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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS
CIVIL CASES

(2011) 2 MLJ 10

A.N. MEHTA
VS
K. THOMAS AND ANOTHER

Code of Civil Procedure (5 of 1908), Order 18, Rule 3A - Appearance of party as witness – Evidence – Authorization of land lord to third party to give evidence – Does not disentitle right of landlord to examine himself at a later stage – Civil procedure provisions not to apply strictly in rent control proceedings – Order 18 Rule 3A not applicable to rent control proceedings.

FACTS IN BRIEF: The rent control petition was filed by the landlords for eviction on the ground of demolition and reconstruction. Revision petition has been filed by the respondent/tenant against the dismissal of the Rent Control Appeal by the lower Court whereby a petition filed by the land lords for the reopening of evidence in the rent control proceedings on their side for examining the landlord /2nd respondent herein as a witness was allowed when a third party had already rendered evidence as authorized by the 2nd respondent.

QUERY: Whether a petition for reopening the evidence for examination of a person as witness is maintainable in rent control proceedings when a third party authorized by such person has given evidence on his behalf?

Held: Admittedly, the proceedings are pending before the Rent Control Court and therefore, the provisions of the Code of Civil Procedure cannot be applied strictly to the rent Control Proceedings. Further, it has been stated in the application that to give evidence regarding the means of the landlord, the second respondent herein wants to examine himself as P.W.2. It is an admitted fact that in any application for eviction on the ground of demolition and reconstruction, the landlord has to prove the means and that fact can be spoken to only by the landlord and it cannot be spoken to by third party. Considering all these facts, the lower Court has allowed the application permitting the second respondent herein to examine himself as P.W.2. Further, the judgment relied by the learned counsel for the revision petitioner which were rendered under Order 18 Rule 3A C.P.C. cannot be made applicable to rent Control proceedings as the provisions of Code of Civil Procedure are not strictly applied to Rent Control Proceedings.

2011 (2) SUPREME COURT CASES 74

KUSUM LATA AND OTHERS
VS
SATBIR AND OTHERS

MOTOR VEHICLES – MOTOR VEHICLES ACT, 1988 – SECTION 166 – Accident claim – Involvement of offending vehicle – Proof of - In FIR lodged by brother of deceased, neither number of the vehicle nor the name of the driver was mentioned – Victim while walking on the road was hit by a vehicle from behind - Brother of deceased heard noise and then saw that a white colour tempo had hit his brother and sped away – Immediately he found that his brother, being seriously injured, was in an urgent need of medical aid and he took him to the hospital – Evidence on record from deposition of an eye witness, who clearly proved the number of the vehicle – Tribunal came to a finding that involvement of the offending vehicle being tempo had not been proved – High Court affirmed finding of the Tribunal – Both the Tribunal and the High Court refused to accept presence of the eye witness as his name was not disclosed in the FIR by the brother of the victim – Whether judgment of the Tribunal as affirmed by the High Court was sustainable – allowing the appeal, Held,

This Court is unable to appreciate the aforesaid approach of the Tribunal and the High Court. This Court is of the opinion that when a person is seeing that his brother, being knocked down by a speeding vehicle, was suffering in pain and was in need of immediate medical attention, that person is obviously under a traumatic condition. His first attempt will be to take his brother to a hospital or to a doctor. It is but natural for such a person not to be conscious of the presence of any person in the vicinity especially when Dheeraj did not stop at the spot after the accident and gave a chase to the offending vehicle. Under such mental strain if the brother of the victim forgot to take down the number of the offending vehicle it was also not unnatural.

There is no reason why the Tribunal and the High Court would ignore the otherwise reliable evidence of Dheeraj Kumar. In fact, no cogent reason has been assigned either by the Tribunal or by the High Court for discarding the revidence of Dheeraj Kumar. The so-called reason that as the name of Dheeraj Kumar was not mentioned in the FIR, so it was not possible for Dheeraj Kumar to see the incident, is not a proper assessment of the fact-situation in this case. It well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind.

(2011) 2 MLJ 222 (SC)

J.P. BUILDERS AND ANOTHER
VS
A. RAMADAS RAO AND ANOTHER

(A) Specific Relief Act (47 of 1963), Section 16(c) – Specific performance – Personal bars to relief – Readiness and willingness on part of plaintiff to perform his part of obligation under contract – Same, condition precedent to obtain relief, of grant of specific performance.

(B) Marshalling – Concept of marshalling – Principles.

Held: The High Court after noting that the plaintiff had paid substantial amount as advance and secured decree for specific performance, came to the conclusion that the right of marshalling is available to the plaintiff. Section 56 deals with the right of subsequent purchaser to claim marshalling. It should be contrasted with Section 81 which refers to marshalling by a subsequent mortgage. The concept as in Section 56 applies to sales in a manner similar to Section 81 which applies to mortgages alone.

The doctrine of marshalling rests upon the principle that a creditor who has the means of satisfying his debt out of several funds shall not, by the exercise of his right, prejudice another creditor whose security comprises only one of the funds.

FACTS IN BRIEF: Challenging the order passed by the High Court whereby the High Court partly allowed the suit and confirming the decree for specific performance granted by the lower Court and dismissed the suit filed by the appellants, appeals have been filed.

QUERY: Whether the plaintiff is ready and willing to perform his part of obligation under contract so as to get entitled to decree of specific performance?

Held: With the materials placed, specific assertion in the plaint, oral and documentary evidence as to execution of agreement, part-payment of sale consideration, having sufficient cash and financial capacity to execute the sale deed, bank statements as to the moneys in fixed deposits and saving accounts, Court is of the view that the plaintiff has proved his "readiness" and "willingness" to perform his part of obligation under the contract. The concurrent findings of the trial Court as well the High Court as to readiness and willingness to perform plaintiff's part of the obligations under the contract, in the absence of any acceptable contra evidence is to be confirmed.

2011 (2) SUPREME COURT CASES 302

PARIMAL
VS
VEENA @ BHARTI

HINDU LAW – HINDU MARRIAGE ACT, 1955 – SECTION 13(1) (ia) & (ib) – C.P.C. – ORDER IX RULE 13; ORDER XLIII, RULE 2; ORDERED XLI, RULE 31; SECTION 104 & 122 – Ex-parte decree of divorce – Wife's application under Order IX, Rule 13, CPC for setting aside the decree – Appellate Court not to interfere with an ex-parte decree unless it meets the statutory requirement of Order IX, Rule 13, CPC – Appellant husband got married to respondent wife on 9.12.1986 and out of the said wed lock, a girl was born – Appellant husband filed a case for divorce on 27.4.1989, u/s 13(1)(ia) and (ib) – Respondent wife refused to receive notice of appellant sent to her by the Court vide registered AD cover for the date of hearing – Refusal to accept summons was reported by the process server – Under the Court's orders, summons were affixed at the house of respondent wife, but the did not appear – She was served through Public notice published in the newspaper which was sent to her address – Ex-parte decree was passed by the trial Court on 28.11.1989 in favour of appellant/husband and marriage between the parties was dissolved – Two years after passing of the decree of divorce, on 16.10.1991, appellant husband got married and has two sons aged 17 and 18 years respectively from the said marriage – Respondent wife filed an application dated 17.12.1993 for setting aside ex-parte decree on ground that she had not been served notice – Trial Court dismissed the application – Appeal filed by the wife allowed by the High Court – High Court did not deal with the issue of service of summons or as to whether there was 'sufficient cause' for the wife not to appear before the court at all – High Court had not set aside the material findings recorded by the trial Court in respect of service of summons – Whether judgment passed by the High Court was sustainable – Held, No – Award of a sum of ₹10 lakhs in favour of wife as a lump sum compensation – Allowing the appeal, Held,

In order to determine the application under Order IX, Rule 13 CPC, the test has to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing and did his best to do so. Sufficient cause I thus the cause for which the defendant could not be blamed for his absence. Therefore, the applicant must approach the court with a reasonable defene. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a strait-jacket formula of universal application.

(2011) 2 MLJ 317 (SC)

T.G. ASHOK KUMAR
VS
GOVINDAMMAL AND ANOTHER

Transfer of Property Act (4 of 1882), Section 52 – Doctrine of lis pendens – Principles.

Held: The principle underlying Section 52 is clear. If ultimately the title of the pendent lite transferor is upheld in regard to the transferred property, the transferee's title will not be affected. On the other hand, if the title of the pendent lite transferor is recognized or accepted only in regard to a part of the transferred property, then the transferee's title will be saved only in regard to that extent and the transfer in regard to the remaining portion of the transferred property to which the transferor is found not entitled, will be invalid and the transferee will not get any right, title or interest in the portion. If the property transferred pendent lite, is allotted in entirely to some other party or parties or if the transferor is held to have no right or title in that property, the transferee will not have any title to the property. Where a co-owner alienates a property or a portion of a property representing to be the absolute owner, equities can no doubt be adjusted while making the division during the final decree proceedings, if feasible and practical (that is without causing loss or hardship or inconvenience to other parties) by allotting the property or portion of the property transferred pendent lite, to the share of the transferor, so that the bona fide transferee's right and title are saved fully or partially.

(2011) 2 SUPREME COURT CASES 330

HIMANSHU ALIAS CHINTUGAYATHRI WOMEN'S WELFARE ASSOCIATION
VS
GOWRAMMA AND ANOTHER

Civil Procedure Code, 1908 – Or. 16 R. 7, Or. 8 6-A & 6-C and Or. 41 R. 22 – Amendment of written statement at appellate stage – Filing belated counterclaim after issues framed by trial court – Permissibility – Decree of permanent injunction passed in favour of appellants – After remand of matter trial court once again decreeing suit in favour of appellants dismissing counterclaim of respondents – In appeal, High Court allowing respondents to amend written statement to include additional prayer in counterclaim and setting aside trial court's order – Sustainability – Held, one of the circumstances to be considered before an amendment is granted is delay in making application seeking such amendment and, if made at appellate stage, reason why it was not sought in trial court – In present case, not only was there wholly untenable delay but appellants had a decree for permanent injunction in their favour –Trial court clearly held that cause of action sought to be introduced by amendment, for relief of possession arose to respondents many years ago and was cause of action for an independent suit – Counterclaim not contained in original written statement may be refused to be taken on record, especially if issues have already been framed – Permitting a counterclaim at this stage would be to reopen a decree which has been granted in favour of appellants – High Court erred in disturbing findings recorded by trial court – Respondents failed to establish any factual or legal basis for modification/nullifying decree of trial court – Hence, High Court's order set aside and decree restored.

The appellant-plaintiffs purchased the scheduled property under an agreement of sale. In part-performance of this agreement of sale, the appellants were put in possession of the scheduled property. The respondent-defendants tried to interfere with the appellants filed a suit for grant of decree of permanent injunction. Respondents 1 and 2, filed written statement before the trial court contending that they were the owners of a portion of land and the appellants were trespassing into their property. The trial court held that the appellants were in peaceful possession and enjoyment of the scheduled property; thee was interference by the respondents and consequently, decreed the suit of the appellants for permanent injunction. Aggrieved by this judgment, the respondents approached the High Court. The High Court allowed the appeal, set aside the judgment and decree of the trial court and remanded the matter to the trial court for fresh disposal. The trial court permitted the respondents to amend the written statement to incorporate the relief of counterclaim for mandatory injunction to direct the appellants to demolish the structures put up subsequent to passing of the status quo order by the trial court. After the respondents had filed the amended written statement, the appellants filed the written statement to the counterclaim. On the basis of the amended pleadings, the trial court framed additional issues. Upon the pleadings of the parties and upon consideration of the material on record the trial court again decree the suit of the appellants but dismissed the counterclaim.

