APPRECIATION OF EVIDENCE
IN CIVIL CASES

S.S. Upadhyay
Former District & Sessions Judge/
Former Addl. Director (Training)
Institute of Judicial Training & Research, UP, Lucknow.
Member, Governing Body,
Chandigarh Judicial Academy, Chandigarh.
Former Legal Advisor to Governor
Raj Bhawan, Uttar Pradesh, Lucknow
Mobile : 9453048988
E-mail : ssupadhyay28@gmail.com

1. **No evidence can be led without pleadings :** No evidence can be led on a plea not raised in the pleadings and no amount of evidence can cure defect in the pleadings. No amount of evidence or arguments can be looked into or considered in absence of pleadings and issues. See :

(i) **Ravinder Singh vs. Janmeja Singh, (2000) 8 SCC 191**
(ii) **Union of India vs. R. Bhusal, (2006) 6 SCC 360**
(iii) **Anathula Sudhakar Vs. P. Buchi Reddy, 2008 (2) AWC 1768(SC)**

2. **Variance between pleadings and evidence—effect? :** Such evidence which is at variance with the pleadings of the party, cannot be relied upon and moreover, an adverse inference is to be drawn when the pleadings and evidence are self-contradictory. See : **Kashi Nath vs. Jag Nath, (2003) 8 SCC 740.**

3. **Plaintiff not to be allowed to set up a new case :** Plaintiff cannot be allowed to set up a new case in his evidence. He cannot be allowed to go outside his pleadings and lead evidence on a fact not pleaded. See : **M.M.B. Catholicos vs. T. Paulo Avira, AIR 1959 SC 31 (Five-Judge Bench).**

4(A). **Pleadings not as substitute for proof** : Mere pleadings of a party cannot be treated as substitute for proof. See : **Manager, Reserve Bank of India, Bangalore vs. S. Mani, (2005) 5 SCC 100 (Three-Judge Bench).**

4(B). **Non-examination as witness of the party pleading—effect?** : Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption u/s. 114(g) of the Evidence Act would arise that the case set up by him is not correct. See :

(i) **Adivekka vs. Hanamavva Kom Venkatesh, AIR 2007 SC 2025**

(ii) **Vidhyadhar vs. Manikrao, (1999) 3 SCC 573.**

5. **Withholding material evidence & effect thereof? :** If a party withholds from court the best evidence or some material evidence (document) or witness, adverse presumption against such party can be drawn u/s. 114(g) of the Evidence Act. See : **M/s. Sri Ram Industrial Enterprizes Ltd. vs. Mahak Singh, AIR 2007 SC 1370**

6. **Plea covered by issue by implication & within the knowledge of parties –effect? :** Explaining the provisions under O. 6, R. 2 CPC regarding implicit pleading & implied plea, the Supreme Court has held that if the plea was covered by issue by implication and the parties knew that the said plea was involved in trial, in such a case mere fact that the plea was not expressly taken in pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. In other words, if an issue is framed and parties were conscious of it, went to trial on that issue, adduced evidence and had an opportunity to lead evidence and cross examine, then objection as to want of specific pleading cannot be raised. See :

(i) **Standard Chartered Bank vs. Andhra Bank Financial Services Ltd., (2006) 6 SCC 94 (Three-Judge Bench)**

(ii) **Sardul Singh vs. Pritam Singh, 1999 (36) ALR 1 (SC)**

(iii) **Bhagwati Prasad vs. Chandramaul, AIR 1966 SC 735**

7. **Party not bound to prove a case not pleaded :** A party to a suit or proceeding cannot be compelled to prove a fact or issue which was never part of his case. No adverse inference u/s. 114 III. (g) & 5 Evidence Act can be drawn against such party. See : **Standard Chartered Bank vs. Andhra Bank Financial Services Ltd., (2006) 6 SCC 94 (Three-Judge Bench)**

8(A). **POA Holder not to depose for principal :** A power of attorney holder cannot depose for the principal for the acts done by the principal and in respect of matters of which only the principal can have personal knowledge. See :

(i) **Janavi Vashdeo Bhojwani vs. Industrial Bank Ltd., 2005 (1) SCJ 520**

(ii) **Smt. Rajni Shukla vs. Spl. Judge, Banda, 2007 (69) ALR 801 (Allahabad)**

8(B). **POA Holder has no right to plead or argue before court :** Only the advocates enrolled under the Advocates Act, 1961 have been authorized to plead and argue before a court of law. Interpreting the provisions of Section 29 of the Advocates Act 1961, Section 2 of the Powers of Attorney Act 1882 and Order 3, rules 1 & 2 CPC, it

has been held by the Calcutta High Court that the holder of Power of Attorney has no right to plead or argue a case before the court. **See: Usha Kant Das Vs S.M. Sefalika Ash, AIR 2019 Calcutta 145**

9. **Burden of proof immaterial where both parties have led their entire evidence :** Rule of burden of proof u/s. 101 Evidence Act is irrelevant when the parties have actually led their evidence (oral and documentary) and that evidence has to be considered by court. When the entire evidence is before the court, the burden of proof becomes immaterial and the court has to come to a decision on a consideration of all materials. Sec. 110 Evidence Act merely enunciates the burden of proof as to ownership. See :

(i) **Standard Chartered Bank vs. Andhra Bank Financial Services Ltd., (2006) 6 SCC 94 (Three-Judge Bench)**

(ii) **Sita Ram Bhau Patil vs. Ram Chandra Nago Patil, (1977) 2 SCC 49 (Three-Judge Bench)**

(iii) **Arumugham vs. Sundarambal, AIR 1999 SC 2216**

(iv) **Narayan vs. Gopal, AIR 1960 SC 100 (Three-Judge Bench)**

(v) **M.M.B. Catholicos vs. T. Paulo Avira, AIR 1959 SC 31 (Five-Judge Bench)**

(vi) **Narayan Govind Gavate vs. State of Maharashtra, (1977) 1 SCC 133 (Three-Judge Bench)**

10A. **Meaning of "proof", "burden of proof", "onus probandi" :** "Proof", which is the effect of evidence led, is defined by the provisions of Sec. 3 of the Evidence Act. The effect of evidence has to be distinguished from the duty or burden of showing to the court what conclusions it should reach. This duty is called the "onus probandi", which is placed upon one of the parties, in accordance with appropriate provisions of law applicable to various situations; but, the effect of the evidence led is a matter or inference or a conclusion to be arrived at by the court. The total effect of evidence is determined at the end of a proceeding not merely by considering the general duties imposed by Sections 101 and 102 of the Evidence Act but also the special or particular ones imposed by other provisions such as Sections 103 and 106 of the Evidence Act. In judging whether a general or a particular or special onus has been discharged, the court will not only consider the direct effect of the oral and documentary evidence led but also what may be indirectly inferred because certain facts have been proved or not proved though easily capable of proof if they existed at

all which raise either a presumption of law or of fact. Sec. 114 of the Evidence Act covers a wide range of presumptions of fact which can be used by courts in the course of administration of justice to remove lacunae in the chain of direct evidence before it. It is, therefore, said that the function of a presumption often is to "fill a gap" in evidence. True presumptions, whether of law or of fact, are always rebuttable. In other words, the party against which a presumption may operate can and must lead evidence to show why the presumption should not be given effect to. The result of a trial or proceeding is determined by a weighing of the totality of facts and circumstances and presumptions operating in favour of one party as against those which may tilt the balance in favour of another. The original or stable onus laid down by Sec. 101 and Sec. 102 of the Evidence Act cannot be shifted by the use of Sec. 106 of the Evidence Act. The totality of circumstances has to be examined, including the recitals, to determine whether and to what extent each side had discharged its general or particular onus. The doctrine of onus of proof becomes unimportant when there is sufficient evidence before the court to enable it to reach a particular conclusion. The principle of onus of proof becomes important in cases of either paucity of evidence or in cases where evidence given by two sides is so equi-balanced that the court is unable to hold where the truth lay. See : **Narayan Govind Gavate vs. State of Maharashtra, (1977) 1 SCC 133 (Three-Judge Bench)**

10B. Pleading and proof required in a suit for specific performance of contract: It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions which are required to be gone into for grant of the relief of specific performance are **first**, whether there exists a valid and concluded contract between the parties for sale/ purchase of the suit property; **second**, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract; **third**, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of table of grant the relief of specific performance to the plaintiff against the defendant in relation to the suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner

and the extent if such relief is eventually granted to the plaintiff; and **lastly**, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of the earnest money etc. and, if so, on what grounds. To avail relief of specific performance, parties are required to plead and prove all statutory requirements prescribed under the provisions of Sections 16(c), 20, 21, 22 & 23 of the Specific Relief Act, 1963 and Forms 47 & 48 of Appendix A to C of the CPC. **See: Kamal Kumar Vs. Premlata Joshi, AIR 2019 SC 459.**

11. **Number of witnesses required for proof of a fact :** According to Sec. 134 of the Evidence Act, no particular number of witnesses in any case is required for the proof of any fact.

