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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS CIVIL CASES

(2013) 9 Supreme Court Cases 1

DARSHAN GUPTA

Vs

RADHIKA GUPTA

- A. Family and Personal Laws – Hindu Law – Hindu Marriage Act, 1955 – Ss. 13(1)(i-a) & (iii) – Divorce – Grounds of cruelty and unsound mind/mental disorder of wife alleged by husband – Allegations if made out

- Cumulative effect of mental disorientation and intemperate/aggressive/erratic behaviour of wife alleged by husband to be of such order and extent that husband could not reasonably be expected to live with her and living with her would result in subjecting himself to cruelty

- Wife had suffered brain damage and severe cognitive deficiencies immediately after she was subjected to Caesarean operation for delivery of child – But according to opinion of medical experts, by virtue of therapeutic and neuropsychological rehabilitation measures, she had recovered to a considerable extent so much that she finally had only mild to moderate cognitive deficiencies and moderate intelligence – Experts further opined that she now exhibited normal emotional responses and was able to discharge her matrimonial obligations, though she would have recovered a lot more had she got emotional support from her husband which she did not get – No evidence to show wife's alleged intemperate/aggressive/erratic behaviour such as shouting and screaming without provocation or cause, getting up at midnight and not allowing husband to sleep, etc. as alleged – Held, grounds under Ss. 13(1)(i-a) & (iii) not made out – Hence, plea for divorce, rejected – Evidence Act, 1872, S.45

- B. Family and Personal Laws – Hindu Law – Hindu Marriage Act, 1955 – S. 13(1) – Divorce petition – Petitioner must approach court with clean hands – Grounds of divorce under S. 13(1) are based on offence by one spouse that entitles the other spouse to seek divorce – Hence if petitioner himself/herself is guilty or at fault, he/she would be disentitled to seek divorce – Held, petitioner husband was disentitled to seek divorce on alleged grounds as he himself was responsible therefore – Divorce – Based for – Fault basis under Hindu Marriage Act, 1955

(2013) 9 Supreme Court Cases 54

RAJESH AND ORS

Vs

RAJBIR SINGH AND ORS

- A. Motor Vehicles Act, 1988 – Ss. 166 and 168 – Fatal accident – Computation of compensation – Future prospects of deceased Consideration of – Addition to be made to actual income of deceased (which existed at the time of his death) towards his future prospects – Rule laid down as to, in Sarla Verma, (2009) 6 SCC 121 in relation to salaried persons – Subsequently clarified and also made applicable to persons self employed of engaged on fixed wages in Santosh Devi, (2012) 6 SCC 421 Further wages – Different additions to actual income for different age groups of such persons - Specified

Held, in case of self-employed persons or persons with fixed wages, the actual income of the deceased must be enhanced for purpose of computation of compensation: (i) by 50% where his age was below 40yrs, (ii) by 30% where he belonged to age group of 40 to 50 yrs, and (iii) by 15% where he was between age group of 50 to 60 yrs – However, no such additional/enhancement permissible where deceased exceeded the age of 60 yrs – For the

above purpose, reiterated, actual income would mean income after paying tax, if any – Tort Law – Compensation/Damages – Future prospects

B. Motor Vehicles Act, 1988 – Ss. 166 and 168 – Power and duty of Tribunal/Court to award compensation – Scope – Held, can award compensation in excess of what is claimed – Duty is to award just, equitable, fair and reasonable compensation with reference to settled principles irrespective of claim made – “Just compensation” – Meaning of, reiterated

C. Motor Vehicles Act, 1988 – Ss. 166, 168, 169 and 173 – Claim proceedings – Reiterated, Tribunal/court should not succumb to niceties or technicalities.