Held: The trial court upon a detailed appreciation of the evidence led by the parties concluded that on the basis of the material on record, it can be said that the possession of the appellant in respect of the plaint scheduled property as against the respondents was long, settled and uninterrupted. On the basis of the aforesaid conclusion, the trial court proceeded to decide the issue with regard to the counterclaim of the respondents. It was noticed that the respondents wanted a direction in the nature of the mandatory injunction, to be given to the appellant to demolish the illegal construction, which came subsequent to the passing of the status quo order. The trial court, however, observed that "the order of status quo was granted in respect to disputed property. The disputed property is what is described in the plaint schedule and not in the schedule to the written statement". Therefore, it was observed that the respondents would have the cause of action available to seek possession based on title and not on the basis on mandatory injunction on account of violation of status quo order. In these circumstances, the trial court observed that the appropriate remedy available to the respondents was to sue for possession. The High Court, while allowing the claims of the respondent to include the prayer for possession in the counterclaim, failed to appreciate that the order passed by the trial court did not cause any prejudice to appreciate that the order passed by the trial court did not cause any prejudice to appreciate that the order passed by the trial court did not cause any prejudice to the respondents. The trial court had merely held that the remedy of an independent suit was available to the respondents.

(2011) 1 MLJ 373 (SC)

RAM CHANDER TALWAR AND ANOTHER
VS
DEVENDRA KUMAR TALWAR AND OTHERS

Banking Regulation Act (10 of 1949), Section 45-ZA – Claim over money in bank account – Rights of nominee of depositor – Right to receive money in account – Money to devolve by rule succession - Nominee not entitled to ownership.

FACTS IN BRIEF:

Aggrieved by the judgment and order of the High Court rejecting the claim of the nominee of the depositor based on Section 45-ZA of the Banking Regulation Act over the money lying in the bank account of the deceased depositor, appeal has been filed by the nominee.

QUERY: Whether the nominee of a depositor is entitled to become the sole beneficiary of the money lying in the bank account of the deceased depositor?

Held: Section 45-ZA (2) merely puts the nomine in the shoes of the depositor after his death and clothes him with the exclusive right to receive the money lying in the account. It gives him all the rights of the depositor so far as the depositor's account is concerned. But, it by no stretch of imagination makes the nominee the owner of the money lying in the account. It needs to be remembered that the Banking Regulation Act is enacted to consolidate and amend the law relating to banking. It is in no way concerned with the question of succession. All the monies receivable by the nominee by virtue of Section 45-ZA(2) would, therefore, form part of the estate of the deceased depositor and devolve according to the rule of succession to which the depositor may be governed.

2011 (1) SCALE 437

SAROJA
VS
SANTHILKUMAR & ORS.

Hindu Law - ADOPTION – Validity – Original owner 'AM' had three children but his only son had expired in 1982 and he was survived by his widow, appellant – 'AM' adopted his grand son, son of his daughter by executing an adoption deed and after doing necessary rituals required – 'AM' thereafter executed a registered will whereby suit properties had been bequeathed in favour of his daughter and his grandson, plaintiffs –'AM' expired on 14.1.1985 – Appellants challenged validity of Will and adoption of plaintiff no. 1 alleging tht the properties which had been bequeathed in the Will were not self acquired properties of 'AM' and that other family members had also a right in the said properties – In absence of evidence, High Court came to the conclusion that the properties which stood in the name of 'AM' belonged to him and no other family member had any right therein – Whether High Court was justified in holding that properties in question were not joint family properties and that the Will was a valid Will - Dismissing the appeal, Held,

No. documentary evidence of whatever type was adduced before the trial court to show that late Arumugha Mudaliar had inherited the properties referred to in the will dated 11th October, 1984 and that it originally belonged to late Shri Ratna Mudiar, father of late Arumugha Mudaliar. No documentary evidence or revenue record showing ownership of late Shri Ratna Mudliar was produced before the trial court. In absence of such an evidence, in our opinion, the High Court rightly came to the conclusion that the properties which stood in the name of late Arumugha Mudaliar, belonged to him and no other family member had any right therein, as the said properties did not belong to the family. We, therefore, agree with the conclusion arrived at by the High Court that the properties in question were not joint family properties.

So far as adoption of Santhilkumar is concerned, in our poinion, the said adoption had been duly established before the trial court. Late Arumugha Mudaliar had followed the rituals required as per the provision of Hindu Law while adopting Santhilkumar as his son. Therewas sufficient evidence before the trial court to establish that Santhilkumar had been validly adopted by late Arumugha Mudaliar. Kandasamy(PW-2) has been examined in detail, who had placed on record photographs taken at the time of the ceremony. The said witness had given details about the rituals performed and the persons who were present at the time of the adoption ceremony and the deed of adoption had also been registered. The afore stated facts leave no doubt in our mind that the adoption was valid. Even photographs and negatives of the photographs which had been taken at the time of adoption are forming part of the record. In such a set of circumstances, we do not find any reason to disbelieve the adoption. We, therefore, agree with the conclusion arrived at by the High Court to the effect that the Santhilkumar was legally adopted son of late Arumugha Mudaliar.

So far as execution of will dated 11th October, 1984 is concerned, the said will had been duly registered.

For the purpose of proving the will, one of the attesting witnesses of the will, namely, Umar Datta(PW-4) had been examined. In his deposition, he had stated that he was present when the said will was being written by Kalyanasundaram(PW-5). The scribe of the will had also been examined. The High Court had appreciated the evidence and we have also gone through the relevant record which clearly reveals that execution of the will dated 11th October, 1984, was duly proved.

2011 (2) CTC 463

RAJENDRA PRASAD GUPTA
VS
PRAKASH CHANDRA MISHRA & OTHERS

Code of Civil Procedure, 1908 (5 of 1908), Section 151 – Withdrawal of Withdrawal Application – Appellant filed an Application for withdrawal of Suit – Subsequently he filed another Application for withdrawal for withdrawal of earlier Withdrawal Application before passing any order in earlier Application – Second Application filed by Appellant was dismissed and Suit was also dismissed as withdrawn – High Court held that once Application for withdrawal of Suit is filed Suit stands dismissed as withdrawn even without any order on Withdrawal Application – There is no express bar in filing an Application for withdrawal of Withdrawal Application – Order of High Court is set aside.

Facts: Appellant filed an Application for withdrawal of Suit, subsequently he filed another Application for withdrawal of earlier Application for withdrawal of Suit before passing any order in the earlier Application. High Court dismissed the Application by holding subsequent Application as not maintainable in law.

Held: The High Court was of the view that once the Application for withdrawal of the Suit is filed the Suit stands dismissed as withdrawn even without any order on the Withdrawal Application. Hence, the Second Application was not maintainable. We do not agree.

(2011) 1 MLJ 587 (SC)

RADHA MUDALIYAR AND OTHERS
VS
SPECIAL TAHSILDAR (LAND ACQ.), T.N.H. BOARD AND OTHERS

Land Acquisition Act (1 of 1894), Sections 4(1), 23 and 34 – Award of compensation – Determination of fair market value – Evidence of comparable sale instances – Scope of.

FACTS IN BRIEF: Aggrieved by the award of compensation granted by the High Court to the claimants without appreciating the evidence of increasing trend in the sale price of the land in the area, appeals have been filed by the claimants.

QUERIES:

1. Whether the deduction applied by the Court while determining compensation of claimants is reasonable?
2. Whether the documentary evidence of increasing trends in land sale price in an area would determine an award of compensation?
3. Whether claimants are entitled to get interest on solatium according to Section 34 of the Act?

Held:

The deduction can be applied for different aspects while determining compensation. If the size of the plot is very small and the same has to be taken into consideration for non-availability of other evidence and where the land acquired is a large chunk of land, then it would be advisable to apply some deduction on that score. In alternative or in addition thereto, deduction can also be applied on account of wastage of land and development charges.

2011 (1) SCALE 749

HARI RAM
VS
JYOTI PRASAD & ANR.

LIMITATION – LIMITATION ACT, 1963 – SECTION 3 & 22 – Encroachment on a public street – Continuing wrong – Cause of action is created as long as such injury continues and as long as the doer is responsible for causing such injury – Section 3 of the Act places an obligation upon the High Court to discuss and consider plea of limitation despite the fact that no such plea was raised and argued before the trial Court as also before the first Appellate Court – Civil suit filed by respondents alleging encroachment by defendants on a public street – Allegations that defendants encroached upon substantial part of the public street making the street narrow causing inconvenience to the users of the said street – Trial Court decreed the suit and a permanent injunction was issued directing removal of unauthorized construction from the ground – Appeal dismissed by first Appellate Court – Second appeal – Appellant defendant in his written statement took up a plea that the suit was barred by limitation – However, no issue was framed nor any grievance made by the appellant – Plea of limitation raised before the High Court – High Court after considering such a plea held that the suit could not be said to be barred by limitation as an encroachment on a public street is a continuing wrong – Whether the plea that the suit was barred by limitation was maintainable – Dismissing the appeal, Held,

On going through the records, we do not find that the appellant has made any submission before the trial court as also before the first appellate court regarding the plea of limitation. Such a plea is seen to have been made before the High Court. The said plea which was made before the High Court was considered at length by the High Court and the High Court held that although such a plea was not raised either before the trial court or before the appellate court, the same could be raised before the High Court in view of the provisions of Section 3 of the Limitation Act which places an obligation upon the Court to discuss and consider such a plea despite the fact that no such plea was raised and argued before the Trial Court as also before the First Appellate Court.

The High Court after considering the aforesaid plea held that the suit cannot be said to be barred by limitation as an encroachment on a public street is a continuing wrong and therefore, there exists a continuing cause of action. The records disclose that initially a complaint under Section 133 of Cr.P.C was filed which was purchased with all sincerity upto the High Court. But the High Court held that the dispute between the parties could be better resolved if a proper civil suit is filed and when evidence is led with regard to the disputed questions of fact. We find from the records that immediately thereafter the aforesaid suit was filed seeking issuance of a mandatory injunction. In view of the afore said facts and also in view of the fact that encroachment on a public street by any person is a continuing cause of action, we find no merit in the said contention.

(2011) 1 MLJ 1002 (SC)

DR. ASHISH RANJAN
VS
DR. ANUPAMA TANDON AND ANOTHER

☎✌☽ **Guardian and Wards Act (8 of 1890) – Custody of child – Violation of rights of visitation – Non – compliance of compromise order – Res-judicata not applicable – Appropriate forum to decide custody afresh.**

FACTS IN BRIEF:

Contempt petition has been filed by the applicant alleging willful and deliberate violation of terms of consent order relating to child custody passed by the Lok Adalat held by this Court by respondents.

QUERY:

Whether doctrine of res judiciate applies in matters of custody of child?

Held:

In addition to the statutory provisions of the Contempt of Court Act, 1971 the powers under Articles 129 and 142 of the Constitution are always available to this Court to see that the order or undertaking which is violated by the contemnor is effectuated and the Court has all powers to enforce the consent order passed by it and also issue further directions/orders to do complete justice between he parties. Mutual settlement reached between the parties cannot come in the way of the well established principles in respect of the custody of the child and, therefore, a subsequent application for custody of a minor cannot be thrown out at the threshold being not maintainable. It is a recurring cause because the right of visitation given to the applicant under the agreement is being consistently and continuously flouted. Thus, doctrine of res judicata is not applicable in matters of child custody.

☎✍☽ Constitution of India (1950), Articles 129 and 142 – Exercise of inherent powers – Technical objections not to prevent Court from administering justice.

Held:

A mere technicality cannot prevent the Court from doing justice in exercise of its inherent powers. The power under Article 142 of the Constitution can be exercised by this Court to do complete justice between the parties, wherever it is just and equitable to do so and must be exercised to prevent any obstruction to the stream of justice.