12(A). **Plaintiff bound to prove his case even when the defendant fails to prove his case :** The plaintiff (in a ejectment suit) must succeed on the strength of his own title. This can be done by adducing sufficient evidence to discharge the onus that is on him irrespective of whether the defendant has proved his case or not. A mere destruction of the defendant's title, in the absence of establishment of his own title carries the plaintiff nowhere. In order to succeed in his suit, the burden u/s. 101, 102, 103 Evidence Act to prove his case lies upon the plaintiff. See : **M.M.B. Catholicos vs. M.P. Athanasius, AIR 1954 SC 526 (Three-Judge Bench)**

12(B) **Plaintiff not to take benefit of any weaknesses in defendant's case** : Where the plaintiff had instituted the suit for declaration of title and possession, it has been held by the Supreme Court that burden of proof u/s. 101 of the Evidence Act rests on the plaintiff to prove his title and entitlement to possession. Plaintiff cannot succeed on any alleged weakness in title possession of the defendant. See :

(i) **State of M.P. Vs. Ushadevi, (2015) 8 SCC 672 (Para 33)**

(ii) **Union of India Vs. Vasavi Co-operative Housing Society Limited, (2014) 2 SCC 269**

(iii) **T.K. Mohammed Abulbucker vs. P.S.M. Ahamed Abdul Khader, AIR 2009 SC 2966**

12(C). **Burden of proof on plaintiff when case proceeds ex-parte :** Even an ex-parte decree under O. 9, R. 6(a) of CPC should satisfy the description of "judgment" as laid down in O. 20, R. 4(2) CPC. A 'judgment' for its sustenance must contain not only findings on the points, but must also contain what evidence consists of, and how does it prove plaintiff's case. A judgment unsupported by reasons is no judgment in the

eye of law, because reasons are the links between the material on record and the conclusion arrived at by the Court. Mere fact that the defendant absented himself on the date of hearing and the suit proceeded ex-parte, did not by itself, entitle the plaintiff to get a decree in his favour. The court is under an obligation to apply its mind to whatever ex-parte evidence or affidavit filed under O. 19 of the CPC is on the record of the case, and application of mind must be writ large on the face of record. This is possible only if the court directs itself to whatever material is on record of the case, analyses the same and then comes to any conclusion on the basis of evidentiary value of the ex-parte evidence or affidavit brought on record by the plaintiff. See :

1. **Commissioner of Income-tax, vs. Surendra Singh Pahwa, AIR 1995 All 259**
2. **Rameshwar Dayal vs. Banda, 1993 All.C.J. 597 (SC)**

12(D).<u>Ex-parte judgments & appreciation of evidence</u> : Ex-parte decree cannot be passed by court without plaintiff having proved his case and by only accepting uncontroverted version of plaint. Plaintiff must prove his case even if the defendant failed to file written statement. The court has not to act blindly upon the admission of a fact made by the defendant in his W.S. Nor the court should proceed to pass judgment blindly merely because a W.S. has not been filed by the defendant traversing the facts set out by the plaintiff in his plaint filed in the court. In a case where W.S. has not been field the court should be a little cautious in proceeding u/o. 8, r. 10 CPC. Before passing the judgment against the defendant, it must see to it that even if the facts set out in the plaint are treated to have been admitted a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. See :

(i) Commissioner of Income Tax vs. Surendra Singh Pahwa, AIR 1995 All 259
(ii) Smt. Indra Sharma vs. Lt. Col. S.K. Sharma, 2005 (4) AWC 3122 (All)
(iii) Balraj Taneja vs. Sunil Madan, 1999 (4) AWC 2 (129) NOC (SC)

12(E). <u>Ex-parte judgments & evidence on affidavit (O. 19, r. 1-A CPC)</u> : In view of the amended provisions of O. 19, R. 1-A CPC w.e.f. 10.2.1981, evidence on affidavit can be received by court where the case has proceeded ex-parte. In such cases the court may permit the plaintiff to adduce his evidence on affidavit. See :

(i) **Ayaaubkhan Vs. State of Maharashtra, AIR 2013 SC 58**

(ii) **Smt. Rajeshwari Devi vs. Ram Chandra Gupta, 1997 (2) ARC 516 (All)**

12(F). **Judgment u/o. 8, rule 10 CPC in the absence of W.S. by defendant & appreciation of evidence :** In a case where W.S. has not been filed by the defendant the court should be a little cautious in proceeding u/o. 8, r. 10 CPC. Before passing the judgment against the defendant. It must see to it that even if the facts set out in the plaint are treated to have been admitted a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. See : **Balraj Taneja vs. Sunil Madan, 1999 (4) AWC 2 (129) NOC (SC).**

13 **.Mutation entries & their evidentiary value :** It is settled law that mutation entries are only for the purpose of enabling the State to collect the land revenue from the person in possession but it does not confer any title to the land. The title would be derived from an instrument executed by the owner in favour of an alienee as per the Stamp Act and registered under the Registration Act. Even if the suit property has been mutated in favour of defendant, the case of the plaintiff which is based on title cannot be adversely affected as the mutation is not proof of title. **Revenue record is not a document of title**. It merely raises a presumption of possession u/s. 110 of the Evidence Act. See :

(i) **Smt. Bhimabai Mahadeo Kambekar Vs. Arthur Import and Export Company, AIR 2019 SC 719.**

(ii) **Union of India Vs. Vasavi Co-operative Housing Society Limited, (2014) 2 SCC 269**

(iii) **Gurunath Manohar Pavaskar vs. Nagesh Siddappa Navalgund, 2008 (70) ALR 176 (SC)**

(iv) **State of U.P. vs. Amar Singh, (1997) 1 SCC 734**

(v) **Talat Fatima Hussain vs. Nawab Syed Murtaza Ali Khan, 1997 All.L.J. 312 (All)**

14. **Khasra entries not proof of title and ownership of land :** Khasra entries are not proof of title and ownership of land. See : **Municipal Corporation, Gwalior Vs. Puran Singh, (2015) 5 SCC 725.**

15. **Affidavits not "evidence" u/s 3 of the Evidence Act :** Affidavits have got no evidentiary value as the affidavits are not included in the definition of

"evidence" in Section 3 of the Evidence Act and can be used as evidence only if for sufficient reasons court passes an order like the one under O.19, r. 1 & 2 of the CPC. See :

(i) **Ayaaubkhan Vs. State of Maharashtra, AIR 2013 SC 58**

(ii) **Smt. Sudha Devi Vs. M.P. Narayanan & others, AIR 1988 SC 1381.**

16. **Uncontroverted affidavit & it's evidentiary value :** If the averments contained in an affidavit are not controverted by counter affidavit, the facts contained in that affidavit can be accepted as correct and true. In such cases presumption in terms of illustration (g) of Sec. 114, Evidence Act can be drawn in favour of the party/deponent whose affidavit has gone uncontroverted. See :

(i) **Managing Committee Shiksha Parishad, Nagawa Ballia vs. Asstt. Registrar, Firms, Chits & Societies, Azamgarh, 2005 (2) AWC 1951 (All)**

(ii) **State of Gujarat vs. S. Tripathy, AIR 1987 SC 479**

17(A). **Defective affidavits filed u/o. 19, R. 1 CPC & rectification thereof :** If there is some slight defect or irregularity in filing of affidavit, party concerned should be given an opportunity to rectify the same. What needs to be seen in such matters is whether there is substantial compliance with the requirements regarding the rules relating to affidavits and their verification and even if there is some breach or omission, whether it can be fatal to the case of the party. The plea of defects in affidavits cannot be allowed to be raised after inordinate delay. See :

(i) **Associated Journals Ltd. Vs. Mysore Paper Mills Ltd., (2006) 6 SCC 197**

(ii) **Malhotra Steel Syndicate vs. Punjab Chemi-Plants Ltd., 1993 Supp. (3) SCC 565**

17(B). **Permission to replace defective affidavit :** Improper verification of affidavit is not fatal. If the court finds that the affidavit is not properly sworn or verified in accordance with the procedure prescribed under the rules of the court, the court may often direct the person swearing the affidavit to replace the same by filing a proper affidavit but such defect in the affidavit cannot be said to be fatal, in any manner. See : **Dr. Umesh Kumari vs. State of U.P., 1999 (17) LCD 463 (All—L.B.)**

18. **Criminal courts not to decide civil disputes :** A criminal court while deciding bail application u/s. 437, 439, 438, 389 Cr.P.C. has no jurisdiction to decide a civil dispute as between the parties. See : **Mahesh Chandra vs. State of U.P., (2006) 6 SCC 196**

19(A). <u>Admission of fact as efficacious proof of the facts admitted</u> : It is true that evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong; but they do raise an estoppel and shift the burden of proof on to the person making them or his representative-in-interest. Unless shown or explained to be wrong they are an efficacious proof of the facts admitted. Until the presumption raised by the admission is rebutted, the fact admitted must be taken to be established. See :

(i) United India Insurance Co. Ltd. vs. Samir Chandra, (2005) 5 SCC 784

(ii) Avadh Kishore Dass vs. Ram Gopal, AIR 1979 SC 861

19(B). <u>Admission must be proved</u> : If admission is proved and if it is thereafter to be used against the party who has made it the question comes within the provisions of Sec. 145 of the Evidence Act. The provisions in the Evidence Act that 'admission is not conclusive proof' are to be considered in regard to two features of evidence. First, what weight is to be attached to an admission? In order to attach weight it has to be found out whether the admission is clear, unambiguous and is a relevant piece of evidence. Second, even if the admission is proved in accordance with the provisions of the Evidence Act and if it is to be used against the party who has made it, it is sound that if a witness is under cross-examination on oath, he should be given an opportunity, if the documents are to be used against him, to tender his explanation and to clear up the point of ambiguity or dispute. This is a general salutary and intelligible rule. Therefore, a mere proof of admission, after the person whose admission it is alleged to be has concluded his evidence, will be of no avail and cannot be utilized against him. See : **Sita Ram Bhau Patil vs. Ram Chandra Nago Patil, (1977) 2 SCC 49 (Three-Judge Bench)**

19(C). <u>Party making the admission must be confronted during cross examination</u> : Explaining the provisions of Sec. 17 & 145 of the Evidence Act together, it has been held by the Supreme Court that an admission before being used against any person must not only be proved but also the party must be confronted at the stage of cross-examination with its previous admission. See : **Sita Ram Bhau Patil vs. Ram Chandra Nago Patil, (1977) 2 SCC 49 (Three-Judge Bench)**

19(D). <u>Admission of a fact not in issue and not relevant does not amount to admission</u> : If a statement in relation to a fact is not in issue and not relevant, then it is not an

admission. See : **Sita Ram Bhau Patil vs. Ram Chandra Nago Patil, (1977) 2 SCC 49 (Three-Judge Bench)**

