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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS CIVIL CASES

2012 – 1- L.W. 49

Sanjeev Kumar Jain

Vs

Raghubir Saran Charitable Trust & Ors.

C.P.C., Sections 35, 35B, Order XXA/Suit for Injunction, Temporary Injunction, vacating of, awarding costs, maximum costs, when can be awarded, Consent, Scope, 'actual realistic costs', what is,

Arbitration and Conciliation Act (1996), Sections 11, 31/"Appoint", meaning of, Terms and Conditions, Scope of,

C.P.C., Order 39/Injunction, Temporary vacating of, Awarding costs, Scope,

Practice and Procedure/"Awarding Costs"; what is.

Held: Impugned order including the portion regarding costs, was not a consent order.

Court could not have awarded costs exceeding the scale that was prescribed in the schedule to the Rules. Doing so would be contrary to the Rules – Chapter 11 Part C of the Delhi High Court Rules deals with award of costs in civil suits.

By seeking consent of the parties to award litigation expenses as costs, the High Court could not have adopted the procedure of awarding what it assumed to be the 'actual costs'.

Nor could it proceed to award a sum of ₹ 45,28,000/- as costs in an appeal relating to an interim order in a civil suit.

There is no provision for award of 'actual costs' and the award of costs will have to be within the limitation prescribed by section 35.

"Actual realistic cost" should have a correlation to costs which are realistic and practical – Even if actual costs have to be awarded, it should be realistic which means what a "normal" advocate in a "normal" case of such nature would charge normally in such a case.

Mechanically ordering the losing party to pay costs of ₹ 45,28,000/- in an appeal against grant of a temporary injunction in a pending suit for permanent injunction was unwarranted and contrary to law – It cannot be sustained.

Discretion vested in the courts in the matter of award of costs is subject to two conditions, as is evident from section 35.

Maximum that can be awarded as compensatory costs in regard to false and vexatious claims is ₹ 3,000/- - Ceiling in regard to compensatory costs should be at least ₹ 1,00,000/-.

The word 'appoint' in section 11 of the Act, refers not only to the actual designation or nomination as an arbitrator, but includes specifying the terms and conditions, which the Chief Justice or Designate may lay down –

Whenever the Chief Justice or his Designate appoint arbitrator/s, it will be open to him to stipulate the fees payable to the arbitrator/s.

Order of the High Court, to the extent it levies costs of ₹ 45,28,000/- on the appellant is set aside – Appellant shall pay the costs of the appeal before the High Court as per Rules plus ₹ 3000/- as exemplary costs to the respondents.

2012 – 1- L.W. 120

National Insurance Company Ltd
Vs
Sinitha & Ors

Motor Vehicles Act, (1988), Sections 140/’No fault’ liability, Principle, 144, 163A/’Fault Liability’; ’No Fault Liability’; Distinction Principle of, Ingredients of Section 163A, Governed by ’Fault’ liability Principle, Distinction between Fault and No-Fault liability; Fault, what is, ’Wrongful act’; ’Neglect’; ’default’.

Compensation payable under Section 163A of the Act was not as an interim measure, but was final.

Compensation determined under Section 163A could not be in addition to a claim for further compensation under a separate provision governed by the “fault” liability principle – Nine points laid down in 2001-3-L.W.622(S.C.) Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala, reiterated.

Section 144 of the Act would not override mandate contained in Section 163A – Section 144 provided for such effect over provisions “for the time being in force”, i.e., the provisions then existing.

Section 163A was not on the statute book at the time when Section 144 was incorporated therein – Section 163A of the Act has overriding effect over all the provisions/sections.

Claim made under Section 163A of the Act is whether a claim under the “fault” liability principle, or under the “no-fault” liability principle.

If a claim for compensation under a provision, is not sustainable for reason of a “fault” on account of “wrongful act”, neglect” or “default”, the provision in question would be governed by the “fault” liability principle – If under a provision, a claimant does not have to establish, that his claim does not have to establish, that his claim does not arise out of “wrongful act” or “neglect” or “default”; the claim cannot be defeated on account of any of the aforesaid considerations; then the provision in question will fall under the “no-fault” liability principle.

