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(DISTRICT DANTEWADA, JAGDALPUR, KANKER AND KONDAGAON)

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**TOPIC: PROCEDURE RELATING TO PRESENTING OF DOCUMENTS DURING
EVIDENCE AND ADMISSIBILITY OF DOCUMENTARY EVIDENCE**

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INTRODUCTION

➤ **What is Documentary Evidence?**

Documentary evidence means and includes all documents including electronic records produced for the inspection of the Court.

Document means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used for the purpose of recording that matter.

In order to prove the documents original document is to be produced. Contents of it are to be proved so also signature on the same have to be proved. When document appeals to the conscious of the Court that it is genuine, contents of the same need not be proved (AIR 2001 SC 318 “M. Narsinga Rao vs. State of Andhra Pradesh”).

➤ **Importance of exhibiting/markings of documents:**

The identity given to a document would help the court and party refer easily to those documents. Instead of saying "*Statement under Section 161 of CrPC of Victim A*" each time, the document can be referred to as *Ex. PW1/A*. The lawyers can address final arguments with ease and the judge can refer to those documents in a judgment with less confusion. It also helps the appellate courts in locating and referring to the documents.

➤ Documents to be utilised in court has to pass through three steps. They are:

1. Production of documents in court
2. Admittance and exhibition.
3. Proof.

DOCUMENTARY EVIDENCE

- Section 3 defines Documentary Evidence – All documents presented before the court for inspection, to demonstrate or show a reality are called documentary evidence.
- Chapter 5 of the Indian Evidence Act deals with documentary evidence.
- Section 61 to 90A falls under this chapter.
- Sections 61 to 73A deal with the general rules for proving documentary evidence in various cases
- Specifically Sections 61-66 of the Act, which gives answers to the questions that how the contents of a document are to be proved.
- Sections 74 to 78 deal with public documents.
- Section 79 to 90-A deal with presumptions as to documents.
- Hence the law of evidence recognizes the superiority and credibility of documentary evidence as against oral evidence.

➤ **Public Documents (Section 74)**

A public document is a reproduction of an entry contained in some kind of public register, book or record relating to relevant facts or a certified copy issued by an authority.

Documents such as a birth certificate, marriage certificate, a bill of a public water utility, an FIR filed before the police station etc are some examples of public documents.

➤ **Private Documents (Section 75)**

Documents like letters, agreements, emails, etc. which are exchanged between contesting parties to a litigation are private documents.

Courts generally lean in favour of accepting public documents more readily than private documents as the presumption is that the risk of tampering with public documents is far less.

➤ **Contents in documentary evidence can be proved by the following (Section 61):**

a) Primary Evidence (Section 62)

These are the “original documents” that are produced in the court for inspection.

There are 2 special circumstances explained under this section:

When a document is executed in parts. In such cases, each part is the primary evidence of the document.

Where several documents are made by one uniform process such as printing, lithography or photography, each is the primary evidence for the contents of the rest.

- **Prithi Chand V. State of H.P. 1889:** A carbon copy was made by uniform process of the certificate of doctor given in the performance of professional duty. It was held to be primary evidence within a meaning of explanation to Section 62
- **Murarka Properties Private Limited v Bihari Lal Murarka (1978):** It was held by the Supreme Court that where there is documentary evidence available the oral evidence must not be given much weight

b) Secondary Evidence (Section 63)

Section 63 of the Act provides Secondary Evidence.

Secondary evidence means and includes:

Certified copies, copies made from the original using a mechanical process while ensuring the accuracy of the copy, copies made from and compared with the original, oral accounts of the contents of a document given by some person who has seen it, when the contents of a document are to be verified by oral evidence then such document becomes secondary evidence. In the case of **Afzauddin Ansari vs State of West Bengal (1997)**, it was held that a man may lie but a document will never lie.

