

The Science, Craft and Art of Trial Court Advocacy
A Step-by-Step Guide to Trial Excellence
(English Version)

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DEDICATION

To the eternal memory of my parents,

LATE DR. G.V. RAGHAVA RAO GARU
AND
LATE G. NAGESWARAMMA GARU

Amma and Nanna...

The love, compassion, moral values, and humanity you instilled in me are the very breath of my thoughts and the guiding compass for my actions.

Your unseen presence constantly inspires me to walk the path of justice with integrity and to lead a life dedicated to humanity.

Your Son,

G. ANIL KIRAN KUMAR

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Over the course of my 23-year career in law, I have had the privilege of practicing as an advocate for more than 14 years and serving as a judge for over 8 years. Throughout this journey, I have benefited immensely from the mentorship, guidance, and support of many remarkable individuals whose contributions have profoundly influenced my professional development. It would be a failure of my duty if I did not formally place on record my gratitude for their invaluable service and wisdom, which have contributed in no small measure to the completion of this book.

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I wish to express my heartfelt gratitude to **Shri K. Narasimha Chary, Advocate** (Former Judicial Member, ITAT), and **Shri V.V. Lakshmi Narayana, IPS**, for graciously taking the time to write the Foreword for this book. Their invaluable guidance, insightful perspectives, and vast experience have greatly enriched this work, making it more comprehensive and meaningful for readers. Their constant support and encouragement have been of immense value in the completion of this endeavor.

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 - **Prof. Dr. Ranbir Singh**, Former Vice-Chancellor, NALSAR University of Law, Hyderabad
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 - **P. Mohan Rao**, Former District Judge & Chief Faculty Member, PALSARH
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-

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These esteemed advocates and leaders represent the pinnacle of legal practice within the State of Telangana. Their strategic mastery and institutional leadership have significantly influenced the legal landscape, offering invaluable insights into the complex dynamics of High Court litigation and the professional standards of the Bar:

- **Shri A. Narsimha Reddy**, Former Chairman, Bar Council of Telangana
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- **G. Lakshmi Lavanya**, Advocate & Head – PALSARH (Former Special Public Prosecutor, ACB)
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- **Nellutla Sushma Vijaya Kumar**, Advocate (Central Government Standing Counsel)
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The vibrant legal community of Ranga Reddy District has played a crucial role in shaping my practical understanding of trial procedures. The practitioners from Rajendra Nagar, L.B. Nagar, and Chevella represent a dedicated group whose collective experience and cooperation remain vital to the local judicial administration:

- **Rajendra Nagar Bar Association:** Shri Ailaboina Krishna Yadav; Dukanam Praveen Kumar (Former AGP and General Secretary); B. Kumar Yadav (AGP)
 - **L.B. Nagar (Ranga Reddy Court Bar Association):** Potedara Rajeshwar Rao (Former General Secretary); B. Kamalakar; Ranga Praveen Kumar (Former Joint Secretary)
 - **Chevella Bar Association:** Patlolla Upender Reddy; Patlolla Jithendar Reddy
-

Warangal & Mulugu Regions

Representing the historical heart of the legal profession in Telangana, the members of the Warangal, Mahabubabad, and Mulugu Bar Associations bring a rich tradition of advocacy. Their steadfast commitment to justice and deep-rooted expertise in regional legal issues have provided a meaningful perspective to this endeavour:

- **Warangal Bar Association:** M. Ram Chander (Former AO, Judicial Dept.); Y. Shyam Sunder Reddy (Former President)
 - **Mulugu Bar Association:** Chakravarthula Venugopala Chary (President); Yekkanti Narsireddy (Ex-President); Masregani Vinay Kumar (Ex-President); Musipatla Venkateshwar Rao (AGP); Bolli Sarangapani, Senior Advocates; Bikshapathi, Advocate
 - Bajarshyam Shyam Prasad Patel, former Public Prosecutor, Mulugu District
-

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- **Asifabad Bar Association:** Raparshi Ravinder (President); T. Suresh, Muktha Suresh, & B. Satish Babu (Former Presidents); Rajiv Reddy

- **Sirpur Bar Association:** V. Kishore Kumar (Former President); M. Shankar Rao; Mohd Rais Ahmed
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- **V. Ashok**, Founder, **FACT OPINION**
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Despite my best efforts to acknowledge all those who contributed to this work, I recognize that I may have inadvertently omitted some names, either due to the sensitive nature of their vocation or for other reasons. Any such omission is entirely unintentional. To all who have shaped my career, inspired my practice, and enriched this book with their knowledge and encouragement, I remain sincerely grateful.

G. Anil Kiran Kumar

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K. Narasimha Chary

Advocate, High Court for the State of Telangana
(Former Judicial Member, Income Tax Appellate Tribunal)

FOREWORD

The legal profession is a continuous quest. However, without proper guidance in this journey, the challenges young advocates face is significant. I have personally observed the difficulties faced by many talented young advocates in Mofussil areas due to the lack of support from a proper 'Senior' and a lack of proper direction. Even though they possess a law degree, I have witnessed their struggle due to a lack of 'professional skills' on how to examine a witness in a courtroom or how to prove a document as evidence.

Later, when I took charge as a Judge, the severity of this problem became even more clear. Especially in District and Mandal level courts, many obstacles arise in the trial process due to a lack of proper trial advocacy skills. Because advocates do not record evidence properly or ignore basic principles in cross-examination, not only is the course of the case damaged, but the justice due to clients is also delayed. As a judge, when there is a lack of expected cooperation and clarity from the advocate, delivering a correct judgment becomes a challenge.

After seeing this book, '**The Science, Craft, and Art of Trial Court Advocacy**' authored by friend G. Anil Kiran Kumar, I felt a solution was found for the main problem of young advocates in Mofussil areas. From speaking with a client to every complex step encountered in the trial process, this book guides like a 'silent senior'.

Especially, the methods of evidence collection and trial procedures explained herein are a great weapon for Mofussil advocates. Reading law in books is different; putting it into practice in the courtroom is different. Mr. Anil Kiran Kumar has provided that practical knowledge very simply. This book will contribute greatly not only to young advocates but also to the conduct of quality trials within the judicial system. My heartfelt congratulations to Mr. Anil Kiran Kumar for this effort, made with the intention of benefiting society by pouring out his 23 years of extensive experience.

With Best Wishes,



Sri K. Narasimha Chary

V.V. Lakshmi Narayana, IPS
Addl DGP (Retired), Maharashtra
& Former Joint Director, CBI, Hyderabad

FOREWORD

Justice is not merely a collection of judgments delivered in courts; it is the lifeblood of democracy, the soul of the Constitution, and the foundation of a citizen's dignity. The Rule of Law is truly implemented in society only when justice is delivered timely, efficiently, and impartially. Justice delayed or denied should be considered not just as an individual injustice, but as a systemic failure that gradually erodes public trust in democratic institutions.

The Constitution of India has adopted values such as equality, liberty, justice, and dignity as its pillars. Fundamental rights, directive principles, and laws related to social justice are all symbols of the resolve to improve the living standards of the people. However, for these guarantees to come into practice, the pathways to enter the judicial system must be easily, properly, and effectively accessible to the people. In reality, especially the weak, the marginalized sections, and the economically backward people are unable to find the right path in the judicial system when their rights are violated.

In this context, the role of an advocate is crucial. An advocate is not just a professional; he is a vibrant bridge between the Constitution and the citizen. The responsibility of translating the language of law into the language of the people, and transforming constitutional guarantees into court judgments, lies with the advocates. However, although the legal profession is theoretically open to all, it is a reality we must fearlessly accept that advocates possessing professional ethics, quality thinking, comprehensive legal understanding, and expertise are

limited. Particularly due to a lack of strong Legal Drafting, strategic argumentation, and deep understanding of court procedures, justice remains inaccessible to the deserving in many cases.

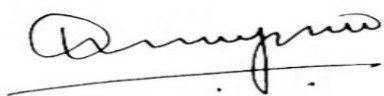
In the contemporary judicial system, much focus is centred on pending cases, statistics, and speedy resolutions. However, justice is a moral standard that cannot be measured by numbers. Just as it is important for the judicial process to be speedy, it is even more important for justice to be qualitative, comprehensive, and humane. In this backdrop, preparing advocates who do not merely apply the law mechanically but understand its soul and practice it in the light of constitutional values has become a national necessity.

This book, **‘The Science, Craft, and Art of Trial Court Advocacy – A Step-by-Step Guide to Trial Excellence,’** stands as an answer to that necessity. The main objective of this book is to comprehensively present trial court advocacy as a science, a craft, and an art. Argumentation in court is not just a citation of legal provisions; it is a coordination of fact-gathering, evidence analysis, understanding human behavior, strategic thinking, and ethical responsibilities.

This book explains every aspect required for the legal profession methodically, deeply, and experientially. Starting from basic skills like the conduct of an advocate, professional ethics, court etiquette, client relations, selection of the appropriate court, and Legal Drafting, it clearly explains all stages up to evidence collection, recording of evidence, examination of evidence, construction of arguments, and formulation of trial strategies. It also provides comprehensive guidance on Civil Suits — Money Suits, Injunction Suits, Partition Suits; Criminal Cases — offenses under the Bharatiya Nyaya Sanhita; and aspects like Interlocutory Applications and Bail Applications.

This book does not just teach professional skills to young advocates; it fosters a sense of constitutional responsibility, ethical firmness, and commitment to democratic values within them. It strongly proposes the idea that legal advocacy should be viewed not just as a livelihood, but as a public service.

I heartily congratulate **Sri G. Anil Kiran Kumar**, Advocate, High Court for the State of Telangana, and former District Judge, for providing this valuable book written with this level of thought, experience, and sense of responsibility. I am confident that this book will have a long-term impact in strengthening the judicial system at the trial court level. I hope that judges, advocates, and law students will make good use of this book and further strengthen quality, ethics, and credibility in the judicial system.



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For the common people of this country, Legal Advocacy has not yet become a popular, affordable, and effective means to resolve their legitimate grievances. Although there are many reasons for this, principally, the needs, narrow benefits, perception, and attitude of our Justice System operators and Political Executive appear to be the most crucial reasons. Today's justice redressal mechanism has become largely politician-centered, judge-centered, or advocate-centered rather than citizen-centric.

In a political democracy, the system functions in such a way that people feel justice is a benefit or concession granted by a politician, rather than a right naturally available to every citizen. Consequently, a situation has arisen where people have to look for political patronage rather than approaching courts for their legal problems. In reality, in the country's current political climate, the structural and functional problems related to the Justice System are not entering into serious public discourse or informed discussion.

At the same time, judges too are under pressure to show their performance based on quantitative parameters like statistics, pendency figures, disposal rates, and speedy justice targets, rather than the substantive quality of justice. Thereby, a situation has arisen where justice is being assessed based on numbers rather than values. When it comes to Advocates, in many instances, a case is becoming an opportunity for professional visibility, career advancement, or financial

sustenance rather than a means of justice delivery. However, it is not correct to say that there are no advocates working honestly for justice. But due to fast-changing social values, individual aspirations, market-driven professional pressures, delay-oriented procedures, and systemic bottlenecks, a situation is arising where their sincere efforts cannot easily yield results.

Looking at it as a whole, we need to honestly accept the reality that our Justice System has not yet fully adopted a victim-oriented approach. To change this bewildering and complex scenario, a single reform, a legislation, or an executive order is not enough. It requires sustained, conscious, and collective effort, in which the entire society must become a partner.

In this context, the most crucial question is only one—Is an advocate ready to take up this call and responsibility? Unfortunately, we cannot deny the criticism that the present legal education system in our country has not functioned at the expected level in preparing advocates in this direction. Legal education is largely limited to a classroom-centric, examination-oriented, and theoretical framework. We are teaching students to memorize statutes, sections, and case laws, but not making them understand the larger purpose of justice delivery. Adequate importance is not being given to aspects like values, ethics, social sensitivity, empathy towards litigants, practical skills, and problem-solving abilities.

For a truly independent and democratic judicial system to function, it is essential to inculcate right values in advocates, equip them with requisite practical skills, and impart application-oriented and socially relevant legal knowledge. These need to be taken as primary and indispensable actions.

This book was formed from this stream of thought. The purpose of this book is not just to give knowledge about law; it is to develop a broader perspective on

how to practice law at the ground level, how to use law for justice, and what our responsibility is towards society as an advocate.

At the very beginning of this book, I have discussed topics that every young legal practitioner must essentially know under the title ‘Frequently Asked Questions by Young Advocates’. The main purpose of this section is not to discourage young advocates from practice; but to give clarity beforehand about the meticulous discipline, unquestionable commitment, emotional resilience, patience, and uncompromising integrity that the legal profession demands. The famous quote ‘Law is a Jealous Mistress’ describes the nature of this profession most meaningfully.

This book is written entirely with a remedy-oriented perspective. I have carefully selected only those areas that advocates frequently deal with and legal remedies that directly affect a large number of people in society. An Advocate's professional life begins with client interaction. Gathering facts from the client, ascertaining if there is a legal claim, and identifying and securing relevant evidence are the first and crucial steps. After that, the entire adjudicatory process continues from the selection of the appropriate legal forum, drafting pleadings, claim presentation, adducing of evidence, up to the submission of arguments.

During the pendency of the case, many steps like interim applications, interlocutory proceedings, writs, revisions, appeals, and miscellaneous petitions have to be taken to preserve the subject matter or facilitate proceedings. In this intermediate stage, the file goes into many hands, and the advocate has to deal with various vested interests, institutional delays, administrative hurdles, and human factors.

Therefore, along with legal knowledge, human understanding, communication skills, negotiation ability, patience, emotional intelligence, ethical strength, and practical wisdom are also equally important. This book attempts to comprehensively explain all these skills, qualities, and requisite knowledge with the help of popular cases, practical illustrations, and real-life situations.

If this book is utilized properly, it will stand as a strong guide not only to achieve success in your practice as an advocate but also to fulfill your role in the justice delivery system in a meaningful and responsible way. To understand the various concepts and key points of cases discussed in this book, the author has personally created some videos. Similarly, lectures given by the author can be viewed on the ‘AKK-Insights’ (<https://www.youtube.com/@AKK-Insights>) - YouTube channel. Readers, by viewing these audios and videos, can understand the concepts explained in the book more clearly and comprehensively.

However, despite meticulous editing and scrutiny, errors may occur. Therefore, it is my humble request to readers to consult relevant Bare Acts, Codes, Rules, or authoritative judicial precedents when there is a discrepancy or doubt. Your comments, criticisms, and constructive suggestions to further improve this book are always welcome.

G. Anil Kiran Kumar

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FREQUENTLY ASKED QUESTIONS BY YOUNG ADVOCATES

Young advocates face many doubts, concerns, and questions in the initial phase of entering the profession. Clarity is needed on the nature of the legal profession, the importance of trial court practice, working under seniors, choice of place of practice, time required to settle in the profession, skills, ethics, politics, and future prospects. This Frequently Asked Questions (FAQs) section is designed to provide practical, experience-based answers to the realistic questions often faced by young advocates. These stand as a guide to understand the legal profession not just as a job, but as a social responsibility and a way of life.

1. What is Advocacy? Why is Trial Court Practice important?

Ans: Advocacy is the Art of Convincing others. When a person's right is violated or is about to be violated, the process of trying to prevent/correct it by finding a solution to that problem with the help of law and the court is called Legal Advocacy. Although there are types like Trial Advocacy and Appellate Advocacy in Legal Advocacy, taking up other legal advocacy without trial practice is like a blind person talking about wonders without knowing the realities of the world. Because the real-life realities of a case can be truly understood only through practice before the trial court. That is why it is said: If a lawyer is a hero in the legal world, a trial court lawyer is a superhero.

2. How should one view the Legal Advocacy Profession?

Ans: One should view the legal profession not just as a source of income, but as a powerful platform to exert Social Influence. This profession has a close resemblance to politics. If politics is about influencing others, lawyering also exerts the same influence by handling cases and giving legal advice to clients. The work a lawyer does, even if they do not take a fee for the result, has the capacity to fundamentally change the life (Life-changing Impact) of the person

they are arguing for. People constantly live with some kind of Insecurity. They need guidance to protect their liberty and property. A lawyer, through his ability to lead a case to a logical conclusion, makes the entire society look to him for his overarching guidance and inspiration to solve any legal or social problem. In fact, as the time spent as a lawyer increases, the influence and power he exerts on society becomes immense and all-embracing. The summary is: If you are passionate about influencing lives, the legal profession is the right job for you. If making money is the sole goal, taking up this profession is not ideal. There is no doubt that advocacy provides a good income. However, if viewed only as a money-making resource, it is difficult for it to provide immediate results. Therefore, it is very important to first view this profession with a social goal and a service perspective.

3. Difference between Practical Knowledge vs. Theoretical Knowledge and their role in Advocacy?

Ans: It is not correct to show a difference between these two in the legal profession. The Law course is a professional course just like a doctor's course. The Bar Council of India designed this course with the aim of creating the best lawyers. Theory and Practice should both be integral parts of the course. The root cause for the feeling that there is a difference between these two is Poor Legal Education. Law schools and colleges have failed to train you on the skills and values necessary as a lawyer. Just because law schools failed in their job, it is not correct to create such a spurious distinction between theory and practice. To be successful as a lawyer, both the theoretical fundamentals of law and the practical management of the court are extremely essential. These two are like two sides of the same coin.

4. Does the legal profession increase the 'LIE' nature of a lawyer?

Ans: The opinion that the legal profession increases the 'lying' nature is not correct; it is an incorrect approach towards life. According to the law (e.g., BNS), no action is inherently a crime; the intention and purpose behind it determine the offense or exemption. Also, speaking the truth or telling a lie changes depending on the context. To implement this principle in reality requires greater inner strength. Otherwise, the personality becomes distorted. To overcome this ethical challenge, one must understand the lives of great people like Lord Krishna, Jesus, or Mahatma Gandhi. If the 'lying nature' aspect is understood correctly, the legal profession becomes a great opportunity to conduct experiments with truth and achieve the true purpose of life. A lawyer's job is to understand the law and evidence in favor of the client's case and argue it. This should be viewed not as a lie, but as Legal Argumentation.

5. What is Power? What are the different types of power?

Ans: The ability to Influence others is called Power. Power is of many types, important among them are: a) Legal Power; b) Social Power; c) Economical Power; d) Cultural Power; e) Moral Power; f) Opinion Power; g) Psychological Power etc.

6. What is Politics?

Ans: The word politics generally applies to the art or science related to running government or state affairs. It involves social relations coupled with Authority or Power. Also, Methods and Tactics used to formulate and implement Policy are also part of it.

7. Legal Profession: Who can take it up? What is the role of financial and social background?

Ans: Anyone can take up the legal profession. Having legal qualifications is enough to take up this profession. There is no doubt that a person's financial and social background plays a role in Shaping one's Practice in the legal profession. Income is low in the beginning of this profession. Therefore, adequate financial support from the family is needed to continue practice with devotion and commitment. People are often influenced by emotions and attachments. A strong social background helps in getting clients quickly and getting established in the profession. However, anyone with unabiding faith in the profession, adequate skills and abilities, and a legal eye can definitely excel as a lawyer. A weak social or financial background might delay one's prosperity but won't deny Prospects. A person whose life or property is in danger, even if from his own community, will only want a lawyer who has the ability to handle the case effectively and has a good image. Even if a strong background gives immediate benefits, if there is no good reputation with legal skills and humanitarian values, that success will not last long. All these rules apply equally to women interested in the legal profession. In summary, background may be an advantage initially, but only skill, ethics, and dedication determine long-term success.

8. Is it necessary to work under a Senior Advocate? Why?

Ans: Generally, even though there is no rule to work under a Senior Advocate, it is very necessary for a new lawyer. Because working under seniors provides working knowledge on a wide variety of cases in a short time. Moreover, procedures like preparing cases, drafting, and conducting arguments can be learned quickly; this helps in increasing public relations with people and other lawyers, and increasing social image; along with work, there is a chance to stabilize financially. Even if one starts the profession without the association of seniors, it becomes very difficult to get cases and settle in the profession.

9. What shall be the criteria to choose a Senior Advocate?

Ans: The following criteria should be considered to choose a Senior Advocate:

1) The number of cases currently with the Senior is the main criterion. If there are more cases, more experience is gained, 2) It is good to inquire how previous juniors (Ex-Juniors) who worked under him have settled in society, 3) His public Image is very important. Because, the Senior reputation impacts your future, check if your mental outlook (Mentality) is compatible with his. Payment should never be the main criterion in choosing a Senior. Seniors might not have time to teach you lessons directly. However, many lessons can be learned by observing their way of life, daily habits, their conversation with clients, the method of turning a problem into a case, and case management.

10. How long does it take to settle in the profession as a lawyer?

Ans: To successfully settle in the profession as a lawyer, practice with undivided devotion and attention for at least three to five years is mandatory. During this crucial time, a young lawyer must acquire complete working knowledge on the following aspects: a) Case Process: Practically learn every stage from Filing to End Result on Civil and Criminal case processes. b) Skills Development: To turn a human problem into a legal case and find a quick solution with the help of the court, the following Skills must be developed: Legal Knowledge; Legal Drafting; Advocacy Skills; Court Craft; Right Habits. To excel in this profession, one must put aside personal and family life and live in the legal world twenty-four hours a day. While exploring solutions for a case, one must try to reach its logical end. Only with this level of dedication and skills can one definitely be successful in this profession.

11. Is it right to prepare for Law Competitive Exams?

Ans: Yes, preparing for law competitive exams (even from a practice point of view) is always Desirable. Preparing for competitive exams brings an Organises

Study to the method of studying law and the Approach. Preparing seriously for the Civil Judge exam or any other law competitive exam is the right opportunity to strengthen the basics of Law. Many questions asked recently are from a practical point of view along with the basics of law. Therefore, this preparation is very useful to analyse problems encountered in practice. In summary, preparing for competitive exams is useful not only for a job but also to solidify your legal knowledge and excel better in the profession.

12. Is there any importance to the place of practice? Yes, the place of practice has an important role in the legal profession. What are suitable areas for practice?

Ans: It is important to choose a place where there is scope for work. Practicing in an area with no opportunity for work is of no great use. Litigation usually comes as a result of change or development. Therefore, areas where the following activities happen excessively are suitable for practice: a) Areas where financial transactions happen excessively b) Areas where developmental activities or construction activities happen, c) Areas where Social transformational actions happen. Generally, cities, towns, or areas where urbanisation is happening rapidly are suitable for practice. Because the intensity of economic and social activities is high in these areas, resulting in a need for more disputes and legal advice. While choosing a place of practice, estimating the litigation generation capacity in that area is very crucial for a lawyer's professional growth.

13. Is it right to stick to Traditional Litigation?

Ans: Sticking to traditional advocacy is not that ideal. Unless there is a strong social and financial background in the area where the lawyer practices, it is not correct to stick only to traditional advocacy in Mofussil Courts. Traditional advocacy is undergoing severe changes; in Mofussil areas, more cases are ending quickly with Compromise or other settlements, thereby reducing the opportunity

for serious work. After completing two or three years of practice in trial courts and gaining sufficient work experience, it is very ideal to shift towards a Special Area of Litigation. There are many special courts and tribunals in cities and towns. Here, there is more demand in new fields like family laws, company laws, consumer laws, revenue laws, and real estate law. In view of increasing urbanization, Specialization is key to a lawyer's professional growth and stability. To excel in the future, it is mandatory for today's lawyers to change according to market needs.

14. To what extent is Trial Court practice experience necessary to excel in corporate law?

Ans: Court practice experience is very necessary for anyone in the legal profession who wants to excel in corporate law or other legal jobs. Practicing for some time provides an understanding of the actual operation of Law. Clear working knowledge is gained at every stage in the journey of a case. A broad understanding of the strengths, weaknesses of the judicial system, and the entire profession is gained. Without this experience, a lawyer working in corporate jobs will have to move forward just by imagining things. As a result, professional satisfaction is not gained, and one might have to act only as a 'File mover' for the case, leading to disappointment.

15. Necessity of a Lawyer's Office?

Ans: Yes, an Office is very necessary for a lawyer. A lawyer must be physically and mentally available. Having a proper office builds faith in the relationship with the client. The Ambience of the office should reinforce the courage and trust you have filled in the client. An office is needed to manage files properly. A file is not just a bundle of papers; it is a human being's life. To solve a problem, read files repeatedly, think to gain new insights, meditate, and plan, a pleasant place is needed. That is nothing but your office. Every new reading shows new ways to

solve the problem wonderfully. An office is an essential pre-requisite for your work.

16. Necessity of Working as a Team?

Ans: Yes, working as a team is very necessary in the legal profession. This is the era of team dynamics. The days when a single person could control and manage all affairs are gone. In these rapidly changing conditions, unless we work as a team of lawyers and synchronize our capabilities (Synergies), there is no chance for professional development. Choosing the right partner is key. The partner should be equal to our knowledge, close to our mental state, and have an adjustability nature. Partnerships break mainly due to money and ego issues in teamwork. That is why money should not determine partnership. One must first learn to live together and work with a team, only then choose the right partner. Many successful business organizations in India like Birla, Tata came from the Joint Family System.

17. Do Face Value and Equation with Judge work?

Ans: Yes, Face Value or good relations (equation with Judge) work. In the Anglo-Saxon legal system, 90% of success in a case lies in the hands of the judge. Whatever the mentality of the judge, it is always ideal to ensure being in his or her good books. The way lawyers present their case, their respect for the court, and their Professional Ethics influence the judge's perception. Going against him or her (the judge) should happen only in rarest of the rare cases. Maintaining professional dignity and courtesy is very crucial in a lawyer's profession.

18. Is Public Relation necessary?

Ans: Yes, public relation is necessary, but only after your skill. Do not show unnecessary interest in this in the initial days of professional life. Your first and main goal is to achieve the following: Mastering Court Craft. Learning the art of

turning a human problem into a Legal Case. Fully learning the Mode of Conducting a Case. Once you prove yourself as a person of competence in these fields, people will come to you on their own to solve their problems. Your quality of work and your success will speak. You do not need Special Marketing for this purpose. Your skill will be your best public relation. In summary, focus on your professional skills first; public relations will come on their own.

19. Does Advocacy require Convincing Skills or Compromising Skills?

Ans: The legal profession requires both convincing Skills and compromising Skills. You are not there in court just to experiment with legal ideas and learn law with the help of human problems. Your main intention is to provide relief to your client. This relief may sometimes come in the form of a judgment through convincing arguments, or sometimes it might have to be achieved through compromise keeping the client's interests in mind.

20. Is 'Playing Safe' the right attitude in the legal profession?

Ans: No, 'Play Safe' is not the right attitude in the legal profession. In personal or professional life, no one should expect such a 'safe' situation. Every lawyer must be ready to face all challenges. Rather than handling a case in a normal manner, they should train themselves more to face disasters and unexpected situations. The true secret of success in life or profession is to be ready to learn constantly without fearing challenges and to face difficult situations effectively.

21. How to view Colleague Advocates when they discourage?

Ans: The legal profession is a kind of Competition. In this competitive world, the person next to you might also try to remove you from this competitive game. That is why they look for ways and methods to discourage you from continuing in the profession. However, the advice given by colleagues might sometimes be correct too. Before yielding to their suggestions (influence), you must consider the

following factors and take a cool decision, check if you have the skills and habits required for this profession. Estimate your professional future keeping in mind your social, political, economic, and cultural background. Remember, every human's situation in this world is unique. Advice that doesn't work for one might work for another. Others' negative experiences should not be a hindrance to your individual capabilities. Instead of viewing colleagues' words as mere discouragement, use it as an opportunity for self-introspection and choose your path wisely yourself.

22. Are there high Politics among lawyers?

Ans: Yes, it is very common to have politics among fellow lawyers or in any office. Every person desire to have Control over things in the office or workplace as part of their self-interest and pursuit of individual agenda. Since lawyers have a strong desire to influence others' lives, it is natural to yearn for authority to influence matters in court. There is nothing wrong with doing politics. In fact, politics is like a lubricant that runs the internal mechanisms of an organization. So, these are necessary. Young entrants need not fear or worry about these issues. In the initial stage of practice, your focus should be only on learning Court Craft and nothing else. If you focus on your skills, politics cannot stop your professional growth.

23. How to handle Advocates Bar Association Politics?

Ans: Politics in the Bar Association are common. Some people engage in politics to achieve their interests or influence daily court-related activities. The benefits gained through these can be tangible or intangible. Tangible benefits, for example, promotions, getting some reliefs; intangible benefits mean mental satisfaction, reputation, or gains through networking. These politics can create trust or mistrust, unity or division in the work environment. If managed positively, they enhance coordination and efficiency among individuals; but if done badly, they

can cause division, anxiety, and intolerance. However, some management experts describe politics as a ‘Lubricant’ that runs the internal mechanisms in an organization. That means, politics play an inevitable role in power distribution, work allocation, and daily decisions. Therefore, paying careful attention to bar politics and creating the right Political Landscape is very crucial for professional success, reputation, and efficiency in the court environment. Because, if you do not interfere with politics, bad politics will interfere with your life. The only way for a lawyer to become a Successful Player in Bar Politics is to develop the right personality. Personality is not just external appearance. It is a particular combination of a person's internal qualities, skills, values, and emotional, behavioural responses. A lawyer possessing this comprehensive personality with competence can stand firm even amidst the political forces working in court through his integrity and competence. Only by constantly developing and improving these qualities can a lawyer dominate court politics and deliver justice to the client.

24. Is there Corruption in courts?

Ans: It is better not to have a positive or negative opinion on whether there is corruption in courts or not. As a lawyer, solving this problem is not in your hands. Lawyers often have to provide emergency services to clients. At such times, the services of the court and its staff become extremely essential. In times of high urgency, it is necessary to get complete co-operation from court staff even at odd hours. If you engage in the work of eradicating corruption in the courtroom, you will disengage from your client's real cause and the main purpose of the legal profession. The reality that there is corruption in the judicial system in India was lamented by the then Chief Justice of India V.N. Khare himself. In his words: ‘Corruption in lower courts is no secret’.

25. ‘Law is a jealous mistress’ Comment.

Ans: Justice is like a deep mistress who needs to be looked after carefully. It does not easily keep giving gifts to anyone. To succeed in Advocacy, a person must dedicate his time, attention, and complete devotion to justice. Justice can obstruct midnight time, meal and rest times too. It has a characteristic that ‘if you leave it, it immediately goes away looking for other opportunities. Justice and Advocacy mean not just being limited to books or systematic training, but also require wisdom, courage, comprehensive observation, and responsibility. A lawyer can gain respect, victories, and recognition only if he truly serves the law. Once this dedication is missing, the law will not be with him. Therefore, justice is a most devoted, demanding mistress. Understanding this and serving with dedication alone leads to true success, respect, and personality.

CHAPTER 1: INTRODUCTION

LEGAL SYSTEM AND ROLE OF A LAWYER

The desire for human survival in the world is very profound. Man, strongly desires to control the resources in this world to fulfil his needs. Due to these desires, a conflict of interest arises with other humans. To resolve this conflict, a dispute resolution mechanism became necessary. As a response to this, human relationships were intertwined based on rights and liabilities through a tool called Law. To ensure the credibility and efficiency of this mechanism, certain institutions run by individuals with independence and impartiality, along with procedural rules, were established. In this system, core values such as providing due opportunity to both parties, delivering justice according to Law rather than the personal opinions of Judges, and the existence of at least one appellate forum are essential.

Following the industrial revolution and the knowledge revolution, life has become more complex and interdependent. Naturally, laws and legal rules have also become more extensive and complex. In these circumstances, it became difficult for an ordinary person or victim to effectively prove his or her grievance before the court on their own. Therefore, the need arose for a person possessing deep knowledge of the law along with the skill to present facts effectively in a legal manner. This necessity gave birth to the role of the legal technician known as the Advocate. The entire process undertaken by an advocate in a case is called Legal Advocacy.

In the modern era, war used to happen on physical battlefields. But now, it takes place in the court. In the past, wars were fought on physical grounds with weapons and military power. But in the modern era, the nature of warfare has changed—wars are now fought in courtrooms. Today, wars are fought not with weapons, but

with facts and law. Every argument in the courtroom is a fierce legal battle. In that war, the advocate is a warrior; his sharpest weapon is the Law.

For an advocate to achieve success, his personality, right habits, deep knowledge, and skills are crucial. An advocate who comprehensively masters these four aspects can steer the case towards success through his self-confidence and courtroom presence. Ultimately, credibility and charisma as an advocate stand as the final factors determining the case outcome. Therefore, let us now study these four important aspects:

I. Habits

II. Behaviour Pattern

III. Skills

IV. Knowledge

I. HABITS

To achieve success, in addition to knowledge and skills, certain habits must become an integral part of a lawyer's personality. Just as Knowledge and Skills are crucial for success in the legal profession, good habits are equally important. The following are the best few:

1. Must have passion to solve human problems.
2. Must have love towards the legal profession.
3. Commitment to law as a profession.
4. Must have good preparation for every case.
5. Develop habit of legal writing.
6. Must do case follow-up and case review.
7. Along with doing legal research, must stay updated with legal developments.
8. Maintain time schedule.
9. Accessible to clients at office.
10. Must make friends with the right peer group.

11. A down-to-earth approach to life.
12. Must possess humility.
13. Must provide mentoring to juniors.
14. Passion to maintain a good office.

II. BEHAVIOR PATTERN

Behaviour is our conduct towards others. While handling a case, we must interact with several key persons, and our conduct influences their perception and decision regarding us. These include the client, opposite client, opposite lawyer, court staff, and the judge. Therefore, it is essential to maintain proper conduct towards them to achieve the correct and desired outcome in the case. A clear understanding of professionalism, courtesy, punctuality, and ethical behaviour must be present in every interaction. This strengthens not only client satisfaction, but courtroom credibility, and professional reputation.

III. SKILLS

Being a successful lawyer requires not just knowledge but also possessing many skills. Skill is developed through training or experience. Important skills include:

1. Client Interaction.
2. Choosing the appropriate Legal Forum.
3. Legal Drafting – Preparing legal documents.
4. Producing, recording and appreciation of evidence includes the skill of Cross-examination.
5. Presenting Arguments.

Additional Skills:

1. Case Handling
2. Case File Management
3. Communication Skills
4. Analytical Skills

5. Conflict Resolution
6. Team Building and Managing Skills
7. Leadership Skills
8. Networking Skills

IV. KNOWLEDGE

An advocate must have a complete understanding of fundamental laws such as Jurisprudence, Contract Act, Transfer of Property Act, Stamp and Registration Act, BNS (Bharatiya Nyaya Sanhita), BNSS (Bharatiya Nagarik Suraksha Sanhita), BSA (Bharatiya Sakshya Adhinyam), and Code of Civil Procedure. A comprehensive understanding of the Constitution of India, Administrative Law, Right to Information, Consumer Law, and Law of Arbitration. Acquiring specialized knowledge in the area one wishes to Practice, especially working or practical knowledge.

CHAPTER 2: KEY HABITS OF A SUCCESSFUL ADVOCATE

As said earlier, to achieve success, along with Knowledge and Skills, certain Habits must be part of an advocate's personality. A Habit is something we do frequently and subconsciously. In fact, habits form the core of our personality, making us charismatic and magnetic. The following are some of the best ones:

1. Must have passion to solve human problems.
2. Must have love towards the legal profession.
3. Commitment to law as profession.
4. Must have good preparation for every case.
5. Develop habit of legal writing.
6. Must do case follow-up and case review.
7. Along with doing Legal research, must updated with developments in law.
8. Maintain time schedule.
9. Accessible to clients at office.
10. Must make friends with the Right peer group.
11. A Down-to-Earth Approach to Life.
12. Must possess Humility.
13. Must provide Mentoring to juniors.
14. Passion to maintain a good office.

1. Must have Passion to solve human problems: To continue in the advocate profession, one must have a burning desire (passion) to solve human problems. Because, to live happily and achieve better results in work, a person must love their work. For those who love their work, hurdles on the way appear not as problems but as opportunities. Passion increases Focus; enables creativity and innovation; increases the desire to achieve excellence; brings energy to work; increases motivation and reduces stress; working more does not feel like a 'workload'; working extra hours feels joyful.

2. Must have Love towards the Legal Profession: Courtroom politics can be very venomous and vicious. In this environment, viewed from a rationalistic angle, young advocates can easily lose their way. The only answer to this is: Loving the profession. Once an advocate starts loving his profession, he views every aberration or lethal injury encountered as wounds to his body and tries to fix them or bears them and moves forward. Such a person continues the profession with unquestionable courage and commitment. For true love to stand, an advocate needs a robust personality, legal knowledge, and a GOD-like understanding of the highs and lows of human life.

To know if an advocate truly loves his profession, one can ask these questions: Do I have deep interest in understanding and solving others' problems? Does this passion come from a desire to influence others' lives to make a better society? Does this passion continue even in adversities? Do I feel pleasure when solving a legal problem, and does it motivate me to move forward in life? Did I choose this profession knowing well about the Judicial System and societal trends, rather than just the cosmetic influence of cinematic icons? If the answers to these questions are positive, you can undoubtedly continue in this profession.

3. Commitment to Law as Profession: Lawyering means fighting, and a lawyer is true a fighter. Working as an advocate, we have to face many setbacks, but we should not back down. Just legal knowledge or lawyering skills are not enough. A lawyer must have an unabiding fighting spirit to face any situation with nobility and civility. The person who can truly continue the fight must have commitment to their legal profession. If we as a lawyer take up a client's case or cause, we must stand by it in any situation. This is called commitment, and for this, mental and moral nerve fabric is needed. To be a successful lawyer, one must have a specific temperament. He must have qualities such as logical reasoning, physical

stamina, moral stamina, and persuasive expression. Beyond all these, the highest ideal that inspires advocates is Justice, for which they risk even judicial censure or public disfavour. If these qualities are practiced constantly, they become inherent habits in us, shaping us into advocates with integrity, courage, and purpose, and commitment to the profession helps us face every challenge with dignity, courage, and ethics.

4. Proper Preparation: The slogan of every successful advocate. Prepare harder, longer, and faster than the other side. Do not reduce preparation relying solely on your experience. Thorough and complete preparation is a great equalizer. We may not be able to control everything, but we have control over the fact that no one can outwork us or out-prepare us.

5. Develop and Strengthen the Habit of Legal Writing: As an advocate, the real fight begins on paper. Drafting legal arguments, petitions, pleadings, contracts, and notices accurately and on time in every case is the lawyer's first battlefield. Well-prepared documents greatly influence courtroom credibility, case strength, and persuasive power. If there are mistakes in paper work, there is a possibility of courtroom challenges, delays, and client disappointment. Therefore, it is extremely necessary for a lawyer to develop and strengthen the writing habit. Daily writing practice, drafting, reviewing, and revising strengthens the lawyer's analytical thinking, logical reasoning, clarity of thought, and attention to detail. A consistent writing habit helps in reducing errors, improving case preparation and courtroom performance, and maintaining professional discipline. Thus, the courtroom fight truly begins on paper, so the writing habit is a fundamental tool in a lawyer's career.

6. Case Follow-up and Case Review: As an advocate, case follow-up and case review can be said to be extremely important. It is the lawyer's responsibility to follow the litigation process, court dates, deadlines and client requirements in

every case. Through Case follow-up, we consider updates related to courts, opposing parties, and clients. Through regular follow-up, case delays, missed deadlines or procedural errors can be avoided. Through case review, the lawyer reviews his case strategy, arguments, legal precedents, and evidences, and makes corrections if necessary. This is a tool that strengthens case preparation and improves courtroom performance. Providing timely updates to clients (upon every critical adjournment) and explaining how it is going for every three or six months increases client confidence. Therefore, disciplined case follow-up and thorough case review are necessary for professional excellence, client satisfaction, and successful litigation.

7. Develop Legal Research Skills: It is necessary to develop strong research Skills. Through this, you can identify the correct laws and principles related to cases. Mastering the changes occurring in laws from time to time and finding relevant judgments strengthens your argument.

8. Maintain time schedule: Working as an advocate is not just looking at cases; managing time properly is also an extremely important responsibility. A lawyer must be able to complete daily tasks, client appointments, court appearances, legal research, and drafting documents on time. If there is no punctuality, deadlines are missed, clients suffer loss, and professional reputation is damaged. Therefore, effective time management is a key attribute for an advocate. For this, a lawyer must plan the day's program in advance, decide priorities correctly, and reduce unnecessary activities. By being ready before every appointment and hearing, completing legal documents on time, and allocating adequate time for case preparation, a lawyer achieves excellence in punctuality. This strongly influences professional discipline, client satisfaction, and courtroom performance. Similarly, filing cases and documents on time and accurately is an important professional responsibility for a lawyer. It is very necessary to follow

deadlines, court dates, and legal procedures on time in every case. If cases and related documents are not filed accurately and on time, the lawyer has to take responsibility for the error, and the client's interests may be damaged. If you do not maintain proper timings, or do not take action, you will feel guilty. By following punctuality, case delays can be avoided, procedural errors reduced, and the client's legal rights protected. Also, maintaining documents properly and accurately increases professional credibility in the courtroom. This practice helps in growing as a disciplined, responsible, and effective lawyer.

9. Accessible to Clients at Office: As an advocate, being accessible to clients is extremely crucial. Being available in the office, arranging meetings with clients, and explaining the progress of their cases builds their faith in the lawyer. A lawyer must be ready to give immediate answers to clients' doubts, questions, and requests. Following office timings systematically, attending appointments punctually, and dealing with clients with professional courtesy makes legal services easily accessible to them. If the lawyer is easily reachable to clients, contacting them via phone, email or office visits, if necessary, reduces unnecessary anxieties and errors. Showing clients that they are important and that their cases are running properly strongly boosts professional reputation. Therefore, accessibility is not just courtesy; it is an important attribute that realizes professional discipline and client satisfaction.

10. Make friends with the Right Peer Group: While growing as an advocate, making friends with the right peer group is very important. A lawyer must have relationships with the right colleagues, mentors, and fellow lawyers for professional growth, knowledge sharing, and ethical guidance. A positive peer group shares new legal perspectives, case strategies, and courtroom experiences with us. Therefore, we can effectively face challenges encountered in law practice. Conversely, a toxic or negative peer group can affect our professional

values, reduce our discipline, and increase the chances of crossing ethical boundaries. That is why it is very necessary for a lawyer to choose the right peer group that supports professional integrity, growth, and learning, and to actively participate in regular interactions, discussions, and brainstorming sessions. This approach shapes the lawyer into a competent, ethical, and socially responsible professional.

11. A Down-to-Earth Approach to Life: The most successful Trial lawyers have mastered not just the necessary technical skills, but the greatest art of all—truly being themselves. Ultimately, success does not come from common techniques of cross-examination or stumbling in final arguments. The person who achieves success must be trustworthy, plainspoken, and candid. He tells it like it is with words composed of the substance of his soul, and words soaked in the blood of his being. Having a simple, trustworthy personality leads to sustenance in the profession.

12. Humility: Humility means being humble. Successful lawyers often use phrases like ‘I have been fortunate’, ‘I have received many blessings’ in their interviews. Recognizing that the reason for their success includes the support of others and divine blessings along with their work indicates humility.

13. Mentoring: Mentoring is an important tool for the professional development of advocates. Senior members should act as a mentor to young advocates and law students. Mentoring has a dual nature. Seniors take juniors under their wings and nurture them. They teach by their example through competent representation, ethical conduct, and public service. There must be love towards the people under our leadership. Not just hard work, there must be passion too. By passing this passion to new members, our profession's respect and stature increase.

14. Passion to Maintain a good Law office: As an advocate, having passion to maintain a good law office is very important. Professionalism and reliability can be shown to clients through office discipline, cleanliness, proper documentation, and timely case management. Maintaining a cordial and cooperative relationship with office staff, interns, and colleagues also reflects the lawyer's passion. Managing every document, case file, appointment, and client interaction properly and on time is the lawyer's responsibility. If a lawyer maintains the office properly, well-organized, and efficient, clients are given a convenient, transparent, and trustworthy experience. Working with Passion increases the lawyer's motivation, focus, and commitment. This increases not only office efficiency, but also professional reputation and client satisfaction. Therefore, passion for the lawyer's office maintenance is key for professionalism, discipline, and long-term success.

Advocate's Office: Structure and Management

Every advocate must have their own Law office. A well-managed office not only creates a healthy working atmosphere and attracts clients but also increases efficiency and productivity in work. An advocate's office generally consists of chambers, a library, cupboards, registers, diaries, computers, stationery, and places to meet clients.

It is better for an advocate to establish their office near to the court premises. It is also ideal to have their residence within a range of two to three kilometers from the court premises. Advocate services are urgent and of a serious nature. Any small delay in handling crises can cause irreparable risk.

Having the office and residence within a range of three to five kilometers to attend court regularly saves time, money, and energies. Due to today's fast life and the idea of speedy disposal of cases, it is mandatory for every advocate to be alert (stand on toes) every moment. Being nearby supports this practice.

The office layout should include the advocate's chamber, proper furniture arrangement, computer, library, and accommodation for clients and staff. The advocate's chamber should be secluded. This allows for confidential communication with clients to happen freely and frankly. Moreover, unnecessary interruptions can be avoided. Furniture arrangement should make the office tidy and fit the available space. Proper accommodation should be provided for staff and Young Advocates. Assistants should be seated in a way that allows the advocate to easily direct any work. An advocate cannot speak to all clients at once, so they may have to wait. Therefore, it is mandatory to arrange a waiting room equipped with proper furniture, newspapers, and magazines.

File and Document Management: Document management is a very important aspect of case management. Every advocate has an obligation to manage the case file. Since cases run for at least three to eight years or more, files should be kept in a way that is easy to identify, secure, and able to restore. A newly practicing advocate should collect photocopies of a variety of cases, petitions, pleadings, and deposition statements of the witnesses of completed cases filed in court. The purpose of collecting these documents is not to copy the format. They help in understanding the mode and method of practice according to cases, and how to file petitions and pleadings.

