



TAMIL NADU STATE JUDICIAL ACADEMY

Vol: XI

Part: 1

January, 2016

IMPORTANT CASE LAW



OFFICE: No.30/95, P.S.K.R. Salai, R.A. Puram, Chennai – 600 028

Phone Nos. 044– 24958595 / 96 / 97 / 98

Telefax: (044) 24958595

Website: www.tnsja.tn.nic.in

E-Mail: tnsja.tn@nic.in/tnsja.tn@gmail.com

INDEX

S. NO.	IMPORTANT CASE LAWS	PAGE NO.
1	Supreme Court - Civil Cases	01
2	Supreme Court - Criminal Cases	03
3	High Court - Civil Cases	06
4	High Court - Criminal Cases	12

TABLE OF CASES WITH CITATION

SUPREME COURT - CIVIL CASES

SL. NO.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE NO.
1	Bharat Bhushan vs. Tej Ram	2015 (12) SCALE 458	16.09.2015	Hindu Law – Customary Law – Wajib-ul-arz – Doctrine of Legal Necessity	1
2	Vishwanath Dadu Gurav vs. Dattatray Ganapati Gurav	2015 (12) SCALE 471	16.11.2015	Indian Succession Act – Section 276	1
3	Jupudy Pardha Sarathy vs. Pentapati Rama Krishna	2015 (6) CTC 665	06.11.2015	Hindu Succession Act – Section 14 – Property of Female Hindu to be her absolute Property	1
4	Vennangot Anuradha Samir vs. Vennangot Mohandas Samir	(2015) 8 MLJ 760 (SC)	02.12.2015	Divorce by Mutual Consent – Settlement of Dissolution of Marriage	2
5	A.Andisamy Chettiar vs. A.Subburaj Chettiar	(2015) 8 MLJ 855 (SC)	08.12.2015	Evidence – Production of Additional Evidence – Fulfillment of condition – C.P.C	2

SUPREME COURT - CRIMINAL CASES

SL. NO.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE NO.
1	State vs. Mushtaq Ahmad Etc	(2015) 4 MLJ (Crl) 225 (SC)	06.10.2015	Narcotics – Possession of – Commercial Quantity	3
2	Prof. N.K.Ganguly vs. CBI, New Delhi	(2015) 4 MLJ (Crl) 605 (SC)	19.11.2015	Criminal Complaint – Quashing of – Sanction to Prosecute	3
3	Shamsher Singh Verma vs. State of Haryana	(2015) 4 MLJ (Crl) 618 (SC)	24.11.2015	Evidence – Right of Defence – Genuineness of Document	4
4	Krishna Bhattacharjee vs. Sarathi Choudhury	(2015) 4 MLJ (Crl) 623 (SC)	20.11.2015	Domestic Violence – Stridhan – Continuing Offence	4
5	State of Rajasthan vs. Ramesh	(2015) 4 MLJ (Crl) 635 (SC)	20.11.2015	Murder – Circumstantial Evidence	5

HIGH COURT - CIVIL CASES

SL. NO.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE NO.
1	Amsavalli (Died) Vs Sarangabani	2016 (1) CTC 61	11.12.2015	Death of parties to Decree after passing of Decree and before presentation of Appeal	6
2	Natarajan Vs Sathiyavani	2016-1-L.W.127	16.09.2015	Suit for injunction - Boundary and measurements	7
3	J. Kubendran Vs D. Rajappa	(2015) 8 MLJ 341	07.10.2015	Tenancy Laws - Eviction - Bona fide Requirement	7
4	Indra Vs B.G. Giri	(2015) 8 MLJ 641	01.12.2015	Hindu Law - Divorce - Cruelty - Desertion - Hindu Marriage Act, 1955	7
5	Inspector General of Registration Vs J. Barathan	(2015) 8 MLJ 769	30.11.2015	Registration - Power of Attorney - Life certificate Production	8
6	Deivanai Vs J. Masilamani Reddi	(2015) 8 MLJ 784	19.11.2015	Property Laws - Possession of Title - Government Poramboke Land	9
7	S. Selvaraj Vs Ramjanally Ebrahimcurrim Chatriwala Trust	(2015) 8 MLJ 787	27.11.2015	Trust and Charities - Suit by Single Trustee - Maintainability of	9
8	S. Shanmugam Vs Chandrasekaran	(2015) 8 MLJ 799	02.11.2015	Property Laws - Suit for Injunction - Declaration of title	10
9	P. Govindasamy Vs Manickam	2015 (6) CTC 851	01.12.2015	Plaint - Rejection of - Non -disclosure of cause of action	10
10	Karumalai and others Vs Kittu	2015-5-L.W.854	12.10.2015	Joint Trial Scope - Feasibility	11

HIGH COURT - CRIMINAL CASES

SL. NO.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE NO.
1	P.Baskaran vs. State, rep by the Inspector of Police	(2015) 4 MLJ (Crl) 129	10.08.2015	Criminal Laws – Culpable Homicide – Provocation	12
2	P.K.M.Selvam vs. State through, Inspector of Police	(2015) 4 MLJ (Crl) 147	20.08.2015	Complaint – Quashing of – Mining	12
3	Ayyappan vs. State	2016 (1) CTC 284	22.12.2015	Surrender of accused before Magistrate	13
4	R. Inbaraj vs. State rep. by the Inspector of Police	(2015) 4 MLJ (Crl) 533	30.09.2015	Cheating – Framing of Charge	13
5	Murugan vs. State of Tamil Nadu	(2015) 4 MLJ (Crl) 555	15.09.2015	Murder – Homicide – Exception	13
6	Mookandi @ Esakkipandi vs. The State, rep by The Inspector of Police, Moolakaraipatti Police Station	2015-2- LW. (Crl.) 677	22.07.2015	Test Identification parade	14
7	R. Mathialagan vs. V. Ravichandrika	2015-2- LW. (Crl.) 725	05.08.2015	Maintenance – Divorced wife Entitlement of	14
8	A. Nasira Begum vs. V. Husain Ahmed and another	2015-2- LW. (Crl.) 753	29.10.2015	Comparison of Signatures, scope of	14
9	The Inspector of Police, Villupuram vs. Govindhasamy and others	2015-2- LW. (Crl.) 778	08.12.2015	Murder – death due to strangling, evidence, appreciation of	15
10	Pandi @ Soundara Pandi vs. G. Sasikala	2015 (6) CTC 831	01.09.2015	Maintenance – Grant of Interim Maintenance – Section 125 Cr.P.C.	15

SUPREME COURT CITATIONS CIVIL CASES

2015 (12) SCALE 458

Bharat Bhushan

vs.