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SUPREME COURT CITATIONS
CRIMINAL CASES

(2011) 2 SUPREME COURT CASES 36

HIMANSHU ALIAS CHINTU
VS
STATE (NCT OF DELHI)

A. Criminal Trial – Witnesses - Hostile witness – Evidence of – Admissibility – Extent of – Corroboration by some other reliable evidence – Need of - Held, evidence of hostile witness remains admissible evidence and it is open to court to rely upon dependable part of that evidence, which is found to be acceptable and duly corroborated by some other reliable evidence available on record – Herein, courts below did not err in acting on evidence of PW 11 (eyewitness and brother of victim, who turned hostile), which was duly corroborated by other reliable evidence on record - Evidence Act, 1872 – S. 154 – Criminal Trial – Witnesses – Related witness – Turning hostile – Instance of.

B. Penal Code, 1860 – Ss. 302/34 – Murder trial – Appreciation of evidence – Conviction confirmed based principally on testimony of hostile eyewitness corroborated by other reliable evidence – Appellant-accused (A-previous enmity – Conviction of appellants under Ss. 302/34, upheld by High Court – Sustainability – Held, presence of PWs 7, 8 and 11 of PW 11 (eyewitness and brother of deceased) clearly nails appellants for murder of deceased – He is a truthful witness who can be safely relied upon, though he had turned hostile – His evidence is corroborated, insofar as A-2 is concerned, by PWs 7 and 8 – His evidence also gets corroborated from evidence of PWs 5 and 24 (doctor conducting post-mortem of deceased and SI, respectively) – Complicity of A – 3 is also established by evidence of PW 11, which is duly corroborated by medical and other evidence, although PWs 7 and 8 have not specifically named him – Concurrent finding of courts below, that prosecution evidence is sufficient to establish guilt of A-3 as well, beyond any reasonable doubt, reliable – Fact that PW 11's statement was taken down by PW 24 (SI) at the place of occurrence within 20-25 minutes of incident, clearly established – Although defence pointed out certain discrepancies and omissions in PW 11's deposition, but, such discrepancies and omissions are only minor and not very material and do not shake his trustworthiness - Conclusions recorded by trial court and confirmed by High Court, concerning appellants, do not suffer from any factual or legal error – Hence, conviction of appellants, confirmed – Criminal Trial – Appreciation of evidence – Minor contradictions or inconsistencies immaterial.

C. Criminal Procedure Code, 1973 – S. 154 – FIR – Delay in lodging/ filing FIR – Sufficiently explained – Effect, if any – Held, on facts, delay of two hours in filing FIR, stood sufficiently explained – Therefore, defence submission that time of two hours was used to falsely implicate accused due to previous enmity, rejected.

D. Constitution of India – Art. 136 – Scope of interference – Interference in criminal matters – Reappreciation of evidence – General rule of non – interference – Reiterated, ordinarily Supreme Court does not enter into an elaborate examination of evidence in a case where High Court has concurred with findings of fact recorded by trial court – Herein, held, there is no justification for departure from this rule.

2011 (2) SUPREME COURT CASES 98

R.S. MISHRA
VS
STATE OF ORISSA & ORS.

CRIMINAL LAW – Cr.P.C. – SECTION 227 & 228 – I.P.C. – SECTION 302 & 304 – Framing of charges – Role of the judge at the stage of framing of a charge – When the charge under a particular section is dropped or diluted

(although the accused is not discharged), some minimum reasons in nutshell are expected to be recorded disclosing the consideration of the material on record – A bald order stating that 'there was no sufficient material to frame the charge u/s 302, IPC', raises a serious doubt about the bona fides of the decision rendered by the judge concerned – Land dispute between accused and deceased – Deceased was said to have abused wife of younger brother of accused – On next day, brother of accused along with the accused went to the house of deceased and asked as to why he had scolded his wife in his absence – Deceased allegedly raised his hand towards brother of accused when accused dealt a lathi blow on head of deceased whereby he fell down – Thereafter, accused allegedly gave two more lathi blows on his chest – When wife of deceased caught hold of accused, he gave a lathi blow to her also on her forehead – Accused was charged u/s 302 and 323, IPC – However, appellant posted as the Additional District and Sessions Judge framed charge for offence u/s 304, IPC – Accused was convicted for offences u/s 304 and 323, IPC – On inspection of the court of Additional and Sessions Judge, a Senior Judge of the High Court noticed that appellant had not assigned any reasons while dropping the charge u/s 302, IPC – High Court took up a suo motu criminal revision against the order – High Court held that appellant, Additional Sessions Judge went wrong in framing charge u/s 304, IPC by declining charge u/s 302, IPC for no reason explained in the order – Single Judge of the High Court made some correctional suggestions about the appellant – Subsequent to these observations, High Court Administration denied selection grade to appellant – Appellant took voluntary Retirement on 30.11.2003 and filed appeal – Whether order passed dropping the charge u/s 302, IPC without assigning any reasons showed non application of mind by appellant – Held, Yes – Whether impugned order of High Court making certain observations and suggestions which led to denial of the selection grade to appellant was sustainable – Held, yes – dismissing the appeal, Held,

We are concerned with the role of the Judge at the stage of framing of a charge. The provision concerning the framing of a charge is to be found in Section 228 of Cr.P.C. This Section is however, connected with the previous section, i.e. Section 227 which is concerning 'Discharge'.

As seen from Section 227 above, while discharging an accused, the Judge concerned has to consider the record of the case and the documents placed therewith, and if he is so convinced after hearing both the parties that there is no sufficient ground to proceed against the accused, he shall discharge the accused, but he has to record his reasons for doing the same. Section 228 which deals with framing of the charge, begins with the words "if after such consideration". Thus, these words in Section 228 refer to the 'consideration' under Section 227 which has to be after taking into account the record of the case and the documents submitted therewith. These words provide an inter-connection between Section 227 and 228. That being so, while Section 227 provides for recording the reasons for discharging an accused, although it is not so specifically stated in Section 228, it can certainly e said that when the charge under a particular section is dropped or diluted, (although) the accused is not discharged), some minimum reasons in nutshell are expected to be recorded disclosing the consideration of the material on record. This is because the charge is to be framed 'after such consideration' and therefore, that consideration must be reflected in the order.

(2011) 2 SUPREME COURT CASES 224

DAYA NAND
VS
STATE OF HARYANA

Juvenile Justice (Care and Protection of Children) Act, 2000 – Ss. 2 (k), 2(1), 7-A, 20 and 64 (as amended by Act 33 of 2006 w.e.f. 22-8-2006) – Sentencing of juvenile – Appellant aged 16 years 5 months and 19 days on date of occurrence – Hence held, was a juvenile, and thus, could not be compelled to undergo sentence of RI as imposed by trial court and affirmed by High Court – Setting aside sentence, appellant directed to be produced before Juvenile Justice Board for passing appropriate sentence in consonance with 2000 Act – Penal Code, 1860 – S.s 376 r/w S. 511 – Appropriate sentence for juvenile – Criminal Trial – Sentence – Principles for sentencing – Age of accused/Juvenile.

(2011) 2 SUPREME COURT CASES 251

LAKHAN LAL
VS
STATE OF BIHAR
AND
PAPPU LAL ALIAS MANOJ KUMAR SRIVASTAVA
VS
STATE OF BIHAR

Juvenile Justice (Care and Protection of Children) Act, 2000 – Ss. 2(k), 2(l), 7-A, 20 and 49 – Applicability to accused who were not juveniles within meaning of Juvenile Justice Act, 1986 when offences were committed, but had not completed 18 yrs of age when offence were committed – Held, such accused would be treated as juveniles and entitled to benefit of 2000 Act, even when claim of juvenility was raised after they had attained 18 years of age – Relevant date for determining claim of juvenility is date on which offence was committed and not when accused produced before court – On facts held, appellants had not attained 18 years of age at time of hearing of appeal irrelevant and they continued to be "juveniles" in instant proceedings – Hence, sentence of life imprisonment imposed on them under S. 302 r/w S. 34 IPC set aside – They having already undergone more than three yrs' imprisonment, the maximum under 2000 Act, appellants set free – Juvenile Justice Act, 1986 – Ss. 2 (h) and 63 – Juvenile Justice (Care and Protection of Children) Rules, 2007, Rr. 12 and 98.

Criminal Trial – Sentence – Principles for sentencing – Age of accused/Juvenile – Appellants, who were "juveniles" when offence was committed convicted under S. 302 r/w S. 34 IPC – Presently aged 40 yrs they had already undergone more than three yrs' imprisonment, maximum period stipulated under 2000 Act – Hence, sentence of life imprisonment imposed against them set aside and they directed to be set free – Juvenile Justice (Care and Protection of Children) Act, 2000, S. 15.

2011-2-L.W. (CRL) 265

MRS. KAMALAM
VS
C. MANIVANNA

Criminal P.C., Section 256, Negotiable Instruments Act, Section 138, Practice/Dismissal of complaint, legality, Appeal.

Complaint was dismissed by Magistrate under Section 256 (1) of Cr.P.C., owing to the absence of the complainant on the appointed day – Present Appeal was filed by the legal representatives of the deceased complainant against the said order.

Held: As far as this case is concerned, there was no complainant since he was dead – Magistrate has not applied his mind to see that the provisions of Section 256 of Cr.P.C., would not be applicable when there is no complainant – However, he has found that the complainant was called absent and passed a mechanical order under Section 256 of Cr.P.C.

Order set aside; Magistrate directed to restore the complaint on file and to proceed with the case in accordance with law after recording the impleadment of the appellant herein as legal representatives of the complainant and permit her to prosecute the said complaint.

Negotiable Instruments Act, Section 138 – See Criminal P.C., Section 256.

Practice/Dismissal of complaint, legality, Appeal – See Criminal P.C., Section 256, Negotiable Instruments Act 138.

The undisputed facts are that the complainant before the Lower Court had presented the complaint under Section 138 of the Negotiable Instrument Act against the respondent and it was taken on file and during the pendency of the said complaint before the Lower Court, the complainant died and it was also promptly reported before the Lower Court. However, he legal representatives were not impleaded to prosecute the complaint. The Lower Court had posted the case on 09.04.2009 and on that day, it is found that no steps were taken for impleadment of the legal representatives and the complainant was also absent and therefore, it had utilized the provisions of Section 256 of Cr.P.C., and acquitted the accused.

2011-2-L.W. (CRL) 268

S.M. OMAR
VS
ZACKARIA THOMAS

Negotiable Instruments Act, Sections 138, 159 – Appeals were preferred by complainant against acquittal of the respondent – Lower court found that the statutory notice was issued to the Jewel Brase Target Private Limited and to the respondent, who was described as Chairman and Managing Director, but the drawer of the cheque was the respondent himself in his personal capacity and therefore, the notice issued under Section 138(b) if the Act is not proper and valid, and has dismissed the complaint, thereby acquitting the respondent.

Lower Court also held that the document evidencing the power of attorney is not valid and P.W1 could not give the particulars about the hand loan and substantiate the case that it is a legally enforceable debt – Further, the trial court also decided that the notice was not given in the personal capacity and therefore, the complaint is not proper and dismissed the complaint.

Held: When the drawer has been addressed with or without any description of his position and when the intention of the holder of the cheque was to make a demand for the payment of the dishonoured cheque from such drawer, provision under section 138(b) of the Act is satisfied – When a person has issued the cheque towards the legally enforceable debt of a company, merely describing the drawer of the cheque by his position as Chairman and Managing Director of the Company, will not invalidate the notice.

Trial court is wrong in concluding that the cheque has been issued by the respondent in his individual capacity but the notice was not issued to the respondent in his individual capacity and therefore, the notice is invalid under Section 138(b).

If a notice is addressed to the drawer by name and describing him by his position as Chairman and Managing Director of a particular company or firm, it is valid.

