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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

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SUPREME COURT CITATIONS CIVIL CASES

(2015) 8 MLJ 200 (SC)

Rakesh Mohindra

vs.

Anita Beri

Date of Judgment : 06.11.2015

Evidence – Secondary Evidence – Evidence Act (Act), Section 65 – Respondents – plaintiffs have filed suit for declaration that appellant-defendant has no right, title or interest over suit property in any manner – Defendant filed application in Trial Court under Section 65 of Act seeking permission to prove letter of disclaimer by way of secondary evidence – Trial Court allowed application and admitted letter of disclaimer to be used as secondary evidence – High Court in civil revision preferred by plaintiff-respondent set aside order of trial court – Hence, appeal by special leave by defendant – Whether High Court is justified in reversing order passed by Trial Court allowing defendant-appellant to lead secondary evidence of contents of documents – Held, all efforts have been taken for purpose of leading secondary evidence – Trial Court has noticed that photocopy of Exhibit came from custody of DEO – Witness, who brought record, has been examined as witness – There is compliance of provisions of Section 65 of Act – Merely because signatures in some of documents were not legible and visible that cannot be ground to reject secondary evidence – Trial court correctly appreciated efforts taken by appellant for purpose of leading secondary evidence – Appeal allowed.

2015 (6) CTC 545

Padmakumari

vs.

Dasayyan

Date of Judgment : 07.04.2015

Specific Relief Act, 1963 (47 of 1963), Section 19(b) – Bona fide Purchaser – Relief of Specific Performance – Rights of bona fide purchaser – Remedies available to bona fide purchaser - Bona fide purchaser purchased property for valuable consideration – Purchaser before purchasing Suit property applied for Encumbrance Certificate and verified about Title of Property – Encumbrance Certificate does not reflect alleged unregistered Sale Agreement executed in favour of Agreement holders – Purchase made by subsequent purchaser without knowledge of prior unregistered Sale Agreement is protected.

Contract Act, 1872 (9 of 1872), Section 55 – Specific Relief Act, 1963 (47 of 1963), Section 16(1)(c) – Contract of Sale of immovable property – When time is essence of Contract – Sale Agreement stipulates that balance sale consideration should be paid within prescribed time – Vendee failed to pay balance consideration within Contractual period – Consequences thereof – Recitals of Sale Agreement stipulating prescribed time for balance payment, would make time as essence of Contract – Plea of Vendee that time is not essence of Contract for sale of immovable property cannot be entertained.

Code of Civil Procedure, 1908 (5 of 1908), Order 6, Rule 3 & Appendix A, Form No.47 – Specific Relief Act, 1963 (47 of 1963), Section 16(c) – Plea of Readiness and Willingness – Necessity of pleadings – Suit for Specific Performance – Plaint did not contain necessary averments of readiness and willingness as prescribed under Form No.47 – Consequences thereof – Absence of necessary averments is fatal to case of Plaintiff.

2015 (6) CTC 555

Vaish Aggarwal Panchayat

vs.

Inder Kumar

Date of Judgment : 25.08.2015

Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11 & Section 11 – Application to dismiss Suit on ground that it was hit by res judicata – Plaintiff in subsequent Suit alleged that Decree in previous Suit was obtained by fraud and collusion – Cause of action and grounds urged for later Suit are different from earlier Suit – Court could not reject Plaintiff under Order 7, Rule 11 and Suit to be decided on trial.

2015 (6) CTC 562

L.C.Hanumanthappa

vs.

H.B.Shivakumar

Date of Judgment : 26.08.2015

Limitation Act, 1963 (36 of 1963), Article 58 – Specific Relief Act, 1963 (47 of 1963), Section 37 – Code of Civil Procedure, 1908 (5 of 1908), Order 6, Rule 17 – Suit for Declaration of Title – Computation of Limitation – Amendment of Plaintiff and Doctrine of Relation Back on limitation – Suit for bare Injunction restraining Defendant from interfering with possession, filed – Defendant filed Written Statement disputing title of Plaintiff to Suit property – Suit on being dismissed appealed and Suit remanded – Plaintiff sought to amend pleading as well as prayer to include relief of declaration – Such amendment made after three years from date on which Defendant filed Written Statement and disputed title of Plaintiff – Relief barred by limitation and time starts running from date on which Written Statement disputing title of Plaintiff was filed – Doctrine of Relation Back not applicable as amendment was ordered subject to limitation.

2015 (6) CTC 576

Prakash

vs.

Phulavati

Date of Judgment : 16.10.2015

Hindu Succession Act, 1956 (30 of 1956) [as amended by Act 39 of 2005], Section 6 – Female's right to inheritance in Coparcenary Property – Right to Survivorship – Whether Section 6 as amended by 2005 Amendment Act is prospective or retrospective in operation – Plaintiff/Daughter filed Suit for Partition and separate possession in year 1992 – Plaintiff's Father died on 18.02.1988 – Pending Suit, Amendment Act 39 of 2005 was introduced – Plaintiff amended Plaintiff claiming share in Coparcenary property by virtue of amended provision – Whether amended Act would apply to pending Suits – Death of Coparcener in Joint Hindu Family prior to 09.09.2005 – Right conferred on 'Daughter of Coparcener' would apply on and from commencement of Amendment Act – Succession opens on date of death of Coparcener and when Coparcener died prior to commencement of Amendment in such cases, succession would be governed by law prevailed prior to Amendment – Substantive provision would apply prospectively unless either expressly or by necessary intendment it is retrospective in nature – Rights under Amendment Act are applicable to living Daughters of living Coparceners as on 09.09.2005 – Disposition or alienation including Partitions, which have taken place before 20.12.2004 as per law applicable prior to that date will remain unaffected and any transaction of Partition effected thereafter will be governed by explanation – Case law discussed – Law laid down by Madras High Court in Bagirathi v. S.Manivanan, 2008 (4) CTC 374 (DB), affirmed.