Section 140(4) reveals, that the claim of compensation under Section 140 of the Act cannot be defeated because of any of the “fault” grounds – Compensation claimed under Section 140 is governed by the “no-fault” liability principle.

Section 163(A) sub-section (2) is in parimateria with sub-section (3) of Section 140 – As in Section 140, so also under Section 163A of the Act, it is not essential for a claimant seeking compensation, to “plead or establish”, that the accident out of which the claim arises, suffers from “wrongful act” or “neglect” or “default” of the offending vehicle – It is open to a concerned party (owner or insurer) to defeat a claim raised under Section 163A of the Act, by establishing “wrongful act”, “neglect” or “default”.

Section 163A of the Act, catered to shortening the length of litigation, by introducing a scheme regulated by a pre-structured formula to evaluate compensation – Only proof of age of income, needs to be established by the claimant to determine the compensation in case of death.

Section 163A of the Act has an overriding effect on all other provisions of the M.V. Act – It is open to the owner or insurance company, to defeat a claim under Section 163A of the Act by pleading and establishing a “fault” ground.

2012 – 1- L.W. 153

Citicorp. Maruti Finance Ltd
Vs
S. Vijayalaxmi

Hire Purchase / Motor vehicle, Repayment default of, Taking over possession of vehicle, how to be effected, Consumer, Deficiency – Use of force impermissible,

Consumer Protection Act/Complaint by hirer of vehicle under a Hire Purchase Agreement, against appellant-Financier Bank alleging deficiency of service.

Agreement, against appellant-Financier Bank alleging deficiency of service.

In case of mortgaged goods subject to Hire-Purchase Agreement, the recovery process has to be in accordance with law and not by use of force – Till such time as the ownership is not transferred to the purchaser, the hirer normally continues to be the owner of the goods – But that does not entitle him on the strength of the agreement to take back possession of the vehicle by use of force – Guidelines laid down by the Reserve Bank of India as well as the Appellant Bank itself, support and make a virtue of such conduct – If any action a virtue of such conduct – If any action is taken for recovery in violation of such guidelines or the principles as laid down by this Court, such an action cannot but be struck down.

2012 (2) CTC 881

Bimal Kumar & Anr
Vs
Shakuntala Debi & Ors

Code of Civil Procedure, 1908 (5 of 1908), Section 2(2) & Order 23, Rule 3 – Partition Suit – Compromise Decree – Effect of – Clear stipulation in compromise entered into between parties that they were in separate and exclusive possession of properties and same had already been allotted to them – Also admitted that they were in possession of their respective shares and no final decree or execution was required to be filed – Parties absolutely conscious that their rights had been fructified and their possession had been exclusively determined – Parties well aware that decree was final in nature as their shares were allotted and nothing remained to be done by metes and bounds – Rights of parties had attained finality and no further inquiry from any spectrum was required to be carried out – Thus, whole thing had been embodied in decree passed on foundation of compromise – Decree based and passed on such compromise in entirety from all angles leaving nothing to be done in future, is a final decree.

Code of Civil Procedure, 1908 (5 of 1908), Section 2(2) & Order 23, Rule 3 – Partition Suit – Compromise Decree – Effect of – Clear stipulation in compromise entered into between parties that they were in separate and exclusive possession of properties – Section 2(2), Explanation – Decree – Preliminary or Final – May be both preliminary and final and that apart, a decree may be partly preliminary and partly final – Preliminary decree merely declares rights and shares of parties and leaves room for further inquiry to be held and conducted pursuant to directions made in preliminary decree which inquiry having been conducted and rights of parties finally determined a decree incorporating such determination is final decree.

Limitation Act, 1963, (36 of 1963), Article 136 – Execution of compromise decree – Limitation – Application for execution of decree or order of any Civil Court to be filed within a period of twelve years – Compromise decree passed in 1964, attained status of final decree – No stay of earlier judgment or any proceedings emanating there from granted in subsequent Suit filed for partition and declaration that exparte compromise decree was null and void – In absence of any interdiction from Court, decree holder was entitled to execute decree – Nonetheless, execution case filed by decree holder in 2004 – Thus, initiation of Execution proceedings after 44 years, barred by limitation – Code of Civil Procedure, 1908, Section 2(2) & Order 23, Rule 3.

