969 Cr.LJ.1120.

Section 85: Presumption as to powers-of-attorney:-

The Court 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 representative of the Central Government, was so executed and authenticated.

Statement in Power of attorney has to be proved like any other statement – AIR 1970 Mani 57.

Section 85-A: Presumption as to electronic agreements:-

The Court shall presume that every electronic record purporting to be an agreement containing the electronic signatures of the parties was so concluded by affixing the electronic signature of the parties.

Section 85-B: Presumption as to electronic records and electronic signatures:-

(1) In any proceedings involving a secure electronic record, the Court shall presume unless contrary is proved, that the secure electronic record has not been altered since the specific point of time to which the secure status relates.

(2) In any proceedings, involving secure electronic signature, the Court shall presume unless the contrary is proved that:

(a) the secure electronic signature is affixed by subscriber with the intention of signing or approving the electronic record;

(b) except in the case of a secure electronic record or a secure electronic signature, nothing in this section shall create any presumption relating to authenticity and integrity of the electronic record or any electronic signature.

Section 85-C: Presumption as to Electronic Signature Certificates:-

The Court shall presume, unless contrary is proved, that the information listed in a Electronic Signature Certificate is correct, except for information specified as subscriber information which has not been verified, if the certificate was accepted by the subscriber.

1. Inserted by the Information Technology Act, 2000 (21 of 2000) (w.e.f 17.10.2000)

2. Substituted for “ Digital Signature Certificate’ by the Information Technology (Amendment) Act, 2008 (10 of 2009).

Section 86: Presumption as to certified copies of foreign judicial records:-

The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of India or of Her Majesty’s dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of the Central Government in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

An officer who, with respect to any territory or place not forming part of India or Her Majesty’s dominions, is a Political Agent therefor, as defined in Section 3, clause (43), of the General Clauses Act, 1897 (10 of 1897), shall, for the purposes of this section, be deemed to be a representative of the Central Government in and for the country comprising that territory or place.

A foreign judgment is not admissible in evidence in the absence of the certificate- ILR 1057 Punj. 974: AIR 1957 Punj. 86: 1957 Cr.LJ 537.

In order to raise the presumption, admission of judgment in evidence does not become a condition precedent- AIR 1964 SC 538: (1964) 4 SCR 19.

Certified copy of a decree of a High Court filed in a court beyond the jurisdiction of the said High Court. Presumption of genuineness is available in spite of the absence of the certificate under Sec.86- ILR (1960) 10 Raj. 94.

Section 87: Presumption as to books, maps and charts:-

The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to have been written or published.

Section 88: Presumption as to telegraphic messages:-

The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

The contents of the telegrams cannot be treated as evidence of the facts stated in the telegram- AIR 1945 PC 174: ILR (1945) 1 Kar. 251.

A telegraphic message does not raise a presumption that it was sent by a person whose name the message purports to bear. The fact has to be proved and that particularly if the person denies to have seen it- AIR 1954 SC 316, 1954 SCR 919, (1966) 1 Andh.LT 21: AIR 1967 AP 83.

The proof of authorship of the message may be made by circumstances as well eg. by a chain of correspondence- AIR 1957 SC 857: 1968 SCR 328: 1957 Cr.LJ 1346: see also AIR 1933 Pat. 94: 34 Cr.LJ 421: AIR 1966 Ori. 150: AIR 1926 Bom.71: 27 Cr.LJ 114.

Presumption under this section is available in respect to radio message as well – AIR 1966 Ori.150.

Section 88-A: Presumption as to electronic messages:-

The Court may presume that an electronic message forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent.

Explanation—For the purposes of this section, the expressions “addressee” and “originator” shall have the same meanings respectively assigned to them in clauses (b) and (za) of sub-section (1) of Section 2 of the Information Technology Act, 2000.

Section 89: Presumption as to due execution, etc., of documents not produced:-

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

Section 90: Presumption as to documents thirty years old:-

Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to Section 81.

Illustrations:

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land, showing his title to it. The custody is proper.

(b) A produces deeds relating to landed property to which he is the mortgages. The mortgagor is in possession. The custody is proper.

(c) A, a connection of B, produces deeds relating to land in B's possession which were deposited with him by B for safe custody. The custody is proper.

Presumption is available only to signature or handwriting – Air 1942 Cal. 309. But where the signature is not in issue, Sec.90 cannot be involved to admit old accounts coming from proper custody- Ganesh Prasad Vs., Narendra Nath AIR 1953 SC 431.

Presumption does not attach to anonymous documents – AIR 1939 Mad. 926: AIR 1950 Raj.47.

Presumption under this section is a rebuttable presumption – AIR 1934 Pat.86: 35 Cr.LJ 481: AIR 1938 Bom. 257.

Section 90-A: Presumption as to electronic records five years old:-

Where any electronic record, purporting or proved to be five years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the electronic signature which purports to be the electronic signature of any particular person was so affixed by him or

any person authorised by him in this behalf.

Explanation—Electronic records are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable.

This *Explanation* applies also to Section 81-A.

IMPORTANT CASE LAWS

1. Presumption as to Documents:

Vasudha Goraknath Mandvilkar v. City and Industrial Development Corp. of Maharashtra, AIR 2008 NOC 2572 Bom : *“.....whenever there is a variance between an unproved private document or its copy and a certified extract of a public record, the latter must prevail as it has more probative value, carrying the presumption as it does under Section 79 of the Evidence Act. This presumption would continue to hold until it is rebutted. It can be rebutted only by production of the original public record from which the extract is made out and certified to be true by the relevant authority. Only if it is so rebutted such certified copy issued by a public authority would stand nullified“.....*

2. Admissibility of a newspaper:

Laxmi Raj Shetty And Anr Vs., State Of Tamil Nadu, AIR 1988 SC 1274 : *“A report in a newspapers is only hearsay evidence. A newspaper is not one of the documents referred to in s. 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under sec. 81 of the Evidence Act to a newspapers report cannot be treated as proved of the facts reported therein. It is now well-settled that a statement of fact contained in a newspapers is merely hearsay and therefore inadmissible in evidence in the absence of the maker of the statement appearing in Court and deposing to have perceived the fact reported.“*

CONCLUSION:

Presumptions Under Sections. 79 to 90 of the Indian Evidence Act make easier for the Courts to come to a right conclusion speedily if no contrary or rebuttable evidence to the above presumptions without corroboration of other evidences in case of death of attestor or scribe or executant and courts shall presume the same to be true and genuine.

(M.A.Somasekhar)
Special Judge, POCSO Court,
Ongole.

Smt K.Satyakumari,
Prl. Senior Civil Judge
Ongole.
Prakasam District.

“Exclusion of Oral Evidence by Documentary Evidence”

INTRODUCTION

The Indian Evidence Act, 1872 is largely based on the English law of Evidence. The Act does not claim to be exhaustive and is procedural law. The Act consolidates, defines and amends the laws of evidence. It is a special law and hence, will not be affected by any other enactment containing provisions on matter of evidence unless and until it is expressly stated in such enactment or it has been repealed or annulled by another statute. Parties cannot contract to exclude the provisions of the Act. Courts cannot exclude relevant evidence made relevant under the Act. Similarly, evidence excluded by the Act will be inadmissible even if essential to ascertain the truth. The object of every judicial investigation is the enforcement of a right or liability that depends on certain facts. The law of evidence can be called the system of rules whereby the questions of fact in a particular case can be ascertained.

The term ‘evidence’ owes its origin to the Latin terms ‘evident’ or ‘evidere’ that mean ‘to show clearly, to discover, to ascertain or to prove.’

Evidence includes everything that is used to determine or demonstrate the truth. Giving or procuring evidence is the process of using those things that are either (a) presumed to be true, or (b) which were proved by evidence, to demonstrate an assertion’s truth. In law, the production and presentation of evidence depends first on establishing on whom the burden of proof lays. Admissible evidence is that which a court receives and considers for the

purposes of deciding a particular case. It is important to prove that the evidences produced in the court are true.[1]

TYPES OF EVIDENCES

Following are the types of evidences:

(a) **Oral Evidence- Section 60 of the Indian Evidence Act, 1872** prescribed the provision of recording oral evidence. All those statements which the court permits or expects the witnesses to make in his presence regarding the truth of the facts are called Oral Evidence. Oral Evidence is that evidence which the witness has personally seen or heard. Oral evidence must always be direct or positive. Evidence is direct when it goes straight to establish the main fact in issue.[2]

(b) **Documentary Evidence- Section 3 of The Indian Evidence Act** says that all those documents which are presented in the court for inspection such documents are called documentary evidences. In a case like this it is the documentary evidence that would show the actual attitude of the parties and their consciousness regarding the custom is more important than any oral evidence.

(c) **Primary Evidence-Section 62 of The Indian Evidence Act** says Primary Evidence is the Top-Most class of evidences and is the document itself produced by the court. It is that proof which in any possible condition gives the vital hint in a disputed fact and establishes through documentary evidence on the production of an original document for inspection by the court.

(d) **Secondary Evidence- Section 63 says** Secondary Evidence is the inferior evidence that occupies a secondary position. It is the evidence which is

produced in the absence of the primary evidence therefore it is known as secondary evidence.