Tej Ram

Date of Judgment : 16.09.2015

HINDU LAW – CUSTOMARY LAW – WAJIB-UL-ARZ – Doctrine of legal necessity – Applicability of – Parties to the suit belonged to Kannoaura Tribe which is a notified scheduled tribe under the Constitution (Scheduled Tribes Order), 1950 – Plaintiffs are sons of defendant 3, who had sold the property to defendant 1, who was a minor at the relevant time, represented by his father, defendant 2 – Plaintiffs filed suit challenging legality of transfer of land by deceased, defendant 3 – Trial Court dismissed the suit while holding that the customary law governing the parties recorded in a book known as ‘Wajib-UI-Arz’ did not prohibit defendant 3, owner of the land, to effect the transfer – However, the same was without legal necessity – In appeal, decree of dismissal was maintained – First Appellate Court while maintaining the finding with regard to the competence of defendant 3 to sell the land reversed the finding on the point of legal necessity – In second appeal, High Court decreed the suit – High Court held that under the customary law in force, defendant 3 was not legally competent to effect the transfer – Whether the High Court was justified in reversing the decree of dismissal of the suit – Held, Yes – Dismissing the appeal.

2015 (12) SCALE 471

Vishwanath Dadu Gurav

vs.

Dattatray Ganapati Gurav

Date of Judgment : 16.11.2015

CONSTITUTION – ARTICLE 226 – INDIAN SUCCESSION ACT – SECTION 276 – One, ‘C’, aunt of appellant, died issueless, executed Will dated 11.9.1984 in favour of appellant regarding certain properties – Appellant, on the basis of said Will got his name entered in the revenue record but on objection of respondent entry was cancelled – Petition for probate filed by appellant – Trial Court decided all issues in favour of appellant and directed issuance of probate in respect of Will – Respondent filed regular civil appeal before District Judge and probate granted was set aside – Writ petition filed by appellant before High Court on the ground that appeal was not maintainable before District Judge – No grounds on merits were raised – High Court dismissed writ petition – Whether appellant can be permitted to raise additional grounds – Court remands the matter to the appellate Court – Disposing the appeal.

2015 (6) CTC 665

Jupudy Pardha Sarathy

vs.

Pentapati Rama Krishna

Date of Judgment : 06.11.2015

Hindu Succession Act, 1956 (30 of 1956), Section 14 – Property of Female Hindu to be her absolute Property – Husband executed Will in favour of Third Wife conferring limited estate and bequeathed immovable property in favour of his son – Wife executed Will in favour of Third party – Legality – When Life Estate conferred upon female Hindu can be enlarged into Absolute Estate – Claim of Hindu widow to be maintained is not mere formality, which is to be exercised as matter of concession, grace or gratis – Right of widow to be maintained, does not create charge on property of her husband – Widow can enforce her right by approaching Court for passing

Decree for Maintenance by creating charge upon property – Recitals of Will indicate that property has been allotted in favour of female Hindu in lieu of her right to Maintenance – Absence of necessary recital in Will indicating that Life Estate conferred in lieu of Maintenance would not affect absolute right of female Hindu – Life Estate conferred upon female Hindu in lieu of her right to Maintenance would enlarge into absolute Estate.

(2015) 8 MLJ 760 (SC)

Vennangot Anuradha Samir

vs.

Vennangot Mohandas Samir

Date of Judgment : 02.12.2015

Hindu Law – Divorce by Mutual Consent – Settlement of Dissolution of Marriage – Hindu Marriage Act, Sections 13(1)(1a), 13B and 23 – Respondent/husband filed suit for dissolution of marriage by decree of divorce on ground that Petitioner/wife committed cruelty – Petitioner moved application for transfer of divorce suit pending before Family Court in Bombay to Family Court in Hyderabad, since she lives in Hyderabad – Consequently, application filed under Section 13B with prayer to treat divorce petition pending before Family Court in Bombay as application under Section 13B and treat present application as second motion and grant divorce by way of mutual consent – Later, Petitioner agreed for settlement of dissolution of marriage, as she needed sufficient amount for her treatment – Whether Court would be justified in granting decree for divorce on basis of settlement, when wife suffers with disease and is in need of money for her treatment and same could be considered for dissolution of marriage – *Held*, facts show that Petitioner agreed for divorce by mutual consent on condition that Respondent will pay her lump sum as full and final settlement, since she suffers from disease which compelled her to agree for mutual consent – Such settlement raises suspicion as to whether consent obtained from Petitioner is free as required by law for granting decree of divorce by mutual consent – Primary and pre-existing duty of Respondent is to provide facilities for treatment of Petitioner, but he promises to do something which he is already duty bound, same is not valid for settlement – Petition ordered to be transferred – Transferor Court shall transmit record of case to Transferee Court – Respondent shall pay specific sum out of total amount to Petitioner for her treatment – After Petitioner cured from disease or within specific period whichever is earlier, Family Court in Hyderabad shall take up case along with fresh application for divorce by mutual consent and dispose of it in accordance with law – Petition allowed.

(2015) 8 MLJ 855 (SC)

A.Andisamy Chettiar

vs.

