



# TAMIL NADU STATE JUDICIAL ACADEMY

Vol: XII

Part: 9

September, 2017

## IMPORTANT CASE LAW



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# INDEX

<b>S. No.</b>	<b>IMPORTANT CASE LAW</b>	<b>PAGE No.</b>
1.	Supreme Court – Civil Cases	01
2.	Supreme Court – Criminal Cases	04
3.	Madras High Court – Civil Cases	06
4.	Madras High Court – Criminal Cases	11

# TABLE OF CASES WITH CITATION

## SUPREME COURT - CIVIL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Senathi NA. Venkitasalapathi Ayer & Sons, Private Trust, rep. through S.L. Sivaji, Recent Manager Trustee vs. Indhumathi and another	2017 (3) MWN (Civil) 111	27.02.2017	Tamil Nadu Buildings (Lease and Rent Control) Act, Sec.29 – Exemption to Trust. How to ascertain? Mere name or description not to be taken – Nature of Trust should be examined.	01
2	Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy	2017 (3) MWN (Civil) 220	19.04.2017	Hindu Marriage Act, Sec.25 – Alimony – To be based on status of parties and capacity of husband. Courts should mould claims based on various factors.	01
3	Allokam Peddabbayya and another vs. Allahabad Bank and others	2017-4-L.W. 392 :: (2017) 8 SCC 272	19.06.2017	Transfer of Property Act, Sec.59-A – CPC, Order 34, Rule 1 – Right of Persons claiming through Mortgage.	02
4	Vithal Tukaram Kadam and Another vs. Vamanrao Sawalaram Bhosale and others	(2017) 7 MLJ 8 (SC)	09.08.2017	Mortgage by conditional sale – Re conveyance clause – Transfer of Property Act, Sec.58.C – How to interpret the deed.	02
5	B.Vijaya Bharathi vs. P.Savitri and Others	(2017) 7 MLJ 81 (SC)	10.08.2017	Specific Relief Act, Sec.16(c) – Readiness and willingness – Inference to be made from facts.	03

## SUPREME COURT - CRIMINAL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	State of U.P. vs. Sunil	2017-2-L.W.(Cr.) 434	02.05.2017	Constitution of India – Article 20(3) – Any Person can be directed to provide Foot Prints and Finger Prints - Not violation of Article 20(3).	04
2	Re: Exploitation of Children in Orphanages in the State of Tamil Nadu vs. Union of India and others.	2017 CRI. L. J 3217	05.05.2017	Juvenile Justice (Care and Protection of Children) Act, Sec.2(14) – Broad and Purposeful Interpretation to be given – Guidelines issued by Supreme Court for proper implementation.	04
3	Sathish Nirankari vs. State of Rajasthan	(2017) 8 SCC 497	09.06.2017	Criminal Trial – Circumstantial Evidence – Obligations of prosecution in such cases discussed.	04
4	Vikram Singh Alias Vicky Walia vs. State of Punjab and Another	(2017) 8 SCC 518	07.07.2017	Evidence Act – Sec.65(B) Certificate when necessary.	05
5	P.Chandrakala vs. K.Narender and ors.	2017 (3) MWN (Cr.) DCC 1 (SC)	24.07.2017	Negotiable Instruments Act, Sections 138 – Compromise between parties – Can be allowed to Compound Offence.	05

## MADRAS HIGH COURT - CIVIL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	M/s. Color Chemicals, A Registered Partnership Firm, rep. by its Power Agent K.Kolanji vs. M.Dhanalakshmi and others	2017-4-L.W.557	03.04.2017	CPC – Order 38, Rule 5 – Specific allegation which would warrant for getting a direction to furnishing security or in default attachment must be made by Petitioner.	06
2	Suresh Babu vs. M.R. Santha Raman and Others	(2017) 6 MLJ 734	30.06.2017	Hindu Law – Right of Hindu widow to adopt in the existence of her husband’s sons through first wife – Decided.	06
3	Murugaiah Velar vs. Velammal and others	(2017) 6 MLJ 416	14.07.2017	Execution Petition – Attachment of Gratuity – CPC, Sec.60(g) – when protection u/s.60(g) is applicable – Decided.	07
4	Seethaiammal (Died) and Others vs. Ramakrishnan Asari (died) and Others	(2017) 6 MLJ 740	21.07.2017	Evidence Act, Secs.65,68,69,71 and 90 - Xerox Copy of Will – Whether admissible in evidence – Discussed.	07
5	State of Tamil Nadu by the District Collector, Salem and others vs. T.Krishnasamy Chettiar (deceased) and others	2017 (3) MWN (Civil) 68	07.08.2017	Specific Relief Act, Secs.34 and 38 – CPC, Sec.80 – When notice not necessary and when relief of declaration of title need not be asked.	08

<b>S. No.</b>	<b>CAUSE TITLE</b>	<b>CITATION</b>	<b>DATE OF JUDGMENT</b>	<b>SHORT NOTES</b>	<b>Pg. No.</b>
6	Vijayakumar vs. Felix and Others	(2017) 7 MLJ 78	09.08.2017	Property Law – Court Auction purchaser Plaintiff in Possession – He cannot be disturbed – Injunction granted.	08
7	Chinnamuniamma and others vs. Pattammal (Deceased) and Others.	2017-4-L.W.761	09.08.2017	Evidence Act, Secs.30, 50,90,91 – Relevancy of opinions relating to Relationship – Long Cohabitation – Discussed.	08
8	Dharmasamvarthini and another vs. Selvakumar and Others and Indian Bank, rep by its General Manager vs. Selvakumar and Others	2017 (5) CTC 477	11.08.2017	Evidence Act, Secs.67 and 68 – Proof of Execution of Gift Deed – Evidence Act, Secs. 114 and 115 – Discussed.	09
9	R. Thimmaiyyan vs. SMT Chits and Finance Corporation, Coimbatore-641 104	2017 (5) CTC 633	16.08.2017	Transfer of Property Act, Sec.58(f) – Essentials of a Mortgage deed – Discussed – Difference between – Mortgage deed and Memorandum of Deposit of title Deeds – Discussed.	09
10	Naaz Jaffar vs. J.M.Sadiq Sait and another	2017-4-L.W.723	17.08.2017	Transfer of Property Act, Secs.10, 11, 45 – Muslim Law – Shariat Act – Contract Act – Minor’s share Onerous gift – What is? Discussed.	10

