Relevancy and Admissibility of documents in evidence

i) Exclusion of oral evidence by documents

ii) Presumptions relating to documents

by

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I. Exclusion of Oral Evidence by Documents

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. In law the person on whom the burden of proof lies has to produce the evidence before the court of law. It is also important that the evidence which is produced before the court should be true.

- **Oral 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. Where a reality can be demonstrated by oral proof, it isn’t essential that the announcement of the observer ought to be oral. Accordingly, a speechless individual may give evidence by signs or by composing. The reality can likewise be demonstrated or shown by oral proof.
- **Documentary evidence-** Any evidence which is present as a document before the court in order to demonstrate or show a reality.

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*“.

Section 91 of the Evidence Act-Evidence in the form of contracts, grants and other dispositions of property should be in the form of a document. This Section applies similarly to cases in which the agreement, stipends or disposition of property alluded are contained in one document or has one record, and cases in which they are contained in a greater number of reports that one.

If there are more than one original documents, then only one original needs to be proved. The statement in any document of whatever facts are mentioned under this Section, shall not prevent the admission of oral evidence as to the same fact mentioned.

Tulsi v. Chandrika Prasad[AIR 2006 SC 3359]

In this case, Section 91 of the Evidence Act mainly says that we should produce the original document for proving the contents of the same but it does not prohibit the parties to adduce some evidence in case the deed is capable of being construed differently for proving the way they understood.

Section 92

The provision of S 92 states that "When the terms of any such contract, grant, etc required by law to be reduced to a document have been proved accordingly as per section 91, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, to contradict, vary, adding to, or subtracting such instrument.

There are six provisos to this Section, namely:

Proviso (1): The facts which invalidate the document.

Proviso (2): Separate oral arguments.

Proviso (3): Separate oral arguments as a condition precedent.

Proviso (4): Distinct oral agreements made subsequently to renew or modify the contract.

Proviso (5): Any usage or customs by which incidents not mentioned in any contract are usually annexed to the contract.

Proviso (6): Extrinsic evidence of surrounding circumstances.

Important Case law

Bhawanbhai Premabhai v. Bai Vahali[AIR 1955 Bombay 320]

The Court held that Section 91 and 92 supplement each other. The judgment further went on to hold that one necessary pre-requisite for the application of Sections 91 and 92 is the presence of a contract between the two transacting parties and when this is absent, the provisions lose significance.

The evidence law of India regards the “Best Evidence Rule” as a principle guiding the Indian Evidence Act 1872. By Best Evidence Rule we mean that the secondary evidence won’t be applicable when primary evidence exists. An essential component of the evidence law is that the best proof or the best evidence ought to be given importance in all cases. Where the demonstration of proof is shown by way of a record, this record is the best evidence of reality. Oral evidence has less value than documentary evidence because oral evidence requires corroboration for its acceptance.

Documentary Evidence Outweighs Oral Testimony

Shri Partap Singh v Shiv Ram

In a recent judgment, the Supreme Court held that revenue recorded entries have statutory presumption attached to them, and oral evidence, on the contrary, will not be sufficient, since witnesses may lie but documents do not.

While allowing the appeal in this case the Supreme Court held that the defendant had failed to rebut the presumption of truth based on reliable, trustworthy and cogent documentary evidence to prove the relationship of a tenant, and it would not be proper to rely on the oral evidence, as its credibility in comparison to documentary evidence is much weaker.

CONCLUSION

The value of documentary evidence is more than oral evidence. The court mainly accepts documentary evidence but takes oral evidence into consideration. Briefly, we can say that there are two types of documents- oral and documentary evidence. In court, documentary evidence has more value. Court wants best evidence and documentary evidence is the best evidence and it consists of two parts primary evidence and secondary evidence. Primary evidence is the best evidence recognized by the court. In the absence of primary evidence, secondary evidence is given to the Court. On the other hand, oral evidence is evidence given by words and gestures and are not permanent it can be changed. Hence Section 91 and 92 exclude oral evidence by documentary evidence. Proof in the form of a document can be submitted instead of giving orally.

II. Presumptions relating to Documents

Introduction:

Presumptions are inferences which are drawn by the court with respect to the existence of certain facts. When certain facts are presumed to be in existence the party in whose favor they are presumed to exist need not discharge the burden of proof with respect to it. This is an exception to the general rule that the party which alleges the existence of certain facts has the initial burden of proof but presumptions do away with this requirement.

