

DISTRICT COURT BHANDARA
WORK-SHOP
SUMMARY/GIST OF ALL THE PAPERS OF
FIRST WORKSHOP HELD ON 10TH JANUARY, 2015.

Subject : A) Burden of Proof (Chapter VII of Evidence Act)

In order to facilitate the compliance of directions of Hon'ble High Court properly, a Work-shop Committee consists of Shri S.R.Sharma, District Judge-1 and Additional Sessions Judge, Shri N.B.Yenurkar, Adhoc District Judge-1 and Additional Sessions Judge, and Shri M.S.Lone, Chief Judicial Magistrate, Bhandara is formed in this Judicial District. Work-shop Committee has got prepared Summaries of papers from Core group of 5 judges.

First Work-shop on the subject Burden of Proof (Chapter VII of Evidence Act) and Provisions as to Bail and Bonds (Chapter XXXIII of Code of Criminal Procedure) was held in presence of Hon'ble Shri Justice A.P.Bhangale, Judge, Bombay High Court and Guardian Judge of Bhandara Judicial District. Discussion was opened by reading the Summary of paper on Burden of Proof. Thereafter, discussion on the topic and Case Laws related to subject was made. Thereafter, another Summary of paper on Provisions as to Bail and Bonds was read. A thorough discussion was made on the subject. Relevant case laws were also discussed. His Lordship has given valuable guidance to the Judicial Officers on both the subjects.

Summary/Gist of all the papers of First Work-shop is as under :-

(A) **BURDEN OF PROOF**

Burden of proof is a legal duty resting upon a party litigant, at some stage in the trial of cases. The legal duty is to introduce evidence of prepondering weight on an issue which he/she asserts, to overcome the proof offered on that issue by the opposite party. The term burden of proof is derived from the latin term “ *onus probandi* ”. Burden of proof is the obligation placed upon a party to prove or disprove a disputed fact. The necessity of proof always lies with the person who lays charges. Generally, the burden of proof is satisfied by evidence. Burden of proof in civil cases to the extent of preponderance of probability may serve a good basis for decision. But in criminal trial degree of burden of proof is higher and it extends to the extent of beyond reasonable doubt.

2. Section 101 of Evidence Act deals with the burden of proof. It speaks that who ever desires any Court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. However, section 102 of Evidence Act deals with question on whom the burden of proof lies. It speaks that the burden of proof in suit or proceedings lies on that person who would fail if no evidence at all were given on either side. Burden of proof has two distinct meanings namely,

(i) the burden of proof as a matter of law and pleadings

which is dealt with the section 101 of Evidence Act and

- (ii) the burden of proof as a matter of adducing evidence which is dealt under section 102 of Evidence Act.

Burden of proof as envisaged under section 101 of the Evidence Act remain constant and it never shifts. On the other hand, the burden of proof as a matter of adducing evidence which is called as **onus** and constantly shifts during the trial.

3. The burden of proof as to the particular fact lies on that person who wishes the court to believe its existence. The onus will shift on the defendant only if the evidence adduced by the plaintiff is held to be sufficient to establish his prima facie case. For instance if the landlord contends that alterations in the tenanted premises are made by the tenant without his consent, then burden is on him to prove the alleged alterations without his consent. If the lessor succeeds to prove this fact, the onus will shift on the tenant to prove that the lessor, despite of stipulation in the agreement of tenancy, arbitrarily or unnecessarily withheld the repairs which rendered him to make alterations in the tenanted premises to make it in habitable condition.

4. This principle can be explained by another illustration. If the plaintiff comes with the case that the defendant executed a promissory note in his favour and the defendant denies it and contends that his signature was obtained on a blank paper. In such situation the burden lies on the plaintiff to prove the execution of the promissory note by defendant and thereafter onus shifts on the defendant to prove

that there was no consideration for such document.

