APPRECIATION OF EVIDENCE IN CIVIL CASES

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1.1. Law regarding appreciation of evidence: Proper appreciation of evidence is the most important part of the judicial functioning of a trial Judge or Magistrate and also of the appellate court during the course of trial of a criminal case or disposal of appeal preferred against acquittal or conviction. The soundness of findings of facts and the quality of judgment depend upon whether or not the trial Judge or Magistrate or the appellate Judge is familiar with the laws applicable to the appreciation of different sorts of evidence brought on record. Article 141 of the Constitution of India provides that the law declared by the Supreme Court shall be binding upon all courts. The courts in India are therefore bound to follow the law on any subject as interpreted by the Supreme Court. Once a legislative provision is interpreted by the Supreme Court in a particular manner, it is then that interpreted law that has to be followed by the courts as the ultimate and binding law, and not the legislative provisions enacted by the Legislature. Accuracy of findings of fact or judgments will depend on whether or not the same have been recorded or passed as per the law declared by the Supreme Court. It can therefore be unhesitatingly said that without the knowledge of the important and leading judicial pronouncements of the Supreme Court and the High Courts regarding appreciation of evidence, no qualitative judgment can be written by the trial Judges, Magistrates and the appellate courts. Apart from the bare provisions contained in the Evidence Act regarding appreciation of evidence, judicial pronouncements of the

Supreme Court have over the years been guiding the trial and appellate courts to properly analyze and evaluate the evidence led by the parties i.e. the prosecution and the defence during the course of trial of criminal cases and appeals. For proper understanding of various laws relating to appreciation of different sorts of evidence, certain important aspects of the subject are being discussed here with the help of the leading judicial pronouncements of the Hon'ble Supreme Court and the Allahabad High Court.

1.2. **Triple tests to rely on evidence :** The Evidence Act teaches us principles on perception and discrimination of relevant facts. The perception permitted as a relevant fact does not automatically amount to a fact proved till the same passes the tests of discrimination, namely, the triple tests of relevancy, admissibility and competence of the witness. See: Dharmrao Vs. Syeda Arifa Praveen, (2026) 3 SCC 460 (Para 38)

1.3. **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) Mohammed Abdul Wahid Vs. Nilofer and Another, (2024) 2 SCC 144.
(ii) M. Siddiq (Ram Janmabhumi Temple) Vs.Suresh Das, (2020) 1 SCC 1 (Five-Judge Bench) (Para 1143,YF).
(ii) Ravinder Singh vs. Janmeja Singh, (2000) 8 SCC 191
(iii) Union of India vs. R. Bhusal, (2006) 6 SCC 360
(iv) Anathula Sudhakar Vs. P. Buchi Reddy, 2008 (2) AWC 1768(SC)

1.4. **A finding without pleadings and issue is not binding on the parties:** A finding without pleadings and issue is not binding on the parties. See: Mohd. Mustafa Vs.Abu Baker, AIR 1971 SC361.

1.5. **Non-framing of issues immaterial when parties went to trial and led all evidence:** Non-framing of issues is immaterial when parties went to trial and led all evidence. See: Baini Prasad Vs Durga Devi, (2023) 6 SCC 708

1.6. Plaintiffs and defendants are also witnesses: Nowhere in the Evidence Act has a party been precluded from presenting himself as a witness and therefore this differentiation based only on meaning as it appears cannot be countenanced. A perusal of Sections 137, 138 and 139 of the Evidence Act does not make any difference between a party as witness and a witness simpliciter. Examination-in-chief, cross examination and re-examination are all facets of a trial which can be availed by a party or adversary. See: Mohammed Abdul Wahid Vs. Nilofer and Another, (2024) 2 SCC 144.

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.

3.1. 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).

3.2. Relief not claimed in plaint not to be granted: A relief larger than the one claimed by plaintiff in the suit cannot be granted by court. It is not open to the court to grant a relief to the plaintiff on a case for which there is no basis in the pleadings. See:

(i) Meena Chaudhary Vs. Commissioner of Delhi Police, (2015) 2 SCC 156.
(ii) Rajendra Tewary vs. Basudeo Prasad, 2002 (46) ALR 222 (SC)
(iii) (iii). Om Prakash Vs. Ram Kumar, (1991) 1 SCC 441 (Para 4).
(iv) (iii).Srinivas Ram Kumar Vs. Mahabir Prasad, AIR 1951 SC 177 (Three-Judge Bench)
(v) (iv). M. Siddiq (Ram Janmabhumi Temple Vs. Suresh Das, (2020) 1 SCC 1 at pages 737 & 738 (Para 1228) (Five-Judge Bench).
(vi) (v). Venkataramana Devaru Vs. State of Mysore, AIR 1958 SC 255 (Five-Judge Bench) (Para 14).

4.1. Standard of proof in civil and criminal cases: Standard of proof required in the civil and criminal proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that findings recorded in one procedure may be treated as final or binding in the other as both the cases have to be decided on the basis of the evidence adduced therein. See:

(i) Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537

(ii) Iqbal Singh Marwah Vs. Meenakshi Marwah, (2005) 4 SCC 370 (Five-Judge Bench)*(para 32)*

4.2. 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).

4.3. 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.

4.4. Adverse presumption u/s 114(g) of the Evidence Act to be drawn against the party not entering into witness box in support of his pleading: Adverse presumption u/s 114(g) of the Evidence Act can be drawn against the defendant if he does not present himself for cross-examination and refuses to enter witness box in order to refute the allegations made against him or support his pleadings in his written statement. See: Iqbal Basith Vs N. Subbalakshmi, (2021) 2 SCC 718 (Three-Judge Bench)

5. **Withholding material evidence and 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 and within the knowledge of parties –effect? :** Explaining the provisions under Order 6, rule 2 CPC regarding implicit pleading and 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)

8.1. **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)

8.2. 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

9.1. 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. Section 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)

9.2 Kinds of " Burden of Proof ": Burden of proof is of two kinds: (i) legal burden and (ii) evidential burden. Legal burden of proof arises from pleadings and it never shifts. Section 101 of the Evidence Act provides for legal burden of proof. Evidential burden of proof may shift from one party to the other as the trial progresses according to the balance of evidence given at particular stage and then the burden rests upon the party who would fail if no evidence at

all, or no further evidence, is adduced by either side. Section 102 of the Evidence Act deals with the evidential burden of proof. See: Rajesh Jain Vs Ajay Singh, (2023) 10 SCC 148 (Paras 28 & 29)

10.1. Meaning of "proof", "burden of proof", "onus probandi": "Proof", which is the effect of evidence led is defined by the provisions of Section 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. Section 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 Section 101 and Section 102 of the Evidence Act cannot

be shifted by the use of Section 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)

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

12.1. Plaintiff bound to prove his case even when the defendant fails to prove his case: The plaintiff (in an 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).

12.2. 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 or possession of the defendant. See:

(i) Ratnagiri Nagar Parishad Vs. Gangaram Narayan Ambekar, (2020) 7 SCC 275.
(ii) State of M.P. Vs. Ushadevi, (2015) 8 SCC 672 (Para 33)
(iii) Union of India Vs. Vasavi Co-operative Housing Society Limited, (2014) 2 SCC 269.
(iv) T.K. Mohammed Abulbucker vs. P.S.M. Ahamed Abdul Khader, AIR 2009 SC 2966.

