



TAMIL NADU STATE JUDICIAL ACADEMY

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IMPORTANT CASE LAW



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SUPREME COURT - CIVIL CASES

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1	Dalip Kaur Brar vs. M/s.Guru Granth Sahib Sewa Mission (Regd.) and Another	2017 (3) MLJ 755 (SC) :: 2017 (4) Scale 346 :: 2017 AIR(SC) 1914	11.04.2017	<u>Tenancy Laws – Provisional Assessment – Right of Appeal – East Punjab Urban Rent Restriction Act, 1949, Sections 13, 13(2)(i) and 15</u> – the ejection application filed against on ground of default of rent –directing Respondents to deposit rent with effect from earlier date though default was from later date – Respondents failed to comply - ordered for eviction –High court set aside order of eviction on ground that provisional assessment was flawed – stay imposed by Appellate Authority – Cheques issued to Appellant dis-honoured – Right of appeal would not come to aid of tenant who had not deposited even admitted dues in pursuance of determination which had been made by Rent Controller – Respondents deposited nothing within period fixed – Deposit made later would not ensure to their benefit – order of eviction restored – appeal allowed.	01
2	Dagadabai (Died) By LR's vs. Abbas @ Gulab Rustum Pinjari	2017 0 Supreme (SC) 365:: CDJ 2017 SC 434:: 2017 (5) SCALE 2 :: 2017(6) CTC 195:: 2017 (5) LW 127	18.04.2017	<u>Law of Adverse Psession – Evidence Act, 1872(1 of 1872), Section 101</u> – Adverse_Possession – Burden of Proof– suit for possession filed by Plaintiff – Original Owner of suit property, Muslim man, died intestate - in Trial Court and First appellate Court adverse possession not proved – High Court dismissed suit – factum of adverse possession must be proved through proper pleadings and evidence against true owner of property – essential elements of plea of Adverse Possession should be fulfilled– defendant did not admit Plaintiff's ownership over suit	01

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
				land – Held, Adoption not recognized under Mohammedan Law – Hence, Defendant’s claim of inheriting suit land as adopted son fails – title by Adverse Possession not proved – appeal succeeds and is allowed .	
3	Danamma @ Suman Surpur and Another Versus Amar and Others	CDJ 2018 SC 062 :: 2018 (1) CTC 788	01.02.2018	<u>Hindu Succession Act, 1956(30 of 1956), Section 6 – Hindu Succession (Amendment) Act, 2005(39 of 2005), Section 6</u> – Daughter’s right in Coparcenary property – suit for partition of Joint Family Property excluded Coparcener’s daughters – Trial court decreed suit and held daughters, born prior to enactment of act, as not entitled to any share – High Court confirmed said Order – whether daughters born prior to enactment of Act entitled to share in property – Amendment of 2005 squarely applicable – Ratio laid down in <i>Prakash vs. Phulavati, 2015(6) CTC 576(SC)</i> applied – factum of birth in Coparcenary creates coparcenary rights in sons and daughters – death of Coparcener leads to devolution of Coparcenary property – Right to Partition is inherent and can be availed by any Coparcener including daughter – Suit for Partition filed in 2002 – Section 6 of Act amended during Suit pendency – Trial court decree passed in 2007 – rights of Appellants crystallized in 2005 – Rights of daughters in Coparcenary property not lost on passing of Preliminary Decree – Partition becomes final only on passing of final decree – Held, appellants entitled to 1/5 share each in Joint Family Property – Plaintiff entitled to 1/25 share in said property – preliminary decree to be amended by Trial Court considering Amendment of 2005 – Appeals allowed.	02
4	M.D. Frozen Foods Exports Pvt. Ltd. and Others vs.	CDJ 2017 SC 1088 :: 2017 (6) CTC 542	21.09.2017	<u>Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(54 of</u>	03

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
	Hero Fincorp Ltd.			<p><u>2002) (SARFAESI Act), Section 37 – Arbitration and Conciliation Act, 1996 (26 of 1996)</u> – Recovery proceedings – Non Banking Financial Companies(NBFC) – Parallel proceedings – secured creditor originally initiated recovery proceedings by invoking Arbitration clause contained in agreement – Arbitral proceedings commenced – Prior to invocation, notification issued under SARFAESI Act, specifying NBFC as Financial Institutions – Applicability of SARFAESI Act to NBFC companies – whether parallel proceedings under Arbitration Act and SARFAESI Act can go on – Held, Arbitration Act and SARFAESI Act are complimentary to each other and it is not a case of election of remedy – Arbitration is an alternate to Civil proceedings – Provisions of SARFAESI Act providing speedy remedy in addition to provisions of Arbitration Act – SARFAESI Proceedings are in nature of enforcement and Arbitration is adjudicatory – SARFAESI proceedings and Arbitration proceedings can be proceeded simultaneously.</p>	
5	Venu vs. Ponnusamy Reddiar (Dead) Thr. Lrs. and others	AIR 2017 SC 2447:: 2017 (4) LW 55 :: 2017 (5) MLJ 296:: 2017 (6) Scale 475	27.04.2017	<p><u>Limitation – Limitation Act, 1963 – Article 137</u> - Limitation for execution of preliminary decree for partition – Application filed for appointment of Court Commissioner – no limitation prescribed for this purpose, as such it would not be barred by limitation, lis continues till preliminary decree culminates into final decree – till partition is carried out and final decree is passed, there is no question of any limitation running against the right to claim partition as per preliminary decree.</p>	03

SUPREME COURT – CRIMINAL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
1	Hussain vs. Union of India and another	CDJ 2017 SC 271 :: 2017(2) CTC 562:: 2017(3) SCALE 460:: AIR 2017 SC 1362	09.03.2017	<u>Constitution of India, Article 21 – Code of Criminal Procedure, 1973(2 of 1974), Section 436-A</u> – Speedy Trial – Bail Applications – Criminal Appeals – Speedy disposal – Delay in disposal of Bail applications – Violation of right of speedy trial – Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 – Timely delivery of justice is part of Human Right –direction issued to Subordinate courts to dispose of Bail Applications expeditiously – guidelines framed for speedy disposal of Magisterial trials and Criminal Appeals pending on file of Appellate Courts.	04
2	Harishankar Shukla vs. State of Uttar Pradesh	2017 (4) Scale 326 :: 2017 AIR 1959 (SC)	05.04.2017	<u>Criminal Law – IPC – Section 304-I, 323</u> – Conviction for offence – sustainability – injured eye-witnesses – land dispute – trial court acquitted all three accused while holding that there were contradictions between the three eye-witnesses – on appeal, High Court convicted A3– High Court held that all the eye-witnesses produced by the prosecution had clearly stated that it was the appellant and the appellant alone, who opened fire from the main door of his house and caused death of deceased – whether judgment of the High Court convicting appellant for offences u/s 304-I, 307 and 323, IPC was sustainable – Held, yes – This court reduces the sentence to six years imprisonment – allowing the appeal in part.	04
3	State of Maharastra vs. Nisar Ramzan Sayyed	2017 (2) SCC (CrI) 624:: 2017 (5) SCC 673 :: 2017 AIR 2363(SC)	07.04.2017	<u>Penal Code, 1860 – Ss.302 and 498-A-</u> A pregnant wife and three year old son, burnt to death by respondent accused husband in his house - three written and three oral dying declarations of wife – Doctor certifying conscious mental state of victim for recording declarations–	05