(e) **Real Evidence- Real Evidence means** real or material evidence that of a fact is brought to the knowledge of the court by inspection of a physical object and not by information derived from a witness or a document. Personal evidence is that which is afforded by human agents, either in way of disclosure or by voluntary sign.

(f) **Hearsay Evidence-** Hearsay Evidence is a weak evidence. It is only the reported evidence of a witness which he has not seen either heard. Hearsay Evidence is that evidence which the witness has neither personally seen or heard, nor has he perceived through his senses and has come to know about it through some third person. There is no bar to receive hearsay evidence provided it has reasonable nexus and credibility.

(g) **Judicial Evidence-** Evidence received by court of justice in proof or disproof of facts before them is called judicial evidence. The confession made by the accused in the court is also included in judicial evidence. Statements of witnesses and documentary evidence and facts for the examination by the court are also Judicial Evidence.

(h) **Non-Judicial Evidence-** Any confession made by the accused outside the court in the presence of any person or the admission of a party are called Non-Judicial Evidence, if proved in the court in the form of Judicial Evidence.

(i) **Direct Evidence-** Evidence is either direct or indirect. Direct Evidence is that evidence which is very important for the decision of the matter in issue. The main fact when it is presented by witnesses, things and witnesses is direct, evidence whereby main facts may be proved or established that is the evidence

of person who had actually seen the crime being committed and has described the offence.

(j) **Circumstantial Evidence or Indirect Evidence-** There is no difference between circumstantial evidence and indirect evidence. Circumstantial Evidence attempts which relates to series of other facts is to prove the facts in issue by providing other facts and affords an instance as to its existence.

Difference between Oral evidence and Documentary evidence

Documentary evidence means all documents produced for the inspection of the Court whereas, Oral evidence means and includes all statements which the Court requires, or permits, to be made before it, by witnesses in relation to matters of fact under inquiry; documentary evidence means and includes all documents produced for the inspection of the Court.

Oral evidence is a statement of witnesses and documentary evidence is a statement of documents. Documents are denominated as dead proof, as distinguished from witnesses who are said to be living proofs. Documentary evidence is superior to oral evidence in permanence, and in many respects, in trustworthiness. There are more ways of trying the genuineness of documentary evidence than there can be of disproving oral evidence. In many cases, the existence of documentary evidence excludes the production of oral evidence.

EXCLUSION OF ORAL EVIDENCE FROM DOCUMENTARY EVIDENCE

Mainly section 91 and 92 of The Indian Evidence act deals with exclusion of oral evidence from documentary evidence.

Section 91 reads as: When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all

cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1. – When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2. – Wills admitted to probate in India] may be proved by the probate.

The document itself is the best evidence to prove any fact. Such fact should be proved either by the primary or secondary evidence of the document. The section forbids the proof of the contents of a writing otherwise than by the writing itself. Even a third party, who is seeking to prove a written contract, can prove it only by producing the writing. In this respect section 91 and 92 supplement each other. They are both based on the “best evidence rule” though they differ in some material particulars also. The Supreme Court held in **Taburi Sahai v. Jhunjhunwala** that a deed of the adoption of child is not a contract within the meaning of section 91 and, therefore, the fact of adoption can be proved by any evidence apart from the deed. Further the principle of exclusion of all other evidence applies only to the terms happens to be mentioned in a contract, the same can be proved by any other evidence than by producing the document. Where both oral as well as documentary evidence are admissible on their own merits, there is nothing in the act requiring that the documentary evidence should prevail over the oral evidence.

Section 92 of The Indian Evidence act reads as: When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying adding to, or subtracting from, its term: [7]

Proviso (1) – Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto, such as fraud, intimidation, illegality, want for due execution, want of capacity in any contracting party, want or failure of consideration, or a mistake in fact or law.

Proviso (2) – The existence of any separate oral agreements to matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether; r not his proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3) – The existence of any separate oral agreement, constituting, a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4) – The existence of any separate oral agreement, constituting, a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property, is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5) – Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description may be proved.

Proviso (6) – Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Section 92 excludes evidence of any oral agreement or statement, when the terms of a contract, grant or disposition of property or any matter required by law to be in writing have been proved as required under Section 91 for the purpose of contradicting, varying, adding to or subtracting from its terms. The principle lays down that when the terms of any such document have been proved by the primary or secondary evidence of the document, no evidence of any oral agreement or statement shall be admitted.

Exceptions:

1) Validity of document- The first proviso to section 92 says that evidence can be given of any fact which would invalidate the document in question or which would entitle a party to any decree or order relating to the document. In case the validity of a document may be questioned.

2) Matters on which document is silent– The second proviso states that evidence can be given of an oral agreement on a matter on which the document is silent. Such evidence is allowed subject to two conditions; firstly, the oral agreement should not be inconsistent with the terms stated in the document. Secondly, in permitting the evidence of oral agreement the court is to have regard of the degree of formality of the document.

3) Condition precedent- the third proviso provides that the existence of any separate oral agreement constituting condition precedent to the attaching of any obligation under the document may be proved. If the party liable under a document has already stated making payments under it, he cannot afterwards set up the defence of an oral condition precedent to liability.

4) Rescission or modification– As per proviso 4, to rescind a document means to set it aside and to modify means to drop some of it as cancelled or to modify some of its terms; such oral agreement may be proved. This is, however, subject to one qualification stated in the proviso itself, namely, where the contract is one is required by law to be in writing, or where it has been registered according to the law relating to registration of documents, then proof cannot be given of any oral agreement by which it was agreed either to rescind the document or to modify its terms.

5) Usages and customs- The proviso 5, therefore, provide that the existence of any usage or a custom by which incidents are attached to a particular type of contract can be proved. But this is subject to the condition that the usage or custom of which proof is offered should not be against the express terms of the document. The usage should not be repugnant to or inconsistent with the document, for otherwise it would nullify the document.

6) Relation of language of facts– The facts upon which the document is to operate are sometimes set out in the contract itself and sometimes not. Oral evidence is also receivable to throw light upon the nature of a document. The section does not fetter the power of the court to arrive at the true meaning of a document as disclosed by all the relevant surrounding circumstances.

Exception 1-Appointment of a Public Officer: Where the appointment of a public officer is required by law to be made by writing and the question is whether an appointment was made, if it is shown that a particular person has acted as such officer that will be sufficient proof of the fact of appointment and the writing by which he was appointed need not be proved.

Exception 2-Wills: Wills admitted to probate in India may be proved by the probate. The document containing the will need not be produced. "Probate" is copy of the will certified under the seal of the court and, therefore, is a sufficient proof of the content of the will.

Section 93 deals with the Exclusion of evidence to explain or amend ambiguous document. In *Keshav Lal v Lal Bhai Tea Mills Ltd* it was held that if the document had mentioned no price at all, oral evidence of the price would have been allowed under section 92 as to a matter of the fact on which the document is silent but not when the document mentions price of ambiguous nature.

Section 94 deals with the Exclusion of evidence against application of document of existing facts. This section applies when the execution of the document has been admitted and no vitiating fact has been proved against it. In the case of *General Court Enterprises P. Ltd v. John Philipose* it was held that oral evidence of explanatory nature was admissible.

Section 95 deals with the Evidence as to document unmeaning in reference to existing facts. When the language of a document is plain but in its application to the existing facts it is meaningless, evidence can be given to show how it was intended to apply to those facts.

Section 96 deals with the Evidence as to application of languages which can apply to one only of several persons. As per *Schuthon Nayar v. Achuthan Nayar*, where a promissory note mentioned a date according to the local calendar and also according to the international calendar, but the two date turned out to be different, it was held that evidence could be offered to show which date was meant.

Section 97 deals with the Evidence as to application of language to one of two sets of facts to neither of which the whole correctly applies. The principle of the section is that where the language of a document applies to one set of facts and partly to another, but does not apply accurately to either, evidence can be given to show to which facts the document was meant to apply.[8]

Section 98 deals with the Evidence as to meaning of illegible character, etc. This section permits evidence to be given of the meaning of words or marks of illegible character or words which are not commonly of intelligible character, foreign words, obsolete words, technical, local and provincial expressions, abbreviations words used in a peculiar sense. In *Canadian-General Electric W. v. Fatda Radio Ltd* it was held that Oral evidence is admissible for the purpose of explaining artistic words and symbols used in a document.

Section 99 deals with who may give evidence of agreement varying terms of document. The parties to a document or their representative-in-interest cannot give evidence of a contemporary agreement varying the terms of the document.

CONCLUSION

Document evidence has more value than the oral evidence. Court is bound to accept the documentary evidence. But oral evidence may take in consideration. It also need to some corroboration. In brief it is submitted that two types of evidence are given by the parties oral and documentary evidence. In courts the value of oral evidence is less than documentary evidence. Because the law always requires the best evidence oral evidence is a evidence is a evidence which is confined to the words spoken by the mouth. On another side documentary evidence are of two types. Primary evidence is more reliable and best evidence consider by court. In the absence of primary evidence, secondary

evidence is that which the witnesses are giving on the basis of his own perception. Where as primary evidence is the original document which is presented to the court for its inspection. Direct evidence is best oral evidence of fact to be proved. But primary evidence is the best evidence in all circumstances. There is also exclusion of oral evidence by document evidence document also of two kinds ambiguous and non ambiguous. The person giving direct evidence available for cross examination for testing its veracity.