2011 (3) SCALE 298

ARUNA RAMCHANDRA SHANBAUG
VS
UNION OF INDIA AND OTHERS

CRIMINAL LAW – I.P.C. – SECTION 306 & 309 – TRANSPLANTATION OF HUMAN ORGANS ACT, 1994 – SECTION 2(d) & 3(6) – CONSTITUTION – ARTICLES 21 & 32 – Euthanasia – Withdrawal of life support of a patient in permanent vegetative state – Legal procedure – Approval of High Court should be taken – Doctrine of Parens Partriae – Passive euthanasia should be permitted in India in certain situations – Guidelines laid down which will continue to be the law until Parliament makes a law on the subject – Petitioner, a staff Nurse working in the hospital, was attacked by a sweeper in the hospital – Due to strangulation by a dog chain, her brain got damaged – 36 years have expired since the incident and she is about 60 years of age and is in bed in the hospital – Writ petition filed on behalf of petitioner by one Ms. 'PV', claiming to be her next friend making a prayer that the hospital

authorities be directed to stop feeding the petitioner and let her die peacefully – A team of three doctors appointed by this Court submitted a report about her physical and mental condition stating that the petitioner has some brain activity, though very little – She meets most of the criteria for being in a permanent vegetative state which has resulted for 37 years – Hospital staff have been looking after her day and night – Doctors, sister-in-charge and Assistant Matron have also issued statements that they were looking after the petitioner and want her to live – Whether petitioner's life support should be withdrawn, and at whose instance – Dismissing the petition, Held,

The KEM Hospital staff right from the Dean, including the present Dean Dr. Sanjay Oak and down to the staff nurses and para-medical staff have been looking after Aruna for 38 years day and night. What they have done is simply marvelous. They feed Aruna, wash her, bathe her, cut her nails, and generally take care of her, and they have been doing this not on a few occasions but day and night, year after year. The whole country must learn the meaning of dedication and sacrifice from the KEM hospital staff. In 38 years Aruna has not developed one bed sore.

2011 (2) CTC 455

SANDHYA MANOJ WANKHADE
VS
MANOJ BHIRAO WANKHADE & OTHERS

Protection of Women from Domestic Violence Act, 2005 (43 of 2005), Section 2(q) – Whether Complaint against female relatives of husband or male partner is maintainable under Act – High Court held that female members cannot be made parties in proceeding under Act, as "females" are not included in definition of "Respondent" – Held, expression "female" has not been used in Proviso to Section 2(q) – No restrictive meaning has been given to expression "relative" – Legislature never intended to exclude female relatives of husband or male partner from ambit of Act.

Facts: Appellant had filed an Appeal aggrieved by the order of High Court directing the Sessions Court to delete the names of the Respondents relatives in the Complaint preferred under the provisions of Domestic Violence Act. High Court had held that Complaint under Domestic Violence Act cannot be preferred against the female relatives of husband.

Held: From the above definition it would be apparent that although Section 2(q) defines a Respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the Proviso widens the scope of the said definition by including a relative of the husband or male partner within the scope of a Complaint, which may be filed by an aggrieved wife or a female living in a relationship in the nature of a marriage.

(2011) 2 SUPREME COURT CASES 550

STATE OF UTTRA PRADESH
VS
CHHOTEY LAL

Criminal Trial – Sentence – Rape – Leniency in sentence in rape cases – Not called for – Subsequent events, of resettlement of victim and/or rapist not relevant for leniency – Held, rape is a heinous crime and once it is established against a person charged of offence, justice must be done to victim of crime, by awarding suitable punishment to crime-doer – Herein, although incident is of 1989 and prosecutrix had married after incident and A-1 (rapist, respondent-accused) has family of his own and sending A -1 to jail now may disturb his family life, but, none o these factors individually or collectively persuade for a soft option – Hence sentence of 7 years' RI imposed by trial court restored and A-1 directed to be taken into custody to serve out remainder thereof – Penal Code, 1860, Ss. 376, 363, 366 and 368 – Crimes Against Women and Children – Rape – No leniency in sentence called for.

Criminal Trial – Medical Jurisprudence/Evidence – Age – Determined by a doctor – Adding of two years to – Rule regarding, if any – Question of age of rape victim – Held, there is no such rule, much less an absolute one, that two years have to be added to age determined by a doctor – Herein, doctor, on basis of her x-ray as well as physical

examination, opined that prosecutrix was of 17 years – Trial court, on consideration of entire evidence, recorded a categorical finding that prosecutrix was about 17½ years of age at time of occurrence – However, High Court conjectured that age of prosecutrix could be even 19 years, done by adding two years to age opined by doctor – Held, view of trial court regarding age of prosecutrix was right – High Court erred in observing as aforesaid – Penal Code, 1860 – S. 376 – Age.

Penal Code, 1860 – S. 375 Firstly & Secondly – Rape – Expressions "against her will" and "without her consent" in S. 375 Firstly and Secondly, respectively – Meaning of – Held, expressions "against her will" and "without her consent" may overlap sometimes, but said two expressions have different connotation and dimension – Expression "against her will" would ordinarily mean that intercourse was done by a man with a woman despite her resistance and opposition – Whereas, expression "without her consent" would comprehend an act of reason accompanied by deliberation – Crimes Against Women and Children – Rape.

Penal Code, 1860 – Ss. 375 and 90 – Word "consent" in context of S. 375 – concept of, discussed.

Penal Code, 1860 – S. 376 – Rape – Testimony of prosexutrix - Evidentiary value of – Corroboration when not required – Reiterated, a woman who is victim of sexual assault is not an accomplice to the crime – Her evidence cannot be tested with suspicion as that of an accomplice – As a matter of fact, evidence of prosecutrix is similar to evidence of injured complainant or witness – Testimony of prosecutrix, if found to be reliable, by itself, may be sufficient to convict the culprit and no corroboration of her evidence is necessary – In prosecutions for rape, the law does not require corroboration – Evidence of prosecutrix alone may sustain a conviction – It is only by way of abundant caution that court may look for some corroboration so as to satisfy its conscience and rule out any false accusations – Reasons why a woman in India is unlikely to falsely allege sexual assault against herself, discussed – Crimes Against Women and Children – Rape.

Held: The important thing that the court has to bear in mind is that what is lost by a rape victim is face. The victim loses value as a person. Indian society is a conservative society and, therefore, a woman and more so a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault. In examining the evidence of the prosecutrix, the courts must be alive to the conditions prevalent in the Indian society and must not be swayed by beliefs in other countries. The courts must be sensitive and responsive to the plight of the female victim of sexual assault. Society's belief and value systems need to be kept uppermost in mind, as rape is the worst form of women's oppression. A forcible sexual assault brings in humiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and more so by a young woman, roping in somebody falsely in the crime of rape. The stigma that attaches to the victim of rape in Indian Society ordinarily rules out the leveling of false accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge.

(2011) 2 SUPREME COURT CASES 715

SUBHASH
VS
STATE OF HARYANA

A. Penal Code, 1860 – Ss. 306 and 498-A - Abetment of suicide – Death by burning – Dying Declaration not credible – Conviction set aside – Allegation of dowry made by appellants – Trial court convicted appellants under Ss. 306 and 498 – A – High Court upheld conviction, relying on dying declaration recorded by SDM – Primary evidence was, dying declaration recorded by SDM – In deceased's statement recorded by doctor before IO, she had stated about an accident – Repeated efforts had been made by IO to record her dying declaration, but failed because of incapacity of victim – Dying declaration was allegedly recorded by SDM after an application was moved before him by PW 10 – Fitness certificate from doctor not obtained prior to recording dying declaration – Dying declaration, held, was manoeuvred at instance of PW 10 – Actual incident rested exclusively on statements of PWs 2 and 10 – Fact regarding oral dying declaration omitted in statements under S. 161 CrPC – Hence, held, statements of PWs 2 and 10 also, inspire no confidence.

B. Evidence Act, 1872 – S. 32(1) – Dying declaration – Credibility – Matters to be considered – Dying declaration allegedly recorded by Magistrate – PW 10 brother of deceased made an application to SDM for recording dying declaration – No noting on dying declaration that SDM had gone to hospital on application of PW 10 – SDM had not been approached by police or medical authorities for recording dying declaration nor had he obtained any opinion in writing from doctor about deceased's fitness to make a statement – Hospital did not fall within his jurisdiction either – Endorsement had been taken from doctor after dying declaration had been recorded – Application of PW 10 had not been produced before IO, but produced for first time in court – Earlier, deceased's statement recorded by doctor and attested by ASI in which deceased stated that she had been burnt in an accident – Repeated efforts by IO to record her dying declaration by Magistrate failed because of incapacity of victim – Held, dying declaration, raises a deep suspicion about its veracity.

C. Criminal Trial – Appreciation of evidence – Contradictions, inconsistencies, exaggerations or embellishments – Material contradictions – PWs 2 and 10, father and brother of deceased, claimed that oral dying declarations made to them by deceased – This significant fact had been omitted in their statements under S. 161 CrPC – No explanation for omission – held, if a significant omission is made in statement of a witness recorded under S. 161 CrPC, same may amount to a contradiction – Whether it so amounts is a question of fact in each case - Statements of PWs 2 and 10, inspire no confidence – Possibility that deceased had been burnt in an accident cannot be ruled out – Conviction of appellant set aside – Criminal Procedure Code, 1973, Ss. 161 and 162.

(2011) 1 MLJ (CRL) 776

SURENDERA MISHRA
VS
STATE OFJHARKHAND

Indian Penal Code (45 of 1860), Sections 302 and 84 – Arms Act (54 of 1959), Section 27 – Conviction and sentence – Plea of insanity – Accused not suffering from unsoundness of mind at time of commission of crime – Plea of accused does not come within exception contemplated under Section 84 IPC.

FACTS IN BRIEF:

Aggrieved by his conviction and sentence under Section 302 IPC and Section 27 of the Arms Act which has been upheld by the High Court in appeal, an appeal has been filed by the accused.

QUERY: Whether the plea of insanity of the accused would come within the exception contemplated under Section 84 of the Indian Penal Code?

Held: Expression "unsoundness of mind" has not been defined in the Indian Penal Code and it has mainly been treated as equivalent to insanity. But the term insanity carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not ipso facto exempted from criminal liability. The mere fact that the accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had first of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behaviour or the behaviour is queer are not sufficient to attract the application of Section 84 of the Indian Penal Code.

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HIGH COURT CITATIONS
CIVIL CASES

(2011) 1 MLJ 6

VIJAYALAKSHMI
VS
SULOCHANA (DECEASED) AND OTHERS

Transfer of Property Act (4 of 1882), Section 51 – Purchaser making improvements – With the knowledge that property does not belong to him – Cannot claim benefit under the Act.

FACTS IN BRIEF: The first respondent/appellant/plaintiff purchased the suit vacant land under sale deed dated 10.08.1966 and the appellant/respondent/defendant also purchased the said land under sale deed dated 28.1.1980. The respondent/appellant/plaintiff has filed a suit for declaration of title and recovery of possession. The trial Court has passed an order stating that the appellant/defendant has to pay a sum of ₹12,000/- being the suit vacant land value from the date of plaint till date of passing of decree together with interest @ 24% per annum and accordingly decreed the suit without costs and has also granted two months time for payment of the amount.

Aggrieved by the decree and judgment of the trial Court, the plaintiff preferred appeal in A.S.No. 6 of 1994 on the file of learned subordinate judge, Poonamallee and the Hon'ble Court has passed the decree stating that the appellant/respondent/defendant has to vacate the land in question and the respondent / appellant/plaintiff is entitled to the recovery of the possession and since the appellant / respondent / defendant has made improvement on the land in question, the respondent/appellant / plaintiff has to pay the value of the house to the appellant/respondent/defendant and the respondent/appellant/plaintiff is entitled to the relief of declaration of the suit property.

Challenging the above said decree and judgment, the second appeal was preferred by the appellant / respondent / defendant.

QUERIES:

1. Whether the appellant being a transferee having effected improvements on the suit property in good faith is entitled to the choice of paying the land value to the respondent in terms of Section 51 of T.P. Act?