Presumptions can be defined as an affirmative or negative inference drawn about the truth or falsehood of a fact by using a process of probable reasoning from what is taken to be granted. A presumption is said to operate where certain fact are taken to be in existence even there is no complete proof.A presumption is a rule where if one fact which is known as the primary fact is proved by a party then another fact which is known as the presumed fact is taken as proved if there is no contrary evidence of the same. It is a standard practice where certain facts are treated in a uniform manner with regard to their effect as proof of certain other facts. It is an inference drawn from facts which are known and proved. Presumption is a rule which is used by judges and courts to draw inference from a particular fact or evidence unless such an inference is said to be disproved.

Presumptions can be classified into certain categories:

- Presumptions of fact.
- Presumptions of law.
- Mixed Presumptions.

The discretionary presumptions with respect to documents under the Indian Evidence Act. Discretionary presumptions relating to documents are given under Section 86, 87, 88, 90 and 90-A of the Indian Evidence Act.

The Sections of the Indian Evidence Act which deal with Discretionary Presumptions relating to documents are sections 86, 87, 88, 90 and 90-A. These Presumptions are those in which the words may presume are used in the sections and the words may presume is used signifies that the courts of

law have discretion to decide as to whether a presumption is allowed to be raised or not. In the case of such presumptions the courts of law will presume that a fact is proved unless and until it is said to be disproved before the court of law or it may call for proof of a fact brought before it.

DISCRETIONARY PRESUMPTIONS RELATING TO DOCUMENTS

Discretionary presumptions are those presumptions where the discretion is left to the court whether or not to raise the presumption. The provisions in which the words “may presume” are used are discretionary presumptions. The discretionary presumptions relating to documents are provided under Sections 86, 87, 88, 90 and 90-A of the Indian Evidence Act. Section 86 lays down the principle that the court may make a presumption relating to the genuineness and accuracy of a certified copy of a judicial record of any foreign country if the said document is duly certified in accordance with the rules which are used in that country for certifying copies of judicial records.The presumption under this section is permissive and imperative in nature and hence should be complied with. But the court has the discretion to decide whether the presumption should be raised or not. If there is no certificate under this section then a foreign judgment is not admissible as evidence in court.But this does not mean that it excludes other proof. It is not necessary that the foreign judgment should have already been admitted as evidence so as to give rise to this presumption

The presumption under Section 87 is related to the authorship, time and place of the book or map or chart and not related to accuracy or correctness of facts contained in the book, map or chart. The accuracy of the information in the map, book or chart is not conclusive but in the absence of contrary evidence it is presumed to be accurate. The accuracy of the information in a map or a chart depends on the source of information. The age of the publication is also not important that the court can refer to any publication as long as it is relevant to the suit brought before it.

The presumption under Section 88 is based on the principle that the acts of official nature are performed in a regular manner. Under this section

the court accepts hearsay statement as evidence about the identity of the message which was delivered.

The requirement under this section that no presumption shall be made with regard to the person who has delivered the message for the purpose of transmission is mandatory and should be necessarily complied with. This presumption only operates if the message has been delivered to the addressee otherwise the message is not held to be proved. This presumption applies only those messages which are transmitted to the addressee through the telegraphic office. This presumption also applies to radio messages.

The form which is given to the post office by the sender of the message is the original of the telegram and not the form given by the post office to the addressee. Either the original copy must be submitted before the court by a post office official or proof of its destruction must be given before copy can admitted as secondary evidence before the court under this section.

According to Section 88 there is only a presumption that the message received by the addressee corresponds to the message delivered for transmission to the telegraph office and there is no presumption as to the person who delivered the said message for transmission. But the proof relating to the authorship of the message is not direct but of a circumstantial nature. The content of the message read in context with the chain of correspondence is proof relating to the authorship of the message.

Section 88-A is similar to Section 88 in structure and it is like an extension of Section 88 which deals with the transmission of electronic message. According to this section the court may presume that an electronic message forwarded by the originator through an electronic mail server to be 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 the message is sent. The terms “addressee” and “originator” given in this section can be defined by looking into Clauses (b) and (za) of Subsection (1) of Section 2 of the Information Technology Act of 2000.

