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**GANGAMMA V. SHIVALINGAIAH (2005): CRITICALLY APPRAISING SECTION 90,  
INDIAN EVIDENCE ACT, 1872**

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**ABSTRACT**

*“In general, facts have to be proved before the court in accordance with the principles mentioned in the Indian Evidence Act, 1872.<sup>1</sup> Court does not rely on averments unless the same stands proved and conclusive. But in certain circumstances court may consider certain facts even without calling proof for them, it means that the court may presume certain facts. Presumption is an inference of the facts drawn on the basis of other known or proved facts or as the statute shall mandate. For the law of evidence, it is used to designate an inference affirmative or negative, of the existence of some fact drawn by judicial authority by the process of probable reasoning of some matter of fact either judicially noticed or admitted or established by legal evidence to the satisfaction of the Court. Thus, the Court possesses the Discretionary Authority to admit or to refute such admission based on presumption, however, if the legislative phraseology provides for a compulsory presumption, such is to be complied to. Hence, the statutory wisdom as provided under the Indian Evidence Act, 1872 is the mandate that the Court must and ought to dictate. Through the analysis of the given case of Gangamma v. Shivalingaiah<sup>2</sup>, the researcher highlights the application of the Presumption Rule under the Indian Evidence Act, 1872 along with such particulars concerning Section 90<sup>3</sup> while analysing and providing a reviewal on the merits of the case herein.*

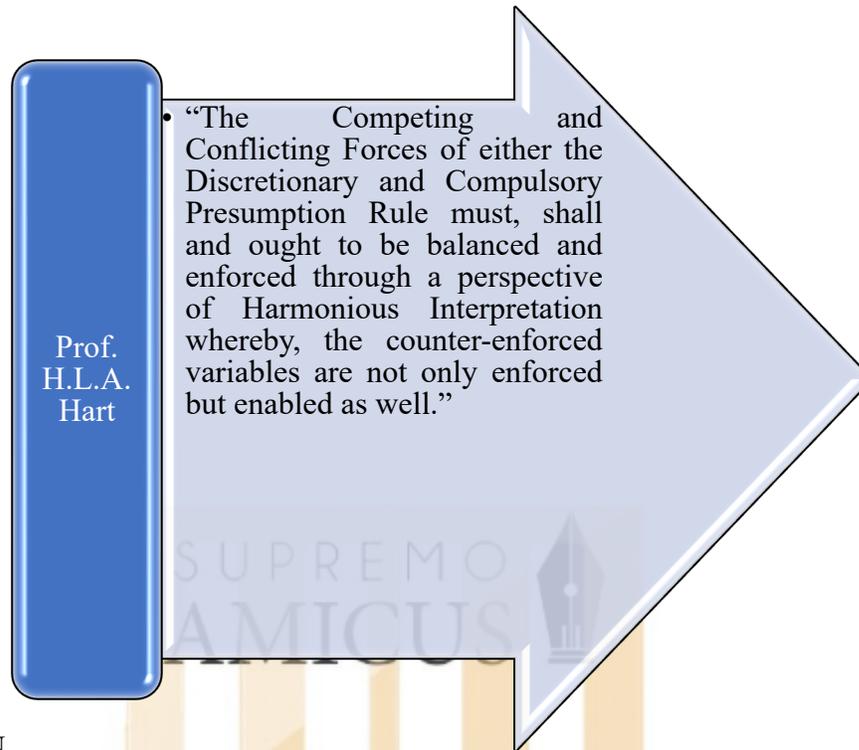
**KEYWORDS:** Presumption, Section 90, Discretionary and Compulsory Presumption, Rebuttable Presumption

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<sup>1</sup> Indian Evidence Act 1872, <https://legislative.gov.in/sites/default/files/A1872-01.pdf> (Visited on: 02.08.2021)

<sup>2</sup> (2005) 9 SCC 359

<sup>3</sup> Section 90 Indian Evidence Act 1872



### INTRODUCTION

- ✓ The first and foremost cardinal principal of Indian Legal Jurisprudence is the Presumption of innocence of the accused. The Universal Declaration of Human Rights, 1948 has declared by its Article 11,<sup>4</sup> Presumption of innocence to be a legal right, until, proved guilty according to law in a public trial. Undoubtedly, the prosecution has to produce clinching and compelling evidence to convince a trial court, with actual and admissible evidence, that a person accused of guilt, is guilty beyond reasonable doubt.
- ✓ Hence, Evidence is given in any case to prove or disprove a fact. Evidence is a ‘means’ to arrive at proof. Proof is a process by which truth or falsehood as to a fact or a counter-fact is convinced. Proof enables a reasonable man to come to a conclusion.