2. Whether the provisions of Section 51 of T.P. Act is different from the plea of equitable estoppels?

Held: The first respondent / plaintiff (deceased) is the first purchaser as per Exhibit A-1 Sale Deed dated 10.8.1966 and the purchase made by her is a true and valid one in the eye of law, but, at the same time, this Court opines that the appellant / defendant purchased the same property mentioned in the Plaint as per Exhibit B-2 Sale Deed dated 28.1.1980 is not a legally valid one in the eye of law and therefore, the appellant / defendant is directed to hand over the suit land to the respondents within a period of three months from the date of passing of this judgment. Further, the respondents are entitled to seek the recovery of possession because of the fact that the appellant / defendant has made improvements by raising constructions on the land and the respondents / plaintiffs on the basis of principles of justice, Equity and Good conscience are directed to pay the value of the house put up by the appellant / defendant in the suit land which is to be determined or fixed on the date of the respondents projecting an execution petition before the Executing Court and taking possession of the same with well and building thereto in the manner known to law and in accordance with law and viewed in this perspective, the appellant / defendant is not entitled to avail the benefit or choice in paying the value to the respondents as per Section 51 of the Transfer of Property Act and also the ingredients of Section 51 are quite distinct and different from the plea of Estoppel under Section 115 of Indian Evidence Act and looking at from any point of view, the judgment and decree of

the First Appellate Court dated 23.8.1995 in A.S. No.6 of 1994 do not suffer from any material irregularity or patent illegality and consequently the substantial questions of law 1 and 2 are answered against the appellant and the second appeal fails.

2011 (1) TLNJ 10 (CIVIL)

N. SENTHILKUMAR
VS
V. TAMILSELVI

Civil Procedure Code 1908 as amended, Order 16, Rule 1 & 5 – Petition filed by husband seeking dissolution of marriage under Section 13(1) (iii) (a) of Hindu Marriage Act – No petition filed for representing wife by guardian on the allegation – interim application filed under order xvi rule 1 & 5 to examine psychiatrist or doctor as witness on his side – rejected by trial court on the view that without taking steps to represent wife by guardian and without verifying about the mental condition of wife by the Court such application is not maintainable – on revision High Court held that the witness may be examined and there is no hindrance for the court to held enquiry under Order 32 Rule 15 subsequently and witness of the doctor may be kept on record – trial court order set aside and Revision allowed.

Civil Procedure Code 1908 as amended, Order 32, Rule 15 – See Order 16, Rule 1 & 5 Civil Procedure Code 1908 as amended.

Hindu Marriage Act 1955, Section 13 (1) (iii) (a) – See Civil Procedure Code 1908 as amended, Order 16, Rule 1 & 5.

2011 (1) TLNJ 17 (CIVIL)

RAJAMANICKAM
VS
BALASUBRAMANIAN

Civil Procedure Code 1908 as amended, Section 47 – Suit filed for partition claiming 1/3 share – D1 and D2 set ex parte – Preliminary decree passed on 13.10.97 – Petition filed for passing a final decree – Petition allowed – Petition to set aside preliminary decree filed by D2 was allowed – written statement filed by him stating property in survey No. 55/1 is available for partition – petition for amendment was filed to include the property – fresh preliminary decree passed – petition for final decree was filed – first respondent filed counter statement, stating no notice was served on him in the amendment petition – contention rejected – final decree passed as against the said order no further proceedings – execution petition was filed – execution proceeding petition was filed under Section 47 CPC - execution court held that the decree is in-executable – revision petition was filed in High Court – held, the first respondent having failed to set aside the ex parte decree passed in the suit, by resorting to the procedure under Order 9, Rule 9, CPC cannot now be permitted to say that the decree is nullity that too by way of application under Section 47 CPC in the course of executing a decree – no steps were taken by the first respondent to set aside the ex parte decree same was allowed to attain a finality – first respondent allowed the order passed in the final decree application to attain a finality – the order passed by the executing court is sustainable and is set aside – CRP allowed.

(2011) 1 MLJ 120

SUNDAR AND ANOTHER
VS
ARULMIGHU GANGADHEESWARAR TEMPLE BY ITS E.O. AND ANOTHER

Code of Civil Procedure (5 of 1908) – Execution proceedings – Objections projected by Objectors / Occupants – Sustainability of.

FACTS IN BRIEF:

Aggrieved by the order passed by the lower Court, a second appeal has been filed by the appellants / Obstructors.

QUERIES:

1. Whether the subsequent events can be taken into account by the Court before final adjudication of the matter?

2. Whether a person in occupation of a premise can be treated as an obstructor in execution proceedings after having recognized him as a tenant by collecting the rents for the premises in his occupation during pendency of the very Execution proceedings?

Held:

It is to be borne in mind that subsequent events cannot be looked into by the Executing Court unless they come within the ambit of Order 21 Rule 13 read with Rule 13 of Code of Civil Procedure.

As far as the present case is concerned, since the Executing Court has to execute Decree in terms of the Decree passed and also because of another vital fact that it cannot traverse beyond the purview and ambit of the Decree passed and in short, on a careful consideration of the facts and circumstances of the case and also in the light of the detailed discussions and that too, in a cumulative fashion, this Court is of the considered view that the appellants / Obstructors / Aliens have not made out a case in their favour and even though it is an axiomatic fact that an Appellate Court or Competent Court of Law can take note of the subsequent events after passing of the Decree and this Court opines that the appellants are not the Lawful Tenants and they can only be treated as Strangers / Obstructors and admittedly, they are parties to the proceedings right from the Suit except at the stage of execution and it is also made clear that the appellants claim as direct tenants have not been finally approved by the H.R. & C.E. Commissioner and notwithstanding the fact that they pay rent though without the rental receipt in the name of Panneerselvam, the same will not enure to their benefit or in any way, the same will not heighten their case and in this view of the matter, this Court answers to the substantial questions of law against the appellants and resultantly, dismissed the second appeal without costs.

2011-2-L.W. 97

MRS. K. LAKSHMI
VS
S. K. SRIDHAR

C.P.C., Section 47/Execution, Order 23, Rule 3, Contract Act, Section 23.

Application (EA) was filed stating that the decree is inexecutable and therefore, the plaintiff/revision petitioner is not entitled to execute the decree, it was allowed by the lower court and CRP arose from said order – Held: it was held in the suit out of which these proceedings arose that the first respondent was not a tenant and his possession was unlawful – In the Second Appeal, this Court has held that the decree was not adjusted and the decree is executable against the first respondent – Therefore, having regard to the specific findings in the suit, it is not open to the first respondent herein to agitate the same pleas in the execution application.

If such frivolous petitions were allowed to stand and thwart the rights of the decree holder in enjoying the fruits of the decree, the people will lose faith in the judiciary – Court must make an endeavour to execute the decree.

First respondent raised various pleas and they were negative by the Courts below and by this Court in the Second Appeal and the same pleas are re-agitated in the execution proceedings which cannot be permitted – Executing court, without appreciating the same, erroneously held that the decree is indivisible and the judgment

debtor/first respondent is a tenant and the decree cannot be executed against him - Finding of the executing court is liable to be set aside and it is set aside.

Compromise between the petitioner and respondents 2 and 3 was not recognized by the court – When the compromise is not recognized, the court should not take into consideration the compromise – CRP allowed.

Execution – See C.P.C., Section 47/Execution.

C.P.C., Order 23, Rule 3 –See C.P.C., Section 47/Execution.

Contract Act, Section 23 – See C.P.C., Section 47/Execution, Order 23, Rule 3.

The revision was filed by the unsuccessful plaintiff, who is not able to get possession of the property even though his suit for recovery of possession was decreed and confirmed by this court in the Second Appeal as against the order of the Executive Court passed in the E.A. filed by the first respondent herein under Section 47 of the Code of Civil Procedure stating that the decree is inexecutable and therefore, the plaintiff/revision petitioner is not entitled to execute the decree. That petition was allowed by the court below and aggrieved by the same, this revision is filed.

Held:

All the contentions were negative by this court in the second appeal and the judgment and decree of the courts below were confirmed. Further, in the second appeal, it was also contended that by reason of the memo filed by the revision petitioner in A.S.No.177 of 1999 agreeing not to execute the decree against respondents 2 and 3, the decree became inexecutable against the first respondent and that was also negative by this court in the Second Appeal. Therefore, as per the judgments of the Honourable Supreme Court reported in 2006 (1) SCC 725 and 2003 (8) SCC 289 cited supra, the findings given in second appeal cannot be re-agitated in the execution application filed by the respondent and it is not open to the first respondent to raise the same plea in the execution application. Further, the contentions of the first respondent that the compromise between the revision petitioner and respondents 2 and 3 is unlawful as it affects the interest of the first respondent and such unlawful agreement cannot be recognized by the court under Order XXIII Rule 3, in my opinion, will only support the case of the revision petitioner. According to me, the compromise entered into between the petitioner and respondents 2 and 3 cannot be termed as unlawful.

2011-2-L.W. 113

RAJAMANICKAM
VS
BALASUBRAMANIAN AND OTHER

C.P.C., Section 47 – APPLICATION (E.A) was preferred by 1st defendant-1st respondent herein stating that no notice was served on the first respondent in I.A.No.456 of 1999, which was filed for amendment of the prayer in plaint and the suit for partial partition is bad in law and consequently, the final decree passed by the trial Court cannot be executed and prayed for rejection of the execution petition – Lower court allowed the EA and CRP was filed against said order – Held: First respondent has failed in all his attempts to make the decree passed in O.S.No.110 of 1997, unworkable and it Is to be held the attempt made by the first respondent is to prevent the petitioner from enjoying the fruits of the decree by filing such a vexatious petition – Order passed by the Executing Court is not sustainable in law and cutting Court is not sustainable in law and calls for interference – CRP allowed.

In the application taken out by plaintiff-petitioner herein for passing of a final decision in the partition suit, the 1st respondent contended that no notice was served on him in I.A.No.456 of 1999, which was filed to amend the prayer in plaint and in the absence of any such notice, the preliminary decree preliminary decree passed by the Court itself is illegal and consequently, no final decree can be passed. The trial Court considered the contention raised by the first respondent, and rejected the same and allowed the final decree application, by order dated

10.11.2000. As against the said order, the first respondent did not initiate further proceedings. Thereupon, the petitioner filed E.P.No.14 of 2001 for delivery of 1/3rd share in the suit schedule property. In the execution petition, the first respondent herein filed E.A.No.69 of 2001 under Section 47 CPC. In the said application filed under Section 47 CPC, it was stated that no notice was served on the first respondent in I.A.No.456 of 1999, which was filed for amendment of the prayer in plaint and the suit for partial partition is bad in law and consequently, the final decree passed by the trial Court cannot be executed and prayed for rejection of the execution petition. This application was resisted by the petitioner herein by filing a counter. The Executing Court, by order dated 20.09.2005, allowed the application filed under Section 47 CPC and aggrieved by such order, the petitioner has filed the present revision petition.

Held:

The short question, which falls for consideration in the present revision is as to whether the Executing Court was justified in entertaining the application filed by the first respondent herein, who was the first defendant in the suit and holding that the decree is in-executable

2011-2-L.W. 127

AZAM BAIG AND OTHER
VS
M/S. KALIKAMBAL BENEFIT FUND LIMITED

C.P.C., Order 18, Rule 3-A, Practice – Revision was preferred against order of lower court allowing the petition filed by respondent herein-defendant to defer the cross-examination of PW-1 till the first petitioner is examined in full as a witness – Held: the provision of Order 18, Rule 3-A contemplates that if a party to a suit wishes to appear as a witness, he shall so appear before the other witnesses on his behalf is examined – But, however, he can seek permission of the Court to examine the other witnesses at the first instance and the Court can grant such permission recording the reasons thereof – This provision can be employed only if the parties to the suit seek to examine any third party as witness.

In the case on hand, PW-1 is none else that the second plaintiff – When he is a party to the suit, he need not seek permission from the Court to examine him at the first instance – Second petitioner is only a guarantor, nevertheless, the second petitioner/second plaintiff being a party to the suit can examine himself as a witness at the first instance before the first plaintiff/first petitioner goes to the witness box – When such is the position, there is no rhyme or reason to contend that the first plaintiff/first petitioner ought to have examined himself at the first instance and thereafter the second petitioner/second plaintiff should go to the witness box – Court below has erroneously allowed the application preferred by the respondent – CRP allowed.