19(E). **Admission to be admissible must be clear, unequivocal & not ambiguous :** An admission to be admissible in evidence must be clear, unequivocal and not ambiguous. See : **Sita Ram Bhau Patil vs. Ram Chandra Nago Patil, (1977) 2 SCC 49 (Three-Judge Bench)**

19(F). **Admission as best evidence :** An admission is the best evidence that an opposing party can rely upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous. See : **Narayan vs. Gopal, AIR 1960 SC 100 (Three-Judge Bench)**

19(G). **Non-denial of or non-response to a plea that is not supported by evidence cannot amount to admission :** Non-denial of or non-response to a plea that is not supported by evidence cannot be deemed to be admitted by applying the doctrine of non-traverse. The Evidence Act does not say to the contrary. Pleadings are not substitute for proof. See : **Manager, Reserve Bank of India, Bangalore vs. S. Mani, (2005) 5 SCC 100 (Three-Judge Bench)**

19(H). **Failure to prove defence does not amount to admission :** Failure to prove his defence by defendant does not amount to an admission of the case of plaintiff by the defendant. See : **Manager, Reserve Bank of India, Bangalore vs. S. Mani, (2005) 5 SCC 100 (Three-Judge Bench)**

19(I). **Failure to prove a defence does not discharge the initial burden of proof :** Failure to prove his defence by the defendant does not discharge or reverse initial burden of proof of his case by the plaintiff. See : **Manager, Reserve Bank of India, Bangalore vs. S. Mani, (2005) 5 SCC 100 (Three-Judge Bench)**

19(J). **Value of admission contained in a rejected application for amendment of pleadings :** Value of admission contained in a rejected application for amendment of pleadings cannot be treated as admission of the party. See : **Smt. Rajeshwari Devi vs. Smt. Laxmi Devi, 1998 (16) LCD 799 (All)**

19(K). **Admission made in ignorance of legal rights or under duress :** Any admission made in ignorance of legal rights or under duress cannot bind the maker of the admission. See : **Shri Krishan vs. Kurukshetra University, Kurukshetra, AIR 1976 SC 376 (Three-Judge Bench)**

19(L) **Facts admitted need not be proved :** In terms of Sec. 58 of the Evidence Act, 1872, facts admitted need not be proved. See :

(i) **Vice Chairman, Kendriya Vidyalaya Sangathan vs. Girdharilal Yadav, (2004) 6 SCC 325 (Three-Judge Bench)**

(ii). **Inder Sain Bedi vs. Chopra Electricals, (2004) 7 SCC 277**

20. **Effect of non cross-examination of witness on a fact appearing in examination-in-chief (Sec. 137 Evidence Act) :** Where a particular material assertion is made by a witness in his examination-in-chief and the witness is not cross-examined in respect of that assertion, it will be taken that the party affected had admitted the truth of that assertion. See : **Kunwar vs. State of U.P., 1993 (3) AWC 1305 (All—D.B.)**

21(A). **Contents of documents & their proof :** Explaining the provisions of Sec. 17, 61, 62 of the Evidence Act together, it has been held by the Supreme Court that mere production and marking of a document as exhibit is not enough. Execution of the document has to be proved by admissible evidence. But where documents produced are admitted by the signatories thereto and then marked as exhibits, no further burden to lead additional evidence to prove the writing and its execution survives. See : **Narbada Devi Gupta vs. Birendra Kumar Jaiswal, (2003) 8 SCC 745**

21(B-1). **Admission of genuineness of document not to be confused with admission of truth of contents (Rule 54, G.R. Civil)** : According to Rule 54 of the General Rules (Civil), when a certified copy of any private document is produced in Court, inquiry shall be made from the opposite party whether he admits that it is a true and correct copy of the document which he denies, or whether it is a true and correct copy of the document the genuineness of which he admits without admitting the truth of its contents, or whether he denies the correctness of the copy as well as of the document itself. Admission of the genuineness of a document is not to be confused with the admission of the truth of its contents or with the admission that such document is relevant or sufficient to prove any alleged fact. See.... **Kapil Core Packs Pvt. Ltd Vs. Harvansh Lal, (2010) 8 SCC 452**

21(B-2). **Unregistered will deed in respect of agricultural land not admissible in evidence due to bar of Section 169(3) of UP ZA & LR Act :** All matters relating to right in or over agricultural land including transfer, alienation and devolution were exclusively within domain of State Legislature . Under UP Zamindari Abolition and Land

Reforms Act, restriction has been imposed by State Legislature by way of amendment in S. 169(3) regarding devolution of agricultural land except by way of written and registered deed. Restriction so imposed by State Legislature upon right of bhumidhar under Special Act is in conformity with objects and purpose of Act which has been framed to reform law relating to land tenure so as to to check any unscrupulous person from claiming land of bhumidhar to exclusion of his heirs and legal representatives, There is no conflict in provincial legislation namely UP Zamindari Abolition and Land Reforms Act and Central legislations that is Succession Act and Registration Act with regard to devolution of interest in land of tenure-holder u/s 17 of Registration Act, registration has been made compulsory for all non-testamentary instruments. Registration of Will has not been made compulsory under Succession Act, whereas UP Z.A. & L.R. Act provides restriction in this field. Restriction imposed by State Govt. cannot be said to be in conflict with laws made by Central Legislature. There is no repugnancy as such and it cannot be said that State Legislature was not competent to legislate. It is settled law that when question arises with regard to legislative competence of legislature in regard to particular enactment with reference to entries in various lists, it is necessary to examine the pith and substance of Act and find out if matter comes substantially within item in list. Scheme of Act under scrutiny, its object and purpose, its true nature and character and the pith and substance of legislature are to be focused at. It is fundamental principle of Constitutional law that everything necessary to exercise of power is included for grant of power itself. Non-observance clause is sometimes added to Section in beginning, with view to give enacting part of Section, in case of conflict, overriding effect over provisions of Act mentioned in that Clause. In other words, in spite of provisions of Act mentioned in that clause, enactment following it, will have its full operation or that provisions enacted in non-obstante Clause will not be impediment in operation of enactment. It is well known rule of interpretation that on construction, entire Act must be looked into as whole. Court cannot add words to Statute or read words into it which are not there. When purpose and object or reason and spirit pervading through Statute is clear, Court must adopt purposive approach in interpreting such Statute. Restriction imposed by Section 169(3) of UP ZA & LR Act upon bhumidhar for devolution of his bhumidhari land would be operative w.e.f. 23.08.2004 i.e. date of commencement of Amendment Act by which registration of Will has been made compulsory. Restriction so imposed by aforesaid provision is on right of bhumidhar to bequeath his property except by way of registered instrument. Restriction is not upon person who is claiming his right on basis of Will rther it is on testator of Will. Thus, no, bhumidhari land could be bequeathed after 23-8-2004 except by way of registered will, whole idea is that land of village remains with tiller of land. See : **Jahan Singh Vs. State of UP, AIR 2017 All 247(paras 13, 14, 21, 22, 24, 26 & 27).**

21(C). <u>Admission of genuineness not to be confused with admission of truth of contents</u>

<u>(Rule 54, G.R. Civil)</u> : When a certified copy of any private document is produced in Court, inquiry shall be made from the opposite party whether he admits that it is a true and correct copy of the document which he also admits, or whether it is a true and correct copy of the document which he denies, or whether it is a true and correct

copy of the document the genuineness of which he admits without admitting the truth of its contents, or whether he denies the correctness of the copy of the copy as well as of the document itself. Admission of the genuineness of a document is not to be confused with the admission of the truth of its contents or with the admission that such document is relevant or sufficient to prove any alleged fact.

21(D). <u>Admission or denial on documents by opposite party (Rule 42, G.R. Civil)</u> : According to Rule 42 of the General Rules (Civil), a party desiring to produce any document in court shall, before producing it in court, obtain admission or denial recorded on the back of the document by the opposite party's lawyer. If the opposite party is not represented by a lawyer, the Court shall get admission or denial recorded by the party in its presence and may, for the purpose, examine the party.

21(E). <u>Evidence in cross or connected civil cases (Rule 86, G.R. Civil)</u> : According to Rule 86 of the General Rules (Civil), whenever by consent of parties evidence given in one case is admitted by a Civil Court as evidence in another case, separate proceeding stating the fact shall be recorded, signed by the Judge and placed on the records of both cases.

22(A). <u>Exhibited documents & their admissibility in evidence</u> : Explaining the provisions of Sec. 17, 61, 62 of the Evidence Act together, it has been held by the Supreme Court that mere production and marking of a document as exhibit is not enough. Execution of the document has to be proved by admissible evidence. But where documents produced are admitted by the signatories thereto and then <u>marked as exhibits</u>, no further burden to lead additional evidence to prove the writing and its execution survives. See :

(i) Narbada Devi Gupta Vs. Birendra Kr. Jaiswal, (2003) 8 SCC 745

(ii) Smt. Sudha Agarwal Vs. VII ADJ, Ghaziabad, 2006 (63) ALR 659 (Allahabad)

(iii) R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami, (2003) 8 SCC 752

(iv) Sait Tarajee Vs. Khimchand Vs. Yelamarti Satyam, AIR 1971 SC 1865.

(v) Judgment dated 03.01.2017 of the Division Bench of the Allahabad High Court in Civil Appeal No. 790/2008, New Okhla Industrial Development Authority Vs. Kendriya Karmachari Sahkari Grih Nirman Samiti Ltd..