(2013) 9 Supreme Court Cases 121

RUKMINI AMMA AND ORS

Vs

RAJESWARY (DEAD) THROUGH LRS. AND ORS

- A. Property Law – Transfer of Property Act, 1882 – Ss. 76 (C) and 100 Liability of mortgagee to pay government dues in respect of mortgaged property stipulated under mortgage deed – Government dues which are charges of public nature, held, do not include agricultural income tax dues which are liability of personal nature of assessee mortgagor – Hence, mortgagee not liable to pay agricultural income tax dues as such liability is not qua the land but liability qua landholder mortgagor – Mortgagor liable to pay agricultural income tax which is based on total agricultural income derived by him from and out of entirety of lands held by him including mortgaged land – Income Tax – Agricultural income – Nature of – Madras Plantations Agricultural Income Tax Act, 1955 (5 of 1955), S.3
- B. Property Law – Transfer of Property Act, 1882 – Ss. 60, 67 and 100 Right to redemption – When extinguished – Suit for redemption after extinguishment of mortgagor’s right by virtue of sale of mortgaged property under Revenue Recovery Act to recover agricultural income tax dues of mortgagor – Upon default in payment of agricultural income tax by mortgagor, mortgaged land brought to public auction under Revenue Recovery Act, pursuant to which mortgagee’s son purchased the same – Sale once effected, held, enured to benefit of purchaser free from encumbrances under S. 44 of Revenue Recovery Act – Such transaction of purchase cannot be alleged to be fraudulent or deceptive in absence of any specific allegation of mortgagor to that effect – Instead of challenging revenue sale by taking steps to set it aside, mortgagor instituted suit for redemption after 30 years – Held, sale effected to meet agricultural income tax liability of mortgagor extinguished mortgagor’s right and therefore, suit for redemption liable to be dismissed – Debt, Financial and Monetary Laws – Debt, Debt Recovery and Relief – Recovery of Debts/Dues through Public Demands or Revenue Recovery Acts – Travancore Revenue Recovery Act, 1951 – S. 44 – Civil Procedure Code, 1908, Or. 34 Rr. 4,5 & 6
- C. Property Law – Transfer of Property Act, 1882 – S. 76(c) Mortgagee’s plea that he is not liable to pay agricultural income tax Estoppel – Held, mortgagee not estopped from taking this plea which is purely based on legal and statutory interpretation, even if he made some payments towards agricultural income tax – Evidence Act, 1872 – S. 115 Restitution – Contract Act, 1872, S.69
- D. Evidence Act, 1872 – S. 115 – Estoppel – Applicability – Not applicable to plea purely based on legal and statutory interpretation – Doctrines and Maxims – Estoppel – Words and Phrases – “Estoppel”

2013 -4-L.W. 314

Rekha Jain

Vs

National Insurance Co. Ltd

Motor Vehicles Act (1988), Sections 149(2), 170/Compensation, Pecuniary and non-pecuniary damages, awarding of, Permanent functional disablement, What is, Section 170(b), Permission from tribunal, to contest, Scope of.

Appellant(actress in Oriya and Malayalm films, Model 24 years of age) sustained grievous injuries on her face and other parts of the body assessed at 30% permanent disablement.

Compensation for personal injury, can be awarded on pain and suffering; for loss of amenities; shortened expectation of life, if any; loss of earnings or loss of earning capacity or both; and medical treatment and other special damages – In Personal injury cases elements are personal loss and pecuniary loss.

For an actress, to act in films or in supporting role, or in TV serials, as a model the physical appearance, particularly the facial features are very important to act in the films and in T.V. serials – Opportunity is lost on account of the disfigurement of her face – Nature of injuries – Disability Certificate – Grant of – Note challenged – Permission required under Section 170(b) – Absence of – Effect.

Appellant's permanent disability should be treated as 100% functional disablement as she cannot act in the films and in T.V. serials in future at all.

Probable annual income for future loss of earning, ₹ 5,00,000/- - 50% of her annual income for the purpose of computation of her future loss of income multiplied by 17 as considering her age at the time of accident.

Total compensation enhanced to ₹ 79,66,000/-

(2013) 9 Supreme Court Cases 576

PRITHI PAL SINGH AND ANR

Vs

AMRIK SINGH AND ORS

- A. Civil Procedure Code, 1908 – Or. 6 R 17 – Amendment of pleading – If time-barred/barred by limitation – Doctrine of relation back – Applicability – Amendment once allowed and incorporated, held, relates back to date of initial institution of suit – This general rule is subject to restrictions, if any, imposed by Court

- Suit filed against sale of land claiming pre-emption under S. 15(1)(a) of Punjab Pre-emption Act on ground that plaintiff was brother of defendant seller – Suit decreed in favour of plaintiff and defendant's appeal dismissed by lower appellate court – During pendency of defendant's second appeal, plaintiff sought amendment of plaint by introducing additional plea that he was also a co-sharer in suit land – High Court rejected application for amendment but Supreme Court granted leave to plaintiff to amend plaint as there was sufficient material/evidence already on record to establish that plaintiff was co-sharer with defendant vendor and through amendment only a new ground, and not any new relief, was sought to be incorporated – Held, Supreme Court having allowed amendment without any rider/condition/restriction on application of doctrine of relation back by making it operative only from date it was allowed, it is reasonable to presume that Supreme Court intended that amendment would relate back to date of filing of suit – High Court rightly held that since suit seeking relief of pre-emption was instituted within time, by amendment introducing a new ground to support the relief, suit would not become time-barred – Doctrines and Maxims – Doctrine of Relation Back – Property Law – Pre-emption – Punjab Pre-emption Act, 1913 (1 of 1913), S. 15(1)(a)

SUPREME COURT CITATIONS CRIMINAL CASES

2013 -2-L.W.(Crl) 721

M/s. Escorts Ltd
Vs
Rama Mukherjee

Negotiable Instruments Act (1881), Section 138/Cheque, dishonour, Complaint filing of, place where cheque presented for encashment, whether cause of action, Whether Court within the jurisdiction, complainant had presented the dishonoured cheque, had the jurisdiction to entertain a petition filed under Section 138, Scope of.

