

TAMIL NADU STATE JUDICIAL ACADEMY

**** VOL. XIX— PART 12—DECEMBER 2024****

IMPORTANT CASE LAWS



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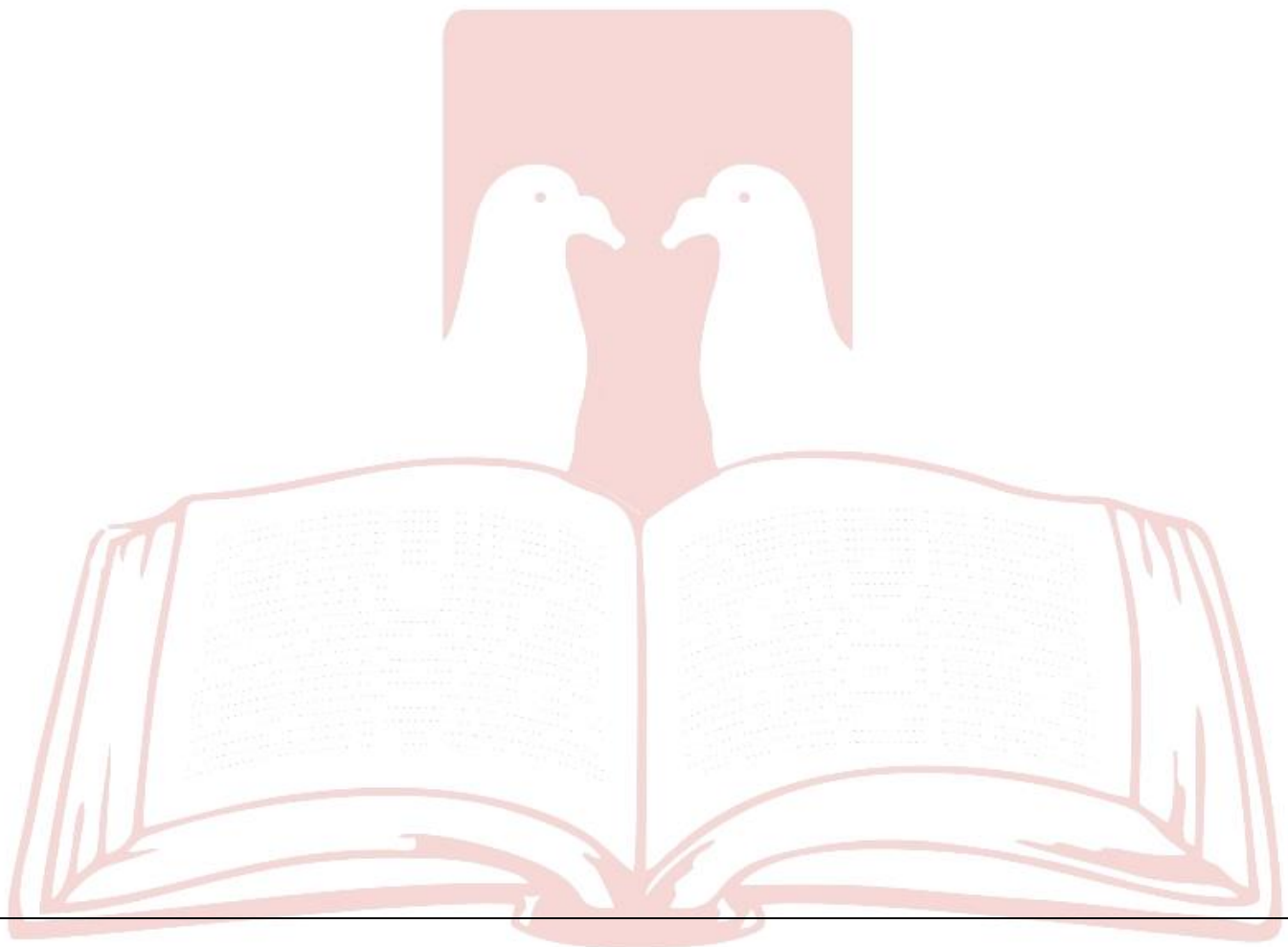
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SUPREME COURT – CIVIL CASES

Kallakuri Pattabhiramaswamy (D) through LRs. Vs. Kallakuri Kamaraju & Ors. [Civil Appeal No. 5389 of 2012]

Date of Judgment: 21.11.2024

Hindu Succession Act, 1956–Life Interest given to a woman will not transform into absolute ownership as per section 14 of Hindu Succession Act, 1956.