22(B). Non-exhibition of documents only a procedural lapse: Non-exhibition of documents is only a procedural lapse. Non-exhibition of documents cannot disentitle a claim when otherwise sufficient evidence is adduced and the

documents established the fact in controversy. **See: Vimla Devi Vs National Insurance Company Limited, (2019) 2 SCC 186**

22(C). <u>Stage of raising objection against the admissibility of an exhibited document</u> : Objection as to admissibility of a secondary documentary evidence produced u/s. 65 of the Evidence Act can be classified as **(i)** objection that the document sought to be proved is itself inadmissible, and **(ii)** objection directed not against the admissibility of the document but against the mode of proof thereof on the ground of irregularity or insufficiency. Objection under category **(i)** can be raised even after the document has been marked as "an exhibit" or even in appeal or revision, but the objection under category **(ii)** can be raised when the evidence is tendered but not after the document has been admitted in evidence and marked as an exhibit. See :

(i) Ranvir Singh vs. Union of India, 2005 (4) AWC 3152 (SC)

(ii) R.V.E. Venkatachala Gounder vs. Arulmgu Viswasaraswami & V.P. Temple, (2003) 8 SCC 752

23. **<u>Observations dated 03.01.2017 of Division Bench in New Okhla Industrial Development Authority case regarding admissibility of documents in evidence</u>** :

The main observations of the Division Bench of the Allahabad High Court in its judgment dated 03.01.2017 in Civil Appeal No. 790/2008, New Okhla Industrial Development Authority Vs. Kendriya Karmachari Sahkari Grih Nirman Samiti Ltd. as contained in its Paragraphs 36 to 60 are as under :

(i) ***Order 13, rule 7 CPC*** *: Provides that documents which are admitted in evidence shall form part of record of suit. The documents not admitted in evidence shall not form part of record and shall be returned to the persons respectively producing them.*

(ii) ***Order 13, rule 8 CPC*** *: Empowers Court to impound a document and keep in the custody of officer of Court, if it sees sufficient cause, for such period and subject to such conditions, as Court thinks fit. 38. Rule 9 provides for return of admitted documents after suit is disposed of, and, either time for filing appeal has expired or appeal has been disposed of. Proviso covers a situation where a document may be returned at any time earlier than the period provided hereinabove in certain conditions. Rule 10 states that Court may, of its own motion, and its discretion, upon application of any of the parties to suit, send for, either*

from its own record or from any other Court, record of any other suit or proceeding, and inspect the same. Conditions applicable when such order is passed on the application, are contained in sub-rule 2 of Rule 10. Sub-rule 3 declares that Rule 10 shall not enable Court to use in evidence, any document which under the law of evidence would be inadmissible in suit. Rule 11 extends provisions relating to documents to all other material objects producible as evidence.

(iii) In exercise of supervisory powers under ***Article 227 of Constitution of India read with Section 122 CPC, GR (C), 1957*** *have been notified in supersession of all existing Rules on the subject. These Rules have 28 Chapters dealing with different aspects of procedure to be followed, not only in trial of civil suits etc., but also tell subordinate Courts, manner of maintenance of record of various proceedings and other administrative aspects.*

(iv) Part (A) deals with parties to the proceedings; (B) with applications and pleadings; (C) with Documents; (D) Commissions; (E) Affidavits; (F) Adjournments; (G) Hearing of suit; (H) Transfer or withdrawal of cases; and, (I) Judgment and decree.

(v) ***Rule 40, GR (Civil)*** *: specify the persons who may produce documents in the Court and says that it may be by parties, by persons, other than parties and on requisition issued by Court. Rule 41 imposes an obligation where the documents produced by party or his witness is in a language other than Hindi, Urdu or English and says that it shall be accompanied by a correct translation of the document in Hindi, written in Devnagri script. Such translation shall bear a certificate of party's lawyer to the effect that the translation is correct. If parties are not represented by a lawyer, Court shall have the translation certificate of any person appointed by it in this behalf at the cost of the party concerned.*

(vi) ***Rule 42, GR (Civil):*** *Contemplates that parties desiring to produce any document in Court, shall, before producing it in any Court, obtain admission or denial, recorded on back of the document by the opposite party's lawyer. If opposite party is not represented by lawyer, Court shall get admission or denial by the party in its presence and may, for the purpose, examine the party*

(vii) ***Rule 43, GR(Civil)*** *:Lays procedure of list of documents contemplated in Order VII Rule 14 and Order XIII Rule 1 CPC and says that such list of documents shall be in form (part IV-71). It further says that no document whensoever produced, shall be received unless accompanied by the said form duly filled up. In case a document is produced by a witness or person summoned to produce documents, form shall be supplied by the parties at whose instance the document is produced. It also requires that list as well as the documents shall be immediately entered in the general index.*

(viii) *If there is any erasures or additions in the documents, other than a registered documents or certified copy, Rule 44, GR (Civil) states that such document shall be accompanied by a statement clearly describing such erasure, addition or inter-lineation and signed by such party. Reference to such statement shall be made in the list form (part IV-71) with which paper is filed.*

(ix) ***Rule 45, GR(Civil)*** *: Is basically a provision for safety and convenience of perusal of documents when it is a small piece of paper or of historic value or written on both sides. It reads as under:-*

> *"45. Small documents and documents of historic value.--Small documents when filed in Court shall be filed pasted on a paper equal to the size of the record, and the margin of the paper should be stitched to the file so that no part of the document is concealed by the stitching. If a document contains writing both on the front and the back, it should be kept in a separate cover, which should be stitched to the file at the proper place leaving the main document untouched."*

(x) When a party require production of a public record, Rule 46 says that application shall be submitted by such party accompanied by an affidavit showing how such party requiring record has satisfied itself that it is material to the suit and why a certified copy of document cannot be produced or will not serve the purpose.

(xi) ***Rule 47, GR(Civil)*** *: When a public record is ordered to be produced but its production require sanction of Head of Department, Rule 47 deals with such a situation and says as under:-*

"47. Documents for production of which sanction of head of department is necessary.--When a Court decides that in the interests of justice it is necessary that it should have before it a document which cannot be produced without the sanction of the head of the department concerned, it shall in its order asking for such document set out as clearly as possible (a) the facts, for the proof of which the production of the document is sought; (b) the exact portion or portions of the document required as evidence of the facts sought to be proved. The Court summoning the document shall fix a date for its production, which should not be less than three weeks from the date of issue of summons."

(xii) ***Rule 48, GR(Civil)*** *: deals with public record of different offices like Sub Registrar, Police, Municipal and District Board and Post Office and says as under:-*

"48. Registers from Sub-Registrar's office :

(1) A summons for the production of any register or book belonging to the office of a Sub- Registrar shall be addressed to the District Registrar and not direct to the Sub-Registrar.

(2) Production of documents in police custody.-A summons for the production of documents in the custody of the police should be addressed to the Superintendent of Police concerned, and not to the Inspector General.

(3) Production of Municipal and District Board Records.-When duly authenticated and certified copies of documents in the possession of Municipal and District Boards15 are admissible in evidence, the Court shall not send for original records unless, after perusal of copies filed, the Court is satisfied that the production of the original is absolutely necessary.

(4) Post Office records not to be unnecessarily disclosed.-When any journal or other record of a post office is produced in Court, the Court shall not permit any portion of such journal or record to be disclosed, other than the portion or portions which seem to the Court necessary for the determination of the case then before it."

(xiii) ***Rule 49, GR(Civil)*** *: For summoning of settlement record, procedure is prescribed in Rule 49 and reads as under:*

"49. Settlement Records.--When a Court requires the production of any Settlement Record in which the Settlement Officer acted in a judicial capacity, it shall be summoned in the manner provided by Order XIII, Rule10. In other cases the procedure prescribed in Order XVI, Rule 6 shall be followed. The summons to produce such documents shall be issued to the Collector/Deputy Commissioner, who may send the document by messenger or registered post."

(xiv) ***Rule 50, GR(Civil)*** *: deals with payment of postage fee, travelling charges and other expenses for transmission or requisition of record etc. Rule 51 says that documents received by registered post, then the registered cover shall not be destroyed but shall be attached to the file of proceedings in the case to which the document is referred.*

(xv) ***Rule 52, GR(Civil)*** *: Then comes Rule 52 which says that all document received must be received by the Court and must be dealt with in one or the other of three means i.e. (a) returned; (b) placed on record; and (c) impounded.*

(xvi) ***Rule 53, GR(Civil)*** *: Thereafter Rule 53 imposes a duty upon Court to inspect documents as soon as they are produced before Court. It says that documents which are proved or admitted by party against whom they are produced in evidence, shall be marked as exhibit in the manner prescribed in Rule 57 and this fact shall be noted in the record. The document which are not proved or not admitted by parties against whom they are produced in Court, shall be kept in record pending proof and shall be rejected at the close of evidence, if not proved or admitted. Documents that are found to be irrelevant or otherwise inadmissible in evidence shall be rejected forthwith. There is a note under Rule 53 stating that no document unless admitted in evidence shall be marked as an exhibit.*

(xvii) ***Rule 54, GR(Civil)*** *: Rule 54 of GR (C), 1957 clarifies that admission of genuineness is not to be confused with admission of truth of contents and reads as under:*

"54. Admission of genuineness not to be confused with admission of truth of contents.-(1)When a certified copy of any private document is produced in Court, inquiry shall be made from the opposite party

whether he admits that it is a true and correct copy of the document which he also admits, or whether it is a true and correct copy of the document which he denies, or whether it is a true and correct copy of the document the genuineness of which he admits without admitting the truth of its contents, or whether he denies the correctness of the copy as well as of the document itself. Admission of the genuineness of a document is not to be confused with the admission of the truth of its contents or with the admission that such document is relevant or sufficient to prove any alleged fact.

(2) A Sessions Clerk who fails to furnish security as required by the preceding sub-rule shall not be allowed to hold that most and also other posts of equivalent status.

Explanation.--Posts of Suits Clerk, Execution Clerk, Appeals Clerk and Readers of the courts of Judge, Small Causes, Civil Judges and Munsif shall, for purposes of this rule, be deemed to be in status equivalent to that of a Sessions Clerk."

