Vol -VII **JUNE, 2012**
Part-VI

IMPORTANT CASE LAWS

Compiled by

Tamil Nadu State Judicial Academy
Chennai – 28

INDEX

TABLE OF CASES WITH CITATION

SUPREME COURT CITATION OF CIVIL CASES

SUPREME COURT CITATION OF CRIMINAL CASES

HIGH COURT CITATION OF CIVIL CASES

HIGH COURT CITATION OF CRIMINAL CASES

SUPREME COURT CITATIONS
CIVIL CASES

2012 – 3- L.W. 1

Bimal Kumar & Anr
Vs
Shakuntala Debi & Ors

Limitation Act (1963), Article 136/'Compromise' decree based on whether Preliminary or final; distinction of compromise decree is a final decree; execution of; bar of limitation, Scope of,

Execution/Compromise decree; bar of limitation when arises,

Practice/Decree; 'Compromise'; 'Preliminary'; 'Final', Limitation, bar as to. Question is whether the decree passed on the basis of compromise had become enforceable or it had the status of a preliminary decree requiring completion of a final decree proceeding to make it executable – Further whether the execution proceeding was hit by limitation.

Held: Parties entered into a compromise and clearly admitted that they were in separate and exclusive possession of the properties and the same had already been allotted to them – No final decree or execution was required to be filed – Compromise application does not contain any clause regarding the future course of action.

'Compromise' essentially means settlement of differences by mutual consent – A reciprocal settlement with a clear mind is regarded as noble – It signifies magnificent and majestic facets of the human mind – A decree came to be passed on a compromise in entirety leaving nothing to be done in the future – Court gave the stamp of approval to the same – Compromise decree was a 'final decree'.

Distinction between preliminary and final decree stated. Latter suit filed by the appellants was for partition and declaring the ex parte compromise decree as null and void – There was no stay of the earlier judgment or any proceedings emanating therefrom.

In the absence of any interdiction from any court, the decree-holder was entitled to execute the decree – Initiation of execution proceedings was barred by limitation – Period of limitation stipulated under Article 136 of the Act could not have been condoned.

(2012) 1 MLJ 808 (SC)

Raghbir Singh Sehrawat
Vs
State of Haryana and Ors

Land Acquisition Act (1 of 1894), Section 4(1), FA and 6 – Land acquisition – Notification not published as per statutory requirement – No opportunity of personal hearing given – Violation of Section 5-A(2) and rules of natural justice – Non-compliance with mandates of statute – Acquisition illegal – Impugned orders, set aside – Appeals allowed.

RATIO DECIDENDI: Section 5-A (2) of the Land Acquisition Act, 1894 makes it mandatory on the Collector to give an objector an opportunity of being heard and any acquisition of land in violation of the said mandate is illegal and liable to be quashed.

(2012) 1 MLJ 824 (SC)

Suba Singh and Anr
Vs
Davinder Kaur and Anr

Fatal Accidents Act (13 of 1855) – Suit for damages – Claim for damages for murder – Claim by widow and minor child – Cause of death by wrongful act of appellants/defendants – Criminal proceedings – Acquittal of 2nd appellant and conviction of 1st appellant under Section 304 Part I of IPC by Apex Court – Maintainability of suit for damages – Scope of – Plea of double jeopardy – Section 357 of Code of Criminal Procedure also recognizes a civil suit at instance of dependants of a person killed against killers – Action for civil damages, not prosecution and decree of damages, not a punishment – Rule of double jeopardy not applicable – Remarriage of widow, not a ground to deny compensation – Remarriage took place after seven years of filing suit – Entitled to award of compensation – Appeal dismissed.

RATIO DECIDENDI: Section 357 of the Code of Criminal Procedure, 1973 recognises a civil suit at the instance of dependants of a person killed against his/her killers and Section 357(1) (c) clearly indicates that any person convicted of causing death of another person may also be liable to face a civil action for damages under the Fatal Accidents Act, 1855 in a suit for damages for the loss resulting to them from such death and rule of double jeopardy will not be applicable.

(2012) 1 MLJ 476 (SC)

Citadel Fine Pharmaceutical
Vs
Ramaniyam Real Estates P. Ltd. and Anr

A. **Tamil Nadu Urban Land (Ceiling and Regulations) Act (24 of 1978), Sections 9 and 6 – Specific Relief Act (47 of 1963), Section 9 – Indian Contract Act (9 of 1872), Section 55 – Time as essence of contract – Suit for specific performance – Agreement of sale – Out of 66 cents of suit property, 19 cents excess urban vacant land – Refusal by income tax authority for clearance of suit property for sale – Refusal to process Form 37-I in view of bar under Section 6 – Agreement to sell excess urban vacant land, null and void as per Section 6 of Tamil Nadu Act – Sale, time bound – Essence of contract, time – Burden of obtaining clearance within stipulated time, on plaintiff/purchaser as per agreement – Non-completion chaser as per agreement - Vendor entitled to terminate contract – Purchaser not entitled to specific performance of contract – Appeal allowed.**

B. **Specific Relief Act (47 of 1963), Section 9 – Suit for specific performance – Sale agreement – Plaintiff/purchaser prays for return of advance amount – Money already returned by defendant/vendor – Suppression of material facts in plaint – Held, plaintiff/purchaser not entitled to discretionary relief of specific performance.**

RATIO DECIDENDI:

I. **A purchaser will not be entitled to specific performance of an agreement of sale when the express terms of the contract and commercial nature of transaction make it clear that the parites intended to treat time as essence of the contract and the purchaser has not discharged his burden within the stipulated time.**

II. **Suppression of a material fact disentitles a party from getting the discretionary remedy of specific performance of a contract.**

****

SUPREME COURT CITATIONS
CRIMINAL CASES

(2012) 4 Supreme Court Cases 379

Jai Prakash Singh
Vs
State of Bihar and Anr

A. **Criminal Procedure Code, 1973 – S. 438 – Anticipatory bail – Grant of – Parameters for – Exercise of judicial discretion in exceptional cases after proper application of mind, and recording of reasons therefor – Necessity of - Murder case – Held, anticipatory bail can be granted only in exceptional cases where court is prima facie of view that applicant was falsely enroped in crime and he is not likely to misuse his liberty – High Court erred in granting anticipatory bail in instant case without recording any reasons therefor and dehors parameters laid down in judicial pronouncements, without considering nature and gravity of offence – FIR, in which respondent-accused were named as assailants in murder case was lodged spontaneously, and thus lent assurance to its veracity – High Court also failed to consider whether custodial interrogation was required – Impugned judgment suffers from non-application of mind and hence, unsustainable – Further held, discretion under S. 438 should be guided by law, duly governed by rule and cannot be arbitrary, fanciful or vague – Court must not yield to spasmodic sentiment of unregulated benevolence – Penal Code, 1860, Ss. 302/34.**

B. **Courts, Tribunals and Judiciary – Judicial Process – Approach/Bases for judicial decision – Individualised, or Personalised Justice or Sympathy – Judicial discretion – Exercise of – Sympathy – Role of, if any – Held, the court may not exercise its discretion in derogation of established principles of law, rather it has to be in strict adherence to them – Discretion has to be guided by law, duly governed by rule and cannot be arbitrary, fanciful or vague – The court must not yield to spasmodic sentiment to unregulated benevolence – Equity.**

