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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS
CIVIL CASES

2011 - 3 – L.W. 1

Kokkanda B. Poondacha and Ors
vs
K.D. Ganapathi and Anr

Code of Civil Procedure, Order 16, Rule 1(1) and (2)/List of witnesses filed by the defendants citing the name of the Advocate for Plaintiffs as a witness without indication about the purpose of summoning him, Legality,

Constitution of India, Article 227/Interference with Interlocutory orders,

Advocate – Client relationship, Nature of,

Bar Council of India Rules (1975), Chapter II, Part IV, Rules 12, 13, 14 and 15 of Section II/Duties of an advocate to the Court, the client, opponent and colleagues; Relationship between a lawyer and his client is solely founded on trust and confidence.

One of the most important duties imposed upon an advocate is to uphold the interest of the client fearlessly by all fair and honourable means.

As regards the prayer made by the respondents for being allowed to cite Shri NRK as a witness, when critically scrutinized in the backdrop of the duties of an advocate towards his client, Court has no hesitation to hold that the same was not only misconceived but was mischievous ex-facie.

Prudent exercise of discretion by the Court would be to insist that the party filing the list of witnesses should briefly indicate the purpose of summoning the particular person as a witness.

High Court totally ignored the principles and parameters for exercise of power under Articles 226 and 227 qua an interlocutory order passed by the Subordinate Court – Appeal allowed.

2011 - 3 – L.W. 7

Hitesh Bhatnagar
vs
Deepa Bhatnagar

Hindu Marriage Act (1955), Section 13-B(2)/Withdrawal of consent – Question raised whether consent once given can be withdrawn in a proceeding for divorce by mutual consent – Held: Most important requirement for a grant of a divorce by mutual consent is free consent of both the parties.

In other words, unless there is a complete agreement between husband and wife for the dissolution of the marriage and unless the Court is completely satisfied, it cannot grant a decree for divorce by mutual consent – Otherwise, in our view, the expression 'divorce by mutual consent' would be otiose.

In the present fact scenario, the second motion was never made by both the parties as is a mandatory requirement of the law, and as has been already stated, no Court can pass a decree of divorce in the absence of that – The non-withdrawal of consent before the expiry of the said eighteen months has no bearing – Court is of the

view that the eighteen month period was specified only to ensure quick disposal of cases of divorce by mutual consent, and not to specify the time period for withdrawal of consent, as canvassed by the appellant.

Respondent has stated that she wants this marriage to continue, especially in order to secure the future of their minor daughter, though her husband wants it to end – Even now, she states that she is willing to live with her husband putting away all the bitterness that has existed between the parties.

In light of these facts and circumstances, it would be travesty of justice to dissolve this marriage as having broken down – Though there is bitterness amongst the parties and they have not even lived as husband and wife for the past about 11 years, we hope that they will give this union another chance, if not for themselves, for the future of their daughter – Appeal allowed.

2011 - 3 – L.W. 17

Jagpal Singh & Ors
vs
State of Punjab & Ors

Encroachment / Poramboke lands, etc. – Suit lands were treated as inalienable in order that their status as community land be preserved; there were no doubt some exceptions to this rule which permitted the Gram Sabha / Gram Panchayat to lease out some of this land to landless labourers and members of the scheduled castes / tribes, but this was only to be done in exceptional cases.

Village land being grabbed by unscrupulous persons using muscle power, money power or political clout, noticed – In many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper – Connivance of the State authorities and local powerful vested interests and goondas – This appeal is a glaring example of this lamentable state of affairs.

Appellants herein are neither the owner nor the tenants of the land in question which is recorded as a pond situated in village; they are in fact trespassers and unauthorized occupants of the land – Collector colluded in regularizing this illegality on the ground that the respondents (appellants herein) have spent huge money on constructing houses on the said land – Appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power / money power and in collusion with the officials and even with the Gram Panchayat.

Court is of the opinion that such kind of blatant illegalities must not be condoned – Such illegalities cannot be regularized – We cannot allow the common interest of the villagers to suffer merely because the unauthorized occupation has subsisted for many years.

Directions issued to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat /Poramboke/Shamlat land – These must be restored to the Gram Sabha / Gram Panchayat for the common use of villagers of the village – For this purpose the Chief Secretaries of all State Governments / Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments – Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes / Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.

Our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years.

Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country .

The time has now come to review all these orders by which the common village land has been grabbed by such fraudulent practices.

2011 - 3 – L.W. 26

Lanka Venkateswaralu (D) by LRs.
vs
State of A.P. & Ors

Limitation Act (1963), Section 5/Condonation of Delay, Discretion of Court/Concept of liberal approach and reasonableness in exercise of the discretion by the Courts in condoning delay, Scope,

C.P.C., Order 22, Rule 5.

Appellant before Supreme Court submitted that the impugned order of the High Court cannot be justified on any legal ground and that the High Court having itself recorded the utter negligence of the respondents (State of A.P.) in pursuing the appeal at every stage, without any justification, condoned the delay – It was pointed out that there was no explanation, much less any plausible explanation, to justify the delay of 3703 days in filing the application for bringing on record the LRs. of the sole respondent or for the delay in filing the application for setting aside the order dated 6th February, 1998,

Held: Court is at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable.

Concepts such as "liberal approach" "justice oriented approach", "substantial justice" cannot be employed to jettison the substantial law of limitation – Especially, in cases where the Court concludes that there is no justification for the delay.

Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, Courts do not enjoy unlimited and unbridled discretionary powers – All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law – Discretion has to be exercised in a systematic manner informed by reason.

Judges at all levels in this country subscribe to an oath when entering upon office of judgeship, to do justice without fear or favour, ill will or malice – This commitment in form of a solemn oath is to ensure that judges base their opinions on objectivity and impartiality – The first casualty of prejudice is objectivity and impartiality – It is also well known that anger deprives a human being of his ability to reason – Judges being human are not immune to such disability – It is of utmost importance that in expressing their opinions, Judges and Magistrates be guided only by the considerations of doing justice.

Judgment of the High Court is unsustainable either in law or in equity. Consequently, the appeals are allowed.

C.P.C., Order 22, Rule 5 – See Limitation Act (1963), Section 5/Condonation of Delay, Discretion of Court/Concept of liberal approach and reasonableness in exercise of the discretion by the Courts in condoning delay, Scope.

2011 - 3 – L.W. 48

Rangammal
vs

Kuppuswami & anr

(Indian) Evidence Act (1982), Section 101/Definition of 'burden of proof' in a case where a person after attaining majority, questions sale of his property by his guardian during his minority.

Limitation Act/Sale of Minor's property by guardian in 1951, Suit for partition filed in 1982 between plaintiff and his brother covering the said property, without impleading the quandom minor who is in possession thereof, Limitation, Burden of Proof.

Evidence Act has clearly laid down that the burden of proving fact always lies upon the person who asserts – Until such burden is discharged, the other party is not required to be called upon to prove his case – Court has to examine as to whether the person upon whom burden lies has been able to discharge his burden – Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party.

Held: In the instant matter, when the plaintiff/respondent No. 1 pleaded that the disputed property fell into the share of the plaintiff by virtue of the sale deed dated 24.2.1951, then it was clearly for the plaintiff/respondent No. 1 to prove that it was executed for legal necessity of the appellant-while she was a minor – But, the High Court clearly took an erroneous view while holding that it is the defendant/appellant who should have challenged the sale deed after attaining majority as she had no reason to do so.

When a person, after attaining majority, questions any sale of his property by his guardian during his minority, the burden lies on the person who upholds/asserts the purchase not only to show that the guardian had the power sell but further that the whole transaction was bonafide.

High Court fell into an error while observing that the appellant/defendant No.2 in the suit should have assailed the sale deed and cannot do so after 31 years of its execution – It is unambiguously an admitted factual position that it is the plaintiff/respondent No.1 who had filed a suit for partition against his brother defendant No.1/respondent No.2, in that partition suit it was plaintiff/respondent No.1 who banked upon the story that a sale deed had been executed by his Uncle Kumara Naicker who claimed it to be the legal guardian of the appellant-Rangammal who admittedly was a minor for legal necessity which was to discharge the debt of the appellant's deceased mother.

High Court clearly misdirected itself by recording in the impugned order that it is the defendant/appellant herein who should have challenged the genuineness of the sale deed after attaining majority within the period of limitation.

It is well established dictum of the Evidence Act that misplacing burden of proof would vitiate judgment.

Suit has to be tried on the basis of the pleadings of the contesting parties – Basic principle seems to have been missed by all the Courts.

In a suit for partition, it is expected of the plaintiff to include only those properties for partition to which the family has clear title and unambiguously belong to the members of the joint family which is sought to be partitioned – If someone else's property (meaning thereby disputed property) is included in the schedule of the suit for partition, and the same is contested by a third party who is allowed to be impleaded by order of the trial Court, obviously it is the plaintiff who will have to first of all discharge the burden of proof.