Hindu Woman can claim absolute ownership of property possessed under her Antecedent Maintenance right.

The Plaintiffs and the original defendant were step brothers. As per Partition deed the plaintiff's mother was given life estate and after her demise the property was to devolve upon the plaintiffs and defendants. After her demise, the plaintiff filed a partition suit. The Defendants contended that life estate was given to mother in lieu of her maintenance and her right got enlarged and she had executed a will in favour of him. The Trial Court allowed the suit holding that plaintiff's mother had no right to execute will. The appeal filed by the defendant before the Hon'ble Andhra Pradesh High Court was also dismissed. Hence, the defendants filed the present appeal. The issue that arose for consideration was whether the defendants were entitled to the entire property by virtue of Hindu Succession Act, 1956. The Hon'ble Supreme Court after deliberating section 14 of Hindu Succession Act and various judgments including V. Tulsamma Vs. V. Sessa Reddy, observed that Hindu Women's right to maintenance is not by virtue of statute, but is found in Shastric Hindu law; maintenance has to be proper, appropriate and adequate, giving the woman so maintained the ability to continue to live the life, similar to what she once lived; and that the very right to receive maintenance is sufficient title to enable the ripening of possession into full ownership if she is in possession of the property in lieu of maintenance. The Hon'ble Apex Court found the Shastric right of maintenance given statutory recognition by two pre-constitutional legislations, as

noted in V. Tulsamma Vs. V. Sessa Reddy and Raghubar Singh & Ors. Vs. Gulab Singh & Ors, stands satisfied and found no averments suggesting that the maintenance given to plaintiff mother was insufficient to warrant interference in line with Mangat Mal (Dead) and Anr. Vs. Smt. Punni Devi (Dead) And Ors. Thus the Hon'ble Supreme Court upheld the Hon'ble High Court judgment and dismissed the appeal.

Shingara Singh Vs. Daljit Singh and Anr. [Civil Appeal No.5919 of 2023]**Date of Judgment: 14.10.2024**

Section 52 of Transfer of Property Act, 1882- doctrine of *lis pendens* applies to a transaction during pendency of the suit and once sale agreement is proved subsequent sale during pendency of the suit is hit by the doctrine of *lis pendens*.

Section 52 of Transfer of Property Act, 1882 - Once Transaction is hit by Lis Pendens, bonafide purchase or lack of notice of Sale Agreement are not Defences.

Without any cross-appeal or cross-objections, it is not permissible to enter into the aspects of the matter which the parties did not object.

The Plaintiff had filed a suit for specific performance of sale agreement claiming that the 1st defendant did not come to registration office for executing the sale deed. Denying the agreement and receipt of earnest money, the defendant contented that it was joint family property. The 1st Defendant sold the property to 2nd defendant on 08-01-1993. The 2nd defendant claimed to be a bonafide purchaser and the agreement was assailed as fraud and fabricated. The Trial Court dismissed the suit holding that since the 2nd defendant had become owner, 1st defendant cannot execute sale deed and held 2nd defendant as bonafide purchaser and also ordered for refund of earnest money. The First appeal was also dismissed holding that the sale agreement is result of fraud and collusion between plaintiff and 1st defendant and doctrine of lis pendence is not applicable. In the second appeal, the Hon'ble High Court held that 2nd defendant was not a bonafide purchaser and the sale was hit by doctrine of lis pendence and allowed the second appeal by decreeing the suit. Hence the 2nd defendant filed the present appeal. The Hon'ble Apex Court held that when defendant did not move any cross-appeal or cross-objections, it is not permissible for the first Appellate Court to enter into the aspects of the matter to hold that the sale agreement was collusive between the Plaintiff

and Defendant No.1. After citing the earlier judgments in Usha Sinha Vs. Dina Ram (2008) 7 SCC 144, Sanjay Verma Vs. Manik Roy (2006) 13 SCC 608, Guruswamy Nadar Vs. P. Lakshmi Ammal (2008) 5 SCC 796 , Chander Bhan (D) through Lr. Sher Singh Vs. Mukhtiar Singh and Ors. 2024:INSC:377, the Hon'ble Apex Court held that doctrine of lis pendens applies to a transaction during pendency of the suit and once sale agreement is proved, the subsequent sale during pendency of the suit is hit by the doctrine of lis pendens. Resultantly, the Hon'ble Supreme Court dismissed the appeal.