Safety and Confidentiality: Maintaining the safety and confidentiality of documents is a primary duty cast on the advocate. This increases the client's trust in the advocate. Cupboards with a locking facility should be arranged for document safety. There should be a separate cabin for case files, which avoids the need to search for files unnecessarily. It is better to verify original documents brought by the client in their presence, take only photocopies, and return the originals to them then and there. If there is a need to file originals, it is ideal to direct the client to bring them to court directly. If the advocate takes original documents, a register with clear details should be maintained, and a receipt should be taken from the client.

Diary and Case Management: The case diary is like the advocate's schedule manager. The case diary records details of case postings based on a calendar. This helps the advocate in preparing for the next day's work. Generally, Bar Associations provide standard form case diaries to their advocate members.

Comprehensive Case Management: Along with document management, case management includes the following aspects: case estimation and research: proper appraisal of the case, study of appropriate provisions of laws, and research on case laws should be done. This enhances the advocate's image and standards. Taking timely action in consultation with the client at every stage of the proceeding is mandatory. A major part of important tasks like research, pre-trial preparation, and meetings with clients happens in the office. Therefore, the office should be managed to get the best outcome from these key tasks.

Technology and Library: It is necessary for every advocate to have a good own library. The advocate's library should contain all bare acts, reference books, and digests. Keeping all relevant Acts in the library saves time and allows for immediate referral without going anywhere. In today's times, every advocate must be tech-savvy. All types of information like filing a petition, case status, and court decisions are uploaded to the computer. It is equally important to have internet and Wi-Fi facilities.

Stationery: The advocate's office must possess necessary stationery items for office use. These should be kept in stock. Items like white paper, wrapper paper, pens, pencils, pins, tags, pinning machine, gum, envelopes, cards, postal stamps, pads, and various types of printed forms to be filed in courts. Stocking all these items avoids the trouble of going out for them when needed. By managing the advocate's office efficiently, not only is professional performance improved, but the advocate can also easily reach their professional goals.

CHAPTER 3: PRINCIPLES OF PROPER CONDUCT FOR ADVOCATES

No matter how an employee is in their personal life, they must follow certain rules while on duty. We call this 'conduct while on duty'. Individuals must always demonstrate good conduct to bring respect to the organization they represent. The same applies to an advocate. These are important for professional ethics.

Every case is always processed within a social environment. There are many people in this environment whose Attitude and conduct can have a negative impact on the outcome of our client's case. The priorities of these individuals might be related to their narrow values or tendencies. In addition to this, due to increased commercialization, cultural values among our stakeholders of the justice system are also declining. In these circumstances, the first priority of an employed person is to protect their job and gain profit from it without any risk. For this, they may often compromise their right attitude, understanding, and personality. Therefore, people processing cases are interested in protecting their authoritative position and benefiting from it. Hence, as an advocate, one must face these challenges creatively, shrewdly, and strategically. For this, it is mandatory for an advocate to have an all-embracing conduct, attitude, and personality. As an advocate, some important tips on how to behave with various people we interact with are given below:

1. Client: The mental framework to always remember in our Professional relationship with the client is: 'A client is a client'. For the client to reveal their full facts, they must have proper belief in us. It is necessary to give them customized treatment. Regarding the case, there must be frankness in our attitude. If it is a bad case, it must be clearly conveyed to them. As an advocate, our duty is to ascertain his legal case, formulate strategies for a legal solution, and process it within the framework of the law. We shouldn't assure about the outcome. This

is very important. However, in situations where there is no case, if the client wants to buy time, one can proceed according to their wish. It is ideal to keep the client informed about the development in court proceedings from time to time. Although this is not a mandatory duty, it increases trust between the client and the advocate. Maintaining Absolute Confidentiality regarding the information shared by the client is the advocate's ethical responsibility. This confidentiality increases the trust the client has in you. Protecting confidentiality allows the client to reveal full details without any hesitation.

Whenever a client asks for a No Objection Certificate (NOC), one should be ready to give it immediately. This is the client's right to appoint another advocate. Respecting their request and giving the NOC immediately should be considered a professional value. Advocacy is a Noble Calling, not Begging. Professional dignity and ethics must be maintained. One should not beg anyone for money or for a case. One must argue while protecting the value of your work and the status of the profession; the main purpose is to stand for justice, provide legal aid to clients, and uphold righteousness in society. This is not a business of begging just for money or cases. Advocates must work based on their capability and honesty while protecting their professional dignity and ethical values.

2. Opposite Lawyer: The Opposite Lawyer is a co-bar member along with us. They are also an officer of the Court. In the future, we might have to work with them on the same case. Clients and cases might be temporary, but advocates have to work in the same place for a lifetime for the cause of justice. We must be fair in our dealings with the opposite lawyer. We should not project the emotions of our client onto them. Even if the opposite lawyer is engaged in such activities (inappropriate activities), we should not engage in cross-talk or quarrels with them. Because this pollutes the court environment. It is ideal and necessary to report such issues to the court.

3. Opposite Party: Except with the immediate presence and consent of our client, talking to the opposite party is not advisable.

4. Judge: The rule every advocate must follow towards the judge is: be respectful, dutiful, and obedient to Court. Showing respect to the judge is not just a moral sermon, but also practical wisdom. This is necessary for the smooth running of the judicial system and for a positive atmosphere in cases. Following the judge's orders with obedience is professional dharma. Good conduct of an advocate increases the chances of a beneficial outcome in the case.

5. Colleague Lawyers and Bar: It is important to have good relations and fair dealing with bar members. This is necessary for professional cooperation and sharing knowledge.

6. Court Staff and Others: One should behave respectfully and humbly with court staff, attenders, etc. They all play a key role in case processing. It is better to seek cooperation rather than demonstrating an authoritative position over them.

7. External World: As an advocate in society, your conduct and personality influence your professional image. It is important to respect social values and follow professional ethics.

Conclusion: An advocate's conduct is not just a personal trait; it is the result of their mental traits, daily habits, culture, belief system, education, and upbringing. For an advocate to succeed, they must understand this complex socio-legal environment and deal with it with a creative and strategic approach. Only by cultivating an all-embracing conduct, attitude, and personality can an advocate achieve success in their profession.

CHAPTER 4: LAWYERING SKILLS

4.1 INTRODUCTION

Late Sri N. R. Madhava Menon, recognized as the father of Modern Legal Education in India, clearly stated that to achieve excellence in the legal profession, mere knowledge of law is not sufficient. He emphasized that for an advocate to grow professionally, there is a need to systematically learn many professional skills and imbibe them through continuous practice. According to Sri Menon's opinion, in lawyering, more than 70% consists of skills, and doctrinal knowledge plays only a supporting role. Law is not a static subject; it is applied in real-life human conflicts. Therefore, an advocate must have the capability to practically apply the law. These skills start not just in the courtroom, but from the case initiation stage itself. Professional branding, client interaction and counselling, properly understanding the client grievance, and making out a case are extremely crucial aspects. Similarly, procedural skills like identifying facts and legal issues, accurately drafting pleadings, and properly filing the case are mandatory for an advocate. Once the case enters the courtroom, advocacy skills become decisive. These include presenting the case effectively, producing and proving evidence, and especially mastering the art of cross-examination. Skills like observing witness behaviour and exposing contradictions make an advocate stand out. Finally, clarity, logical reasoning, and legal backing are extremely necessary in oral and written submissions. Sri Menon repeatedly emphasized that without these skills, even sound legal knowledge remains ineffective. Hence, this chapter aims to study all these legal skills in a detailed and systematic manner, enabling aspiring lawyers to build professional competence, credibility, and confidence in the legal profession.

4.2 CLIENT INTERACTION – PRINCIPLES

I. Environment and Listening

1. Showcases your professional ability and integrity: The way you speak with a client conveys your professional ability and integrity. Your behaviour, communication skills, and performance should increase the client's trust. Only through proper communication will the client reveal full details, which influences the success of the case.

2. Create an environment where the client can express freely: You must create an environment where the client can express their problem freely without any fear or hesitation. It is only in a free environment that they reveal hidden or hesitant key facts, which is crucial for fully understanding the case.

3. Ensure a calm, private, and comfortable discussion space: You must ensure a calm, private, and comfortable space to discuss with the client. Privacy gives them a sense of security, thereby enabling them to boldly speak about personal and sensitive matters as well.

4. Allow the client to narrate their full version: Allow the client to tell their full version of the problem. It is important not to interrupt or rush them in the middle. Only by listening to the full narrative will you, as a lawyer, fully understand the context of the case and the client's perspective.

5. Take notes as the client narrates the facts: It is very necessary to take notes of important points while the client is explaining the facts. Taking notes prevents you from forgetting important information. Moreover, taking notes also instils confidence that the lawyer is listening attentively to what the client is saying.

6. Avoid Judging the client's vices or virtues: You should avoid making personal assessments about the client's vices or virtues. As a lawyer, your focus should be solely on legal facts and consequences. An impartial approach helps in getting full cooperation from the client.

7. Listen without any preconceptions or critical judgment: You must listen to what the client says without any preconceptions or critical judgment. Professionally, one must focus only on the legal aspects of the case. Listening without preconceptions reveals the actual facts.

8. Patient listening offers mental relief and reassurance: Patient and attentive listening provides clients with a sense of mental relief and reassurance. When clients feel that their lawyer truly understands their concerns and problems, it builds trust and confidence in the lawyer. This sense of understanding encourages clients to cooperate more openly and effectively in matters relating to their case.

II. Analysis and Strategy

1. Clarify doubts and missing links honestly to uncover true facts: To know the true facts, honestly clarify any doubts and missing links in the narrative. Questioning deeply in this manner reveals any concealed or inadvertently omitted details that could influence the case.

2. Listen like a lawyer—focus on facts and legal consequences: As a lawyer, you must listen by focusing on facts and legal consequences, rather than viewing it merely as a personal story. You need to identify which fact strengthens or weakens the case.

3. Identify legal rights and issues from the client's narrative: It is important to identify legal rights and issues from the client's narrative. Identifying the laws,

rules, and core aspects embedded in their problem helps in steering the case in the right direction.

4. Use the Theory of Relevancy, Admissibility and Credibility: You must use the Theory of Relevancy, Admissibility and Credibility while interacting with the client. This means identifying which of the things stated by the client are relevant facts versus irrelevant facts, admissible facts versus inadmissible facts, and credible facts versus not credible. This helps significantly in formulating the case strategy. We will explore this in more detail in the next chapter for effective client interactions.

5. Read all documents given and seek necessary clarifications: Read all documents provided by the client carefully and seek necessary clarifications. The basis of the case lies in these documents, so it is essential to examine them thoroughly and resolve any doubts regarding them with the client.

6. Review the case, checking logic, legality, and factual truth: Review the case for logic, legality, and factual truth. This means analysing to what extent the case will stand, how strong it is legally, and whether the facts stated by the client are trustworthy.

7. Conduct legal research after the first meeting to build strategy: Conduct legal research after the first meeting to formulate the strategy. This research helps in understanding the strengths and weaknesses of the case and relevant case judgments, serving as a foundation for a strong argument.

8. Hold a second consultation to confirm the legal positions: Hold a second consultation after the initial research to confirm the legal position. This helps in clearly informing the client about the legal opportunities and challenges.

9. Use the second meeting to explore practical solutions: Use the second meeting to explore practical solutions for the case. This includes various methods such as settlement, mediation, or the strategy for going to trial.

10. Let fees be offered out of gratitude, not demanded: Let the fee be offered by the client voluntarily out of gratitude; you should not demand it. This preserves your professional values and helps maintain a healthy and trusting relationship with the client.

4.3 CLIENT INTERACTION – THEORY OF RELEVANCY AND ADMISSIBILITY

Once we have come to a clear decision regarding the nature of right or liability violated, the primary duty of an advocate is to examine whether that violation can be proved in court or not. Even if a right exists in law, it has no value without proper proof. That right can be practically enforced only when there is Evidence. Therefore, the actual key question is — not ‘what happened’, but ‘what can be proved before the Court’.

What kind of questions should an Advocate ask the client?

Ans: The answer to this question is clear in the Bharatiya Sakshya Adhiniyam, 2023 (BSA), especially in S. 3 & S.141. According to S.3 of BSA, a case must be proved only through facts mentioned in S.4 to S.50 but not with any other facts. As per BSA, a case shall be proved with the aid of relevant fact only and no others. If a party wishes to introduce a fact outside the scope of Sections 4 to 50, according to S.141, the Court has the power to question how that fact is relevant. If that fact does not fall under S.4 to 50 or is barred by law, the Court will reject receiving it. So, to properly prove his case, an advocate must inquire about facts and connected facts related to those constituting the right or liability. Doing so helps the advocate establish the necessary facts related to the case before the court according to the theory of relevancy. To ask those questions, an advocate must have extraordinary command over the substantive law that speaks about the right or liability, as well as the theory of relevancy. Only when having such understanding can one ask the right questions related to the case and effectively establish matters before the court.

In this context, an Advocate must have absolute clarity on the following terms:

Fact in Issue: A fact that establishes a right or liability is called a ‘fact in issue.’ Example – Murder case: Did person A kill B? Here ‘Did A commit murder?’ is the fact in issue. If this matter is proved, criminal liability is established on A.

Relevant Fact: A fact which can be used to prove a case before the Court is called as relevant fact. Fact in issue itself is also a relevant fact. Example: A purchasing a knife before attacking B. This is preparation related to murder.

Irrelevant Fact: A fact that is not useful for proving the case is considered irrelevant. For example, stating that the accused is a person of bad character may appear related to the case, but the law specifically provides that the bad character of an accused cannot be used to prove the case against him, except in rebuttal when the accused himself relies on evidence of good character (S.54 BSA)

Shall Not Be Proved: Even if a fact is relevant, the law may prohibit its use as proof. For example, under Section 23(1) BSA, a confession made before a police officer—such as an accused stating, ‘I myself committed the murder’—is a fact directly related to the offence and therefore relevant. However, the law expressly provides that such a confession shall not be proved in evidence. Thus, it is a situation where a fact is relevant but legally cannot be proved. Similarly, emotional or extraneous matters that do not fall within legally recognized relevance cannot assist in proving a case. Therefore, every advocate must clearly understand and apply the Doctrine of Relevancy, treating it like a form of mental framework or legal software that guides the identification of facts which can actually be proved in court.

Sections 4 to 50 – The Complete Relevancy Code S.4 to S.50 have identified 64 varieties of relevant facts useful to prove a fact in issue. If an advocate completely understands these sections and can fit the client narration into Sections 4 to 50, then the evidentiary foundation of the case becomes extremely strong. That is, the process of converting the story told by the client into law-recognised relevant facts is ‘Inquiring with the Client.’ After this process is completed: unnecessary matters are removed, relevant matters are clearly identified, and the case is placed before the court entirely within the legal framework (i.e., only with relevant facts).

Client Examination – Relevancy-Oriented Questioning During the time of questioning the client, questions must strictly correspond to Sections 4 to 50 of the law of Evidence. The following are broad facts covered under theory of relevancy.

1. Facts which establish right or liability
2. Facts which establish state of mind – intention, knowledge
3. Facts forming part of the same transaction
4. Facts which are inconsistent or making facts probable
5. Facts which could show Occasion or Cause or Effect
6. Motive
7. Preparation
8. Conduct - Previous or subsequent
9. Facts explaining or introducing facts in issue
10. Facts showing intent in similar acts
11. Facts showing a regular course of business or conduct
12. Admissions and confessions
13. Expert opinions
14. Character evidence

Conclusion: Skill in Evidence Law does not mean memorizing sections but thinking in relevancy. An advocate questioning the client based on **Sections 4–50** can turn raw facts into relevant and admissible legal evidence. If this process is done comprehensively, the case transforms from being an emotional story into a legally compelling proposition, whereby the court is compelled to give a judgment in our favour based on relevant and admissible evidence.

Hypothetical Situation – I

Plaintiff and Defendant belong to Shameerpet village. They are childhood friends. Due to their acquaintance, on 02.10.2009, in Shameerpet village, the Defendant asked the Plaintiff to give an amount of Rs. 1,00,000/- (Rupees One Lakh) as a hand loan for the expenses required to perform the marriage of his sister. Accordingly, the Plaintiff gave the said amount as a loan to the Defendant. At that time, the Defendant executed a demand promissory note in favor of the Plaintiff and promised to repay the loan amount with interest @ 2% per month. After giving the loan, the Plaintiff asked the Defendant multiple times to repay the loan amount. Finally, on 11.11.2011, the Plaintiff sent a legal notice to the Defendant demanding payment of the loan amount. However, the Defendant did not pay the loan amount. Similarly, the Defendant sent a reply legal notice stating that the said debt transaction is a false transaction, which is factually false. Therefore, the Plaintiff filed this present suit for recovery to recover the amount of Rs. 1,00,000/- (Rupees One Lakh). Immediately after receiving the reply notice via post, on 28/12/2011, the defendant came to the Plaintiff's house and caused hurt. Later this case was reported to the police and an inquiry was conducted. In the inquiry, the defendant accepted his liability. Villagers also felt bad about the Defendant's behaviour, expressed bad opinions about him, and many rumours also spread.

I. Facts in Issue:

1. Did the Defendant take Rs. 1,00,000/- as a hand loan from the Plaintiff on 02.10.2009?
2. Did the Defendant execute a demand promissory note for the debt and promise repayment @ 2% interest per month to the Plaintiff?
3. Did the Defendant default by not repaying the loan amount?

All these facts establish fact in issue as mentioned under S.11 BSA.

II. Relevant Facts as per BSA:

1. S.6 (motive & conduct): Defendant asking for money for his sister's marriage expenses on 02.10.2009.
2. S.5 : Plaintiff giving Rs. 1,00,000/- as loan to Defendant.
3. S.15 & S.16: Execution of the demand Promissory Note
4. S.6 & S.15: Plaintiff asking for repayment multiple times.
5. S.7: Personal Relationship.
9. S.4 & 6: Sister's marriage & related expenses.
10. S.6: Defendant caused hurt to plaintiff.
11. S.15: Did the Defendant admit his mistake before the police?

III. Irrelevant Facts: Villagers' opinions & gossip about defendant and his Community, Social disapproval of the defendant, Character attacks or moral judgments on defendant. Hearsay/rumors spread in village.

Hypothetical Situation – II

Raju and Ramini are husband and wife. They have a son named Arjun. Ramini died in the year 2005. Later, in the year 2010, Raju married a woman named Rukmini as a second marriage. Raju worked as a Senior Assistant in Rangareddy Collector Office and retired. Raju died in the year 2024. There is a deposit of Rs. 1,00,000/- (One Lakh Rupees) in the name of Raju in State Bank of India (SBI).

After Raju's death, Arjun contacted the bank and tried to obtain that amount. However, since Rukmini also claimed that she has a right, the Bank officials asked to bring a Succession Certificate. Meanwhile, Raju wrote a Will during his lifetime gifting his entire property to Arjun. Therefore, Arjun approached the court and filed an OP to issue a Succession Certificate. Arjun's main argument is: He is Raju's only son, and Rukmini has no legal right on the bank deposit, yet she is dishonestly claiming it.

I. Facts in Issue: The facts required to be proved are:

1. Is there a Father–Son relationship between Arjun and Raju?
2. Has Raju died? (Death of the propositus)
3. Is there a deposit of Rs. 1,00,000/- in SBI Bank in Raju's name?
4. Did Raju gift his property in favour of Arjun through a Will?
5. Does Rukmini have a Succession right on that deposit or not?

II. Relevant Facts:

Father–Son Relationship: Birth Certificate showing Arjun is Raju's son, School records, Service records of Raju, Family ration card. S.6: Facts forming part of same family transaction.

S.44: Opinion as to relationship by family members.

S.29: Death Certificate proving Raju's death.

S.28: Bank Deposit of ₹1,00,000/-:SBI Bank passbook/account statement Certificate issued by Bank.

S.29: Entries in the Official records.

Will Executed in Favour of Arjun: Registered/unregistered Will written by Raju, Attesting witnesses' testimony. It is relevant under: S.6, Section 26, S.58 & Section 67 BSA.

Claim of Rukmini: The fact that Rukmini is the second wife, Marriage date (2010). It is relevant under S.7. Facts explaining facts in issue and S.6 Conduct of parties.

III. Irrelevant Facts: Emotional relationship between Arjun and Raju, Village gossip regarding second marriage, social opinions on Rukmini. They have no legal relevance.

IV. Facts which shall not be proved: Rumors about inheritance, Hearsay statements regarding family disputes, Character evidence of Arjun or Rukmini. **Sections 46–47.**

ADMISSIBILITY

Every relevant fact must also be legally admissible. Admissibility depends on the mode of proof prescribed under the BSA. To prove a fact, it is not enough for it to be merely relevant; it must be proved in an admissible mode. Evidence can be oral or documentary or electronic. An advocate must know how to prove a fact, i.e., whether through oral, documentary, or electronic evidence, and ultimately, they must also know through whom that fact should be proved.

Oral Evidence must be direct. It means oral evidence is admissible if a person states that they personally saw, heard, or perceived it (S.60, BSA).

Hearsay/Indirect Evidence – repeating what others have said – is generally not admissible. Hearsay evidence is admissible under few circumstances and they are: 1) Dying Declarations (S.26(a)), 2) Statements made by persons referred under S.26 under the circumstances specified under (S.26(b)), 3) Statements in course of business/official duties (S.29–S.33), 4) Statements relating to relation and family matters (S.26(e) 7 (f)), 5) Admission (S.15).

Documentary Evidence – using documents to prove a fact (**S.61–S.65, BSA**). The BSA divides documents into various kinds for the purpose of proving the case. Without knowing the document's nature, one cannot prepare a proof strategy. One must know which category the document possessed by the client belongs to. An advocate must have extraordinary command over one rule – knowing which fact can be proved by oral evidence and which by documentary or electronic evidence. For this, he shall have a wizard-like understanding of **S.94 & 95 of BSA**. Documents are classified into various types for Proof. Without complete understanding of these aspects, it is impossible to become a good trial advocate. This is a fundamental rule of admissibility. Let us have a glance at various kinds of documents.

1. Primary & Secondary Documents: A Primary document means the original document itself. This is the best mode of proof. A secondary document means a copy used as a substitute when the original is not available. Secondary evidence is allowed only if the original is lost, destroyed, or is a public document. Secondary evidence is not accepted without a Reason.

2. Attested & Non-Attested – Wills, Gift Deeds: For some documents, attestation is mandatory. Documents like Wills and Gift Deeds must be signed by at least two attesting witnesses. Without Attestation, the document's validity falls into question. In non-attested documents, attestation is not required.

3. Public & Private Documents: Public documents are records prepared by government officials in their official duty. Ex: Birth, Death registers. Private documents relate to transactions between individuals. Certified copies are admissible for public documents. Private documents generally must be proved through the original.

4. Ancient Document (S.92 BSA): A document that is 20 years old or older is called an Ancient Document, and 5+ years in case of electronic records. If these come from proper custody, the court may presume its due execution, attestation and hand writing. But if the custody is suspicious, the presumption does not apply.

5. Ambiguous/Latent Defect Documents: If the language in the document is not clear and there is ambiguity, court interpretation becomes necessary. A latent defect is a flaw not visible outwardly but becomes known during usage. In such cases, the document's meaning can be explained through surrounding circumstances.

6. Negotiable Instruments – Promissory Note, Cheque: Instruments like Promissory Note and Cheque possess a special legal character. These come with

transferability and presumptions. Negotiable Instruments Act provisions apply. If Execution is proved, consideration is presumed unless rebutted.

7. Stamped/Unstamped Documents: If a document requiring Stamp duty is unstamped or insufficiently stamped, it is not admissible in court. Without a Proper stamp, the document is not accepted as evidence. If the Deficit stamp + penalty is paid, the court may admit it at its discretion.

8. Registered/Unregistered Documents: For Certain documents, registration is compulsory. Ex: Sale Deed. Without registration, the document does not convey property rights. An unregistered document is useful only for a collateral purpose. A registered document has higher evidentiary value.

Electronic Evidence – Electronic Evidence plays an extremely crucial role in modern litigation. This includes emails, WhatsApp chats, SMS, call records, CCTV footage, audio/video recordings, computer files, social media data, etc. In India, electronic evidence admissibility is primarily regulated by the BSA, especially Sections 62 and 63(4). The first and most important requirement to use electronic evidence in Court is S.63(4) BSA compliance. If electronic data is produced in the form of a CD, DVD, pen drive, or printout, a certificate must mandatorily be attached to it. This certificate must clearly state that the electronic record was taken from a regularly used computer/device, the information was fed in the ordinary course of activities, and that the device is properly in proper working condition.

4.4 CHOOSING THE APPROPRIATE LEGAL FORUM

After an advocate confirms that a legal right has been violated, choosing the correct forum to obtain the appropriate remedy for that right is the most important and critical step. In the modern legal system, multiple forums and laws are available for the same type of legal violation. These function with different functional modalities and offer diverse types of remedies.

Generally, in some instances, there is a possibility to seek remedy for the same problem in a Civil Court, Writ Court, or Consumer Forum. Therefore, an advocate must deeply examine all relevant factors and choose the right forum that is favourable to the client's interests. By choosing the right forum, the chance of achieving an appropriate and effective result for the case increases significantly. In fact, it can be said that more than half of an advocate's success depends on the selection of the right forum.

Therefore, an advocate must use his analytical thinking, legal knowledge, and experience to choose the forum that provides the best result for the client. Before choosing the right forum, one must comprehensively consider the jurisdiction, mode of operation, nature of remedy, and interests of the parties regarding those forums. In this context, some important factors an advocate needs to examine are:

1. Does that forum offer an effective and cost-efficient remedy: In matters of family disputes, in many cases, remedy mechanisms under criminal or special laws are more effective than the civil system.

Example – I: In a family dispute, a suit for injunction can be filed in Civil Court to prevent a husband from illegally selling the wife's property. At the same time, relief can also be sought under the Domestic Violence Act. A petition filed under the Domestic Violence Act is less expensive, faster, and more effective compared

to a Civil Court. The reason is, according to civil law, the case must be filed only where the property is located or where the defendant resides. But under the Domestic Violence Act, the case can be filed even where the petitioner resides.

Example – II: In Cheque Bounce Cases, to recover the amount due via cheque, a suit can be filed in Civil Court or a complaint can be filed in Criminal Court. Generally, the criminal court process takes less time and is more effective compared to the Civil Court.

2. The nature of relief offered by that forum.
3. The urgency involved in the case.
4. The dispute resolution process followed by that forum.
5. The judge's perspective and attitude.
6. Convenience of parties.
7. Convenience of lawyer.

To select the right forum, an advocate must have a comprehensive understanding of the legal forums established under various laws, the nature of disputes they resolve, the method of solving problems, the nature of remedies they can offer, and their organizational procedures. To clearly understand these differences, some laws have been taken as examples and explained. Specifically, the structure, procedures, and remedial mechanisms of Legal Services Institutions established under the Legal Services Authorities Act, Consumer Forums under the Consumer Protection Act, and the constitutional powers exercised by High Courts and the Supreme Court through Writ Jurisdiction are analysed. In this way, by understanding the authority, remedial mechanism, benefits, and limitations of various forums, an advocate can provide the best outcome to the client through proper forum selection. Strategic forum selection with this understanding becomes the foundation for providing the best possible outcome to the client.

Modern Dispute Resolution Systems: After the emergence of the Welfare Concept State, as the State took up various types of functions, the previously existing Civil and Criminal courts alone could not work effectively to protect the rights. This made the need for new model of dispute resolution mechanisms inevitable. Although these new systems are different in form, they are not new in substance. They still work on the following common principles: Principles of Natural Justice; Burden of Proof; Methods of Execution of orders. However, they differ from ordinary courts in the following matters: exclusivity and professionalism; quantum of proof; relaxation from rigid rules of evidence; effective enforcement mechanism.

Various Kinds of Dispute Resolution Systems: Some important dispute resolution systems available in the modern era:

1. Civil Court
2. Criminal Court
3. Writ Court
4. Consumer Forum
5. Legal Service Authority
6. Permanent Public Utility Services
7. Revenue Court
8. Right to Information
9. Arbitration Forum
10. Family Court
11. Human Rights Commission
12. Loka-Yuktha
13. Women Commission
14. SC & ST Commission
15. Real-Estate Regulatory Authority (RERA)

A broad study of Traditional Civil and Criminal justice systems will be taken up in upcoming chapters. In this part, we will study how institutions like Legal Services Authority, Writ Court, and Consumer Forum work, and what their powers, procedures, and case handling methods are. This gives the lawyer a practical understanding, providing significant help in choosing the right forum in litigation and managing cases effectively.

Important Stages in Dispute Resolution: The important stages followed by any dispute resolution mechanism are generally as follows:

1. Filing a Complaint.
2. Issuing Summons.
3. Filing a Written Statement.
4. Framing Issues (points of dispute).
5. Evidence Recording.
6. Delivering Judgment.
7. Execution.

Writ Court – Jurisdiction and Functioning Model

Writ Jurisdiction is the summary interference of the sovereign of state in the affairs of agencies of state to ensure that they are functioning within the limits of Constitutional norms, values, and laws. This special power is conferred upon the Supreme Court (Article 32) and High Courts (Article 226). The following are the theoretical and operational reasons why Writ Jurisdiction works much more effectively (efficacy) and efficiently (effective) than ordinary legal processes:

Writ is a cheap and quick remedy. The Court fee generally does not exceed ₹100/- (Rupees One Hundred only). In contrast, in the Civil Court jurisdiction, court fee has to be paid depending on the value of the disputed right. If the petitioner is fortunate, it gets disposed very quickly. The judicial process before Writ Courts is simple and easy, which is distinct from the rigid rules of ordinary courts.

Generally, there are no rigid rules for evidence record or appreciation. According to Article 32 of the Constitution, the court may frame appropriate procedure for the enforcement of fundamental rights. Like ordinary courts, there is no complicated trial and recording of evidence before Writ Courts. Except in very rare cases, Proof of facts mainly depends on the submitted documents and affidavits.

The jurisdiction of Writ Court orders extends across the country. In contrast, the jurisdiction of a Civil Court is limited only to a particular area. The Writ Court has the power of judicial review, meaning it can quash unconstitutional or illegal actions. There is no time limitation for filing writ.

Under Article 32 or Article 226, immense powers are conferred upon the Supreme Court or High Courts to mould adjudicatory process to reach injustice and remedy it wherever it has occurred. It is for this reason that innovative methods like

awarding damages in writ petitions, collecting evidence through commissioners, and Public Interest Litigation (PIL) have emerged.

The enforcement of Writ orders is quicker (quick) and stronger (effective) than that of ordinary courts. The Writ judgment is delivered by the highest judicial forums in the state. Writ Courts are given the power of contempt for violation of court orders. Therefore, if writ orders are not followed (violation), action can be taken for immediate implementation using contempt power. In contrast, enforcement of Civil Court orders requires a complicated and time taking execution process under Order XXI of the Code of Civil Procedure (CPC). Due to the above reasons, lawyers prefer to seek justice for their parties through writ jurisdiction to resolve their grievances.

Legal Services Authority Act, 1987

The core principle of the Legal Services Authority (LSA) Act, is to provide Free Legal Aid and Services to the poor and weaker sections of society, and to resolve disputes amicably through Lok-Adalats. The key features of this Act are analysed in three broad dimensions.

I. Institutional Framework and Unique Composition

This Act has established a four-tier institutional structure to provide legal aid across the country. These institutions formulate policies for legal aid schemes, implement them, and monitor them.

National Legal Services Authority (NALSA): Functions at the National Level. It formulates policies and schemes for the availability and effectiveness of legal services nationwide.

State Legal Services Authority (SLSA): Implements the policies directed by NALSA at the State Level and provides the most effective and economical legal services at the state level.

District Legal Services Authority (DLSA): The main unit organizing legal aid at the District Level. The Principal District Judge acts as its chairman.

Taluk/Mandal Legal Services Committee (TLSC/MLSC): An institution functioning at the Taluk or Mandal level. It acts as the primary unit to provide legal services directly to the common people.

B. Conglomeration of State Wings

The Composition of these institutions is a key feature of this Act. At the lower levels (for example, in District and Taluk committees), there are members from the Judiciary (Senior Judges), Executive (District Collector, Revenue Officer), and Police (Superintendent of Police). Due to this Conglomeration, a favourable environment is created to resolve disputes and take necessary actions, making quick and inexpensive remedies possible.

II. Nature of Legal Aid and Eligibility

Definition of Legal Aid (S.2-Legal Service): According to this Act, 'Legal Service' is not limited to just giving advice. It includes the rendering of service in the conduct of any case or other legal proceeding before any court or other authority or tribunal. It also includes the giving of advice on any legal matter.

Persons Entitled (S.12): Based on social and economic weakness, this Act has listed persons entitled to receive free legal aid in S.12. This classification clearly indicates the target group of legal aid:

- a) A member of a Scheduled Caste or Scheduled Tribe.
- b) Women or Children. c) Victims of trafficking in human beings.
- d) Mentally ill or disabled persons. e) A person with low annual income (income less than the limit prescribed by the State Government).

III. Dispute Resolution Mechanism: Lok-Adalat

It is resolution mechanism provided under the Act. An eligible person seeking legal aid can make a written application to the Taluk or District Legal Services Committee regarding pending litigation or pre-litigation matters. Upon receiving the application, the Legal Services Committees refer the matter to the Lok-Adalat. They can constitute multiple Lok-Adalat Benches as per the requirement. No Court-fee is required for the dispute resolution process; It follows a simplified and flexible procedure to resolve disputes. The Lok-Adalat Bench has the powers of a Civil Court, which are: to order any person to appear (summon); to ask for evidence; to order the production of documents. The Award given by the Lok-Adalat has the same legal force as a decree issued by a Civil Court. Therefore, this award can be enforced like a Civil Court decree. This feature makes the Lok-Adalat a strong and effective dispute resolution mechanism.

CONSUMER PROTECTION ACT

The **Consumer Protection Act, 1986** is a social legislation designed to protect consumer rights. Establishing social justice and consumer sovereignty in the market is the theoretical foundation of this Act. This Act abolished the traditional rule of 'Caveat Emptor' (Buyer Beware) and ushered in a new era of 'Caveat Venditor' (Seller Beware). This Act provides the following aspects for the quick and inexpensive resolution of consumer disputes.

I. Institutional Structure: The Three-Tier Quasi-Judicial Mechanism for the redressal of grievances of consumers, this Act has established a three-tier structure with a Quasi-judicial nature. Unlike ordinary Civil Courts, these institutions provide a summary and speedy resolution mechanism:

District Forum: Established in every district. It is headed by a person qualified to be appointed as a District Judge. Its pecuniary jurisdiction is up to ₹20 Lakhs.

State Commission: Established at the state level. It is presided over by a person who is or has been a High Court Judge. Its jurisdiction is up to ₹1 Crore.

National Commission: Functions at the national level. Its jurisdiction applies to disputes valued above ₹1 Crore. In this Appellate system, a consumer dissatisfied with the District Forum's decision can appeal to the State Commission, and a consumer dissatisfied with the State Commission's decision can appeal to the National Commission.

II. Definition and Scope of the Consumer:

A. Scope of the Consumer This Act has not limited the consumer to just the buyer. Along with the person who purchased goods by paying consideration, any person who uses those goods with the buyer's approval is also a consumer. Similarly, the person availing services and the beneficiary of that service are also included. Even if full payment is not made, they are considered a consumer.

B. Coverage of Goods and Services The provisions of this Act cover both 'Goods' (movable property) and 'Services'. Services: Any type of service such as banking, insurance, medical treatment, housing construction, telephone, electrical energy is included. No complaint can be filed for services provided free of charge or for defects falling under personal service contracts.

C. Filing of Complaint A consumer, a registered consumer association, the Central or State Governments, or numerous consumers with the same interest can file a complaint. The complaint is generally made on a plain paper, either handwritten or typed.

III. Redressal Procedure and Enforcement:

A. Grounds for Complaint: The primary reasons for filing a complaint are: Unfair or defective practices; following an unfair or restrictive trade practice; defective goods; deficiency in service; charging excess price; unlawful sale of goods hazardous to life and safety.

B. Limitation and Fees: According to Section 24A, the complaint must be filed within two years from the date the cause of action arose. However, if there is sufficient cause, the Forum has the power to accept the complaint by condoning the delay (condonation of delay). No Court Fees is required to file a case under this Act, but after the 2002 amendment, a nominal fee has to be paid.

C. Enforcement of Orders and Penalties: Consumer courts have wide powers to enforce their orders. They have the power to impose imprisonment up to three years or a fine up to ₹10,000/- or both on a person who does not comply with the orders. In case of non-compliance with an interim order, courts can attach the property of that person. If the violation continues for more than six months, they also have the power to sell the attached property. To recover the amount due, consumer courts can issue a certificate for that amount to the District Collector. The Collector collects that amount as arrears of land revenue.

4.5 LEGAL DRAFTING – PLEADINGS AND CONVEYANCING

Legal Drafting is an important skill in the legal profession. It can be defined as ‘expressing a legal right, privilege, duty, or status in a definitive form.’ Drafting is the process of synthesis of Law and facts in language form.

Kinds of Legal Drafting:

Functional: Regulating the legal relationship between parties and achieving a particular result. Examples: Sale Deed, Gift Deed, Mortgage Deed. This is called 'Conveyancing'.

Persuasive: To convince the reader to accept a specific view point. Examples: Complaint, Written Statement, Appeal, Bail Application. This is called 'Pleadings'.

Informative: Containing only necessary and useful information for the reader. Examples: Letters written to the Client and Legal Opinions.

Stages in Drafting:

Planning Stage: Taking instructions from the Client. To analyse those instructions in a factual and legal context. Determining the purpose and objective behind creating the document. Researching relevant case law and finding appropriate forms or precedents.

Writing Stage: Preparing a skeleton draft. Creating ideas for the draft. Ensuring that the entire content formulated in the planning stage is incorporated into the draft.

Revision Stage: Re-analysing instructions, factual situation, and legal research. Correcting words (re-write), ensuring coherence. Re-organizing the material to be clear and user friendly. Focusing on spelling and grammar.

PLEADINGS

Pleading means a statement of facts in a logical form regarding the plaintiff's cause of action or the defendant's grounds of defense. It implies a Complaint or a Written Statement. The object of pleadings is to ascertain the real dispute between the parties and to narrow down the area of conflict.

Fundamental Rules of Pleading: Parties' pleadings shall contain material facts only. If there is a failure (omission) to state material facts, it is fatal. In the absence of pleading (i.e., when material facts are missing), no matter how much evidence is adduced, it cannot be looked into (considered). Law should not be mentioned in pleadings. However, this rule does not apply in the case of foreign law. Foreign law must be pleaded specifically. Evidence should not be mentioned in pleadings.

Exceptions: a) It is not required to be averred specifically regarding the performance of all conditions precedent necessary for the case. b) There is no need to plead material facts which the law presumes in one's favor or where the burden of proof lies on the opposite party. The defendant generally does not need to deny damages. But special damages and facts related to aggravation or mitigation of damages must be specifically denied.

Drafting Guidelines: The pleading should be divided into paragraphs and numbered consecutively. Dates, sums, and numbers should be expressed in figures and words. Simple sentences should be used; passive voice and pronouns (pronouns) should be avoided. Also, the Civil Rules of Practice prescribe a specific method for writing. Facts must be stated in a precise and concise form. The advocate must construct the narration logically and unassailably. Only material facts should be stated, Evidence should not be stated.

In pleadings, material facts are the basic, essential facts that constitute the cause of action or defence. Without them, the pleading is incomplete. Material particulars, on the other hand, are the detailed facts that explain, clarify, and give precision to those material facts. In some cases—especially involving allegations like fraud, misrepresentation, undue influence, or negligence—the law requires material particulars because general statements are not enough. The opposite party must clearly understand the exact case they have to meet.

Examples: Fraud: *Material fact*: ‘The defendant committed fraud.’

Material particulars: The pleading must specify how, when, where, and in what manner the fraud was committed.

Example: ‘On 10th January 2024, at Hyderabad, the defendant falsely represented that the property was free from encumbrances, knowing it was mortgaged to XYZ Bank, thereby inducing the plaintiff to enter the agreement.’

Negligence: *Material fact*: ‘The defendant was negligent.’

Material particulars: The exact act or omission must be stated.

Example: ‘The defendant drove the vehicle at 90 km/h in a 40 km/h zone, jumped a red signal at Begumpet Junction, and hit the plaintiff.’

Misrepresentation:

Material fact: ‘The contract was induced by misrepresentation.’

Material particulars: The specific false statement, its timing, and reliance must be mentioned. Example: ‘The defendant stated on 5th March 2023 that the machinery was new, whereas it had been used for five years.’

The particulars are necessary: They prevent vague and ambiguous pleadings, they ensure fair trial by informing the other side of the exact case and they help the court identify the real issues in dispute.

In summary, while material facts form the foundation, material particulars provide the necessary detail, and in certain serious allegations, the absence of particulars can render the pleading defective.

Power of Court with Respect to Pleadings: Strike out or Amend Pleadings. The Court may, at any stage, order to strike out or amend any matter in the pleading if they are: a) Unnecessary, scandalous, or vexatious; b) When they cause prejudice to a fair trial; c) When they are an abuse of process of the court.

Amendment of pleadings (Order VI Rule 17 CPC): It is not a right of the party. It is the discretion of the court. Amendment can be done only to determine the real questions in controversy between the parties and to avoid multiplicity of proceedings. However, after the 2002 amendment to the Code of Civil Procedure, a proviso was added stating that no amendment shall be allowed after the commencement of trial unless the court is satisfied that despite due diligence, the party could not have raised the matter earlier.

In pleadings, either in the plaint or written statement, parties may take inconsistent or alternative pleas. The law permits a party to present different possible versions of facts or defenses. But, in view of Section 11, Explanation IV of the Code of Civil Procedure, 1908, all such pleas must be taken at the earliest stage and not in a piecemeal manner. If a party omits to raise a plea which ought to have been raised earlier, it is deemed to have been directly in issue, and the party may be barred from raising it in subsequent proceedings.

Where discretionary relief is sought, the pleadings must clearly establish the bona fides and clean conduct of the party. A litigant must not suppress any material facts that may prejudice the opposite party. The pleadings should also contain a specific paragraph disclosing any prior or pending litigations relating to the subject matter. Otherwise, the court would refuse the reliefs.

PLAINT – CONTENTS

A Complaint is a statement of claim. If the complaint is correct, it will be registered as a Suit. The details that must be in a complaint for it to be registered as a suit are:

1. Name of the court
2. Names, description, and residential address of plaintiffs and defendants.
3. The cause of action and when it occurred
4. The jurisdiction of the court to determine the dispute
5. Suit valuation and court fee
6. Relief sought
7. In case of immovable property – its complete description shall be given

WRITTEN STATEMENT - CONTENTS

A Written Statement is the pleading of the defendant (O.VIII R.3, R.4 of CPC). In this, the defendant counters every material fact stated by the plaintiff in the complaint. In a Written Statement, facts must be specifically denied. General denials are not allowed. Every fact stated by the plaintiff must be denied explicitly and not evasively. A bare or evasive denial has no value. It is of no use. Otherwise, the facts pleaded in the complaint are deemed to be admitted. Except for damages, every fact that he does not admit must be specifically denied (R.3). The new facts shall be specifically pleaded like void, voidable, fraud, barred by limitation, payment etc.,

Counter Claim: A cross-claim filed by the defendant against the plaintiff.

Set-off: Asking to adjust the amount due to the defendant from the plaintiff against the amount payable to the plaintiff.

CONVEYANCING

One of the important tasks performed by an advocate is drafting a Deed or Instrument; this is called Conveyancing. Legal Drafting brings a Legal right, Duty, or Legal relationship into a definitive form. Effective drafting is a process of synthesis of Law and facts.

Essentials of Conveyancing: Drafting skill cannot be acquired overnight. It requires extensive experience regarding law and life. To draft a deed, we shall have a complete knowledge about the facts (oral and document) that convey the client's rights, interests, and liabilities. The advocate must study the necessary legal ways and means to translate the intention of the parties into writing. One must clearly understand the relevant law and how it works in the real world. Drafting should be done only after explaining legal hurdles and remedial ways. An advocate should use a word only after fully knowing and examining what it is meant for.

FUNDAMENTAL ELEMENTS OF A DEED

The fundamental elements primarily present in Every Deed:

1. Description of the deed
2. Date on which it is executed
3. Parties to the deed
4. Recitals
5. Habendum (Transfer of rights)
6. Covenants (Terms and Conditions)
7. Exceptions and reservations
8. Completion of transaction
9. Execution (Signature)
10. Attestation (Witness signatures)

LEGAL ELEMENTS OF A SALE DEED

Let us examine the Legal and Structural requirements with the help of a Sale deed example. The legal requirements of Sale deed are evident from the S.54 of Transfer of Property Act. The following elements must be there in a Sale Deed:

The Parties: There must be a Seller/Vendor and a Buyer/Vendee in a sale. Vendor: Must be a competent person having the power or title to transfer and sell that property.

1. Purchaser: Transferee shall be competent to contract.

2. Subject Matter: The subject of the sale must be transferable immovable property. Transfer of Ownership: In a sale, there is an absolute transfer of all rights (Ownership). No rights remain with the Transferor. In the example: 150 Square yards of land in Survey No. 25 is the subject matter.

3. The Transfer or Conveyance: A Sale is completed only after registration and delivery of possession. In the example: It is stated that the Vendor received the sale consideration and delivered possession to the Vendee.