2011 CIJ 134 SC (1)

Ltatipamula Naga Raju
vs
Pattem Padmavathi

Negotiable Instruments Act, 1881 (26 of 1881) – Sec.118 – Negotiable instruments – Promissory note – Signature – Admission – Execution – Presumption – Respondent had filed a suit against the appellant for

Rs.1,25,000 based on promissory note - Appellant contested the claim by contending that he had borrowed only Rs.25,000, put his signature in pro note and repaid it but the pro note was not returned as if it was misplaced and later, after adding 1 before the amount, suit was filed for Rs.1,25,000 - Trial Court, after relying on the evidence of handwriting expert, dismissed the suit - But, appeal was allowed and the second appeal was dismissed - In the further appeal, appellant contended that mere admission of the signature would not be taken as admission of signature and the judgment of the trial court was correct which was resisted by the respondent - Held mere admission of the signature would not amount to admission of the contents of the document - As the evidence of the handwriting expert was clear, the judgment of the trial Court was correct - Appeal was allowed and the judgment of the trial Court was confirmed.

Negotiable Instruments Act, 1881 (26 of 1881) – Sec.118 - Negotiable instruments-Promissory note - Signature – Admission – Execution – Presumption - Simply because the defendant had fairly admitted his signature available in the pro note, the court should not come to the conclusion that the amount as shown was payable by the defendant-In a suit based on negotiable instruments, mere admission of the execution of the pronote would not be a ground to reject other evidences let in by the defendant.

Ratios:

a. **Simply because the defendant had fairly admitted his signature available in the pronote, the court should not come to the conclusion that the amount as shown was payable by the defendant.**

b. **In a suit based on negotiable instruments, mere admission of the execution of the pronote would not be a ground to reject other evidences let in by the defendant.**

2011 – 3 – L.W. 218

Oriental Insurance Co.Ltd.
vs
Dhanbai Kanji Gadhvi & Ors

Motor Vehicles Act (1988), Section 163-A, 166/Compensation on the basis of the structured formula – There is no prohibition in any provision of the Motor Vehicles Act 1988 against the claimant praying for compensation as per the structured formula after having filed a claim petition under section 166 of the Act –Respondents were perfectly justified in making an application which was filed under Section 166 of the Act and praying the Tribunal to award compensation to them on the basis of the structured formula mentioned in Section 163A of the Act.

A claimant, thus, must opt/elect to go either for a proceeding under Section 163A or under Section 166 of the Act, but not under both.

Impugned judgment of the High Court upholding the order passed by the Tribunal to permit the respondents to proceed further with the petition filed under Section 166 of the Act cannot be sustained and will have to be set aside.

2011 – 3 – L.W. 222

Ravi
vs
Badrinarayan & Ors

Motor Vehicles Act (1988), Sections 140, 166/Delay in filing FIR, whether fatal to the claim – Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserved to be condoned – Authenticity of the FIR assumes more significance than delay in lodging thereof.

It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case – Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident – Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station – Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police – Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim.

2011 – 3 – L.W. 300

Sri Nagarajappa
vs
The Divisional Manager, The Oriental Insurance Co. Ltd.

Motor Vehicles Act (1988), Section 166/Compensation for permanent disability – Assessment – Held: 2011-1-SCC 343 followed – While awarding compensation it has to be kept in mind that the appellant (Manual labourer) is to do manual work for the rest of his life without full use of his left hand, Disability should be taken to be 68% and not 20% - Appellant is severely hampered and perhaps forever handicapped from performing his occupation as a coolie – Total compensation payable to the appellant amounts to ₹4,77,640/-, which we round off to ₹ 4,77,000/-.

(2011) 5 Supreme Court Cases 654

Hafeeza Bibi And Ors
vs
Shaikh Farid (Dead) by LRS. And Ors

Muslim Law – Gift or hiba – Immovable property – Validity of gift of – Three essential requisites for, reiterated – Transaction reduced into writing – Effect of – Registration thereof – Held, not compulsory – Gift deed if merely records factum of prior gift or effectuates contemporaneous gift – Relevance – Further held, recording transaction of gift on a plain piece of paper does not render gift invalid – Transfer of Property Act, 1882 – Ss. 122, 123 and 129 – Registration Act, 1908, Ss. 17 and 49

Held: Merely because a gift is reduced to writing by a Mohammedan instead of it having been made orally, such writing does not become a formal document or instrument of gift, When a gift could be made by a Mohammedan orally, its nature and character is not changed because of it having been made by a written document. What is important for a valid gift under Mohammedan Law is that three essential requisites must be fulfilled. The form is immaterial. If all the three essential requisites are satisfied constituting a valid gift, the transaction of gift would not be rendered invalid because it has been written on a plain piece of paper.

The distinction that if a written deed of gift recites the factum of prior gift then such deed is not required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to be in conformity with the rule of gifts in Mohammedan Law. In other words, it is not the requirement that in all cases where the gift deed is contemporaneous to the making of the gift then such deed must be registered under Section 17 of the Registration Act. Each case would depend on its own facts.

Muslim Law – Gift or hiba – Immovable property – Unregistered gift deed – Validity of – Appellant-defendants and respondent-plaintiffs being legal heirs of one SD – Suit for partition contested by appellant-defendant MY on basis of gift deed – Trial court ruled that hiba was valid and binding on respondent-plaintiffs – In appeal, High Court reversed ruling of trial court holding that hiba was not registered – Legality of – Held, out of love and affection, SD bequeathed properties to MY through hiba – Hiba of SD was accepted by MY and MY was put in possession – Gift deed was in form of declaration and not instrument of gift – Gift deed did not require registration – All essential ingredients of hiba were satisfied – Hence it was complete and irrevocable in favour of MY – Decree of trial court restored – Deeds and Documents – Gift deed – Construction of.

Muslim Law – Gift or hiba – Immovable property – Essential ingredients – Restated – Held, three essentials of a valid gift under Mohammedan Law are: (1) declaration of gift by donor; (2) acceptance of gift by donee; and (3)

delivery of possession – Writing is not essential for validity of gift – An oral gift fulfilling all three essential requirements makes the gift complete and irrevocable – Transfer of property Act, 1882, Ss. 123 and 129.

(2011) 4 MLJ 710 (SC)

United India Insurane Co. Ltd
vs
K.M. Poonam and Ors

Motor Vehicles Act (59 of 1988), Section 149 and 147 – Liability of insurer towards third parties – Accident causing injuries and death – Carrying passengers in excess in vehicle – Breach of policy terms – Liability of insurer limited to number of persons covered by insurance policy – Owner held liable for paying other passengers in excess – Insurer directed to deposit total compensation awarded to all claimants and recover the amount in excess of its liability from owner of vehicle.

RATIONES DECIDENDI:

I. **The insurance company is liable to make payment even in respect of persons not covered by the policy and entitled to recover the amount from the owner though the liability of insurer is limited to the number of persons covered under the insurance policy.**

II. **Insurance company is entitled to recover the amount paid by it in excess of its liability from the owner of the vehicle.**

(2011) 4 MLJ 887 (SC)

H. Siddiqui (dead) by Lrs.
vs
A. Ramalingam

Code of Civil Procedure (5 of 1908), Order 41, Rule 31 – Judgments of Appellate Court – Suit for specific performance – Non-execution of sale deed – Agreement of sale disputed – Seller denies execution of power of attorney for alienation of property – Trial Court decreed suit – High Court reverses judgment and decree of trial Court – Admission of signature on photocopy of power of attorney – Specific admission on execution of power of attorney by seller – Mere admissibility of document in evidence not indicative of its probative value – Independent assessment of evidence by appellate Court mandatory – Appellate Court to proceed and decide in-appeal in adherence to Order 41, Rule 31 – Matter remitted back to be decided by High Court afresh.

Indian Evidence Act (1 of 1872), Section 65 and 66 – Secondary evidence – Secondary evidence to be authenticated by foundational evidence – Secondary evidence in regard to contents of a document inadmissible unless non production of original accounted for – Mere admissibility of document not amounting to its proof.

RATIONES DECIDENDI

I. **Mere admissibility of a document does not indicate its probative value.**

II. **Appellate Courts are mandatorily required to make an independent assessment of the evidence on all important aspects and consider relevant points which arise for adjudication and proceed in adherence to the requirements of Order 41, Rule 31 of the Code of Civil Procedure.**

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SUPREME COURT CITATIONS
CRIMINAL CASES

(2011) 6 Supreme Court Cases 86

O.P. Sharma and Ors
vs
High Court of Punjab and Haryana

Advocates – Generally – Advocates' role, professional conduct and ethical standards – Duty to court, examined – Held, advocates have an obligation to uphold rule of law and ensure that public justice system functions at its full potential – Violation of principles of professional ethics by an advocate is unacceptable – An advocate should be dignified in his dealings with court, to his fellow lawyers and to litigants – Necessity of advocates to faithfully abide by prescribed standards of professional conduct and etiquette, emphasized – Members of legal profession have a social duty to show people a beacon of light by their conduct and actions – S. 7(1)(b) – Courts, Tribunals and Judiciary – Judicial Process – Role of the Bar.