**Giriappa and Anr. Vs. Kamalamma and Ors. [Special Leave Petition (Civil)
No. 30804 of 2024]**

Date of Judgment: 20.12.2024

Section 53A of Transfer of Property Act, 1882 is an exception to the provisions which require a contract to be in writing and registered and which bar proof of such contract by any other evidence and such exception must be strictly construed.

The Plaintiff filed suit for declaration of title and recovery of possession. The Defendant contended that plaintiff had executed sale agreement and they are in possession of the suit property. The Trial Court decreed the suit which was further confirmed by the Appellate Court. The question that arose for consideration was whether the defendant was entitled to the protection of Section 53A of the Transfer of Property Act. The Hon'ble Supreme Court after discussing Section 53A of TP Act and 16 of Specific Relief Act, held that prerequisites for protection of prospective purchaser are (1) contract in writing with terms necessary to constitute the transfer can be ascertained with reasonable certainty (2) transferee has, in part-performance of the contract, taken possession of the property (3) transferee has done some act in furtherance of the contract and has performed or is willing to perform his part of the contract and that if preconditions stand complied the transferor shall be debarred from enforcing his ownership over the property. It was also held that transferee for consideration without notice of contract or of the part-performance is an exception. The Hon'ble Supreme Court further observed that the Section 53 A was inserted to protect ignorant transferees and to relax the strict provisions of Transfer of Property Act and Registration Act in favour of transferees in order to allow the defence of part performance to be established. The Hon'ble Supreme Court dismissed the SLP holding that Section 53-A is an exception to the provisions which require a contract to be in writing and registered and which bar proof of such contract by any other evidence and hence exception must be strictly construed.

T.C.John @ Yohannan (Deceased) Through LRs. Vs. V.J. Antony and Ors.[Civil Appeal No.14749 of 2024]

Date of Judgment: 19.12.2024

Motor Vehicles Act, 1988 – Payment of interest for the period of delay in filing appeal and not furnishing copy of the paper book by the claimant counsel – delay in filing appeal attributable to the claimant and hence not entitled to interest – delay in supply of copies of paper book is not fault of the claimants but of their counsel and hence entitled to interest for those period.

The wife of the deceased and daughters filed Motor Accident Claim seeking compensation for Rs. 15,00,0000/-. Award for Rs. 4,15,000/- with interest at 7.5% p.a was passed on 18-11-2011. Appeal was filed before the Hon'ble High Court with delay of 708 days. In appeal the compensation was enhanced to Rs. 9,84,500/- with interest at the rate of 8% p.a. but interest was not awarded for the delay period of 708 days and for period from 22-06-2016 to 13-07-2023 which was the period of delay in supplying copy of the paper book to the insurance company. The present appeal was filed against the same. The question that arose for consideration is that whether the Hon'ble High Court was right in denying interest for those period. The Hon'ble Apex Court concluded that the fault of filing the appeal beyond the period of limitation was attributable to the claimant and upheld the order of denial of interest for the period of 708 days. However, the Apex Court held that delay from 22.06.2016 to 13.07.2023 in not supplying the copy of the paper book was not on the part of the Claimant but on the part of their counsel and that once the matter was before the Court, the appellants should not be deprived of the interest for the period between 22.06.2016 to 13.07.2023 and the claimants should not be made to suffer. The Hon'ble Supreme Court partly allowed the appeal by modifying the award of the Hon'ble High Court by awarding interest for the period from 22.06.2016 to 13.07.2023 at the rate of 8% p.a.

Mukesh Vs. The State of Madhya Pradesh and Anr. [Civil Appeal No. 14808 of 2024]

Date of Judgment: 20.12.2024

Section 17 of Registration Act - compromise decree only asserts the pre existing right and does not create any new right and that document pertaining to mutation of suit property is not liable for stamp duty.