C. **Criminal Procedure Code, 1973 – S. 154 - Promptness in filing FIR – Necessity of and inference that may be drawn therefrom – Held, reflected first hand account of occurrence and persons responsible therefor – Object of insisting upon prompt lodging of FIR is to obtain information regarding circumstances in which crime was committed, names of actual culprit, part played by them, as well as names of eyewitnesses – Delayed FIR loses advantage of spontaneity and possibility of coloured version, exaggerated account or concocted story which may be result of consultations/deliberations creeps in – Further held, FIR is a vital and valuable piece of evidence though it may not be substantive evidence – In instant case, FIR was lodged within two hours of occurrence which lends assurance of its veracity – Based thereon, anticipatory bail granted by High Court, revoked – Penal Code, 1860, Ss. 302/34.**

2012 (3) CTC 428

JIK Industries Ltd & Ors
Vs
Amarlal V. Jumani and Anr

Negotiable Instrument Act, 1881 (26 of 1881), Section 147 – Code of Criminal Procedure, 1973 (2 of 1974), Sections 320 & 4(2) – Companies Act, 1956 (1 of 1956), Section 391 – Non-obstante Clause in N.I. Act – Interpretation of – Effect of – Sanction of Scheme under Section 391 of Companies Act – Compounding of offence under N.I. Act – Whether a valid consequence? – Non-obstante clause in N.I. Act does not refer to any particular Section of Code but refers to entire Code – Extent and impact of such clause to be found out on basis of

consideration of intent and purpose of insertion of such clause – Effect of Section 147 of N.I. Act does not obliterate all statutory provisions of Code relating to mode and manner of compounding of an offence – Section 147 of N.I. Act does not obliterate all statutory provisions of Code relating to mode and manner of compounding of an offence – Section 147 of N.I. Act only overrides Section 320(9) of Code in so far as an offence under Section 147 is concerned – Moreover, no special procedure provided under N.I. Act for procedure relating to compounding – Thus, procedure under Section 320 of Code relating to compounding – Thus, procedure under Section 320 of Code relating to compounding shall automatically apply in view of clear mandate of sub-section (2) of Section 4 of Code – Thus, basic procedure of compounding an offence laid down in Section 320 of Code shall apply to compounding of offence under Act – If procedure of Section 320 not made applicable to compounding of offence under Act, compounding of offence under Act will be left totally unguided and uncontrolled and such interpretation would be contrary to Section 4(2) of Code – Held, main principle of compounding, namely, consent of person aggrieved or person injured or Complainant cannot be wished away nor same can be substituted by virtue of Section 147 of Act – Thus, sanction of Scheme under Section 391 of Companies Act would not result to automatic compounding of offence under Section 138 of Negotiable Instruments Act even without consent of Complainant.

Code of Criminal Procedure, 1973 (2 of 1974), Sections 320, 320(4)(a)(b) & 320(9) – Section statutory provision for compounding of an offence – Two categories of offences under IPC which have been made compoundable – Firstly, offence for compounding of which leave of Court is required and secondly, where for compounding leave of Court is not require – However, compounding only possible at instance of person who is either Complainant or who has been injured or is aggrieved – representation of person compounding statutorily provided in all situations.

Companies Act, 1956 (1 of 1956), Section 391 – Code of Criminal Procedure, 1973 (2 of 1974), Section 320 – Compounding of Offence by sanctioning of Scheme – Whether warranted? – Scheme under Section 391 cannot be contrary to law – Compounding of offence is always a controlled statutory provision – Various features in compounding of offence to be satisfied before it can be claimed by offender that offence has been compounded – Thus, compounding of offence cannot be achieved indirectly by sanctioning of a Scheme by Company Court.

Companies Act 1956 (1 of 1956), Section 391 – Negotiable Instruments Act, 1881 (26 of 1881) – Offence under NI Act prior to Scheme – Compounding of - Scheme under Section does not have effect of creating new debt – Scheme simply makes original debt payable in a manner and to extent provided for in Scheme – Offence under Negotiable Instruments Act committed prior to Scheme – Offence, committed prior to Scheme, does not get compounded only as a result of said Scheme – Thus, Scheme under Section 391 of Companies Act does not have effect of compounding offence under Negotiable Instruments Act.

Companies Act, 1956 (1 of 1956), Section 391 – Discretion of Court – Effect of – Wide discretion to Court to approve any set of arrangement between Company and its shareholders – Effect of approval of Scheme of compromise and arrangement binds dissenting minority, Company and also liquidator if Company is under winding up.

Criminal Jurisprudence – Quashing of case and Compounding of Offence – Difference between – Quashing of case different from compounding – In quashing, Court applies it – Compounding is primarily based on consent of injured party – Thus, two cannot be equated.

2012 – 1- L.W. (Crl.) 485

Azija Begum
Vs
State of Maharashtra & Anr

Criminal Procedure Code, Section 173(8), Constitution of India, Articles 227, 14/Access to justice.

Appellant (wife of deceased) lodged an FIR regarding her husband's death – Not being satisfied with investigation, she filed a petition before the Magistrate under Section 173(8),

Appellant's contention is once the Magistrate was prima facie satisfied that the matter was not properly investigated and required further investigation, the investigation should have been handed over to some other investigating agency.

When the order of the Magistrate was challenged by the appellant before the High Court on the basis of a petition under Article 227 of the Constitution, the said petition came to be disposed of by the High Court by an unusually laconic order.

Every citizen of this country has a right to get his or her complaint properly investigated – This is a question of equal protection of laws and is covered by the guarantee under Article 14 of the Constitution – Issue is akin to ensuring an equal access to justice.

Second respondent, the Additional Director General of Police, State CID, Pune Division, Pune, Maharashtra to order a proper investigation in the matter by deputing a senior officer from his organization to undertake a thorough investigation.

(2012) 4 Supreme Court Cases 559

Promode Dey
Vs
State of West Bengal

A. **Penal Code, 1860 – S. 302 – Murder trial – Conviction confirmed – Death caused by sharp-edged weapon – Appreciation of evidence – Child witness – Reliability of – PW 2 aged eight yrs gave a vivid account of how her mother was killed by appellant with a dao – PW 2's testimony supported by evidence of PWs 1, 8 and 11 as well as recovery of dao at instance of appellant on very date of incident from jungle by side of house of appellant and also supported by medical evidence – Trial court convicted appellant under S. 302 IPC – High Court was of the view that prosecution evidence established guilt of appellant – Appellant contended that: (i) child witness is prone to tutoring, so conviction is not safe; (ii) PWs 3, 4, 5, 6, 7 and 9 had turned hostile, (iii) Magistrate before whom statement of PW 2 was recorded under S. 164 CrPC was not examined, (iv) granduncle of PW 2 present in house where allegedly murder was committed, also not examined , and (v) FSL report of weapon not produced before court – Held, guilt of appellant is established beyond reasonable doubt through evidence of PWs 1, 2, 8, 11 and Ext. 6 – No adverse inference can be drawn from any contention of appellant – High Court rightly sustained conviction of appellant on basis of eyewitness account of PW 2 – Evidence Act, 1872, S. 27.**

B. **Criminal Trial – Witness – Hostile witness – Guilt of appellant is established beyond reasonable doubt through evidence of PWs 1, 2, 8, 11 and Ext. 6 – Held, fact the PWs 3, 4, 5, 6, 7 and 9 did not support prosecution case is immaterial.**

