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## **IMPORTANT CASE LAWS**

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## SUPREME COURT CITATIONS CIVIL CASES

2011 (6) CTC 214

Mangluram Dewangan  
Vs  
Surendra Singh & Ors

Code of Civil Procedure, 1908 (5 of 1908), Section 104, Order 22, Rules 3 & 9 (2) Order 43, Rule 1(k) – Abatement – Whether an order of Trial Court rejecting an Application filed under Order 22, Rule 3 by person claiming to be legatee under Will of Plaintiff and consequently dismissing Suit in absence of any legal heir, is appealable decree or not – Held, no Appeal is provided against order under Order 22, Rules 3 & 5, either under Section 104 or Order 43, Rule 1 – When an order is passed under Order 22, Rules 3 & 5, dismissing an Application by a person claiming to be Legal Representative on ground that he is not Legal Representative and consequently dismissing Suit, is not appealable under Section 104 or Order 43, Rule 1 – An order dismissing an Application under Order 22, Rule 3 after an enquiry under Rule 5 and consequently dismissing Suit is also not a decree – Aggrieved person can challenge order by way of Revision before High Court and not by way of Appeal.

Code of Civil Procedure, 1908 (5 of 1908), Order 22, Rule 3 – Abatement – Whether rejection of Application under Order 22, Rule 3 after an enquiry under Rule 5, and consequential dismissal of Suit on ground that there is no Legal Representative would amount to decree or not – Held, if Court orders that Suit has abated or dismissed, Suit as having abated, as consequence of rejection of Application under Order 22, Rule 3, such order is not a decree – When any order declares that Suit has abated or dismisses Suit not as consequence of Legal Representatives filing any Application to come on record, but in view of finding that right to sue does not survive on death of sole Plaintiff, and there is an adjudication determining rights of parties in regard to all or any of matters in controversy in Suit, such order will be a decree – Law laid down in *Niranjan Nath v. Afzal Hussain*, AIR 1916 Lahore 245 and *Mithulal v. Badri Prasad*, AIR 1981 M.P. 1 (FB) approved and followed.

Code of Civil Procedure, 1908 (5 of 1908), Order 22 – Rules of Abatement – Nature and Scope – (a) When sole Plaintiff dies and right to sue survives, on an Application made in that behalf, Court shall cause Legal Representative of deceased Plaintiff to be brother on record and proceed with Suit – (b) If Court holds that right to sue does not survive on death of Plaintiff, Suit will abate under Rule 1 of Order 22 – (c) Even where right to sue survives, if no Application is made for making Legal Representative a party to Suit, within time limited by law (within period of 90 days from date of death of Plaintiff), Suit abates, as per Rule 3(2) of Order 22 – (d) Abatement occurs as a Legal Consequence of (i) Court holding that right to sue does not survive; or (ii) no Application being made by any legal representative of deceased Plaintiff to come on record and continue Suit : Abatement is not dependant upon any formal order of Court that Suit has abated – (e) Even though formal order declaring abatement is not necessary when Suit abates, as proceedings in Suit are likely to linger and will not be closed without formal order of Court, Court is usually to make an order recording that Suit has abated, or dismiss Suit by reason of abatement under Order 22 – (f) Where a Suit abates or where Suit is dismissed, any person claiming to be Legal Representative or dismissal of Suit under Order 22, Rule 9(2) : If sufficient cause is shown, Court will set aside abatement or dismissal : If however such Application is dismissed, order dismissing such an Application is open to challenge in an Appeal under Order 43, Rule 1(k) of the Code – (g) A person claiming to be Legal Representative cannot make an Application under Rule 9(2) of Order 22 for setting aside abatement or dismissal, if he had already applied under Order 22, Rule 3 for being brought on record within time and his Application had been dismissed after an enquiry under Rule 5 of Order 22, on ground that he is not Legal Representative.

2011 CIJ 336 REJ  
Janak Dulari Devi & Anr  
Vs  
Kapildeo Rai & Anr

Transfer of Property Act, 1882 (4 of 1882) – Sec.8, 54-Indian Evidence Act, 1872 (1 of 1872) – Sec. -92 – Code of Civil Procedure, 1908 (5 of 1908) – O.VI R.2 – Property – Transfer – Sale – Sale deed – Registration receipt – Pleadings – Evidence – Appellants had purchased a property by a registered sale deed but the registration receipt with a promise to hand over it on receiving the balance of sale price – When the respondents failed to surrender the registration receipt on receiving the balance of sale price, appellants filed a suit for specific performance which was resisted by the respondents by contending that sale consideration was not at all paid and on failure, they had cancelled the sale deed and sold the property to another – While the trial Court decreed the suit and directed the respondents to hand over the receipt, first appellate Court and the High Court held against the buyer by holding that sale consideration was not at all paid and the title did not pass on against which the appellants preferred SLP-While the appellants contended that only a part of the sale price was due to be paid and offered to pay the same, the respondents contended that nothing was paid and on failure, they cancelled the sale and sold the property to another-Held, in the State of Bihar practice of executing sale deed and payment of sale consideration in future was prevailing and the seller would retain the registration receipt till the sale price was paid and on failure, he could cancel the transaction – In this transaction, title would pass only on the payment of the full sale consideration and not on the registration of the sale deed – Even in other States, if there was such an intention of the parties to transfer title only on payment of full sale consideration on a future date, title would pass on only on such future date and not on the date of registration of the sale deed – As the first appellate nonpayment of entire consideration till the sale deed was cancelled and there was no proof to show that it was also offered before the cancellation, appellants were not entitled for a decree of specific performance – SLP was dismissed and the decree of dismissal of the suit was confirmed.

Indian Evidence Act, 1872 (1 of 1872) – Sec. – 92 – Code of Civil procedure, 1908 (5 of 1908) – O. VI R.2 – Pleadings – Evidence – Effect – Evidence let in by the parties without necessary pleadings or contrary to the pleadings would be ignored by the Court.

Transfer of Property Act, 1882 (4 of 1882) – Sec. 8, 54 – Indian Evidence Act, 1872 (1 of 1872) – Sec. – 5, 92 – Property – Transfer – Sale – Sale deed – Registration – Title – Transfer – Pleadings – Evidence – Parties executing the sale deed may agree that title to the property covered by the sale deed would pass on, not on the execution of that deed but on the execution of that deed but on a future date or on happening of an event – When the parties to the sale deed had agreed that title to the property would pass on only at a later date or on the happening of an event, they may let in evidence to that effect even if the same was contrary to the recital in the sale deed.

Transfer of Property Act, 1882 (4 of 1882) – Sec.8, 54 – Property – Transfer – Sale – Sale deed – Registration – Title – Transfer – When the parties to the sale deed had agreed that title to the property would pass on only on the payment of sale consideration which was agreed to be paid at a future date, title to the property would pass on only on the payment of the sale consideration so agreed and not on the execution of the sale deed.

Transfer of Property Act, 1882 (4 of 1882) – Sec.8, 54 – Property – Transfer – Sale – Sale deed – Registration – Title – Transfer – Possession – Registration receipt – Normally, the recitals in a sale deed about the transfer of title, receipt of consideration and delivery of possession will be evidence of such acts and events; and on the execution and registration of the sale deed, the sale would be complete even if the sale price was not paid, and it will not be possible to cancel the sale deed unilaterally – In the State of Bihar and in other parts of the country where the practice of takhubzul badlain is prevalent, until and unless the duly executed and registered sale deed comes to the possession of the purchaser or until the right to receive the original sale deed is secured by the purchaser by obtaining the registration receipt, the deed of sale merely remains an agreement to be performed and will not be a completed sale.

**Ratios:**

- a. Evidence let in by the parties without necessary pleadings or contrary to the pleadings would be ignored by the Court.
- b. Parties executing the sale deed may agree that till to the property covered by the sale deed would pass on, not on the execution of that deed but on a future date or on happening of an event.
- c. When the parties to the sale deed had agreed that title to the property would pass on only at a later date or on the happening of an event, they may let in evidence to that effect even if the same was contrary to the recital in the sale deed.
- d. When the parties to the sale deed had agreed that title to the property would pass on only on the payment of sale consideration which was agreed to be paid at a future date, title to the property would pass on only on the payment of the sale consideration so agreed and not on the execution of the sale deed.
- e. Normally, the recitals in a sale deed about the transfer of title, receipt of possession will be evidence of such acts and events; and on the execution and registration of the sale deed, the sale would be complete even if the sale price was not paid, and it will not be possible to cancel the sale deed unilaterally.
- f. In the State of Bihar and in other parts of the country where the practice of takhubzul badlain is prevalent, until and unless the duly executed and registered sale deed comes to the possession of the purchaser or until the right to receive the original sale deed is secured by the purchaser by obtaining the registration receipt, the deed of sale merely remains an agreement to be performed and will not be a completed sale.

