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IMPORTANT CASE LAW



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SUPREME COURT - CIVIL CASES

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| 1 | Mangathai Ammal (Died) through LRs. And others Vs. Rajeswari and others | 2020 (2) CTC 217 | 09.05.2019 | <p><u>Prohibition of Benami Property Transaction Act, 1988 (45 of 1988) [as amended by Act 43 of 2016], Sections 3 & 4 – Evidence act, 1872 (1 of 1872), Section 101</u></p> <p>Held : The Burden of proving that a transaction is a Benami transaction shall lie on the person who asserts so. Further it is not the payment of part of the purchase money or the stamp duty but the real intention of the person contributing the money that determines the nature of transaction as to whether it's Benami Transaction or not.</p> | 1 |
| 2 | M.Arumugam Vs. Ammaniammal and others | 2020 (2) MLJ 279 (SC) LNIND 2020 SC 11 | 08.01.2020 | <p><u>Succession Laws - Joint family property–Natural guardian -Hindu Succession Act, 1956, Section 4(b), 6, 8, 19 and 30</u></p> <p><u>Held :-</u> When two or more heirs succeed together to an intestate then as per Sections 30 and 19 of the Hindu succession Act, they shall take the property per capita and as tenants in common and not as joint tenants. Therefore, the property devolved under Section 8 shall not be treated as Joint Family Property and hence the mother as natural guardian could deal with it.</p> | 2 |

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| 3 | Syeda Nazira Khatoon (D) by LR Vs. Syed Zahiruddin Ahmed Baghdadi and others | 2020 (2) CTC 318 | 26.09.2019 | <u>Mohammedan Law -Mulla's Principles of Mohammedan Law, Sec.214</u> Held :-Unless Mutawalli is vested with the power under the Wakf deed to select another person to succeed as Mutawalli he can't appoint a successor by executing a trust deed. | 3 |
| 4. | The Idol of Sri Renganathaswamy Vs P.K. Thoppulan Chettiar and others | 2020 (2) CTC 341 | 19.02.2020 | <u>Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (T.N. act 22 of 1959), Sections 6 (19) & 108</u> Held:- Public charity when associated with Hindu festival will become a Religious charity as per Section 6(19) of the HR&CE Act and hence suit filed for sale of portion of endowed property is barred under Section 108 of the HR&CE Act. | 3 |
| 5. | Ashok Kumar Kalra Vs Wing CDR. Surendra Agnihotri & others | 2020 (2) CTC 437 | 19.11.2019 | <u>Code of Civil Procedure, 1908 (5 of 1908), Order 8, Rule 6-A – Purposive Interpretation of Statutes</u> Held:- Counter-claim can be filed after filing of Written Statement. But when filed with delay then the court has to consider (i) period of delay; (ii) limitation prescribed for cause of action pleaded; (iii) reason for delay; (iv) Defendant's assertion of his right; (v) Similarity of cause of action between main Suit and Counter-claim; (vi) cost of fresh litigation; (vii) injustice and abuse of process; and (viii) Prejudice to opposite party. | 4 |

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| 6. | Ashok Kumar Gupta & Anr. Vs. M/s.Sitalakshmi Sahuwala Medical Trust & ors. | 2020 (1) TNLJ 615 (Civil) | 03.03.2020 | <p><u>Civil Procedure code 1908 Section 92:- Public Charitable Trust –</u></p> <p>Held :- For invoking Section 92 of the code of civil procedure, three condition must be satisfied. They are,</p> <p>1)The trust in question shall be the one which is created for the public purpose of a charitable and religious nature.</p> <p>2) There shall be a breach of trust or such a situation that a direction of court is necessary for the administration of such a trust.</p> <p>3)The relief claimed must be one or other enumerated in that section.</p> | 4 |

SUPREME COURT - CRIMINAL CASES

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|--------|---|--------------------------------|-------------------|---|---------|
| 1 | Krishnaveni Rai Vs.Pankaj Rai and another | 2020(2) CTC 359 | 19.02.2020 | <p><u>Hindu Marriage Act, 1955 (25 of 1955), Sections 5, 11 & 15 and Section 125 Cr.P.C.</u></p> <p>Held:- Second Marriage solemnised during the pendency of the Appeal that was taken in to file after the condonation of delay in filing the said appeal cannot be said to be a Void Marriage unless it contravenes the conditions imposed under Section 5 of the Hindu Marriage Act 1955.</p> | 5 |
| 2. | Ruhi Vs Anees Ahamad and others | I (2020) DMC 485 SC | 06.01.2020 | <p><u>Indian Penal Code 1860-Section 498A, 406, 34 – Dowry Prohibition Act 1961--place of Filing of complaint - Section 4 Jurisdiction</u></p> <p>Held:- The effect of Mental cruelty borne out of the physical cruelty or the humiliating verbal exchange will remain to continue even in the parental home. Therefore even though there may not be any physical overt act in the place of Parental Home a complaint under section 498A can be filed in the place of Parental Home where the wife resides after leaving the Matrimonial home.</p> | 5 |