Practice – See C.P.C., Order 18, Rule 3-A.

Held: I am constrained to state that the respondent on wrong presumption contends that the first plaintiff/first petitioner alone should have gone into the witness box before the second plaintiff/second petitioner could go. When there is a specific provision in the Civil Procedure Code that only if a third party to the suit is to be examined at first, permission has to be sought for from the Court, the respondent cannot contend that the second plaintiff/second petitioner being a guarantor to the loan obtained by the first plaintiff/first petitioner, should not have gone to the witness box at the first instance. The second plaintiff/second petitioner being a party to the suit, he is at liberty to let in evidence at first. That apart, the present application is filed after the second petitioner/second plaintiff was examined in chief and after cross-examination in part.

Considering the above facts and circumstances of the case, I am of the considered view that the Court below has erroneously allowed the application preferred by the respondent. Civil Revision Petition allowed.

2011-2-L.W. 131

M/S SUNDARAM DYNACAST PVT. LTD
VS
M/S. RAAS CONTROLS, OTHERS

C.P.C., Order 7, Rule 14(3) (inserted by Amendment Act 46 of 1999), Order 18, Rule 17-A (inserted by Amendment Act 104 of 1976), Practice, Constitution of India, Article 227/Revision from order regarding marking of Exhibits.

Revision was filed against order of lower court dismissing petition (IA) to recall PW1 for marking further exhibits on his side and petition to condone delay in filing and to receive the documents mentioned in the petition – Held: in the case on hand, it is stated that the Resolution of the Company which is sought to be marked was not filed by mistake and inadvertence, when PW1 was examined – Thus, reasons were set out as to why the said document cannot be filed when PW1 was examined – The respondents will have ample opportunity to cross-examine PW1, about the admissibility of the document at the time of marking the document and at the time of further cross-examination of PW1. – CRPs under Article 227 allowed.

C.P.C., Order 18, Rule 17-A (inserted by Amendment Act 104 of 1976) – See C.P.C., Order 7, Rule 14(3) (inserted by Amendment Act 46 of 1999).

Practice – See C.P.C., Order 7, Rule 14(3) (inserted by Amendment Act 46 of 1999), Order 18, Rule 17-A (inserted by Amendment Act 104 of 1976).

Constitution of India, Article 227/Revision from order regarding marking of Exhibits – See C.P.C., Order 7, Rule 14(3) (inserted by Amendment Act 46 of 1999), Order 18, Rule 17-A (inserted by Amendment Act 104 of 1976), Practice.

2011 (1) TLNJ 225 (CIVIL)

PUSHPA @ LEELA & OTHERS
VS
SHAKUNTALA & OTHERS

Motor Vehicles Act 1988, Section 50 & 157 – Legal heirs of deceased in a motor accident filed claim petition against the owner of vehicle on record and against insurance company – the original registered sold the truck and gave its possession to transferee – on date of sale truck was covered by an insurance policy in the name of transferor – the change of ownership of the vehicle was not entered in certificate of registration – after earlier policy transferee took out in the name of transferor, and vehicle caused accident – tribunal awarded compensation but held that transferor not liable since he had ceased to be owner of the vehicle after its sale; as no privity of contract between transferee and the insurance company, policy was of no use and transferee and the insurance company, policy was of no use and transferee alone liable – appeals by claimant and legal heirs of transferee were dismissed – on further appeal by the heirs of transferee to Apex Court it was held that as the transferor name continued in records of registering authority as the owner of the truck was equally liable for payment of the compensation amount – therefore the insurance policy in respect of the truck was taken out in his name the insurance company is liable pay compensation – Civil Appeal allowed.

(2011) 1 MLJ 247

M.R. RAMAMURTHY (DECEASED) AND OTHERS
VS
MS. RADHA (DECEASED) AND OTHERS
AND
MS. RADHA (DECEASED) AND OTHERS
VS
M.R. RAMAMOORTHY (DECD) AND OTHERS

(A) **Indian Evidence Act (1 of 1872), Section 90- Applicability to will.**

(B) Indian Evidence Act (1 of 1872), Section 68, 69 – Proof of mode of execution.

(C) Benami Transactions(Prohibition) Act (45 of 1988), Section 4 – Bar.

(D) **Transfer of Property Act (4 of 1882) – Spec successions, ouster.**

FACTS IN BRIEF:

Grant of probate of a Will dealing with a property purchased by the testator in the name of another and for partition by metes and bounds and mesne profits.

QUERY:

Whether the document produced from proper custody can be presumed to be genuine when it is over 30 years old.

Held:

It has been held that presumption of genuineness may be raised if the document in question is produced from proper custody; that however, it is the discretion of the Court to accept the presumption flowing from Section 90 and that such discretion, which is no doubt a judicial discretion, should not be exercised arbitrarily.

(2011) 1 MLJ 265

MANGAYARKARASI AMMAL AND OTHERS
VS
SURESH BAFNA, PROPRIETOR OF MADRAS MERCANTILE AGENCY

Suit for recovery of money – Execution of promissory notes not admitted – Discrepancy in statement of accounts – Proper appreciation of evidence required – Remitted back to Trial Court.

FACTS IN BRIEF:

Appeal has been filed by the defendants against the judgment and decree of the Trial Court decreeing the money suit to the plaintiff, without considering the contradictions between the statement of accounts furnished by the plaintiff and other documents.

QUERIES:

1. Whether the relevant evidences are properly appreciated by the Trial Court?

2. Whether the law relating to burden of proof was properly applied by the lower Court?

3. Whether plaintiff can file additional documents at an appellate stage?

Held:

The lower Court skipped over the objections raised by the defendants, by pointing out that simply because Exhibit A-2, the pro-note was signed only by one of the defendants namely Mangayarkarasi, the case of the plaintiff could not be doubted and as such, skipping over similarly, all the objections raised by the defendants, the lower Court decreed the suit.

Admitting the signatures, would not amount to admitting the execution of the pro-notes and this settled proposition of law has not been considered by the lower Court.

It is the bounden duty of the plaintiff to prove the case convincingly as per law and that too in the wake of the defendants having challenged the genuineness of the very money transactions, which allegedly emerged between the plaintiff and the defendants.

2011 (1) TLNJ 308 (CIVIL)

C.M.A.(MD) NO. 160 OF 2008: THE MANAGING DIRECTOR, M/S. STATE EXPRESS TRANSPORT CORPORATION, PALLAVAN HOUSE, PALLAVAN
VS
L.R. SOLAI AND OTHERS
AND
C.M.A.(MD) NO. 161 OF 2008: THE MANAGING DIRECTOR, M/S. STATE EXPRESS TRANSPORT CORPORATION LTD., (TAMIL NADU DIVISION 1), CHENNAI
VS
S. TAMILARASI AND OTHERS

Motor Vehicles Act 1988, Section 168 & 183 and 184 – An assistant professor of an University, aged about only 39 years died in road accident while driving on his Motorcycle – wife and minor daughter and as well as the parents and sister of the deceased filed claim petitions and tribunal totally awarded ₹19,66,000/- - On appeal by the transport corporation alleging contributory negligence and as driver of the bus was acquitted in criminal case, the High Court held that in criminal case the standard of proof is beyond reasonable doubt and in claim petition it is preponderance of probability and transport corporation cannot be absolved of its liability on the ground of acquittal – findings of the tribunal on the aspect of negligence and quantum awarded confirmed – Civil Miscellaneous Appeals dismissed.

2011 (1) TLNJ 315 (CIVIL)

M/S. AKSOL CHEMICALS PRIVATE LIMITED, REP.BY ITS EXECUTIVE DIRECTOR MR. R. JAISHANKAR
VS
THE TAMILNADU ELECTRICITY BOARD REP.BY ITS EXECUTIVE ENGINEER, OPERATION AND MAINTENANCE RANIPET AND OTHER

Tamil Nadu Court fees and Suit Valuation Act 1955, Section 22, & 25(d) & 27(c) – Suit for declaration that bill issued by EB is illegal and void – Court fee paid under section 25(d) for declaratory relief and under section 27(c) for injunction – trail court directed plaintiff to pay ad valorem court fee on the billed amount-on revision High Court held that the very action of the board itself being challenged and not the quantum of EB changes-court fee payable under section 25(d) held proper-further held that Court should not be carried away by the form in which the plaint is drafted but should ascertain the actual relief sought for determination of court fee – CRP allowed.

2011 (1) TLNJ 329 (CIVIL)

P. SUBRAMANIAN (DIED) AND OTHERS
VS
S. VISWASAM

Civil procedure Code 1908 as amended, Order 9, Rule 13 – Suit for specific performance and decreed exparte – decree was executed and sale deed executed – application filed seeking possession – defendants alleging not aware of decree filed petition to set aside with petition to condone delay of 1147 days – rejected – on revision High Court called for records and found that defendants were not actually served with summons but were set exparte after publication affidavit of process server not considered and process server not examined – nothing on record to show serious attempt was made by process server to effect service – further held that it is trite that sufficiency of explanation alone is relevant criteria and not number of days – no presumption that delay is deliberate – further execution of sale deed cannot be a reason for rejecting condone delay and setting side applications – order of rejection set aside and matter remitted back for fresh consideration – CRP allowed with direction.

2011 (1) TLNJ 358 (CIVIL)

ABDUL AJEES
VS
S. VENKATASAMY NAICKER

Limitation Act 1963, Section 5 – Suit for declaration and injunction – dismissed – appeal with condone delay petition filed with medical certificate – rejected – on revision High Court confirmed the view of appellate court and opined that extend of delay is not material but the reasons for delay alone material – further held that medical certificate with medical bill, discharge summary, case sheet maintained by hospital are needed to justify the reasons given – Civil Revision Petition dismissed.

2011 (2) CTC 401

C. SUBRAMANIAN
VS
N. CHOCKALINGAM ASARI AND OTHER

Registration Act, 1908 (16 of 1908), Section 47 – Code of Civil Procedure, 1908 (5 of 1908), Section 64(2) & Order 21, Rule 58 – "Z" filed Suit for recovery of money against "R", pending Suit he also filed Interim Application for attachment of property – "R" gave an undertaking that he would not alienate property and recording his undertaking Application was closed – Subsequently "Z" filed another Application for attachment of property and same was ordered on 3.9.2003 – Suit decreed on 9.12.2005 – "Z" filed Execution Petition for sale of attached property – At that time Appellant filed Application seeking declaration that he has title over attached property and prayed for raising attachment being bona fide purchaser of property – Courts below dismissed Application – Appellant contended that he is bona fide purchaser and Sale Deed was executed in his favour – Sale Deed was executed after order of attachment – Registration of any Sale Deed subsequent to attachment of property by Court would have no effect – Appellant cannot rely upon Sale Deed registered in respect of attached property by pleading as bona fide purchaser.

Facts:

Respondent filed an Execution Petition for sale of attached property on the basis of decree passed in Suit for recovery of money. Appellant filed an Application under Order 21, Rule 58 of CPC in the Execution Petition, seeking

declaration that he has title over the property and to raise the attachment. Court below dismissed the Application on merits. Aggrieved by the order of Courts below the Appellant had filed Civil Miscellaneous Second Appeal before the High Court.

Held: Admittedly, the Sale Deed executed by the Second Respondent in favour of the Appellant was registered only on 30.9.2003 after the attachment of the property in issue was made on 3.9.2003 in I.A.No.399/2003. However, it is contended by the learned Counsel for the Appellant that the registration should relate back to 7.8.2003, since the document was executed and presented on 7.8.2003 before the Registering Authority. I am unable to subscribe to the submissions made by the learned Counsel for the Appellant in view of Section 64(2), C.P.C. makes it very clear that the registration of Sale Deed made subsequent to the attachment would have no effect. Amendment was made to Section 64, C.P.C. by introducing sub-section (2) to Section 64. In this regard, Section 64, C.P.C. is extracted hereunder:

> "64. Private alienation of property after attachment to be void.-
>
> (1) Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment – debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.
>
> (2) Nothing in this Section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment.