PRODUCTION OF DOCUMENTS

A document to be used in court has to pass through three steps. They are:

1. Production of documents in court
2. Admission and exhibition
3. Proof (formal proof and truth of contents).

Production of documents in evidence:

→ **Under Civil Law:**

Code of Civil Procedure, Order VII rule 14, Order VIII rule 8A and Order XIII rule 1 say as to ‘**Production**’ of documents in court at various stages. At these stages the opposite party may not have

a right to object. But the Court or even the office of the court (registry) can raise and note objection on the ground of insufficiency of stamp by virtue of the provisions of the Stamp Act concerned.

Order V rule 7 requires that the summons to the defendant to appear and answer shall order **to produce** all documents or copies thereof specified in rule 1A of Order VIII in his possession or power upon which he intends to rely in support of his case.

Order XIII rule 4 directs following endorsements on every document which has been admitted in evidence in the Suit:

- (a) the number and title of the suit,
- (b) the name of the person producing the document,
- (c) the date on which it was produced, and
- (d) a statement of its having been so admitted.

→ Under Criminal Law:

Code of Criminal Procedure, Section 173, deals with production of Police Report before the court, on completion of investigation. Sub section (5) of this section requires the police officer to forward to the Magistrate along with the report-

- “(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;
- (b) the statements- recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.”

Sec. 294 Cr PC deals with production of documents before court, and as to its proof.

- “294. No formal proof of certain documents. (1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.
- (2) The list of documents shall be in such form as may be prescribed by the State Government.
- (3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:
- Provided that the Court may, in its discretion, require such signature to be proved.”

ADMISSIBILITY OF DOCUMENTS

- In Civil proceedings- In Civil proceedings, an element of a case is weighed by the standard or superiority or power of the evidence. However, the evidence produced is generally government documents such as leases, sale deeds, rent agreements, gift deeds, etc.
- In Criminal proceedings- In Criminal proceedings, the evidence is used to prove whether the defendant in a disputed matter is guilty or not beyond a reasonable doubt. However, in criminal proceedings evidence can only be used when it is considered admissible and relevant to the facts or issues or matter or any other factor of dispute. The decision of whether an evidence is admissible or not is on the Court's discretion.

➤ **What constitutes admissible evidence under the Indian Evidence Act, 1872?**

Evidence under the Indian Evidence Act, 1872 means and includes:

- 1 All the statements which are permissible and admissible by the Court made by the witnesses before it or in front of the magistrate, regarding the matters of a dispute under question.
- 2 All the documents produced for inspection as per the order of the Court including the electronic records.

The general rule is that all relevant evidence is admissible and irrelevant evidence is inadmissible. So, to be admissible, every item of evidence must tend to prove or disprove a fact at issue in the case. If the evidence is not related to a fact at issue in a case, it is irrelevant and is, therefore, inadmissible.

➤ **Admissibility of document Tested First; Then only, Genuineness, Veracity, etc.**

In Anvar PV v. PK Basheer, AIR 2015 SC 180: (2014)10 SCC 473, it is held as under:

- “Genuineness, veracity or reliability of the evidence is seen by the court only after the stage of relevancy and admissibility.”

Generally speaking, all relevant documents are admissible. But, various provisions of the Evidence Act, Civil and Criminal Procedure Codes, Stamp Act, Registration Act, etc. stipulate various

formalities or regulations for tendering documents in evidence. ‘Relevancy’ is a matter of judicial application of the mind by the court. But, ‘admissibility’ is governed solely by the legal principles.

➤ **Probative Value of Documents**

Whenever a document is admitted in court, the probative value thereof will be a matter for the court to determine.

State of Bihar v. Radha Krishna Singh (AIR 1983 SC 684) it is observed:

- “Admissibility of a document is one thing and its probative value quite another—these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and weight or its probative value may be nil.”

➤ **Objection Regarding Admissibility of Documents** –

Disputes on admissibility of documents arise on 2 domains. In **Manakishore Lalbhai Vs. New Era Fabrics**: AIR 2015 SC 3796:

1. document which is ab initio (or inherently) ‘inadmissible’
2. document liable to be objected on ‘mode or manner of proof’.