**2011 CIJ 461 ALJ**

**Ramrameshwari Devi and Ors**

**Vs**

**Nirmala Devi and Ors**

Code of Civil Procedure, 1908 (5 of 1908) – O. XXA R.1 – Code of Criminal Procedure, 1973 (2 of 1974) – Sec. 340 – Administration of justice – Civil litigation – Delay – Perjury – Mesne profit – Determination – Cost – Issues – Court – Duty – Appellants who were permitted by the respondents to be in a house failed to vacate it – When the respondents filed a suit to evict the appellants, appellants adopted various dilatory tactics and filed so many petitions, appeals etc before various Courts which resulted in the delay of more than 40 years in vacating the appellant – Finally, when the suit was at the stage of pronouncing judgment, appellants filed a petition raising objection regarding valuation and court fee which was dismissed and ultimately came to the Supreme Court – On considering the dilatory tactics adopted by the appellants and the incentive to them because of such delay, the Court appointed amicus curiae and heard the parties to decide the way for speedy disposal of the civil cases and prevent perjury – Held, normally, the Courts should not grant ex parte injunction or stay – When such order was granted ex parte, immediately on the appearance of the opposite party, the petition had to be disposed – Litigants who obtained ex parte an interim injunction on the strength of false pleadings and forged documents should be adequately punished – The Court must adopt realistic and pragmatic approach in granting mesne profits – Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants – Act the time of admission of plaint, the Court had to frame a time schedule for filing written statement and other stages – Guidelines to be followed by the trial Courts in civil proceedings were suggested – Appeal was dismissed with a cost of ₹ 2,00,000/-.

Code of Civil Procedure, 1908 (5 of 1908) – O. XXA R.1 – Administration of justice – Civil litigation – Vexatious litigation – Mesne profit – Determination – Cost – Court – Duty – In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation.

Code of Civil Procedure, 1908 (5 of 1908) – O. XXA R.1, O. XXXIX R.1 – Civil litigation – Injunction – Stay – Exparte – Court – Duty – The Court should be cautious and extremely careful while granting ex-parte ad interim injunctions – As a rule, the court should grant interim injunction or stay order only after hearing the defendants or the respondents – In case the court has to grant ex-parte injunction in exceptional cases then while granting injunction it must record in the order that if the suit is eventually dismissed, the plaintiff or the petitioner will have to pay full restitution, actual or realistic costs and mesne profits.

Administration of justice – Civil litigation – Delay – Perjury – Mesne profit – Determination – Cost – Issues – Court – Duty – Guidelines framed.

Code of Civil Procedure, 1908 (5 of 1908) – O. XXA R.1 – Civil litigation – Cost – Determination – Cost – Court – Duty – While imposing costs the pragmatic realities and be realistic what the defendants or the respondents had to actually incur in contesting the litigation before different courts.

Ratios:

- a. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation.
- b. The court should be cautious and extremely careful while granting ex-parte and interim injunctions.
- c. As a rule, the court should grant interim injunction or stay order only after hearing the defendants or the respondents.
- d. In case the court has to grant ex-parte injunction in exceptional cases then while granting injunction it must record in the order that if the suit is eventually dismissed, the plaintiff or the petitioner will have to pay full restitution, actual or realistic costs and mesne profits.
- e. While imposing costs the Courts have to take into consideration pragmatic realities and be realistic what the defendants or the respondents had to actually incur in contesting the litigation before different courts.

**(2011) 8 MLJ 551 (SC)**

**National Insurance Co. Ltd**

**Vs**

**Shyam Singh and Ors**

Motor Vehicles Act (59 of 1988) – Accident claim – Fatal accident – Compensation – Appeal – Determination of multiplier – When unmarried young man dies, average age of parents to be taken for determining multiplier and not age of deceased – Tribunal had rightly applied multiplier of 8 by taking the average age of parents of deceased – Appeal allowed to said extent.

**RATIO DECIDENDI:** Where an unmarried young man dies, the average age of the parents of the deceased may be taken for determining the multiplier.

2011-4-L.W. 610  
Suba Singh & Anr  
Vs  
Davinder Kaur & Anr

Fatal Accidents Act (1855), Section 1A / Suit for damages for murder by wrongful act, Scope,

Criminal P.C., Section 357 / Compensation, Suit for damages whether barred,

Constitution of India, Article 20(2) / Rule against double jeopardy, Scope,

I.P.C., Sections, 302, 307, 302/ 34, 397/34,

Arms Act, Section 25/27.

Suit for damages was filed by respondents, widow and the minor daughter of one Ss, claiming a sum of rupees three lakhs and damages from the defendants – appellants for causing the death of SS by their wrongful act, by gun shot injuries.

An action for civil damages is not prosecution and a decree of damages is not a punishment – Rule of double jeopardy, therefore, has no application to this case.

In Section 357 Criminal P.C., there is a clear and explicit recognition of a civil suit at the instance of the dependants of a person killed, against his / her killers – In sub-section (1) (C) of section 357 there is clear indication that apart from the punishment of fine, the person convicted of any offence of having caused the death of another person or of having abetted the commission of such an offence may also be liable to fact a civil action for damages under the Fatal Accident Act, 1855 in a suit for damages.

Sensitive matters like payment of compensation and damages for death resulting from a wrongful or negligent act are governed by a law which is more than one and a half centuries old.

2011-4-L.W. 618  
Mathai M. Paikeday  
Vs  
C.K. Antony

C.P.C., Order 33, Order 44, 'Indigent person', who is, 'Sufficient means'; what is, Scope of, Pension and Money received by the respondent from his son employed abroad whether is covered.

“Sufficient means” in Order 33 Rule 1 of CPC contemplates the ability or capacity of a person in the ordinary course to raise money by available lawful means to pay court fee.

Object and purpose of Order 33 and Order 44 of CPC are to enable a person, who is ridden by poverty, or not possessed of sufficient means to pay court fee, to seek justice.

Amount of money received by the respondent from his son employed abroad and by way of pension amounts to a 'sufficient means' to pay court fee which disentitles him to be an indigent person under Order 33 Rule 1 and Order 44 Rule 1 of CPC.

Respondent cannot be declared as an indigent person in order to prosecute regular first appeals before the High Court.

2011 (6) CTC 771

C. Venkatachalam  
Vs  
Ajitkumar C. Shah and Ors  
And  
Bar Council of India  
Vs  
Sanjay R. Kothari and Ors

Consumer Protection Act, 1986 (68 of 1986) – Consumer Protection Rules, 1987 – Maharashtra Consumer Protection Rules, 1987, Rules 2(b) & 4(7) – Advocates Act, 1961 (25 of 1961), Section 33 – Consumer could be represented by Agent duly appointed by him and such Agent need not be Advocate by profession – In medical negligence case Doctor may be represented by Doctor – Such provision does not violate Advocates Act – Consumer Commission may consider non-Advocate appearing without accreditation and party may appoint non-Advocate as representative provided such representative is appearing on an individual case basis and has some pre-existing relationship with complainant, etc. – Directions, guidelines issued.

(2011) 7 MLJ 843 (SC)

Himani Alloys Ltd.  
Vs  
Tata Steel Ltd.

Code of Civil Procedure (5 of 111908), Order 12 Rule 6 – Judgment on admissions – Suit for recovery of money – Application for judgment on admission – Plea that defendant had admitted liability for specified amount – Judgment passed by High Court on admission in favour of plaintiff / respondent – Appeal – Claim of plaintiff regarding admission proved to be incorrect – High Court ought to have rejected application – High Court could not give judgment on some other admission not pleaded by plaintiff --- Appeal allowed.

**RATIO DECIDENDI:** Unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim and the discretion should be used only when there is a clear admission which can be acted upon.