Held: The role and status of lawyers at the beginning of sovereign and democratic India is accounted as extremely vital in deciding that the nation's administration was to be governed by the rule of law. They were considered intellectuals amongst the elites of the country and social activists amongst the downtrodden. The role of lawyers in the framing of the Constitution needs no special mention. In a profession with such a vivid history it is regretful, to say the least, to witness instances of the nature of the present kind. Lawyers are the officers of the court in the administration of justice. The Bench as well as the Bar has to avoid unwarranted situations or trivial issues that hamper the cause of justice and are in no one's interest. A lawyer cannot be a mere mouthpiece of his client and cannot associate himself with his client in maligning the reputation of a judicial officer merely because his client failed to secure the desired order from the said officer. A deliberate attempt to scandalize the court which would shake the confidence of the litigating public in the system and would cause a very serious damage to the name of the judiciary.

(2011) 5 Supreme Court 324

Kuldip Yadav and Ors
vs
State of Bihar

Penal Code, 1860 – Ss. 302 and 324 r/w S. 149 – Appreciation of evidence – Credibility of witnesses – Conviction set aside – Held, where version given by eyewitnesses who were also interested witnesses, being related to deceased and also inimically deposed against accused, was highly exaggerated, contrary to each other and not fully corroborated by medical evidence, and there were discrepancies about number of accused persons, weapons and ammunition carried by them and which was not in tune with what the informant had stated in his deposition, conviction on basis of their testimonies unsustainable – Impugned judgment upholding conviction of appellants set aside.

Penal Code, 1860 – S. 149 – Applicability – Mandatory for court before convicting accused with aid of S. 149 to give clear finding regarding nature of unlawful common object – In absence of such finding as also any overt act on part of accused, mere fact that they were armed not sufficient to prove common object – Moreover, in order to attract S. 149, it must be shown that incriminating act was done to accomplish common object of unlawful assembly and it must be within knowledge of other members as one likely to be committed in prosecution of common object – Essential ingredients of S. 141 also need to be established – In instant case, there was no material to show that all the accused shared the common object, the object itself not being proved and their participation in it was not made out by credible evidence – Besides, no overt act was attributed to any other accused except A-1 towards murder of deceased – Hence, conviction under S. 149 unsustainable.

Criminal Procedure Code, 1973 – Ss. 223(d) and 156 – Procedure in respect of cross-cases – Cases when to be consolidated or amalgamated – Principles reiterated – Duty of IO common in cross-cases – In instant case, investigation was conducted by same IO in both cases – He ought to have brought to notice of trial court that there were two FIRs arising out of same incident to avoid gross injustice to parties concerned – Criminal Trial – Investigation – Generally – Duties of Investigating Officer.

(2011) 2 MLJ (Crl) 482 (SC)

Bhim @ Uttam Ghosh
vs
State of West Bengal

Indian Penal Code (45 of 1860), Section 307 – Juvenile Justice (Care and protection of Children) Act (56 of 2000), Section 2(k), 2(1), 7-A, 20 and 49 – Juvenile Justice (Care and Protection of Children) Rules (2007), Rules 12 and 98 – Conviction – Claim of juvenility – Procedure to be followed when claim of juvenility raised.

FACTS IN BRIEF: An appeal has been filed challenging the order of the High Court whereby the High Court upheld the conviction of the appellant-accused for an offence punishable under Section 307 of IPC.

QUERY: Whether a person who had not completed eighteen years of age on the date of commission of the offence would be treated as a juvenile even if the claim of juvenility is raised after he has attained the age of eighteen years on or before the date of the commencement of the 2000 Act?

Held: Proviso to sub-section (1) of Section 7-A contemplates that a claim of juvenility can be raised before any Court and has to be recognized at any stage even after disposal of the case and such claim is required to be determined in terms of the provisions contained in the 2000 Act and the Rules framed thereunder, even if the juvenile has ceased to be so on or before the date of the commencement of the said Act. The effect of the proviso is that a juvenile who had not completed eighteen years of age on the date of commission of the offence would also be entitled to the benefit of the 2000 Act as if the provisions of Section 2(k) of the said Act, which defines "juvenile" or "child" to mean a person who has not completed eighteenth years of age, had always been in existence even during the operation of the 1986 Act.

(2011) 2 MLJ (Crl) 487 (SC)

Pal @ Palla
vs
State of Uttar Pradesh

Code of Criminal Procedure, 1973 (2 of 1974), Section 210 – Procedure to be followed when there is complaint case and police investigation in respect of same offence – Clubbing of two cases together – Scope of – Version in complaint case and police report totally different though arising out of same incident – Two trials should be held simultaneously but not as single trial – Evidence to be recorded separately in both cases and should be disposed of simultaneously so that procedure does not infringe provisions of Article 20(2) of Constitution of India, 1950 read with Section 300 Cr.P.C. – Facts of case also warrant that two trials should be conducted by same Presiding Officer in order to avoid conflict of decisions.

Held: Although, it will appear from the above that under Section 210 Cr.P.C. the Magistrate may try the two cases arising out of a police report and a private complaint together, the same, contemplates a situation where having taken cognizance of an offence in respect of an accused in a complaint case, in a separate police investigation such a person is again made an accused, then the Magistrate may inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. That, however, is not the fact situation in the instant case, since the accused are different in the two separate proceedings and the situation has, in fact, arisen where prejudice in all possibility is likely to be caused in a single trial where a person is both an accused and a witness in view of the two separate proceedings out of which the trial arises. This is a case where the decision of Harjinder Singh v. State of Punjab and Others would be more apposite.

Although, the High Court has relied on the provisions of Section 210 of the Code in directing that the two cases be clubbed together, the fact situation does not really attract the provisions contemplated in the said Section. On the other hand, as indicated hereinabove, the trial Court, in the unusual facts of the case, is required to hear the two cases together, though separately, and taken evidence separately, except in respect of all witnesses who would not be affected either by the provisions of Article 20(2) of the Constitution or Section 300 Cr.P.C.

The order of the High Court impugned in the appeal cannot, therefore, be sustained and is, accordingly, set aside.

(2011) 2 MLJ (Crl) 506 (SC)

Main Pal
vs
State of Haryana

Indian Penal Code (45 of 1860), Sections 211 and 212 – Contents and particulars of charge – Trespass and assault to outrage modesty of woman – Error in framing charge – Wrong mentioning of name of person against whom offence was committed – Defence with regard to erroneous charge – Conviction for commission of offence against another person without framing a charge with reference to such person leading to failure of justice – New trial ordered after framing real and actual charge against accused – Conviction set aside.

Held: The accused is entitled to know with certainty and accuracy, the exact nature of the charge against him, and unless he has such knowledge, his defence will be prejudiced. Where an accused is charged with having committed offence against one person but on the evidence led, he is convicted for committing offence against another person, without a charge being framed in respect of it, the accused will be prejudice, resulting in a failure of justice. But there will be no prejudice or failure of justice where there was an error in the charge and the accused was aware of the error. Such knowledge can be inferred from the defence, that is, if the defence of the accused showed that he was defending himself against the real and actual charge and not the erroneous charge.

In judging a question of prejudice, as of guilt, the Courts must act with a broad vision and look to the substance and not to the technicalities, and their main concern should be to see whether the accused has a fair trial, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself.

(2011) 2 MLJ (Crl) 558

Srinath Prasad
vs
State by Inspector of Police, J-6, Thiruvanmiyur Police Station, Thiruvanmiyur

Indian Penal Code (45 of 1860), Sections 498-A and 306 – Indian Evidence Act (1 of 1872), Section 32 (1) – Abetment of suicide – Conviction and sentence – Appeal – Letters written by deceased relating to cause of death exhibiting circumstances leading to death would fall within four corners of Section 32(1) of Evidence Act – But letters do not contain any incriminating materials to attract ingredients of offence under Section 306 IPC – Said letters only disclose confused state of mind and depression of deceased – Neither contents of letters nor evidence of witnesses disclose any concrete instance which can be termed as cruelty – Prosecution miserably failed to prove case against appellant/accused for offences under Sections 498-A and 306 IPC – Impugned judgment of conviction unsustainable in law – Appeal allowed.

Held: A reading of the provision under Section 32(1) of the Indian Evidence Act coupled with the principle laid down by the Hon'ble Apex Court it is abundantly clear that the letters written by the deceased, Exhibits P-2 to P-4 relating to the cause of the death exhibiting the circumstances leading to the death would fall within the four corners of Section 32(1) of the Indian Evidence Act and therefore admissible.

By reading the above said letters of the deceased, Exhibits P-2 to P-4, by no stretch of imagination it could be stated that the ingredients of the offence under Section 306 IPC are made out against A 1. As already pointed out, the said letters only disclose the confused state of mind and depression of the deceased.