4. The Price or Consideration: Price is the essence of a contract of sale. If the price is not fixed, it becomes a void and unenforceable contract. Whether the price is paid, promised to be paid, or part paid, it must be stated conspicuously in the Sale Deed. In the example: The sale price is fixed at Rs. 50,000/- (fifty thousand only) and it is stated that the vendor received this amount.

Important Note: After meeting the requirements of Section 54 (S.54), parties are free to vary the terms and conditions mentioned under Section 55 (S.55), but any condition that changes the mandatory provision of any law becomes void.

STRUCTURAL ELEMENTS OF A DEED

1. Description of the Deed: To avoid confusion, it indicates the purpose and matter of the deed. It is usually written in capital letters. Example: ‘SALE DEED’.

2. Date of Execution: This plays a key role in determining limitation and when the passing of title occurred. In the example: mentioned as 27.04.2012.

3. Parties to the Deed: Full particulars of the transferor (Vendor), transferee (Vendee), and other parties confirming the transfer are important. In the example: G. Bhaskar (Vendor) and M. Suresh (Vendee) are described with their Age, Occupation (Occ), and Address (R/O).

4. Recitals: These are the introductory parts of the contract or deed; they explain only the background facts of the transaction but do not impose conditions.

They are 2 types: Narrative Recitals and Introductory Recitals. Facts showing the nature of interest regarding how the property was acquired by the transferor (e.g., inherited) are Narrative Recitals. Recitals explaining the motive or reason behind the execution of the deed (Ex: Family needs) are Introductory Recitals.

5. Habendum: This part speaks about the interest the purchaser is going to acquire in the property. In a Sale Deed, the interest transferred is ownership. This is also known as Operative Portion. Because, this is the part that defines the Main Act of the deed. In this deed, the Vendor completely transferring all title, interests, and rights over the property to the buyer for an amount of Rs. 50,000/- and delivering possession becomes the operative portion.

6. Covenants: Agreements stipulating that a specific fact is true between the parties or agreeing to be bound to do or not to do a specific act. In the example: The parties agreeing to abide by the rights and liabilities under Section 55 (S.55) of the Transfer of Property Act falls under this category.

7. Execution (Amalu): Signing by the parties. For a sale transaction to be completed, the Vendor's signature is sufficient. If there are any annexures (annexed) like a map plan, parties must sign on them as well.

8. Attestation (Sakshi Santakalu): Witnesses signing on the deed. Witnesses are required to verify that this deed was properly executed.

9. Testimonium & Testatum: These parts indicate that the parties have signed the deed.

10. Completion of Transaction: Being properly stamped according to the Indian Stamp Act and registration according to the Indian Registration Act are required. These expenses should generally be borne by the transferee (buyer).

MODEL SALE DEED

This Deed is executed on **27.04.2012**

By G.Bhaskar S/o Surya Rao, Age: 30 years,
Occ: Mess Supervisor, Nalsar Mess, R/O Adarash Nagar,
Shameer Pet, R.R District. (**Hereinafter called as Vendor**)

And

M.Suresh S/o M.Rambabu, Age: 38 years,
Occ: Office Sub-ordinate Nalsar, R/O NALSAR University,
Shameer Pet, R.R Dist. (**Hereinafter called as Vendee**)

The vendor is the absolute owner and possessor of the property admeasuring **150 SQ yards** (One hundred fifty Square yards) of land situated in survey no.25 of Shameer Pet Village and Mandal, Ranga Reddy District, which is fully described in the schedule. He acquired this land by way of succession as the sole legal heir after the death of his father. Keeping in view urgent family and personal necessities, the Vendor has sold all title, interests, and rights over this property to the Vendee for a consideration of Rs. 50,000/- (Rupees Fifty Thousand Only) and transferred absolute rights. The Vendor has received the sale consideration and delivered possession of the property to the Vendee, which the Vendee has acknowledged. This is not government assigned land. The Parties have agreed to abide by the rights and liabilities under the Transfer of Property Act.

(Signature)Vendor

SCHEDULE OF PROPERTY

Property admeasuring one hundred fifty square yards of land bearing Survey no.25 of Shameerpet Village and Mandal, Ranga Reddy District and bounded as under:-

East: thirty feet road; West: House of Ravi Kiran; North: twenty feet road; South: Sreenivas Reddy House;

(Signature) Vendor

Enclosure: Sketch map of Site plan is enclosed.

4.6 RECORDING EVIDENCE

Meaning of the term Evidence: The term evidence means a statement made on oath before the Court. Every piece of evidence consists of three important parts:

a) Examination-in-Chief: The questions asked by the party calling the witness and the evidence given. Leading questions should not be asked in this.

b) Cross-Examination: The evidence elicited from the witness by the adverse party.

c) Re-Examination: The party calling the witness asking questions again after the cross-examination. These three stages together help the court in ascertaining the truth.

Mode of Recording Evidence: In civil cases, according to Order 18 Rule 4 (O.18 R.4), the Examination-in-chief of every witness must be in the form of an affidavit. Cross-examination and Re-examination should be taken by the court or through a commissioner appointed by the court. In criminal cases, generally, the witness must come to the court and give evidence except in S.138 Negotiable Instruments Act. The testimony of a witness is called a Deposition. The names are referred to as PW1, PW2, etc. for prosecution in criminal cases and DW1, DW2 for defense. In civil cases, plaintiff witnesses are called PWs and defendant witnesses are called DWs. The evidence of a witness is called a Deposition.

Order: Examination-in-Chief, Cross-Examination, and then Re-Examination (S.138 IEA). According to Section 139 IEA, a person called to produce a document shall not be cross-examined unless and until he is called as a witness.

Marking: Marking is making any document or material object part of the evidence before the court. This process is called marking. Any document or object is marked only through a witness; the witness identifies and authenticates it.

Marking is possible either in Examination-in-Chief or in Cross-Examination. But, in any case, before a document or object is marked, the witness must admit that it is genuine or relevant. The opposite party can raise an objection.

Grounds for objection: 1) Document produced is secondary evidence, without proper justification. 2) Document is unduly stamped. Once a document/object is marked through a witness, court assigns specific identification name or number to the witness and the document/object. This is necessary for clarity and proper reference in the trial record. There are special rules for marking in the Civil Rules of Practice and Criminal Rules of Practice. These rules guide the identification, admission, and use of documents/material objects as evidence. Proper marking preserves reliance on evidence, accurate reference, and authenticity.

In Civil cases, if documents are marked by the plaintiff side, they are called Ex.A1, Ex.A2, etc. If marked by the defendant side, they are called Ex.B1, Ex.B2, etc. In Criminal cases, documents marked by the prosecution side are called Ex.P1, Ex.P2, etc. Documents marked by the defendant side are called Ex.D1, Ex.D2, etc. This marking system allows documents to be easily referred to during the trial and maintains clarity for a proper record.

Examination-in-Chief - (Direct Examination)

In the legal profession, presenting evidence and conducting Examination-in-Chief, i.e., Direct Examination, is one of the most important skills. The goal of Direct Examination is to keep the witness as the centre of attention. The witness is believed and remembered not because of the skill of the questions asked by the lawyer, but because of the manner and content of the testimony given by the witness. If a judge remembers that a witness was particularly convincing, even if they are not clearly sure who conducted that direct examination, you have done your job well. A good Direct Examiner is like a director of a film crew. Although limited to the script, he can bring his own approach and perspective into the production. Here are the important Elements of an effective Direct Examination:

1. Keep it Simple: The judge would not have heard this testimony before. Every person has a limited capacity to absorb and retain oral information. Attention spans drop significantly after 15 to 20 minutes. Therefore, the examination must be short and focused. Decide beforehand what the critical part of the witness's testimony is, get to that point quickly, develop it sufficiently, and then stop.

2. Organize Logically: After deciding the key points of the Direct Examination, they must be arranged in a logical order. Judges, like others, can understand events better if they are presented in the order they actually occurred (chronological order). This is a frequently used and logical sequence when questioning witnesses in personal injury and criminal cases: Personal background; Scene description; Action description; Using Exhibits to highlight and repeat key points; Damages description (if necessary).

3. Use Introductory and Transition Questions: Introductory questions inform the judges about what to expect and what not to expect. Transition questions act like sign posts. When a witness is about to give testimony on multiple topics,

transition questions inform the judges that questions on one topic have ended and the next topic is about to begin. They function like chapter headings in a book, making it easier to follow the Direct Examination.

4. Introduce Witness and Develop Background: When a witness comes to the witness stand, three questions hover in the Judge's mind: 'Who is she?', 'Why is she here?', and 'Why should I believe her?'.

5. Credibility: The judge wants to know a little about the witness to assess credibility. Some simple questions showing that they are married, have children, and hold a responsible job show that the witness is a mature, responsible person. By making the witness talk about their job or family, the judge gets a 'feel' for the witness. Key witnesses like the plaintiff in a personal injury case or the defendant in a criminal case need to appear three-dimensional; only then does the judge get a real sense of them. Nonverbal clues from the moment the witness steps into the court room until they leave also play a key role. The clothes the witness wears should give the judge the impression that the witness is taking the court appearance seriously. How the witness enters, walks to the stand, takes the oath, and maintains eye contact should be rehearsed in advance.

6. Set the Scene: Judges are accustomed to receiving information in 5 to 15-second sound bites as seen on the evening news. Therefore, go from general to specific. Describe it as if starting with a panoramic view using a zoom lens and then zooming in on details. Give a general description of the location and the lighting conditions at that time. Leave minute details like how wide the street is or how far the witness was from the accident spot for the cross examiner to ask. By describing the scene from the point of view of the witness, the judge gets the opportunity to see that scene from a unique perspective.

7. Recreate the Action: In an effective Direct Examination, it is very important to recreate the action through the witness so that the judge can experience the event through the witness. There are four basic elements in this process:

a) Point of View: Conduct the direct exam in a way that allows the Judge to see the action from an advantageous point of view. This is usually through the eye of the witness. This type of testimony makes the judge feel as if they have been placed in the back seat of the car and are seeing what the plaintiff saw.

b) Pace: Pace involves controlling the speed of the examination. This is very important regarding witness testimony. By controlling the pace, you can make the judge feel the rate at which the event occurred.

c) Sensory Language: Language should be simple so that judges can understand. The language should be sensory, making it vivid and memorable.

d) Word Choice: Choose simple words and phrases. They have a significant impact on the answer.

e) Present Tense: Using the present tense in both the lawyer's questions and the witness's answers is an effective technique to recreate a dramatic event. This makes the judge emotionally involved in the story.

Additional Elements:

a) Generally, leading questions should be avoided in direct examination; encourage the witness to state the facts himself.

b) Allow the witness to speak in detail (explain).

c) By voluntarily (volunteer) exposing any weakness in your case or the witness, their impact reduces during cross-examination.

d) Facts can be highlighted and summarised by using exhibits (documents, photos, etc.).

Cross-Examination – Principles

I. Preparation & Strategy

1. Meticulous preparation before trial: For success in cross-examination, one must prepare extremely carefully and deeply before the trial itself. One must fully understand all the facts, evidence, points of law, and the opponent's arguments in the case. Thorough preparation provides immense self-confidence during the trial, which is key to asking the right questions.

2. Acquire command over the case of your opponent: You must have complete understanding and control over the opponent's case. Their evidence, documents, and arguments must be thoroughly examined. This helps you identify their weaknesses or discrepancies and question them effectively.

3. Have a clear idea of your case theory: You must have a clear idea of your case theory, meaning the main storyline with which you want to convince the judge. Your questions, arguments, and approach should be directed solely towards proving this central theory.

4. Identify how the witness can harm or help your case - identify it: You must estimate in advance how the witness you are questioning can harm or help your case. Identify whether the things the witness says are favourable or unfavourable to your argument and formulate your questioning strategy accordingly.

5. Know every witness has a boiling or melting point: Every witness has a weakness where they reach a specific level of emotion—a boiling Point or melting Point. By knowing this point, you can take control of the witness or choose the right time to elicit favourable answers.

6. Strictly know which questions should not be asked: One must have a precise understanding of which questions *not* to ask. You must strictly avoid questions

where you don't know the answer or questions that are likely to yield a negative answer. Avoiding unnecessary questions to prevent damage to the case is a sign of efficiency.

7. Do not repeat what was already covered in examination-in-chief: Do not repeat things the witness has already stated during the examination-in-chief. This wastes cross-examination time and irritates the judge. Focus only on new aspects or the witness's mistakes.

8. Questions shall focus on facts central to the case: Questions in cross-examination should focus only on facts central to the case. Focusing on small, insignificant aspects may divert attention from important points. Your questions must strengthen your case theory.

II. Questioning Technique

9. Never ask a question unless you get a favourable answer: Do not ask a question under any circumstances unless you are sure you will get a favourable answer. A negative answer can severely impact your case. Therefore, carefully assess the outcome before every question. Ask 'Yes' or 'No' questions. To control the witness, ensure the questions you ask can be answered only with 'Yes' or 'No'. Avoid asking questions that invite broad explanations. Doing this provides clarity and keeps the witness under control.

10. Each question should focus on a single fact: Each question should focus on a single fact only. Cramming multiple facts into a single question may confuse the witness, or you may not get a clear answer. Questions should be simple.

11. Questions should be simple and clear: Questions should be drafted in a simple, clear, neutral, and precise manner. The intent and meaning of the question should be easily and quickly understood by the witness and the judge.

12. Avoid Argumentative, Irrelevant, or Insulting questions: Completely avoid asking argumentative, irrelevant, indecent, or insulting questions. These types of questions damage the courtroom atmosphere and lower your professional ethics.

13. If the court objects, withdraw the question: If the court objects to your question, it is best to withdraw that question immediately. Respect the court's decision. Arguing unnecessarily on this may not be beneficial to the case.

14. Re-frame the withdrawn question: To try the withdrawn questions again later, reframe them subtly in a different way. This new method of questioning should overcome the court's objection and convey that you haven't given up your point.

III. Witness Credibility

15. Put denials and suggestions to assert your case: To strongly prove your case argument, put denials and suggestions to the witness. This means making statements suggesting your argument contrary to what the witness said, and recording your side of the story in the court record.

16. Highlight the witness's interest to the case: Openly emphasize the witness's personal interest to the case. By pointing out personal or financial relationships between the witness and your opponent, you can reduce the credibility of the witness's words.

17. Show the witness lacks personal knowledge: Prove that the witness lacks personal knowledge or direct information about the things they are saying. That is, try to prove that the witness is speaking merely based on guesses or things heard from others.

18. Expose gaps or flaws in the witness's story: Openly show the gaps or flaws in the witness's narrative. You can question their credibility by showing discrepancies in the witness's words regarding timeline, location, or other details.

19. Note omissions to demonstrate inconsistencies: Note the omissions where the witness failed to mention important matters. This serves as a key basis to prove inconsistencies between their previous statements and current testimony.

IV. Conduct & Conclusion

20. Keep C.E brief, focused, and effective: Keep it brief, focused, and effective. Dragging it out unnecessarily reduces its impact. It is better to stop once you have achieved your main objectives.

21. Speak and act confidently before the judge and witness: Speak and act confidently before the judge and witness. There should be certainty in your body language and tone. This confidence gives strength to your argument and increases respect for you in court.

22. Stay calm and handle surprises smoothly: Stay calm during cross-examination. Handle even surprising matters coming from the witness or your opponent smoothly. It is important to remain calm and composed, think logically, and respond in a clear and reasoned manner.

23. Strategic use of Silence: Knowing when to maintain silence during cross-examination is an important strategy. Especially after the witness gives an answer, pausing for a while may give them a chance to blurt out more information.

24. Keep cross-examination professional, not theatrical: Cross-examination should be conducted in a professional manner. It should not be theatrical. It is better to focus on facts and legal evidence rather than overacting or using emotions.

4.7 APPRECIATION OF EVIDENCE

Appreciation of Evidence means carefully and comprehensively examining the oral evidence, documentary evidence, and other matters placed before the court to arrive at a decision on whether the facts in issue are true or false. It is essentially a decision-making process. In this process, the court applies prudent man's logical reasoning and judgment. It means assessing the evidence based on witness credibility and reliability. It involves assessing the credibility and reliability of witnesses, as well as verifying discrepancies, contradictions, and omissions found in the evidence. Finally, to deliver justice, the court takes a reasoned decision based on logical reasoning on the evidence. Appreciating evidence is the most crucial decision-making step. For appreciation, evidence must be viewed from the following angles:

1. What are the admitted facts in the case?
2. What are the disputed facts?
3. Are the disputed facts covered under the principle of Judicial Notice?
4. Are the disputed facts affected by the principle of Estoppel?
5. Are the facts governed by the rules of Presumption?
6. On whom does the burden of proof lie?
7. Is the witness competent to testify?
8. Are the facts testified admissible and credible?

ADMITTED FACTS

1. The Court must have a clear understanding of the issues or points for determination. This clarity helps in identifying which facts need to be proved by evidence and which need not. Because, according to BSA Section 53, if any facts are admitted by the parties, there is no need to prove them in court. If a party in a case admits a fact explicitly or implicitly, there is no need to prove that fact again. Admissions can be in pleadings, documents, or in the form of oral statements

before the court. However, in cases where the law directs that a fact must be proved in writing, oral admissions should not be accepted. Treating admitted facts as proved allows the court to focus only on disputed issues and deliver efficient and speedy justice.

JUDICIAL NOTICE

2. Judicial Notice means the court recognizing certain commonly known facts (facts of common knowledge) or matters recognized by law on its own without asking for specific evidence. There is no need to prove such facts. According to Section 51 BSA, matters of which the court takes judicial notice need not be proved. For example, the court takes notice of facts like laws being in force, the existence of government departments, calendar dates, or geographical facts. This principle simplifies the judicial process and saves time.

ESTOPPEL

3. Estoppel is a legal principle where if a party accepts a fact, they cannot later claim contrary to that acceptance themselves. It is used for fairness and justice. Estoppel facilitates justice by preventing parties from making contradictory claims. Examples: A landlord giving property to a tenant and later not claiming to eject the tenant. A party acknowledging facts and not disputing them contrarily in court.

PRESUMPTIONS

4. Presumption means an inference or logical decision taken by the court based on certain already proved facts. It is like a short cut to proof. Through presumptions, the court can make a decision as permitted by law without needing to prove every matter separately. Presumptions are three kinds:

i) May Presume: In this case, the court has discretion on whether to presume a fact or not. The Court can presume if it wants, or ask for proof. Example: a) The

court can presume certain things based on normal human behaviour. b) If a letter is posted to the correct address, it can be presumed to have been received.

ii) Shall Presume: Here, the law directs the court that it must presume that fact, but the opposing party has the opportunity to rebut that presumption. Example: The court must presume the genuineness of public documents. The court must presume a certified copy is genuine, but the opposing party can rebut it.

iii) Conclusive Proof: This is the strongest presumption. If the law declares a fact as conclusive proof, no evidence is allowed against it. Example: A child born during a valid marriage is legitimate offspring. The court will not accept any proof against this.

BURDEN OF PROOF

5. Burden of proof is the primary tool for fairness, logical reasoning, and proper decision-making in a trial. It helps the court focus on disputed issues and conduct the trial effectively. Burden of proof is the first and most important tool in appreciation of evidence. It directs the court – which party must prove the facts. Whoever asserts their legal right or another's liability in court, that party has the responsibility to prove the same. If unable to prove, the court will disbelieve that party's case or version and deliver a verdict based on unproven facts. If proof of one fact depends on another fact, the burden to prove the latter fact also lies on the same party. But there are some exceptions that relieve the party from the burden of proof. These are: admitted facts, judicial notice, estoppel, presumptions.

COMPETENCY

6. To present facts as evidence in court, the witness must be a competent person. The first and foremost qualification for a witness is mental capability. That is, according to S.124 BSA, the witness must have the capacity to understand questions and give effective rational answers. Next, the witness should not be

explicitly prohibited by law from giving evidence. Therefore, in some cases, even if a person possesses mental capability, the law prevents them from testifying. This rule can be clearly seen from S.124 to S.137 BSA.

ADMISSIBILITY AND CREDIBILITY

7. It is not enough for a fact intended to be presented in court to be only relevant and admissible; it must also meet the test of credibility. Before believing any fact, the court examines if it is credible. Therefore, a lawyer must clearly know what credibility is, in which situations a fact becomes credible, and under what circumstances the court accepts that fact.

Relevancy → Decides what to prove **Admissibility** → Decides how to prove

Credibility → Makes the relevant & admissible fact believable

It helps a lawyer to present facts effectively, anticipate challenges, and help the court assess the truth. That is why client interrogation should always happen based on Relevancy + Admissibility + Credibility. The court considers facts according to the prudent man's test. Therefore, credibility of facts must be examined from multiple angles. The following are some tools provided by law through which credibility can be tested:

1. Does the Fact fit into the logical framework of the case facts?
2. Is the Fact supported by adequate corroboration?
3. Are there any contradictions or omissions in the Fact?
4. Does the Fact fit natural human nature & conduct?
5. Does the Fact match the common course of natural events?
6. Are there any discrepancies? What is the other side's viewpoint on that fact?
7. Can the Fact be attacked by the other side with stronger evidence?
8. What is the relation between the Witness and the document?
9. Why is Secondary evidence being produced?
10. What is veracity, identity, character & social position of the witness?
11. What is the Witness's personal knowledge source?

KINDS OF EVIDENCE

For Appreciation of Evidence, we must study evidence from the following angles: Substantive Evidence, Corroborative Evidence, and Contradictory Evidence.

Substantive Evidence: Means oral testimonies given by a witness before the court, dying declaration. Based on these, conviction or decree can be given, provided such evidence is relevant and admissible.

Corroborative Evidence (S.160 BSA): Means evidence that supports a witness's earlier statement, recorded version, or document. Corroboration increases value to evidence, shows consistency & the court can act on that evidence.

Contradictory Evidence (S.148 BSA): Means a witness speaking contra to the statement/recorded document given before the court. Contradiction reduces value to evidence; due to lack of consistency, it is not safe for the court to act. A material omission is also considered a contradiction. A Witness can only be corroborated or contradicted with his own previous recorded version, not with others. A Witness can be cross-examined about his previous statements without showing the writing. But to contradict a witness's previous statements in writing (to use as adverse evidence), it must be shown to the witness, and an opportunity to explain the contradiction must be given. If the Witness admits, it becomes a contradiction. If the Witness disputes the earlier version, it must be told to the investigating officer (person who recorded the statement). Generally, the investigating officer will depose in court that the witness testimony is untrue. Then that witness statement becomes a contradiction.

Use of Contradictions: If there are contradictions in Evidence, they affect witness credibility. The Court may reject witness evidence due to contradictions. Contradictions are useful to save the Accused and to challenge Witness reliability and credit. The land mark judgments are: Vishnu Naryan Moger v. The Karnataka State, 1996 CrLJ 1121 (Kant) and Baladin v. State of U.P., AIR 1956 SC 181.

Omission: Material fact not mentioned in **FIR, S.180 BNSS, S.183 BNSS statements**, but mentioned in the witness box. Whether an omission in **S.180 BNSS statements** becomes a contradiction or not is fact dependent. Supreme Court held that (a) Omissions, unless deemed to be part of the statement by necessary implication, cannot be used for contradiction; (b) Omission must be on important features. According to **Section 181 BNSS**, statements not taken into writing by a police officer cannot be used for contradiction. But, if implicitly part of the recorded statement, it can be used for contradiction.

Examples:

Before police: A stabbed B at a particular time;

Before Court: A & C stabbed B at the same time;

In Police statement, ‘only’ implied – witness saw only A.

Before police: A stabbed B & ran north;

Before Court: A stabbed B & ran south;

North & south at the same time is impossible → one is necessarily false. In Police statement, ‘only’ implied – witness saw only A stabbed B.

Before concluding this chapter, it is appropriate to mention some important terms related to the discussed subject and their meanings.

Proved: A fact is said to be proved when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Proof = Matters + Belief. Matters: Evidence and other facts. **A fact is proved: Matters + Belief.** Now the question what is matters? The term matters: Evidence and other facts.

Evidence: Oral or documentary statement made on oath before court or any public authority. All facts can be proved by oral evidence except the contents of a document. Evidence means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence: S.54, 55, 58(5), 94 Explanation, 94, 125 & S.147 explanation deal with oral evidence.

(2) all documents including electronic records produced for the inspection of the court such documents are called documentary evidence: S.56, 57, 60, 94, 95 & 148 deal with documentary evidence.

The following facts which are not oath cannot be called as evidence and they are called as matters:

- a) A confession or statement of the accused (**S.262, 274, 351, 183 BNSS**)
- b) Demeanor of witness (**S.315 BNSS**),
- c) Local investigation or inspection (**S.347 BNSS**)
- d) Facts judicially noticeably without proof (**S.57 BSA**)
- e) Material objects (**Criminal rules of Practise**).

Fact: S.2 BSA says Fact means and includes: -

(1) Anything, state of things, or relation of things, capable of being perceived by senses.

(2) Any mental condition of which any person is conscious.

Ex: (a) That there are certain objects arranged in a certain order in a certain place, is a fact.

(b) Any mental condition of which any person is conscious.

Fact in issue: S.2 BSA defines fact in issue. Any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceedings, necessary follows. It means matter in controversy.

4.8. ARGUMENTS

(Skills and Techniques to Argue a Case)

I. Conduct in Court

1. Address the Court politely and humbly: Make it a habit to address the court with politeness and humility. A lawyer should demonstrate professional respect by showing due courtesy and reverence to the court at the beginning as well as at the conclusion of arguments. Such conduct encourages the judge to consider the arguments with greater openness and attention.

2. Be Humble and Composed in your presentation: Be humble and composed during the argument. Present your argument calmly with a stable mind, without displaying excitement or anxiety. This calm presentation gives strength to your argument and increases your credibility in the court.

3. Arguments are meant to convince the Court: Arguments are not merely to present your case, but primarily intended to convince the court. Every point you present must be proven with legal basis and logic. You should provide an explanation backed by evidence in a way that the judge accepts your argument.

4. Know the exact relief you are arguing for: You must fully know the exact relief you are seeking in the case you are arguing. Your argument should be directed towards justifying that relief. Instead of vague wishes, you should be able to state clearly and specifically what you expect from the court.

II. Preparation and Structure

5. Match your arguments with the facts, issues and evidence and do legal research and stay updated on case law: Ensure your arguments match the facts, issues, and evidence of the case exactly. Moreover, conduct legal research and stay updated on new case law from time to time.

6. Prepare written arguments to your oral submissions: You should prepare written arguments to support your oral submissions. This provides the judge with a brief description of your case, key points, and legal basis beforehand. This preparation gives more clarity during the argument.

7. Know the judge's approach and perspective: Knowing the judge's approach and style is very beneficial. By knowing whether the judge gives more time to ask questions or prefers you to be brief, you can mould your argument accordingly.

8. Organise evidence in a clear, simple and logical sequence: Organize the evidence in your case in a clear, simple, and logical Sequence. Following the proper order when presenting documents or witnesses makes the course of the case easily understood by the judge.

9. Anticipate Counter Arguments and prepare your response: Anticipate the counter-arguments coming from your opponent's side beforehand and prepare your responses to them. This prior preparation gives you self-confidence. It is key to responding immediately and effectively to the opponent's argument.

III. Argument Delivery

10. Submit arguments to the Judge, not to the opponent: Your arguments should be addressed to the judge, not to the opponent. Convincing the judge is your main goal. Arguing with the opponent may divert your main focus.

11. Focus on strongest points: Focus only on the strongest points in your arguments; do not waste time on small or insignificant matters. Emphasizing the key aspects that determine the success of the case increases the chance of influencing the judge quickly.

12. Use Simple and professional language: Use simple, clear, and professional language for the argument. Avoid using vague or complex language. Simple words make your argument understood by the judge quickly and clearly.

13. Support your arguments with case laws: Use authentic relevant case law and examples to support your arguments. This legal basis increases credibility to your argument and helps the judge in delivering the judgment.

14. Use pauses and emphasis to highlight important points: Use pauses to emphasize important points and to grab the judge's attention. A proper pause gives power to your words and helps the judge remember key points.

IV. Court Decorum

15. Maintain a respectful, confident and professional demeanor: Maintain a respectful, confident, and professional manner. There should be stability in your stance, eye contact, and tone. This professional behavior gives more strength to your argument.

16. Never interrupt the judge or opposing counsel: Never interrupt the judge or the Opposing Counsel. Listen patiently when they are speaking. Following this rule conveys your discipline and respect in court.

17. Never argue with the judge: Avoid arguing with the judge under any circumstances. If there is disagreement with decisions or opinions taken by the judge, it should be expressed only humbly and lawfully.

18. Avoid emotional reactions or aggressive tone: Completely avoid using emotional reactions or an aggressive tone. Argue only with logic and evidence, not emotions.

19. Avoid unnecessary social, personal and moral commentary: Avoid including unnecessary social, personal, or moral commentary in the argument. Your focus should be solely on legal facts and issues.

V. Response and Conclusion

20. Answer the Judge's questions clearly, directly and promptly: Answer the questions asked by the judge clearly, directly, and immediately. It is important to give a specific answer without giving a detailed explanation [unless necessary].

21. Observe the Judge's body language and reactions: It is very important to observe the judge's body language and reactions. By understanding their interest, agreement, or disagreement, you can adjust your argument accordingly.

22. Think before responding to the opponent or judge: Think once before responding to the opponent or the judge. This prevents you from giving negative answers in haste. Responding after thinking makes your answers effective.

23. Stay calm and handle unexpected questions smoothly: Stay calm and handle unexpected questions smoothly. Answering logically without panic conveys your professional skill.

24. Reinforce your key points in a clear and concise summary: Reinforce your Key Points in a clear and concise summary. This summary reminds the judge of the main aspects of your argument and helps in formulating the judgment.

25. Conclude by restating the precise relief sought: When concluding your argument, end by restating the precise relief you are seeking. This clearly states the goal of your argument and guides the judge in taking the final decision.

CHAPTER 5: CIVIL PRACTICE

5.1 INTRODUCTION

To understand civil court practice comprehensively, one must first examine how a person's grievance develops into a civil dispute, how the case is instituted before the court, how the claims are proved through evidence, and ultimately how the court delivers its decision.

The common types of cases generally seen in civil courts include money suits, injunction suits, suits for specific performance, partition suits, suits for declaration with injunction, and suits for declaration with recovery. These suits are typically filed to resolve disputes relating to property, debts, contractual obligations, legal rights, and the protection of individual interests.

In this part, we will study the various stages of civil court practice, including client interaction, drafting of pleadings, filing of necessary documents, framing of issues, recording of evidence, presentation of arguments, and delivery of judgment. These aspects will be explained with the help of practical examples such as money suits, injunction suits, suits for specific performance, and partition suits. This approach helps in understanding the working structure of civil court practice in a clear and practical manner.

It enables readers to develop a better understanding of case planning, management of evidence, and the manner in which arguments are presented and judgments are delivered in court. Before proceeding further, it is necessary to have a clear understanding of the fundamental principles of the civil justice system.

Fundamentals of Civil Justice System:

1. In a civil case, the plaintiff must prove his own case.
2. The standard of proof in civil proceedings is the preponderance of probabilities.
3. The defendant must specifically deny the plaintiff's allegations and clearly state his defence.
4. If the defendant remains silent or fails to put forward a proper defence, it may be treated as an admission of the plaintiff's case.
5. The defendant has the burden to prove the averments made in his defence.
6. If the defendant does not enter the witness box to support the statements made in his written statement, the court may draw an adverse inference against him.
7. Documents play a crucial role in civil cases. Therefore, a civil lawyer must have a clear understanding of the mode of proof of documents and their evidentiary value.
8. Ultimately, advocates must carefully plan their proof strategy based on oral evidence and documentary evidence.

To excel in Civil Law Practice, a civil lawyer must have a strong command over the following subjects:

1. The Code of Civil Procedure, 1908
2. Civil Rules of Practice
3. Limitation Act, 1963
4. Court-Fees and Suits Valuation Act, 1956
5. Negotiable Instruments Act, 1881
6. Revenue Laws
7. Indian Contract Act, 1872
8. Transfer of Property Act, 1882
9. Specific Relief Act, 1963
10. Bharatiya Sakshya Adhiniyam, 2023
11. Stamp Act
12. Registration Act, 1908

Note: A civil lawyer with strong command over these subjects can effectively draft pleadings, manage evidence, advise clients, and argue cases in court.

5.2 KEY STAGES IN A CIVIL CASE

The objective of a civil court is to determine whether there is a Right on the side of the plaintiff and whether there is a liability on the side of the defendant. By submitting his complaint in the form of a Plaint to the court, the plaintiff explains his right and its violation, and requests the court to grant him appropriate relief. For the relief sought in the Plaint to be granted, it must pass through certain important stages. They are:

1. Filing the plaint and Institution of the Suit
2. Service of Summons
3. Written Statement
4. S.89 CPC - ADR Mechanism
5. Settlement of Issues
6. Evidence Recording
7. Arguments
8. Judgment and Decree
9. Execution of Decree-Appeal

1. Filing the plaint (O.VII Rule 1. S. 26 of CPC) Every suit commences with the presentation of plaint. The Plaintiff submits this to the court. This plaint must comply with the provisions of S.26, Order VI (Pleadings Generally) and Order VII (Plaint) of the Code of Civil Procedure (CPC), as well as the Civil Rules of Practice. Describing his right and its violation in detail, the plaintiff requests the court to grant him appropriate relief. If the court accepts the plaint, it becomes a suit and thereafter the Court allots a suit number.

2. Issuance of Summons: After registration of the plaint as suit, the court issues Summons to inform the defendant about the suit as per O.V CPC. This is to inform the defendant about the suit and order him to appear before the court and answer

the case filed against him. The procedure for issuance and service of summons is dealt under Chapter VII of the Civil Rules of Practice.

3. Written Statement (Order VIII CPC) After receiving summons from the court, the defendant submits his explanation to the court in the form of a Written Statement. Through this document, the defendant conveys his case and his response to the allegations in the Plaint. This Written Statement must be in accordance with the provisions of Order VIII (O.VIII) of the Code of Civil Procedure (CPC). The defendant must file the written statement in court within 30 days from the date of receipt of summons. However, if unable to file within 30 days, if there are valid reasons, the court has the power to extend that deadline by another 60 days (Total 90 days: first 30 days + additional 60 days).

4. S.89 & O.X Rules-1A, 1B, & 1C of CPC - ADR Mechanism: According to S.89 of CPC, after the completion of pleadings of both parties (Plaint and Written Statement) and before framing issues, the court must mandatorily make an effort to refer the case to Alternative Dispute Resolution (ADR) methods vide M/S. Afcons Infra. Ltd. vs M/S Cherian Varkey Const Co 2010 8 SCC 24. If the ADR process fails, the court should take a report and proceed with the regular Trial. If a settlement is reached, the court must record it and issue a decree. For this purpose, a preliminary hearing is conducted, during which the court examines the parties with reference to their respective pleadings.

5. Settlement of Issues (O.XIV CPC): The main objective of this process is to clearly identify the real points of dispute between the parties based on their pleadings. The Court settles two types of issues:

Issues of Law: Ex: Does limitation apply to this suit filed by the plaintiff?

Issues of Fact: Did the defendant really illegally occupy the plaintiff's property or not?

The questions framed in this manner guide the entire civil trial. Parties are required to submit their evidence only to answer these specific issues. Most importantly, the final judgment given by the court is based solely on the issues framed in this manner, and judgment is not given on other matters. Lawyers can file draft issues in court.

6. Recording of Evidence O.XVIII: Recording of evidence is a crucial trial stage that happens after the framing of issues. This process happens as per O.XVIII provisions of CPC. Generally, the order of recording evidence is as follows: The court usually orders the plaintiff to present evidence first, because the Burden of Proof to prove the suit lies mostly on the plaintiff. After the plaintiff's evidence is completed, the defendant presents evidence to prove his arguments and refute the plaintiff's contentions. As per O.XVIII R.4 & R.9 CPC, the Examination-in-Chief of witnesses must generally be submitted in the form of an affidavit. However, cross-examination and re-examination to verify facts take place in court. Rules 95, 113, 115 in Civil Rules of Practice describe the manner of recording evidence, attendance of witnesses, and the rules of court regarding examination.

7. Final Arguments After the Parties' evidence is completed, the court declares that the case is ready for disposal. Final arguments take place at this stage. Final arguments mean that lawyers from both sides comprehensively present their argument before the court based on the evidence recorded on behalf of their client and the issues framed. The plaintiff's lawyer starts the argument first. They explain why the relief asked for should be granted based on the contents of their plaint, submitted evidence, and legal basis. After that, the defendant's lawyer presents their argument. They explain how they refuted the plaintiff's evidence, what the strength of their evidence is, and why they want the suit to be dismissed. If necessary, the plaintiff's lawyer has an opportunity to speak last (Rebuttal), refuting only certain arguments made by the defendant. During these arguments,

lawyers summarize the entire trial that happened previously (from pleadings to evidence) and try to influence the judge by citing important Case Law.

8. Judgment After final arguments are completed, the court takes the final decision. The judge pronounces the Judgment on a scheduled date. This judgment must be in accordance with the provisions of Order XX CPC. The judgment given by the judge must contain the following:

1. Brief history of the case.
2. Issued settled for trial.
3. Finding on each issue.
4. Reasons for the decision.

Finally, details like in whose favor the judgment is given, what the Relief is, and who should bear the court costs.

9. Decree: After pronouncing the judgment, the court shall draw up a decree in accordance with Order XX CPC. A decree represents the operative portion of the judgment, clearly specifying the rights granted to the plaintiff and the liabilities imposed upon the defendant.

10. Appeal: Any party aggrieved by the judgment can file an appeal. This is in accordance with S.96 to 112 CPC and Chapter 13 of Civil Rules of Practice.

11. Execution: If the defendant does not comply with the orders mentioned in the decree, the plaintiff can approach the court for Execution of Decree as per S.36 to S.94 & O.XXI CPC.

5.3 MONEY SUIT

Money Suit - Conceptual Understanding

A Money Suit arises when a Pecuniary Liability is created due to one person taking a debt from another person or due to the breach of any contractual obligation in favor of the plaintiff. This liability may arise through a Contract (oral or written), a Negotiable Instrument (e.g., Pro-note, Cheque), a Mortgage Deed, or any other means.

CLIENT INTERACTION

When a client approaches a lawyer to file a money suit, the advocate shall inquire about the following issues:

1. Acquaintance: In a money suit, it is important to understand the relationship between the plaintiff and the defendant—whether it is based on kinship, friendship, or business acquaintance—and how that relationship developed. Generally, a person does not lend a substantial amount of money to someone who is a complete stranger. Therefore, establishing the trust or prior acquaintance between the parties helps demonstrate the likelihood of such a financial transaction having taken place.

2. Avoiding money lender defence: If the plaintiff does not possess a money-lending licence, he is generally not permitted to carry on the business of lending money. Therefore, the plaint must clearly state that the transaction in question is merely a hand loan or personal loan given out of friendship, relationship, or business acquaintance, and not a loan advanced in the course of a money-lending business. If the defendant is able to establish during the trial that the plaintiff is an unlicensed money lender and that the loan was advanced as part of a money-lending activity, the suit may be liable to be dismissed. To avoid such a situation, it is essential for the lawyer to specifically plead in the plaint that the amount was

advanced as a personal hand loan arising out of personal relationship or trust between the parties, and not as a commercial money-lending transaction.

3. Necessity: When preparing a money suit, the lawyer must carefully inquire about the purpose for which the defendant requested the money, such as expenses for marriage, medical treatment, construction of a house, repayment of debts, or business needs. Understanding the purpose of the loan helps establish the background and surrounding circumstances of the transaction. Such details assist in presenting a clear chain of events before the court—how the request for money arose, why the plaintiff agreed to lend it, and how the transaction was completed. When these circumstances are logically connected, they strengthen the probability that the transaction actually took place. This approach is supported by Section 119 BSA, which recognizes the relevance of facts that form part of the same transaction or explain the surrounding circumstances connected with a fact in issue. Therefore, identifying the reason for the loan helps establish the context and continuity of events, making the plaintiff's version more credible before the court.

4. Mode of Payment and Supporting Evidence: It is essential to ascertain the mode through which the money was paid, such as cash, cheque, bank transfer (NEFT/RTGS), or through a written instrument like a promissory note or bond. The mode of payment determines the nature of evidence required to prove the transaction. If the amount was transferred through a bank, the relevant bank statement or transaction record must be obtained and preserved. If any witnesses were present at the time of the transaction, or if a scribe prepared the document, their details should be collected. Mentioning such witnesses in the plaint strengthens the plaintiff's case and assists in proving the transaction during the trial.

5. Guarantee: If the loan transaction was supported by a guarantor, such person should be impleaded as a party to the suit. Under the law relating to contracts, the liability of the guarantor is co-extensive with that of the principal debtor, unless the contract provides otherwise. Therefore, adding the guarantor as a defendant ensures that the decree, if granted, can be enforced against both the principal debtor and the guarantor.

6. Notice: Although issuing a notice is not mandatory before filing a money suit, sending a legal notice demanding repayment is advisable. A notice clearly establishes that the plaintiff made a formal demand for repayment before approaching the court. If the defendant fails to reply to the notice, such silence may be treated as a relevant circumstance supporting the plaintiff's case. Under Section 119 BSA, facts forming part of the surrounding circumstances connected with the transaction are relevant. Therefore, the issuance of notice and the absence of a reply can strengthen the plaintiff's argument by indicating that the defendant had no immediate denial or explanation regarding the claim.

II. Legal and Procedural Requirements

1. Time Limitation: Under Article 35 of the Limitation Act, 1963, the limitation period for filing a suit for recovery of money based on a promissory note or written acknowledgment of debt is three years. The limitation period begins from the date on which a demand for repayment is made, and the debtor refuses or neglects to pay. Filing the suit after the expiry of the limitation period can result in dismissal, even if the claim is genuine. Sending a formal demand notice before filing the suit not only establishes the date of demand but also strengthens the plaintiff's position.

2. Jurisdiction: Jurisdiction determines which court can hear the suit. A money suit may be filed either at the place where the cause of action arose or at the place where the defendant resides or conducts business/employment. The suit valuation further determines the court: lower-value claims go to a Junior Civil Judge, medium-value claims to a Senior Civil Judge, and high-value claims or special cases to the District Judge. Verifying both territorial and pecuniary jurisdiction is crucial to avoid objections or dismissal.

3. Court Fee: The court fee is governed by Section 20 of the Court Fees and Suits Valuation Act, 1956 and must be paid based on the total valuation of the suit, which includes both the principal amount claimed and any interest. Underpayment or non-payment of court fee can render the plaint defective, invite objections, or cause unnecessary delays in the proceedings. Proper calculation and payment of court fee is therefore essential before filing.

4. Prayer in the Plaint: The prayer should include the principal amount, interest, and costs of the suit. It is important to claim all reliefs arising from the debt in the same suit, as failure to do so may prevent the plaintiff from raising these claims later under the principle of res judicata or procedural bars.

5. Documents Required: Documents form the primary evidence in a civil suit. According to Sections 54, 94, 95, and 147 BSA, facts recorded in a document must generally be proved by producing the document itself. Essential documents include: the promissory note or loan agreement, bank statements or transaction records, legal notices and acknowledgements, and documents proving the necessity of the loan such as wedding cards, medical bills, or construction receipts. If a guarantor is involved, guarantee documents must also be filed, and the guarantor impleaded as a party. All documents should be properly numbered, legible, and annexed to the plaint.

MONEY SUIT - MODEL PLAINT
IN THE COURT OF THE JUNIOR CIVIL JUDGE, AT MEDCHAL:
MEDCHAL: R.R. DISTRICT

O.S. No: _____ /2011

Between:

Ram S/o Late Shankar, Age: 26 years,

Occ: Advocate, R/o Shameerpur (V) & (M), R.R. District

... Plaintiff

AND

Krish S/o Narayana, Age: 26 years,

Occ: Advocate, R/o Shameerpur (V) & (M), R.R. District

... Defendant

Plaint filed U/S 26, Order VII Rule 1 of the Civil Procedure Code
Claim: Suit for Recovery of Money

1. The Plaintiff and Defendant are residents of Shameerpur Village. They are childhood friends. Due to this acquaintance, on 02.10.2009 at Shameerpur Village, the defendant requested the plaintiff to provide a sum of Rs. 1,00,000/- (Rupees One Lakh) as a Hand Loan for the purpose of performing his sister's marriage. Accordingly, the plaintiff paid the said amount to the defendant.

2. At that juncture, the defendant executed a Demand Promissory Note in favor of the plaintiff covering the aforementioned amount, promising to repay the same with interest @ 2% per month.

3. Despite the plaintiff demanding repayment through a Legal Notice dated 11.11.2011, and despite several requests, the defendant refused to pay the money. On the contrary, he issued a reply to the Legal Notice stating that this transaction is false, which is untrue. Therefore, this suit is filed for the recovery of Rs. 1,00,000/- (Rupees One Lakh).

4. This suit is filed within three years from the date of the Promissory Note, i.e., 02.10.2009. Therefore, the suit is within Limitation as per Article 113 of the Limitation Act. Since this is a suit for recovery of money, the plaintiff has valued the suit at Rs. 1,00,000/- (Rupees One Lakh) and paid a court fee of Rs. 3,426/- (Rupees Three Thousand Four Hundred and Twenty-Six Only) as per schedule-I of the T.S. Court Fees and Suits Valuation Act.

Prayer: The Plaintiff therefore prays that the Hon'ble Court may be pleased to pass a Judgment and Decree in favor of the plaintiff and against the defendant for a sum of Rs. 1,00,000/- (Rupees One Lakh) along with interest. Also, to direct the defendant to pay the costs of the suit.