(2011) 7 MLJ 1432 (SC)

V. Sumatiben Maganlal Manani (dead) by L.Rs.  
Vs  
Uttamchand Kashiprasad Shah and Anr

Eviction – Issues of sub-letting and non-user of suit shop for purpose it was let out – Decree of eviction passed by lower Courts – High Court in revision set aside decree of eviction and dismissed suit of plaintiff – Appeal by landlady – On basis of materials available on record, appellate Court justified in arriving finding of subletting against defendant No. 1 – Electricity bill showing no consumption of electricity for period of six months immediately preceding filing of suit supported case of plaintiff – Impugned order of High Court interfering and setting aside findings of facts properly arrived at by Courts below not justified – Order of High Court set aside – Appeal allowed.

**RATIO DECIDENDI:** When the Courts below took into consideration the overall picture emerging from all the material facts and circumstances relating to the case and passed a decree of eviction on the ground that the suit premises had not been used by the tenant for the purpose for which it was let out and also on the ground of subletting, the High Court, in exercise of its revisional jurisdiction, is not justified in interfering with the well reasoned judgment of the appellate Court and setting aside the findings of facts properly arrived at by the Courts below.

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## SUPREME COURT CITATIONS CRIMINAL CASES

2011 (6) CTC 228

Raghuvansh Dewanchand Bhasin  
Vs  
State of Maharashtra & Anr

Code of Criminal Procedure, 1973 (2 of 1974), Sections 71, 71 78 & 79 – Constitution of India, Article 21 – Freedom of Personal Liberty – Non-Bailable Warrant – Procedure to be followed – When Non-Bailable Warrant can be issued – Magistrate issued Non-Bailable Warrant at preliminary stage of case when it came up for hearing – Subsequently accused appeared before Court and Non-Bailable Warrant was cancelled – Police arrested accused despite cancellation of Non-Bailable Warrant by Court – Accused has also informed Police about cancellation of Non-Bailable Warrant directly involves curtailment of liberty of person – Warrant of arrest cannot be issued mechanically, but only after recording satisfaction – Courts should be extra-cautious and careful while directing issue of Non-bailable Warrant, otherwise wrongful detention would amount to infringement of Fundamental Right envisaged under Article 21 of Constitution of India – Power to issue Non-Bailable Warrant has to be exercised judiciously and not arbitrarily.

Constitution of India, Articles 226, 21 & 32 – Wrongful and illegal detention – Right to Compensation – Powers of Court to award compensation – Illegal arrest – Courts can grant monetary compensation in exercise of its jurisdiction respectively under Articles 32 & 226 of the Constitution of India to victim, whose Fundamental Rights under Article 21 of the Constitution are violated.

Code of Criminal Procedure, 1973 ( 2 of 1974), Sections 70, 71, 78 & 79 – Issuance of Non-Bailable Warrant – Procedure to be followed – General directions issued by Supreme Court to prevent abuse and to protect personal liberty – (a) All High Courts shall ensure that Subordinate Courts use printed and machine numbered Form No.2 for issuing warrant of arrest and each such form is duly accounted for; (b) Before authenticating, Court must ensure that complete particulars of case are mentioned on warrant; (c) Presiding Judge of Court (or responsible officer specially authorized for purpose in case of High Courts) issuing warrant should put his full and legible signatures on process, also ensuring that Court seal bearing complete particulars of Court is prominently endorsed thereon; (d) Court must ensure that warrant is directed to a particular Police Officer (or Authority) and, unless intended to be open-ended, it must be returnable whether executed or unexecuted, on or before date specified therein; (e) Every Court must maintain a Register (in format given below), in which each warrant of arrest issued must be entered chronologically and serial number of such entry reflected on top right hand of process; (f) No warrant of arrest shall be issued without being entered in Register mentioned above and concerned Court shall periodically check/monitor same to confirm that every such process is always returned to Court with due report and placed on record of concerned case; (g) A register similar to one in clause (e) supra shall be maintained at concerned Police Station : Station House Officer of concerned Police Station shall ensure that each warrant of arrest issued by Court, when received is duly entered in said register and is formally entrusted to a responsible officer for execution; (h) Ordinarily, Courts should not give a long time for return or execution of warrants, as experience has shown that warrants are prone to misuse if they remain in control of executing agencies for long; (i) On date fixed for return of warrant, Court must insist upon compliance report on action taken thereon by Station House Officer of concerned Police Station or Officer In-charge of concerned agency; (j) Report on such warrants must be clear, cogent and legible and duly forwarded by a superior Police Officer, so as to facilitate fixing of responsibility in case of misuse; (k) In event of warrant for execution beyond jurisdiction of Court issuing it, procedure laid down in Sections 78 & 79 of Code must be strictly and scrupulously followed; and (l) In event of cancellation of arrest warrant by Court, order cancelling warrant shall be recorded in case file and Register maintained : copy thereof shall be sent to concerned authority, requiring process to be returned unexecuted forthwith : Date of receipt of unexecuted warrant will be entered in aforesaid registers : A copy of such order shall also be supplied to accused – Format of Register prescribed.

2011 CIJ 549 SC(1)

Inderjit Singh Grewal  
Vs  
State of Punjab & Anr

Code of Criminal Procedure, 1973 (2 of 1974) – Sec. 482 – Hindu Marriage Act, 1955 (25 of 1955) – Sec. 13B – Administration of Justice – Divorce - Consent divorce - Fraud - Effect- Decree – Cancellation – Party – Right – Quashing – Court – Jurisdiction – Couples has obtained divorce by mutual consent and thereafter, wife filed a complaint before the Magistrate alleging that the divorce was sham and obtained by them by fraud on the Court for enabling the husband to marry an American women to enable him to get American citizenship and after such divorce, she had been cohabiting with him and at that time, the husband had committed domestic violence – When the Magistrate took cognizance of the complaint and issued summons, husband sought for quashing the complaint as an abuse of the process of the Court which was resisted by the wife – When the High Court dismissed the petition, husband filed SLP – Parties stood by their stands – Held, when a competent District Court had granted a decree of divorce, the Magistrate which was lower in rank could not ignore the same and take cognizance of the complaint – While fraud vitiated the order obtained from the Court, the party who was instrumental or abetted the fraud could not get relief from the Court by alleging such fraud – As the District Judge had already granted divorce and it remained in force, without setting aside the same by appropriate proceeding, party could not lodge a complaint by ignoring it – Order of a competent Court could not be set aside as void in collateral proceeding – Complaint was held as an abuse of the process of the Court and was set aside with liberty to the wife to challenge the decree of divorce in appropriate proceeding – Appeal was allowed.

Administration of Justice – Fraud – Order – Office – Effect – Where a person gets an order / office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eyes of the law.

Administration of Justice - Order – Void – Fraud – Effect – A void order passed by a Court or authority could be ignored or set aside only by initiating appropriate proceeding before an appropriate Forum.

Administration of Justice – Fraud – Effect – Estoppel – A person who obtained an order by playing fraud on the Court or authority is not entitled to challenge that order by alleging such fraud.

Hindu Marriage Act, 1955 (25 of 1955) – Sec. 13B, 23(2) – Divorce – Consent divorce – Conciliation – Court – Duty – Even in the proceeding for divorce by mutual consent, there is an obligation on the part of the court to make every endeavour to bring about reconciliation between the parties.

Ratios:

- a. Where a person gets an order / office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eyes on the law.
- b. A void order passed by a Court or authority could be ignored or set aside only by initiating appropriate proceeding before an appropriate Forum.
- c. A person who obtained an order by playing fraud on the Court or authority is not entitled to challenge that order by alleging such fraud.
- d. Even in the proceeding for divorce by mutual consent, there is an obligation on the part of the court to make every endeavour to bring about reconciliation between the parties.
- e. In the proceeding for divorce by mutual consent, for granting divorce, the Court has to be satisfied about the existence of mutual consent between the parties on some tangible materials which demonstrably disclose such consent.



2011 CIJ 558 CTJ (1)

State of Rajasthan  
Vs  
Arjun Singh and Ors

Indian Evidence Act, 1872 (1 of 1872) – Sec. 3 – Criminal trial – Evidence – Witness – Relative – Motive – Accused persons had stood in the roof and fired at the deceased and others and thereby caused them injuries which resulted in the death of one and injuries to others – In their prosecution, few were convicted and others were acquitted against which the State and the accused preferred appeal – High Court confirmed the judgment of the trial Court but altered the sentence from Sec. 149 IPC to Sec. 34 IPC against which both parties preferred SLP – While the State contended that the charge against all the accused that the motive for them was not relatives and so their evidences should not be relied on – Held, when direct evidence was available and it was reliable, absence of proof of motive would not vitiate the prosecution – Merely because the witnesses were related to the deceased, their evidences were not to be brushed aside – Medical evidence corroborated the evidence of the eye witnesses – Reasoning of the High Court both for conviction and acquittal was cogent and correct – Appeals were dismissed.