Interpretation of Statutes – Literal Rule of Interpretation – Harmonious Construction – Prospective or Retrospective operation of Statute – Explanation or Proviso to main provision cannot be interpreted to decide nature of operation of Statute – Amendment of substantive provision would apply prospectively unless either expressly or by necessary implication it is retrospective.

SUPREME COURT CITATIONS CRIMINAL CASES

(2015) 4 MLJ (Crl) 371 (SC)

Balu

vs.

State of U.T. of Pondicherry

Date of Judgment : 16.10.2015

Murder – Common Intention – Indian Penal Code, 1860, Sections 326, 325, 324, 302, 149, 148 and 34 – Along with other accused, Appellants/accused Nos.4 and 5 convicted under Section 148 and Section 302 read with Section 149 and various other offences – On appeal, High Court, while maintaining sentence, modified conviction against accused Nos.1 and 2 and Appellants as conviction under Section 302 read with Section 34, Section 326 read with Section 34 and Section 324 read with Section 34 – But, acquitted accused No.3 – Appeal by accused Nos.4 and 5 – Whether High Court right in finding that Appellants acted in furtherance of common intention in committing murder of deceased – Whether High Court right in attributing constructive liability to Appellants while convicting them under Section 302 read with Section 34 – *Held*, for conviction of offence read with Section 34, it is necessary that there should be finding as to common intention of participants – Though High Court modified conviction from Section 302 read with Section 149 as Section 302 read with Section 34, it did not record finding as to how Appellants shared common intention to establish their constructive liability to sustain conviction under Section 302 read with Section 34 – Appellants attacked deceased with sticks on his face and deceased sustained nasal bone fracture, same cannot be act in furtherance of common intention to commit murder of deceased – Considering totality of circumstances, conviction of Appellants under Section 302 read with Section 34 cannot be sustained – Also, no specific overt act attributed to Appellants in attacking PWs.2, 4 and 5 – As Appellants did not act in furtherance of common intention in attack of witnesses, conviction of Appellants as modified by High Court under Section 326 read with Section 34 and under Section 324 read with Section 34 cannot be sustained, same liable to be set aside – Conviction of Appellants under Section 302 read with Section 34 modified as conviction under Section 325 and they are sentenced to undergo imprisonment to period already undergone – Appeal partly allowed.

(2015) 4 MLJ (Crl) 377 (SC)

Mehboob Ali

vs.

State of Rajasthan

Date of Judgment : 27.10.2015

Evidence – Admissibility of Evidence – Confessional Statement – Evidence Act (Act), Section 25, 26 and 27 – Appellants along with other accused were arrested and convicted for dealing with forged currency notes – In appeal preferred by appellants, it was submitted that confessional statement of accused recorded under Section 27 of Act was not admissible as there is no recovery of currency notes from their possession – Whether confessional statement of accused persons recorded under section 27 of Act is not admissible as accused persons were under custody of police – *Held*, it is apparent that there was discovery of fact as per statement of appellants – Co-accused was nabbed on basis of identification made by accused appellants – Co-accused was dealing with fake currency notes came to knowledge of police through accused appellants – Recovery of forged currency notes was also made from another co-accused – Thus accused appellants had knowledge about co-accused who was nabbed at their instance and on basis of their identification – These facts were not to knowledge of Police hence statements of accused persons leading to discovery of fact are clearly admissible as per provisions contained in section 27 of

Act – This falls in Section 27’s exception to general provisions about inadmissibility of confession made under police custody contained in sections 25 and 26 of Act – Appeal dismissed.

(2015) 4 MLJ (Crl) 486 (SC)

Baldev Singh

vs.

State of Haryana

Date of Judgment : 04.11.2015

Narcotics – Conscious Possession – Narcotic Drugs and Psychotropic Substances Act 1985 (Act 1985), Section 15 – Code of Criminal Procedure (Code), Section 313 – Appellant was arrested for possession of narcotics – On appreciation of evidence, Trial Court acquitted appellant – On appeal, High Court reversed finding of Trial Court and convicted appellant under Section 15 of Act 1985 - Whether High Court was right in convicting appellant under Section 15 of Act 1985 holding him in conscious possession of contraband – Held, no plea has been taken that appellant was not in conscious possession of contraband – Appellant has only pleaded that he is being falsely implicated and that false case has been foisted against him in police station – In his statement under Section 313 Code, appellant had not stated anything as to why would police foist false case against appellant – It is to be noted that huge quantity of poppy straw was recovered from possession of appellant – It is not possible to accept contention of appellant that he is being falsely implicated as it is highly improbable that such huge quantity has been arranged by police officials in order to falsely implicate appellant – It has been proved beyond reasonable doubt that accused being driver of tractor was in conscious possession of thirty three bags of poppy husk in trolley attached to tractor – Upon appreciation of evidence, High Court rightly reversed acquittal and convicted appellant under Section 15 of Act 1985 – Appellant has suffered protracted proceeding of about twenty five years – Sentence of imprisonment imposed on appellant is reduced – appeal partly allowed.

