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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS CIVIL CASES

2012- 5-L.W.92

Ram Kishun and Ors
Vs
State of U.P and ors

Contract Act (1872), Sections 128, 142/Guarantor, Surety, Liability of, Legal heirs of surety, Liability, Auction sale, whole property whether needed to be sold.

Held: As the appellants had inherited the estate of the guarantor, they are liable to meet the liability of unpaid amount.

In case there are more than one surety the liability is to be divided equally among the sureties for unpaid amount of loan – Once the sale has been confirmed it cannot be set aside unless a fundamental procedural error has occurred or sale certificate had been obtained by misrepresentation or fraud.

Instead of putting this whole land, sale of 1/3rd of this land could have served the purpose.

Auction sale stood vitiated and all the consequential proceedings are liable to be quashed.

Surety does not have a right to dictate terms to the creditor as how he should make the recovery and pursue his remedies against the principal debtor at his instance.

Law requires a proper valuation report – Its acceptance by the authority concerned by application of mind – Fixing the reserve price accordingly and acceptance of the auction bid taking into consideration that there was no possibility of collusion of the bidders – The authority is duty bound to decide as to whether sale of part of the property would meet the outstanding demand.

2013 (1) CTC 104

Indra Kumar Patodia and Anr
Vs
Reliance Industries Ltd and Ors

Advocates Act, 1961 (25 of 1961), Section 35 – Professional Misconduct – Advocate filing Vakalatnamas without authority and filing fictitious Compromises adversely affecting interest of parties concerned, guilty of professional misconduct in past and reprimanded – Administration of a Lawyer need not be taken leniently – In interest of purity and legality of profession and to maintain faith and respect of people in rule of law, no sympathy ought to be shown to such Advocate – Advocate concerned suspended from practice for a period of three years – Appeal allowed.

Practice and Procedure – Appreciation of Evidence – Reversing of well reasoned and carefully written finding of Bar Council of State by Bar Council of India merely on basis of oral submission – Validity of, discussed.

2013 (1) CTC 113

U. Sree
Vs
U. Srinivas

Hindu Marriage Act, 1955 (25 of 1955), Section 13(1)(i-a) – Mental Cruelty – Divorce – Wife constantly ill-treating Husband and deprecating his practice of music – Husband humiliated in public on several occasions by Wife – Allegations of family of Husband conspiring to get him re-married for dowry made without any evidence – Act of Wife an aspersion on character of Husband and also an effort to malign reputation of his family – Mental cruelty established from facts and circumstances of case – Decree of Divorce granted to Husband on ground of cruelty, upheld.

Hindu Marriage Act, 1955 (25 of 1955), Section 13(1) – Desertion – Absence of Pleading – Effect of – Petition for divorce devoid of any specific pleading on ground of desertion – Grant of decree of divorce on ground of desertion, erroneous.

Hindu Marriage Act, 1955 (25 of 1955), Section 25 – Permanent Alimony and Maintenance – Assertion by Husband that he had earned name and fame in world of music and performed concerts in India and abroad – Offer of Husband to buy flat to Wife not materializing on account of dispute in location – Duty of Court to see that Wife lives with dignity and comfort – Considering social status of parties, permanent alimony of ₹ 50 lakhs awarded in favour of Wife and Son, out of which ₹ 20 lakhs to be kept in fixed deposit in name of Son – All deposits made earlier, ordered to be excluded.

Indian Evidence Act, 1872 (1 of 1872), Section 65 – Secondary Evidence – Letter written to father by daughter disputed and denied by father – High Court on said denial, admitted secondary evidence – Approach of High Court erroneous – Finding of High Court on admissibility of secondary evidence, dislodged.

2012- 1-L.W. 330

Mathai Samuel & Ors
Vs
Eapen Eapen(dead) by Lrs. and Ors

Succession Act (1825), Section 2(h)'Will', Gift/difference between, transfer 'in praesenti'; Composite document, Will and Settlement, Construcion of, Malayalam words, used 'adheendha' and 'swathanthryam', meaning of, Scope of,

Transfer of Property Act (1882), Section 122/Gift, Settlement deed, ingredients, transfer in praesenti, composite document, construction of clauses, as Will and settlement, Scope of,

Words and Phrases/'adheendar'; 'swathanthryam',

A composite document is severable – And part clearly testamentary, such part may take effect as a Will – Other part if it has the characteristics of a settlement will take effect in that way – A document which operates to dispose of property 'in praesenti' in respect of few items of the properties is a settlement – In future, in respect of other items, it is a testamentary disposition.

Composite document, which has the characteristics of a Will as a gift, may be necessary to have that document registered – Otherwise that part of the document which has the effect of a gift cannot be given effect to.

Question is not what may be supposed to have been intended, but what has been said.

Executants have used the Malyalam words 'adheendha' and 'swathanthryam' – 'Adheendha' means control, domination, command, manage etc. 'Swathanthryam' means liberty, freedom, independence etc. – Executants had retained the entire rights over the property in question and not parted with.

(2012) 10 Supreme Court Cases 603

Sahara India Real Estate Corporation Ltd and Ors
Vs
Securities and Exchange Board of India and Anr

- A. Press and Media Laws – Coverage of court proceedings – Matters sub judice – Postponement of reporting of, by judicial order – Safeguarding presumption of innocence.
- Purpose of postponement, held, is fair and dispassionate judicial consideration untainted by media hype
 - Parameters for passing postponement order, held, are (i) real and substantial risk of prejudice to fairness of the trial or to the proper administration of justice, (ii) necessity, and (iii) proportionality – Order of postponement will only be appropriate in cases where the balancing test i.e. public right to know through media balanced with litigating party's right to have cool-minded judicial verdict otherwise favours postponement of publication for a limited period.
 - Mechanism of postponement and courts competent to entertain postponement application – Mechanism of postponement, held, is by invocation of inherent powers of writ courts under Arts. 129 and 215 of Constitution – Other options are change of venue or postponement of trial, and only if these are not adequate measures, subject to the above parameters, Supreme Court or High Courts alone can under their inherent powers under Arts.129 and 215 of Constitution pass orders of postponement for a limited period suo motu or on being approached or on report being filed before them by a subordinate court.
 - Stage at which postponement order may be passed – Actual and not planned publication must create the real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial – So postponement orders operate on the actual publication – Hence, before passing postponement orders, the superior courts should look at content of offending publication (as alleged) and its effect - Further held, postponement should be ordered without disturbing content of the publication.
 - Burden to establish a case for postponement order – Held, is on party which seeks postponement – Real and substantial risk of prejudice in the case by media publicity has to be proved – Further, party seeking postponement must displace presumption of open justice.
 - Suo motu action – Where excessive prejudicial publicity by newspapers (in general) impinges upon presumption of innocence of any person then courts of record can pass such postponement order in exercise of their inherent powers.
 - Nature of postponement order – A preventive measure – Held, postponement order though having its genesis in contempt law, is really not punitive – Its function is to prevent possible contempt.

- Width and extent of postponement order – Held, order may include direction for non-disclosure of identity of victim, witness or complainant – Publishing of evidence of a witness may also be barred – Public right to know through media is to be balanced with litigating party’s right to have cool-minded judicial verdict – However, such orders of postponement should be ordered without disturbing the content of the publication.
 - Period for which postponement order may be issued – Held, postponement order can only be for a limited period or short period.
 - Postponement order vis-à-vis open justice system – Held, open justice promotes transparency and public confidence but openness is not an absolute requirement for every case – Exceptions can be created where core function of judicial system, namely, to render unbiased decisions, has to be preserved.
 - privacy and confidentiality – Right to negotiate in private – Avoidance of media gaze – Such right can be equated to right of accused in a criminal trial.
 - Guidelines – Guidelines for reporting, held, cannot be framed across the board – What is an offending publication has to be decided on a case-to-case basis – It would require the courts in each case to see content and context of offending publication.
 - Remedy against postponement order – Held, postponement order is open to challenge in appropriate court.
 - Fair and accurate reporting – Fair reporting privilege is based on presumption of “open justice” in courts – Media by virtue of S. 4 of Contempt of Courts Act, 1971 is entitled to publish a fair and accurate report – Media has a right to know what is happening in courts and to disseminate the information to the public which enhances the public confidence in the transparency of court proceedings.
 - Justifications for and sources of power for passing postponement orders – Arts. 129 and 215 of Constitution declare Supreme Court and High Courts as courts of record and having constitutional power to punish for their contempt – Constitution also preserves common law powers of superior courts – Art. 19(2) of Constitution permits reasonable restrictions on freedom of expression for avoiding contempt of court – Temporary postponement order, held, is a reasonable restriction – Art. 21 of Constitution conferring right to fair trial – Unwanted media coverage may affect this right – Justification as a test under Arts. 14 and 21 of Constitution – Postponement order, held, satisfies this requirement also
 - Constitution of India – Arts. 129 & 215 and 19(1)(a) & 19(2) & 21 – Contempt of Courts Act, 1971 – Ss. 2(c), 3, 4 and 5 – Human and Civil Rights – Fair Trial – Facets of – Presumption of innocence until proved guilty – Trial by media – Preventive measures – Criminal Trial – Presumption of innocence
- B. Criminal Trial – Fair and Speedy trial – Postponement of media reporting – Fair and accurate reporting of a trial, held, can be temporarily prohibited if there is substantial risk of prejudice in later or connected trials – Contempt of Courts Act, 1971 – Ss. 7 4 and 13 – Press and Media Laws – Postponement orders**

- C. Constitution of India – Pt. III – Constitution scheme – Composite mechanism to sustain democratic set-up – One right does not Court’s duty to strike a proper balance in a given situation where one right competes with other – Temporary deferment of one right so as to avoid conflict with other – Reasonableness as hallmark of State action – Freedom of expression vis-à-vis right to have a trial uninfluenced by media publicity – Temporary restraint on media coverage of judicial proceedings – Postponement order – Underlying basis – Balancing of two competing rights, namely, public right to know through media under Art. 19(1)(a), against individual right under Art. 21 to protect one’s liberty or privacy – Constitution of India – Art. 19(1)(a), Preamble and Arts. 21 and 14 – Press and Media Laws – Postponement orders
- D. Constitution of India – Arts. 19(1)(a) & 19(2) and preamble – Freedom of expression – Meaning and content – Reasonable restrictions democratic society – Various facets of said right – Informed citizenry – Availability of different shades of opinion including radical ones – Widest dissemination of information by different sources – Discussion forums enabling exchange of ideas – Media as an instrument of free expression – Right to freedom of expression, however, not absolute and subject to reasonable restrictions under Art. 19(2) so as to ensure orderly conduct of democratic society
- E. Constitution of India – Arts. 129, 215, 142(2) and 19(2) – Contempt jurisdiction and media freedom – Widest amplitude of expression “in relation to contempt of court” occurring in Art. 19(2) – Inherent power of Supreme Court and High Courts under Arts. 129/215 and Art. 142(2) – Held, Art. 142(2) operates in a limited field while powers under Arts. 129 and 215 are wider – Ambit of powers under Arts. 129 and 215 – Superior courts (Supreme Court and High Courts), held, being courts of record, have inherent powers even to punish for contempt of lower courts – Contempt of Courts Act, 1971, Ss. 2(c), 4 and 10
- F. Constitution of India – Arts. 19(1)(a) & (2) and Preamble – Freedom of speech and expression – Comparative position in different jurisdictions – Freedom of expression and postponement of media publicity of court proceedings – Held, in USA, right to freedom of expression is absolute and therefore courts there, in order to prevent media interference, have to devise techniques other than media restrictions - Clash model of USA, further held, is the product of absolute freedom of expression recognized in USA – Position, however, is different in India where reasonable restrictions on media are permitted by Constitution itself – Postponement order can be passed in India to ensure that conducting of fair and dispassionate trial by court is not usurped by media – Law relating to freedom of expression in other jurisdictions, namely, Canada, UK, European continent, Australia and New Zealand also reviewed while determining contours of India law – Constitution of USA – First Amendment
- G. Contempt of Courts Act, 1971 – Ss. 7, 4 and 13 – Relative scope – Court proceedings in chambers or in camera – Divulging of information by media – Contempt under S. 7 – Reason for treating such disclosure differently from fair and accurate reporting under S. 4 – Held, 7 refers to leakage of information whereas S. 4 refers to reporting of court proceedings – Leakage defeats very purpose of hearing in chambers or in camera – Hence, it is treated as contempt of court - S. 4 on the other hand supports open justice system – Effect of S. 13 – For imposing sentence under S. 13, held interference with due course of justice is the primary consideration.
- H. Constitution of India – Arts. 141, 32, 136 and 226 – Determination of law through judicial interpretation – Permissibility – Open-textured expressions in Constitution/legislation to which definite meaning ought to be assigned – Such exercise, held, is a legitimate judicial function – Media reporting of court proceedings – Board contours of law laid down by Court with reference to constitutional and other legal provisions – Held, Court by doing this, has only crystallized law flowing from open-textured

expressions like ‘law in relation to contempt of court’, ‘freedom of speech and expression’, ‘administration of justice’, and combined reading of Arts. 19(1)(a), 19(2), 21, 129, 215 and S. 2(c) of Contempt of Courts Act, 1971 – Court by virtue of its function under Art. 141, is entitled to give definite shape to law where so warranted – Words and Phrases – “Law in relation to contempt of court”, “equal protection of law”, “freedom of speech and expression” and “administration of justice” – Interpretation of – Jurisprudence – Judicial law-making – “Open-texture” of law, as basis for

- I. Constitution of India – Art. 141 – Law declared by Supreme Court – Existence of lis – On facts, held, lis existed – Negotiations for settlement going on between appellant, a private party and respondent, a statutory body (SEBI) – Unsolicited media publicity bringing the matter to public domain and thus invading their privacy – Both parties inviting Court to define law at least for future guidance – Held, there was an issue before Court, requiring declaration of law.
- J. Constitution of India – Arts. 32, 226 and 136 – Practice and Procedure – Collateral issue arising during pendency of main matter before Court – Court, if can resolve such issue
- K. Constitution of India – Art. 141 – Precedents – Utility – Understanding bases of law – Held, Indian precedents as well as comparative law from foreign jurisdictions, assist in determining contents and contours of rights.

2012- 5-L.W.709

State of A.P. & Ors

Vs

D. Raghukul Pershad (d) By Lrs & Ors

Landlord-tenant/Evidence, Suit for eviction, declaration of title, not claimed, effect of,

Evidence Act (1872), Section 116/Title, denial, evidence in proof of, absent, Scope of, Suit for eviction, without declaration of title, effect of,

Eviction/title, denial, declaration of title, when arises, Scope of.

An averment was made in the plaint that the respondents were the owners of the suit land, but no relief for declaration of title was claimed – This being not a suit of declaration of title and recovery of possession but only a suit for eviction, the Courts were not called upon to decide the question of title.

Appellants who were the tenants of the respondents will have to surrender possession to the respondents before they can challenge the title.

Findings on title set aside, but we maintain the decree for eviction.

SUPREME COURT CITATIONS CRIMINAL CASES

2013 (1) CTC 129

Court on its Own Motion (Lajja Devi)

Vs

State

and

Laxmi Devi and Anr

Vs

State (GNCT of Delhi) & Ors

Prohibition of Child Marriage Act, 2006 (6 of 2007), Sections 2(a), 9, 12 & 15 – “Barring three circumstances envisaged in Section 12, marriage of a child is voidable at instance of said child and it is not void – Girl married at 13 years – Petition filed by Mother for custody allowed – Marriage of Girl voidable after her attaining majority.

Prohibition of Child Marriage Act, 2006 (6 of 2007), Sections 2 & 3(a) – Child Marriage – Whether void? – Marriage contracted with female of less than 18 years or male of less than 21 years would not be void but only voidable and same would become valid if action contemplated under Section 3 is not taken for declaration of said marriage as void – When girl, who was 15 years of age, at time of marriage, does not file any proceedings for declaring said marriage as void and has attained age of 21 years, said marriage, held, becomes valid.

Prohibition of Child Marriage Act, 2006 (6 of 2007) – Hind Minority and Guardianship Act, 1956), Section 6 – Child Marriage – Custody of married girl Child – Determination of – Factors to be considered by Court, discussed.

Indian penal Code, 1960 (45 of 1960), Section 376 – Prohibition of Child Marriage Act, 2006 (6 of 2007) – Provision in Code stipulating that rape committed by Husband on his Wife, who is above 15 years of age, would not be rape, ought to be amended in order to bring about effective implementation of 2006 Act.

Indian Penal Code, 1960 (45 of 1960), Section 376 – Rape – Consent – Girl below 15 years of age – Consent would be immaterial when girl is below 15 years of age – Offence would be made out and charge-sheet cannot be quashed – However, it would require consideration if girl after majority affirms and reiterates her consent.

Indian Penal Code, 1960 (45 of 1960), Section 375 – Rape – Wife below 15 years of age – Consummation – Consent of Wife and Personal Law of Wife would be immaterial and consummation with Wife below 15 years of age would be an offence.

Indian penal Code, 1960 (45 of 1960), Section 376 – Rape – Consent – Girl above 16 years of age – Girl above 146 years of age, if makes statement that she consented and said statement and consent are not without any force, undue influence or coercion, Court can quash proceeding under Section 376 – Consequently, girl, who was 17 years of age at time of marriage, consents that she married on her own accord, FIR filed against her Husband under Section 376, quashed – Code of Criminal procedure, 1973 (2 of 1974), Section 482.

Prohibition of Child Marriage Act, 2006 (6 of 2007) – Acceptance of Child Marriage by various enactments – Effect of – Need for Amendment – Legislative intent of 2006 Act to curb Child Marriages subdued by Legislative endorsement and acceptance of minor marriages in other statutes – provisions under various enactments directly or impliedly acquiescing Child Marriage, discussed – Need for Legislature to incorporate changes in 2006 Act and other enactments, emphasized, - Indian Penal Code, 1860 (45 of 1860), Section 375 – Indian Majority Act, 1875 (9 of 1875) – Dowry Prohibition Act, 1960 (28 of 1961), Section 6(1)(c) – Code of criminal Procedure, 1973 (2 of 1974), Section 125 – Hindu Marriage Act, 1955 (25 of 1955), Section 13(2) (iv).

2013 (1) CTC 230

Indra Kumar Patodia and Anr
Vs
Reliance Industries Ltd and Ors

Code of Criminal Procedure, 1973 (3 of 1974), Sections 2(d) & 200 – Negotiable Instruments Act, 1881 (26 of 1881), Section 142 – Complaint under Section 138 – Signature – Whether necessary – Non-obstante clause under Section 142 – Effect of – Complaint under Code includes allegation made orally or in writing – Non-obstante clause in Ni Act excludes oral Complaints and excludes cognizance of Complaint if made by anybody other than payee or holder – Section 200 of Code demands that examination of Complainant has to be signed – Logically, presentation of Complaint merely first step – Action can be taken only after verification under Section 200 has been completed by Magistrate – Complaint, though not signed by Complainant, subsequently verified by Magistrate – Would not cause any prejudice to Accused on account of non-signing – Statement made on oath and signed by Complainant under Section 200 would safeguard interest of Accused – Legislative intent of Section 142(a) would be Complaint has to be in writing and Magistrate would examine Complainant on oath and Verification Statement is to be signed by Complainant – Complaint made without signature under section 138, maintainable when Complaint is verified by Complainant and process is issued by Magistrate after verification.

Negotiable Instruments Act, 1881 (26 of 1881), Sections 138 & 142 – Limitation – Computation of – Period of limitation to be computed from date of filing Complaint or initiating Criminal proceedings – Date of taking cognizance by Magistrate would not be relevant for computing period of limitation.

(2012) 10 Supreme Court Cases 433

KURIYA AND ANR
Vs
STATE OF RAJASTHAN

A. Penal Code, 1860 – Ss. 302/34 and 364/34 – Applicability of S. 34 – Common intention to kill deceased – If established - Specific role not attributable to each accused – Large number of accused acting in concert – Effect – Principles, reiterated – Conviction of all accused with aid of S. 34. confirmed

- Dispute about agricultural land between deceased and accused persons, resulting in 15 accused persons (including appellant-accused) killing deceased, using axe “kash” and “lath” – Evidence on record clearly established that all accused persons had come with weapons, assaulted deceased and taken him inside house of one of the accused where he was again assaulted by accused persons and after sometime, his body was dragged out by accused persons, including appellant and thrown near a hand-pump nearby – Held, this is clearly a case of common intention and object to murder – There was motive for accused persons to kill deceased, they had come out with common intention and object to assault and kill deceased, in which they succeeded – According to evidence, large number of persons (15) had attacked one person - Hence, witnesses cannot be expected to explain role in inflicting of injuries by each one of them individually and weapons used – Such conduct would be opposed to normal conduct of a human being – Fear for his own life and anxiety to save victim would be so high that eyewitness(es) in such a situation cannot be expected to speak with person with regard to injuries inflicted on body of deceased and role attributable to each of accused individually – In cases where it is not possible to attribute a specific role to a particular accused, like present case, recourse to S. 34, held, was appropriately made by prosecution – Evidence Act, 1872, Ss. 114 and 115

B. Penal Code, 1860 – Ss. 302/34 and 364/34 – Murder trial – Proof beyond reasonable doubt – Cumulative effect of prosecution evidence – Natural witnesses – Motive established, even by testimony of defence witnesses – Motive established, even by testimony of defence witness – Conviction confirmed - Dispute over land – Key witnesses being young son of deceased and a passerby who was attracted to scene by scream of deceased while being assaulted by accused persons – Their evidence fully corroborated by medical evidence, inquest report, postmortem report, statement of IO and recovered items though two other eyewitnesses turning hostile

C. Penal Code, 1860 – Ss. 302/34 and 364/34 – Murder trial – Appreciation of evidence – Medical evidence vis-à-vis ocular evidence – Conflict between regarding manner in which injuries were inflicted – Material inconsistency not made out on correct appreciation of the same – Conviction confirmed - Blunt side of sharp weapons – Injuries caused by – Accused alleged to be carrying sharp-edged weapons, but no injuries likely to be caused by sharp side of such weapons found on deceased – Clothes of deceased however found to be bloodstained – Held, this could be explained by fact that some blood from severe internal bleeding would have oozed out, due to severity of beating by 15 persons and dragging about of deceased while being assaulted and after he had succumbed and died

(2012) 10 Supreme Court Cases 451

ALAGUPANDI ALIAS ALAGUPANDIAN
Vs
STATE OF TAMIL NADU

- A. Penal Code, 1860 – S. 302 – Murder trial – Appreciation of evidence – Conviction confirmed – Appellant killed his stepmother by stabbing her with a knife – PW 1, brother of deceased, was staying with her – He was sleeping outside the house that house that night – He saw appellant running out of house with bloodstained knife – Knife and bloodstained shirt were recovered on confessional statement by appellant – Serological report clearly supported prosecution case – FIR registered on basis of statement of PW 1 within 11/2 hours – PW 1's presence was found natural and supported by PWs 11, 6, 14, and recovery of weapon of crime upon disclosure statement of accused, completed chain of events – Statement of PW 1 is fully corroborated by other witnesses, expert evidence and medical evidence – There was a clear motive as entire properties left by father of accused were being enjoyed by deceased herself – Accused had to ask for money from deceased and more often she refused to give him money, and otherwise also they had strained relations
- B. Criminal Procedure Code, 1973 – S. 154 – FIR – Prompt FIR – Effect on credibility of FIR – Occurrence had taken place after 12 a.m./midnight on 13-1-2002/14-1-2002 – FIR was registered at 0130 hrs on 14-1-2002 on basis of statement of PW 1 – At best, there is nearly one and half hour's gap between time of occurrence and registration of FIR – If PW 1 was not present at house of his sister, who was stabbed to death by appellant at night while she was asleep inside, and PW 1 outside the house, then it could not have been possible for PW 1 to see accused running away after stabbing his sister and also he could not have met Sarpanch of village and then police officer within a short period of occurrence – PW 1 stated entire facts before PW 11, Sub-Inspector, whereupon FIR was registered – Held, there is no delay in lodging FIR, and in any event even delay of 1 or 1 1/2 hours is fully explained by conduct of PW 1
- C. Criminal Trial – Motive – Necessity of proving, if any – Establishing existence of a motive for committing a crime is not an absolute requirement of law but it is always a relevant factor, at it renders assistance to courts while analyzing prosecution evidence and determining guilt of accused.
- D. Criminal Trial – Clues and tell-Tale Signs/Forensics – Bloodmarks/Trial and Bloodstains – Matching of blood group – Inference – As per serological report shirt of appellant-accused contained human blood of group A – Same blood group was also found on saree, jacket and gunny bag which were seized from place of occurrence – This is a very material and significant piece of evidence and was put to accused under S. 313 CrPC, but except vague denial accused said nothing more – Held, this is clinching evidence against accused which fully supports prosecution – Evidence Act, 1872 – S. 45 – Criminal procedure Code, 1973, S. 313
- E. Criminal Trial – Witnesses – Child/Young witness – Reiterated, child witness can be a competent witness provided statement of such witness is reliable and truthful – While assessing evidence of a child

witness court must carefully observe his/her demeanour to eliminate likelihood of tutoring – Conviction can be allowed to stand without any corroboration, but as a rule of prudence it is always desirable to seek corroboration of such evidence from other reliable evidence on record.

- F. Criminal Trial – Examination – Non-examination/Failure to examine witness – PWs 7 and 8 were said to be child witnesses who had seen occurrence, being minor sons of deceased – Court put certain questions to these witnesses to form an opinion as to whether they would be able to depose – Trial court did not permit recording of statement of these witnesses being child witnesses – Legality or correctness of this direction of trial court was not questioned by either party – No arguments addressed even before Supreme Court by either party that these two child witnesses should have been examined and that it had caused any prejudice to any of the parties in present appeal – According to PW 1, these children has seen appellant-accused murdering their mother – Despite this statement if these witnesses have not been examined and parties have not raised nay objection in that regard, no reason to record any findings on this aspect of case – Evidence Act, 1872, Ss. 136, 155 and 134
- G. Criminal Trial – Witnesses – Eyewitness – Stating exactly what he saw and no more – Effect on credibility of testimony – Interested/Related witness – Evidentiary value – Every witness, who is related to deceased cannot be said to be an interested witness – Statement of every related witness cannot, as a matter of rule, be rejected by courts – Statement of PW 1(brother of deceased) inspires confidence and is truthfully and reliable – His statement does not suffer from any material contradictions – If PW 1 intended to lie, nothing prevented him from saying that he was also an eyewitness to scene of stabbing of deceased by appellant-accused – He only stated that he had merely seen accused running out form house of deceased with a knife in his hand – Remaining facts were established by circumstantial evidence – Where a sole witness has staged exactly what he had actually seen and said statement otherwise fits into prosecution case, and is trustworthy, court normally would not be inclined to reject statement of such sole witness – Evidence Act, 1872, Ss. 6, 59, 134 and 155.

(2012) 10 Supreme Court Cases 464

MUNISH MUBAR
Vs
STATE OF HARYANA

- A. Penal Code, 1860 – Ss. 302/34 and 404 – Murder trial – Circumstantial evidence – Murder soon after arrival at airport – Recovery of articles belonging to deceased and bloodstained clothes of deceased based on disclosure statement of appellant-accused; he also found to be present near place of occurrence at relevant time based on telephone call records; and non-explanation by appellant-accused regarding incriminating evidence against him – Conviction confirmed – Criminal Procedure Code, 1973 –Ss. 374 and 386 – Evidence Act, 1872 – Ss. 65-B, 7 and 27 – Telecommunications Laws – Mobile phone/Satellite phone/GPS devices – Data from - Forensic use
- B. Criminal Trial – Circumstantial evidence – Failure to explain incriminating circumstances – Effect – It is obligatory on part of accused respect to incriminating circumstances associated with him – Court must take note of such explanation even in a case of circumstantial evidence so to decide whether chain of circumstances is complete – It was the duty of appellant to furnish some explanation in his statement under S. 313 CrPC, as under what circumstances his car had been parked at Delhi Airport and it remained there for 3 hrs on date of occurrence during exactly the time period in which deceased was to arrive, and was then allegedly done to death by appellant.
- C. Criminal Trial – Circumstantial evidence – Recovery of crime articles/other articles – Non-examination of independent witnesses and reliance upon depositions of police officials in respect of recovery – Effect of – Defence did not raise this issue during cross-examination of IO as to why independent

person was not made panch witness – Police witnesses were found reliable – Contention of appellant regarding non-examination of independent person, rejected – Conviction confirmed – Evidence Act, 1872, S. 27

- D. Criminal Trial – Circumstantial Evidence – Generally – Appreciation of evidence – Circumstantial evidence is a close companion of factual matrix, creating a fine network through which there can be no escape for accused – In a case of circumstantial evidence, circumstances must be fully established and all facts so established, must be consistent with hypothesis regarding guilt of accused – Circumstances so established should exclude every other possible hypothesis except one sought to be proved, as in present case
- E. Criminal Trial – Circumstantial Evidence – Motive – In a case of circumstantial evidence motive assumes great significance and importance – Absence of motive would put the court on its guard and cause it to scrutinize each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take place of proof – However, evidence regarding existence of motive which operates in mind of an assassin is very often not within reach of others – Motive may not even be known to victim – Motive may be known to assassin and no one else may know what gave birth to such evil thought in his mind – If evidence on record suggests sufficient/necessary motive to commit a crime (as in present case), it may be conceived that accused has committed the same

(2012) 10 Supreme Court Cases 517

**MANHARIBHAI MULJIBHAI KAKADIA and Anr
Vs
SHAILESHBHA MOHANBHAI PATEL AND ORS**

- A. Criminal Procedure Code, 1973 – Ss. 397, 401(2), 203, 200, 202 and 204 – Complaint case – Revision petition filed by complainant against dismissal of complaint under S. 203 – Opportunity of hearing to accused / suspect, held, is necessary
- Held, dismissal of complaint under S. 203, whether at stage of S. 200 itself or after following process contemplated under S. 202, culminates in termination of complaint proceedings – Therefore, when complainant files revision petition thereagainst before High Court or Sessions Judge, accused/Suspect arraigned in complaint gets right of hearing before Revisional Court, as is expressly provided in S. 401(2), notwithstanding that order impugned in revision was passed without his participation
 - However, if Revisional Court remands impugned order to Magistrate for fresh consideration, accused/suspect arraigned in complaint would not be entitled to hearing before Magistrate until consideration of matter for issuance of process – Expressions “prejudice”, “other person”, “in his own defence” occurring in S. 401(2) – Meaning of – Penal Code, 1860, Ss. 420, 467, 468, 471 and 120-B
- B. Criminal Procedure Code, 1973 – Ss. 200 to 204 – Complaint – Summons or issuance of process – Hearing of accused/suspect – Pre-issuance and post-issuance stages, distinguished – Held, in proceedings under S. 202 accused/suspect is not entitled to be heard on question whether process should be issued against him or not – Up to stage of issuance of process, accused cannot claim any right of hearing
- C. Criminal Procedure Code, 1973 – S. 202 – Twin objects of, restated
- D. Criminal Procedure Code, 1973 – S. 202 – Scrutiny of complaint by Magistrate under – Locus standi – Accused has no locus standi at this stage

- E. Criminal Procedure Code, 1973 – Ss. 203, 200 to 202 (Ch. XV), 204, 210, 156 and 190 – Dismissal of complaint under S. 203 – Nature of stage of - In exercise of power under S. 202, police directed to investigate allegations in complaint by Magistrate – Investigation report opining that no offence was made out – Accepting that report, complaint dismissed – In such circumstances, held, complaint was dismissed not at pre-cognizance stage but at post-cognizance but at pre-issuance of process stage – Cognizance had been taken when police was directed to investigate – Expressions “cognizance”, “taking cognizance” – Meaning of

(2012) 4 MLJ (Crl) 792 (SC)

Sangeet and Anr
Vs
State of Haryana

- (A) Indian Penal Code (45 of 1860), Sections 302, 307, 148, 449 read with 149 – Arms Act (54 of 1959), Section 25(1-B) – Murder – Death penalty imposed to appellants – Appeal – Held, Court has not endorsed approach of aggravating and mitigating circumstances – No balance sheet to comparing both – There is considerable uncertainty on punishment to be awarded in capital offences – Whether it should be life this uncertainty, awarding a sentence of life imprisonment, not unquestionably foreclosed – No evidence that victims body was burnt by appellant/accused from below waist with a view to destroy evidence of her having been subjected to sexual harassment and rape – No evidence that accused was a professional killer – Death penalty awarded to appellants converted into a sentence life imprisonment – Appeal allowed.
- (B) Life sentence – Explained – Prisoner serving a life sentence has no infeasible right to release on completion of either fourteen years or twenty years imprisonment – A convict undergoing life imprisonment expected to remain in custody till end of his life, subject to any remission granted by appropriate Government under Section 432 of Cr.P.C.- It is subject to procedural checks in that Section and substantive check Section 433-A of the Cr.P.C.

2012- 2-L.W.(Crl.) 825

MSR Leathers
Vs
S. Palaniappan & Anrrinivasan and Anr

Negotiable Instruments Act (1881), Section 138/Proviso, dishonor of cheque, Notice, Complaint, Successive defaults, Complaint, whether permissible; Requisites of offence, what are; ‘Cause of action’ to constitute an offence, what are. Section 142/‘Cause of action’, Scope of, Successive dishonor of cheque, Prosecution based on, permissible; Complaint based on first default, not launched; whether bars prosecution on second default, ‘Absolution’; whether permissible, ‘cause of action’, in criminal law.

Held: Decision is Sadanandan Bhadrans case (1998-2-L.W. 728) overruled – Prosecution based upon second or successive dishonor of the cheque is also permissible so long as the same satisfies proviso to Section 138 – Prosecution based on a second or successive default in payment of the cheque amount should not be impermissible because no prosecution on the first default followed by a statutory notice and a failure and a failure to pay had not been launched.

Proviso to Section 138, stipulates three distinct conditions precedent, before the dishonor of a cheque can constitute an offence and become punishable – What are, stated – See Para 10.

A complaint under Section 138 can be filed only after cause of action to do so has accrued in terms of clause (c) of proviso to Section 138.

Neither Section 138 nor Section 142 forbids the holder or payee of the cheque encashment on any number of occasions within a period of six months of its issue or within the period of its validity, whichever is earlier.

Nothing in the Act that forbids the holder/payee of the cheque to demand by service of a fresh notice under clause (b) of proviso to Section 138 of the Act, the amount covered by the cheque, should there be a second or a successive dishonor of the cheque on its presentation.

‘Cause of action’ meaning in Section 142 (b) of the Act, stated.

Statute does not provide for ‘absolution’ because the period of 30 days has expired or the payee has for some other reasons deferred the filing of the complaint against the defaulter.

2012- 2-L.W.(CrI.) 862

Nupur Talwar
Vs
Central Bureau of Investigation & Anr

I.P.C., Sections 302/34, 201/34,

Criminal Procedure Code, Section 204/issue of process by Magistrate, Order, challenge to/Aarushi Murder case, Section 461, 465,

Review of Judgment in 2012-1-L.W.(CrI.) 252 dismissed.

Per A.K. Patnaik, J.: Magistrate at the stage of Section 204 Cr.P.C. is to see whether on a perusal of the evidence there is sufficient ground for proceeding against the accused – Magistrate is not required to weigh the evidence.

To issue process, it was not legally necessary for the Magistrate to have given detailed reasons.

Once the order of Magistrate taking cognizance and issuing process was sustained no scope for further investigation.

Per J.S. Khehar, J: Sections 204, 209/speaking orders of Magistrate while issuing process, Necessity, Scope of, Sections 461, 465.

For the purpose of issuing process, all the concerned Court has to determine is, the concerned Court has to determine is, whether the material placed before it is sufficient for proceeding against the accused – Sufficient to proceed is different from sufficient to prove and establish guilt – Magistrate was fully justified in issuing process.

Possible defence(s) of an accused need not be taken into consideration at the time of issuing process.

Magistrates order being speaking, cannot be stated to have occasioned failure of justice – Order of the Magistrate, therefore, cannot be faulted on the ground that it was a reasoned order.

HIGH COURT CITATIONS CIVIL CASES

2012 (1) TLNJ 1 (Civil)

R. Sankarappan, 10/176 Singanna St Chintadripet Chennai - 2

Vs

C.M. Kbrahim, Managing Partner, Express Construction Company 78/829 Anna Salai, Chennai – 2 and Anr

Civil procedure Code, 1908 Order 39 Rule 1 & 2 and Order 38 Rule 5 – Suit for recovery of money – immovable property cannot be property in dispute to grant temporary injunction to secure the amounts in the suit for recovery is Order 38 Rule 5 – property can be attached to secure the amounts or defendant can be asked to furnish security – Relief of damages is against defendant No. 2 whereas property belongs to defendant NO.1 against no relief is claimed – O.A. dismissed.

2012- 5-L.W.1

Consim Info Pvt. Ltd., No. 94, TVH Beliciaa Towers, Tower II, 10th Floor, MRC Nagar,
Mandaveli, Chennai – 600 028, rep. By its Director and Chief Executive Officer
Mr. Janakiraman Murugavel

Vs

Google India Pvt. Ltd., No. 3, RMZ Infinity – Tower E 3rd, 4th and 5th Floor,
Old Madras Road, Bangalore 560 016 and Ors

Trade Marks Act, (1999), Sections 2 (2)(b)(c)(ii), 28, 29, 30, 31, 'Infringement'; Contributory ancillary, 'passing off'; 'Bharatmatrimony.com'/Infringement of; Inclusion in 'Adwords', 'Keywords suggestion tool'; Effect of, "organic results"; "sponsored links"/Descriptive Generic mark.

Injunction/Infringement; Contributory, Ancillary/Passing off, 'Bharatmatrimony.com/Inclusion in 'Adwords', 'Keyword Suggestion tool'; Effect of' organic results'; 'Sponsored links'; Effect of.

Appeal against judgment reported in 2010-5-L.W. 385 dismissed.

Allegation against first respondent is that of 'contributory infringement' or 'ancillary infringement' – They are alleged to have facilitated the infringement by the other respondents, by providing the trademarks of the appellant as key words any by allowing them to use those marks in the adtitle and adtext of their advertisement.

A search engine is an information retrieval system designed to help find information stored on a system – It is a data base of 'web page extracts' that can be queried to find reference to something on the net.

An internet user targets the site on which he wishes to land, only through the use of specific words or expressions, called "keywords".

Respondents 2 to 4 used the combination of two words in the course of their trade which are registered trademarks of the appellant on their advertisements – If the respondents 2 to 4 use the individual words constituting the registered trade marks of the appellant in their advertisements in the sponsored links column, then such use would certainly fall within Section 2(2)©(ii) and Section 29(6)(d) of the Act.

If the appellant's registered trade marks is clicked, respondents 2 to 4's links are shown on the right hand side as 'sponsored links' – In the sponsored links appellant's mark is also shown with a space in between the two words – If one clicks the said word on the sponsored links it goes to respondents 2 and 4 – It only mislead the consumers.

If one goes to the web site of the respondents 2 and 4 on the right hand side sponsored links, no doubt the appellant's key word is also shown along with the respondents' key word – But, in that case if one click the appellant's key word, it goes only to the appellant's web site and not to the respondents' web site – Respondents 1 and 5 had discriminated the appellant and also arbitrarily used the trademark words as key word in the 'sponsored links' causing loss to the appellant business.

Respondents 1 and 5, Google has been adopting double standards, since the benefit given to the respondents 2 to 4 were not given to the appellant – There is a clear discrimination between the appellant and the respondents 2 to 4.

Appellant has established their case with regard to prima facie case and balance of convenience – As such, the appellants are entitled for injunction.

Undertaking given by the first respondent, Google, shall continue till the disposal of the suit.

2013- 1-L.W.53

A. Noorjehan & Ors
Vs
Kabir & Ors

C.P.C., Order 20, Rule 12/Suit for partition.

Mesne profits can be claimed even after the passing preliminary decree – But after the passing of the final decree, there can be no claim for mesne profits – Three years from the date of passing of final decree – Limit – Scope of.

2013- 1-L.W.63

N. Maheswari
Vs
Mariappan & Ors

Constitution of India, Article 227/Setting aside, judgment without reasons; Revision by third party/leave to file; defendant remained exparte, Onus on plaintiff, Proof of, Trial Court's role.

Learned Judge passed the judgment in three lines – “Heard; Judgment pronounced; Heard; Perused; Satisfied; Claim proved; In the result, suit is decreed as prayed for; No costs.”

The Court cannot pass judgment and decree as prayed for without giving any reasons, because the defendant remained ex-parte – Onus in more on the part of the trial Court when defendants remain ex-parte – As the trial Court has to go through the plaintiff's evidence, his claim, etc. to find out whether the plaintiff has proved his case – Merely because defendant remained exparte as it does not mean that the plaintiff has proved his case.

Case in hand is a typical example of mis-carriage of justice – Trial Court after framing three issues, did not discuss anything with regard to those issues by evaluating the evidence – It simply decreed the suit in a slip-should manner, against the second defendant also when the plaintiff himself admits that he has not pressed the suit against the second defendant.

As first defendant is concerned, the matter is to be remanded to the trial Court for reconsideration.

2012- 5-L.W.65

Murari Nadu (deceased) and Ors
Vs
Srinivasan and Anr
And
The Commissioner, Hindu Religious and Charitable Endowment
Vs
K. Srinivasan and Ors

Tamil Nadu Hindu Religious and Charitable Endowments Act (1959), Section 6(11)/Hereditary Trustee, Private temple, public temple, Scope.

Held: Suit temple –Arulmigu Bhuvaneswari Ellaiamman Temple is a private one – Though the temple is situate in Natham, it comes to light that forefathers of plaintiff had been looking after the temple, father of the plaintiff has concededly established the temple structure afresh, it ought to be observed that it is a private temple.

There is no property endowed to the temple – There is no kopuram or Dwajasthamba nor Hundial, bell etc., are present in the suit temple.

Members of the public have no participation in the dharshan in the temple and in the daily acts of worship, nor had they participated in any celebrations of festive occasions.

There could be no presumption that the temples in South India are public.

Even though it is held that such a presumption can be drawn, it has been treated as rebuttable presumption – Plaintiff has established that the suit temple is a private one by means of which the presumption has been satisfactorily rebutted.

2013- 1-L.W.72

Ramuthai & Ors
Vs
Mookkayee alias Pappammal (Died) & Ors

C.P.C., Order 18, Rule 3-A/Examining son on behalf of mother, Permission of Court to examine, to file proof affidavit, person other than plaintiff/mother, Section 151,

Evidence Act (1872), Section 120/Permission of Court to examine person other than plaintiff.

Plaintiffs filed a proof affidavit for chief examination of J-son of the second plaintiff, who is not a party to the suit.

Petitioners filed an application under section 151 CPC r/w Section 120 of the Evidence Act seeking to scrap such proof affidavit contending that the plaintiffs did not get permission to examine a third party, before they were examined as witnesses – Court returned, the petition and held that the petition filed by the petitioners stating there is no bar to examine son on behalf of mother as witness is not maintainable.

Held: If a party intends to examine any other witness other than the person who is also party to the proceedings, he has to get permission from the court – It is incumbent upon the Court to record reasons for permitting the party to the suit to examine other witness on his behalf before he was examined.

Held: It is the bounden duty of the plaintiff to get permission of the Court.

2012 (1) TLNJ 81 (Civil)

G. Kumar
Vs
Samuthiradevi and Anr

Hindu Law – Specific performance suit decreed ex parte – Court executed sale deed – Brother of JD filed petition to recall warrant for execution of sale claiming on interest on the property – executing court dismissed the petition and appeal the High Court held there is no presumption that a Hindu family possesses any joint property merely because, it is joint – burden of proving particular property as joint family property, is upon person who claims it as coparcenary property – If possession by joint family admitted or proved, such acquisition made by member is joint family property – CMA dismissed

2012 (1) TLNJ 124 (Civil)

P. Paramandandan
Vs
Selvanagaki Ponnusamy (died) Ponnuruvelu (died) and Ors

Constitution of India 1950 – Article 227 – Suit for delivery of possession dismissed – appeal filed nearly after four and half years with a petition to condone delay of 1670 days-reasons sought for condoning delay is non availability of records to the plaintiff earlier to prove her case – delay condoned and on revision High Court held that four such reasons the delay cannot be condoned – expressed that in such cases there will be no end to litigation – CRP (PD) allowed.

2013 (1) TLNJ 161(Civil)

Kesavan and Ors
Vs
Muthu Gounder S/o. Kairaya gounder

Civil Procedure Code 1908 as amended, Section 100 – Second Appeal – claim of possession of the Suit property – Patta is the prima Facie proof for title of the property – Revenue department had issued patta both in the name of Plaintiff and Defendant – Analyzed the documents – Documents produced by Defendants are ancient & partition Deed come into existence long prior to the filling of the Suit.

India Evidence Act, 1872, Section 114 – Possession is Presumed to be continued in possession unless dispossession is shown – It is for plaintiff to explain as to how he got possession from defendant – claim of possession is not proved – Second Appeal dismissed.

2013 (1) CTC 180

N. Babu
Vs
S. Shanmugam and Ors

Constitution of India, Article 227 – Striking off of Plaintiff – Second Appeal confirming ownership of Revision petitioner dismissed – After said dismissal suit property bequeathed by father of lessor by way of Will – Possession of lessee, on account of Lease Deed executed in favour of him after dismissal of Second Appeal, neither settled nor lawful – Possession of said lessee only as a trespasser - No injunction to be granted in favour of lessee restraining lawful owner/Revision Petitioner – Suit filed by lessee for injunction, clear abuse of process of law – Plaintiff in said Suit struck off – Civil Revision petition allowed.

Practice and Procedure – Re-litigation – Plaintiff in subsequent Suit, in case of re-litigation to be struck off by Court at earliest instance – Filing of subsequent Suit, abuse of process of Court and not to be encouraged.

2013 (1) CTC 193

Nagai Sivakathi Benefit Fund Ltd

Vs

P. Ramasamy and Ors

Code of Civil procedure, 1908 (5 of 1908), Order 29, Rule 1 – Suit for Recovery of money filed by Company – Managing Director signed Plaintiff and verified it – Trial Court held that it was not proved that Managing Director was competent to sign Plaintiff – Copy of Resolution passed by Board of Directors was marked without any objection and it is not open to Defendant to impeach same at a later point of time – There is nothing to indicate that Managing Director was not conversant with facts of case – Director or Principal Officer, which includes Managing Director of a Company, can represent Company in a Suit – Trial Court dilated unnecessarily on competence of Managing Director to sign Plaintiff on irrelevant considerations – In Cause Title it is not necessary to indicate, while describing a Company, that it is represented by Manager, etc., since Company itself is a corporate body having legal personality, which can sue or be sued – Officer, who signs Plaintiff, should be a competent person of a Company – Managing Director being Principal Officer of Company, wields enormous powers and hence, it would be illogical to visualize that such a person is not competent to verify Plaintiff.

Evidence Act, 1872 (1 of 1872), Chapter X – Deposition of party – Plaintiff is a Company registered under Companies Act – Officials could only speak with reference to document – Law does not expect witness, who deposes on behalf of Company, to depose from out of his personal knowledge – Assuming that a witness without back up of document deposes about some transaction, Court will not accept same – Merely because officer of Plaintiff disowned personal knowledge about certain transactions, it does not mean that his deposition should be looked askance at.

Practice and Procedure – Court cannot throw entire case of Plaintiff by picking holes in pleadings and evidence – It would not serve cause of justice and would amount to throwing baby along with bath water – In matters where clarity is required regarding accounts, Court is enjoined to appoint a Commissioner to take accounts – Since Plaintiff failed to adduce proper evidence regarding accounts, appropriate course for Court is to remit matter back – Direction issued for appointment of qualified Auditor as Commissioner to look into accounts already produced and to be produced – Appeal disposed off.

2013 (1) CTC 318

Kali Naicker and Anr

Vs

Jeganathan and Ors

Transfer of Property Act, 1882 (4 of 1882), Section 122 & 123 – “Gift” – Pre-requisites for valid Gift – Gift how to be made – Acceptance of Gift – Gift Deed executed by donor in favour of donee – When Gift Deed comes into effect – Acceptance of Gift by donee is essential for valid Gift – Gift Deed was not acted upon and validly accepted by donee – After execution of Gift Deed, donee has cancelled Gift Deed by Cancellation Deed and same was acted upon – Non-acceptance of Gift by donee would make Gift invalid.

Registration Act, 1908 (16 of 1908), Sections 48 & 49 – “Gift Deed” or “Settlement Deed” – Registration of Gift Deed – Legal presumption – Valid Gift – Donor has cancelled Gift Deed and same was acted upon – Donee has not proved that he has validly accepted Gift – Whether mere registration of Gift Deed would validate invalid Gift – Held, mere registration of Gift Deed would not amount to valid execution of Gift unless and until it is proved that donee has validly accepted Gift as per Section 122 of T.P. Act.

2013 (1) CTC 335

R. Sentil Kumar
Vs
Vilvanathan Mudaliar (Died) and Ors

Code of Civil procedure, 1908 (5 of 1908), Order 22, Rule 4 – Limitation Act, 1963 (36 of 1963), Section 5 – Application for arraying Legal Representatives of Defendant in Suit filed after delay of 1622 days – Date of death not informed of Plaintiff/Applicant – Held, duly cast upon other Defendants to inform Plaintiff about date of death of deceased Defendant to enable Plaintiff to take further steps – Defendants, who fail to do so, cannot take advantage of their own lapses – Delay in filing Application sufficiently explained – Order dismissing Application set aside – Revision allowed.

Code of Civil procedure, 1908 (5 of 1908), Order 43, Rule 1(k) – “Abatement of Suit – Whether can be reversed in Revision – Suit, held, abated as Application to condone delay in filing Application to bring LRs on record and to set aside abatement – Order dismissing Application to condone delay, revisable and thus, Revision against abatement of Suit also maintainable.

2012- 1-L.W. 351

V. Karuppannan
Vs
Idol of Sri Kalyana

C.P.C., Order 9, Rule 13, Order 21, Rule 106, Section 151.

Suit was filed by the respondent-Idol Sri ‘Kalyana Pasupatheeswaraswamy’, seeking for declaration and permanent injunction – Exparte decree was passed – Decree holder filed E.P. – Petitioner was set exparte initially – E.A. was filed under Order 21 Rule 106 for setting aside the exparte order, which was allowed - Whereupon the revision petitioner-K was permitted to participate in the E.P.

K filed E.A. on the ground that he filed the application under Order 9 Rule 13 for getting the order set aside – However, the lower Court dismissed the said E.A. and no order of stay could be granted.

Revision petitioner submitted that the said application filed under Order 9, Rule 13 was not numbered, because of some administrative difficulties.

It is the duty of the lower Court to send a Special Messenger to retrieve or get back the bundle in O.S., and number the application filed under Order 9 Rule 13 of the Code, instead of keeping the said I.A., idly which would lead to travesty of justice.

2012- 1-L.W. 353

P.V. Chinnaraji
Vs
V. Nagaraj

C.P.C., Order 41, Rule 23/Remand, Validity of.

Before passing an order of remand, the first Appellate Court has to record reasons that re-trial was necessary.

Opportunity was afforded to defendant to examine witnesses after his examination but defendant has filed to avail such opportunity – Remand is not an procedure easily to be resorted to.

2012- 5 - L.W. 385

M/s. Olympic Cards Ltd, rep. by its Managing Director
Vs
Standard Chartered Bank, Small Medium Enterprises Banking, Consumer Banking
rep. by its Protifolio Manager No.8, Haddows road, Chennai -1 and Anr

C.P.C., Order 9, rule 7, Order 9 Rule 13/Application to set aside ex parte order, not numbered, Returned, not represented, Effect of, whether amounts to abandonment, whether filing of fresh application, bar arises, scope of "Good cause", Application under Order 9, Rule 7, Role of Court,

Order 9 Rule 13 "sufficient cause"; what is,

Order 4 Rule (1)"Institution of a suit"; "valid legal proceeding",

Order 23, Rule 1(4)"withdrawal of suit without leave"; bar of fresh suit; when arises, unnumbered application, not represented, whether a bar, abandonment of claim,

Civil rule of practice, rule 16/ Presentation, institution of suit, what is, unnumbered application, not represented, whether suit instituted, abandonment of claim, what is,

C.P.C., Section 11/Res judicata/ Abandonment of claim, bar as to fresh suit, Scope of.

Suit for delayed booking Forward contract, interest rate on term loan, pre-payment penalty charges to over draft account, etc. – Application filed in Civil Suit Diary under Order 9, Rule 7, was returned and not represented, whether would amount to withdrawal/abandonment of the claim under Order 23, Rule 1 CPC – Precludes from filing a fresh application – Whether there was improper exercise of discretion in allowing application.

Abandonment of suit under Order 23(1) does not involve any adjudication on merits.

Application seeking permission of the Court to withdraw the suit and bar under Order 23, Rule 1(4) to file a fresh suit presupposed the institution of the suit.

Any abandonment before registration of suit would not constitute withdrawal of suit Order 23 Rule 1, so as to operate as a legal bar for a subsequent suit of the same nature.

Filing of an application in the Registry and return of it – Non-representation of the application would not amount to "abandon the claim".

Allowing application under Order 9, Rule 7/Order 9, Rule 13 C.P.C is the discretion of the trial Court.

2012- 5-L.W. 425

Kallakurichi Co-op Sugar Mill Dhina Coolie Thozhilalar Sangam, STA-309/1984, Moongil Thuraipattu – 605 705

Vs

The Government of Tamilnadu, rep by its Secretary to Government, Industries (Mic-2) Department, Secretariat, Chennai-600 009.

Practice/ Advocates, Government Pleaders, Soliciting Briefs, Professional etics, Taking notice, Scope of.

Tamil Nadu Cooperative Societies Act, Rule 189(3)/Commissioner of Sugars, power to issue such a circular, Appointment of Advocates,

Constitution of India, Article 226/Service, Service/Vacancies, posts, filling of,

Held: Soliciting briefs by the Government Pleaders constantly present before the court is not only unhealthy, but also contrary to the professional ethics framed by the Bar Council of India.

Since many complaints have come to this court from different bodies including panchayats and cooperative societies, this court is forced to clarify the legal position.

- The Government Pleaders must be informed that they cannot taken notices for any bodies, for which they have not been engaged as retainers.

Direction to issue circulars to all societies and panchayats that the choice of appointing the counsel is their own and the Government departments, cannot be asked to appear for them.