### BURDEN OF PROOF [प्रमाण – भार]

- ✓ The general rule about burden of proof is that it lies on the party who alleges the fact to prove that the fact exists.

<sup>4</sup> Article 11, Universal Declaration of Human Rights, 1948.



**SECTION 103,**  
Indian Evidence  
Act, 1872

- The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

- ✓ But a party can take advantage of the presumptions which are in his favour. If the prosecution can prove that the conditions of a presumption are fulfilled and such a presumption is of rebuttable nature then the burden of prove to rebut it is always on the party who wants to rebut it.

**SECTION 105,**  
Indian Evidence  
Act, 1872

- When a person is accused of any offence, the burden of proving the existence of circumstances under General Exceptions in the Indian Penal Code or within any special exception of the same Code is upon him, and the Court shall presume the absence of such circumstances.

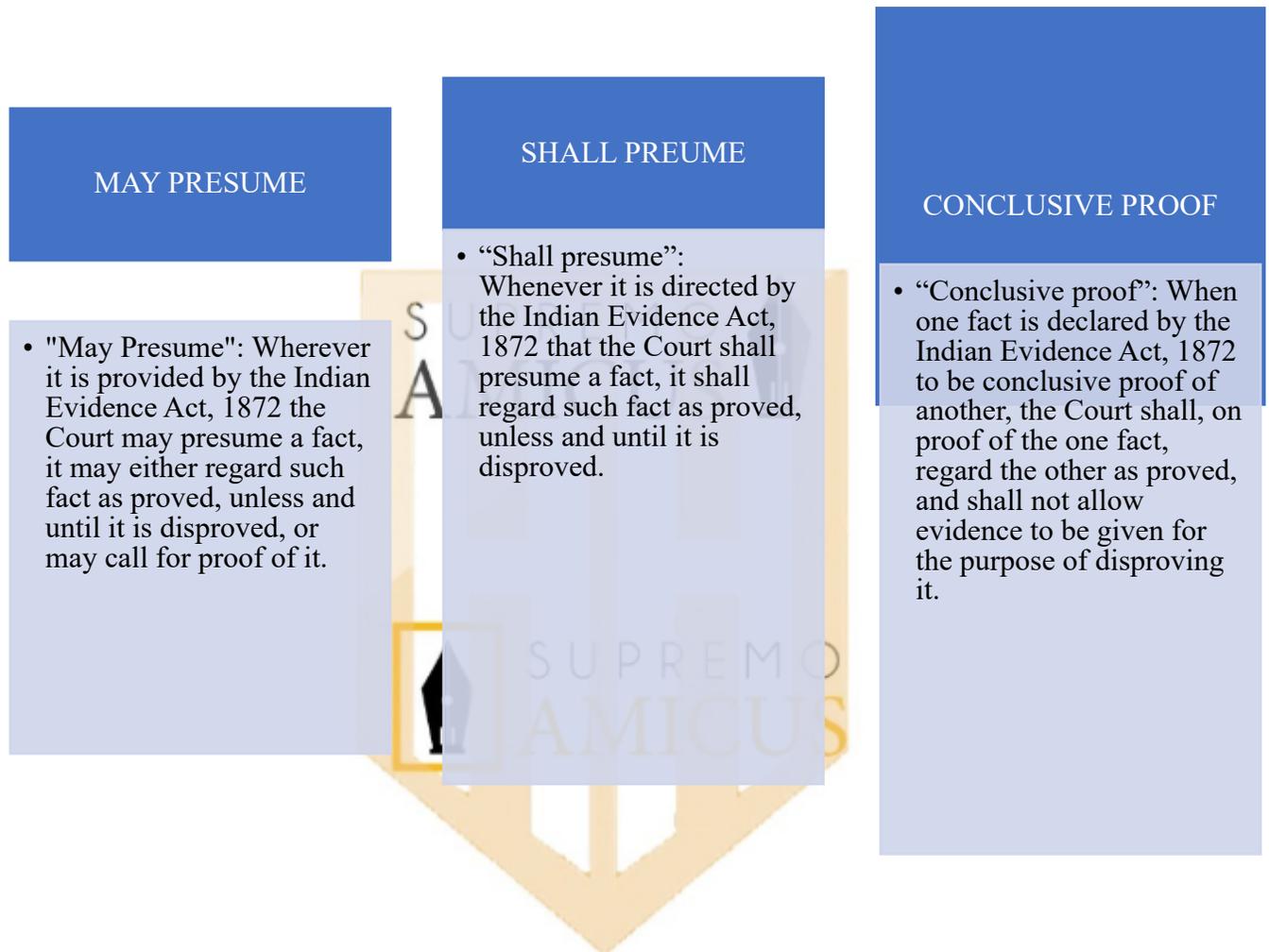
- ✓ Presumptions of law are those inferences which are said to be established by law and contained in the Evidence Act, 1872.