Indian Evidence Act, 1872 (1 of 1872) – Sec. 3 – Criminal trial – Appreciation of Evidence – Eye witness – Motive – Proof – Motive is the emotion which impels a man to do a particular act – In criminal trial, when direct evidence is available and it is reliable, absence of proof of motive would not vitiate the prosecution.

Indian Evidence Act, 1872 (1 of 1872) – Sec. 3 – Criminal trial – Evidence – Witness – Relative – Motive – In criminal trial, the testimonies of the relatives who are eye – witnesses are not to be rejected merely because of their relationship with the victim – In criminal trial, the evidence of the relatives of the victim have to be carefully analysed and if the same are cogent and if there is no discrepancy, the same are acceptable.

Indian Evidence Act, 1872 (1 of 1872) – Sec. 3 – Criminal trial – Appreciation of Evidence – Witness – Neighbours – Nonexamination – Mere non-examination of the neighbours as witnesses in criminal trial would not vitiate the prosecution.

Ratios:

- a. Motive is the emotion which impels a man to do a particular act.
- b. In criminal trial, when direct evidence is available and it is reliable, absence of proof of motive would not vitiate the prosecution.
- c. In criminal trial, the testimonies of the relatives who are eye – witnesses are not to be rejected merely because of their relationship with the victim.
- d. In criminal – trial, the evidences of the relatives of the victim have to be carefully analysed and if the same are cogent and if there is no discrepancy, the same are acceptable.
- e. Mere non-examination of the neighbours as witnesses in criminal trial would not viciate the prosecution.

2011 CIJ 632 CTJ (1)

Mrinal Das & Ors  
Vs  
State of Tripura

Indian Penal Code, 1860 (45 of 1860) – Sec.34, 149-Indian Evidence Act, 1872 (1 of 1872) – Sec.3, 114, 133- Code of Criminal Procedure, 1973 (2 of 1974) – Sec.306, 307, 378 – Criminal trial – Appreciation of evidence Approver-Hostile witness – Corroboration-Appeal against acquittal-Appellate Court-Power-Appellants were prosecuted for an offence of murder and the trial Court convicted few of them and the High Court convicted others against which they preferred appeal-while the appellants contended that the evidence of the approver and of the

hostile witnesses should not be believed and there was no special circumstance to allow appeal against acquittal, respondent resisted the same-Evidence of an approver and also of hostile witness had to be appreciation with suspicion and if they were corroborated, they could be used-First appellate Court was empowered to appreciate the evidence recorded by the trial Court and on its finding that the accused had to be convicted, the finding of acquittal could be changed to that of conviction – As the High Court had properly appreciated the evidences available, it was not interfered with and the appeal was dismissed.

Code of Criminal Procedure, 1973 (2 of 1974) – Sec.378 – Criminal trial-Appeal against acquittal-Appellate Court-Power-Limitation-In an appeal against acquittal preferred before the first appellate Court, law does not prescribe any limitation, restriction or condition to reappraise, reconsider and review the evidence and the appellate court is free to arrive at its own conclusion – There is no limitation on the part of the first appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion.

Indian Evidence Act, 1872 (1 of 1872) – Sec.3, 114, 133 – Code of Criminal Procedure, 1973 (2 of 1974) – Sec. 306, 307 – Criminal trial-Appreciation of evidence-Approver-Corroboration – In criminal trial, conviction is not illegal merely because it proceeds on the uncorroborated testimony of an approver – It is a rule of prudence to seek corroboration for the testimony of an approver before acting upon it.

Indian Evidence Act, 1872 (1 of 1872) – Sec.3 – Criminal trial-Appreciation of evidence – Hostile witnesses – Corroboration – Merely because a witness deviates from his statement made in the FIR and declared as hostile, his evidence cannot be held to be totally unreliable.

Indian Evidence Act, 1872 (1 of 1872) – Sec.3, 134 – Criminal trial – Appreciation of evidence-Witness-Number-In criminal trial, where a large number of offenders are involved, it is necessary for the Court to seek corroboration, at least, from two or more witnesses as a measure of caution.

Indian Penal Code, 1860 (45 of 1860) – Sec.34, 149 – Criminal trial – Common intention – Common object – In order to convict a person vicariously liable under Section 34 or Section 149 IPC, it is not necessary to prove that each and every one of them had indulged in overt acts – In order to apply Section 34 IPC, apart from the fact that there should be two or more accused, two other facts must be established, namely a) common intention b) participation of accused in the commission of an offence.

Ratios:

- a. In an appeal against acquittal preferred before the first appellate Court, law does not prescribe any limitation, restriction or condition to reappraise, reconsider and review the evidence and the appellate court is free to arrive at its own conclusion.
- b. There is no limitation on the part of the first appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion.
- c. In criminal trial, conviction is not illegal merely because it proceeds on the uncorroborated testimony of an approver.
- d. It is a rule of prudence to seek corroboration for the testimony of an approver before acting upon it.
- e. Merely because a witness deviates from his statement made in the FIR and declared as hostile, his evidence cannot be held to be totally unreliable.
- f. In criminal trial, where a large number of offenders are involved, it is necessary for the Courts to seek corroboration, at least, from two or more witnesses as a measure of caution.
- g. In order to convict a person vicariously liable under Section 34 or Section 149 IPC, it is not necessary to prove that each and every one of them had indulged in overt acts.
- h. In order to apply Section 34 IPC, apart from the fact that there should be two or more accused, two other facts must be established, namely a) common intention b) participation of accused in the commission of an offence.

**(2011) 4 MLJ (Cri) 746 (SC)**

**Bhagwan Dass  
Vs  
State (NCT) of Delhi**

Indian Penal Code (45 of 1860), Section 302 – Indian Evidence Act (1 of 1872), Sections 3, 8, 27 – Honour killing – Father killed his daughter annoyed with his daughter who left her husband and living in an incestuous relationship with her uncle – He felt humiliated by this, murdered his own daughter – Murder took place inside house of appellant and informed police by unknown person – Admittedly, deceased was living with appellant for one month leaving her husband – Omission by appellant in not informing police about death of his daughter for about 10 hours was a totally unnatural conduct on his part – Motive and opportunity for appellant to commit murder exists – Doctor evidence that death due to Asphyxia and not suicide by hanging – Recovery of electric wire under bed on disclosure statement – Circumstantial evidence clearly show accused had committed crime – Held nothing honourable in honour killings, they are nothing but barbaric and brutal murders by bigoted, persons with feudal minds – It comes within category of rarest of rare cases deserving death punishment – Conviction and sentence confirmed.

Code of Criminal Procedure, 1973 (2 of 1974), Section 162(1) and (2) – Indian Evidence Act (1 of 1872), Section 24 – Use of statements in evidence – Statement of Accused to his mother is an extra-judicial confession – Subsequent denial in Court is not believable because she obviously had after-thoughts and wanted to save her son/accused from punishment – In fact, in her statement to police she had stated that the dead body was removed from the bed and placed on floor – When she confronted with this statement in Court she denied that she had made such statement before police – Her statement to police can be taken into consideration in view of proviso of Section 162(1) Cr.P.C.

**RATIONES DECIDENDI:**

- I. The statement of the accused to his mother is an extra-judicial confession, if it is voluntary true and made in fit state of mind.
- II. The dependable part of the evidence of hostile witness can be relied on.
- III. There is nothing ‘honourable’ in ‘honour killings’, and they are nothing but barbaric and brutal murders by bigoted, persons with feudal minds, it comes within the category of rarest of rare cases deserving death punishment.

**(2011) 3 MLJ (Cri) 841 (SC)**

**Ajitsingh Harnamsingh Gujral  
Vs  
State of Maharashtra**

Indian Penal Code (45 of 1860), Section 302 – Murder – Award of death sentence – Accused committed murder of all four members of his family – Killing by pouring petrol and setting fire – Case relies on circumstantial evidence – No eye witness – Failure of prosecution to prove motive satisfactorily in all cases of circumstantial evidence may not fail a case – Wife of accused continuously ill-treated by him – Fact of his wife living with him for 25 years, do not prove a happy married life – Bad treatment of husbands put up by most Indian women and continue living with them – Evidences of witnesses reliable – Fully establishes “last seen” theory – Accused last seen with wife at midnight and quarrelling with her – Only short interval between this and fire – Chain of circumstances connects accused to crime – Guilt of accused proved – Murder in a brutal, grotesque and dastardly

manner so as to arouse intense indignation of community – Falls within rarest of rare category – Conviction upheld – Appeal dismissed.