MADARS HIGH COURT - CIVIL CASES

| S. No. | CAUSE TITLE | CITATION | DATE OF JUDGMENT | SHORT NOTES | Pg. No. |
|--------|--|------------------|------------------|--|---------|
| 1 | Lalitha Mohan and anr vs. Pratap K.Moturi | 2020 (2) CTC 129 | 17.02.2020 | <p><u>Indian Succession Act, Sec.63 – Evidence Act, Sec.68, 101 to 103 & 114(e) – Registration Act, Section 60</u></p> <p>Held:- There is no substantial difference between the Registered and Unregistered Will in terms of complying with provisions of Section 63 of Succession Act and Sec.68 of Evidence Act. But Section 114 (e) of Evidence Act read with Section 60 of Registration Act, will give additional strength to the Propounder of the Will.</p> | 6 |
| 2 | M.Karuppuraj Vs. M.Ganesan | 2020 (2) CTC 142 | 06.01.2020 | <p><u>Specific Relief Act, 1963 (47 of 1963), Sec.12</u></p> <p>Held : Court can, at any stage of the litigation can accept relinquishment of claim made by a party, either in full or in part, subject to certain conditions. However it should be seen that the election to relinquish claim by one party should not prejudice right of other party. The bar under Section 12 will not apply to the Plaintiff if the Defendant breached the terms of Contract.</p> | 6 |
| 3 | Adaikalam and anr Vs. K.Pothiyappan and anr. | 2020 (2) CTC 174 | 03.01.2020 | <p><u>Transfer of Property Act, 1882 (4 of 1882), Sec.52 & 8:- Right of the pendente lite transferee to get impleaded.</u></p> <p><u>(Whether ruling in Rajendran v. Mohanammbal, 2018 (6) CTC 483 is applicable to all the cases.</u></p> <p><u>Held :-</u></p> <p><u>As per the ruling in Rajendran vs Mohanammbal, 2018(6) CTC 483.</u> Existence of right in a party to the suit property transferred pendente lite is a must for impleading any one as a party. In this case the Pendente lite Transferor / Defendant's predecessor-in-title claimed the title under a Settlement Deed and the Trial Court had held that the Suit property is not included in that Settlement Deed. Therefore without any right on the Transferor, the pendente lite Transferee cannot rely on the ratio laid down in 2018 (6) CTC 483.</p> | 7 |

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| 4 | T.S.Govindarajan Vs. M.Govindarajan | 2020 (1) LW 940 | 29.01.2020 | <p><u>Specific Relief Act, Sec.16 – Transfer of Property Act, Section 53-A, part performance – Registration Act, Section 17(1-A)</u></p> <p>Held : For claiming benefit under Section 53-A of the Transfer of Property Act the following factors has to be proved</p> <p>a)The contract should have been registered. If unregistered section 53A can't be invoked.</p> <p>b)The Person claiming the benefit shall be in actual possession of the suit property.</p> <p>c)Entry in to possession or continuance of possession must be in pursuant to the agreement.</p> <p>d)The party claiming the benefit under section 53A of the Transfer of property Act shall be ready and willing to perform his part of the Contract.</p> | 7 |
| 5 | Selvaraj Vs. Ponnuthai (died) and others | 2020 (2) MLJ 414 | 13.09.2019 | <p><u>Code of Civil Procedure, 1908 - Order 21 Rule 32 -Execution Proceedings – Arrest –</u></p> <p>Held : In the execution of decree of Injunction by way of arrest of JD, the Decree Holder should mention in the application that he brought about the factum of Judgment to the notice of the Judgment debtor and he was provided with an opportunity to obey the decree and despite providing such opportunity the Judgment debtor willfully disobeyed the order of Injunction. Further the court should hold a enquiry providing an opportunity to the Judgment debtor to explain his position before passing the order of arrest .</p> | 8 |
| 6 | C.Naveen Kumar Vs. S.Chandrasekar (Deceased) I.T.N.Gopalakrishnan | 2020 (2) CTC 388 | 14.10.2019 | <p><u>Code of Civil Procedure, 1908 (5 of 1908), Section 2(11) & Order 22, Rule 5</u></p> <p>Held :- Legal Heir will become Legal Representative only if he represent the estate of the deceased. The question as to whether any person is Legal Representative of deceased Plaintiff/Defendant or not, has to be decided first as Preliminary issue, even at Appellate stage. Such determination is a mandatory requirement under Order 22, Rule 5.</p> | 8 |