Words and Phrases – “Compromise” – Means settlement of difference by mutual consent – In such process, adversarial claims come to a rest – Cavil between parties given a decent burial – Compromise, which is arrived at by parties, puts an end to litigative battle – It is a noble reciprocal settlement with clear mind – It signifies magnificent and majestic facets of human mind – Exalted state of affairs brings in quintessence of sublime solemnity and social stability.

**SUPREME COURT CITATIONS
CRIMINAL CASES**

2012 (2) CTC 871

Om Kr. Dhankar

Vs

State of Haryana & Anr

Code of Criminal Procedure, 1973 (2 of 1974), Section 197 – Indian Penal Code, 1860 (45 of 1860), Sections 420, 409 & 427 – Offence of cheating by no stretch of imagination be committed by any public servant while acting or purporting to act in discharge of official duty – Thus, previous sanction of Competent Authority in relation to such offences would not be required under Section 197 of Code – Prakash Singh Badal v. State of Punjab, 2007 (1) SCC 1, relied upon.

Code of Criminal Procedure, 1973 (2 of 1974) Section 397 – Order of Magistrate directing issuance of summons – Can be challenged by way of Revision under Section 397.

HIGH COURT CITATIONS CIVIL CASES

2012 (3) CTC 6

V. Palanisamy
Vs

V. Shanmugam and Ors

Code of Civil Procedure, 1908 (5 of 1908) Order 18, Rule 1 – Right to being – Evidence Act, 1872 (1 of 1872), Sections 101 to 103 – Burden of proof – Suit for Partition of family property – Defence of Defendant that properties already divided on basis of family arrangement who should begin – Person who pleads family arrangement whereby all properties were divided should prove same – Defendant having pleaded so should prove – Plaintiff cannot be expected to prove negative, as matter not covered by any documentary evidence and based on oral arrangement followed by conduct of parties – Thus, order of Lower Court directing Defendant to first open case by getting into box, not interfered with.

2012 (3) CTC 25

P.R. Pajus (Debtor), Proprietor, P.R. Karuppaiah Nadar & Co. Trichy
Vs

P. Uma Maheswaran and Ors

Code of Civil Procedure, 1908 (5 of 1908), Order 18, Rule 1 – Right to begin – Evidence Act, 1872 (1 of 1872), Sections 101 to 103 – Burden of proof – Onus of proof – Insolvency petition – Application to direct Debtor/Respondent to first adduce evidence to prove that properties available in his hands sufficient to discharge his liabilities – Held, initial burden always on Petitioner to get into witness box and to speak about money transaction and make out his case as pleaded in Petition – Only when said initial burden is discharged, Respondent can be asked to make out his case – Held, mere averments in Petition that Debtor had transferred property in order to defeat Creditors not enough to invoke provision – Thus, order of Insolvency Court directing Respondent to first enter witness box factually and legally unsustainable and thus, set aside.

2012 (3) CTC 38

R. Gunalan and Anr
Vs

The State by Deputy Superintendent of Police, Vigilance and Anti-Corruption Department, Erode Wing, Erode District

Indian Evidence Act, 1872 (1 of 1872) Independent Witness – Necessity in trap cases – Unless there is corroboration in material particulars evidence of bribe giver cannot be accepted – Mere recovery of tainted money not sufficient to convict accused – When there are serious contradictions in evidence, prosecution case cannot be accepted by mere picking a sentence or two from evidence.

Prevention of Corruption Act, 1988 (49 of 1988), Section 19 – Sanction for Prosecution – Not an idle formality – To be strictly complied with before any prosecution is launched – Irregularity in procedure not a ground for setting aside conviction unless such irregularity had resulted in failure of justice to accused – Burden on prosecution to prove that sanction accorded was valid.