**MEANING AND DEFINITION OF PRESUMPTIONS (अनुमान)**

- ✓ The word 'Presume' means "supposed to be". The word 'Presumption' means "an inference from the known facts".
- ✓ Presumptions are inferences which are drawn by the court with respect to the existence of certain facts. When certain facts are presumed to be in existence the party in whose favour, they are presumed to exist need not discharge the burden of proof with respect to it. This is an exception to the general rule that the party which alleges the existence of certain facts has the initial burden of proof but presumptions do away with this requirement.



PRESUMPTION CONTAINED UNDER SECTION 4<sup>5</sup>



**MAY PRESUME [उपधारणा कर सकेगा]**

- ✓ **DISCRETIONARY POWER:** Court enjoys its discretionary power to presume any/ certain/ few facts and recognize it either proved or may ask for corroborative evidence to confirm or reconfirm the presumption set by the court in its discretion.

<sup>5</sup> Section 4 Indian Evidence Act 1872



- ✓ **REBUTTABLE PRESUMPTION:** Section 4 of the Indian Evidence Act provides that a fact or a group of facts may be regarded as proved, until and unless they are disapproved. Thus, the concept deals with rebuttable presumption.
- ✓ It is the weakest category of presumption.
- ✓ For e.g.: Section 90<sup>6</sup> talking about the Presumption as to documents thirty years old.

### SHALL PRESUME [उपधारणा करेगा]

- ✓ It denotes a strong assertion or intention to determine any fact. Court does not have any discretionary power in the course of presumption of ‘Shall Presume’, rather the court has presumed facts or groups of facts and regard them as if they are proved until they are disproved by the other party.
- ✓ Section 4 of the Indian Evidence Act explains that the concept of ‘Shall Presume’ may also be called ‘Presumption of Law’ or ‘Obligatory Presumption’.

### CONCLUSIVE PRESUMPTION [निश्चयक सबूत]

- ✓ It is one of the strongest presumptions.
- ✓ With regards to Conclusive proofs, the law has absolute power and shall not allow any proofs contrary to the presumption.
- ✓ The Court in its consideration shall regard all other facts to be proved, only if one fact of the case is proven without any reasonable doubt. And if the other facts are proved on the basis of proving of one fact that the court shall not allow any evidence contrary to other facts which are presumed as conclusive proofs.

Thus, the Research herein, pounds upon the Case Reviewal and Consideration of *Gangamma v. Shivalingaiah*<sup>7</sup>. The Case concerns the Application of Section 90 wherein, the discretionary power of the court concerning the application of ‘May Presume’ stands tall.

The Reviewal commences with the analysis of Section 4 of the Indian Evidence Act, 1872 along with the mention of three types of Presumption, afore-mentioned.

The research deals with the facts of the case in totality along with the arguments raised by the parties in the Honourable Supreme Court. The case review analysis the arguments of the parties in conjunction with statutory mandate and the literal interpretation rule in regards to the Interpretation of Statutory dictum. The case reviewal also encompasses an intensive and elaborate discussion of

<sup>6</sup> Section 90 Indian Evidence Act 1872

<sup>7</sup> (2005) 9 SCC 359



the Application of Section 90 of the Indian Evidence Act, 1872 along with its operability in regards to the documents purporting to be of age, thirty years. The Review concludes with the verdict of the Supreme Court wherein, the judgement of the High Court was superseded. The Conclusion includes the synopsis along with the personal critique of the researcher.