Indian Evidence Act (1 of 1872), Section 114 – Indian Penal Code (45 of 1860), Section 302 – Murder – Plea of alibi in defence – Sudden disappearance of accused from scene of occurrence – Leaving house at odd time of 2.00a.m. – Version of accused that he received a message that his sister in Delhi critical – He rushed from Mumbai to be with her – Claim of accused that he went by car to Ajmer Dargah to pray and then to Delhi, unacceptable – Accused not having any cash crunch – Traveled with 7 lakhs in hand – Visiting a critical person from Mumbai to Delhi in car after visiting Dargah instead of taking a flight, unacceptable version – No proof of urgent message as claimed by him – Held, plea of alibi false and bogus.

**RATIONES DECIDENDI:**

- I. Conviction for commission of offence of murder under Section 302 of the Indian Penal Code can be based on circumstantial evidence when the chain of circumstances connects accused to crime.
- II. Sentence of death penalty can be awarded in cases falling within “rarest of rare category” in which murder was grotesque, diabolical, revolting or of a dastardly manner so as to arouse intense and extreme indignation of community and when the collective conscience of the community is petrified, or outraged.

**(2011) 3 MLJ (CrI) 936 (SC)**

**Lakhan Lal and Anr**

**Vs**

**State of Bihar**

Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Sections 7 – A, 2 (k) and(1) – Claim of Juvenility – Determination of age – Reckoning date for juvenility the date on which the offence committed – Not the date when produced before Court or Authority.

Juvenile Justice (Care and protection of Children) Act (56 of 2000), Sections 7 – A, 2 (k) and (1) – Claim of Juvenility – Maintainability – Fact of Juvenility ignored by trial Court as well as Appellate Court – Appellants crossed 40 years of age – Yet claim continued in further appeal as if they were to be juvenile – Claim considered even though the appellants convicted under Section 302 IPC and serving the sentence of three years therefore – Conviction sustainable – Sentence awarded set aside and released forthwith – Dharambir v. State, (2010) 4 MLJ (CrI) 716, followed.

**RATIONES DECIDENDI**

- I. Even when the juvenile ceases to be a juvenile i.e., crosses the age of 18 years, the inquiry must be continued and orders made in respect of such person as if such person had continued to be a juvenile.
- II. Even though issue as to whether the accused were juvenile did not come up for consideration for whatever reason before the Courts below, the same could be considered at any stage of the proceedings.

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## HIGH COURT CITATIONS CIVIL CASES

2011 (6) CTC 140

C. Magarajan  
Vs

The District Collector, Vellore District, Vellore and Anr

Community Certificate – Issued by Tashildar on 19.5.1977 – Validity of – Community Certificates issued by Tahsildar upto 11.11.1989 valid – Thereafter only Revenue Divisional Officer is competent – Ratio in R. Kanadasamy v. The Chief Engineer, Madras Port Trust, 1997 (3) CTC 36 (SC) applied and followed.

2011-4 –TLNJ 337 (Civil)

C.R.P. (NPD) No. 3825 of 2011 :- S. Srinivasan

Vs

G.D. Selvaraj

And

C.R.P. (NPD) No 3826 of 2011:- G.S. Dhandapani

Vs

G.D. Selvaraj

And

C.R.P. (NPD) No. 3827 of 2011:- R. Govindaraj and Anr

Vs

G.D. Selvaraj

And

C.R.P. (NPD) No. 3828 of 2011:- R. Govindaraj

Vs

G.D. Selvaraj

Tamil Nadu Buildings (Lease and Rent Control) Act 1960, Section 14(1)(b) – Petition filed seeking eviction on the ground of demolition and reconstruction and two other grounds – petitions allowed by the rent controller as landlord has sufficient means to carry out demolition and reconstruction – on appeal the tenants filed petition to summon records relating deposits of the Landlord – Petition as well as appeal were dismissed – on further revision High Court expressed that when the landlord proved his means before the rent controller it is proper for the court to order eviction – when the order is tested on appeal it is for the tenants to prove that the said order is improper and liable to be reversed tenants cannot seek documents to set aside an order that was proved – CRP dismissed.

2011 CIJ 352 REJ

Navaneethakrishnan & Ors

Vs

S.A. Subramania Raja

Specific Relief Act, 1963 (47 of 1963) – Sec. 12(3) – Hindu law – Ancestral property – Sale – Necessity – Specific performance – Respondent filed a suit for specific performance of an agreement in respect of an immovable property which was resisted by the appellants – Appellants contended that it was an ancestral property in which many persons were having right and the sale was without any legal necessity and it was not binding upon them which plea was resisted by the respondent – When the trial Court decreed the suit and the appeal was also dismissed, the appellants preferred second appeal – Parties stood by their stands – Held, the version available in the documents showed that the property was ancestral and the legal necessity was not proved – When a whole of the property could not be sold but a substantial part could be sold, the Court could order the performance of the substantial portion – As the persons who had signed the agreement had 1/3<sup>rd</sup> share in the property and that formed

a substantial portion of the property, specific performance was ordered in respect of 1/3<sup>rd</sup> share in the property – Appeal was partly allowed.

**Specific Relief Act, 1963 (47 of 1963) – Sec.12(3) – Hindu law – Ancestral property – Sale – Co-owner – Legal necessity – Specific performance – Sale of an ancestral property by some of the co-owners without any legal necessity would not bind the other co-owners.**

**Specific Relief Act, 1963 (47 of 1963) – Sec. 13(3) – Specific performance – Co-Sharer – When a whole of the property agreed to be sold could not be ordered to be specifically performed by the Court but a considerable portion could be so ordered, the Court could direct the specific performance of the considerable portion of the property.**

**Ratios:**

- a. **Sale of an ancestral property by some of the co-owners without any legal necessity would not bind the other co-owners.**
- b. **When a whole of the property agreed to be sold could not be ordered to be specifically performed by the Court but a considerable portion could be so ordered, the Court could direct the specific performance of the considerable portion of the property.**

**2011-4 –TLNJ 358 (Civil)**

**U. Sree  
Vs  
U. Srinivas**

**Hindu Marriage Act 1955, Section 13(1)(i-a) – petition by the Husband seeking divorce and conjugal rights by wife – the husband alleged wife caused mental cruelty including threatening harassment under IPC – wife denied averments trial court granted relief of divorce – on appeals by the wife the High Court on the basis of the evidence held that the wife as caused animus desrendi – further opined that no useful purpose will be served in keeping the marriage intact and make the party suffered – a marriage that is dead, practically and emotionally if continue will only prolong mental agony – dissolution decree confirmed – CMA dismissed.**

**2011 (5) CTC 416**

**Perumal  
Vs  
V. Balasubramanian**

**Evidence Act, 1872 (1 of 1872), Sections 145 & 146 - Cross-examination of witness – Practice of Advocates, showing only signature portion, by blocking rest of document, deprecated – Even a well educated person might not be in a position to identify his own signature, if it is shown to him in isolation – Advocated shall do well to see that such practice is dropped – Defendant, who is a driver, might have been perplexed, when signatures alone were shown and stated that those were not his signatures – Hence, Court should not jump to conclusion that Defendant was in the habit of denying his signatures.**

**Code of Civil Procedure, 1908 (5 of 1908), Section 34 – Interest – Award of – Suit for recovery of money on basis of a promissory note – Awarding of pendente-lite interest, is purely within discretion of Court – It has to be exercised judicially – Defendant is a poor driver and he borrowed money for purpose of his daughter's marriage – In such a case, charging of pendente-lite interest @ 12% per annum is exorbitant – Hence, interest rate reduced to 6% - Second Appeal allowed.**

(2011) 7 MLJ 438

Astral Cables Ltd., Delhi - 6

Vs

National Small Industries Corporation Ltd (A Government of India Enterprise) rep.  
By its Chairman cum Managing Director, 111-B/118, Sector-18, Shopping Complex,  
Noida 201 301 and Chennai and Anr

Code of Civil Procedure (5 of 1908), Order 7 Rule 11 – Rejection of plaint – While considering application, strength or weakness of plaintiff's case not to be seen – Plaint averments to effect that part of cause of action has arisen in Chennai – Learned Single Judge not right in rejecting plaint on ground that no part of cause of action has arisen in Chennai – Findings on said ground of cause of action set aside – How-ever, plaint liable to be rejected on different ground under Order 7 Rule 11(d) CPC.