Date:

Place:

Plaintiff

Counsel for the plaintiff

List of Documents:

1. Promissory Note executed by Krish in favor of Ram, dated: 02.10.2009.
2. HDFC Bank account statement of Ram.
3. Wedding card of Krish's sister, dated...
4. Legal Notice, dated: 11.11.2011.
5. Registered Post Acknowledgement.

Date:

Place:

Plaintiff

MONEY SUIT – MODEL WRITTEN STATEMENT
IN THE COURT OF THE JUNIOR CIVIL JUDGE, AT MEDCHAL:
MEDCHAL: RANGA REDDY DISTRICT
O.S. No: /2011

Between:

Ram

S/o: Late Shankar, Age: 26,

Occ: Advocate, R/o: Shameerpet (V) & (M),

R.R District

... Plaintiff

AND

Krish

S/o Narayana, Age: 26,

Occ: Advocate, R/o: Shameerpet (V) & (M),

R.R District

... Defendant

Written Statement filed by the Defendant

1. The averments made in Para 1 of the Plaintiff's plaint stating that the Defendant borrowed a sum of Rs. 1,00,000/- (Rupees One Lakh) from the Plaintiff on 02.10.2009 at Shameerpet Village for the purpose of his sister's marriage and executed the suit Promissory Note are absolutely false.

2. The Defendant has no necessity to borrow money from anyone. The defendant did not borrow Rs. 1,00,000/- (Rupees One Lakh) from the plaintiff at any point in time, specifically on 02.10.2009. Furthermore, he never executed the suit Promissory Note. The suit Promissory Note is forged and fabricated.

3. The suit Promissory Note is not supported by consideration.

4. The allegation that the plaintiff demanded repayment of the loan and that the defendant was evading the same on one pretext or another is completely false. The defendant came to know about the suit only after receiving the summons. The contention that the defendant received the registered notice dated 12.11.2011 is also completely false. Therefore, the Defendant is not liable to discharge the suit debt. Hence, it is prayed that this Hon'ble Court may be pleased to dismiss the suit with costs.

Date:

Place:

Defendant

Counsel for the Defendant

ISSUES
IN THE COURT OF THE HON'BLE JUNIOR CIVIL JUDGE,
AT MEDCHAL: MEDCHAL MALKAJGIRI DISTRICT

O.S. No: _____ /2011

Issues:

1. Whether the defendant executed the suit promissory note?
2. Whether the suit promissory note was executed in favour of the plaintiff in view of the transaction pleaded in the plaint?
3. Whether the plaintiff is entitled to the relief sought for?
4. To what relief?

VI) EVIDENCE

PW1 (Ram): Examination-in-Chief:

1. What is your name? Ans: Ram.

2. Where do you reside?

Ans: I am a resident of Aziz Nagar village.

3. Why have you filed this case?

Ans: Even though the defendant took one lakh rupees from me, he refused to repay it.

4. How did you give this one lakh rupees?

Ans: At that time, the defendant wrote and gave me a promissory note.

5. At what place and what time did you give him this money?

Ans: I gave this money to the defendant at SBH Bank, Aziz Nagar on 01/10/2011 at 11:00 AM.

6. Why did you give this money?

Ans: The defendant requested that he needed money urgently due to his sister's marriage. This marriage was scheduled on 20/10/2011.

7. How do you know the defendant?

Ans: He is my childhood friend; we both belong to the same village.

8. Who was present when the money was given?

Ans: Our village Sarpanch Rajendra and Bank Security Guard Gopal were present.

9. Was the money repaid to you?

Ans: No, despite my making several requests and even issuing a legal notice.

10. Have you filed any document to support this case?

Ans: Yes, I have filed the following documents:

Ex.A1: Suit Promissory Note executed by the defendant.

Ex.A2: Legal Notice. Ex.A3: Acknowledgement Receipt.

Ex.A4: Wedding Card of defendant's sister. Ex.A5: Plaintiff's Bank Statement.

Cross-Examination:

1. I suggest to you that the defendant is an Advocate?

Ans: Yes, he is an Advocate.

2. I suggest to you that you are an Income Tax payee?

Ans: Yes, I am an Income Tax payee.

3. Did you show in your Income Tax statement that you lent money to the defendant?

Ans: No, I did not show it.

4. I suggest to you that since you did not give him any amount, you did not show it in your records?

Ans: No, I gave him the money.

5. I suggest to you that you know the defendant's signature well?

Ans: Yes.

6. I suggest to you that since you have a proper understanding of the defendant's signature, you forged his signature and filed this false case?

Ans: No, that is false.

7. How many people signed after Rajendra signed on the promissory note?

Ans: The promissory note was first written and given by the defendant, and after that, at the same time, Rajendra signed it.

8. I suggest to you that the Defendant and Rajendra are political rivals?

Ans: Yes.

9. I suggest to you that you managed the postal authorities with the help of Rajendra's political influence and obtained Ex.A3?

Ans: No, that is false.

10. I suggest to you that the Defendant does not owe you any money, but at the instigation of Rajendra, you forged the Defendant's signature and filed this false suit?

Ans: No, that is false.

JUDGMENT
IN THE HON'BLE COURT OF THE JR. CIVIL JUDGE: MEDCHAL
PRESENT: G. ANIL KIRAN KUMAR, B.A., B.L.(HONS)
O.S. No. 23 of 2016

Between:

Ram

... **Plaintiff**

AND

Krish

... **Defendant**

JUDGMENT

This suit is filed for the recovery of a sum of Rs. 1,00,000/- (Rupees One Lakh Only) based on a promissory note executed by the defendant in favor of the plaintiff.

The case of the plaintiff:

1. The plaintiff and defendant are childhood friends and residents of Shameerpet Village. Due to that acquaintance, on 02.10.2009, the defendant requested a hand loan of Rs. 1,00,000/- for his sister's marriage expenses, and the Plaintiff gave that amount. At that time, the defendant executed a demand promissory note promising to repay the same with interest at 2% per month. Despite the plaintiff making several requests, including issuing a legal notice dated 11.11.2011, the defendant did not pay the money. On the contrary, the defendant replied to the legal notice stating that this transaction was false. Therefore, this suit is filed for the recovery of Rs. 1,00,000/-.

The case of the defendant:

2. The defendant clearly denied the allegations in the plaint and requested the dismissal of the suit. He argued that the suit promissory note is forged and fabricated, and also that it is not supported by Consideration.

3. The Court examined the arguments of both sides and counselled them to resolve the dispute amicably as per S.89 CPC, 1908. However, as they showed no interest, the Court settled the following Issues for trial:

1. Whether the defendant executed the suit promissory note?
2. Whether the suit promissory note was executed in favour of the plaintiff in view of the transaction pleaded in the plaint?
3. Whether the plaintiff is entitled to the relief sought for? To what relief?

EVIDENCE ON RECORD:

4. To support his case, the Plaintiff examined himself as PW1 and marked documents Ex. A1 to A5. The defendant did not examine anyone on his behalf and did not mark any documents. Arguments of both sides were heard.

Issue No. 1:

7. To prove that the suit promissory note (Ex. A1) was executed by the defendant, the plaintiff relied on his oral evidence (PW1) and supporting documents (Ex.A1 to Ex.A5). Legally, execution means signing a document after fully understanding its contents. According to PW1, immediately after receiving the agreed consideration, the defendant voluntarily drafted the promissory note, understood its terms, and put his signature under the document. This transaction was witnessed by Rajender and a bank security guard. The defendant denied this version in his written statement and alleged that his signature was forged.

8. According to law, a witness's testimony under oath is presumed to be truthful unless their credibility is successfully impeached. During the trial, the defendant did not ask PW1 specific questions to discredit PW1's credibility, the execution credibility, the order of events, or logic. The defendant did not examine himself as a witness to support the averments in his written statement. Therefore, his arguments remained merely as pleadings and were not established in the form of evidence.

9. The defendant did not examine himself to support the forgery allegation. Furthermore, although the defendant made a specific allegation that PW1 forged his signature, no expert opinion or independent evidence was submitted. Since PW1 is a childhood acquaintance, he could identify the defendant's signature. The defendant did not cross-examine PW1. So, the forgery plea is not proved by the defendant. Accordingly, Issue No.1 is decided in favor of the plaintiff and against the defendant.

Issue No. 2:

10. Following the favorable finding on Issue No.1, according to Section 118 of the Negotiable Instruments Act, once execution is proved, a presumption arises that the promissory note is genuine. The burden lies on the defendant to rebut this presumption. The defendant failed to submit oral or documentary evidence. The defendant argued that Ex.A1 arose due to the plaintiff's nexus with the village Sarpanch, but there is no supporting evidence. Similarly, the defendant's plea that the plaintiff did not disclose the suit transaction in his income tax returns cannot be given any weight when viewed against proved and admitted facts. Merely not showing it in income tax returns is not a proper ground to doubt an otherwise proved transaction.

11. On the other hand, the defendant remained silent as to the authenticity of Ex.A2 to A5. The failure to reply to Ex.A2 was considered as an adverse inference against the defendant's case. The plaintiff produced the defendant's sister's marriage invitation card (Ex.A3) to corroborate the loan purpose. Further, the fact that the plaintiff and defendant are childhood acquaintances strengthens the nature of their relationship and the transaction. When considering all these circumstances comprehensively, the Court rejected the defendant's plea as it was not credible. Considering the childhood acquaintance of the parties and their respective financial positions, the court found the plaintiff's version consistent

and probable. As the defendant failed to rebut the statutory presumption, Ex.A1 is declared valid, enforceable, and binding. Accordingly, Issue No.2 is decided in favor of the plaintiff and against the defendant.

Issue No. 3 & 4:

12. Consequently, the suit is decreed in favor of the plaintiff and against the defendant for the recovery of the suit amount of Rs. 1,00,000/- (Rupees One Lakh Only) along with costs of the suit, with future interest at the rate of 12% P.A. from the date of the suit till the date of the decree, and at 6% P.A. from the date of the decree till realization.

(Typed to my dictation on 12.5.2017)

**Junior Civil Judge,
Medchal**

Appendix of Evidence

For Plaintiff PW1: Ram

For Defendant NIL

Exhibits

Ex.A1: Promissory Note written and given by Krish

Ex.A2: HDFC Bank Account Statement of Ram

Ex.A3: Wedding Card of Krish's sister

Ex.A4: Legal Notice, dated: 11.11.2011

Ex.A5: Registered Post Acknowledgement

**Junior Civil Judge,
Medchal**

5.4 INJUNCTION SUIT

INJUNCTION SUIT - CONCEPTUAL UNDERSTANDING

1. Nature of Law: Law not only provides remedies for violated rights but also safeguards such rights from anticipated injury. Hence, law provides certain preventive remedies. A Suit for Injunction is a preventive legal action. This relief is sought to prevent the defendant from violating an obligation existing against them. This obligation on the defendant may arise from law, contract, custom, or precedent. This relief is sought for the prevention of a breach of duty.

2. Conditions for Granting Relief of Injunction: According to S.38 of the Specific Relief Act (SRA), a person seeking an Injunction must fulfil the following conditions:

- i) The Plaintiff must have a right in their favor, and there must be an obligation on the defendant to respect that right.
- ii) There is no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion of the defendant.
- iii) The invasion must be such that compensation in money would not be an affordable (adequate) relief.
- iv) To prevent multiplicity of proceedings.
- v) When the defendant is a trustee of the property for the plaintiff.

3. Additional conditions in case of breach of contract:

- i) The plaintiff must be entitled to compensation for the breach of that contract.
- ii) The plaintiff must be capable of performing the contract.
- iii) The plaintiff must not violate the essential terms of the contract on their part.
- iv) Must not act wilfully at variance with, or in subversion of, the relation intended to be established by the contract.

v) The plaintiff must prove that they have performed, or have always been ready and willing to perform, the essential terms on their part. In the case of money payment, there is no need to actually tender (pay) unless ordered by the court.

4. Injunction is a Discretionary Relief: Even if the above rules are proved, the Court has the authority to refuse injunction relief due to the following reasons:

- i) Lack of bonafides
- ii) Unclean conduct on part of the plaintiff
- iii) Suppression of material facts
- iv) Additional conditions in case of breach of contract
- v) S.41 of the SRA spells out conditions ‘when injunction can be refused’.

5. Prohibitory Injunction in case of Threat of Dispossession: Cases regarding threat of dispossession concerning immovable property, especially agricultural land, are widely seen in courts. In this context, it is extremely important to properly understand the meaning of the term possession is, under what circumstances possession receives legal protection, when and how a person acquires lawful possession over agricultural land, and how to verify lawful possession. Having a clear understanding of these aspects allows an advocate to effectively defend their party's rights before the court.

6. Conceptual Understanding of Possession: Possession indicates lawful custody or physical control over a property by a person. Possession is not merely related to ownership; it is an important right independently recognized by law. Possession over property can be acquired through several legally recognized modes. Important among these are sale, lease, gift, partition, succession, will, court decree, usufructuary mortgage, as well as adverse possession. If possession is acquired through methods other than these recognized modes, it is considered unlawful possession. The law provides certain important rights to the person in possession.

They are:

- a) Right to use
- b) Right to use and enjoy
- c) Right to possess
- d) Right to exclude others from the property
- e) Right to sue to protect their possession

A person seeking possession protection does not necessarily need to prove their ownership or better title. It is sufficient if they can show their lawful possession over the property. In the case of *Rame Gowda vs. M. Varadappa Naidu*, the Supreme Court clearly stated that a person in settled and peaceful possession — even if a settled trespasser — can maintain an injunction suit even against the original owner.

Article 65 of the Limitation Act prevents the owner from forcibly taking possession, even if that possession is illegal. The only legal remedy available to the owner is to file a suit for recovery of possession. Similarly, according to S.113 BSA, the person in possession of the property is presumed to be the owner. In cases where there is no proper proof of title, the law deems the person in possession to have ownership.

7. Role of Land Records in Proving Possession: To prove possession over agricultural land, land records maintained by revenue authorities are extremely crucial. Although these records are maintained primarily for the purpose of state revenue collection, their importance has not diminished over time. Even after the emergence of the Welfare State, the need for maintaining land records has increased further. The reason is that these records act as essential tools for planned development, safeguarding government land, and safeguarding individual landholders' rights. In these land records, several basic and key details regarding a land are recorded. Most importantly — land size, shape, type of soil, productivity, kind of crops cultivated, survey number and extent, name of the

pattadar and possessor, nature of occupation, and details like irrigation facilities. Therefore, land records are considered the most reliable evidence before courts in proving lawful possession over agricultural land.

8. Basic Information about Land Records: The village is basic revenue unit. Each village is sub-divided into survey numbers. All records related to land are maintained by land revenue authorities based on the survey number. In this context, let us examine the various types of land records maintained by revenue authorities.

Permanent Records:

a) Naksha or Village Map: Every revenue village has a Naksha.

b) Tippan or Field Measurement Book - FMB: Every survey number has a Tippan or FMB. This shows the size and shape of the land. For example, if there are 100 Survey no's, there will be 100 maps.

c) Sethwar or RSR (Revenue Survey Settlement Record) or Diaglott: A separate register (Sethwar or RSR) is maintained for every survey number. This is also called a settlement record. It contains approximately 14 columns. It contains the Pattedhar's name, nature of the land, and other basic details.

d) Supplementary Sethwar: When a permanent change like sale or partition occurs in the land (e.g., dividing Survey no. 25 into 25/a, 25/b, 25/c), a supplementary Sethwar is annexed to the original RSR. The copies of these documents are available at the Survey Office, District Collector office, Tahsil, and State archives.

Khasra Pahani: This is a Record of Rights prepared in the year 1954–55 by the Board of Revenue of Andhra Pradesh (Telangana Area). This Khasra Pahani record was gazetted under Regulation No. 4 of the Andhra Pradesh (Telangana Area) Record of Rights in Land Regulation, 1358-F. According to Regulation No. 13, any entry made in the Khasra Pahani is presumed to be true until proven to

the contrary. Therefore, this record holds great legal significance regarding rights and possession over land. This Khasra Pahani record continued effectively as long as the 1358-F regulations were in force. Later, these regulations were repealed by the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971. However, this Act came into force from 15-08-1978.

Annual or Occasional Revenue Records:

ROR / 1B (Record of Rights Register): A separate ROR or 1B is maintained for every village at the Tahsil level. It contains 14 columns, including details like khatadar name, survey number, land classification, extent, and Land Revenue. It shows how a new person's name entered the ROR (via sale or gift).

Title Deed: Informs about the ownership rights of the landholder.

Pass Book: Reflects all transactions related to the land. If a conflict arises between the Patta pass book and Title deed, 1B (or ROR) will prevail. Before issuing a Passbook, the Tahsildar must mandatorily make necessary changes in the 1B. Traditionally, under the guidance of the Tahsildar, the erstwhile Village Revenue Officer (VRO) used to maintain eleven types of Integrated Village Accounts for every village. The most important record among these village accounts is the Village Account No.3/Adangal/Pahani. This document generally contains about 21 columns. Some of those columns are of utmost legal importance:

Column No. 11: Name of Pattadar (This may be different from the owner)

Column No. 13: Name of Occupant / Possessor

Column No. 14: Extent of Cultivation

Column No. 15: Nature of Occupation

Since the Pahani/Adangal document is maintained by village-level officials, placing complete reliance on it is generally not considered safe. Courts also treat this record only as corroborative evidence.

As a recent development, the Telangana Government introduced the Dharani portal under the Telangana Rights in Land and Pattadar Pass Books Act, 2020. Through this, land records have been consolidated in digital form. However, due to issues arising in the Dharani system, the government is currently trying to reorganize land record management to be more transparent, accountable, and legal through the Bhu Bharati Act, 2024.

Therefore, currently, when proving possession of agricultural land, it is legally essential to comprehensively examine traditional village-level records (Pahani/Adangal), digital records (Dharani), and the latest legal framework (Bhu Bharati Act).

Unregistered Sale deeds: In reality, for a person who acquired land through an unregistered document, the mutation (change) in 1B will be done only after compliance with provisions under Bhu Bharati Act.

Encumbrance Certificate (EC): EC is an official document issued by Registration Authorities. It is an extract of the register maintained by the Sub-Registrar. Through the EC, one can know if there are any charges or liabilities on a property. The EC is important for a prospective buyer to know if the property has a clear and marketable title. Government officials and financial institutions generally use an EC of 13 to 30 years as primary evidence. However, documents not registered in the register (e.g., Equitable mortgage, Wills) are not captured in the EC. Therefore, these must be verified through other evidence.

9. Summary and Strategy: To prove possession in an Injunction suit, an advocate must mandatorily verify and scrutinize these six main records:

1. Sethwar/RSR,
2. Village Map and FMB (Tippan),
3. 1/B (Record of Rights Register),
4. Patta Pass Book and Title Deed,
5. Pahani/Adangal,
6. Encumbrance Certificate (EC).

By analysing these documents, important details of the land such as:

1. Classification (Government / Private), 2. Ownership,
3. Survey Number, 4. Extent, 5. Nature of Occupation can be known.

Based on these details, one can decide which Land Law applies and how to strategize the appropriate legal solution for the client. Moreover, by observing BhoomiS until YouTube videos and the Judgment of the High Court for the State of AP (erstwhile) G. Satyanarayana vs Government of A.P., can get the complete picture and understanding about the revenue records and their usage in civil cases more deeply.

INJUNCTION SUIT: CLIENT INTERACTION

An Injunction Suit is a preventive legal action approached through the court to prevent a future threat to the right of peaceful possession and enjoyment of immovable property. As an Advocate, it is necessary to examine these aspects with the plaintiff before filing the suit.

Step 1. Plaintiff Relationship with the Property: One must know how the Plaintiff acquired the right of possession/enjoyment over the property. Recognized modes of acquiring rights: Sale, Gift, Partition, Succession, Will, Court Decree, Adverse Possession, Settled Possession, or Section 53A of Transfer of Property Act. The Advocate needs to inquire through which of these modes the right was acquired. Verifying these facts is important. Here, understanding Section 11 of BSA is useful, as it guides how the creation, claim, modification, recognition, assertion, or denial of a right on property is proved in courts.

Transactions and Instances (BSA S.11)

Transaction (S.11(a)): The manner in which a right on property was created/modified through transactional documents like a Sale Deed is relevant. They play a key role in confirming the creation or modification of rights.

Instances of Exercise of Right (S.11(b)): The Court will also examine how the right was actually used are also examined in courts. Examples: Entries in Revenue records, obtaining permission to erect a Hut, obtaining Electricity and water connection. In this way, by combining transactions and instances, the legitimacy and actual exercise of the property right can be consistently established in courts.

Step 2: Inquiry about Documents: According to Property law and Evidence law, facts related to immovable property must be proved through documents. One must examine if there are documents proving the plaintiff's entitlement. Especially, the legal validity and authenticity of source documents like the Sale Deed must be verified.

Step 3. Link Documents: Ask the plaintiff to produce documents that support, modify, or restrict their right. Examples: Link Documents, Title Deed, Pass Books, 1/B Record, Pahani / Adangal, Tax Receipts, Encumbrance Certificate.

Step 4: Actual Physical Possession: Verify whether the plaintiff is in actual physical possession of the property or not.

Step 5: Presumptive Value of Public Documents: Public documents issued according to law are presumed to be genuine. Entries in revenue records are presumed to be correct. The burden lies on the party disputing this.

Step 6: Reason for Fear of Violation: Verify the reason for the defendant's interference. Check if it is based on a justified right or if it is an unlawful claim. If the defendant has no legal right, file a mere Injunction Suit. If the defendant's claim is based on documents, consider whether to file a Suit for Declaration and Consequential Relief. Reading the **Anathula Sudhakar vs Buchi Reddy (2008) 4 SCC 594** case is useful for framing and proving an injunction suit.

Step 7: Bonafides must be shown:

The Plaintiff must not hide material facts that affect the relief. If there is a possibility of suppression of facts, the suit is liable for dismissal. *Example:* Disclosure of previous suits or pending cases between parties is mandatory.

Step 8: Immediate Action: When there is an immediate danger of illegal interference, the immediate action taken by the plaintiff must be mentioned in the plaint. If there is a delay in filing the suit, relief may be denied.

Step 9: Defendant Conduct: Verifying the defendant's conduct, character, and criminal antecedents helps in establishing the fear of dispossession.

Step 10: We must state that how relief in terms of money is not an adequate relief.

Step 11: Notice: Generally, to institute an Injunction Suit, if the defendant is the Government or a Government Pleader, giving notice according to S.80 CPC is mandatory.

Step 12: As per Article 113 Limitation Act, the limitation period is 3 years. It is calculated 3 years from the date when the plaintiff's right is under threat of invasion or danger of violation. The fear must be tangible.

Step 13: Jurisdiction: The Injunction Suit must be filed in the court where the immovable property is located.

Step 14: Suit Valuation and Court Fee: According to S.26 of T.S. Court Fee and Suits Valuation Act, 1956, the court fee for an Injunction Suit depends on the value of the right. If the plaintiff's title is denied in the Plaint, the suit must be valued under **S.26(a)** of the Act. If the title is not denied and threat of interference based without any reasons, suit claim can be valued notionally and fee can be paid accordingly.

Step 15: Prayer: The relief generally sought in an Injunction Suit: To pray to the court to grant a decree of perpetual injunction restraining the defendant and his followers from interfering with the suit property.

III. PLAINT
IN THE COURT OF HON'BLE JR. CIVIL JUDGE, MEDCHAL
O.S. NO. 71/2011

Between:

Bharat,
S/o: Late Raghu, Age: 50,
Occ: Agriculture, R/o: Podduru (V),
Medchal (M), Ranga Reddy District. **... Plaintiff**

And

Narasimha,
S/o Ramakrishna, Age: 33,
Occ: Agriculture, R/o: Podduru (V),
Medchal (M), Ranga Reddy District. **... Defendant**

Plaint filed U/S.26 and O.VII R.1 CPC
Claim: Suit for Permanent Injunction

The facts of the case:

1. The plaintiff is the absolute owner and possessor of Acre: 01:00 guntas land in Sy.No.26 of Podduru village, Medchal Mandal (Suit Property). The complete description is given at the end of the plaint. The plaintiff purchased this suit property on 10.10.1993 from Shyam through an unregistered sale deed by paying Rs. 1,00,000/-. Due to the sudden demise of Shyam and the unavailability of his legal heirs, the sale was not registered.

2. Possession of the Suit property was handed over to the plaintiff at the time of the sale itself. Since then, the plaintiff has been cultivating the suit land without any interruption. The plaintiff's name has been entered in the revenue records. The plaintiff has also made an application for regularization under Section 5A of the Pattadar and Pass Books Act.

3. Due to the construction of the Outer Ring Road, land prices in the suit village have increased. The defendant is a real estate agent and a person who tries to knock away (usurp) the land of villagers. The defendant has no relation whatsoever with the suit land. On 20.11.2011, when the defendant tried to unlawfully interfere with the suit land, the Plaintiff successfully prevented it with the help of his relatives.

4. While leaving, the defendant openly declared that he would dispossess the plaintiff at any cost. Therefore, fearing likely dispossession, the plaintiff has filed this suit.

5. The suit is filed within the limitation period under Article 113 of Limitation Act.

Suit Valuation and Court Fee: Since this is a suit for perpetual injunction only, the Plaintiff has given a notional valuation of the relief as Rs. 3,000/- and paid Rs. 261/- under Section 26(c) of the Court Fee & Suit Valuation Act.

Prayer: To grant a decree for perpetual injunction restraining the Defendant and his followers from interfering with the Suit property. To order the costs of the Suit.

Date: ...

Place: Medchal

Plaintiff

Counsel for the plaintiff

SCHEDULE OF PROPERTY:

All that agriculture land over an extent of Acre: 01:00 guntas land in Sy.No.26 of Podduru village, Medchal Mandal (Suit Property). The boundaries of Survey no.26 (One Acre): East: Thirty feet village road; West: Narasimha's land; North: Plaintiff's land; South: Krishna's land.

List of Documents:

1. Sale deed (Unregistered) dt: 10.10.1993.
2. C.C of Adangal Phani (2001 - 2011) - Issued by TAHSILDAR.
3. C.C of Adangal Phani (1999 - 2000) - Issued by TAHSILDAR.
4. Certificate of Loan granted by Co-operative Bank.
5. C.C of Application u/S.5A (for regularization).

Date: ...

Place: Medchal

Plaintiff

Counsel for the plaintiff

Injunction Suit – Court objections

1. How is the Suit maintainable in the absence of a registered sale deed?

Ans: At the time of registering the Plaint, the court should consider only the plaint averments (allegations in the suit) and verify whether there is a cause of action. The court should not consider the documents filed along with the plaint. The court must presume that the contents of the plaint are true and correct. Insisting on a registered sale deed is untenable. This is a matter of trial. The Hon'ble High Court of A.P. authoritatively held this proposition in the cases of *R. Raghunath Reddy v R. Ramakrishna Reddy* (2013) and *Sai Baba Kirana and General Merchant v Manjira Chit Fund Co.* (2004).

2. Whether the Suit valuation and Court fee paid is proper?

Ans: The relief sought by the plaintiff is to prevent interference by a stranger regarding immovable property. This is an intangible right. S.26(c) of the T.S. Court Fee Act permits the plaintiff to value the relief notionally. There is no need to take market value as the criterion in Injunction suits. The relief should be valued based on the advantage derived or the loss averted. The High Court confirmed this proposition in *Viraj Constructions vs. P. Pandu* (1998). Hence, the valuation and the Court fee paid are correct.

3. Is it tenable for the Head Clerk to direct the payment of deficit stamp duty along with ten times penalty at the Plaint filing stage?

Ans: No, it is not tenable. The Head Clerk or the Court cannot direct payment of deficit stamp duty or penalty at the stage of suit registration. A reading of S.s 33 & 35 Stamp Act shows that deficit stamp duty becomes relevant only when the document is tendered in evidence. Under Proviso (a) to S.35, an unduly stamped instrument can be admitted only after payment of the required duty and penalty. Therefore, the Court can demand deficit stamp duty only at the stage of admission of the document in evidence (*K. Santhakumari v. K. Suseela Devi*).

4. Is the Defendant's argument that the Court should not rely on unregistered and unstamped documents in a Temporary Injunction petition tenable? Should the Court collect stamp duty or send it to the Collector?

Ans: a) Yes, tenable. When inquiring into a petition under Order XXXIX R.1 & 2, the defendant can object to an unstamped and unregistered sale deed. If the requisite stamp duty is not paid, Court shall not consider that document. The court can impound a document only at the stage of receiving it in evidence. Hearing under Order 39 Rules 1 and 2 is not equivalent to receiving in evidence. However, if the petitioner requests, the document can be impounded.

b) If the Plaintiff is ready to pay the deficit stamp duty, the Court does not object to it. The plaintiff can request the court to collect ten times the original deficit duty. If the plaintiff requests the court to send it to the Collector, he shall collect the deficit fee or actual fee basing on the date of execution.

5. Can an unregistered sale deed be marked in evidence to prove the sale transaction?

Ans: No. As per Section 17 of the Registration Act and the Transfer of Property Act, instruments relating to immovable property valued at more than Rs. 100/- must mandatorily be registered. As per S.49 Registration Act: If a document requiring registration is unregistered, it shall not affect the immovable property and shall not be received as evidence to prove the transaction. In *Bandar Singh v Nihal Singh* (2003), it was held that an unregistered sale should not be used to prove a sale transaction.

6. Can an unregistered sale deed be marked for other purposes? What can the Plaintiff use it for in this case?

Ans: Yes. It can be marked for collateral purposes. Proviso to S.49 of the registered Act, an unregistered document can be received in evidence as a contract in a suit for specific performance or as evidence of a collateral transaction or

matter. To illustrate, it can be used to show that the plaintiff's possession is not unauthorized or illegal. Further, to establish the jural relationship between the parties and the capacity in which the property is occupied. If stamp duty is not paid, the sale deed cannot be made admissible even for a collateral purpose.

7. If an unduly stamped and unregistered sale deed is marked in evidence, can the defendant challenge it at any time?

Ans: Once the Court has admitted a document in evidence, according to section 36 of the Stamp Act, it cannot be reviewed by the trial court or the appeal court on the ground that the instrument was not duly stamped (*Bipin Shantilal Panchal v State of Gujarat*, 2005). However, even if an unregistered document is marked, it can be excluded from being read as evidence to confer a right, as it violates the bar under S.49 of the Registration Act. The defendant can raise this objection at any stage, including in the appeal court.

**WRITTEN STATEMENT
IN THE COURT OF THE JUNIOR CIVIL JUDGE,
MEDCHAL
O.S. NO. 71 /2011**

Between:

Bharat,
S/o: Late Raghu

..... Plaintiff

And

Narasimha,
S/o Ramakrishna

..... Defendant

WRITTEN STATEMENT

The Defendant respectfully submits the following facts:

1. Except for the allegations specifically admitted in this Written Statement, the defendant should be deemed to have specifically denied all other allegations in the plaint.
2. It is submitted that the plaintiff is not the owner or possessor of the suit property as averred in para 2 of the plaint. It is not true that the plaintiff purchased the suit property from Shyam on 10.10.1993 through an unregistered sale deed by paying Rs. 1,00,000/-. It is also false to say that although the plaintiff made all efforts to pay the vendor and get it registered, it did not become a reality because the vendor left the village, became bedridden due to illness, and subsequently died.
3. It is also false to submit that possession of the suit property was handed over to the plaintiff at the time of the sale itself, that the plaintiff has been personally cultivating the suit land without any interruption since then, and that his name is entered as possessor in the relevant revenue records. It is submitted that the application filed by the plaintiff for regularization under S.5A of the Pattadar and Pass Books Act was rejected by the Mandal Revenue Officer.

4. It is also false to allege that the defendant is a real estate agent, conversant and well versed in knocking away villagers' land, and has no relation to the suit land. The Plaintiff must prove this through strict proof. It is false to say that the defendant attempted to grab the suit land on 20.11.2011 or any other date. It is also false to allege that the Plaintiff, with the help of his relatives, successfully prevented the defendant's unjustified interference. It is also false to allege that the defendant openly declared while leaving the land that he would dispossess the plaintiff at any cost. It is submitted that the cause of action to file this untenable suit is an imaginary and invented matter. It lacks bonafides. Therefore, it is prayed to dismiss the suit with costs.

Counsel for the Defendant

ISSUES
IN THE COURT OF JR. CIVIL JUDGE, MEDCHALAT: MEDCHAL:
RANGA REDDY DISTRICTO.S. No. 71/2011

Between:

Bharath **Plaintiff**

And

Narasimha **Defendant**

ISSUES

1. Whether the plaintiff is in possession of the suit property as on the date of the filing of the suit?
2. Whether there is an unjustified interference on part of the defendant?
3. Whether the plaintiff is entitled to relief?
4. To what relief?

Junior Civil Judge,
Medchal

EVIDENCE

PW1: Bharat (Plaintiff)

Examination-in-Chief

1. What is your name?

Ans: Bharat.

2. What is your father's name?

Ans: Raghu.

1. What is your age?

Ans: 55 years.

4. What is your occupation?

Ans: Agriculture.

5. Where do you reside?

Ans: Podduru Village.

(Judge: I swear in the name of God that I shall speak the truth and nothing but the truth.)

6. Why have you filed this case?

Ans: I filed this suit for injunction to prevent the defendant from making illegal interference into my suit land.

7. How did you acquire the Suit property?

Ans: I purchased the Suit property from Shyam on a stamped document. But it was not registered.

8. Who is in possession of this land?

Ans: This land is in my possession. I am also recorded as the possessor in the revenue records.

9. How long have you been in possession of the Suit land?

Ans: I have been in possession of the Suit land since the year 1993, from the date of purchase.

10. Who is cultivating this land?

Ans: I am cultivating it.

11. Have you initiated any official proceedings regarding this land?

Ans: Yes. I obtained a crop loan on this land from the agriculture co-operative society. I also applied to the revenue authorities for land regularization and issuance of Patta Pass book and title deeds.

12. What are the boundaries of the Suit property?

Ans: The Boundaries are as follows: East: Thirty feet Road; West: Narasimha's land; North: My land; South: Krishna's land.

13. Why did you file this case only against the defendant?

Ans: On 20/11/2011 during morning hours, the defendant illegally entered with the intention to occupy. However, it was timely resisted by my near and dear. But he threatened that he would occupy my land at any cost. That is why I filed the suit.

14. Have you filed any documents in support of your case?

Ans: Yes, I have filed the following documents:

Exhibits:

Ex.A1: Sale deed (Unregistered) dated: 10.10.1993 (From Shyam to me).

Ex.A2: C.C of Adangal Phani (2001 - 2011) (Issued by TAHSILDAR).

Ex.A3: C.C of Adangal Phani (1999 - 2000) (Issued by TAHSILDAR).

Ex.A4: Certificate of Loan granted by Co-operative Bank, Medchal.

Ex.A5: C.C of Application u/S.5A (regularization).

Cross-Examination:

1. I suggest to you that you have not filed your vendor's title deed or pass book?

Ans: Yes, I have not filed them.

2. Do you hold pass book and title for the land acquired from your father?

Ans: Yes, I hold them.

3. How did you obtain a crop loan from the society?

Ans: The Crop loan was given based on the Phani issued by the revenue authority.

4. Can you say based on which proceeding your name was recorded as possessor in the revenue records?

Ans: I can't say.

(At this stage, Judge put the following question)

5. Mr. Bharat, if given time, can you file the copy of the proceedings by which your name was entered in revenue records?

Ans: It is not possible. I cannot say.

6. I suggest to you that you illegally got your name entered and obtained the loan using your undue influence?

Ans: No, that is false.

7. I suggest to you that the application you made to the Tahsildar for Regularization was rejected?

Ans: Yes, it was dismissed, but I filed an appeal.

8. I suggest to you that till this date you have not given any notice to Shyam or his legal representatives to register the land in your name?

Ans: Yes, I have not given.

9. I suggest to you that you filed this case suppressing material facts?

Ans: No, I have not suppressed any material fact.

10. I suggest to you that you have not given any police report for the alleged interference of the Defendant?

Ans: Yes, I have not given any report.

11. I suggest to you that the Defendant never interfered in the Suit land and you are not in possession of the Suit land?

Ans: No, that is false.

JUDGMENT
IN THE COURT OF THE JUNIOR CIVIL JUDGE, MEDCHAL

Present: G. Anil Kiran Kumar, B.A., B.L(Hons)

Date: 3rd March, 2013.

O.S. NO. 71 OF 2011

Between:

Bharat, S/o: Late Raghu,
Age: 55, Occ: Agriculture
R/o: Podduru (V), Medchal (M),
Ranga Reddy District. **..... Plaintiff**

And

Narasimha,
S/o Ramakrishna, Age: 33,
Occ: Agriculture R/o: Podduru (V),
Medchal (M), Ranga Reddy District. **..... Defendant**

:: JUDGEMENT ::

The case of the plaintiff:

1. The Plaintiff is the owner and peaceful possessor of the Suit property. He purchased this land on 10/10/1993 from Shyam through an unregistered sale deed by paying consideration. Registration was not possible due to the sudden demise of the Vendor and the non-availability of legal heirs. The Plaintiff has been in possession and uninterruptedly cultivating since the Sale date. Confirming this possession, the Plaintiff's name was entered as possessor in the revenue records. An application was also made under S.5A of T.S. Pattadar and Pass Books Act for regularization vide Ex.A5. Due to the construction of the Outer Ring Road, land prices have increased. The Plaintiff filed this suit because the Defendant, as a real estate agent, made illegal interference in the Suit property on 20/11/2011 and threatened dispossession.

The case of the Defendant:

2. The Defendant denied all the averments made by the Plaintiff in their Written Statement. Specifically, it was submitted that the Plaintiff is not the owner or possessor, and the unregistered sale deed (Ex.A1) is false. It was also stated that the Plaintiff's S.5A regularization application was dismissed. The Defendant stated that he did not commit illegal interference and termed the Plaintiff's cause of action as fictitious.

Issues Settled for Trial:

3. Based on the Pleadings, the Court settled the following Issues for trial:

1. Whether the plaintiff is in possession of the suit property as on the date of the filing of the suit?
2. Whether there is an unjustified interference on part of the defendant?
3. Whether the plaintiff is entitled to relief? To what relief?

4. To prove the case, the Plaintiff examined himself as PW1 and marked Ex.A1 to Ex.A5. On behalf of the defendant, no evidence was adduced and nothing was marked.

Issue No.1:

5. PW1 deposed that he has been in possession of the suit property since the year 1993. Though there exists a defect in the marking of Ex.A1 during the cross-examination of PW1, the said document nevertheless indicates that the plaintiff's entry into possession of the suit property was not an act of illegal trespass. On the contrary, it reflects that the plaintiff came into possession pursuant to a transaction with the vendor, supported by consent and consideration.

6. Further, Ex.A2 and Ex.A3 (Phani extracts) disclose that the plaintiff's name has been reflected in the possession column for the period from 1999 to 2011. These revenue records substantially corroborate the plaintiff's version regarding the duration and nature of his possession. Under Section 6 of the Record of Rights in Land Act, a presumption attaches to the correctness of entries made in the record of rights. In the present case, the defendant has not produced any rebuttal evidence to displace this statutory presumption.

7. It is true that PW1 could not specifically state the proceedings through which the revenue entries came to be made in his favour. However, the burden to disprove the presumption attached to such entries lies on the defendant once they are placed on record. The defendant merely alleged that the entries were brought about by undue influence or otherwise contrary to law, but no evidence whatsoever has been adduced to substantiate these allegations. In the absence of any rebuttal evidence from the defendant, the oral testimony of PW1, coupled with the revenue entries marked as Ex.A2 and Ex.A3, sufficiently establishes that the plaintiff has been in settled possession of the suit property and continued to be in such possession as on the date of filing of the suit.

8. The defendant has also contended that a bare suit for injunction is not maintainable in the absence of proof of title. This contention cannot be accepted in the facts of the present case. The Hon'ble Supreme Court in *Rame Gowda v. M. Varadappa Naidu* (2004) has held that a person in settled possession cannot be dispossessed even by the true owner except in accordance with law. Similarly, in *Anathula Sudhakar v. P. Buchi Reddy* (2008) 4 SCC 594, the Hon'ble Supreme Court held that where the plaintiff is in possession and the defendant does not set up a rival claim of title, a suit for bare injunction is maintainable. In the present case, the defendant has not asserted that he is the owner of the suit property, nor has he set up any competing title.

9. It is also relevant to note that Ex.A1 is an unregistered sale deed. As per S.49 of the Registration Act, such a document cannot be relied upon to establish title. However, it is well settled that an unregistered but duly stamped document can be looked into for a collateral purpose, such as explaining the nature and origin of possession. Accordingly, Ex.A1 may legitimately be considered to show the circumstances under which the plaintiff entered into possession of the property.

10. When Ex.A1 is read along with the revenue records (Ex.A2 and Ex.A3) and in the light of the unamended S.53-A of the Transfer of Property Act, it lends support to the conclusion that the plaintiff's possession is lawful and protected. Therefore, on a careful appreciation of the oral and documentary evidence on record, this Court is of the considered view that the plaintiff has successfully established his settled possession over the suit property as on the date of filing of the suit. Accordingly, Issue No.1 is answered in favour of the plaintiff.

Issue No.2:

11. The plaintiff has pleaded that the defendant attempted to interfere with his peaceful possession of the suit property. In support of this contention, PW1 deposed that the defendant committed illegal interference on 20.11.2011 and attempted to dispossess him from the suit property. The testimony of PW1 further reveals that, owing to the escalation of land prices in the locality and the fact that the defendant is engaged in real estate activities, there existed a motive for such interference.

12. Significantly, the defendant did not adduce any evidence. Though the allegations of interference were denied in the Written Statement, mere denial without supporting evidence is of no consequence. Thus, the defendant failed to prove his version.

13. In the absence of any rebuttal evidence from the defendant, the testimony of PW1 remains unchallenged and credible. Further, as already discussed under Issue No.1, the plaintiff has been found to be in settled possession of the suit property. The defendant, who has not asserted any right or title over the property, is therefore a stranger to the suit property. Any attempt by such a stranger to disturb the possession of the plaintiff amounts to unlawful interference.

14. Accordingly, this Court holds that the plaintiff's apprehension of interference by the defendant is genuine and well-founded. Hence, Issue No.2 is answered in favour of the plaintiff.

Issue No.3:

15. The next question that arises for consideration is whether the plaintiff is entitled to the relief of permanent injunction. The evidence on record discloses that the defendant attempted to interfere with the plaintiff's possession and tried to take possession of the suit property. Such an act would result in irreparable injury to the plaintiff. In terms of Section 38(c) of the Specific Relief Act, a perpetual injunction may be granted when the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property and when compensation in money would not afford adequate relief.

16. In the present case, if the defendant is not restrained by an order of injunction, there is every possibility of repeated interference with the plaintiff's peaceful possession. Such conduct would inevitably lead to multiplicity of legal proceedings. Section 38(d) of the Specific Relief Act also recognizes that an injunction may be granted to prevent multiplicity of proceedings.

17. The Court has also examined whether any of the grounds for refusal of injunction under Section 41 of the Specific Relief Act are attracted in the present

case. Nothing has been brought on record to show that the plaintiff approached the Court with unclean hands. Though it was elicited in the cross-examination of PW1 that an application filed under Section 5A was dismissed and that the same was not specifically mentioned in the plaint, it is also stated that the plaintiff has preferred an appeal against the said order. Moreover, the dismissal of the Section 5A application does not have a direct bearing on the maintainability of the present suit for injunction.

18. Therefore, the omission to mention the said proceedings cannot be treated as suppression of a material fact so as to disentitle the plaintiff from equitable relief. Considering the settled possession of the plaintiff and the threat of forcible dispossession by a stranger, the grant of permanent injunction to restrain the defendant from interfering with the plaintiff's possession otherwise than by due process of law becomes necessary. Accordingly, Issue No.3 is also answered in favour of the plaintiff.

Result

19. In view of the findings recorded on Issue Nos.1, 2, 3 and 4, this Court holds that the plaintiff has successfully established his lawful and settled possession over the suit property and the unlawful interference by the defendant. Consequently, the suit is decreed with costs in favour of the plaintiff, granting permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property except in accordance with due process of law.

(Typed by me personally on 3.3.2013)

**Junior Civil Judge,
Medchal**

APPENDIX OF EVIDENCE

Witnesses Examined:

For Plaintiff: PW.1: Bharath

For Defendants: NIL

Exhibits Marked: For Plaintiff:

Ex.A-1: Unregistered Sale deed.

Ex.A-2: C.C of Adangal Phani of the year 2001 -2011.

Ex.A-3: C.C of Adangal Phani of the year 1999 -2000.

Ex.A-4: C.C of Certificate of Loan granted by Co-operative Bank, Medchal for suit property.

Ex.A-5: C.C of Application u/S.5A given to MRO for regularization of the suit land.

For Defendants: NIL

**Junior Civil Judge,
Medchal**

5.5 SUIT FOR SPECIFIC PERFORMANCE

Conceptual Understanding of Specific Performance

1. Introduction: Specific Performance is a legal action sought in a Court of Law to enforce the terms of a contract agreed upon between parties. The provisions from S.9 to S.25 of the Specific Relief Act, 1963 (SRA) form the framework and scope of this suit. This relief is based on equity. When a contract breach occurs, awarding damages is not an adequate remedy in all cases. Sometimes, justice is served to the Plaintiff only by specifically performing the original promise rather than giving damages.

2. Primary Conditions for Granting Specific Performance: A person seeking Specific Performance must mandatorily fulfil the statutory standard mentioned under S.10 of the Specific Relief Act. This relief is generally granted only when damages are not an adequate relief. Specifically, in cases where there is no clear standard to ascertain the actual damage caused by the defendant's breach of contract, or where monetary compensation is deemed insufficient, the Court grants the equitable relief of Specific Performance. When a contract regarding the transfer of Immovable property is breached, the Court must conclusively presume that compensation in money is not an adequate relief. This is because immovable properties like land are unique and have no substitute. When a contract regarding the transfer of movable property is breached, generally the Court presumes that compensation in money is an adequate relief, except when that property is not an ordinary article of commerce or when it holds a special value or interest to the plaintiff, or when those goods are not easily available in the market.