# MADRAS HIGH COURT - CRIMINAL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Pandurangan vs. Sivakami	(2017) 3 MLJ (CrI) 572	20.06.2017	Negotiable Instruments Act, Secs.138 and 139 Standard of Proof to Rebut Presumption u/s.139.	11
2	S. Dharmalingam vs. State rep. By The Deputy Superintendent of Police, Vigilance and Anti-Corruption, Chennai City – I Detachment, Chennai - 28. (Cr.No.12/AC/2005/CCI)	(2017) 3 MLJ (CrI) 563	29.06.2017	Prevention of Corruption Act, Secs.7, 13(2), 13(1)(d) and 20 – Proof of Demand and Acceptance – Presumption u/s.20 when can be applied.	11
3	E.Ponnurangam, S/o.Ettiyappan and Others vs. State, represented by Inspector of Police, Railway Protection Force, Chengalpattu, Southern Railway	(2017) 3 MLJ (CrI) 596	05.07.2017	Railway Property (Unlawful Possession) Act, Sec.3(a) and Probation of Offenders Act, Secs. 4 and 18 Discussed.	12
4	Senthil Kumar and Another vs. State of Tamil Nadu, Represented by the Inspector of Police, Thudiyalur Police Station, Coimbatore (Cr.No.1444/2008)	(2017) 3 MLJ (CrI) 578	13.07.2017	Indian Penal Code, Secs. 323, 324 – Corroboration of evidence of Eye witnesses Conviction upheld.	12
5	A.R. Chellappan vs. A.R.E. Thirugnanam	2017 (3) MWN (Cr.) DCC 32 (Mad.)	17.07.2017	Negotiable Instruments Act, Sec.7 – Material Alteration – Onus of Proof.	13

<b>S. No.</b>	<b>CAUSE TITLE</b>	<b>CITATION</b>	<b>DATE OF JUDGMENT</b>	<b>SHORT NOTES</b>	<b>Pg. No.</b>
6	Mahindra Consulting Engineers Ltd., vs. SPE/CBI/ACS, REP. By Inspector of Police, Central Bureau of Investigation, Nungambakkam, Chennai -6.	(2017) 3 MLJ (CrI) 657	18.07.2017	IPC, Secs.120(B), 420 – Prevention of Corruption Act, Secs.13(2), 13(1)(d) - Charges of Conspiracy - When can be framed.	13
7	D.Durairaj vs. State of TamilNadu, Rep. By Deputy Superintendent of Police, CBCID, Salem	(2017)3 MLJ (CrI) 736	25.07.2017	Cr.P.C, Sec.301 – Assistance to Prosecution when can be granted	14
8	Santineer Vincent Rajkumar and another vs. R. Rejitha	2017 (5) CTC 515	03.08.2017	Domestic Violence Act, Secs.2(f) and 2(r) – Parents-in-law not living under same roof – Complaint not attracted.	14
9	K.Govindaraj vs. 1.Subbian 2. The Collector office of the Collector of Nagapattinam District, 3. The Sub-Registrar office of the Sub-Registrar Vedaranyam Nagapattinam District	2017 (2) TLNJ 331 (Criminal)	01.09.2017	Cr.P.C.Sec.85 (3) – Proclaimed Offender – Petitions to lift Attachment can be filed even after 12 years if Proper reason is given by Petitioner.	15
10	M/s.Sri Moogambigai Constructions India pvt.Ltd., rep.by its Managing Director Thiru.K.M.Velumanie, vs. M/s.Venus Enterprises, Rep.by its Managing Partner Thiru.B.V.Ayyappan and others	2017 (2) TLNJ 321 (Criminal)	22.09.2017	Cr.P.C, Secs. 2(d), 200, 202 – Return of Complaint with direction to file with original Cheque – Not proper.	15

## **SUPREME COURT – CIVIL CASES**

### **2017 (3) MWN (Civil) 111**

**Senathi NA. Venkitasalapathi Ayyer and Sons, Private Trust, rep. through S.L. Sivaji, Recent  
Manager Trustee**

**vs.**

**Indhumathi and another**

**Date of Judgment: 27.02.2017**

### **Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (T.N. Act 18 of 1960), Section 29 –**

Exemption of Buildings owned by Public Trust and Charitable Trust – Applicability – Suit for Ejectment filed by Trust – Decree for Eviction – Concurrent findings – Eviction Decree attains finality – Execution – Tenant raised plea that Decree-holder is Private Trust and not exempted under Act – High Court held that Decree-holder was a Private Trust as per its title and exemption from Rent Act was not applicable – Tenability – Mere description or name could not be taken as determinative of character of Trust without examining nature of Trust – Trust in question constituted for benefit of general Public – Judgment of High Court set aside – Direction issued to Tenant to hand over possession of premises forthwith.