A.Subburaj Chettiar

Date of Judgment : 08.12.2015

Evidence – Production of Additional Evidence – Fulfillment of condition – Code of Civil Procedure, 1908, Section 107(1)(d), Order XLI Rules 27 and 27(1) – Based on Will executed by his father, Appellant/Plaintiff filed suit for permanent injunction restraining Respondent/Defendant from interfering in his peaceful possession of suit property – Trial Court dismissed suit holding that Plaintiff failed to prove that his father executed Will relied on by him in his favour – Aggrieved by decree of Trial Court, Plaintiff filed appeal before First Appellate Court – Pending appeal, Plaintiff moved application to direct scientific investigation to find out whether signature of Testator in Ex.A-4/Will is genuine – First Appellate Court directed Appellant to deposit specific sum – In revision petition, Defendant challenged order of First Appellate Court allowing application for additional evidence, same allowed – Appeal – Whether Plaintiff entitled to produce additional evidence in Appellate Court – *Held*, Rule 27(1) of Code 1908 shows that parties not entitled to produce additional evidence whether oral or documentary in Appellate Court, but for situations mentioned – Parties not allowed to fill lacunae at appellate stage and it is against spirit of Code 1908 to allow party to adduce additional evidence without fulfillment of conditions mentioned in Rule 27 of Code 1908 – No application moved before Trial Court seeking scientific examination of Ex.A-4, nor Plaintiff with due diligence could not have moved such application to get proved documents relied upon by him – Regarding exercise of revisional powers in matter of allowing application for additional evidence, when appeal pending before Lower

Appellate Court, impugned order by High Court cannot be upheld, same set aside – To do justice between parties, First Appellate Court directed to decide application for additional evidence afresh in light of observations made regarding principles on which such application can be allowed or rejected – Appeal disposed of.

SUPREME COURT CITATIONS CRIMINAL CASES

(2015) 4 MLJ (CrI) 225 (SC)

State

vs.

Mushtaq Ahmad Etc

Date of Judgment : 06.10.2015

Narcotics – Possession of – Commercial Quantity – Narcotic Drugs and Psychotropic Substances Act, 1985 (1985), Sections 8, Section 20 (b) (ii) (B) and 20 (b) (ii) (C) – Accused-respondents were charge sheeted under Section 8 read with Section 20 of Act 1985 and sent for trial – Trial Judge taking note of fact that first and second respondent were in possession of 6.2kg and 4 kg of charas respectively treated contraband article as commercial quantity and accordingly found them guilty under Section 20 (b) (ii) (C) of Act 1985 – High Court on appeal converted conviction into Section 8 read with Section 20 (b) (ii) (B) of Act 1985 holding that quantity seized was not “Commercial quantity” – Whether High Court was right in converting conviction holding that seized contraband did not fall under “Commercial quantity” – *Held*, High Court has found that seized article contained more than 50gms. Tetra hydrocannabinol in respect of both accused persons – Commercial quantity for contraband article, namely, Tetra hydrocannabinol (THC) as stated in Entry no. 150 is 50gms – Even assuming said percentage is found in seized item then also contraband article would go beyond “intermediate” quantity and fall under “commercial” quantity – Seized item fell under commercial quantity and hence conviction recorded by trial court under Section 20 (b) (ii) (C) of Act 1985 is impeccable – Section 20 (b) (ii) (C) of Act 1985 stipulates that minimum sentence will be ten years which may extend to twenty years and minimum fine imposable is one lakhs rupees which may extend to two lakhs rupees – Provision also provides about default clause – When minimum punishment is prescribed, no court can impose lesser punishment – Judgment and order passed by High Court set aside – Appeal allowed.

(2015) 4 MLJ (CrI) 605 (SC)

Prof. N.K.Ganguly

vs.

CBI, New Delhi

Date of Judgment : 19.11.2015

Criminal Complaint – Quashing of – Sanction to Prosecute – Code of Criminal Procedure, 1973 (Code 1973), Section 197 – Indian Penal Code 1860 (Code 1860), Section 120B – Appellants were alleged to have committed economic offences in official capacity – Respondent filed complaint – On basis of complaint, Court issued summons to appellants – Appellants filed application for quashing of proceedings in absence of sanction from Central Government – Whether offence under Section 120B Code 1860 is made out against appellants, and whether previous sanction of Central Government is required to prosecute them – Whether order passed by Special Judge taking cognizance of offence against appellants is legal and valid – *Held*, it becomes clear that for purpose of obtaining previous sanction from appropriate government under Section 197 of Code 1973, it is imperative that alleged offence is committed in discharge of official duty by accused – It is also important for Court to examine allegations contained in final report against Appellants, to decide whether previous sanction is required to be obtained by respondent from appropriate government before taking cognizance of alleged offence – In instant case, allegations made against Appellants in final report filed by respondent that alleged offences were committed by them in discharge of their official duty – Therefore, it was essential for Special Judge to correctly decide as to

whether previous sanction from Central Government under Section 197 of Code 1973 was required to be taken by respondent, before taking cognizance and passing order issuing summons to appellants for their presence – In absence of previous sanction obtained from Central Government to prosecute appellants as required under Section 197 of Code 1973, proceedings quashed – Appeals allowed.

(2015) 4 MLJ (Cri) 618 (SC)

Shamsher Singh Verma

vs.

State of Haryana

Date of Judgment : 24.11.2015

Evidence – Right of Defence – Genuineness of Document – Code of Criminal Procedure, 1973 (Code 1973), Sections 294 and 294(1) – Indian Evidence Act, 1872 (Act 1872), Section 3 – Appellant/accused charged for alleged offences – Prosecution witnesses examined and also statement of accused recorded – In defence, accused examined witnesses and application moved under Section 294 of Code 1973 before Trial Court with prayer that alleged gadgets may be got operated initially in Court to preserve copy of text contained for further communication to FSL to establish their authenticity – Also, voice of father of victim may be ordered to be taken by experts at FSL to be further got matched with recorded voice – Special Judge rejected application of accused to get exhibited compact disc and to get it proved from FSL, same challenged – High Court affirmed order passed by Special Judge – Appeal – Whether accused was denied right of defence – *Held*, compact disc is also document and it is not necessary for Court to obtain admission or denial on document under sub-section (1) to Section 294 of Code 1973 personally from accused or complainant or witness – Endorsement of admission or denial made by defence on document filed by prosecution or on application/report with which same filed is sufficient compliance of Section 294 of Code 1973 – Similarly on document filed by defence, endorsement of admission or denial by public prosecutor is sufficient and defence will have to prove document if not admitted by prosecution – If such document is admitted, it need not be formally proved and can be read in evidence – Statement of accused shows that he was implicated due to property dispute – Record also reflects that Registration Clerk, Document Writer, Clerk-cum-Cashier of Bank and son of Appellant examined as defence witnesses and evidence in defence is in progress – Lower Courts erred in not allowing application of defence to get played compact disc relating to conversation between father of victim and son and wife of Appellant regarding alleged property dispute – Also, erred in rejecting application to play compact disc in question to enable public prosecutor to admit or deny and to get it sent to FSL by defence – Orders passed by Lower Courts set aside – Appeal allowed.