3. Additional Conditions:

a) The contract sought to be enforced must be legally valid and enforceable.

b) The Plaintiff must not have violated any essential term of the contract and must not have committed fraud.

c) As per S.16(d) of the SRA, the Plaintiff must not only aver (state) that they have always been ready and willing to perform the essential terms of the contract, but must also prove that fact.

Ready and willingness must not be limited only to the date of filing the suit, but must continue continuously from the contract inception until the decree. The term readiness means having financial capacity, i.e., having funds or the ability to easily raise funds to pay the remaining consideration amount. The term willingness means having legal inclination, i.e., the Plaintiff's intention to complete the contract.

4. Discretionary Relief and Grounds for Refusal: Prior to the 2018 Amendment to the Specific Relief Act, Specific Performance was a discretionary relief. According to S.20 SRA, the Court had to use its judicial discretion based on sound judicial principles. But now the Court cannot refuse the relief of specific performance on those grounds.

5. Grounds for Refusal under S.20 SRA (unamended):

- a) If granting the decree gives the plaintiff an unfair advantage over the defendant.
- b) When non-performance of the contract causes no hardship to the plaintiff, but causes excessive hardship to the defendant.
- c) If enforcing Specific performance is inequitable.

6. General Equity Principles:

- a) If the Plaintiff fails to show bonafide (good faith).
- b) If the Plaintiff's conduct is unclean.

c) Suppression of material facts or fraud. These principles are still applicable in granting or refusing the relief of specific performance. If the plaintiff's claim is hit by any of these situations, the suit can be dismissed.

7. Grounds for Refusal under S.14 SRA:

- a) For an act requiring the continued supervision of the Court
- b) When the Contract is determinable in nature.
- c) When the Contract depends on the personal qualifications of the parties.

II. Client Interaction - Practical Guidelines

Before filing the suit, the Advocate must conduct a detailed inquiry with the client and build a strong case.

1. Contract Details and Verification: What is the client's acquaintance with the Defendant? How was the Contract formed? What was the motive for the contract? Is the Contract written or oral? Check if the document is properly stamped. An unduly stamped document is not admissible in evidence under the Indian Stamp Act. If it is an instrument creating a right over immovable property, verify if it is a registered instrument under S.17 of the Registration Act and the Transfer of Property Act. If there is no registration, though a suit is maintainable, the relief should be drafted in a way that does not affect title.

2.Consideration and Payment: What is the Agreed consideration? Is it close to the market value? How much Advance was paid? Collect payment proof (receipts, bank statements). Was the total amount paid at the time of the agreement, or was it agreed to be paid on subsequent dates? Did the Plaintiff make payment as per the agreement or not? If the Plaintiff committed any default, inquire about the justification for it. Details of how the consideration was paid are crucial to prove readiness and willingness in Specific Performance.

3. Time is the essence of Contract: It is important to understand the principle ‘Time is the essence of the contract’. The intention to keep time as the essence must be gathered from contract terms, nature of the property, or surrounding circumstances. In a contract related to immovable property, time is not always the essence (*Chand Rani vs Kamal Rani, 1993*). Here, the presumption is that time is not the essence. Even if time is not the essence, the plaintiff must perform their part of the contract within a reasonable time. Reasonability is a question of fact. Mere escalation in the price of the land is not a ground to deny Specific Performance relief (*K. Narendra v. Riviera Apartments (P) Ltd*).

4. Readiness and Willingness: It must be averred in the Complaint that the client is always ready and willing. This must be proved in the evidence stage. Collect financial records (loan capacity or Bank Balance) to show that the client possesses the balance consideration amount. The plaintiff must prove continuous readiness and willingness through the complaint and evidence. In *Joseph Varghese vs. Joseph Aley & Ors. (1969)*, the Apex Court held that specific words are not necessary, but the averments in the Complaint must clearly indicate total readiness and willingness.

5. Legal Notice: Although a legal notice is not mandatory to institute a Specific Performance Suit, through judgments, the Hon’ble Apex Court has indicated that a legal notice is mandatory before filing the suit for specific performance. The notice discloses the Plaintiff’s readiness and willingness. The defendant’s silence permits the court to draw an adverse inference. Details of the notice and the defendant’s reply notice, if any, must be mandatorily mentioned in the complaint. Sending a Legal Notice to the defendant after the breach is a strong action to assert the client’s readiness and willingness.

6. Bonafide’s of the plaintiff: Since Specific Performance is based on equity, the Plaintiff’s conduct must be impeccable. The Plaintiff must not suppress material

facts affecting the relief. Mention the immediate action taken by the plaintiff when the breach of contract terms occurred. If there is delay in filing the suit, it can be a ground to deny relief.

7. Documents required to be verified and filed: According to Sections 94 & 95 of the Bharatiya Sakshya Adhiniyam, 2023, terms in a written contract must be proved only through documentary evidence. Oral evidence contradicting a Written agreement or changing its terms is not allowed, subject only to exceptions. So, in a Specific Performance suit, the following documents must mandatorily be verified:

Agreement of Sale (Contract Document) – To know the contract terms, consideration, time clause, obligations.

Payment Receipts – To prove consideration or advance was paid.

Legal Notice Copy – To establish Plaintiff's readiness & willingness and Defendant's breach.

Title Documents – To verify ownership and whether defendant has valid title.

Bank Statements/Financial Capacity Proof – Useful to show plaintiff has the financial capacity to perform the contract.

8. Time Limitation: According to Article 54 of the Limitation Act, 1963, the limitation period applicable to a Specific Performance suit is three years. If a specific date for performance is fixed in the agreement, the limitation period is calculated from that date. If no date is fixed for performance, the limitation period starts from the date the Plaintiff receives notice that the Defendant has refused performance.

9. Jurisdiction: A suit related to Immovable property must be filed only in the competent Civil Court of the area where that property is situated. It is subject to the pecuniary jurisdiction of that court.

10. Court Fee: Under S.39(a) of the Court Fees and Suits Valuation Act, court fee in a Specific Performance suit must be paid by valuing it based on the total sale consideration amount mentioned in the agreement.

12. Prayer and Alternative Relief: The Plaint should primarily seek the following reliefs:

- a) Directing the Defendant to specifically perform the Agreement of Sale and execute a Sale Deed in favor of the Plaintiff;
- b) Giving a direction to hand over possession of the property to the Plaintiff after execution of the Sale Deed. At the same time, the Plaintiff has the right to seek alternative reliefs in case the court decides that Specific Performance relief cannot be granted. In such situations, the Plaintiff can pray to refund the earnest money / advance sale consideration and award damages if necessary. The prayer regarding such refund of money or damages must mandatorily be in the Plaint as per Section 21 of SRA.
- c) If the defendant has terminated/cancelled the agreement of sale through notice or any other mode, the same must also be specifically challenged in the suit, and a prayer to declare it null and void must be included. It is a mandatory relief to be sought along with other reliefs. The Hon'ble Supreme Court clearly held this legal position in the case *I. S. Sikandar vs. K. Subramani & Ors. (2013) 15 SCC 27*. Similarly, in a Specific Performance suit, it is necessary to pray not just for sale deed execution but also for possession delivery. Furthermore, if any third parties have already obtained a sale deed from the vendor, it is necessary to pray for court orders that such persons should also join in the sale deed to be executed in favor of the plaintiff.

PLAINT
IN THE COURT OF THE JUNIOR CIVIL JUDGE, JADCHERLA
O.S. NO. 25 /2016

Between:

Sri. Krishna Rao

..... Plaintiff

And

Sri. Kranthi

..... Defendant

Plaint filed under S.26 & O.VII R.1 of CPC, 1908

Claim: Suit for Specific Performance

The brief facts:

1. The parties are permanent residents of Shameerpet village and are acquainted with each other. The Defendant is the absolute owner and possessor of a two-acre dry agricultural land situated in Survey no. 27 of Jadcherla Village (Hereinafter referred to as Plaint Schedule Property).
2. The Defendant needed funds for his daughter's marriage, he entered into an Agreement of Sale with the Plaintiff on 06/06/2016 to sell the Plaint Schedule Property. The sale consideration was fixed at Rs. 2,00,000/- (Rupees Two Lakhs Only). On the date of the Agreement, a payment of Rs. 1,50,000/- was made. It was agreed that the remaining balance amount would be paid at the time of registration, i.e., after the marriage.
3. The marriage was cancelled because the groom died in a road accident. Since the major portion of the sale consideration was paid, the Plaintiff demanded the registration of the Plaint Schedule Property. Although the Plaintiff sent a legal notice, the Defendant refused to execute the sale deed.

4. The Defendant is showing aversion to perform the contract and is trying to avoid the Agreement of Sale. The Plaintiff has already paid the entire consideration (substantial part) and has performed his part of the contract. The Plaintiff is ready and willing to perform the remaining part and is ready to register the sale deed at his own costs. However, the Defendant refused to perform his part. Hence, this suit.

5. The suit is filed within three years from the Agreement date, 06.06.2016, under Article 54 of the Limitation Act.

6. This is a Specific Performance Suit, Court fee must be paid on the consideration amount mentioned in the Agreement (Rs. 2,00,000/-) as per **S.39(a)** of the **Court Fee & Suits Valuation Act**. The Plaintiff has paid Rs. 4,526/- as per Schedule-I.

Prayer: To grant a decree for Specific Performance of the Suit Agreement, or in the alternative, to direct the Defendant to pay Rs. 2,00,000/- along with interest and to order the suit costs.

Date:

Place: Jadcherla

Plaintiff

Counsel for the plaintiff

List of Documents:

1. Contract for sale (06/06/2016).
2. Legal notice (07/07/2016).

Date:

Place: Jadcherla

Plaintiff

Counsel for the plaintiff

IV. WRITTEN STATEMENT

IN THE COURT OF THE JUNIOR CIVIL JUDGE, JADCHERLA O.S. NO. 25 /2016

Between:

Sri. Krishna Rao

..... Plaintiff

And

Sri. Kranthi

..... Defendant

Written Statement in Specific Performance Suit

1. Except for the allegations specifically admitted in this Written Statement, the Defendant should be deemed to have specifically denied all other allegations in the plaint.
2. It is admitted that the Defendant is the absolute owner of the Plaint Schedule Property. However, it is false and denied that the Defendant executed the suit agreement, agreed to sell for Rs. 2,00,000/-, received Rs. 1,50,000/-, and agreed to accept the balance amount at the time of registration.
3. It is false to say that the Defendant is averse to performing the contract. In fact, the Plaintiff, with malafide intention, failed to show readiness and willingness to perform the contract.
4. The time is the essence in the contract. Yet, the Plaintiff failed to perform his part of the contract and violated the contract terms.
5. The Defendant entered into the contract solely for his daughter's marriage. Since that marriage was cancelled, the very purpose of the contract failed. Therefore, the Defendant need not abide by the contract terms. It is inequitable to enforce the contract.

6. The Defendant has no other means of living except by cultivating the suit land. Losing this property would put the Defendant's family life at risk and injury. On the other hand, the Plaintiff owns many other lands in the village. Granting Specific Performance would cause excessive hardship to the Defendant.

7. The Defendant is ready to return the amount received through the suit agreement. Damages would be an adequate relief for the Plaintiff.

8. The Plaintiff's conduct is malafide and unclean. This is evident from the actions and omissions admitted in the Plaint and Legal Notice. Since Specific Performance is a discretionary relief, the Plaintiff is not entitled to this relief.

It is prayed that the Hon'ble Court may be pleased to dismiss the suit with costs.

Documents Filed:

1. Wedding card.
2. FIR (regarding road accident).

Date:

Place: Jadcherla

Defendant

Counsel for the defendant

ISSUES
IN THE COURT OF JR. CIVIL JUDGE, JADCHERLAAT:
JADCHERLA: MAHBUBNAGAR DISTRICT
O.S. NO. 25/2016

Between:

Mr. Krishna Rao ...Plaintiff

And

Mr. Kranthi ...Defendant

Issues:

1. Did the Defendant execute Ex. A1?
2. Whether Ex.A1 was executed in respect of the transaction stated therein?
3. Is the Plaintiff ready and willing to perform his part of the contract?
4. Is the Plaintiff entitled to relief of Specific Performance?
5. To what relief?

**Junior Civil Judge,
Jadcherla.**

PART – VI: Evidence

PW1: Examination-in-Chief

Q.1. What is your name?

Ans. My name is Krishna Rao.

Q.2. Where are you residing presently?

Ans. Presently, I am residing in Jadcherla.

Q.3. What is your occupation?

Ans. I am a Businessman.

Q.4. Why did you file this case?

Ans. I filed this case to get a direction from the Court for the Defendant to execute the sale deed.

Q.5. What are the terms of the contract?

Ans. The Defendant executed an Agreement of Sale regarding his immovable property, i.e., land located in Survey No. 27 of Jadcherla village. That Agreement is marked as **Ex.A1**.

Q.6. When did you enter into the agreement?

Ans. I entered into this Agreement on 06/06/2016.

Q.7. What is the consideration for the contract?

Ans. The consideration amount for this contract is Two Lakhs (Rs. 2,00,000/-).

Q.8. Did you pay the consideration?

Ans. Yes, I paid the entire consideration.

Q.9. What are the boundaries of the property?

Ans. **East:** Hyderabad – Bangalore Road **North:** Thirty feet Road **West:** Land in Survey No. 26 **South:** Land in Survey No. 25

Q.10. Did you make any request to him to execute sale?

Ans. Yes. I requested the Defendant several times to execute the sale deed. Moreover, I also issued a legal notice on 7/7/2016. Notice is marked as **Ex.A2**.

Cross-Examination:

Q.11. I suggest to you that you read and understood the contents of the plaint and signed it?

Ans. Yes.

Q.12. I suggest to you that you have not clearly stated in the plaint that you are always ready and willing to perform your contractual obligation?

Ans. Yes, it is not clearly stated in the plaint.

Q.13. You have known the Defendant for the past thirty years?

Ans. Yes.

Q.14. I suggest to you that you are doing **real estate business**?

Ans. Yes.

Q.15. I suggest to you that you possess many lands not only in the suit village but also in neighbouring villages?

Ans. Yes.

Q.16. I suggest to you that the suit property is the ancestral property belonging to the Defendant?

Ans. Yes.

Q.17. I suggest to you that the Defendant has no other properties except the suit property?

Ans. Yes.

Q.18. I suggest to you that the suit land is the only source of livelihood for the Defendant?

Ans. Yes.

Q.19. I suggest to you that even before entering into this Agreement, you contacted the Defendant several times and asked him to sell the suit land?

Ans. Yes.

Q.20. I suggest to you that although you offered a higher price than mentioned in the suit agreement, the Defendant refused to sell the land?

Ans. Yes.

Q.21. I suggest to you that it is mentioned in the recital of the Agreement that this land is to be sold to meet financial needs for the marriage of the Defendant's daughter?

Ans. Yes.

Q.22. I suggest to you that you were also an invitee to that marriage, and this is that wedding invitation card?

Ans. Yes. This wedding invitation card is marked as Ex.B1.

Q.23. I suggest to you that the marriage was cancelled as the groom died in a road accident one day before the marriage, and this is the related FIR?

Ans. Yes. This is the FIR and it is marked as Ex.B2.

Q.24. I suggest to you that the Defendant promised to repay the money received under this Agreement along with interest?

Ans. No.

Q.25. I suggest to you that if the sale registration takes place, the Defendant and his family will suffer irreparable loss and danger, and that is why he refused to sell?

Ans. No.

Q.26. I suggest to you that since the purpose intended for selling the land has failed (frustration of purpose), there is no need for the Defendant to register the land?

Ans. No.

Re-Examination: NIL

IN THE COURT OF THE JUNIOR CIVIL JUDGE, JADCHERLA

Present: G. Anil Kiran Kumar, B.A., B.L(Hons)

O.S. NO. 23 OF 2005

Date of Judgment: May 16, 2010.

Between:

Sri. Krishna Rao Plaintiff

And

Sri. Kranthi Defendant

:: JUDGEMENT ::

This suit is filed by the Plaintiff requesting the Court to direct the Defendant to specifically perform the terms of the Agreement of Sale (Ex.A1) and to register the suit property in the name of the Plaintiff.

1. **The case of the Plaintiff:** The Plaintiff is the owner and possessor of the suit property obtained through ancestral property. The defendant entered into an Agreement of Sale (Ex.A1) on 06/06/2016 with the plaintiff to sell his suit property for meeting his daughter's marriage expenses. The sale consideration was fixed at Rs. 2,00,000/-. An amount of Rs. 1,50,000/- was paid on the date of agreement. It was agreed that the remaining balance amount would be paid at the time of registration, i.e., after the marriage. The marriage was cancelled as the groom died in a road accident one day before the marriage. Although the Plaintiff requested the execution of the Sale Deed through a legal notice (Ex.A2), the Defendant refused to perform the contract. The Plaintiff averred that having paid a substantial portion and having deposited the balance amount in court, he is ready and willing to perform his part of the contract. Hence, the Plaintiff is entitled to Specific Performance.

2. The case of the Defendant: In his Written Statement, the Defendant completely denied the Plaintiff's averments. Specifically, the execution of the written contract was denied. It was averred that the Plaintiff is not ready and willing to perform the contract. The suit property is the Defendant's sole source of living. The fundamental purpose of the contract failed. Enforcing the contract would cause serious hardship and be inequitable to the Defendant. The Defendant is ready to refund the amount received.

3. As the Parties showed no interest in settlement under S.89 CPC, the Court settled the following Issues for trial:

1. Did the Defendant execute Ex. A1?
2. Whether Ex.A1 was executed in respect of the transaction stated therein?
3. Is the Plaintiff ready and willing to perform his part of the contract?
4. Is the Plaintiff entitled to relief of Specific Performance? 5. To what relief?

Evidence on Record:

4. The Plaintiff examined himself as PW1 and marked Ex.A1(Contract for Sale) and Ex.A2 (Legal Notice). No one was examined on behalf of the Defendant (NIL). The Defendant marked Ex.B1 (Wedding card) and Ex.B2 (FIR).

Issue No. 1:

5. PW1 deposed that the defendant duly executed Ex.A1 with full knowledge of its contents and upon the occurrence of the transaction covered therein. PW1 also got Ex.A1 marked in evidence. The defendant did not adduce any oral evidence in his defence. However, during the cross-examination of PW1, the defendant's counsel put a specific suggestion that the signature on Ex.A1 was forged. In view of this specific plea of forgery, the burden shifts to the defendant under Section 108 Bharatiya Sakshya Adhiniyam, 2023, and it is for the defendant to prove the same.

6. It is a settled principle that testimony given on oath carries a presumption of truth unless successfully discredited. In the present case, the defendant failed to put specific questions to PW1 to challenge his credibility, the execution of the document, or the sequence of events. The defendant neither examined any witness nor produced any independent evidence in support of the plea of forgery. No handwriting expert was examined to substantiate the allegation. Further, the defendant (Kranthi) did not enter the witness box to depose in support of his case. This failure attracts an adverse inference under Section 119 Bharatiya Sakshya Adhiniyam, 2023, namely that had such evidence been produced, it would not have supported the defendant's case. A mere suggestion in cross-examination is insufficient to prove forgery. Having regard to the contents of Ex.A1, the consistent testimony of PW1, and the failure of the defendant to discharge the burden, this Court holds that the execution of Ex.A1 is proved on a preponderance of probabilities. Accordingly, Issue No.1 is decided in favour of the plaintiff and against the defendant.

Issue No. 2:

7. Once execution of the document is proved, this Court is empowered under Section 119 Bharatiya Sakshya Adhiniyam, 2023 to draw presumptions having regard to the surrounding circumstances. In the present case, there are no material circumstances to show that Ex.A1 was brought into existence contrary to the pleadings or evidence on record. Therefore, this Court presumes that Ex.A1 was duly executed in pursuance of the transaction stated therein. Accordingly, it is held that Ex.A1 was executed in respect of the transaction pleaded in the plaint. Issue No.2 is decided in favour of the plaintiff and against the defendant.

Issue No. 3:

8. According to S.16(c) SRA, it is mandatory for the Plaintiff to plead and prove 'ready and willing'. In the cross-examination, the Defendant proved that the

mandatory averment ‘always ready and willing to perform contract’ was not expressly mentioned in the Plaint. This was a crucial technical error on the part of the Plaintiff's counsel. However, Courts have always followed the pragmatic approach of substance over form. The Court must examine the entirety of the plaint and the conduct of the party.

9. The Plaintiff paid a substantial portion (75% - Rs. 1,50,000/-) of the total consideration at the time of Ex.A1. This shows the plaintiff's strong financial ability and readiness. The Plaintiff deposited the balance sale consideration in Court at the time of filing the suit. This action is the most conclusive proof of readiness. By depositing the money, the Plaintiff removed all doubts regarding his financial ability. There is only a two-month gap between the date of Ex.A1 and the suit filing. This indicates the Plaintiff's immediacy.

10. The issuance of the Legal Notice (Ex.A2) by the Plaintiff is a clear, affirmative action proving his intent to complete the contract. The Court's finding is deep and correct. Despite the technical pleading defect, the Plaintiff's actions—paying substantial advance, promptly filing, issuing legal notice, and most importantly, depositing the balance consideration with the Court—proved continuous readiness and willingness. The Defendant failed to submit any evidence to the contrary. Issue No. 3 is resolved in favor of the Plaintiff.

Issue No. 4:

11. This Issue is the most critical one. Under S.20, the Court examines arguments based on hardship. The Specific Relief (Amendment) Act, 2018 introduced provisions making specific performance mandatory for contracts not falling under Section 14. This legislative amendment removes discretion based on general hardship or inequity. However, this amendment is prospective in nature, meaning it applies only to cases arising after 2018. Since the present suit agreement is a contract from 2016, the court can decide the suit based on the unamended Section

20 of the SRA. Therefore, the old S.20 SRA forms the basis for the decision. Through admissions in PW1's cross-examination, the Defendant's intense hardship was straight forwardly proved. The suit property is the Defendant's sole source of livelihood. The land is ancestral property and has been under cultivation for forty years. The core purpose of the Sale (for daughter's marriage) was completely frustrated (Ex.B1 & Ex.B2). The Plaintiff is a wealthy real estate agent and owns other lands. The loss to the Defendant would be catastrophic, whereas the loss to the Plaintiff is financial only. The court observed this disproportionate impact. Therefore, relief under specific performance cannot be given to the Plaintiff. Issue No.4 is resolved in favor of the Defendant. Instead, the Plaintiff is entitled to the alternative relief of refund along with interest.

Issue No. 5:

12. The relief of specific performance is dismissed. Alternatively, the defendant is ordered to refund the amount of Rs. 1,50,000/-. It is ordered to pay interest on this amount at 18% per annum from the date of suit contract, i.e., 06.06.2016, till the date of decree, and at 6% per annum from the date of decree till the date of realization. In the circumstances of the case, the parties are directed to bear their own costs.

(Typed to my dictation in the open Court on May 16, 2010)

**Junior Civil Judge,
Jadcherla**

APPENDIX OF EVIDENCE:

Witnesses Examined:

For Plaintiff: PW.1: Kranthi

For Defendants: NIL

Exhibits Marked:

For Plaintiff:

1. Contract for sale (06/06/2016)
2. Legal notice (07/07/2016).

For Defendants:

Ex.B1 - Wedding Card Ex.B2 - FIR

**Junior Civil Judge,
Jadcherla**

5.6 PARTITION SUIT

PARTITION SUIT - CONCEPTUAL UNDERSTANDING

01. Introduction Legally, there is recognition for a property to be jointly owned, possessed, and enjoyed by more than one person. Under this joint ownership, every joint holder has an absolute right to enjoy the entire property completely, regardless of whether their interest (share) is substantial or minimal. This right continues as long as the property remains joint. Only when Partition occurs, the joint holder is entitled to enjoy the property solely to the extent of their allotted share. The jointness of property may arise through contract, law, or custom. It is clear that joint ownership is formed through contract under the provisions of the Transfer of Property Act. Under Hindu Succession law, if a Hindu male dies intestate (without a will), his self-acquired property becomes the joint property of Class-I legal heirs. Under Hindu Coparcenary law, Coparceners and their widows are entitled to get a share in the Joint Family Property.

When a joint shareholder demands their share, and that demand is refused by others, they have to resort to a Suit for Partition for a remedy. Problems are generally fewer in joint property acquired through contract, because ownership and entitlement are clear in the written contract. Similarly, when partition is sought among Class-I legal heirs, legal issues are not that severe. The facts to be proved are merely the Class-I relationship, intestate death, and that the property is a self-acquisition. However, when a Coparcener in a Hindu Joint Family Coparcenary seeks partition, complex issues based on oral evidence arise. Aspects like the Kartha's power to alienate become crucial in these partition suits.

Hindu Coparcenary: A Hindu Coparcenary consists of a male member in a joint family and his sons, grandsons, and great-grandsons. It includes three generations in unbroken male descendant line from the holder. Co-parcenary is a creature of

law, and it cannot be created by the act of parties. A stranger can be added as a member only through Adoption.

Mitakshara devolution of property: Survivorship (for Joint family property) and Succession (for Self-acquired property). In the Mitakshara system, a son gets a right in family property by birth. Every time a male member is born or dies, the share of the other surviving males is diminished or enlarged. According to Sir Dinshanji Mullah, the essence of coparcenary under Mitakshara law is unity of ownership. Until partition occurs, no one can claim a definite share. A Coparcener's interest is fluctuating, and is defined only when partition occurs.

Rights of a daughter in a Hindu Coparcenary:

a) Law prior to the Amendment to Hindu Succession Act of 2005: Although the Hindu Succession Act 1956 gave equal property rights to a Hindu Female, the preferential rights of male heir continued in the Mitakshara Coparcenary concept. According to S.6 of the Act (prior to 2005), a male Hindu's interest in Mitakshara coparcenary property would devolve by survivorship. However, according to the proviso, if the deceased had a Class I female heir, his interest would devolve by succession and not by survivorship. Under Explanation-1, the law presumes that a notional partition took place immediately before the death of the member. The concept of notional partition applies only when there is a Class I female heir.

b) Law after to the Amendment to Hindu Succession Act of 2005: As per S.6 of the amended provision, the daughter as a coparcener by birth equal to the son. Thus, she got equal rights in coparcenary property just like a son. This Act is retrospective. The Hindu Succession Act, 2005 is a revolutionary change. Since it made the daughter a coparcener, she gets an equal share in coparcenary properties on par with the son. She gets a right in ancestral property by birth. The daughter is entitled to demand partition for her coparcener share. However, there is an important condition to this right. That property should not have been

partitioned through a registered partition or Court Decree before December 20, 2004. The purpose of this cut-off date is to avoid invalidating partitions that legally took place before the amendment. A daughter can also dispose of her share at her will, just like male coparceners. If a female coparcener dies before partition, she can dispose of her interest through a Will. If she dies intestate, her interest devolves through succession as per S.15.

Right in Paternal Grandfather's Property: A daughter acquires a birth right in ancestral property. For example, when her paternal grandfather dies intestate, if his son (her father) is alive, the daughter gets an interest as a coparcener in that property. She also acquires the right to demand partition from her father.

Share of Deceased Coparcener: If a female coparcener dies before partition, her children are entitled to get a share. Assuming a notional partition took place immediately before her death, her interest devolves to her heirs. The daughter can now demand partition even in the dwelling house where the family resides.

Expansion of Class I Heirs: Daughter's children and her pre-deceased daughter's children also got the right to acquire a share in joint property. Those added as Class I heirs in the Schedule to Act: a son of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son. Although they are not coparceners, they are eligible to receive a share under the amended S.6.

c) Daughter as Coparcenary in the State of A.P and T.S: The (united) State of Andhra Pradesh gave coparcenary status to the daughter through a State Amendment in 1986. This law was a precursor to the 2005 Central Amendment. Although S.6 of the Hindu Succession Act granted coparcenary status to daughters from 9/9/2005, in the states of Andhra Pradesh and Telangana, a similar

status was granted to daughters back in 1985 through S. 29A. The only condition to acquire coparcenary status under this State Amendment is that the daughter must have been unmarried as of 05/09/1985. The conditions in Section 6 and Section 29A apply only to coparcenary property or ancestral property. It has no relation to self-acquired property of a Male or Female Hindu dying intestate. The governing provisions for such succession are S.8 (for male's property) and S.15 (for female's property) of the Hindu Succession Act.

Key Points Relating to Partition Suits and Coparcenary Property:

1. In a partition suit, all the parties, (i.e, co-owners or coparceners) are both the plaintiffs and defendants. All co-owners must be joined as parties; if any coparcener is omitted, the suit can be dismissed.
2. A coparcener cannot gift or alienate joint family property without the consent of other coparceners. Any unilateral gift or transfer is void ab initio (i.e., it has no legal effect from the beginning), not merely voidable. *Thamma Venkata Subbamma v. Thamma Rattamma, (1987) 3 SCC 294* and *C.N. Arunachala Mudaliar v. C.A. Muruganatha, AIR 1953 SC 495*.
3. All the available joint properties must be included the partition suit. Failure to include them may result in dismissal of the case.
4. Section 6 of the Hindu Succession Act (as amended): A daughter is a coparcener by birth vide *Vineeta Sharma v. Rakesh Sharma, AIR 2020 SC 3717*. Daughter's rights cannot be defeated by transfers or alienations made after 20.12.2004 unless valid and lawful. She is entitled to seek partition and challenge unilateral transfers by other coparceners.

CLIENT INTERACTION
PARTITION SUIT- COPARCENARY PROPERTY

Before filing a Partition Suit, an Advocate must mandatorily conduct a detailed inquiry with the client and study the facts and documents necessary for the success of the Suit.

Relationship: A pedigree chart is necessary to prove the coparcenary relationship between the plaintiff and defendant. This shows the parties in the suit, their respective shares, and their rights over the suit property. Every member in the coparcenary must be included as a necessary party to the suit.

Property of Joint family: Whether the property is Joint family property or not is a crucial fact. Ancestral property can be presumed to be joint family property. However, to prove self-acquired property as joint family property, one must prove that the property was acquired with joint family funds or that the family members treated it jointly.

Hindu Gains of Learning Act, 1930: According to this Act, property earned by a family member through their educational or professional efforts is considered their separate property, even if that education or profession was acquired using joint family funds. However, one must understand the scope of this Act and Clarify whether the client's earnings become joint family property or not.

The power of Kartha to Alienate to joint family properties: The Kartha (Head of family) has the inherent power to alienate joint family property for legal necessity or for the benefit of the estate. If the Plaintiff challenges the alienation made by the Kartha, he must prove that the Kartha incurred debts or sold the property without legal necessity. The Burden is on the Plaintiff.

No need to seek a declaration to set aside sale deed: In the context of challenging a sale deed made by the Kartha, if the Plaintiff is challenging that alienation only to the extent of their share, there is no need to seek a declaration to set aside the entire sale deed. This reduces the Plaintiff's burden.

Notice: Issuing a legal notice for Partition is not mandatory, but it informs the Defendant of the plaintiff's intention before filing the suit. This ascertains the Defendant's refusal date and is also relevant in determining the cost in the suit.

Documents required: The following documents play a key role in determining whether the properties possess a joint nature or not: Revenue records (Adangal/Phani), Title Deeds, Assessment papers, Family Settlement/Agreement (if any), Karta's Accounts (if any). Khasra Phani, Adangal/Phani of various years (to compare past and current enjoyment), Title deeds.

Time limitation: Under Article 110 of the Limitation Act, the limitation is twelve years. In the case of Joint family property, the limitation period starts from when possession is openly denied. One must ascertain the date when the Defendant openly denied the share when the Plaintiff demanded it in Partition.

Jurisdiction: Must file in the Court where the Immovable property is located. Pecuniary jurisdiction depends on the market value of the property.

Court Fee to be Paid: The payment of Court fee depends on the Plaintiff's possession status. If the Plaintiff is in joint possession, a fixed court fee must be paid. If not in Possession, ad valorem court fee (on market value) must be paid.

Prayer: The reliefs that can be sought are: to declare a share in the Suit property, and to ask to appoint an advocate commissioner for a final decree and seek mesne Profits and future profits.

**PARTITION SUIT
PLAINT
In the Court of Jr. Civil Judge, Medchal
O.S. No. 133 / 2015**

Between:

Rajani
Rajeev & Others

And

..... Plaintiff
..... Defendants

Plaint filed U/S. 26 R/W O.VII R.1 & 2 CPC
Claim: Suit for Partition and Separate Possession

The brief facts of the case:

1. Late Ragavaiah and Seethamma were husband and wife. They were Hindus governed by the Mithakshara School of Hindu Law. They had three sons and two daughters. The names of the male children were Late Ram, D1, D2, and one of the two daughters is the Plaintiff (Rajani). D4 is the mother of the Plaintiff, D5 is the wife of Late Ram, and D6 and D7 are the children of Late Ram and D5.
2. The Joint Family Coparcenary of Late Ragavaiah acquired ten acres of dry agricultural land by way of inheritance. This is situated in Survey no. 27 of Shameerpet Village and Mandal, Ranga Reddy District. Ragavaiah's family cultivated this land, and with the funds (crop yielding) derived from it, they purchased a five-acre mango garden adjacent to the ten acres in the same survey number. These two lands are situated as a single block. (This property is referred to as Suit land).
3. Ragavaiah performed the marriages of his two daughters. Sometime later, Ragavaiah and his eldest son, Late Ram, died in an accident at Shameerpet. One year after their death, on 10/09/2015, the Plaintiff requested her two brothers (D1 & D2) to partition the Suit land and give her share for the educational needs of

her family and children. D1 and D2 declined that demand. Hence, she has filed this partition suit.

4. There were six Coparceners in the Joint Family of Late Ragavaiah (Late Ragavaiah, his three sons, and two daughters). Since Late Ragavaiah died intestate, his interest devolves according to S.6(3) of the Hindu Succession Act. Assuming a partition took place in the family immediately before his death, Late Ragavaiah's share would be 1/6th. This 1/6th share is divided equally among his Wife (D4) and five children (three sons, two daughters) by way of succession. The Plaintiff herself is entitled to a 1/6th share as a Coparcener, and a 1/6th share in her father's 1/6th share. The Plaintiff is entitled to a 7/36th share in the Suit land.

5. The defendants were managing the suit schedule properties and were regularly sharing the profits arising therefrom with the plaintiffs. However, for a period of one year, the defendants failed to share the profits due to drought conditions and other unforeseen reasons.

6. The cause of action for filing the present suit arose on 10/09/2015, when the plaintiffs demanded partition of the suit schedule properties and Defendant Nos. 1 and 2 refused the same, and subsequently when similar demands made to Defendant Nos. 1 to 3 were denied. Thereafter, the plaintiffs made discreet inquiries and came to know that the defendants, without the notice and consent of the plaintiffs, fraudulently got their names entered in the revenue records. Hence, such entries are illegal, unlawful, and not binding on the plaintiffs.

7. Since the Plaintiff's share in the Suit land was denied by D1 & D2 on 10/09/2015, the suit is filed within limitation. As the Suit properties are joint family properties, the Plaintiff can claim a share at any time.

7. As the Suit Schedule properties are located in Shameerpet Village and Mandal, this Hon'ble Court has territorial, pecuniary & subject-matter jurisdiction.

8. The market value of the Plaint-Schedule property is calculated at Rs. 15,00,000/- (Rupees Fifteen Lakhs). The value of the Plaintiff's 7/36th share is Rs. 2,91,667/- (Rupees Two Lakhs Ninety-One Thousand Six Hundred and Sixty-Seven). For Jurisdiction, 3/4th value of the Plaintiff's share, i.e., Rs. 2,18,750/-, is mentioned under S.50(2) of the T.S Court Fee & Suits Valuation Act. Since the Plaintiff is in joint possession, a fixed court fee of Rs. 200/- is paid under **S.34(2)** of the APCF & SV Act, which is sufficient according to law.

PRAYER: It is prayed that this Hon'ble Court may be pleased to pass a Judgment and Decree as follows:

- a) To pass a preliminary decree allotting a 7/36th share to the Plaintiff in the Plaint schedule property.
- b) To appoint a commissioner to divide the suit schedule properties by metes and bounds, taking into consideration the bad and good nature of the soil, as per the terms of the preliminary decree.
- c) To put the Plaintiff in possession of their separate allotted share after division by the Commissioner.
- d) To pass a final decree after placing the Plaintiff in their separate and exclusive possession.

Plaintiff

Date: 27.11.2015

Place: Hyderabad.

**WRITTEN STATEMENT
IN THE COURT OF JR. CIVIL JUDGE, MEDCHAL
O.S. NO. 133 / 2015**

Between:

Rajani

..... Plaintiff

And

Rajeev & Others

..... Defendants

Written Statement

1. Except for the allegations specifically admitted in the Written Statement, the Defendants hereby deny all allegations in the Plaint. D1 & D2 admit that the relationship of the parties in the Suit is correct. However, the Plaintiff and her other sister were given their due share at the time of their marriages itself. Their claims were settled by performing their marriages in a grand manner and spending a large amount of money. This settlement took place approximately fifteen years ago. Therefore, they are not entitled to any share in the Suit Schedule Properties.

2. Plaintiff is not in possession of the Suit Properties. The Revenue records show the Defendants as Pattedhars & possessors. Their names were mutated around fifteen years ago. The claim is time barred. The 05 acre mango garden was never a Joint Family Property. It is false to state that the names of the defendants were mutated in the revenue records without the consent of the plaintiff.

3. The suit is bad for non-joinder of necessary parties as the children (D6 & D7) and wife (D5) of Late Ram were not included as parties in the suit. It is false and denied that the Plaintiff demanded partition on 10/10/2010 or any date mentioned in the Plaint. The fixed Court-fee of Rs. 50/- paid by the Plaintiff is not correct. Since the Plaintiff is not in possession, ad valorem court fee must be paid. It is prayed that this Hon'ble Court may be pleased to dismiss the suit with costs based on the facts mentioned above.

Date:

Place:

Defendant No.1

Defendant No.2

V. ISSUES
IN THE COURT OF JR. CIVIL JUDGE, MEDCHAL
AT: MEDCHAL: RANGA REDDY DISTRICT

O.S. No. ____ of 2015

BETWEEN:

Rajani **Plaintiff**

And

Rajeev & others **Defendants**

ISSUES

That this Court having perused the pleading on either side settled the following issues for trial.

1. Whether the suit bad for non-joinder of necessary parties?
2. Whether the Suit Schedule properties are Joint Family Properties of Late Ragavaiah?
3. Whether the plaintiff is entitled to Share in the Suit schedule properties?
4. What is the share of the plaintiff?
5. Whether the suit is barred by limitation?
6. Whether the Court Fee Paid is sufficient?
7. To what relief?

Junior Civil Judge, Medchal

PART – VI: EVIDENCE

PW1: Examination-in-Chief

Q1. What is your name?

Ans. My name is Rajani.

Q2. Where are you residing presently?

Ans. Presently, I am residing in Secunderabad.

Q3. What is your husband's name?

Ans. My husband's name is Rakesh.

Q4. What is your relationship with the defendants?

Ans. They are my siblings.

Q5. What is your relationship with Ragavaiah?

Ans. He is my Father.

Q6. Why did you file this case?

Ans. I filed this case to get the Joint family property partitioned and to get my specified share allotted to me.

Q7. Do you know the details of the land?

Ans. Yes, the land is in Shameerpet village, Survey No.27.

Q8. How did your family acquire the suit property?

Ans. My father acquired that land from my grandfather.

Q9. Did you file any document to show that land is ancestral?

Ans. Yes. I filed Khasra Phani and Village Account No.3 (1990–2015). These are marked as Ex.A1 to A3.

Q10. Do you know the boundaries of the suit property?

Ans. Yes, they are: East: Four Liner Road North: Thirty feet Road West: Land in Survey No.28 South: Land in Survey No.29

Q11. When did you get married?

Ans. Approximately fifteen years ago.

Q12. When did you demand your share in the property?

Ans. A month back, prior to filing the suit.

Q13. What is the response from defendants?

Ans. They refused to implement my **request**.

Q14. What is your share in the property?

Ans. $1/6\text{th} + 1/36\text{th} = 7/36\text{th}$ share.

Cross-Examination

Q1. I suggest that since the date of your marriage you are staying at your in-law's house only?

Ans. Yes.

Q2. Your marriage was performed by your father only?

Ans. Yes.

Q3. Your marriage was performed in a grand manner?

Ans. Yes.

Q4. At the time of your marriage gold and other ornaments were also given?

Ans. Yes.

Q5. You are in possession and enjoyment of those articles? **Ans.** Yes.

Q6. At the time of marriage your father spent a huge amount of money?

Ans. He spent money, but not a huge amount.

Q7. Since the date of your marriage, you are not in possession of the suit property?

Ans. Yes.

Q8. Your elder brother, who died along with your father, is also married?

Ans. Yes.

Q9. He has a wife and two children?

Ans. Yes.

Q10. They are not made as parties?

Ans. Yes.

Q11. Five acres of land in the self-acquired suit property belong only to your brothers?

Ans. No, that is false.

Q12. Neither you nor your sister have any right in the suit property?

Ans. No, I have rights.

Q13. Is it not mentioned in the Ex.A1 to A3 the name of you or your sister?

Ans. Yes, mentioned.

Q14. Are you not a member of the joint family of Late Ragavaiah?

Ans. No, I am also a joint family member.

Q15. You filed this case with a dishonest intention?

Ans. No.

DW1: Examination-in-Chief

Q1. What is your name?

Ans. My name is Rajeev.

Q2. Where are you residing presently?

Ans. Presently residing in Shamirpet.

Q3. What is your father's name?

Ans. My father's name is Late Ragavaiah.

Q4. Who performed the marriage of the plaintiff?

Ans. My father and we together performed the Plaintiff's marriage.

Q5. How much did you spend towards the marriage?

Ans. We spent approximately Rs. 30,00,000/- (Thirty Lakhs).

Q6. How much property was given to your sisters?

Ans. We gave gold, silver, and other household articles worth Rs. 10,00,000/- to every sister.

Q7. Who purchased the mango garden of five acres?

Ans. Only I and my two brothers.

Q8. Who cultivates the suit land?

Ans. Only I and my two brothers.

Q9. Who shares the crop yield over the suit property?

Ans. Only I and my two brothers.

Q10. Who has rights over the suit property?

Ans. Only I and my two brothers.

Q11. What rights does the Plaintiff have over the suit property?

Ans. The Plaintiff has no rights.

Q12. Has she ever demanded partition?

Ans. No.

Q13. Do you have any documents showing the suit lands belong to you and your brothers?

Ans. In Ex.A1 to A3 filed by the Plaintiff, clearly only mine and my brothers' names are there, sisters' names are not there.

Q14. What relief do you seek from the Court?

Ans. I request the Court to dismiss the suit.

Cross-Examination

Q1. I suggest that cultivation is the only source of income of your family?

Ans. Yes.

Q2. Part of ten acres acquired from your grandfather, you have no other lands?

Ans. Yes.

Q3. To prove that amounts given at the time of marriage were in lieu of her share, there is no proof?

Ans. Yes, there is no proof.

Q4. Did you file those proofs?

Ans. No, I did not file.

Q5. Five acres mango garden was purchased from funds raised from ten acres land? **Ans.** Yes.

Q6. You didn't give any notice to your sister that she has no right to the property?

Ans. Yes.

Q7. During your father's lifetime, did she take her due share in the yield over suit property?

Ans. No.

Q8. Your sister requested several times to give her share?

Ans. No.

Q9. You have not filed any document to show that notice was given to the plaintiffs at the time of mutation of your names in the revenue records as pattadars and possessors, is it not?

Ans: Yes, I have not filed any such document.

Q10. I suggest that even if time is granted by the Court, you will not be able to produce any such document?

Ans: Yes. Witness adds: I cannot say.

Q11. I put it to you that no notice was given to the plaintiffs, and therefore you have neither filed nor can produce any document in that regard?

Ans: It is not true. Notice was given.

JUDGMENT
IN THE COURT OF THE JUNIOR CIVIL JUDGE, MEDCHAL

Present: G. Anil Kiran Kumar

Date of Judgment: March 25, 2016.

O.S. NO. 133 OF 2015

Between:

Smt. Rajani

..... Plaintiff

And

Sri. Rajeev & others

..... Defendants

:: JUDGEMENT ::

This suit is filed by the Plaintiff (Rajani) for Partition and Separate Possession seeking a 7/36th share (1/6th Coparcenary Share + 1/36th Succession Share) in her Joint Hindu Family Property.

The case of the plaintiff:

1. Late Ragavaiah and Seethamma were Hindu husband and wife. They had three sons (Ram, Lakshman, Raju) and two daughters (Rajani - Plaintiff, Roja). The Joint family coparcenary of Late Ragavaiah acquired ten acres of agricultural land by inheritance. With the funds derived from that land, a five-acre mango garden was purchased. Late Ragavaiah performed the marriages of his daughters. Late Ragavaiah and his eldest son Ram died in an accident. When the Plaintiff demanded partition on 10/11/2016 for the educational needs of her children, the Defendants (brothers) refused.

The case of the defendant:

2. The Defendants admitted the relationship between the parties. However, they argued that the Plaintiff's due share was settled at the time of her marriage. Hence, they have no share in the Suit properties. It was pleaded that the Plaintiff was excluded from possession for fifteen years, so the claim is barred by limitation. The mango garden is not joint family property. Non-joinder of Late Ram's wife and children as parties. The fixed court fee paid is insufficient.