**RATIO DECIDENDI:** Where the allegations made in the plaint prima facie discloses a cause of action, plaint cannot be rejected and the question whether the plaint discloses any cause of action is to be decided by looking at the plaint averment and not the defence set up in the written statement.

(2011) 8 MLJ 441

V. Thulasi

Vs

Indian Overseas Bank, Sowcarpet Branch, Chennai 600 079

Code of Civil Procedure (5 of 1908), Order 7 Rule 11(d) – Rejection of plaint – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (54 of 2002), Section 34 – Plaintiffs seek for declaration that alleged guarantee created in plaintiffs name for loan advanced to 1<sup>st</sup> defendant is null and void – Bank has proceeded under SARFAESI Act in respect of property offered as guarantee by plaintiff – Section 34 of Act imposes specific bar to grant any relief of injunction in respect of any action taken by Bank under provisions of SARFAESI Act – In view of specific bar under Section 34 of SARFAESI Act, action initiated by Bank under provisions of SARFAESI Act cannot be subject matter of suit in Civil Court – Suit barred under Section 34 of SARFAESI Act – Application for rejection of plaint rightly allowed by learned single judge – Appeal dismissed.

**RATIONES DECIDENDI:** In view of specific bar under Section 34 of the SARFAESI Act, the action initiated by the Bank under provisions of SARFASI Act cannot be subject matter of suit in Civil Court and the suit filed for the declaration that alleged guarantee created in the plaintiffs name for the loan advanced to 1<sup>st</sup> defendant is null and void and for permanent injunction restraining the defendants from proceeding against the plaintiff or the plaint schedule property is barred under Section 34 of SARFAESI Act.

(2011) 7 MLJ 490

Velu Naicker

Vs

Elumalai Naicker

Expert Opinion – Only after application of mind on expert's report and oral deposition given by expert, evidence becomes evidence in strict sense.

**RATIO DECIDENDI:** Only after application of mind on the expert's report and the oral deposition given by the expert, the so called evidence given by the expert actually becomes evidence in strict sensu and the opinion of the expert as found in the report cannot be verbatim taken by the Court.

(2011) 7 MLJ 511

New India Assurance Co. Ltd., Chennai - 1

Vs

Sasikala Devi (deceased) and Ors

Motor Vehicles Act (59 of 1988) – Accident claim – Fatal accident – Claim petition filed by mother of deceased – Pending claim, mother died – Brother of deceased impleaded as her legal representative – Award of compensation by Tribunal – Tribunal has not considered whether first respondent / brother of deceased entitled to claim compensation – Unless dependency proved, claimant not entitled to claim compensation – First respondent not entitled to claim compensation for death of deceased brother.

**RATIO DECIDENDI:** Unless dependency proved, Claimant is not entitled to claim compensation for death of deceased.

(2011) 7 MLJ 532

A.N. Arunachalam

Vs

T. Sivaprakasam and Anr

Indian Evidence Act (1 of 1872), Section 92 – No one is permitted to let in evidence contra to a registered document – Duty cast upon defendants to show that document in question is not sale agreement – Burden is upon defendants to prove the same.

**RATIO DECIDENDI:** In a suit for specific performance, once the execution of sale agreement is admitted, the onus of proving that the sale agreement was executed only with regard to some money transaction and that there was no intention of selling the suit property, is upon the defendant who made the contention.

2011-4- TLNJ 548

V.Ramasamy Naidu

Vs

S.P. Damodaran

Negotiable Instruments Act 1881, Section 118 – Suit for recovery of money – decree and reversed by the appellate court – on further appeal High Court expressed that when plaintiff has not come with clean hands to court, the presumption under section 118 of NI act has to be rebutted – SA dismissed.

2011 (5) CTC 607

Nakkheeran Publications, rep. by its Editor and anr.

Vs

Dhyanapeeta Charitable Trust, rep. by its Trustee, Sri Nithya Sadhananda @ T.T. Dhanasekar

Code of Civil Procedure, 1908 (5 of 1908), Order 11, Rules 15 & 18 – Inspection of documents referred to in Pleadings or Affidavit – Procedure to make order for inspection – Defendant filed an Application for seeking direction to Plaintiff to permit Defendant to inspect document mentioned in Affidavit – Defendant filed Application for inspection after completion of chief-examination and before cross-examination of PW1 – Contention of Plaintiff that he will produce and mark all documents at time of trial through witness – Defendant's Application for inspection of documents avoiding cross-examination of PW1 is premature – Civil Revision Petition dismissed.



**2011 (5) CTC 612**

**Rabiya Basheer Ali**

**Vs**

**C. Devendra Prasad**

**Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (T.N. Act 18 of 1960) – Practice and Procedure – In Fair Rent proceedings particulars of property are to be ascertained – Rent Controller permitting Landlord to inspect property with help of a qualified Civil Engineer after giving prior notice to Tenant – Permissibility.**

This Revision Petition is filed against the order of the Appellate Authority, in granting permission to the Landlord/Respondent to inspect the property with the help of the qualified Civil Engineer, after giving prior notice. Whether the property Landlord/Respondent is entitled to file the Petition for fixing the fair rent or not can be decided by the Lower Court, when appropriate Application is filed to that effect. As on date, the Landlord/Respondent has filed the application for fixation of fair rent and to fix the fair rent, particulars of the property has to be ascertained. For that, purpose, the inspection of the property by a qualified Civil Engineer is necessary.

**2011 (5) CTC 620**

**Eesha Kumar**

**Vs**

**The Assistant Commissioner, Coimbatore City Municipal Corporation, West Zone, Coimbatore**

**Registration of Births and Deaths Act, 1969 (18 of 1969), Section 15 – Correction or cancellation of entry in Register of Births and Deaths – Petitioner made representation to Registrar to incorporate changed names of Petitioner and his parents in his Birth Certificate – Petitioner’s and his parents’ names were changed and same were published in Gazette Notification – Registrar changed name of Petitioner alone in Birth Certificate and left names of Petitioner’s father and mother unchanged – Orders passed by Registrar refusing to change names of Petitioner’s parents cannot be faulted – Correction and cancellation of entry can be made in margin of Register in cases where recording is either erroneous in form or substance or has been fraudulently or improperly made – Changes in names are not covered under Section 15 and same cannot be incorporated in Birth Certificate.**

**Indian Evidence Act, 1872 (1 of 1872), Sections 37 & 56 – Public Documents – Gazette Notification – Evidentiary value – Changed names of person published in Gazette Notification is admissible in evidence – Gazette Notification is public document and same can be taken judicial notice at any time by Court concerned.**

**2011 (5) CTC 628**

**Marappa Gounder and Ors**

**Vs**

**Chennimalai Gounder (Died) and Ors**

**Transfer of Property Act, 1882 (4 of 1882), Section 52 – Doctrine of Lis Pendens – ‘C’ Plaintiff purchased 1/3 share in suit property from ‘N’ & ‘K’ pending Suit for Specific Performance filed by ‘M’ Defendant in respect of suit property – Suit filed by ‘M’ was dismissed – Pending First Appeal, ‘N’ & ‘K’ again sold their 1/3 share in favour of ‘M’ – ‘N’ & ‘K’ filed Compromise Memo alongwith ‘M’ and Appeal was dismissed as against ‘N’ & ‘K’ – ‘C’ Plaintiff was not party to Compromise Memo and opposed Compromise Memo entered between his vendors and ‘M’ as collusive – ‘C’ plaintiff filed Suit for Partition claiming 1/3 share of Plaintiff against Defendant – Whether compromise decree passed between parties without consent of transferee pendent lite will bind on transferee pendent elite, when transferee pendent lite is also party to Suit – Whether purchase by ‘C’ Plaintiff pending Suit for Specific Performance would hit by Doctrine of lis pendens or not – Held, if transferee pendent elite is not party to Suit, if any alienation is made pending Suit will be subject to outcome of Suit and decree passed in Suit would bind him – Even if any compromise is reached between parties to Suit, decree passed on such compromise shall be binding on transferee, eventhough he is not party to Suit – Where transferee pendent elite is subsequently arrayed as party to Suit and if any compromise is reached between parties, without consent of transferee pendent elite, such compromise decree shall not be binding on transferee pendent elite – Law laid down in Veeraraghava Reddi v. Subbba Reddi, 1915 ILR (43) Mad. 37 (FB) followed and applied.**