### **2017 (3) MWN (Civil) 220**

**Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy**

**Date of Judgment: 19.04.2017**

HINDU MARRIAGE ACT, 1955 (25 of 1955), Section 25 – Maintenance – Parameters – Family Court awarded Maintenance of Rs.12,000 for Wife and Son – High Court enhanced Maintenance from Rs.12,000 to Rs.23,000 – SLP filed by Husband – Husband remarried after grant of Decree for Divorce and begotten child – Husband receives Net Salary of Rs.95,527-25% of husband's Net Salary would be just and proper to be awarded as Maintenance – Amount of Permanent Alimony awarded to Wife must be befitting status of parties and capacity of spouse to pay Maintenance – Maintenance is always dependant on factual situation of case and Court would be justified in moulding claim for Maintenance passed on various factors – Court can take into consideration of “change in circumstances of parties” for variation, modification or rescission of Maintenance ordered by Court – Maintenance amount of Rs.23,000 awarded by High Court reduced to Rs.20,000 per month – Ratio laid down in Dr.Kulbhusan Kumar v. Raj Kumari, 1970 (3) SCC 129, followed and applied.

**Allokam Peddabbayya and another vs. Allahabad Bank and others**

**Date of Judgment: 19.06.2017**

**C.P.C.**, Order 34 rule 1, Redemption suit.

**Transfer of property act (1882), Section 59A**

Suit for redemption of mortgage – **held:** plaintiffs having interest in mortgaged property through their predecessor-in-interest and in right to redeem same were competent to do so under section 91, but subject to limitation under proviso to section 60.

Under order 34, rule 8 right to redemption survived only till confirmation of the sale and not thereafter – suit was instituted after issuance of sale certificate.

Plaintiffs lost right to sue for redemption of mortgaged property by virtue of proviso to section 60 no sooner that the mortgaged property was put to auction sale in a suit for foreclosure and sale certificate was issued.

**(2017) 7 MLJ 8 (SC)**

**Vithal Tukaram Kadam and Another vs. Vamanrao Sawalaram Bhosale and others**

**Date of Judgment: 09.08.2017**

Property Laws – Mortgage by Conditional Sale – Re-conveyance Clause – Transfer of Property Act, 1882, Section 58(c) – Suit filed by Appellant /Plaintiff for redemption of mortgage against Respondent/ Defendant decreed holding that deed/ Exhibit 62 was mortgage by conditional sale and First Appellate Court confirmed it – On second appeal, High Court held that Exhibit 62 was sale deed, option for re-conveyance not exercised within stipulated period and suit was not maintainable –Aggrieved, Appellant filed appeal – Whether Exhibit 62, was mortgage by conditional sale, or sale with option to repurchase – Held, Exhibit 62, though styled as sale deed, for consideration was but ostensible sale, containing Clause for re-conveyance – Words “repay”, “return” and “subject to such condition” did not commensurate with deed of absolute sale – Language used, conveys distinct impression that Plaintiff did not intend to relinquish rights, title and claims to his lands – Defendant was aware of limited nature of right conveyed and agreed to conditional sale along with obligation to return lands, if amount repaid – Value of land was far in excess of amount mentioned in agreement – Relationship of debtor and creditor could not be faulted with – Respondent did not take steps for mutation for three long years after execution of deed – Plaintiff objected to mutation in name of Defendant, by Exhibits 33 and 34 – Period for re-conveyance provided in agreement itself was inordinately long for ten years – Clause for re-conveyance was in requirement with Section 58 (c) – High Court failed to consider aforesaid factors in totality and in holistic manner – Exhibit 62 was mortgage by conditional sale and not sale with option to repurchase – Appeals allowed.

**(2017) 7 MLJ 81 (SC)**

**B. Vijaya Bharathi vs. P. Savitri and Others**

**Date of Judgment: 10.08.2017**

Contract – Specific Performance – Readiness and Willingness – Specific Relief Act, 1963, Section 16(c) – Registered agreement to sell entered into between 1<sup>st</sup> Defendant and Appellant/Plaintiff for schedule property, but 1<sup>st</sup> Defendant sold said property to 2<sup>nd</sup> Defendant who in turn, sold property to 3<sup>rd</sup> Defendant – Suit filed for specific performance decreed – On appeal filed by 3<sup>rd</sup> Defendant, High Court set aside decree of Trial Court stating that Plaintiff was not ready and willing throughout as required by Section 16(c) and hence, Plaintiff filed present appeal – Whether bar of Section 16(c) attracted on facts of present case – Held, 1<sup>st</sup> Defendant ran away from Registering Authority making it clear that she did not want to act in furtherance of agreement – High Court right in stating that no prudent person would stay quiet for period of one year and eleven months after such unequivocal repudiation of agreement if they were really interested in going ahead with sale transaction – Though aware of two conveyances of same property, Plaintiff did not ask for their cancellation – Unless those sales set aside, no decree for specific performance could possibly follow – Bar of Section 16(c) squarely attracted on facts of present case – Suit must be dismissed at threshold due to lack of readiness and willingness, which was basic condition for grant of specific performance – Appeal dismissed.

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## **SUPREME COURT – CRIMINAL CASES**

**2017-2-L.W.(Crl.) 434**

**State of U.P. vs. Sunil**

**Date of Judgment: 02.05.2017**

I.P.C., Sections 302, 34

Constitution of India Article 20(3), Foot-prints, Finger-prints, providing of, whether permissible

held: any person can be directed to give his foot-prints for corroboration of evidence, same cannot be considered as violation of Article 20 (3) – Non-Compliance of such direction of the Court may lead to adverse inference – same cannot be entertained as the sole basis of conviction.