2012 (3) CTC 48

P. B. Kasee Sah
Vs
P.T. Hiru Sah

Code of Civil Procedure, 1908 (5 of 1908), Order 14, Rule 1 & 3 – Pleadings in Written Statement – Issue whether to be framed in that regard? – Suit for mandatory injunction – Specific plea raised by Defendant in Written Statement that Suit for injunction not maintainable without seeking relief of declaration – However, no issue framed to that regard – Held, when such specific plea was raised, relevant issue ought to have been framed – Object of an issue is to bring down evidence, arguments and decision to a particular question so that there may be no doubt as to what dispute is – Issues are framed for arriving at right decision of case and to pin-point real and substantial points of difference – Pleadings of parties to be reflected in issues framed – Thus, two additional issues framed.

Tamil Nadu Court Fees and Suits Valuation Act, 1995 (T.N. Act 14 of 1955), Sections 12(2) & 25(a) – Code of Civil procedure, 1908 (5 of 1908), Order 14, Rule 2 – Suit for Mandatory Injunction – Suit transferred from City Civil Court to High Court – Objection raised regarding valuation and correctness of Court fees – No limit to pecuniary jurisdiction of High Court – Thus, issue regarding valuation and correctness of Court-fees need not be determined as preliminary issue but can be decided along with other issues.

2012 – 1- L.W. 74

Chinnu Padayachi and Anr
Vs
Dhanalakshmi W/o. Thangavel and Ors

C.P.C., Order 6, Rule 17/Amendment seeking Mandatory Injunction, when can be allowed,

Limitation Act (1963), Article 113, Section 22/Continuous offence, what is.

An application was filed by the respondents for amendment of the pleadings, incorporating the prayer for mandatory injunction – Respondents have stated that after filing of the suit, the petitioners herein have put up the said construction – It is not stated, when such construction was put up, even though it is stated that after filing of the suit – Hence, the relief of mandatory injunction cannot be entertained.

Construction in the common passage, cannot be considered as a continuous breach, which will entitle the respondents to file application for amendment, even after the prescribed period of three years – Amendment sought for by the respondents barred by limitation.

2012 – 1- L.W. 89

R. Mohanasundaram & Ors
Vs
Arulmigu Kolavizhi Amman Temple, G.N. Chetty Street, Mylapore, Chennai - 4

Tamil Nadu Hindu Religious and Charitable Endowments Act (1959), Sections 23, 29, 47 (Tamil Nadu Amendment Act 28 of 2003), Section 109, Substituted Section applies to pending suits, Suit for recovery of possession, declaration of title when needed.

Limitation Act (1963), Section 10/Applicability to Religious institutions,

Adverse possession/Claim by Poojaris-in-charge of temple, whether maintainable,

Trusts, Limitation, Adverse Possession.

Suit filed for recovery of Possession by Respondent-plaintiff temple (-arulmigu Kolavizhiammal temple) Mylapore, Chennai was decreed and reported in 2008-3-L.W. 1083-Appeal was preferred by defendants against that.

Held: Plaintiff temple has established that it has got title by grant made by the Government – Defendants were only in-charge of the temple in their capacity as poojaris and managers of the temple and that they do not have any legal right to be in possession of the suit property – Plaintiff temple is entitled for recovery of possession.

Defendants 1 to 4 have been in possession and enjoyment of the suit property as poojaris and defacto trustees of the plaintiff temple and not in possession of the suit property in their own right as owners.

Only when a cloud is cast on the title, there is a need to file the suit for declaration – A cloud upon title is an apparent defect in it – In the instant case, defendants 1 to 4 and their ancestors have been held to be poojaris/Archakas, who were performing poojas and in management of the temple – There was no necessity for the plaintiff temple to seek for declaration of title.

Even though no specific trust/endowment has been produced, the very purpose of grant would show that the property is intended for the purpose of the temple establishing that it is a religious endowment – In the case of religious and charitable endowment of Hindus and Muslims, for the purpose of Section 10, the endowed property should be regarded as property vested in Trust for a specific purpose and the Manager thereof as a trustee.

For applicability of Section 10 – There must be property which has become vested in a person in trust for a specific purpose; The suit must be against such person or his legal representatives or assigns not being assigned for valuable consideration; The suit must be for the purpose of following in the hands of such person the trust property or its proceeds or for an account of such property or proceeds.”

Archakas cannot acquire rights in the lands of the temple to which the grant was made because the Archakas should be deemed to be in possession in a fiduciary capacity and as such they cannot claim right – Defendants 1 to 4 and their ancestors were only managers of the temple and the properties and therefore the plaintiff temple has rightly invoked Section 10.