Section 90 deals with presumption relating to ancient documents or documents which are 30 years old. The basis of Section 90 is the principle of

convenience and necessity. The basic objective of this section is to reduce any difficulties faced by persons who want to prove the handwriting, execution and attestation of ancient documents for establishing their case.

Under this section the court may make the following presumptions with respect to ancient documents: a) the signature and every part of handwriting of such a person and b) that the document was duly executed and attested by the person it is supposed to be executed and attested. The presumption under this section does not apply to other aspects of the document like its contents or its authenticity.

The presumption under this section applies to all the documents which come under the definition given under Section 3 of the Indian Evidence Act. It applies to books of accounts, testamentary documents, private and public documents. This presumption does not apply to anonymous documents.For the presumption under Section 90 to be applicable the following conditions have to be fulfilled:

The document should be proved or purported to be 30 or more years old. There must be some evidence or at least a prima facie case should be made out to support that the document is 30 years old. This is however a rebuttable presumption. Ancient documents can be read as evidence without any formal proof. The period of 30 years is commuted from the date of the execution of the document to the date on which it is put as evidence.

The document should be produced from proper custody. It can be proved that document is produced from proper custody either by giving evidence to prove the fact or show that the person who produced it was the depository of the document.

The document should be original and not certified copies or registered copies. If an original document is not produced before the court and no reason is given for the non production of the original documents the certified copies are not admissible before the court. However if a copy of a document can be admitted as secondary evidence under Section 65 and is produced from proper custody and is over thirty years old then signature which authenticates the document may be presumed as genuine but this does prove the execution of the document. Certified copies are admissible if the original

document is in the possession of the opposite party. Certified copies are also admissible to prove contents of the original if the original copy is lost.

This presumption applies only in the case of proving the signature and the handwriting of the document. If the documents do not have a signature then the presumption under Section 90 does not apply to it. The definition of signature under this section includes thumb impressions if there is no evidence to the contrary. However the signature under this section does not include seals because seals do not fall within the definition of signature given in the General Clauses Act.

However there are certain causes which weaken the presumption under Section 90 are:

The court may presume the genuineness of the document if it more than 30 years and produced from proper custody. The presumption is weakened by circumstances which raise doubts authenticity of the document. When the genuineness of the document is disputed the court has to consider external and internal evidence related to it in order to decide whether there was proper execution and signature.

When the document is suspicious on the face of it the court need not presume that the document was executed by the person purported to have executed it.

Section 90-A is similar to Section 90 of the Indian Evidence Act in structure and is like an extension of Section 90 which applies to electronic records which are 5 years old. According to this section if any electronic record purporting or proved to be 5 years old is produced from 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 authorized by him in this behalf.

The explanation to this section states that 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 said to be improper if it is proved to have a legitimate origin or the circumstances of the case are such as to render such an origin probable.

The conclusive presumptions are U/Sec 79, 80, 80-A, 81, 82, 83, 85 and 89.The Sections of the Indian Evidence Act which deal with Mandatory Presumptions are Section 79, 80, 80-A, 81, 82, 83 85 and 89. These Presumptions are those in which the words shall presume is used. In case of such presumptions the courts of law will presume that a fact before it is proved until and unless it is disproved. The words shall presume signify that the courts have to mandatorily raise a presumption and such a presumption which is raised shall be considered to be proved unless and until the presumption is said to be disproved and there is no discretion left to the court therefore there is no need for call of proof in this case. It is like command of the legislature to the court to raise a presumption and the court has no choice but to do it. The similarity between discretionary and mandatory presumptions is that both are rebuttable presumptions.

CONCLUSION

Discretionary presumptions are those presumptions in which court will presume a fact to be proved until it is disproved or may call proof upon it. In the case of such presumptions the court has the choice to decide whether to raise the presumption or not. The conclusive presumption be taken as it is Conclusive Proof is also known as Conclusive Evidence. It gives certain facts an artificial probative effect by law and no evidence shall be allowed to be produced which will combat that effect. It gives finality to the existence of a fact which is sought to be established. This generally occurs in cases where it is in the larger interest of society or it is against the governmental policy. This is an irrebuttable presumption.