But for amendment of Section 64, C.P.C., the unfortunate decree holder would have resorted to filing of a Suit for declaration that the transfer made by the judgment-debtor in favour of the claim Petitioner is fraudulent under Section 53 of the Transfer of Property Act. And later this situation is now remedied by the introduction of Section 64(2), C.P.C. Hence the Claim Petitioner could not rely on the execution of Sale Deed before the attachment, while the actual registration took place after attachment. In this case, it is still worse that the Second Respondent-property in direct contravention to his own undertaking.

2011 (1) TLNJ 429 (CIVIL)

SARASWATHI AND OTHERS
VS
THAYAMMAL AND OTHERS

Civil Procedure Code 1908 as amended, Section 96 and Order 9, Rule 13 – Suit for partition – First defendant died and defendants 2 to 8 reminded exparte – 9th defendant agreed with plaintiffs' case – suit decreed – 4th & 5th Defendants preferred appeal instead of set aside application – appeal dismissed as appellants set exparte in trial court – on further appeal challenging the view of first appellate court, the High Court opined that under trite proposition of law, a person who reminded exparte entitled to appeal but not entitled to seek permission to file written statement and documents in appellate court to participate proceedings – further held that even exparte judgment should be a reasoned and discernible one and not to be simply decreed as prayed – permission granted to file set aside application in trial court and Second Appeal dismissed.

2011 (1) TLNJ 452 (CIVIL)

V. SATHYA NARAYANA, S/o V. GURUSWAMY AND OTHER
VS
MENAKA @ DILLIBAI, W/o MOHAN AND OTHERS

Specific Relief Act 1963, Section 16 – Suit for specific performance dismissed - on appeal the High Court expressed that no specific phraseology necessary and the intention of the party is necessary to infer for a ready and willingness to perform his part of contract – further held that plaintiff should aver and prove that they were and are ready and willing to perform their part of contract – alternative relief granted and First Appeal allowed in part.

2011 (1) TLNJ 535 (CIVIL)

ORIENTAL INSURANCE CO. LTD., VELLORE
VS
SAKKUBAI AND OTHER

Motor vehicles Act 1988, Section 166 – Victim died while pushing the tractor trailer – tribunal awarded ₹ 2,00,000/- - On appeal the High Court rejected the contention of the appellant insurance company that policy did not permit more than one to travel, as victim died while pushing the vehicle – deceased 45 years and parents of the deceased alive – 12 is fixed as the multiplier – trial court fixing 18 set aside – CMA dismissed.

(2011) 2 MLJ 549

DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO. LTD.,
VS
SUDHA AND ANOTHER

Motor vehicles Act (59 of 1988), Sections – Rash and negligent driving – Injury – Gratuitous passengers in goods vehicle – No coverage under policy – Insurer not liable – Principle of pay and recover – Insurer entitled to recover compensation amount from owner.

FACTS IN BRIEF:

Petition has been filed by the insurance company under Article 227 of the Constitution against the common award passed by the Motor Accident Claims Tribunal whereby it directed payment of compensation to the injured persons of the goods vehicle by the Insurance Company without granting them liberty to recover form the owner of the vehicle.

QUERIES:

1. Whether the insurer is liable to pay compensation to injured persons who are gratuitous passengers in a goods vehicle?

2. Whether owner of a goods vehicle is absolved from liability to pay compensation on ground that claimants are unauthorized passengers?

Held

It is appropriate for this Court to issue direction to enable the petitioner Insurance Company to recover the compensation amount paid by them as being the insurer of the 2nd respondent in the same proceedings. Except for this liberty being granted to recover the compensation amount from the owner of the vehicle, the 2nd respondent, the award passed by the Tribunal stands confirmed in all other respects.

2011 (1) TLNJ 575 (CIVIL)

G. SEETHADEVI
VS
R. GOVINDARAJ

Tamil Nadu Court Fees and Suits Valuation Act, 1955 – Section 40 – Suit for declaration that sale deed said to have been executed through alleged power agent is null and void and for injunction – Plaintiff claimed that no power was executed to execute sale of suit property – trial court felt a suit for declaration and directed court fee to paid under section 40 of the TN CF & SV Act – on revision the High Court opined that as the plaintiff is not aware of the said power of attorney, and as the alleged execution itself is denied the court fee payable is only under Section

25(d) – the ruling given under 2009 (4) LW 650 distinguished and the order of trial court set aside and Civil Revision Petition allowed.

2011 (1) TLNJ 577 (CIVIL)

CHELLAMAL
VS
T. PUNITHA AND OTHER

Civil Procedure Code 1908 as amended, Section 107, and Order 41, Rule 23, 23A – See Motor Vehicles Act 1988, Section 169.

Motor Vehicles Act 1988, Section 169 – Petition filed by the legal heirs of the deceased claiming compensation – Proper steps not taken to serve notice on owner of the vehicle and petition was dismissed in respect of owner of the vehicle in preliminary stage – Insurance company took the plea that owner violated policy condition, vehicle not having valid permit and deceased not allowed to travel – Claim petition was dismissed – on appeal High Court opined that the owner of the vehicle is the necessary party and the act being beneficial law to legal heirs of vehicular accident – to compensated properly matter remanded to tribunal to restore and retry the matter of the LRs and record – CMA allowed.

2011 (1) TLNJ 641 (CIVIL)

A. CHANDRAN AND OTHER
VS
PERIYAMMAL

Deeds – Description of property – Boundary – suit for declaration and injunction with regard to suit property including a well – decreed but on appeal judgment of trial court set aside – on further appeal High Court followed the legal maxim "Non Videntur qui errant consentire" and held that boundary will prevail over extent and plaintiff can not permitted to plead that wrong boundary was given – Second Appeal dismissed.

(2011) 1 MLJ 688

PETER ALEXANDER
VS
Q-848, SIVAKASI CO-OPERATIVE PRIMARY AGRICULTURAL AND RURAL DEVELOPMENT BANK, THROUGH ITS BRANCH MANAGER, SIVAKASI TOWN AND TALUK, VIRUDHUNAGR DISTRICT

Injunction – Suit for injunction restraining creditor from resorting to unlawful means while recovering loan – Maintainability.

FACTS IN BRIEF:

A suit for injunction was filed by plaintiff which was dismissed by the Courts below. Aggrieved by the same, the second appeal has been filed by the plaintiff.

QUERY: Whether a suit for injunction restraining the creditor from bringing the properties for sale otherwise than in accordance with law is maintainable?

Held: In this case, it has been stated by the plaintiff/appellant that he apprehended that the defendant-Bank is trying to take coercive steps and on that basis, he filed the suit as prayed for. It is also stated in the written statement that the Government has given a circular directing the Bank to take stern action against the defaulters. Therefore, it cannot be stated that the apprehension of the appellant is not bona fide. Hence, when the plaintiff alleges that he apprehended that

the defendant-Bank may indulge to take provisions of the Act, he is entitled to file a suit for injunction restraining the defendant from recovering the loan except under due process of law. Unfortunately, the trial Court held that the plaintiff has not stated the actions taken by the respondent-Bank which are illegal. Further, the First Appellate Court has also presumed that the respondent-Bank will not indulge in unlawful acts for recovery of the loan as it is a registered Society and on that ground, dismissed the appeal.

(2011) 2 MLJ 720

TERANCE ALEX
VS
MARY SOWMYA ROSE

Code of Civil Procedure (5 of 1908), Order 3 Rule 2 and Order 9 Rule 13 – Family Courts Act (66 of 1984), Sections 10, 13, 20 – Matrimonial proceedings – No legal impediment for Power of Attorney to represent party – But power agent should not be legal practitioner.

FACTS IN BRIEF:

Aggrieved by an order passed by the Family Court, a civil revision petition had been filed.

QUERY: Whether a power of attorney can represent a party to matrimonial proceedings in family Court?

Held: Any person, not being a legal practitioner, can be nominated as an agent under Order 3 Rule 2 C.P.C, to prosecute or defend the parties and until the Family Court passess any specific order, directing appearance of the party, depending upon the facts and circumstances of the case.

(2011) 2 MLJ 819

ORIENTAL INSURANCE CO. LTD.,
VS
RANGAMMAL AND OTHERS

Motor Vehicles Act (59 of 1988), Sections 173 and 166(1) – Rash and negligent driving – Death of labourer – Proof of negligence – Calculation of income – FIR given by third party – Third party information stating deceased to be a beggar – Not be relied on – Compensation claim by legal representatives – Proof of relationship – Production of legal heir certificate – Deceased unmarried – Concept of dependency compensation – Brothers and sisters of deceased – Maintainability of claim for loss of estate by legal heirs who are not dependants – No hard and fast rule – Brother and sister entitled to maintain claim petition under Section 166 of M.V. Act.

FACTS IN BRIEF:

Appeal has been filed by the insurance company under Section 173 of the Motor Vehicles Act against the judgment and decree passed by the Motor Accident Claims Tribunal whereby the Tribunal fixed negligence on the driver of the offending vehicle and awarded a sum of ₹1,88,000/- with interest. The appellant/Insurer challenges the maintainability of the claim petition itself.

QUERIES:

1. Whether a legal representative not dependant on the income of a deceased would be entitled to claim loss of dependency?

2. Whether contents of the FIR given by a third party are admissible in evidence for the purpose of calculation of loss of income?

Held:

It should be noted that the FIR has been given by a thirty party and Courts have consistently held that in Motor Accident Claims Cases, FIR, at best, can be taken on record, to set the criminal law in motion, and to the factum of accident, unless it is disputed. The contents of the FIR, which are given by a third party, need not always reflect the correct particulars, in all resects, as to the age, avocation of the deceased etc. Merely because a third party states that the deceased was a beggar, that cannot be simply be taken on record, as the admitted fact, by the respondents/claimants. There is no reason as to why the oral testimony of the respondents/claimants, regarding the avocation should be discarded, particularly, when their testimony is put to cross-examination. No documentary proof can be expected for engagement of a labourer.

(2011) 1 MLJ 858

ANNAM RAMJI
VS
BAJAJ ENTERPRISES REP. BY ITS PROPRIETOR SRI CHAND BAJAJ,
HAVING OFFICE AT HARDEVI CHAMBER

Tamil Nadu Court Fees and Suit Valuation Act (14 of 1955), Section 25(b), 25(d) – Suit for relief of "status declaration" – Under Section 34 of the Specific Relief Act (47 of 1963) – Valuation of suit – Under Section 25(d) of the Act.

FACTS IN BRIEF:

The revision has been filed by the petitioner against the order of return passed by the learned I Assistant City Civil Judge, Madras dated 24.9.2010 on the plaint filed by him, for bare declaration of the plaintiff's status as sole and absolute owner of the suit schedule property.

QUERY:

Whether the order of return of plaint passed by the lower Court is proper?

Held:

In the plaint filed by the petitioner the averments are made only to attract the provisions of Section 34 of Specific Relief Act. It is not germane to go through the proviso to Section 34, at this stage. Therefore, the order of return passed by the lower Court is against the tenor of Section 34 of Specific Relief Act. Therefore it has become necessary for this Court to interfere and set aside the order passed by the lower Court and to issue directions. The Registry is directed to return the plaint to the petitioner, for presentation of the same before the lower Court within a period of one week from the date of receipt of a copy of this Order. On such representation, the lower Court is directed to number the plaint, if otherwise in order, in accordance with law.