| S. No. | CAUSE TITLE | CITATION | DATE OF JUDGMENT | SHORT NOTES | Pg. No. |
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| 7 | P.Jayachandran Vs. S.Kumar (Died) K.Indresh Kumar and ors. | 2020 (2) CTC 394 | 07.01.2020 | <p><u>Specific Relief Act, 1963 (47 of 1963), Section 20 – Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 7</u> Relief of Specific Performance rejected – Moulding of Relief</p> <p>Held:- Return of Advance paid by Purchaser is a consequential relief and it is in consonance with Principles of Equity & Fairness. Advance amount cannot be denied generally except where there is a provision in the agreement for forfeiture clause.</p> | 9 |
| 8. | M.Prabhu Ramakrishnan and anr. Vs. Shyamkumar Srivastava and ors. | 2020 (2) MLJ 605 | 28.11.2019 | <p>Succession Laws –Interim Injunction – Vacation- Interim injunction granted in the suit will not only bind the defendant but the plaintiff also. Therefore when the plaintiff made alienation of part of the suit property after obtaining an order of injunction he is not entitled to continue with such order and it has to be vacated.</p> | 9 |
| 9. | Kuppammal and anr. Vs. Palaniswamy and others | 2020(1)TNL J 521 (Civil) | 28.11.2019 | <p><u>Non Joinder of Necessary Party in a partition suit Order 36 Rule 2:</u> Held:- Suit for partition can't be dismissed only on the ground of non joinder of necessary parties. If the court is of the view that there are other parties and they are to be heard then a direction should be issued to the plaintiff to implead the necessary party.</p> | 9 |

MADARS HIGH COURT - CRIMINAL CASES

| S. No. | CAUSE TITLE | CITATION | DATE OF JUDGMENT | SHORT NOTES | Pg. No. |
|--------|---|-------------------------------|-------------------|--|---------|
| 1 | State represented by the public prosecutor, High court, Madras Vs G.Kaleeswaran | (2020) 1 MLJ (CrI) 542 | 07.01.2020 | <p><u>Prevention of corruption Act 1988 section 7 and 20</u> Held :- Prosecution has to prove the demand of bribe and the acceptance of the tainted money by the accused. Much emphasize made in this case as to the verification of the antecedent of the accused by the investigating officer.</p> | 10 |
| 2 | Pandiyarajan and others Vs State represented by Inspector of Police, Aruppukottai Town Police station, Virudhunagar District and others | (2020) 1 MLJ (CrI) 578 | 29.11.2019 | <p><u>Tamilnadu Gaming Act 1930 Sections 4,5,6,8,9-City police Act 1988</u> <u>Held :-</u> That to decide whether a club is a gaming house the relevant consideration is whether the Owner of the club makes a profit out of the games or not Further. Section 2 of the Tamilnadu Gaming Act excludes its applicability to the city of Madurai as defined in the Madras city police Act 1988. Further the foundation for fair trial is that the informant cannot be an investigator. In that sense entire proceedings are vitiated.</p> | 10 |

SUPREME COURT – CIVIL CASES

2020 (2) CTC 217

Mangathai Ammal (Died) through LRs. And others Vs. Rajeswari and others
Date of Judgment : 09.05.2019

Prohibition of Benami Property Transaction Act, 1988 (45 of 1988) [as amended by Act 43 of 2016], Sections 3 & 4 – Evidence act, 1872 (1 of 1872), Section 101

Facts of the case : Plaintiff sued D1 , her mother in law for partition alleging that the property held in D1's name was purchased out of the proceeds of the sale of the ancestral property and hence it is Joint family property. The 1st Defendant, namely the mother in law contested the suit on the ground that she purchased the property only out of her own income.

On considering that the part of the purchase money is paid by the 1st defendants husband, the trial court held that the property was purchased in the name of D1 by her husband for the benefit of the family and hence it is a joint family property and decreed the suit.

In appeal the question arose as to on whom the burden of proof shall lie ? and when a transaction can be tagged as Benami transaction ?

a) On whom the burden will lie -

Held : The Burden of proving that a transaction is a Benami transaction will lie on the person who asserts so .

b) When a transaction can be tagged as Benami transaction –

Held : Whether a transaction is a Benami transaction or not is largely depends on the facts of the case. There is no absolute formulae or acid tests uniformly applicable in all situations .To decide such issue Courts to be normally guided by the following 6 circumstances viz:

- (1) source from which purchase money came;
- (2) nature and possession of property after purchase;
- (3) motive, if any, for giving transaction Benami colour;
- (4) position of parties and relationship if any, between Claimant and alleged Benamidar;
- (5) custody of title Deeds after sale; and
- (6) conduct of parties concerned in dealing with property after sale

However it has been held that ,payment of part of sale consideration or payment for purchase of the stamp papers cannot be the sole criteria to hold that a transaction is a Benami transaction. Even if consideration is paid by a person other than the person mentioned as purchaser in the deed, it is really the intention of the person who contributed money to buy property that will be the determinative of the nature of transaction and not the mere payment of consideration or the payment for the stamp papers.

(Ratio laid down in Leelavathi, V. vs. Shankaranarayana Rao, 2019 (3) MWN (Civil) 449 (SC); Thakur Bhim Singh vs. Thakur Kan Singh, 1980 (3) SCC 72; and Jaydayal Poddar vs. Bibi Hazra (Mst.), 1974 (1) SCC 3, reiterated.)