Even if an inherently-inadmissible document is marked, objections thereto can be raised ‘at a later stage’. Mode of proof (not inherent admissibility) falls within the realm of procedural law. Therefore, objection thereto can be waived.

➤ **Inherently-inadmissible documents**

‘Inherent-inadmissibility of documents’ arises from the following:

1. Irrelevancy
2. Non-registration.

Section 5 of the Indian Evidence Act, 1872 deals with relevancy. It reads as under:

- “5. Evidence may be given of facts in issue and relevant facts.—Evidence may be given in any suit or proceedings of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.
- Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure

- Illustration s (a) A is tried for the murder of B by beating him with a club with the intention of causing his death. At A's trial the following facts are in issue:— A's beating B with the club; A's causing B's death by such beating; A's intention to cause B's death.
- (b) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.”

In *Jainab Bibi Saheb v. Hyderally Saheb*, (1920) 38 MLJ 532, it was pointed out that neither an omission by an advocate to object to giving of irrelevant and inadmissible evidence nor the failure of the tribunal to exclude it of its own motion would validate a decree based on material which the Evidence Act declares to be inherently and in substance irrelevant to the issue. It was also held in this decision that the primary rule to prove relevant facts by the evidence of witnesses is to call them before the trial Judge and examine them *viva voce* in the manner stated in Chapter 10 of the Evidence Act.

➤ **Document liable to be Objected on ‘Mode or Manner of Proof’**

Following are *proper* modes:

- Exhibition through one who can vouchsafe veracity.
- Admissible mode of secondary evidence. Eg: Certified copy be produced proving circumstances that entitles to give secondary evidence under Sec. 65 of the Evid. Act.
- Secondary evidence that is recognised under Sec. 63 alone be tendered as secondary evidence.
- Production of properly stamped document.

➤ **Objection to be raised – when document is admitted**

It was observed by the Supreme Court in 2001 in ***Bipin Shantilal Panchal v. State of Gujarat***, AIR 2001 SC 1158, that that ‘it is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection’. And the Court directed as under:

“When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit

in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment.”

But, the subsequent decisions in **R.V.E. Venkatachala Gounder**: AIR 2004 SC 4082; **Smt. Dayamathi Bai v. K.M. Shaffi**, AIR 2004 SC 4082: (2004) 7 SCC 107 took a contra view. It was held that the objection as to ‘mode of proof’ should be taken at the time of marking of the document as an exhibit, so that the defect can be cured by the affected party.

➤ Document Marked in Proof Affidavit, Court Records it – Objection in Cross Examination – Effect

Our Procedural Codes do not specifically speak about it. The general assumption is that when a document is marked as an exhibit without objection from the opposite party which is affected by that document, its admissibility cannot be questioned at a later stage of the proceedings in the suit. Will it be sufficient if the admissibility is challenged in cross examination of the witness through whom it is exhibited? Several propositions are seen raised.

1. Court evaluates documents only in Final Hearing. Hence, court cannot ignore the objection of the opposite party raised in cross examination.
2. For no objection at the time of ‘recording it by court’, objection raised in cross examination stand belated.
3. If a document ‘liable to be objected on mode or manner of proof,’ is allowed to be marked, or no objection is raised at that ‘proper’ time, subsequent cross examination is of no use.

It goes without saying that the pedantic approach in the latter propositions will adorn only over-scrupulous judges. It is clear from our Apex Court decision in *Lachhmi Narain Singh v. Sarjug Singh*, AIR 2021 SC 3873, which lays down as under:

- “24. In view of the foregoing discussion, it is clear that plea regarding mode of proof cannot be permitted to be taken at the *appellate stage for the first time*, if not raised before the trial Court at the appropriate stage. This is to avoid prejudice to the party who produced the certified copy of an original document without protest by the other side. If such objection was raised before trial court, then the concerned party could have cured the mode of proof by summoning the original copy of document. But such opportunity may not be available or possible at a later stage. Therefore, allowing such objection to be raised during the appellate stage would put the party (who placed certified copy on record instead of original copy) in a jeopardy & would seriously prejudice interests of that party. It will also be inconsistent with

the rule of fair play as propounded by Justice Ashok Bhan in the case of RVE Venkatachala Gounder v. Arulmigu, AIR 2003 SC 4548.”

➤ **Court’s Jurisdiction to Require to Prove an Admitted Document**

In any case, besides the powers of the court under Sec. 165 of Evidence Act, the scheme of the Procedural Acts (Evidence Act, CPC and CrPC) shows that the court has jurisdiction to require the party concerned to prove that document. We can rely on Sec. 58 of Evidence Act and Order XII, Rule 2A Proviso of the CPC and Sec. 294 of the CrPC to see the scheme of the procedural laws.

Section 294 of Code of Criminal Procedure reads as follows:

- “294. No formal proof of certain documents. (1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.
- (2) The list of documents shall be in such form as may be prescribed by the State Government.
- (3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:
- Provided that the Court may, in its discretion, require such signature to be proved.”

➤ **Mere marking– not dispense with proof (of truth of contents)**

In **Sait Tarajee Khimchand v. Yelamarti Satyam**, AIR 1971 SC 1865, the Supreme Court observed that mere marking of documents (day book and ledger) as exhibits do not dispense with the proof of documents. In **Nandkishore Lalbhai Mehta Vs. New Era Fabrics**, AIR 2015 SC 3796, it is observed that mere marking as exhibit and identification of executor’s signature by one of witnesses do not prove contents of a document.

In **Narbada Devi Gupta v. Birendra Kumar Jaiswal**, AIR 2004 SC 175, it is held as under:

- “The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the “evidence of those persons who can vouchsafe for the truth of the facts in issue”

In **Kaliya Vs. State of Madhya Pradesh** (2013-10 SCC 758) it is held as under:

- “Mere admission of a document in evidence does not amount to its proof. Nor, mere marking of exhibit on a document does not dispense with its proof, which is otherwise required to be done in accordance with law.

➤ **Insufficiently Stamped Documents – Effect of Marking Without Objection**

Insufficiency of Stamp: Sec. 35 of the Indian Stamp Act reads as under:

- “35. Instruments not duly stamped inadmissible in evidence, etc.- No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:
- Provided that-(a)any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;”

Privy Council in **Ram Rattan v. Parma Nath**, AIR 1946 PC 51, held that section 35 of the Stamp Act prohibited the unstamped (or inadequately stamped) document from being looked at even for any collateral purpose, as it enacts that no instrument chargeable with duty shall be admitted in evidence ‘for any purpose’. The unstamped (or inadequately stamped) document becomes admissible on payment of penalty under Stamp Act or on payment of the stamp duty after impounding.

The Apex Court held in **Javer Chand v. Pukhraj Surana**, AIR 1961 SC 1655, as under:

- “Where a question as to the admissibility of a document is raised on the ground that it has not been stamped, or has not been properly stamped, it has to be decided then and there when the document is tendered in evidence. The Court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case. ... Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, S. 36 of the Stamp Act comes

into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the Trial Court itself or to a Court of Appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction.”

S. 35 of the Stamp Act (Present View):

In **Omprakash v. Laxminarayan**, (2014) 1 SCC 618, the Apex Court observed as under:

- “From a plain reading of the aforesaid provision (S. 35 of the Stamp Act), it is evident that an authority to receive evidence shall not admit any instrument unless it is duly stamped. An instrument not duly stamped shall be admitted in evidence on payment of the duty with which the same is chargeable or in the case of an instrument insufficiently stamped, of the amount required to make up such duty together with penalty. As we have observed earlier, the deed of agreement having been insufficiently stamped, the same was inadmissible in evidence. The court being an authority to receive a document in evidence to give effect thereto, the agreement to sell with possession is an instrument which requires payment of the stamp duty applicable to a deed of conveyance. Duty as required, has not been paid and, hence, the trial court rightly held the same to be inadmissible in evidence.”

The Apex Court upheld the observation of the MP High Court in Writ Petition No. 6464 of 2008, overruling the impugned judgment (*Laxminarayan v. Omprakash* 2008 (2) MPLJ 416). The High Court observed in Writ Petition as under:

- “8. A document would be admissible on basis of the recitals made in the document and not on basis of the pleadings raised by the parties. 9. It would be trite to say that if in a document certain recitals are made then the Court would decide the admissibility of the document on the strength of such recitals and not otherwise. In a given case, if there is an absolute unregistered sale deed and the parties say that the same is not required to be registered then we don’t think that the Court would be entitled to admit the document because simply the parties say so. The jurisdiction of the Court flows from Sec. 33, 35 and 38 of the Indian Stamp Act and the Court has to decide the question of admissibility. With all humility at our command we overrule the judgment in the matter of *Laxminarayan* (supra).”

➤ **Impounding of Documents – When Produced or When Exhibited**

In **Yogesh Kumar Sikka v. Monika** (2019) the P & H High Court held as under:

- “12. Court cannot say that it would impound the document only when the document is tendered in evidence for marking. There may be instances where duty and penalty payable

may be very high and the party may not choose to rely upon such insufficiently stamped document in order to avoid stamp duty and penalty. In such circumstances, it would result in loss of revenue to the exchequer. The power of impounding a document is to collect stamp duty and penalty whenever there is an escape of duty. Therefore, when it is brought to the notice of the Court that a document is insufficiently stamped, the Court exercising its power under S. 33 of the Act has to pass an order at the first instance for impounding the document. Though there is a discretion vested in the Court to exercise powers under S. 33 and 34 of the Act, no Court can hold that it would wait till the document is tendered in evidence. In such circumstances, there may be chances of loss of revenue to the exchequer.”

➤ **Unregistered Documents – Effect of Marking Without Objection**

Under section 49 of the Registration Act, if a document required to be registered is not registered, it is not admissible in evidence ; and such unregistered document can only be used as an evidence of collateral purpose.

With respect to Unregistered (Necessarily Registrable) Documents it is held by the Apex Court in **K.B. Saha and Sons Private Limited v. Development Consultant Ltd**, (2008) 8 SCC 564: AIR 2008 SC (Supp) 850, as under:

- “34. From the principles laid down in the various decisions of this Court and the High Courts, as referred to here-in-above, it is evident that :
- A document required to be registered is not admissible into evidence under section 49 of the Registration Act.
- 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.”

In the light of the Supreme Court decision in **K.B. Saha and Sons Private Limited**, it appears that the observation of the Karnataka High Court in *Nanda Behera v. Akhsaya Kumar Behera*, 2017AIR (CC) 1893, that once the Court, rightly or wrongly, decides to admit the documents in evidence, so far as the parties are concerned, the matter is closed, is not applicable to unregistered (compulsorily registrable) documents.

However, the Calcutta High Court in *Dipak Kumar Singh v. Park Street Properties (P) Limited*, AIR 2014 Cal 167, distinguished *K.B. Saha & Sons Private Limited*, (2008) 8 SCC 564, and other decisions saying that ‘the question of admissibility of a document, which had been admitted in evidence, was not taken up for consideration’ in those decisions. The High Court relied on *Javer Chand v. Pukhraj Surana*, AIR 1961 SC 1655 (question as to admissibility on the ground that it has

not been stamped), which held that once a document had been marked as an exhibit in a case and the trial had proceeded all along on the footing that the document was an exhibit in the case and had been used by the parties in examination and cross-examination of their witnesses, it was not open either to the trial court itself or to a court of appeal or revision to go behind that order.