(xviii) ***Rule 55, GR(Civil)*** *: The expression which are to be used by parties while admitting or not admitting documents, is provided in Rule 55 and reads as under:*

"55. Proper expression about admissions of documents.-Admission of a document by a party shall be indicated by the endorsement "Admitted by the plaintiff" or "Admitted by the defendant". Admission of a document in evidence by the Court shall be indicated by the endorsement "Admitted in evidence". If any question is raised as to the correctness of a copy and the correctness of its is admitted, the endorsement shall be "correctness of copy admitted". The use of the expression "Admitted as a copy" in endorsement on document is prohibited."

(xix) ***Rule 56, GR(Civil)*** *: Talks of documents filed in suits which are compromised or dismissed in default and says:*

(xx) *Endorsement on documents in suits compromised or dismissed for default.-Documents filed in suits, which are dismissed for default or compromised, shall, before being dealt with in the manner provided in Rules 59 and 60 be endorsed with the particulars mentioned in Order XIII, Rule 4(i)and the result of the suit."*

(xxi) ***Rule 57, GR(Civil)*** *: Provides the manner in which marking is to be made in documents and reads as under :*

"57. Marking of documents.-(1) Documents produced by a plaintiff and duly admitted in evidence shall be marked with a number, and documents produced by a defendant shall be marked with a

number and the letter A, or, where there are more than one set of defendants by the letter A for the first set of defendants, by the letter B for the second, and so on. Where a document is produced by order of the Court and is not produced by any party, the serial number shall be prefaced by the words "Court Exhibit" or an abbreviation of the same.
(2) Where a document is produced by a witness at the instance of a party, the number of the witness shall be endorsed thereon, e.g., Ex.P.W.1 if it is produced by the plaintiff's first witness, and Ex.-A/D.W.1 if it is produced by the defendant's first witness.
(3) The party at whose instance a document is produced by a witness shall deposit the cost of the preparation of a certified copy of that document before it is placed on the record. The office shall then prepare a certified copy and keep it with the original document. If the witness wants to take back his document it shall be returned to him unless there are special reasons for keeping the original on the record. Provided that a certified copy shall not be necessary where the document is written in a language other than Hindi or English, and a translation has been filed as prescribed by Rule 41.
(4) Every exhibit-mark shall be initialed and dated by the Judge."

(xxii) ***Rule 58, GR(Civil)*** *: If a number of documents of same nature are admitted than the manner in which such documents are marked, is provided in Rule 58 as under:*

"58. Marking of documents.- Where a number of documents of the same nature are admitted, as for example, a series of receipt for rent, the whole series should bear one figure or capital letter or letters, a small figure or letter in brackets being added to distinguish each paper of the series."

(xxiii) ***Rule 59, GR(Civil)*** *: States that documents which are rejected as irrelevant or otherwise inadmissible under Order 13 Rule 3 CPC or not proved, unless impounded under Order 13 Rule 8 or rendered wholly void or useless by force of decree, be returned to the person producing it or to the pleader and such person or pleader shall give a receipt for same in column 4 of list (Form Part IV-71).*

*(xxiv).****Rules 60 and 61 GR(Civil)*** *: Deal with retention of impounded and certain other documents and care of impounded documents. Rule 63 talks with the manner in which documents are to be returned. Rule 64 specifically concerned with books of business and read as under: "64. Books of business.-If a document be an entry in a letter book, a shop book, or other account in current use or an entry in a public record, produced from a public office or by a public officer, a copy of the entry, certified in the manner required by law, shall be substituted on the record*

before the book, account or record is returned, and the necessary endorsement should be made thereon, as required by Order XIII, Rule 5."

24(A). <u>Distinction in standard of proof in civil & criminal cases</u> : Explaining Sec. 3, 101, 102, 110 of the Evidence Act, it has been held by the Supreme Court that the test of "**Proved", "Disproved"** and **"Not Proved"** in a civil or a criminal case is one and the same. However, it is the valuation of the result drawn by the applicability of the rule contained in Sec. 3 of the Evidence Act that makes the difference. In a suit for possession of property based on title, if the plaintiff creates a **<u>high degree of probability</u>** of his title to ownership, instead of proving his title **<u>beyond any reasonable doubt</u>**, that would be enough to shift the onus on the defendant. If the defendant fails to shift back the onus, the plaintiff's burden of proof would stand discharged. See :

(i) V.D. Jhingan vs. State of U.P., AIR 1966 SC 1762 (Three-Judge Bench)

(ii) R.V.E. Venkatachala Gounder vs. Arulmgu Viswasaraswami & V.P. Temple, (2003) 8 SCC 752

24(B). <u>Standard of proof when civil case involving allegation of charges of criminal or fraudulent character</u> : It is apparent from definitions of the words 'proved', 'disproved' and 'not proved' given in Sec. 3 of the Evidence Act that it applies the same standard of proof in all civil cases. It makes no difference between cases in which charges of a fraudulent or criminal character are made and cases in which such charges are not made. But this is not to say that the Court will not, while striking the balance of probability, keep in mind the presumption of honesty or innocence or the nature of the crime or fraud charged. It is wrong to insist that such charges must be proved clearly and **beyond reasonable doubt**. See : **Gulabchand vs. Kudilal, AIR 1966 SC 1734 (Five-Judge Bench)**

24 (C). <u>Proof of undue influence in executing sale-deed by weak and old lady</u>: No presumption of undue influence in executing a registered sale-deed can arise merely because the parties are related to each other or the executant is old or of weak character. In view of Section 49 of Registration Act, 1908, registration of sale-deed re-enforces valid execution of the sale-deed and carries presumption of its validity. Burden of proof lies on the party challenging the genuineness of the transaction to

show that the transaction is not valid in law. A registered document carries with it a presumption that it was validly executed. See:

(i) **Jamil Begam Vs. Shami Mohd, AIR 2019 SC 72.**

(ii) **Prem Singh Vs. Birbal, (2006) 5 SCC 353.**

(iii) **Vishwanath Bapurao Sabale Vs. Shalinibai Nagappa Sabale, (20090 12 SCC 101.**

25(A). <u>Secondary evidence & its admissibility</u> : Certified copy of sale deed--- Where a certified copy of registered sale deed was being marked as exhibit and admitted in evidence u/s. 65 of the Evidence Act without any objection from the opposite party but later on the opposite party raised objections regarding the mode of proof of the certified copy for want of primary evidence, it has been held by the Supreme Court that since the objection was not as to the admissibility of the certified copy but only against the mode of proof being irregular and insufficient, the document was admissible in evidence and such objections could have been taken before the document was marked as an exhibit and admitted to the record. See :

(i) **Dayamathi Bai vs. K.M. Shaffi, (2004) 7 SCC 107**

(ii) **R.V.E. Venkatachala Gounder vs. Arulmgu Viswasaraswami & V.P. Temple, (2003) 8 SCC 752**

25(B-1)<u>Photostat copy of document not admissible in the absence of its factual foundation</u>: Pleas of party that original documents were misplaced cannot be relied on and the party cannot be permitted to lead secondary evidence by producing photostat copies of the documents in the absence of factual foundation that the original documents really existed but were lost or misplaced as is required u/s 63 and 65 of the Evidence Act. See :

(i) **Amarjit Singh Vs. Surinder Singh Arora, AIR 2017 Delhi 198,**

(ii) **U. Sree Vs. U. Srinivas, AIR 2013 SC 415**

(iii) **H. Siddiqui Vs. A. Ramlingam, AIR 2011 SC 1492.**

(iv) **Narbada Devi Gupta Vs. Birendra Kr. Jaiswal, (2003) 8 SCC 745**

(v) **Smt. Sudha Agarwal Vs. VII ADJ, Ghaziabad, 2006 (63) ALR 659 (Allahabad)**

(vi) **R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami, (2003) 8 SCC 752**

(vii) **Sait Tarajee Vs. Khimchand Vs. Yelamarti Satyam, AIR 1971 SC 1865.**

(viii) Judgment dated 03.01.2017 of the Division Bench of the Allahabad High Court in Civil Appeal No. 790/2008, New Okhla Industrial Development Authority Vs. Kendriya Karmachari Sahkari Grih Nirman Samiti Ltd..

25(B-2). <u>Stolen documents from custody of Govt. admissible in evidence</u> : Secret documents relating to Rafale fighter jets were removed/stolen from the custody of the Ministry of Defence, Govt. of India and their photocopies were produced before the Supreme Court. The objection raised before the Supreme Court by the Central Govt. was that the secret stolen documents were not admissible in evidence. The Supreme Court held that all the documents in question were admittedly published in newspapers and thus already available in public domain. No law specifically prohibits placing of such secret documents before the Court of law to adjudicate legal issues. Matter involved complaint against commission of grave wrong in the highest echelons of power. Review petition could be adjudicated on merits by taking into account the relevance of the documents. **See: Yashwant Sinha Vs. Central Bureau of Investigation, AIR 2019 SC 1802 (Three- Judge Bench)**

25(B-3) <u>Test whether an information/document is protected from disclosure u/s 123, Evidence Act</u> : Section 123 of the Evidence Act relates to the affairs of the State. Claim of immunity u/s 123 has to be adjudged on the touchstone that the public interest is not put to jeopardy by requesting disclosure of any secret document. Documents in question (stolen papers of the Rafale fighter jets from the Ministry of Defence, Govt. of India) being in public domain were already within the reach and knowledge of the citizens. The Supreme Court held that the claim of immunity u/s 123 of the Evidence Act raised by the Central Govt. was not tenable and the documents in question were admissible as evidence. **See: Yashwant Sinha Vs. Central Bureau of Investigation, AIR 2019 SC 1802 (Three- Judge Bench)**

25(C). <u>Secondary/certified copy of sale deed & its admissibility</u> : A sale deed is not a public document and therefore its certified copy is not admissible in evidence unless an explanation is given u/s. 65 of the Evidence Act in support of non-availability of the original sale deed. See : **Dr. Gurmukh Ram Madan vs. Bhagwan Das Madan, 1998 (2) ARC 517 (SC)**

