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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS CIVIL CASES

2015 (2) CTC 178

Nanjappan

vs.

Ramasamy

Date of Judgment : 24.02.2015

Evidence Act, 1872 (1 of 1872), Section 92 – Letting of Oral Evidence contrary to terms of Written Contract – Tenability – Suit for Specific Performance – Contention of Defendant that sale price was fixed as Rs3,00,000/- and only for purpose of avoiding Registration charges and Stamp duty, sale price was mentioned as Rs45,000/- in Sale Agreement – Courts below have concurrently rejected Defendant's case on this issue - Defendant cannot let in any evidence to contradict or vary terms of Written Contract.

Specific Relief Act, 1963 (47 of 1963), Sections 20 & 16(c) – Suit for Specific Performance of contract – Discretion as to grant of relief of Specific Performance – First Sale Agreement entered between parties stipulates time limit for performance of contract – Plaintiff could not complete sale within time stipulated in Agreement – Second Agreement was entered into between parties extending time limit specified in original contract – Conduct of parties - Time fixed for performance of contract was extended again and again totaling period of 8 years – Extension of time for performance of contract is factor to be considered for exercise of discretion – Court can take into consideration of conduct of parties, recitals in Sale Agreement and circumstances outside contract – Defendant pleaded that he has constructed house in Suit property and he is residing there with his family – Defendant will suffer significant hardship if Decree of Specific Performance is granted as against hardship to be suffered by Plaintiff – Plaintiff is not entitled for discretionary relief of Specific Performance – Defendant is directed to return advance amount with interest in addition to Compensation of Rs.2,00,000/- to Plaintiff.

2015 (2) CTC 185

Anil

vs.

Rajendra

Date of Judgment : 18.12.2014

Arbitration and Conciliation Act, 1996 (26 of 1996), Sections 8 & 11 – Code of Civil Procedure, 1908 (5 of 1908), Section 11 – Power to refer parties to Arbitration – Appointment of Arbitrator – Res judicata – issue estoppels – Held, Respondent having approached Civil Court and having opposed Appellant's Section 8-Application earlier, cannot invoke Section 11(6) for appointment of Arbitrator – When Civil Court is seisin of dispute between parties and existence of arbitration has already been held in negative in Petition filed by Appellant under Section 8, Application under Section 11(6) for appointment of Arbitrator by Respondent is hit by Doctrine of res judicata and Principle of Issue Estoppel – Case law discussed – Petition filed under Section 11(6) by Respondent is nothing but abuse of process – Impugned Order set aside – Appeal is allowed with Cost of Rs.25,000.

2015 (1) TN MAC 321 (SC)

Jakir Hussein

vs.

Sabir

Date of Judgment : 18.02.2014

INCOME – Fixation of - Injured/Claimant aged 33 yrs, working as Tempo Driver, earning Rs.4,500 p.m. – Tribunal fixing monthly income at Rs.3,000 p.m. – High Court in Appeal fixing same at Rs.4,000 p.m. – If, proper – Minimum wages of a driver, as per State Government Notification issued under Minimum Wages Act, fixed at Rs.128 per day – Minimum Wages Notification is only a yardstick and not absolute factor for determination of Compensation – Minimum Wages as fixed by State Government at times fail to meet requirements needed to maintain basic quality of life since it is not inclusive of factors of cost of living index - Driving of Motor Vehicle being a skilled job, it would be just and reasonable to fix daily wages at Rs.150 per day i.e. Rs.4,500 p.m.

PERMANENT DISABILITY – LOSS OF EARNING POWER – Injured/Claimant aged 33 yrs., a Tempo Driver, suffered compound fracture on right arm – Disability assessed by Doctor at 55% - Tribunal fixing disability at 30% - High Court in Appeal fixing disability at 55% - If, proper – Difficulty in moving shoulder, wrist and elbow and pus formation on injury even after 2 yrs, of accident – Injured cannot drive any Motor Vehicle in future as opined by Doctor – High Court also, on personal appearance of injured, observed that right hand of injured was completely crushed and deformed – Injured being a driver and driving being only means of livelihood for himself and his family, disability and loss of earning capacity must be taken at 100% - Dictum in Raj Kumar applied – Fixing Income at Rs4,500 p.m. and applying Multiplier of 16 as per ration in Sarla Verma, Rs.8,64,000 awarded towards Loss of Earning Power[Rs.4,500 x 12 x 16]

MOTOR ACCIDENT CLAIM – Compensation – Quantum – Enhancement – Injured/Claimant, aged 33 yrs, Tempo Driver, earning Rs4,500 p.m. as per claim – Suffered compound fracture and injures on right arm – Disability : 55% assessed by Doctor : 30% and 55% respectively fixed by Tribunal and High Court : Injured cannot drive motor vehicles any more : Disability taken as 100% by Apex Court – Income : Rs.3,000 p.m. fixed by Tribunal as against claim of Rs.4,500 p.m. : Rs.4,000 p.m. fixed by High Court : Not proper : Apex Court fixed income at Rs.4,500 p.m. – Loss of Earning Power : RS.1,72,800 and Rs3,50,000 fixed by Tribunal and High Court respectively : Apex Court fixing Income at Rs.4,500, disability at 100% and applying Multiplier method awarded Rs.8,64,000 – Loss of Income during Treatment : Rs.76,500 [Rs4,500 x 17 months] awarded as against Rs.51,000 – Medical Expenses : Rs2,00,000 awarded by High Court as against Rs.1,80,000 confirmed by Apex Court – Future Medical Expenses : Considering Medical condition and future medical treatment & incidental expenses, Rs.2,00,000 awarded by Apex Court : Principles in Nagappa applied – Pain & Suffering : Considering suffering undergone and applying principles in Rekha Jain, Rs1,50,000 awarded by Apex Court – Loss of Amenities : Since injured not in position to move freely, Rs,1,50,000 awarded by Apex Court – Attendant Charges : Rs40,00 awarded by Apex Court – Extra-Nourishment : Rs.20,000 awarded – Transportation : Rs.20,000 awarded – Costs during pendency of Appeal : Rs.40,000 awarded by Apex Court since claim of Appellant/Claimant pending for several years – Total Compensation : Enhanced from Rs.6,80,000 to Rs.17,60,500 – Interest : 9% p.a.