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
				Sentence – death sentence – commutation to life imprisonment till natural life of convict - respondent's conviction by trial court confirmed by Supreme Court herein – death sentence awarded by trial court modified to life imprisonment till natural life of respondent – accused.	
4	Surain Singh vs. State of Punjab	2017 0 Supreme (SC) 323:: AIR 2017 SC 1904:: 2017 (5) SCC 796	10.04.2017	Section 300 of IPC exception 4 - Exception 4 - Ingredients of – Principles summarized - Death caused by kirpan-blow – No intention of accused to cause death while committing the act – attack was not premeditated and preplanned – act of accused was not cruel and he did not take undue advantage of deceased – scuffle took place in the heat of passion and all requirements under S.300 Exception 4, satisfied – Hence, accused entitled to such benefit – Therefore, conviction of accused converted from S.302 to S.304 Pt.II IPC.	05
5	Girish Sharma and Others vs. The State of Chhattisgarh and Others	CDJ 2017 SC 995 :: 2017 0 Supreme(SC) 1059;	23.08.2017	<u>Code of Criminal Procedure, 1973 – Section 306, 193 and 319</u> – An accomplice can be made witness in order to strengthen prosecution case against more serious accused.	06

MADRAS HIGH COURT - CIVIL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
1	Flyways, AIR Cargo Shipping Clearing and Forwarding Agents, Chennai vs. ALM Leather Exports, Chennai	2017 (5) CTC 642	25.01.2017	<u>Code of Civil Procedure, 1908 (5 of 1908), Order 14, Rule 2(2) – Code of Civil Procedure, 1908 (5 of 1908), Order 14, Rule 2(2)</u> – Disposing suit on issue of law – suit for recovery of amount – earlier application for rejection of Plaint on ground of limitation, dismissed on merits by High Court – appeal before division bench withdrawn – earlier detailed order regarding delay condonation and limitation stands good and reached finality – limitation cannot be re-agitated as preliminary issue in present application – Held, present application urging same contentions as earlier application for rejection of plaint cannot be entertained – application under different provisions of law, urging same ground, which was already negative by this court, is abuse of process of law – application dismissed	07
2	N.Balachandiran and another vs. Karuppana Gounder	2018 (1) TLNJ 53 (Civil) ::CDJ 2017 MHC 3661	31.01.2017	<u>Civil Procedure Code, 1908, Order 9 Rule 9 & Limitation Act, 1963, Section 5</u> – Suit for partition and permanent injunction filed by Petitioner – suit dismissed for default for non-appearance of petitioner– Petition filed to restore suit - suit restored – Petitioner once again allowed suit to be dismissed– petition once again filed to restore suit- relying on decision of Supreme Court in <i>N.Balakrishnan vs. M.Krishnamurth reported in (1998) 7 SCC 123</i> – to meet the ends of justice opportunity given to the petitioner to conduct the suit and get a contested decree after full pledged trial CRP (NPD) is allowed.	07

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
3	M/s.Royal Sundaram Alliance Insurance Co. Ltd., Coimbatore vs. Sivakumar (Died) & others	2018 (1) TLNJ 23 (Civil) :: 2017 (1) TNMAC 624	23.02.2017	<u>Motor Vehicles Act, 1988, Section 166, 173</u> – Insurance company filed appeal in High Court –Testimony of mother of the deceased is duly corroborated by FIR – no oral or documentary evidence on the side of appellant– there is no rebuttal – income of the deceased based on the salary certificate and evidence of co-worker not erroneous – addition of 50% of the income towards future prospects– quantum of compensation awarded to the legal representatives of the deceased cannot be said on the higher side warranting interference – CMA is dismissed.	08
4	Joseph Arokiados, Rep by Power Agent, T.Kasi vs. P.Pradeep	2017 (6) CTC 596 :: 2017 (5) LW 232 :: CDJ 2017 MHC 6233	24.02.2017	<u>Order II Rule 2 of C.P.C. Code of Civil Procedure, 1908(5 of 1908), Order 2, Rule & Order 6, Rule 17</u> – The Defendant in the said Suit is the Petitioner and the Respondent thereon is the Plaintiff. The said Suit has been filed by the Respondent for declaration of his right over the suit property, for possession and for permanent injunction. In the said Suit, the Petitioner being the Defendant has filed an Application under Order 7, Rule 11, C.P.C. to reject the Plaintiff. The said Application came to be dismissed by the learned Trial Judge, which made the Petitioner to approach this Court by filing the present Civil Revision Petitioner.– High Court in Revision held that second suit barred under Order 2, Rule 2 – Plaintiff filed amendment application in first suit to include relief of declaration of title and possession – Trial Court allowed amendment application – amendment cannot be allowed.	08
5	The Managing Director, Tamil Nadu State Transport	2018 (1) TLNJ 89 (Civil)	10.03.2017	<u>Motor Vehicles Act, 1988, Section 173, 166</u> – Fatal Accident – Tribunal awarded Rs.12,42,000/- - Appeal by Transport Corporation on quantum	09

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
	Corporation Villupuram Limited, Thiruvannamalai Region vs. Kokila and 2 others			questioning sum of Rs.5,500/- fixed as monthly income of deceased in absence of any proof - the Supreme Court has confirmed the monthly income of Rs.12,000/- to a self employed Pandit aged about 30 years – the Tribunal awarded amount which is on lower side and difficult to run a family– CMA is dismissed.	
6	B.R.Srinivasa Rao and another vs. Dr.B.R.Shankar and 3 others	2017 (5) CTC 369 :: 2017 (3) MWN (Civil) 640	15.03.2017	<p><u>A. Tamil Nadu Court Fees and Suit Valuation Act, 1955(T.N.Act 14 of 1955), Section 27(c)</u> - Challenge to Court-fee, not argued – Plaintiffs cannot be non-suited for non-payment or incorrect payment of Court fee – opportunity to be given to pay necessary court fee - suit maintainable.</p> <p><u>B. Code of Civil Procedure, 1908 (5 of 1908), Order 1, Rule 9</u> – misjoinder or non-joinder of parties, not fatal to suit – exception is non-joinder of necessary party – defendant purchaser of suit property, necessary party – plea of misjoinder not sustainable.</p> <p><u>C. Evidence Act, 1872 (1 of 1872), Section 92 – Code of Civil Procedure, 1908 (5 of 1908), Order 1, Rule 2</u> – Evidence contradicting written statement, adduced – evidence contrary to written document of witness is not permissible – executants of power of attorney revoked same alleging that executants intended to take care of property but orally deposed that revocation became necessary only because agent acted beyond scope of authority - Evidence disbelieved.</p> <p><u>D. Code of Civil Procedure, 1908(5 of 1908), Order 1, Rule 2</u> – No evidence can be adduced in absence of pleading – pleading and evidence must go hand in hand – evidence includes oral as well as documentary evidence.</p> <p><u>E. Law of Possession</u> – Possession by duly constituted agent is possession by</p>	09

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				<p>Principal.</p> <p><u>F. Contract Act, 1872(9 of 1872), Section 213 – Specific Relief Act, 1963(47 of 1963), Section 31</u> – Failure to render accounts by Agent can be questioned by Principal – Such failure does not result in declaration that sale deed executed by Agent is null and void.</p> <p><u>G. Evidence Act, 1872(1 of 1872), Section 114(e) – Registration Act, 1908(16 of 1908), Section 34</u> – Registrar, registering sale deed executed by agent, not recording that he had verified original power of attorney – such omission constitutes procedural irregularity, not affecting sale deed – act of government official in discharge of Public duty, to be presumed to have been done officially and legally.</p> <p><u>H. Code of Civil Procedure, 1908 (5 of 1908), Order 8, Rule 6-A</u> – Counter claim – Maintainability of – Principal appointed agent authorizing agent to sell her property – No restrictions imposed in power – agent sold property pursuant to power – after such sale Principal revoked power of attorney and sold same property to Third party – such third party made counter-claim in suit for declaration by agent and purchaser through agent – counter-claim by person, who had no title to convey and by person, who acquired no title through such document, bad in law – sale deed executed by agent valid, and not sham and nominal – subsequent sale deed by Principal in favour of third party non-est in law.</p>	
7	A.Abdul Rahim vs. Dr.Francis Pinto	2017 (6) CTC 337	21.03.2017	<p><u>Partnership Act, 1932(9 of 1932), Section 14</u> – suit property contributed by defendant’s father as capital of partnership business — property shown as firm’s property in income-tax returns – defendant father signed in it -</p>	10