12.3. Burden of proof on plaintiff when case proceeds ex-parte: Even an ex-parte decree under Order 9, rule 6(a) of the CPC should satisfy the description of "judgment" as laid down in Order 20, rule 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 Order 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, analyze 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 :

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

12.4. Ex-parte judgments and appreciation of evidence: 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

written statement Nor the court should proceed to pass judgment blindly merely because a written statement 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, rule 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)

12.5. Ex-parte judgments and evidence on affidavit (Order 19, rule 1-A CPC): In view of the amended provisions of Order 19, rule 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)

12.6. Judgment u/o 8, rule 10 CPC in the absence of written statement by defendant and appreciation of evidence: In a case where written statement has not been filed by the defendant, the court should be a little cautious in proceeding u/o 8, rule 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. 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 Order 19, rules 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.

14. Uncontroverted affidavit and its 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 Section 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. Assitant Registrar, Firms, Chits & Societies, Azamgarh, 2005 (2) AWC 1951 (All)

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

15.1. Defective affidavits filed u/o 19, rule 1 CPC and 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.

15.2. 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 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)(LB).

15.3. Production of additional documents after framing of issues when to be permitted : Where the documents were missing and could not be filed by the defendant at the time of filing of his written statement and were sought to be produced at the time of final hearing, explaining the provisions of Order 8, rule 1- A (3) and Order 13, rule 1 CPC, it has been held by the Supreme Court that as the defendant had shown cogent reasons for not filing the said documents along with his written statement and the documents were necessary for arriving at just decision in the suit, permission to produce the documents should have been granted. See: Sugandhi Vs. P.Rajkumar, AIR 2020 SC 5486

15.4. Document/additional evidence not to be admitted after conclusion of final arguments and reserving judgment: Document/additional evidence cannot be admitted by Court after conclusion of final arguments and reserving of judgment. See: Arjun Singh Vs. Mohindra Kumar, AIR 1964 SC 993

16.1 Jurisdiction and maintainability of suit should be decided first before passing any interim order: Question of jurisdiction would assume importance even at stage a court considers question of grant of interim relief. Where an interim relief is claimed in a suit before a civil court and party to be affected by grant of such relief, or any other party to the suit, raises a point of maintainability thereof or that it is barred by law and also contends on that basis that interim relief should not be granted, grant of relief in whatever form, if at all, ought to be preceded by court by formation and recording of at least a prima facie satisfaction that suit is maintainable or that it is not barred by law. In the present

case, defendant had challenged the maintainability of the suit before the trial court by taking a plea in his written statement that the suit property was a Bhumidhai land owing to which the suit was barred by Section 331 of the UP ZA & LR Act, 1950 and also by Section 41(h) of the Specific Relief Act,1963 and as such not maintainable before the civil court. What was required of the trial court in such a situation was to record a satisfaction, at least prima facie, that the suit was maintainable and then proceed to pass such orders as it considered proper in the circumstances of the suit. It would be inappropriate for the court to abstain from recording its prima facie satisfaction on the question of maintainability, yet, to proceed to grant protection pro tem on the assumption that the question of maintainability of the suit has to be decided as a preliminary issue under Order 14, rule 2 CPC. But without deciding the question of maintainability of the suit, the trial court decreed the suit under Order 8, rule 10 CPC against all defendants including those who had not filed their written statements. See: Asma Lateef Vs Shabbir Ahmad, (2024) 4 SCC 696(Three- Judge Bench) (Paras 50, 51)

16.2 Court can pass interim order even when question of jurisdiction is pending: Objection as to jurisdiction to be decided by the court as a preliminary issue would not prevent the court from passing interim orders while the decision on question of jurisdiction is pending if called for in the facts and circumstances of the case. Any violation of such interim order would be punishable under Order 39, rule 2-A CPC even if later on the court holds that it had no jurisdiction to entertain the suit. See: Tayabbhai M. Bagasarwalla vs. Hind Rubber Industries Pvt. Ltd., (1997) 3 SCC 443

16.3 Valuation, Court Fee and maintainability of suit: When there is challenge to jurisdiction, valuation or sufficiency of court fee or maintainability of suit, the court is to first decide these issues and then

to decide the application for temporary injunction and other matters. See: Arun Kumar Tiwari vs. Smt. Deepa Sharma, 2006 (1) ARC 717 (All) (DB)

16.4 Merits of the case not to be discussed when court has no jurisdiction: It is settled law that once court holds that it has no jurisdiction in the matter, it should not consider the merits of the matter. See: Jagraj Singh vs. Birpal Kaur, AIR 2007 SC 2083.

16.5 Criminal courts have no jurisdiction to decide civil disputes: A criminal court while deciding bail application u/s 437, 439, 438, 389 CrPC has no jurisdiction to decide a civil dispute as between the parties. See: Mahesh Chandra vs. State of U.P., (2006) 6 SCC 196

17.1. Admission of fact as efficacious proof of the facts admitted: 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

17.2. Admission must be proved: 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 Section 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).

17.3. Admission of a party is only a piece of evidence and not conclusive of the fact admitted: Admission of a party is only a piece of evidence and not conclusive of the fact admitted. Where there is no clear-cut admission as to the fact concerned, it would be of no consequence. See: Bhagwat Sharan Vs. Purushottam, (2020) 6SCC 387.

17.4. Party making the admission must be confronted during cross examination: 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).

17.5. Admission of a party is only a piece of evidence and not conclusive of the fact admitted: Admission of a party is only a piece of evidence and not conclusive of the fact admitted. Where there is no clear-cut admission as to the fact concerned, it would be of no consequence. See: Bhagwat Sharan Vs. Purushottam, (2020) 6SCC 387.

17.6. Admission of a fact not in issue and not relevant does not amount to admission: 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)

17.7. Admission to be admissible must be clear, unequivocal and 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)

17.8. 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)

17.9. 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).

17.10. 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)

17.11. 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).

17.12. 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).

17.13. 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).

17.14. Facts admitted need not be proved: In terms of Section 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

18. Effect of non cross-examination of witness on a fact appearing in examination-in-chief (Secion 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)(DB)

19.1. Once a document has been properly admitted, the contents of that document would also stand admitted in evidence: Once a document is admitted in evidence, the contents of that document are also admitted in evidence, though those contents may not be conclusive evidence. Moreover, once certain evidence is conclusive, it shuts out any other evidence which would detract from the conclusiveness of that evidence. There is a prohibition for any other evidence to be led which may detract from the conclusiveness of that evidence and the court has no option to hold the existence of the fact otherwise when such evidence is made conclusive. Thus, once a document has been properly admitted, the contents of the document would stand admitted in evidence, and if no objection has been raised with regard to its mode of proof at the stage of tendering in evidence of such a document, no such objection could be allowed to be raised at any

later stage of the case or in appeal. But the document can be impeached in any other manner, though the admissibility cannot be challenged subsequently when the document is produced in evidence. See: Neeraj Dutta Vs State NCT of Delhi, (2023) 4 SCC 731 (Five-Judge Bench) (Para 62)

19.2. Contents of documents and their proof: Explaining the provisions of Sections 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

19.3. Contents of document cannot be proved by oral evidence: Section 59 of Evidence Act: When the entire case is based on construction of a document (insurance policy), the question of adducing any oral evidence would be irrelevant as per Section 59 of the Evidence Act. See: Peacock Plywood (P) Ltd. Vs. OIC Ltd., (2006) 12 SCC 673.