The Appellant filed suit for declaration and permanent injunction claiming to be owner and in long and continuous possession of the suit property. However, the Parties reached compromise. Trial court decreed the suit. No appeal was filed against that compromise decree. Based on that decree, the appellant applied for mutation of revenue records. The Tahsildar referred it to Collector of Stamps. The Collector of Stamps initiated proceedings under Section 33 of the Indian Stamp Act and ordered the Appellant to pay Rs.6,67,500/- towards stamp duty. The Plaintiff preferred revision against that order. It was dismissed by the Board of Revenue. Miscellaneous Petition was filed before the Hon'ble High Court. The same was also dismissed. Against that the present appeal was filed. The Contention of the respondent was that the Compromise decree was a collusive one. The point which fell for consideration in the appeal was whether the compromise decree was exempted from registration or not. After deliberating section 17 of Registration Act, Section 3, Schedule IA of Stamps Act, the Hon'ble Supreme Court allowed the appeal by holding that the compromise decree only asserts the preexisting right and does not create any new right and that document pertaining to mutation of suit property is not liable for stamp duty. The Honb'le Apex Court also observed that a compromise decree involves immovable property other than the suit property would require registration.

SUPREME COURT – CRIMINAL CASES**Dara Lakshmi Narayana & Others Vs. State Of Telangana & Another**
[Special Leave Petition (Criminal) No 16239 of 2024]**Date of Judgment: 10.12.2024****CRUELTY AND HARASSMENT DEMANDING DOWRY UNDER SECTION 498 A**
IPC - SECTION 3 AND 4 of the DOWRY PROHIBITION ACT, 1961:-

Protection of a woman who is subjected to cruelty in the matrimonial home primarily due to an unlawful demand for any property or valuable security in the form of dowry is sometimes misused.

The marriage of appellant was solemnised as per Hindu rites and rituals at Chennakesava Swamy Temple, Marakapuram, Andhra Pradesh. The respondent wife had lodged a complaint against the appellants which was registered as FIR No.82 of 2022 for the offences punishable under Section 498A of the IPC and Sections 3 and 4 of the Dowry Prohibition Act was registered with Neredmet Police Station, Rachakonda. Out of their wedlock, they have 2 minor children. It is the allegation that after marriage, the appellant had started harassing her both physically and mentally for want of additional dowry and that the appellant husband also used to abuse in filthy language and used to suspect her character and he used to come home in an inebriated condition and harassed her by having an illegal affair. Being aggrieved by the High Court's refusal to quash the criminal proceedings arising out of FIR No.82 of 2022 dated 01.02.2022, the appellants have preferred an appeal.

The point that arose for consideration was whether there had been any sort of harassment of demanding dowry from the wife and any instance of cruelty committed by the husband or any of the family members.

The inclusion of Section 498A of the IPC by way of an amendment was intended to curb cruelty inflicted on a woman by her husband and his family, ensuring swift intervention by the State. The Hon'ble Supreme Court has observed

that in recent years, as there have been a notable rise in matrimonial disputes across the country, accompanied by growing discord and tension within the institution of marriage, consequently, there has been a growing tendency to misuse provisions like Section 498A of the IPC as a tool for unleashing personal vendetta against the husband and his family by a wife.

Making vague and generalized allegations during matrimonial conflicts, if not scrutinized, will lead to the misuse of legal processes and an encouragement for use of arm twisting tactics by a wife and/or her family. Sometimes, recourse is taken to invoke Section 498A of the IPC against the husband and his family in order to seek compliance with the unreasonable demands of a wife. Consequently, this Court has, time and again, cautioned against prosecuting the husband and his family in the absence of a clear prima facie case against them. Courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment by the husband's close relatives who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complainant are required to be scrutinized with great care and circumspection. With the above observations the Hon'ble Supreme Court allowed the appeal and quashed the proceedings against the Appellants.

Wadla Bheemaraidu Vs. State of Telangana [Criminal Appeal No.573 of 2023]

Date of Judgment: 03.12.2024

SIGNIFICANCE OF RECOVERY MADE UNDER SECTION 27 OF THE INDIAN EVIDENCE ACT, 1872:-

It is a settled law that in a case purely based on circumstantial evidence, the chain of circumstances must be proved beyond all manner of doubt. Even if one of the links in the chain of incriminating circumstances is broken, the accused becomes entitled to the benefit of doubt.

The concise facts of the case is that the wife of the accused had developed an illicit extra marital affair with one Nagesh and on knowing this a plan was hatched by the husband to eliminate the said Nagesh and subsequently the said Nagesh was strangled with a towel and his face was crushed with a boulder.

The point that arose for consideration is that whether DNA profiling alone can be a ground for conviction in a case which strongly relies upon circumstantial evidence.

