



TAMIL NADU STATE JUDICIAL ACADEMY

Vol: XIV

Part: 1

January, 2019

IMPORTANT CASE LAW



HEADQUARTERS, CHENNAI

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

Phone Nos. 044– 24958595 / 96 / 97 / 98 Fax: (044) 24958595

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

REGIONAL CENTRE, COIMBATORE

No.251, Scheme Road, Race Course, Coimbatore - 641 018.

Telephone No: 0422 - 2222610/710

E-Mail:tnsja.rc.cbe@gmail.com

REGIONAL CENTRE, MADURAI

Alagar Koil Road, K.Pudur, Madurai - 625 002.

Telephone No: 0452 - 2560807/811

E-Mail:tnsja.rc.mdu@gmail.com

INDEX

S. No.	IMPORTANT CASE LAW	PAGE No.
1.	Supreme Court – Civil Cases	1
2.	Supreme Court – Criminal Cases	4
3.	Madras High Court – Civil Cases	8
4.	Madras High Court – Criminal Cases	14

TABLE OF CASES WITH CITATION

SUPREME COURT - CIVIL CASES

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Sushil Kumar Agarwal Vs. Meenakshi Sadhu	(2018) 8 MLJ 446 (SC)	09.10.2018	Contract – Specific performance – Development agreement – Section 14(3)(c) of Specific Relief Act	01
2	P. Radha Bai Vs. P. Ashok Kumar	(2018) 8 MLJ 496 (SC)	26.09.2018	Limitation – Arbitration award – Objections	01-02
3	Venugopal padayachi Vs. V. Pichaikaran	(2018) 10 SCC 549	18.09.2018	Property Law – Adverse Possession – Mortgage	02
4	Sudarsan puhan Vs. Jayanta Mohanty	(2018) 10 SCC 552	20.09.2018	Motor Accident – Compensation Claim – Sections 173 r/w 96 of Motor Vehicle Act	02
5	Ravi Chand Mangla Vs. Dimpal Solania	(2018) 10 SCC 610	18.09.2018	Rent Control – Eviction – Striking off defence – Default in payment of rent	03

SUPREME COURT - CRIMINAL CASES

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
1	Ram Lal v. State of Himachal Pradesh	(2018) 4 MLJ (CrI) 698	03.10.2018	Corruption – Confession – Sections 13 of Prevention of Corruption Act – Sections 409 and 477-A IPC	04
2	Labhuji Amratji Thakor v. state of Gujarat	(2018) 4 MLJ (CrI) 739	13.11.2018	Summons – Additional Accused – Section 319 Cr.P.C.	04
3	Rajesh Sharma v. State of U.P	(2018) 10 SCC 472	27.07.2017	Section 498-A IPC – Misuse of Section – Remedial measures – Directions issued	05-06
4	Shamim v. State (NCT of Delhi)	(2018) 10 SCC 509	19.09.2018	Criminal Trial – Credibility of witness	06
5	State of M.P. v. Gangabishan	(2018) 9 SCC 574	27.07.2018	Culpable homicide not amounting to murder – Inference of From nature of injury inflicted	07

MADRAS HIGH COURT – CIVIL CASES

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Rajendran Vs. Mohanambal	(2018) 8 MLJ 649	09.11.2018	Civil Procedure – Execution Proceedings – Obstruction Petition – Order 21 Rules 97, 101 and 102 – CPC	08
2	Pichaimuthu Vs. Rasu	(2018) 8 MLJ 665	22.10.2018	Succession Laws – Partition – Joint family property – Section 32(6) of Indian Evidence Act	09
3	T.R. Murugesan Vs. S. Balakrishnan	(2018) 8 MLJ 688	11.09.2018	Contract – Specific performance – Time – Section 16(c) of Specific Relief Act – Section 52 off Contract Act	09-10
4	MRF Limited Vs. Multi Race Force Lubricants Pvt. Ltd.	(2018) 8 MLJ 724	14.09.2018	Intellectual Property Laws – Trademark – Infringement – Injunctive relief qua	10
5	M. Govindasamy (Deceased) v. R. Krishnan (died)	(2018) 8 MLJ 750	20.11.2018	Civil Procedure – Execution proceedings – Fraudulent decree – Section 47 CPC	10-11
6	Godrej and Boyce Manufacturing Co., Ltd. Vs. T.N.S.I.D.C. Ltd.	(2018) 8 MLJ 754	23.10.2018	Property Laws – Road for access – Maintenance charges	11
7	Lakshmi Vs. K. Selvaraj	(2018) 8 MLJ 761	26.10.2018	Succession Laws – Property of Hindu female – Validity of settlement – Section 14 of Hindu Succession Act	11-12
8	Lagrave Jayaseeli Vs. Trinite Modestine (deceased)	(2018) 8 MLJ 415	25.09.2018	Civil Procedure – Impleadment of Parties – Assignees – Order 22 Rule 10 CPC	12
9	A/m. Agatheeswarar Prasanna Vs. Subramania Chettiar	(2018)8 MLJ 434	03.09.2018	Civil Procedure – Res Judicata – Order 21 Rule 101 CPC	12-13
10	V. Vijayalakshmi Vs. D. Annalakshmi	(2018) 8 MLJ 442	20.09.2018	Civil Procedure – Comparison of signature – Handwriting expert – Order 26 Rule 10(A) CPC	13

MADRAS HIGH COURT – CRIMINAL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Integrated Finance Co. Ltd. Vs. Ravishankar Industries Pvt. Ltd.	(2018) 4 MLJ (CrI) 647	14.09.2018	Negotiable Instruments – Execution of Cheques – Presumption – Sections 20, 138 and 139 of Negotiable Instruments Act	14
2	Manickam vs. State of Tamilnadu	(2018) 4 MLJ (CrI) 654	29.09.2018	Abetment of Suicide – Dowry Demand – Sections 306 and 498-A IPC	14
3	Shanthi Aqua Farms vs. Secretary to Government of Tamilnadu	(2018) 4 MLJ (CrI) 658	03.10.2018	Theft – Extraction of Water – Sections 378, 379, 425 and 426 IPC	15
4	D.Ravichandran vs. State	(2018) 4 MLJ (CrI) 691	24.10.2018	Misappropriation of property – Conspiracy – Sections 120-B and 409 IPC	15
5	Arul vs. State	(2018) 4 MLJ (CrI) 704	08.10.2018	Seizure of contraband – Sampling – Sections 41 and 32(c) of Tamilnadu Prohibition Act	16
6	K.Jeevanantham vs. State	(2018) 4 MLJ (CrI) 709	16.11.2018	Quashing of Final Report – Murder – Sections 34 and 302 IPC	16
7	Karur Murali v. Public Prosecutor, Tirunelveli	(2018) 4 MLJ (CrI) 578	04.10.2018	Quashing of Complaint – Defamation – Sections 199 and 482 Cr.p.c.	17
8	Sabari @ Sabarigiri v. Assistant Commissioner of Police	(2018) 4 MLJ (CrI) 585	26.09.2018	Quashing of Records – Review of History Sheets – Sections 109 and 110 Cr.p.c. – Article 21 of Constitution of India – Nos. 741 to 748 of Police Standing Orders	17
9	K.R. Meenakshi v. M. Jayanthi	(2018) 4 MLJ (CrI) 611	22.10.2018	Quashing of Proceedings – Private Complaint – Sections 200 and 482 Cr.p.c. – Section 493, 494, 120-B and 506(ii) IPC	18
10	T. Muthuramalingam v. Inspector of Police	(2018) 4 MLJ (CrI) 392	11.09.2018	Quashing of FIR – Civil Dispute – Section 482 Cr.p.c. – Sections 420, 447, 464, 465, 468 and 47 IPC	18

SUPREME COURT– CIVIL CASES

(2018) 8 MLJ 446 (SC)

Sushil Kumar Agarwal v. Meenakshi Sadhu

Date of Judgment: 09.10.2018

Contract – Specific performance – Development agreement – Specific Relief Act 1963, Section 14(3)(c) – Suit filed by Appellant / Plaintiff / builder for specific performance of development agreement against Respondents / Defendants / owners of premises dismissed by lower Courts on ground that suit was not maintainable under Section 14(3)(c) of Act, hence this appeal – Whether Section 14(3)(c) of Act was bar to suit by developer for specific performance of development agreement between himself and owner of property – Whether agreement between Appellant and Respondent was capable of specific performance – Held, by giving purposive interpretation to Section 14(3)(c)(iii), the anomaly and absurdity created by third condition would have no applicability where developer who had interest in property, brings suit for specific performance against owner – Developer had to satisfy two conditions laid out in sub clause (I) and (ii) of Section 14(3)(c), for suit for specific performance to be maintainable against owner – Condition under Section 14(3)(c)(i) was that building or other work described in contract was sufficiently precise to enable court to determine exact nature of building or work – Agreement between parties was vague – Court could not determine exact nature of building or work – First condition in Section 14(3)(c)(i) was not fulfilled – Another condition under Section 14(3)(c)(ii) was that Plaintiff had substantial interest in performance of contract and interest was of such nature that compensation in money for non-performance of contract was not adequate relief – Alleged losses/damages incurred by Plaintiff could be quantified – Plaintiff could be provided recompense for losses allegedly incurred by payment of adequate compensation in form of money – Developer failed to satisfy conditions under sub-clause (i) and (ii) of Section 14(3)(c) of Act – Specific performance could not be granted – In absence of any plea for damages or monetary relief by Respondents, no reason to remit appeal back to High Court – appeal dismissed.

(2018) 8 MLJ 496 (SC)

P. Radha Bai v. P. Ashok Kumar

Date of Judgment: 26.09.2018

Limitation – Arbitration award – Objections – Limitation Act, 1963 (Act 1963), Sections 5, 17 and 29A – Arbitration and Conciliation Act, 1996 (Act 1996), Section 34 – Arbitrators passed award providing for division of properties and businesses to Appellants and Respondents – After pronouncement of award, Appellants entered into Memorandum of Understanding (MoU) with Respondents agreeing to give additional properties, however, Appellants delayed execution of Gift and release Deeds – Respondents filed application under Section 34(3) of Act 1996 for setting aside award accompanied by another application under Section 5 of Act 1963 seeking condonation of delay – Trial court dismissed delay condonation application – High Court remanded matter to trial court concerning applicability of Section 17

of Act 1963 in application under Section 34 of Act 1996, hence these appeals – Whether Section 17 of act 1963 was applicable while determining limitation period under Section 34(3) of Act 1996 – Held, once party had received award, limitation period under Section 34(3) of Act 1996 commences – Section 17 of Act 1963 would not come to rescue of such objecting party – Respondents had right to challenge award under Section 34 of Act 1996 on moment they received it – Respondents received award and alleged MoU was executed later – Once Respondents received award, time under Section 34(3) commenced and any subsequent disability even as per Section 17 or Section 9 of Act 1963 was immaterial – Merely because Appellant had committed some fraud, it would not affect Respondents right to challenge award, if facts entitling filing of Section 34 application was within their knowledge – When Respondents had received Award, three months period prescribed under Section 34(3) begins to commence – There would not have been any point for meaningful remand as question of law answered against Respondents – Appeals allowed.

(2018) 10 SCC 548

Venugopal Padayachi v. Pichaikaran

Date of Judgment: 18.09.2018

Property Law – Adverse Possession – Mortgage – Possession of mortgagee – Consideration of, as adverse possession from the time such mortgagee claims to be absolute owner of the property

2018) 10 SCC 552

Sudarsan puhan v. Jayanta Mohanty

Date of Judgment: 20.09.2018

Motor Vehicles Act, 1988 – S. 173 r/w S. 96, Or. 20 R. 4(2) and Or. 41 R. 31 CPC – Compensation – Reduction of, in appeal without adverting to factual and legal issues involved – Impermissibility of – Full and fair and independent consideration of the evidence at the appellate stage – Necessity of

(2018) 10 SCC 610

Ravi Chand Mangla v. Dimpal Solania

Date of Judgment: 18.09.2018

A. Rent Control and Eviction – Arrears of Rent/Default/Tender of Rent/Striking off Defence – Default in payment of rent – Arrears of rent from 1-4-1993 to 31-8-2009 were paid only on 24-9-2009 whether amounted to non-payment of rent as a ground for eviction

B. Rent Control and Eviction – User/Non-user/Misuser/Non-occupation of premises – Appellant urged that premises let out for sawmill are now being utilised for manufacturing of grills which amount to change of user

* * * * *

SUPREME COURT– CRIMINAL CASES

(2018) 4 MLJ (CrI) 698 (SC)

Ram Lal v. State of Himachai Pradesh

Date of Judgment: 03.10.2018

Corruption – Confession – Prevention of Corruption Act, 1988 (Act), Section 13 – Indian Penal Code, 1860 (Code), Sections 409 and 477-A – Appellant caused wrongful loss to bank – When fraud came to light Committee of two officers namely, (PW-3) and another was deputed to hold preliminary enquiry – Committee noticed bungling of accounts by Appellant – After preliminary enquiry, FIR registered against Appellant – After investigation, Appellant convicted for offence under Sections 13(1)(c) and 13(2) of Act and Sections 409 and 477-A of Code, hence this appeal – Whether conviction and sentence imposed on Appellant sustainable and whether confession statement of Appellant was not voluntary and Pws 2 and 3 were persons in authority who have pressurized Appellant to make confession – Held, mere allegation of threat or inducement is not enough – Inducement must be sufficient to cause reasonable belief in mind of Accused that by so confessing, he would get an advantage – Though confession statement has been initially made in presence of PW-3 and another by Appellant, no question was put to PW-3 that extra-judicial confession was outcome of any threat, inducement or allurement – Statement which runs to eleven sheets has been held to be made by Appellant voluntarily – Likewise confession statement made before (PW-2) was in handwriting of appellant made in presence of (PW-2) and then Assistant Chief Officer (Inspection) – Not suggested to (PW-2) that confession statement was outcome of some threat or pressure – Trial court as well as High Court concurrently held that extra-judicial confession and confession statements were voluntarily made and that same can form basis for conviction – Considering passage of time and facts and circumstance of case, sentence of imprisonment imposed on Appellant is reduced to three years – Appeals partly allowed.

(2018) 4 MLJ (CrI) 739 (SC)

Labhuji Amratji Thakor v. State of Gujarat

Date of judgment 13.11.2018

Summons – Additional Accused – Code of Criminal Procedure, 1973, Section 319 – Application filed by Prosecution under Section 319, alleging that in statement of victim, she has taken name of Appellants, who had allegedly taken her in jeep – Trial Court rejected application, however, High Court reversed the same, hence this appeal – Whether High Court committed error in setting aside order of trial court rejecting application under Section 319 – Held, names of Appellants did not figure in statement of victim recorded after investigation – In statement recorded before police, victim named only person with whom she admitted of having physical relations and with whom she went and lived in several places – In statement before Court, victim narrated entire sequence of events but no suggestion of any act done by Appellants amounting to offence – High Court did not record any satisfaction that evidence on record as revealed by statement of victim and her mother made out prima facie case of offence against Appellants – Mere fact that Appellants were also present in jeep in which she was taken could not be treated to be allegation of complicity of Appellants in offence – High Court had not given sufficient reasons for allowing application under Section 319 – Appeal allowed.

(2018) 10 SCC 472

Rajesh sharma v. State of U.P.

Date of Judgment: 27.07.2017

A. Penal Code, 1860 – S. 498-A – Misuse of S. 498-A – Remedial measures – Directions issued – [Ed.: Some of these directions have been set aside, and others modified, by a three-Judge Bench in *Social Action Forum for Manav Adhikar v. Union of India*, (2018) 10 SCC 443] – Need to check tendency to rope in all family members by making omnibus allegations to settle matrimonial disputes – Fact that most of such complaints were filed in heat of moment over trivial issues and were not bona fide, taken judicial notice of – Besides, uncalled for arrests ruin chances of settlement and even when settlement is arrived at, proceedings continue since offence under S. 498-A is non-compoundable resulting in uncalled hardship to parties – Hence, safeguards, against uncalled for arrest or insensitive investigation necessary – Crimes Against Women and Children – Abuse of S. 498-A IPC

B. Constitution of India – Arts. 32, 21 and 136 – Reiterated that function of Court is not to legislate but only interpret – No doubt in doing so laying down of norms is sometimes unavoidable – Just and fair procedure being part of fundamental right to life, interpretation is required to be placed on a penal provision so that its working is not unjust or unfair unreasonable

C. Penal Code, 1860 – S. 498-A – Object of – “Cruelty” – Connotation – To punish cruelty at hands of husband or his relatives against wife particularly when such cruelty had potential to result in suicide or murder of woman

(2018) 10 SCC 509

Shamim v. State (NCT of Delhi)

Date of Judgment: 19.09.2018

A. Criminal Trial – Appreciation of evidence – Credibility of witness – Witness deposing against closely related accused – Weightage of such evidence – What is – Held, in a criminal trial, normally evidence of wife, husband, son or daughter of deceased, is given great weightage on principle that there is no reason for them not to speak truth and shield real culprit – There is no reason why same principle cannot be applied when such a witness deposes against a closely related accused and why same reverse weightage shall not be given to credibility of such witnesses

B. Criminal Trial – Appreciation of Evidence – Generally – Approach while appreciating evidence of witness – What should be – Principles reiterated

C. Criminal Trial – Witnesses – Child/Young witness – Credibility of child witness – Reiterated, child of tender age is always receptive to abnormal events which take place in his

life and would never forget those events for the rest of his life – Child would be able to recapitulate correctly and exactly when asked about the same in future

D. Criminal Trial – Generally – Duty of presiding Judge – What is, given – Evidence Act, 1872, S. 165

E. Penal Code, 1860 – Ss. 302/307/34 – Murder trial – Family murder – Opposition to marriage – Motive clearly established – Evidence of injured witness, credible and reliable – Incriminating materials recovered in pursuance of disclosure made by accused – Reversal of acquittal, confirmed

F. Penal Code, 1860 – Ss. 302/307/34 – Once accused is convicted with aid of S. 34 IPC, there is no justification to single out accused for differential treatment for sentencing

(2018) 9 SCC 574

State of M.P. v. Gangabishan

Date of Judgment: 27.07.2018

Penal Code, 1860 – S. 304 Pt. I – Culpable homicide not amounting to murder – Inference of, from nature of injury inflicted – Death of one due to gunshot injury on thigh, and injuries to one other using other weapons – Conviction of accused firing said gunshot alone, for culpable homicide not amounting to murder, and acquittal of the rest of the accused, confirmed

* * * * *

MADRAS HIGH COURT – CIVIL CASES

(2018) 8 MLJ 649

Rajendran v. Mohanambal

Date of Judgment: 09.11.2018

Civil Procedure – Execution Proceedings – Obstruction Petition – Code of Civil Procedure, 1908, Order 21 Rules 97, 101 and 102 – Respondent / decree holder filed execution petition for delivery of specific plot allotted to her in terms of final decree – Appellants/sons of cultivating tenant who purchased property pending litigation filed obstruction petition – Lower courts dismissed petition, hence this appeal – Whether Appellants / pendent lite purchasers, were entitled to right of hearing during final decree proceedings – Was there exception to Order 21 Rule 102 for Appellants to obstruct delivery of property by Execution Court – Whether lower Courts erred in not entering finding on Appellants’ plea of tenancy – Held, Appellants could not avoid losing share of title in property in terms of preliminary decree to Respondent – Right of Appellants to participate in proceedings for passing final decree should not have been denied to them – Validity of decree sought to be executed had to be kept as constant – Only those rights other than those affected by decree alone merit consideration in enquiry under Order 21 Rule 101 read with Rule 98 – Delivery of property could not be stopped by this Court on ground that Appellants were not parties to proceedings for passing final decree – Appellants should have agitated it only before Court which passed final decree and not before Execution court – Whether property continues to be cultivable/agricultural property and if Appellants’ father continued to be cultivating tenant till his death for his tenancy-right to devolve on Appellants, and if it had merged with their right as lessor with regard to 1/4th share were all questions of fact, which lower Courts ought to investigate and pronounce their findings – Case remanded back to Execution Court – Appeal allowed.

(2018) 8 MLJ 665

Pichaimuthu v. Rasu

Date of Judgment: 22.10.2018

Succession Laws – Partition – Joint family property – Indian Evidence Act (Act), Section 32(6) – Plaintiff and 1st and 2nd Defendants were brothers and sons of common ancestor and 3rd Defendant was their sister – Plaintiff filed suit for partition – 1st Defendant resisted suit contending that 5th and 6th items of properties were his separate properties – Trial court decreed suit in respect of 1st to 4th items of schedule properties and dismissed in respect of 5th and 6th items of properties – First appellate court granted preliminary decree for partition in respect of 5th and 6th items of properties also, hence this appeal – Whether items 5 and 6 of suit properties could be partitioned as joint family properties when said items are self acquired and absolute properties of 1st defendant purchased out of his own funds – Held,

contention raised by father of 1st defendant in earlier suit between parties that suit properties were purchased by 1st defendant in his capacity as family manager out of income derived from ancestral properties – Determination of Appellate Court that merely because 1st Defendant had not filed reply statement, the same was admissible as evidence, could not be countenanced – First Appellate court erred in holding that written pleas of deceased father put forth in another suit would attract Section 32(6) of Act – No acceptable and reliable material placed to hold that at time of Sale deed, 1st Defendant was acting as family manager of family comprising of his brothers and sisters – 1st Defendant had separated from joint family and living with his own family members separately – Parties found to be acquiring properties in their individual names – 5th and 6th items were only separate properties of 1st Defendant purchased out of his own funds – Appeal allowed with costs.

(2018) 8 MLJ 688

T.R. Murugesan v. S. Balakrishnan

Date of Judgment: 11.09.2018

Contract – Specific performance – Time – Specific Relief Act, 1963 (Act 1963), Section 16(C) – Contract Act, 1872 (Act 1872), Section 52 – 1st Respondent filed suit for specific performance of agreement of sale as Defendants failed to demarcate passage from main road to reach property and evaded execution of sale deed – Defendants admitted execution of agreement but claimed that time was essence of contract – Trial Court decreed suit, hence this appeal by defendants – Whether parties intended time to be essence of agreement – Whether Defendants were guilty of nonperformance of reciprocal promise – Whether Plaintiff was ready and willing to perform his part of contract in terms of Section 16(C) of Act – Whether Plaintiff entitled to alternative relief – Held, agreement specified that payment of balance of sale consideration was to be made on or before particular date – No provision for extension of time fixed under agreement – Time fixed under sale agreement for payment of sale consideration was essence of contract – 1st Defendant had demarcated pathway as required by agreement even before issuance of legal notice by Plaintiff – Obligation cast on Defendants to make available persons interested in pathway to sign as attesting witnesses, would arise only after Plaintiff had tendered sale consideration and sale deed prepared – Plaintiff did not tender sale consideration – Performing second part of promise did not arise at all – Plaintiff had not established that he was ready and willing to perform his part of contract throughout period – Plaintiff guilty of nonperformance – Defendants had also not come to court with clean hands – Clause providing for forfeiture was penal and did not amount to provision for liquidated damages – Plaintiff would be entitled to alternative relief of refund of advance – Decree for specific performance granted by Trial Court set aside – Appeal allowed.

(2018) 8 MLJ 724

MRF Limited v. Multi Race Force Lubricants Pvt. Ltd.

Date of Judgment: 08.11.2018

Intellectual Property Laws – Trademark – Infringement – Plaintiff filed suit with complaint of infringement of its trademark with prayer for injunctive relief qua passing off in light of Defendant using interned domain name, keyword, adword, HTML Code, file name – Whether Plaintiff proved infringement of its trademark by Defendant and was entitled for injunctive relief qua passing off – Held, Plaintiff proved its case, therefore, entitled to injunctive reliefs as prayed for and also, entitled for preliminary decree directing Defendant to render account of profits made by use of suit Trade Mark – Defendant continued to use meta data notwithstanding Cease and Desist notice, though they discontinued use of mark and logo, necessitating issue of Second Cease and Desist Notice followed by presentation of this suit – Defendant after entering appearance and filing vacate interim order applications, failed to proceed with suit, necessitating/compelling Plaintiff to carry this suit to its logical end over a period of 1 ½ years including letting in of oral evidence and marking of exhibits expending money, energy and effort – Fit case to award compensatory costs – Comparison of rival marks, had proved case of infringement of copyright and passing off – Suit decreed with costs and compensatory costs.

(2018) 8 MLJ 750

M. Govindasamy (Deceased) v. R. Kishnan (died)

Date of Judgment: 20.11.2018

Civil Procedure – Execution proceeding – Fraudulent decree – Code of Civil Procedure, 1908, Section 47 – Plaintiffs / Advocates filed suit for declaration and recovery of possession – No advocates dared to enter appearance on behalf of Defendants – On application of 3rd Defendant, District Judge ordered transfer of sui to another district – Plaintiffs failed to inform court concerned above transfer and managed to get exparte decree – Years later, Plaintiffs filed execution petition on basis of exparte decree – 2nd and 3rd Defendants filed application under Section 47 to declare exparte decree as nullity – This Court transferred execution petition to another district – Application allowed and execution proceedings closed – Application filed by 5th Plaintiff to set aside exparte order and to restore petition filed for setting aside exparte order was allowed, hence this revision – Whether order of District Munsif sustainable – Held, this Court was inclined to set aside order passed by District Munsif, who had not taken into account conduct of Plaintiffs – Decree was obtained from Court which on date of decree did not have jurisdiction to pass same – Plaintiffs who were practicing Advocates had played fraud on Court and snatched exparte decree – Plaintiffs thereafter, initiated execution proceedings on basis of this decree and persisted in proceeding with same – Cost imposed – Revision allowed.

(2018) 8 MLJ 754

Godrej and Boyce Manufacturing Co. Ltd. v. T.N.S.I.D.C. Ltd

Date of Judgment: 23.10.2018

Property Laws – Road – Maintenance charges – Plaintiff was using ‘B’ schedule property / road for access to his ‘A’ schedule properties – Defendant demanded maintenance charges from Plaintiff for such access – As Plaintiff had been paying tax to Municipality, Plaintiff did not pay maintenance charges to Defendant as demanded Defendant threatened coercive acting against Plaintiff in preventing its usage, hence Plaintiff filed suit – Trial Court decreed suit which was reversed by lower appellate Court, hence this second appeal – Whether appellate court committed fundamental error based on admitted facts that lands on which Plaintiff factory was situated was not assigned / conveyed / transferred to Appellant by Respondent or State Government – Whether lower appellate court justified in reversing decree of trial court without considering sale deed / Ex.A2, in which , it was mentioned that road was formed by vendor of Appellant – Held, Plaintiff had not made out as to what was nature of right it seeks to enforce in respect of road – Having admitted that road was vested with and maintained by Defendant, Plaintiff was bound to pay necessary maintenance charges to Defendant – Plaintiff failed to establish that road was public road vested with Government or municipality – Plaintiff laid suit only against Defendant admitting that it was only Defendant who was vested with road in question and maintained only by Defendant – No cause of action for Plaintiff to institute suit – Appeal dismissed.

(2018) 8 MLJ 761

Lakshmi v. K. Selvaraj

Date of Judgment: 26.10.2018

Succession Laws – Property of Hindu female – Validity of settlement – Hindu Succession Act, 1956, Section 14 – Suit property originally belonged to joint family of predecessor-in-interest who had two brothers – During his life time, predecessor-in-interest executed Ex.A.2 / settlement deed settling sit properties in favour of his wife – After death of predecessor-in-interest, his widow and his brothers entered into Ex.A.3 / family partition which gave life estate to window – Widow died and Plaintiffs / grandsons of one brother sought declaration of their title to suit properties – Defendant claimed that he was absolute owner of property in view of settlement deed / Ex.B1 executed by widow in his favour – Lower Courts decreed suit, hence this appeal by defendant – Whether lower Courts properly considered material evidence / Ex.A.2, Ex.B1 and Ex.A.3, while applying Section 14(1) and 14(2) of Act – Whether lower Courts properly appreciated scope and effect of Section 14(1) of Act while considering Ex.A.2, Ex.B1 and Ex.A.3 – Held, Ex.A.3 was document executed in recognition

of right of widow for maintenance over her husband's properties – Ex.A.2 would show that what had been settled was not undivided share, but specific property within certain boundaries – Description prove that there was in fact partition between brothers prior to execution of settlement deed – Ex.A.3 between brothers and widow, would confer limited right on widow over suit properties and executed in recognition of pre-existing right of widow – Section 14(2) of Act would not apply – If section 14(1) was to apply, property would become absolute property of widow n enactment of Act – Reversionary right contemplated under said document would fade into insignificance – Widow was entitled to deal with it as her own property – Settlement deed executed by her would be valid document, more particularly, when Plaintiffs had not denied its execution – Judgments of lower Courts set aside – Appeal allowed.

(2018) 8 MLJ 415

Lagrove Jayaseeli v. Trinite Modestine (deceased)

Date of Judgment: 25.09.2018

Civil Procedure – Impleadment of Parties – Assignees – Code of Civil Procedure, 1908, Order XXII Rule 10 – Petitioners purchased portions of suit property pending proceedings from deceased sole Appellant – On coming to know that appeal filed by sole Appellant in respect of suit property was dismissed as abated, Petitioners filed these petitions to condone delay of 909 days to set aside abatement and to bring them on record as representatives in interest of deceased sole Appellant – Whether Petitioners entitled to get impleaded in this appeal in place of deceased Appellant – Held, though there was no interim order, there was affirmation on oath and recording same, this Court dismissed injunction application filed by Plaintiff – This affidavit was filed in interlocutory proceeding in second appeal and sale deed in favour of Petitioners referred to this Second Appeal – Petitioners and their vendor were guilty of contumacious and clandestine conduct which disentitled them to be impleaded in place of deceased Appellant – If transaction was bonafide, Petitioners would not have waited for 22 years two get impleaded – Petitioners were purchasers of only small extent of larger extent of suit property – Petitions dismissed.

(2018) 8 MLJ 434

A/m. Agatheeswarar Prasanna v. Subramania Chettiar

Date of Judgment: 03.09.2018

Civil Procedure – Res Judicate – Separate Suit – Code of Civil Procedure 1980, Order XXI Rule 101 – Plaintiff obtained decree against First Defendant and put decree in execution – Execution had been resisted by Second Defendant – Plaintiff preferred application for removal of obstruction caused by Second Defendant – Courts dismissed application by holding that suit laid by Plaintiff is barred under Order XXI Rule 101 and same confirmed on appeal, hence this second appeal – Whether Plaintiff precluded from filing fresh suit in light of Order XXI Rule 101 – Held, all questions arising between parties to application for removal of obstruction have to be decided by executing court itself and a separate suit is not maintainable – As there is bar of separate suit with reference to same under Order XXI Rule 101, courts below justified in holding that suit laid by Plaintiff is not legally sustainable – Plaintiff having failed to exhaust remedies available in execution proceedings cannot be allowed to circumvent same by laying separate suit for same reliefs – No interference called for – Appeal dismissed.

(2018) 8 MLJ 442

V. Vijayalakshmi v. D. Annalakshmi

Date of Judgment: 20.09.2018

Civil Procedure – Comparison of signature – Handwriting expert – Code of Civil Procedure, 1908, Order 26 Rule 10 (A) – Petitioner filed appeal against decree of specific performance of sale agreement / Exhibit A1 executed by her – Four years later, application filed by Petitioner for sending Exhibit A1 to handwriting expert for comparison of signature in Exhibit A1 with certain admitted signature was dismissed by First appellate Court, hence this revision – Whether order rejecting Petitioner's request for seeking signatures of Exhibit A1 for comparison by handwriting expert, justified – Held, when written statement was construed in its entirety, Petitioner intended to state before trial Court that she did sign certain papers before Respondent when she obtained loan and there is not indication in written statement whatsoever to effect that such a signature was forged by Respondent herein – On perusal and appreciation of entire averments in written statement, it could only be construed that Petitioner never intended to state that her signature was forged by Respondent – No infirmity or procedural irregularity on part of Petitioner in not having taken up application before trial Court for comparing signatures in Exhibit A1 with that of admitted signature of Petitioner – Present application has been filed after almost four years from date of appeal with no explanation – Delay in filing application before first Appellate Court would be fatal to Petitioner Revision dismissed.

* * * * *

HIGH COURT OF MADRAS – CRIMINAL CASES

(2018) 4 MLJ (CrI) 647

Integrated Finance Co. Ltd. v. Ravishankar Industries Pvt. Ltd.

Date of Judgment: 14.09.2018

Negotiable Instruments – Execution of Cheques – Presumption – Negotiable Instruments Act, Sections 20, 138 and 139 – Towards installment of loan amount, Respondents / Accused company issued various cheques to Appellant Company cheques for encashment – Cheques returned with endorsement as “Refer to Drawer” – No reply or payment made by Accused even after issue of statutory legal notice – On complaint filed against Respondents for offence punishable under Section 138, Trial court acquitted accused by holding that subject Cheques were not supported by consideration – Whether Section 139 of Act will aid Appellant / Complainant company and presumption under Section 139 is in favour of Appellant / Complainant – Held, initial burden of proving case of Complainant completed when Complainant proved execution of cheques and other supporting documents by Accused – Burden shifted to Accused to disprove case of Complainant – Accused expected to let in reliable documentary evidence – Bare denial will not be suffice to hold that Accused has disproved case of Complainant successfully – Accused has not denied causing of statutory demand notice – Accused has admitted that no reply was offered by him – Section 20 of Act makes it clear that once issuance of cheque is admitted, then it is for Accused to disprove case of Complainant – Presumption as contemplated under section 139 of Act is in favour of Complainant – Appeals allowed.

(2018) 4 MLJ (CrI) 654

Manickam v. State of Tamil Nadu

Date of Judgment: 29.09.2018

Abetment of Suicide – Dowry Demand – Indian Penal Code 1860, Sections 306 and 498-A – Wife/Deceased of Appellant committed suicide with child – Mother of deceased alleged that dowry harassment and extra marital affair of Appellant drove deceased to commit suicide – Trial court convicted Appellant / Accused under Sections 498-A and 306, hence this appeal – Whether conviction of Appellant / Accused under Sections 498-A and 306, legally justiciable – Held, evidence of Revenue Divisional Officer reveals that deceased wife of Appellant was not subjected to dowry harassment and same evidenced in Inquest Report – Mental cruelty engraved in first limb of Section 498-A has nothing to do with demand of dowry – Extra-marital relationship would not come within ambit of Section 498-A – No other acceptable evidence of mental cruelty, which has driven wife of Appellant to commit suicide – Offence under Section 498-A, not attracted – To constitute

offence under Section 306, prosecution to establish beyond reasonable doubt that Accused abetted commission of suicide – For alleged extra marital relationship, nothing brought out by prosecution to show that Appellant provoked, incited or induced wife to commit suicide – Appellant acquitted of all charges – Appeal allowed.