Conducting of poojas and ceremonies and upkeep of the temple satisfy the of Section 10 and the ancestors of the appellants, being in-charge of the temple as Managers/Trustees, plaintiff temple has rightly invoked Section 10.

Plaintiff temple has been dealing with the property – Appellants are not right in contending that the suit property became vested in them prior to the cut-off date i.e., 30th September 1951 and invoking the unamended Section 109 of H.R. & C.E. Act cannot be countenanced.

Section 109 makes it clear that the entire provisions of the Limitation Act, 1963 shall not apply to any suit for possession of immovable property belonging to any religious institution.

Substituted Section 109 of H.R. & C.E. Act will apply even for the pending suits – Archakas/trustees cannot claim adversely to the temple and acquire proprietary rights in the lands of the temple, where patta stands in the name of the plaintiff.

2012-2-TLNJ 113 (Civil)

CRP (NPD) No.1162 of 2011:- Mr. R. Roopkumar

Vs

M/s. Rajiv Jewellers, represented by its Prop. R. Jayakumar, Old No.8/84, New No. 78/2, Sir Thiyagaraya Road, T.Nagar, Chennai – 600 017.

And

CRP (NPD) No.4278 of 2011:- M/s. Rajiv Jewellers, represented by its Prop. R. Jayakumar, Old No.8/84, New No. 78/2, Sir Thiyagaraya Road, T.Nagar, Chennai – 600 017.

Vs

Mr. R. Roopkumar

Tamil Nadu Buildings (Lease and Rent Control) Act 1960, Section 25 – The plea of the tenant that in the appeal filed by the tenant for redetermining the fair rent, cannot be countenanced courts have consistently held

that in matters relating to fixation of fair rent – the Rent Controller can fix higher fair rent than what was claimed – CRP 1162 of 2011 is allowed / CRP 4278, 4279/11 is dismissed.

2012-2-TLNJ 136 (Civil)

Sapna
Vs
B. Pradeep Kumar

Hindu Marriage Act 1955, Section 13(1)(a) – Wife sought divorce on the ground of cruelty – Family Court Chennai as trial court dismissed wife’s petition – on appeal High Court expressed that treating wife as a servant maid and forced to do all household works including washing the clothes of all family members of husband’s family also amounts of mental cruelty and view of trial court in this regard set aside – (Para 33) – held that wife entitled to relief of decree of divorce – permanent alimony ordered to be paid – CMA allowed.

2012-2-TLNJ 158 (Civil)

Ramachandran
Vs
Govindasamy (died) and Ors

Civil Procedure Code 1908 as amended, Order 34, Rule 1 – Suit for reemption of property mortgaged by an usufructory mortgage – alleged that for more than 10 years mortgagee in possession and therefore claimed as mortgage discharged-defendant objected that all the legal heirs of original owner of the property not impleaded – trial court dismissed suit as the transaction was a conditional sale and for non joinder of necessary parties – confirmed by the appellate court-on second appeal the High Court opined that when some legal representatives file a suit for redemption, it is sufficient and suit not to be dismissed merely for non non joinder of such parties as necessary parties (Para 18) – Second appeal allowed.

Interpretation of documents – Civil Procedure Code 1908 as amended, Order 34, Rule (Para 20).

2012 (3) CTC 160

Venkatasubramaniya Chettiar (died) & Ors
Vs
Perumal Chettiar & Ors

Registration Act, 1908 (16 of 1908), Sections 17 & 49 – Transfer of Property Act, 1882 (4 of 1882) – Suit for Partition filed by one brother against other brother – Defendant claiming that properties were already divided under an unregistered Partition Deed – Plaintiff contending that rights in praesenti were created in unregistered Partition Deed and therefore, same cannot be relied on in evidence – Copy of unregistered Partition Deed eschewed by Trial Court on ground that it cannot be looked into for any purpose – Suit decreed – Appeal by Defendant – Unregistered Partition Deed could be looked into for collateral purpose of proving division in status and subsequent separate enjoyment of parties, in a Suit for Partition – Trial Court was not correct in rejecting unregistered Partition Deed, under which properties were divided – Trial Court is not correct in eschewing unregistered Partition Deed – Impugned Judgment set aside – Matter remitted with direction that Trial Court should consider unregistered Partition Deed for collateral purpose of proving division in status and possession of parties.