Transfer of Property Act, 1882 (4 of 1882), Section 52 – Doctrine of Lis Pendens – Nature and Scope – Essential Elements – Invocation thereof – Prerequisites – (i) Transfer made by party to Suit during pendency of Suit is not void altogether, but validity is subject to outcome of Suit – (ii) If alienee pendente lite is not a party to Suit or Appeal, any decree passed in Suit including decree passed on a compromise between parties to Suit or Appeal shall be binding on alienee pendente lite, provided there was no fraud or collusion – (iii) If alienee pendente lite is subsequently added as party to Suit, then he has got right to contest Suit like that of any other party – Even if alienors who are parties to Suit remain ex parte, alienee, as a party to Suit, has got every right to let in evidence and to establish his title or any other right which he claims through alienor – (iv) when despite contest made by alienee, irrespective of fact whether alienor contested Suit or not, if decree is passed against alienee pendente lite then undoubtedly in view of Section 52, transferee pendente lite shall be bound by said decree – (v) In event a decree is passed on a compromise reached between alienor pendente lite and other contesting parties and if alienee pendente lite is not a party to compromise, it shall be deemed that such compromise reached between alienor pendente lite and other parties is as a result of collusion between them – (vi) if there is any collusion between alienor pendente lite and other parties barring alienee, then, undoubtedly Doctrine of lis pendens shall not operate against the transferee pendente lite – (vii) If alienee pendente lite is also party to compromise upon which a decree is passed in terms of compromise, alienee pendente lite will also be bound by decree.

2011-4-L.W. 628

The District Collector, having office at Katchery, Thanjavur District. & 2 Ors  
Vs  
Saraswathi

Tort / Negligence of Doctor, Vicarious liability, Family planning operation, Failure of, Compensation, Scope.

Contention on behalf of the appellants (State owned hospital) that the operation was done three years before the respondent gave birth to twins and that there is an element of failure in all operations and there is no specific fault on the doctors, not accepted.

Respondent was made to conceive due to the failure caused by the doctors of the second appellant, - By applying the doctrine of vicarious liability, the Courts below have rightly held that the appellants are liable to pay the compensation amount – Un-wantonly the respondent has given birth to two children due to the mistake committed by the doctors of the second appellant.

Failure of the operation itself would amount to negligence and it is not incumbent on the respondent / plaintiff to specifically prove the negligence.

2011-4-L.W. 633

Rajendra Gupta and Ors  
Vs

The Corporation of Chennai, rep. by its Commissioner, Ripon Buildings, Chennai -3 and Anr

C.P.C., Sections 92, 93 / Requisites to invoke Section 92, Locus Standi, Victoria Public Hall, Trust Property, Renewal of lease, 'Interested Person'; who is, Cy pres Doctrine, Scope,

Transfer of Property Act (1882), Sections 108(J), 115, Lease / Sub – lease, Rights of sub-lessee, Scope of, Fresh lease, Renewal of lease / Doctrine of 'Cy pres', Scope,

Trusts Act (1882), Section 77, Extinguishment of Trust, Victoria Public Hall Trust, Extinguishment of Trust by Resolution, Scope and objects of Trust,

C.P.C., Order 39 / Injunction – Prima facie case means that there is a serious question to be tried and that the claim of the Plaintiffs is not frivolous or vexatious.

**Held:** Lease deed executed between the Trustees and Corporation will clearly establish that the Corporation continues to be the owner of the property and that the Trust is only a lessee bound by the terms of the lease agreement.

Deed of Trust enables the Trustees “to sublet” – Initial period of sublease itself was beyond the original lease i.e. 30.04.1985.

Trust can grant lease for a period not exceeding 21 years only after obtaining permission of the Court – Even though, the leased property is not the Trust property, as per the terms of Scheme decree, Trustees being governed by the provisions of Trust Act are to administer the property only as per the terms of the scheme decree subject to the provisions of Indian Trust Act.

Deed of sublease is not in good faith and antithesis to the object of the Trust.

In the case on hand, the property was not dedicated to the Trust; but only leased out to the Trust for construction of Victoria Public Hall.

Burden of proving perpetuity of lease is on the lessee.

Long tenancy by itself is not sufficient to hold that lease is in perpetuity – There is no force in the submission that lease is in perpetuity.

Three requisite conditions to invoke jurisdiction under Section 92, (i) there is a trust created for public purposes of a charitable or religious nature;

(ii) there is a breach alleged of such trust, or the direction of the court is deemed necessary for the administration of such trust; and the relief claimed is one or other of the reliefs mentioned in the section – It must be instituted either by the Advocate – General or by two or more persons interested in the Trust with the consent of the Advocate – General now with the leave of the Court.

Suit under Section 92 C.P.C. is a suit of a special nature for the protection of public rights in the public Trusts and Charities – A suit under Section 92 C.P.C. is thus a representative suit and as such binds not only the parties named in the suit – title but all those who are interested in the Trust.

Court must satisfy that the Trust is a “Public Trust” and the persons who filed the applications are “interested in the Trust” – Appellants cannot be said to be the “persons interested” in the Trust.

When the Appellants are not “persons interested” in the Trust, Appellants cannot maintain the applications in the scheme suit seeking for reconstitution of the Board of Trustees.

Unless new lease deed is executed at the cost of lease, there is no question of automatic renewal of lease by mere exercise of option by the lessee.

Upon fulfillment of the object of the Trust or impossibility of continuation of the Trust, the Trustees may make a declaration to the effect whereupon the Trust will stand extinguished.

Appellants have no locus standi to challenge the resolution nor are they persons interested in the affairs of the Trust – Appellants cannot attack the resolution passed for their personal interest.

Applying doctrine of Cy press, the Government has now extended its arm to revive the original glory by spending the huge amount and by forming another Trust.

Section 93 (3) of C.P.C. only empowers the use of the property of the trust for religious object in “Cy press” – Doctrine of Cy press would only apply where a charitable bequest fails or incapable of being fulfilled in

accordance with the spirit or when directions of the Founder cannot be carried out for the purpose and the spirit for which the Trust was created.

Prima facie case means that there is a serious question to be tried and that the claim of the Plaintiffs is not frivolous or vexatious.

1<sup>st</sup> Defendant – Corporation is the trust owner of the property and that no injunction could be granted infavour of the Appellants as against the trust owner – Appeals dismissed.

(2011) 7 MLJ 672

Manivannan

Vs

Thenmozhi

Hindu Adoption and Maintenance Act (78 of 1956), Section 18(3) – Suit for maintenance – Wife guilty of disertion and cruelty – Maintenance awarded by lower Courts – Award of maintenance by Courts below cannot be found fault with – Second appeal dismissed.

**RATIO DECIDENDI:** A wife, who is guilty of desertion or cruelty should not be made to suffer for want of maintenance, if she is not having enough wherewithal to meet her creature comforts.

2011 (6) CTC 747

Mayil Traders, Registered Firm, rep. by its Partner, Tmt. Vedhambal,  
85/88 R. Pudupalayam Village, Rasipuram Taluk, Salem District

Vs

Thiyagarajan

Code of Civil Procedure, 1908 (5 of 1908), Order 41, Rule 27 – Production of document at Appellate stage – Certificate of Renewal of Registration of Trade Mark, whether essential piece of evidence? – Suit for injunction restraining Defedant from using Trade Mark allegedly deceptively similar to Plaintiff's Trade Mark and damages for same – Certificate of Renewal of Registration of Trade Mark sought to be produced as additional piece of evidence – Held, certificate issued by Deputy Registrar of Trade Mark, an important piece of documentary evidence to establish case of Plaintiff – Moreover, document being of recent origin took genesis for first time to be introduced in Suit - Fair admission on behalf of Plaintiff that based on findings of Trial Court, Application made to Deputy Registrar for issuance of certified copy of Certificate of Renewal – Held, certificate not to introduce a new set of facts in this case – Certificate to establish date of registration of Plaintiff's Trade Mark and its validity – Held, Appellate Court is a Court of Appeal in facts also – Appellate Court has power of jurisdiction to reappraise evidence and come to its own conclusion on basis of materials – However, in order to exercise power under Order 41, Rule 27 good reason to be shown as to why evidence not produced in Trial Court – In instant case, satisfactory account given by Plaintiff to establish necessity of producing document at Appellate stage – Thus, condition enumerated under Order 41, Rule 27 complied with – Petition to produce document allowed – Certificate issued by Deputy Registrar of Trade Mark received and marked as Exhibit on side of Plaintiff.