Hence, as it is considered that document is written to perpetuate the memory, Sections 91 and 92 exclude oral evidence by documentary evidence. Oral proof cannot be substituted in the place of written documents where the written document exists in proof of certain transactions referred to in Section 91 as written testimony is of higher grade, more certain and more reliable than oral evidence.

Chapter – V: Of Documentary Evidence (Section 61 – 90-A)

Presumptions as to Documents (Section 79 – 90-A)

Presumptions as to Documents (Section 79 – 90-A)

Section 79: Presumption as to genuineness of certified copies—

The Court shall presume to be genuine every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer of the Central Government or of a State Government, or by any officer in the State of Jammu and Kashmir who is duly authorised thereto by the Central Government:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

Section 80: Presumption as to documents produced as record of evidence-

When-ever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorised by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume— that the document is genuine; that any statement as to the circumstances under

which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

Section 81: Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents—

The Court shall presume the genuineness of every document purporting to be the London Gazette or any Official Gazette, or the Government Gazette of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament of the United Kingdom printed by the Queen's Printer and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

Section 81-A: Presumption as to Gazettes in electronic forms—

The Court shall presume the genuineness of every electronic record purporting to be the Official Gazette, or purporting to be electronic record directed by any law to be kept by any person, if such electronic record is kept substantially in the form required by law and is produced from proper custody.

Section 82: Presumption as to document admissible in England without proof of seal or signature.—

When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine,

and that the person signing it held, at the time when he signed it, the judicial or official character which he claims, and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

Section 83: Presumption as to maps or plans made by authority of Government.—

The Court shall presume that maps or plans purporting to be made by the authority of the Central Government or any State Government] were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Section 84: Presumption as to collections of laws and reports of decisions—

The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the Courts of such country.

Section 85: Presumption as to powers-of-attorney—

The Court 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 representative of the Central Government, was so executed and authenticated.

Section 85-A: Presumption as to electronic agreements—

The Court shall presume that every electronic record purporting to be an agreement containing the electronic signatures of the parties was so concluded by affixing the electronic signature of the parties.

Section 85-B: Presumption as to electronic records and electronic signatures—

(1) In any proceedings involving a secure electronic record, the Court shall presume unless contrary is proved, that the secure electronic record has not been altered since the specific point of time to which the secure status relates.

(2) In any proceedings, involving secure electronic signature, the Court shall presume unless the contrary is proved that—

(a) the secure electronic signature is affixed by subscriber with the intention of signing or approving the electronic record;

(b) except in the case of a secure electronic record or a secure electronic signature, nothing in this section shall create any presumption relating to authenticity and integrity of the electronic record or any electronic signature.

Section 85-C: Presumption as to Electronic Signature Certificates—

The Court shall presume, unless contrary is proved, that the information listed in a Electronic Signature Certificate is correct, except for information specified as subscriber information which has not been verified, if the certificate was accepted by the subscriber.

Section 86: Presumption as to certified copies of foreign judicial records—

The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of India or of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of the Central Government in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

An officer who, with respect to any territory or place not forming part of India or Her Majesty's dominions, is a Political Agent therefor, as defined in Section 3, clause (43), of the General Clauses Act, 1897 (10 of 1897), shall, for the purposes of this section, be deemed to be a representative of the Central Government in and for the country comprising that territory or place.

Section 87: Presumption as to books, maps and charts—

The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to have been written or published.

Section 88: Presumption as to telegraphic messages—

The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Section 88-A: Presumption as to electronic messages.—

The Court may presume that an electronic message forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent.

Explanation—For the purposes of this section, the expressions “addressee” and “originator” shall have the same meanings respectively assigned to them in clauses (b) and (za) of sub-section (1) of Section 2 of the Information Technology Act, 2000.

Section 89: Presumption as to due execution, etc., of documents not produced—

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

Section 90: Presumption as to documents thirty years old.—

Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person’s handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to Section 81.

Section 90-A: Presumption as to electronic records five years old—

Where any electronic record, purporting or proved to be five years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the electronic signature which purports to be the electronic signature of any particular person was so affixed by him or any person authorised by him in this behalf.

Explanation—Electronic records are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable.

This *Explanation* applies also to Section 81-A.

IMPORTANT CASE LAWS

1. Presumption as to Documents:

Vasudha Goraknath Mandvilkar v. City and Industrial Development Corp. of Maharashtra, AIR 2008 NOC 2572 Bom : “.....*whenever there is a variance between an unproved private document or its copy and a certified extract of a public record, the latter must prevail as it has more probative value, carrying the presumption as it does under Section 79 of the Evidence Act. This presumption would continue to hold until it is rebutted. It can be rebutted only by production of the original public record from which*

the extract is made out and certified to be true by the relevant authority. Only if it is so rebutted such certified copy issued by a public authority would stand nullified".....

2. Admissibility of a newspaper:

Laxmi Raj Shetty And Anr vs State Of Tamil Nadu, AIR 1988 SC 1274 : *"A report in a newspapers is only hearsay evidence. A newspaper is not one of the documents referred to in s. 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under s. 81 of the Evidence Act to a newspapers report cannot be treated as proved of the facts reported therein. It is now well-settled that a statement of fact contained in a newspapers is merely hearsay and therefore inadmissible in evidence in the absence of the maker of the statement appearing in Court and deposing to have perceived the fact reported."*

K.Satyakumari

Prl. Senior Civil Judge,

Ongole.

Prakasam District.

PRESUMPTIONS RELATING TO DOCUMENTS & EXCLUSION OF ORAL EVIDENCE BY DOCUMENTS.

**Paper Presentation
by
Smt. M. Sudha,
Senior Civil Judge,
Chirala**

PRESUMPTIONS RELATING TO DOCUMENTS

Introduction:

The evidence in cases plays an important role in deciding the case and to bring out justice. The [Indian Evidence Act](#) accepts two forms of evidence, documentary evidence and oral evidence. According to the Indian Evidence Act, the documents which are produced for the inspection of the court are called documentary evidence. The documentary evidence is of great help and they are very reliable during the process of investigation. The documents are mainly of two types: private document and public document. This article would deal with the presumption as to the documents and their evidential value.

Public Documents

The interpretation clause of the Indian evidence act defines the term document. According to [Section 3](#) of the Indian Evidence Act, document means any matter expressed or described upon any substance and it can be in various 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 particular information or matter. There are various examples given for documents in the act like map, plan, caricature and letters. Any words which are printed and lithographed are considered to be documents according to the Indian Evidence Act. [Section 74](#) of the Indian evidence act provides the definition of the term Public document. According to this Section, the following documents are considered public documents:

- The documents forming the acts or records of acts of sovereign authority;
- The documents forming the acts or records of acts of official bodies and tribunals;
- The documents forming the acts or records of acts of various officers like public officers, legislative, judicial officers and executive working in any part of India;
- The public records which are kept in the state of private documents also come under this category.

Every other document which does not come under the above-mentioned category is considered as private documents according to [Section 75](#) of the Indian Evidence Act. [Section 76](#) of the Indian Evidence Act provides the power to public officers to provide certified copies of public documents when it is necessary and when the person has the right to demand copies and ask for the copy of the document.

Presumption as to Documents

[Section 79](#) to [Section 90](#) of the Indian Evidence Act provides various presumptions as to the documents. There are certain presumptions regarding the documentary evidence in this act. According to the Indian Evidence Act, the presumption is of two types. There are certain cases in which the Court “shall presume” and in certain cases, it “may presume”. The terms are defined in [Section 4](#) of the IEA. According to this Section,

- “May presume” means whenever it is mentioned by this Act that the Court may presume a fact, it may either consider such fact as proved, unless and until it is disproved or may call for proof of it.
- “Shall presume” means whenever it is mentioned in this Act that the Court shall presume a fact, it shall consider such fact as proved, unless and until it is disproved.

Presumption as to the Genuineness of Certified Copies

The certified copies are the copies of public documents that are provided by the authorized officer when it is necessary for inspection. [Section 79](#) of the Indian Evidence Act provides the presumption as to the genuineness of these certified copies. According to this Section, the court presumes the certified copy to be genuine when it comes with a valid certificate. The court also presumes that the officer who has signed the documents holds the official character of the designation mentioned in the certificate. The certified copy of the public document must contain a certificate which is provided by the authorized officer that has to mention that it is the true copy of the document and the officer has to sign the certificate with their name and they also have to mention the date and designation. The certificate should also be sealed whenever it is necessary by the authorized officer.

Presumption as to Documents produced as Records of Evidence

[Section 80](#) of the Indian Evidence Act provides the various presumptions regarding the documents which are provided as evidence. The Court presumes that the documents which are produced for inspection are genuine. The court also presumes that any statements as to the circumstances under which it was taken, considered to be made by the person signing it, are true and that such evidence, statement or confession was duly taken by following all the procedures. The documents provided for inspection can be a record or memorandum of the evidence that is provided by a witness during the judicial proceeding before the officer authorized by law to take evidence or it can be a statement or confession that is provided by any prisoner or person who is accused, which taken in accordance with the law and the confession must be signed by the magistrate or any other officer authorized by law.