M.Arumugam Vs. Ammaniammal and others

Date of Judgment : 08.01.2020

Succession Laws – Joint family property – Natural guardian – Hindu succession Act, 1956, Section 4(b), 6, 8, 19 and 30 –

One Moolagounder at the time of his death left intestate leaving his 2 sons D1,D2 and wife D5 and 3 daughters who are the plaintiff and the D4and D5. **Suit filed on 6-12-1989** by the youngest daughter of Moolagounder for partition of share of her father against her brothers D1,D2 Sisters D3,D4 and Mother D5. Defendants contented that D5 the mother of the then minor plaintiff executed a release deed in favour of D1 and D2. Trial court held that the mother being the natural guardian can deal with the undivided interest of her minor son in the Joint family property and the release deed executed in favour of D1 and D2 will bind the plaintiff and dismissed the suit. But in appeal the trial court's Judgment was set aside and the suit was decreed by the High Court. Hence this appeal is filed by the by 2nd Defendant.

Whether mother as the natural guardian for her minor child can intermeddle with the undivided share of the minor in the Joint family property over and above the Power of the Karta of the Joint family property ?

Held:- Generally Karta alone can deal with the undivided interest of the minor in the joint family property and the natural guardian cannot deal with the undivided interest of the minor in the Joint family property. However in this case due to the presence of number of female heirs mentioned as class I heirs in Schedule I, the devolution will take place as per Section 8 of the Hindu succession Act. Sections 30 and 19, of the Act provides that when two or more heirs succeed together to property of an intestate, they shall take the property per capita and as tenants in common and not as Joint Tenants. Therefore the property is not to be treated as Joint family property and hence mother as a natural guardian can deal with the property. Further when family settlement takes place and when some of members relinquish their share in favour of Karta, then in that situation the Karta could not act as guardian of that minor whose share was being relinquished in favour of Karta as there arise the conflict of interest. **In such eventuality it would be mother alone who would be natural guardian.** Therefore the document executed by the mother of the minor child could not be said to be void document and it is only a voidable document and the plaintiff aged 17 at that time had sufficient knowledge of the document and her husband also had attested the subsequent partition deed between D1 and D2 on 30-4-1980 and hence Judgment of High Court set aside and that of trial court restored – Appeal allowed.

2020(2) CTC 318

Syeda Nazira Khatoon (D) by LR Vs. Syed Zahiruddin Ahmed Baghdadi and others

Date of Judgment : 26.09.2019

Mohammedan Law – Mulla’s Principles of Mohammedan Law, Sec.214

Wakf Deed dictated that the Office of Mutawalli is to be occupied by direct descendant of Mutawalli. But the Grandson of original Mutawalli created a trust Deed in favour of his Wife and appointed her as Mutawalli –Validity of such Trust Deed is challenged

Held:- After creation of Wakf, all properties will pass from wakif to the dedicator of God. Mutawalli is only Manager of the said properties. Power of Mutawalli Will flow only as per the recitals stated in the Wakf Deed. In the instant case as per the Wakf Deed the Mutawalli is not vested with the power to select another person for transfer of office after his demise. Trust Deed created by the Grandson will have the effect of changing the terms of original Wakf Deed. The Wife of the last Mutawalli/Grandson is also not a direct descendant in family and hence she is not entitled to Mutawalliship . Therefore her claim for Mutawalliship, is unsustainable and the Trust Deed created in contravention of intention of Wakif is illegal.

2020 (2) CTC 341

The Idol of Sri Renganathaswamy Vs.P.K. Thoppulan Chettiar and others

Date of Judgment : 19.02.2020

**Tamil Nadu Hindu Religious and Charitable Endowments act, 1959 (T.N. act 22 of 1959),
Sections 6 (19) & 108**

Property purchased by Settlor for Charitable purpose. Charitable activities performed during fourteen years prior to Deed of Settlement. Clear stipulation in settlement Deed that sons of Settlor have to carry on Charitable work after his lifetime. Absolute prohibition is made on Sale or Mortgage of the Suit property and an Obligation is imposed on the Legal Heirs to fund the Charitable activities out of own business. In such a situation Suit for grant of permission for sale of portion of specific endowment is filed under section 34 of the Hindu religious and charitable endowment Act and the same was decreed. The same is challenged in this appeal

Held:- When beneficiaries of Trust or Charity are limited to finite group of identifiable individuals then the Trust or Charity will be a private Trust or Charity .When beneficiaries are either public at large or an amorphous and fluctuating body of persons incapable of being specifically identifiable then the Trust or Charity will be a public Trust or Public Charity.

In the instant case as the charity is created for the benefit of devotees of Sri Renganathaswamy attending particular festival and they are not definite in number and they are not identifiable and hence such Charity will be a public trust .

Further, when a public charity associated with Hindu festival, it will become a Religious charity as per Section 6(19) of the HR&CE Act .

In this instant case no specific endowment is created neither in favour of Appellant/Idol nor in favour of sons of Settlor and there is a clear intention of the Settlor to divest himself and his heirs of property and endow it for continuation of Charitable activities in the Suit Property. Therefore the charity being a public charity associated with Hindu festival the charity created under the settlement deed will become a Religious charity as per Section 6(19) and the bar created by Section 108 will apply to this case and hence the suit filed for sale of portion of endowed property is barred – Decree passed in Suit by lower Courts, set aside – Suit dismissed – Appeal allowed.