Cheque was presented for encashment by the complainant at Delhi.

Delhi High Court erred in concluding that the courts at Delhi, did not have the jurisdiction to try the petition filed by the appellant under Section 138.

Nishant Aggarwal's case 2013-2-L.W.(Crl.) 406 held that, Court within the jurisdiction whereof, the dishonoured cheque was presented for encashment, would have the jurisdiction to entertain the complaint – Controversy herein same as that case – Impugned order set aside.

(2013) 10 Supreme Court Cases 741

A.S.V. NARAYANAN RAO
Vs
RATNAMALA AND ANR

Penal Code, 1860 – S. 304-A- Medical negligence – Death due to criminal medical negligence – Maintainability of complaint for – Need to show not just negligence, but gross negligence – Criminal proceedings maintainable only if there is prime facie gross negligence as opined by independent doctor (preferably government doctor) as laid down in Jacob Mathew, (2005) 6 SCC 1 – Held, present case was not a case of gross negligence causing death of patient necessitating proceedings under S.304-A IPC – Hence, criminal proceedings quashed

Police seeking opinion of State Medical Council, which opined that in present case, the doctors seemed to have done their best – Surgical doctor's opinion case, the doctors seemed to have done their best- Surgical doctor's opinion in consumer dispute was that he was not put on standby, when angioplasty was conducted by appellant-accused cardiologist – However, surgical doctor's further opinion was that time gap between angioplasty failure and surgery may or may not be a factor for enhancement of risk, and in present case the time gap was not a factor of patient's death – High Court overlooking this evidence of surgical doctor, and declined to quash criminal proceedings on the ground that opinion of a cardio anaesthetist/anaesthesiologist was not taken and that standby surgical unit was not ready before angioplasty – Held, the medical negligence if any cannot be said to be gross – Therefore, impugned orders of the High Court set aside and criminal proceedings for medical negligence before trial court quashed

Criminal Procedure Code, 1973 – S. 482 – Quashment of proceedings against doctor when medical negligence is not gross – Constitution of India – Art. 136 – Quashment of proceedings against doctor when medical negligence was not gross – Evidence Act, 1872 – S. 45- Opinion of third party doctors in determining medical negligence

(2013) 10 Supreme Court Cases 758

**KALIYA
Vs
STATE OF MADHYS PRADESH**

- A. Evidence Act, 1872 – Ss. 63,65 and 32(1) Secondary evidence relating to document – When permissible – Held, a party must adduce primary evidence first and only in exceptional cases is secondary evidence permissible – Secondary evidence can be adduced relating to a document only when the original has been destroyed or lost, or when party offering evidence of its contents cannot, for any other reason, not arising from his own default, or neglect, produce it in reasonable time – Held, in instant case, court only on being satisfied that original dying declaration was not traceable, rightly permitted prosecution to lead secondary evidence by way declaration of its carbon copy – Furthermore, contents of dying declaration were fully borne out by remaining unimpeachable evidence on record – Conviction under S. 302 IPC, confirmed – Penal Code, 1860, S.302
- B. Evidence Act, 1872 – Ss. 32(1) 63 – Carbon copy of dying declaration – Admissibility and proof – Held, court is to examine probative value of documents produced as secondary evidence and decide question of their admissibility as secondary evidence – Mere admission or marking of exhibit does not dispense with its proof – In instant case held, testimony of prosecution witnesses regarding recording of dying declaration remains unimpeached – Hence, said carbon copy could be relied on Conviction under S. 302 IPC, confirmed
- C. Penal Code, 1860 – Ss. 302 and 498-A – Death by burn injuries – Dying declaration against appellant mother-in-law of deceased of having murdered her daughter-in-law by pouring kerosene on her and setting her on fire at home – Held, based on the facts established by the prosecution, defence story rightly disbelieved by High Court – Conviction under S. 302 IPC, confirmed
- D. Evidence Act, 1872 – S.32(1) Dying declaration – Recording of procedure, if any – Reiterated, there is no procedure prescribed to record dying declaration – Person recording dying declaration must be satisfied that maker is in a fit state of mind and capable of making statement Courts need not look for corroboration of dying declaration, unless it suffers from any infirmity

2013 -2-L.W.(Cri) 770

**Econ Antri Ltd
Vs
Rom Industries Ltd. & Anr**

Negotiable Instruments Act (1881), Section 138(c), 142(b)'cause of action', when arises, exclusion of day, when it occurs, Calculating of, Scope of,

Limitation Act (1963), Section 12/Exclusion of time, calculation of time in cheque bounce cases,

General Clauses Act (1893), Section 9/Commencement and termination of time, calculation of time, calculation of time in cheque bonnce case.