5. In a suit for Specific performance of Contract of immovable property the defendant, if raised the pleading that he was in need of amount and thus, obtained certain amount from the plaintiff as a hand loan, but by way of security he executed a nominal document styled as agreement of sale, which was not to be acted upon. In such situation still the initial burden lies on the plaintiff to prove the document to be genuine as agreement of sale and thereafter, the onus will shift on the defendant to rebut it. In the case of *Subhra Mukherjee vs. Bharat Coking Coal Ltd., AIR 2000 SC 1203= 2000(3)SCC 312* it is held by the Hon'ble Supreme Court that where issue was whether the document in question was genuine, sham or bogus the party who alleged it to be bogus had to prove nothing till the party relying upon document established its genuineness. This burden always keeps on shifting through out the trial. Thus, though the form of issue may cast the burden on the defendant, it could not affect the burden of proof on the pleadings which is on the plaintiff. This ratio has further been reiterated by the Hon'ble Supreme Court in a case of *Rangammal vs. Kuppuswami & Anr., (2011)12 SCC 220.*

6. The amount of evidence required to shift upon a party must depend on the circumstances of each case. So far as shifting of onus is concerned, it shifts from one side to other if the evidence is sufficient prima facie to establish the case on the party on whom it lies. The party on whom the onus lies must prove his case sufficiently to justify the Judgment in his favour if there is no other evidence given. However, when the parties have adduced evidence in support of their

respective cases, the question of onus loses its importance and the evidence is to be appreciated on the basis of probabilities and balance of the case of the parties. The doctrine of onus of proof becomes unimportant when there is sufficient evidence before the Court to enable it to reach at a particular conclusion. The principle of onus of proof assumes importance in cases of either paucity of evidence or in cases where evidence given by two sides is so equibalanced that the Court is unable to hold where the truth lay.

7. Chapter of burden of proof plays great importance in framing of issues in Civil matters. The Court should frame the issues after considering the pleadings, presumptions of law and the relief claimed. While framing the issues on a question of law the burden need not be reflected on either of the parties to the suit. However, while framing the issues relating to the controversy on facts the issue should reflect the burden on whom such fact is to be proved. Non-framing of proper issues or framing the incorrect issues, many times, not only burdens the record but also prejudices the parties and may lead to miscarriage of justice.

8. In the Criminal matter it is the fundamental principle of Criminal Jurisprudence that when an accused is put on trial, the burden to prove the offence by legal and cogent evidence always remains on the prosecution, which never shifts. Only in exceptional cases where a special defence or plea is raised by the accused a burden is to be discharged by him either by leading evidence or by demonstrating from the record that such special defence is made out. Such burden on the prosecution cannot be neutralized nor shifted because the accused has taken a particular plea in defence. The burden in the matter of defence

to be discharged by the accused is not of beyond reasonable doubt as on prosecution, but it is of the nature of preponderance of probabilities.

9. The provisions of Section 101 to 103 has laid down rules about upon whom burden of proof lies generally. However, the provision of Section 104 to 114 has laid down rules about upon whom burden of proof lies in special circumstances. Section 104 of Evidence Act provides that the burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence. It is the duty of each party to discharge its respective burden of proving facts. If plaintiff failed to discharge the burden of proof suit should be dismissed. In such situation, it would not be proper to call for defence evidence and adjudicate the suit adversely on the basis of defence evidence. For example A wishes to prove the dying declaration by B, A must prove the death of B. So also, if A wishes to prove, by secondary evidence, the contents of lost documents, A must prove that document has been lost.

10. Section 105 of the Act deals with the burden of proving that the case of accused comes within exception. That however, in criminal matter it is the fundamental principle of criminal jurisprudence that when an accused is put on trial, the burden to prove the offence is always on the prosecution, which never shifts. Only in exceptional cases where special defence or plea is raised by the accused, a burden is discharged by him either by leading evidence or by demonstrating from the record that such special defence is made out. Such burden on the prosecution cannot be neutralized nor shifted because the accused has taken a particular plea in defence.

11. Section 106 of the Act deals with the burden of proving a fact especially within the knowledge of any person. Burden of proving of fact which is especially within the knowledge of any person lies upon him. Thus, it is an exception to the general rule laid down in section 101 of the Act. For example, in a case of a servant charged with misappropriation of goods of his master, if the failure to account was due to an accidental loss, the facts being within servant's knowledge, it is for him to explain the loss. In a claim for maintenance the claimant can quote a figure of income on guess work because the fact of exact income of other party is especially within the knowledge of that party. In an eviction proceeding on the ground of the default in payment of rent, the burden lies on the tenant to prove payment. This provision is only applicable to the parties to a suit.