(2015) 9 SCC 502

Vikram Singh

vs.

Union of India

Date of Judgment : 21.08.2015

A. Penal Code, 1860 –Ss.364-A, 303 and 302 – Constitutional validity of S.364-A, upheld – Case of kidnapping for ransom and murder – Appellants convicted under Ss.302 and 364-A – Death sentence awarded to appellants – Reliance upon Mithu, (1983) 2 SCC 277, by appellants, to contend that S.364-A IPC, to the extent it denied to courts the discretion to award sentence other than death or life imprisonment, was ultra vires of right to life guaranteed to them under Art.21 of Constitution, held, misplaced – Death sentence of appellants, re-confirmed

B. Penal Code, 1860 – Ss.364-A and 11 – Ejusdem generis – Rule of, explained – Applicability of aforesaid rule in interpreting words “any other person” in S.364-A IPC – Definition of “person” in S.11 IPC – Relevance

C. Penal Code, 1860 – S.364-A – True scope and purport of – Historical background in which S.364-A came on statute book, given – Ingredients of S.364-A, highlighted – What necessitated the incorporation of S.364-A and a stringent punishment for those indulging in such activities, explained

D. Constitution of India – Art.245 – Nature and scope of legislative power – Validity of Statute/Judicial review – General principles – Self-restraint to be exercised by courts while examining vires of legislation validly enacted – Position summarized

E. Criminal Trial – Sentence – Principles for sentencing – Proportionality – Principles enumerated – Held, that punishment must be proportionate to offence, is recognized as a fundamental principle of criminal jurisprudence around the world

F. Constitution of India – Arts.32, 226, 129, 142 and 136 – Judgment of conviction and sentence of death attaining finality – Further proceedings – Maintainability of – Position discussed – Reiterated, duty to do justice in rarest of rare cases shall prevail over the policy of certainty or finality of judgments – Criminal Procedure Code, 1973 – Ss.353, 372, 374 and 386 – Penal Code, 1860 – Ss.302 and 364-A – Criminal Trial – Practice and Procedure – Final order/Finality of order/judgment

(2015) 9 SCC 609

S.R.Sukumar

vs.

S.Sunaad Raghuram

Date of Judgment : 02.07.2015

A. Criminal Procedure Code, 1973 – Ss.190(1)(a), 2(d), 200, 202, 203 and 204 – Amendment in criminal complaint – When permissible – Principles laid down – Subsequent events – Amendment seeking to introduce facts based on – Multiplicity of proceedings – Avoidance of – Prejudice to other side if likely – Consideration of

- Held, although there is no specific provision in CrPC to amend a complaint or a petition filed under CrPC, if amendment sought to be made relates to a simple infirmity which is curable by means of a formal amendment and by allowing such amendment no prejudice would be caused to the other side, court may permit such amendment to be made – But amendment cannot be allowed if it does not relate to a curable infirmity or infirmity cannot be corrected by a formal amendment or if there is likelihood of prejudice to the other side

B. Criminal Procedure Code, 1973 – Ss.190(1)(a), 2(d), 200, 202, 203 and 204 – “Taking cognizance of an offence on complaint” – Meaning of – Stage at which cognizance taken – Determination of – Obligation on the part of Magistrate while taking cognizance – Principles explained in detail

- Held, “taking cognizance of an offence” means applying judicial mind to contents of complaint and materials filed therewith and taking judicial notice of an offence – Magistrate takes cognizance of an offence when he decides to proceed against the person accused of having committed that offence and not at the time when he is just informed by filing complaint or police report about commission of that offence – Thus, mere presentation of complaint and receipt of same in court does not mean that Magistrate has taken cognizance of offence

- Magistrate is not bound to take cognizance where complaint does not disclose any cause of action – Under S.200 CrPC, for taking cognizance of an offence, court must examine complainant upon oath to find out whether complaint is justifiable or vexatious – It is only upon examination of complainant the Magistrate would proceed to apply judicial mind whether to take cognizance of offence or not

- But then, mere examination of complainant does not mean that Magistrate has taken cognizance of offence – On examination of complainant, Magistrate cannot be said to have ipso facto taken the cognizance when he is merely gathering material to decide whether a prima facie case is made out for taking cognizance or not

- However, it is neither practicable nor desirable to define as to what is meant by taking cognizance – Question as to whether Magistrate has taken cognizance of offence or not would depend upon facts and circumstances of given case