(2011) 2 MLJ (Crl) 595

A. Sivagnana Pandian
vs
M. Ravichandran

Indian Evidence Act (1 of 1872), Section 45 – Application to refer cheque to Forensic Science Expert to ascertain age of ink – Various scientific avenues available for finding out age of ink in document – Disputed document directed to be referred to examination in order to provide opportunity to accused to rebut presumption as per law by non-destructive method in this regard – Practical hardships if any sustained by expert shall be brought to notice of Court.

Held: Since various scientific avenues are available for finding out the age of the ink in a document, it must be subjected to tests as suggested by various scientists. This Court follows the ratio in the decisions in Kalyani Baskar v. M.S. Sampoornam (2007), 1 MLJ (Crl) 1020 case and T. Nagappa v. Y.R. Mudaliar (2008) 2 MLJ (Crl) 956 case above, and direct to refer the disputed document to such examination in order to provide an opportunity to the accused, when a good material is available, to rebut the presumption as per law, by non-destructive method in this regard.

If the expert concerned considers that such examination would destruct a part of the document or the document itself, they may report the fact before the Court and the Court thereafter shall pass further orders for the proof of the facts on the basis of pleadings and other evidence.

(2011) 2 MLJ (Crl) 612

Saravanan and Ors
vs
State through Inspector of Police, Puliyangudi Police Station, Tirunelveli District

Indian Penal Code (45 of 1860), Sections 302, 341 – Double Murder – Appreciation of evidence – Both accused and deceased-accused are armed with weapon sustained injuries in altercation – Deceased – Accused 'M' succumbed to injuries on the spot –Non-explanation of injuries on the person of A-1 – Suppression of FIR given by wife of Deceased-accused – Weapon armed by deceased not recovered – Suppression of genesis and origin of occurrence – Prosecution case doubtful as to real aggressor – Conviction unsustainable in law – Acquittal.

FACTS IN BRIEF: This is a case of double murder. There were strained feelings between the prosecution party and the accused party in respect of cutting trees in the village. On the fateful day of occurrence an aggression takes place between both the parties in front of the house of the Accused-A2 and in the course of the altercation D2 attacked the deceased-accused Mahendran with an aruval, the grandfather of D1 and D2, P.W. 4/wife of D1 raised hue and cry. On hearing the same, P.Ws.2 and 5 rushed to spot and found D1 and D2 and Mahendran lying in a pool of blood. A1, A2 and A3 threatened them with dire consequences and ran away from the scene. P.W. 4 lodged report to police. The trial Court on analysis of evidence held guilty of the Accused persons for commission of offences under Section 302 and 341 of I.P.C and awarded sentence of imprisonment to life and sentence of one months S.I with fine with default sentence respectively. The present appeal is assailed against the judgment of conviction and sentence.

Query:

1. Whether prosecution establishes the real aggressor for the commission of crime?
2. Whether the right of private defence exercised by Accused party exceeded their right more harm than necessary caused?
3. Whether the prosecution establishes the guilt of the Accused beyond all reasonable doubt?

Held: It is seen that the deceased–accused Mahendran as well as A1 also sustained grievous injuries at the time of occurrence. The fact remains that that the deceased-accused Mahendran succumbed to the injuries and died on the spot. Though the prosecution has explained the injuries by the deceased-accused Mahendran to the effect that D2 attacked the deceased-accused Mahendran, none of the witnesses whispered a word as to how A 1 sustained injuries. The evidence of the I.O.., P..W. I6 reveals that a complaint was preferred by the wife of deceased–accused and the case was also registered in Cr.No. 148 of 2008, but the investigating officer neither produced the FIR nor the final report before the Court. It is further admitted by P.W.16 in his cross-examination that he has not recovered the 'aruval' used by D1 and D2 and as such, it is quite clear that his investigation discloses that even D1 is armed with the weapon, viz., 'aruval' as he has not denied the same and he has merely stated that he has not recovered the said 'aruval' used by D 1 and D2. Therefore, it is crystal clear from the sequence of events and the specific admission of P.W.s. 1, 4 and 16 that the prosecution has not at all explained the injuries sustained by A1 and as such, the Court has no hesitation to hold that the genesis and origin of the occurrence has been suppressed by the prosecution.

2011-1-L.W. (Crl) 654

Sunita Kumari Kashyap
vs
State of Bihar & Anr

I.P.C., Section 498A/Husband of relative of husband of a woman subjecting her to cruelty, Continuing offence,

Dowry Prohibition Act (1961), Sections 3 and 4, Jurisdiction of Court with reference to the offence punishable under Sections 498A, 406/34 IPC,

Criminal P.C., Section 177/Ordinary place of inquiry and trial, Section 178/Place of inquiry or trial, Section 179/Offence triable where act is done or consequence ensues.

Question raised before the Supreme Court was whether criminal proceedings initiated by the appellant herein at Gaya against her husband and his relatives are maintainable or not for lack of jurisdiction? – Held: Perusal of the entire complaint, which was registered as an FIR, clearly shows that there was ill-treatment and cruelty at the hands of her husband and his family members at the matrimonial home at Ranchi; because of their actions and threat she was forcibly taken to her parental home at Gaya where she initiated the criminal proceedings against them for offences punishable under Sections 498A and 406/34 IPC and Sections 3 and 4 of the D.P. Act – Among the offences, offence under Section 498A IPC is the main offence relating to cruelty by husband and his relatives.

As the offence was a continuing one and the episode at Gaya was only a consequence of continuing offence of harassment of ill-treatment meted out to the complainant, clause(c) of Section 178 is attracted – Further, from the allegations in the complaint, it appears to us that it is a continuing offence of ill-treatment and humiliation meted out to the appellant in the hands of all the accused persons and in such continuing offence, on some occasion all of them had taken part and on other occasion, one of the accused, namely, husband had taken part, therefore, undoubtedly clause (c) of Section 178 of the Code is clearly attracted – Impugned order of the High Court holding that the proceedings at Gaya are not maintainable due to lack of jurisdiction cannot be sustained and is set aside.

In view of the same, the SDJM, Gaya is permitted to proceed with the criminal proceedings in trial and decide the same in accordance with law.

Dowry Prohibition Act (1961), Sections 3 and 4, Jurisdiction of Court with reference to the offences punishable under Sections 498A, 406/34 IPC – See I.P.C., Section 498A/Husband or relative of husband of a woman subjecting her to cruelty, Continuing offence.

Criminal P.C., Section 177/Ordinary place of inquiry and trial, Section 178/ Place of inquiry or trial, Section 179/Offence triable where act is done or consequence ensures – See I.P.C., Section 498A/Husband or relative of husband of a woman subjecting her to cruelty, Continuing offence, Dowry Prohibition Act (1961), Sections 3 and 4, Jurisdiction of Court with reference to the offences punishable under Sections 498A, 406/34 IPC.

(2011) 5 Supreme Court Cases 721

Gurudev Singh
vs
State of Madhya Pradesh

Penal Code, 1860 – S. 300 Exceptions 1 and 4 – Applicability of – Murder or culpable homicide not amounting to murder – Appellant contended that there was provocation from the side of complainant party and that due to such provocation, incident occurred due to a sudden fight – Accused persons were armed with deadly weapons like lohangi and kirpan – They surrounded deceased and PW 1 and started giving blows on vital parts of their bodies with intention of killing them – Provocation came from accused's side and not from deceased or PW 1 - It was also not a sudden attack – Held, Exceptions to S. 300 not attracted – Conviction confirmed.

Penal Code, 1860 – S. 302 r/w S.34 and S. 323 r/w S. 34 – Murder trial – Appreciation of evidence – Conviction confirmed – Contention that there were vital discrepancies in evidence, rejected – Appellant armed with lohangi with two others armed with kirpan and lathi attacked deceased and PW 1 – PW 1 has given a vivid description of incident – It was stated by him that all three accused persons surrounded him and deceased, and attacked them and caused vital injuries on different parts of their bodies – After being so hit and on realizing that accused persons would kill him, he ran away from place of occurrence and reported the same to his father who came along with him and other persons to place of occurrence but they could not find deceased – They only found dead body of deceased next morning in a nearby nala after searching throughout the night – PW 2 also has clearly stated that all accused persons hit deceased on his head, hands and legs and also hit PW 1 – Statements of PWs 1 and 2 are also supported by medical evidence – Injuries were found to be very serious in nature and were caused by sharp-cutting and hard and blunt weapons – Said injuries were sufficient to cause death in the normal course of nature – Weapons of crime were also recovered on basis of statements made by accused – Held, appellant is guilty of offence committed under Ss. 302/34 and Ss. 323/34 IPC.