While calculating the period of one month which is prescribed under Section 142(b) of the N.I. Act, the period has to be reckoned by excluding the date on which the cause of action arose – Saketh 2000-1-L.W. (Cri.) 73 lays down the correct law.

2013 -2-L.W.(Crl) 785

A.K. Singhania

Vs

Gujarat State Fertilizer Co. Ltd., and Anr

Negotiable Instruments Act (1881), Sections 138/Directors 'in-charge' and responsible for conduct of business of company; allegation of, consulting Directors, Effect of inference drawn, Section 141/offence by companies, Directors, role of, averment, necessity of.

Averments in complaint do not suggest that two accused, at the time offence was committed, were "in-charge of and responsible for the conduct of the business of the company."

Other Directors including the two accused herein were consulted – Inference drawn by the complainant on that basis that these two accused, are in-charge and responsible to the company for the conduct of its business, is misconceived.

In cause of offence by Company, to bring its Directors within Section 138, it is necessary to allege that they were "in charge of and the Company" – No particular form is prescribed, not necessary to reproduce the words of the section.

Not necessary to allege and prove, such of the Directors have any specific role in respect of the transaction leading to issuance of cheque.

HIGH COURT CITATIONS CIVIL CASES

2013-4-L.W.1

Mrs. Chitrakala
Vs
P. Mahesh and Anr

C.P.C., Order 8, Rule 5/No specific denial, whether admission, suit whether can be decreed, burden of proof on plaintiff, Scope of, ex parte decree, passing of, whether proper,

Partition/ Burden of proof, on plaintiff, denial by defendant, absence of, whether admission, ex parte decree, passing of, whether proper.

Suit for partition, delivery of possession – Though trial Court found triable issues, it has decreed it only based on plaint averments.

It is not safe to record an ex-parte judgment without directing the plaintiff to prove the facts – Burden on plaintiff to prove.

Trial Court approach that merely because there was no evidence of denial or rebuttal, the plaintiff's case be held to have been proved erroneous.

2013-4-L.W.27

Arulmigu Logavinayagar Temple, rep. by its Fit Person, Maduvankarai, Guindy, Madras
Vs
Sankari & Ors

Tamil Nadu Hindu Religious and Charitable Endowments Act (1959), Section 109/Adverse Possession, Plea of, against religious institution, temple, whether maintainable,

C.P.C., Order 43, Rule 1/Second Appeal, against finding whether maintainable, no decree passed, Scope of, Adverse Possession / Against temple, Plea, not maintainable, 'parens patriarch', applicability of.

Suit property belongs to temple – Plea of adverse possession can never be accepted by virtue of Section 109.

Unless plaintiff show they perfected title by adverse possession prior to 30/9/1951, there is no question of the temple's title to the property being lost by the law of limitation – Finding recorded in earlier suit that the title and ownership regarding the suit property belong to the temple – Effect of – As per principle of 'parens patriarch', court is the custodian of the idol property.

2013-4-L.W.39

Indian Bank Main Branch, Chidambaram, Rep.by its Branch Manager
Vs
V.K. Balaji

C.P.C., Section 9/Suit for injunction against Bank, Bar, under SARFAESI Act, Scope of,

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (“SARFAESI Act”) (2002), Section 34/Bar of suit, Suit for injunction by obstructor, maintainability of,

Transfer of Property Act, Section 65-A/Power of mortgator to lease, lessee, rights of,

Plaintiff entered into the possession of the suit property under R without undertaking to pay monthly rent – Whether in view of Section 65-A, claim of tenancy in favour of the plaintiff is legally tenable.

Held: Such sort of leases are beyond Section 65-A – Bank having acquired legal right over the suit property, was justified in demanding the occupier to vacate the premises and pay rent – Plaintiff should not have filed the suit seeking injunction,

If obstructers are allowed to approach the Court and get injunction then purpose of the Act would get frustrated – First appellate Court was not justified in holding that the suit was maintainable, contrary to Section 34 of the SARFAESI Act,

2013-4-L.W.50

Indira Devi

Vs

G. Suresh, HUF rep by its Kartha G. Suresh

Tamil Nadu Buildings (Lease and Rent Control) Act (1960), Section 10 (3) (a) (iii).