The law is well-settled that in a case based purely on circumstantial evidence, the prosecution is under an obligation to prove each and every link in the chain of incriminating circumstances beyond all manner of doubt and that the circumstances so relied upon by the prosecution should point unequivocally towards the guilt of the accused and should be inconsistent with the guilt of anyone else or the innocence of the accused. Only in the event of the complete/unbroken chain of circumstances being proved by cogent and clinching evidence which does not admit of any other inference, otherwise that of the guilt of the accused, the conviction can be recorded. The third link of circumstantial evidence is that the recovered skeletal remains were purportedly matched with the blood of the mother of the deceased by the process of DNA profiling. However, the complainant did not utter a single word that her blood

sample was collected by the Investigating Officer during the course of the investigation. In addition to this, the Medical Officer did not state that he collected the blood samples. Thus, the DNA profiling report pales into insignificance and cannot be treated as an incriminating circumstance against the accused. In so far as the aspect of recovery of the currency notes is concerned, the Investigating Officer categorically stated that it was the accused who led them to the place of discovery, but so far as the crime scene is concerned, there is not even a slightest utterance by the Investigating Officer that the accused made the disclosure or led them to the place where the skeletal remains were found. The disclosure made by the accused before the Investigating Officer under Section 27 has not been proved and the prosecution failed to establish that the discovery was made on being pointed out by the accused. Since the very factum of the discovery/recovery of incriminating skeletal remains was not proved by proper evidence, the same cannot be linked to the accused. As a consequence, none of the incriminating circumstances portrayed by the prosecution in its endeavor to bring home the charges against the accused were established by cogent and clinching evidence. Therefore, the Apex Court allowed the appeal.

Narcotics Control Bureau Vs. Kashif [Criminal Appeal No. 5544 of 2024]**Date of Judgment: 20.12.2024****PROCEDURE FOR DISPOSAL OF PROPERTY UNDER The NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 UNDER SECTION 52 A- RULES AND DIRECTIONS LAID DOWN :-****Non-Compliance of Section 52A of NDPS Act not ground for bail - Irregular seizure won't make evidence inadmissible.**

Based on information received, the Intelligence Officer had apprehended a suspected parcel and it was found to have contained 11 lace rolls and 3 pieces of clothes. On opening one lace roll, it was found to have contained 120 strips of Tramadol tablets and each strip had 10 tablets. The remaining lace rolls were also opened and a total of 13200 strips of Tramadol tablets were found. The spot Panchnama was prepared and the suspected contraband was seized and sealed in presence of independent witness and deposited in the Malkhana on the very day. A recovery of 15000 Zolpidem tablets was made from the said consignment. On the basis of the disclosure statement made by the accused-Ganesh Chaudhary another recovery of 19440 Tramadol tablets was made from 3 packages at Global India Express Pvt. Ltd., which were sent by the co-accused Tamir Ali for being couriered to USA. The said case properties were also sealed and deposited in the Malkhana on the same day. The Bureau thereafter filed a complaint before the Special Judge, NDPS Act, Patiala House Courts, against the Respondent - Kashif and six other accused, for the offences punishable under Section 8, 22(c), 23(c) and 29 of the NDPS Act

The point that arises for consideration is that any breach of procedure or rule or regulation which may indicate a lapse in procedure, may be considered as an irregularity, and would not affect the outcome of legal proceedings but it cannot be termed as an illegality leading to the nullification of the proceeding.

The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act. Section 52A was inserted only for the purpose of early disposal of the seized contraband drugs and substances, considering the hazardous nature, vulnerability to theft, constraint of proper storage space etc. There cannot be any two opinions on the issue about the early disposal of the contraband drugs and substances, more particularly when it was inserted to implement the provisions of International Convention on the Narcotics Drugs and Psychotropic Substances, however delayed compliance or non-compliance of the said provision by the concerned officer authorized to make application to the Magistrate could never be treated as an illegality which would entitle the accused to be released on bail or claim acquittal in the trial, when sufficient material is collected by the Investigating Officer to establish that the Search and Seizure of the contraband substance was made in due compliance of the mandatory provisions of the Act. The following rules have been laid down in the Judgment which are directed to be followed scrupulously in respect of disposal of narcotics property.

(ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

(iii) The purpose of insertion of Section 52A laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in the year 1989 as one of the measures to implement and to give effect to the 34 International Conventions on the Narcotic drugs and psychotropic substances.

(iv) Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be

merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

(v) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused

(vi) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.