Presumption as to Gazettes, Newspapers, Private Acts of the Parliament and other Documents

[Section 81](#) of the Indian Evidence Act deals with the presumption regarding Gazettes, newspapers, private Acts of the Parliament. The court presumes the following documents to be genuine, according to this Section:

- The document professed to be the London Gazette, or any Official Gazette, or the Government Gazette of any colony;
- The documents which are a dependency of possession of the British Crown;
- Newspaper or journal;
- Copy of a private Act of Parliament of the United Kingdom which is printed by the Queen's Printer.

The documents must be kept in the substantial form mentioned in the law and also it must be produced from proper custody. The Court also presumes the Official gazettes kept in the electronic form is genuine if it is kept in the substantial form mentioned in the law.

Presumption as to Maps and Plans made by Government authorities

The maps and plans are also a recognized type of documentary evidence. [Section 83](#) of the Indian Evidence Act provides the various presumptions regarding maps and plans made by the authorities of the government. According to this Section, the maps and plans are presumed to be genuine and accurate if it is made by the authority of the Central or State government.

Presumption as to a Collection of Laws and Reports

[Section 84](#) of the Indian Evidence Act provides various presumptions regarding the laws and reports. According to this Section, the court presumes every book which contains laws and reports of the decisions of the Courts of the country to be genuine if the book is printed or published by the authority of the government.

Presumption as to the Power-of-Attorney

[Section 85](#) of the Evidence Act provides various presumptions regarding the power of attorney. According to this Section, the court shall presume that every document that is considered to be the power of attorney, and that is executed before the authorized officer or Notary Public or any court or before any Magistrate is executed and authenticated.

Presumption as to Books, Maps and Charts

[Section 87](#) of the Indian Evidence Act provides various presumptions regarding the books, maps and charts. The Court presumes that any book which contains any information which contains matters of public or general interest, or any published chart that are in relation with the case or any statements that contain relevant facts which are produced for inspection is written and published by the person mentioned in the book. The court also presumes that the time and place of publication which is mentioned in the book or chart to be true.

Presumption as to Telegraphic Messages

[Section 88](#) provides various presumptions regarding the telegraphic messages. According to the Section, the court presumes “that telegraphic messages to be that a message, which is forwarded from a telegraph office to the person to whom such message which claims to be addressed, is in relation with a message that is delivered for transmission at the office from which the message purports to be sent”. The Section also mentions that the Court does not make any presumption regarding the person by whom such a message was delivered for transmission. The Section is not of any use now as the telegraph services have been stopped by the Indian Government

Presumption as to Electronic Messages

This is a very important Section as a lot of information are transferred in the electronic form in the modern days. [Section 88A](#) of the Indian Evidence Act provides various presumptions regarding electronic messages. According to this Section, the Court presumes that an electronic message, which is forwarded by the originator by means of an electronic mail server to the addressee to whom the message claims to be addressed corresponds with the message as fed into his computer for transmission. According to the Section, the terms “addressee” and “originator” has the same meaning as mentioned in the clauses (b) and (za) of sub-section (1) of [Section 2](#) Information Technology Act,2000”.

Presumption as to due Execution of Documents not Produced

[Section 89](#) of the Indian Evidence Act provides various presumptions regarding the due execution of documents not produced. The Court presumes that every document that is called for inspection and the documents are not produced even after the notice period, it is presumed that the documents are attested, stamped and executed in the manner which is prescribed by law.

Presumption as to Documents Thirty years old

[Section 90](#) of the Indian Evidence Act deals with the presumption as to documents that are thirty years old. The Court presumes that any document which is produced for investigation is from proper custody and the signature corresponds to the signature of the person whose custody the document was in. The Court also presumes that any handwriting in the document is the handwriting of the person who has the custody of the document. It is also presumed by the Court that in case if the document attested or executed, that it was duly executed and attested by the persons by whom it professes to be executed and attested. The term proper custody means that the document is with the care of the person and in a place where it would naturally be. For example, ‘A’ has been in possession

of a certain property for a long time. He produces from his custody deeds the various documents relating to the land showing his titles to it and the custody is held to be proper.

Presumption as to the Electronic Record of Five years old

[Section 90A](#) of the Indian Evidence Act provides the various presumptions regarding electronic records of five years old. According to this Section, the Court presumes that when any electronic record that is above five years old and it is procured from the proper custody for investigation. It is presumed that the digital signature corresponds to the particular person whose custody the record is or the signature belongs to the person who has authorized it. The term proper custody means that the electronic record is with the care of the person and in a place where it would naturally be. It is also mentioned in the Section that no custody is improper if it is proved that the custody is of legitimate origin in the particular case to render such origin possible.

Conclusion

The Sections regarding presumptions is a very important part of the Indian Evidence Act as they help in the investigation. The presumptions make the investigation easier and fast. The Court has to follow all the presumptions and it can only change its notion on presumptions only when it is necessary. The documents have a lot of evidentiary value and it is important to investigate them properly and also save the Court's valuable time at the same time. Thus the presumptions regarding the documents is a very essential part of the Indian Evidence Act.

EXCLUSION OF ORAL EVIDENCE BY DOCUMENTS

INTRODUCTION:

Evidence includes everything used to determine or prove the authenticity of an assertion. Providing or obtaining evidence refers to the process of using (a) what is assumed to be true or (b) what is proven by evidence to prove the facts asserted.

The term "evidence" in its original sense indicates a state of obviousness, that is, simple or obvious. But it applies to things that tend to provide or produce evidence.

In English law, the term "evidence" sometimes refers to what the witnesses in the court said and displayed.

At other times, this means that the facts have been proven by these words and are considered the basis for the survival of the fittest that has not been proven. Similarly, it is sometimes used as the meaning of certain facts related to the matter under investigation. However, in the Act, the word has a clearer meaning.

TYPES OF EVIDENCE:

- Oral Evidence- Section 60 of the Indian Evidence Act provides for the recording of oral evidence. All statements that the court allows or wants witnesses to make in his presence about the truth are called oral evidence. The oral evidence is the evidence that the witness personally saw or heard. The oral evidence must always be direct or affirmative.
- Documentary evidence- Section 3 of the Indian Evidence Act stipulates that all documents presented in the court for inspection are called documentary evidence. In this case, the documentary evidence will show the actual attitude of the parties, and their awareness of customs is more important than any oral evidence.
- Primary Evidence- Section 62 of The Indian Evidence Act stipulates that primary evidence is the most important type of evidence and is also a document produced by the court itself. It is this kind of proof that can provide crucial hints in the disputed facts under any possible circumstances, and the original documents to be provided before the court to check.

- Secondary evidence- Section 63 says that Secondary evidence is considered inferior evidence. It means that even after supporting evidence is provided, the main evidence needs to be provided to fill the gap. Such evidence can be provided without the main evidence, but the notice for it should be issued. However, if the secondary evidence is accepted without objection within a reasonable time, then the parties have no right to assert that the view was proved with the help of secondary evidence rather than primary evidence.
- Hearsay evidence- Hearsay evidence is weak evidence. It was just the witness testimony that he reported, and he had not seen it. Such evidence is the one which the witness neither saw or heard personally, nor was perceived by his own senses, but by some third party.
- Judicial evidence refers to the evidence received by the court or evidence to prove the facts. This evidence includes: The confession made by the defendant in the court is also included in the judicial evidence. Witness statements, documentary evidence and facts for court review are also judicial evidence.
- Non-judicial evidence mainly refers to the confession made by the defendant outside the court and in the presence of anyone. If such evidence is proved in the court, it takes the form of judicial evidence.
- Real evidence is also called material evidence. The court may examine this evidence on its own. It is presented to the court by checking the real thing or the real thing. Such evidence does not come from documents or witnesses. However, such evidence requires the support of witnesses, preferably expert witnesses who can explain the importance of the evidence.
- Direct evidence- Evidence can be direct or indirect. Direct evidence is very important evidence for the decision. Direct evidence is considered necessary evidence for deciding the matter in the event. It directly proves or denies the facts. In such evidence, a specific fact is directly established without providing a reason related to that fact. It is almost unnecessary to point out the explanation provided because the witness 's evidence in the court is direct evidence, not the testimony of the guilty fact.
- The circumstantial and indirect evidence refers to evidence that proves the facts involved by providing other facts (ie indirect facts) and proving their relevance. By linking a series of other facts to the facts discussed, a satisfactory conclusion can be drawn from this evidence.
- Electronic evidence- This evidence can also be used as an electronic record provided by the court. Even in criminal cases, evidence can be provided through electronic records which can include data, image, sound, etc. This will include a video conference or a video conference.
- Tape Recording evidence- The tape itself is direct evidence. What the person said can be recorded and can appear in court. Any previous statement of a person can be recorded. If the person changes his statement in the court in the end, the recorded statement can be submitted to the court to verify the authenticity of the verifier. The audiotape evidence is more authentic than the written evidence.

DIFFERENCE BETWEEN ORAL AND DOCUMENTARY EVIDENCE:

- Documentary evidence refers to all documents produced for court inspection, while oral evidence refers to and includes all statements required by the court to allow witnesses to make statements about the facts investigated; documentary evidence refers to and includes all documents produced for court inspection.
- Oral evidence is the statement by the witness whereas the documentary evidence is the statement made by the documents.
- In terms of durability and reliability, documentary evidence is better than oral evidence. There are more ways to try to prove the authenticity of documentary evidence than to refute oral evidence. In many cases, the existence of documentary evidence does not include the production of oral evidence.