(2018) 4 MLJ (CrI) 658

Shanthi Aqua Farms v. Secretary to Government of Tamilnadu

Date of Judgment: 03.10.2018

Theft – Extraction of Water – Indian Penal Code, 1860, Sections 378, 379, 425 and 426 – State Government issued Order of regulation on extraction of ground water and said orders makes it mandatory to get No Objection Certificate from State Ground and Surface Water Resource Data Centre – Petitioners/Industries using or extracting ground water, filed petition challenging impugned order – Whether Extraction of ground water can be brought under offence described in any one of the provisions of Code and such persons can be liable to be prosecuted for offence of theft – Held, if any person extract ground water from Earth and simply wasting with intention to cause wrongful loss to State, then offence of “Mischief” under Section 425 of Code is committed by such person – If Petitioners extract water for commercial usage without obtaining any proper licence or permission, such an extraction or over extraction, will attract sections 378 and 379 of Code – All those persons liable to be prosecuted for offence of theft – Impugned order of regulation issued by 1st Respondent confirmed – Respondent directed not to grant licence, No Objection Certificate (NOC) or permission for commercial establishments /person to extract ground water for commercial usage in absence of water flow meter – Respondents directed to measure quantum of water extracted by establishments/persons by taking meter reading every Month – Respondents directed to register Police complaint in event of identifying any excess extraction of ground water by tampering flow meters sealed – If water is wasted for causing wrongful loss, then Section 425 of Code will also attract – Respondents directed to suspend licenses by issuing show cause notices and by providing opportunity to persons involved in offence of theft or violation of conditions stipulated in Government Regulations or if criminal case registered – If person is convicted, then he be permanently debarred from getting licence for extraction of ground water – Petitions disposed of.

(2018) 4 MLJ (CrI) 691

D.Ravichandran v. State

Date of Judgment: 24.10.2018

Misappropriation of Property – Conspiracy – Indian Penal Code, 1860, Sections 120B and 409 – Alleged that Petitioners who were entrusted with properties and monies of society, conspired and indulged in wrong doings along with other accused persons – Petitioners charged for offence under Sections 120B and 409 of Code – Discharge Petition filed by Petitioners before learned Judicial Magistrate was allowed, however, Principal Sessions Judge reversed order – Whether Petitioners dishonestly aided other accused

persons for committing misappropriation of Society's funds – Held, prosecution has not produced any material to show that there was close cohesion and collusion between all accused persons which formed subject matter of conspiracy – Criminal proceedings cannot be initiated against Petitioners for their failure to discharge duty property – When DVAC recommended dropping of all further proceedings and departmental proceedings were also dropped as against Petitioners, for very same charges criminal proceedings cannot be initiated – In case of serious charges of defalcation of properties of Society mens rea cannot be excluded – Not case of prosecution that Petitioners herein got any wrongful gain and cannot be said that Petitioners had dishonestly aided other accused persons for committing misappropriation of Society's funds – Petitioners cannot be prosecuted – Revisions allowed.

(2018) 4 MLJ (CrI) 704

Arul v. State

Date of Judgment: 08.10.2018

Seizure of contraband – Sampling – Tamilnadu Prohibition Act, Sections 4(1) and 32(c) – Accused / Petitioner convicted by lower Courts for offence under Section 4(1)(a)(a) of Act on allegation that he smuggled Brandy bottles without having permit or license to carry same, hence this revision – Whether non-sending of Brandy bottle for chemical analysis was fatal to case of prosecution – Held, according to Inspector of Police who conducted investigation, he had not taken sample of Brandy bottle and same had not been sent to chemical analysis – As per section 32(c) of Act, officer, who seized illicit arrack shall take samples in presence of any Police Officer not below rank of Inspector of Police and send same for chemical analysis, however, no such exercise carried out by Inspector of Police which was fatal to case of Prosecution – Conviction and sentence imposed on Petitioner set aside – Revision allowed.

(2018) 4 MLJ (CrI) 709

K. Jeevanantham v. State

Date of Judgment: 16.11.2018

Quashing of Final Report – Murder – Indian Penal Code, 1860, Sections 34 and 302 – Respondent Police registered First Information Report against Petitioners based on complaint given by 2nd Respondent to effect that his father died after he was assaulted by Petitioners – Final Report filed before lower Court for offence under Section 302 r/w Section 34 against Petitioners, hence this petition to quash final report – Whether there was any material for lower Court to frame charge under Section 302 against Petitioners – Held, by employing test of intention or test of knowledge, there were absolutely no materials to connect injuries sustained by deceased and actual cause of his death – Final opinion of Doctor states that deceased died out of Coronary Artery Heart Disease and deceased had consumed ethyl alcohol which was clear from viscera report prepared by Forensic Department – If deceased had died due to emotional stress he suffered after

incident, that would not automatically result in charge of murder against accused persons – Lower Court had taken cognizance of Final Report and framed charge under Section 302 against Petitioners without there being any material brought forth by prosecution – Court not inclined to quash entire Final Report since there were prima facie material against Petitioners for causing hurt to deceased person in furtherance of common intention – Charge framed by Lower Court for offence under Section 302 set aside – Petition partly allowed.