### AIM & OBJECTIVE OF THE STUDY

- ✓ To critically analyze and harmonize the Application of the Presumption Rule contained in Section 4 of the Indian Evidence Act, 1872; through the Case Reviewal of *Gangamma v. Shivalingaiah*.<sup>8</sup>
- ✓ To discuss the considerations revolving around the Application of Section 90 of the Indian Evidence Act, 1872 along with the Phraseology and the Established Rule of Interpretation concerning the said.

### RATIONALE OF THE STUDY

- ✓ To stress upon the Imminent and Imperative nature of the conflicting forces of the Rule of Interpretation concerning 'May Presume' in light of the case of *Gangamma v. Shivalingaiah* wherein, the operability of Section 4 and Section 90 of the Indian Evidence Act, 1872 and it being a Rebuttable Presumption has been brought to limelight. The Facts of the case along with the arguments of the parties and the court's verdict has been mentioned through a coordinated fusion of the statutory wisdom.

### RESEARCH METHODOLOGY

- ✓ **RESEARCH DESIGN:** The researcher follows the premise of the Exploratory Research Design and primarily focusses on the socio-legal means of strengthening efficient Justice Dispensation. The study '*in-toto*' is qualitative, descriptive and analytical in its nature.
- ✓ **METHOD OF DATA COLLECTION:** The researcher follows Doctrinal method of research requiring the compilation of relevant data from the specified databases in order to analyze the material and arrive at a more complete understanding of the Application of the Interpretation Rule in regards to Section 90 of the Indian Evidence Act, 1872 and other considerations revolving around the said matter of socio-legal pertinence.
- ✓ An analysis of reports, documents, journals and other available resources within online databases were referred to.
- ✓ **TOOLS OF ANALYSIS:** The researcher has pounded over the Case Reviewal of *Gangamma v. Shivalingaiah* in light of the Rule of Interpretation concerning the Application of Section 4 and Section 90 of the Indian Evidence Act, 1872, imputing secondary data for data analysis while employing tabling methods for effective data representation.

<sup>8</sup> (2005) 9 SCC 359



- ✓ **LIMITATIONS:** The research paper, in its very essence, is of an extensive nature, however, for the purpose of the study, relatives concerning the Case Reviewal of Gangamma v. Shivalingaiah has been highlighted in conjunction with the Operability of the Rule of Interpretation along with the Critical Appraisal of Section 4 and Section 90 of the Indian Evidence Act, 1872 being brought to limelight.

**GANGAMMA V. SHIVALINGAIAH<sup>9</sup>**

**BENCH**

- ✓ HON'BLE MR. JUSTICE S.B. SINHA
- ✓ HON'BLE MR. JUSTICE S.H. KAPADIA

**FACTS OF THE CASE**

- ✓ The plaintiff respondent filed a suit for declaration of his title over the lands in suit.
- ✓ A sale deed dated 12-4-1940 was executed by one Mahalingaiah, father of Defendant. The contention of the defendant appellant in the said suit, inter alia, was that the purported sale deed executed by Mahalingaiah in favour of minor Shivalingaiah represented by his father and guardian Muralasiddaiah was a sham and nominal transaction.
- ✓ The learned trial court dismissed the suit. The first appellate court also dismissed the appeal preferred there against by the first respondent herein.
- ✓ However, a second appeal was preferred before the High Court of Karnataka. The said appeal had been allowed by the impugned judgment whereby and whereunder the concurrent findings of fact recorded by the courts have been set aside.

<b>SUSBTANTIAL QUESTION OF LAW: HIGH COURT</b>	<ul style="list-style-type: none"> <li>✓ "When the registered sale deed of the property in question in favour of the plaintiff being an ancient document more than 30 years old, when there is a legal presumption regarding the authenticity of the recitals therein, can a plea contrary to the recitals therein viz. that is a nominal one and not for consideration can be taken and whether the evidence led is sufficient to disprove the recitals therein."</li> </ul>
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- ✓ High Court while reversing the judgments and decrees passed by the trial court and the first appellate court, held that in regard to the provisions contained in S.90 of the Indian Evidence Act, 1872, the suit of the plaintiff respondent should have been decreed.