(2015) 4 MLJ (Cri) 623 (SC)

Krishna Bhattacharjee

vs.

Sarathi Choudhury

Date of Judgment : 20.11.2015

Domestic Violence – Stridhan – Continuing Offence – Domestic Violence Act, 2005 (Act 2005), Section 12 – Wife had filed application for recovery of Stridhan – Application was dismissed by lower court and High Court as being barred by limitation – Whether retention of stridhan by husband or any other family members is continuing offence or not and whether application is barred by limitation - *Held*, as long as status of aggrieved person remains and stridhan remains in custody of husband, wife can always put forth her claim under Section 12 of Act 2005 – Status between parties is not severed because of decree of dissolution of marriage – Concept of “continuing offence” gets attracted from date of deprivation of stridhan, for neither husband nor any other family members can have any right over stridhan and they remain custodians – For purpose of Act 2005, she can submit application to Protection Officer for one or more of reliefs under Act 2005 – In application, wife had mentioned that husband had stopped payment of monthly maintenance and, therefore, she had been compelled to file application for stridhan – Regard being had to said concept of “continuing offence” and demands made, Court is disposed to think that

application was not barred by limitation – Courts below as well as High Court had fallen into grave error by dismissing application being barred by limitation – Matter remitted to Magistrate to proceed with application under Section 12 of Act 2005 on merits – Appeal allowed.

(2015) 4 MLJ (Crl) 635 (SC)

State of Rajasthan

vs.

Ramesh

Date of Judgment : 20.11.2015

Murder – Circumstantial Evidence – Indian Penal Code, 1860, Sections 302, 304 Part I and 201 – Respondent/accused convicted for offences punishable under Sections 302 and 201, same challenged – High Court set aside conviction recorded by Trial Court holding that chain of circumstances against accused was not complete to conclude that accused committed murder of his daughter and acquitted him – Appeal – Whether prosecution proved case of accused beyond reasonable doubt on basis of circumstantial evidences – *Held*, evidence on record shows that when accused saw his daughter talking to PW-9, he got suddenly provoked and lost his power of self-control, slapped her, took her inside house and caused death of his daughter by strangulation and throttling – Medical evidence shows *ante mortem* injuries on neck region and around mouth of deceased as mentioned in autopsy report/Ex.P-12 – Ongoing through reports/Ex.P-12 and P.13 read with oral testimony of witnesses, prosecution proved charge of culpable homicide not amounting to murder punishable under Section 304 Part I against accused – High Court erred in holding that deceased could have hanged herself and chain of circumstances was not complete against accused – Accused convicted under Section 304 Part I and his conviction recorded by Trial Court modified – Impugned judgment and order passed by High Court set aside – Appeal allowed.

HIGH COURT CITATIONS CIVIL CASES

2016 (1) CTC 61

Amsavalli (Died)

Vs

Sarangabani

Date of Judgment : 11.12.2015

Code of Civil Procedure, 1908 (5 of 1908), Sections 2(11), 96 & 100 – First Appeal – Second Appeal – Death of parties to Decree after passing of Decree and before presentation of Appeal – Practice of filing Petition to accept Cause Title – Insistence of Registry to file Legal Heirship Certificate from jurisdictional Tahsildar to entertain Appeal or Petition – Condition imposed by Registry for numbering Appeal filed by Legal Representatives of deceased is untenable – Insistence of filing of Legal Heirship Certificate may cause under hardship to party, who intends to file Appeal – Procedure to be followed – Party, obtaining Legal Heir Certificate before filing of Appeal can file Certificate of Legal Heirship along with Appeal memorandum – Parties, who have not obtained Legal Heir Certificate, may file Affidavit stating that person concerned are Legal Representatives of deceased and by describing as to how they are Legal Representatives.

Code of Civil Procedure, 1908 (5 of 1908), Order 22 – Death of Parties to Decree after passing of Decree and before presentation of Appeal – How to file First Appeal or Second Appeal – Procedure contemplated under Order 22 will not apply – No specific provision available in Code to deal with cases, where party to Decree dies after passing of Decree.

Code of Civil Procedure, 1908 (5 of 1908), Sections 96 & 100 – First Appeal – Second Appeal – Appellate remedy – Nature and scope – Death of parties to Decree after passing of Decree and before presentation of Appeal – Practice of filing Petition to accept Cause Title indicating Legal Representatives of deceased persons – Procedure contemplates seeking leave or permission to number Appeal – Legality – Right of Appeal is creation of Statute – No permission or leave is required from Court to file Appeal by or against Legal Representatives of deceased – Practice of filing Petition to accept Cause Title or Interlocutory Application to recognize legal Representatives of deceased is incorrect – Appeal can be straightaway filed by Legal Representatives of deceased who was party to Decree under challenge.

Code of Civil Procedure, 1908 (5 of 1908), Section 151 – Death of Party to Decree after passing of Decree and before presentation of Appeal – Legal Representatives of deceased party can straight away file Appeal without filing Petition to accept Cause Title or to recognize Legal Representatives – Possibility of filing Appeals by or against some persons, who are not real Legal Representatives of deceased – Procedure to be followed – Interested party may raise objection at any stage of proceedings – Court can adjudicate upon issue in relation to right of parties to file Appeal – Mere entertaining of Appeal shall not amount to final adjudication right of Legal Representatives to prefer Appeal.

Code of Civil Procedure, 1908 (5 of 1908), Section 153 – Appeal presented against person, who is dead on date of presentation – Appeal filed without knowing factum of death of person – Procedure to be followed – Court may permit Appellant to amend Cause Title or written Appeal Memorandum for amendment and for representation – On date, when Application filed for amending Cause Title, if period of limitation for Appeal already expired in such cases Application for condonation of delay should be filed – Petition to amend Cause Title can be allowed after condonation of delay – When Application for amendment is filed before expiry of limitation for Appeal, such Application can be allowed and accordingly Cause Title may be amended.