Issues Settled for Trial:

3. As the Parties showed no interest in settlement under S.89 CPC, the Court settled the following Issues for trial:

1. Whether the suit bad for non-joinder of necessary parties?
2. Whether the Suit Schedule properties are Joint Family Properties of Late Ragavaiah?
3. Whether the plaintiff is entitled to Share in the Suit schedule properties?
4. What is the share of the plaintiff? 4. Whether the suit is barred by limitation?
5. Whether the Court Fee Paid is sufficient? 7. To what relief?

Issue no.1:

4. In a Partition Suit, all sharers must be necessary parties. In this case, Late Ragavaiah's eldest son Ram also died. His interest devolves to his Class I heirs (wife and children) as per Hindu Succession Act S.6(3). Therefore, Ram's wife and children must be parties. The Court allowed the petition filed by the Plaintiff to implead Late Ram's children and wife. Therefore, the defect in the Suit is resolved. Issue No.1 is accordingly answered.

Issue no.2:

5. When the Plaintiff is seeking Partition, they must prove that the properties are Joint Family Properties. Property acquired with Joint family funds also becomes Joint Family Property. As PW1 testified, agriculture land was acquired through inheritance and the Defendants did not dispute this, it is established as ancestral property. According to the Plaint, this garden was acquired with funds from the crop yielding of the agriculture land. The Defendants averred that the mango garden is not joint family property. However, the Defendants made no averment that they acquired it with their own funds or that Late Ragavaiah wrote a will. If a Kartha or coparcener purchases property with joint funds, it becomes joint property. The Defendants failed to rebut it.

6. The defendants have pleaded ouster as a defence, contending that the revenue entries were mutated in their names. However, to establish ouster between co-heirs or joint owners, there must be a clear and open assertion of hostile title to the knowledge of the other co-sharers. Mere possession and enjoyment of profits for a long period do not constitute ouster. The defendants are required to prove exclusive possession and enjoyment, but no documentary evidence has been placed on record in this regard.

7. Though the defendants sought to rely upon revenue records, the same are not sufficient or reliable to establish ouster. Significantly, **DW1**, in his cross-examination, admitted that no document was filed to show that any notice was given to the plaintiff regarding exclusion or that mutation of revenue entries was effected with the consent or knowledge of the plaintiffs. Further, despite a specific question regarding such documents, none have been produced. Therefore, an adverse inference can be drawn against the defendants for withholding the best available evidence. The defendants have failed to prove that they had asserted a hostile title to the knowledge of the plaintiffs for a continuous and uninterrupted period. In the present case, both the agricultural land and the mango garden are established as joint family properties. Accordingly, the plea of ouster fails, and Issue No. 2 is decided in favour of the plaintiffs.

Issue no.3:

8. Under the Hindu Succession (Amendment) Act, 2005, a daughter becomes a Coparcener by birth, equal to a son. Also, in Andhra Pradesh (United), Section 29A (1986) existed. PW1's marriage took place after 1986. Whether applying the provisions of S.6 of the 2005 Amendment to the Hindu Succession Act or A.P. Amendment S.29A, the Plaintiff becomes a Coparcener. The Defendants failed to prove that they settled the Plaintiff's share. Merely performing marriage expenses

is not considered as relinquishment of a share. The Plaintiff is entitled to a share in the Suit Schedule properties. Issue No. 3 is decided in favor of the Plaintiff.

Issue No.4:

9. According to Hindu Succession Act S.6(3), Late Ragavaiah's interest must be calculated through a notional partition. At the time of Late Ragavaiah's death, there were six Coparceners in the Joint Family (three sons, two daughters, and Ragavaiah). Therefore, the Plaintiff gets a 1/6th direct share as a Coparcener. Late Ragavaiah's interest is calculated as 1/6th. This 1/6th share devolves among his Class I Heirs (wife and five children), so each gets 1/6th of 1/6th = 1/36th share. $\frac{1}{6}\text{th (Coparcener Share)} + \frac{1}{36}\text{th (Succession Share)} = \frac{7}{36}\text{th share}$. The Plaintiff is entitled to a 7/36th share. Accordingly, Issue No. 4 is decided in favor of the Plaintiff.

Issue No.5:

10. According to Limitation Act Article 110, the limitation period is 12 years. It starts from when the Plaintiff gains knowledge of exclusion. In Issue No.2, the Court found that the Defendants failed to prove Ouster. The Defendants failed to prove that they gave knowledge of an adverse claim to the Plaintiff for an uninterrupted period. The Plaintiff's demand was made in 2016. The Suit was filed subsequently. The Suit is not barred by Limitation. Issue No.5 is decided in favor of the Plaintiff.

Issue no.6:

11. According to Court Fee and Suit Valuation Act S.34(2), if the Plaintiff is in joint possession, a fixed court fee is sufficient. It was established in Issue No. 2 that the Suit Schedule properties are Joint Family Properties. According to Law, possession of one of the coparceners is the possession of others too. Since Ouster was not proved, the Plaintiff is deemed to be in joint possession. The fixed court fee of Rs. 200/- is sufficient. Issue No. 6 is decided in favor of the Plaintiff.

Issue No.7:

12. **Result:** In view of the above findings, the Plaintiff is eligible for partition. The Plaintiff's share is declared as 7/36th. A Preliminary decree is passed in favor of the Plaintiff with costs, allotting a 7/36th share in the Plaintiff schedule property.

(Typed to my dictation on 25.3.2016)

Junior Civil Judge, Medchal

APPENDIX OF EVIDENCE:

Witnesses Examined:

For Plaintiff: PW.1: Rajani

For Defendants: DW.1: Rajeev

Exhibits Marked: For Plaintiff:

Ex.A1: Certified copies of Khasra Phani.

Ex.A2: Certified copy of the Phani of the year 1990 to 1995.

Ex.A3: C.C of the Phani (Village Account no.3) of the year 2006 to 2015.

For Defendants: NIL

Junior Civil Judge, Medchal

CHAPTER 6: CRIMINAL PRACTICE

6.1 INTRODUCTION

To practice on the criminal side, a lawyer needs not only practical knowledge of the adjudication of criminal cases but also a clear understanding of the philosophical basis behind the criminal justice system. Generally, as a trial court practitioner in the initial days of criminal practice, we mostly encounter cases where we have to defend the accused. These are the cases we commonly see before our criminal courts:

1. S.85 BNS (Cruelty)
2. S.3 & 4 of Dowry Prohibition Act
3. S.101 BNS (Murder)
4. S.106 BNS (Rash or negligent Act)
5. S.118 (Voluntarily causing grievous hurt by dangerous weapons or means)
6. S.303 (Theft)
7. S.138 of the Negotiable Instruments Act

Fundamental Principles of the Criminal Justice System:

The below principles serve as fundamental guidelines for a criminal lawyer in case preparation, strategy formulation, and courtroom advocacy.

1. The purpose of a criminal trial is to prove the guilt of the accused.
2. The responsibility to prove the case lies on the prosecution.
3. Proof must be beyond reasonable doubt.
4. The accused has the right to remain silent.
5. The accused need not state his version.
6. In criminal trials, the defence primarily aims to expose weaknesses in the prosecution's case by questioning its logic, consistency, and the natural sequence of events. This is done by bringing out contradictions, omissions, and procedural irregularities in the evidence presented. Since the prosecution must prove its case

beyond reasonable doubt, the defence only needs to create reasonable doubt. Even a single such doubt is enough to give the accused the benefit of doubt and lead to acquittal.

8. Due to statutory presumptions in special laws, the burden of proof may shift to the accused. Even in such cases, the criminal lawyer should plan the defense strategy correctly by shaking the credibility of the prosecution evidence without narrating the accused's story.

To excel in proficiency on the criminal side, a criminal lawyer must have a strong command over the fundamentals of the following subjects:

1. Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)
2. Bharatiya Nyaya Sanhita, 2023 (BNS)
3. The Bharatiya Sakshya Adhiniyam, 2023 (BSA)
4. Criminal Rules of Practice
5. Negotiable Instruments Act, 1881
6. Special and Local Laws

Proficiency in these subjects enables a criminal lawyer to achieve proficiency in critical skills like case framing, investigation, prosecution, defense strategy, and evidence handling. In this part, we will study the criminal adjudicatory process in detail - from lodging an FIR, through investigation and trial stages, to case disposal via judgment. We will analyze this process with examples of offenses under S. 85 BNS, S.106 BNS, S.138 N.I Act, as well as U/S 9(1) r/w Section 51(1) of the Wildlife Protection Act, 1972.

6.2 KEY STAGES IN A CRIMINAL CASE

The following are the key stages in a Criminal Case - Adjudicatory Process. Generally, criminal cases come before the court through a Police Report (Charge-sheet) or a Complaint.

1. Method of Addressing Grievance: Most criminal cases begin with the police filing a charge sheet. A charge sheet is the summary of the Investigation. The charge sheet contains how the crime occurred, against whom it occurred, and the date of the complaint. The Investigating Officer (IO) collects the necessary evidence to prove the crime. S.181 or S.182 BNSS statements, scene of offense panchanama, inquest/wound certificate/post-mortem report, confession & recovery panchanama are documents attached to the charge sheet.

2. Cognizance & Summons: After receiving the charge sheet, if the Magistrate opines that the allegations and documents therein establish a prima facie case, he takes cognizance of the offense and issues summons to the accused.

3. Appearance of Accused: When the accused appears, the court must provide him with copies of all documents (supply of copies). If the accused cannot afford a lawyer, the court must arrange a Legal Aid Counsel U/S.9A of LSA Act, 1987. At this stage, the accused has the opportunity to file a Discharge Petition or a S.528 BNSS Petition, stating that the allegations made in the charge sheet do not make out any case against him.

4. The usual grounds for filing the Discharge: Alleged facts do not disclose an offense; Double Jeopardy; Dispute of Civil nature; barred by limitation; Court has no jurisdiction; filing of the case is hit by (S.191-S.203 BNSS), e.t.c.,

5. Charge: If a discharge petition is not filed or if it is dismissed, the next stage is framing the Charge. After framing the charge, the accused is questioned. If the

accused admits guilt, the court may convict him. If he does not admit guilt, summons is issued to the witnesses mentioned in the charge sheet, and the case is posted for Trial.

6. Prosecution Evidence: Generally, the person who filed the case (**informant**) is examined first. Later, Eye Witnesses to the incident, panchanama witnesses, medical experts (PME), and finally the Investigating Officer (IO) are examined. Prosecution witnesses are marked as PW1, PW2... and documents as Ex.P1, Ex.P2.... Witnesses on behalf of the accused are marked as DW1, DW2... and documents as Ex.D1, Ex.D2....

7. Examination under S.351 BNSS: After the prosecution evidence is completed, the accused must be examined under S.351 BNSS. This inquiry is conducted explaining the incriminating evidence against the accused in the prosecution evidence. This inquiry is not on oath, and no statement made by the accused under S.351 BNSS should be the sole basis for conviction.

8. Defense Evidence: After S.351 BNSS examination, the accused may present his Defense evidence. But if he wants to examine himself as a witness, he shall take permission of the Court. However, in criminal cases, since the standard for conviction is proof beyond reasonable doubt, the Accused is advised not to present witnesses on their behalf.

9. Arguments: If there is no Defense evidence or after it is completed, the case is posted (Adjourned) for arguments. After both parties present oral or written arguments, the case is posted (adjourned) for judgment.

10. Judgment and Sentence: The court judgment will be in the form of Acquittal or Conviction. If acquitted, the accused is released. If convicted, the accused's argument on the sentence is heard, and then the sentence is imposed.

6.3 OFFENCE UNDER S.85 BHARATIYA NYAYA SANHITA (BNS)

S.85 BNS - Conceptual Understanding

S.85 of BNS: If the husband or any relative of the husband of a woman subjects such woman to cruelty, they shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation: ‘Cruelty’:

(a) Any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Section 3 of Dowry Prohibition Act:

Penalty for giving or taking dowry

1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more: Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years.’

2) Nothing in sub-section (1) shall apply to, or in relation to, -

(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf): Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

(b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act:

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.

Section 4 of Dowry Prohibition Act:

‘If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.’

8A. Burden of proof in certain cases: -

Where any person is prosecuted for taking or abetting the taking of any dowry under section 3, or the demanding of dowry under section 4, the burden of proving that he had not committed an offence under those sections shall be on him.

S.85 BNS – Reporting offence: As per S.221 BNSS, a report regarding an offence under S.85 BNS must be given to the police by the victim or her parents or a person authorized by law. Unlike general crimes, the police cannot issue an FIR and investigate suo-moto or based on a report given by a third party.

Investigation: Investigation means collecting evidence. This must mandatorily include:

1. Visiting the scene of the offense: ascertaining the facts and circumstances related to the case; identifying the suspected offender; recording statements of witnesses and the accused; deciding whether there is a case to place the accused before the Magistrate for trial based on the collected evidence.

Guidelines for Investigating Officers in S.85 BNS:

1. Approach and Conduct of Investigation: The IO must conduct investigations with utmost sensitivity, impartiality, and intelligence, given the serious and personal nature of offences under S.85 BNS / Section 498A IPC. The IO should exercise caution before arraying any person as an accused or effecting arrests, as courts emphasize the need for discretion in such cases. Hence, it is important for an IO to understand the word cruelty used in this section.

2. The term cruelty referred to in S.85 BNS must be of a higher and sterner degree than ordinary cruelty related to Divorce. To apply S.85 BNS, the act must be Wilful. This act must be such that it causes grave injury or leads to suicide. The mental pain, agony, or suffering must be of such a magnitude that it severs her marital bond. To determine cruelty, the entire sequence of events must be examined. Harassment by the husband and relatives for property contrary to law is also an offense. Coercion means inducing or compelling a person to do something by using threats or force.

3. While assessing cruelty, the IO must consider:

a) Nature and degree of harassment: The conduct must go beyond ordinary matrimonial discord; routine quarrels do not constitute cruelty.

b) Mental or emotional impact: Repeated intimidation, insults, humiliation, or threats affecting the mental health of the woman.

c) Link to unlawful demands: Harassment directly connected to dowry or property demands strengthens the case.

d) Evidence of injury or threat: Physical injuries, threats, or wilful misconduct.

e) Circumstances of the parties: Age, vulnerability, social and family context of the victim. Cruelty is thus appreciated in the totality of circumstances, focusing on serious physical or mental suffering beyond normal marital disagreements.

4. Understanding Parties and Context: The IO should inquire into the social, cultural, and economic status of the families, as well as the psychological and behavioral traits of the victim, accused, and their families, by consulting friends, relatives, and close associates.

5. Classification and Verification of Allegations: Determine whether the allegations fall under Part-I (driving to suicide or causing grave injury) or Part-II (harassment for unlawful demands) of the Explanation of cruelty. Examine whether any money or property demand is unlawful, and assess if the conduct constitutes harassment rather than a mere request.

6. Evidentiary Requirements: Mere demand for dowry or money is insufficient; harassment or coercion with unlawful consequences must be proved. Evidence must clearly reflect the link between the demand and harassment; vague or general allegations are insufficient (*Guddi Kumari v. State of Bihar, 2018; Preeti Gupta v. State of Jharkhand, 2010*). To implicate an individual, there must be specific and distinct allegations of overt acts against each accused (*Kahkashan Kausar @ Sonam v. State of Bihar, 2022*). Allegations, especially against relatives living separately, must be scrutinized carefully and with caution, ensuring they are specific, supported by evidence, and not exaggerated.

7. Caution in Charging and Arrests: Due to the sensitivity of offences under S.85 BNS, the IO must ensure strict compliance with procedural and evidentiary requirements before charging or arresting any person. A careful and methodical investigation is essential to prevent unjust implication.

Charge-Sheet: A charge sheet is the Investigating Officer's Action Plan to prove the case before the court. In S.85 BNS cases, the charge sheet contains the following elements: Place and time of offense; Name of the victim; Manner in which the offense occurred; Witnesses: Victim/Complainant, Eye-witness and Circumstantial witness, Family elders' evidence, Medical Officer, and Investigating Officer; Documents and seized items; The IO's conclusion.

Pre-Trial Precautions of the Court: The Magistrate examines the facts stated in the charge sheet along with the prosecution material and applies his judicial mind to determine whether a prima facie case is made out for trial of an offence under Section 85 BNS. If satisfied that sufficient grounds exist, the Magistrate takes cognizance of the offence and issues summons to the accused. After the accused appears, the court provides copies of documents to the accused free of cost. The court must frame the charge and examine the accused under S.262 BNSS. This examination must give clear factual information to the accused about the charges levelled against him. The trial is the method of deciding whether the accused is guilty or innocent. The trial begins with the framing of the charge. Since the case was filed by the police, the burden to prove the case is on the prosecution. Generally, the victim/complainant is examined first, followed by eye witnesses, circumstantial witnesses, the medical officer, and finally the investigating officer.

Prosecution Evidence:

PW1: Ramani (Victim)'s Evidence:

Examination-in-Chief: (Witness is testifying on Oath in Court)

1. What is your Name?

Ans: Ramani.

2. Where are you residing presently?

Ans: Shameerpet.

3. What is your Education?

Ans: Discontinued X standard.

4. What is your Occupation?

Ans: House-Hold work.

5. What is your Husband's Occupation?

Ans: Truck Driver.

6. Why did you file this case?

Ans: I approached the court seeking to punish the Accused.

7. What is your relation with the Accused?

Ans: He is my husband.

8. When and where were you married?

Ans: I was married on 10.10.2014 at Shameerpet.

9. How was your marriage performed?

Ans: At the time of marriage, my parents gave Rs. 50,000/- (Rupees Fifty Thousand Only) as dowry to Narayana. Besides that, Gold and house-hold articles worth Rs. 50,000/- were also given to the accused.

10. What happened after the marriage?

Ans: We lived happily for one year. A female child was born to us. Later, the accused got addicted to bad habits and started to harass me to bring additional dowry.

11. What was your response to his demand?

Ans: I clearly told him that my parents died in an accident, I did not inherit anything, and I cannot meet his financial demand.

12.What was his response to your information?

Ans: He used to behave arrogantly and say that I have no one, and no one would question even if he killed me. Although this was a routine affair, I bore it as I had no other alternative.

13. What happened later?

Ans: The accused realized that there was no one to look after me. On 12.03.2016 during night hours, in a drunken state, he quarrelled with me and beat me with a stick. As a result, I suffered an injury.

14. What did you do after that?

Ans: I escaped from the accused and took shelter in the village elder's house. Later, on their advice, I reported to the police. The police recorded my statement and sent me for medical aid.

10.Is this the report you gave?

Ans: Yes, the report shown to me is mine, and the signature on it is also mine. This report is Ex.P1.

Cross-Examination:(Questioning by Counsel for Accused)

1. I suggest that your marriage was performed according to your Hindu religious caste customs, is it true?

Ans: Yes.

2. I suggest that according to your community customs, the bridegroom party must give cash and gold ornaments to the bride, is it true?

Ans: Yes.

3. I suggest that according to your community customs, the girl party must give cash and gold articles to the boy party, is it true?

Ans: Yes.

4. Did you file any document or video footage to show that you gave dowry to the accused or his relative?

Ans: No.

5. I suggest that the Accused or his relative never demanded dowry, and you did not pay any dowry?

Ans: No, we gave Rs. 50,000/- dowry and other house articles.

6. Did you disclose your matrimonial differences to anyone before this incident occurred?

Ans: No, I did not.

7. I suggest that your husband knew your parents' economic status before your marriage, is it true?

Ans: Yes.

8. You did not mention how much additional dowry the Accused demanded either in the report given to the police or in the S.180 BNSS statement, right?

Ans: Yes, I did not.

9. I suggest that male persons taking drinks is routine in your families?

Ans: Yes. It is common.

10. I suggest that the police did not examine you?

Ans: The police examined me.

11. I suggest that in your two years of matrimonial life, the accused did not beat you at any time?

Ans: Yes, he did not beat me previously.

12. I suggest that the Accused did not beat you with a stick, but you foisted this false case with the intention of getting separated?

Ans: No.

13. I suggest that you have a habit of Ragging others including the accused without any valid reason?

Ans: No.

14. I suggest that the Accused never subjected you to cruelty, but you filed this case with the intention of getting separated?

Ans: No, that is false.

PW-2: Rajendra (Village Elder)'s Evidence

Examination-in-Chief (Witness is testifying on Oath in Court)

1. What is your Name?

Ans: Rajendra.

2. Who are you?

Ans: I am the Sarpanch of Shameerpet village.

3. How do you know the parties in this case?

Ans: They are our villagers and live in our street.

4. What do you know about this case?

Ans: On the Incident date, 10.01.2009, while I was walking on the road, Ramani came running to me. When I asked, she said her husband was harassing her for additional dowry and beat her with a stick. I saw swelling injuries on her hands.

5. What did you do later?

Ans: I called the accused, told him to change his ways, and directed him to look after the victim properly. But he rejected my advice. That is why I advised her to report to the police.

6. Did the police ever call you?

Ans: Yes, the police examined me and recorded my statement.

Cross-Examination:

7. I suggest that you know the Accused since childhood?

Ans: Yes.

8. I suggest that to your knowledge, there is no incident where the accused committed violence?

Ans: Yes.

9. I suggest that you never received any complaint against the Accused?

Ans: Yes, I did not receive.

10. I suggest that there is no written resolution that a panchayat took place on the disputed matter?

Ans: Yes, there is no written resolution.

11. I suggest that small petty quarrels occurring between villagers during evening hours is common?

Ans: Yes, it is common. But here the case is different.

12. I suggest that before the incident, a house was allotted to PW1 under the Indirama Housing scheme in her name?

Ans: Yes.

13. I suggest that the police did not examine you?

Ans: No, the police examined me.

14. I suggest that you know nothing about the case, but you are giving false evidence only because the police told you to?

Ans: No.

PW3: Vijay (Investigating Officer - IO)'s Evidence
Examination-in-Chief (Witness is testifying on Oath in Court)

1. Where are you working?

Ans: Presently, I am working as SI of Police, Shameerpet since 01.01.2015.

2. What do you know about this case?

Ans: On 11.01.2009, PW1 came to the P.S. and presented Ex. P1. Therefore, I registered it as Cr.No.11/2009 dt:11.01.2009 under offenses S.85, 118(1) BNS and S.3 & 4 of DP Act and took up investigation. At that time, I sent the original FIR copy to the court. I recorded PW1's statement in the police station itself and entered it in my Part II CD. Furthermore, I issued an MLC and sent her to the hospital for medical aid.

3. What else did you do?

Ans: Afterwards, I went to the spot, conducted the scene of offence panchanama, and drew a rough sketch. I recorded the statements of PW2 and LW3 (Kumar). During Investigation, the accused surrendered and admitted his guilt before me. I invoked S.35(3) BNSS and directed him to appear before the court after receiving summons.

4. What did you complete in this Case?

Ans: I received the medical report regarding the injury to PW1 from the medical officer. It was marked as Ex.P3. The injury was of simple nature. Later, I filed the charge sheet.

Cross-Examination:

5. Did you inquire about the custom of exchanging cash or articles between the families of the Accused and PW1?

Ans: No, I did not.

6. Did you inquire whether PW1's family had the capacity to give Rs. 50,000/- dowry?

Ans: No, I did not.

7. Did you collect any documentary material to show that the Accused took dowry?

Ans: No, I did not.

8. It is not mentioned in the FIR or the S.180 BNSS statement how much additional amount of dowry the Accused demanded, right?

Ans: Yes, not mentioned.

9. I suggest that the Accused never took dowry or demanded additional dowry?

Ans: No, that is false.

10. I suggest that you did not examine PW1's relatives or nearby persons to know PW1's general attitude and mental frame work?

Ans: Yes, I did not.

11. I suggest that small petty quarrels between Husband and wife are normal?

Ans: Yes.

12. I suggest to you that PW1 is a person with a nature of intentionally provoking and harassing others without reason?

Ans: I don't know.

13. Did you examine whether the Accused's action happened in the heat of passion or provocation?

Ans: No, I did not.

14. I suggest that since the incident did not happen, you did not examine in that direction?

Ans: No, the incident happened.

15. I suggest that the Accused never subjected PW1 to cruelty, but she filed this case with the intention of separating?

Ans: No, that is false.

16. I suggest that you did not visit the scene of offence and did not examine anyone, but filed a false charge-sheet just for statistics purpose by doing table investigation?

Ans: No, that is false.

JUDGMENT
IN THE COURT OF THE JUDICIAL FIRST CLASS
MAGISTRATE, Medchal
Date: Wednesday, June 10, 2009
PRESENT: G. Anil Kiran Kumar, B.A.B.L., (Hons),
Judicial First-Class Magistrate, Medchal.
CALENDAR CASE NO. 190 OF 2005

Between:

The State of Telangana through
its Sub-Inspector of Police, Medchal **... Prosecution**

AND

Narayana,
S/o. Ramana, Age: 33 years,
R/o: Shameerpet, Medchal **... Accused**

:: JUDGEMENT ::

Brief Facts of the Case:

1. The foundation of this case rests on the report (Ex.P.1) given by PW1 (Ramani). According to PW1's, she was married to the accused Narayana on 10.10.1995. At the time of marriage, her parents gave Rs. 50,000/- cash along with gold ornaments and other articles worth approximately Rs. 50,000/- as dowry. According to PW1's contention, after about two years, the accused became addicted to vices and started to harass PW1 for additional dowry. After the death of PW1's parents, as she had no financial support, the accused increased the Cruelty. While this harassment was continuing, on 12.03.2016, the accused, in a drunken state, beat PW1 with a stick, causing a bleeding injury.

2. Upon PW1's complaint to the Shameerpet police on the advice of the Village Elder (PW2), a case was registered as Cr.No.117/05 under S.85 BNS, S.118(1) BNS, and S.3 & 4 DP Act. The Investigating Officer (IO - PW3) investigated the case and filed the charge sheet.

3. Based on the investigation report, this Court took Cognizance of the above offenses. Charge was framed against the accused under S.259 BNSS. The accused pleaded not guilty and claimed trial.

4. On behalf of the Prosecution, PWs 1 to 4 were examined. PW1: Ramani (Victim), PW2: Rajendra (Circumstantial Witness - Village Elder), PW3: Vijaya (Investigating Officer - IO). Documents Marked: Ex.P.1: PW1's Report; Ex.P.2: Original FIR; Ex.P.3: Medical Report.

5. The accused was examined U/s.315 BNSS. He denied the incriminating evidence levelled against him and stated that there was no defense evidence. The Defense Counsel created doubt in the Prosecution's argument by cross-examining PW1 and PW3.

Points for Determination:

1. Whether the accused proven guilty for offence under S.3 of the Dowry Prohibition Act?
2. Whether the Prosecution proved that the accused committed cruelty for an offence under S.85 BNS or demand of additional dowry under S.4 DP Act?
3. Whether the accused confirmed guilty under S.118 BNS?
4. If guilt is proven in any of the above, what punishment is the accused liable for?

Point no.1:

6. Under Section 3 of the Dowry Prohibition Act, it is true that once a person is prosecuted, the burden shifts to the accused to disprove the allegations. However, this principle does not mean that mere prosecution is sufficient to establish guilt. The prosecution must first lay foundational facts, such as credible evidence showing that dowry was actually given or demanded, before the burden can shift to the accused.

7. In the present case, the allegation of dowry payment rests solely on the oral testimony of PW1, without any corroborative documentary or independent evidence. PW3 (Investigating Officer) admitted in cross-examination that no documentary proof was collected to establish the alleged payment of dowry. The defence suggested that the cash and articles were exchanged as part of customary practices, and the IO further admitted that he did not inquire into the customs prevailing in the community of PW1 or the financial capacity of her family to give such dowry.

8. Further, as per Rule 10 of the Dowry Prohibition Rules, 1998, the prosecution under Section 3 is barred by limitation, as it was initiated beyond one year from the date of marriage vide *Mr. Tammineedi Bhaskara Rao And Two Ors. vs State of A.P.* Rep by Public Prosecutor 2007 Cr LJ 1204.

9. In view of these material omissions, the prosecution has failed to establish the foundational facts necessary to shift the burden onto the accused. Consequently, the standard of proof required in criminal law has not been met, and the offence under Section 3 of the Dowry Prohibition Act is not proved against the accused.

Point no.2:

10. Since the allegations in the present case relate to cruelty arising out of demand for additional dowry, the offences under Section 85 BNS and Section 4 of the Dowry Prohibition Act are closely interconnected and stem from the same set of facts. Therefore, both the provisions are considered and adjudicated together.

11. Upon a careful appreciation of the entire oral and documentary evidence on record, this Court proceeds to examine whether the prosecution has successfully established the guilt of the accused for the offences alleged, particularly under Section 85 BNS and Section 4 of the Dowry Prohibition Act.

12. At the outset, it is settled law that to constitute an offence under Section 85 BNS, the alleged cruelty must not be mere ordinary wear and tear of matrimonial life, but must amount to wilful conduct of such a nature as is likely to cause grave injury, or must be directly connected with a demand for dowry or unlawful monetary demand. In the present case, though PW1 alleged that the accused demanded additional dowry and subjected her to harassment, it is an admitted position that neither in the FIR (Ex.P1) nor in her statement under Section 180 BNSS has she specified the quantum of additional dowry demanded. This omission is material in nature, as it strikes at the root of the prosecution case and creates a serious doubt regarding the very existence of a specific unlawful demand.

13. Further, the evidence of PW2, who is an independent witness and village elder, reveals significant admissions. He categorically stated that no prior complaints were ever received against the accused, and that petty quarrels among villagers are common occurrences. This is further corroborated by the evidence of PW3 (Investigating Officer), who also admitted that such disputes are not uncommon. Importantly, PW1 herself admitted during cross-examination that she had not disclosed any matrimonial disputes to anyone prior to the alleged incident, thereby weakening the prosecution's claim of continuous harassment.

The investigation conducted in this case also suffers from certain deficiencies. PW3 (IO) admitted that he did not inquire into the financial capacity of PW1's family to give dowry, nor did he collect any documentary evidence to substantiate the alleged payment or demand of dowry. He further failed to examine independent witnesses or relatives to ascertain the general conduct of the parties or the circumstances leading to the alleged incident. These lapses assume significance, particularly in a case resting primarily on oral testimony.

14. The prosecution case thus substantially rests on the sole testimony of PW1, which, in the absence of corroboration and in light of the material omissions and contradictions brought out in cross-examination, appears to be self-serving and not wholly reliable. The possibility that the incident may have arisen out of ordinary matrimonial discord, rather than cruelty linked to dowry demand, cannot be ruled out. It is a cardinal principle of criminal jurisprudence that the prosecution must prove its case beyond reasonable doubt. In the present case, the cumulative effect of the omissions, admissions, and investigative lapses creates reasonable doubt regarding the prosecution version. As such, the accused is entitled to the benefit of doubt. Accordingly, this Court holds that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt for the offences under Section 85 BNS and Section 4 of the Dowry Prohibition Act.

Point no.3:

15. To prove guilt under S.116 BNS, the weapon used must be a dangerous weapon. PW1's testimony (beating with a stick) is corroborated by Ex.P.3 (Medical Report) and PW2's statements. The accused gave no suggestion denying this action. PW3 did not produce that stick before the court, and the material object is not on record. Hence, presuming the said stick as a dangerous weapon without putting it to the notice of the accused is against the cannons of fair trial. Since as per Ex.P.3 Medical Report, the injury is of simple nature, the accused is found guilty for an offence under S.115 (2) BNS instead of S.116 BNS.

16. The accused is found not guilty and acquitted under offenses S.85 BNS, S.3 & 4 of Dowry Prohibition Act. The accused is found guilty and convicted under S.115 BNS.

17. The Court heard the accused on the question of sentence. The convict submitted that, considering the circumstances in which the offence occurred, his family situation, the future of PW-1 and their child, and the need for conjugal companionship, and expressing a sense of remorse, a lenient view may be taken. The prosecution opposed this plea. Upon considering the totality of the circumstances and the nature of the offence under Section 115(2) BNS, the Court held that the ends of justice would be met by imposing a fine rather than imprisonment. Accordingly, the accused was sentenced to pay a fine of ₹1,000 under Section 115 BNS, and in default of payment, to undergo simple imprisonment for a period of three months.

(Dictated to Personal Assistant after his transcription, corrected and pronounced by me in the Open Court on this the 21.12.09.)

JMFC, Medchal.

APPENDIX OF EVIDENCE

Prosecution Witnesses:

PW1: Ramani (Victim)

PW2: Rajendra (Circumstantial Witness)

PW3: Vijaya (IO)

Exhibits Marked:

Ex.P.1: PW1 Report

Ex.P.2: Original FIR

Ex.P.3: Medical Report

Defense Evidence: NIL

JMFC, Medchal.

6.4 S.106 BHARATIYA NYAYA SANHITA (BNS)

CONCEPTUAL UNDERSTANDING

Provision under S.106 BNS: Causing death by rash or negligence. ‘Whoever causes the death of any person by any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to 5 years and shall also liable to fine.’

Comment-I: The essential ingredients of the offence: The death of a person must have been caused by the rash or negligent act of another person. The death must be a direct, proximate, or efficient result of that rash or negligent act. To be liable under S.106 BNS, that rashness or negligence must be culpable negligence (punishable negligence); mere negligence as in Civil law is not sufficient. In Civil law, the evidentiary rule *Res ipsa loquitur* (The thing speaks for itself) applies. But this rule has no application in the trial of Criminal negligence cases. Here, the burden of proof always lies on the Prosecution.

Comment-II: The terms 'Rashly' and 'Negligently' are not defined in the BNS. But these words do not indicate a positive evil intent, but rather a lack of care expected from reasonable person and that it is considered culpable (punishable).

Comment-III: The term ‘negligence’ refers to performing an act without the care and caution required by law, or failing to maintain the standard of care that a reasonably skilled person would observe. Criminal negligence is a gross and culpable disregard for proper care and precaution, resulting in a failure to prevent harm or injury to the public or to an individual.

Comment-IV: The term ‘rashness’ refers to performing an act recklessly without considering its possible consequences. Culpable rashness occurs when a person

acts aware of the potential for harmful or illegal outcomes, yet proceeds in the belief that either the consequences will not occur.

Comment-V: Most cases under S.106 BNS relate to road accidents and medical negligence. In this context, we will examine the application of S.106 BNS regarding deaths caused by road accidents.

Reporting Offence: Anyone can report an offence under S.106 BNS to the police or to a Magistrate. It is a Cognizable offence - an offence for which police can arrest without a warrant. As soon as a report disclosing an offence under S.106 BNS is received, the police must issue an F.I.R (First Information Report) and undertake investigation. After the FIR is issued, the Investigating officer (IO) has the authority to use all tools and techniques to identify the offence and collect the necessary material and evidence to prosecute the accused.

Investigation Guidelines under S.194 BNSS for Cases Relating to S.106 BNS: Before filing a charge sheet under S.194 BNSS in cases pertaining to S.106 BNS, the Investigating Officer (IO) must comply with specific requirements. Proceeding to the place of offence involves visiting the location where the crime occurred to observe and document the scene. Ascertainment of facts and circumstances requires determining all relevant details surrounding the case. Discovery of the suspected offender focuses on identifying and locating the alleged criminal. The examination of various persons, including the accused if necessary, entails recording their statements in writing as deemed appropriate by the IO. Based on the collected evidence and statements, the formation of an opinion involves deciding whether there is sufficient material to place the accused before the Magistrate for trial and to file the charge sheet. In cases such as road accidents, especially those involving fatalities, investigations must be conducted speedily and scientifically to ensure accuracy and proper justice.

Three Essential Elements to be Proven in S.106 BNS Road Accident Cases:

To establish a case under S.106 BNS, the prosecution must prove three essential elements:

Death of the Person in the Accident – This element is generally undisputed, as documentary evidence such as the inquest report (BNSS S.184), Post-Mortem Examination (PME), and death certificate clearly establish the cause, manner, and time of death.

Causal Link Between the Accused and the Death – The Investigating Officer (IO) must demonstrate that the accused's actions directly caused the death, using scientific and factual evidence to establish this connection.

Rashness or Negligence of the Accused – This is often the most contested element. To prove it, the IO must undertake specific steps:

Motor Vehicle Inspector Report – Determine the mechanical condition of the vehicle and any pre-existing defects.

Rough Sketch & Scene Panchnama – Record physical evidence such as measurements of the accident site, brake marks, blood traces, and other relevant details.

Eyewitness Testimony – Record statements of witnesses to ascertain whether the accused's driving was rash or negligent.

IO's Duty: The IO must utilize all available tools and evidence to establish these three elements conclusively, ensuring a robust prosecution case without leaving room for reasonable doubt.

Theory of Accused Identification: Generally, when there is no prior acquaintance between the eyewitness and the accused, it cannot be safely assumed that the witness can identify the accused accurately after a long lapse of time. Therefore, the IO (Investigating Officer) should not rely solely on oral evidence. The most standard tool in law to identify the accused is the Test Identification Parade (TIP) (BNSS S.54A).

Vehicle Linkage: With the help of the registration number of the crime vehicle, its owner can be easily known. Through the owner, one can trace who was driving at the relevant time of the accident and who used that vehicle before the incident date. These details are also available from government agencies.

Technological Aid: In the current age of technology, Closed-circuit television cameras (CCTV) are ubiquitous. Identifying the accused with the help of CCTV footage is one of the best methods. The IO must not rely solely on oral statements but must use all these available tools to effectively rule out the defense argument regarding identification.

Theory of Proving Rashness or Negligence: Proving rashness or negligence is crucial in **S.106 BNS** cases. The IO must analyse this not based on assumptions but based on scientific tools and field realities.

Examination of Witness and Analysis:

Witness Duty: The IO must examine all persons who saw the incident immediately after receiving information. Verify the reason for the witness being there at the time of occurrence and note it in the S.182 BNSS statement.

Multifaceted Analysis: The IO must analyse oral statements from multiple angles and form an opinion about rashness or negligence. This analysis should be based on field realities like Scene Photographs, Scene observation report, Site plan, MVI Report, Weather Conditions, and the physical and mental condition of the drivers.

Theory of Physical Evidence: The physical evidence collected by the IO provides an objective understanding to the court.

Scene Photographs: The IO must preserve the incident spot and photograph it from multiple angles. Alongside vehicles, the site and surrounding areas should also be photographed so that the court can easily discern the exact topography.

Site Plan/Rough Sketch: Site plans are mandatory in **S.106 BNS** cases. In this plan, the exact point of impact, the length of tyre skid marks, and the rest point where vehicles stopped must be clearly demarcated. Based on the length of tyre skid marks, courts can estimate the speeds of the vehicles, thereby avoiding vague and subjective expressions. The IO must use maps of the roads drawn to scale to produce accurate site plans.

Technical and Medical Theory:

MVI Report (Mechanical Vehicle Inspector Report): Mechanical inspection reports are very important. The exact physical conditions and damage of the vehicles must be reported by qualified personnel. This report is important for the court to come to a conclusion whether the accident occurred due to human rashness or negligence or due to mechanical failure.

Weather Conditions: The IO must note the prevalent weather conditions. Factors like a slippery road or poor visibility are useful to establish negligence.

Drivers' Condition: Tests should be conducted to know if drivers had consumed intoxicants.

Theory of Violation of Obligations:

Violation of Rules: Violating Road rules like crossing a Traffic signal or going faster than the prescribed speed constitutes negligence.

Last Option Test: The test depends on who had the last option to avoid the accident and what standard of care that person showed with an ordinary degree of skill.

Consciousness of Consequences: The IO must meticulously analyse and objectively assess the quantum of consciousness the accused had regarding the occurrence of mischievous and illegal consequences. (Abdul Subhan vs State (NCT of Delhi) on 27.9. 2006).

Charge-sheet (Challan): A charge-sheet is the action plan of the Investigating Officer (IO) explaining how the prosecution intends to prove the case before the court, and it must be filed in the prescribed format under law. In cases under S.106 BNS, the charge-sheet must clearly mention the exact place and time of the offence, along with the name of the deceased victim. It should describe the mode and manner of the offence, explaining how the accused committed the rash or negligent act resulting in death, and also set out the mode of proof, indicating the strategy for establishing the case. The charge-sheet must include details of witnesses and their specific roles, such as the complainant, eyewitnesses, circumstantial witnesses, panch witnesses for inquest and scene observation, the medical officer who conducted the post-mortem examination, the Motor Vehicle Inspector (MVI), and the IO. It should further contain particulars of all documents relied upon by the prosecution, including the FIR, PME report, MVI report, and site plan, as well as details of the property seized, especially the crime vehicle. Finally, the IO must clearly state the conclusion of the investigation, explaining how the evidence establishes the commission of an offence under S.106 BNS.

5. Pre-Trial Precautions by Court: After the IO submits the charge-sheet, upon examining it, if the facts mentioned therein indicate an offense under S.106 BNS, the Magistrate applies their judicial mind and takes Cognizance. After taking Cognizance, summons is issued to the accused. After the Accused appears, it is the Court's duty to provide documents copies free of cost (S.228 BNSS). If the Accused cannot afford an advocate, the Court appoints a Legal Aid Counsel. The Court examines the accused under S.274 BNSS. The purpose of this examination is to convey clear factual information of the accusation charged under S.106 BNS to the accused. Since the Prosecution initiated the Case, the burden to prove the case lies on them. The Prosecution first examines the complainant (PW1). Then eye witness, witness to scene, inquest, PME, confession and recovery (if any), and finally the Investigation officer (IO) are examined.

Witness Status: Prosecution witnesses are referred to by serial numbers like PW1, PW2, etc.

Marking of Documents: Documents on behalf of the Prosecution are marked as Ex.P1, Ex.P2, etc. Material objects are marked as MO1, MO2, etc.

Sentencing Policy under S.106 BNS / BNS S.106: The Hon'ble Supreme Court in the *Dalbir Singh v. the State of Haryana* Judgment gave important directions regarding **sentencing policy** under S.106 BNS: Given the increasing trend of road accidents in India and its devastating consequences on victims/families, criminal courts should not consider S.106 BNS under the benevolent provisions of S.4 of the Probation of Offenders Act (PO Act). Therefore, invoking the Probation of Offender Act for an offense under S.106 BNS is not ideal or legal.

Prosecution evidence

S.106 BNS Case: Witness Statements

1. PW1: Krishna (Witness) Examination-in-Chief

1. What is your name?

Ans: Krishna.

2. What are you doing?

Ans: I am studying law at M.G. Law College.

3. Why have you come to the court?

Ans: On 11/11/2001 at around 10:30 AM, while I was standing at L.B. Nagar Junction, I saw a WIPRO company bus crossing without noticing the red signal, causing the death of a bike rider. The person died on spot. At that time, the deceased was going on the road on a bike with a green light signal.

4. Can you identify the person driving the WIPRO bus at that time?

Ans: Yes, I can identify.

5. Is he in the court?

Ans: He is the person standing in the dock in the court.

6. What did you do after that?

Ans: I phoned the police and gave a report, and also phoned 108 Ambulance.

7. Is this the report you gave?

Ans: Yes, the signature shown to me on the report is mine.

8. Did the police examine you?

Ans: Yes, the police examined me.

Cross-Examination:

1. I suggest that on the alleged date of incident, that bus went away without stopping there?

Ans: Yes, the driver did not stop the bus.

2. You have never seen that driver before, right?

Ans: Yes. I have not seen him before.

3. I suggest that you have never seen the accused since the date the alleged incident occurred?

Ans: Yes, after the incident, I am seeing him for the first time in court.

4. I suggest that the Accused has no relation to the alleged offence and you have never seen the accused, but are falsely deposing as per what the police said?

Ans: No, I am speaking the truth.

5. I suggest that saying the Accused drove the vehicle without seeing the red signal is a lie?

Ans: No, that is not correct.

2. PW2: Raju (Witness) Examination-in-Chief

1. What is your name?

Ans: Raju.

2. Where do you reside?

Ans: I am a resident of Vanasthalipuram.

3. What are you doing?

Ans: I am working as a Software Engineer in WIPRO.

4. What do you know about this case?

Ans: I don't know anything about this case.

5. Did the police ever call you?

Ans: No, the police never called me regarding this case.

Note: (At this stage, the Hon'ble Public Prosecutor sought court permission to ask cross-examination questions to the witness under S.157 BSA, and permission was granted.)

6. Is the Accused a WIPRO company bus driver?

Ans: Yes.

7. Do you know him for five years?

Ans: Yes, I know him for five years.

8. I suggest that on 11/11/2001 at around 10:30 AM while you were travelling in the WIPRO company bus at L.B. Nagar Junction, the bus driver crossed the road without noticing the red signal. As a result, a person died on the spot, and at that time the deceased was going on a bike with a green light signal?

Ans: It is false.

7. I suggest that you are lying with the intention to help the accused?

Ans: No, I am speaking the truth.

8. I suggest that the police examined you and they recorded your statement, and this is that statement?

Ans: No, the police did not examine me and I did not give any statement.

PW3: Ajay Kumar (Witness) Examination-in-Chief

1. What is your name? Ans: Ajay Kumar.

2. What are you doing?

Ans: I am working as Transport Manager in WIPRO company.

3. What is the nature of the Transport Manager's duty?

Ans: I am the in-charge of all vehicles in our company and our company drivers must work only according to my instructions. I maintain the record of those details.

4. According to your record, who was driving vehicle no. AP10T4553 Bus on 11/11/2001 at around 10:30 AM at L.B. Nagar Junction?

Ans: This vehicle belongs to our company and on that day one Rajiv (i.e., Accused) was driving.

5. Do you have anything to show proof for that?

Ans: Yes, I handed over it to the police.

6. Is this the record you gave?

Ans: Yes, the signature shown to me on the record is mine.

7. Did the police examine you? Ans: Yes, the police examined me.

Cross-Examination:

1. I suggest that the accused has been driving a vehicle in your company for one year before the alleged date of incident? Ans: Yes.

2. Is it displayed on your company vehicles to report to your company if there is anything about the driver's improper driving and conduct?