19.4. 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.

19.5. Use of an unregistered document requiring registration: A document required by law to be registered, if unregistered, is inadmissible as evidence

of a transaction affecting immovable property. But it may be admitted as evidence of collateral facts, or for any collateral purpose, that is, for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property. Courts should have in mind the following factors with regard to the admissibility of an unregistered document:

19.6. **(i)**document required to be registered, if unregistered, is not admissible into evidence under Section 49 of the Registration Act.

(ii) Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section 49 of the Registration Act.

(iii)A collateral purpose must be independent of, or divisible from the transaction to the effect which the law required registration.

(iv)collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating any right, title or interest in immovable property of the vale of one hundred rupees and upwards.

(v) If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose. See: K. B. Saha Vs. Development Consultant Limited, (2008) 8 SCC 564 (Paras 33& 34)

19.**6 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 Section 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 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 rather 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).

19. How to prove a will-deed?: If objection is raised on genuineness of the will-deed by pointing out suspicious circumstances against the will-deed, the propounder has to remove them. Propounder has to establish that the testator had signed the will in a sound disposing state of mind and understanding the nature and effect of disposition. See: Leela Vs. Muruganantham, (2025) 4 SCC 289 (Paras 25-28)

19.1 **A fact learnt from other person not admissible in evidence:** Statement of the wife of the deceased before the court made on the basis of what she had learnt from her husband, of which she had no personal knowledge, was found not admissible in evidence under Section 32 of the Evidence Act. See: Subhash Harnarayanji Laddha Vs. State of Maharashtra, (2006) 12 SCC 545.

19.2 **Admission of genuineness not to be confused with admission of truth of contents (Rule 54, G.R. 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 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.

19.3 **Once a document has been properly admitted, the contents of the documents would stand admitted in evidence:** Once a document is admitted, the contents of that document are also admitted in evidence, though those contents may not be conclusive evidence. Moreover, once certain evidence is conclusive, it shuts out any other evidence which would detract from the conclusiveness of that evidence. There is a prohibition for any other evidence to be led which may detract from the conclusiveness of that evidence

and the court has no option to hold the existence of the fact otherwise when such evidence is made conclusive. Thus, once a document has been properly admitted, the contents of the documents would stand admitted in evidence, and if no objection has been raised with regard to its mode of proof at the stage of tendering in evidence of such a document, no such objection could be allowed to be raised at any later stage of the case or in appeal. But the documents can be impeached in any other manner, though the admissibility cannot be challenged subsequently when the document is bound in evidence. See: Neeraj Dutta Vs. State NCT of Delhi, (2023) 4 SCC 731 (Five-Judge Bench) (Para 62)

19.4 **Admission or denial on documents by opposite party (Rule 42, G.R. Civil):** 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.

19.5 **Evidence in cross or connected civil cases (Rule 86, G.R. Civil):** 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.

20.1. Exhibited documents and their admissibility in evidence: Explaining the provisions of Sections 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:

(i) G.M. Shahul Hameed Vs. Jayanthi R. Hegde, (2024) 7 SCC 719 (Paras 23 & 24)

(ii) Jagmail Singh Vs. Karamjit Singh, (2020) 5 SCC 178
(iii) Narbada Devi Gupta Vs. Birendra Kr. Jaiswal, (2003) 8 SCC 745
(iv) Smt. Sudha Agarwal Vs. VII ADJ, Ghaziabad, 2006 (63) ALR 659 (Allahabad)
(v) R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami, (2003) 8 SCC 752
(vi) Sait Tarajee Vs. Khimchand Vs. Yelamarti Satyam, AIR 1971 SC 1865.
(vii) 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..

20.2. Mere exhibition of a document not sufficient: Mere admission of a document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof which is required to be done in accordance with law. See:

(i) G.M. Shahul Hameed Vs. Jayanthi R. Hegde, (2024) 7 SCC 719(Paras 23 & 24)
(ii)LIC of India Vs. Ram Pal Singh Visen, (2010) 4 SCC 491.

20.3. 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.

20.4. Document brought on record but not proved cannot be read: Document brought on record but not proved cannot be read in evidence. See: Nand Ram Vs. Jagdish Prasad, (2020) 9 SCC 393.

20.5. Stage of raising objection against the admissibility of an exhibited document: 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

20.6. Sale deed, whether original or certified copy, is not a public document: What Section 74 of the Evidence Act, 1872 provides is that public records kept in any State of private documents are public documents, but private documents of which public records are kept are not in themselves public documents. A registered document, therefore, does not fall under either Clause (e) or (f) of Section 65 of the Evidence Act. The entry in the register book is a public document, but the original is a private document. A deed of sale is a conveyance. A deed of conveyance or other document executed by any person is not an act nor record of an act of any sovereign authority or of any official body or tribunal, or of any public officer, legislative, judicial and executive. Nor is it a public record kept in a State of any private documents. A sale deed (or any other deed of conveyance) when presented for registration under the Registration Act is not retained or kept in any public office of a State after registration on completion of the process of registration. An original registered document is not therefore a public record kept by a State of a private document. Consequently, a deed of sale or other registered document will not fall under either of the two classes of documents described in Section 74 as “ public document”. Any document which is not a public document is a private document. Hence, any registered conveyance or any other registered document is not a public document but a private document. Moreover, a certified copy of a registered instrument is also not a public record of a private document under Section 74 (2) of the Evidence Act, 1872 for the reason that original has to be

returned to the party under Section 61 (2) of the Registration Act, 1908. Thus, the factum of registration of what is otherwise a private document inter partes does not clothe the document with any higher legal status by virtue of its registration. See: Deccan Paper Mills Company Limited Vs. Regency Mahavir Properties, (2021) 4 SCC 786 (Para 22) (Three-Judge Bench)

20.7. Secondary/certified copy of sale deed not admissible in evidence: 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)

20.8. Certified copy of sale deed is admissible in evidence: A certified copy of a sale deed can be filed to prove ownership and possession over the disputed property. See: Ved Prakash Rastogi Vs. Nagar Palika Budaun, AIR 2008 All 27.

20.9. Certified copy of gift deed admissible in evidence: Where the original gift deed had been lost, its certified copy issued by the competent authority is admissible in evidence. See: Debananda Chaubey Vs. Narayan Bigraha, 2007 (54) AIC 349 (Gauhati).

21. Observations dated 03.01.2017 of Division Bench in New Okhla Industrial Development Authority case regarding admissibility of documents in evidence: 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), 195**7 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."

22.1. Law does not expect impossible evidence from a party: Law does not demand the impossible. When there is disability that makes it impossible to obey the law, the alleged disobedience of the law is excused. A party cannot be expected to produce an evidence which is impossible to be produced. See: Arjun Panditrao Khotkar Vs. Kailash Kushan Rao Gorantyal, (2020) 7 SCC 1 (Three-Judge Bench).