HIGH COURT CITATIONS CIVIL CASES

(2015) 8 MLJ 59

Sellappa Gounder

Vs

Palanisami

Date of Judgment : 06.10.2015

Property Laws – Usage of Common Passage – Injunction – Appellant/Plaintiff filed suit against Respondents/Defendants for declaration that suit passage jointly belonged to them and for permanent injunction not to obliterate ridge and widen passage and not to take carts and other vehicles through it – Trial Judge held that Plaintiff entitled to declaration that suit passage jointly belonged to Plaintiff and Defendants – Also, held that Plaintiff entitled to injunction against Defendants only not to widen passage – On appeal, Lower Appellate Judge concurred with findings of Trial Court – Plaintiff filed second appeal challenging disallowed portion of his claim for injunction restraining Defendants from taking carts and other vehicles through suit passage – Whether Plaintiff entitled to injunction restraining Defendants from taking carts and other vehicles through suit passage – *Held*, regarding decree of declaration, since Defendants did not file appeal or cross-objection even before Lower Appellate Court, decree of Trial Court as confirmed by Lower Appellate Court attained finality and nothing can be canvassed against it by Defendants – Regarding relief of injunction, Lower Courts declined injunction restraining Defendants from using suit passage for taking carts and other vehicles, since specific passage was enough to take carts – No defect or infirmity found in concurrent findings of Lower Courts – Lower Courts rightly held that Defendants should be restrained by decree of injunction not to widen passage beyond specific feet by either obliterating or shifting field bund – Lower Courts did not err in refusing injunction restraining Defendants from taking carts and other vehicles through suit passage and granting limited injunction against Defendants not to widen passage – Appeal dismissed.

2015(2) TN MAC 454 (DB)

The Branch Manager, United India Insurance Co. Ltd.

Vs

M.Ethirajulu

Date of Judgment 24.08.2015

NEGLIGENCE – Finding of – Challenge to – Injured/Claimant, a Labourer, travelling in Van as an Employee – Van driven rashly and negligently dashed against Tractor-cum-Trailer from behind – Injured sustained grievous injuries in accident – Doctrine of Res ipsa loquitur squarely applicable – Version of Claimant as PW1 duly corroborated by documentary evidence viz. FIR, Wound Certificate, Accident Register, MV Inspector's Reports, Charge-sheet and judgment of Criminal Court, etc. – Preponderance of probabilities sufficient to prove manner of accident and negligence – Strict proof of evidence not necessary – Evidence on record sufficient to conclude that accident occurred in manner as stated by Claimant – No material warranting interference with finding of Tribunal holding Van driver negligent in driving – Moreover, even if Driver of Tractor-Trailer was negligent, would make no difference when Insurers of both vehicles are one and same Insurance Company – Finding of Tribunal confirmed.

PERMANENT DISABILITY – LOSS OF EARNING CAPACITY – Assessment – Injured/Claimant aged 32 yrs., a Coolie, suffered fractures of thigh bone, hip and mandible – Treated in various hospitals from 28.06.2006 to 19.10.2006 as inpatient – Injured underwent 9 surgical procedures including metallic implantation and removal and hip arthroplasty – Left lower limb shortening by 2 inches left knee passive ROM Injured not able to squat, difficulty in walking and observed short limb gait – Disability assessed by Medical Board as 60% Permanent Disablement –

Tribunal taking monthly income at Rs.6,000 and adding 50% as Future Prospects, fixed income at Rs.9,000 p.m. – Applying Multiplier of 17, Tribunal awarded Rs.11,01,000 towards Loss of Earning Capacity [Rs.9,000 x 12 x 17 x 60%] – High Court in Appeal confirming income and disability as fixed by Tribunal, applied proper Multiplier of 16 as against 17 and awarded Rs.10,60,000 [Rs.9,000 x 12 x 16 x 60%] towards *Loss of Earning Capacity* – Since injured suffered left lower limb shortening by 2 inches causing whole body disablement, injured entitled to Compensation both under “*Permanent Disability*” and “*Loss of Earning Capacity*” – Apex Court in *B.Kothandapani* followed – Accordingly, High Court awarded Rs.60,000 towards *Permanent Disability*.

INCOME – Fixation of – Injured/Claimant aged 32 yrs., a Labourer/Coolie employed in a Van for loading/unloading goods – Tribunal taking average earning at Rs.200 per day taken monthly income at Rs.6,000 – Adding 50% as Future Prospects, Tribunal fixed income at Rs.9,000 p.m. [Rs.6,000 + Rs.3,000] following Apex Court in *Santosh Devi - Held*, not excessive warranting any interference.

MULTIPLIER – Proper Multiplier – Injured/Claimant aged 32 yrs. – Application of Multiplier of 17 by Tribunal, held, not proper – Tribunal ought to have applied Multiplier of 16 as per ratio in *Sarla verma* (SC).

PAIN & SUFFERING – Award of Compensation under – “Pain” is one experienced momentarily and may continue even for longer period depending upon gravity/situs of injuries – “Suffering” is loss of happiness due to same – Injured suffered multiple injuries, treated as an inpatient for long period and underwent 9 surgical procedures – Disability assessed at 60% - Award of Rs.1,30,000 towards Pain & Suffering, *held*, slightly on higher side – Reduced to Rs.1,00,000.

2015–5–L.W. 476

Chinna Pillai and another
Vs
T.S. Natarajan and others

Date of Judgment : 02.09.2015

Injunction/Title, Adverse possession,

Adverse possession/alternate plea, cultivating tenant, effect of.

Suit for injunction based on adverse possession – Alternate plea of cultivating tenant, whether tenable.

Held: No-mutually destructive - Evidence, adducing of, in absence of plea, permitting of, scope – Amendment of plaint, need for – authority under special enactment, deciding an issue, effect on civil court, binding nature, scope of.