- **EXCLUSION OF ORAL EVIDENCE FROM DOCUMENTARY EVIDENCE:**

- According to Section 91 of Indian Evidence Act: When the terms of a contract, grant or any other property disposal are reduced to the form of documents, and in all cases, the law requires the reduction of anything except the document itself or in the case of secondary evidence In addition to the secondary evidence, for any form of contract, gift or other property or the provisions of such matters, no evidence shall be provided as evidence in the form of this document is acceptable according to the provisions contained above.
- Exception 1.- When the law requires the appointment of a public official in writing and shows that any particular person has already served as the public official, there is no need to prove the appointment in writing.
- Exception 2- Wills admitted to probate in India] may be proved by the probate.
- Section 92 of the Indian Evidence Act: when any such contract, gift or other property clause is proved according to the last section, or any matter required by law to be simplified in the form of a document, The parties or their interested representatives shall accept any verbal agreement or statement of evidence in order to check conflict with the terms of the term, increase or decrease:
- This section excludes any evidence of oral agreement or statement, when the contract, the terms of granting or disposing of property, or any matter required by law in writing has been proved in accordance with the provisions of Section 91 to conflict with, change, When supplementing, it may be subtracted from its terms. The principle stipulates that when the terms of any such document have been proved by the primary or secondary evidence of the document, no oral agreement or statement of evidence shall be accepted.

- **EXCEPTIONS:**

- The validity of the document-Section 92, the first provision states that evidence can be provided to prove any relevant facts that would invalidate the document in question or give the party the right to obtain any decree related to the document or command, in case the validity of the document may be questioned.
- Matters for keeping the document silent-The second conditional condition provides that evidence of oral agreement can be provided for matters where the document remains silent. There are two conditions for allowing such evidence: First, the verbal agreement should not conflict with the provisions in the document. Second, when allowing oral agreement evidence, the court should consider the formality of the document.
- Condition precedents-The third condition stipulates that it can prove that there is any separate oral agreement, which constitutes a condition precedent for attaching any obligations to the document. If the party liable under the document has indicated payment under the document, he cannot later defend the oral precedent for liability.
- Recession or modification-according to the provisions of Section 4, withdrawing the document means putting it on hold, and modifying means canceling or modifying some of them; this verbal agreement can prove. However, this is subject to a condition stipulated by the additional condition itself, that is, the law requires the contract to be in writing, or the contract has been registered in accordance with the law related to the registration of the document, which proves that it cannot agree to any oral agreement to resign or modify its terms.
- Usage and customs-Therefore, Section 5 stipulates that there can be a certain usage or habit of attaching certain types of contracts to incidents. However, this is subject to the following conditions: the usage or habit of providing proof should not conflict with the explicit terms of the document. Usage should not conflict with or inconsistent with the document, otherwise it will invalidate the document.

- The relationship of the language of the facts- The contracts itself stipulates the facts on which the document is based, sometimes not. Oral evidence can also be used to illustrate the nature of the document. This section does not limit the court's power to disclose the true meaning of the document based on all relevant circumstances surrounding it.

CONCLUSION:

The value of oral evidence is lower than that of documentary evidence. The court will inevitably accept the documentary proof. But oral evidence can be considered. This also requires some supporting evidence. Briefly stated, the parties provided two types of evidence, verbal and written. In court, the value of documentary evidence is higher than that of documentary evidence. Because the law always needs the best evidence. Oral evidence is evidence limited to verbal expression. The evidence on the other side is two types of documentary evidence. The original evidence is more reliable, and the best evidence is considered by the court. In the absence of primary evidence, secondary evidence is provided to witnesses based on his own point of view. The primary document as the main evidence is submitted to the court for inspection. Direct evidence is the best evidence to prove the facts. But in some cases, the main evidence is the best evidence in all cases. There is documentary evidence that excludes and excludes oral evidence, and the oral evidence shall prevail when the evidence is submitted as a court witness. Those who provide direct evidence can cross-check to test their accuracy.

- Therefore, the document was written as written evidence. Sections 91 and 92 exempt written evidence from oral evidence. In some evidence of criminal transactions called written testimony in section 91, oral evidence is more certain and reliable than oral evidence.

**Senior Civil Judge,
Chirala.**

**Office of the Senior Civil Judge,
Chirala, dated: 31.08.2023**

From
Smt. M. Sudha,
Senior Civil Judge,
Chirala.

To
The Hon'ble Prl. District Judge,
Prakasam District,
ONGOLE.

Honoured Madam,

Sub: Workshop-I – Paper presentation – Senior Civil Judge, Chirala –
Submitted – Regarding.

Ref: 1. High Court's Circular ROC.No. 60/Rc/2023-RC, dated
02.08.2023Circular of Hon'ble Prl. District Judge, Ongole in Dis No. 2265
dated 05.05.2023.

2. Circular dated 16.08.2023 of Prl. District Judge, Ongole in Dis No. 4205
dated 16.08.2023.

In obedience to the reference cited above, I have the honour to submit the Paper Presentation relating to the topics "Exclusion of oral evidence by documents & Presumptions relating to documents", for the Work shop -I to be scheduled on 16.09.2023, for the Session – 4, for onward submission to the Hon'ble High Court of Andhra Pradesh, for consideration.

This is submitted for favour of information.

Yours faithfully,

**Senior Civil Judge,
Chirala.**

**Enclosure:
Paper Presentation.**

THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE
(SECTION 91 TO 100) OF THE INDIAN EVIDENCE ACT.

SHAIK IBRAHIM SHARIEF,
I-Addl.Junior Civil Judge, Ongole.

A] INTRODUCTION :

The term evidence has come from the Latin word “evident” which means “to show clearly” or to prove. Evidence contains everything that is used to reveal the truth or facts. The word 'evidence' is used in the Indian Evidence Act, 1872 [hereunder referred to as 'Evidence Act'] means the testimony which may be legally recieved in order to prove or disprove some facts in dispute.

The appreciation of evidence in cases includes dealing with oral and documantary evidence. When the proof is restricted to spoken words or by gestures or motion, then it is termed as 'oral evidence'. Oral evidence, when reliable, is adequate without narration or written proof to demonstrate a reality or fact. Any evidence which is present as a document before the court in order to demonstrate or show a reality is called 'documentary evidence'. The difference between oral and documentary evidence is as under :

Oral evidence	Documentary evidence
Oral evidence means and includes all statements which are made by a witness in the court.	Documentary evidence means producing a document before the court of law and inspection is done by the court in order to know the facts.
It is a statement by a witness.	It is a statement in the document.
In oral evidence, the witness tells	In documentary evidence, the

about the facts by speaking or with gestures.	facts are recorded in writing.
Oral evidence is provided under Section 59 and 60 of Evidence Act.	Documentary evidence is provided under Section 61 to 66 of Evidence Act.
Section 59 of Evidence Act says that it considers all facts as oral evidence except electronic evidence and documentary evidence. Section 60 says that oral evidence must be direct.	Primary evidence is considered as the evidence which is given in several parts like duplicate copies or as counterpart like those which is signed by the parties or photocopy of the document whereas, Secondary evidence contains certified copies, that have been made by the same mechanical process and also contain counterparts of the document against the parties.
For example any crime has been committed by a 'ABC' and there is a person available at that time, then whatever he heard, saw, perceived, or formed an opinion, that is considered as oral evidence.	For example a photocopy of a document or photograph.

In certain cases, oral evidence is excluded by documentary evidence and the same is 'the best evidence'. Where the demonstration is exemplified in a record, the record is the best proof of the reality.

B] CHAPTER VI OF EVIDENCE ACT :

Chapter VI of Evidence Act deals with exclusion of oral evidence by documentary evidence. Documents once reduced into writing are considered to be the best evidence. It is on the higher footing than oral

evidence. The very object for which writing is used is to perpetuate the memory of what is written down, and so to furnish permanent proof of it. In order to give effect to this, the document itself must be produced. Section 61 of Evidence Act provides that the contents of documents may be proved by primary evidence or its secondary evidence. Section 62 of Evidence Act makes it clear that primary evidence is the document itself. The provisions of Chapter VI i.e. Section 91 to 100 can be summarised as follows :

1. SECTION 91: EVIDENCE OF TERMS OF CONTRACTS, GRANTS AND OTHER DISPOSITIONS OF PROPERTY REDUCED TO FORM OF DOCUMENT.

The Chapter VI of Evidence Act begins with Section 91. It deals with the exclusion of oral evidence by documentary evidence. Section 91 of Evidence Act contains two exceptions, three explanations and five illustrations. Production of the document is required by this section to prove its contents. In a sense, the rule enunciated by Section 91 of Evidence Act can be said to be an exclusive in as much as it excludes the admission of oral evidence for proving the contents of the document except in cases where secondary evidence is allowed. This Section lays down the best evidence rule, but it does not prohibit any other evidence where writing is capable of being construed differently and which shows how the parties understood the document.

Under this Section 91 of Evidence Act,

- (1) when the terms of (a) a contract, (b) a grant; or (c) any disposition of property, have been reduced to the form of a document; or
 - (2) where any matter is required by law to be reduced to the form of a document,
- then (a) the document itself, or (b) secondary evidence of its contents, must be put in evidence.