2011 (5) CTC 837

C. Raghunatha Reddy

Vs

S. Rajasekaran and Anr

Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (T.N. Act 18 of 1960), Sections 4 & 10(2)(i) – Wilful default – Non-payment of difference between fair rent and contractual rent – Mere pendency of Revision Preferred by Landlord would not enable Tenant to contend that fair rent had not reached finality.

Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (T.N. Act 18 of 1960) – Practice and Procedure – Restoration of Suit or proceeding dismissed for default would amount to all ancillary orders or proceedings also

being restored unless there is something on record to show contrary – When main RCOP is restored to file, Section 11 (4) Petition also stands restored.

Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (T.N. Act 18 of 1960), Section 11(4) – Proceedings before the Appellate Authority – Stay granted by Appellate Authority and also made absolute would not bar the Appellate Authority from entertaining an Application under Section 11(4).

Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (T.N. Act 18 of 1960) – Execution – Practice and Procedure – An order passed as a consequence to failure of Tenant to comply with conditional order under Section 11(3) is a contested order and not an ex-parte order – Executing Court entitled to proceed without ordering notice as contemplated under Order 21, Rule 22(1), CPC as amended by Madras High Court Amendment.

Law of Execution – Delivery of movables inside tenanted premises by bailiff to Landlord and kept under lock and key in a room after execution of a bond by Landlord – Would not render non-delivery of vacant possession – Held, delivery of possession, proper.

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## HIGH COURT CITATIONS CRIMINAL CASES

(2011) 4 MLJ (CrI) 582

Mahalakshmi

Vs

State of Tamilnadu rep. by Deputy Superintendent of Police, Maduranthagam and Ors

Indian Penal Code (45 of 1860), Sections 302, 498-A – Dowry Prohibition Act (28 of 1961), Section 4 – Code of Criminal Procedure, 1973 (2 of 1974), Sections 397, 401 – Revision against acquittal – Scope of – Death of wife in matrimonial home within 5 months of marriage – Onus to explain cause of death of deceased upon husband/1<sup>st</sup> Accused – Defence explanation of death by suicide due to drowning in well, falsified by medical evidence – Post-Mortem certificate reveals deceased died of asphyxia – Doctor evidence specific to effect that ante-mortem injuries so caused death and then only would have been thrown into well – Doctor opined, because of that lungs not bloated and no water particles or water body found in stomach – Trial Court without assigning any reason disbelieved Medical Expert’s opinion and cause of death, gave its own view and acquitted accused persons – Trial Court committed an error in not accepting Medical Experts Opinion – Fit case to remit matter back for retrial – Order of acquittal set aside and ordered retrial – Revision allowed.

Indian Evidence Act (1 of 1872), Section 45 – Medical Expert’s evidence – Doctor who examined deceased and conducted post-mortem only competent witness to speak about nature of injuries and cause of death – Unless something inherently defective Court cannot substitute its opinion for that of doctor.

Code of Criminal Procedure, 1973 (2 of 1974), Sections 397, 401 – Revision against acquittal – Order of retrial – Justification of – Trial Court committed error while discarding doctor’s evidence and cause of death – Trial Court committed irregularity in appreciating evidence – Material evidence overlooked – To prevent gross miscarriage of justice – Judgment of acquittal set aside – Retrial ordered.

### RATIONES DECIDENDI:

- I. The doctor, who has examined the deceased and conducted the post-mortem is the only competent witness to speak about the only competent witness to speak about the nature of injuries and the cause of death. Unless there is something inherently defective the Court cannot substitute its opinion for that of the doctor.
- II. To prevent the gross miscarriage of justice, the High Court is empowered to set aside the judgment of acquittal and to order for retrial.
- III. Crimes against women are not ordinary crimes committed in a fit of anger or for property. They are social crimes. They disrupt the entire social fabric. Hence they call for harsh punishment.

(2011) 4 MLJ (CrI) 609

Vijay and Ors

Vs

State represented by Inspector of Police, All Women Police Station, Tambaram, Chennai and Anr

Code of Criminal Procedure, 1973 (2 of 1974), Sections 314, 482 – Oral arguments and memorandum of arguments – Oral arguments mandatory and it is duty of Court to hear oral arguments – But learned Magistrate did not follow said procedure and has not heard oral arguments of accused – Though learned Magistrate had pronounced judgment convicting first accused, not sentence being imposed – Procedure adopted by learned Magistrate is against law and procedure contemplated under Code – Gross injustice caused to first accused violating Art-

icle 21 of Constitution of India (1950) – As such, application under Section 482 of Code maintainable – Impugned judgment set aside – Case transferred to some other Court.

**RATIO DECIDENDI:** In view of Section 314 of Cr.P.C., the oral arguments are mandatory and the written arguments could be filed in support of the oral arguments before concluding it and it is the duty of the Court to hear the oral arguments of the accused.

2011 (5) CTC 626

Ramayee and another  
Vs  
Govindasamy

Code of Criminal Procedure, 1973 (2 of 1974), Section 125 – Maintenance should be ordered to be payable from date of petition and not from date of order except for special reasons stated in order it restricted to from date of order.

(2011) 3 MLJ (Crl) 858

Murugan and Ors  
Vs  
Kasimani  
And  
Kasimani  
Vs  
Murugan and Ors

Code of Criminal Procedure, 1973 (2 of 1974), Section 200 – Protection of Women from Domestic Violence Act ( 43 of 2005), Section 12 – Maintenance – Claim for enhancement of maintenance amount – Complainant unmarried and staying with accused / brother and family – Complainant working as daily wage coolie and entire amount of her earning given to accused – III – treatment towards complainant at hands of accused – Domestic Incident Report from Protection Officer nominated by Court not considered by trial Court – Non – consideration of Report of Protection Officer vitiates order passed by trial Court – Orders passed by lower Courts set aside – Matter remitted back to trial Court for consideration of Domestic Report so as to act in accordance with provisions of Act.

**RATIO DECIDENDI:** Judicial Magistrate who deals with application filed by aggrieved persons under Section 12(1) of the Protection of Women from Domestic Violence Act, 2005, shall necessarily follow and act in accordance with provisions of the Act and consider the Domestic Incident Report from the protection Officer or the service provider and any order passed by the Court in default is vitiated.

(2011) 3 MLJ (Crl) 961

B. Kumar @ Jeyakumar @ Left Kumar @ Stephen Kumar  
Vs  
Inspector of Police, C. B. C. I. D., Pudukkottai, Vaitheeswaran Koil Police Station

Indian Penal Code (45 of 1860), Sections 302, 307, 394 read with 397, 376 – Offences of murder and rape – Conviction and sentence – Death sentence – Appeal – Extreme depravity with which offences of murder and rape committed on school going children and merciless manner in which death inflicted on victim would bring case under category of rarest or rare cases – None of mitigating factors present in case – Act of accused shocked collective conscience of society – Death sentence awarded by trial Court confirmed – Appeal dismissed.

**RATIO DECIDENDI:** When the offences of murder and rape were committed by the accused on the school going children with extreme depravity and the death was inflicted on the victim in merciless manner and when the act of the accused had shocked the collective conscience of the society, the case would fall under the category of rarest of rare cases and the punishment of sentence of death awarded by the trial Court is proper and has to be confirmed.

(2011) 3 MLJ (Crl) 980

Lingam @ Lingadurai

Vs

Inspector of Police, Susendram Police Station, Kanyakumari District and Anr

Indian Penal Code (45 of 1860), Section 364 – Probation of Offenders Act (20 of 1958); Sections 4 and 6 – Release of offenders on probation of good conduct – Conviction and sentence of accused under 364 IPC – Five years rigorous imprisonment imposed on accused – A Person found guilty by Court of an offence punishable with death or imprisonment for life not entitled to obtain benefits under Probation of Offenders Act – Section 364 IPC enables Court to give a sentence of life imprisonment upon accused – Accused not entitled to benefits of provisions of Act.

**RATIO DECIDENDI:** An accused is not entitled to extension of benefit of Probation of Offenders Act, 1958, if he is found guilty of having committed an offence punishable with death or imprisonment for life.

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