**2017 CRIL.J 3217**

**Re: Exploitation of Children in Orphanages in the State of Tamil Nadu vs. Union of India and others**

**Date of Judgment: 05.05.2017**

(A) Juvenile Justice (Care and Protection of Children) Act (2 of 2016), S. 2(14) – “Child in need of care and protection”- Definition in S.2 (14) – Not exhaustive, but illustrative and furthering requirement of social justice – Must be given a broad interpretation.

Interpretation of Statutes – Broad and purposeful interpretation to be given to provision of S.2(14) of J J Act.

(B) Constitution of India, AArt.32 – PIL – Child sexual abuse cases – Guidelines issued by Supreme Court for protection of rights and welfare of children and proper implementation of beneficial legislation.

**(2017) 8 SCC 497**

**Sathish Nirankari vs. State of Rajasthan**

**Date of Judgment: 09.06.2017**

Criminal Trial – Circumstantial Evidence – Generally – Obligation of prosecution in a case which rests on circumstantial evidence, discussed – Murder trial – Case resting on circumstantial evidence – Herein, there are lurking doubts in the story of prosecution and many missing links are there – Hence, conviction of appellant-accused is set aside – Penal Code, 1860, Ss.302 and 309.

Criminal Trial – Medical Jurisprudence/ Evidence – Asphyxia/Throttling/ Strangulation/ Hanging – Signs of death due to strangulation, summarized.

**(2017) 8 SCC 518**

**Vikram Singh Alias Vicky Walia vs. State of Punjab and Another**

**Date of Judgment: 07.07.2017**

Evidence Act, 1872 – Ss. 65-B, 7 and 62 – Admissibility of electronic records under – Original tape-recorded conversation of ransom calls handed over to police, held, is primary evidence and, therefore, certificate under S. 65-B not required – Such certificate is mandatory only for secondary evidence.

**2017 (3) MWN (Cr.) DCC 1 (SC)**

**P.Chandrakala vs. K.Narender and ors**

**Date of Judgment: 24.07.2017**

NEGOTIABLE INSTRUMENTS ACT, 1881 (26 of 1881), Sections 138 and 147 – CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Section 357(3) – Compounding of offence – Permissibility – Dishonour of Cheque for Rs.7,00,000 – Conviction and sentence of Simple Imprisonment for 6 months with Fine of Rs.500 and Compensation of Rs.7,00,000 with default sentence, affirmed in Appeal by Lower Appellate Court – Revision before High Court, dismissed – Appeal before Supreme Court – Compromise pending Revision before High Court – Entire amount paid by Accused/ Appellant and Complainant acknowledged receipt of same – Complainant having no objection, if conviction set aside – Parties, having settled their disputes, can be allowed to compound offence – Setting aside Judgments of Courts below, Appellant acquitted of charge – However, as Appellant wasted public time, exemplary Cost of Rs.1,00,000 imposed on Appellant payable to a named orphanage – In case of failure to produce acknowledgment for payment to orphanage, Order of Conviction and Sentence to revive.

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## **MADRAS HIGH COURT – CIVIL CASES**

**2017-4-L.W.557**

**M/s.Color Chemicals, A Registered Partnership Firm, rep. by its Power Agent K.Kolanji**

**vs.**

**M.Dhanalakshmi and Others**

**Date of Judgment: 03.04.2017**

C.P.C., Order 38 rule 5

Attachment before judgment – ordering of – specific allegation, absence of, effect To get relief of direction for furnishing security or in default, attachment – Petitioner who seeks remedy must make a specific averment which would warrant for getting such a relief – It is absent.

**(2017) 6 MLJ 734**

**Suresh Babu vs. M.R. Santha Raman and Others**

**Date of Judgment: 30.06.2017**

Property Laws – Redemption of Mortgage – Adopted Son – Hindu Adoption and Maintenance Act (HAM Act), Section 12 – Hindu Succession Act (Act), Section 15(2) – Mother of Appellant/1st Defendant was original owner of suit property – Defendant is adopted son – Husband or mother was married twice and was his second wife – 1st and 2nd Respondents in appeal are sons of 1st wife – Suit property alleged to have been mortgaged to tenant – After demise of mother of Appellant, there were three suits: one filed by Appellant's tenant for prohibitory injunction, another by Appellant himself for recovery of possession from his tenant and third one is present suit for redemption filed by Respondents – Trial Court decreed Appellant's sit for eviction of tenant – First Appellate Court reversed finding of Trial Court on issue of adoption and held that 1st and 2nd Respondents are successors – in – interest of suit property under Section 15(2) of Act – Whether adoption of Appellant by mother/hindu widow justified – Whether widow's husband's sons through his first wife be considered as heirs of widow as to deny her right to adopt for herself – Held, son adopted would have status of natural born son under Section 12 of HAM Act and has rights, duties and obligations that are attached to natural born son – Interpretation that widow's husband's sons through another woman, though legitimate from his point, must be treated as her own sons, takes away Hindu widow's power of adopting child for herself – Proviso does not take away mother's right to adopt but only introduces pre – condition, with its application intended only for those women having their husbands living, where it requires her to obtain consent of her husband while she opts to adopt for herself, but not widow – Mother of Appellant, Hindu widow had her independent right to adopt for herself well preserved – It was not affected by existence of her husband's sons through latter's first wife – Mother of Appellant, had right to decide who she wanted to care, whose care she required and to who her properties should go, besides who should offer pinda to her – Judgment and decree passed by First Appellate Court set aside – Judgment and decree passed by First Additional District Munsif, restored – Appeal allowed.

