

A STUDY ON DOCUMENTARY EVIDENCE IN INDIAN EVIDENCE ACT

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***Abstract:** This study is all about the Documentary evidence. Documentary evidence is in many ways considered better than the evidence furnished by witnesses, about which there has always been a certain amount of suspicion. Documentary evidence differs a lot from the evidence of witnesses and is dealt with under special rules. Documentary evidence includes electronic evidence it means all documents produced for inspection of the court. There is two types of documents Public documents and Private documents. Public documents prepared by public servant in discharge of his official duties. And Private document made by an individual for personal interest in individual right. Our question is how to prove public and private document asevidence? And which private document consider as a public document.*

Keywords: Documentary evidence, Public and Private document.

I INTRODUCTION

Document is a matter which is written in (letter, figure, marks & symbol) on any stuff for the purpose of recording it. Evidence can be a two type: oral evidence, documentary evidence. Documentary evidence includes electronic evidence it means all documents produced for inspection of the court. Our questions is what is public and private document? And which private document are public document, And method of proof of public document. Public documents prepared by public servant in discharge of his official duties proved by certified copies under section 76, 77. When private document kept in public office as a record is considered as a public document. Public document is secondary evidence. Private document made by an individual for personal interest in individual right. And certified copies of private document are not admissible its proved by producing original i.e. primary evidence.

Primary evidence is the finest obtainable proof of the existence of an object or a fact because it is the actual document or the genuine source of evidence. If party have a primary evidence, then they must present it as a evidence in the court.

Secondary evidence is the copy or duplicated from a unique report or has been substituted from the original or first thing. Usually courts try to avoid using secondary evidence wherever it is possible. Sections 91 and 92 excepted oral evidence by documentary evidence. Oral proof cannot be substituted in the place of written documents where the written document exists in evidence of reliable transactions of offence referred to in Section 91 as written testimony , more certain and more reliable than oral evidence.

II Literature Review:

1. Principles of law of evidence by Singh avatar 19th ed 2011 central law publications

In this book the author clearly explains that the direct evidence is the evidence directly about the real point in issue.

2. Law of evidence by Lalbatuk 4th ed 2005

The author in this book deals documentary evidence deals with evidence produced in the form of document in order to prove a disputed fact.

3. Law of evidence by Arthur Best, Wigmore 4th ed 2014

Secondary evidence that which can be given in absence of primary evidence where a copy of document and recollection of witnesses

4. A study on exclusion of oral evidence by documentary evidence by Vishalautani 15th sep 2012

Documentary evidence is the best form of evidence where the original documents as the evidence are admissible by the court of law.

Secondary evidence that which can be given in absence of primary evidence where a copy of document and recollection of witnesses.

4. A study on exclusion of oral evidence by documentary evidence by VishalAutani15th Sep 2012. Documentary evidence is the best form of evidence where the original documents as the evidence are admissible by the court of law.

III Research Methodology

Research Question:

Whether the documentary evidence can be substituted by oral evidence in case there is a lack of evidence.

Research Terminology

Documentary evidence includes written documents cannot be substituted by the oral evidence which exist in the proof of transaction of offence deals in section 91 of the act as written testimony is of highly certain more reliable and has higher grade than oral evidence.

In this paper the researcher mainly picked for doctrinal research methodology, and the sources are collected beneath through secondary data.

Chapterization:

Exclusion of Oral Evidence From Documentary Evidence

Under section 91 and 92 of The Evidence act of india dealt with exclusion of oral evidence by the documentary evidence section 91 reads as: In terms of a contract, or of a grant, or of any other nature of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other nature of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1. – When a public authority is required by law to be appointed in written, and when it is showed any person has acted as public officer, he need not be proved by his writings by which he is appointed

Exception 2. – Wills accepted to probate in India may be proved by the probate.