22.2. Distinction in standard of proof in civil and criminal cases: Explaining Section 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 Section 3 of the Evidence Act that makes the difference. In a suit for possession of property based on title, if the plaintiff creates a **high degree of probability**

of his title to ownership, instead of proving his title **beyond any reasonable doubt**, 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

22.3. Standard of proof when civil case involving allegation of charges of criminal or fraudulent character: It is apparent from definitions of the words 'proved', 'disproved' and 'not proved' given in Section 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)

23.1 Seeking cancellation of sale-deed on ground of undue influence executed by weak and old lady: 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, (2009) 12 SCC 101.

23.2 Cancellation of a document, whether registered or unregistered, can be sought only in civil court: A document, whether registered or unregistered, can be cancelled by the court. See: Deccan Paper Mills Company Limited Vs. Regency Mahavir Properes, (2021) 4 SCC 786 (Para 22) (Three-Judge Bench)

23.3 Presumption of genuineness of a registered document is attached to it: Presumption of genuineness of a registered document is attached to it. Initial onus to prove it to be forged document lies on the plaintiff. In the present case, plaintiff lady had denied her signature on the sale deed. Divergent opinions of hand writing experts were produced by the plaintiff and the defendant. Ground taken by the plaintiff that the document/sale deed was the result of copied forgery could not be substantiated only on the basis of the opinion of the handwriting expert. Opinion of an expert is not binding piece of evidence if not corroborated by other pieces of evidence. In the said case, plaintiff had failed to prove that her signatures on the documents i.e. general power of attorney and the sale deed were forged. See: Rattan Singh Vs. Nirmal Gill, AIR Online 2020 SC 854

23.4. Power of attorney is of no consequence if no sale deed is executed in pursuance thereof: In the present case, it goes without saying that the power of attorney executed by the appellant-defendant is of no consequence as on the strength of said power of attorney, neither sale deed has been executed nor any action pursuant thereof has been taken by the power-of attorney holder which may confer title upon the respondent-plaintiff. Non-execution of any document by the general power-of-attorney holder consequent to it renders the said general power of attorney useless. In connection with the general power of attorney and the will so executed, the practice, if any, prevalent in any State or the High Court recognizing these documents to be documents of title or documents conferring right in any immovable property is in violation of the statutory law. Any such practice of tradition prevalent would not override the specific provisions of law which require execution of a document of title or transfer and registration

so as to confer right and title in an immovable property of over Rs 100 in value. In this regard, reference may be had to two other decision of the Delhi High Court in *Imtiaz Ali* v. *Nasim Ahmed* and *G. Ram* v. *DDA* which inter alia observe that an agreement to sell or the power of attorney are not documents of transfer and as such the right, title and interest of an immovable property do not stand transferred by mere execution of the same unless any document as contemplated under Section 54 of the Transfer of Property Act, 1882, is executed and is got registered under Section 17 of the Registration Act, 1908. The decision of the Supreme Court is Suraj Lamp & Industries (P) *Ltd.* v. *State of Haryana* also deprecates the transfer of immovable property through sale agreement, general power of attorney and will instead of registered conveyance deed. Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53-A of the Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transferor or any person claiming under him. See: *Ghanshayam* vs *Yogendra Rathi* (2023) 7 SCC 361 (Paras 12, 14, 15 & 16)

23.5. Presumption of knowledge of execution of document from date of its registration: When a document is required by law to be registered and is got registered, then the whole world comes to know (by way of constructive notice) about the execution and registration of such document from the date of its registration. Referring to Explanation I to Section 3 of the Transfer of Property Act, 1882, it has been held by the Supreme Court that knowledge of execution and registration of such document for purposes of limitation starts from the date of its registration. See:

(i). Uma Devi Vs. Anand Kumar, (2025) 5 SCC 198 (Para 13)

(ii). Suraj Lamp & Industries (P) Limited Vs. State of Haryana, (2012) 1 SCC 656 (Paras 15 &17)

23.6. Sale deed got executed by a person belonging to Scheduled Caste without permission of Collector u/s 157-AA would be void: Section 157-AA of the U.P. ZA & LR Act specifically provides that no person belonging to the Scheduled Caste having become Bhumidhar with transferable rights u/s 131-B of the U.P. ZA & LR Act shall have the right to transfer the land by way of sale, gift, mortgage or lease to a person other than a person belonging to Scheduled Caste and such transfer, if any, shall be in the following order of preference:

(a) landless agricultural laborer

(b) Marginal Farmer

(c) Small Farmer, and

(d) A person other than a person referred to in Clauses (a), (b) & (c).

If before execution of the sale deed, no permission from the competent authority i.e. Assistant Collector, was obtained, then the sale-deed would be void and the purchaser on the basis of such sale deed would not acquire any right in the land purchased by him through such sale-deed. See: Prem Chandra Vs. Addl. Commissioner (Admin), Lucknow Mandal and Others, 2015 (129) RD 417

24.1. Secondary evidence and its admissibility : 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

24.2. Certified copy of will deed admissible in evidence: A certified copy of a will deed is admissible in evidence for purposes of proving contents of the original document in view of Sections 63(1), 65(f) and 79 of the Evidence Act read with Section 57 of the Registration Act. See: Hameed Vs. Kanhaiya, AIR 2004 All 405.

24.3. Proof of contents of documents: By mere filing of a document, its contents are not proved. A certificate issued by an expert should be brought on record by examining him. By mere marking of an Exhibit on a document, it does not mean that the document has been proved. See:

(i) Subhash Maruti Avasare Vs. State of Maharashtra, (2006) 10 SCC 631.
(ii) K. Subramani Vs. P. Rajesh Khanna, 2009 AIHC (NOC) 800 (Madras).

24.4. Proof of contents of documents: Once a document is properly admitted in evidence, its contents are also admitted in evidence though they may not be conclusive. See: P.C. Purushothama Vs. S. Perumal, AIR 1972 SC 608.

24.5. Photostat copy of document not admissible in the absence of its factual foundation: 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..

24.6. **Ordinary secondary evidence is admissible only when both original and certified copies are lost:** An ordinary secondary copy of a document is admissible in evidence only when both the original and certified copies are lost. See: M. Kumhar Vs. B.G. Ganeshpuri, AIR 2000 SC 2629.

24.7. **Secondary copy of document can be admitted in evidence only on proof that the original was in existence earlier:** A secondary evidence, as a general rule, is admissible in evidence only in the absence of primary evidence. If the original itself is found to be inadmissible through failure of the party who files it to prove it to be valid, the same party is not entitled to introduce secondary evidence of its contents where the original documents are not in existence/available, photocopy of the documents are not admissible in evidence. See: J. Yashoda Vs. Shobarani, (2007) 5 SCC 730.

24.8. **Affidavit must in support of application seeking production of secondary evidence:** An application for the production of secondary evidence must give full details and must be supported by a proper affidavit. See: State of Rajasthan Vs. Khemraj, AIR 2000 SC 1759.

24.9. **Stolen documents from custody of Govt. admissible in evidence:** 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)

24.9a. Newspaper reports to be treated as hearsay evidence: As per Section 60 of the Evidence Act, newspaper reports would be regarded as hearsay evidence and cannot be relied upon. See:

(i) Chandrabhan Sudam Sanap Vs. State of Maharashtra,(2025) 7 SCC 401 (Three-Judge Bench) (Paras 121)

(i) Joseph M. Puthussery Vs. T.S. John, AIR 2011 SC 906.