INTEREST – Rate of Interest – Accident took place on 12.11.2008 – Awards passed by Tribunal and High Court on 29.7.2010 and 24.1.2013 respectively – Award of 7% p.a. and 8% p.a. by Tribunal and High Court, held, not proper – Applying decision in Uphaar Tragedy, Apex Court awarded interest at 9% p.a.

2015 -1- L.W. 522

Leela Rajagopal and others
vs.
Kamala Menon Cocharan and others

Date of Judgment : 08.09.2014

WILL /Genuineness, proof, suspicious circumstance, whether,

of. Succession Act (1925), Section 63, Will, proof of, undue influence, suspicious circumstance, forgery, plea

Madras High Court Original side rules, Order 25, Rule 4, Form 5.

Appeal against 2009-4-L.W. 912 dismissed.

Will indicates its unambiguous purport and effect – Mind of the testator discernible reasons for exclusion of sons.

Plea of place of execution, inconsistency in verification alongwith application for probate and oral evidence, understood in light of verification in a standard form (Form No.55) prescribed by the Madras High Court on the Original Side.

Participation of first respondent in execution, registration of Will cannot be circumstance that warrant an adverse conclusion – Will dated 11.1.1982 is identical with the contents of the earlier Will dated 28.12.1981 – Lack of knowledge of English to testator would not alter it – Non-production of the original Will and reliance on the certified copy reasonably explained.

2015 (1) CTC 791

Satti Paradesi Samadhi & Philliar Temple

vs.

M. Sankuntala (D) tr.L.Rs.

Date of Judgment : 03.07.2014

Code of Civil procedure, 1908 (5 of 1908), Order 14(2) – Limitation Act, 1963 (36 of 1963), Section 10 – Preliminary Issue – Question of limitation tried as Preliminary issue – When issue requires inquiry into facts, it cannot be tried as preliminary issue – Plaintiff pleaded that limitation would not apply as Suit would fall under Section 10 of Limitation Act – Certain facts are to be established to throw lis from sphere of Section 10 and issue is mixed question of law and fact – Such issue cannot be tried as Preliminary issue.

SUPREME COURT CITATIONS CRIMINAL CASES

(2015) 1 MLJ (Crl) 482 (SC)

Dilip Kumar Mondal

vs.

State of West Bengal

Date of Judgment : 14.01.2015

Murder – Common Intention – Indian Penal Code, 1860, Sections 300 Exception 4, 302, 304 Part I, 326 and 34 – Conviction of Appellants/ accused under Section 304/34 confirmed, but their conviction under Section 326 set aside – Appellants alleged that testimony of witnesses suffered from contradictions and they were falsely implicated, same not considered – Also, alleged that High Court failed to appreciate that no premeditation by them and incident was due to sudden fight – Further, alleged that High Court ought to have invoked Exception 4 to Section 300 – Respondent/State resisted that no contradiction in testimony of witnesses – Also, alleged that accused already armed with deadly weapons and inflicted injuries on deceased – Whether infliction of injuries on deceased by Appellants was result of premeditation – Whether conviction of Appellants under Section 302 sustainable – Held, contradiction in evidence of witnesses and discrepancies in prosecution case duly considered by Lower Courts, same do not create infirmity in prosecution case – Defence plea that false case foisted on accused due to political rivalry not substantiated – Lower Courts recorded concurrent findings that Appellants inflicted injuries on deceased, same unassailable – Facts and circumstances on record show that no premeditation by Appellants and incident was due to sudden fight – To invoke Exception 4 to Section 300, it must be shown that offender did not take undue advantage or acted in cruel or unusual manner – Injuries on record show that accused did not take undue advantage of situation – Offence would fall under Section 300 Exception 4 – Conviction of Appellants altered to Section 304 Part I – Appeal allowed.

(2015) 1 MLJ (Crl) 489 (SC)

Pathubha Govindji Rathod

vs.

State of Gujarat

Date of Judgment : 21.01.2015

Murder – Culpable Homicide not Amounting to Murder – Right of private Defence – Indian penal Code, 1860, Sections 300 Exception 2, 302, 304 Part I and 149 – Deceased killed, when quarrel between two sides aggravated – Cross complaints lodged – In both cases, Police submitted charge sheets against both set of accused – Both sessions cases resulted in conviction – 1st Appellant/accused convicted under Section 302 read with Section 149 – 2nd Appellant/accused convicted under Section 304 Part I read with Section 149 – 1st Appellant alleged that Lower Courts erred in not accepting his plea of private defence – Also, alleged that charge relating to murder of deceased with fire arm, even if proved, covered by Exception 2 of Section 300 – Whether conviction of 1st Appellant under Section 302 read with Section 149 and that of 2nd Appellant under Section 304 Part I read with Section 149 justified – Whether Lower Courts erred in not accepting plea of private defence taken by 1st Appellant – Held, normally right of private defence not available to either parties in incidents of group fighting, but same is not Rule without exception – 1st Appellant took plea of private defence right from beginning of trial – Facts and evidence on record show that 1st Appellant suffered knife injury and due to that, he caused death of one of the deceased by firing several shots thereby exceeding right of private defence – Evidence on record established that 1st Appellant's case was that of culpable homicide not amounting to murder covered under Exception 2 of Section 300 – Conviction against 1st Appellant under Section 302 read with Section 149 set aside – 1st Appellant convicted under Section 304 Part-I – Conviction against 2nd Appellant under Section 304 Part I read with Section 149 does not require interference – Appeal partly allowed.

(2015) 1 MLJ (Crl) 504 (SC)

L. Laxmikanta

vs.