The first part of provision refers to transactions

voluntarily reduced to writing. The second part refers to those cases in which any matter is required by law to be reduced to the form of a document, e.g., sale of immovable property of the value of Rs.100 and upwards, mortgage for an amount exceeding Rs 100, a lease of immovable property for a year at least, a trust of immovable property, a gift of immovable property, etc.

In **Tulsi Vs. Chandrika Prasad [AIR 2006 SC 3359]**,

Hon'ble Supreme Court held as under :

“Section 91 of the Evidence Act mainly forbids proving of the contents of a writing otherwise than by writing itself and merely lays down the 'best evidence rule'. It, however, does not prohibit the parties to adduce evidence, in a case, the deed is capable of being construed differently to show how they understood the same.”

EXCEPTIONS TO SECTION 91 :

Exceptions to the best evidence rule are given in Section

91. These two exceptions to this provision are as under :

(1) APPOINTMENT OF PUBLIC OFFICER :

When a public officer is required by law to be appointed in writing and any officer has acted as such, the writing need not be proved. It is a general principle, that a person's acting in a public capacity is prima facie evidence of his having been duly authorised so to do; and even though the office be one the appointment to which must have been in writing, it is not, at least in the first instance, necessary to produce the document, or account for non-production.

Illustration:

A question arises whether 'A' is a Police Officer of the Police Station, then the order of appointment is not required to be proved. The fact that he is working as a Police Officer of the Police Station is sufficient.

The fact that a person is working in the due capacity of his office is also evidence of that person's appointment in the office.

(2) **WILLS ADMITTED TO PROBATE :**

Will admitted to probate in India may be proved by the probate. A Will is neither a contract, nor a grant, nor a disposition of property. The death of the testator makes it operative. Hence, this section does not apply to Wills.

This is another exception of the general rule of the writing to be produced itself. When on the basis of will probate has been obtained and if later, the question arises on the existence of that will, the original will is not required to be produced before the court. This exception requires to prove the contents of the will by which the probate is granted. The term “probate” stands for the copy of a certificate with the seal of the court granting administration to the estate of the testator. The probate copy of the will is secondary evidence of the contents of the original will in a strict sense, but it is ranked as primary evidence.

The general rule laid down in this section is also subject to the exceptions laid down in the Sections 95-99 of the Evidence Act. The section has no application when the writing is not evidence of the matter reduced to writing.

EXPLANATIONS TO SECTION 91 :1. **TRANSACTIONS IN ONE OR MORE THAN ONE****DOCUMENTS. — [EXPLANATION 1]:**

This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one. Illustration (a) to the section exemplifies this explanation. It says, if a contract is contained in several letters, all the letters in which it is contained must be proved.

2. **MORE THAN ONE ORIGINAL.—[EXPLANATION 2]**

This explanation runs that where there are more originals than one, one original only need be proved. Illustration (c) exemplifies the meaning of this explanation. It says, if a bill of exchange is drawn in a set of three, one only need be proved.

3. **EXTRANEOUS FACTS IN DOCUMENTS.—[EXPLANATION 3]**

The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact. Illustrations (e) exemplify this explanation. It says, A give B a receipt for money paid by B. Oral evidence is offered of the payment. The evidence is admissible.

2. **SECTION 92: EXCLUSION OF EVIDENCE OF ORAL AGREEMENT**

When a transaction has been reduced into writing, either by requirement of law, or agreement of the parties, the writing becomes the exclusive memorial thereof and no extrinsic evidence is admissible either to prove independently the transaction, or to contradict, vary, add to, or subtract from, the terms of the document, though the contents of such document may be proved by either primary or secondary evidence.

Under this section :

- (1) when the terms of (a) a contract, (b) a grant, or (c) any other disposition of property, have been reduced to the form of a document, or
- (2) when any matter required by law to be reduced to the form of a document, have been proved by the production of the document or by giving secondary evidence of its contents, no evidence of any oral agreement or statement shall be admitted

as between the parties to any such document or their representatives in interest, for the purpose of (i) contradicting, (ii) varying, (iii) adding to, or (iv) subtracting from, its terms.

In **Krishi Utpadan Mandi Samiti, Sahaswan, District Badaun through its Secretary V/s. Bipin Kumar and Another, [(2004) 2 SCC 283]**, the Hon'ble Supreme Court held that,

"Section 92 of the Act precludes a party from leading evidence contrary to the terms of a written document. To permit a party to so urge would be to give a premium to dishonesty".

Thus, the grounds of exclusion of oral evidence are : (1) that to admit inferior evidence when the law requires superior would be to nullify the law; and

(2) that when the parties have deliberately put their agreement into writing, it is conclusively presumed between themselves and their privies that they intended the writing to form a full and final statement of their intentions, and one which should be placed beyond the reach of future controversy, bad faith, or treacherous memory.

This section is supplementary to section 91 and is, to some extent, implied, in it. If the contract, grant or disposition has been reduced into writing, section 91 says no evidence shall be given of it, except the document itself, and this rule would be in vain, unless, as is said in this section, it was also forbidden to contradict, vary, add to, or subtract from, its terms. The bar of this section applies only when it is sought to be proved that the terms of the transaction were different and not that the transaction itself was different than what it purported to be.

The words "as between the parties to any such instrument" used in this section refer to bilateral instruments only and not to unilateral instruments, such as wills and power of attorney. This section operates only as between, the parties to a deed or their representatives in interest. It has no application to strangers and does not therefore prevent a stranger from showing that a transaction which on the face of it purports to be one thing was in fact never intended by the parties to be that but was effected for some collateral purpose and that the real transaction between them was something different. But such a case must be pleaded and proved.

In the case of ***Ram Janaki Raman v. State (AIR 2006 SC 1106)***, it was held by the Hon'ble Supreme Court that the bar laid down by section 92 of the Act was not applicable under the Criminal proceeding. The Hon'ble Supreme Court held as under :

“We may cull out the principles relating to Section 92 of the Evidence Act, thus:

i) Section 92 is supplementary to Section 91 and corollary to the rule contained in Section 91. ii) The rule contained in Section 92 will apply only to the parties to the instrument or their successors in interest. Strangers to the contract (which would include the prosecution in a criminal proceeding) are not barred from establishing a contemporaneous oral agreement contradicting or varying the terms of the instrument. On the other hand, Section 91 may apply to strangers also. iii) The bar under Section 92 would apply when a party to the instrument, relying on the instrument, seeks to prove that the terms of the transaction covered by the instrument are different from what is contained in the instrument. It will not apply where anyone, including a party to the instrument, seeks to establish that the transaction itself is different from what it purports to be. To put it differently, the bar is to oral evidence to disprove the terms of a contract, and not to disprove the contract itself, or to prove that the document was not intended to be acted upon and that intention was totally different.

Applying the aforesaid principles, it is clear that the bar under Section 92 will apply to a proceeding interparties to a document and not to a criminal proceeding, where the prosecution is trying to prove that a particular document or set of documents are fictitious documents created to offer an explanation for disproportionate wealth. Oral evidence can always be led to show that a transaction under a particular document or set of documents is sham or fictitious or nominal, not intended to be acted upon.”

EXCEPTIONS TO SECTION 92 :

There are six exceptions to this section —

(a) The facts which invalidate the document

Any fact which would (i) invalidate any document, or (ii)

entitle any person to any decree or order relating thereto may be proved, such as fraud, intimidation, illegality, failure of consideration, mistake in fact or law.

(b) **Separate oral agreement**

Any separate oral agreement (i) as to any matter on which the document is silent, and (ii) which is not inconsistent with its terms, may be proved.

(c) **Separate oral agreement as a condition precedent**

Any separate oral agreement, constituting a condition precedent to the attacking of any obligation under the document, may be proved.

(d) **Distinct oral agreement made subsequently to renew or modify the contract :**

Any subsequent oral agreement to rescind or modify any such contract, grant, or disposition of property, may be proved, except when such contract of grant (i) is required to be in writing, or (ii) has been registered. Hon'ble Supreme Court in the case of **S. Saktidevi Vs. M. Venugopal Pillai [AIR 2000 SC 2633]** has considered the scope and ambit of proviso (4) of Section 92 of the Evidence Act as follows :

"....Proviso (4) to Section 92 contemplates three situations, whereby

(i) the existence of any distinct subsequent oral agreement as to rescind or modify any earlier contract, grant or disposition of the property can be proved.

(ii) However, this is not permissible where the contract, grant or disposition of property is by law required to be in writing.

(iii) No parol evidence can be let in to substantiate any subsequent oral arrangement which has effect of rescinding a contract or disposition of property which is registered according to the law in force for the time being as to the registration of documents."

(e) **Any usage or customs by which incidents not mentioned in any contract are usually annexed to contract**

Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to such contracts, may be proved if they are not repugnant to, or inconsistent with, its express terms.

(f) **Extrinsic evidence of surrounding circumstances**

Any fact which shows in what manner the language of the document is related to existing facts, may be proved.

RELATIONSHIP BETWEEN SECTION 91 AND 92 OF EVIDENCE ACT :

It would be noticed that Sections 91 and 92 of Evidence Act are supplemental to each other. Section 91 would be frustrated without the aid of Section 92 and Section 92 would be inoperative without the aid of Section 91. Since Section 92 excludes the admission of oral evidence for the purpose of contradicting, varying, adding to or subtracting from, the terms of the document proved under Section 91, it may be said that it makes the proof of the document conclusive of its contents.