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
				<p>partnership dissolved– in the deed, defendant’s father agreed to relinquish his share of interest in capital asset of firm for due compensation paid in installments –intention of partners to treat suit property as partnership firm property, established –subsequent disputes between defendant and his father – father claimed property was never partnership property – property once blended into partnership business does not automatically revert on dissolution of partnership . Partnership property – proof of – relevance of subsequent events - evidence of PW1 shows heavy debts incurred and sale deed executed to clear such debts – said events happened after dissolution of firm and after defendant’s father retired from partnership – held, dispute between partners at that stage not ground to hold that property never treated as partnership property.</p>	
8	Rathina Naicker.A.E. vs. Thirumalai.V.	2018 (1) TLNJ 108 (Civil) :: 2017 (4) MLJ 40	24.03.2017	<p><u>Civil Procedure – Rejection of Plaint – Suppression of material facts – Res Judicata – Code of Civil Procedure, 1908, Order 7 Rule 11(d) and Order 20 Rules 4 and 5 - Civil Procedure Code, 1908, Order 7 Rule 11(d) – Res Judicata</u> – Appellant/Plaintiff filed suit for declaration and for recovery of possession – Defendant filed application under Order 7 Rule 11(d) to reject plaint – trial court found suit was barred by limitation and Plaintiff guilty of suppression of earlier suit and rejected plaint – whether Plaintiff was guilty of suppression of material facts – whether present suit hit by res judicata - Held, Plaint in present suit would disclose that, filing of earlier first suit and its appeal suppressed – Though there was averment with regard to earlier second suit, still Plaintiff was guilty of suppression of material facts – it was</p>	11

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
				clever method of drafting pleadings – judgment and decree made in earlier second suit not in consonance with Order 20 Rule 4 and 5 – said decision would not come to aid of Plaintiff – even as per plaint averments, plaintiff predecessor in title was aware of mistake with regard to few cents occurred at time of re-settlement – such plea taken in earlier round of litigation and having lost and suppressed same, Plaintiff came forward to file present suit – In earlier second suit, which came to be decreed exparte, Plaintiff did not ask for recovery of possession – Plaintiff was guilty of suppression of material fact, while drafting pleadings in earlier second suit – Plaintiff developed habit of suppressing material facts to get unfair advantage – No error apparent or infirmity in reasons assigned by Lower Courts for rejection of plaint – Appeal dismissed.	
9	State Express Transport Corporation (Chennai) Ltd., Pallavan Salai, Chennai, Rep by its Managing Director vs. B.Panboo and others	2018 (1) TLNJ 186 (Civil) :: 2017 (2) TNMAC 538	06.04.2017	<u>Motor Vehicles Act, 1988, Section 173</u> Fatal Accident – Deceased passenger in Transport Corporation bus – hit by lorry insured with oriental – negligence apportioned 50:50 on drivers of bus and lorry – Tribunal awarded Rs.48,90,000/- compensation – appeal by transport corporation and Insurance company on apportionment of negligence and quantum-contention of Appellants – lump sum award of Rs.18 lakh towards loss of salary and Rs.30 lakh towards loss of bonus unreasonable – held-negligence – case of composite negligence of death of passenger in bus– in absence of direct evidence both tort feasons held jointly and severally liable– compensation should be based on multiplier method with 30% addition towards future prospects and ¼ deduction towards personal expenses instead of lump sum compensation –	11

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
				however amounts awarded under conventional heads on lower side and requires enhancement – quantum needs no interference and confirmed – appeals of both transport corporation and insurance company dismissed.	
10	Muthaiyan vs. Poongothai and Others	CDJ 2017 MHC 6166 :: 2017 0 Supreme (Mad) 2094	06.09.2017	<u>Coromandel Hindu Law</u> - Coromandel Hindu Law will apply only if the right has accrued before 01.10.1963, from which date the Hindu Succession Act is extended. If a Hindu died after 01.10.1963, the law of succession to his properties is the Hindu Succession Act, 1956 and the repealed customary Hindu law can be applied only when the right or interest over the property had accrued prior to 01.10.1963 and Hindu Succession Act will not apply in that case.	12

MADRAS HIGH COURT – CRIMINAL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
1	Dharmaraj vs. State, by The Inspector of Police, New Hope Police Station, Nilgiris.	2017 (2) TLNJ 81 (Criminal)	06.07.2016	<u>Indian Penal Code, 1860(Section 302)</u> – Triple Murder – Life imprisonment with fine (3 counts) – appeal – accused wish to marry D3 opposed by D1 & D2, hence murder – motive proved – conduct of accused after seeing the dead bodies in not informing anybody immediately is not as an act of a normal person – presence of accused at the time of occurrence proved from his own and other evidence but accused not proved that the facts which is within his knowledge – on considering the age of accused High Court instead of directing the accused to undergo the sentences consecutively, directed to undergo concurrently – appeal partly allowed.	13
2	Saridha vs. State	2017 0 Supreme (Mad) 2108:: CDJ 2017 MHC 5110	11.08.2017	<u>Constitution of India - Article 20, Article 21 - Criminal Procedure Code - Section 173, Section 174, Section 313, Section 374(2) - Indian Penal Code - Section 302 - Appeal against Conviction</u> - Court below Convicted first Accused and second Accused/Appellant/Mother of Deceased for offences punishable under Section 302 of IPC – Appellant challenged judgment and order passed by Court below – held, that non furnishing of accident register copy was not a relevant factor - Unfortunately, Court below has not considered evidence of Inspector of Police in its perspective, particularly on aspect of Accident Register, which strikes at very foundation of prosecution	13

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
				theory – Order of conviction and sentence passed by Court below were set aside insofar as Appellant was concerned – Appellant was acquitted of all charges – Criminal Appeal was allowed.	
3	Ramasamy vs. The State, Rep. by The Inspector of Police, E-9, Thalambur Police Station, Kancheepuram District	2018 (1) TLNJ 36 (Criminal)	19.12.2017	<u>Criminal Procedure Code, 1973 Section 79(2) & 482</u> – Recalling of non-bailable warrant – non-bailable warrant issued on 21.01.2014 – kept pending without execution till date – issuance of bailable warrant or non bailable warrant should be exercised with extreme caution - pendency of non bailable is one of the major factors for the long pendency of cases before the trial court.	13
4	Sankarkumar vs. The Inspector of Police, Puliyarai Police Station, Tirunelveli District.	2017 (2) TLNJ 432 (Criminal) :: CDJ 2017 MHC 6905	10.10.2017	<u>Indian Penal Code, 1860, Sections 302, 307, 394 & 449</u> – Murder for gain – appeal against conviction and sentence – considering age of the deceased, indiscriminate attack by the accused, and opinion of doctor it appear that death due to hemorrhage shock – hence contention that deceased would not have died instantaneously not acceptable – when the exact time of death cannot be found scientifically and precisely contention raised relying upon the presence of rigor mortis not correct – merely because of the omission of the name of the accompanied person in the AR copy, the case of the prosecution cannot be disbelieved – correction by scoring the letter “Un” from the word “Un Known” by doctor in Accident Register – clearly explained – contention that time of arrest cannot be believed from the evidence of P.W.9 to be rejected	14