Petition was filed for the personal occupation of the respondent’s son for parking his car.

Son of respondent/landlord was provided with a car by his employer, he is in need of a parking area – Contention of respondent/landlord that there is no other suitable place available to park his vehicle.

If the requirement of the landlord is bonafide, he is entitled to seek eviction – Vehicle belongs to the respondent’s son or the car provided by his employer, makes no difference – Since the respondent’s son is also a member of the family.

2013-4-L.W.55

P. Ravikumar

Vs

Malarvizhi @ S. Kokila

Hindu Marriage Act (1955), Section 13(v) HIV, whether a communicable disease as a ground for divorce,

Evidence Act, Section 106, 114/Presumption against, when to be drawn, test for HIV, blood sample not given by wife, Effect of,

Divorce petition filed on the ground that the respondent/wife is afflicted with HIV positive.

Order was passed directing parties, to give the blood sample to find out whether they are having AIDS or not.

Appellant not reactive to HIV positive – Respondent did not give her blood sample.

Presumption drawn against respondent – Appellant has proved that the wife is afflicted with HIV positive.

Veneral disease means a communicable infection transmitted by sexual intercourse – HIV positive is a disease transmitted through sex – Any disease related to veneral disease in a communicable form, will also come under section 13(v).

When a spouse is having that disease, the other spouse is entitled to get the declaration of divorce.

2013-4-L.W.60

M.S. Mohammed Arif

Vs

M. Devadoss

Tamil Nadu Buildings (Lease and Rent Control) Act (1960), Section 10, Section 23, after an undertaking to vacate given to Court, RCA whether maintainable, numbering of appeal by Registry, maintainability, Scope of,

Practice/Tenant-lawyer after undertaking to vacate, Filing of, Appeal, Right of, whether barred,

Constitution of India, Article 227/RCA, maintainability, numbering of appeal, challenge to.

Tenant(lawyer) admitted that landlord's requirement is bona fide – After assuring the Court that he would vacate from the premises, after two years, has resiled from the undertaking given to the Rent Controller and challenged the order of eviction, as if there was no consideration on merits – This is an abuse of process of law – Rent Controller is not obligated to adjudge an admitted fact.

Admission of the tenant regarding the request of the landlord for bona fide purpose and the period, after which, he had assured to quit and deliver possession is unambiguous.

2013 -4- L.W. 193

Kamalakannan & Ors

Vs

Kasthuri & Anr

Hindu Succession Act (1956), Sections 6,8/ Coparcenary property, daughter, when entitled to, Succession, opening of, date of death relevant,

Hindu Law/ Joint Family Property, Coparcenary,

Hindu Succession Amendment Act (39 of 2005), Sections 6(5), (6), Partition, Succession, Opening of, Act, whether retrospective, Effect of, Coparcenary property, division of, when starts, date of death of coparcener, Effect of, Partition, decree of court, whether correct,

Hindu Succession (Tamil Nadu Amendment) Act (1989), (Act 1 of 1990), Effect of, Hindu Succession, Coparceners,

Partition/Coparcenary Property, Succession, Opening of, daughter's rights, Effect of decree, prior to 20th December 2004.

Preliminary decree for maintenance and charge – First defendant 'R' had ancestral properties – Devolution and division after his death – Law, Effect of – Partition – Scope of.

Amendment to Hindu Succession Act by Act 39 of 2005 has not been expressly given retrospective effect – Difference between disposition and the recognition of partition – What is.

Testamentary dispositions by a person, on his death before the cut-off date 20.12.2004, Section 6 (5) refused to recognize a partition, if not effected by a registered deed or by a decree of the court.

Preliminary decree passed before 20.12.2004 – Not a partition by a decree of court, protected by section 6(5).

Whether 6th appellant/ daughter a coparcener by virtue of the amendment Act 39 of 2005.

Amended provision does not make a sister of a coparcener as a coparcener along with her brother when the father had died before the cut-off date – Amendment does not make a daughter of coparcener who died prior to the cut off date, as a coparcener – It does not reopen the succession, that had opened regarding the interest of a coparcener, who died prior to 20.12.2004.

Date of death of R(D1) is crucial regarding the applicability of the amendment brought to Section 6 of Hindu Succession Act by 39 of 2005.