The document is the best evidence to prove any fact or related facts. This fact should be proved either by the primary or secondary evidence of the document. The section prohibits the proof of the contents of a written document otherwise than by the written itself. Even a third party, who is searching for to prove a written contract, can prove it only by producing the writing. In this respect section 91 and 92 additions to each other. They are both based on the “best evidentiary rule” though they differ in some material particulars also. The Supreme Court held in *TaburiShahi v. Jhunjhunwala* that a deed of a adoption of child is not a valid contract within the meaning of section 91 and therefore, the fact of adoption can be proved by any evidence apart from the deed. further the principles of exclusion of all other evidence applies only to the terms happens to be mentioned in a contract, the same can be proved by any other evidence then by producing the document. Where both the oral evidence and documentary evidence are permissible on their own merits. There is nothing any special

provision in the act requiring that the documentary evidence should prevail over the oral evidence. Where it is held that the final position as a result is that is the term of any transfer reduced to writings are in dispute between a stranger to a document and party to his representatives in Hiradevius Official assignee of Bombay.

Section 92 of The Indian Evidence act reads as: When the term of any such contract, grant or other nature of property, or any matter required by law to be substituted to the form of a document have been proved according to the final section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their legal representatives in interest, for the purpose of contradicting, varying adding to, or subtracting from, its term: Provision 1. Any fact may be proved which would not validate any document, or which would entitle any person to any decree or order relating thereto, such as fraud, coercion, illegality, want for due execution, want of capacity in any contracting party, want or failure of consideration, or a mistake in law or in fact.

Proviso (2) – The existence of any individual oral agreements to matter on which a document is silent, and which consistent with its terms, may be proved. In considering whether; or not his provision applied, the Court shall have regard to the degree of formality of the document.

Proviso (3) – The presence of any unique oral ascension, constituting, a condition point of reference to the connection of any commitment bound under any such other contract, forfeit or nature of property, might be demonstrated.

Proviso (4) – The existence of any oral agreement, constituting, a condition precedent to the attaching of any obligation under any such contract, grant or nature of property, may be proved, except in cases in which such contract, grant or nature of property, is by law required to be in writing, or has been registered according to the law in force for the time being as to the registering of documents.

Proviso (5) – Any usage or custom by which incidents not expressly mentioned in any contract are usually added to contracts of that description of evidence may be proved.

Proviso (6) – Any fact may be proved which shows in what manner the language of a document is related to living facts.

Section 92 of evidence act excluded evidence of any oral agreement or statement in written, when in the term of a contract, grant or nature of property or any matter required by law to be in writing have been proved under Section 91 for the purpose of contradicting, varying, adding to or subtracting from its term of contract. The principle of evidence act lies down that

when the terms of any such document have been proved by the primary or secondary evidence of the document, no evidence of any oral agreement or statement shall be. In *Gangabai vs chhahubai* it was held that purpose of oral evidence is admissible to show that the document executed was never intended to operate. In *Hittlamanivs Prayyagurulingayyapoojari* that the consent decree or order did not cover all the dispute between the parties and also some vagueness remained evidence could be given of such matters section 92 of evidence act not been attracted.

KINDS AND EXCEPTIONS:

- 1) Validity of document- The first proviso to section 92 of evidence act dealt that evidence can be given of any facts in which would not validate the document in question or which would entitle a party to any decree or order related to the document. In case the validity of document may be questioned.
- 2) Matters on which documents is silent– The second proviso states that evidence can be given of an oral agreement on a matter on which the document is a silent. Such evidence is allowed subject to two conditions; firstly, the oral agreement should be consistent with the terms stated in the document. Secondly, in allowing oral agreement the court is to have regard of the degree of formality of the document.
- 3) condition precedent: the third provision provide that the existence of any separate oral agreements constituting condition precedent to attachment of any obligations under the document may be proved if the party is liable under a document has already stated making payments under it he cannot after setup the defences of an oral condition precedent to liability.
- 4) Recession or modification– As per proviso 4, to a document means to set it aside and to manipulate means to drop some of it as cancelled or to modify some of its terms; such oral agreement may be proved. subject to one capability expressed in the stipulation itself, in particular, where the agreement is one is required by law to be in composed, or where it has been enrolled by the law identifying with enlistment of records, at that point confirmation can't be given of any oral understanding by which it was concurred either to surrendered the archive or to adjust its terms.
- 5) Usages and customs- The proviso(5), therefore, that provides the existence of any usage or a custom by which incidents are attached to a particular type of contract can be proved. But this is the subject to the conditions that usage or custom of which proof is offered should not

be against the express terms of documents. Usage should not be repugnant to our inconsistent with the document, for otherwise it would nullify the document

6) Relation of language of facts– the facts upon which the documents are to operate are sometimes set out in the contracts itself and sometimes not. Oral evidence is also receivable to throw upon the nature of a document. The section does not filter the power of the court to arrive at true meaning of a document as disclosed by all the relevant surroundings and circumstances.