(2018) 4 MLJ (CrI) 578

Karur Murali v. Public Prosecutor,

Tirunelveli Date of Judgment: 04.10.2018

Quashing of complaint – Defamation – Code of Criminal Procedure, 1973, Sections 199 and 482 – Criminal complaints filed by Public Prosecutor against Petitioners for alleged defamatory speech made against then Chief Minister of State – Petitions filed to quash proceedings initiated against Petitioners – Whether criminal complaint filed by Public Prosecutor on behalf of Chief Minister under Section 199(2) of Code 1973 could be continued even after person concerned ceases to hold post at later point of time – Whether Public Prosecutor could continue to prosecute criminal complaint even after death of erstwhile Chief Minister – Whether allegations made in complaint against erstwhile Chief Minister pertains to and was connected with discharge of public function/official duty or personal in nature – Held, even if person ceases to hold Office/Post at later point of time, prosecution launched shall continue since alleged defamatory statement was “Office/post centric” and not “person centric” – State was duty bound to continue with prosecution of complaint as offence considered to have been committed against State – Defamation in question did not pertain to private or personal character of former Chief Minister, it pertains to her conduct in discharge of her public functions – Criminal complaint did not abate on death of former Chief Minister – State was duty bound to continue with proceedings through Public Prosecutor – Allegations made in complaint, challenged in second petition were purely personal in nature and did not have direct bearing on public function discharged by her – Impugned proceedings in said case quashed – Allegations found in complaint, challenged in first petition relatable to behaviour or conduct of former Chief Minister, in discharge of her public function – This Court would not exercise its jurisdiction under Section 482 to quash said proceedings – First petition dismissed – Second petition allowed.

(2018) 4 MLJ (CrI) 585

Sabari @ Sabarigiri v. Assistant Commissioner of Police

Date of Judgment: 26.09.2018

Quashing of Records – Review of History Sheets – Criminal Procedure Code, 1973 (Code), Sections 109 and 110 – Constitution of India, 1950 (Constitution), Article 21 – Police Standing Orders, Nos. 741 to 748 – Petitioners names were retained in crime history sheets maintained under Police Standing Orders Nos. 741 to 748 – Petitions filed to quash records relating to alleged history sheets and direct 1st Respondent / Assistant Commissioner of Police to close history sheets – Whether continuance of Petitioners to be categorized as “History Sheeters” is legal and in consonance with relevant Police Standing Orders – Held, no materials produced to show that Police Standing Order (PSO) No. 748 (2) was followed to retain names of Petitioners – Nothing to show that concerned Inspector of Police maintained record and continuously entered instances of bad character exhibited by Petitioners as contemplated under PSO Nos. 746(3) and 746(4) – No materials to show that officer in rank of Assistant Superintendent of Police/Deputy Superintendent of Police considered materials placed by Inspector, gave reasons to continue names of Petitioners as history sheeters and passed separate order – Mandatory requirements were not fulfilled – No mention about yearly extensions for which specific and separate orders needs to be passed – Continuing to retain names of Petitioners in history sheets is illegal and violative of Article 21 of Constitution – Police seem to be adopting practice of registering FIRs under Sections 109 and 110 of Code just to open history sheet and to justify continuance of names of persons in history sheet – PSO No. 747 has requirement that automatic opening of history sheet can be done only if person has been convicted more than twice under Section 109 of Code and more than once under Section 110 of Code – Mere registration of FIR under Sections 109 and 110 of Code can never justify action of Police in continuing to retain name of person in history sheet – can Petition disposed of.

(2018) 4 MLJ (CrI) 611

K.R. Meenakshi v. M. Jayanthi

Date of Judgment: 22.10.2018

Quashing of Proceedings – Private Complaint – Criminal Procedure Code, 1973 (Code 1973), Sections 200 and 482 – Indian Penal Code, 1860 (Code 1860), Sections 493, 494, 120(b) and 506(ii) – 1st Respondent / Complainant / wife filed private Complaint under Section 200 of Code 1973 on Petitioner alleging that she had illicit relationship with her Complainant's husband / 2nd Respondent and committed offences of bigamy, illegal cohabitation, threat, coercion, criminal conspiracy and intimidation under Sections 493, 494, 120(b) and 506(ii) of Code 1860 – Trial Court took cognizance of offences and issued Summons, hence this petition – Whether private Complaint filed against Petitioner liable to be quashed – Held, allegations made in complaint with regard to second marriage by 2nd Respondent with Petitioner taken along with sworn statement did not disclose essential

ingredients of offence under Section 494 of Code 1860 – In complaint filed by 1st Respondent, there is no say as to form of marriage alleged to have taken place, details of time and name of witnesses whose presence second marriage of petitioner with 2nd respondent – For offence under Section 120(b) and 506(ii) of Code 1860, 1st Respondent stated in complaint that 2nd Respondent permitted Petitioner to take charge of business of family – Only bald allegations were levelled against Petitioner as if she made threats to life of 1st Respondent – In absence of vital allegations in complaint, same ought not have taken on file by Magistrate – Complaint quashed – Petition allowed.

(2018) 4 MLJ (CrI) 392

T. Muthuramalingam v. Inspector of Police

Date of Judgment: 11.09.2018

Quashing of FIR – Civil Dispute – Criminal Procedure Code, 1973 (Code 1973), Section 482 – Indian Penal Code, 1860 (Code 1860), Sections 420, 447, 464, 465, 468 and 471 – 2nd respondent purchased property from vendor and is absolute owner of same – Petitioner purchased property from common owner who sold property to 2nd Respondent's vendor – 2nd Respondent alleged that Petitioner mentioned bogus boundaries in registered sale deed and grabbed his land – Suit filed by 2nd Respondent dismissed – 2nd Respondent gave Complaint and 1st Respondent / Police registered FIR under Sections 420, 447, 465, 468 and 471 of Code 1860 hence this petition to quash FIR – Whether showing false boundaries in sale deed will amount to committing forgery of document with intention to take possession of 2nd Respondent's property – Held, even assuming that Petitioner is fraudulently claiming land belonging to 2nd Respondent, same will not satisfy requirement of Section 464 of Code 1860 – Requirement that it should have been made with intention of causing it is not present – Once, Section 464 of Code 1860 is not attracted, offences under Sections 465, 468 and 471 will not be attracted – Even on plain reading of complaint given by 2nd Respondent, no offence made out under Sections 465, 468 and 471 – Procedure adopted by 2nd Respondent by giving complaint and concealing same, while giving present complaint is abuse of process of law – Matter is purely civil in nature and 2nd Respondent attempted to give criminal colour – None of offences stated in FIR had been made out to exercise jurisdiction under Section 482 – Petition allowed.

* * * * *