(2015) 8 MLJ 525

Nisar Ahamed
vs.
S. Leela

Date of Judgment : 30.10.2015

Res judicata – Production of documents – Code of Civil Procedure, 1973, Order 7, Rule 14(3) – Respondent/Plaintiff filed suit for permanent injunction and also filed application to receive document in question, which is information received from Secretary to Government – Since Respondent found that document was received from Under Secretary to Government cum Public Information Officer and not from Secretary to Government, Respondent made an endorsement and application was dismissed as not pressed – Thereafter, Respondent filed another application to receive document received from Under Secretary to Government cum Public Information Officer, same allowed by Trial Court – Revision – Whether application was barred by res judicata in view of filing of similar application, which was earlier dismissed as not pressed – Held, Trial Court gave cogent

reasons for allowing application and considered issue relating to res judicata – Previous application filed by Respondent to receive document in question was not dismissed on merits but only as not pressed – Therefore, impugned subsequent application to receive document in question cannot be said to be barred by res judicata – Court in full agreement with Trial Court – No interference with impugned order – Petition dismissed.

2015 (6) CTC 618

Narendra Prasad

Vs

Indian Express Newspapers (Bombay) Pvt.Ltd

Date of Judgment : 28.07.2015

Law of Evidence – Production of Evidence – Practice and Procedure – Admissibility and evidentiary value – Duty of Court, thereof – Relevancy of Evidence – Admissibility of Evidence – Important aspects to be considered by Court when document is to be proved and relied upon in evidence : (i) Proof of execution of document (ii) Proof of contents of document (iii) Evidentiary value of document as whole.

Indian Evidence Act, 1872 (1 of 1872), Sections 40, 41, 42, 42 & 13 – Relevancy of Judgments – Judgment not inter-partes - Nature of Evidence – Whether “Judgment inter-partes” can be considered as piece of evidence – Mode of proof – Person not being party to Suit sought to mark Judgment rendered by competent Court in another Suit – Admissibility – Marking of Judgment of competent Court in another Suit – “Judgment not inter-partes” pronounced by competent Court in Suit in which right in dispute was asserted and recognized or denied, is admissible in evidence.

Indian Evidence Act, 1872 (1 of 1872), Sections 74, 75, 76 & 63 – Public Documents – Private Documents – Mode of Proof – Distinction – Marking of Plaintiff and Written Statement filed in other Suits – Defendant raised objection that Plaintiff and Written Statement sought to be relied upon are not Public documents – Mode of proof of Public document – Plaintiff and Written Statement are Public documents – When Plaintiff gets registered and taken on file, it becomes Public documents and copies can be granted only to persons interested on satisfaction of Court – Issuance of Certified copy of Plaintiff would make Plaintiff as Public document – Nature of admissibility depends upon stage at which those documents stand in Court – Plaintiff/Written Statement may be admissible in proof of fact, but it cannot be admissible to prove correctness of Statement contained therein, unless it is proved by direct or secondary evidence.

Indian Evidence Act, 1872 (1 of 1872), Section 65 – Admissibility of Evidence – Marking of Certified copy of Photo copy of Partnership Deed – General Rule – Copy of Photo copy is inadmissible in evidence – Exceptions – Party, who opposes marking of document himself, has relied upon document in another Suit – Objection to marking is legally untenable.

Code of Civil Procedure, 1908 (5 of 1908), Order 13, Rules 1 & 3 – Admissibility of Evidence – Marking of Documents – Objection for marking – How to be made – When to be made – Duty of Counsel – Nature of objection – Classification – (i) Objection that document (sought to be proved) itself inadmissible in evidence (ii) where objection was not with regard to admissibility of document but with regard to mode of proof – Objection to admissibility can be taken even at later stage of Appeal or in Revision – Objection in relation to mode of proof should be taken at time of marking of document and it cannot be allowed at any stage subsequent to marking of documents – Document admitted in evidence does not amount to proving of contents of documents.

Words and Phrases – “Judgment inter-partes” – Meaning – Nature and Scope – Judgment, which operates only upon those, who have been duly made parties and then privies.

2015 (6) CTC 637

Rajaraman

Vs

Subramanian

Date of Judgment : 25.09.2015

Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rules 3 & 7 – Moulding of Relief – Suit for Injunction – Plaintiff claiming Easementary right – Suit decreed and Decree confirmed in Appeal – Second Appeal by Defendants – Plaintiff has not provided proper description of property, over which he claims Easementary right – Order 7, Rule 7 states that every Plaintiff shall state specifically relief claimed by Plaintiff either simply or in alternative and that it shall not be necessary to ask for general reliefs, which Court may deem fit and proper under facts of case – Such general relief alone has been sought for by Plaintiff in as Prayer No.(c) – Person claiming Easementary right cannot simply rely on said part of Order 7, Rule 7 and contend that though no prayer based on easement is claimed or though course of easement over other man's property is not clearly defined, he shall be entitled to such relief – Person claiming easement should precisely plead property over which he claims easement – As Plaintiff has not done it, Plaintiff's case deserves to be rejected.

Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 3 – Easements Act, 1882 (5 of 1882), Section 4 – Injunction Suit – Claim of right of Easement – Defendants contending that total extent of S.No.79/8 is 9 cents, total extent of S.No.79/9 is 9 cents and total extent of S.No.79/10 is 9 cents and that all three sub-divisions put together is only 27 cents, but Plaintiff provided description of 'B' Schedule as forming part of above said sub-divisions, with larger extent of 30 cents – Plaintiff has not provided proper description of property, which is claimed to be road through which he claims Easementary right – Under said circumstances, Courts below ought not to have decreed Suit without description of Plaintiff 'B' Schedule property being amended to show exact portion over which easement was claimed – Not in interest of justice to grant relief in favour of Plaintiff when description is not proper, especially when Defendants claim that the road created over portions left by southern plot owners and northern plot owners lies on north of pillars put up by Defendants – Defects have not been rectified by Plaintiff – As Plaintiff failed to accurately plead property over which he claims easement, no relief can be granted in his favour.

Code of Civil Procedure, 1908 (5 of 1908), Order 1, Rule 10 – Easements Act, 1882 (5 of 1882), Section 4 – Plaintiff claiming Easementary right – Plaintiff Schedule shows that 'B' Schedule property is bounded on south not only by Defendants' house, but also by houses of three others – When Plaintiff claims Easementary right over entire stretch of land, he ought to have made them parties or else he ought to have examined them as Witnesses on his side to show that they did have no objection for using portions corresponding to their property, as road – Plaintiff failed to make all owners of Servient Tenements, over which he claims Easementary right, as parties to Suit – Suit deserves to be dismissed.

Easements Act, 1882 (5 of 1882), Sections 4, 13 & 15 – Code of Civil Procedure, 1908 (5 of 1908), Section 100 – Evidence Act, 1872 (1 of 1872), Sections 101, 102 & 103 – Suit for Injunction – Concurrent findings in favour of Plaintiff – Person claiming easement should precisely plead property over which he claims easement – But Plaintiff has not done it – Both Courts wrongly cast burden of proof on Defendants and basing on weakness of defence, decreed Suit, without even noticing major flaw in Plaintiff's pleading regarding portion over which Plaintiff claimed Easementary right – Impugned Judgment and Decree set aside – Second Appeal allowed.

2015 (6) CTC 689

Beryl Dhinakaran

Vs

D.Albert

Date of Judgment : 29.07.2015

Indian Evidence Act, 1872 (1 of 1872), Sections 68 & 69 – Settlement Deed – Proof of – It is duty of beneficiary of Will or Settlement Deed to prove attestation as required under provisions of Act – Attestors to

Settlement Deed died – Person acquainted with signature of deceased Attestors examined – On facts, execution and attestation of Settlement Deed proved in accordance with law – Held, Settlement Deed valid.

Interpretation of Documents – Settlement or Will – Even though Settlor has retained possession of property till his lifetime i.e. Life Estate to himself – Document cannot be construed as Will – Donor’s right to use property for lifetime does not affect transfer of ownership – On facts, document in question, held, a Settlement and not a Will – Case-law discussed.

2015 (6) CTC 750

Annadurai
Vs
Subburaj

Date of Judgment : 27.08.2015

Code of Civil Procedure, 1908 (5 of 1908), Section 55 – Arrest and Detention – Money Decree – Decree holder levied execution for non-satisfaction of Decree – Judgment-debtor filed Application before Insolvency Court to declare him as Insolvent – Maintainability of Execution Petition for arrest and detention – Execution Court ordered arrest without recording evidence for sufficient means – Mandatory procedure to be followed – Court should record finding that Judgment-debtor failed and neglected to pay Decree amount despite sufficient means to pay – Execution Court ordered arrest without recording any finding as to sufficient means – Order of Arrest issued by Execution Court militates against Procedural law and Constitutional principles – Impugned Order of Arrest set aside and matter remanded to Execution Court to consider Plea of Insolvency raised by Judgment-debtor.

2015–5–L.W. 755

S. Rajkannu
Vs
R. Shanmugapriya

Date of Judgment : 20.08.2015

Hindu Marriage Act 1955), Sections 13-B, 28, divorce, appeal, scrapping of.

Petition for divorce by mutual consent presented by both parties and order of divorce passed when revision petitioner alone was present – wife challenged in appeal – whether to scrap appeal.

Held : consent decree under Section 13-B different from a consent decree in non-matrimonial matters – Section 28(1) clear that a consent decree passed under Section 13-B of H.M. Act is appealable.

2015–5–L.W. 763

Vadivelan
Vs
Rajeswari and others

Date of Judgment : 26.10.2015

Hindu Succession Act 1956), Sections 15, 16,

Benami transaction prohibition act (1988), Section 3, 4.

Claim for death cum retirement gratuity, insurance policies of ‘T’ – Succession, determination of – Nomination, effect of, Property, whether benami, section 4 bar, if applies – Marriage of ‘T’ with second wife, if proved.

R was legally wedded wife of late T and M was legitimate son – Two insurance policies taken on the life of late T – R was shown as the nominee – Nominee has right to collect amount on behalf of legal heirs and give a valid discharge – Appellant born through first wife, C mother of T, R (second wife), M, legal heirs, when succession to properties of T opened, all four persons entitled to equally share amounts.

C, mother of T died, effect of – sons of T appellant and second respondent/third defendant her legal heirs – Daughter-in-law stands excluded from succeeding to share of C.

No evidence to show family did have ancestral nucleus for purchase of property, exemption provided under Section 4 cannot be applied.

HIGH COURT CITATIONS CRIMINAL CASES

2015-2- LW. (CrI.) 426

Ajay Kumar Bisnoi and another
vs.