**(2017) 6 MLJ 416**

**Murugaiah Velar vs. Velammal and others**

**Date of Judgment: 14.07.2017**

Civil Procedure – Execution Petition – Attachment – Code of Civil Procedure, 1908 (Code 1908) Sections 60(g) and 151 – Execution petition filed by Petitioner/ Plaintiff levied as against gratuity amount to which, Defendants entitled to as legal representatives of deceased borrower – Gratuity amount attachment also judgment and said attachment also became absolute – 1<sup>st</sup> to 3<sup>rd</sup> Respondents/ Defendants filed application under Sections 60(g) and 151 of Code 1908 on ground that gratuity amount exempted from attachment – Lower Court allowed application – Aggrieved, Petitioner filed present revision – whether Defendants entitled to seek for raising of attachment of gratuity amount ordered earlier – Held, as per Code 1908, gratuity amount allowed to pensioners exempted from attachment, but Defendants claimed right over gratuity amount only in their capacity as legal representatives of deceased borrower – Exemption provided to gratuity amount would be made applicable only to deceased borrower and said exemption could not be claimed by his legal representatives as they inherit gratuity amount in their capacity as legal representatives of deceased – Estate of deceased lying in hands of legal representatives liable for action pursuant to decree passed in suit – Defendants could not claim benefit of provision of Section 60(g) of Code 1908 as they could not be equated as pensioners entitled to receive gratuity amount as such – Lower Court erred in raising attachment passed earlier and set aside – Revision allowed with costs.

**(2017) 6 MLJ 740**

**Seethaiammal (Died) and Others vs. Ramakrishnan Asari (died) and Others**

**Date of Judgment: 21.07.2017**

Evidence – Xerox Copy of Will – Validity – Indian Evidence Act, 1872, Sections 65, 68, 69, 71 and 90 – Whether Xerox copy of Will can be relied upon to decide rights of parties without proof of Will as required under law – Held, evidence itself indicate that original Will is in Plaintiff's possession and without accounting for loss of original, he filed Xerox copy and admitted before Trial Court without objections – When law mandates certain things to be done in particular manner, secondary evidence should have been received only on compliance of provisions of Section 65 – Without establishing loss of original or its destruction, Xerox copy cannot be received as secondary evidence – Trial Court and Appellate Court did not consider mandatory provisions for proving Will as contemplated under Section 68 – Plaintiff did not discharge his onus in proving Will – Merely because Will not denied in written statement, it cannot be taken into proof of Will – Irrespective of denial or non-denial of Will, proof of Will as per Section 68 or Sections 69 and 71 is mandatory – None of the conditions for proving Will complied by Plaintiff – Relying of Will itself to decide right of Plaintiff is not as per law – Presumptions under Section 90 cannot be applied – Until Will proved, Plaintiff cannot claim right over same.

**2017 (3) MWN (Civil) 68**

**State of Tamil Nadu by the District Collector, Salem and others**

**vs.**

**T. Krishnasamy Chettiar (deceased) and others**

**Date of Judgment: 07.08.2017**

**Code of Civil Procedure, 1908 (5 of 1908), Section 80** – Suit for bare Injunction – Attempt to encroach upon land of Plaintiff – It is not an act purporting to be done by Public Officer in his official capacity – Issuance of Notice under Section 80 is not required.

**Specific Relief Act, 1963 (47 of 1963), Sections 34 and 38** – DW1 in his deposition admitted Plaintiff's title – Such admission operates as estoppels against its maker, when there is no dispute with respect to title – Suit for bare Injunction is maintainable, without prayer for declaration of title – Second Appeal disposed of.

**(2017) 7 MLJ 78**

**Vijayakumar vs. Felix and Others**

**Date of Judgment: 09.08.2017**

Property Laws – Possession – Injunction – Suit properties, purchased by Plaintiff's vendor in Court auction sold to Respondents/Plaintiffs on various dates – Appellants/ Defendants were parties to execution proceedings and they tried to disturb construction in said property by Plaintiffs – Suits filed by Plaintiffs for bare injunction restraining Defendants from disturbing their peaceful possession decreed – Appeals by Defendants – Whether decree for injunction granted in favour of Plaintiffs justified – Held, Defendants were shown as 3<sup>rd</sup> and 4<sup>th</sup> Respondents in execution application for delivery of possession and contentions that were raised by Defendants were dealt with and orders were passed – Pursuant to said orders, Plaintiffs purchased properties from Court auction purchaser/ Plaintiff's vendor – Defendants stopped from raising said contentions once again – If at all Defendants aggrieved, they would have raised such objection at time of execution itself – Documents would show that vendor of Plaintiffs purchased suit properties in Court auction and taken delivery through Court and from date of purchase, Plaintiffs was in possession of suit properties – Appeal dismissed.

**2017-4-L.W.761**

**Chinnamuniamma and others vs. Pattammal (Deceased) and Others**

**Date of Judgment: 09.08.2017**

Evidence Act Sections 30,50,90,91 Factum of Marriage – proof of long cohabitation as husband and wife – scope Any man or women who have lived together or co-habitated, there must be sufficient evidence to substantiate same – witnesses examined on behalf of plaintiffs have not spoken about cohabitation.

Relevancy of opinion given by a person relating to relationship – what is – scope No evidence to establish relationship – mere unproved recital found in a document is insufficient – Plaintiff's failed to prove either factum of marriage or long cohabitation – A presumption of paternity or long cohabitation cannot be drawn.