12. Section 107 of the Act provides that when the question is whether a man is alive or dead and it is shown that he was alive within 30 years, the burden of proving that he is dead is on the person who affirms it. Section 108 of the Act provides that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for 7 years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it. The basic idea behind these provisions is that it is presumed that once a thing is proved to be in an existence in a particular state, it is to be understood as continuing in that state, until the contrary is established. Thus, section 107 of the Act presume the fact of continuation of life and section 108 presume the fact of death. This sections deal with the procedure to be followed when a question is

raised before a Court, as to whether a person is alive or dead, but do not lay down any presumption as to how long a man was alive or at what time he died.

13. Section 109 of the Act provides that when the question is whether persons are partners, landlord and tenant or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand or have ceased to stand each other in good relationship respectively is on the person who affirms it. Thus, this provision is also based on the presumption of continuance of human activities. Thus, once the existence of personal relationship is proved, the law presumed that the same relationship continues to exist till the contrary is proved.

14. Section 110 of the Act provides that when the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner. This section gives effect to the principle that possession is prima facie proof of ownership; anyone who intends to oust the possessor must establish right to do so. This is to presume from lawful possession until the want of title or a better title is proved. Principle of this section does not apply where the possession has been obtained by fraud or force.

15. The term 'possession' in this section is to be understood as opposed to juridical possession and to denote actual present possession. A person in possession of land without title has an interest in the property which is heritable and good against all the world except

the true owner. To recover possession a plaintiff must show a better right in himself to possession than is in the defendant. He may within the period prescribed by Limitation Act, succeeds in a case where he is dispossessed either by establishing the title or by showing a prior legal possession entitling him to be restored to the same.

16. Section 111 of the Act provides that where there is question as to the good faith of a transaction between parties, one of whom stands to the other in a position of question of active confidence, the burden of proving of good faith of the transaction is on the party who is in a position of active confidence. The principle of the rule embodied in this section which was called “the great rule of the Court” is he who bargains in a matter of advantage with a person placing confidence in him is bound to establish, that a reasonable use has been made of that confidence. Where a fiduciary or quasi- fiduciary relationship exists, the burden of sustaining transaction between the parties rests with the party who stands in such relation and is benefited by it. The words 'active confidence' indicate that the relationship between the parties must be such that one is bound to protect the interest of the other. For example such relationship applies to trustee, an executor, an administrator, a guardian, an agent, a Minister of religion, medical attendant, Attorney etc.

17. In the case of deeds and powers executed by Pardanashin ladies, it is requisite, that those who rely upon them should satisfy the Court that they have been explained to, and understood by those who executed them. Her free and intelligent consent to the

transaction is necessary. The expression 'pardanashin' does not mean that a lady observing pardah, but it has special legal significance and it means one who is unable to understand the transaction by virtue of the manner in which she has been brought up. Similarly mere signature of a blind person on the sale deed cannot have any force. Where an illiterate and blind woman is alleged to have executed a sale deed, the execution of which is denied by her, the heavy burden is laid on the purchaser to prove that she not only agreed to sell but she knew what was being written and the document was in accordance with terms of agreement.

18. Section 112 of the Act provides that, the fact that any person born during the continuance of a valid marriage between his mother and any man, or within 280 days after its dissolution, the mother remaining unmarried, shall be a conclusive proof that he is the legitimate son of that man, unless it can be shown that parties to the marriage had no access to each other at any time when the child could have been begotten.

19. Section 113-A of the Act deals with the presumption as to abetment of suicide by married woman. The presumption is of abetment of suicide by a married woman when it is committed within period of 7 years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty. Sec. 113-B of the Act deals with the presumption as to dowry death. When the question is whether a person has committed dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection

with, any demand of dowry, the Court shall presume that such person had caused dowry death. However, these presumptions are rebuttable.

20. Section 114 of the Act provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relations to the facts of the particular case. Sections 104 to 113 direct on whom burden of proof will lie. The Court is bound in every instance to presume against that party on whom the burden of proof is directed to lie. No option is given to the Court as to whether it will presume the fact or not. But there are various presumptions where room is left for the Court to exercise its powers of inference; the Court can throw the burden of proof on whichever side it chooses. This section deals with cases of the description. The presumption under Section 114 are of the nature which may naturally arise. However, the Court is not compelled to raise them, but is to consider whether in all the circumstances of the particular case they should be raised. In order to draw an inference that a fact in dispute has been established, there must exist, on record, some direct material fact or circumstances on which such an inference could be drawn. The presumption may be either of law or of fact. Presumption of law may be either conclusive or rebuttable but presumption of fact are always rebuttable.