State

Date of Judgment : 05.02.2015

Prevention of Corruption – Illegal Gratification – Conviction and Sentence – Prevention of Corruption Act, 1988, Section 7 read with Section 13(1)(d) read with Section 13(2) – Appellant/Warden alleged to have demanded sum from Complainant/Student for allotment of hostel room – Complaint filed against Appellant for demanding illegal gratification – Trap initiated, Appellant trapped while accepting sum from Complainant – Trial Court found mandatory requirements of Section 7 read with Section 13 for demand of illegal gratification and its acceptance proved against Appellant beyond reasonable doubt by prosecution – On appeal, High Court confirmed conviction and sentence awarded by Trial Court – Appeal – Whether Lower Courts justified in convicting and awarding sentences to Appellant for offences committed by Appellant beyond reasonable doubt – Held, evidence of both prosecution witnesses/Complainant and shadow witness consistent on issue of demand and acceptance of illegal gratification from complainant and same is without any contradiction – No reason to disbelieve testimony of complainant when he deposed that Appellant made demand for allotment of room in hostel – Nothing in defence version deserves acceptance to acquit Appellant of charges leveled against him – Allegation that complainant was forcing Appellant to accept money, which he was not accepting is unbelievable as evidence adduced by prosecution that trap was arranged in room not in passage – Twin requirements of demand and acceptance of illegal gratification were rightly held proved against Appellant – Appellant was rightly convicted and sentenced for offences punishable under Section 7 read with Section 13(1)(d) read with Section 13 (2) of the Act – Appeal dismissed.

(2015) 1 MLJ (Crl) 594 (SC)

Ravi Prakash Singh @ Arvind Singh

vs.

State of Bihar

Date of Judgment : 20.02.2015

Bail – Remand of accused – Filing of Charge sheet – Refusal of Bail – Code of Criminal Procedure, 1973, Section 167(2) and 482 – Indian penal Code, 1860, Section 302 read with Section 34 and Section 120B – Arms Act, Section 27 – Appellant/Accused surrendered before Magistrate for offence committed under Code 1860 and Arms Act – Remand extended from time to time under Section 167 Code 1973 – Appellant moved application under Section 167(2) Code for his release on ground that charge sheet has not been filed – Magistrate endorsed on order sheet that as per report of clerk of Court, charge sheet has already been received – Bail application moved under Section 167(2) cant moved bail application before Session Judge, seeking bail on ground that he was entitled to be released on bail under Section 167(2) Code 1973, same rejected – Petition under Section 482 Code 1973 filed to quash impugned orders of Lower Courts – High Court held since charge sheet was filed within period of ninety days, no error in orders passed by Lower Courts – Appeal – Whether High Court erred in dismissing petition under Section 482 Code when charge sheet was not filed within time prescribed – Held, day on which Appellant/Accused surrendered should be excluded, as such charge sheet was filed on ninetieth day – No infringement of Section 167(2) Code 1973 – High Court not erred in dismissing petition under Section 482 Code, and upholding refusal of bail to Applicant prayed by him under Section 167(2) Code – Appeal dismissed.

(2015) 1 MLJ (Crl) 614 (SC)

Bhim Singh

vs.

State of Uttarakhandr

Date of Judgment : 11.02.2015

Dowry Death – Cruelty – Circumstantial Evidence – Indian Penal Code, 1860 (Code 1860), Sections 304B and 498A – Dowry Prohibition Act, 1961 (Act 1961), Sections 3 and 4 – Indian Evidence Act, 1872 (Act 1872), Sections 113A and 113B – 1st and 2nd Appellants convicted under Section 304B of Code 1860 – All Appellants convicted under Section 498A of Code 1860 and also under Sections 3 and 4 of Act 1961 – On appeal, High Court upheld conviction of 1st and 2nd Appellants based on circumstantial evidence, but acquitted others, same challenged – Whether High Court justified in upholding conviction of 1st and 2nd Appellants based on circumstantial evidence and acquitting others – Held, prosecution proved by cogent evidence that soon before her death, deceased subjected to cruelty in connection with demand for dowry, same raises presumption under Section 113B of Act 1872, onus shifted on accused to dislodge presumption – Circumstantial evidence leads to guilt of accused, as prosecution proved that accused had opportunity to administer poison and doctors in medical examination also reported that deceased was healthy – Fact that death occurred in house of accused leads to their guilt and accused did not discharge onus of disproving presumptions under Sections 113A and 113B of Act 1872 – Question of suicide ruled out – When facts clear, immaterial to see whether motive proved – Absence of motive does not break link in chain of circumstances connecting accused with crime – Guilt or innocence of accused to be adduced from circumstantial evidence – No missing link in circumstantial evidence put forth by prosecution – Accused not entitled to benefit of doubt – Guilt of 1st and 2nd Appellants under Section 304B of Code 1860 established – Appeal dismissed.

HIGH COURT CITATIONS CIVIL CASES

2015 -1- L.W. 312

Madras Cements Limited
vs.
T.M.T. Kannammal Education Trust
Date of Judgment : 27.11.2014

Evidence Act, Section 34, 101, 102, 103.

Suit for arrears on account – Burden of proof – Entries in ledger – Proof of, reliability – Scope.

Section 34 not satisfied by production of accounts – Statements shall not be sufficient evidence to charge any person with liability – In absence of production of original account book.

A person who wrote the entries or a person who has knowledge of them did not appear and depose before the Court – It cannot be held that the case of the plaintiff has been proved.

2015 (1) TN MAC 434 (DB)

Managing Director, Metropolitan Transport Corp. Ltd
vs.
B. Kannan
Date of Judgment : 16.12.2014

INCOME – Assessment – Injured/Claimant aged 38 yrs., a practicing Advocate, earning Rs.25,000 p.m. as per claim – PW2, Claimant’s Senior Advocate deposed that Claimant was paid Rs.15,000 p.m. – Certificate issued by PW2 marked – Claim of Claimant that he earned Rs.10,000 out of private practice, as such earned Rs.25,000 p.m. – Tribunal fixing income at Rs.10,000 p.m. – Not proper – Evidence of PW2 under whom Claimant practiced being acceptable, deducting Rs.1,000 towards conveyance charges, High Court fixed income at Rs.14,000 as against Rs.10,000 fixed by Tribunal.