M/s. KEI Industries Ltd

Date of Judgment : 25.09.2015

Practice/Advocates, boycott, effect of, litigants to claim damages,

Negotiable Instruments Act (1881), Section 138, litigants to claim damages,

Criminal Procedure Code, Sections 200, 205, personal appearance, exemption, scope, 273, 317, litigants to claim damages.

Personal appearance, exemption of, in cheque dishonor cases – when can be allowed – Representation by counsel – non-appearance of advocates, court to report to Bar Council of India for action – Subordinate Courts, direction to – Scope – Boycott of courts by lawyers – effect of.

No Advocate has a right to abstain from Court without first returning the briefs to his clients and refunding the fees received from them – Failure of a lawyer to attend to his case in Court, not only breach of contract and breach of trust, but also professional misconduct.

It is open to litigants to claim damages and also to move the consumer forum, for damages caused by advocates by not representing the matters in Courts – No Advocate shall be permitted to represent the matter without robes (dress-code) on boycott day – order set aside.

(2015) 4 MLJ (CrI) 430

Theerthagiri

vs.

State rep. by the Inspector of Police

Date of Judgment : 13.10.2015

Rape – Criminal Intimidation – Indian Penal Code 1860 (Code 1860), Sections 376 and 506 (i) – First Accused directed prosecutrix and subsequently, without her consent, has deflowered her – Due to his overt acts, prosecutrix has become pregnant – First accused has firmly refused to marry her – Accused Nos.2 and 3 have threatened prosecutrix by way of saying that they would abort her pregnancy – Trial Court found First Accused guilty under Section 376 and 417, Code 1860 – Accused Nos.2 and 3 were sentenced under Section 506(i), Code 1860 – Against convictions and sentences, present criminal appeal has been filed by Accused/Appellant – Whether Appellants guilty of offences under Code 1860 – *Held*, specific evidence given by prosecutrix is that from inception she knows very well that her marriage with First Accused would not be possible – Even though her mind is clear, only for purpose of quenching lust, she has had coition with First Accused and consequently, become pregnant and delivered child – It is clear that prosecutrix is also consenting party for having sexual intercourse with First Accused – Trial Court without perpending evidence given by prosecutrix has erroneously found First Accused guilty under Sections 376 and 417 Code 1860 – Without considering unexplained delay of giving complaint, Trial Court has erroneously found Accused Nos.2 and 3 guilty under Section 506(i) Code 1860 – Convictions and sentences passed by Trial Court are not factually and legally sustainable – Convictions and sentences passed by Trial Court set aside – Appellants/accused are acquitted – Appeal allowed.

2015-2- LW. (Crl.) 435

R. Makeswaran

vs.

The State rep. By The Inspector of police

Date of Judgment : 10.09.2015

Criminal Procedure Code, Sections 93 to 104, search and 'seizure Memo', Section 461,

Prevention of Corruption Act (1988), Sections 7, 13(2) r/w 13(i)(d).

Failure on the part of the Investigating Agency in preparing seizure memo does not vitiate proceedings – A seizure memo in nothing but a corroborative piece of evidence.

2015-2- LW. (Crl.) 468

T. Senthamaraikannan

vs.

The State rep. by the Director General of police

Date of Judgment : 07.09.2015

I.P.C., Section 300, exception I, clause three, culpable homicide not amounting to murder, section 299, 302,

Accused was son-in-law and deceased was the son of P.W.1.

Meeting of accused, deceased and P.W.1 was by sheer chance, shows accused would not have had any pre-meditation to do away with the deceased – Conduct of deceased provoked accused – No motive, no-pre-meditation – Accused lost his self control by the provocation made by P.W.1 and deceased and because of that he stabbed deceased once – Act fall within exception 1 to Section 300, same would not amount to culpable homicide amounting to murder – act of accused fall only under the second limb of 299.

2015 (6) CTC 501

Kamalesh Kumar Sheth

vs.

The Inspector of Police, Central Crime Branch - II

Date of Judgment : 03.11.2015

Code of Criminal Procedure, 1973 (2 of 1974), Sections 26, 29(1) & (2), 167 & 325 and Schedule I – Whether Default Bail is granted on expiry of 60 days or 90 days in respect of offences under Section 409, IPC – Offence under Section 409, IPC is punishable with imprisonment for life or 10 years and fine – Such offence triable by Magistrate of First Class – Contention that Default Bail will be granted on expiry of 60 days under Section 167(2)(a)(ii) as maximum punishment that can be granted by Magistrate/CMM is 3/7 years, rejected – Expression “punishable” occurring in Section 167 is not used in relation to power of Magistrate to impose punishment but relates to offence under investigation by Police – Expression “investigation” occurring in Section 167 assumes primacy and not expression “punishable” – Issue of punishment arises during trial and not at investigation stage – Entire history on remand from 1859 traced and Case-law discussed.

Interpretation of Statutes – Word used in Statute is to be interpreted in context in which it is used in Statute – Interpretation of such word used in another Statute cannot be applied in totally different context.

(2015) 4 MLJ (Crl) 513

Oikattan

vs.