**2017 (5) CTC 477**

**Dharmasamvarthini and another vs Selvakumar and Other, Indian Bank, rep by its General Manager**

**vs.**

**Selvakumar and Others**

**Date of Judgment: 11.08.2017**

**Evidence Act, 1872 (1 of 1872), Sections 67 and 68** – Proof of execution of Gift Deed – First Wife denied execution of Gift Deed, claimed no knowledge of its contents – She alleged signature on blank papers obtained by her husband subsequently misused to create Gift Deed to Second Wife/Plaintiff's mother – First Wife admitted her signature in document – Attestor of Gift Deed spoke about execution of document by First Wife – Court Notice issued for deficit Court-fee of stamp addressed to both First and Second Wives – No action by First Wife to challenge document – Therefore, execution of document believed – Evidence of Attestor coupled with admission of signature by First Wife clearly established execution of Gift Deed.

Evidence Act, 1872 (1 of 1872), Section 114; Evidence Act, 1872 (1 of 1872), Section 115; Evidence Act, 1872 (1 of 1872), Section 17; Hindu Marriage Act, 1955 (25 of 1955), Section 11 – Discussed.

**2017 (5) CTC 633**

**R. Thimmaiyyan vs. SMT Chits and Finance Corporation, Coimbatore-641 104**

**Date of Judgment: 16.08.2017**

**Transfer of Property Act, 1882 (4 of 1882), Section 58(f) – Registration Act, 1908 (16 of 1908), Section 17** – Mortgage by Deposit of Title Deeds – Memorandum of Deposit – Registration of – Mortgage by deposit of Title Deeds evidence by Memorandum of Deposit and Promissory Notes signed by Borrower – Loan not repaid – Suit for recovery filed – Essentials of document for Mortgage: (i) date; (ii) date of repayment; (iii) sum secured; (iv) nature of Mortgage; and (v) subject matter of Mortgage – Document to be deemed Mortgage must incorporate all essentials of Mortgage – Such document must be registered – Absence of any one of essentials disqualifies document from creating Mortgage by itself – No mention of rate of Interest and time for repayment makes document, at best, a Letter evidencing Mortgage already created – Memorandum of Deposit of Title Deeds does not require registration – Possession of Original Title Deeds in hands of Plaintiff not explained – Case of Defendant not believable – Creation of Mortgage indicated by mere deposit of Title Deeds to creditor does not require registration – Appeal partly allowed.

Negotiable Instruments Act, 1881 (26 of 1881), Sections 20 and 118, Code of Civil Procedure, 1908 (5 of 1908), Section 34 – Discussed.

**2017-4-L.W.723**

**Naaz Jaffar vs. J.M.Sadiq Sait and another**

**Date of Judgment: 17.08.2017**

Transfer of Property Act (1882), Sections 10, 11, Life interest, scope of, condition restraining alienation, section 45 joint transfer for consideration, effect of.

Muslim Law/Shariat Law/ Restriction on alienation, minor's share, enjoyment, scope of.

Contract act (1872), Section 127/Onerous gift, what is, transaction in favour of minor, validity.

Condition restraining alienation in sale deed whether valid – mother paid sale consideration for purchasing jointly with her son, effect of.

Condition conferring life estate in sale deed whether proper.

Mother can deal with suit property during her life time in whatsoever manner she likes and if any portion of the suit property is left out, same will go to first defendant after her demise – mother did not effect division of suit property during her life time.

Though entire sale consideration was paid by mother there is a recital in sale deed that after her life time, whatever remainder in suit property is available shall vest with first defendant absolutely – This is a contract to contrary within section 45 – Recitals indicate no absolute restriction and it will not render sale deed invalid – Unless there is a total restraint on alienation of property transaction is not void – partial restraint would be valid and binding.

Any transaction in favour of the minor cannot require a consent from minor, said contract is valid and enforceable under section 127.

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## **MADRAS HIGH COURT – CRIMINAL CASES**

**(2017) 3 MLJ (Crl) 572**

**Pandurangan vs. Sivakami**

**Date of Judgment: 20.06.2017**

Negotiable Instruments – Dishonour of Cheque – Presumption – Negotiable Instruments Act, Section 138 and 139 – Judicial Magistrate convicted Petitioner / accused under Section 138 – On appeal, First Appellate Court modified judgment by reducing sentence and confirmed fine amount – Against order of Lower Appellate Court judgment, revision filed – Whether Petitioner committed offence punishable under Section 138 – Whether Petitioner brought out material to dislodge legal position attached to cheque – Held, accused had to rebut presumption under Section 139 – Standard of proof for doing so is that of ‘preponderance of probabilities’ – If accused is able to raise probable defence which creates doubts about existence of legally enforceable debt or liability prosecution can fail – Supreme Court also held that accused can rely on materials submitted by complainant in order to raise such defence – In some cases, accused may not need to adduce evidence of his/her own – To prove preponderance of probabilities, accused need not get himself examined – Court after scanning entire evidence of P.W.1 have serious doubt about legally enforceable debt – From admissions of P.W.1 in cross examination, legal presumption attached to cheque dislodged by accused – Burden shifted on complainant to establish consideration not proved in manner known to law – Legally enforceable debt cannot be inferred merely on cheque – Order of Lower Courts set aside – Revision allowed.