C. **Criminal Trial – Examination – Non-examination/Failure to examine witness – Guilt of appellant was established by eyewitness account of PW 2 and recovery of weapon – Held, no adverse inference can be drawn from fact that granduncle of PW 2 was not examined, as he was neither eyewitness nor complainant and was in fact not present in same house where incident occurred.**

D. **Criminal Trial – Investigation – Defective or illegal investigation – Effect of – Guilt of appellant is established beyond reasonable doubt through evidence of PWs 1, 2, 8, 11 and Ext. 6 – Fact that FSL report not collected from forensic science laboratory not material.**

E. Criminal Trial – Examination – Non-examination/Failure to examine witness – Non-examination of Magistrate before whom statement was recorded under S. 164 Cr.PC of PW 2 – Held, even if statement of PW 2 recorded under S. 164 CrPC is excluded from consideration, offence is proved against appellant by substantive evidence of PW 2 and evidence of PWs 1, 8, 11 and by the fact of recovery of a dao at the instance of appellant – Criminal Procedure Code, 1973, S. 164.

(2012) 4 Supreme Court Cases 722

Govindaraju Alias Govinda
Vs
State By Sriramapuram Police Station and Anr

A. Criminal Trial – Witnesses – Police officials/personnel/IO as witnesses – Police officer as sole eyewitness – Testimony – Reliability – Evidentiary value

- **Held, it cannot be stated as a rule that a police officer can or cannot be a sole eyewitness in a criminal case which will always depend upon facts of a given case – If testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, then statement of such witness cannot be discarded only on ground that he is a police officer and may have some interest in success of the case – Only when his interest in success of case is motivated by overzealousness to an extent of his involving innocent people, then, no credibility can be attached to his statement – Presumption that a person acts honestly applies as much in favour of a police officer as in respect of other persons and it is not proper to distrust and suspect him without there being good grounds therefor.**

- **PW 1 police officer, who was on motorcycle and carrying his regulation weapon stated that he had seen accused chasing victim, and was only about 30 yd away from place of occurrence, but had given no explanation as to why he had taken no steps to prevent commission of offence, being police officer who was also armed and upon a motorized vehicle – Moreover, he had not named accused in FIR, which showed that he was unaward of their identity – Identity of absconding accused was never established and source from where PW 1 got to know names of accused also not divulged – Besides, testimony of PW 1 remained uncorroborated and alleged eyewitnesses did not even partially support prosecution case – Hence, conviction on sole testimony of PW 1 prosecution case – Hence, conviction on sole testimony of PW 1 unsustainable.**

B. Criminal Trial – Identification – Identification of accused – PW 1 complainant and sole eyewitness not naming any accused in FIR, nor disclosing their identities to PW 11 (IO) – Post-mortem report also indicating that names of assailants were unknown – Identity of third accused not established – Source from where PW 1 got to know names of accused not divulged – Hence held, testimony of PW 1 implicating appellant does not inspire confidence.

C. Criminal Trial – Witnesses – Hostile witness – Testimony – Evidentiary value of – Not-totally wiped out as part of statement can be taken into consideration which supports the prosecution case – On facts held, PWs 7, 9 and 10 who were alleged eyewitnesses to occurrence had completely denied prosecution version but strangely were not confronted with their statements made under S. 161 CrPC – PW 8, who was witness to recovery of knife, admitted his signature on recovery memo but stated that he did not know reason as to why his signature was taken – PWs 2, 4, 6 who were seizure witnesses also failed to support prosecution – Hence, their testimonies cannot be taken into consideration for sustaining guilt of accused.

D. Evidence Act, 1872 – S. 27 – Memos not bearing signatures of accused upon their disclosure statements – Held, was a defect in recovery – Police officer can prove recovery he has affected during course of investigation and in accordance with law, but in such case statement of IO has to be reliable and so trustworthy that even if attesting witness to seizure turns hostile, same can still be relied upon – More so, when it is corroborated by

prosecution evidence, which was not there in instant case - All recovery witnesses had turned hostile, thus creating doubt as to recovery – Knife recovered from appellant-accused was not bloodstained – Knife recovered at behest of co-accused, though bloodstained, no effort was made by prosecution to prove that it was human blood and that it was of the same blood group as deceased – Hence, no reliance on recoveries can be placed.

E. Criminal Trial – Proof – Presumptions – Adverse inference – Non-production of material witnesses like doctor, who performed post-mortem and examined victim before he was declared dead as well as of Head Constable and constable who reached the site immediately upon occurrence.

- **Held, applicability of principle of adverse inference presupposes that withholding was of such material witnesses who could have stated precisely and cogently the events as they occurred and without their examination, there would remain a vacuum in case of prosecution – On facts held, lacuna in case of prosecution remains unexplained and chain of events unconnected by non-examination of such material witnesses – If such a witness, without justification, is not examined, inference against prosecution can be drawn by court – Fact that witnesses who ere necessary to unfold narrative of incident and though not examined, but were cited by prosecution, certainly raises a suspicion – When principal witnesses of prosecution become hostile, greater is the requirement of prosecution examine all other material witnesses who could depose in completing chain by proven facts – Evidence Act, 1872, S. 114 Ill. (g)**

F. Criminal Trial – Witnesses – Generally – Quality and not quantity relevant – Held, it is not the number of witnesses that matters but the substance – Not necessary to examine large number of witnesses if prosecution can bring home guilt of accused even with limited number of witnesses.

G. Criminal Trial – Witnesses – Sole/Solitary witness – Testimony – Evidentiary value – Reiterated, there is no bar in basing conviction on testimony of a solitary witness so long as said witness is reliable and trustworthy – However, this evidence has to be accepted with caution and after testing it on touchstone of evidence tendered by other witnesses or evidence otherwise recorded – It must essentially fit into chain of events that is stated by prosecution – Presence of such witness at occurrence should not be doubtful – If evidence of sole witness is in conflict with other witnesses, it cannot be a foundation of conviction of accused – On facts held, testimony of PW 1, a police officer, complainant and sole eyewitness was not free of suspicion and lacked credence – Hence, conviction on basis thereof unsustainable.

H. Criminal Trial – Witnesses – Independent witness – Non-examination – Effect – Held, mere absence of independent witnesses when investigating officer recorded statement of accused and article was recovered pursuant thereto, is not a sufficient ground to discard evidence of police officer relating to recovery at instance of accused – But where statement of police officer itself is unreliable then it may be difficult for court to accept recovery as lawful and legally admissible – Official acts of police should be presumed to be regularly performed and there is no occasion for courts to begin with initial distrust to discard such evidence – On facts held, since statement of PW 1 itself was found unreliable, absence of independent witness while recording statement of accused and recovery made pursuant thereto, had material bearing on prosecution case – Evidence Act, 1872, S. 27.

I. Criminal Trial – Acquittal of co-accused – Acquittal of co-accused charged under Ss. 302/34 IPC, attaining finality since leave to appeal against acquittal not granted – Effect on accused against whom leave granted – Question left open.

J. Criminal Procedure Code, 1973 – Ss. 378 and 386 – Appeal against acquittal – Power of appellate court – Scope – Necessity of seeking leave to appeal in case of appeal against acquittal unlike in case of appeal against conviction – Significance of - Presumption of innocence of accused reinforced by order of acquittal - Principles reiterated.

