



DELHI LAW ACADEMY

INDIAN EVIDENCE ACT

PRESUMPTIONS

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PRESUMPTION OF LIFE

Section 107

- When the question is
 - whether a man is alive or dead and
- it is shown
 - that he was **alive within thirty years**
- burden of proving that he is dead
 - is on the person who affirms it

NOTE:

Presumption of Life u/s 107:

- **If a person was alive any time within the last 30 years, he shall be presumed to be alive.**

PRESUMPTION OF DEATH

Section 108

- But when the question is
 - whether a man is alive or dead and
- it is proved
 - that he has not **been heard of for seven years**
 - by those who would naturally have heard of him if he had been alive
- burden of proving that he is **alive**
 - is shifted to the person who affirms it

NOTE

Presumption of Death u/s 108:

- **If a person has not been heard of for seven years by those who would naturally have heard of him, he shall be presumed to be dead.**



PRESUMPTION OF CONTINUANCE OF RELATIONSHIP

Section 109

- When the question is
 - whether (certain) persons are partners, landlord and tenant or principal and agent and
- it has been shown
 - that they have been **acting as such**
- burden of proving
 - that they **do not stand** or have **ceased to stand** to each other in those relationships
- is on the person who affirms it

PRESUMPTION OF OWNERSHIP

Section 110

- When the question is
 - whether any person is **owner** of anything of which he is **shown to be in possession**
- burden of proving that he is **not the owner**
 - is on the person who affirms that he is not the owner

Explanatory Notes by DLA:

Possession raises a presumption of title

Applicability

- For Section 110 to be attracted, *there must be a question as to whether any person is the owner of anything and the ownership claimed must be that of which he is shown to be in possession.*
- *Section 110 is based on the principle that **title follows possession.***



- Possession in and of itself may raise a presumption of title. *But this applies when the facts disclose no title in either of the disputants in which case, as it is said, possession alone decides.*

Non-applicability

- On the other hand, it is also well-settled that the presumption cannot arise when the facts are known.
- The maxim “possession follows title” is applicable in cases where proof of actual possession cannot reasonably be expected, for instance, in case of wastelands, or where nothing is known about possession one way or another.

Effect

- Where the provision applies, the burden of proving that another person who is in possession is not the owner lies on the person who affirms against the ownership of that other person.

Case Study:

THE AYODHYA VERDICT [9 November 2019]

M Siddiq v. Mahant Suresh Das [2019 SC]

Application of law to the facts of the Ayodhya Case

- The crucial test is whether the disputed site represents anything of which the Muslim parties are “**shown to be in possession**”.
- Unless the “shown to be in possession” requirement is fulfilled, the presumption would not arise and there would be no question of placing the burden of establishing that the plaintiffs in Suit 4 are not the owners on the contesting Hindu parties.
- Post the setting up of the wall and railing, it is evident that there were obstructions which arose in the continued worship of the Muslims in the inner courtyard. Though, the claim of the Muslims over the inner courtyard



was not abandoned, yet as the evidence indicates, this was a matter of contestation and dispute.

Condition precedent

- That possession may prima facie raise a presumption of title no one can deny but this presumption can hardly arise when the facts are known. When the facts disclose no title in either party, possession alone decides.

Authority: **Nair Service Society Ltd. V. K C Alexander** [1968 SC]

Object of Section 110

- The object of Section 110 is based on public policy. The object is to prevent persons from committing a breach of peace by taking the law into their own hands however good their title may be over the land in question. This object underlies provisions such as Section 6 Specific Relief Act, Section 145 CrPC and Sections 154 and 158 IPC:

Source: **State of A P v. Star Bone Mill & Fertiliser Co.** [2013 SC]

Relevant provisions of the Specific Relief Act for cross-reference:

Section 6(1):

- If any person is dispossessed of immovable property
 - without his consent, otherwise than in due course of law
- he may by suit **recover possession** thereof
 - notwithstanding any other **title** that may be set up in such suit