Criminal Procedure Code, 1973 – S. 154 – FIR – Delay – Explanation – Time of incident about 8.00 p.m. – FIR recorded next morning – Injured witness ran away from place of occurrence to save himself and told this fact to informant – Deceased was not found at place of occurrence – Informant and PW 1 were trying to locate the deceased throughout the night – After tracing out dead body of deceased in a nala next morning, FIR was recorded immediately – Held, explanation for delay in filing FIR was reasonable – Conviction confirmed.

Criminal Trial – Injuries, Wounds and Weapons – Injuries on accused – Non-explanation of – Effect – Injuries received by accused were very simple in nature whereas injuries inflicted on deceased and PW 1 were very serious in nature and were inflicted on vital parts of the body of deceased – There was a clear intention on part of accused persons to kill and murder the deceased – Conviction confirmed.

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HIGH COURT CITATIONS
CIVIL CASES

2011 (4) CTC 20

Manorama Akkineni
vs
Janakiraman Govindarajan

Hindu Marriage Act, 1955 (25 of 1955) – Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11 – Dissolution of Marriage – Legal sanctity of marriage performed as per Hindu rites and custom – Marriage was performed between petitioner and Husband as per Hindu rites and custom in India – Couples again married in USA and got certification under Laws of USA – Marriage between spouses was dissolved by Superior Court of California, county of Alameda – Wife filed Original Petition in Family Court, Chennai seeking relief of dissolution of marriage, custody of child and permanent alimony of ₹1 Cr. – Whether Original Petition filed by Wife before Family Court is maintainable in Law – Held, Hindu marriage is sacrament and not contract – Order passed by Foreign Court dissolving marriage cannot be construed as an order dissolving marriage performed as per Hindu rites and custom – Original Petition filed by wife before Family Court at Chennai seeking dissolution of marriage and permanent alimony is maintainable.

Facts:

Petitioner/wife and Respondent/husband married as per Hindu rites and customs in India. The parties again performed marriage ceremony in USA and got certification of Marriage in USA. Superior Court of California, dissolved the marriage between the parties. Petitioner-Wife preferred original Petition before Family Court at Chennai seeking dissolution of marriage, custody of children and permanent alimony. Respondent husband filed an Application under Order 7, Rule 11 to reject the Petition, Family Court rejected the Petition filed by the Wife. Aggrieved by the order of the Court below the Petitioner/Wife has filed Civil Revision Petition under Article 227 of the Constitution of India.

Held:

In Hinduism, man and woman represent the two halves of the divine body. In Hindu dharma, marriage is viewed as a sacrament and not a contract. Hindu marriage is a life-long commitment of one wife and one husband, and is the strongest social bond that takes place between a man and a woman. Hindu marriage was strictly based on absolute trust, mutual affection, capacity to adjust and sharing the responsibilities equally. At every stage of the wedding ceremony when the incantations (Mantras) from the Vedas were uttered, prayers were offered to ensure a smooth life. The duties were demarcated and freedom given to both. The union being sacred, the vow did not give room for separation. The significance of taking seven steps was that the couple should never give scope for differences of opinion and should an occasion arise, both should respect the sentiments of the other, thereby ensuring that no confrontation takes place. The main objectives behind a Hindu marriage are the follow:

(i) Performance of religious duty - Dharma

(ii) Giving birth to children – Praja

(iii) Sex satisfaction – Rati.

2011 (4) CTC 32

Sasikala
vs
Wilson D. Doss

Transfer of Property Act, 1882 (4 of 1882), Sections 106 & 109 – Rights of lessor's transferee – Notice to quite tenancy – Whether notice under Section 106 of Act, is mandatory to file Suit for recovery of possession – Plaintiff filed Suit for recovery of possession treating Defendant as trespasser – Defendant had entered into tenancy with original owner of suit property – Plaintiff filed Suit without issuing notice under Section 106 of Transfer of Property Act – Suit is bad for non-issuance of notice under Section 106.

Transfer of Property Act, 1882 (4 of 1882), Section 109 – Attornment of Tenancy – Contention of Plaintiff that after death of original owner Defendant had not approached subsequent purchaser for attornment of tenancy – Attornment is creature of contract – There is no need for Tenant to seek for attornment from subsequent purchaser – Transferee of lessee steps into shoes and possess all rights which transferor has – Attornment by Tenant is not essential to give validity to transfer made in favour of transferee.

2011 CIJ 42 PLJ

Tmt. Rajakani & Ors. etc
vs
Sumathi & Ors. etc.,

Hindu Marriage Act, 1955 (25 of 1955) - Sec.29(2) - Indian Evidence Act, 1872 (1 of 1872) - Sec.103 - Hindu law – Divorce - Customary divorce – Proof - Burden of proof – Issues – Necessity - Between the parties, there was a dispute about the legal status of a lady to inherit the property left by the deceased - A woman claimed that she married the deceased after the customary divorce of another woman and so that another woman court not claim to be the legal heir which was denied by the later woman - Trial Court and also the Appellate Court rejected such plea of customary divorce which was challenged before the High Court - In the High Court, it was contended that there was a practice of customary divorce prevalent in the community and the respondent was divorced by the deceased and so she could not claim to be the legal heir - Respondent pleaded that there was no such practice in the community - Held, under the Hindu Law, normally, divorce could be done only through the Court - If anyone pleads customary form of divorce, he/she has to strictly prove it - Customs should be ancient, continuous and consistently practiced by the community – Even in the absence of framing of specific issue, if the parties were aware of the specific dispute and let in evidence and based upon the evidence, the Court decide that dispute, the same would be valid – Customary divorce was held as not proved and the order of the first appellate Court was upheld.

Code of Civil Procedure, 1908 (5 of 1908) – O.XIV - Practice and Procedure – Issues – Framing of issue – Failure – Effect – In any suit, the non-framing of an issue may not affect or vitiate the judgment, provided the parties went for trial knowing fully well what their rival pleadings are and what are the points in dispute are and that in such a case, the said defect would be only an irregularity that can be corrected by the appellate courts.

Hindu Marriage Act, 1955 (25 of 1955) – Sec.29(2) – Indian Evidence Act, 1872 (1 of 1872) – Sec.103 – Hindu law – Divorce – Customary divorce – Proof – Burden of proof – Issues – Necessity – Whoever pleads the prevalence of customary divorce in a community has to prove it strictly – To prove a custom, one should let in evidence to the effect that there existed such an usage from time immemorial and due to continuous adoption of such usage and practice, it has acquired the force of law and in fact, it has been recognized to be a part of law – To be successful in substantiating a plea of custom, continuous and frequent instances without any deviation should be proved – Customary divorce cannot be equivated with a divorce deed.

Ratios:

a. **In any suit, the non-framing of an issue may not affect or vitiate the judgment, provided the parties went for trial knowing fully well what their rival pleadings are and what are the points in dispute are and that in such a case, the said defect would be only an irregularity that can be corrected by the appellate courts.**

b. **Whoever pleads the prevalence of customary divorce in a community has to prove it strictly.**

c. **To prove a custom, one should let in evidence to the effect that there existed such an usage from time immemorial and due to continuous adoption of such usage and practice, it has acquired the force of law and in fact, it has been recognized to be a part of law.**

d. **To be successful in substantiating a plea of custom, continuous and frequent instances without any deviation should be proved.**

e. **Customary divorce cannot be equitvated with a divorce deed.**

(2011) 4 MLJ 42

V. Uma
vs
V. Balaji

Code of Civil Procedure (5 of 1908), Order 39 Rule 2A – Temporary injunctions and interlocutory orders – Consequence of disobedience or breach of injunction – Remedy in Code of Civil Procedure in event of disobedience of order of injunction granted by Civil Court – Whenever disobedience to injunction order brought to notice of Court, Trial Court should make attempt to take up applications not withstanding pendency of suit – In view of alternative remedy available to petitioner under Order 39 Rule 2A C.P.C., not permissible for petitioner to invoke jurisdiction under Contempt of Courts Act (70 of 1971).

RATIO DECIDENDI: Whenever disobedience to the injunction order is brought to the notice of the Court and such applications are filed, the trial Court should take up those applications not withstanding the pendency of the suit.

2011 (4) CTC 48

T.K. Saminathan
vs
The Special Commissioner and Commissioner of Land Administration, Chepauk and Ors

Administrative Law – Public Interest will prevail over private interest – Courts have to lean to uphold public interest in preference to private interest – Temple property – Lands that are Temple poromboke lands were encroached by private individuals – Previous Civil Suit as also Board of Revenue proceeding relating to encroachment held against private parties and eviction was ordered – Petitioner filed Writ Petition praying to direct Authorities to evict such encroachers – Writ Petition allowed – Authorities passed order rejecting eviction – Encroachers were promoting private interest – Encroachers' interest has to yield to public interest.

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (T.N. Act 22 of 1959), Section 6(15) – Person having interest – Locus of devotee to seek eviction of encroacher of temple land – Held, devotee had locus standi.