Ans: Yes, it is displayed and the company mobile number is also mentioned.

3. I suggest that you have never received any report about the driver's improper driving and conduct from your staff or any person?

Ans: Yes, I have not received any report against the accused.

4. I suggest that your company appoints drivers only after thoroughly verifying their mental and physical abilities and experience? Ans: Yes.

5. I suggest that according to your understanding, the accused is a perfect driver?

Ans: Yes, he is a perfect driver.

6. I suggest that the Accused did not commit any offence? Ans: I don't know.

PW4: Karthik (Scene and Inquest Panch Witness)

Examination-in-Chief

1. What is your name?

Ans: Karthik.

2. What are you doing?

Ans: I run a tea stall at L.B. Nagar Junction.

3. What do you know about this case?

Ans: I know about this case. On 11/11/2011 at around 11:00 AM, the L.B. Nagar S.I. of Police called me and my tea shop colleague to be a witness to the road accident scene observation that happened there. Agreeing to that, we acted as panches to that report.

4. What did you observe at the Scene of offence?

Ans: At the scene of offence, we observed a person's blood stream. We also saw a splendor bike in damaged condition and the Bike's tier skid marks. That is why we signed on the report. The signature shown to me on the report is mine.

5. Do you know anything else about this case?

Ans: Later, on the same day, we went to Osmania mortuary where the deceased's dead body was kept. At that time, the police conducted an inquest in our presence. We observed a head injury on the deceased dead body and there was no other injury. That is why we signed on the report. The signature shown to me on the report is mine.

Cross-Examination:

1. To how many panches have you acted as Panch witness so far?

Ans: Approximately, to thirty panches.

2. I suggest that you have not obtained any permission to run your tea stall at L.B. Nagar Junction?

Ans: Yes, I have not obtained any permission.

3. I suggest that you know nothing about what is in those reports and the alleged incident did not happen at all, but you are falsely deposing as per what the police said?

Ans: No, I am speaking the truth.

PW5: Pavan Kumar Soni (Medical Officer)
Examination-in-Chief

1. What is your name?

Ans: Pavan Kumar Soni.

2. What are you doing?

Ans: I have been working as a Medical Officer in Osmania for the past ten years.

3. What do you know about this case?

Ans: On 11/11/2011 at around 04:00 PM, at the request of L.B. Nagar S.I. of Police, I conducted a post-mortem on the deceased dead body named Ramesh.

4. What did you do?

Ans: I conducted the Post-mortem and gave a report that the deceased's death occurred due to internal bleeding caused by head injury. Accordingly, I issued a report and the signature shown to me on the report is mine.

Cross-Examination:

1. Did you mention anything about the deceased's alcohol contents?

Ans: No, I did not mention.

PW6: Srinivas Reddy (Investigating Officer - IO)

Examination-in-Chief

1. What is your name?

Ans: Srinivas Reddy.

2. What are you doing?

Ans: I have been working as S.I. of Police in L.B. Nagar Police station for the past two years.

3. What do you know about this case?

Ans: I know about this case. On 11/11/2011 at around 10:30 AM, upon receiving a report from PW1, I issued an FIR as Cr.No.120/2011 under S.106 BNS. I also recorded PW1's statement in my part-II CD.

4. What did you do in this case?

Ans: First, immediately after receiving information, I went to the incident spot, identified the deceased dead body, and sent it to the hospital. I conducted a scene observation report and later conducted an inquest on the deceased dead body. Afterwards, I requested the medical officer to conduct a post-mortem, and he issued a report.

5. Did you do anything else?

Ans: I went to the accused driver's office, inquired and examined the transport manager, and recorded his statement in my part-II CD. There itself, I arrested the accused and seized the crime vehicle. After completing the investigation, I filed a charge-sheet.

Cross-Examination:

1. I suggest that you did not examine any police official and did not file any other material proof to show that the Accused drove the crime vehicle without observing the red signal?

Ans: Yes, I did not examine any police official or any material proof.

2. I suggest that L.B. Nagar Traffic junction is under C.C T. V surveillance?

Ans: Yes, it is under C.C T. V surveillance.

3. I suggest that a competent Motor vehicle inspector did not examine the crime vehicle or the Deceased vehicle?

Ans: Yes, did not examine.

4. Did you make an inquiry whether the Deceased had a driving license or not?

Ans: Yes, the deceased has a driving license.

5. I suggest that you did not file it?

Ans: Yes, I did not file.

6. I suggest that the Deceased did not have a driving license and the alleged incident happened due to his mistake?

Ans: No.

7. I suggest that you conducted a table investigation to enable the Deceased to get insurance compensation and foisted this false case on the accused driver?

Ans: No. I conducted a proper investigation.

**IN THE COURT OF THE JUDICIAL FIRST CLASS
MAGISTRATE, L.B. NAGAR**

Date: Tuesday, December 01, 2009

PRESENT: G. Anil Kiran Kumar, B.A.B.L., (Hons)

Judicial First Class Magistrate, Mulugu

CALENDAR CASE NO. 198 OF 2006

Between:

The State of Telangana

Sub-Inspector of Police, L.B. Nagar.

... Complainant

AND

Rajiv, S/o. Mallayya,

Age: 25 years, R/o: Madhapur, Cyberabad

... Accused

:: JUDGEMENT ::

The Brief Facts of the Case:

1. On 11/11/2001 at about 10:30 hours at L.B. Nagar Junction, the Accused Rajiv (Driver) drove in a negligent manner without noticing the red signal, crossed the Junction, and dashed a person riding a bike. As a result of this act, the bike rider died on the spot. The deceased had a green light signal at that time. Based on the report (Ex.P.1) given by PW1 (Krishna), the police issued an FIR as Cr.No.120/2011 under **S.106 BNS**, completed the investigation, and filed the charge-sheet.

2. Based on the investigation report, this Court took cognizance of the offense under S.106 BNS. After the Accused appeared, the accusation was explained under S.274 BNSS. The accused pleaded not guilty and claimed trial. On behalf of the Prosecution, PWs 1 to 6 were examined. PW1: Krishna (Complainant & Eyewitness), PW2: Raju (Eyewitness & WIPRO Passenger – Hostile), PW3: Ajay Kumar (WIPRO Transport Manager - Documentary Link), PW4: Karthik (Panch for Inquest & Scene of Observation), PW5: Pavan Kumar Soni (Medical Officer - PME), PW6: Srinivas Reddy (Investigating Officer - IO). Ex.P1 to Ex.P.8 are marked.

3. Points for Determination:

1. Did the death of the deceased occur due to WIPRO Vehicle no.AP10T4553? 2. Did the Accused drive that vehicle?
3. Were the actions and omissions of the Accused rash or negligent?
4. If the above points are proven, what punishment is the Accused liable for under S.116 BNS?

Point no.1

4. PW5 (Medical Officer) testified via the PME Report (Ex.P.6) that the death of the deceased occurred due to head injury and internal bleeding. PW4 (Panch) observed the head injury on the dead body during the Inquest (Ex.P.5). In the opinion of the Court, the oral testimonies and documentary evidence (Ex.P.1, Ex.P.7) remain undisputed. The death of the Deceased Ramesh occurred solely due to the road accident.

Point no.2

5. PW1 identified the Accused in Court. However, in cross-examination, he admitted that he was seeing him for the first time in Court after the incident and had no previous acquaintance. It is a serious lapse that the Prosecution failed to conduct a TIP (Test Identification Parade) to strengthen the Identification of the Accused. PW3 (Transport Manager) testified that as per the record, the Accused drove the crime vehicle at that time. Ex.P.3 corroborated this fact. According to the law of evidence, documentary proof acts as corroboration to PW1's weak identification. Although PW2 turned hostile, he admitted knowing the Accused for 5 years. Taking PW3's documentary evidence into consideration, the Court confirms that the Accused indeed drove the crime vehicle.

Point no.3

6. In the present case, although it is alleged that the accused crossed the junction in violation of a red signal—amounting to breach of a positive duty—the

prosecution evidence suffers from serious infirmities. PW6 (IO) admitted that the accident spot, L.B. Nagar Junction, is under CCTV surveillance, yet failed to collect such crucial and tangible evidence, which could have conclusively established the manner of the accident. Further, the IO did not obtain a Motor Vehicle Inspector (MVI) Report, which is essential to determine whether the accident occurred due to mechanical failure or human error. The non-examination of both vehicles by a competent authority creates a serious gap in the prosecution case.

7. Additionally, PW6 admitted that the deceased possessed a driving license, but the same was not produced before the Court. When the defence questioned the competency of the deceased, withholding such material evidence raises an adverse inference. The IO also failed to examine traffic police personnel present at the junction, who could have been crucial independent witnesses.

8. Although PW1's testimony suggests that the accused violated the traffic signal, the Court cannot safely rely solely on oral evidence in the absence of corroborative scientific and documentary proof. Moreover, PW3 described the accused as a competent and careful driver with no prior complaints, which weakens the prosecution's claim of culpable negligence. In the absence of the MVI report and other scientific evidence, the Court is unable to apply objective tests such as the 'last opportunity test' or assess whether the accused failed to exercise reasonable care.

9. The cumulative effect of these lapses—failure to secure CCTV footage, absence of MVI report, non-production of the deceased's driving license, and non-examination of material witnesses—creates a reasonable doubt regarding whether the accused acted in a rash or negligent manner.

10. In view of the above discussion, this Court holds that the prosecution has failed to prove beyond reasonable doubt that the accused acted rashly or negligently so as to cause the death of the deceased. The essential ingredient of culpable negligence under S.106 BNS is not proved beyond doubt. Accordingly, the benefit of doubt must go to the accused.

Point no.4:

11. In the result, the Prosecution failed to prove the offense of S.115BNS charged against the Accused beyond a reasonable doubt. The Accused is found not found guilty for an offence under S.115BNS and as such he is acquitted under Section 263 BNSS. His bail bonds are canceled upon expiry of appeal time.

(Dictated to Personal Assistant after his transcription, corrected and pronounced by me in the Open Court on this the 01.12.2009)

JMFC, L.B. NAGAR

APPENDIX OF EVIDENCE

(Witnesses Examined)

Prosecution Evidence:

PW.1: Krishna

PW.2: Raju

PW.3: Ajay Kumar

PW.4: Karthik

PW.5: Pavan Kumar Soni

PW.6: Srinivas Reddy

Exhibits Marked

Ex.P.1: Report of PW-1

Ex.P.2: 161 Cr.PC Statement of PW-2

Ex.P.3: Certificate (Accused as driver)

Ex.P.4: Scene Panchanama

Ex.P.5: Inquest Report

Ex.P.6: PME Report

Ex.P.7: Original FIR

Ex.P.8: Seizure report

DEFENSE EVIDENCE

NIL

JMFC, L.B. NAGAR

6.5 OFFENCE UNDER S.138 NEGOTIABLE INSTRUMENTS ACT

Conceptual Understanding

S.138 N.I. Act is a penal provision applicable when a cheque, issued by a person towards discharge of a Legally enforceable Debt or Liability, is dishonored (rejected) due to Insufficient funds in the account. Punishment: Imprisonment which may extend to two years, or fine which may extend to twice the amount of the cheque, or both.

Mandatory Technical Formalities

1. To prove the offense under S.138, the following conditions must mandatorily be fulfilled:

Item	Rule
Cheque Presentation	The cheque must be presented to the bank within its validity period (currently 3 months from the date on which it is drawn).
Demand Legal notice	Within 30 days of the receipt of information from the bank regarding the return of the cheque as unpaid, a demand for payment must be made to the Drawer (person who issued the cheque) through a written notice.
Failure to Repay the amount	The drawer of the cheque must fail to make payment within 15 days of the receipt of the said notice.
Complaint	A Complaint must be filed in court within one month after the expiry of the 15 days period allowed for payment. (It must be filed in the court of a Metropolitan Magistrate or a Judicial Magistrate of the First Class).

2. Client Interaction: To prove the offense under S.138 N.I. Act, besides the above technical aspects, proving the genuineness of the loan transaction is very important. So, one should inquire about these matters during client interaction.

a) Acquaintance: What is the relationship between the parties? This proves the trust and intention for lending the loan. To avoid the argument that the plaintiff is a money lender, it is better to mention it as a 'Hand Loan'.

b) Reason for lending money: Why was the money given? (e.g., marriage, health). This helps to establish the chain of events as per S.119 BSA.

c) Mode of payment of consideration: How was the money paid - Cash, Bank Transfer, or Pro-note? Proofs like Bank statements must be collected.

d) Witnesses to transaction: Were there any witnesses while lending the loan? Their details must be mentioned in the complaint.

e) Presumption: According to S.118 & S.139 N.I Act, once the issuance of the cheque is proved, the court presumes that it was issued for the discharge of a legally enforceable debt. However, if the Defendant rebuts this presumption, the plaintiff must prove the fundamental transaction. That is why complete details must be mentioned in the complaint.

3. Pre-Trial Precautions by Court: In S.138 cases, police do not file a charge sheet. The complainant files the complaint directly (S.142 N.I Act). As per S.223 BNSS, the Magistrate first records the statement of the complainant on oath (or accepts an affidavit). If the inquiry reveals insufficient grounds, the Magistrate can directly dismiss the complaint. As per BNSS, Accused has right to be heard before the complaint in by the court. If sufficient grounds are found, the Magistrate takes cognizance and issues summons to the accused. After the accused appears, the court gives him copies of documents, examines him under S.261 BNSS explaining the offense, and asks if he pleads guilty.

261 BNSS: When the Accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him. The Accused is asked if he pleads guilty or has any defense. In a Summons Case, there is no need to frame a formal charge. If the Accused pleads guilty, the Magistrate records his plea and may, in his discretion, convict him. If the offence is punishable only with fine, a pleader authorized by the accused can plead guilty on his behalf.

4. Trial: In S.138 NI Act case, the Summons Case Trial Procedure explained in S.261 to S.269 BNSS must be followed. If the Accused is not convicted, the Court must hear the complainant and take all evidence presented by him. Similarly, hear the accused and take all evidence produced in his defense.

According to S.145 (1) N.I Act, evidence of the complainant is allowed to be given by affidavit. To expedite cases, evidence of the accused and witnesses can also be recorded through affidavit. Although S.143 NI Act states that S.138 cases should be tried in a summary way, the Apex Court has opined that they should be tried as regular summons cases. If the Magistrate believes that a sentence of imprisonment exceeding one year may have to be passed, after hearing the parties, he can issue an order to try the case as a regular summons case.

Since the complainant initiated the Case, the burden to prove the case lies on him. The Complainant is first examined as a witness himself (PW1). Later, based on the points raised by the defense in the complainant's cross-examination, other witnesses necessary to verify the facts in the complaint are examined (PW2, etc.). Complainant witnesses are marked with serial numbers like PW1, PW2, and documents as Exhibits like Ex.P1, Ex.P2. Material objects are marked as MO1, MO2, etc.

EVIDENCE

S.138 NI Act Case:

PW1 Ram's Statement

1. PW1: Ram (Complainant) Examination-in-Chief:

1. What is your name?

Ans: Ram.

2. Where do you reside?

Ans: I am a resident of Aziz Nagar village.

3. Why did you file this case?

Ans: The Accused received an amount of One Lakh from me but refused to repay that amount.

4. How did you give this one lakh rupees?

Ans: At that time, the accused issued a Blank signed cheque in my favor.

5. Where did you give this money to the accused?

Ans: I gave this money to the accused at SBH Bank Aziz Nagar on 01/10/2011 at around 11:00 AM.

6. Why did you give this money?

Ans: The accused requested that he urgently needed money on the occasion of his sister's marriage. This marriage was scheduled on 20/10/2011.

7. How do you know the accused?

Ans: He is my childhood friend and we belong to the same village.

8. Who was there at the time of lending money?

Ans: Our village Sarpanch Rajendra and Bank Security guard Gopal were there.

9. What did you do with the Cheque given in your favor?

Ans: I presented that Cheque in my bank. But it was dishonored due to insufficient funds. The Bank issued a memo regarding that.

10. What did you do after that?

Ans: I issued a legal notice asking to repay the amount in the cheque. He did not give any reply to my legal notice. As the accused failed to pay the money even twenty days after receiving the notice, I filed this complaint.

11. Did you file any documents in support of this case?

Ans: Yes, I filed the following documents: Ex.A1 is the Cheque issued by the accused. Ex.A2 is the legal notice. Ex.A3 is the acknowledgment receipt. Ex.A4 is the wedding card of the accused's sister. Ex.A5 is my SBH bank statement.

Cross-Examination:

1. I suggest that the Accused is an advocate?

Ans: Yes, he is an advocate.

2. I suggest that he has earned a good amount of money?

Ans: Yes, he earned recently.

3. I suggest that you are an Income tax assessee?

Ans: Yes, I am an income tax assessee.

4. Did you show in your income tax statement that you lent money to the accused?

Ans: No, I did not show.

5. I suggest that since you did not give him any amount, you did not show it in your records?

Ans: No, I gave him the amount.

6. I suggest that you have a good acquaintance with the accused's signature?

Ans: Yes.

7. I suggest that since you have proper knowledge about the Accused's signature, you forged his signature and filed this false case?

Ans: No, that is a lie.

8. I suggest that the Accused and Rajendra are political rivals?

Ans: Yes.

9. I suggest that you did not file any supporting documents?

Ans: Yes, I did not file.

10. I suggest that the accused did not receive the notice issued by you?

Ans: No, he received it. I also filed the acknowledgment receipt.

11. I suggest that you managed the postal officials with the help of Rajendra's political clout and obtained Ex.A3?

Ans: No, that is a lie.

12. I suggest that according to your case, this hand loan was given to the accused about five years ago?

Ans: Yes, I gave the loan five years ago.

13. I suggest that the case filed by you is not legally maintainable?

Ans: No, it is legally maintainable.

14. I suggest that the Accused does not need to pay you any money, but at the behest of Rajendra, you forged the defendant's sign and filed this false case?

Ans: No, that is a lie.

**IN THE COURT OF THE JUDICIAL MAGISTRATE,
CHEVELLA**

Present: G. Anil Kiran Kumar, B.A., B.L(Hons)

C.C. NO. 23 OF 2015

Between:

Ram

..... Complainant

And

Krishna

..... Accused

:: JUDGEMENT ::

This Complaint is filed for an offence punishable under S.138 of the Negotiable Instruments Act, 1881 (NI Act).

The facts of the case:

1. The Complainant and Accused are childhood friends. On 20.10.2011, the Accused requested a hand loan of Rs. 1,00,000/- (Rupees One Lakh) from the Complainant for his sister's marriage. The Complainant lent the said amount. At that time, the Accused gave a signed blank Cheque to the Complainant. As the Accused failed to pay the money for over three years, the Complainant filled the date (24/11/2015) and amount in the Cheque and presented it in his bank. The Cheque was dishonoured due to insufficient funds. Even after issuing a Legal notice (Ex.P2) and its receipt by the Accused (Ex.P3), the Accused failed to pay the money. Consequently, the Complainant filed this complaint on 30/12/2015.

2. The Court received the complaint, determined that there was a prima facie case, and issued summons to the Accused. After appearing, the Accused was examined under S.274 BNSS, but he did not admit guilt. The Complainant examined himself as PW1 and documents Exs.P1 to Exs.P5 were marked. After the Prosecution evidence, the Accused was examined under S.351 BNSS, but he denied the offence and stated that there was no defense evidence.

Points for Determination:

1. Whether Complaint was filed as per law?
2. Did the Accused executed the Ex.P1 Cheque?
3. Was the Cheque issued to discharge a legally enforceable debt?
4. If yes, what punishment is the Accused liable for?

Point no.1:

4. To initiate prosecution under Section 138 of the Negotiable Instruments Act, the statutory requirements must be fulfilled. In the present case, the cheque (Ex.P1 dated 24/11/2015) was presented within its validity period and was dishonoured on the same day due to “insufficient funds,” as evidenced by the bank memo. The Complainant issued a legal notice on 26/11/2015 within the prescribed 30 days. Despite receipt of the notice, the Accused failed to make payment within 15 days, giving rise to the cause of action. The complaint was filed on 30/12/2015 within the limitation period. These facts are not disputed by the Accused, and the material on record clearly shows due compliance with all mandatory requirements. No procedural infirmity in initiating the present complaint. This point is decided in favour of the Complainant.

Point no.2:

5. The burden lies on the Complainant to prove that the Accused executed Ex.P1. The term ‘execution’ implies that the person signing the document did so with knowledge of its contents; but, it does not necessarily mean that the execution occurred contemporaneously with the transaction covered by the document.

6. PW1 deposed that Ex.P1 cheque was issued by the Accused towards repayment of the amount borrowed by duly filling and thereafter signing it. Conversely, the Accused contended that PW1 forged his signature by taking advantage of their childhood friendship. While PW1 admitted such acquaintance, he denied the allegation of forgery. It is undisputed that Ex.P1 cheque belongs to the Accused.

However, the Accused failed to explain the circumstances under which PW1 came into possession of his cheque. The Accused further admitted that Ex.P2 cheque was dishonoured due to “insufficient funds” and also acknowledged receipt of the legal notice issued to him. Despite being aware of the serious allegations and consequences, the Accused did not send any reply, thereby remaining silent without justification.

7. The plea of forgery is merely a bald assertion. The burden to prove forgery lies on the Accused, which he has failed to discharge. He neither produced expert evidence, such as a handwriting expert’s opinion, nor examined any independent witness to support his claim. Additionally, he did not enter the witness box to testify. Forgery cannot be established by mere suggestion without supporting evidence. Hence, this plea is devoid of merit and cannot be accepted.

8. As per settled principles of law, testimony given on oath is presumed to be truthful unless its credibility is effectively impeached. In the present case, the Accused did not put any specific questions in cross-examination to challenge PW1’s credibility, the execution of Ex.P1, or the sequence of the transaction. Further, the Accused chose not to step into the witness box. In such circumstances, an adverse inference may be drawn under Section 119(g) of the Bharatiya Sakshya Adhiniyam, to the effect that had he deposed, his testimony would not have supported his defence.

9. Upon a comprehensive consideration of the evidence—namely, Ex.P1 cheque, the credible oral testimony of PW1, the admissions of the Accused, his failure to respond to the legal notice, procedural lapses, and absence of supporting evidence—the Court concludes that the Accused himself executed Ex.P1 cheque. Accordingly, this point is decided in favour of the Complainant and against the Accused.

Point no.3:

10. Since Points 1 & 2 are decided in favor of the Complainant, the presumption under S.139 and S.118 N.I Act that the Cheque was issued to discharge a legally enforceable debt stands in favor of the Complainant. The responsibility to rebut this burden lies on the Accused.

11. According to the Accused's cross-examination and arguments, the hand loan was given on 01/10/2011. By the date the Cheque was presented (24/11/2015), this debt had exceeded three years. Hence, it is a time barred debt. To attract criminal liability under Section 138 of the Negotiable Instruments Act, the cheque must be issued for a legally enforceable debt or liability. The High Court of Andhra Pradesh in *Girdhari Lal Rathie v. P.T.V. Ramanujachari* held that although a promise to pay a time-barred debt may be valid, Section 138 applies only when the cheque is issued for a legally enforceable debt. This principle was also affirmed by the Supreme Court of India in *Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd.*

12. In the result, the Accused is found not guilty for an offence under S.138 N.I Act. He is acquitted under Section 278(1) BNSS.

(Typed directly, corrected and pronounced by me in the Open Court on 12/11/10)

JMFC, Chevella.

Appendix of evidence

For Complainant PW1: Ram

For Accused NIL

Exhibits Marked

For Complainant

ExP1: Cheque issued by the accused.

ExP2: Legal notice.

ExP3: Acknowledgment receipt.

ExP4: Accused Sister wedding card.

ExP5: My SBH bank statement.

For Accused NIL

JMFC, Chevella.

6.6 OFFENCE UNDER S.9(1) R/W S.51(1) WILD LIFE (PROTECTION) ACT, 1972

CONCEPTUAL UNDERSTANDING

1. S.9. Prohibition of Hunting: No person shall hunt any wild animal specified in Schedules I, II, III, and IV of the Act (except as provided under S.11 and S.12).

S.2(16) Definition of Hunting: ‘Hunting’ includes:

(a) capturing, killing, poisoning, snaring, and trapping any wild animal and every attempt to do so.

(b) injuring or destroying or taking any part of the body of any such animal (or, in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles or disturbing the eggs or nests of such birds or reptiles).

2. S.51. Penalties: Any person who contravenes any provision of this Act shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to ₹25,000/- or with both. Schedule I or Part II of Schedule II Animals: Where the offence relates to any animal specified in Schedule I or Part II of Schedule II, the imprisonment shall not be less than one year but may extend to six years and also with fine which shall not be less than ₹5,000/-.

3. Reporting of Offence:S.55: Police cannot directly investigate and file a charge sheet for offences under this Act. The court takes cognizance only upon a Complaint. S.55: Cognizance of offences: No court shall take cognizance of any offence against this Act except on the complaint of:

a) The Director of Wildlife Preservation or any other officer authorized in this behalf by the Central Government or

b) The Chief Wildlife Warden or any other officer authorized in this behalf by the State Government or

c) Any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Central Government or the State Government or the officer authorized as aforesaid. A Police Report (FIR) does not stand in these cases. Only a complaint filed by an officer mentioned in S.55 forms the primary basis for trial.

4. Investigation: In these cases, investigation is conducted by an authorized Forest Officer instead of a police officer. The investigation focuses on the following aspects:

a) Scene of Offence Investigation

Seizure of Materials: The Forest Officer must visit the scene of the offence, seize prohibited wildlife materials (meat, bones, skin, etc.), and prepare a Search & Seizure Memo.

Samples: Samples must be collected for expert examination (e.g., to determine the species of the animal). Perishable items like meat should be destroyed in a proper manner as per S.50(6).

Unnatural Death: Investigation must be conducted on how, where, when, and by whom the animal was killed. A post-mortem must mandatorily be conducted by a Veterinary Surgeon.

Fire Arms: If guns were used, bullets must be collected and sent for examination by a ballistic expert.

b) Examination of Witnesses:

Official Record (S.50(8)): Any officer not below the rank of an Assistant Conservator of Forests has the power to record statements of witnesses. According to S.50(9), a statement recorded in the presence of the accused is admissible as evidence in any subsequent trial.

c) Interrogation of Accused:

Extra-Judicial Confession: A statement recorded by the accused before a Forest Officer is considered an extra-judicial confession and is admissible in evidence.

Backward/Forward Linkages: To prove the allegations and discover the reasons for the crime, documentary and forensic evidence such as the accused's bank accounts, travel tickets, and digital evidence (mobile phones, laptops) must be collected.

5. Mode and Manner of Filing Complaint Instead of filing a charge sheet, only an officer authorized under **S.55** must file a Complaint. The complaint must clearly state details such as the animal's scientific name, the schedule under which it is listed, the punishment amount, whether the accused is a repeat offender, etc. Important documents like the officer's authorization papers, scene of offence sketch/panchnama, post-mortem report, and forensic reports must mandatorily be attached to the complaint.

6. Pre-Trial Precautions by Court: Cognizance: According to S.223 BNSS, this complaint is treated as a complaint filed by a public servant acting or purporting to act in the discharge of his official duties. Hence, Magistrate can take cognizance without recording the oath statement of the complainant. It must provide copies of documents to the accused free of cost (S.230 BNSS). Since the present warrant case is instituted upon a complaint and not on a police report, the procedure in S.268 to S.270 BNSS shall be followed.

Pre-Charge Evidence: According to S.267(1) BNSS, the Magistrate must first proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution (calling witnesses and giving opportunity for cross-examination).

Discharge Opportunity: After recording evidence, as per S.268(1) BNSS, if the court considers that no case is made out, the accused shall be discharged.

8. Prosecution Evidence and Marking

First Opportunity: Prosecution evidence must be recorded during the pre-charge evidence stage mentioned above.

Marking: Complainant witnesses are marked as **PW1, PW2...** and documents as **Ex.P1, P2....**

Framing of Charge and 2nd opportunity: If discharge does not happen, the charge is framed against the accused under **S.269 BNSS**.

In a warrant trial instituted on a complaint, the complainant is afforded a second opportunity to lead evidence even after the charge is framed, as per the procedure for the recall and cross-examination of prosecution witnesses. Following the closure of the prosecution case, the Statement of the Accused is recorded under Section 351 of the BNSS to enable the accused to personally explain any circumstances appearing in the evidence against them. Subsequently, the defense evidence stage allows the accused to produce witnesses and documents in their favor. Once the evidence is concluded, the case moves to final arguments, followed by the judgment. If the court finds the accused guilty, it proceeds to the sentencing stage. If the offense is proved, punishment is imposed under Section 51 of the Wild Life (Protection) Act, 1972. If the offense relates to animals specified in Schedule I or part of Schedule II, the statute mandates a rigorous punishment, often involving a minimum term of imprisonment and a substantial fine. Given the grave nature of environmental and ecological crimes, the sentencing policy is firmly rooted in the Deterrent principle, aiming to discourage potential offenders and protect endangered species through the imposition of exemplary penalties.

PROSECUTION EVIDENCE

PW1: Jabbar (Forest Beat Officer)

Examination-in-Chief:

1. What is your Name? Ans: Jabbar.

2. What are you doing?

Ans: I have been working as a Forest Beat Officer in RANTHAMBHORE wild life sanctuary from March 2009 till date.

3. Why have you come to the court?

Ans: On 10.10.2012 at around 11:00 AM, while I was performing my beat duties, I found a tiger dead body. Upon seeing the dead body, I found that it died due to a head injury caused by a bullet. Therefore, according to law, I issued a preliminary investigation report under S.9 (1) r/w S.51(1) of the WPA and took up investigation. Ex.P1 is the preliminary offence report issued by me vide POR no.11/2010. I also informed this matter to my higher authorities.

4. What was the response of your higher authorities?

Ans: They rushed to the scene and photographed the scene. I conducted the scene of offence and inquest panchnama. The signature shown to me on the reports is mine. MO1 is the photograph of the deceased animal. After that, we took the deceased animal to the nearby veterinary hospital and requested the Doctor to conduct a post-mortem.

5. What was the Doctor's response?

Ans: Dr. Pawan Kumar informed us that the tiger's death occurred solely due to the injury caused by a bullet on the head part. He removed that bullet from the tiger's body.

6. What happened to the tiger corpse?

Ans: We took court permission and cremated the deceased dead body. We filed relevant documents as proof for that.

7. Did you make any inquiry about the owner of the bullet?

Ans: Yes, upon our inquiry about the bullet, we came to know that Rehman Khan is the possessor of that bullet.

8. What was the follow-up investigation after that?

Ans: Since the accused is a popular personality, we reported this matter to the Law-and-order police Ranthambhore. The report shown to me is the one given by me and it bears my signature.

9. Did the police examine you? Ans: Yes, the police examined me.

Cross-Examination:

1. I suggest that the tiger death was widely reported in newspapers and Television channels?

Ans: Yes, it is true.

2. I suggest that whenever an unnatural death of a tiger occurs, your higher officials conduct an inquiry and take action against responsible officers?

Ans: Yes, it is true.

3. I suggest that you conducted the investigation and gave the report only on superior instructions? Ans: Yes, it is true.

4. I suggest that there is a sudden rise in visitors to your wild life sanctuary in recent times? Ans: Yes, it is true.

5. I suggest that VIPs do not have any special access in your wild life sanctuary? Ans: Yes, it is true.

6. I suggest that there is a distance of approximately thirty meters between the tiger and the visitor, separated by a barbed iron fencing of six feet height?

Ans: Yes, it is true.

7. I suggest that according to your case, the date of incident is a Sunday?

Ans: Yes, it is true.

8. I suggest that your forest is under C.C camera surveillance?

Ans: Yes, it is true.

9. I suggest that you did not inquire whether the Incident was covered in the C.C camera or not? Ans: Yes, it is true.

10. I suggest that you do not allow any person carrying dangerous weapons or licensed guns? Ans: Yes, it is true.

11. I suggest that there are no eye witnesses to the Incident?

Ans: Yes, it is true.

12. I suggest that you failed to secure any proof to show that Rehman came to your forest on the Alleged date of incident? Ans: Yes, it is true.

13. I suggest that the Accused has no relation to this tiger death and you conducted a false investigation and gave a false report to escape from your responsibility?

Ans: No, that is false.

PW2: Pawan Kumar Soni (Medical Officer)

Examination-in-Chief:

1. What is your Name?

Ans: Pawan Kumar Soni.

2. What are you doing?

Ans: I have been working as a medical officer in RANTHAMBHORE wild life sanctuary for the past five years.

3. What do you know about this case?

Ans: On 11/10/2010 at around 03:00 PM, PW1 requested me to conduct a post-mortem on the deceased tiger's dead body.

4. What did you do?

Ans: I conducted the Post-mortem and gave a report stating that the death of the deceased tiger occurred solely due to the head injury on the head part caused by a bullet. Accordingly, I issued a report and the signature shown to me on the report is mine. This can be marked as Ex.P3.

5. Did you do anything else in this case?

Ans: I removed the bullet from the tiger dead body and handed over it to PW1. He seized it through a Seizure Panchnama. The bullet shown to me is the one I removed from the tiger's head. This can be marked as MO2.

Cross-Examination:

1. I suggest that generally a tiger does not die due to one specific injury?

Ans: It's true, but the current case is different.

2. Since how long do you know PW1? Ans: For ten years.

3. I suggest that you gave a false report?

Ans: No, I gave a correct report upon PW1's request.

PW3: Amarnath (Gun Shop Owner)

Examination-in-Chief:

1. What is your Name?

Ans: Amarnath.

2. What are you doing?

Ans: I am the sole proprietor of power gun shop. We have a license to sell arms and ammunition.

3. Do you have to follow any rules while selling Arms and ammunition?

Ans: Yes, we must maintain records.

4. Do you have any record regarding the bullet seized from the Deceased tiger?

Ans: Yes, according to our records, we sold this bullet to Rehman Khan. In our records, this is entered vide entry no. 7893/2009. I sold six bullets and one 6MM gun to the accused. I sold MO2 and MO3 to the accused who is in the dock. Ex.P5 is the certificate issued by me.

Cross-Examination:

1. What is the normal range of a 6MM Pistol?

Ans: The range of a 6MM pistol is not more than 25 meters.

2. Is one bullet shot sufficient to kill an animal like a tiger?

Ans: I can't say whether one bullet shot is sufficient to kill an animal like a tiger.

PW4: Rakesh Kumar (Disclosure and Recovery Panch Witness)

Examination-in-Chief:

1. What is your Name? Ans: Rakesh Kumar.

2. Where do you reside?

Ans: I am a resident of Vasanth Vihar Apartments in Mumbai.

3. What are you doing?

Ans: I have a furniture business. I am the president of Vasanth Vihar Apartments Flats Association.

4. Do you know the accused?

Ans: Yes, I know the accused. He has his own flat in the apartment.

5. What do you know about this case?

Ans: On 16/10/2010, the S.I. of Police Ranathambore came to our house and requested me to come along with him. Agreeing to that, I followed them. At that time, the accused (the person in the dock) was in his house, and in our presence, the accused stated that he hunted and killed a tiger in Ranthambhore wild life sanctuary on 10.10.2010 at around 11:30 AM. He informed that he killed that wild life animal with a 6MM pistol. He also informed that it was a licensed weapon.

6. What happened after that?

Ans: After that, the accused opened the almariah door in the room and handed over the weapon. The police seized it. The pistol shown to me (in court) is the one seized from the accused. MO3 is the 6MM pistol. Exp8 is the disclosure and recovery statement. The signature shown to me on the report is mine.

Cross-Examination:

1. I suggest that there were some previous clashes between me and the Accused in the past? Ans: Yes, it is true.

2. I suggest that you are an Animal welfare activist? Ans: Yes, it is true.

3. I suggest that you have good relations with police officials?

Ans: Yes, it is true.

4. I suggest that keeping previous enmity in mind and in collusion with the police, you fraudulently signed on Exp8 with the intention to cause injury to the accused?

Ans: No, that is false.

PW5: Karan (Investigating Officer - IO)

Examination-in-Chief

1. What is your Name?

Ans: Karan.

2. What are you doing?

Ans: I have been working as S.I. of Police in RANTHAMBHORE station for the past two years.

3. What do you know about this case?

Ans: On 11.10.2012 at around 02:00 PM, PW1 presented a report in the form of Ex.P1. I issued an FIR, took up investigation, and examined PW1. At that time itself, I forwarded the Original FIR to the JMFC, RANATHAMBHORE. Ex.P9 is the original FIR. I also recorded PW1's statement in my part-II CD.

4. What did you do in this case?

Ans: Immediately after receiving information and after collection of material given to me by PW1, I visited the scene and verified the investigation, finding it to be true and correct. Knowing that the accused resides in Mumbai, I went to his house along with my team and panches.

5. What happened at the Accused's house?

Ans: At that time, the accused was in his house, and in our presence, the accused stated that he hunted and killed a tiger in Ranthambhore wild life sanctuary on 10.10.2012 at around 11:30 AM. He informed that he killed that wild life animal with a 6MM pistol. He also informed that it was licensed. After that, he took the weapon from the almariah in the room and handed over it. After that, we drafted ExP8. I arrested the accused, produced him before the JMFC, Ranathambhore, and filed the charge-sheet.

Cross-Examination:

1. I suggest that you did not inquire whether there was any enmity between PW6 (Rakesh Kumar) and the accused?

Ans: Yes, it is true.

2. I suggest that you have previous acquaintance with Rakesh Kumar and that he is an animal welfare activist?

Ans: Yes, it is true.

3. I suggest that you did not inquire any independent witness in this case?

Ans: Yes, I did not inquire.

4. I suggest that you took the accused's house into your control while interrogating him at home?

Ans: Yes, we took it into control.

5. I suggest that you searched the house during your interrogation?

Ans: No, we did not search the house at any time.

6. I suggest that the recovery you made from the Accused's possession is fake?

Ans: No, we made a lawful recovery.

7. I suggest that you falsely implicated the accused at the instance of Rakesh Kumar and PW1?

Ans: No, that is false.

**IN THE COURT OF THE JUDICIAL FIRST-CLASS MAGISTRATE: AT:
RANTHAMBHORE**

Date: Thursday, November 12, 2010

PRESENT: G. Anil Kiran Kumar
Judicial First-Class Magistrate, Ranthambhore.
CRIMINAL CASE NO. 101 OF 2010

Between:

The State of Rajasthan
through Forest Range Officer,
Ranthambhore

... Prosecution

AND

Salman Khan,
S/o. Amir Khan, Age: 45 years,
Occ: Business, R/o: H.no.10-20,
Flat no.45, Vasanth Vihar,
Near Ramlila, Mumbai-10

... Accused

:: JUDGEMENT ::

The brief facts of the case:

1. The foundation of this case relates to the hunting (poaching) of a tiger under the Wild Life Protection Act, 1972 (WPA). According to the Prosecution, on 10/10/2010 at around 11:30 AM, the Accused Salman Khan killed a Schedule-I animal (Tiger) with a 6MM pistol in Compartment No.299 of Ranthambhore wildlife sanctuary. This act is punishable under WPA S.9 (1) r/w S.51 (1). PW1 found the tiger's dead body and issued POR no.11/2010 (Ex.P1) under S.9 (1) r/w S.51 (1) WPA. PW1 photographed the scene and conducted the Inquest report (Ex.P2). PW2 conducted the PME, confirmed that death occurred due to a bullet, and removed the bullet (MO2). PW1 reported this matter to the Police, who registered it as Cr.No.100/ 2010, completed the investigation, and filed the charge-sheet.

2. Based on the Police report, this Court took Cognizance under S.9 (1) r/w S.51 (1) of the WPA. After copies of documents were furnished, a Charge was framed against the Accused under S.259 BNSS. The Accused pleaded not guilty and claimed trial.

3. On behalf of the Prosecution, PW1 to PW5 were examined. Exhibits P1 to P9 and Material Objects MO1 to MO3 were marked. The Accused was examined under S.316 BNSS.

4. Points for Determination:

1. Does the Court have the jurisdiction to maintain this case based on a Police report as per the provisions of WPA S.55?
2. Did the offence of Poaching occur under WPA S.9?
3. Is it proved beyond all reasonable doubt that the Accused killed the tiger under WPA S.9?
4. If the above points are proved, what is the punishment liable to be imposed on the Accused?

Point no.1 (Legal Maintainability - Jurisdictional Bar):

5. The Wild Life Protection Act, 1972 is a special law. The procedure for filing a Complaint under S.55 for the enforcement of this Act is prescribed clearly and strictly (mandatory). According to the proviso of Sec.55 WPA, the Magistrate has the power to take Cognizance of an offence under the Act, but it must be based *only* on a complaint given by an authorized officer mentioned in Sec.55 (Director of Wildlife Preservation, Chief Wildlife Warden, etc.). A Police Report cannot be treated as a Complaint. The Hon'ble Apex Court in the Judgment of State of Bihar vs Murad Ali Khan, Farukh Salauddin & others: (1988) 4 SCC 655 reiterated the mandatory nature of S.55 WPA. Taking Cognizance based on a Police report violates legal competence. There is no provision to convert a Charge sheet into a Complaint. In the present case, PW1 issued a POR and reported to the Police. The

Police issued an FIR, conducted the investigation, and filed a charge-sheet. This Court took Cognizance based on this Police report. This process is a clear violation of S.55 WPA. The Court has an inherent lack of jurisdiction to maintain this case based on a Police report. Hence, the case is not maintainable.

Point 2:

6. Although the Court has given a decisive finding on the maintainability aspect, it is a judicial duty to analyze the Prosecution evidence. The tiger's dead body (MO1) was found in Compartment No.299. PW2 confirmed through PME that the cause of death was a head injury caused by a bullet. The MO2 bullet was recovered from the tiger's body. The Prosecution conclusively proved that the tiger's death was unnatural and occurred through a hunting act. The offence of poaching under WPA S.9 has occurred.

Point 3:

7. It is undisputed, through the uncontroverted testimony of PW3, that the accused was in possession of MO2 (bullet) and MO3 (6MM gun). Under Section 109 of the Bharatiya Sakshya Adhiniyam, 2023, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon them. Since the accused was the holder of the weapon, the circumstances surrounding its use or his whereabouts at the time of the alleged poaching are facts uniquely within his knowledge. Consequently, a secondary burden shifts to the accused to offer an explanation that addresses these circumstances.

8. In criminal law, while the prosecution must prove its case beyond reasonable doubt, the accused is only required to discharge his burden under S.109 BSA by the standard of preponderance of probability. In this instance, the accused has successfully raised a probable doubt through discrepancies in the prosecution's own case.

9. The first contradiction relates to physical impossibility. The testimony of PW3 (effective range: 25 meters) and PW1 (distance to enclosure: 30 meters) creates a scientific discrepancy. The act of shooting the tiger from behind the protective fencing appears physically inconsistent with the weapon's capabilities.

10. The second issue concerns tainted recovery. The admitted enmity of PW4 (the Panch witness) and his close ties with the Investigating Officer (PW5) cast a shadow over the 'discovery' of the weapon under S.23(2) BSA.

11. The third aspect is the adverse inference arising from non-production of evidence. The prosecution's failure to produce the available CCTV footage or visitor logs creates a significant gap, allowing the Court to infer that such evidence, if produced, would not have supported the prosecution's claim of the accused's presence at the scene.

12. While S.109 BSA requires the accused to explain facts within his special knowledge, he has met this requirement by demonstrating that the prosecution's narrative is physically and procedurally improbable. By establishing these facts on a preponderance of probability, the accused has rebutted the presumption and created a reasonable doubt. The nexus between the possession of the weapon and the actual act of hunting under S.9 of the Wildlife Protection Act remains unestablished. Hence, the accused is entitled to the benefit of the doubt.

Result

13. In the result, the Court holds that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Accordingly, the accused is held not guilty of the offence under S.9(1) read with S.51(1) of the Wildlife Protection Act, 1972 and is acquitted.

(Typed directly on computer, corrected and pronounced by me in the Open Court on 12/11/10)

JMFC, Ranthambhore

APPENDIX OF EVIDENCE

Witnesses Examined

For Prosecution:

PW1 - Jabbar

PW2 - Pawan

PW3 - Amarnath

PW4 - Rakesh Kumar

PW5 - Karan

For Defence:

NIL

EXHIBITS MARKED

For Prosecution:

ExP1: POR issued by PW1

ExP2: Scene observation and Inquest report

ExP3: Medical report issued by Doctor

ExP4: Bullet Seizure Report

ExP5: Certificate issued by Power gun shop

ExP6: Permission order issued by JMFC Ranthambhore to destruct dead body of a tiger.

ExP7: Report - given to Police

ExP8: Disclosure and recovery report

ExP9: FIR issued by PW7

For Defence:

NIL

Material objects:

MO1: Photos of original Scene

MO2: Bullet seized from PW2.

MO3: 6MM gun

JMFC, RANTHAMBHORE

CHAPTER 7: INTERLOCUTORY APPLICATIONS

7.1 INTRODUCTION

In the judicial process, there is a significant time gap between the commencement of a case and the final judgment. During this interim period, petitions filed to protect the rights of the parties, preserve evidence, or facilitate court proceedings are called 'Interlocutory Applications' (IAs). In Latin, 'Interlocutorius' means 'speaking in between.' This implies that they are used for urgent orders required in the midst of the main trial proceedings. The scope of IAs is determined by various sections and orders of the Code of Civil Procedure (CPC). They are primarily crucial in civil cases involving property disputes or infringement of rights, e.g., Temporary Injunction, attachment before judgment, etc. In criminal cases (under BNSS / CrPC), the purpose of IAs primarily relates to the personal liberty of the accused and Fair Trial, e.g., Bail applications, Dispense with Attendance, Recalling Witnesses.