2020 (2) CTC 437

Ashok Kumar Kalra Vs. Wing CDR. Surendra Agnihotri & others

Date of Judgment : 19.11.2019

Code of Civil Procedure, 1908 (5 of 1908), Order 8, Rule 6-A – purposive Interpretation of Statutes

Whether Counter-claim can be filed after filing of the Written Statement :

Held:-Time limit for filing Counter-claim is not explicitly provided by Statute. Purpose of introducing rule 6-A in Order 8, is to avoid multiplicity of proceedings. Court should adopt balanced approach in view of object behind amendment and in interest of justice. No rigid, hard and fast rule fixing time frame for filing Counter-claim, curtailing discretion of Courts. Order 8, rule 6-A does not put any embargo on filing of Counter-claim after filing Written Statement. However this, does not give absolute right to Defendant to file Counter-claim with substantive delay. Even if filed within limitation period Outer limit for filing Counter-claim is till issues are framed.

When filed with delay the Court has to consider the following inclusive factors, which are illustrative and not exhaustive: (i) period of delay; (ii) limitation prescribed for cause of action pleaded; (iii) reason for delay; (iv) Defendant's assertion of his right; (v) Similarity of cause of action between main Suit and Counter-claim; (vi) cost of fresh litigation; (vii) injustice and abuse of process; and (viii) Prejudice to opposite party.

2020 (1) TLNJ 615 (CIVIL)

Ashok Kumar Gupta and Another Vs M/S Sitalakshmi Sahuwala Medical Trust and Ors

Date of the Judgment : 03.03.2020

Civil Procedure Code 1908 Section 92:- Public Charitable Trust –Suit for framing Scheme for Administration of Trust. Leave to institute the suit was granted –Application filed for revocation of leave stating no proper reason in the affidavit and in the application –Application dismissed before the trial court –Revision filed before the High Court was allowed .

Held :- For invoking section 92 of the code of civil procedure three condition must be satisfied. they are:

- 1) The trust in question shall be the one which is created for the public purpose of a charitable and religious nature.
- 2) There is a breach of trust or such a situation that a direction of court is necessary for the administration of such a trust.
- 3) The relief claimed must be one or other of the reliefs as enumerated in that section.

SUPREME COURT – CRIMINAL CASES

2020 (2) CTC 359

Krishnaveni Raj Vs. Pankaj Rai and another

Date of Judgment : 19.02.2020

Hindu Marriage Act, 1955 (25 of 1955), Sections 5, 11 & 15 and Section 125 Cr.P.C.

Marriage between the appellant and her 1st husband was dissolved by decree of divorce .Appeal against the said decree filed by the 1st husband of the appellant after the expiry of period of limitation with delay condonation petition and the delay was condoned and the appeal was taken on file. During the pendency of the appeal Appellant married R1. Latter the appeal was withdrawn. As dispute arose between the appellant and R1 the appellant filed maintenance petition against R1. R1 claimed that his marriage with the Appellant during the pendency of the Appeal against the decree of divorce passed in favour of the appellant against her 1st husband is void. The trial court also accepted that contention and rejected the maintenance petition. Against which this appeal is filed.

Whether the second marriage solemnised during the pendency of an appeal which is taken on file after condonation of delay in filing, is void or not is the question involved in this appeal.

Held:- Careful reading of Sections 5, 11 and 15 makes it amply clear that while Section 5 specifies conditions on which marriage may be solemnised between two Hindus. Only on contravention of those conditions a marriage will become void.

Further, Section 15 stipulates that it is lawful for party to remarry if previous marriage is dissolved by Decree of Divorce and, time for appealing has expired without Appeal being preferred. Further no condition is imposed in the Section 15 that the marriage during pendency of Appeal is void. In instant case, condition mentioned in Section 5 of the Hindu Marriage Act is not contravened and the appeal from Decree of Divorce is filed almost a year after the expiry of period of limitation for filing an Appeal. Bar under Section 15 will be applicable only in case, where Appeal is filed during period of limitation and it is not applicable in cases, where Appeal has been preferred and condonation of delay is sought. Appeal filed in the instant case is infructuous from the beginning as Appellant's ex-husband had also lawfully remarried after expiry of limitation .Petition filed by Appellant against R1 claiming Maintenance, maintainable – R1 directed to pay Rs.20,000 to Appellant as Maintenance per month and Rs.1 lakh as Lump Sum Maintenance - Appeal allowed – order of Sessions Judge dismissing Petition under Section 125, Cr.P.C., set aside.

I (2020) DMC 485 SC

Ruhi Vs Anees Ahamad and others

Date of Judgment: 06.01.2020

Indian Penal Code 1860-Section 498A,406 ,34 –Dowry Prohibition Act 1961--place of Filing of Complaint - Section 4 Jurisdiction

Whether criminal complaint under section 498A is to be filed only at the place of matrimonial Home?