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				since PW9 is not a witness to the arrest – appeal dismissed.	
5	R.Venkatesan vs. Shamsath Begam	2017 (2) TLNJ 498 (Criminal) :: CDJ 2017 MHC 6948	11.10.2017	<u>Negotiable Instrument Act, 1881, Section 138</u> –appeal against acquittal – trial court and the first appellate court found that the signature found in the cheque was that of the respondent – first appellate court reversed the order of conviction,– appeal – once the signature of the respondent is admitted and the cheque had been issued for valid consideration, the burden shifts on the respondent to explain under what circumstances the cheque was issued when the account was closed or when there was no sufficient balance in the bank account – explanation given by the respondent– since respondent had denied her signature and which denial was found to be false by the court– appellant also entitled for compensation – criminal appeal allowed.	14
6	State, Rep by the Inspector of Police, Civil Supplies C.I.D., Kuzhithurai vs. Sheik Usman and another	2017 (2) TLNJ 648 (Criminal) :: CDJ 2018 MHC 583	03.11.2017	<u>TNSC(RDCS) Order 1982, Section 6(4) EC Act, 1955 Section6 (A) & 7(1)</u> – Smuggling the Public distribution system rice – proceedings – mere production of certificate stating that the seized rice is PDS rice is not sufficient proof – one cannot be prosecuted for smuggling the rice meant solely on the basis of the certificate issued by the quality inspector or authority stating that the rice seized from the accused was PDS rice – appellate court found that the sales tax receipt and purchased bills for the rice – documents produced by the	14

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				accused were not considered by the DRO– seized rice was not proved as PDS rice – Revision filed against order of Sessions Court dismissed.	
7	M/s.GMAC-TCFC Finance Limited, Rep by its Power of Attorney Holder, Mr.N.A.Charles vs. I.Sabastian	2017 (2) TLNJ 645 (Criminal) :: CDJ 2017 MHC 7878	08.12.2017	<u>Negotiable Instrument Act, 1881, Section 138</u> – Purchase of Vehicle on hire purchase – repossessed by petitioner due to default in repayment – cheques issued appellant – dishonoured – respondent acquitted – appeal – trial court rightly held that once the vehicle was repossessed and sold by the finance company the hire purchase agreement comes to an end and the complainant cannot present any of the postdated cheques for acknowledgment – a mere perusal of the cheques would clearly reveal that they were issued towards equated monthly installments only at the time of execution of hire purchase agreement – appeal dismissed.	15
8	Rukmani and 6 others vs. Manonmani and 2 others	2017 (2) TLNJ 640 (Criminal)	11.12.2017	<u>Protection of Women from Domestic Violence Act 2005, Section 12</u> – Petitioners and the respondent are not related by way of consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family – there was a dispute in respect of a sale agreement and subsequently, a suit also filed by husband of the R1 – provisions of the Domestic Violence Act misused by R1 to put pressure on the petitioners to compel them to sell the property under the alleged sale agreement – it is a suit for specific performance – there are enough materials to show that the R1/complainant and her son and	15

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				husband have colluded to drag the petitioners to court by filing the present vexatious complaint though no domestic violence has been caused against the R1/complainant.	
9	Paneerselvam vs. State, Rep by The Inspector of Police Chinnamanoor Police Station, Theni District.	2017 (2) TLNJ 625 (Criminal)	13.12.2017	<u>Mental Health Act, 1987, Section 24</u> – Accused convicted and sentenced under Section 302 & 307 IPC – Appeal –accused already murdered his own mother and Judicial Magistrate acquitted the accused/appellant – already admitted in Institute of Mental Health – escaped from there and later secured - offences committed by a person of unsound mind – exempted from the purview of IPC from being punished –accused was not in a fit state of mind and suffering from severe mental disorder – as per section 24 of the act court passed a reception order and directing to be kept accused in any one of the Licensed Psychiatric Nursing Homes – appeal allowed with directions.	16
10	Malli Sivaramaiyer Mothilal vs. The Commissioner of Police, Madurai City, Madurai and 3 others	2018 (1) TLNJ 27 (Criminal)	14.12.2017	<u>Dowry Prohibition Act, Section 4 and Indian Penal Code 1860, Section 498-A, 406 & 109</u> – Offence under – Writ Petition to direct R1 to withdraw the lookout circular issued against the petitioners and restraining R1 to R3 to arrest petitioner and prevent him to travel abroad – since the petitioners have given an undertaking to appear before the J.M. Court as and when their presence is required, High Court held that it is unable to refuse to grant the relief to the petitioners – personal appearance of the family members and particularly outstation members may not be	16

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
				required and the trial court ought to grant exemption for their personal appearance or permit their appearance by video conferencing without adversely affecting the progress of the trial – petition closed with directions.	

SUPREME COURT – CIVIL CASES

2017 (3) MLJ 755 (SC) :: 2017 (4) Scale 346 :: 2017 AIR (SC) 1914

Dalip Karu Brar vs. Guru Granth Sahib Sewa Mission (Regd.) and another

Date of Judgment: 11.04.2017

Tenancy Laws – Provisional Assessment – Right of Appeal – East Punjab Urban Rent Restriction Act, 1949, Sections 13, 13(2)(i) and 15 – Appellant/landlord filed ejectment application against Respondents/tenants on ground of default of rent – Rent Controller made provisional assessment of rent directing Respondents to deposit rent with effect from earlier date though default was from later date – Respondents failed to comply with provisional assessment – Rent controller ordered eviction – Thereafter three rounds of proceedings initiated before High Court by Respondents – Finally, High court set aside order of eviction on ground that provisional assessment was flawed – being aggrieved, present appeal filed – Whether challenge to order of eviction in appeal did not survive upon dismissal of civil revision application – whether High Court fell into error in setting aside order of eviction – Held, scope of revision before High Court related to conditions for stay imposed by Appellate Authority – Decision of High Court not in regard to order of eviction – if Respondents intended to dispute claim of arrears for specified period, there was no reason or justification for them not to deposit rent – Legislative concession, extended to tenants under Section 13(2)(i) provision, was available conditionally – to be save against eviction, tenant must satisfy conditions – arrears payable by tenant, would be correctly assessed only after evidence was recorded and concluded – instant assessment was provisional – every kind of excuse made by tenant for not paying rent due and payable – Cheques issued to Appellant dishonoured – Right of appeal would not come to aid of tenant who had not deposited even admitted dues in pursuance of determination which had been made by Rent Controller – Respondents deposited nothing within period fixed – Deposit made later would no ensure to their benefit – High Court fell into error in allowing revision application and in setting aside order of eviction – order of eviction restored – appeal allowed.

2017 0 Supreme (SC) 365:: CDJ 2017 SC 434:: 2017 (5) SCALE 2 :: 2017(6) CTC 195::

2017 (5) LW 127

Dagadabai (Died) By LR's vs. Abbas @ Gulab Rustum Pinjari

Date of Judgment: 18.04.2017

Law of Adverse Psession – Evidence Act, 1872(1 of 1872), Section 101 – Adverse Possession – Burden of Proof – Original Owner of suit property, Muslim man, died intestate – His only daughter inherited suit land exclusively – Defendant claimed title to suit property as adopted son of original owner and also through Adverse possession – suit for possession filed by Plaintiff – Trial Court and First appellate Court concurrently held Plaintiff to be owner of suit

land and that defendant's title by adverse possession not proved – High Court reversed concurrent findings and dismissed suit – burden of proof in plea of Adverse Possession – burden lies on party raising plea of Adverse Possession – factum of adverse possession must be proved through proper pleadings and evidence – person claiming adverse possession must prove his case only against true owner of property – essential elements of plea of Adverse Possession are : (i) ownership of true owner must be admitted; (ii) true owner must be made party to suit;(iii) actual, peaceful, uninterrupted continuous possession for more than 12 years, to exclusion of true owner;(iv)element of hostility in asserting right of ownership to knowledge of true owner – defendant did not admit Plaintiff's ownership over suit land – Held, Adoption not recognized under Mohammedan Law – Hence, Defendant's claim of inheriting suit land as adopted son fails –Issue of Adverse Possession cannot be tried successfully, when defendant does not admit Plaintiff's ownership over suit land – title by Adverse Possession not proved – appeal succeeds and is allowed – impugned High Court judgment dismissing suit set aside – judgment of trial court and first appellate court decreeing suit restored.