2011 (4) CTC 64

Kuppusamy
vs
Selvathandavam @ Thandava Mudaliar and Ors

Law of Evidence – Code of Civil Procedure, 1908 (5 of 1908) – Practice & Procedure – Deposition of a Witness in an earlier Suit – Can be marked in a subsequent Suit only through same Witness and not through any other person or Witness.

Facts:

An Application is filed to mark the evidence of a witness in an earlier Suit where it is contended that the right of the Petitioner was admitted by the said witness. The Trial Court dismissed the said Application and Revision is preferred against the same.

Held:

The case of the Petitioner is that the summon was taken in the Suit to one Ramalingam S/o Sakkarapani to give evidence in O.S. No.27 of 2005. But the summon was returned with endorsement that he is not residing there. In such circumstances, the Petitioner has filed a Petition to condone the delay in adducing additional evidence viz., the deposition of said Ramalingam who was examined as P.W.2 in O.S. No.160 of 1999. It has not been stated in the Affidavit as to who are the parties in O.S. No.160 of 1999 and how such deposition is relevant for deciding the issue in the present Suit. Even if the deposition is allowed to be produced, it can be marked only through Ramalingam, as he had deposed before the Court. It can't be marked through any other witness and therefore, the Court is right in dismissing the Petition.

In the decision reported in Tirumala Tirupati Devasthanams v. K.M. Krishnaiah, 1998 (2) SCC 331, it has been held that judgment not inter partes is admissible in evidence under Section 13 of the Evidence Act as evidence of an assertion of a right to property in dispute and the judgment rendered in earlier Suit declaring title of the present Appellant in a land is admissible and could be relied upon by Appellant in the subsequent Suit filed by the Respondent for grant of permanent injunction against the Appellant in respect of the same land, even though Respondent was not a party to the earlier Suit. The said decision relates to a judgment rendered in an earlier Suit. But the said decision has not laid down that the deposition of a witness to an earlier Suit can be marked as additional evidence in the subsequent Suit. Therefore, the said decision is not applicable to the facts of this case.

2011 - 3 – TLNJ 71

Thennarasu
vs
Jain Parswanatha Nainar and Ors

Civil Procedure Code 1908 as amended, Order 6 Rule 17 – Amendment of plaint sought and allowed by trial court holding that plea of limitation, can be determined finally – on revision High Court verbalized that court has to allow the amendment that is necessary for resolving the controversy between the parties as Court has wide discretionary power in the matter of amendment of pleadings – but to be exercised with great care and caution – further held that if there is no inconsistency between initial averments in plaint and proposed in the amendment, even belated if does not cause irretrievable injury to other side has to be permitted – Civil Revision petition is dismissed.

2011 - 3 – L.W. 80

M/s Meenakshisundaram Textiles, 1st Floor, Sona Towers,
72, Millers Road, Bangalore – 52 rep by its Managing Director
vs
M/s Valliammal Textiles Ltd., No.50/1, Anadipalayam, Mangalam Road, Tiruppur

C.P.C., Section 2(2)/'Decree'; 2(9)/'judgment'; Order 20, Rule 6(a); 2(14)/'Order'.

Appeal (CMA) was filed against order of lower court dismissing application to set aside the ex parte decree / judgment – Lower court passed the order holding; "Suit was filed for directing the defendant to pay the plaintiff the sum of ₹.1,12,25,770.00 with future interest from the date of suit till realization at 18% per annum of ₹.85,75,500/-; Defendant was called and found absent; The evidence on record perused decreed with costs for ₹.1,12,25,770.00 with future interest."

Question is as to whether the aforesaid judgment could be termed to be a "judgment" in terms of Section 2(9).

Section 2(9) defines a "judgment" as statement given by the judge on the grounds of a decree or order to bring a decree within Section 2(2) – There must be an adjudication of the dispute.

Adjudication means the judicial determination of the matter in dispute – Such adjudication must be about any or all the matters in controversy in the suit – After adjudication, there must be a conclusive determination of the rights of the parties – For the purpose of a decree, elements of adjudication, conclusive determination and formal expression on such determination are absolutely necessary.

Judgment not containing the bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue would not qualify it to call as "judgment".

The Civil Procedure Code does not say that the Court is bound to grant a decree in case the defendant is absent – The practice of writing a judgment indicating that the defendant was ex parte and as such the claim was proved and the suit was decreed, deserves to be condemned – Order set aside and the suit is restored to file – CMA allowed.

(2011) 4 MLJ 83

Lakshmi and Anr
vs
Metropolitan Transport Corporation Ltd

Motor Vehicles Act (59 of 1988), Section 163-A – Contributory negligence – Cases where even negligence, is on the part of the victim – Contributory negligence – Exception to Section 166 – Even if victim has contributed to the accident – Owner of the motor vehicle – Liable to pay for loss or death by the third party, due to accident arising out of the use of motor vehicle – Tribunal cannot go into the issue of 'contributory negligence.'

FACTS IN BRIEF: The deceased is the son of the appellants and he was studying in IX standard at the time of the accident while he was travelling in the respondent's bus on 8.3.2004, at 8.30p.m., he fell down from the bus and left rear wheel ran over the deceased. He was immediately taken to the hospital, but he died on the way. Hence, the claimants claimed a sum of ₹1,74,500/- as Compensation before the Tribunal and the Tribunal awarded a sum of ₹81,000/- Aggrieved against the same, the claimants have come forward with this appeal.

QUERY: Whether the question of 'contributory negligence' can be taken into consideration in the appeal, when the position filed is under Section 163-A?

Held: When the petition is filed under Section 163-A of the Motor Vehicles Act, the Tribunal cannot go into the issue of contributory negligence and the findings of contributory negligence on the part of the claimants have to be set aside.

The lower Court though has stated that the accident was caused as stated in the claim petition and the claimants are entitled for compensation, it has failed to consider the fact that the petition was filed under Section 163-A of the Act, but not under Section 166 and reduced the compensation by 50%. The finding insofar as the contributory negligence is therefore set aside. The quantum awarded by the Court below is reasonable and it is hereby confirmed.

(2011) 5 MLJ 86

Dhanalakshmi
vs
S. Prabhavathy and Ors

Indian Evidence Act (1 of 1872), Section 112 – Hindu Marriage Act (25 of 1955), Section 16 – Legitimacy of child – Suit for partition – Appellant impleading herself as D11 claiming legitimacy – Trial Court decreed suit – Filing of appeal by D11 claiming to be legitimate child – Legitimacy of marriage between parents of appellant in dispute – No proof of marriage between parents of appellant – Allegation of marriage of mother of appellant to another person made by only legal heirs – Allegation of adulterous relationship between their father and mother of appellant – Prolonged co-habitation cannot lead to presumption of marriage – Children born out of adulterous relationship not eligible to invoke legitimacy under Section 16 – Onus of proof of legitimacy not discharged by appellant – No shifting of burden of proof – Claim of legitimacy, held not valid.

Indian Evidence Act (1 of 1872), Section 90 – Presumption as to old documents – Acknowledgment of marriage and legitimacy of children in mortgage deed – Ante litem document – Document come within meaning of ancient document under Section 90 - Document having evidentiary and probative force – Presumption as to signature and hand writing of persons by whom it purports to be executed and attested – Document, held valid.

Evidence – Marking of document – Not amounting to proving document – Proving of document required to be done by that party who produce and mark such document.

RATIONES DECIDENDI:

I Presumption of a legitimate marriage cannot be drawn merely on ground of prolonged co-habitation of a couple.

II In the process of bastardizing one person, Court should not bastardize another person who is not liable to be bastardized.

III Presumption under Section 112 of the Indian Evidence Act cannot be invoked unless there is strong evidence of a legitimate marriage between the mother of the person claiming legitimacy and his father.

IV. A party who produces and marks a document is required to prove such document and not the opposite party.

(2011) 4 MLJ 92

G. Pavunambal and Ors
vs
Sharmila Devi and Anr

Indian Succession Act (39 of 1925), Section 112 – Bequest - Made to a particular person with a particular description – If he died during the life time of the testator – Entire bequest has become void.

RATIO DECIDENDI: If any bequest is made to a particular person with a particular description and he dies during the lifetime of the testator, the entire bequest has become void as per Section 112 of Indian Succession Act.

2011 CIJ 101 ALJ

S. Tajudeen
vs
S.V. Sambandan & Ors.

Code of Civil Procedure, 1908 (5 of 1908) – O.VIII R.6A, 9 - Civil suit - Counter claim – Limitation - In the suit filed by the plaintiff for declaration of title, the defendant filed his counter claim after the filing of his written statement which was rejected by the trial Court on the ground that it was not made within time - In the revision against the dismissal of the counter claim, defendant contended that for the claim that accrued to him before the filing of the suit by the plaintiff, there was no period of limitation and he could file it at any time which was resisted by the plaintiff - Held, the defendant could prefer his counter claim only before filing his defence statement and not thereafter - As the counter claim was made after the written statement was filed by the defendant, the order of the trial Court was confirmed and the revision was dismissed.