Significance of interlocutory applications: Interlocutory applications play a crucial role in litigation as they help to protect the disputed property or evidence from being lost or destroyed before the conclusion of the case, ensuring preservation of the subject matter. They also act as a 'safety valve' by preventing immediate harm or injustice to the parties and empower the judge to address and remove technical or procedural difficulties that may arise during the trial, thereby providing procedural flexibility.

In summary, Interlocutory Applications are the lifeline of trial advocacy. Without them, the relief due to the plaintiff might become useless by the time the main case is decided. However, the Supreme Court has warned on several occasions that these should not be used merely to delay the case (Dilatory tactics). As an advocate, having a scientific understanding of IAs is essential to achieve procedural excellence and substantive justice.

7.2 INTERLOCUTORY APPLICATIONS IN CIVIL PROCEEDINGS

During the pendency of a civil case, Interlocutory Applications are filed to obtain interim reliefs. Their main objective is to protect the rights of the parties, preserve the subject matter of the suit, and ensure the effective implementation of the final judgment. Through these applications, the court exercises control to prevent injustice during the trial. Examples: Temporary injunction, stay of proceedings, appointment of receiver, amendment of pleadings, etc.

Temporary Injunction Petition: When the disposal of a Permanent Injunction Suit filed by the Plaintiff is delayed, if the threat of dispossession is imminent, the very object of the Suit frustrates. Delay is common in civil law; hence the law provides interim relief. To address this situation, a remedy is provided under Order XXXIX Rule 1 & 2 r/w 151 of the Code of Civil Procedure (CPC). The primary objective of a Temporary Injunction is to maintain the status quo. This relief is useful to protect the interests of the parties until the Suit is disposed of.

Order 39 Rules 1 and 2 CPC: The Court may grant a temporary injunction under Order 39 Rule 1 to prevent waste, damage, alienation, sale, removal, or disposition of the property in dispute and to protect the plaintiff from dispossession or other injury relating to the property. Under Order 39 Rule 2, the Court may grant an injunction to restrain the defendant from committing a breach of contract or causing any other injury. Thus, Rule 1 mainly protects the property in dispute, whereas Rule 2 restrains breach of contract or other wrongful acts.

Cardinal Principles for Granting Injunction: Before granting or refusing a Temporary Injunction, the Plaintiff must mandatorily prove these three cardinal principles:

1. Prima Facie Case: The Court must feel that there is merit in the Plaintiff's case and a possibility of winning in the trial. Material facts establishing the Plaintiff's right must be disclosed, and in the Court's opinion, legal issues must likely be in favor of the Plaintiff.

2. Irreparable Injury: If the Injunction is not granted, substantial injury will occur to the Plaintiff, which cannot be remedied by damages. Losing possession of Immovable property is a long and uncertain process to regain. Monetary compensation does not compensate for this loss.

3. Balance of Convenience: The court grants an injunction only if the loss caused to the plaintiff by not granting it is greater than the inconvenience caused to the defendant by granting it. When the plaintiff is cultivating in possession and the defendant attempts to interfere as a stranger, maintaining the status quo shows the balance in favor of the plaintiff. Similarly, when the defendant in a suit for specific performance can be restrained not to alienate the property.

Other Factors: Conduct of the Parties, Plaintiff's conduct, Plaintiff's Bonafide's, Material facts should not be suppressed.

S.151 CPC: The Court can use its inherent powers to grant a Temporary Injunction for the ends of justice or to prevent abuse of the process of the court.

Order XXXVIII Rule 5 CPC – Attachment Before Judgment:

The purpose of **Order 38 Rule 5 CPC** is to prevent the defendant from obstructing the execution of the final decree by selling, transferring, or hiding their property with malafide intention while the case is pending. This is a preventive provision given to protect the plaintiff's rights. According to this provision, if the court has prima facie satisfaction—meaning if it believes the defendant is trying to dispose of their property or remove it from the court

jurisdiction before the decree comes—the court orders the defendant. According to that order, the defendant must furnish security for a specific amount or disclose their property details before the court. If the defendant fails to comply with that order, the court can order attachment before judgment. However, the court must use this power carefully and sparingly. Not just because the plaintiff has a fear; the defendant's malafide intention must be clearly visible. Order 38 Rule 5 is an extraordinary remedy. It is not to punish the defendant, but to ensure the decree obtained by the plaintiff does not become a paper decree. Therefore, to invoke this provision, an advocate must place a strong case before the court based on the defendant's conduct, circumstances, and supporting material.

Amendment of Pleadings (Order VI Rule 17 CPC):

Amendment of pleadings refers to modifying or altering the pleadings in the plaint or written statement. Its main objective is to place the real controversy of the case completely and correctly before the court. If any omission, mistake, or change due to subsequent events necessitates a change in pleadings, the court permits amendment. According to Order VI Rule 17 CPC, amendment is generally liberally allowed before the trial begins. If amendment is sought after the trial has commenced, the party must show due diligence, i.e., explain why that matter could not be pleaded earlier. The court rejects amendments made with malafide intention, to delay, or causing prejudice to the opposite party. A new cause of action should not be introduced through amendment, nor should the nature of the case be completely changed. However, amendments are generally allowed in matters like facts clarification, relief correction, amount correction, boundaries, dates, etc. If Amendment is allowed, the opposite party must be given an opportunity for an additional written statement or rebuttal. The Court primarily looks at whether justice is advanced or unnecessary multiplicity of proceedings is reduced.

Order I Rule 10 CPC – Addition / Deletion of Parties: The purpose of Order I Rule 10 CPC is to ensure that proper and necessary parties are present in the case. If effective adjudication is not possible without someone's presence, such a person is a necessary party. If their presence is useful but not mandatory, they are a proper party. According to this Rule, the court can add or delete a party at any stage at its discretion. Even if the plaintiff wrongly impleads a party or fails to include a necessary party, the court invokes Order I Rule 10 to make rectification. If a decree is passed without a necessary party, there is a danger of that decree becoming ineffective or a nullity. That is why an advocate must carefully identify parties at the case filing stage itself. Party addition should not change the cause of action or unnecessarily expand the suit scope. The Court primarily looks at whether the real dispute will be completely decided by the party's presence. Order I Rule 10 CPC is a procedural justice tool used to protect substantive rights.

(Model I.A. Petition)
IN THE COURT OF JR. CIVIL JUDGE, MEDCHAL
I.A.NO. ____ of 2011
In
O.S.NO 71 /2011

Between:

Bharat

...Plaintiff

And

Narasimha

...Defendant

Petition filed under Order XXXIX Rule 1 & 2 R/W 151 CPC

For the reasons stated in the accompanying affidavit, the Hon'ble Court may be pleased to temporarily restrain the respondent/ defendant from interfering with the plaintiff's peaceful possession and enjoyment over the petition schedule property by interim injunction pending disposal of the suit and pass such other order or orders in the interest of justice.

Date:

Place: Medchal

Counsel for the petitioner

Schedule of Property

One-acre land in Survey no.26, Podduru revenue village, Medchal Mandal, Ranga Reddy District and bounded by:

East: Thirty Feet Village Road;

West: Land of Narasimha;

North: Plaintiff's land;

South: One Krishna's land

Date:

Place: Medchal

Counsel for the petitioner

IN THE COURT OF JR. CIVIL JUDGE, MEDCHAL

I.A.NO. ____ of 2011

In

O.S.NO 71 /2011

Between:

Bharat

...Plaintiff

And

Narasimha

...Defendant

Affidavit

1. I, Bharat S/o: Late Raghu, Age: 50, Occ: Agriculture, do hereby solemnly affirm as follows:

2. I am the petitioner and plaintiff in this suit. I know the facts of the case. I am the owner and possessor of the petition schedule property. I purchased it through an unregistered sale deed, acquired possession, and have been peacefully in possession since then. My name is also entered in the revenue records.

3. On 17.10.2011, while I was working on the land with my employees, the respondent (stranger) came with some unsocial elements and tried to dispossess me. They threatened me with dire consequences. Although I reported to the Police Shameerpet, no action was taken against the culprits/respondent.

4. I state that revenue records show my lawful possession. Since the Defendant has no title, the prima facie case is in my favor. If my possession is not protected, there is a fear that I will be dispossessed. This loss cannot be compensated by damages. The irreparable injury caused to the Plaintiff if the Injunction is not granted is far greater than the inconvenience caused to the Defendant. Therefore, the balance of convenience is on my side.

5. I state that due to the high-handed actions of the Respondent, dispossession is imminent. If a Temporary Injunction restraining the defendant from interfering into my property is not granted, the object of the Suit will be frustrated. Hence, it is prayed that the Hon'ble Court grant a temporary injunction until the disposal of the suit.

Date & Place:

Deponent

Sworn and signed before me

Advocate

7.3 INTERLOCUTORY APPLICATIONS IN CRIMINAL PROCEEDINGS

In criminal proceedings, Interlocutory Petitions (IPs) are petitions filed for temporary or interim reliefs while the case is pending. Their main objective is to ensure the smooth conduct of the trial, protect the rights of the accused and complainant, and prevent the abuse of the legal process. According to the Criminal Procedure Code, the court can issue procedural orders through interlocutory petitions. These are used to regulate the inquiry or trial rather than being a final adjudication. However, revision is generally not maintainable against purely interlocutory orders. Through interlocutory petitions, the court maintains a balance—between the liberty of the accused and the integrity of the investigation/trial. An advocate must clearly know the timing, necessity, and legal basis of these petitions. A properly drafted interlocutory petition plays a key role in achieving a fair trial without delaying it.

Commonly filed interlocutory petitions include: bail petitions (regular, anticipatory), remand objections, discharge applications, recall of witness, summoning additional witnesses, alteration of charges, return of property, exemption from personal appearance, etc.

1. Bail Petitions (Regular & Anticipatory): A Bail petition is an important interlocutory petition filed to protect the personal liberty of the accused. Regular bail is filed after the accused is arrested. Anticipatory bail is filed in advance when there is an apprehension of arrest. The Court examines factors such as the nature of the offence, seriousness, punishment severity, evidence strength, possibility of the accused absconding, and witness tampering possibility. Bail is not a punishment; its purpose is to ensure the accused is available before the court during the trial. In the bail petition, the advocate must clearly present mitigating factors such as the accused's background, cooperation, medical grounds, false

implication, etc. If the Court grants bail, it imposes certain conditions, which the accused must mandatorily follow. Bail jurisprudence relies on the balance between liberty and social interest.

2. Remand Objections: When the Police seek remand to keep the accused in custody, the advocate files remand objections on behalf of the accused. The court examines whether the arrest was legal, whether grounds of arrest were explained to the accused, and whether police custody is genuinely necessary. The main objective of remand objections is to discourage mechanical remand. The Advocate raises grounds like illegal arrest, lack of material, unnecessary custody, etc. The Court applies its judicial mind to decide whether police custody or judicial custody is necessary. Through remand objections, the accused's constitutional rights, especially liberty under **Article 21**, are protected. Proper objections can prevent unnecessary detention and ensure fair investigation.

3. Discharge Application: After the Charge sheet is filed, if there is no prima facie case against the accused, a discharge application can be filed. The Court examines whether the offence ingredients are complete based solely on prosecution records. If the allegations are groundless, there is no need to bring the accused to trial. A discharge application is a safeguard protecting the accused from false, vexatious, or frivolous prosecutions. The Advocate must analyze the charge sheet, statements, and documents to highlight legal defects. If Discharge is allowed, the accused is completely released from the trial. This also helps in saving judicial time and preventing the misuse of the criminal process.

4. Recall of Witness: A recall of witness petition can be filed to question a witness whose Examination-in-chief or cross-examination has been completed. The court allows it if clarification is needed, to expose material contradiction, or for the ends of justice. Recall is not an absolute right of a party; it is based on court discretion. If recall is sought to delay, for harassment, or to fill a lacuna, the

court rejects it. The Advocate must clearly justify why recall is necessary. Proper recall brings out the truth and helps in a fair trial. The court primarily considers factors of prejudice, delay, and necessity.

5. Return of Property: A return of property petition can be filed to retrieve property seized by the police during investigation. If property remains in police custody for a long time, it may suffer damage, decay, or misuse. The court can give interim custody to the rightful owner, subject to conditions. The court examines aspects like ownership proof, property nature, and investigation necessity. The Advocate must establish ownership through documents. The return of property petition protects property rights and prevents unnecessary hardship. Conditions can be imposed so that the property remains under court supervision until final disposal.

6. Exemption from Personal Appearance: If it is practically difficult for the accused to personally appear in court for every hearing, exemption from personal appearance can be sought. The court grants exemption on sufficient grounds like illness, old age, distance, employment, women accused, etc. representation of the accused continues through the Advocate's presence. The court can impose conditions with discretion, e.g., compulsory appearance on required dates. Exemption reduces hardship for the accused but should not be used to delay the trial. If there is cooperation from the Accused, the court generally allows exemption.

Model Petitions

SECTION 482 BNSS (ANTICIPATORY BAIL PETITION)

1. The Petitioner is a permanent resident and works as a daily wage labourer.
2. He is a law-abiding citizen and is innocent of the allegations.
3. At the instigation of the villagers, the Petitioner's wife lodged a complaint under Section 85, 118(1) BNSS and Sections 3 & 4 of the Dowry Prohibition Act, which was registered as Crime No. 1/2009. The Petitioner apprehends arrest.
4. The alleged offences are non-bailable and punishable with less than 7 years of imprisonment.
5. This is the first anticipatory bail petition.
6. The Petitioner undertakes to provide full cooperation to the investigation.
7. He is ready to abide by any conditions imposed by the Court.

Prayer: Therefore, in the event of the Petitioner's arrest, it is prayed that the Court be pleased to grant bail on suitable conditions.

Counsel for the Petitioner

SECTION 480 BNSS

(NON-BAILABLE OFFENCE BAIL - REGULAR BAIL)

1. The Petitioner was remanded to judicial custody on .../.../2025, and a case was registered under S.303(2) BNS.
2. He is innocent.
3. The investigation is complete, except for the charge sheet.
4. The Petitioner has a permanent residence.
5. This is the first bail petition.
6. He undertakes to cooperate with the investigation.
7. He is ready to abide by the conditions of the Court.

Prayer: Therefore, it is prayed that the Honorable Court be pleased to grant bail on suitable conditions.

Counsel for the Petitioner

SECTION 262 BNSS
(DISCHARGE PETITION)

Based on the case records, the offence is not established against the accused.

1. The allegations are of a civil nature.
2. Other grounds will be urged/explained during the hearing.

Prayer: It is prayed that the Court be pleased to discharge the accused in the above C.C and pass appropriate orders.

Counsel for the Accused

SECTION 355 BNSS
(EXEMPTION FROM PERSONAL APPEARANCE)

1. The case is posted to today for framing of charges.
2. The accused could not appear due to unavoidable circumstances.
3. The absence is non-intentional.

Prayer: Therefore, it is prayed to dispense with the personal attendance of the accused and permit the proceedings to continue through his counsel/advocate.

Counsel for the Accused/Petitioner

SECTION 74(2)
BNSS (RECALL OF NON-BAILABLE WARRANT)

1. The case was posted to .../.../2025 and .../.../2025 for framing of charges.
2. A Non-Bailable Warrant was issued.
3. He could not appear due to unavoidable illness; it was not deliberate.
4. If the WARRANT is not recalled, the petitioner will suffer loss.
5. Recalling the WARRANT will not cause prejudice to the prosecution. The Petitioner undertakes regular appearance.

Prayer: Therefore, it is prayed that the Court be pleased to recall the WARRANT.

Counsel for the Petitioner/Accused

CHAPTER 8: ARTIFICIAL INTELLIGENCE

Artificial Intelligence (AI) is a significant development in modern technology. It is influencing all professions and playing a key role in the legal profession as well.

For Advocates, AI tools like Fact Opinion, ChatGPT, Perplexity, Gemini, Grok, etc., serve as efficient assistants, even though they are not substitutes for legal reasoning or judicial discretion. Given the vast case law, technical procedures, and need for drafting precision in the Indian legal system, AI acts as a supportive mechanism.

1. Role of AI in Legal Research Traditionally, legal research is a time-consuming process. Searching for Judgments, understanding the ratio decidendi, and correlating statutes with case law is very difficult. AI tools help advocates by explaining legal concepts in simplified language, summarizing landmark judgments, and identifying relevant statutory provisions. However, AI should only be used as a preliminary research tool. Verification through authentic databases like SCC Online, Manupatra, and Indian Kanoon is mandatory.

2. AI in Drafting of Legal Documents Legal drafting is an important part of an advocate's skill. Accuracy is absolutely essential in drafting Plaints, written statements, affidavits, legal notices, etc. Fact Opinion or ChatGPT can create structured drafts, maintain legal language consistency, and reduce drafting time. This is especially useful for junior advocates to learn drafting styles. However, facts verification, updated law application, and draft customization according to local court practice remain the advocate's responsibility.

3. Understanding and Analysis of Judgments: Indian judgments are generally lengthy and filled with citations. AI helps by summarizing judgments, extracting the ratio decidendi, and explaining the difference between findings and the decree. This is useful for senior advocates in argument preparation and for juniors in briefing.

4. AI in Case Strategy and Issue Framing: Issue framing and strategy play a key role in Case success. Regarding the Theoretical Aspect, AI supports the advocate in identifying legal issues, structuring arguments, and pointing out weaknesses in opponent pleadings. However, the final strategy formulation must be done by the advocate personally.

5. AI as a Tool for Client Communication. It is difficult for Clients to understand legal terminology and procedures. AI helps advocates explain the law in layman terms and create client-friendly summaries. This increases client confidence and professional credibility.

6. Assistance in Procedural Law (CPC & CrPC): Procedural laws are crucial in Indian courts. AI explains procedural provisions, identifies correct applications, and clarifies appeal limitation periods. This is extremely useful in trial court practice.

7. AI and Advocate Productivity: Efficiency is essential in an Advocate's daily professional work. AI tools help save time by creating timelines, checklists, and summaries, allowing advocates to focus on court work and legal strategy.

8. Ethical and Professional Responsibilities: Ethical boundaries are most important in the use of AI. Advocates should not place blind reliance on AI. Citing unverified case law or sharing confidential data amounts to professional misconduct. AI should be treated like a junior assistant, not a decision-maker.

9. Limitations of Artificial Intelligence AI has certain inherent limitations. AI may give generic answers, miss recent judgments, lack knowledge of local court practices, and cannot assess evidence credibility. Therefore, human legal expertise is irreplaceable.

10. Future of AI in Legal Profession The role of AI in the legal profession will grow further in the future. AI will not replace advocates; but advocates who use AI responsibly will be ahead of those who do not. Efficiency and adaptability will define future legal practice.

Conclusion: Artificial Intelligence, especially tools like Fact Opinion, ChatGPT, Perplexity, Gemini, and Grok, have emerged as powerful legal assistants today. They are immensely helpful in enhancing legal research, improving drafting quality, and simplifying complex law concepts. However, the final responsibility, professional ethics, and judicial judgment will always belong to the advocate. AI assists an advocate's mind, but it will never replace their legal wisdom, experience, and discretion.

CHAPTER 9: MISCELLANEOUS CIVIL LAW

1. Why must the full details of the plaintiff and defendant be given in the Plaintiff or Written Statement? Which rule makes this mandatory?

Ans: For the legal process to proceed properly in court, a full description of both the Plaintiffs and Defendants is mandatory. These details include name, age, occupation, and residential address. Providing these full details enables the proper issuance of summons, determination of Jurisdiction, and Execution of Judgment. **Order VII R.1 CPC** mandates that these details must be included in the plaint.

2. What is Cause of Action? Is it important for the case?

Ans: Cause of action refers to the facts constituting the violation of right of the plaintiff. These facts lead to approaching the court. If the cause of action is not clearly stated in the plaint, there is a possibility to Reject the plaint (Order VII Rule 1(e) CPC).

3. What is the meaning of the term Material Facts?

Ans: As per Order VI Rule 2 of the CPC, the pleadings shall state material facts are the important facts required to be proved to sustain the plaintiff's claim or the defendant's defence. If even one of these facts is missing, the case fails. Pleadings should contain only these material facts, not Evidence or Law.

4. What is 'The Case of the Plaintiff' and 'Case of the Defendant'?

Ans: Order VII R.1 CPC. The Plaintiff's case means the Legal Claim formed based on the Material Facts stated by the plaintiff in the Plaint. This claim encompasses the plaintiff's Right, the Violation of that right, and the Relief Claimed due to it. This is the Primary Narrative the plaintiff must prove before the court.

5. What is the difference between Averment, Evidence, and Argument?

Ans: Averment/Allegation: This is an argument or **Material Fact** stated in the plaint or written statement. It is merely stated, not yet proven.

Evidence: This is proof submitted before the court on Oath (orally or in documentary form). It is used to prove the averment. Evidence should not be stated in Pleadings.

Argument: This is the final contention made by the advocate using Facts, Evidence, and Law to persuade the judge to their side.

6. What is Verification? What is its importance? Which law makes it mandatory?

Ans: Order VI Rule 15 of the CPC. Verification means the plaintiff or defendant personally signing while affirming that the facts stated in the plaint or written statement are true and correct. Through this verification, the bonafide and credibility of the information in the document are established. It also helps prevent false averments. **Order VI R.15 CPC** makes this verification mandatory.

7. What is Prayer in plaint? Is it related to court fee/suit valuation?

Ans: Prayer means the final relief (e.g., compensation, injunction, divorce) that the plaintiff seeks from the court after proving their claim. The Suit Valuation and Court Fee are determined based on the Nature of Relief and its valuation.

8. What is Jurisdiction? How is it discussed in the plaint?

Ans: Jurisdiction is the legal authority of a court to hear and decide a specific case. It is of three types: Subject Matter, Territorial, and Pecuniary. According to Order VII Rule 1(f) CPC, the Facts showing jurisdiction (how the court has territorial and pecuniary jurisdiction to hear the case) must be stated in the plaint.

9. What are the reasons for Rejection of Complaint?

Ans: Order VII Rule 11 of the CPC. The following are the reasons for the court to reject a complaint under O.VII R.11 CPC:

- a) Lack of Cause of Action in the complaint.
- b) When the Suit Valuation is wrong.
- c) When sufficient court fee is not paid as per the suit valuation.
- d) When the suit is Barred by Law.
- e) When sufficient Complaint Copies are not submitted to the court.

10. Why is the description of Immovable Property given in the Complaint?

Ans: Order VII Rule 3 of the CPC. After completing all other Material Facts (e.g., title, possession, violation) regarding the property in the complaint, the description of the property is given at the end in the form of a Schedule of Property for its accurate identity. This description includes full details like boundaries, survey number, etc. This leaves no room for ambiguity during the execution of the Judgment.

11. At what stage should documents be filed? Can original documents or photocopies be filed?

Ans: Documents relied upon by the parties must be filed along with the Complaint or Written Statement. The filed documents are entered in the Document Register. This procedure is governed under Order VII Rule 14 (with Complaint) and Order VIII Rule 1A (with Written Statement) of the CPC. For Marking as Evidence in court, generally only originals must be filed. However, photocopies can be submitted if the law permits proving secondary evidence. In the case of Public Documents, Certified Copies are allowed.

12. What is Stamp Duty and Registration?

Ans: **Stamp Duty** is a Tax imposed by the government to give legal validity to a document. Registration is the recording of that document with the government to transfer or record ownership over immovable property. If stamp duty is not paid, that document is inadmissible in evidence. However, that defect can be rectified by paying a penalty. For non-registration of a document there is no such remedy.

13. What are the consequences of filing an Unduly Stamped document? Is there any remedy for it?

Ans: Unduly stamped documents are inadmissible in evidence. The court may impound that document. According to S.35 of the Indian Stamp Act, a document on which stamp duty has not been paid can be admitted in evidence by paying the appropriate stamp duty and penalty (usually ten times the duty). This payment must be made only at the time of tendering in evidence.

14. What are the consequences of filing unregistered documents? Is there any remedy for it?

Ans: As per Section 17 of the Registration Act, documents related to immovable property valued at more than Rs. 100/- must mandatorily be registered. An unregistered document does not confer any title and cannot be used to prove sale transaction. It is not possible to rectify the defect of a document that is not fully registered. However, under Section 49, it can be used only for a collateral purpose (e.g., to prove the nature of possession).

15. What is the importance of Patta Pass Books and Title Deeds? What is their evidentiary value?

Ans: A Title Deed conveys Ownership Rights over the land. A Pass Book reflects all transactions related to the land. These documents relate to ownership rights and are issued by revenue officials as per law. Therefore, they have a Presumption of Correctness under the ROR Act.

16. What are the important columns in Adangal/Pahani? What is their importance and evidentiary value?

Ans: The important Columns are:

- a) Column No. 11 (Name of Pattadar/Owner),
- b) Column No. 13 (Name of Occupant/Cultivator), Column No. 14 (Extent of Cultivation). These details provide information about the Nature of Land, ownership, and possession. Since these documents are entries in public record, they have presumptive value under Section 29 of the BSA. The burden of proof lies on the party disputing their truthfulness.

17. Why is witness testimony taken on Oath? What is its effect?

Ans: Taking witness testimony on Oath is to ensure that the witness speaks only the truth and to prevent them from lying. The court considers only testimony given on oath as Evidence. A witness lying on oath becomes punishable. This increases the Credibility of the evidence.

18. Why is the witness asked 'I know the parties and the property' in Examination-in-Chief?

Ans: To prove that the witness has personal knowledge about the parties and the property. This knowledge increases the credibility of that witness's testimony because it proves he is not a stranger. Under S.7 of the BSA, this becomes a Relevant Fact.

19. Every witness in a case has a specific role; explain that role and its utility to the case.

Ans: In a civil case, every witness is introduced by a party as per their case theory.

Party (Plaintiff or Defendant): Proves the main facts of the case by giving Substantive Evidence. **Attesting Witness:** Verify the Execution of Documents.

Expert: Gives Expert Opinion on technical or scientific matters. **Revenue**

Officer: Verifies facts like Possession or Ownership.

20. What does 'ExA1 marked' mean at the end of Examination-in-Chief?

Ans: 'ExA1 marked' means the first document (Exhibit Plaintiff 1) admitted as evidence by the court among the documents filed on behalf of the Prosecution (Plaintiff). Difference: Ex indicates Documentary Evidence, MO indicates Material Object. Rule: According to Order XIII Rule 4 of the CPC, after Marking a document as evidence, the judge signs it. B1: B1 is the number given to documents filed on behalf of the Defendant (Exhibit Defendant 1).

21. Is the original document required to mark a document as evidence?

Ans: It is mandatory to submit the Original Document before the court to mark documents as evidence. This as per S.57, 58 & 59 of BSA and O.XIII R.4 of CPC. But if the original document is lost or destroyed, secondary evidence (photocopies, certified copies) can be submitted. In case of public document, certified copies can be produced. The documents are marked by either the Court or Court appointed Commissioner. According to Order XIII Rule 4 of the CPC, the Judge signs the marked documents.

22. What is the importance of S.94 & 95 BSA?

Ans: When the terms of a contract or any legal transfer are in writing, proving its terms through oral evidence is a Prohibition. Oral evidence should not be given to modify, explain, or prove contrary to the terms of a written agreement. In civil cases, these sections are crucial to protect the Authenticity of Document Terms.

23. Is denial of an allegation is necessary in Cross-Examination? What happens if not denied?

Ans: Yes, it is necessary to challenge or deny material allegations during cross-examination. If the advocate for the opposite party fails to deny or challenge the material statements made by a witness, the court may treat those statements as admitted or undisputed. Therefore, important facts deposed in examination-in-

chief must be specifically put to the witness during cross-examination. Mere bald denial is also not sufficient; the suggestion made in cross-examination should be supported by relevant circumstances or material to effectively challenge the credibility of the witness.

24. What is the difference between OS No. and OP No.? What is IA?

Ans: OS No. (Original Suit Number): The number given to a civil suit filed through a Complaint in the Common Law procedure.

OP No. (Original Petition Number): The number given to cases filed in the form of a petition instead of a complaint in the Civil Law procedure (e.g., Succession Certificate).

IA (Interlocutory Application): Petition filed for Temporary Relief or other procedures in the middle of a main Suit while it is pending.

EP (Execution Petition): Petition filed to enforce the Judgment or Decree given by the court.

25. What is a Rejoinder? What is the difference between Complaint and Counter Claim?

Ans: Rejoinder: This is a statement filed by the plaintiff in response to the defendant's **Written Statement**.

Complaint: The initial claim filed by the plaintiff against the defendant stating that the defendant violated their right.

Counter Claim: A counter-claim filed by the defendant back against the plaintiff. It is not the defendant's defense, but his own claim. Complaint is filed under Order VII Rule 1 CPC, Counter Claim under Order VIII Rule 6A CPC.

26. What is Form No. 8?

Ans: Form no.8: In some states of India, especially in Andhra Pradesh and Telangana, Form No. 8 must be mandatorily attached when filing a suit document

(Plaint) related to immovable property. This rule is mentioned in the Civil Rules of Practice and Circular Orders of the respective states, not in the Civil Procedure Code, 1908. The main purpose of Form No. 8 is to provide details necessary for the valuation of immovable property. It contains details like the area where the property is located, survey number, extent, market value, court fee value, annual rental value, etc. If this form is not submitted, the plaint will not be officially registered even if accepted.

27. What is Form No.2?

Ans: Form no.2 could be a specific standard form in the Civil Rules of Practice. It generally relates to procedures like List of Documents filed or Summons. Contents: It contains the name of the plaintiff or defendant, case details, and the list of filed documents. Generally, the Party (Plaintiff/Defendant) and their Counsel (Advocate) sign on this form.

28. What is the role of Prayer and Court Fee?

Ans: The Prayer in a Written Statement is to ask to dismiss the plaintiff's suit or to file a Counter Claim and seek relief in their favor. Generally, there is no court fee for filing a Written Statement. However, if the defendant claims a Counter Claim or Set-off, court fee must be paid based on the Suit Valuation of that claim.

29. What is the procedure for writing a judgment? What are the stages in it?

Ans: Order XX Rule 5 of the CPC. The following stages must be followed when writing a judgment: a) Determination of Issues. b) Summary of Evidence. c) The court stating its decision for each issue based on law and evidence. d) This is the final part of the judgment, where the judgment regarding Decreeing or Dismissing the suit is announced.

30. What is Execution (EP)? How can a decree be executed?

Ans: Execution means legally enforcing the Judgment or Decree given by the court as per Order 21 CPC. Under Order XXI of the CPC, a decree can be executed in the following ways: Recovery of Possession, Attachment and Sale of Property, Arrest or Detention of the judgment debtor, collecting Mesne Profits or other monetary reliefs.

31. How many columns are there in Adangal/Pahani? What is its use for the plaintiff in this case?

Ans: There can be approximately up to 21 columns in an **Adangal or Pahani**.

Use: It is a village-level revenue record where the names of the Pattedhar (Owner) and Occupant/Possessor (Cultivator) of the property are recorded. In this case: In an Injunction Suit, the Adangal is very important to prove **Possession**. It contains details about cultivation and possession.

32. What documents are relied upon to support the plaintiff's case in a suit for permanent injunction seeking to restrain the defendant from illegally interfering with the plaintiff's peaceful possession?

Ans: In a suit for permanent injunction to restrain the defendant from illegally interfering with the plaintiff's peaceful possession, the plaintiff generally relies on documents that establish possession and the nature of his right over the property. Such documents may include registered or unregistered sale deeds, title deeds, Adangal/Pahani (revenue records showing possession), passbooks, loan certificates, and encumbrance certificates. The relevance of these documents depends on the nature of the suit, but in an injunction suit they are primarily produced to demonstrate the plaintiff's possession, indicate ownership or lawful occupation, and show how the right over the property was created or claimed.

32. Is there a difference in the testimony of different witnesses examined by the plaintiff?

Ans: Yes, there is a difference. The testimony of each witness varies depending on their role and personal knowledge of the facts. The plaintiff must depose about the substantive facts of the case, particularly regarding possession and the alleged interference. A panch or eyewitness should testify only about the events they personally saw or in which they participated. A revenue officer, when examined, generally testifies to verify the authenticity and contents of the relevant public or revenue records.

CRIMINAL LAW

1. What is the inherent purpose of an FIR? What is its use?

Ans: FIR is the first information received by the police regarding the commission of an offence. Its main objective is to set the criminal justice process in motion to commence investigation. The Columns in an FIR and their purpose depend on the Police Manual. These include important details like the complainant's details, time/place of offence, description of offence, etc. The FIR is not Substantive evidence. It can only be used for Corroboration or Contradiction of the person making the statement in court.

2. What is the procedure for giving an information to the police?

Ans: FIR is the first information, the following key details must be clearly included: a) Facts indicating that an offence has occurred. b) Time and Place of the offence. c) Name of the person against whom the offence was committed (Victim). Only essential details should be included; evidence or legal arguments are unnecessary.

3. What is a Charge-sheet? Who files it? What are its contents?

Ans: A charge-sheet is a summary of investigation and the IO's action plan to prove the offence before the court. As per S.193 BNSS, Charge-Sheet is a report prepared by the Investigating Officer (IO) to prove the case before the court after completing the Investigation into an offence. The charge-sheet contains important details like the manner in which the offence was committed, Place and time of offence, Sections under which the accused is charged, Witnesses used to prove the case, documents, seized property and the IO's findings about the basing on the evidence collected. This becomes the basis for the court to take Cognizance and commence Trial. The logic of a charge-sheet is to inform the court of all relevant facts and evidence sources necessary to prove the accused's guilt beyond reasonable doubt within the scope of the law of evidence.

4. What is Form No. 66?

Ans: Form No. 66 is the Case Diary Docket Sheet. It is an internal police document used to record details of property lost and recovered seized by the police during investigation. After the investigation is complete, this form is submitted to inform the court about the details of the seized property and the date and method of its subsequent disposal. This document is not part of the charge sheet but is filed in support of it.

5. Why are signatures necessary on FIR, Inquest, etc.?

Ans: Signatures of Independent Witnesses/Panches on FIR, Inquest, Panchanama, and Recovery statements are to prove that those actions were conducted Bonafide and Legally by the investigating officer. If there are no signatures, there is a possibility for the accused to argue in court that those actions were fabricated. Inquest and seizure Panchanama specify the need for independent witnesses.

6. What is the Method of Description of Charge?

Ans: A Charge is a clear notice of the accusation levelled against the accused. It is framed by the Court in Warrant cases / Sessions Case. It must mandatorily contain these elements: a) Name of the offence. b) Section of law. c) Time and place of offence. d) Person against whom the offence is committed (Victim). e) Nature of accusation.

7. Why are witnesses referred to as LW1 to LW10 in the Charge-sheet?

Ans: LW (List Witness) is the list of witnesses the Investigating Officer is ready to present to give evidence in court. The purpose is to give Notice to the Accused and the Court. Based on this list, the accused can prepare for his Defense. This list includes victims, eye witnesses, doctors, and the Investigating Officer.

8. What do the abbreviations Cr. No., C.C. No., S.C., and P.R.C. stand for?

Ans: Cr.No (Crime No.): The number given when an FIR is registered at a police station - indicates the Investigation stage.

C.C. No. (Calendar Case Number): The number given after the court takes Cognizance on a Charge-sheet or private complaint. It indicates the Trial stage.

S.C (Sessions Case): Cases involving serious offences tried by the Sessions Court.

P.R.C (Preliminary Registered Case): The number of cases committed to the Sessions Court by the Magistrate Court (Committal) (S.232 BNSS).

9. What is meant by PW1 and LW1? What is the difference between them?

Ans: PW1 (Prosecution Witness 1): The witness on behalf of the Prosecution is called by this name when appearing to give Evidence in court. This number is given when the witness is examined on Oath during the Trial stage.

LW1 (List Witness): This is the list of witnesses recorded in charge-sheets.

Difference: LW1 is merely a list number in police records, whereas **PW1** is the legal status given to a witness who comes to give evidence during the court trial. PW1 undergoes Examination-in-chief and Cross-examination.

10. What is the difference in the order of witnesses in Charge-Sheet and Deposition?

Ans: In Charge-Sheet witnesses are referred to as LW1, LW2... merely indicating the list order. In Court, while giving evidence, they are called PW1, PW2... (Prosecution Witness). The difference is that PW is the status given by the court based on the Order of Deposition (order in which they testified). The prosecution is under no Compulsion to call witnesses in the same order as given in the charge-sheet.

11. What is Calendar case? What are Split Up, Alternative Charge, LPC?

Ans: Calendar case: The number given by the court to cases that come for trial (especially cases tried in Magistrate court). It is called **C.C. No.**

Split Up (Case Separation): Temporarily separating the case for those present when some accused in a case do not appear.

Alternative Charge: According to **S.239 BNSS**, charging under alternative sections when there is no clarity on the offence committed by the accused (e.g., S.103(1) BNS or S.105 BNS).

LPC (Long Pending Case): Terminology used to refer to cases pending for a long time.

12. What is the procedure for testifying in court regarding a complaint?

Ans: The complainant must testify in court on Oath. The facts stated by the witness must be Consistent with the allegations in their complaint. The opposition will try to use points in the complaint for Contradiction, which must be faced boldly. The complaint serves as Corroborative Evidence.

13. What is the purpose of S.180 BNSS Statement?

Ans: S.180 BNSS statement is an oral statement recorded from witnesses by the IO (Investigating Officer) during investigation. Its main purpose is only to use it for Contradiction of the testimony given by the witness in court. It has no Substantive Value. The witness should not sign this statement. The logic behind this is to avoid allegations of police pressure on the witness and to allow them to testify freely in court. This statement can be used to challenge the witness's credibility through Material Omission (failing to state an important fact).

14. What is the procedure for testifying in court regarding S.180 BNSS Statement?

Ans: Since S.180 BNSS statement is a statement given to the police, the witness need not specifically testify about it. The Opposite Counsel (in cross-

examination) will use this statement to question if the witness committed Material Omission of important facts or stated contrary to allegations (Contradiction) to try and Impeach Credibility.

15. What is the purpose of Scene Observation/Confession and Recovery?

Ans: Scene Observation: Examining the scene of offence, drawing a rough sketch, and recording the Physical Facts of the offence. As part of investigation, Geographical Details of the location and a rough sketch must be drawn. The location of objects related to the crime and the manner in which evidence was collected must be recorded. This report can be used either for Corroboration or Contradiction.

16. What is Panchanama?

Ans: Panchanama is an official record document used in the Indian legal system, especially in criminal investigation. It is a document used to record the details of a specific action performed by police officers or other investigating officers, such as scene observation, seizure of an object, conducting an inquest, or recovery.

Procedure for writing Panchanama: The time, place, and detailed manner of the action must be clearly written. For example, recording 'where blood traces were found at the scene', 'what items were seized'. Panches (respectable independent local witnesses) must mandatorily sign it. This action is mandatorily conducted in the presence of witnesses. These witnesses verify the action and its details. This document is used to prove to the court that the work done by the investigating officer actually happened and that the process was transparent. It is not Substantive Evidence. It is useful only for Corroboration or Contradiction of evidence in court. In BNSS, provisions related to search are incorporated in S.103 and provisions related to inquest in S.189, continuing this process.

17. What is the purpose of Inquest?

Ans: The main purpose of an Inquest is to determine the causes and circumstances of a person's death. It is a preliminary investigation to know whether the death occurred due to suicide, homicide, accident, or natural causes. It is dealt under S.189 BNSS. It is useful to know the nature of injuries, marks on the body, etc., are recorded in this. The report is useful for corroboration or contradiction. It has no Substantive Value.

18. What is PME?

Ans: PME means Post-Mortem Examination. When death occurs in a crime, it is an examination conducted by a Medical Officer on the dead body to determine the cause, time, and mode and manner of death. The PME report must be proved in court and can be considered as Expert Opinion. PME report has no Substantive Value but can be used for Corroboration and Contradiction. It contains details such as Nature, type of injuries, their time, weapon used, and cause of death or injury must be clearly recorded. It holds the value of expert opinion.

19. Explain about Confession and Recovery?

Ans: A **Confession** made by the accused before the police cannot be proved in court. However, if any material fact (Recovery) related to the crime is discovered based on information given by the accused, only that recovery part can be proved (S.23 (2) BSA). Only the fact that *what* specific information given by the accused led to the discovery of *what* physical fact can be proved in court. This is recorded in the presence of panches. It has only corroborative and contradictory value.

20. What is the purpose of Test Identification Parade (TIP)?

Ans: A process conducted in the presence of a Magistrate to determine whether a witness can correctly identify the accused for the first time when there is no prior acquaintance. It strengthens the identity of the accused and increases the credibility of the witness's arguments in court.

21. What is the procedure for testifying facts recited in Panchanama?

Ans: The witness (Panch) must depose key facts stated in the report and identify his signature. The opposition will challenge whether the witness truly saw those actions or merely signed at the request of the police. The witness should be able to clearly and detailly explain the events that occurred at that time.

22. What is the purpose of Framing Charge?

Ans: To give a clear and precise notice to the accused regarding the accusation levelled against him. Thereby enabling the accused to understand the offence against him and prepare for Defense. Only after framing the charge, if guilt is admitted, punishment can be imposed, or if not admitted, the trial proceeds (i.e., Examination of Witnesses in court).

23. Why is the witness asked 'I know the accused' in Examination-in-Chief?

Ans: Identity of the accused is a key element in criminal trial. If an eye witness has prior acquaintance with the accused, it increases the credibility of the witness's statement.

24. Why is it stated 'I was examined by police' at the end of Examination-in-Chief?

Ans: To prove that the evidence given by the witness in court is consistent with the statement given previously to the police (S.180 BNSS). This statement increases the credibility of the evidence and is useful for Corroboration of the previous statement under S.160 of the BSA.

25. What happens if a witness is not cross-examined?

Ans: If a witness is left without cross-examination, there is a possibility that the court may consider the statements made by that witness in Examination-in-Chief as Admitted by the accused or the opposition. The court understands that the

credibility against those statements has not been challenged on behalf of the accused, which may turn disadvantageous to the accused.

26. Why is permission sought under S.154 BSA in case of a Hostile Witness?

Ans: A witness who testifies against the party who called them (e.g., Prosecution) instead of in their favor. When a witness turns Hostile, the lawyer who called them seeks court permission to cross-examine them as well. Through this, it becomes possible to contradict them by showing their previous statement.

27. What is the difference between ‘It is false to state that...’ and ‘It is not true to suggest that...’ in Cross-examination?

Ans: Both these phrases are legal language used to contradict or challenge a witness's statement. **‘It is false to state that...’:** This is a method used for **Strong Denial**, stating that the witness's statement is completely wrong. **‘It is not true to suggest that...’:** This is a general method used to place a counter-argument to the witness and say ‘I do not agree with this matter’.

28. Is it necessary to give a Denial in Cross-examination?

Ans: Yes, it is mandatory. If important points stated by the witness in Examination-in-Chief are not denied in cross-examination, the court considers those points as Admitted by the accused or opposition. If denial is not given, the opportunity to argue that the witness's statement is not true during final arguments is lost.

29. What is S.315 BNSS? What is its importance?

Ans: S.315 BNSS examination is a crucial process that explains the incriminating circumstances to an accused and gives them the right to offer their explanation. After the Prosecution Evidence is completed, the court itself explains the specific incriminating evidence against the accused in their mother tongue. It is a legal opportunity for the accused to know about the evidence against them and give an

explanation. The accused does not take Oath at this time. Therefore, answers given here are not considered false evidence. The answers given by the accused are not a Substantive basis for imposing punishment. However, it is an important opportunity to inform about their defense and explain their case.

30. Can any documents be filed during S.315 BNSS?

Ans: Yes, can be filed. While explaining the incriminating circumstances to the accused, the court explains the right to submit documents in support of their defense. The accused can submit documents proving his innocence or in support of his defense. S.356 (4) BNSS allows the accused to file documentary evidence in their defense if they wish.

31. How to bring the Accused as a Defense witness?

Ans: A person appearing to give evidence on behalf of the accused is called a defense witness. According to S.358 BNSS, the accused can appear as a witness (Defense Witness) in their own case on their own accord with court permission. However, accused persons generally do not dare to appear as witnesses in criminal cases. The reason is the possibility of incriminating facts or contradictions to their arguments coming out during cross-examination.

32. What is the procedure for writing a judgment?

Ans:S.381 BNSS. Judgment is the conclusion of the judicial decision. It must contain these elements:

- a) Points for Determination.
- b) Summary of Prosecution and Defense evidence.
- c) Explaining the court's decisions for each issue based on law of evidence and Case Laws.
- d) Result Portion: Contains Acquittal or Conviction and details of the punishment (Order on Sentence).

33. Should an advocate have comprehensive understanding of sentencing policy and Probation of Offenders Act?

Ans: Yes, this is extremely essential. For an advocate, having comprehensive understanding of sentencing policy and Probation of Offenders Act, 1958 is extremely essential. Understanding sentencing policy allows for effective protection of the accused's rights in court and influencing court discretion. Knowing alternative sentencing schemes like probation, sentence suspension, or conditional release increases the chances of avoiding imprisonment. Understanding eligibility, conditions, and the role of the probation officer for probation is also key. Arguing sentencing policy in court makes achieving leniency and rehabilitation for the accused possible. Not just protecting accused rights, but social reintegration is also possible through this understanding. Understanding Sentencing policy and Probation of Offenders Act → efficiency in legal strategy, favourable outcomes in court, and an important tool for delivery of comprehensive justice.

34. What is Abatement of Case?

Ans: 'Abatement of Case' means a case ending or stopping according to law. According to Criminal Procedure, liability for a crime is personal liability. Therefore, if the Accused dies, Criminal Appeals filed against that accused generally abate (end) under BNSS Section 435. The same principle is applied to Trials as well, because it is not possible to punish a deceased person. Therefore, if the accused dies, the case ends as S.435 BNSS.