CDJ 2018 SC 062 :: 2018 (1) CTC 788

Danamma @ Suman Surpur and another Versus Amar and others

Date of Judgment: 01.02.2018

Hindu Succession Act, 1956(30 of 1956), Section 6 – Hindu Succession (Amendment) Act, 2005(39 of 2005), Section 6 – Daughter's right in Coparcenary property – suit for partition of Joint Family Property excluded Coparcener's daughters – Trial court decreed suit and held daughters, born prior to enactment of act, as not entitled to any share – High Court confirmed said Order – whether daughters born prior to enactment of Act entitled to share in property – Amendment of 2005 squarely applicable – Ratio laid down in *Prakash vs. Phulavati, 2015(6) CTC 576(SC)* applied – factum of birth in Coparcenary creates coparcenary rights in sons and daughters – death of Coparcener leads to devolution of Coparcenary property – Right to Partition is inherent and can be availed by any Coparcener including daughter – Suit for Partition filed in 2002 – Section 6 of Act amended during Suit pendency – Trial court decree passed in 2007 – rights of Appellants crystallized in 2005 – Rights of daughters in Coparcenary property not lost on passing of Preliminary Decree – Partition becomes final only on passing of final decree – Held, appellants entitled to 1/5 share each in Joint Family Property – Plaintiff entitled to 1/25 share in said property – preliminary decree to be amended by Trial Court considering Amendment of 2005 – Appeals allowed.

CDJ 2017 SC 1088:: 2017(13) Scale 266:: 2017 (6) CTC 542

M.D. Frozen Foods Exports Pvt. Ltd. & Others vs. Hero Fincorp Ltd.

Date of Judgment: 21-09-2017

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(54 of 2002) (SARFAESI Act), Section 37 – Arbitration and Conciliation Act, 1996(26 of 1996) – Recovery proceedings – Non Banking Financial Companies(NBFC) – Parallel proceedings – secured creditor originally initiated recovery proceedings by invoking Arbitration clause contained in agreement – Arbitral proceedings commenced – Prior to invocation, notification issued under SARFAESI Act, specifying NBFC as Financial Institutions – Applicability of SARFAESI Act to NBFC companies – whether parallel proceedings under Arbitration Act and SARFAESI Act can go on – Held, Arbitration Act and SARFAESI Act are complimentary to each other and it is not a case of election of remedy – Arbitration is an alternate to Civil proceedings – Provisions of SARFAESI Act providing speedy remedy in addition to provisions of Arbitration Act – SARFAESI Proceedings are in nature of enforcement and Arbitration is adjudicatory – SARFAESI proceedings and Arbitration proceedings can be proceeded simultaneously.

AIR 2017 SC 2447:: 2017 (4) LW 55 :: 2017 (5) MLJ 296:: 2017 (6) Scale 475

Venu vs. Ponnusamy Reddiar(Dead)Thr.Lrs. & others

Date of Judgment: 27.04.2017

Limitation – Execution of Preliminary Decree – Limitation Period – Limitation Act, 1963, Article 131 – Application for execution of decree filed after thirty years of issuing preliminary decree – Application also sought for appointment of Court commissioner to carry out preliminary decree – Whether application for execution of decree filed after thirty years of issuing preliminary decree, sustainable – Held, preliminary decree for partition crystallizes rights of parties for seeking partition to extent declared – equities remain to be worked out in final decree proceedings – till partition carried out and final decree passed, there is no question of limitation running against right to claim partition as per preliminary decree – even when application filed seeking appointment of commissioner, no limitation prescribed and it would not be barred by limitation – Lis continues till preliminary decree culminates in to final decree – other ground which was taken with respect to preliminary decree being worked out by way of compromise – factum of compromises not been found established and there is no satisfaction of preliminary decree which was passed – it was not established that parties worked out their rights by mutual agreement – final decree to be drawn as per law – appeal dismissed

SUPREME COURT – CRIMINAL CASES

CDJ 2017 SC 271 :: 2017(2) CTC 562:: 2017(3) SCALE 460:: AIR 2017 SC 1362

Hussain vs. Union of India & another

Date of Judgment: 09.03.2017

Constitution of India, Article 21 – Code of Criminal Procedure, 1973(2 of 1974), Section 436-A – Speedy Trial – Bail Applications – Criminal Appeals – Speedy disposal – Delay in disposal of Bail applications – Violation of right of speedy trial – Constitutional right cannot be denied even on plea of non-availability of financial sources – Court is entitled to issue direction to augment and strengthen investigation machinery, setting up of new Courts and other measures – Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 – Timely delivery of justice is part of Human Right – denial of speedy justice – direction issued to Subordinate courts to dispose of Bail Applications expeditiously – guidelines framed for speedy disposal of Magisterial trials and Criminal Appeals pending on file of Appellate Courts.

2017 (4) Scale 326 :: 2017 AIR 1959 (SC)

Harishankar Shukla vs. State of Uttar Pradesh

Date of Judgment: 05.04.2017

Criminal Law – IPC – Section 304-I, 323 – Conviction for offence – sustainability – injured eye-witnesses – land dispute – Prosecution case that accused persons, three in number, had made an encroachment on a part of land of injured eye-witnesses and had placed cattle troughs there when PW3 and PW4 came out of the house and questioned the accused persons – on this an altercation between the two sides took place – one of the accused allegedly exhorted his associates to assault PW4 – there was a scuffle between the parties, at which point, A3 went back to his house and came out with a country made pistol fired one bullet and caused death of deceased – PW3 and PW4 injured eye-witnesses, were father and mother of deceased – trial court acquitted all three accused while holding that there were contradictions between the three eye-witnesses – on appeal, High Court convicted A3 of offences u/s 307-I, IPC, for death of deceased and for offences u/2 307 and 323 ,IPC – High Court held that all the eye-witnesses produced by the prosecution had clearly stated that it was the appellant and the appellant alone, who opened fire from the main door of his house and caused death of deceased – whether judgment of the High Court convicting appellant for offences u/s 304-I, 307 and 323, IPC was sustainable – Held, yes – This court reduces the sentence to six years imprisonment – allowing the appeal in part.

2017 (2) SCC (Crl) 624:: 2017 (5) SCC 673 :: 2017 AIR 2363(SC)

State of Maharashtra vs. Nisar Ramzan Sayyed

Date of Judgment: 07.04.2017

A. Penal Code, 1860 – Ss.302 and 498-A- Pregnant wife and three year old son, burnt to death by accused husband in his house – three written and three oral dying declarations of wife – role attributed to accused regarding incident, consistent in all dying declarations – Doctor certifying conscious mental state of victim for recording declarations – where there was no witness, failure of husband to explain how both unnatural deaths took place in his house, going against him – reversal of conviction by High Court – not proper – conviction restored.

B. Criminal Trial – Sentence – death sentence – commutation to life imprisonment till natural life of convict – pregnant wife and three year old son, burnt to death by respondent accused husband in his house – respondent's conviction by trial court under Sections 302 and 498A IPC, confirmed by Supreme Court herein – death sentence awarded by trial court modified to life imprisonment till natural life of respondent – accused.

2017 0 Supreme (SC) 323:: AIR 2017 SC 1904:: 2017 (5) SCC 796

Surain Singh vs. State of Punjab

Date of Judgment: 10.04.2017

A. Penal Code, 1860 – S.300 Exceptions 1 and 4 – Relative scope – Explained.

B. Penal Code, 1860, S.300 Exception 4 - Ingredients of – Principles summarized - Death caused by kirpan-blow – No intention of accused to cause death while committing the act – attack was not premeditated and preplanned – act of accused was not cruel and he did not take undue advantage of deceased – scuffle took place in the heat of passion and all requirements under S.300 Exception 4, satisfied – Hence, accused entitled to such benefit – Therefore, conviction of accused converted from S.302 to S.304 Pt.II IPC.

