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Mode of Proof of Documents in Evidence

Proving of documents- Meaning

The Indian Evidence Act, 1872 (for short "**Evidence Act**") contemplates that when a document is produced in evidence, its existence, execution, and contents must be proved in order to be taken into account for complementing the veracity of the facts of the case. Sufficiency of proof is an important factor in the process of admissibility of such document as evidence by a court.

Section 61 of the Act states that the contents of documents may be proved either by primary or secondary evidence. Section 65 lists down circumstances under which a document would have to be proved through secondary evidence. In all other cases documents are to be proved by primary evidence (Section 64).

In cases of public documents, Section 76 provides that on a demand made by or on behalf of a rightful person, the public officer may give certified copies of public documents. According to Section 77, such certified copies may be used for proving the contents of the public documents. Thus, certification by a public officer is a valid way of proving a public document in ordinary course.

Sasan Power Limited vs. North American Coal Corporation (India) (P) Ltd. (2016) 10 SCC 813 has laid down the principles of proof of documents. The Supreme Court held, when an understanding between the parties is reduced to writing in a document, no proof other than the document must be given in evidence. In such cases, the document itself may be produced or its 'secondary evidence'.

Proved, Disproved and Not proved

Section 3 defines these three terms as:

"Proved"- A fact is said to be proved, either when the court believes its existence or considers its existence to be so probable that any prudent man would act on the supposition of its existence.

"Disproved"- A fact is said to be disproved, either when the court believes its non-existence or considers its non-existence to be so probable that any prudent man would act on the supposition of its non-existence.

"Not proved"- When a fact is neither proved nor disproved, it is not proved.

Both in the cases of proved and disproved, the question that is sought to be answered is in relation to the existence of a fact. When the answer is in the affirmative, the fact is proved and when the answer is in the negative, i.e., when the existence is not found, the fact is said to be disproved.

However, **State of A.P. vs. V. Vasudeva Rao** (2004) 9 SCC 319 clarified that unless a fact is disproved or dispelled, the court can treat the presumption of proof as tantamounting to proof. This was also ingeminated in **Union of India vs. Pramod Gupta** (2005) 12 SCC 1 that wherever under the Evidence Act it is directed to the court to presume a fact, such fact shall be regarded as proved, unless disproved.

R.V.E. VenkatachalaGounder vs. Arulmigu-Viswesaraswami & V.P. Temple (2003) 8 SCC 752 has laid down the anvil for testing of "proved", "disproved", and "not proved". It held that the evaluation of the result against such test shall be drawn by the applicability of the rule. The plaintiff cannot be expected to prove his title beyond a reasonable doubt and when the degree of probability is high enough to lend assurance to the existence of the title, the onus must then shift upon the defendant. Unless the defendant is successful in shifting back the onus by presenting relevant facts, the title of the plaintiff shall stand proved.

Presumption as to documents

Presumption, generally, means to pre-assume a fact or an idea to be true on the basis of probability. The Evidence Act recognizes the theory of presumption and states numerous circumstances under which a court may presume genuineness or authenticity of a document without the parties having to prove the same.

Section 79 stipulates that certificates or duly certified copies shall be presumed to be genuine by a court when the Law declares such certificate or document certified by an officer of Central or State government to be admissible as evidence.



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Section 114 states that a court may presume existence of certain facts. **In State of A.P. vs. Star Bone Mill & Fertiliser Co.**, (2013) 9 SCC 319 the Supreme Court held that the presumption read under Section 114 applies only in cases where there is either no proof or very little proof on either side.

Burden of Proof

Part III of the Evidence Act deals with production and effect of evidence. Section 101 contemplates that when a document is produced, the burden of proof as to existence of the facts corroborated by such document, lies upon the person who seeks to have a legal right asserted by a court.

Further, section 102 clarifies that the burden of proof essentially lies on the person who would lose his argument or fail in the suit or proceeding if no evidence at all were produced on either side.

Under section 105, the Act states that when a person is an accused under any law and seeks to take refuge under an exception provided under such law, then the burden of proving the circumstances that fall under such exceptions is upon the accused. Unless such circumstance is proved, the court shall presume that it does not exist.

In **Anil Rishi vs. Gurbaksh Singh** (2006) 5 SCC 558, the Supreme Court held that the elementary rule under section 101 was inflexible although it may not be universally applicable and there may be exception thereto. However, the hardship in proving the affirmative of an issue shall not reverse the burden of proof.

The Supreme Court has also clarified that adverse inference may be drawn against a party withholding best evidence although the burden of proof did not lie upon that party or it was not called upon to produce it. [**Gopal Krishnaji Ketkar vs. Mohamed Haji Latif AIR 1968 SC 1413**]

Proof of a document when the contents and existence are both denied

When the contents and existence of a document are both denied, it becomes necessary to prove such document. However, the mode of proof shall remain the same as discussed earlier, i.e., through primary or secondary evidence. The ordinary course in case of disputed documents is to produce the original directly (primary evidence) and then ascertain its originality in evidence by the person who made/signed/executed it.

Conclusion

It can be ascertained thus, that a document produced before a court is to be proved either through primary or secondary evidence, i.e., either in originals or the copy of such document as may be permissible in view of section 63 of the Indian Evidence Act. The mode of proof of disputed document is also similar, yet, in such cases, the mode of obtaining the document shall also be proved. The Court in **Narba-da Devi Gupta vs. Birendra Kumar Jaiswal** (2003) 8 SCC 745 held that execution of a document has to be proved by admissible evidence through persons who can vouchsafe for the truth of the facts in issue. However, when the documents and their signatures are admitted by the opposite party then parties do not need to lead evidence to prove such documents.