D1 ('R') died on 26.5.2003 prior to cut-off date, 20.12.2004 prescribed by Act 39 of 2005 – 6th appellant (daughter) had not become Coparcener during his life time even by TN Act 1 of 1990 – Since, she was married prior to 31.3.89.

2013 -4-L.W.206

K.M. Thamburajan

Vs

Trichy Café (P) Ltd., A registered Partnership Firm, by its Managing Director, R. Narayanan, S/o .K.M. Ramasamy, 448, Nethaji Road, Erode.

C.P.C., Order 17, Rule 3/ when applies, Order 9, Rule 13/Setting aside exparte decree, judgment on merits, what is.

Suit for specific performance - Trial Court has delivered the Judgement without hearing the arguments of the Defendants – It can be construed only as 'Exparte' – I.A. Filed under Order9, Rule 13 maintainability, Scope of.

Held: Judgment delivered in the main suit without hearing the arguments of Defendants 1 and 2 attract case under Order 17 Rule 2.

If on the date fixed where one of the parties remained absent and for that party no evidence has been examined till date, the Court has no option but to proceed under O.17 R.2 in any one of the methods under O.9 – It has to dispose of the suit on merits and it comes under Order 9.

Order 17 Rule 3 comes into play only in a situation where the parties have failed to tender evidence after time was granted to them – Essential thing is that Opportunity to let in evidence should have been given and parties must be present – A Court of Law has a power to proceed with the suit notwithstanding the failure of either party to produce evidence.

2013-4-L.W. 224

A. Anusuya

Vs

Santhi Sivasamy & Anr

C.P.C., Section 47.

Section 47 application was filed contending that the property sought to be executed is not the same property as found in the decree passed by the trial court – Court below before numbering the E.A., dismissed it holding pleadings made were already decided.

Court to consider and decide on merits, Order cannot be sustained – CRP disposed of.

2013-4-L.W.352

Rajasundaram & Ors

Vs

C. Thayamma

C.P.C., Order 34/usufructuary mortgage, redemption of, time limit, whether applies.

Suit was filed for redemption – Date of mortgage is 19.7.1957 – It was contended that amount was deposited after 30 years from the date of original mortgage and appellants are disentitled to redeem the mortgage.

Question was whether final decree application filed in time.

Held: “Otti” denotes usufructuary mortgage or an anomalous mortgge.

At the expiry of the period of mortgage, appellants have to either hand over the possession of the land or pay back the mortgage amount – It cannot be construed as an anomalous mortgage.

It is only an usufructuary mortgage – In a redemption suit if time for deposit was fixed and default was committed in depositing the amount, still, the mortgagor is not debarred from exercising his right to redeem the mortgaged property.

2003-1-L.W. 797 (S.C.) held that mortgagee is entitled to possess the property in question till the final decree of redemption is passed – Though there is failure on the part of the mortgagor to deposit the mortgaged amount within time stipulated in the preliminary decree.

Extension was granted by trial court for payment of money and the amount was also paid – Right of redemption cannot be taken away.

HIGH COURT CITATIONS CRIMINAL CASES

2013 -2-L.W.(CrI) 305

Haji Wappa
Vs

State rep. by the Inspector of Police, Nagore Police Station, Nagore, Nagapattinam District

I.P.C., Sections 307, 308.

PW1 demanded the loan amount from accused – Accused caused grievous injury to PW1 – It is not a premeditated attack – PW 1 having survived, the accused would be liable not under Section 307, I.P.C, but only under Section 308 I.P.C.,

2013 -2-L.W.(CrI) 308

Suresh @ Crime Suresh
Vs

State by the Inspector of Police, Koratur Police Station, Tiruvallur District

I.P.C., Section 300 exception 4, applicability of, 304(i), 302'/Culpable homicide not amounting to murder'.

On the spur of the moment knife lying in the kitchen came to be used towards causing a cut injury to the neck of the deceased – There is no previous personal animosity between the appellant and the deceased who were close relatives – Appellant had no motive to cause death of the deceased – Exception 4 to Section 300 IPC, applicable – Injury to the neck of the deceased with the knowledge that such act was likely to cause death – Appellant guilty of offence under Section 304 (ii) IPC.

Sentenced to five years rigorous imprisonment.

2013 -2-L.W.(CrI) 312

Siva @ Sivalingam
Vs

The State Represented by The Inspector of Police Sirumugai Police Station Coimbatore District

I.P.C., Section 379, 302,

Criminal Trial/ Medical Evidence, time of death, post mortem, effect of, body decomposition, brain liquefied,

Medical evidence suggests that death would have been at a time much prior to that suggested by the prosecution – It would not be possible to convict the accused for offence under section 302 IPC – Case that the accused had stolen M.Os1 and 2 worn by deceased stands proved – Conviction passed against the appellant set aside for offence under section 302 IPC.