Code of Civil procedure, 1908 (5 of 1908), Section 151 – Death of Party to Decree before presentation of Appeal – Factum of death known to Appellant – Procedure to be followed – Appellant can straightaway filed Appeal against Legal Representatives of deceased without filing Petition to accept Cause Title or to recognize Legal Representatives.

Code of Civil procedure, 1908 (5 of 1908), Section 151 – Death of Party to Decree after passing of Decree and before presentation of Appeal – Procedure to be followed – Legal Representatives of deceased party can straight away file Appeal without filing Petition to accept Cause Title or to recognize Legal Representatives – Procedure enumerated can be applied in cases, where party die after final conclusion of hearing and before pronouncement of Judgment by Lower Court – Appeal memorandum shall contain statement that parties are Legal Representatives of deceased – Separate Affidavit should be filed describing as to how Appellants are Legal Representatives of deceased.

2016-1-L.W.127

Natarajan
Vs
Sathiyavani

Date of Judgment : 16.09.2015

Boundary and measurements.

Suit for injunction – Boundary will prevail over measurements, when – scope of – measurements and extents found in Ex.A1 do not tally with that available on ground – If boundary can be fixed with accuracy, it will prevail over extent or measurement – Mandatory injunction to remove encroachment, grant of, scope.

(2015) 8 MLJ 341

J. Kubendran
Vs
D. Rajappa

Date of Judgment : 07.10.2015

Tenancy Laws- Eviction – Bona fide Requirement – Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Section 14(1)(b) – Respondent/landlord filed petitions under Section 14(1)(b) for eviction of Petitioners/tenants and to put him in possession of petition mentioned premises, same dismissed – On appeal, Rent Control Appellate Authority reversed order of Rent Controller – Petitions by tenants – Whether Petitioners liable to be evicted under Section 14(1)(b) – Held, age and condition of building may be one of the components of bona fides, but that alone is not material ground – Non-examination of expert with regard to age and condition of building is also immaterial - Evidences on record establish that requirement of Respondent for demolition and reconstruction of building is bona fide – No reason found to interfere with judgment of Rent Control Appellate Authority holding that Petitioners liable to be evicted under Section 14(1)(b) – Judgment and decree of Rent Control Appellate Authority confirmed – Petitioners directed to vacate petition mentioned premises and surrender same to Respondent – Petitions dismissed with costs.

(2015) 8 MLJ 641

Indra
Vs
B.G. Giri

Date of Judgment : 01.12.2015

- A. Hindu Law – Divorce – Cruelty – Desertion – Hindu Marriage Act, 1955 (Act 1955), Section – Parties were married as per Hindu law – Subsequent to disputes in marital life, divorce proceedings were initiated – Respondent husband filed petition against Appellant/wife – Court allowed petition and dissolved marriage that took place between the parties and granted ‘Decree of Divorce’ on ground of ‘Cruelty and Desertion’ infavour of Respondent/Husband – Further, it was held that Respondent/Petitioner/Husband was entitled to permanent custody of minor child – Whether Court was right in granting divorce on ground of cruelty and desertion infavour of Respondent/husband – Held, even though Appellant/Wife in letter addressed to Respondent/Husband had stated that she was living with Respondent/Husband at residence/premises, unfortunately, she had not chosen to examine herself to substantiate same – Appellant/Wife all of sudden to enter into house of Respondent/Husband together with her mother and some unknown persons etc., would not go to show that there was no desertion for continuous period of two years – Even though parents of Respondent/Husband as P.W. 2 and P.W.3 before trial Court were examined, were not cross examined by Appellant/Wife – Respondent/Husband and his parents/P.W.2 and P.W.3 had deposed about inhuman conduct of Appellant/Wife – In absence of cross examination of P.W.2 and P.W.3 by Appellant/Wife’s, and when P.W.1 was not cross examined by Appellant/Wife touching upon aspect of Cruelty and Desertion, adverse inference would be drawn in eye of law and that their evidence had remained unimpeachable and there were of worthy of acceptance – Failed to produce any other witness to examine on behalf of Appellant especially, when she had not let in any evidence by examining herself before trial Court subjected herself to cross examination – Marriage between parties has broken down irretrievably beyond repair – For all practical purposes, marriage between parties held emotionally and practically became dead with no scope for revival – Trial Court had rightly held that there was no option but to grant ‘Decree of Divorce’ – It is evident from order passed by trial Court, it had not awarded any sum to Appellant/Wife towards permanent alimony – Considering interest of welfare of Appellant/Wife and her status, Court, directed Respondent/Husband to pay sum to Appellant towards permanent alimony in full and final settlement – Miscellaneous appeal dismissed.
- B. Hindu Law – Custody of Minor Child – Hindu Minority and Guardianship Act, 1956 (Act 1956) – Hindu Marriage Act, 1955 (Act 1955) – Guardianship and Wards Act, 1890 (Act 1890) – Whether custody should be given to mother or father or partially to one and partially to other – Held, welfare of child is neither to be measured by ‘Monetary-Tape’ nor by ‘Physical Comfort’ only – Ingredients of Act, 1956 overrides Act, 1955 – Coming to aspect of custody of minor child, it is to be pertinently pointed out by this Court that the child as seen from Assessment Report had developed learning disability for which medical treatment is provided to him – In fact, Respondent/Husband had claimed permanent custody of the minor son – After completion of five years, automatically, right of father as natural guardian under Act, 1956 revives and prevails over right of mother – Since welfare of child is paramount consideration in deciding custody of child and even though Respondent/Husband is natural guardian of minor child according to relevant provision contained in Act, 1956, r/w Act, 1890, Court is of considered opinion that interest of the minor child would be well served and taken care of by Respondent/Husband (father) if custody of the child is ordered to be given to him – Moreover, even regard to custody, maintenance and education of minor child, Respondent/Husband is fit person – Court holds that Respondent/Husband is entitled to for permanent custody of child – Respondent/Husband is to take care of welfare of minor son to maintain him, to meet out his educational expenses and to incur necessary medical expenses as the case may be – Since Appellant/Wife is mother of minor son, she is entitled to visitation rights and Court grants her permission to move concerned Family Court by filing necessary application and to seek redressal of her grievance in manner known to Law.