PERMANENT DISABILITY – LOSS OF EARNING POWER – Assessment – Injured/Claimant, aged 38 yrs, a practicing Advocate suffered amputation of right leg below knee and fracture of femur and nasal bones of left leg – Doctor, who treated injured, assessed disability at 90% i.e. 50% in respect of amputation of right leg and 40% in respect of left leg – Tribunal fixing disability at 90% income at Rs.10,000 p.m. and Multiplier at 16, awarded Loss of Earning Power at Rs.17,28,000 – If, proper – Disability Certificate/Ex.P22 issued by Government Institute of Rehabilitation Medicine not taken into consideration – Ex.P22 showing disability at 65% - High Court taking disability at 65% and fixing income at Rs.14,000 p.m. awarded Rs.17,47,200 [Rs.14,000 x 12 x 16 x 65%] as against Rs.17,28,000 awarded by Tribunal002E

MULTIPLIER – Proper Multiplier – Claimant/Injured aged 38 yrs. – Multiplier of 16 as applied by Tribunal being in consonance with ratio in Sarla Verma held to be appropriate.

PAIN & SUFFERING – MENTAL AGONY – EXPECTANCY OF LIFE – LOSS OF AMENITIES – Award of Compensation under – Injured/Claimant aged 38 yrs, a practicing advocate suffered amputation of right leg below knee and multiple fractures on left leg – Rs.50,000 awarded under each head enhanced to 1,00,000.

2015 (1) CTC 465

Solaiammal

vs.

Thoothukudi Municipal Corporation

Date of Judgment : 17.11.2014

Code of Civil Procedure, 1908 (5 of 1908), Section 9 – Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 (T.N. Act (1 of 1976), Section 15 – Tamil Nadu District Municipalities Act, 1920 (T.N. Act 5 of 1920), Section 351 – Ouster of Jurisdiction of Civil Court – Municipal Corporation instituted Suit against Tenant for recovery of arrears of rents – During pendency of Suit, tenant died and his Legal Heirs were brought on record – Legal Heirs raised objection as to maintainability of Suit – Objection rejected, Personal Decree passed – Second Appeal filed – Property in question is a Public Premises – Jurisdiction of Civil Court expressly barred under Section 15 of T.N. Act – State Act provides for a quick and summary remedy – Issue of Jurisdiction is an important question and goes to root of matter - Decree of Civil Court without jurisdiction, held, invalid – Suit dismissed as not maintainable – Second Appeal allowed.

Constitution of India, Article 226 – Alternative remedy – Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 (T.N. Act(1 of 1976), Sections 2,3,6,7,8,9 & 15 – Act envisages Summary remedy to evict ‘Unauthorised Occupants’ from a Public Premises – Estate Officer to issue Notice to Tenant and conduct enquiry – Estate Officer is a Quasi-Judicial Officer – He must pass a speaking Order after following Principles of Natural Justice – Any Order of Estate Officer directing payment can be collected as Land Revenue – Order of Estate Officer appealable – As against Order made in Appeal, remedy under Article 226 can be availed.

Code of Civil Procedure, 1908 (5 of 1908), Section 9 – Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 (T.N. Act (1 of 1976), Sections 2,3,6,7,8,9 & 15 – Tamil Nadu District Municipalities Act, 1920 (T.N. Act 5 of 1920) – Ouster of Jurisdiction of Civil Court – Municipal Corporation instituted Suit against for recovery of arrears of rent – Tenant died – Personal Decree passed against Legal Heirs of Tenant – Second Appeal filed – Premises in question is a Public Premises – In view of Section 8 of T.N. Act, Estate Officer has power to evict Objector – Estate Officer, being Quasi-Judicial Authority can initiate proceedings to evict unauthorized occupant – He has trappings of a Judicial Officer – Remedy contemplated under State quicker and summary in nature – Law Suit before Civil Court, barred – Held, Suit dismissed.

2015 (1) CTC 496

Minila Rani (died)

vs.

Pamila Rani

Date of Judgment : 26.11.2014

Indian Succession Act, 1925 (39 of 1925), Sections 372, 264 & 286 – Probate – Grant of Probate by District Munsif Court - Plaintiff originally filed Probate Petition before District Court and upon objection made by Defendant, Probate Petition was converted as Civil Suit – District Court erroneously referred Suit to Sub-Court Trichy on ground of pecuniary value of Suit – Sub-Court, Trichy again transferred Suit to District Munsif Court on account of enhancement of Pecuniary Jurisdiction of Munsif Courts – Legality – District Munsif Court does not have any jurisdiction to entertain Probate proceedings and to grant Probate in respect of Will – Transfer of Suit by District Court to Subordinate Court is illegal – Contention of Plaintiff that Probate proceedings can be continued before District Court with oral and documentary evidence recorded by District Munsif Court – District Munsif Court does not have any jurisdiction at all to try Probate proceedings and evidence recorded by Munsif Court cannot be used by District Court – Judgment of Munsif Court granting Probate is set aside and matter remanded to District Court for fresh adjudication.

2015 (1) CTC 577

Dharani Ammal
vs.
Arayee

Date of Judgment : 23.01.2015

Transfer of Property Act, 1882 (4 of 1882), Section 58(d) – Usufructuary Mortgage – Usufructuary Mortgage is created by Mortgagor delivering possession of mortgaged property to Mortgagee – Such delivery of possession could be express or by implication – Mortgagor binds himself to such possession – Person borrowing money from another and delivering possession of property to such other person with right to enjoy property towards interest for amount borrowed creates Usufructuary Mortgage.

Transfer of Property Act, 1882 (4 of 1882), Sections 59 & 62 – Registration Act, 1908 (16 of 1908), Sections 17 & 49 – Usufructuary Mortgage can be created by mere delivery of property to Mortgagee, if money secured by such mortgage is less than Rs.100 – If it is Rs.100 or more, then such Mortgage can be created only by registered instrument – Delivery of possession of property to secure loan of Rs.3,000/- without registered instrument is invalid Mortgage and owner of property cannot invoke Section 62 to recovery possession – Lender becomes occupier of property under invalid Mortgage – Redemption of Mortgage can arise only if there is valid Mortgage and not other wise.