HIGH COURT – CIVIL CASES**K.Thamaraiselvan Vs. Sivakami Sachitanandam [C.R.P No. 4989 of 2024]****Date of Judgment: 05.12.2024**

Section 36 of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, section 116 of Evidence Act – Section 122 of the Bharatiya Sakshya Adhinyam, 2023– Having admitted landlord’s title and being inducted as tenant, the tenant is estopped from denying the title of the landlord - letting in evidence on the question of title cannot be permitted.

The Respondent/Landlord filed eviction against the Petitioner/Tenant and the same was ordered. The Petitioner preferred appeal. During the pendency of the appeal, petitioner contended that TNHB was the owner and not the respondent and took out an application to summon TNHB officials. The said application was dismissed and this revision was filed against the said dismissal order. The Court held that the petitioner was estopped from denying the title of the respondent/Landlord as per section 122 of BSA and quoted the dictum laid down in S.Krushnan Vs. R.Kalaivani in CRP (PD) 3070/2021 dated 06-01-2022 and while dismissing the revision petition held that as per the TNRRRLT Act letting in evidence on the question of title cannot be permitted.

S.Kulanthai (Deceased) and Others Vs. Mrs. Ragina Jeyapaul and others.
[Writ Appeal (MD) No 1408 of 2023]

Date of Judgment: 02.12.2024

Section 17 of Registration Act - lease hold right is a right in immovable property - transfer of lease hold right by a tenant to a third party comes under the purview of section 17 of Registration Act and it is to be done by way of a registered instrument.

The 1st respondent claimed that the cultivating tenant of the 3rd respondent had transferred the lease hold rights to him vide an unregistered instrument and applied for transfer of lease hold right and to record his name as cultivating tenant. Appellant claimed to be legal heirs of deceased cultivating tenant filed application seeking modification of entries in records of tenancy rights. It was rejected by the Record Officer. Appellants filed appeal before the Revenue Court. The Appeal was allowed directing to record the name of the appellants as tenants. The 1st Respondent filed Revision application before the DRO. Revision was also dismissed. Hence the 1st respondent filed Writ petition. The writ petition was allowed. Against that the present appeal was filed. The question which fell for determination in the appeal was that whether the transfer made by the cultivating tenant in favour of the 1st respondent was valid or not. The Court observed that Agricultural tenant who becomes a statutory tenant is entitled to protection from eviction and such statutory tenancy are not transferrable and hence such transfer would be invalid and held that the lease hold right is a right in immovable property and any such transfer of interest by a tenant to a third party comes under the purview of section 17 of Registration Act and is to be done by way of a registered instrument and the transfer in favour of the 1st respondent is illegal. Resultantly the High Court while upholding the order of the Revision Court, set aside the order of the Writ Court.

S. Mathalaikumar Vs. S. Sakthivelrajan and Others [C.R.P. (MD) (PD) Nos. 878 and 879 of 2020]

Date of Judgment: 05.12.2024

Order I Rule 10 of CPC – Dispute as to nature and source of purchase of property to be included in the suit is to be adjudicated by the trial court after impleading the parties and including the property in the suit

The Petitioner/Plaintiff filed suit for partition. The Respondents 1 to 16 are family members. Respondents 17 to 22 are subsequent purchasers. The Petitioner filed an application to include property purchased in the name of R11, 15 and wife of R4 and R10. The Respondents contented that it was purchased from income of their business and the application is belated and all parties to the sale deed were not impleaded. The Trial Court dismissed the application holding that those properties were purchased by those respondents in their personal capacity from the income of their firm which stood in the name of female and cannot be included in the properties of a Joint Family. These revisions were filed against the dismissal of those I.A. The question that fell for consideration is that whether the wife of R4 and R10 are to be made defendants and those properties are to be included in the suit. After deliberating on various judgments of the Hon'ble Apex Court, the court observed that as per Order I Rule 10(2) CPC, the primary consideration for the court is to see whether the parties to the lis are necessary and whether, if the proposed persons are not impleaded in the suit as defendant's, it would cause injustice to the Lis. In view of the same, only if the wife of 4th and 10th respondent were impleaded and properties purchased by 11th and 15th defendants were included, the trial court could adjudicate with refund to nature of those properties based on evidence to be led by the parties on merit and allowed the revision petitions.