Section 6(4)

- this section does not bar any person from suing
 - **to establish his title** to such property and
 - **to recover possession** thereof



CONCLUSIVE PROOF OF LEGITIMACY

Section 112

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

Explanatory Notes by DLA:

Basis of section 112

- This section is based on the maxim *pater est quem nuptiae demonstrant*
- which literally means *he is the father whom the marriage indicates*

Presumption of law

- The law presumes both that a marriage ceremony is valid and that every person is legitimate
- It is a rebuttable presumption of law that a child born during the lawful wedlock is legitimate and that **access** occurred between the parents
- This presumption can only be displaced by a strong preponderance of evidence and not by a mere balance of probabilities

Standard of proof

- The evidence of non-access for the purpose of repelling it must be strong, distinct, satisfactory and conclusive.



- The standard of proof in this regard is similar to the standard of proof of guilt in a criminal case.
- The law is very strict regarding the type of the evidence which can be let in to rebut the presumption of legitimacy of a child.
- Even proof that the mother committed adultery with any number of men will not of itself suffice for proving the illegitimacy of the child.

What is required to dislodge the presumption?

- This section requires the party disputing the paternity to prove non-access in order to dispel the presumption.
- *"Non-access" means **non-existence of opportunities** for sexual intercourse; it does not mean absence of **actual** cohabitation.*

Authority: **Goutam Kundu v. State of West Bengal** [1993 SC]

Guidelines from the Supreme Court for ordering blood test

(1)

- Courts in India cannot order blood test as a matter of course.

(2)

- Wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.

(3)

- There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112.

(4)

- The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.

(5)

- No one can be compelled to give sample of blood for analysis.



THE LAW ON DNA TEST

Question:

- When should a Court order a DNA test to determine the paternity of a child?

Ans:

- When there is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the court to reach the truth, the court must exercise its discretion only after **balancing the interests** of the parties and on due consideration whether for a just decision in the matter, DNA test is eminently needed.
- DNA test in a matter relating to paternity of a child should not be directed by the court as a matter of course or in a routine manner, whenever such a request is made.

Authority: **Bhabani Pd Jena v. Orissa Commission for Women [2010 SC]**

Question:

- Can the findings of a DNA test dispel the presumption raised by section 112 when living together of the husband and wife is established?

Ans:

- No.
- The result of a genuine DNA test is said to be scientifically accurate. But even that is not enough to escape from the conclusiveness of Section 112, e.g. *if a husband and wife were living together during the time of conception but the DNA test revealed that the child was not born to the husband, the conclusiveness in law would remain irrebuttable.*

Authority: **Kamti Devi v. Poshi Ram [2001 SC]**



When the truth is known there is no need or room for any presumption

- Although Section 112 raises a presumption of conclusive proof on satisfaction of the conditions enumerated therein but the same is rebuttable.
- The presumption may afford legitimate means of arriving at an affirmative legal conclusion.
- *While the truth or fact is known there is no need or room for any presumption.* Where there is evidence to the contrary, the presumption is rebuttable and must yield to proof.

Distinction between a legal fiction and a presumption of fact:

- Legal fiction assumes existence of a fact which may not really exist.
- Presumption of a fact depends on satisfaction of certain circumstances. Those circumstances logically would lead to the fact sought to be presumed.
- Section 112 does not create a legal fiction but provides for presumption.

Truth must triumph

- Section 112 was enacted at a time when modern scientific advancements and DNA test were not even in contemplation of the Legislature.
- The result of DNA test is said to be scientifically accurate.
- *The husband's plea that he had no access to the wife when the child was begotten stands proved by the DNA test report.*
- He cannot be compelled to bear the fatherhood of a child, when the scientific reports prove to the contrary.
- When there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former.
- **“Truth must triumph”** is the hallmark of justice.

Authority: **Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik [2014 SC]**