Limitation Act, 1963 (36 of 1963) – Law of Adverse Possession – Adverse Possession could be relating to title into property there could b adverse possession of mere Mortgage rights – Registration Act, 1908 (16 of 1908), Sections 17 & 49 – Invalid Mortgage cannot create interest in favour of Mortgagee – Mortgagee in possession of such invalid Mortgage could, by proving adverse possession, acquire rights of Mortgagee on expiry of 12 years as provided in Article 65 of Limitation Act – Mortgage can, therefore, be created by adverse possession by Mortgagee continuing to have intention of acquiring only Mortgage rights - Mortgagee can, by such adverse possession, acquire only Mortgagee rights and not any higher right – Owner of property who delivers possession of property to another to secure loans advanced and who fails to register same, when amount borrowed is more than Rs.100/- can file a simple Suit for recovery of possession and not Suit for redemption of Mortgage – If such owner fails to seek possession within 12 years of entering into such Mortgage, Mortgagee became an actual Mortgagee and such owner can file Suit for redemption and for recovery of possession – Owner of property who borrowed Rs3,000/- and did not execute a registered Mortgage and who failed to seek recovery of possession within 12 years from date of entering into Mortgage, could file Suit for recovery of possession without seeking redemption of Mortgage when lender pleads that there was no oral Mortgage and that he had no animus that he was in the possession of property to assert his Mortgagee rights – Case law discussed and provision of law analysed.

2015 -1- L.W. 606

Shanmugam and others
vs.

The Child Trust and others

Date of Judgment : 23.01.2015

C.P.C., Section 47, execution, bar of, Order 40, Rule 1 ,Receiver, powers of, scope, agent of court, Receivership termination, when, happens, death, effect of,

Order 22, Rules 3, 4, abatement, non-impleading of heirs, effect of,

Adverse Possession/plea of, limitation.

Suit for declaration and possession whether barred under section 47 CPC by earlier proceedings – Failure on advocate receiver to execute decrees against occupants – Plea of – It was contended that suit filed by the advocate receiver was decreed and confirmed by the first appellate court on 22.4.1971 – Period for executing decree, whether expires on 21.04.1983.

Adverse possession – Title of person from whom defendants claimed, negative – effect.

C.P.C., Order 40, Rule 1, Receiver's role, powers.

Advocate receiver powers, 'custodial legis' scope, when is discharged, on his death, his appointment as advocate receiver terminates automatically – No need for specific order for discharge of advocate receiver – An advocate receiver not representative of one of the parties, but is an officer of Court on behalf of all parties to the lis – It is made to safeguard, protect property in dispute so that the Court can effectively manage the property through the advocate receiver – Advocate receiver ought to have executed those decrees within the period of limitation, but there is failure on his part – For his failure to file execute petition, the second plaintiff being the succeeding party, cannot be made to suffer.

C.P.C., Order 22, rules 3,4.

Suit whether barred for non impleading of legal heirs of defendants, after abatement, plaintiffs made an endorsement giving up the relief sought against the defendants – effect of – Effect of decrees, whether can be split up.

Whether suit abates in toto or against deceased defendants depends on facts of each case – Property occupied by the defendants was clearly demarcated and identified.

Defendants have no common or independent interest of their own, absence of details regarding death, plaintiffs cannot be expected to implead legal heirs.

A suit will be bad for non-impleading of legal heirs of the deceased only if it is proved that when a proceeding before the Court is rendered impossible to be proceeded with, after it had partially abated on account of the death of one or the other party on either side – Bifurcation of property, effect, question of non-impleading of legal heirs will not affect.

2015 –I-LLJ-620 (Mad)

General Manager, State Bank of India

vs.

Presiding Officer

Date of Judgment : 06.02.2015

Casual workman – Termination of service – Reinstatement – Industrial Disputes Act, 1947, Section 25F – Petitioner/Management engaged services of 2nd Respondent/Employee as daily wager – 2nd Respondent was disengaged as there was no necessity for Petitioner to engage him – 2nd Respondent alleged that Section 25F of Act 1947 not followed – On reference, Labour Court ordered reinstatement and directed Management to take up question of his regularisation into service – Writ petition – Whether Labour Court erred in ordering reinstatement, as appropriate remedy available to 2nd Respondent is only compensation – Held, failure to prove, engagement of employee was not under authority of competent official – Except Management no one could have written name of fictitious person instead of employee's name in Attendance Register – Labour Court rightly held engagement of casual workmen was not totally unknown, same gave status of perpetuity for process of regularisation – Mere mention of unemployed in loan application form, not fatal to case of employee, when other materials available before Court - Deputy Manager of Bank admitted that 2nd respondent worked as Sub-Staff continuously, also no notice given prior to disengagement of employee – Attendance Register established that 2nd Respondent was continuously working with Petitioner – When similarly placed workmen, not appointed through Employment Exchange regularized, Petitioner discriminated 2nd Respondent by not regularizing his service – Labour Court

rightly held since employee continuously worked, Petitioner ought to have followed provisions of Section 25-F of Act 1947 – Labour Court rightly ordered reinstatement with full wages and directing to take up question of regularisation so that employee not deprived fair and equal treatment – Allegation of Petitioner that Labour Court exceeded jurisdiction beyond terms of reference, rejected – Termination order set aside – Writ petition dismissed.