(ii) Laxmi Raj Shetty Vs. State of T.N., AIR 1988 SC 1274.

(iii) Quamarul Ismam Vs. S.K. Kanta 1994 Supp. (3) SCC 5.

24.10. Test whether an information/document is protected from disclosure u/s 123, Evidence Act: 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).

24.11. Authenticity of entries of public document like school register or T.C. may be tested by court: So far as the entries made in the official record by an official or person authorized in performance of official duties are concerned, they may be admissible u/s 35 of the Evidence Act but the court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what

was his source of information. The entries in school register or school leaving certificate require to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal case. See:

(i) C. Doddanarayana Reddy Vs. C. Jayarama Reddy, (2020) 4 SCC 659 (Para 18)
(ii) Madan Mohan Singh Vs. Rajni Kant, (2010) 9 SCC 209 (Para 20)
(iii) Updesh Kumar Vs. Prithvi Singh,(2001) 2 SCC 524
(iv) State of Punjab Vs. Mohinder Singh, (2005) 3 SCC 702.

24.12. Family Settlement: Whether its registration is compulsory?: A memorandum of family settlement or family arrangement requires compulsory registration as per Section 17 (2) (v) of the Registration Act, 1908 only when it creates or extinguishes for the first time any right, title or interest in an immovable property among the family members. If it records only pre-existing right in the immovable property or arrangement or terms already settled between the parties in respect of the immovable property, it does not require registration. See:

(i) Ravinder Kumar Grewal Vs. Manjit Kaur, (2020) 9 SCC 706
(ii) Kale Vs. Director of Consolidation, (1976) 3 SCC 1194

24.13. Unregistered family arrangement or partition deed or oral partition under Hindu law can be relied on for collateral purposes: An unregistered family arrangement or partition deed or oral partition under Hindu law can be relied on for limited collateral purposes like severance of joint family status and title, explaining nature of possession, recording arrangement made thereunder and evidencing parties' subsequent conduct. Reality of disruption of joint family status by a cumulative assessment of conduct of parties that includes separate possession, separate cultivation, separate residence, independent dealing with lands allotted, and revenue records that consistently reflect such separation can be proved by such mutual written or oral family settlement. Transfer by an heir apparent being mere spes succession is ineffective to convey any right. By mere release deed, no transfer took place. Father of the appellants did not have any right at all which he could transfer or relinquish. Oral partition can be accepted if proved by conduct of parties or by mutual family arrangement severing the status, possession on separate shares. The reasoning of the lower courts on "

not acted upon " was not proper and not acceptable. Long standing conduct of parties can be treated as creating an equitable estoppel against the party setting up a contrary claim now. See:

(i)Anjanappa Vs. Nanjundappa, (2026) 4 SCC 492 (Paras 31 to 38)

(ii) Shanmugam Pillai Vs. K. Shanmugam Pillai, (1973) 2 SCC 312 (Paras 13, 22)

(iii)TVR Subbu Chetty Vs. M. Raghava Mudaliar, AIR 1961 SC 797 (Para 9.5)

(iv)Kalyani Vs. Narayana, (1980) Suppl SCC 298 (Para 18)

24.14. A compromise decree in respect of immovable suit property does not require registration: A compromise decree passed by a court in respect of immovable property which is subject matter of the suit would ordinarily be covered by Section 17(1)(b) of the Registration Act and would not require registration. But if the compromise is entered into in respect of an immovable property other than the subject- matter of the suit or proceeding would be covered under Section 17 (2) (vi) of the Registration Act and the same would require registration**.** See: Khushi Ram Vs Nawal Singh, AIR 2021 SC 1117 (Paras18 &19)

24.15. Photostat copy of a document and its admissibility: In the 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 its photocopy was taken and this should be above suspicion. See: Ashok Dulichand vs. Madahavalal, AIR 1975 SC 1748.

24.16. Photostat copy when can be produced as secondary evidence? : Where original document is in existence, but not produced, secondary evidence by production of copies is not admissible unless conditions of Sections 65 and 66 of the Evidence Act are satisfied. These provisions have 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.)

25.1. Proof of signature or initial: Explaining Sections 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.

25.2. Omission to take signature of witness on his deposition not to render his deposition inadmissible: 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.

25.3. Mutation entries and 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)

25.4. Presumption of truth about revenue records: Presumption of truth is attached to revenue record. However, this presumption is rebuttable. It is for the party who alleges that the revenue entries are wrong to lead evidence to rebut this presumption. See: Vishwasrao Satwarao Naik Vs State of Maharashtra, (2018) 6 SCC 580

25.5. 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 72

25.6. Entries in municipal records not proof of ownership: Entries in municipal records are not proof of ownership. See:

(i)Hemalatha Vs. Tukaram, (2026) 5 SCC 168

(ia)Suraj Bhan Vs. Financial Commissioner, (2007) 6 SCC 186

(ii)Suman Verma Vs. Union of India, (2004) 12 SCC 58
(ii)Municipal Corporation, Aurangabad Vs. State of Maharashtra, (2015)16 SCC 689
(iii)Ajit Kaur Vs.Darshan Singh, (2019) 13 SCC 70

27.1. Adverse possession and injunction: A person claiming the title by virtue of adverse possession can maintain a suit under Section 65 of the Limitation Act, 1963 for declaration of title or for a permanent injunction seeking protection of his possession thereby retraining the defendant or for restoration of possession in case of illegal dispossession. **See:**

(i) Ravinder Kaur Grewal Vs. Manjit Kaur, 2019 SCC Online SC975 (Three-Judge Bench).
(ii) M. Siddiq (Ram Janmabhumi Temple) Vs. Suresh Das, (2020) 1 SCC 1(Five-Judge Bench) (Para 1143 to 1155).

Note: Three contrary previous decisions of the Supreme Court by Two- Judge Benches reported in (i) Gurudwara Sahab Vs. Gram Panchayat Village Sirthala, (ii) State of Uttarakhand Vs.Mandir Shri Lakshmi Siddh Signature Not Verified Maharaj and (iii) Dharampal Vs. Punjab Waqf Board have now been over-ruled by the judgment in Ravinder Kaur Grewal's case stand overruled.

27.2. Suit for declaration of title and possession on the basis of adverse possession: A person who has perfected his title by adverse possession can use it as a sword and file a suit for declaration of his title and possession. See: Mohd. Vs Rajkumar, (2020) 10 SCC 264

27.3. Adverse possession and its elements to be proved: A party claiming to have perfected his title to an immovable property through adverse possession must prove following facts:

a. title of the true owner of the property must be admitted by the party claiming to be in adverse possession,

b. such possession must be without the consent of the true owner

c. such possession must be continuous or uninterrupted at least for twelve years

d. such possession must be open and hostile to the knowledge of the true owner See:

(i) Nand Ram Vs. Jagdish Prasad, (2020) 9 SCC 393.

(ii) Uttam Chand Vs. Nathu Ram, (2020) 11 SCC 263.