DISTINCTION BETWEEN SECTIONS 91 AND 92 :

The two Sections 91 and 92 of Evidence Act differ in some material particulars. This distinction can be spelled out as under :

1. Section 91 deals with the exclusiveness of documentary evidence. It deals with the proof of the matters mentioned in that Section. On the other hand, Section 92 deals with the conclusiveness of such evidence. It deals with disproof of the matters mentioned in the Section.
2. Section 91 makes inadmissible oral evidence of the terms of a contract or of a grant, or of any other disposition of property which have been reduced to the form of a document. Section 92 provides that when the terms are proved by the document, no evidence of any oral agreement or statement shall be admitted, as between the parties, to contradict or vary them. Section 92 has application when the terms of a contract, grant or other disposition of property, among other things, have been proved in accordance with Section 91.

3. The distinction between these two Sections as well as Section 99 has been clearly brought out by the Hon'ble Supreme Court in **Bai Hira Devi Vs. Official Assignee of Bombay**[AIR 1958 SC 448] wherein it is held that, "In our opinion, the true position, therefore, is that if the terms of any transfer reduced to writing are in dispute between a stranger to a document and the party to it or his representative in interest. Section 92 does not prevent both the stranger to the document and the party there to or his representative in interest, to lead evidence of oral agreement, notwithstanding the fact that such evidence if believed may contradict, vary, add to or subtract from, its terms."

It has been further observed that "In fact, S. 91 and 92 really supplement each other. It is because S. 91 by itself would not have excluded evidence of oral agreements which may tend to vary the terms of the document, that S.92 has been enacted; and if S. 92 does not apply to a case, there is no other Section in the Evidence Act which can be said to exclude evidence of agreement set up".

4. Section 92 excludes the evidence of oral agreements and it applies to cases where the terms of contracts, grants or other dispositions of property have been proved by the production of relevant documents themselves under Section 91; in other words, it is after the document has been produced to prove its terms under Section 91 that the provisions of Section 92 come into operation for the purpose of excluding evidence of any oral agreement or statement, for the purpose of contradicting, varying, adding to, or subtracting from, its terms.

5. Section 91 applies to all documents, whether they purport to dispose of rights or not. Section 91 applies to documents which are both bilateral and unilateral, unlike 92, the application of which is confined only to bilateral documents.

6. Section 91 lays down the rule of universal application and is not confined to the executants of the documents. Section 92, on the other hand, applies only between the parties to the instrument or their representatives in interest. There is no doubt that Section 92 does not apply to strangers who

are not bound or affected by the terms of the document. Persons other than those who are parties to the document are not precluded from giving extrinsic evidence to contradict, vary, add to, or subtract from, the terms of the document.

3. **SECTION 93 : EXCLUSION OF EVIDENCE TO EXPLAIN OR AMEND AMBIGUOUS DOCUMENT:**

There are two sorts of ambiguities of words—the one is ambiguities patens and other latens. Patens is that which appears to be ambiguous upon the deed or instrument; latens is that which seems certain and without ambiguity, for anything that appears upon the deed or instrument; but there is some collateral matter out of the deed that breeds the ambiguity.

Section 93 of Evidence Act deals with patent ambiguities. If the language of a deed is, on its face, ambiguous or defective, no evidence can be given to make it certain.

Illustration:

An agreement is made between A and B that A will sell his crops for Rs. 1000 or 2000. The evidence cannot be given that which price was to be given.

This section has reference to documents the language of which is so vague or defective on their face as to convey no meaning or so inherently ambiguous as to render the meaning uncertain. On account of inherent ambiguity or imperfection in the language or the deficiency or inconsistency of the words used, the intention of the maker of the document becomes a matter of pure speculation of the documents failed. When the person or the subject name in the document cannot be ascertained from the language used and it is on its face unintelligible, extrinsic evidence of intention cannot be given. The Court has to interpret documents, but it cannot apply intention of the writer or import words in a documents which are incapable of meaning for want of adequate expression.

4. **SECTION 94: EXCLUSION OF EVIDENCE AGAINST APPLICATION OF DOCUMENT TO EXISTING FACTS :**

The words of a written instrument must be construed according to their natural meaning, and no amount of acting by the parties can alter or qualify words which are plain and unambiguous. No principle has ever been more universally or rigorously insisted upon than those written instruments, if they are plain and unambiguous, must be construed according to the plain and unambiguous language of the instruments themselves. Under this section, where the language in its ordinary sense properly applies to the facts without any difficulty, evidence to show that it bears a different meaning will be rejected, as it contradicts the document.

When in a document comes before a Court for interpretation, it will first try to ascertain its meaning by looking into the language itself. When the words used in it are plain in themselves i.e. perfectly clear and free from ambiguity, and there is no doubt for difficulty as to the proper application of the words to existing facts, parol evidence is not admissible to show that parties intended to mean other than what they have said. The question is not what was intention of the parties, but what is meaning of the words they have used.

5. **SECTION 95: EVIDENCE AS TO DOCUMENT UNMEANING IN REFERENCE TO EXISTING FACTS :**

Where the language of a document is plain in itself but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense. It is based upon the *maxim falsa demonstratio non necet* (a false description does not vitiate the document). The illustration to this section shows that if A sells to B "my house in Calcutta," and if A has no house in Calcutta but has a house in Howrah, of which B has been in possession since the execution of the deed, these facts may be proved to show that the deed related to the house in Howrah. Where a sale deed describes the land sold by wrong survey numbers, extrinsic

evidence is admissible to show that the lands intended to be sold and actually sold and delivered were lands bearing different survey numbers.

6. SECTION 96 : EVIDENCE AS TO APPLICATION OF LANGUAGE WHICH CAN APPLY TO ONE ONLY OF SEVERAL PERSONS :

Where the description in the document applies equally to any one of two or more subjects, evidence to explain its language is admissible. Where the language of a document, though intended to apply to one person or thing only, applies equally to two or more, and it is impossible to gather from the context which was intended, an equivocation arises, e.g., when the same name or description fits two persons or things accurately; when the same name or description fits one exactly and the other but tolerably; when the same name or description fits two objects equally but subject to a common inaccuracy, provided that the inaccuracy be a mere blank or applicable to no other person or thing.

This section also deals with latent ambiguity. It modifies the rule laid down in Section 94 by providing that where the language of a document correctly describes two sets of circumstances but could not have been intended to apply to both, evidence may be given to show to which set it was intended to apply. Here the language is certain. The doubt as to which of similar persons or things the language applies has been introduced by extrinsic evidence.

In cases under section 94 and 96, the language is certain and intelligible, but in the document contemplated in section 96 ambiguity is introduced on account of words being applicable to two or more persons or things, while it was intended to apply to one. Oral evidence is admissible in cases of equivocation, because it is meant to explain document and not to contradict and vary it.

7. SECTION 97: EVIDENCE AS TO APPLICATION OF LANGUAGE TO ONE OF TWO SETS OF FACTS, TO NEITHER OF WHICH THE WHOLE CORRECTLY APPLIES.

This section is based upon the maxim *falsa demonstratio non necet*. It is only an extension of the provision of section 95. Sections 95, 96 and 97 all deal with latent ambiguity. Where in a written instrument the description of the person or thing intended is applicable with legal certainty to each of several subjects, extrinsic evidence, including proof of declarations of intention, is admissible to establish which of such subjects was intended by the author. The rule rejecting erroneous description not substantially important is applicable only where there is enough to show the intention clearly.

The illustration to this section shows that if A agrees to sell to B "my land at X in the occupation of Y", and A has land at X but not in the occupation of Y, and has land in the occupation of Y but it is not at X, evidence may be given to show which was intended to be sold. Another common case is where land within certain boundaries is sold and is wrongly described as containing a certain area, the error in area is regarded as a mere misdescription and does not vitiate the deed. The maxim *falsa demonstratio non necet* applies.

8. SECTION 98 : EVIDENCE AS TO MEANING OF ILLEGIBLE CHARACTERS , ETC

Evidence as to the meaning of illegible characters (e.g., shorthand-writer's notes) or of foreign obsolete, technical, local and provincial expressions and of words used in a peculiar sense may be given. In such cases the evidence cannot properly be said to vary the written instrument; it only explains the meaning of expressions used. Mercantile usage has given special meanings to many ordinary words. Evidence of the meaning which these words bear in mercantile transactions can be given under this section. The principle upon which words are to be construed in instruments is very plain— where there is a popular and common word used in an instrument, that word must be construed *prima facie* in its popular and common sense. Where the point in dispute is as to the meaning of a particular word in the document, evidence may be admitted to show in what peculiar sense that particular word was used, and extrinsic evidence including the evidence regarding the subsequent conduct of the parties is admissible to determine the effect of the instrument as well as the intention of the parties.

9. SECTION 99 : WHO MAY GIVE EVIDENCE OF AGREEMENT VARYING TERMS OF DOCUMENT

Section 92 forbids the admission of evidence of an oral agreement for the purpose of contradicting, varying, adding to, or subtracting from, the terms of a written document as between the parties to such document or their representatives in interest. The rule of exclusion laid down in the section does not apply to the case of a third party who is not a party to the document. On the contrary, this section distinctly provides that persons who are not parties to a document may give evidence tending to show a contemporaneous agreement varying the terms of the document.