(2011) 1 MLJ 887

R. RAMANI
VS
SHANTHI DAMODARAN

(A) Code of Civil Procedure (5 of 1908), Order 2 Rule 2 –Execution of sale deed – Suit for permanent injunction restraining alienation of property to third parties – Ownership of property by means of a Will which is to be

probated – Filing of suit for permanent injunction without filing a suit for specific performance – Maintainability of.

FACTS IN BRIEF:

The trial Court dismissed the application filed by the petitioner/defendant under Order 14 Rule 2 and Section 151 of the Code of Civil Procedure to try the maintainability of the suit for permanent injunction filed by the respondent/plaintiff citing a bar in view of the Section 41(h) of the Specific Relief Act. Aggrieved by this order, civil revision petition has been filed by the defendant.

QUERY:

Whether a suit for permanent injunction can be maintained in view of the bar in Section 41 (h) of the Specific Relief Act when the cause of action for specific performance has not arisen?

Held:

It is contended by the petitioner that since it is not possible to get Letters of Administration, the agreement of sale was given up and abandoned. But, there is no specific recital in this regard in the sale agreement. It is further contention of the petitioner that without filing the suit for specific performance of contract, filing of suit for permanent injunction is barred and the present suit is not maintainable. But, the cause of action for filing the suit would arise only after getting the probate order as regards the will and on the date of filing of the present suit and even now, such cause of action has not arisen.

(B) Specific Relief Act (47 of 1963), Section 41(h) – Availability of equal and efficacious remedy – Availability of equal and efficacious remedy – Grant of injunction – Scope of.

Held: When the cause of action for filing the suit for specific performance of contract has not arisen, it is impossible for the respondent to file a suit for specific performance of contract. In the considered view of this Court, there is no wrong in filing the present suit. An equal efficacious remedy as provided in Section 41 (h) of the Act would arise only after the cause of action for such suit arises.

(2011) 1 MLJ 907

OM PRAKASH HUNDIA, PROP. HRINKAR EXPORTS CARRYING ON BUSINESS
VS
SANCO TRANS LIMITED REPRESENTED BY ITS MANAGING DIRECTOR, V. UPENDRAN, REGISTERED OFFICE

Suit for recovery of money – Evidence of statement of account in absence of examination of its writer – Admissibility of.

FACTS IN BRIEF: The present Appeal has been preferred against the judgment and decree of the trial Court decreeing the suit for recovery of money in favour of the plaintiff holding the defendant liable to pay the principal sum together with interest @ 12% per annum.

QUERIES:

1. Whether the non-examination of the writer of statement of running account maintained by a company in relation to another defaulting company would vitiate the trial?
2. Whether acknowledgment of liability determines the limitation period in case of recovery of money?

Held: What is required is that the entries in Accounts should, in order to be relevant regularly kept in the course of business. It is just and necessary where reliance is placed upon the Books of Accounts to prove that they have been regularly kept in the course of business. If the Books of Accounts are kept in pursuance of some continuous and uniform practice in the current business routine of an individual to whom it belongs then, they are regularly kept in the course of business within the meaning of Section 34 of the Indian Evidence Act, 1872.

(2011) 1 MLJ 1172

S. SARAVANAN
VS
DEEPA

Code of Civil Procedure (5 of 1908), Section 13- Foreign judgments – Enforceability of.

FACTS IN BRIEF: Aggrieved by the order passed by the Family Court, a revision petition has been filed.

QUERY: Whether an application to set aside the ex parte decree will amount to submitting to the jurisdiction of the Court?

Held: Admittedly, the parties got married in Chennai under the Hindu Marriage Act and therefore, the Foreign Court did not have jurisdiction to entertain the matrimonial dispute in respect of marriage that took place in India as per the Hindu Marriage Act. Therefore, unless the respondent submitted to the jurisdiction of the Foreign Court, the judgment rendered the Foreign Court cannot be enforced in India against the respondent.

(2011) 1 MLJ 1259

JAYAKUMAR
VS
KRISHNASWAMY IYYENGAR

Transfer of Property Act (4 of 1882), Section 53(A) – Conditions to invoke protection – Transferee – Possession should be taken – Transferee must have performed or must be willing to perform his part of contract.

FACTS IN BRIEF: The defendant is the appellant herein. The plaintiff, who is the respondent filed the suit in O.S. No. 193 of 1999 praying for recovery of possession of 3 acres of land in S.A. No.8/2A1 in Thular Village, Kudavasal Taluk. The very same plaintiff filed the suit in O.S. No. 77 of 2000, praying for damages for use and occupation. The trial Court non-suited the plaintiff in both the suits. The plaintiff preferred two separate appeals, aggrieved by the judgment of the trial Court, before the first appellate Court. The first appellate Court accepted the contention of the plaintiff and decreed both the suits. As against which, these two appeals have been preferred by the defendant.

QUERY: Whether the lower appellate Court is right in law in holding that the defendant is not entitled the protection under Section 53(A) of the Act (4 of 1882)?

Held: Two main conditions will have to be fulfilled to invoke the protection under Section 53-A of the Transfer of Property Act. The transferee must in part performance of the contract take possession of the property. Further, the transferee must have performed or must be willing to perform his part of the contract. In the instant case, though the defendant has the instant case, though the defendant has taken possession of the property pursuant to Exhibit B-1, he has not fully performed his part of the contract. His unwillingness to perform his part of the contract is writ large in the facts and circumstances of the case.

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HIGH COURT CITATIONS
CRIMINAL CASES

(2011) 1 MLJ (CRL) 628

KUPPAN
VS
STATE OF TAMIL NADU REP. BY THE INSPECTOR OF POLICE, BARGUR POLICE STATION, KRISHNAGIRI DISTRICT

(A) Indian Penal Code (45 of 1860), Section 302 – Indian Evidence Act (1 of 1872), Sections 145, 25, 27 – Murder case – Ocular testimony and Medical evidence – Contradiction – Testimony of Ocular Witnesses that the accused attacked the deceased with mango sticks – Medical evidence was death caused due to asphyxia by smothering – Witnesses neither whispered strangulation nor smothering – Belated dispatch of statement of eye-witnesses to Court – Evidence unnatural – Accused was arrested after three years from the date of occurrence – Extra-judicial confession of the accused after filing of the charge sheet – Confession leading to recovery of material object belatedly after that – Nothing to indicate the nexus of the crime to the accused – Cannot put to use as a piece of evidence – Conviction erroneous – Conviction Set aside – Appeal allowed.

(B) Indian Evidence Act (1 of 1872), Section 27 – Confession leading to recovery-Material object recovered belatedly after chargesheet filed – Whether can be used as a piece of evidence.

FACTS IN BRIEF: The case of the prosecution is that the accused and the deceased had developed intimacy, the deceased pressurized him that she should be kept as concubine for which course, he was not amenable and the accused attacked her with mango stick and caused her death. The accused stood charged for the offence under Section 302 of IPC and tried and found guilty for the offence under Section 302 of IPC and sentenced to undergo life imprisonment and fine with default sentence, challenged in this appeal on the ground that the trial Court has erroneously believed the evidence of alleged ocular testimony put forth by the prosecution which is thoroughly contrary to medical evidence. Further that the charge sheet was made earlier to the arrest i.e. 2 ½ of years to the occurrence and recovery of material object was recovered belatedly upon extra-judicial confession of the accused.

QUERIES:

1. **Whether the testimony of ocular witnesses which is contrary to medical evidence could be believed?**
2. **Whether the much belated recovery of material object can be used as piece of evidence?**

Held: The ocular witnesses P.Ws.2 and 3 have deposed that at the time when they witnessed the occurrence, the accused was actually attacking the deceased with mango stick on different parts of the body, neither strangulation nor smothering. The medical opinion canvassed through Doctor P.W.12 was that the death was caused due to asphyxia by smothering. Thus, the medical opinion canvassed and placed before the trial Court would clearly indicate that P.Ws.2 and 3 would not have seen the occurrence at all. Added further, the accused was actually arrested after three years from the date of occurrence, that too after filing of the charge sheet. The alleged extra-judicial confession or recovery of M.O.3 mango stick, all could not be put to use as a piece of evidence. Thus, there is nothing to indicate that the prosecution has brought home the nexus of the crime to the accused. The trial Court has erroneously convicted the accused. The appeal is allowed.

(2011) 1 MLJ (CRL) 632

CHTTI ALIAS CHITTIBABU
VS
STATE REPRESENTED BY ITS INSPECTOR OF POLICE, GUMMIDIPOONDI POLICE STATION, THIRUVELLORE DISTRICT

Indian Penal Code (45 of 1860), Section 392 read with 34, Section 397 – Robbery, dacoity with attempt to cause death or grievous hurt – Punishment for robbery – Scope of sentencing.

FACTS IN BRIEF: Challenging his conviction and sentence under Section 397 read with 34 IPC, the third accused has preferred a criminal revision petition.

QUERY: Whether the revision petitioner/third accused is one among three culprits and whether his conviction and sentence under Section 397 read with 34 IPC is proper?

Held: Though originally the trial Court convicted the petitioner for the offence under Section 397 read with 34 IPC and sentenced to undergo 7 years rigorous imprisonment along with conviction under Section 392 read with 34 IPC for which he was sentenced to undergo five years rigorous imprisonment, the appellate Court had acquitted the petitioner from the offence under Section 397 read with 34 IPC observing that no separate conviction could be made under Section 397 read with 34 IPC, and made under Section 397 read with 34 IPC, and no separate charge ought to have been framed under Section 397 IPC.

(2011) 1 MLJ (CRL) 752

K. RAJAMANICKAM
VS
P. ARUMUGAM

Negotiable Instruments Act (26 of 1881), Section 138 – Dishonour of cheque – Conviction and sentence – Service of statutory notice – Condition precedent for prosecuting a person for offence under Section 138 of Act – Compliance of.

FACTS IN BRIEF:

Aggrieved by the order dismissing the appeal against his conviction and sentence the accused who was punished by the trial Court for an offence under Section 138 of the Negotiable Instruments Act, has filed a revision petition.

QUERY: Whether there is perversity in the finding of the trial Court as well as Appellate Court regarding the service of statutory notice, which is a condition precedent for prosecuting a person for an offence under Section 138 of the Negotiable Instruments Act?

Held: The learned Judicial Magistrate No.IV, Salem has relied on the fact that the postal authorities, after noting the act that the addressee was not found in Yercaud, somehow got the address of the office of the petitioner in Pallipatti, Salem and redirected the same to the said address. To that extent, the above said observation of the learned Judicial Magistrate No.IV, Salem is correct. But the observations that followed is totally perverse. There is no iota of evidence to show that the respondent/accused refused to receive the said tapal marked as Exhibit P-6, when it was sought to be delivered by the postman to him. On the other hand, the endorsement found in Exhibit P-6 is “not claimed”. Not claimed” cannot be equated to “refused”. The learned Judicial Magistrate No.IV, Salem, chose to make an observation that the said notice when sought to be delivered to the petitioner, was refused, which is totally contrary to record.

(2011) 1 MLJ (CRL) 767

RANGESH
VS
STATE BY INSPECTOR OF POLICE, PALLAVARAM POLICE STATION

Indian Penal Code (45 of 1860), Section 376(2)(f) – Rape of child – Reliability of evidence of victim – Testimony to inspire confidence of Court – Delay in lodging FIR not to be a ground for dismissal.

FACTS IN BRIEF: Aggrieved by the conviction and sentence impose by the trial Court on the accused who is a school teacher, for the commission of offence of rape on a nine year old school girl, appeal has been filed by the accused.

QUERY: Whether testimony of a child rape victim can be made the sole basis for the conviction of an accused?

Held: The Hon'ble Apex Court in one of the decisions cited supra has categorically held that if the evidence of the prosecutrix inspires the confidence of the Court, it can be acted upon even in the absence of medical evidence. As far as the case on hand is concerned, as already pointed out that the evidence of P.W.1 not only inspires the confidence of this Court but her version is also corroborated by other evidence available on record through P.W.s.2 to 4 as well as through the medical evidence of the Doctors.

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