27.4. Burden of proof of possession, dispossession & adverse possession: 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.)

27.5. Suit to be decreed on proof of possessory title: Where in suit for permanent injunction, plaintiff had proved his possessory title over the suit property, though not the full title, and the defendant had failed to prove any title to the suit property, it has been held by the Supreme Court that the plaintiff's suit deserved to be decreed against the interference of the defendant with the plaintiff's possession over the suit property. See: Iqbal Basith Vs N. Subbalakshmi, (2021) 2 SCC 718 (Three-Judge Bench)

27.6. Injunction suit without seeking declaration of title maintainable if there is no cloud on title of plaintiff: A prayer for declaration of title in a suit for injunction will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title when some apparent defect in his title to a property or when some prima facie right of a third party over it is made out or shown. An action for declaration is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the

plaintiff, believing that the defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raise a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief even after the suit for injunction is dismissed where the suit raised only the issue of possession and not any issue of title. In the present case, there was no issue involved about the title of the plaintiff and his father. It is not as if the respondent-defendants had set up a title in themselves or were claiming through somebody who was claiming the title. Their plea was of adverse possession against the appellant which presupposes that the appellant was the owner. When in a suit simpliciter for a perpetual injunction based on title, the defendant pleads perfection of his title by adverse possession against the plaintiff or his predecessor, it cannot be said that there is any dispute about the title of the plaintiff. Hence, the plaintiff need not claim a declaration of title in such a case as the only issues involved in such a suit are whether the plaintiff has proved that he was in possession on the date of the institution of the suit and whether the defendant has proved that he has perfected his title by adverse possession. Therefore, in the present case, it was not necessary for the appellant/plaintiff to claim a declaration of ownership in the suit for injunction. There was no cloud on his title. Therefore, the suit, as originally filed, was maintainable. **See: K.M. Krishna Reddy Vs. Vinod Reddy, (2023) 10 SCC 248 (paras 16 & 17).**

27.7. Possession of mere a licensee does not amout to possession: A licence does not create any interest in the immovable property. Possession of holder of any interest or estate in immovable property i.e. the possession of any owner is distinguishable from mere occupation of a licensee whose possession under licence does not amount to possession against the holder of interest in the immovable property. See: Victory Iron works Ltd Vs. Jitendra Lohia, (2023) 7 SCC 227

28.1. Examination-in-Chief on affidavit: Order 18, rule 4 CPC w.e.f. 01.07.2002 provides for production of oral evidence of examination-in-chief of witnesses on affidavit. Copies of such affidavits shall be supplied by the party to the opposite party. The opposite party shall have right to cross-examine such witnesses on their affidavits filed under Order 18, rule 4 CPC.

28.2. Court may permit examination-in-chief in civil suits to be recorded in court: U/o 18, rule 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).

28.3. Production of additional evidence at late stage of trial: It has been held by the Hon'ble Supreme Court that even after deletion of Order 18, Rule 17-A CPC w.e.f. 01.07.2002, Court has inherent power to permit parties to produce evidence not known to them earlier or which could not be produced in spite of due diligence. Order 18, Rule 17-A CPC did not create any new right but only clarified the position. Therefore, deletion of Order

18, Rule 17-A CPC does not disentitle the parties to produce evidence at a later stage. If a party satisfies the Court that after exercise of due diligence or the evidence was not within his knowledge or could not be produced at the time when the party was leading his evidence, Court may permit leading of such evidence at a later stage on such terms as may appear to be just. See: Salem Advocates' Bar Association vs. Union of India, (2005) 6 SCC 344 (Three-Judge Bench).

29.1. One P.W. cannot be contradicted by the evidence of other P.Ws. (Sec. 145 & 157, Evidence Act—When and How Attracted) : 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.

29.2. Witness may be cross-examined by drawing his attention to contents of document to be produced in court during the course of cross-examination: Plaintiff or defendant at their own behest may enter evidence in court. Further, it is permissible to produce a document for cross-examination or to refresh the memory of a witness whether that be a party to the suit or a witness called by them without any distinction. Inter alia, being precluded from effectively putting questions to a witness and receiving answers from either party to a suit, with aid of these documents, will put the other side at risk of not being able to put forth complete veracity of their claim thereby fatally compromising the proceedings. See: Mohammed Abdul Wahid Vs. Nilofer and Another, (2024) 2 SCC 144.

30.1. Value of expert opinion u/s 45: 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) (DB).
(ii) Forest Range Officer vs. P. Mohammed Ali, AIR 1994 SC 120

30.2. Hand-writing expert's opinion u/s 45/73 of Evidence Act can be invoked only for an admitted document: In a suit for declaration and injunction, it is for the plaintiff to prove his case. Section 45 read with Section 73 of the Evidence Act can only be invoked for an admitted document for the purpose of comparison of signatures or handwriting. See: Hussain Bin Awaz Vs. Mittapally Venkataramulu, 2025 LiveLaw (SC) 1083

30.3. Handwriting expert's opinion u/s 45 Evidence Act not to be accepted unless corroborated by other evidence, either direct or circumstantial: 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:

(i) Rattan Singh Vs Nirmal Gill, AIR 2021 SC 899
(ii) (ii).Padum Kumar Vs. State of UP, (2020) 3 SCC 35
(iii) (iii).Sashi Kumar Banerjee vs. Subodh Kumar Banerjee, AIR 1964 SC 529 (Five-Judge Bench)

30.4. Expert evidence not to be treated as substantive evidence: 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).

30.5. Value of Expert Evidence under Section 45 of the Evidence Act: 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.

30.6. Expert evidence is like secondary evidence & not as primary evidence: 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

30.7. 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.

30.8. Courts should be slow in basing their findings on mere handwriting expert's opinion: 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.

30.9. Handwriting expert & appreciation of his opinion evidence: 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.

30.10. Handwriting expert's opinion to be relied upon when supported by other evidence: 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:

(i) Rattan Singh Vs Nirmal Gill, AIR 2021 SC 899
(ii) Alamgir vs. State of NCT, Delhi, (2003) 1 SCC 21

30.11. Effect of adverse remarks against handwriting expert in some of past cases: 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.

30.12. 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.

30.13. Qualifications required of an expert u/s 45, Evidence Act: 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

30.14. Necessary qualifications of an expert u/s 45, Evidence Act: 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

30.15. 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

30.16. 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

30.17. 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)*

2.1. **Court can compare a disputed signature with an admitted one**: Court can compare a disputed signature with an admitted one u/s 73 of the Evidence Act but it would be hazardous to rely solely on this comparison without the assistance of an expert. See: Dharmrao Vs. Syeda Arifa Praveen, (2026) 3 SCC 460 (Para 46.1)

30.18.

30.19. **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)*

30.20. 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 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).*

31. 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

32. 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

33.1. Commissioner's report to be evidence in suit (Or. 26, rule 10(2) CPC): 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.

33.2. Points for commission to be defined by the court (Rule 68, G.R, Civil): 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.

33.3. Commissioner may be examined as witness [Or. 26, rule 10(2) CPC]: 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.