In the case of an alienation of land in which a document has been executed purporting to be a deed of gift or mortgage, it is open to a third party claiming to exercise a right of preemption to prove that the transaction was in reality one of sale, and that the document sought to be impugned was executed in order to conceal its real nature and to defraud him of his legal rights.

10. SECTION 100 : SAVING OF PROVISIONS OF INDIAN SUCCESSION ACT RELATING TO WILLS.

This section clarifies that nothing contained in this Chapter shall be taken to affect any of the provisions of the Indian Succession Act (10 of 1865) as to the construction of wills.

C] CONCLUSION :

In short, Sections 91 and 92 define the cases in which documents are exclusive evidence of the transactions which they embody. Sections 93-98 deal with rules for construction of documents with the aid of extrinsic evidence. Sections 93-99 deal with the interpretation of documents by oral evidence. Overall provisions of this chapter revolve around enriching sanctity of best evidence rule. The provisions of this chapter are guiding principles while dealing with evidence on record.

PRESUMPTION AS TO DOCUMENTS UNDER THE INDIAN EVIDENCE ACT, 1872

**SHAIK IBRAHIM SHARIEF,
I-Addl.Junior Civil Judge, Ongole.**

Document

Section 3 of the Indian Evidence Act, 1872 ('Act' for short) defines the term 'document' as 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.

Presumption

The presumption is of two types-

- May presume - the Court may presume a fact, it may either regard such fact as proved, unless it is disproved, or may call for proof of it;
- Shall presume - the Court shall presume a fact, it shall regard such fact as proved, unless and until it is proved.

Shall presume

The following sections of Evidence Act, 1872 provides that the Court shall presume as proved-

- Section 79 - Presumption as to genuineness of certified copies;
- Section 80 - Presumption as to documents produced as record of evidence;
- Section 81 - Presumption as to Gazettes, newspapers, private Acts of Parliament and other
- Section 82 - Presumption as to document admissible in England without proof of seal or signature;
- Section 83 - Presumption as to maps or plans made by Authority of Government;
- Section 84 - Presumption as to collections of laws and reports of decisions;
- Section 85 - Presumption as to powers of attorney;
- Section 85A - Presumption as to electronic agreements;
- Section 85B - Presumption as to electronic records and electronic signatures;
- Section 85C - Presumption as to electronic signature certificates.

- Section 89 – Presumption as to due execution etc., of documents not produced

Presumption as to genuineness of certified copies

Section 79 provides that the court shall presume to be genuine every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any evidence of any particular fact, and which purports to be duly certified by any officer of the Central Government or of a State Government who is duly authorized thereto by the Central Government. Such document is substantially in the form and purports to be executed thereto by the Central Government. The Court shall also presume that any officer by whom such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

Presumption as to documents produced as record of evidence

Section 80 provides that whenever any document is produced before the Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law and purporting to be signed by any Judge or Magistrate, or by any such Officer as aforesaid, the Court shall presume that-

- the document is genuine;
- any statements as to the circumstances under which it was taken, purporting to be made by the person signing it are true; and such evidence, statement or confession was duly taken.

This section does not deal with the question of admissibility. It dispenses with the necessity of a formal proof by raising the statutory presumption.

Presumption as to Gazettes, newspapers and other documents

Section 81 provides that the Court shall presume the genuineness of every document purporting to be the Official Gazette or to be a newspaper or journal or every document purported to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

Presumption as to Gazettes in electronic forms

Section 81A was inserted by the Information Technology Act, 2000 with effect from 17.10.2000. This section provides that the Court shall presume the genuineness of every electronic record purporting to be the Official Gazette, or purporting to be electronic record directed by any law to be kept by any person, if such electronic record is kept substantially in the form required by law and is produced from proper custody.

Presumption as to document admissible in England without proof of seal or signature

Section 82 provides that when any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine and that person signing it held, at the time when he signed it, the judicial or official character which he claims and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

The Calcutta High Court, in one case decided during the year 1967, held that an affidavit, sworn before a Notary Public in USA certified under seals of County Clerk and the Clerk of the Supreme Court, New York, forwarded under certificate of Consulate General of India in New York, is authentic and admissible in evidence.

Presumption as to maps or plans made by Authority of Government

Section 83 provides that the Court shall presume that maps or plans purporting to be made by the authority of the Central Government or any State Government were so made and are accurate; but maps or plans made for the purposes of any clause must be proved to be accurate.

The plan signed by the Executive Engineer and SDO is presumed to be genuine. No presumption of accuracy is available about maps prepared by a private person without the authority of the Government.

Presumption as to collections of laws and reports of decisions

Section 84 provides that the Court shall presume the genuineness of every book, purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country and of every book purporting to contain reports of the decisions of the Courts of such country.

The report of a judicial pronouncement appearing in a newspaper has no presumption under section 84.

Presumption as to powers of attorney

Section 85 provides that the Court 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 representative of the Central Government, was so executed and authenticated.

Presumption as to electronic agreements

Section 85A was inserted by the Information Technology Act, 2000 with effect from 17.10.2000. This section provides that every electronic record purporting to be an agreement containing the electronic signatures of the parties was so concluded by affixing the electronic signature of the parties.

Presumption as to electronic records and electronic signatures

Section 85B was inserted by the Information Technology Act, 2000 with effect from 17.10.2000. The said section provides that in any proceedings involving a secure electronic record, the Court shall presume unless contrary is proved, that the secure electronic record has not been altered since the specific point of time which the secure status relates.

In any proceedings, involving secure electronic signature, the Court shall presume unless the contrary is proved that-

- the secure electronic signature is affixed by subscriber with the intention of signing or approving the electronic record;

- except in the case of a secure electronic record or a secure electronic signature, nothing in this section shall create any presumption relating to authenticity and integrity of the electronic record or any electronic signature.

Presumption as to electronic signature certificates

Section 85C was inserted by the Information Technology Act, 2000 with effect from 17.10.2000. The said section provides that the Court shall presume, unless contrary is proved, that the information listed in a Electronic Signature Certificate is correct, except for information specified as subscriber information which has not been verified, if the certificate was accepted by the subscriber.

Presumption as to due execution etc., of documents not produced

Section 89 provides that the Court shall presume every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

May presume

The following sections of Evidence Act, 1872 provides that the Court may presume a fact either regard as proved, unless and until it is disproved or may call for proof of it-

- Section 86 – Presumption as to certified copies of foreign records;
- Section 87 – Presumption as to books, maps or charts;
- Section 88 – Presumption as to telegraphic messages; (now telegraph system is not in vogue);

PRESUMPTION AS TO DOCUMENTS UNDER INDIAN EVIDENCE ACT, 1872

- Section 88A – Presumption as to electronic messages;
- Section 90 – Presumption as to documents thirty years old; and
- Section 90A – Presumption as to electronic records five years old.

Presumption as to certified copies of foreign records

Section 86 provides that the Court may presume that any document purported to be a certified copy of any judicial record of any country not

forming part of India or of Her Majesty's Dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of the Central Government in or for such country to be the manner commonly in use in that country for that certification of copies of judicial records.

An Officer who, with respect to any territory or place not forming part of Indian or Her Majesty's Dominions, is a Political Agent therefore, as defined in Section 3(43) of the General Clauses Act, 1897 shall, for the purposes of this section, be deemed to be a representative of the Central Government in and for the country comprising that territory or place.

Here are some of the points of the High Court/Supreme under this section-

- A foreign judgment is not admissible in evidence in the absence of the certificate.
- In order to raise the presumption, admission of judgment in evidence does not become a condition precedent.
- Certified copy of a decree of a High Court filed in a court beyond the jurisdiction of the said High Court. Presumption of genuineness is available in spite of the absence of certificate under section 86.

Presumption as to books, maps or charts

Section 87 provides that the Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to telegraphic messages

Now the telegraph system is not in vogue. However section 88 is discussed for the information of the readers. It may be helpful for any past case.

Section 88 provides that the Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

The presumption under this section is available for radio message as held by the Orissa High Court in AIR 1966 Ori. 150.

Presumption as to electronic messages

Section 88A was inserted by the Information Technology Act, 2000 with effect from 17.10.2000. The said section provides that the Court may presume that an electronic message forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent.

Presumption as to documents thirty years old

Section 90 provides that where any document, purporting or proved to be 30 years old, is produced from any custody which the court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting, and, in the case of document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

The documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

Illustrations

PRESUMPTION AS TO DOCUMENTS UNDER INDIAN EVIDENCE ACT, 1872

- A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land, showing his titles to it. The custody is proper.
- A produces deeds relating to landed property to which he is the mortgagee. The mortgagor is in possession. The custody is proper.
- A, a connection of B, produces deeds relating to land in B's possession which were deposited with him by B for safe custody. The custody is proper.

The presumption under this section is a rebuttable presumption. This presumption does not attach to anonymous documents as held by Madras High Court in AIR 1939 Mad 926.

Presumption as to electronic records five years old

Section 90A was inserted by the Information Technology Act, 2000 with effect from 17.10.2000. The said section provides that where an electronic record, purporting to be proved to be 5 years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the electronic signature which purports to be the electronic signature of any particular person was so affixed by him or any person authorized by him in this behalf.

The electronic records are said to be in proper custody if they are in the place in which and under the care of the person with whom, they naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable.