DOCUMENTARY EVIDENCE

Raja Mahadeva Royal vs. Raja Virabasava Chikka royal & ors., AIR 1948 PC 114.

(Re : Secondary evidence of document)

The documents which are merely copies of copies, the originals not having been satisfactorily accounted for are inadmissible in evidence.

Madholal Sindhu vs. Asian Assurance Co. Ltd., AIR 1954 Bombay 305

***(Re : Direct Evidence*)**

Under Section 67 of the Evidence Act the contents could not be proved by proving the handwriting or the signature on a document, if the witness had no personal knowledge about the contents of the document. Hence, such documents are not admissible in evidence.

(Hence, it is futile to prove the signature without calling the signatory to depose.)

Mobarak Ali Ahmed vs. State of Bombay, AIR 1957 SC 857

(*Re : chain of correspondence*)

The genuineness of a document is proof of the authorship of the document and is proof of a fact like that of any other fact.

It may consist of direct evidence of a person who saw the document being written or signature being affixed. It may be proof of the contents or of the signature by one of the modes provided in Sections 45 and 47 of the Indian Evidence Act.

It may be proved by internal evidence afforded by the contents of the documents. This last mode of proof by the contents may be of considerable value where the disputed document purports to be link in a chain of correspondence, some links in which are proved to the satisfaction of the Court. In such a situation, the person who is the recipient of the document, be it either a letter or a telegram, would be in a reasonably good position both with reference to his prior knowledge of the writing or the signature as also his knowledge of the subject matter of the chain of correspondence to speak of its authorship.

In an appropriate case the Court may also be in a position to judge whether the document constitutes a genuine link in the chain of correspondence and thus to determine its authorship.

Under Section 88 there is a presumption only that the message received by the addressee corresponds with the

message delivered for transmission at the office of origin. There is no presumption as to the person who delivered such a message for transmission. But proof of authorship of the message need not be direct and may be circumstantial. The contents of the message received in the context of chain of correspondence may well furnish proof of the authorship of the message at the dispatching end.

Smt.Krishna Subala Bose vs. Dhanapati Dutta, AIR 1957 Calcutta 59 & 63.

(*Re : Secondary evidence of documents*)

When a copy is prepared from another copy, it does not come within the meaning of secondary evidence in Section 63, Evidence Act unless it is compared with the original.

(Hence a copy of the copy of the document is not secondary evidence.)

The fact that a document was admitted without any objection from a party, does not entitle the Court to admit in evidence which in law inadmissible.

Madamanchi Ramappa vs. Muthaluru Bujjappa, AIR 1963 S.C. 1633

(*Re : Proof of certified copy of a public document*)

The document which is a certified copy of a public document, need not be proved by calling a witness.

Sir Mohammed Yusuf vs. D, AIR 1968 Bombay 112 (following Madhoklal Sudhan, AIR 1954 Bombay 305 & Mubarak Ali, AIR 1957 S.C. 857)

(*Re : Proof of truth of the contents of the document*)

The proof of the genuineness of a document is proof of the authorship of the document and is proof of fact like that of any other fact. The evidence relating thereto may be direct or circumstantial. Signature can be taken to have been proved under Section 47 of the Indian Evidence Act by recognition. But the proof of the signature on the basis of opinion evidence, however, is not proof of handwriting of the document.

The reason for Bhagwati, J.'s judgment in **Mubarak Ali's case** according to the Court could be that the evidence of contents contained in the document is hearsay evidence unless the author thereof is examined before the Court.

Proof of the signature is not proof of the handwriting of the body of the document. That does not amount to a proof of the truth of contents of the document. The only person

competent to give evidence on truthfulness of the contents was the author. The statements contained in the entries in the company record were neither admissible nor had any probative value. Followed in **AIR 1981 S.C. 2085 Ratanji Dayawala vs. Invest Import**.

Bishwanath Rai vs. Sachhidanand Singh, <u>AIR 1971 S.C. 1949 @ 1953</u>

(***Re : Proof of truth of the contents of the letter***)

(***Re : Exhibiting documents (letters) upon receipt of them by witness***)

Contents of a document, and not its correctness, is proved by the person who knows the signature or handwriting.

Where a witness proves the contents of a letter written to him by one S, the letter is relevant and admissible to the extent to which the fact that S wrote such a letter to the witness with its contents has bearing on the issues involved in the case. The correctness of the contents of the letter can only be proved by examining S as a witness.

In the absence of the examination of the person who wrote the letter, only the contents of the letter get proved upon the party showing receipt of the letter. The correctness of the

contents are not proved thereby. They can be proved only if the party who wrote the letter is examined. However, the letter is admissible in evidence to the extent of the fact that it was written. Such letter is, therefore, relevant and admissible in evidence.