(2015) 8 MLJ 769

Inspector General of Registration

Vs

J. Barathan

Date of Judgment : 30.11.2015

Registration – Power of Attorney – Life certificate Production – Registration Act, 1908, Sections 69(1), 69(2) – Respondent presented one sale deed and one gift deed for registration –Both documents had been executed by power agent of original owners of property in question – Registering Authority/second appellant, demanded life certificates as per Circular – Respondent refused to furnish life certificates on ground that Circular is no longer valid – Single Judge accepted contention of Respondent and allowed his writ petitions, directing Registering Authority to register documents, without insisting on production of life certificates – Appeals – Whether Single judge was right in directing Appellant to register documents without insisting on production of life certificates and holding that Circular is not valid – Held, two types of powers conferred by Section 69(1) first, power of general superintendence over all Registration Officers in territories under State Government and second, power to make Rules – It is only when Inspector General of Registration seeks to exercise second type of power conferred under sub-section (1) of Section 69 of Act 1908, procedures stipulated for making Rule under sub-section (2) of Section 69 would come into play – Circular has to be traced to power conferred by first part of section 69(1) and hence procedure prescribed in sub-section (2) for making rules has no application to same – Validity of Circular cannot any more be raised by Respondent, either on basis of earlier decision of High Court or on an independent basis – This is in view of directions issued by Supreme Court – Judgment setting aside Circular does not have force of law in view of directives issued by Supreme Court – Direction issued by Supreme Court has force of law – It is binding on all courts and it is actually law of land – It is true that Single Judge who allowed writ petitions of Respondent did not have benefit of judgment of Supreme Court, as judgment of Supreme Court came subsequently – Direction of Supreme Court cannot be ignored as it arose directly out of challenge to very same Circular – Order of Single Judge liable to be set aside – Writ appeals allowed.

(2015) 8 MLJ 784

Deivanai

Vs

J. Masilamani Reddi

Date of Judgment : 19.11.2015

Property Laws – Possession of Title – Government Poramboke Land – Appellant/Plaintiff enjoyed B-schedule property/Government poramboke land, for which, Government issued B-memos and collected penalty – As Respondent/Defendants made attempt to disturb possession of Plaintiff, she filed suit for permanent injunction restraining Defendants from interfering with her peaceful possession over B-schedule property, same decreed – On appeal, First Appellate Court set aside decree and judgment of Trial Court – Second appeal by Plaintiff – Whether First Appellate Court right in reversing decree and judgment of Trial Court ignoring B-Memos issued by Tahsildar recognizing possession of Plaintiff solely on ground that there is no office seal in said documents – Held, if poramboke land belonging to Government possessed by individual, it is at liberty to issue B-memo and collect penalty from possessor and if necessary, can evict such trespasser – Person, in occupation of Government land and paying penalty to it entitled to maintain suit for permanent injunction against third party by which he can protect his possession – Trial Court rightly found that there are B-memos issued by Government and Plaintiff proved her possession over B-schedule property – First Appellate Court concluded otherwise on ground that B-memos did not contain office seal of Tahsildar and one B-memo did not even contain signature of issuing authority – Plaintiff explained same through her evidence that whatever served upon her produced in evidence – Since no parties alleged that those documents forged, absence of office seal does not make documents invalid – Defendants though claim that they are in possession of B-schedule property, they did not have document to prove their passion – Trial Court right in decreeing suit in respect of B-schedule property, but First Appellate Court not right in reversing decree and judgment of Trial Court – Decree and judgment by First Appellant Court set aside and of Trial Court restored – If Government intends to take possession of land in question, Government is at liberty to evict Plaintiff by following procedure established by law – Appeal allowed.

(2015) 8 MLJ 787

S. Selvaraj

Vs

Ramjanally Ebrahimcurrim Chatriwala Trust

Date of Judgment : 27.11.2015

Trust and Charities – Suit by Single Trustee – Maintainability of – 1st Respondent/Plaintiff/Trust leased out suit property to original tenant, who sub-let same to Appellant/1st Defendant - Subsequently, tenancy attorned in favour of Plaintiff – As 1st Defendant did not pay arrears of rent even after receipt of notice, Plaintiff filed suit for eviction on ground of arrears of rent, for damages for unlawful use and occupation and for future damages – Trial Court decreed suit for recovery of possession, arrears of rent and for damages, same confirmed on appeal – Second appeal by 1st Defendant with allegation that suit filed by single trustee, who is not duly elected or nominated trustee of Plaintiff not maintainable – Alleged that while there are number of trustees representing trust, no suit can be filed by single trustee against tenants without resolution – Alleged further that when two trustees authorized in respect of suit property, they should have jointly instituted suit – Whether suit maintainable in absence of resolution by Trust authorizing trustee or trustees to institute suit in respect of suit property – Whether suit filed by single trustee maintainable, when two trustee authorized in respect of suit property – Whether suit filed by single trustee maintainable, when Trust did not establish adoptions of single trustee – Held, records show that Plaintiff consists of seven trustees and present representative of suit is also one among them – In that regard, Plaintiff marked its Minutes Book as Ex.A.12 as per which, five members of Board of trustees passed resolution authorizing present representative of suit to institute legal proceedings – Plea raised by Appellant that present representative of suit has no legal right to institute suit is not maintainable – Trust has decree in its favour for delivery of vacant possession of schedule property - Well-considered judgment of First Appellant Court need not be interfered with, same confirmed – Appeal dismissed.

(2015) 8 MLJ 799

S. Shanmugam

Vs

Chandrasekaran

Date of Judgment : 02.11.2015

Property Laws – Suit for Injunction – Declaration of title – Respondent/Plaintiff filed suit for permanent injunction restraining Appellants/Defendants from interfering with his peaceful possession and enjoyment of suit property, same decreed – On appeal, First Appellate Court confirmed decree and judgment of Trial Court – Second appeal with allegation that when title for property is under serious dispute, mere suit for bare injunction is not maintainable – Whether suit for bare injunction maintainable without there being prayer for decree for declaration of title, when title of property disputed by Defendants by producing number of documents – Held, documents produced by Plaintiff make out prima facie case that Plaintiff got title for specific area – Documents produced by Defendants would also show that they relate to title for property comprised in very same survey number to extent of smaller area – But, plea taken by Defendants that four boundaries will prevail over extent and as per Defendants, entire extent of specified area of land belongs to them – In respect of specified area comprised in survey number, both parties got documents and they made rival claims – When that be so, appropriate for Plaintiff to amend suit to include prayer for decree for declaration of title also, but Plaintiff failed to do so – Judgment and decree of Lower Courts set aside – Suit remitted back to Trial Court for fresh disposal enabling Plaintiff to amend suit appropriately and to try same in accordance with law – Appeal allowed.