C.Penal Code 1860 – S.304 Part I or Part II – Relative scope of, explained – Held, if there is intent and knowledge then the same would be a case of S.304 Part I and if it is only a case of knowledge and not intention to cause murder or bodily injury then the same would fall under S.304 Part II.

2017 AIR(SC) 4973:: 2017 (11) Scale 234 ::CDJ 2017 SC 995

Girish Sharma & Others vs. The State of Chhattisgarh & Others

Date of Judgment: 23.08.2017

Code of Criminal Procedure, 1973 – Section 306, 193 and 319 – Incriminating materials against appellants – Not arrayed as accused but made witnesses in order to strengthen prosecution case against more serious accused – Not unjustified – Recourse to section 306 not necessary – Section 319 not applicable.

The submission made on behalf of the appellants that the prosecution was entitled to cite the three original accused as witnesses, in the given fact situation, having regard to larger interest of justice to strengthen the prosecution case against more serious accused cannot be held to be without substance. This could be done even without recourse to Section 306 Cr.P.C. It is certainly open to the Court to finally decide whether cognizance ought to be taken or not after balancing all the relevant considerations. The decision of the prosecutor to cite them as witnesses does not bind the Court and such decision can be interfered with if interest of justice so requires.

MADRAS HIGH COURT – CIVIL CASES

2017 (5) CTC 642

**Flyways, AIR Cargo Shipping Clearing and Forwarding Agents, Chennai
vs.
ALM Leather Exports, Chennai**

Date of Judgment: 25.01.2017

Code of Civil Procedure, 1908 (5 of 1908), Order 14, Rule 2(2) – Disposing suit on issue of law – suit for recovery of amount – earlier application for rejection of Plaint on ground of limitation, dismissed on merits by High Court – appeal before division bench withdrawn – earlier detailed order regarding delay condonation and limitation stands good and reached finality – limitation cannot be re-agitated as preliminary issue in present application – Held, present application urging same contentions as earlier application for rejection of plaint cannot be entertained – application under different provisions of law, urging same ground, which was already negative by this court, is abuse of process of law – application dismissed.

2018 (1) TLNJ 53 (Civil) ::CDJ 2017 MHC 3661

N.Balachandiran & another vs. Karuppana Gounder

Date of Judgment: 31.01.2017

Civil Procedure Code, 1908, Order 9 Rule 9 & Limitation Act, 1963, Section 5 – Suit for partition and permanent injunction filed by Petitioner – suit dismissed for default for non-appearance of petitioner on 03.12.2009 – Petition filed to restore suit with delay of 446 days in filing petition – Petition allowed on payment of cost and suit restored – Petitioner once again allowed suit to be dismissed for default with delay of 573 days – dismissed in trial court – Revision filed – Held, - Right of parties shall not be deprived with ex parte order – relying on decision of Supreme Court in *N.Balakrishnan vs. M.Krishnamurth reported in (1998) 7 SCC 123* – to meet the ends of justice opportunity given to the petitioner to conduct the suit and get a contested decree after full pledged trial – loss caused to respondent due to delay compensated by directing petitioner to pay a cost of Rs.15,000/- - CRP (NPD) is allowed.

2018 (1) TLNJ 23 (Civil)

M/s.Royal Sundaram Alliance Insurance Co. Ltd., Coimbatore

vs.

Sivakumar (Died) & others

Date of Judgment: 23.02.2017

Motor Vehicles Act, 1988, Section 166, 173 – Tribunal awarded Rs.16,66,300/- - Insurance company filed appeal in High Court – held, Testimony of mother of the deceased is duly corroborated by FIR – no oral or documentary evidence on the side of appellant – Insurance Company – there is no rebuttal – income of the deceased based on the salary certificate and evidence of co-worker not erroneous – addition of 50% of the income towards future prospects is based on the decision of the Supreme Court in the decision **2013(2) TNMAC 55(SC)** – Application of “16” multiplier as *per Sarala Varma’s case 2009 (5) L.W. 561*, is proper – quantum of compensation of Rs.16,66,300/- awarded to the legal representatives of the deceased cannot be said on the higher side – warranting interference – CMA is dismissed.

2017 (6) CTC 596 :: 2017 (5) LW 232 :: CDJ 2017 MHC 6233

Joseph Arokiados, Rep by Power Agent, T.Kasi vs. P.Pradeep

Date of Judgment: 24.02.2017

Code of Civil Procedure, 1908(5 of 1908), Order 2, Rule & Order 6, Rule 17 – Suit to include whose claim - relinquishment of part of claim – bar to institute subsequent suit – Plaintiff instituted first suit for injunction – Plaintiff has admitted in Plaint that Defendant is in possession of suit property – failure to seek comprehensive relief – second suit instituted for declaration of title and recovery of possession on same cause of action – defendant filed application to reject Plaint in as much as subsequent suit hit by Order 2, Rule 2 – Trial court dismissed application – High Court in Revision held that second suit barred under Order 2, Rule 2 – Plaintiff filed amendment application in first suit to include relief of declaration of title and possession – Trial Court allowed amendment application – amendment application filed by plaintiff to circumvent bar under Order 2, Rule 2, legally impermissible – Object of Order 2, Rule 2, is to prohibit vexing defendant again and again by multiple suits – attempt to amend Plaint in first suit to include relief would tantamount to get rid of bar under Order 2, Rule 2 – amendment cannot be allowed.

2018 (1) TLNJ 89 (Civil)

**The Managing Director, Tamil Nadu State Transport Corporation Villupuram Limited,
Thiruvannamalai Region**

vs.

Kokila & 2 others

Date of Judgment: 10.03.2017

Motor Vehicles Act, 1988, Section 173, 166 – Fatal Accident – Tribunal awarded Rs.12,42,000/- - Appeal by Transport Corporation on quantum questioning sum of Rs.5,500/- fixed as monthly income of deceased in absence of any proof – held – deceased aged 30 years – stated to be master in hotel based on evidence of wife – In *Munna Lal & another vs. Vipin Kumar Sharma & others (CDJ 2015 (SC) 476)* the Supreme Court has confirmed the monthly income of Rs.12,000/- to a self employed Pandit aged about 30 years – the Tribunal awarded only fixed income at Rs.5,500/- per month which is on lower side and difficult to run a family - monthly income at Rs.5,500/- cannot be treated as bonanza to claimants who have lost their bread winner – CMA is dismissed.

2017 (5) CTC 369 :: 2017 (3) MWN (Civil) 640

B.R.Srinivasa Rao & another vs. Dr. B.R.Shankar & 3 others

Date of Judgment: 15.03.2017

A. Tamil Nadu Court Fees and Suit Valuation Act, 1955(T.N.Act 14 of 1955), Section 27(c) - Challenge to Court-fee, not argued – Plaintiffs cannot be non-suited for non-payment or incorrect payment of Court fee – opportunity to be given to pay necessary court fee - suit maintainable.

B. Code of Civil Procedure, 1908 (5 of 1908), Order 1, Rule 9 – misjoinder or non-joinder of parties, not fatal to suit – exception is non-joinder of necessary party – defendant purchaser of suit property, necessary party – plea of misjoinder not sustainable.

C. Evidence Act, 1872(1 of 1872), Section 92 – Code of Civil Procedure, 1908 (5 of 1908), Order 1, Rule 2 – Evidence contradicting written statement, adduced – evidence contrary to written document of witness is not permissible – executants of power of attorney revoked same alleging that executants intended to take care of property but orally deposed that revocation became necessary only because agent acted beyond scope of authority - Evidence disbelieved.