Om Prakash Berlia vs. Unit Trust of India, AIR 1983 Bombay 1

(***Re : Proof of truth of contents of the document and proof of contents of certified copies of public documents.***)

Section 63 states that secondary evidence includes an oral account of the contents of a document given by some person who has seen it. That person does not give evidence of the truth of the contents of the document merely by reason of having seen it, but of what he saw. In Section 63, therefore, the expression "the contents of a document" must mean only what the document states. Section 61 provides that the contents of documents may be proved either by primary or by secondary evidence. The expression in Section 61 must, therefore, also mean what the document states, and not the truth of what the document states.

Secondly, Sections 61 and 62 read together show that the contents of a document must, primarily, be proved by the production of the document itself for the inspection of the

Court. It is obvious that the truth of the contents of the document, even prima facie, cannot be proved by merely producing the document for the inspection of the Court. What it states can be so established.

The writer of a document must depose to the truth of its contents.

Section 67 of the Act requires the proof of the handwriting or signature upon a document. If by mere production of the original document for the inspection of the Court the truth of its contents was proved prima face, the requirement of proof of the handwriting and of the signature upon it would be almost superfluous.

The Act requires, first, the production of the original document. If the original document is not available, secondary evidence may be given. This is to prove what the document states. Upon this the document becomes admissible, except where it is signed or handwritten, wholly or in part. In such a case the second requirement is, under Section 67, that the signature and handwriting must be proved. Further, where the partly tendering the document finds it necessary to prove the truth of its contents, that is, the truth of what is states, he must do so in the manner he would

prove a relevant fact.

The production of certified copies under the provisions of Section 63 is a means of leading secondary evidence. Secondary evidence can, obviously, be led only of what the document states, not as to whether what the document states is true.

Only a certified copy of the public document is admissible. Secondary evidence of a public document so led only proves what the document states, no more. In other words, he who seeks to prove a public document is relieved of the obligation to produce the original. He can produce instead a certified copy. All other requirements he must still comply with.

In **Vithoba Savlaram vs.Shrihari Narayan, AIR 1945 Bom 319, Chagla, J.** held that all that a certified copy does is that it authenticates the genuineness of the copy. The Court presumes that the original document had the same contents as the copy. It certainly does not prove the actual execution of the original document.

Under Section 3 of the Commercial Documents Evidence Act a document in Part II of its Schedule should be

admitted in evidence but it does not raise the presumption with regard to the accuracy of the statements contained therein. A certified copy of a public document can be admitted as secondary evidence to prove only what the document states. The truth of what the document states must be separately established.

Suhas Bhand vs. State of Maharashtra, 2009 (3) BCR (Cri) 784

How public documents (ROC records) get proved.

Food Corporation of India vs. Assam State Co-operative marketing, 2004 (12) SCC 360

When there is a chain of correspondence which is tendered in evidence and the receipt of the letter is not disputed by a party. The documents will stand proved and they can be read in evidence. The letters read together form a part of the official record of the Plaintiffs and are pieces or links in the long chain of correspondence entered into between the parties. This statement would then form a part of a series of letters under Section 39 of the Indian Evidence Act. As part of the official record of the parties, the statements made in the chain of correspondence can be read as evidence.

State of Maharashtra vs. Dr. Praful Desai, AIR 2003 SC

2053

Documentary evidence includes electronic records which includes video conferencing.

Havovi Kersi Sethna vs. Kersi gustad sethna, 2011 (3) Mah LJ 564

Recorded conversation on CD is admissible in evidence as secondary evidence. It can be used upon production of the original record of the taped conversation copied on the CD subject to the identification, relevancy and accuracy of its contents.

Ravinder Singh Gorkhi vs. State of U.P., 2006 (5) SCC 584

Age can be proved by producing birth certificate which is a public document carrying a presumption of its correctness, but not by a school leaving certificate which is a private document and which would be admissible in evidence only upon it being proved by the evidence of its author corroborated by the school records. A mere certificate to show the age was observed to have been got up only for the case and was rejected as admissible evidence.

Shah Navaj vs. State of U.P., 2011 (9) SCR 859

A school leaving certificate which was proved by the author leading evidence of its preparation with the school records was

accepted in evidence upon considering the case of Gorkhi (supra).

(This shows how private and public documents are to be proved and when they are accepted as admissible evidence.

Vasudha Gorakhnath vs. CIDCO, 2008 (110) BLR 1376

Certified copy of public document must prevail over unproved private document.

Anvar P.V.vs. Basheer, 2014 (10) SCC 473; AIR 2015 SC 180

Mode of proof of electronic documents.

(Judgment in the case of Navjot Sindhu overruled.)

Kantilal Khimji Haria vs. M/S Sanyam Realtors Pvt. Ltd., Notice of Motion No. 1361 of 2013 in Suit No. 672 of 2013

What are public documents. Proof of certified copies of electronic public documents such as an intimation sent by the Income Tax authority to the assesse under S. 143 of the Income Tax Act. Statement of objects and reasons of the Information technology Act and proof by digital signature for authentication of electronic records in Government and its agencies considered under Ss. 6, 14 and 15 of the Information

Technology Act r/w S. 85B of the Indian Evidence Act making a presumption as to electronic records.