**(2017) 3 MLJ (Crl) 563**

**S.Dharmalingam**

**vs.**

**State rep. By The Deputy Superintendent of Police, Vigilance and Anti-Corruption, Chennai City – I**

**Detachment, Chennai -28. (Cr.No.12/AC/2005/CCI)**

**Date of Judgment: 29.06.2017**

Prevention of Corruption – Proof of Demand – Prevention of Corruption Act, 1988, Sections 7,13(2), 13(1)(d) and 20 – Trial Court convicted Appellant/accused under Section 7, 13(2) read with Section 13(1)(d) – Appeal against conviction and sentence – Whether prosecution proved guilt of Appellant of demand and acceptance of money beyond reasonable doubt – Held, on analyzing entire evidence of P.W.2 and P.W.3, prosecution version of alleged demand and acceptance of money doubtful – Only if demand, acceptance proved beyond reasonable doubt by prosecution, presumption under Section 20 will apply – When demand and acceptance of money itself is doubtful, in view of evidence of P.W.2, who turned hostile and P.W.3 evidence is also contradictory with P.W.2, defence explanation is more probable than case of prosecution – Accused entitled to benefit of doubt – Judgment of Trial Court set aside – Appeal allowed.

**(2017) 3 MLJ (Crl) 596**

**E.Ponnurangam, S/o.Ettiyappan and Others**

**vs.**

**State, represented by Inspector of Police, Railway Protection Force, Chengalpattu, Southern Railway**

**Date of Judgment: 05.07.2017**

Unlawful Possession – Railway Properties – Probation of Offenders – Railway Property (Unlawful Possession) Act, 1966 (Act 1966), Section 3(a) – Probation of Offenders Act, 1958 (Act 1958), Sections 4 and 18 – Petitioners/1<sup>st</sup> and 2<sup>nd</sup> accused admitted of having stolen railway properties near railway track and 3<sup>rd</sup> accused/ Petitioner bought said railway properties from them – Appeal against conviction of Petitioners by Trial Court for offence under Section 3(a) of Act 1966 dismissed – Aggrieved, Petitioners filed present revision – Whether conviction of Appellants under Section 3(a) of Act 1966 justified – Whether Petitioners could be afforded benefit of Section 4 of Act 1958 – Held, Inspector/ PW-1's evidence supported by PW-10 regards seizure of M. Os.1 to 5 under seizure Mahazar – PW-7/VAO issued certificate informing that 2<sup>nd</sup> accused ran grocery as also old scrap iron business in premises – PW-1's evidence revealed missing of MOs.1 to 5 at occurrence spot – Evidence of PWs.6 and 9 was to effect that suit properties belonged to Southern Railway and would not be freely available in market place – Except in regard to offences referred to in Section 18 of Act 1958, for other offences under other Acts, even though minimum sentence provided for, benevolent provisions of Act 1958 could be applied if other conditions satisfied – Benefit of Section 4 of Act 1958 afforded to Petitioners – Findings of conviction and sentence of Lower courts confirmed but provision 4 of Act 1958 invoked – Revision disposed of.

**(2017) 3 MLJ (Crl) 578**

**Senthil Kumar and Another**

**vs.**

**State of Tamil Nadu, Represented by the Inspector of Police, Thudiyalur Police Station, Coimbatore (Cr.No.1444/2008)**

**Date of Judgment: 13.07.2017**

Hurt – Voluntarily Causing Hurt – Nature of Injuries – Indian Penal Code, 1860, Sections 323 and 324 – Appellants/accused worked under same person/mason – Victim had balance of amounts to be paid to Appellants – Appellants joined together with intention to cause death of victim picked quarrel with him and attacked him with weapons – Trial Court convicted 1<sup>st</sup> Appellant for offence punishable under Section 323 – Aggrieved, Appellants preferred appeal – Whether conviction of Appellants for voluntarily causing hurt by dangerous weapons or means, justified – Held, according to PW1, PW3 and PW4/eye witnesses at time of occurrence, PW1 attacked by 1<sup>st</sup> and 2<sup>nd</sup> accused and injury sustained by PW1 – No reason to disbelieve evidence of PW3 and PW4 – Their evidences not shaken during cross examination – Evidences of PW1 and PW3 would show that 1<sup>st</sup> accused attacked PW1 and he sustained injuries in fingers – Trial Court correctly concluded that accused committed offence and caused injuries to PW1 – As per evidence of doctor and accident register, injuries sustained are simple in nature – No reason to interfere with judgment and sentence passed by Trial Court – Appeal dismissed.

**2017 (3) MWN (Cr.) DCC 32 (Mad.)**

**A.R. Chellappan vs. A.R.E. Thirugnanam**

**Date of Judgment: 17.07.2017**

NEGOTIABLE INSTRUMENTS ACT, 1881 (26 of 1881), Section 87 – “Material Alteration” – Alteration in date of Cheque – Date in Cheque shown as 13.03.2015 – Third numeral in 2015 i.e., “1” found overwritten by altering numeral “0” as “1” – No signature of drawer found for said alteration, indicating consent/approval of drawer – Cheque in question, held, suffered from “material alteration”, as per Section 87 and void – Person in possession of instrument subsequent to its execution liable to discharge onus of establishing that it was not altered.