2012- 5-L.W.429

R. Lazarus

Vs

Dr. Mrs. Anna Duraisamy, Rep. by her Power of Attorney agent S. Ashok

Tamil Nadu Buildings (Lease and Rent Control) Act (1960), Sections 10 (2), 11(4) /Non payment of rent for 14 years, Abuse of process, Revision whether maintainable,

Practice/ Rent Control, Abuse of Process, Letters to Chief Justice, Revision maintainability.

Revision petitioner/tenant being a defaulter in paying the rent for many years has no locus standi to maintain the revision against the impugned order passed under Section 11(4).

A tenant who has not paid rent after the eviction order passed by the learned Rent Controller and the order passed by the Appellate Authority under Section 11(4) of the Act and also the conditional order passed by this court, is resorting to various illegal methods of sending letters by registered post directly to the Hon'ble Chief Justice with false averments – No person is entitled to adopt abuse of process of law and the court, by illegal methods by sending letters with false averments.

Revision preferred by the petitioner/tenant is not legally sustainable and the same is an abuse of law and Court, the Civil Revision Petition is dismissed with cost.

2012- 5 - L.W. 440

K. Ramachandran

Vs

Kanna Gounde & Ors

Evidence Act, (1872), Section 112/Presumption, birth during marriage, proof of legitimacy, access to each other, Scope of.

There is no evidence to prove and establish that the plaintiff was not born during the wedlock of P.W.3 and D1.

D1 acknowledged plaintiff as his son and he acted as the guardian for is son-the plaintiff and executed the sale deed-Ex.A4 on his behalf also.

Presumption contemplated under Section 112 is only a rebuttable one.

The Court should be reluctant to bastardize a person.

The Courts below have committed illegality in not considering the scope of Section 112 when it was not shown that the parents of the plaintiff had no access to each other at any time when the plaintiff could have been begotten.

2012- 5-L.W.451

Smt. Saroja Sukmaran
Vs
R. Padmanaban

C.P.C., Section 60(1), Proviso (g),(k), Order 38, Rule 5, terminal benefits, whether can be attached, concession by counsel, effect of.

Practice/ Concession by counsel, effect of/attachment of terminal benefits, Scope of.

Held: Terminal benefits viz., gratuity and Provident Fund amounts cannot be attached.

2012- 5-L.W.609

The Head Master, the Government Boys Higher Secondary School, Uthanagari rep. By Chinnathambi,
Head Master, Government Boys Higher Secondary School and Anr
Vs
Rasul Khan and Ors

Patta/Issuance of, Title, whether conveys, Cancellation of, Government authority, who can issue,

Gramanatham/Issuance of Patta, when possible, Prescriptive title when can be prescribed', Scope of,

Revenue Standing Orders, Paragraph 7(ii)/Form 21.

Fraud/ Patta, Cancellation of, Scope, Fraud vitiates all acts.

Maxims: Fraus et jus nunquam cohabitant; Fraus et dolus nemini partocinari debent.

Held: Court below were no justified in declaring the right of the plaintiff.

House site patta was issued in Form NO.21 as per paragraph 7(ii) of Revenue Standing Orders.

On coming to know of the fact that the plaintiff in collusion with the official who was not fully competent to issue such grant, obtained such grant, steps have been taken by the official concerned by issuing notice for cancellation – Fraud vitiates everything.

The authority which issued the patta or grant in respect of gramamatham, can also cancel it – There could be gramamatham lands which got vested with the Government and which did not get vested with the Government.

An individual could also acquire prescriptive title over gramamatham land by virtue of the principle nec vi nec clam nec precario, provided it is not a promboke land or land which got vested with the Government.

It is the specific case of D1 and D2, that Ex.A1 was obtained by practicing fraud and misrepresentation on the Government and the said Bimachar had no capacity or official power to issue such patta.

There is no evidence to demonstrate and display that either the plaintiff or his predecessors had been in possession and enjoyment of the property.

2012- 5-L.W.649

Natesa Gounder
Vs
Raja Gounder & Ors

Easements Act (882), Sections 13, 15/Easement by grant, Easement by prescription, antithetical to each other, Easement of necessity, Scope of.

Private easement rights would not be found specified in the revenue maps – But curiously in the revenue map, it was got corrected as though S.No.18/3 A is a pathway and that sub-division 3A also emerged in S.No.18.

It is clear that the plaintiff is having the facility of ingress and egress to his property through the 'iteri' (pathway) situated to the north of his property – In such case, his inclination or desire to use the suit property as his pathway from the southern side would not attract the concept of easement by necessity or easement of necessity by implied grant.

Implied grant and the concept easement by prescription are quite antithetical to each other – If a person is having an implied grant in his favour, then the question of prescription would not arise – Easement by prescription would come into play, if at all the plaintiff had exercised his right of ingress and egress to his property over a continuous period of 20 years in another man's land, openly, uninterruptedly and peacefully.

Plaintiff's right to have ingress and egress through the iteri (pathway) might be a difficult one, still he has to get himself satisfied with that.

In the absence of defendants 1 and 2 or their ancestors, being parties to Exs. A2 and A3, the right of pathway contemplated therein would not be binding on D1 and D2 – Easement of necessity by implied grant is not applicable.

2012- 5-L.W.662

Kalyani Ammal & Ors
Vs
Arumbu Ammal and Anr

C.P.C., Order 21, Rule 2/Payment out of Court/Compromise/Injunction, Co-owner, declaration of title, title dispute, Preliminary decree, Passing of,

When the plaint itself discloses a title dispute, it is incumbent upon the plaintiffs to pray for declaration of title over the suit property.

Law contemplates under Order XXI Rule 2 of CPC, that whenever there is any adjustment or compromise subsequent to the passing of the decree, the parties should approach the Court and get it recorded.

No injunction would lie against the co-owner of the property – The present suit filed by the plaintiffs without approaching the Court which passed the preliminary decree is not tenable.

HIGH COURT CITATIONS CRIMINAL CASES

(2012) 4 MLJ (Crl) 710

M. Natarajan

Vs

Alexendar Mohan, Inspector General of Police, Central Zone, Tamil Nadu and Ors

Code of Criminal Procedure, 1973 (2 of 1974), Section 14 – Jurisdiction – Private complaint – Private complaint filed before Chief Metropolitan Magistrate Court returned – Direction issued to file it before competent authority – Criminal Original Petition – Question as to whether Chief Metropolitan Magistrate has got exclusive jurisdiction to take cognizance of a private complaint against police officials – held, Section 14(i) Cr.P.C. is applicable to both Chief Metropolitan Magistrate and Metropolitan Magistrate – Local Limits of Magistrate detained by Chief Judicial Magistrate under Section 14 Cr.P.C. – Said Magistrate shall have jurisdiction to take cognizance of any complaint within territorial limit – Metropolitan Magistrate having jurisdiction over area where offence have been committed alone is empowered to take cognizance of offence – Return of complaint is in accordance with law – Order passed by Chief Metropolitan Magistrate confirmed – Criminal original petition dismissed.

(2012) 4 MLJ (Crl) 719

B. Ranganathan and Anr

Vs

State represented by Inspector Police, V7 Nolambur Police Station, Chennai -37 and Ors

- (A) Compromise in criminal proceedings – Property dispute between parties – Forgery of kist receipts from revenue department alleged – Compromise of personal dispute between individuals – Validity and enforceability of – Held, individuals of compromise no way concerned with act of forgery of kist receipts – Compromise has no impact upon criminal proceedings initiated – Criminal proceedings cannot be quashed on basis of settlement between individuals.
- (B) Code of Criminal Procedure, 1973 (2 of 1974), Section 195 – Cognizance of offence – Locus standi of complainant – Fraudulently using public document as genuine for obtaining status quo order – Maintainability of complaint – Held, Section 195 does not apply where forgery committee before document produced in Court – Document allegedly forged outside was produced in proceeding before Court – De facto complainant competent to set in motion criminal law against offenders for act of forgery – Complaint by individual maintainable – CrI.O,P partly dismissed.