2015 (6) CTC 851

P. Govindasamy

Vs

Manickam

Date of Judgment : 01.12.2015

Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11(d) – Rejection of plaint – Bar of limitation – Grounds thereof – Plea of limitation – Mixed question of law and facts – Adjudication thereof – Suit for Recovery of money – Plaintiff allege that he was instrumental for execution of Sale Deeds dated 6.10.2006 in favour of Defendants and for which Defendants have agreed to provide one percent of sale consideration as Brokerage Fee –

Suit filed on 28.10.2010 alleging that Defendants have failed to pay Brokerage Fee – Defendant filed Application to reject Plaint as barred by limitation – Single Judge ordered rejection of Plaint on ground of limitation – Plaintiff averred in Plaint that he filed Criminal Complaint on 2.2.2008 and subsequently filed Petition for registration of Complaint before High Court – High Court disposed of Criminal Original Petition on 25.7.2009 directing Plaintiff to seek remedy before Civil Court – Plaintiff caused legal Notice and filed Suit – Issue relates to exclusion of time spent in other litigation should be decided to adjudicate plea of limitation – Averments made in Plaint with regard to time spent in other litigation would warrant leading of evidence and adjudication of disputed facts – Plaint cannot be rejected at threshold without conducting trial on mixed question of fact and law on limitation – Order of Single Judge set aside.

Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11 & Order 1, Rule 10 – Rejection of Plaint – Non-Joinder of Necessary and proper parties – Whether Plaint could be rejected – Consequences thereof – Civil Court can direct impleadment of Necessary party at any stage of Suit – Necessary party can be impleaded even in Appellate stage after dismissal of Suit by Trial Court – Plaint cannot be rejected on ground of non-joinder of Necessary parties.

2015–5–L.W.854

Karumalai and others

Vs

Kittu

Date of Judgment : 12.10.2015

C.P.C., Section 100, evidence, appreciation,

Practice/Evidence, joint trial, scope.

Court cannot suo motu read evidence recorded in one case in another case, though both the cases are dealt with by same Court- Joint trial, feasibility, scope.

HIGH COURT CITATIONS CRIMINAL CASES

(2015) 4 MLJ (Crl) 129

P.Baskaran

vs.

State, rep by the Inspector of Police

Date of Judgment : 10.08.2015

Criminal Laws – Culpable Homicide – Provocation – Indian Penal Code 1860 (Code 1860), Sections 34, 299, 300, 302 and 304(i) – Appellants/Accused 1 and 2, along with other accused were charged for murder of deceased – Trial Court after appreciation of evidence convicted Appellants for offence under Section 302 r/w 34 of Code 1860 – Appeal against conviction – Whether Appellants are guilty of offence under Section 302 r/w 34 of Code 1860 – *Held*, accused have committed crime actuated by grave and sudden provocation – Thus, act of accused falls under First Exception to Section 300 of Code 1860 – But going by number of injuries found on deceased and medical opinion, these injuries would be sufficient to cause death of deceased – Injuries were not unintentional – Thus, act of accused falls within ambit of second limb of Section 299 of Code 1860 – Therefore, accused are liable for punishment under Section 304(i) of Code 1860 – Conviction and sentence imposed by Trial Court under Section 302 r/w Section 34 of Code 1860 set aside – Appellants convicted under Section 304(i) of Code 1860 – Appeal partly allowed.

(2015) 4 MLJ (Crl) 147

P.K.M.Selvam

vs.

State through, Inspector of Police

Date of Judgment : 20.08.2015

Complaint – Quashing of – Mining – Code of Criminal Procedure, 1973 (Code 1973), Sections 161(3) and 482 – Mines and Minerals (Development and Regulation) Act, 1957 (Act 1957) – Petitioners are accused of excavating granite stones beyond permitted limit in non-permitted areas – Petitioners sought quashing of complaint filed against them – Whether complaint against petitioners can be quashed – *Held*, acts such as those complained of in present cases, do constitute theft – Supreme Court has recognized proprietary rights in private persons over sub-soil/minerals in land owned by them – Offence of theft requires act of taking moveable property out of possession of person – Same, in effect, recognizes sand/minerals as moveable property – That accusation in all cases is that illegal mining was conducted also on poramboke lands cannot be lost sight of – Allegations of theft certainly can be made – First Information Reports allege commission of offences – Offences, if any committed and by whom, are matters for investigation – Where two cases have been registered in respect of wrong doing regarding same property, complaint in one would be treated as First Information Report and that in other 161(3) Code 1973 statement – First Information Report in case of petitioner/A2 has been registered at instance of Village Administrative Officer – It is difficult to accept position that in informing commission of offences, Village Administrative Officer was so uninformed that participation of petitioner/A2 was not mentioned in complaint – However, within three days, First Information Report has been altered to array Petitioner/A2, who was Minister in former Government, as accused – While statements of Government Officials, are hearsay, that of other witnesses demonstrably are vindictive attempts to rope in petitioner/A2 – Petitions dismissed – Petition of Petitioner/A2 allowed.

2016 (1) CTC 284

Ayyappan

vs.

State

Date of Judgment : 22.12.2015

Code of Criminal Procedure, 1973 (2 of 1974), Section 167(2) – Surrender of Accused before Magistrate – Surrender of Accused before Magistrate, who has no jurisdiction to try or to commit case for trial – Discretion of Magistrate – Accused may surrender before any Judicial Magistrate in State irrespective of whether Magistrate has or has not jurisdiction to try or to commit case for Trial – Magistrate has no option except to accept Surrender.