- **Hence, interference with acquittal in appeal thereagainst is justified only when there is element of perversity which should be traceable in findings recorded by trial court, either of law or of appreciation**

of evidence – Mere possibility of another view is no ground for interference with acquittal – Reasons must be recorded by High Court as to why acquittal was not justified – On facts held, High Court erred in interfering with judgment of acquittal only on basis of possibility of another view and without specifically dealing with facets of perversity relating to issues of law and/or appreciation of evidence by trial court – Impugned judgment reversing acquittal of appellant-accused and convicting him under S. 302 IPC hence, unsustainable – Acquittal restored – Penal Code, 1860 – S. 302 – Constitution of India, Art.21.

K. Criminal Trial – Proof – Presumptions – Held, it is a settled canon of appreciation of evidence that a presumption cannot be raised against accused either of fact or in evidence.

- **High Court convicting appellant on presumption that "he must have stabbed deceased because PW 1 had stated that he had seen victim being chased by assailants which suggested that something else must have occurred earlier, some injuries may have been inflicted on victim; or that victim was aware of some danger to his life and was running away from assailants" – Held, evidence must be read as it is available on record – It was for PW 1 complainant and sole eyewitness to explain and categorically state whether victim had suffered any injuries earlier, because both victim and accused were within sight of PW 1 – High Court erred in convicting appellant on basis of certain legal and factual presumptions, which is unsustainable.**

****

HIGH COURT CITATIONS
CIVIL CASES

2012 – 3- L.W. 66

V. Ramasamy Naidu
Vs
S.P. Damodaran

Negotiable Instruments Act (1881), Section 43, 118.

Promissory note was signed by the defendant – At the most it can be stated that the said instrument is an inchoate stamped instrument wherein it can be held that the defendant had given prima facie authority to the plaintiff to make or complete upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the instrument.

There shall be a presumption that promissory note was made for consideration – Section 118 will be applicable if only the negotiable instrument was made by the person who executed the same – In case of inchoate stamped instrument, the promissory note is not made by the person who signed the document, but it is made only by a person to whom it is handed over with implied authorization under Section 20 of the Act to make the same.

If once presumption under Section 118 has been rebutted, then it becomes the burden of the plaintiff to prove that the promissory note, was supported by consideration.

Promissory note in question is not supported by consideration – There is no obligation on the part of the defendant to pay any amount.

2012 (3) CTC 291

V.N. Pachaimuthu
Vs
The Superintendent of Police, Villupuram District, Villupuram and Ors

Constitution of India, Article 226 – Code of Criminal Procedure, 1973 (2 of 1974), Sections 154, 157, 160 & 482 – Writ Petition seeking to restrain Police officials from proceeding with any enquiry without following due process of law – Contention that matter is purely Civil in nature and that Police have no authority – Court cannot prohibit Police Authorities to proceed with matter in accordance with law – Writ Petition is prima facie, not competent – However, Police has no jurisdiction to harass a citizen – Duty of Police, in case of receipt of Complaint showing cognizable offence, is to register an FIR – Thereafter Police can proceed with investigation – This will entitle aggrieved party to work out remedy in accordance with law – Police also has no right to direct a party to produce evidence which will go against them – Notice issued under Section 160 calling Petitioner for enquiry is without jurisdiction and unwarranted – Notice under Section 160 can be issued only to witness in any pending FIR but not to a person who is an accused – Notice under Section 160 quashed – A citizen cannot be called for enquiry in absence of any FIR – Writ Petition allowed to a limited extent.

2012-2-TLNJ 365 (Civil)

S. Subramaniam
Vs
Thamban and Ors

Specific Relief Act 1963 – The court cannot pass a decree for permanent injunction against the persons who have not been before the court and not added as necessary parties to the suit – in as much as the suit temple

is situated in poramboke land, it is open to the plaintiff to implead proper and relevant parties to the suit so as to have a complete and comprehensive adjudication in respect of the controversies – disputes involved between the parties – SA dismissed.

2012-2-TLNJ 372 (Civil)

Victor Devapalan
Vs
S. Joesph Sagayaraj

Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960, Section 10 (2) (i) – explanation to proviso – When the tenant after receipt of notice alleging default replied denying willful default, the question of granting or waiting for the 60 days to file the petition for eviction does not arise – CRP dismissed.

2012 – 2- L.W. 391

E. Ranganathan
Vs
M. Gnanasundari

Hindu Law/Stridhana Property, Rule of, Inheritance, who is entitled to, grandmother's Stridhana Property/Who is entitled to, Class I, Class II heir/grandson or son's wife, Scope of.

Hindu Succession Act (1956), Sections 8,14,15,16/Property of Hindu female, Stridhana Property, devolution of, Plea of Adverse possession, Scope of, Exclusion of heir, Class I, Class II.

Adverse Possession/Plea of, Stridhana Property, Scope of, Claim of Adverse Possession negative.

P, maternal grand mother of appellant purchased property in 1907 and had it as her Stridhana – P had four sons and a daughter 'J' – J had a daughter 'L' and son 'R' – J predeceased 'P' leaving behind 'L' daughter son son'R' – P then died – Later L, L's husband and son also died leaving 'R'.

Question is would R succeed or defendant/wife of MN-maternal uncle of R, would succeed to the Stridhana Property of P.

Held: Stridhana property of P on her death goes to her daughter J, not to her son, namely, the defendant's husband MN – Even after the death of J, it goes to her daughter L – In the present case J has 2 children L and R-Plaintiff – After death of L's husband and son, Plaintiff 'R', brother of L would inherit the property and not defendant, wife of MN, son of 'P'.

Accepted principle followed in stridhana property is that what one has descended as stridhana does not revert back to Class II heir in the place of Class I heir.

Plaintiff who is in the nearer line of stridhana heirs will have preference by excluding the defendant in inheriting the suit property.

Since the branch of L had come to an end, who is the daughter's daughter of p and J's daguther, and the plaintiff/appellant herein being a brother of L, who is class 2 heir, the plaintiff/appellant herein is legally entitled to inherit the "Streedhana property" of J.

Plea of adverse possession, was neither proved nor established by any acceptable oral and documentary evidence before the first appellate Court by the respondent/defendant – Findings arrived at by the first appellate Court to non suit the plaintiff by reversing the judgment and decree of the trial Court are liable to be set aside.

2012 – 2- L.W. 404

Subbammal & Ors
Vs
D.V. Hariprasad & Anr

C.P.C., Section 2(11)/'legal representative'; Order 22 Rule 3, Order 1, Rule 10(2).

Application to implead, as legal representative to claim under a will, Scope of.

Respondents claim their right as legatees under a Will – Respondents herein want to implead themselves as legal representatives – They ought to have filed an application under Order XXII Rule 3 CPC – Filing of petition under Order I Rule 10(2), CPC cannot be accepted.

(2012) 1 MLJ 442

I. Mahendra Kumar Nahar and Ors
Vs
E. Ravindran and Ors

Code of Civil Procedure (5 of 1908) – Striking off plaint – Suit for permanent injunction – To restrain defendants from interfering with peaceful possession and enjoyment of suit property – Filing of earlier suits for similar relief – Claim in all suits one and same – Present suit allegedly abuse of process of law – 1st respondent/plaintiff filed suit after suits invoking certain cause of action, that has arisen subsequent to earlier suit – Plaintiff required to file application for necessary amendment in case some cause of action arises after filing of suit – Plaintiff to implead third parties as a party to earlier suit in case they try to interfere with possession after filing of suit – Petitioners already been made parties in earlier suit – Filling of third suit, a clear abuse of process of law – Revision petition allowed.

(2012) 1 MLJ 449

Kuppusamy Gounder and Anr
Vs
Palaniappan

Indian Evidence Act (1 of 1872), Sections 45 and 73 – Code of Civil Procedure (5 of 1908), Section 100 – Second Appeal – Suit for specific performance – Suit decreed – Concurrent findings – Appeal – Agreement of sale – 1st defendant/appellant allegedly agreed to sell suit property to plaintiff – 1st defendant contemplating to sell property to 2nd defendant – Filing of suit for specific performance – Sale agreement not at all executed by appellant – Thumb impression in sale agreement, a rank forgery and not made by appellant – Courts below failed to compare disputed thumb impression in sale agreement with admitted thumb impression of appellant – Court empowered under Section 73 of Evidence Act to compare disputed thumb impressions with that of admitted thumb impression – Court empowered to record a finding on comparison even in absence of expert opinion – Comparison of thumb impression made by this Court with magnifier – Thumb impressions not made by one and same person – Agreement of sale, not genuine – Plaintiff not entitled to relief of specific performance – Second Appeal allowed.

RATIO DECIDENDI: Court is empowered under Section 73 of the Evidence Act, 1872 to compare the disputed thumb impressions in a sale agreement with that of the admitted thumb impression of the party and may record a finding on comparison, even in the absence of an expert's opinion.

2012 – 2- L.W. 468

Padmaja Ashok
Vs
Dr. E. Rajyasree and Ors

Adverse Possession/ Father claiming against son,

C.P.C., Order 3, Rule 2/General Power of Attorney executed in foreign country, duly stamped, whether.

Limitation Act (1963), Section 10,

Guardians and Wards Act (1890), Section 20,

Stamp Act, Sections 18/Power of Attorney in foreign country, 35, 36, 61, Appellate courts power/Scope of.

A guardian of a minor can never claim to have acquired title by adverse possession over such minor's property.

Because son permitted father to be in occupation of the suit property, no presumption arises as against the son that he permitted his father to acquire title by adverse possession as against him.

Once an insufficiently stamped document is marked, it's a admissibility cannot be challenged before the same Court.

Even in respect of the power of attorney emerged in Foreign countries, the higher for a can invoke its power under Section 61.

Document be impounded and the stamp duty and penalty should be collected by the Collector by treating it as the Power of Attorney executed by the principal in favour of only one person.

2012 – 2- L.W. 509

V.T.R. Palanlisamy Chettiar
Vs
V.T.R. Srinivasan & Ors

C.P.C., Section 21/Objection to pecuniary jurisdiction, When can be taken; Waiver by defendants; Effect of,

Civil Courts Amendment Act (2004).

An objection on the ground of lack of pecuniary jurisdiction cannot be entertained by appellate court and revisional court, even if it was taken at the earliest possible opportunity before the Trial Court as in the absence of failure of justice, lack of territorial or pecuniary jurisdiction is a mere irregularity and it odes not make a decree nullity – This provision gives a statutory recognition to the principle the defect as to pecuniary jurisdiction of the court may be waived by the Defendant.

When the suit was filed, the Sub Court had unlimited jurisdiction and Trial Court had proper pecuniary jurisdiction to try the suit – Before the delivery of judgment and decree by the Trial Court, Civil Courts Amendment Act 2004 had come into force i.e. from 8.1.2004 – After the said amendment had come into force, admittedly, no objection was filed by the Respondents, questioning the pecuniary jurisdiction of the Trial Court and no additional issue was framed.

There is a difference between lack of jurisdiction which goes to the root of jurisdiction and lack of territorial and pecuniary jurisdiction – First appellate court was not justified in remanding the suit to the Trial Court.

2012 – 2 - TLNJ 521 (Civil)

Palaniammal and Ors
Vs
Tilakavathi

Specific Relief Act 1963, Section 34 – Suit for declaration and injunction of the plaintiffs right of half share in the suit well, electricity connection motor and pumpset and the right to bail out water on alternate days – Suit dismissed on ground that no electricity motor claimed by the plaintiff existed and the plaintiff had relinquished the right in the electricity connection – judgment reversed upholding the right to half share of the plaintiff in the suit well, electricity connection and to bail out water on alternate days – Second Appeal filed the defendant, the High Court observed that were the parties has exercised there one half right in the suit well, the suit well cannot be divided into two and one party can deepen the well on one side and another party on the other side – the springs in the well will help the party were as the springs of the well will not be available to the party who has not deepen the well – therefore the theory of deepening of well on one side after relinquishing the electricity connection by the plaintiff in favour of the defendant is not sustainable – Appeal dismissed as the defendant did not prove his case.

2012 – 2- L.W. 524

E. Subbammal
Vs
R. Rajendran and Anr

Pre-emption/Right of, when can be exercised,

Limitation Act (1963), Article 97.

Suit has been instituted before taking delivery of possession of the suit property – Second part of Article 97 would apply.

On the date of filing of the suit, question of taking delivery of possession has not arisen.

Right of pre-emption can be exercised on the grounds:- (i) A right is founded on law; (ii) A right created on the basis of general usage; (iii) A right created on the basis of special contract.

A suit, to enforce right of pre-emption should be filed within one year from the date of physical possession of whole or part of the property or the same should be filed within one year from the date of registration of sale deed if the same does not admit physical possession of the whole or part of the property.

2012 – 2 - TLNJ 540 (Civil)

R. Rakshadoss
Vs
Anjali and Ors

Negotiable Instruments Act 1881, Section 118(a) – Suit on promissory note executed for the balance of sale consideration – dismissed by trail court and allowed in part by first appellate court – on second appeal Held that admitted facts need not be proved as per section 58 of the Evidence Act and as the executants of the promissory note himself admitted signature in the promissory note, the presumption under section 118(a) is to be drawn against him – Second Appeal dismissed.

2012 – 2- L.W. 551

K.S. Ravichandran
Vs
Sivananda Vijaya Lakshmi

Hindu Marriage Act (1955) Section 13/Divorce, on ground of cruelty, Section 25/Permanent Alimony, Grant of, Petition, Maintainable.

Husband has challenged the order of the Family Court, with regard to the order passed directing to pay a sum as permanent alimony.

Held: There is no Law which rules that when the marriage is not consummated the parties to the marriage would not acquire/retain the status as husband/wife.

Assuming that the decree granting divorce is valid, even then, the wife is entitled to make a claim under Section 25 of the Hindu Marriage Act – Petition filed by the wife seeking permanent alimony is maintainable.

2012 – 2- L.W. 615

Jayaraman (Died) & Ors
Vs
Eswaran

Tamil Nadu Cultivating Tenants' Protection Act (Act 25 of 1955), Section 2(aa), (Act 10 of 1969), Section 15,

Contention that the tenancy agreement originally entered into between the original tenant, the father of the 2nd plaintiff and the landlords, has not terminated and as such, the respondent/2nd plaintiff is not entitled to claim protection under Section 2(aa) cannot be accepted.

2nd plaintiff's possession is lawful possession – 2nd plaintiff/respondent is a tenant under the appellants/defendants – As per Section 15 of Tamil Nadu Act, 10/1969, entry in the Record of Tenancy Rights Register shall be presumed to be correct, till the contrary is proved – In the present case, the respondent/second plaintiff's name is duly entered in the above said register – Appellants have not challenged the above said order.

2012 – 2- L.W. 623

Sapna
Vs
B. Pradeep Kumar

Hindu Marriage Act (1955), Section 13(i)(a)/'Mental Cruelty'.

It is not accepted that a woman should remain like a maid servant and only to prepare food and look after the children – A wife is also expected to have a rightful equal honour and dignity in matrimonial home – Observation of the Family Court that the allegation of the Appellant/Wife that "she was treated as a servant maid and forced to do all the household works including washing the clothes of all the family members of her husband's family was coming under the normal wear and tear does not come under the ground of cruelty", **is not valid**.

While arriving at a conclusion as regards 'cruelty' the social status, educational level of the parties, society they move in, the possibility or otherwise of parties ever living together in case they are living separately are to be taken into account by the Court concerned.

Cruelty is a conduct of such type that the Appellant/Wife cannot reasonably be expected to live with the husband – Cruelty as per Section 13(1) (ia) is to be considered as a behaviour by one spouse towards another, which causes reasonable apprehension in the mind of a person that it is not quite safe for her/him to continue the relationship of marriage with the another.

Parties had been living separately for a period of six years and there appears to be no possibility between them to reconcile and to reside together – It is a clear case of irretrievable break down of marriage between the parties.

2012 – 2- L.W. 633

Sri Kayaroganaswamy Neelayadhatchi Amman Devasthanam represented by its Executive Officer, Neela Sannadhi, Nagapattinam Town & Munsifi.
Vs
Nagappattinam Co-operative Housing Society Ltd represented by its Secretary T.S.No.1737, Amaranandeeswarar Sannadhi, Neela East Street, Nagapattinam Town & Munsifi.

Transfer of Property Act (1882), Section 106/Notice to quit; Waiver of, what is, Effect, Section 113/2nd Notice to quit; Section 116/'Tenancy by holding over'; 'Tenancy by sufferance'; distinction.

Acceptance of rent after issuance of notice by the Appellant/Plaintiff shows an intention on its part to treat the lease as a subsisting one – Conduct of the Appellant/Plaintiff in accepting the rent paid by the Respondent/Tenant, amounts to waiver – By the conduct of the Temple, the intention to treat the lease as subsisting is manifest.

As per Section 113 acceptance of rent may amount to waiver, if a landlord accepts the rent for a period after issuance of notice.

The waiver of the notice is a bilateral act, showing an ad idem to continue the old contractual tenancy despite the notice.

'Holding Over' is retaining possession – If a tenant remains in a possession after determination of lease, the common law rule is that he is a tenant on sufferance – 'Tenant holding over' or a 'tenant at will', Distinction.

There is a difference between the tenant continuing in possession after the determination of the lease without the consent of the landlord, and a tenant doing so with the landlord's consent – The former one is called as 'tenant by sufferance', as per English law and the latter, group of tenants is described as a 'tenant holding over' or a 'tenant at Will'.

A tenancy of holding over is a creature of a bilateral, consensual act, and does not come into existence by a mere unilateral intendment or declaration of one of the parties.

2012 (3) CTC 641

M. Veersamy
Vs
State of Tamil Nadu, rep. by Home Secretary, Secretariat, Fort St. George, Chennai-2

Child Sexual Abuse – Change in Investigation Agency – School children belonging to SC community sexually exploited by Headmaster of School – Complaints of children and parents if found true would attract Section 3(1)(xi) & (xii) of SC & ST (Prevention of Atrocities) Act – Thus, investigation directed to be done by a Woman Police Officer not below rank of Deputy Superintendent of Police – SC and ST (Prevention of Atrocities) Act, 1989 (33 of 1989), Section 3(1)(xi) & (xii).

Code of Criminal Procedure, 1973 (2 of 1974), Section 161 – Child Sexual Abuse – Enquiry and Court proceedings – Enquiry directed to be conducted with certain sensitivity – Court, to which Final Report is submitted, also to act with sensitivity in examining children – Investigating Officer prevented from recording any new statements as statements already recorded under Section 161(3) of Code – Court to avoid bringing of children again & again to Court and prevent direct cross-examination of children – Directions issued in Sakshi v. Union of India, 2004 (5) SCC 518 to be followed.

Code of Criminal Procedure, 1973 (2 of 1974), Section 24 – Child Sexual Abuse – Appointment of Special Public Prosecutor – State directed to appoint Special Public Prosecutor, who is a woman and has 7 years of standing in High Court and who is sensitive to such issues – National Commission for Protection of Child Rights Act, 2005 (4 of 2006) Section 26.

Child Sexual Abuse – Compensation to victims – Number of children affected belonging to SC community – Children entitled to compensation even before any trial is completed based on report given by fact finding team and Child Welfare Committee and opinion of Psychologist – District Collector directed to grant compensation of ₹ 1,20,000/- to each victim girl in full without waiting for trial to be completed – Compensation of ₹ 1,20,000/- also to be granted to non-SC girls – SC & ST (Prevention of Atrocities) Act, 1989 (33 of 1989), Sections 21 & 3(1)(xi) & (xii) – SC & ST (Prevention of Atrocities) Rules, 1995, Rule 12(4) & Annexure 1 – National Commission for Protection of Child Rights Act, 2005, Section 13, 15(3) & 24.

Child Sexual Abuse – Directions to Superintendent of Police – Superintendent of Police directed to ensure effective compliance of direction issued in matter and to monitor case by calling for fortnightly reports from Investigating Officer and to give necessary advice accordingly for smooth progress of investigation.

2012 (2) CTC 717

C. Narasaraju
Vs
S. Ramesh, Son of B. Srinivasan

Guardians and Wards Act, 1890 (8 of 1890), Section 9 – "Ordinary residence' – Child since birth in custody of grandfather in Mysore – Child never in custody of father in Chennai – Thus, Mysore would be ordinary residence of child – Consequently, Original Petition filed by father under Section 25 for custody of child before Court in Chennai not maintainable and same has to be presented before appropriate Court in Mysore.

2012 (2) CTC 727

V. Prema Kumari
Vs
M. Palani

Prohibition of Child Marriage Act, 2006 (6 of 2007), Sections 2(e) & 3 – District Court under Section 3 empowered to annul child marriages on a Petition made by contracting party who was child at time of marriage – Section 2(e) includes Family Court in definition of District Court – Thus, Family Court is empowered under Section 3 of 2006 Act to annul a child marriage – Though, Application for declaring child marriage as void was made under Section 13(2) (iv) of 1995 Act, in instant case, relief ought to have been granted by Family Court as quoting wrong provisions ought not to disentitle a party from getting relief – Hindu Marriage Act, 1955, Section 13(2)(iv).

Hindu Marriage Act, 1955 (25 of 1955), Sections 5(iii) & 13(2)(iv) – Need for corresponding amendment – Minimum valid age to marry – Section 5(iii) was amended to substitute 21 years and 18 years for 18 years and 15 years respectively – However, Section 13(2)(iv) was not amended simultaneously to substitute 15 years in respect of girl – Need for said amendment emphasised.