(2013) 4 MLJ (Crl) 668

Vimaldoss

Vs

State rep. by The Inspector of Police, Ennore Police Station, Thiruvallur District

- (A) Criminal Law – Murder – Indian Penal Code (45 of 1860), Sections 302 and 304 Part II – Evidence Act, Section 32 – Appellant in drunken state doused wife with kerosene and set her on fire – Investigation officer recorded statements of deceased in hospital – Appellant charged under Section 302 of Code – Trial Court convicted Appellant under Section 302 – Appeal – Whether conviction of Appellant liable to be quashed on ground of discrepancy in evidence – Held, even though Prosecution Witnesses turned hostile, no reason to doubt that act of Appellant led to death of deceased – Dousing deceased with kerosene and setting her on fire has been recorded in FIR, same read in evidence under Section 32 of Evidence Act – Magistrate recorded statement and found deceased to be conscious – Deceased suffered burn injuries on fingers and was unable to affix thumb impression, her right toe impression taken on record – Allegation of Plaintiff that deceased attempted self-immolation and burn injuries suffered by Appellant was in an attempt to save her cannot be countenanced – Reasons given by Appellant on delay in going to hospital, not accepted – No reason to doubt involvement of Appellant in occurrence – Prosecution case proved in support of dying declaration recorded by Magistrate – Conviction of Appellant under Section 302 altered under Section 304 Part II.
- (B) Criminal Procedure – Conviction – Conversion of sentence – Indian Penal Code, 1860, Sections 302 and 304 Part II – Whether Appellant liable to be convicted under Section 302 of Code or under Section 304 – Held, deceased suffered burn injury lesser than specified – Post Mortem Certificate stated that deceased has suffered Septicemia, as burn injuries suffered could have been occasioned owing to laxity on part of medical personnel – No doubt, intention of Appellant setting deceased on fire was to cause death but conviction under Section 302 not appropriate due to intervening factor being septicemia – Appellant guilty of offence under Section 304 Part II of Code.

(2013) 4 MLJ (Crl) 691

Pichamuthu, Villupuram District

Vs

State rep. by The Inspector of Police, Marakanam Police Station, Tindivanam Taluk, Villupuram District

Criminal Law – Murder – Culpable homicide not amounting to murder – Benefit of exception – Indian Penal Code (45 of 1860), Sections 302 and 304 (ii) – Appellant having relationship with deceased, later married another person – Knowing about marriage, deceased went to Appellant's house wherein quarrel broke out – Deceased threatened to defame Appellant if he does not pay her off or alternatively live with her – Appellant out of anger strangulated and sentenced Appellant under Section 302 to undergo life imprisonment – Criminal Appeal – Whether conviction of Appellant to be altered to one for offence under Section 304 (ii) instead of 302 – Held, no doubt that it was Appellant, who caused death of deceased – Facts and circumstances make it clear that intention of Appellant primarily was not to lose face in eye of community – Caught up in heat of moment, Appellant wrongly conducted himself in causing death of deceased – Benefit of exception afforded to Appellant – Finding of guilt arrived at by trial Court confirmed, conviction altered to one for offence under Section 304(ii) instead of 302 – Criminal Appeal partly allowed.

(2013) 4 MLJ (Crl) 697

A. Archana and Anr

Vs

R. Aravindan

Criminal Procedure – Maintenance – Expeditious disposal – Code of Criminal Procedure, 1973, (2 of 1974), Section 125 – Maintenance petition filed – 1st Petitioner and 2nd Petitioner, wife and daughter of Respondent, seek direction to expeditiously dispose of maintenance petition – Whether Petitioners are entitled to expeditious disposal of maintenance petition filed before Family Court – Held, if wife is entitled, husband bound to maintain wife who is unable to maintain herself – Obligation is on husband to feed wife and children – Obligation eternal in nature – Maintenance cases under Section 125 Cr.P.C. to be enquired in summary manner – Trial Courts expanding cases results in thwarting object of Section 125 Cr.P.C. – Wife and children affected by husband entitled to speedy justice – Maintenance matters not to be delayed – For maintenance, woman and children not be made to wage long drawn legal battle – Family Court directed to dispose of maintenance case conducting enquiry on day-to-day basis – Petition disposed of.