<sup>9</sup> (2005) 9 SCC 359



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- ✓ High Court did not enter into the question as to whether the evidence led by the appellant herein was sufficient to disprove the recitals

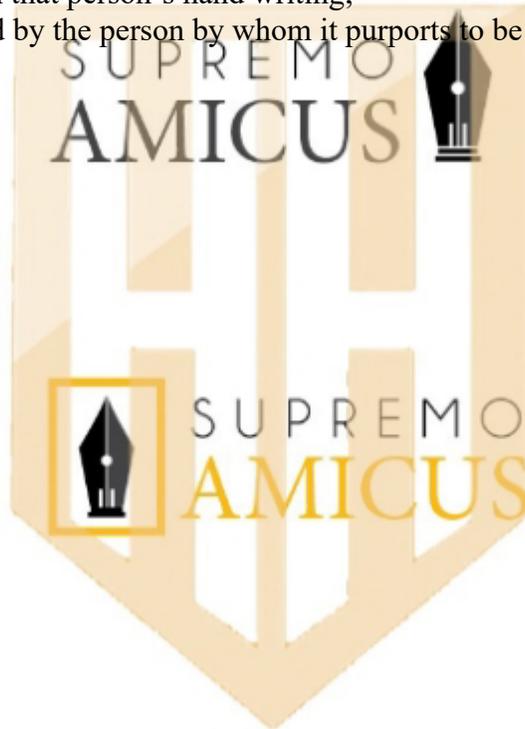
**SECTION 90: INDIAN EVIDENCE ACT, 1872<sup>10</sup>:**

Section 90 provides that when any document: -

- ✓ Purporting and proved to be thirty years old,
- ✓ Is produced in the court,
- ✓ From custody which is the opinion of the court is proper.

Then, the court *MAY PRESUME*:

- ✓ That the signature and every other part of the document which purports to be in the hand writing of any particular person is in that person's hand writing;
- ✓ Dually executed and attested by the person by whom it purports to be executed and attested.



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<sup>10</sup> Section 90 Indian Evidence Act 1872



ESSENTIAL CONDITIONS

DOCUMENT MUST BE THIRTY YEARS OLD	DOCUMENT PRODUCE: PROPER CUSTODY	DOCUMENT MUST BE FREE FROM SUSPICION
<p>---This section only relates to documents that are, or have been, proven to be thirty years old.</p> <p>---It is essential to quantify the period of thirty years from the date the document purports to bear.</p> <p>---No presumption of authenticity can be raised under this section if the document is undated.</p> <p>---The Privy Council in <i>Surender Krishna Roy v. Mirza Mohammad Syed Ali</i>,<sup>11</sup> held that the presumption under Section 90 is applicable only when the document was established to be 30 years old, at the date on which it was filed in the court.</p>	<p>---Documents are said to be in proper custody if they are found in the place in which or under the care of the person, they are reasonably expected to be.</p> <p>---Proper custody doesn't necessarily imply that only a person entitled in law must have possession of document, it is sufficient if proved to have a legitimate origin</p> <p>---In <i>Darshan Singh v. Prabhu Singh</i>,<sup>12</sup> from a mother's custody, a deed relating to the affairs of a family of three brothers was made. The custody was held to be proper since there could be no better custodian than the mother for whom all three sons are alike.</p>	<p>---The document must be free from suspicion. Whenever, the court has any doubts, the court may refuse to make a presumption and direct the party seeking evidence to prove that the document adheres with normal rules of evidence.</p> <p>---In <i>Ram Milan v. Sher Bahadur</i>,<sup>13</sup> Court refused to raise the presumption that the ink used was not as old as the alleged document and was written after folds were made.</p> <p>---In <i>Baldeo Missir v. Bharos Kunbi</i>,<sup>14</sup> it was established that description in the document had been erased and rewritten with fresh ink, hence, Court did not admit the said document.</p>

<sup>11</sup> (1936) 38 BOMLR 330

<sup>12</sup> AIR 1946 All 67

<sup>13</sup> AIR 1976 All 251

<sup>14</sup> AIR 1926 All 537



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**NATURE OF PRESUMPTION: -**

- ✓ The term 'May Presume' indicates that the court has the discretion to either presume or not to presume.
- ✓ The judicial discretion should not be exercised arbitrarily and should not be informed without reason. At the same time as the presumption under this section is raised, the court must exercise considerable precautions and take into account all the circumstances surrounding it.
- ✓ If it is found that the document produced contains any deletions, overwriting or abnormalities therein, the court must refuse to accept the presumption of authenticity.
- ✓ Hence, Section 90 of the Evidence Act is permissive in nature in the sense that the court may or may not draw them into consideration.
- ✓ The power provided under Section 90 is only discretionary and not compulsory.

**ARGUMENTS OF THE APPELLANTS [MR S. N. BHAT]**

- ✓ Appellants submitted that the High Court has committed a serious error of law in passing the judgment.
- ✓ It was urged that the plea that the sale deed obtained by the *karta* of the family in the name of the plaintiff who was a minor was a sham transaction was available to the defendant.
- ✓ Section 90, Indian Evidence Act, 1872 is in the nature of a Rebuttable Presumption wherein, the Court has Discretionary Power to admit the document or to not since, the phraseology is 'May Presume' and not 'Shall Presume'.

**DECISION OF THE COURT**

- ✓ Supreme Court held that the substantial question of law was formulated by the High Court on a wrong premise. S.90 of the Indian Evidence Act has been misconstrued and misinterpreted by the High Court.
- ✓ S.90 of the Indian Evidence Act nowhere provides that the authenticity of the recitals contained in any document is presumed to be correct. The High Court, therefore, committed a manifest error of law in interpreting the provision of S.90 of the Indian Evidence Act.
- ✓ Section 90 talks about Rebuttable Presumption and the court is under no obligation to admit the said document, if there are adverse averments as to its Guinness.
- ✓ Phraseology signifies that 'may Presume' has been imported and no Obligation on the court.



- ✓ High Court dismissed the appeal while setting aside the judgement of the high court. Also, remitted the matter to the concerned High Court.

### CONCLUSION: ANALYSING THE CODE

- ✓ The Case has indeed been decided by the Supreme Court in conformity with the Statutory Mandate and the Principles of Just Rule of Interpretation.
- ✓ Section 4 provides the Rule of Interpretation concerning the use of ‘Presumption’ which might arise in the Indian Evidence Act, 1872. ‘May Presume’ particularly signifies that the Court possesses its Discretionary Power as to whether to admit certain fact or not. This is a Rebuttable Presumption and can be proved otherwise by the concerned party.
- ✓ Section 90 in the Indian Evidence Act contains the phraseology as ‘Court May Presume’. Hence, the Court has an authority to either admit certain fact, deny or call for corroboration. Further, there is no obligation on the part of the court to admit the said document, complying the dictum of Section 4 thereto.
- ✓ In the case of Gangamma v. Shivallingaiah<sup>15</sup>, the High Court unfortunately mis-constructed the provision and interpretation of Section 90. The High Court believed that on the production of the document which qualifies the Age Factor of Thirty Years, the Court was mandated to admit the document; regardless of the Genuity of the recitals.
- ✓ However, on an Appeal, the Supreme Court struck down such faulty interpretation of the High Court, thereby, ruling that Section 90 contains a Rebuttable Presumption wherein, the concerned party may prove otherwise, that the document purported on record is not that which it claims to be. Thus, the parties were enabled to provide their recitals and to prove otherwise the validity of the purported document. The Court is under no legal obligation to admit the document. It can call for corroboration or can altogether adjudge such to be a falsified document based on the allegations that are put forward by the parties.
- ✓ Supreme Court dispensed complete justice in the given case by preventing the mis-carriage and consequent failure of justice caused upon by the faulty and erroneous interpretation by the concerned High Court. The Apex Court thus upheld the Statutory and Legislative Mandate provided under Section 4 and Section 90 of the Indian Evidence Act, 1872 and due process was complied to.
- ✓ Thus, it can be conclusively stated that when a Legal Provision contains a Rebuttable Presumption caused about by the phraseology ‘May Presume’ as contained under Section 90 in the present case, the Court shall not automatically consider the propriety of the existence of the fact, if the party has provided adverse recitals as to the validity of the said document.

<sup>15</sup> (2005) 9 SCC 359



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