D. Code of Civil Procedure, 1908(5 of 1908), Order 1, Rule 2 – No evidence can be adduced in absence of pleading – pleading and evidence must go hand in hand – evidence includes oral as well as documentary evidence.

E. Law of Possession – Possession by duly constituted agent is possession by Principal.

F. Contract Act, 1872(9 of 1872), Section 213 – Specific Relief Act, 1963(47 of 1963), Section 31 – Failure to render accounts by Agent can be questioned by Principal – Such failure does not result in declaration that sale deed executed by Agent is null and void.

G. Evidence Act, 1872(1 of 1872), Section 114(e) – Registration Act, 1908(16 of 1908), Section 34 – Registrar, registering sale deed executed by agent, not recording that he had verified original power of attorney – such omission constitutes procedural irregularity, not affecting sale deed – act of government official in discharge of Public duty, to be presumed to have been done officially and legally.

H. Code of Civil Procedure, 1908(5 of 1908), Order 8, Rule 6-A – Counter claim – Maintainability of – Principal appointed agent authorizing agent to sell her property – No restrictions imposed in power – agent sold property pursuant to power – after such sale Principal revoked power of attorney and sold same property to Third party – such third party made counter-claim in suit for declaration by agent and purchaser through agent – counter-claim by person, who had no title to convey and by person, who acquired no title through such document, bad in law – sale deed executed by agent valid, and not sham and nominal – subsequent sale deed by Principal in favour of third party non-est in law.

2017 (6) CTC 337

A. Abdul Rahim vs. Dr. Francis Pinto

Date of Judgment: 21.03.2017

A. Partnership Act, 1932(9 of 1932), Section 14 – Firm property – proof of – suit property contributed by defendant's father as capital of partnership business – parties agreed excess of net assets passed on to firm shall be treated as loan to firm – clause indicates intention of defendant's father to throw his other individual assets into firm and excess be treated as loan payable by firm – property shown as firm's property in income-tax returns filed between 1973 - 1986 - same were signed by defendant's father – partnership dissolved through deed of dissolution in 1986 – in said deed, defendant's father agreed to relinquish his share of interest in capital asset of firm for due compensation paid in installments – conduct of parties in treating property is significant – held, intention of partners to treat suit property as partnership firm property, established – suit property is firm property.

B. Partnership Act, 1932(9 of 1932), Section 14 – Evidence Act, 1872 (1 of 1872), Section 115 – Dissolution of partnership – status of partnership property – estoppels – suit property contributed by defendants' father as capital of partnership firm – parties agreed and treated suit property as partnership firm's property from 1973-186 – during said period, defendant's father signed IT returns showing property as firm's property – partnership dissolved through deed of dissolution in 1986 – in said deed defendant's father agreed to relinquish his share of interest in capital asset of firm for due compensation – subsequent disputes between defendant and his father – father claimed property was never partnership property – held, property once blended into partnership business does not automatically revert on dissolution of partnership - subsequent dispute between partners will not affect nature of agreement and arrangement during existence of partnership firm – defendant's father stopped from taking different stand later.

C. Partnership Act, 1932(9 of 1932), Section 14 – Evidence Act, 1872 (1 of 1872), Section 8 – Partnership property – proof of – relevance of subsequent events/conduct – defendant’s father incurred heavy debts since 1989 – evidence of PW1 shows heavy debts incurred and sale deed executed to clear such debts – said events happened after dissolution of firm and after defendant’s father retired from partnership – held, dispute between partners at that stage not ground to hold that property never treated as partnership property.

2018 (1) TLNJ 108 (Civil)

Rathina Naicker.A.E. vs. Thirumalai.V

Date of Judgment: 24.03.2017

Civil Procedure Code, 1908, Order 7 Rule 11(d) – Res Judicata – Suit for declaration of title and permanent injunction against defendant in respect of C Scheduled suit property – defendant filed petition to reject plaint contending suit barred by limitation – petition allowed – appeal filed by Plaintiff – dismissed – second appeal – contention of appellant – suit property originally purchased by paternal grandfather to an extent of 0.78 cents – mistakenly referred as 0.70 cents in survey records while resettlement in 1911 – defendant predecessor in title owned only 0.32 cents but created false document for 0.40 and encroached the suit property – appellant filed suit in OS 1819/1981, against defendant’s predecessor and collector for rectification of revenue records – decreed ex parte – but revenue records not rectified - contention of respondent – appellant has suppressed earlier suit in O.S.No.190/1969 between them and the defendants predecessors for recovery of possession dismissed on merits – appeal file against in AS 116/1974 dismissed – no second appeal filed against the same and reached finality – suit hit by Res Judicata, suppression of facts and barred by limitation – held, appellant is guilty of suppression of material facts relating to earlier suit and appeal – suit also hit by Res Judicata – even as per plaint averments defendant trespassed suit property in 1969 and hopelessly barred by limitation – second appeal dismissed.

2018 (1) TLNJ 186 (Civil)

**State Express Transport Corporation (Chennai) Ltd., Pallavan Salai, Chennai, Rep by its
Managing Director**

vs.

B.Panboo & others

Date of Judgment: 06.04.2017

Motor Vehicles Act, 1988, Section 173 – Fatal Accident – Deceased passenger in Transport Corporation bus – hit by lorry insured with oriental – negligence apportioned 50:50 on drivers of bus and lorry – Tribunal awarded Rs.48,90,000/- compensation – appeal by transport corporation and Insurance company on apportionment of negligence and quantum-contention of Appellants – lumpsum award of Rs.18 lakh towards loss of salary and Rs.30 lakh towards loss of bonus unreasonable – held- negligence – case of composite negligence of death of passenger in bus – relying on Supreme Court decision in Khenyei Vs. New India Assurance Company Ltd. & others 2015 (1) TNMAC 801 (SC) – drivers of both vehicles died – in absence of direct evidence both tortfeasors held jointly and severally liable – apportionment of tribunal affirmed – quantum

– deceased aged 43 years – development officer – IT returns shows the income at Rs.5,92,423/- and paid Income Tax at Rs.1,44,970/- compensation should be based on multiplier method with 30% addition towards future prospects and ¼ deduction towards personal expenses instead of lump sum compensation – however amounts awarded under conventional heads on lower side and requires enhancement – quantum needs no interference and confirmed – appeals of both transport corporation and insurance company dismissed.

CDJ 2017 MHC 6166 :: 2017 0 Supreme(Mad) 2094

Muthaiyan vs. Poongothai & Others

Date of Judgment: 06-09-2017

Hindu Succession Act - Section 2 (1) (c) - Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure – Coromandel Hindu Law will apply only if the right has accrued before 01.10.1963, from which date the Hindu Succession Act is extended. If a Hindu died after 01.10.1963, the law of succession to his properties is the Hindu Succession Act, 1956 and the repealed customary Hindu law can be applied only when the right or interest over the property had accrued prior to 01.10.1963. Hindu Succession Act will not apply.

MADRAS HIGH COURT – CRIMINAL CASES

2017 (2) TLNJ 81 (Criminal)

Dharmaraj vs. State, by The Inspector of Police, New Hope Police Station, Nilgiris

Date of Judgment: 06.07.2016

Indian Penal Code, 1860(Section 302) – Triple Murder – Life imprisonment with fine (3 counts) – appeal – accused wish to marry D3 opposed by D1 & D2, hence murder – motive proved – conduct of accused after seeing the dead bodies in not informing anybody immediately is not as an act of a normal person – presence of accused at the time of occurrence proved from his own and other evidence but accused not proved that the facts which is within his knowledge – on considering the age of accused High Court instead of directing the accused to undergo the sentences consecutively, directed to undergo concurrently – Appeal partly allowed.