Code of Criminal Procedure, 1973 (2 of 1974), Section 167(2) – Surrender of Accused before Magistrate, who has jurisdiction either to try or to commit case for trial – Magistrate can remand Accused to such custody – Surrender of Accused before Magistrate, who has no jurisdiction to try or to commit case for trial – Procedure to be followed – When Magistrate is *prima facie* satisfied that detention of Accused is necessary, he shall remand him to such custody for term not exceeding fifteen days in whole with direction for production of Accused before jurisdictional Magistrate before expiry of Remand period – When Magistrate is of *prima facie* opinion that detention of Accused is unnecessary, he shall not remand him to custody and instead, he should forward him to jurisdictional Magistrate in Police escort and shall also forward information about surrender of Accused to Superintendent of Police/Commissioner of his District – Superintendent/Commissioner of Police in turn should forward information to jurisdictional Police officials within whose jurisdiction case is under investigation – When Magistrate has any doubt regarding which Judicial Magistrate has jurisdiction to try offence – Magistrate can forward Accused in Police escort to Chief Judicial Magistrate of District/Chief Metropolitan Magistrate within whose jurisdiction investigation is in progress and in turn CJM/CMM can forward Accused to jurisdictional Magistrate.

(2015) 4 MLJ (Crl) 533

R. Inbaraj

vs.

State rep. by the Inspector of Police

Date of Judgment : 30.09.2015

Cheating – Appeal against Conviction – Framing of Charge – Indian Penal Code 1860 (1860), Sections 417, 450, 376 – Accused was alleged to have entered house of *defacto* complainant and without consent of prosecutrix, deflowered her – Upon complaint and investigation, trial court framed charges under Sections 450 and 376 of Code 1860 – Trial court acquitted accused of charges framed under Sections 450 and 376 but convicted him under Section 417 of Code 1860 – Appellant/accused has contended that no specific charge has been framed under Section 417 of Code 1860, but trial court has erroneously found accused guilty under said section and sentenced him – Whether conviction of accused was right in law when charge was not framed – *Held*, since no mention has been made to effect that accused has given false promise to an extent of marrying prosecutrix, it is needless to state that conviction and sentence passed by trial court under section 417 of Code 1860 are not factually and legally sustainable – It is settled principle of law that without framing charge, accused cannot be punished under any section of law – Even without framing charge under section 417 of Code 1860, trial court has erroneously invited conviction and sentence under said section against Appellant/accused – Conviction and sentence passed against Appellant by Sessions Court set aside – Appellant acquitted – Appeal allowed.

(2015) 4 MLJ (Crl) 555

Murugan

vs.

State of Tamil Nadu

Date of Judgment : 15.09.2015

Murder – Homicide – Exception – Indian Penal Code 1860 (Code 1860), Section 300, 302 and 304(i) – Indian Evidence Act (Act), Section 114 – Deceased and wife of Appellant/Accused were alleged to have been involved in affair – Deceased was brother of Accused – After quarrel, accused attacked deceased and as result deceased died – Accused was tried and convicted by Trial Court – Appellant now before Court with appeal – Whether Appellant is guilty of offence under Section 302 of Code 1860 – *Held*, but for some quarrel arising out of affair between deceased and wife of accused, accused would have had no provocation to attack deceased at that odd hour – In respect of conversation between parties, it is for Court to presume from and out of certain basic facts – In this case, PW1 has stated that occurrence went for about 20 minutes – Details of quarrel have not been stated by prosecution – In this respect, prosecution has not come forward with clean hands – Going by natural human conduct, Court is able to presume, as provided under Section 114 of Act, that in said quarrel, deceased would have provoked accused and only out of said provocation, accused would have attacked deceased – Though PW1 has not explicitly stated so, Court finds reasons to presume so – Provoked by deceased and having lost his self-control, accused had attacked deceased with iron pipe – Act of accused would fall under exception one to Section 300 Code 1860 – Appellant liable to be punished under Section 304 (i) Code 1860 – Conviction and sentence imposed on Appellant set aside, instead he is convicted under Section 304 (i) of Code 1860 – Appeal partly allowed.

2015-2- LW. (Crl.) 677

Mookandi @ Esakkipandi

vs.

The State, rep by The Inspector of Police, Moolakaraipatti Police Station

Date of Judgment : 22.07.2015

Indian Penal Code (1860), Section 397,

Indian Evidence Act (1872), Sections 9, 27.

Test Identification parade – Identification of, in police station before going to Central Prison to identify accused in Test Identification Parade, has no value.

Joint confession statement recorded, improper procedure.

Confession statement after recovery recording of, nullity.

2015-2- LW. (Crl.) 725

R. Mathialagan

vs.

V. Ravichandrika

Date of Judgment : 05.08.2015

Criminal Procedure Code (1973), Section 125(1) explanation (b), section 125(4),

Held: divorced wife entitled for maintenance though marriage dissolved on ground of desertion – Section 125(4) not a bar.

2015-2- LW. (Crl.) 753

A. Nasira Begum

vs.

V. Husain Ahmed and another

Date of Judgment : 29.10.2015

Evidence Act, Section 47,

Difference in signature – Return of cheque by bank manager effect of – comparison of Signatures, scope of
– To send to hand writing expert.

2015-2- LW. (CrI.) 778

The Inspector of Police, Villupuram

vs.

Govindhasamy and others

Date of Judgment : 08.12.2015

I.P.C., Sections 302, 34,

Criminal Trial/Sudden death, vasovagal shock, proof of.

Murder – death due to strangling, evidence, appreciation of – Death, classification of – Natural, sudden, Miscellaneous causes – Death due to vasovagal shock, falls under ‘sudden death’ occurs freakishly – Not enough to conclude injury sufficient in the ordinary course to cause death.

2015 (6) CTC 831

Pandi @ Soundara Pandi

vs.

G. Sasikala

Date of Judgment : 01.09.2015

Code of Criminal Procedure, 1973 (2 of 1974), Section 125 – Maintenance – Grant of Interim Maintenance – Jurisdiction of Court to order ex parte Interim Maintenance – Mechanical interpretation of beneficial provision would defeat legislative intent – Domestic Violence Act enables aggrieved person to get ex parte Maintenance by approaching competent Family Court – Inordinate delay in disposal of main petition seeking Maintenance would result in serious injustice – Court can order Ad Interim ex parte Maintenance – Impugned Order failed to disclose emergency situations on basis of affidavit and documents – Object of granting Maintenance is measure of Social Justice intended to prevent vagrancy and destituteness – Court can grant ex parte Interim Order of Maintenance by recording sufficient reasons.