(2015) 1 MLJ 691

Kasiammal
vs.
Lakshmi

Date of Judgment : 12.12.2014

- A. Property Laws – Licence – Revocation of – Deceased 1st Appellant/Plaintiff filed suit for possession and mesne profits, same decreed – On appeal, Lower Appellate Court set aside judgment and decree of Trial Court and dismissed suit – Second appeal – 1st Appellant alleged that her son-in-law permitted to occupy suit property and after his death, licence granted to him revoked and Respondent/Defendant had no right to continue in possession – Whether Lower Appellate Court erred in allowing appeal and dismissing suit by 1st Appellant on premise that no document to prove plea of cancellation of licence produced by her – Whether Lower Appellate Court erred in not holding that licence being personal between grantor and grantee of licence shall have lapsed on death of licensor or licensee – Held, Trial Judge gave correct finding that 1st Appellant’s son-in-law was in possession as permissive occupant and on his death, licence revoked and Respondent could not resist plea by 1st Appellant – Also, gave finding that Respondent not able to prove her marital status with 1st Appellant’s son-in-law, same disturbed by Lower Appellate Judge by simply pointing out that PW-1 not cogent in her evidence – Evidence of PW-1 shows that aberrations found were minor discrepancies due to her illiteracy – Lower Appellate Judge ignored fact that Respondent did not prove her case of adverse possession – Analysis of facts and evidence shows that, while Trial Court decided case on preponderance of probabilities, Lower Appellate Judge reversed same rendering perverse findings – Finding of Trial Court regarding mesne profits confirmed – Judgment and decree of Lower Appellate Court set aside – Decree by Trial Court restored – Appeal allowed.
- B. Limitation – Adverse Possession – Limitation Act, Article 65 – Whether Lower Appellate Court right in holding that suit filed by 1st Appellant barred by limitation ignoring contention of Appellant that possession of Respondent not proved to be adverse to 1st Appellant – Held, when person setting up plea of adverse possession does not know who is owner of property and claims that property belongs to other person, he/ she cannot be said to have set up possession adverse to that of owner – 2nd Appellant is son of 1st Appellant’s son-in-law born through predeceased daughter of Plaintiff – Even if assumed that 1st Appellant’s son-in-law perfected title by adverse possession to suit property, after his death, 2nd Appellant entitled to same as his legal heir – Respondent not in position to prove that she legally wedded to 1st Appellant’s son-in-law – In earlier suit, when Respondent made claim for mutation on premise that she was wife of deceased 1st Appellant’s son-in-law, she lost her battle – Plea that suit barred by limitation not substantiated by Respondent – Finding of Lower Appellate Court to contrary perverse and same to be interfered with and reversed – Lower Appellate Court wrong in holding that suit by Appellant barred by limitation and such finding rendered in ignorance of plea of Appellant that possession of Respondent not proved to be adverse to that of Plaintiff.

2015 -1- L.W. 892

N. Kuppusamy Naidu
vs.
Saroja

Date of Judgment : 05.02.2015

Hindu law/Stridhana properties, Joint family property, female's rights, Rule of, Estoppel, when to be applied,

Hindu Succession Act (1956), Section 14, stridhana property, female's rights, absolute, when.

Appellant and respondent/children of 'K' are brother and sister.

Property to 'K' by WILL, whether stridhana property or joint family – Plea that K's husband treated it as joint family property whether valid, acquiescence, plea of – Scope.

Held: 'A' schedule properties were stridhana properties of K, on her death, it would have been inherited by her legal heirs as per law of inheritance prevailing on the date of her death – Stridhana properties of a female dying intestate before Hindu succession Act, presence of daughter would have excluded the son and husband – Daughters take only a limited estate and on death, it would go to the stridhana heirs of the mother from whom she inherited the same – Respondent(sister of appellant) plaintiff became entitled to all the five items of properties described in plaint 'A' schedule.

On coming into force of Hindu Succession Act, such a limited estate of the respondent enlarged into an absolute property by virtue of Section 14.

Fact respondent joined with others in executing sale deed not enough to show she treated properties as joint family properties – Rule of estoppels – when applies – Scope of.

Alienation to third parties, by father, purchasers not made parties – Suit bad for non joinder of necessary parties.

2015 -1- L.W. 981

A/M. Navaneetheswara Swamy Thirukoil, Sikkal

vs.

State of Tamil Nadu

Date of Judgment : 13.01.2015

Transfer of Property Act (1882), Chapter V. Sections 106, 108, 111, lease, determination of, surrender of lands, rental arrears, recovery of.

Total of 291.58 acres of appellant temple's land was leased to government to run a seed farm – Determination of lease, how to be done – Arrears of rent, payment of, collection, how to be made – Partial surrender of 279.36 acres are remaining was encroached, whether proper and to be accepted by lessor – Contention that section 108 has no application to lease in favour of government.

Held: In the absence of an agreement, offer to surrender only a portion of leasehold land is not a valid surrender causing determination of lease – Section 108 applies to lease in favour of government, If offer to surrender is not in conformity with Section 108 (m), lessor shall be justified in refusing to accept surrender and insist upon lessee to pay rent till complete and proper surrender of land in terms of Section 108(m) – Section 108(m) makes it obligatory on the part of lessee to restore property to good condition as it was at the time when lessee was put in possession – When lease not terminated in accordance with law lessee continues in possession after termination of the lease by efflux of time – Till possession is delivered, lessee shall be liable to pay rent.

HIGH COURT CITATIONS CRIMINAL CASES

2015 -1- L.W. (CrI). 184

Saravanan

vs.

State

Date of Judgment : 05.12.2014

I.P.C., Section 323, 302, 304 Part II, 299, 300.

Prosecuting agency failed to prove criminal intention – If accused had an intention to commit the offence of death, he would have equipped himself with weapons for the commission of murder of the deceased.

From the circumstances, his aim was to pick up quarrel – out of sudden provocation, appellant/accused had picked up a stone, which was found lying and assaulted over the head, further assaulted deceased with wooden cot frame.

Since no premeditation or malice is established by the prosecuting agency, finding under section 302 erroneous – Appellant/accused found guilty under section 302 erroneous – Appellant/accused found guilty under section 304 Part II IPC

2015 -1- L.W. (CrI). 241

R. Selvaraj

vs.

Murugesan

Date of Judgment : 10.12.2014

Criminal procedure Code, Section 22, 222, when can be invoked,

Negotiable Instruments Act, Section 138,

I.P.C., Sections 417, 420, 422.

Initial complaint under section 138 altered to section 417, 420, 422 IPC and acquitted – whether by resorting to sections 221 and 222, trial court ought to have convicted respondent under section 138.

Invoking of Section 221 and 222, scope of – Ingredients of Section 138 of the N.I. Act and Section 420 are different.