25(D). <u>Photostat copy of a document & its admissibility</u> : In case of photostat copy of a document, before it is admitted in evidence, it has to be explained as to what were the circumstances under which photocopy was prepared and who was in the possession of the original document at the time when it's photocopy was taken and this should be above suspicion. See : **Ashok Dulichand vs. Madahavalal, AIR 1975 SC 1748**

25(D). <u>Photostat copy/secondary evidence when can be produced ?</u> : Where original document is in existence, but not produced, secondary evidence by production of copies is not admissible unless conditions are satisfied. The provision has been designed to provide protection to persons who, in spite of their best efforts, are unable to, for the circumstances beyond their control, to place before the Court, primary evidence of a document as required by law. Secondary evidence should not and cannot be allowed unless the circumstances exist to justify as provided under Act, 1872. Further, if the document is to be admitted in secondary evidence, the facts thereof have to be proved. The certified copy of the original can be treated as secondary evidence. But the contents of the documents sought to be marked as secondary evidence cannot be admitted in evidence without production of the original document. Under no circumstances can secondary evidence be admitted as a substitute for inadmissible primary evidence. …. Under what circumstances the secondary evidence relating to document must be provide by primary evidence is an exception to the cases falling under Sections 65 and 66 of Act, 1872. The person seeking to produce secondary evidence relating to a document can do so only when the document is not in his possession. To enable a person to take recourse to Sections 65 and 66 of Act, 1872, it would be necessary to establish that the document sought to be summoned was executed and that the said document is not with him, but in possession of the person against whom the application is made to be produced for proving against him. …. Also whenever a secondary evidence is to be admitted, very existence of such a document has to be established. See **: Ram Das Singh Vs. Duli Chand, AIR 2014 (NOC) 218 (All.)**

26(A). <u>Proof of signature or initial</u> : Explaining Sec. 3 & 45 of the Evidence Act, the Supreme Court has held that the genuineness of an initial cannot be doubted merely because only initials are used instead of full name of the signatory. See : **Gouni Satya Reddi vs. Govt. of A.P., (2004) 7 SCC 398.**

26(B) **<u>Omission to take signature of witness on his deposition not to render his deposition inadmissible</u>:** Where deposition of witness was recorded on commission but signature of the witness was not taken on it, it has been held by a Three-Judge Bench of the Supreme Court that correctness and authenticity of the deposition of the witness could not be disputed for want of signature on his depositions. Defect of not taking signature is not fatal to reception of deposition in evidence. See: Owners and Parties interested in M.V. 'Vali Pero' Vs. Fernandeo Lopez, AIR 1989 SC 2206 (Three-Judge Bench).Note : Section 114(e) of the Evidence Act is also relevant here.

27. **<u>Hearsay Witness (S. 60, Evidence Act)</u> :** As per Sec. 60, Evidence Act, hearsay deposition of a witness is not admissible and cannot be read as evidence. See : **Mukul Rani Varshnei vs. Delhi Development Authority, (1995) 6 SCC 120.**

28. **<u>Burden of proof of possession, dispossession & adverse possession</u> :** Where a plaintiff is suing for possession on the basis of dispossession the burden lies on him to show that from the date of his dispossession or discontinuance of possession which gave him the cause of action for the suit was within twelve years of the suit, while if the suit is not for possession based on the ground of dispossession or discontinuance of possession but is a suit for possession of immovable property not specially provided for in any other Article of the Act then Art. 144 would apply and on proof of title the plaintiff's suit cannot be dismissed until the defendant further establishes his adverse possession for more than twelve years. There is obviously some distinction between the mere dispossession or discontinuance of the possession of the plaintiff and the adverse possession of the defendant. Ordinarily an owner of property is presumed to be in possession of it and such presumption is in his favour where there is nothing to the contrary. It would, therefore, follow that an owner of property starts with the presumption in his favour that he is in possession of his property, but where the plaintiff himself says that he was dispossessed by the defendant and, therefore, is no longer in proprietary possession of the property in suit, at the time of the institution of the suit, the Court cannot start with the presumption in his favour that the possession of the property was with him. No doubt in many cases the distinction is very fine and the line of demarcation between dispossession and adverse possession is thin but it is incumbent on the plaintiff to prove as to when he has been dispossessed or has discontinued his possession to establish the date of

dispossession or discontinuance of possession and to show that it was within twelve years of the institution of the suit (vide Article 12 of the First Schedule to the Limitation Act). See : **Qadir Bux vs. Ramchand, AIR 1970 All 289 (F.B.)**

29. **Burden of proof of limitation :** A person having the right to the possession of a movable property wrongfully taken from him by another can file a suit to recover the said specific moveable property or for compensation therefore within three years from the date when he first learns in whose possession it is. Obviously where a person has a right to sue within three years from the date of his coming to know of a certain fact, it is for him to prove that he had the knowledge of the said fact on a particular date, for the said fact would be within his peculiar knowledge. It is the duty of the plaintiff to establish, at any rate prima facie, that the suit is within time and is not barred by lapse of time. Under the Evidence Act there is an essential distinction between the phrase, burden of proof, as a matter of law and pleading and as a matter of adducing evidence u/s. 101 of the Evidence Act, the burden in the former sense is upon the party who comes to court to get a decision on the existence of certain facts which he asserts. That burden is constant throughout the trial; but the burden to prove in the sense of adducing evidence shifts from time to time having regard to the evidence adduced by one party or the other or the presumption of fact or law raised in favour of one or the other. The burden of proof, is on a plaintiff who asserts a right, and it may be, having regard to the circumstances of each case, that the onus of proof may shift to the defendant. But to say that no duty is cast upon the plaintiff even to allege the date when he had knowledge of the defendant's possession of the converted property and that the entire burden is on the defendant is contrary to the tenor of the article in the Limitation Act and also to the rules of evidence. See : **K.S. Nanji & Co. vs. Jatashankar Dossa, AIR 1961 SC 1474**

30. **Court may permit examination-in-chief in civil suits to be recorded in court :** U/o. 18, r. 4(1) CPC the parties to a civil suit are required to file their affidavits in support of their pleadings in the form of their examination-in-chief. In appropriate cases court may permit examination-in-chief to be recorded in court. There is no question of inadmissible documents being read into evidence merely on account of such documents being given exhibit numbers in the affidavit filed by way of the

examination-in-chief. See : **Salem Advocates' Bar Association vs. Union of India, (2005) 6 SCC 344 (Three-Judge Bench)**

31. **<u>One P.W. cannot be contradicted by the evidence of other P.Ws. (Sec. 145 & 157, Evidence Act—When & How Attracted</u>**) : Sec. 145 of the Evidence Act applies when the same person makes two contradictory statements. It is not permissible in law to draw adverse inference because of alleged contradictions between one prosecution witness vis-à-vis statements of other witnesses. It is not open to court to completely demolish evidence of one witness by referring to the evidence of other witnesses. Witness can only be contradicted in terms of Section 145 of the Evidence Act by his own previous statement and not with the statement of any other witness. Sec. 145 has no application where a witness is sought to be contradicted not by his own statement but by the statement of another witness. See :

(i) **Chaudhary Ramjibhai Narasangbhai vs. State of Gujarat, AIR 2004 SC 313**

(ii) **Mohanlal Gangaram vs. State of Maharashtra, AIR 1982 SC 839**

32(A).<u>Value of expert opinion u/s 45</u> : Opinion of an expert u/s 45 of the Evidence Act is only opinion evidence. It does not help court in interpretation. Expert evidence is a secondary evidence which cannot be given importance as primary evidence. :

(i) **Anand Singh vs. State of U.P., 2009 (67) ACC 99 (All—D.B.)**

(ii) **Forest Range Officer vs. P. Mohammed Ali, AIR 1994 SC 120**

32(B). **<u>Evidentiary value of handwriting expert u/s. 45 Evidence Act</u> :** The handwriting expert's evidence u/s. 45 Evidence Act is only opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence. See : **Sashi Kumar Banerjee vs. Subodh Kumar Banerjee, AIR 1964 SC 529 (Five -Judge Bench)**

32(C). **<u>Expert evidence not to be treated as substantive evidence</u> :** The handwriting expert's evidence u/s. 45 Evidence Act is only opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence. See : **Sashi Kumar Banerjee Vs. Subodh Kumar Banerjee, AIR 1964 SC 529 (Five-Judge Bench).**

32(D). <u>Value of Expert Evidence under Section 45 of the Evidence Act</u> : The courts normally look at expert evidence with a greater sense of acceptability but it is equally true that the courts are not absolutely guided by the report of the experts especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. Where the eye witness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive. The expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by examining the terms of science, so that the court, although not an expert, may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert opinion is accepted it is not the opinion of the Medical Officer but that of the court. The skill and experience of an expert is the ethos of his opinion which itself should be reasoned and convincing. Not to say that no other view would be possible but if the view of the expert has to find due weightage in the mind of the court, it has to be well authored and convincing. See : **Dayal Singh Vs. State of Uttaranchal, AIR 2012 SC 3046.**

32(E). <u>Expert evidence is like secondary evidence & not as primary evidence</u> : Opinion of an expert u/s. 45 of the Evidence Act is only opinion evidence. It does not help court in interpretation. Expert evidence is a secondary evidence which cannot be given importance as primary evidence. See :

(i) Anand Singh vs. State of U.P., 2009 (67) ACC 99 (All—D.B.)