State rep. by the Inspector of Police

Date of Judgment : 28.10.2015

Murder – Acquittal – Indian Penal Code 1860 (Code 1860), Sections 302 and 114 – Respondents 2 to 5 are accused Nos.1 to 4 – Accused Nos.1 and 2 stood charged for offence under Section 302 Code 1860 and accused 3 and 4 stood charged for offence under Section 302 read with 114 Code 1860 – Trial Court acquitted all four accused – Appellant is father of deceased – He has come up with this appeal challenging acquittal of respondents – Whether Trial Court was right in acquitting all accused - *Held*, to come to conclusion that prosecution has failed to prove case beyond reasonable doubts against all accused, trial Court has given cogent reasons except few reasons which are not tenable – Enormous delay in forwarding FIR to Court, which has not been explained away and conduct of PWs.1 to 3 and doubt regarding their very presence are main reasons stated by trial Court for acquitting accused – When Court looks into facts of instant case and when Court appreciates evidence let in by prosecution, Court has no hesitation at all that trial Court was right in acquitting accused – Assuming that on certain points there are two views possible, unless view taken by trial Court is found to be perverse and totally untenable, it is not permissible for this Court to substitute its view in place of view taken by trial Court – Appeal dismissed.

(2015) 4 MLJ (Crl) 535

Samuthiram

vs.

State by Inspector of Police

Date of Judgment : 01.10.2015

Murder – Solitary Witness – Indian Penal Code, 1860, Section 302 – Charge against Appellant/accused No.1 and accused No.2 framed under Section 302 – Trial Court acquitted accused No.2, but convicted Appellant under Section 302 – Appeal by accused No.1 – Whether prosecution proved case against Appellant beyond reasonable doubts – *Held*, evidences show that there is material contradiction, but same is not explained by prosecution – Since other eye-witness passed away before commencement of trial, PW-1 is solitary witness to alleged occurrence, but credibility of same doubted by Trial Court – Even according to Trial Court, PW-1 is only partly believable – If there is only evidence of solitary witness, prudence requires that same requires corroboration – In absence of such corroboration, there can be no legal or factual impediment to rely on such evidence, provided said evidence inspires confidence – If evidence of solitary witness does not inspire confidence, then it is not safe to rely on said solitary evidence – In present case, PW-1 is not fully believable, her presence is doubtful and there is no corroboration for her evidence from independent source – Prosecution failed to prove case beyond reasonable doubts – Conviction imposed on Appellant set aside and he is acquitted – Appeal allowed.

(2015) 4 MLJ (Crl) 562

Saravanan

vs.

State of Tamil Nadu

Date of Judgment : 30.09.2015

Murder – Dying Declaration – Indian Penal Code, 1860, Section 302 – Appellant/accused convicted under Section 302, same challenged with allegation that dying declaration relied on by prosecution does not inspire confidence, since deceased made different statements – Whether prosecution proved case of accused beyond reasonable doubt based on dying declaration of deceased – *Held*, in multiple dying declarations, when one dying declaration is in favour of accused, to reject same and to accept dying declaration against accused, Court should find sufficient reasons – But, in present case, no reason found to reject earliest dying declaration of deceased to

Doctor, which is in favour of accused – Doubt that deceased tutored by relatives also not obviated by prosecution – Fact that deceased unconscious for some time also spoken by PW-10 – Not safe to sustain conviction of accused solely based on dying declaration by deceased to Judicial Magistrate – Prosecution failed to prove case beyond reasonable doubt – Conviction imposed on Appellant set aside and he is acquitted – Appeal allowed.

(2015) 4 MLJ (CrI) 587

V.Duraisamy

vs.

State, The Inspector of Police

Date of Judgment : 09.09.2015

Suicide – Abetment of Suicide – Suicide Note – Indian Penal Code 1860 (Code 1860), Section 306 – Deceased received sum from Accused – Subsequently deceased committed suicide – Daughter of deceased as defacto complainant gave complaint to Investigating Officer – Trial court on basis of suicide note found 2nd Accused guilty under Section 306 of Code 1860 and sentenced him – Whether accused compelled deceased to commit suicide – *Held*, it is seen from records that Complaint has been given by P.W.1, daughter of deceased – At time of giving Complaint, suicide note has not been given to Investigating Officer, but subsequently same has been seized under cover of Mahazar – It is needless to say that suicide note is nothing but concocted document and same cannot be given weight – Trial court has simply believed suicide note – Trial court has failed to understand that no incriminating materials are available against 2nd accused in charge and erroneously, invited convictions and sentences against him – Convictions and sentences passed by Trial court set aside – Appellant/2nd accused is acquitted – Appeal allowed.

(2015) 4 MLJ (CrI) 641

Ganesan

vs.

State rep. by Inspector of Police

Date of Judgment : 30.09.2015

Murder – Right of Private Defence – Indian Penal Code, 1860, Sections 302, 100 and 97 – Appellant/accused convicted under Section 302, same challenged with allegation that evidences available on record to prove that accused acted in right of private defence – Whether right of defence of body, which accused exercised could extend to cause death of deceased – *Held*, evidence shows that suddenly deceased made first attack, which accused would not have even expected, same made with formidable wooden log – Accused would have had reasonable apprehension that if more attacks made, either same would result in death or in grievous hurt – Accused had right of private defence which would extend to causing of death – Accused did not exceed his right of private defence of his body, because he had apprehension that deceased would further attack him with wooden log and in that process, he would be killed – Act of accused falls within ambit of Section 100 and it is not offence in view of exception in Section 97 – Conviction imposed on Appellant set aside and he is acquitted – Appeal allowed.