34.1. When Depositions of Witnesses Contain-- (i) Contradictions, (ii) Exaggerations, (iii) Inconsistencies (iv) Embellishments, (v) Falsus in uno, falsus in omnibus: 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

34.2. When two witnesses making contrary statements on the same fact: 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

35. **Electronic records & their appreciation:** 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**.**

36.1. **Public Documents:** Sections 35 & 74 of Evidence Act: A document which fulfills following three conditions is a public document:

(i) that the document is required to be prepared under some laws;
(ii) that such document has been prepared by a public servant;
(iii) that the public servant prepared such document in discharge of his official duty.

36.2. **Certain public documents:** Followings are treated to be public documents.

(i) **Khasara & Khatauni** prepared under land laws.
(ii) **Map** prepared by police officer during investigation of crime. See: Rajasthan State Road Transport Corporation Vs. Nand Kishore, AIR 2001 Rajasthan 334.
(iii) **Court record**. See: P.C. Thomas Vs. P.M. Ismail, (2009) 10 SCC 239.
(iv) **FIR** registered u/s 154 CrPC. See: Hasib Vs. S, AIR 1972 SC 283 and Vimlesh Kumari Vs. Rajendra Kumar, 2010 (4) ALJ (NOC) 422(All).
(v) **Electoral roll (voter list).** See: Raghunath Behera Vs. Balaram Behera, AIR 1996 Orissa 38.
(vi) **Charge sheet** submitted by an investigating officer u/s 173(2) CrPC is a public document within the meaning of Sec. 35 of the Evidence

Act. See: Standard Chartered Bank Vs. Andhra Bank Financial Services Ltd., (2006) 6 SCC 94 (Three-Judge Bench)

(vii) **Statement of a witness or confessional statement of an accused recorded by Magistrate u/s 164 CrPC is a 'Public Document'** within the meaning of Sections 74 & 80 of the Evidence Act" (now u/s 74 & 79 of the BSA) and as such it can be read or used per se by the court without calling the Magistrate as witness to prove it. See: State of Uttar Pradesh Vs. Singhara Singh, AIR 1964 SC 358 (Para 5) (Three-Judge Bench)

(ix) **PMR being public document, its certified copy is admissible:** Since the PMR, FIR & other such documents or public documents therefore their certified copies would be admissible in evidence u/s 63 of the Evidence Act. See : Vimlesh Kumari Vs. Rajendra Kumar, 2010 (4) ALJ (NOC) 422(All)

(x) **Govt school register and T.C. :** So far as the entries made in the official record by an official or person authorized in performance of official duties are concerned, they may be admissible u/s 35 of the Evidence Act but the court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entries in school register or school leaving certificate require to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal case. See:

(v) C. Doddanarayana Reddy Vs. C. Jayarama Reddy, (2020) 4 SCC 659 (Para 18)
(vi) Madan Mohan Singh Vs. Rajni Kant, (2010) 9 SCC 209 (Para 20)
(vii) Updesh Kumar Vs. Prithvi Singh,(2001) 2 SCC 524
(viii) State of Punjab Vs. Mohinder Singh, (2005) 3 SCC 702.

(viii) **Birth and death registers** are public documents. See: Thambi Vs. V.M. Duraisamy, 2009 (76) AIC (Summary of Cases) 11 (Madras).

(ix) Certified copy of registered **Power of Attorney** is not a public document. See: Bidhan Paul Vs. P.C. Ghosh, AIR 2002 Gauhati 46.

(x) **Driving licence** is a public document within the meaning of Section 74 of the Evidence Act and its entries are admissible in evidence under Section 77 of the Evidence Act. There is no further necessity of proving its contents by examining any witness. See: OIC Limited Vs. Smt. Poonam Kesarwani, 2009(3) ALJ 613 (All)(DB).

(xi) **G.O.** issued by Government is a public document. But, its mere cyclo styled copy is not admissible in evidence. See: Union of India Vs. Nirmal Singh, AIR 1987 All 83.

(xii) **Extract of Government notification** published in a newspaper is not admissible in evidence. See: Laxmi Raj Shetty Vs. State of T.N., AIR 1988 SC 1274.

37.1. Document as old as 20 years: Section 90 of Evidence Act: Presumption of its due execution.

37.2. Electronic record as old as 05 years: Section 90A of Evidence Act: Presumption of its due execution.

38.1. 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.

38.2. 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.

38.3. 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.

38.4. Evidence of witness in support of contents of oral agreement admissible: Where the witnesses had deposed that in their presence the parties had negotiated about an oral agreement for reconveyance and such agreement was made, it has been held by the Supreme Court that it will be too hyper technical to contend that the witnesses should not only state that in their presence negotiation for oral agreement was held but they had heard the talks between the parties**.** See: Achutananda Vaidya Vs. Praffulya Kumar Gayen, AIR 1997 SC 2066.

38.5. 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.

38.6. 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.

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

38.8. Section 45-A : Opinion of Examiner of Electronic Evidence

38.9. Section 47-A : Opinion as to electronic signature which relevant

38.10. Section 59 : Proof of facts by oral evidence

38.11. Section 65-A : Special provisions as to evidence relating to electronic record.

38.12. Section 65-B : Admissibility of electronic records

38.13. Section 67-A : Proof as to electronic signature

38.14. Section 73-A : Proof as to verification of digital signature

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

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

38.17. Section 85-B : Presumption as to electronic records and electronic signature

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

38.19. Section 88 : Presumption as to telegraphic messages

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

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

38.22. Section 131 : Production of documents or electronic records which another person, having possession, could refuse to produce.

39.1. Admissibility and evidentiary value of tape recorded conversation (S. 7, Evidence Act): With the introduction of **Information Technology Act, 2000** "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

39.2. Preconditions for admissibility of tape recorded conversation: 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 :

(i) Ram Singh & others Vs. Col. Ram Singh, 1985 (Suppl) SCC 611

(ii) State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715
(known as Parliament attack case)

39.3. Conversation on telephone or mobile & its evidentiary value: 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)

40. Information contained in computers: 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)

41.1. Science of identification of finger-prints has attained near perfection as compared to identification of hand-writing: The science of identification of finger-prints has attained near perfection and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of identification of hand-writing is not nearly so perfect and the risk is, therefore, higher. See:

(i)C. Kamalakkannan Vs, State of Tamil Nadu, (2025) 4 SCC 487 (Para 13)

(ii) Murari Lal Vs. State of MP, (1980) 1 SCC 704 (Paras 4,6,11)

41.2. Finger prints & its evidentiary value: 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.

41.3. Fingerprint experts report not substantive evidence: 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)

41.4. Non-examination of finger print expert & its effect: 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.

41.5. Thumb impression & expert's evidence: 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.

41.6. Science of identification of finger-prints has attained near perfection as compared to identification of hand-writing: The science of identification of finger-prints has attained near perfection and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of identification of hand-writing is not nearly so perfect and the risk is, therefore, higher. See:

(i) C. Kamalakkannan Vs, State of Tamil Nadu, (2025) 4 SCC 487 (Para 13)

(ii) Murari Lal Vs. State of MP, (1980) 1 SCC 704 (Paras 4,6,11)

42. **Typewriter expert:** 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).