Held:- Mental cruelty borne out of the physical cruelty or abusive or humiliating verbal exchange will remain to continue in the parental home. Therefore It is not necessary that the complaint under section 498A should be filed only at the place where the matrimonial home is situated and it can also be filed at the place of parental home even though there may not be any physical overt act at the place of parental home.

Accordingly in this case Charge sheet filed in Meerat Police Station was ordered to be transferred for trial to Karkardooma Court, Delhi, where the parental home of the victim is situated.

MADRAS HIGH COURT – CIVIL CASES

2020 (2) CTC 129

Lalitha Mohan and anr vs. Pratap K.Moturi

Date of Judgment: 17.02.2020

Indian Succession Act, 1925 (39 of 1925), Sec.63 – Evidence Act, 1872 (1 of 1872), Sec.68, 101 to 103 & 114(e) – Registration Act, 1908 (16 of 1908), Section 60

a)Effect of registration of Will –

Held:- No substantial difference between Registered and Unregistered Will in terms of complying with provisions of Section 63 of Succession Act and Sec.68 of Evidence Act. Registration gives additional strength to Propounder or beneficiary. Section 114 (e) of Evidence Act read with Section 60 of Registration Act creates presumption attributable to official act of registration.

b) Onus of Proof of Will:-

Held :- Initial onus of proving Will always will be on the Propounder of Will or beneficiary of Will and. When fraud alleged, the onus will shift on to the person making such allegation to substantiate it. But where suspicious circumstances are found to be in existence then the onus of proof will rest on the Propounder to disprove it. Mere participation or presence of propounder or beneficiary by itself is not prime factor to disbelieve Will sans other circumstances governing.

2020 (2) CTC 142

M.Karuppuraj Vs. M.Ganesan

Date of Judgment : 06.01.2020

Specific Relief Act, 1963 (47 of 1963), Sec.12:-

Plaintiff paid advance and agreed to pay the balance of sale consideration within 3 months and he also requested the defendant to receive the balance of sale consideration and to execute sale deed after vacating the tenant. Defendant failed to vacate the tenant and to execute the sale deed. Suit filed before the trial court and the plaintiff insisted that the tenants to be vacated. Trial court dismissed the suit and ordered for refund the advance amount. Appeal filed. Despite notice defendant remained exparte. At the appeal stage the plaintiff relinquish the relief of vacating the tenant which is the main reason for the trial court for the dismissal of the suit. Appellate court accepted the relinquishment of the part of the claim made by the plaintiff and decreed the suit for specific performance as the Plaintiff found to be ready and willing. Against that Judgment this revision is filed.

The question arose is that “When Relinquishment of Claim and Part performance of Contract is permissible ?”

Held : Court can, at any stage of the litigation can accept relinquishment of claim made by a party, either in full or in part, subject to certain conditions. However it should be seen that the election to relinquish claim by one party should not prejudice right of other party. In this case the bar under Section 12 is not applicable to the Plaintiff as the Defendant has breached the terms of Contract. Election of Plaintiff to purchase the suit property with Tenants at the Appellate stage, though contrary to the claim laid before Trial Court is legally permissible. Further it has been held that review is maintainable only if there is error apparent on the face of the record and review is not maintainable merely because alternate decision could be taken by a court. Appeal dismissed

2020 (2) CTC 174

Adaikalam and anr vs. K.Pothiyappan and anr.

Date of Judgment : 03.01.2020

Transfer of Property Act, 1882 (4 of 1882), Sec.52 & 8:- Right of the pendente lite transferee to be impleaded

Whether failure to implead the pendente lite Transferee as party in the Suit constitutes fraud in the light of the Judgment rendered in Rajendran v. Mohanammbal, reported in 2018 (6) CTC 483 was the question raised in this Appeal.

Ratio laid down in the case of Rajendran v. Mohanammbal, is that :-

“When an immovable property is transferred pendente lite the right in the property is vested in the transferee in praesenti and its not postponed till the conclusion of the lis. After transfer the transferor might not have any interest to contest and defend the title or he may collude with other to defeat the right of the transferee and hence it’s the transferee who is the best person to defend his right and hence he has to be impleaded”.

Held :- **Ratio in Rajendran’s case** presupposes existence of right in a party to the suit property transferred pendente lite however inconsequential it may appear to be. But in a case Where the Transferor himself does not have any right in the property, or found by Court not to have any right in property then non-impleadment of pendente lite Transferee will be inconsequential.

In this case the Pendente lite Transferor/Defendant’s predecessor-in-title claimed the title under a Settlement Deed and the Trial Court has held that the Suit property is not included in that Settlement Deed. The Said settlement Deed and the Trial Court Judgment also are not produced – only when existence of right in the pendente lis transferor is proved the exposit allegation of whether fraud will vitiate the transfer can be looked into by the court. Hence to determine, whether Decree is obtained fraudulently without impleading pendente lite Transferee ,the matter is remanded back to the First Appellate Court.