Held: when a person is charge under Sections 417, 420, 422 of IPC and prosecution was not able to prove the charges for those offences, the accused cannot be convicted for the offence under Section 138 N.I. Act

(2015) 1 MLJ (Crl) 397

S.J. Vasudevan

vs.

Sub Divisional Magistrate/Revenue Divisional officer

Date of Judgment : 09.01.2015

Criminal procedure – Enquiry – Notice – Appearance of parties – Code of criminal procedure, 1973, Sections 107 and 111 – 1st Respondent/Magistrate issued notice to petitioners to appear for enquiry – Petitioner filed petition to set aside impugned notice as it was contrary to Section 111 Code 1973 – Also alleged that under Section 107, both parties cannot be called for enquiry by issuing notice under Section 111 Code 1973 – Whether action taken by 1st Respondent in issuing impugned notice to both parties for enquiry justified – Held, in impugned notice, no order under Section 111 nor final order under Section 107 passed by 1st Respondent but only issued notice to both parties to appear before him for enquiry – Only when order has been passed under Section 111 by 1st Respondent and if that order was not in compliance with provision of Section 111, same can be challenged – 1st Respondent has only taken up FIR for enquiry and issued notice to both parties to appear before him for enquiry and has not made up his mind to proceed either under Section 111 or 107 – Impugned notice cannot be quashed on ground that it does not comply with Section 111 or both factions cannot be tried by issuing notice under Section 111 – There is no need to pass any order as parties have settled matter as per proceedings of 1st Respondent – Petition dismissed.

(2015) 1 MLJ (Crl) 400

A. Rahamathullah

vs.

P.A.K. Manoharan

Date of Judgment : 18.12.2014

Negotiable Instruments - Complaint – Validity of cognizance – Barred by limitation – Negotiable Instruments Act, 1881 (NI Act), Sections 138 and 142 – Code of Criminal procedure, 1973 (Code), Section 473 – Limitation Act, Section 5 – Respondent filed private complaint alleging Petitioner and 1st accused/company committed offence under Section 138 of NI Act – Magistrate took cognizance, condoning delay of one day – Whether order of Magistrate taking cognizance is barred by limitation and illegal – Held, in absence of any satisfactory explanation by complainant for delay, Magistrate, on his own, shall not condone delay as it could be otherwise done under Section 473 of Code – If date of presentation of complaint beyond period of limitation prescribed under Section 142 of NI Act, absolute necessary for complainant to explain delay by showing sufficient cause – No petition for condonation of delay filed and no such explanation offered by Respondent – Lower Court, without noticing that there was delay in presenting complaint, inadvertently taken cognizance – Order of Magistrate taking cognizance set aside – Matter remanded back with liberty to Respondent to file appropriate petition seeking condonation of delay by showing sufficient cause – Petition allowed.

(2015) 1 MLJ (Crl) 428

C. Anandane

vs.

State

Date of Judgment : 27.01.2015

Charge – Alternation of - Code of Criminal Procedure, 1973 (Code 1973), Section 216 – Prevention of Corruption Act, 1988 (Act 1988), Sections 13(1)(e) and 13(2) – Petitioner/ accused charge sheeted for offence under Sections 13(1)(e) and 13(2) of Act 1988 – Petitioner filed petition for alternation of charge alleging that charge with offence of having acquired assets in his name and in name of his family members disproportionate to his known source of income – Also, alleged that in framing charges against him, properties standing in name of his deceased with also included, but same to be excluded – Petition for alteration of charge dismissed – Revision – Whether charge be permitted to be altered to exclude properties standing in name of deceased, as deceased would not be in position to prove that she had source of income to buy properties that were not acquired by Government servant – Held, evidence sought to be adduced by accused cannot be taken into consideration, while framing charge – For alteration or addition of charge also, evidence that could be produced by other accused during trial cannot be taken into consideration – Though not possible to plead rebuttal evidence by reason of death of deceased that deceased had means to purchase properties, same cannot be reason for altering charge by excluding those properties, since prosecution proceeded on basis that same acquired by Petitioner – Probable defence of accused or lack of opportunity to accused to lead rebuttal evidence cannot be reason for altering charges – Petitioner did not take steps to amend charges sheet for certain period – When case posted for arguments before Trial Court, Petitioner filed petition for altering charges, same dismissed – No bona fide on part of Petitioner in seeking alteration of charge – Revision dismissed.

(2015) 1 MLJ (Crl) 450

Nethaji
vs.
State

Date of Judgment : 20.01.2015

Copy Right – Infringement of Copy Right – Selling of Newly Released Films – Copy Rights Act, 1957, Section 63 – Petitioners/ accused convicted for offence under Section 63, same confirmed on appeal – Revision with allegation that both Lower Courts failed to consider that no evidence let in by prosecution to prove that seized DVDs contained replica of new movies and Court also did not view them – Whether conviction of Petitioners for offence under Section 63 justified – Held, perusal of impugned judgments shows that vital omission by prosecution to prove that seized DVDs by Investigating Officer from place of occurrence contained movies as alleged – No witnesses spoke to effect that alleged DVDs contained new movies – Even Lower Courts did not see movies in seized DVDs and no comparison with original version – As copyright amounts to act of piracy, there should be clear and cogent evidence to prove infringement – Petitioners’ case is of no evidence with regard infringement – Petitioners’ conviction and sentence liable to be set aside, same set aside – Petition allowed.