2012 (2) CTC 737

Tamil Nadu Defence Officers' Co-operative Housing Society Ltd
Vs
Sethulakshmi

Easements Act, 1882 (5 of 1882), Section 15 – Prescriptive right of easement not restricted to building alone but can be claimed even in respect of vacant land also.

Code of Civil Procedure, 1908 (5 of 1908) – Res Judicata – Suit for declaration that certain roads are private roads and neighbouring owners have no right over it – Will not bar a subsequent Suit for declaring a prescriptive right of easement of use of said roads.

2012 – 2- L.W. 739

N. Manickam
Vs
Kanagaraj & Ors

Partition Act (1893), Section 4,5,

Hindu Succession Act (1956), Section 22.

Finding of the learned I Additional Sub Judge that after the sale of the undivided share by one co-sharer, the other co-sharer cannot exercise the right of pre-emption is not correct.

Right under section 22 can be exercised even after the sale by one of the co-sharers to a stranger.

When the stranger purchaser also joined in the final decree application and prayed for partition of their half share, it can be stated that he prayed for actual division – Revision petitioner is entitled to exercise his right of pre-emption.

Revision petitioner gets a right to exercise the right of pre-emption in their application – Application under section 22 of the Hindu Succession Act is maintainable.

Filing of the application under section 5 of the Partition Act and not under section 22 of the Hindu Succession Act will not make any difference and the petition can be considered only as a petition filed under section 22.

Right conferred under section 22 does not depend upon the divisibility of the property into two even assuming that the property is capable of division when a co-sharer is entitled to exercise that right and approached the court for purchase of that share.

2012 – 2- L.W. 757

Ms. Padmavathy & Ors
Vs
Mr. Rathina Sabapathy & Ors

C.P.C., Section 11/Res Judicata, Applies in case of pending proceedings also, Order 1, Rule 8, impleading, rejection earlier, Effect of.

In respect of pending proceedings, earlier order will operate as res judicata in the subsequent stage of proceedings – At the instance of the revision petitioners, their application to implead themselves was already

rejected and therefore, that judgment will operate as res judicata – It is not open to the revision petitioners to raise the same plea in the subsequent stage of the proceedings, as appeal is only a continuation of the suit.

2012 – 2- L.W. 776

Ramalingam
Vs
Government of Tamil Nadu through Collector, Thanjavur and Anr

Tamil Nadu Panchayats Act (1994) Section 132 / Fishery Rights; is Property; Panchayat's right, as to; plea of adverse Possession, not accepted.

Tamil Nadu Panchayat (Lease & Licensing of Fishery Rights), Rules (1999) / Rule 11/ lease of Fishery Rights, Scope of.

Tamilnadu Land Encroachment Act (1905) Section 2 / Tamilnadu Minor Inams (Abolition and Conversion into Ryotwari) Act 1963, (Tamilnadu Act 27 of 1963) Section 14.

Plea that the fishery rights in the tanks have become vested with the Appellant/Plaintiff by enjoyment over 30 years by his predecessors or ancestors is not accepted – When the lease of fishery rights in respect of water resources or suit tanks have become vested in Village Panchayat or Panchayat Union Council, then, Appellant/Plaintiff is not entitled to take the plea of adverse possession.

As per Section 132 fishery right in respect of the suit tanks is to be construed as annual property or income in the village panchayat, suit 9 tanks vest in the village Panchayat as per Section 132 is to be administered by it for the benefit of the inhabitants or holders – 2nd Respondent/ 2nd Defendant Panchayat Union is entitled to conduct fishery right auction as per Rule 11.

(2012) 1 MLJ 789

Sathiyamurthy
Vs
R. Pavunambal and Anr

Code of Civil Procedure (5 of 1908), Order 2 Rule 2 and Order 7 Rule 11 – Rejection of plaint – Suit for specific performance – Cause of action for filing present suit available even on date of filing earlier suit for injunction – Cause of action for filing both suits based on agreement of sale – Appellant/plaintiff failed to obtain leave of Court under Order 2 Rule 2 to file present suit for omitted claim – Suit for specific performance barred under Order 2 Rule 2 – Order of rejection of plaint, upheld – Appeal dismissed.

RATIO DECIDENDI: When the cause of action for filing a subsequent suit was available even on date of filing the earlier suit, subsequent suit will be barred by Order 2 Rule 2 of the Code of Civil Procedure, 1908 if the plaintiff failed to obtain leave of the Court under Order 2 Rule 2 for filing such fresh suit for the omitted claim.

2012 – 2- L.W. 851

R. Chandrasekaran in all the revisions
Vs
S. Karthik & Ors

CPC Section 144/Restitution, redelivery of possession ordering of, by Rent Control Appellate authority, Section 151/order 21, Rule 97, 99, 103/Applications to be filed, redelivery; necessity of, Tamil Nadu Buildings Lease and Rent Control Act (1960) Section 25/willful default/ Execution Fraud, Redelivery, ordering of, Scope.

Revision petitioner filed six RCOPS as against six persons – And sought for eviction on the ground of 'wilful default' in paying the rents in respect of the six demised premises described therein – Rent Controller passed eviction orders, as against which no appeal emerged – Six E.Ps were filed and under that delivery of the demised premises was taken by the revision petitioner – Several persons filed Execution applications before the learned Rent Controller, invoking Section 144 of C.P.C. for redelivery of the said properties.

Among them, the second respondents in all these revision petitions were the petitioners in various E.A. for redelivery on the ground that they have been illegally disposed and those six respondents in the RCOPs had nothing to do with the suit properties, but the revision petitioner in collusion with those six persons obtained RCOP decrees and illegally dispossessed those petitioners, who sought redelivery in the E.As.

Rent Controller dismissed the applications as against which, the six second respondents in these revisions, each preferred RCAs.

Appellate authority ordered redelivery.

Held: Six Revisions were filed against that order – Appellate authority arrived at the just conclusion that as on the date of delivery, the six second respondents herein and others like them were there in occupation of the premises and they were dispossessed, illegally.

Respondents ought to have filed applications under Order 21 Rule 99 of C.P.C – But they have filed the applications initially under Section 144 of CPC and thereafter got them converted into ones under Section 151 of C.P.C.

Dispossession of the actual occupants turned out to be illegal and erroneous and hence, status-quo-ante has to be restored.

Revision petitioner by citing technical defects in ordering redelivery cannot try to retain the illegal delivery obtained by him.

Because of the non-framing of the issues and also non-conducting of those EAs as suits, the revision petitioner herein had not at all adduced any evidence.

Dismissal order passed by the Rent Controller in EAs can never be termed as decree because he never dealt with any application under Order 21 Rule 99 of C.P.C – Fraud vitiates all proceedings and any forum at any stage can treat such acts borne out of fraud as non est and rectify the illegality.

But for the erroneous action of the bailiffs of the Court and the Rent Controller, the six second respondents herein would have continued to occupy the premises and as such status-quo ante has to be restored – Direction Passed.

2012 – 2 - L.W. 970

D.Nagamanickaya Ors
Vs
K. Syamanthakamma & Ors

Trusts Act (1882), Section 3, 10, 72, 73, 75/Chetpet Subbadarma Trust-Charitable Trustee/Alienation of trust property by Trustee/Challenge as to, Suit to set aside sale deeds by legal representatives of original trustee, Locus of,

Adverse Possession, Plea of prescription, Scope of, bar under limitation Act, legal representative of trustee cannot plead adverse possession,

Tamil Nadu Court Fees and Suits Valuation Act (1955), Sections 6, 40.