2020 (1) LW 940

T.S.Govindarajan Vs. M.Govindarajan

Date of Judgment : 29.01.2020

Specific Relief Act, Sec.16 – Transfer of Property Act, Section 53-A, Part Performance – Registration and other related laws (Amendment) Act (2001) (Act 48 of 2001), Section 17(1-A)

What are the factors that has to be proved for claiming benefit under Section 53-A of the Transfer of Property Act:

It has been held that for claiming benefit under Section 53-A of the Transfer of Property Act the following factors has to be proved :-

- a)The contract should have been registered.
- b) Person claiming the benefit shall be in actual possession of the suit property.
- c) Entry in to possession or continuance of possession must be in pursuant to the agreement.
- d)The party claiming the benefit under section 53A of the Transfer of property Act shall be ready and willing to perform his part of the Contract.

If the document is not registered on or after such commencement of the amendment then such agreement shall have no effect for the purpose of section 53A.

In the present case there is no whisper that possession continues in pursuant to the agreement and in fact the plaintiff has not proved that he himself is in actual possession of the suit property. Therefore the injunction granted by the trial court is set aside.

2020 (2) MLJ 414

Selvaraj Vs. Ponnuthai (died) and others

Date of Judgment : 13.09.2019

Civil Procedure – Execution Proceedings – Arrest – Code of Civil Procedure, 1908 Order 21 Rule 32

For disobedience of decree for permanent injunction Execution petition filed by the Respondent/Plaintiff and the Executing Court simply after perusing the proof affidavit ordered arrest of Petitioner/Defendant for disobedience of the decree for permanent injunction, Hence this revision filed.

Whether the order of arrest passed by the a executing Court in a E.P filed for execution of an injunction Order on the basis of the mere affidavit of the petitioner is justified ?

Held : That the executing court before ordering arrest or attachment, should have examined that whether the Decree Holder had mentioned in the execution petition that he brought the Judgment to the notice of the Judgment debtor and provided opportunity to the Judgment Debtor to obey the decree and despite providing such opportunity the Judgment debtor willfully disobeyed the order of Injunction Further the court should have held a enquiry providing an opportunity to the Judgment debtor to explain his position and only if it is proved that the Judgment debtor had the notice of the Judgment and he had the opportunity to obey the decree but has willfully disobeyed despite notice then arrest or attachment of property can be ordered.

In this case there is no proof to show that the decree holder had brought the Judgment to the notice of the Judgment Debtor and the Judgment Debtor willfully violated the decree. Therefore, Arrest ordered by the Executing Court merely on the basis of proof affidavit is violative of Order 21 Rule 32(1) – Hence the Order of arrest passed by the Trial Court is set aside as null and void – Revision allowed.

2020 (2) CTC 388

C.Naveen Kumar Vs. S.Chandrasekar (Deceased) 1.T.N.Gopalakrishnan

Date of Judgment : 14.10.2019

Code of Civil Procedure, 1908 (5 of 1908), Section 2(11) & Order 22, Rule 5

a) Difference between Legal Heir and Legal Representative :-

Held :- Legal heir is legal representative only if he represent the estate of the deceased .

b) Legal Representative – Determination of –

Held:- The question as to whether any person is legal Representative of deceased Plaintiff/Defendant or not, has to be decided first as Preliminary issue even at the Appellate stage as such determination is a mandatory requirement under Order 22, Rule 5. Appellate Court is duty bound to determine whether Legal Heir can be construed as Legal Representative before impleading a person to represent the estate of the deceased. Therefore case remanded back to Trial court to record evidence regarding the issue of Legal heir for taking ultimate decision by the 1st Appellate court as to who is the Legal representative.

2020 (2) CTC 394

P.Jayachandran Vs. S.Kumar (Died) 1. K.Indresh Kumar and ors.

Date of Judgment : 07.01.2020

Specific Relief Act, 1963 (47 of 1963), Section 20 – Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 7– Relief of Specific Performance rejected – Moulding the Relief:

Whether advance money can be refunded without specific prayer for refund of advance amount in the alternate?

Held:-Court can grant any other consequential relief in lieu of the main relief prayed for. Return of Advance paid by Purchaser is a consequential relief and it is in consonance with Principles of Equity & Fairness . Such relief can be construed as general relief, and there is no necessity to seek for such relief In all circumstances, return of advance amount is the natural consequence, if Specific Performance declined . Alternate relief of return of Advance cannot generally be denied barring exceptional circumstances, where parties agreed to a valid and enforceable forfeiture clause. As Plaintiff is not entitled to Specific Performance in this case the Defendants are directed to return the Advance amount with Interest at the rate of 10% per annum.

2020 (2) CTC 605

M.Prabhu Ramakrishnan and Another Vs Shyamkumar Srivastava and others

Date of the Judgment : 28 .11.2019

Succession Laws –Plaintiff sold part of the Suit Property after obtaining an order of Ad-Interim Injunction . Injunction vacated on that ground

The question arose is whether the single judge is justified in vacating the interim injunction granted to the Appellants.