43.1 **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. Following material questions are required to be gone into for grant of the relief of specific performance:

(i) whether there exists a valid and concluded contract between the parties for sale/ purchase of the suit property

(ii) whether the plaintiff has been ready and willing to perform his part of the contract and whether he is still ready and willing to perform his part as mentioned in the contract

(iii) 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 extent if such relief is eventually granted to the plaintiff.

(iv) 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.

43.2 Suit for specific performance can't be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement: In the case noted below, the Hon'ble Supreme Court has held that every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. The courts will also "frown" upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three-year period is intended to assist the purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part-performance, where equity shifts in favour of the purchaser.

(i) The courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) The courts will apply greater scrutiny and strictness when considering whether the purchaser was "ready and willing" to perform his part of the contract. See: K.S. Vidyanadam v. Vairavan, (1997) 3 SCC 1

43.3 Steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance: It would amount to injustice to hold that a vendor who took a very meagre sum as earnest money, and agreed that the rest of the consideration would be paid within a stipulated period of time, did not intend that time was of essence to the contract. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific

performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and "non-readiness". The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and received rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees." See: Saradamani Kandappan v. S. Rajalakshmi, (2011) 12 SCC 18 (Para 37)

43.4 A case involving specific performance of an agreement can also be decided by Arbitrator : A case involving specific performance of an agreement can also be decided by Arbitrator under Arbitration and Conciliation Act, 1996. See:

(i) Deccan Paper Mills Company Limited Vs. Regency Mahavir Properties, (2021) 4 SCC 786 (Three-Judge Bench) (Para 23)

(ii) Olympus Superstructures (P) Limited Vs. Meena Vijay Khetan, (1999) 5 SCC 651

43. Agreement for sale does not convey title to prospective purchaser: Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the

prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53-A of the Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transferor or any person claiming under him. See: Ghanshyam Vs. Yogendra Rathi, (2023) 7 SCC 361.

44. Undivided share of co-parcener can be transferred but possession cannot be handed over to him: An undivided share of co-parcener (co-sharer) can be transferred but possession cannot be handed over to vendee unless the property is partitioned by metes and bounds either by decree of court in partition suit or by settlement among co-sharers. See:

(i) Gajara Vishnu Gosavi Vs. Prakash Nanasahed Kamble, (2010) 2 SCC 1105 (Para 13)
(ii) Ramdas Vs. Sitabai, (2009) 7 SCC 444 (Para 14)
(iii)M.V.S.Manikayala Rao Vs Narasimhaswami, AIR 1966 SC 470 (Para 5)
(iv) Sidheshwar Mukherjee Vs, Bhubneshwar Prasad Narain Sing, AIR 1953 SC 487
(v)

45. Court can refuse to examine the case of the party on merits if it misleads the court and does not place before it all the material facts: If a party does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits and such a party requires to be dealt with for contempt of court for abusing the process of the court. See: Kusha Vs. State of Odisha, (2024) 4 SCC 432.

46. Hiba (Gift) by Muslim and its requirements: A written document recording the gift does not become a formal instrument of gift. Even an oral gift that fulfills the three necessary conditions is to be treated to be a valid gift. Following are the essential requirements of a valid gift:

(i) Hiba of moveable or immovable property made by a Muslim to a Muslim or non-Muslim:

(ii) a clear manifestation of wish to give on the part of the donor

(iii) acceptance of the gift on the part of the donee

(iv) taking possession of the subject-matter of gift by the donee. See: Dharmrao Vs. Syeda Arifa Praveen, (2026) 3 SCC 460 (Paras 53 to 54.5)

47. Direction of Supreme Court to Trial Courts to prepare chart for systematic presentation and exhibition of documents and producing the same in judgments: The Supreme Court has issued directions to all Trial Courts to prepare a chart for systematic presentation and exhibition of documents and producing the same in the judgments. The directions of the Supreme Court as issued by it on 15.12.2025 are reproduced below:

Preparation of Tabulated Charts in all the judgments:

(1) All trial Courts dealing with criminal matters shall, at the conclusion of the judgment, incorporate tabulated charts summarizing- a. Witnesses examined; b. Documents exhibited, and c. Material objects (muddamal) produced and exhibited.

(2) These charts shall form an appendix or concluding segment of the judgment and shall be prepared in a clear, structured and easily comprehensible format.

Standardized Chart of Witnesses:

(1) Each criminal judgment shall contain a witness chart with at least these columns- a. Serial Number; b. Name of the Witness c. Brief Description/Role of the Witness, such as: Informant, Eyewitness, Medical Jurist/Doctor, Investigating Officer (I.O.), Panch Witness, etc.

(2) The description should be succinct but sufficient to indicate the evidentiary character of the witness. This structured presentation will allow quick reference to the nature of testimony, assist in locating the witness in the record and minimize ambiguity.

(3) The judgment featured a Specimen Chart for Witnesses Examined for reference.

Standardized Chart of Exhibited Documents:

(1) A separate chart shall be prepared for all documents exhibited during trial. This chart shall include- a. Exhibit Number; b. Description of document; c. The Witness who proved or attested the document.

(2) Illustratively, the description may include: FIR, complaint, panchnamas, medical certificates, FSL reports, seizure memos, site plans, dying declarations, etc.

(3) The requirement of specifying the witness who proved the document ensures traceability of proof and assist the Court in appreciating compliance with the Evidence Act, 1872/Bharatiya Sakshya Adhiniyam, 2023.

(4) The Judgment also attached a Specimen Chart for Exhibited Documents for reference.

Standardized Chart of Material Objects/Muddamals:

(1) Whenever material objects are produced and marked as exhibits, the trial Court shall prepare a third chart with- a. Material Object (M.O.) Number; b. Description of the Object; c. Witness who proved the Object’s Relevance (e.g., weapon, clothing, tool, article seized under panchnama, etc.)

(2) This enables clarity regarding the physical evidence relied upon.

(3) The judgment attached a Specimen Chart for Material Objects/Muddamals

Special Provisions for Cases Involving Voluminous Evidence:

(1) In complex cases, such as conspiracies, economic offences or trials involving voluminous oral or documentary evidence, the list of witnesses and exhibits may be substantially long. Where the number of witnesses or documents is unusually large, the trial Court may

prepare charts only for the material, relevant, and relied-upon witnesses and documents, clearly indicating that the chart is confined to such items. This ensures that the charts remain functional reference tools rather than unwieldy compilations.

Application to Defence Witnesses and Evidence:

(1) The aforesaid directions shall apply, mutatis mutandis, to all witnesses examined and all evidence adduced by the defence.

Adoption of Specimen Format and Permissible Deviations:

(1) The specimen charts provided in the judgment shall ordinarily serve as the standard format to be followed by trial Courts across the country.

Observations Regarding Applicability to Civil Proceedings:

(1) While these directions are primarily intended to streamline criminal trials, we leave it open to the High Courts to consider, wherever appropriate, the adoption of similar tabulated formats in civil matters as well, particularly in cases involving voluminous documentary or oral evidence, so as to promote clarity, uniformity, and ease of reference.

(2) The Supreme Court further directed that the High Courts may consider incorporating the above directions in their respective rules governing the procedure of trial Courts. **See:** Judgement dated 15.12.2025 of the Supreme Court passed in Manojbhai Jethabhai Parmar Vs. State of Gujarat, 2025 SCC OnLine SC 2803.

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