Specific Relief Act (1963), Section 30/Prayer for declaration, absent, effect of,

Evidence Act, Section 90,

Limitation Act (1963), Section 10/Suit against trustees, Plea of Prescription by legal representatives, Scope of,

Transfer of Property Act, Purchaser, duties of/Good faith, what is.

Good faith and absence of knowledge of certain facts on the part of the vendees could be spoken only by them and not by their power agent.

Maxims/'Verba relata inesse videntur'; 'Verba illate inesse videntur'; 'Verba Relata Hoc Maxime Operantur per referentiam ut in eis inesse videtur.

Held: Once it is held that the property is a Trust property and VG, the Trustee, the question of applying the Hindu law of inheritance would not apply – Whenever a Trustee dies, his legal representatives, not necessarily only the legal heirs of the deceased trustee, could rightly manage the property till a proper trustee is appointed – Even a trustee 'de son tort' could safeguard the trust property – Legal heirs of a trustee cannot inherit the trust property.

A biological son of a trustee, for the purpose of claiming adverse possession, cannot pose himself as the adopted son of one other person and contend that in as much as he became the adopted son, he could acquire adverse possession.

A biological son of a trustee can never inherit the property over which his father was the trustee.

If the biological son of a trustee enters into possession of the Trust property under his father or on his father's death, he was enjoyed to protect the trust property – Such a person cannot also plead adverse possession and Section 10 of the Limitation Act operates herein.

A trustee 'de son tort' or a defacto manager of a trust is entitled to institute suit for preserving the property.

****

HIGH COURT CITATIONS
CRIMINAL CASES

2012 (3) CTC 309

P. Shinu
Vs
P. Perumal

Code of Criminal Procedure, 1973 (2 of 1974), Sections 204 & 258 – Non-supply of copy of Complaint along with summons – Dropping of Criminal proceedings – Whether warranted? – Private Complaint made under Section 138 of NI Act – Summons issued by Magistrate under Section 204 of Code – Petition under Section 258 of Code filed by accused to drop proceedings in Complaint on ground that summons was nto accompanied by a copy of Complaint – Held, Section 258 applies to cases instituted otherwise than on Complaint and said Section does not get attracted to a case instituted on private Complaint – Moreover, duty of issuing process is that of Court – Complainant cannot be found fault with for any lapse or failure on part of Court to annex copies of documents necessary to accompany summons – Accused cannot take advantage of Section 259 to penalize Complainant for omission on part of Court – Moreover, defect of non-supply of copy of Complaint, is a curable defect and same would not vitiate proceedings – Thus, order of Judicial Magistrate dismissing Application under Section 258, not interfered with – Negotiable Instruments Act, 1881, Section 138.

2012 (3) CTC 379

Karuppa Gounder
Vs
D. Sekar and Ors
And
Karuppa Gounder
Vs
P. Gopinath

Administrative Law - Circular cannot override provisions of enactment – High court issued administrative Circular conferring power upon Chief Judicial Magistrates to entertain private Complaints against Police personnel – As per Sections 11 & 14 Of Cr.P.C., Chief Judicial Magistrate is competent to define jurisdiction, of Magistrates – As of now every Magistrate, having local jurisdiction, shall have power to take Cognizence – Held, neither CJM nor High court can deprive power of Magistrate by means of an administrative order or Circular – Circular is invalid and unenforceable – Quashed in exercise of power under Section 482 Of Cr. P. C.,

Code of Criminal Procedure, 1973 (2 of 1974), Sections 11, 12, 14, 190 &200 – Judicial Magistrates are competent to entertain private Complaints against Police officials – Circular dated 25.5.2003 Conferring power upon Chief Judicial Magistrate declared as invalid and unenforceable as being contrary to order in force – CJM shall define local jurisdiction of Judicial Magistrate, however, Subject to control of High court - Once local jurisdiction is so defined by CJM under Section14 of Cr.P.C., then Judicial Magistrate shall exercise all powers of Magistrate within their local limits so defined - Admittedly no Special Court was established to try cases involving offences against Police personnel – In order to give effect to orders made under Section 14, said Circular preventing Magistrate to entertain Private Complaints against Police personnel was quashed.

Code of Criminal Procedure, 1973 (2 of 1974), Section 482 – Quashing of Administrative Circular – Suo moto exercise of inherent power - Scope - High court issued Circular dated 22.5.2003 empowering CJM to entertain private Complaints against Police personnel – Orders issued under Section 14 defined local limits of Judicial Magistrates - Held, in absence of modified or varied order made under Section 14 by means of yet another order

under Section 14, Administrative Circular is invalid - In order to give effect to order in force, Circular is liable to be quashed even in absence of challenge.

Administrative Law – Mode of conferring power cannot be construed as source of power – Section 32 of Cr.P.C., empowers High court to issue order either by name or in virtue of their offices or clauses of officials generally by their official titles- Held, this provision deals only with mode of conferring power and does not deals with source of power of High Court.

Constitution of India, Article 50 – Separation of powers – Independence of judiciary – Judiciary enjoys absolute independence in dispensation of Justice – Such judicial independence without interference of any other organ has been declared as one of basic feature of Constitution – Judiciary, by observing absolute discipline, has played a vital role in Nation building – Every Judicial Officer is independent in his own sphere of activity – No other agency including High Court can interfere with his judicial function.

2012-2-TLNJ 521 (Civil)

Narender Kumar
Vs
State (NCT of Delhi)

Indian Penal Code, 1860, section 376 – Offence of rape – Appeal against order of trial Court dismissed by High Court – Once the statement of rosecurtrix inspires confidence and accepted by the court conviction can be based only on the solitary evidence of the prosecutrix – No corroboration required unless for compelling reasons – Complaining of offence of rape is not an accomplice after the crime – Testimony of victim has to be appreciated just as the testimony of any other witness – If court finds difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial – Even by any stretch of imagination it cannot be held that the prosecutrix was not knowing the appellant prior to the incident – It is crystal clear that if the evidence of the prosecutrix is read and considered in totality of the circumstances along with the other evidence in which the offence is alleged to have been committed, Supreme Court viewed that her deposition does not inspire confidence – Prosecution not disclosed the true genesis of the crime – appellant entitled benefit of doubt – appeals succeed –
For appellant: Mr. Dharmendra Kumar Sinha
For Respondent: Mrs. Anil Katiar

2012-2-TLNJ 529 (Civil)

K.U. Prabhu Raj
Vs
State by Sub Inspector of Police, A.W.P.S Tambaram and Anr

Indian Penal Code, Section 417 and 420 – False promise to marry – Sexual intercourse – Case filed – Quash Petition in High Court – Held – Mere promise to marry and later on withdrawing the said promise will not amount to an offence of cheating at all – no materials available to show that because of the promise made by the petitioner, the daughter of the second respondent has done anything or omitted to do something which has the tendency to cause damage or harm to the body or mind or reputation or property of the daughter of the second respondent – allegations would not make out an offence under section 417 or 420 I.P.C., at all – Daughter of the second respondent did not do anything out of inducement made by the petitioner to marry her – Petition allowed.

****