**(2017) 3 MLJ (CrI) 657**

**Mahindra Consulting Engineers Ltd.,**

**vs.**

**SPE/CBI/ACS, Rep. By Inspector of Police, Central Bureau of Investigation, Nungambakkam,  
Chennai -6.**

**Date of Judgment: 18.07.2017**

Conspiracy – Cheating – Indian Penal Code, 1860 (Code 1860), Sections 120B and 420 – Prevention of Corruption Act, 1988 (Act 1988), Sections 13(2) and 13(1)(d) – Petition filed by Petitioner seeking to discharge him from offence charged under Section 120B read with Section 420 of Code 1860 and Section 13(2) read with Section 13(1)(d) of Act 1988, dismissed – Aggrieved by said order, Petitioner preferred present revision petition – Whether charge of conspiracy and cheating against Petitioner ought to be quashed – Held, merely because, agreement entered into between Petitioner and Project Implementing Agency (PIA) to ensure that housing construction component is implemented according to operational guidelines laid down by PIA, Petitioner cannot be fastened with criminal liability for act of deviation done by contractor in buildings in question – At most, act of Petitioner would amount to breach of contract and it would not amount to criminal offence as alleged by prosecution – Mere breach of agreement is not sufficient to frame charge under Section 120B of Code 1860, as against Petitioner – To bring home guilty for charge under Section 420 of Code 1860, there must be evidence to show that there was deception by Petitioner from very inception – In absence of oral and documentary evidence by prosecution, no prima facie materials available on record as against Petitioners to frame charges under Section 420 of Code 1860 – No prima facie materials available on record to proceed against Petitioner for alleged offences, since he was only adviser to PIA – Petition allowed.

**(2017) 3 MLJ (CrI) 736**

**D. Durairaj**

**vs.**

**State of Tamil Nadu, Rep. By Deputy Superintendent of Police, CBCID, Salem**

**Date of Judgment: 25.07.2017**

Trial – Assistance to Prosecution – Permission of Prosecutor – Criminal Procedure Code, 1973, Section 225 and 301 – Petitioner is defacto complainant/father of deceased – Deceased committed suicide in matrimonial house due to cruelty and dowry demand – Charge sheet and investigation report filed by Police – Petitioner filed petition under Section 301 for permission of Court to render assistance to prosecution in conducting trial – Request of Petitioner to assist prosecution rejected – Aggrieved, Petitioner preferred present revision – Whether order rejecting request of Petitioner to assist prosecution, sustainable – Held, Section 301 says that in any case, private person instructed pleader to prosecute person in any Court, Public Prosecutor or Assistant Public Prosecutor shall conduct prosecution and pleader so engaged to assist him shall act only under directions of Public Prosecutor – Pleader may with permission of Court submit written arguments after evidence is closed – Section 225 says that in every trial before Court of Sessions, prosecution shall be conducted by Public Prosecutor – In Sessions Courts, it is Public Prosecutor alone, who shall conduct prosecution – Nothing specified or stated in said Section enabling private parties, even though affected or close kith and kin of affected, to engage pleader on their own even for assisting prosecutor – Beyond such point, even Section 301(ii) cannot be stretched upon, as Petitioner does not have right to claim permission to assist prosecution – Petitioner does not have case to agitate issue for getting permission from Lower Court to assist prosecution – No infirmity in impugned order passed – Revision dismissed.

**2017 (5) CTC 515**

**Santiner Vincent Rajkumar and another vs. R. Rejitha**

**Date of Judgment: 03.08.2017**

**Code of Criminal Procedure, 1973 (2 of 1974), Section 482 – Protection of Women from Domestic Violence Act, 2005 (43 of 2005), Sections 2(f) and 2(r)** – Domestic Violence proceedings – Complaint against Parents-in-law – Complainant and Parents-in-law not living under same roof – Complaint under Domestic Violence Act will not be attracted – Ratio laid down by Apex Court in Preeti Gupta and another v. State of Jharkand, 2010 (7) SCC 667, relied on and applied.

**2017 (2) TLNJ 331 (Criminal)**

**K. Govindaraj**

**vs.**

**1. Subbian 2. The Collector office of the Collector of Nagapattinam District, 3. The Sub-Registrar office of the Sub- Registrar Vedaranyam Nagapattinam District**

**Date of Judgment: 01.09.2017**

Criminal Procedure Code, 1973, Section 85(3) – Petitioner / accused in cheque dishonour case declared as ‘Proclaimed offender’ and his properties attached by the Court – Petitioner arrested and then case ended in acquittal, in view of the compromise between the parties – Petition to lift the attachment dismissed by trial Court as same not filed within prescribed time – two years period referred for lifting the attachment cannot be read literally to say the belated application are not maintainable, even if there is a justifiable cause for not appearing before the Court – If the petitioner makes out a justifiable cause for filing the present application after 12 years of attachment and able to convince the trial Court that he has not absconded himself wantonly, then, the Court has every right to consider the application and lift the attachment – Petition allowed with directions.

**2017 (2) TLNJ 321 (Criminal)**

**M/s.Sri Moogambigai Constructions India pvt.Ltd., rep.by its Managing Director  
Thiru.K.M.Velumanie,**

**vs.**

**M/s.Venus Enterprises, Rep. by its Managing Partner Thiru.B.V.Ayyappan and others**

**Date of Judgment: 22.09.2017**

Criminal Procedure Code, 1973, Section 2 (d), 200 and 202 and Chapter XV- Complaint returned by Magistrate Court – to file same along with original Cheque – Law does not or provide any other mode of dealing with the complaint, much less returning the complaint – no provision in the Criminal Procedure Code or the Criminal Rules of Practice, empowering the Magistrate to return the complaint just because he thinks that there are any defects – when the complainant presents the case to the Magistrate, that is not the stage of examining the defects and it is not for the Magistrate to examine the so called defects in the complaint – Magistrate has to do is to consider the same by ordering the examination of complainant and / or as the case may be, his witnesses – return of complaint is not proper and the Magistrate directed to take the complaint on file and follow the procedures under Chapter XV of Cr.P.C – Petition allowed. Negotiable Instrument Act, 1881, Section 138 - Complaint under – returned by Trial Court with direction to file with Original Cheques – See Criminal Procedure Code, 1973 Section 2(d), 200, 202 and Chapter XV.

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