Code of Civil Procedure, 1908 (5 of 1908) – O.VIII R.6A, 9 - Civil suit-Counter claim – Limitation - Any counter claim can be made by the defendant in the suit only before he files his written statement and not thereafter.

Ratio: Any counter claim can be made by the defendant in the suit only before he files his written statement and not thereafter.

(2011) 4 MLJ 126

Soundararajan
vs
H. Mahitha and Anr

Impleading of third party – Suit for specific performance of agreement of sale – Application for impleading by third party – Third party showing semblance of title or interest in property in dispute entitled to be impleaded as party to suit being a necessary party – Impleading application rightly allowed.

RATIO DECIDENDI: A third party is entitled to be impleaded in a suit for specific performance only if such party shows some semblance of title or interest in the property in dispute.

2011 (4) CTC 153

1. Tim Cecil 2. Steffi Cecil …… Petitioners

Guardians and Wards Act, 1890 (8 of 1890), Section 7 – Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) (as amended by Act 33 of 2006), Section 41 – Hindu Adoptions and Maintenance Act, 1956 (78 of 1956) – Law Commission of India, 153rd Report, Chapter VII, Paragraph 7.5 – U.N. Convention of Rights of Child – Hague Convention on protection of Children and Cooperation in respect of Inter-country Adoption – Whether or not procedures prescribed for adoption of children by foreigners should be adopted in case of adoption of child given by biological parents to foreigners – Adoptions are no longer confined to corners of Guardians and Wards Act and Hindu Adoptions and Maintenance Act – Primary responsibility of providing care and protection to children is that of his birth family – Biological parents do not have unfettered right to give their children in adoption or foster care to foreign nationals – Even if biological parents giving child in adoption and foreign nationals taking such child in adoption genuine, Court can insist on conducting Home Study by recognized and approved agency in country to which child was going on adoption – Blanket exemption of biological parents from safeguards prescribed for inter-country adoptions may not be in interest of children – Court owes obligation to children as a Court of Wards – Children are not properties of their parents and parents cannot have absolute dominance over children – Judgment laid down by Supreme Court in Lakshmi Kant Pandey v. Union of India, AIR 1984 SC 469 and Anokha (Smt.) v. State of Rajasthan, 2004 (1) SCC 382 laying down that procedures prescribed for adoption were not applicable to inter-country adoptions given by biological parents considered and march of law, recommendations of Law Commission and Provisions contained in International Conventions taken into account

and directions issued to Central Adoption Resource Authority, Ministry of Women and Child Development, Government of India, New Delhi to engage services of recognized and approved in Germany to have home study conducted in respect of foreign nationals who sought adoption.

In a country where abject poverty drives a few families to sell their children for beggary, forced labour or prostitution, it is not safe to rely entirely upon the wisdom of the biological parents, to give their children in adoption or for foster care, to foreigners. As a matter of fact, adoption is evolved as a method of providing alternative care for children deprived of a healthy and happy environment. Therefore, it is accepted as a mode of enforcement of the fundamental rights of the child and hence, it cannot be looked at as an exercise of the rights of the biological parents over the child.

2011 (4) CTC 188

Amaravathy (died) and Ors
vs
Isakimuthi and Ors

Interpretation and Construction of Documents – Transfer of Property Act, 1882 (4 of 1882), Section 19 – Vesting of interest – Settlement Deed or Will – Rules for determination – Test of be followed – Deed created a right in praesenti in favour of settlee – Any document that creates right in praesenti in favour of person is nothing but Settlement and not Will.

The following aspects have to be looked into while interpreting an instrument;

(i) nomenclature used by the settlor in styling the document;

(ii) express dispositive words used which touch upon the time when the vested interest is created;

(iii) reservation of the power of revocation in the instrument;

(iv) effect of the reservation of a life estate in favour of the executant under the instrument;

(v) registration of the document under the appropriate law.

(2011) 4 MLJ 459

Rau Padma and Ors
vs
Gayatri Devi and Ors

Injunction – Interlocutory injunction – Claim of possession made by respondents/plaintiffs in light of rival claim made by appellants on basis of revenue records – First appellant co-owner of property and no injunction could be granted against first appellant – Appellants 2 to 5 are subsequent purchasers and they have stepped into shoes of first appellant – Appellants 2 to 5, after mutation of records, obtained planning permission – In view of rival claims, suit property should continue to be in joint possession of appellants and respondents during pendency of suit.

RATIO DECIDENDI: When the subject property is a vacant site, the question of title assumes importance even to decide the issue regarding possession in view of the settled position that possession follows title.

2011-2-TLNJ 628 (Civil)

M/s Sundaram Dynacast Pvt. Ltd., Padi, Chennai – 50.
vs
M/s. Raas Controls, Having Factory at No.222, Okhla Industrial Estate Phase III, New Delhi and Anr

Civil Procedure Code 1908 as amended, Order 7, Rule 14(3) – Order 18 Rule 17-A was omitted by Amendment Act 46 of 1999 with effect from 01.07.2002, the insertion of Rule 14(3) under Order 7 will amply establish that the plaintiff with the leave of the Court can file the document even though it was not filed along with or annexed with the plaint – looking at any angle, the order of the Court below rejecting the request of the petitioner to recall PW1 and to file the document referred to above is totally untenable and unjustified – CRP (PD) allowed.

2011-2-TLNJ 637 (Civil)

Zubaida and Ors
vs
Mahaboob Bivi and Ors

Mohammadan Law of Wills – For enforcing the Will executed by a Mohammedan which is more than 1/3rd of the whole, the consent of the heirs of the testator after his death shall be obtained – in the case of a Hiba gift deed, when possession was not parted by the donor and the recitals therein disclose that the right over the property was not immediately divested from the donor, it cannot be considered as a valid gift deed – A.S. allowed.

(2011) 4 MLJ 664

Nattan Ambalam
vs
Dhanalakshmi

Code of Civil Procedure (5 of 1908), Order 21, Rules 105, 106 (3), Section 151 – Inherent powers of the Court, under – Application to set aside ex parte order dismissing E.P. for default allowed with condition – E.A. filed under Section 151, C.P.C. – Maintainability – Respondent-plaintiff obtained decree in respect of Suit Property and if E.A. not allowed it would cause inconvenience and hardship to respondent-plaintiff – Said conclusion of Executing Court, exercising its judicial discretion in allowing E.A., correct – E.A. by respondent-plaintiff, filed under Section 151, C.P.C., competent in the eye of law – Respondent-plaintiff directed to pay ₹ 500 costs to petitioner-defendant.

RATIONES DECIDENDI

I. The inherent powers of a Court of law has its root in necessity.

II. Since the ex parte order of dismissal of the E.P. would result in hardship and inconvenience to the decree holder, the Court could exercise its judicial discretion and allow the E.P. filed under Section 151, C.P.C., to restore the E.P. to file.

III. The application filed by the plaintiff decree holder under Section 151, C.P.C., to set aside the order dismissing the E.P. for default, is competent in the eye of law.

(2011) 4 MLJ 773

UCO Bank, Bazzar Branch, Pondicherry
vs
Lucky and Company, a Partnership firm having its place of business at G.F. 23, Nehru Street, Pondhicherry and Ors

Suit for Recovery of money – Principal sum adjudged – Expression "Principal sum adjudged" to be distinguished from "principal sum advanced" – Amount which Court determines after adjudicating upon rights of parties in principal sum adjudged.

FACTS IN BRIEF: Plaintiff Bank filed the suit for recovery of ₹22,94,072.29 together with future interest at 17.5% p.a. The trial Court held that plaintiff would be entitled to ₹14,97,833.14 (₹15,97,833.14 less ₹1,00,000) and not ₹22,94,072.29. The trial Court ordered payment of interest the rate of 12% per annum from 12.6.1985 till the date of filing of the suit and therafter at 6%p.a. on the principal sum of ₹5,50,000/- till the date of realisation.

Being aggrieved by decreeing of the suit in part, the appellant has preferred this appeal.

RATIO DECIDENDI: The principal sum and any interest on such principal sum prior to the date of institution of the suit is the 'Principal sum adjudged.'

(2011) 4 MLJ 786

Dr. Jayakar Joseph and Anr
vs
B. Raveendra Bose

Code of Civil Procedure (5 of 1908), Order 21 Rule 89(1), 92(2) and Order 43 Rule 1(j) – Appeals from orders - Execution proceedings – Sale of properties – Court auction – Confirmation of sale in favour of decree holder - Filing of application by judgment debtor to set aside sale – Dismissal on ground of limitation – Maintainability of application under Rule 89(1) to set aside sale along with deposit – Scope of – Maintainability of appeal under Order 43 Rule 1(j) – Scope of - Order 21 Rule 89(1) integrally connected with Rule 92(2) – Follow up action to Rule 89(1) lies in Rule 92(2) – Order setting aside or refusing to set aside a sale on application under Rule 89(1) is appealable as an order under Order 43 Rule 1(j).