(2015) 1 MLJ (Crl) 455

R. Kasthuri
vs.
State

Date of Judgment : 19.12.2014

- A. Custodial Death – Investigation by Magistrate – Transfer of case – Code of Criminal Procedure, 1973, Section 176(1A) and 482 – Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Rules, Rules 7 and 12 – Petitioner/wife of deceased allege that deceased fallen victim of police torture – Respondent/Police stated that Deceased/Accused tried to escape from police custody fell into pit, sustained injuries and died – FIR registered and same forwarded to Judicial Magistrate for holding enquiry – Magistrate held that death caused due to heart attack with multiple injuries sustained in unexpected fall from height – Magistrate’s report submitted to District Collector, same forwarded to Government – Accepting report, Government dropped further action – Petitioner filed petition seeking to transfer investigation of case to CBCID to be conducted by officer not below rank of Deputy Superintendent of Police and sought compensation – Whether course adopted by Magistrate, Inspector of police, District Collector and Government legally sustainable and whether Petitioner entitled for any relief – Held, inquiry held by Judicial magistrate or Metropolitan Magis-

trate cannot be equated to an investigation by police – Introduction of Section 176(1A) of Code 1973 conclude that inquiry held by Judicial Magistrate is judicial inquiry in character and same does not either form part of investigation or part-take character of investigation is fortified – Magistrate shall not submit report either to District Collector or to Government – On receipt of Magistrate’s report relating to inquiry, investigating officer shall use same for further investigation – Procedure adopted by Magistrate illegal – Inquiry by Magistrate does not bar Inspector of Police to investigate case according to law – Government equated report of Magistrate to investigation by police as final conclusion and dropped further action, same is illegal and set aside – Allegation of Petitioner that investigation should be conducted by Deputy Superintendent of Police since deceased belong to scheduled caste, not applicable as alleged attack on deceased was not on account of fact that he belongs to schedule caste – Relief of compensation not granted, as Court ordered for investigation – Directions issued – Petition allowed.

- B. Words and Phrases – “Into the cause of the death” – Inquiry “into the cause of the death” as found in Section 176(1) of Code of Criminal Procedure, 1973 have been omitted in Section 176(1A) of Code of Criminal Procedure, 1973 indicating that the inquiry by a Judicial Magistrate under Sub-Section (1A) is not confined only to cause of death or cause for the disappearance or cause for rape.

(2015) 1 MLJ (CrI) 522

O. Chandrasekaran

vs.

State

Date of Judgment : 17.02.2015

Dowry death – Indian Penal Code, 1860 (Code 1860), Sections 498-A, 304-B r/w 109 – Deceased was wife of A1 of A2 and A3 parents of A1 – A4 was elder sister of A1 – Trial Court found Appellants/A1 to A4 guilty under Section 498-A and 304-B r/w 109 of Code 1860 – Appeal – Whether conviction and sentence imposed on A1 to A4 justified – Held, doubt as to manner of death of deceased – Conduct on part of A1 to A4 disclose that deceased prevented from attending her own brother’s marriage – When deceased delivered first baby, none of Appellants went and saw deceased as well as her child and also did not take her back to matrimonial home – Deceased continued to be in parental home after delivering girl child for about 1 year – When parents of deceased approached Ex-MLA who mediated, only thereafter, deceased taken back to matrimonial home after giving five sovereigns of jewels and sum of cash – Demand of cash for purpose of starting business can be termed as demand of dowry – Deceased was harassed, tortured and ill-treated by A1 to A4 on account of unreasonable demand of dowry which led to her tragic demise – Conviction and sentence confirmed – Appeal dismissed.

(2015) 1 MLJ (CrI) 549

S. Jeeva Ashok

vs.

Kalarani

Date of Judgment : 18.02.2015

Domestic Violence – Maintenance – Interim Orders – Protection Order – Protection of Women from Domestic Violence Act, (DV) 2005, Sections 18, 23 and 31 – Code of Criminal procedure, 1973, Section 125 – Respondent/Wife filed complaint against Petitioner/Husband under DV Act and sought for maintenance and return back stridhan articles – Lower Court directed Revision Petitioner to pay sum as specified until further orders, also to return articles – To enforce impugned order, Respondent filed petition under Section 31, Lower Court directed return of Respondent’s article – Revisions filed challenging order passed by Session Judge in awarding maintenance, also challenged order of Magistrate - Whether Lower Court erred in allowing petition under Section 31 of DV Act holding that impugned orders passed under Section 23 of DV Act should be construed as protection order under Section 18 of DV Act – Held, impugned order is only an interim measure and directed revision petitioner to pay arrears in three equal installments in respect of petition filed under Section 125 Code 1973

-Revision Petitioner has entirely paid arrears and continues to pay maintenance amount to Respondent, same is disputed by Respondent – Court not prepared to consider submission of Respondent since main case filed under DV Act is pending adjudication, any observation made may affect rights of either of the parties – Order cannot be construed as protection order and is not enforceable under Section 31 – Though return of articles is an interim order, it is subject to final orders to be passed in main case – Impugned orders set aside – Revisions allowed.

(2015) 1 MLJ (Cri) 567

A. Kanagarajan
vs.
State

Date of Judgment : 01.12.2014

Prevention of Corruption – Illegal Gratification – Evidence – Prevention of Corruption Act, 1988, Sections 7, 13(1)(d), 13(2) and 20 – Appellant/accused convicted under Sections 7 and 13(1)(d) read with Section 13(2), same challenged – appellant alleged that evidence of PW-2/defacto complainant not fully reliable and same not corroborated by other evidences – Respondent resisted that accused dealt with application of PW-2 and Trial court rightly convicted him, since evidences proved acceptance and recovery and phenolphthalein test ended in positive – Whether Appellant’s conviction under Sections 7 and 13(1)(d) read with Section 13(2) justified - Whether evidence of PW-2 reliable – Held, perusal of chief and cross-examination of PW-2 shows that his evidence not fully, but partly reliable and same needs corroboration – Evidence on record proved that Appellant not competent person to return application, because as per evidence of PW-5/ higher official, Appellant was to scrutinize application and would return same only on his instructions – Prosecution failed to prove that Appellant was competent to provide appointment on compassionate ground – No one accompanied PW-2 during trap proceedings – Evidence of PW-2 prima facie, would be of suspect, same needs corroboration – But, no corroboration for second demand and acceptance – Phenolphthalein test was in positive and same proved by evidence of PW-12, but second demand and acceptance not proved beyond reasonable doubt – Also, Respondent did not seek for rescue of Section 20, Since basic ingredients not proved – Prosecution did not prove guilt of accused beyond reasonable doubt and benefit of doubt given to Appellant – Conviction and sentence passed against Appellant set aside – Appellant acquitted from charges leveled against him – Appeal allowed.