(2013) 4 MLJ (Crl) 699

NKKP. Raja and Ors
Vs

State of Tamil Nadu, rep. by Deputy Superintendent of Police, Vigilance and Anti Corruption,
Erode Detachment at Erode

Criminal Procedure – Appeal – Maintainability of – Criminal Law (Amendment) Ordinance, 1994, Sections 3 and 11 – Prevention of Corruption Act, 1988 – Appellants figured as accused under Prevention of Corruption Act – Respondent/State filed application before Special Judge under Section 3 for attachment of properties of Appellants – Objection filed by Appellants for raising and interim attachment – Though application filed by Respondent as Original Application, Special Judge chose to take on file as Criminal Miscellaneous Petition – Without awaiting final adjudication, Appellant challenged order invoking Section 11 – Whether appeal maintainable on ground that final order is yet to be passed by Special judge and should appeal be rejected being premature – Held, appeal not maintainable being premature – Final order yet to be passed by Special judge – Appellants to await final orders to be passed on consideration of objection to ad interim attachment – Special Judge to convert nomenclature of application filed by Respondent into Original Application from Criminal Miscellaneous Petition – Appeal dismissed.

(2013) 4 MLJ (Crl) 711

Priya Sudir
Vs

State rep. by Inspector of Police, F5 Choolaimedu Police Station, Chennai

Evidence – Criminal law – Insufficient evidence – Indian Pena Code (45 of 1860), Section 302 – Appellant alleged to have caused death of house maid by pouring kerosene and setting her on fire – Statement of deceased recorded by prosecution witnesses -Trial Court found Appellant witnesses -Trial Court found Appellant guilty and convicted under Section 302 IPC – Appeal – Whether evidence against Appellant sufficient to prove guilt under Section 302 IPC – Held, Prosecution witness/Investigation officer admitted to have examined informant, but such person has not been called as witness – No occasion for presence of either prosecution witnesses or informant at hospital, possibility of dying declaration being tutored cannot be ruled out - Accident Register was forwarded to Court only after two months from date of occurrence, same is to be rejected as doctor admits to have not affixed his signature – Even though prosecution witness/Doctor deposed that Accident Register was recorded upon his instruction, same does not bear seal of hospital nor it was informed that impression is that of thumb or toe of deceased – Small of kerosene discernible, same was not noted in Accident Register – Dying declaration recorded by prosecution witness stated that deceased has stopped short of informing that accused set her on fire – Possibility of defence version being correct cannot be ruled out and benefit of doubt given to accused – Conviction against Appellant set aside – Appeal allowed.

2013 -2-L.W.(Crl) 728

Mahender Goyal
Vs

M/s. Kadmaba International, rep. by its Proprietor, Deepak Kumar Aggarwal

Criminal Procedure Code, Sections 190, 192, 200, 201, 202, 322, 406, 407, 451, 460.

Power of Magistrate to take cognizance, Post-cognizance, role of, transfer of case, powers of, quashing of cognizance, territorial jurisdiction of Magistrate, Scope of, return of records, Power of – Cheque bounce cases, cause of action, role, power of Magistrates, High Court's power to transfer, Scope of.

Procedure when Magistrate finds case is not triable within his jurisdiction, role of, Scope – Originals and copies of complaints when to be given for presentation before appropriate court, Scope of – Period to be given by Magistrates, reasonable time for presentation before appropriate Court, What is – 'Complaints Returned Register' maintenance of directions to Magistrates, given.

Negotiable Instruments Act (1881), Section 138/'cause of action', when, where arises, jurisdiction of Magistrate, determination of, how to be done, Place of bank, presentation of cheque, where complainant maintains account, relevance of/Presentation of a cheque in a bank where the complainant maintains the account would confer jurisdiction to the Magistrate within whose jurisdiction the bank is situated, to take cognizance of the case under Section 138 of NI Act.

If the five different acts were done in five different localities, any one of the Courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138.

2013 -2-L.W.(Crl) 754

Lenovo India (P) Ltd., rep. by its Inbound Manager, K.S. Mohan, No.4, Venkatnarayana Nagar,
T.Nagar, Chennai 700 017 & Anr

Vs

The State rep. By Inspector of Police, M-2, Madhavaram Police Station, (Crime) Chennai 600 051

Criminal Procedure Code, Sections 451, 453, 457/Permission to sell property Return of Property – Powers to pass orders as to disposal of properties involved in a criminal case – Scope of – Lenovo Laptop computers, return of – Petition seeking permission to sell them, dismissed.

I.P.C., Section 406/Sale of laptop computers, Scope of – Revision was preferred against that order.

Subject to speedy and natural decay, cannot be restricted to perishable items alone – Section 451 empowers the Court to dispose of the property during enquiry, trial, if the situation so warrants.

Learned Judicial Magistrate shall grant permission to the first petitioner to sell the case – properties.