RATIONES DECIDENDI

I. An order setting aside or refusing to set aside a sale on an application under Rule 89(1) is appealable as an order under Order 43 Rule 1(j) of the Code of Civil Procedure.

II. Filing of application for setting aside a sale and payment of deposit contemplated under Section Rule 89(1) of the Code of Civil Procedure shall be taken place simultaneously.

III. An application under Rule 89(1) to set aside a sale along with deposit of money is well within time and maintainable even if it is filed after the prescribed period of sixty days from the date of sale on the date of reopening of Court, on account of expiration of prescribed period during summer recess.

IV. The Court is entitled to make an order for setting aside the sale under Rule 92(2) Order 21 of the C.P.C after compliance of conditions under Rule 89(1) of the Code by judgment debtors.

(2011) 4 MLJ 815

K.C. Kalaikovan
vs
Commissioner, Revenue Administration, Chennai-5 and Ors

Constitution of India (1950), Article 226 – Indian Evidence Act (1 of 1872), Section 35 – Correction of date of birth in service record – Correction sought as per birth certificate – Statement in school register amounting to authenticated evidence unless established by unimpeachable contrary materials – Birth Register to prevail over school register – Petitioner entitled to correction of date of birth.

RATIO DECIDENDI: Birth certificates are admissible in evidence for establishing a plea of correction of date of birth in service record, as the birth certificate issued by the competent authority cannot be disowned unless it is held to be false or obtained by misstatement.

2011 (3) CTC 848

P. Sundararama Reddy alias P.S. Reddy (died) and Ors
vs
A.S. Divyendar and Anr
And
P. Lakshmi Devi
vs
Nirmala Devi and Ors

Indian Succession Act, 1925 (39 of 1925), Sections 232, 236, 63 & 61 – Holograph Will – Suspicious circumstances when – Mental condition of Testatrix is relevant – Execution of Will under undue influence and coercion – Testatrix was aged 26 years at time of execution of Will – Plaintiff is father of Testatrix and she bequeathed all properties in favour of her father – Testatrix was living with her husband and child in matrimonial home at time of execution of Will – No reason was assigned in Will about specific exclusion of Testatrix's daughter from bequest – Propounder of Will pleads that relationship between Testatrix and her husband was bickering, therefore she bequeathed properties in favour of him – There was no misunderstanding between Testatrix with her husband during Execution of Will – Genuineness of Will was proved by examination of Attesting Witness - Propounder of Will should establish that Testatrix executed Will out of her own volition – When doubt arises as to mental condition of Testatrix at time of execution of Will, duty is cast upon propounder to displace same – Absence of reasons excluding Testatrix's daughter would cast duty upon Court to see whether Testatrix was influenced or coerced for unjust disposal of property – Will has been brought about by parents of Testatrix by undue influence and coercion and it is vitiated – T.O.S. dismissed.

When a doubt arises as to the mental condition of the testatrix at the time of the execution of the Will, it is the duty cast upon the propounder to displace the same. But P.W.1 in her evidence has not stated as to when there was no difference of opinion between the spouses, what prompted her to execute the Will, making father of testatrix as absolute owner excluding her husband and daughter. The above said decision would make it clear that the testator's mind should be free when he executes the Will and the legitimate suspicion should completely be removed by the propounder. But in this case, there is no evidence to show that out of her own Will, the mind of testator had executed the Will. It is observed that under coercion and under influence, she had executed the Will.

(2011) 4 MLJ 959

P.G. Pattabi
vs
Mythili and Ors

Execution petition – Filed without certified copy of decree – But with suit register extract – Scope of admissibility of E.P.

RATIO DECIDENDI: A Court can place reliance on the suit Register, when the judgment and reliefs granted in the decree, as found exemplified in the suit Register do tally with each other.

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HIGH COURT CITATIONS
CRIMINAL CASES

2011-1-L.W. (Crl) 709

Ganesan and Anr
vs
State Rep. By The Inspector of Police, R-2, Kodambakkam Police Station, Chennai.

Criminal P.C, Sections 219, 323, 407, 408, 193,

Criminal Trial/Joint trial, Cognizance, Cross-cases; Committal by jurisdictional Magistrate; Trial by Sessions Court, Scope of,

I.P.C., Sections 354 r/w. 109, 324, 376 r/w. 109, 372,

Constitution of India, Article 21, Procedural illegality of offending fair trial, Substitution of evidence recorded in the other case and consideration of the said evidence.

Legal issues in the case, Sum up: (i) No Court of Sessions shall take cognizance of any offence unless the case has been committed to it by the jurisdictional Magistrate.

(ii) The Court of Sessions has no power to direct a Magistrate to commit any case to his file nor can a Court of Sessions withdraw a case from a Magistrate to his file.

(iii) If any of the offences in a given case is exclusively triable by a Court of Sessions then, the legal duty of the Magistrate is to commit the case to the Court of Sessions for trial as provided in Section 209 of Cr.P.C.

(iv) In cross cases, where one of the cases involves offences exclusively triable by a Court of Sessions and in the other case none of the offence is exclusively triable by a Court of Sessions, then, as provided in Section 323 of Cr.P.C. the jurisdictional Magistrate should commit both the cases for trial to the Court of Sessions.

(v) On such committal of cross cases arising out of the same occurrence, the Sessions Court shall scrupulously follow the procedure laid down by the Hon'ble Supreme Court in Nathi Lal v. State of U.P. 1990 Supp. SCC 145.

(vi) In any other case involving offences which are not exclusively triable by a Court of Sessions and if it appears to the jurisdictional Magistrate that for any of the grounds enumerated under Section 407 (1) of Cr.P.C. that the case needs to be tried by a Court of Sessions, the learned Magistrate shall submit a report to the High Court and on such report the High Court may order for committal of such case to the Court of Sessions for trial and thereupon on committal, the Sessions Court shall try the same as per Chapter XVIII of the Code of Criminal Procedure.

(vii) In any event, the trial court shall not record common evidence or substitute the evidence recorded in one case as evidence in the other case and shall not consider the evidence recorded in one case in the other case.

(viii) In no case, the trial court shall deliver a common judgment in two or more cases (Vide Nathi Lal's case cited supra).

(ix) In respect of the cases where trial has not already commenced before the Court of Sessions without the case being committed, the accused shall be at liberty to raise objection at the earliest opportunity or else, the court shall follow the dictum laid down in State of Madhya Pradesh v. Bhooraji and others, 2001 Cri.L.J. 4228 (1).

(x) In respect of cross cases, for each case there has to be a separate public prosecutor to conduct the prosecution.

A perusal of the judgment of the trial court revealed that as two cases in C.C.Nos.8 and 9 of 2000 were also committed to the Principal Sessions Court and the Principal Sessions Court, in turn, made over the same to the learned Additional Sessions Judge, Mahila Court, Chennai, for trial – But, this court, on a perusal of records, found that there was no committal orders in respect of these two cases.

Two Calendar Cases in which the offences are not exclusively triable by the Court of Sessions were withdrawn by the learned Principal Sessions Judge and accordingly they were entertained.

Offences said to have been committed by these accused on four different occurrences would not fall within the ambit of Section 219 of Cr.P.C. – Trial court had rightly conducted four separate trials – Evidence let in one case in respect of one occurrence cannot be made use of against the accused in the other case – But the trial court has committed very serious illegality in considering the evidence in all cases together and in delivering a common judgment.

Common judgment delivered in two or more cases – Though the learned Additional Sessions Judge has stated in the common judgment that this case came to be tried on having been committed by the Magistrate, it is factually incorrect as there was no committal order passed by the learned Metropolitan Magistrate as reported by the Principal Sessions Judge.

The power of the High Court to direct a Magistrate to commit any case to the Court of Sessions has not been vested with the Sessions Court under Section 408 of Cr.P.C.

There is a world of difference between withdrawal and transfer of a case.

Neither under Section 408 of Cr.P.C. a case can be transferred from the Court of Magistrate to the Court of Sessions for the purpose of trial, nor a case can be withdrawn from the court of a Magistrate to the Court of Sessions for trial – A case can come up for trial before the Court of Sessions only on being committed either under Section 209 of Cr.P.C. or under Section 323 of Cr.P.C. or on committal in pursuance of an order of the High Court under Section 407 of Cr.P.C.

In the case on hand, admittedly, none of the offences involved is exclusively triable by the Court of Sessions – Neither there was any report to the High Court seeking an order for committing the case to the Court of Sessions nor the learned Magistrate had thought it necessary to commit the case to the Court of Sessions under Section 323 of Cr.P.C. – Learned Magistrate had submitted a report to the court of sessions in this regard – This is a serious procedural lapse inasmuch as the Sessions Court is precluded from taking cognizance without the case being committed as provided under law.

Substitution of evidence recorded in the other case and consideration of the said evidence is not mere procedural irregularity but, it is illegality offending fair trial guaranteed under Article 21.

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