(ii) Forest Range Officer vs. P. Mohammed Ali, AIR 1994 SC 120

32(F). <u>Handwriting experts opinion to be relied upon with great caution</u> : It is well settled that the opinion of a handwriting expert must always be received with great caution. See : **Magan Bihari Lal vs. State of Punjab, (1977) 2 SCR 1007**

32(G).<u>Courts should be slow in basing their findings on mere handwriting expert's opinion</u> : Where in a suit for specific performance of agreement, the attesting witness had deposed that the executants had put his signatures on the agreement under compulsion without knowing the contents thereof and the handwriting expert on the basis of photocopies of admitted documents had opined

that signatures on agreement did not tally with specimen signatures of the executants and the trial court, on proper appreciation of evidence, dismissed the suit but the High Court in appeal relied upon the untrustworthy, shaky and vague evidence to grant discretionary relief of specific performance in contravention of mandate of Section 20 of the Specific Relief Act, 1963, it has been held by the Hon'ble Supreme Court that the handwriting expert's opinion u/s 45 & 73 of the Evidence Act is a week evidence and courts should be slow to base their findings solely on such opinion but should apply their own mind and take a decision. See : **Garre Mallikharjuna Rao (Dead) By LRs. & Others Vs. Nalabothu Punniah, (2013) 4 SCC 546**

32(H). **<u>Handwriting expert & appreciation of his opinion evidence</u>** : A handwriting expert is a competent witness whose opinion evidence is recognized as relevant under the provisions of Sec. 45 & 73 of the Evidence Act and has not been equated to the class of evidence of an accomplice. It would, therefore, not be fair to approach the opinion evidence with suspicion but the correct approach would be to weigh the reasons on which it is based. The quality of his opinion would depend on the soundness of the reasons on which it is founded. But the court cannot afford to overlook the fact that the science of identification of handwriting is an imperfect and frail one as compared to the science of identification of finger-prints; courts have, therefore, been wary in placing implicit reliance on such opinion evidence and have looked for corroboration but that is not to say that it is a rule of prudence of general application regardless of the circumstances of the case and the quality of expert evidence. No hard and fast rule can be laid down in this behalf but the court has to decide in each case on its own merits what weight it should attach to the opinion of the expert. See : **State of Maharashtra vs. Sukhdev Singh @ Sukha, AIR 1992 SC 2100.**

32(I). **<u>Handwriting expert's opinion to be relied upon when supported by other evidence</u>** : The opinion of a handwriting expert u/s. 45 of the Evidence Act can be relied on when supported by other evidence. Though there is no rule of law that without corroboration the opinion evidence cannot be accepted but due caution and

care should be exercised and it should be accepted after probe and examination. See : **Alamgir vs. State of NCT, Delhi, (2003) 1 SCC 21**

32(J). <u>Effect of adverse remarks against handwriting expert in some of past cases</u> : Where there were some adverse remarks against the handwriting expert in some of past proceedings but nothing could be shown as to how experts report suffered from any infirmity then his evidence cannot be treated as totally irrelevant or no evidence on the basis of said adverse remarks. See : **Lalit Popli vs. Canara Bank, AIR 2003 SC 1796**

32(K). <u>Opinion of an expert not to be relied on unless examined as witness in court</u> : Unless the expert submitting his opinion is examined as witness in the court, no reliance can be placed on his opinion alone. See : **State of Maharashtra vs. Damu, AIR 2000 SC 1691**

32(L). <u>Qualifications required of an expert u/s 45, Evidence Act</u> : Sec. 45 of the Evidence Act which makes opinion of experts admissible lays down that when the court has to form an opinion upon a point of foreign law or of science or of art or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject. See :

(i) Ramesh Chandra Agrawal vs. Regency Hospital Ltd., 2009 (6) Supreme 535

(ii) State of H.P. vs. Jai Lal, (1999) 7 SCC 280

32(M). <u>Necessary qualifications of an expert u/s 45, Evidence Act</u> : Sec. 45 of the Evidence Act which makes opinion of experts admissible lays down that when the court has to form an opinion upon a point of foreign law or of science or of art or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has

made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject. See :

(i) **Ramesh Chandra Agrawal vs. Regency Hospital Ltd., 2009 (6) Supreme 535**

(ii) **State of H.P. vs. Jai Lal, (1999) 7 SCC 280**

32(N). Handwriting experts opinion to be relied upon with great caution : It is well settled that the opinion of a handwriting expert must always be received with great caution. See : **Magan Bihari Lal vs. State of Punjab, (1977) 2 SCR 1007**

32(O). Opinion of an expert not to be relied on unless examined as witness in court : Unless the expert submitting his opinion is examined as witness in the court, no reliance can be placed on his opinion alone. See : **State of Maharashtra vs. Damu,AIR 2000 SC 1691**

32(P). Comparison of handwritings or signatures not a science at all but only an art : Comparison of hand writings or signatures is not a science at all much less any scientific approach is involved in making such comparison. It is only an art which has to be acquired by experience. In so far as judicial officers in State are concerned, they are provided with the subject of introduction to comparison of signatures and hand writing during their basic induction course at the time of their induction into the subordinate judiciary after selection. They are taken to several premier forensic and scientific institutions for practical experience and also are provided with lectures by faculty on the above subject. It is not as if judicial officers undertake the power under Section 73 of the Evidence Act, in a gullible manner. They are provided with basic confidence in undertaking this subject. It cannot be said that lower Court which is Court presided over by senior subordinate judicial officer cannot undertake work of comparison of signatures in exercise of power under Section 73 of Evidence Act, particularly when that Court did not entertain any doubt on this aspect of matter. After all, evidence of a person who claims to be an expert, is not conclusive. An expert's evidence has to be scrutinized and adjudicated again by Court, like any other witness for the party, as to his approach to his conclusion and also reliability of such report. Judicial discretion thus exercised by lower Court in refusing to send disputed documents and admitted document to expert for comparison of signatures, proper.

See : **J. Krishna Vs. Maliram Agarwal & Others, AIR 2013 AP 107** *(paras 9 &10)*

32(Q). **Judicial Officers are provided training during their basic induction training course and are competent to themselves compare the handwritings/signatures :** Comparison of hand writings or signatures is not a science at all much less any scientific approach is involved in making such comparison. It is only an art which has to be acquired by experience. In so far as judicial officers in State are concerned, they are provided with the subject of introduction to comparison of signatures and hand writing during their basic induction course at the time of their induction into the subordinate judiciary after selection. They are taken to several premier forensic and scientific institutions for practical experience and also are provided with lectures by faculty on the above subject. It is not as if judicial officers undertake the power under Section 73 of the Evidence Act, in a gullible manner. They are provided with basic confidence in undertaking this subject. It cannot be said that lower Court which is Court presided over by senior subordinate judicial officer cannot undertake work of comparison of signatures in exercise of power under Section 73 of Evidence Act, particularly when that Court did not entertain any doubt on this aspect of matter. After all, evidence of a person who claims to be an expert, is not conclusive. An expert's evidence has to be scrutinized and adjudicated again by Court, like any other witness for the party, as to his approach to his conclusion and also reliability of such report. Judicial discretion thus exercised by lower Court in refusing to send disputed documents and admitted document to expert for comparison of signatures, proper. See : **J. Krishna Vs. Maliram Agarwal & Others, AIR 2013 AP 107** *(paras 9 &10)*

32(R). **Judicial discretion available to refuse disputed and admitted documents to expert for comparison of signatures u/s 73 of the Evidence Act :** Comparison of hand writings or signatures is not a science at all muschless any scientific approach is involved in making such comparison. It is only an art which has to be acquired by experience. In so far as judicial officers in State are concerned, they are provided with the subject of introduction to comparison of signatures and hand writing during their basic induction course at the time of their induction into the

subordinate judiciary after selection. They are taken to several premier forensic and scientific institutions for practical experience and also are provided with lectures by faculty on the above subject. It is not as if judicial officers undertake the power under Section 73 of the Evidence Act, in a gullible manner. They are provided with basic confidence in undertaking this subject. It cannot be said that lower Court which is Court presided over by senior subordinate judicial officer cannot undertake work of comparison of signatures in exercise of power under Section 73 of Evidence Act, particularly when that Court did not entertain any doubt on this aspect of matter. After all, evidence of a person who claims to be an expert, is not conclusive. An expert's evidence has to be scrutinized and adjudicated again by Court, like any other witness for the party, as to his approach to his conclusion and also reliability of such report. Judicial discretion thus exercised by lower Court in refusing to send disputed documents and admitted document to expert for comparison of signatures, proper. See : **J. Krishna Vs. Maliram Agarwal & Others, AIR 2013 AP 107** *(paras 9 &10).*

35. **Bankers' Books Evidence Act, 1891 :** No person can be charged with liability merely on the basis of entries in books of account, even where such books of account are kept in the regular course of business. There has to be further evidence to prove payment of the money which may appear in the books of account in order that a person may be charged with liability thereunder, except where the person to be charged accepts the correctness of the books of account and does not challenge them. The original entries alone u/s 34 of the Evidence Act would not be sufficient to charge any person with liability and as such copies produced u/s. 4 of the Bankers' Books Evidence Act obviously cannot charge any person with liability. See : **Chandradhar Goswami vs. Gauhati Bank Ltd., AIR 1967 SC 1058**

36. **Author's opinions in text books & their evidentiary value :** Though opinions expressed in text books by specialist authors may be of considerable assistance and importance for the Court in arriving at the truth, cannot always be treated or viewed to be either conclusive or final as to what such author says to deprive even a Court of law to come to an appropriate conclusion of its own on the peculiar facts proved in a given case. In substance, though such views may have persuasive value cannot always be considered to be authoritatively binding, even to dispense with the actual proof otherwise reasonably required of the guilt of the accused in a given case. Such opinions cannot be elevated to or placed on higher pedestal than the opinion of an

expert examined in Court and the weight ordinarily to which it may be entitled to or deserves to be given. See : **State of M.P. vs. Sanjay Rai, AIR 2004 SC 2174**

33(A). <u>Commissioner's report to be evidence in suit (Or. 26, rule 10(2) CPC</u>) : The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record.

33(B). <u>Points for commission to be defined by the court (Rule 68, G.R, Civil)</u> : According to Rule 68 of the General Rules (Civil), when issuing a commission for making a local inspection u/o. 26, rule 9 CPC, court shall define the points on which the commissioner has to report. No point which can conveniently and ought to be substantiated by the parties by evidence at the trial shall be referred to commissioner.