Exception 1-Appointment of a Public Officer: Where the appointment of a public officer is required by law to be made by writing and the question is whether an appointment was made if it is shown that an individual person has acted as such authority that will be adequate proof of the fact of appointment and by the way of written in which he was appointed need not be proved.

Exception 2-Wills: Wills admitted to probate in India will be proved by the probate. The document having the will need not be produced. “Probate” is Xerox copy of the will certified under the seal and sign of the court and, therefore, is a sufficient proof of the contents of the will.

section 93 furnishes with the Exclusion of confirmation to clarify or change uncertain report. In *KeshavLal v Lal Bhai Tea Mills Ltd* it was held that if the archive had specified no cost by any stretch of the imagination, oral proof of the cost would have been permitted under section 92 as to a matter of the reality on which the report is quiet however not when the record notices cost of uncertain nature.

Section 94 deals with the Exclusion of evidence against application of documents of existing facts. This section applies when the execution of the documents has been admitted and no vitiating fact has been proved against it. In the case of *General Court Enterprises Pvt.Ltd v. JohnPhilipson*, it was held that oral evidence of explanatory nature was admissible.

Section 94 deals with the Exclusion of evidence against application of documents of existing facts. This section applies when the execution of the documents has been admitted and no vitiating fact has been proved against it. In the case of *General Court Ent* to those facts.

Section 95 dealt the Evidence as to report unmeaning in reference to existing certainties. At the point when the dialect of a report is plain yet in its application to the current actualities it is unimportant, proof can be given to indicate how it was expected, yet the two date ended up being extraordinary, it was held that confirmation could be offered to demonstrate which date was implied.

section 97 deals with the Evidence as to utilization of correspondence to one of two accumulations of realities to neither of which the entire accurately applies. The guideline of the segment is that where the dialect of a report applies to one arrangement of certainties and halfly to another, yet does not have any significant bearing precisely to either, confirmation can be given to show to which realities the archive was intended to apply. Section 98 deals with the Evidence as to meaning of illegible character, etc. This section permits evidence to be given of the importance of words or signs of unintelligible character or words which are not usually of clear character, outside words, old words, specialized, nearby and common articulations, truncations words utilized as a part of an unconventional sense. In Canadian- General Electric W. v. Fatda Radio Ltd it was held that Oral proof is acceptable to explain aesthetic words and images utilized as a part of a document.

Section 99 manages who may give proof of understanding differing terms of archive. The gatherings to a report or their agent in-intrigue can't give proof of a contemporary assignation fluctuating the terms of the record.

IV Conclusion:

Oral evidence has lesser value than documentary evidence. Court is bound to admit the documentary evidence. But oral evidences may take in consideration. It is also need some corroboration. In briefly submitted that two types of evidences are given by the parties either oral and documentary evidence. In court of law the value of documentary evidence is higher than documentary evidence. Because the law always requires the best evidence oral evidence is a evidence is a evidence which is confined to the words expression verbal or oral. On another evidence are of side documentary two types. Primary evidences are more reliable and best evidences consider by court of law. In the absence of primary evidence, secondary evidence is that which the witnesses were given on the basis of his own perspective. Whereas primary evidence is the original document which is presented to the court of law for its inspection. Direct evidence is the best evidence to be prove of fact to be proved. But primary evidence in certain cases is the best evidence in all cases. There documentary evidence excludes and exempts the oral evidence and prevails over the oral evidence while submitting the evidence in as witnesses in court of law. The person giving direct evidence available for cross examination for testing its veracity. Hence, that document is written which is documentary evidence. Section 91 and 92 except oral evidence by documentary evidence. Oral proof cannot be substituted in the place of written documents where the written

document exists in evidence of reliable transactions of offence referred to in Section 91 as written testimony, more certain and more reliable than oral evidence.

V References:

1. Principles of law of evidence by Singh avatar, 19th ed 2011, central law publications.
2. Law of evidence by Lalbatuk 4th ed 2005.
3. Law of evidence by Arthur best, wigmore 4th ed 2014
4. Powel on evidence ,20th edition p.109