RELEVANCY OF EVIDENCE

Sec. 5 and 136 of the Evidence Act stipulate that evidence can be given only on ‘facts in issue’ or ‘relevant facts’. Relevant facts are enumerated in Sec. 6 onwards. Documents used in a case have to pass through three steps.

They are:

- Production of documents in court
- Admittance and exhibition.
- Proof.

➤ **Evidence – Three Classes**

On a broad classification, ‘evidence’ can be arrayed into following categories.

- First, oral evidence
- Second, documentary evidence including electronic records and material objects
- **Third, Opinions of experts** including views of persons specially skilled in foreign law, science or art, or in questions as to identify of handwriting or finger-impressions. It may also be termed as scientific evidence.

➤ **Modes of Proof of Documents**

Modes of Proof of Documents (as to, both, ‘formal proof’ and ‘truth of the contents’) include the following:

- Admission of the person who wrote or signed the document (Sec. 17, 21, 58, 67, 70).
- Evidence of a person in whose presence the document was signed or written – ocular evidence (Sec. 59).
- An attesting witness (Sec. 59).
- Opinion of a person who is acquainted with the writing of the person who signed or wrote (Sec. 47).
- Admission made by the person who signed or wrote the document made in judicial proceedings (Sec. 32, 33).

- Evidence of a handwriting expert-opinion evidence/scientific evidence (Sec.45).
- Evidence of a person who in routine has been receiving the document; or a document signed by such a person in the ordinary course of his business or official duty, though he may have never seen the author signing the document (Sec. 32, 34, 35 or 114).
- Invoking (specific) presumptions under Sec. 79 to 90A.
- Presumptions (general) under Sec. 114.
- Circumstantial evidence: on probability or inferences (Sec. 114).
- Court-comparison (Sec. 73).
- Facts judicially noticeable (Sec. 56 and 57).
- A fact of common-knowledge. (It does not require proof. See: Union Of India Vs. Virendra Bharti: 2011-2 ACC 886, 2010 ACJ 2353; Rakhal Chakraborty Vs. Sanjib Kumar Roy: 1998-1 GauLR 253, 1997-2 GauLT 705)
- Internal evidence afforded by the contents of the document; a link in a chain of correspondence; recipient of the document. (Mobarik Ali Ahmed Vs. State of Bombay, AIR 1957 SC 857)

➤ **Modes of Proof of Documents Required By Law To Be Attested.**

Section 68 of the Evidence Act provides that the documents required by law to be attested shall not be used in evidence until at least one attesting witness has been examined, if there be

- (i) an attesting witness alive,
- (ii) he is subject to the process of court and
- (iii) he is capable of giving evidence.

But, the proviso lays down that if its execution is not specifically denied by the person by whom it purports to have been executed, it shall not be necessary to call an attesting witness in proof of the execution of any document *not being a Will* if such document is registered in accordance with the provisions of Indian Registration Act, 1908. That is, for the purpose of proving the Will, the examination of the attesting witness is necessary.

Following documents are required by law to be attested by two or more attesting witnesses.

- a. Will: section 63 of the Succession Act.
- b. Mortgage deed: section 59 of the T P Act.
- c. Gift deed: section 123 of the T P Act.
- d. Bond: 2(5) of the Indian Stamp Act, 1899.

CONCLUSION

From the above stated legal provisions, case laws and discussions, the legal position emerges as the following:

(i) Even when a document is technically admitted in court, the *probative value* thereof will always be a matter for the court and it is depended upon the nature of each case.

(ii) Whenever the court considers:

- (a) mere marking of a document **on admission** will not amount to proof, or evidence of the contents of the document or its truth; or
- (b) the **probative value** of a document 'marked without objection' is *low or nil*, for want of proper proof; or
- (c) there is a formal defect to the document for it is a secondary evidence because it is produced without adducing 'foundational evidence';

then,

before taking an adverse stance as to proof in this count, the court should give an opportunity to the party who relies on the document to cure the deficiency.