M. Natarajan (deceased) & Others Vs. M. Shanthilal Jain (Died). [C.R.P. (PD). No 4966 of 2024]

Date of Judgment: 09.12.2024

Order 7 Rule 14 of CPC - remand order in appeal set aside judgment in entirety – when order of remand is not a restricted one there is no bar to adduce additional evidence and take application under Order VII Rule 14 of CPC and those documents can be marked subject to relevancy, proof and genuineness.

Original plaintiff filed suit for injunction and it was dismissed. On appeal, the judgment was set aside and the suit was remanded back. Petitioners are the legal heirs of the plaintiff. Petitioners filed application under Order VII Rule 14(3) of CPC before the trial court to receive additional documents. It was dismissed holding that no leave was granted by the appellate court to let in fresh evidence. The Present revision was filed against that order. The appellate court had set aside the judgment in entirety and had directed the trial court to have a fresh look at the entire suit. The Hon'ble High Court held that the order of remand is not a restricted one there is no bar for the petitioner to adduce additional evidence and take an application under Order VII Rule 14 of CPC and allowed the revision by holding that the petitioners were entitled to mark documents subject to relevancy, proof and genuineness.

HIGH COURT – CRIMINAL CASES**Murugan and Ors. Vs. The State represented by The Inspector of Police,
Rajapalayam [Crl.A.(MD) No.870 of 2022]****Date of Judgment: 12.12.2024****BRUTALITY OF CRIME WILL NOT AND CANNOT DISPENSE WITH THE NEED
TO ADDUCE LEGAL EVIDENCE:-**

The Criminal Appeal has been filed by the Accused/Appellant against the conviction and sentence imposed by the Trial Court.

The question that arose for consideration was that when a witness initially testified under section 164 Cr.P.C. that the accused had committed the offence and later changed his version during his examination in chief, claiming that he was beaten up by the police for implicating the accused is admissible evidence in the eye of law.

In a case where a witness in his statement recorded under Section 164 of the Cr.P.C. makes culpability of the accused, but when he is put on the witness box he does a complete somersault which leads to the question that whether the statement recorded under Sec 164 Cr.P.C. would be reliable, it has been held that a statement recorded under Sec 164 Cr.P.C. is not substantive evidence and that the substantive evidence is the evidence that is rendered in the Court, and that, it would be impermissible to convict the accused on the basis of the statement recorded under Section 164 Cr.P.C. Further, while allowing the appeal, it has been held that the brutality of crime will not and cannot dispense with the need to adduce legal evidence to fasten culpability on the accused.

Silambarasan Vs. State Rep. by Inspector of Police, Mettupalayam Police Station. [Crl. A. Nos.191 and 357 of 2019]

Date of Judgment: 05.12.2024

EFFECT OF CONSIDERING AND RELYING UPON 'LAST SEEN THEORY'

Incriminating circumstances of last seen theory and recovery of stolen articles at the instance of the accused will establish the culpability of the accused in addition to the Call Detail Records.

The Criminal Appeal has been preferred by the accused against the conviction and sentence imposed by the Trial Court.

The point that arose for consideration was that when one of the circumstance relied upon by the prosecution is not proved then what could be the effect of the other circumstances relied upon by the prosecution.

The fundamental principle arising out of a circumstantial evidence is, whether the circumstances relied upon by the prosecution forms a complete chain and unerringly points towards the guilt of the accused by excluding all other hypothesis. In such scenario, it becomes the primordial duty of the Court to find out whether the other incriminating circumstances on its proof, forms a complete chain, pointing towards the accused. The circumstances such as the last seen theory and recovery of stolen jewellery at the instance of the accused establishes the guilt of the accused unerringly and in the present case, the accused had failed to explain and prove as to how the articles belonging to the deceased came into their custody and hence dismissed the appeal.

P.Gowshika Boopathy Vs.The State Rep by Inspector of Police, Central Crime Branch (Team II) Egmore. [Crl.OP.No.16929 of 2017]

Date of Judgment: 12.12.2024

REVOCAION OF POWER OF ATTORNEY AND DISHONEST INTENTION:-

Dishonest intention in the matter of misappropriation or conversion of the property entrusted being the gist of offence of criminal breach of trust, a bonafide claim of the right of the petitioner to the property entrusted cannot be considered as criminal breach of trust.

The Criminal Original Petition has been filed by the accused to call for records pending on the file of the Trial Court in pursuance of Charge Sheet filed against him for offences under sections 120(B), 420, 406, 468, 506(i) and quash the same.