33(C). <u>Commissioner may be examined as witness [Or. 26, rule 10(2) CPC]</u> : Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

38(A). <u>When Depositions of Witnesses Contain-- (i) Contradictions, (ii) Exaggerations, (iii) Inconsistencies (iv) Embellishments, (v) Falsus in uno, falsus in omnibus</u> : If there are no material discrepancies or contradictions in the testimony of a witness, his evidence cannot be disbelieved merely on the basis of some normal, natural or minor contradictions, inconsistencies, exaggerations, embellishments etc. The distinctions between material discrepancies and normal discrepancies are that minor discrepancies do not corrode the credibility of a party's case but material discrepancies do so :

(i) Jagat Singh vs. State of U.P., AIR 2009 SC 958
(ii) Sanjay vs. State of U.P., 2008(62) ACC 52 (Allahabad – D.B.)
(iii) Dimple Gupta (minor) vs. Rajiv Gupta, AIR 2008 SC 239
(iv) Kulvinder Singh vs. State of Punjab, AIR 2007 SC 2868
(v) Kalegura Padma Rao vs. State of A.P., AIR 2007 SC 1299
(vi) State of Punjab vs. Hakam Singh, 2005(34) AIC 929 (SC)
(vii) Krishna Mochi vs. State of Bihar, (2002) 6 SCC 81
(viii) Leela Ram vs. State of Haryana, 2000(40) ACC 34 (SC)

In the case of **Sucha Singh vs. State of Punjab, (2003) 7 SCC 643**, the Supreme Court has held as under :

"Maxim 'falsus in uno, falsus in omnibus' is not applicable in India. It is merely a rule of caution. Thus even if a major portion of evidence is found to be deficient, in case residue is sufficient to prove the guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. The court has to separate grain from chaff and appraise in each case as to what extent the evidence is acceptable. If separation cannot be done, the evidence has to be rejected in toto. A witness may be speaking untruth in some respect and it has to be appraised in each case asto what extent the evidence is worthy of acceptance and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. Falsity of particular material witness on a material particular would not ruin it from the beginning to end. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment." Rulings relied upon :

(i) Ram Rahis vs. State of U.P., 2008 (61) ACC 925 (All—D.B.)
(ii) Sohrab vs. State of M.P., (1972) 3 SCC 751
(iii) Ugar Ahir vs. State of Bihar, AIR 1965 SC 277
(iv) Nasir Ali vs. State of U.P., AIR 1957 SC 366

38(B). <u>When Two Witnesses Making Contrary Statements On The Same Fact</u> : One statement by one of witnesses may not be taken out of context to abjure guilt on the part of all accused persons. When the case of the prosecution is based on evidence of eye witnesses, some embellishments in prosecution case caused by evidence of any prosecution witness although not declared hostile, cannot by itself be ground to discard entire prosecution case. On the basis of mere statement of one P.W. on a particular fact, the other P.W. cannot be disbelieved. See :

(i) Bhanwar Singh vs. State of M.P., AIR 2009 SC 768
(ii) Dharmendrasingh @ Mansing Ratansing vs. State of Gujarat, (2002) 4 SCC 679

39. <u>ELECTRONIC RECORDS & THEIR APPRECIATION</u> : With the passage of the **'Information Technology Act, 2000'** as further amended by the Parliament in the year 2008 (Central Act No. 10 of 2009), the expression "document" now includes **"electronic records"** also**.**

40(A). Section 3 (as amended vide the Information Technology (Amendment) Act, 2008) (Central Act No. 10 of 2009) : The expressions, Certifying Authority, electronic signature, Electronic Signature Certificate, electronic form, electronic records, information, secure electronic record, secure electronic signature and subscriber shall have the meanings respectively assigned to them in the Information Technology Act, 2000.

40(B).Section 17 : Admission defined : An admission is a statement, (Oral or documentary or contained in electronic form), which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

40(C).Section 22-A : When oral admission as to contents of electronic records are relevant : Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question.

40(D).Section 34 : Entries in books of accounts including those maintained in an electronic form, when relevant.: (Entries in books of accounts including those maintained in an electronic form), regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

40(E).Section 35 : Relevancy of entry in public record or an electronic record made in performance of duty. : An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record or an electronic record is kept, is itself a relevant fact.

40(F).Section 39 : What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers.

40(G). Section 45-A : Opinion of Examiner of Electronic Evidence

40(H).Section 47-A : Opinion as to electronic signature which relevant

40(I).Section 59 : Proof of facts by oral evidence

40(J).Section 65-A :Special provisions as to evidence relating to electronic record

40(K).Section 65-B : **Admissibility of electronic records**

40(L).Section 67-A : Proof as to electronic signature

40(M).Section 73-A : **Proof as to verification of digital signature**

40(N).Section 81-A : **Presumption as to Gazettes in electronic forms**

40(O).Section 85-A : **Presumption as to electronic agreements**

40(P).Section 85-B : **Presumption as to electronic records and electronic signature**

40(Q).Section 85-C: **Presumption as to Electronic Signature Certificates**

40(R).Section 88 : Presumption as to telegraphic messages

40(S).Section 88-A : **Presumption as to electronic messages**

40(T).Section 90-A : **Presumption as to electronic records five years old**

40(U).Section 131 : **Production of documents or electronic records which another person, having possession, could refuse to produce.**

41(A). <u>Admissibility and Evidentiary Value of Tape recorded conversation (S. 7, Evidence Act)</u> : With the introduction of **<u>Information Technology Act, 2000</u>** "electronic records" have also been included as documentary evidence u/s. 3 of the Evidence Act and the contents of electronic records, if proved, are also admissible in evidence. Tape recorded conversation is admissible in evidence provided that the conversation is relevant to the matters in issue, that there is identification of the voice and that the accuracy of the conversation is proved by eliminating the possibility of erasing the tape record. A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible u/s. 7 of the Evidence Act. It is also comparable to a photograph of a relevant incident. See : **R.M. Malkani Vs. State of Maharashtra, AIR 1973 SC 157**

41(B). <u>Preconditions for admissibility of tape recorded conversation</u> : A tape recorded statement is admissible in evidence, subject to the following conditions :

(1) The voice of the speaker must be identified by the maker of the record or other persons recognizing his voice. Where the maker is unable to identify

the voice, strict proof will be required to determine whether or not it was the voice of the alleged speaker.

(2) The accuracy of the tape recorded statement must be proved by the maker of the record by satisfactory evidence: direct or circumstantial.

(3) Possibility of tampering with, or erasure of any part of, the tape recorded statement must be totally excluded.

(4) The tape recorded statement must be relevant.

(5) The recorded cassette must be sealed and must be kept in safe or official custody.

(6) The voice of the particular speaker must be clearly audible and must not be lost or distorted by other sounds or disturbances. See :

1. **Ram Singh & others Vs. Col. Ram Singh, 1985 (Suppl) SCC 611**
2. **State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715** (known as Parliament attack case)

41(C). <u>Conversation on telephone or mobile & its evidentiary value</u> : Call records of (cellular) telephones are admissible in evidence u/s. 7 of the Evidence Act. There is no specific bar against the admissibility of the call records of telephones or mobiles. Examining expert to prove the calls on telephone or mobile is not necessary. Secondary evidence of such calls can be led u/s. 63 & 65 of the Evidence Act. The provisions contained under the Telegraph Act, 1885 and the Telegraph Rules, 1951 do not come in the way of accepting as evidence the call records of telephone or mobile. See : **State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715** (known as Parliament attack case)

42. <u>Information contained in computers</u> : The printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service-providing company can be led in evidence through a

witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge. Such secondary evidence is admissible u/s. 63 and 65 of the Evidence Act. See : **State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715** (known as Parliament attack case)

43(A).<u>Finger prints & its evidentiary value</u> : There is no gainsaying the fact that a majority of fingerprints found at crime scenes or crime articles are partially smudged, and it is for the experienced and skilled fingerprint expert to say whether a mark is usable as fingerprint evidence. Similarly it is for a competent technician to examine and give his opinion whether the identity can be established, and if so whether that can be done on eight or even less identical characteristics in an appropriate case. See : **Mohan Lal Vs. Ajit Singh, (1978) 3 SCR 823.**

43(B). <u>Fingerprint experts report not substantive evidence</u> : Evidence of fingerprint expert u/s 45 of the Evidence Act is not substantive evidence. It can be used to corroborate some items of substantive on record. See : **Musheer Khan Vs. State of M.P, 2010 (70) ACC 150(SC)**

43(C). <u>Non-examination of finger print expert & its effect</u> : Where the crime article, before its seizure, was handled by many persons, non-examination of the finger print expert in such a case would not have any adverse effect on prosecution case. See : **Keshavlal Vs. State of M.P., (2002) 3 SCC 254.**

43(D).<u>Thumb impression & expert's evidence</u> : Science of identifying thumb impression by an expert u/s. 45 of the Evidence Act is an exact science and does not admit of any mistake or doubt. See : **Jaspal Singh Vs. State of Punjab, AIR 1979 SC 1708.**

44. <u>Typewriter expert</u> : Overruling an earlier Three-Judge Bench decision in Hanumant vs. State of M.P., AIR 1952 SC 343, a Five-Judge Bench of the Supreme Court has held that the word 'expert' in Sec. 45 of the Evidence Act includes expert in typewriters as well. Typewriting also falls within the meaning of work 'handwriting'.

Hence opinion of typewriter expert is admissible in evidence. The examination of typewriting and identification of the typewriter on which the questioned document was typed in based on a scientific study of certain significant features of the typewriter peculiar to a particular typewriter and its individuality which can be studied by an expert having professional skill in the subject and, therefore, the opinion of the typewriter expert is admissible u/s. 45 of the Evidence Act. See : **State Through CBI Vs. S.J. Choudhary, AIR 1996 SC 1491 (Five-Judge Bench).**

******