Held:-Interim injunction Granted in the suit will, not only bind the defendant but also the plaintiff. The interim injunction is in fact in respect of the property and not against any individual. Any alienation of the case property before adjudication of the case on merit would invite third party interference which will interalia result in multiplicity of suit proceedings. When plaintiff made alienation of part of the suit property after obtaining injunction order then he is not entitled to continue with such an order. Hence the order of vacating the ad-interim injunction is valid.

2020(1)TNLJ 521 (Civil)

Kuppammal and anr Vs Palanisamy and others

Date of the Judgment : 28 .11. 2019

Non Joinder of Necessary Party in a partition suit Order 36 Rule 2 : Whether a suit can be dismissed solely on the ground of Non Joinder of necessary party to the suit?

Held :- Suit for partition can't be dismissed for non joinder of necessary parties. If the court is of the view that there are other parties which are to be heard and appears to be necessary party then direction should be issued to the plaintiff to implead the necessary party and the suit can't be dismissed only for the reason that its bad for non joinder of necessary party.

MADRAS HIGH COURT – CRIMINAL CASES

(2020) 1 MLJ (Cr) 542

State represented by the Public Prosecutor, High court, Madras VS G.Kaleeswaran

Date of Judgment : 07.01.2020

Prevention of corruption Act 1988 section 7 and 20 - proof of demand

Head constable charged under section 7 for receiving bribe – Based on evidence trial court acquitted the accused . Against that this appeal is filed.

What prosecution has to prove at trial under section 7 of Prevention of corruption Act ?

Held :- Prosecution need to prove demand of bribe and receipt of tainted money.

In this case prosecution has failed to prove that there was a demand from the accused which is ‘sine qua non’ for the offence and the receipt of tainted money also is not proved by the prosecution in the manner known to law hence presumption under section 20 will not attract to this case. Prosecution further failed to prove that verification of antecedent of the accused was not done by the investigating officer which is also an important factor in this type of cases. Hence appeal is dismissed.

(2020) 1 MLJ (Cr) 578

Pandiyarajan and others Vs State represented by Inspector of police, Aruppukottai Town Police

Station, Virudhunagar District.

Date of Judgment : 29.11.2019

Tamilnadu Gaming Act 1930 Sections 4, 5, 6, 8, 9 - City police Act 1988

Petition filed challenging FIR and summary trial cases arising out of offences under section 4(1)d, 8, 9 of Act 1930 and section 45 and 46 of Act 1988.

The following questions were raised in this case :

- a) Whether Act 1930 is applicable to city in question ?
- b) Whether place of occurrence were common gaming housing under Act 1930?
- c) Whether seizure on basis of secret information without registering FIR was violative of Article 21 of the constitution?
- d) Whether procedures under section 5(1) of Act 1930 is followed ?
- e) Whether respondent satisfy the presumption under section 6 of the Act 1930?
- f) Whether Act 1887 and 1930 are different ?
- g) Whether the officer who registered the case and investigate of FIR after conducting search and seizure the case are one and the same ?

Held :-

a) In CrI.O.P (MD) 14347 and 1565 Of 2019 6 the Case is registered under section 45 and 46 of Tamilnadu city police Act. But Section 2 of the Tamilnadu Gaming Act excludes its applicability to the city of Madurai as defined in the Madras city police Act 1988. In this case the club is situated at Madurai. Therefore, the registration of the FIR is not sustainable one.

b) Gaming itself is not an offence. It will become an offence only if it is carried on in a public place or in a common gaming house. To decide whether a club or house is a gaming house the relevant consideration is not whether the members playing card makes the profit or not but whether the club or house as a person occupying, using or keeping the house or room makes a profit. In all the cases accused were playing cards in a club registered under the Tamilnadu Societies and Registration Act. No mention in the report that anybody running common gaming house. In all the cases accused were playing cards in a club registered under the Tamilnadu Societies and Registration Act. Nothing in the final report that the accused permitted the place to be used as a gaming house. Therefore these clubs can't be construed as gaming house and section 8 and 9 of the Gaming Act 1930 will not be applicable to this case.

c) Conducting investigation after registration of FIR under section 154 Crpc is the procedure established by law. Timely registration of FIR is insisted to avoid manipulation. In this case after receipt of secret information FIR has not been registered immediately but the superior officers were consulted and only after search and seizure the FIR had been registered which is violative of Article 21 of the constitution.

d) Though FIR is registered after search and seizure it has been done only after having consultation with the superior officers and hence its violative of procedures mentioned under section 5(1) of Act 1930.

e) Prosecution has to establish the initial presumption that the place is a gaming house and recovery of articles like card, dice, money, cloth and gaming table. Clubs are not common gaming house and hence the presumption under section 6 of Gaming Act 1930 will not get attracted to this case.

f) Under Bombay prevention of gambling Act 1887 playing or keeping playing card in any house room or place itself is an offence and the element of profit is not material under that Act. In that sense it differs from the Tamilnadu Act 1930.

g) The foundation for fair trial is that the informant can't be an investigator. In that sense entire proceedings are vitiated.