The point that arose for consideration was the validity of the cancellation of power of attorney and the alleged sale deeds executed subsequently was essentially civil in nature and can be proved through evidence before the Civil court. It is settled law that mere knowledge, even discussions of the plan would not perse constitute conspiracy.

The Court observed that it is a well settled proposition of law that civil right to recover the share amount due does not debar one from instituting a criminal case for cheating, when intention to cheat is clear from the inception of transactions bolstered by subsequent conduct of the person to be evaluated. The dishonest intention in the matter of misappropriation or conversion of property entrusted being the gist of the offence to constitute criminal breach of trust was not adequate to bring it under Section 406 IPC. In the absence of any prima facie case and acceptable reasons in the complaint which has been lodged five years after the revocation of the Power of Attorney it would amount to an allegation which is civil in

nature and does not disclose commission of an offence. Thus, the Criminal Original Petition were allowed.

J.Pandiaraj (Died) and Ors. Vs. State by The Deputy Superintendent of Police, Vigilance and Anti Corruption, Dharmapuri [CrI.A.No.299 of 2015]

Date of Judgment: 08.11.2024

TRAP TEST-PREVENTION OF CORRUPTION ACT- Sections 7, 13(2), 13(1)(d):-

A trap test at the best can prove that an accused person has either received the planted currencies, or he has just touched it and the moment the accused touches the planted currencies or an article without even completing the act of receiving it the trap test will produce positive results.

The Criminal appeal has been filed by the accused challenging the conviction and sentence imposed by the Trial Court.

The point that arises for consideration is that whether a demand for bribe must be inferred only from proof of payment and acceptance of bribe money.

Notwithstanding the functional utility in providing an opening for an investigation, a trap test carries a weak evidentiary value to bring home the guilt of the accused person on its own strength for it is neither capable of proving a demand for and the acceptance of bribe-money. At the best a trap test may serve to prove payment of bribe, which perhaps is the easiest of the triple criteria to prove, since the bribe giver himself is decoy of the investigating agency. Acceptance requires a shade of intent more than that which is required for receiving. Even acceptance of the planted currencies or article need not always lead to a conclusion that there is intent to accept what is received. There can be a mismatch between the bribe-giver in giving the bribe and the intention of the accused person in receiving it. Therefore, the proof of acceptance of bribe depends on the purpose or the intent behind the acceptance of the tainted article. It could therefore be stated that a simple act of receipt need not carry *mens rea*, acceptance of the planted article does not require *mens rea*. The court dismissed the appeal.

Mohamed Asaruthin Vs. The State of Tamil Nadu, rep. by the Inspector of Police, Gummidipoondi [Cr.R.C.Nos. 1847, 1849, 1885 and 2002 of 2024]

Date of Judgment: 09.12.2024

FILING EXTENSION APPLICATION FOR DETENTION UNDER THE NDPS ACT- SECTION 167(2) CR.P.C.- SECTION 187(3) BHARATIYA NAGARIK SURAKSHA SANHITA:-

Prosecution can be directed to file an extension application well in advance at least fourteen days before the expiry of the statutory period if the further detention of the accused is necessary for the investigation of the case along with the report of the public prosecutor.

In all the cases filed against the accused the applications for statutory bail were dismissed by the trial court belatedly and that the extension applications filed by the prosecution was not considered along with the bail applications.

The question that arises for consideration is whether infeasible right of the accused to claim statutory bail accrues on the expiry of the statutory period notwithstanding the pendency of extension application filed by the prosecution. Further, when an application is filed for extension of time to file the final report before the end of the statutory period, the right of the accused to seek default bail is barred?

The Hon'ble High Court has held that if an extension application is filed and pending, when the statutory period for filing the final report comes to an end then the trial courts have to necessarily follow the directions issued by the Hon'ble Supreme Court in *Varun and Others Vs. State, (2024) 1 LW (CRL) 239* to consider the extension application filed by the prosecution as well as the bail application together. The decision in the bail application would depend on the decision in the extension application. Further, the trial courts shall consider to dispose the extension application expeditiously and not later than seven days and that, the police can be directed to file an extension application well in advance at least fourteen days before

the expiry of statutory period if further detention of the accused is necessary. Only in extraordinary circumstances, the extension application filed within fourteen days before the expiry of the statutory period can be entertained by the Trial Court, if it is satisfied with the reasons stated by prosecution for such delay.