2017 0 Supreme (Mad) 2108 : CDJ 2017 MHC 5110

Saridha vs. State

Date of Judgment: 11.08.2017

Constitution of India - Article 20, Article 21 - Criminal Procedure Code - Section 173, Section 174, Section 313, Section 374(2) - Indian Penal Code - Section 302 - Appeal against Conviction - Court below Convicted first Accused and second Accused/Appellant/Mother of Deceased for offences punishable under Section 302 of IPC - Appellant challenged judgment and order passed by Court below – held, that non furnishing of accident register copy was not a relevant factor - Unfortunately, Court below has not considered evidence of Inspector of Police in its perspective, particularly on aspect of Accident Register, which strikes at very foundation of prosecution theory - Order of conviction and sentence passed by Court below were set aside insofar as Appellant was concerned - Appellant was acquitted of all charges - Criminal Appeal was allowed.

2018 (1) TLNJ 36 (Criminal)

Ramasamy

vs.

The State, Rep. by The Inspector of Police, E-9, Thalambur Police Station, Kancheepuram District

Date of Judgment: 19.12.2017

Criminal Procedure Code, 1973 Section 79(2) & 482 – Recalling of non-bailable warrant – non-bailable warrant issued on 21.01.2014 – kept pending without execution till date – issuance of bailable warrant or non bailable warrant should be exercised with extreme caution - pendency of non bailable is one of the major factors for the long pendency of cases before the trial court.

2017 (2) TLNJ 432 (Criminal) :: CDJ 2017 MHC 6905

Sankarkumar vs. The Inspector of Police, Puliyarai Police Station, Tirunelveli District

Date of Judgment: 10.10.2017

Indian Penal Code, 1860, Sections 302, 307, 394 & 449 – Murder for gain – appeal against conviction and sentence – considering age of the deceased, indiscriminate attack by the accused, and opinion of doctor it appear that death due to hemorrhage shock – hence contention that deceased would not have died instantaneously not acceptable – when the exact time of death cannot be found scientifically and precisely contention raised relying upon the presence of rigor mortis not correct – merely because of the omission of the name of the accompanied person in the AR copy, the case of the prosecution cannot be disbelieved – correction by scoring the letter “Un” from the word “Un Known” by doctor in Accident Register – clearly explained – contention that time of arrest cannot be believed from the evidence of P.W.9 to be rejected since PW9 is not a witness to the arrest – Appeal dismissed.

2017 (2) TLNJ 498 (Criminal) :: CDJ 2017 MHC 6948

R. Venkatesan vs. Shamsath Begam

Date of Judgment: 11.10.2017

Negotiable Instrument Act, 1881, Section 138 –Offence – appeal against acquittal – trial court and the first appellate court found that the signature found in the cheque was that of the respondent – first appellate court reversed the order of conviction, holding that it was improbable that the respondent would have borrowed a sum of Rs.2 lakhs from a stranger – appeal – once the signature of the respondent is admitted and the cheque had been issued for valid consideration, the burden shifts on the respondent/accused to explain under what circumstances the cheque was issued when the account was closed or when there was no sufficient balance in the bank account – explanation of the respondent that she had borrowed Rs.1,00,000/- through one Forest Ranger, but had no knowledge of the Appellant, cannot be accepted for the simple fact that evidence with respect to signature in the cheque and denial of receipt of advocate notice has also been found to be false – since respondent had denied her signature and which denial was found to be false by the court, it is obvious that she had deliberately deposed falsity in court of law – appellant also entitled for compensation – criminal appeal allowed.

2017 (2) TLNJ 648 (Criminal)

State, Rep by the Inspector of Police, Civil Supplies C.I.D., Kuzhithurai

vs.

Sheik Usman & another

Date of Judgment: 03.11.2017

TNSC(RDCS) Order 1982, Section 6(4) and Essential Commodities Act, 1955 Section 6 (A) & 7(1) – Smuggling the Public distribution system rice – proceedings – not even an iota of material to show that the rice distributed to family card holders was purchased by the accused and was transported through the lorry – mere production of certificate stating that the

seized rice is PDS rice is not sufficient proof – contents of the said certificate is not proved by examining the author of the said certificate – one cannot be prosecuted for smuggling the rice meant solely on the basis of the certificate issued by the quality inspector or authority stating that the rice seized from the accused was PDS rice – appellate court found that the sales tax receipt and purchased bills for the rice – documents produced by the accused were not considered by the District Revenue Officer in his enquiry proceedings – seized rice was not proved as PDS rice – Revision filed against order of Sessions Court dismissed.

2017(2) TLNJ 645 (Criminal) :: CDJ 2017 MHC 7878

**M/s.GMAC-TCFC Finance Limited, Rep by its Power of Attorney Holder, Mr.N.A.Charles
vs.
I. Sabastian**

Date of Judgment: 08.12.2017

Negotiable Instrument Act, 1881, Section 138 – Purchase of Vehicle on hire purchase – repossessed by petitioner due to default in repayment – cheques issued at the time of agreement presented by appellant – dishonoured – case filed under the act – respondent acquitted – appeal – trial court rightly held that once the vehicle was repossessed and sold by the finance company the hire purchase agreement comes to an end and the complainant cannot present any of the postdated cheques for acknowledgment – complainant’s contention that these three cheques were issued by the respondent only for repayment of balance amount towards the loan amount has not been substantiated by adducing acceptable evidence – a mere perusal of the cheques would clearly reveal that they were issued towards equated monthly installments only at the time of execution of hire purchase agreement – appeal dismissed.

2017 (2) TLNJ 640 (Criminal)

Rukmani & 6 others vs. Manonmani & 2 others

Date of Judgment: 11.12.2017

Protection of Women from Domestic Violence Act 2005, Section 12 – Petition of quash proceedings – Petitioners and the respondent are not related by way of consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family – there was a dispute in respect of a sale agreement and subsequently, a suit also filed by the R3/husband of the R1 – provisions of the Domestic Violence Act misused by the R1 to put pressure on the petitioners to compel them to sell the property under the alleged sale agreement – it is a suit for specific performance – there are enough materials to show that the R1/complainant and her son and husband have colluded to drag the petitioners to court by filing the present vexatious complaint though no domestic violence has been caused against the R1/complainant – criminal original petition is allowed.

2017 (2) TLNJ 625 (Criminal)

Paneerselvam

vs.

State, Rep by The Inspector of Police Chinnamanoor Police Station, Theni District

Date of Judgment: 13.12.2017

Mental Health Act, 1987, Section 24 – Accused convicted and sentenced under Section 302 & 307 IPC – Appeal – It was noticed that accused already murdered his own mother and Judicial Magistrate acquitted the accused/appellant – already admitted in Institute of Mental Health – escaped from there and later secured - no dispute that it is the accused who is the aggressor, caused the death of D1 and D2 – proved from witnesses 2, 3 and 4 and – natural, cogent and corroborative each other – offences committed by a person of unsound mind – exempted from the purview of IPC from being punished – according to PW12 who examined the accused observed that accused was not in a fit state of mind and suffering from severe mental disorder – as per section 24 of the act court passed a reception order and directing to be kept accused in any one of the Licensed Psychiatric Nursing Homes – appeal allowed with directions.

2018 (1) TLNJ 27 (Criminal)

Malli Sivaramaiyer Mothilal

vs.

The Commissioner of Police, Madurai City, Madurai & 3 others

Date of Judgment: 14.12.2017

Dowry Prohibition Act, Section 4 and Indian Penal Code 1860, Section 498-A, 406 & 109 – Offence under – Writ Petition to direct R1 to withdraw the lookout circular issued against the petitioners and restraining R1 to R3 to arrest petitioner and prevent him to travel abroad – since the petitioners given an undertaking to appear before the J.M. Court as and when their presence is required, High Court held that it is unable to refuse to grant the relief to the petitioners – personal appearance of the family members and particularly outstation members may not be required and the trial court ought to grant exemption for their personal appearance or permit their appearance by video conferencing without adversely affecting the progress of the trial – petition closed with directions.