Code of Civil Procedure, 1908 (5 of 1908), Order 41, Rule 27 – Application for receipt of additional documents filed at stage of Appeal – Parties cannot be allowed to fill up their lacuna or fill up their omissions – Provisions are not intended to allow litigants to patch up weak points – Additional documents are relevant for determination of issues arising between parties – Parties have not grasped significance of producing documents before Trial Court – Hence, additional evidence cannot be refused to be received – Application allowed – Trial Court to consider additional documents – Appeal allowed.

2012 – 1- L.W. 173

Mr. T. Ali, M/s Kohinoor Roller Flour Mills represented by its Managing Director,
M.L.Road, Kottayam, Kerala State

Vs

M/s Koodal Industries Ltd., through one of its Directors Thiru B. Sundarapandian,
Door No.89, First Floor, South Avanimoola Street, Madurai – 625 001.

C.P.C., Section 34/Interest, Compound Interest,

Contract Act (1872), Section 72 Illustration (n),

Tamil Nadu Court Fees and Suits Valuation Act (1955), Section 22.

Suit was filed by the Respondent/Plaintiff against Appellant/Defendant for recovery of money – Appellant/Defendant has paid the entire principal amount due to the Respondent/Plaintiff – Only for the interest amount, the suit has been laid by the Respondent/Plaintiff – In order to become a money suit, a specific amount must be claimed in the suit – Since the entire principal amount due to the Respondent/Plaintiff has been paid by the Appellant/Defendant, the claim for interest made by the Respondent/Plaintiff is a money suit as per Section 22 – But the Respondent/Plaintiff comes out with a plea that interest has been orally agreed between the parties but failed to prove the said plea before this Court – Claim for interest is not based on any contract and as such the claim for interest in the plaint cannot be allowed.

When there is no written contract between the parties to the payment of compound interest and when the plea that it has been agreed between the parties has been negative by this Court then the Respondent/Plaintiff cannot claim compound interest merely because the transaction is commercial in nature.

2012 (3) CTC 178

Sulochana and Ors

Vs

Thilakavathi

Hindu Succession Act, 1956 (30 of 1956), Section 15 – Appeal arising out a Suit for Partition – Right over property of mother – Whether widow of pre-deceased son is entitled to share – Widow of a predeceased son is not a legal heir – Without establishing Will in question, daughters are entitled to entire share of mother to exclusion of widow of pre-deceased son – Consequent to death of mother, her entire share devolved upon her two daughters, who happened to be beneficiaries under Will also.

Code of Civil Procedure, 1908 (5 of 1908), Section 11 & Order 9, Rule 9 – Partition Suit – Earlier Suit for Partition was dismissed as settled out of Court – Question whether subsequent Suit for Partition is barred by res-judicata – Simply because a Partition Suit was dismissed earlier for default or as settled out of Court, co-sharers are not precluded from instituting a fresh Suit for partition, if in reality no settlement got fructified – Compromise decree stands on a different footing – One should not get perplexed by indulging in making false analogy between compromise decrees and Suits dismissed as settled out of Court – Defendant, who pleads that amounts were paid to Plaintiffs pursuant to dismissal of earlier Suit, had not established same – Plea relating to amicable partition put forth by Defendant is nothing but a hill of beans fraught with mendacity and falsity – Suit not barred.

Limitation Act, 1963 (36 of 1963), Article 65 – Code of Civil Procedure, 1908 (5 of 1908) – Adverse Possession – Possession by one co-owner amounts to possession by other co-owner – To attract ouster, a clear proof to demonstrate and display that the co-owner in possession started enjoying property as his own to detriment to interest of co-sharers not in possession – But no evidence to show that right of Plaintiff's was ousted.

2012-2-TLNJ 184 (Civil)

Lilly and Anr
Vs
Tamimul Ansari and Ors

Civil Procedure Code 1908 as amended, Order 1, Rule 10 (2) – Suit for partition dismissed for default – Property subsequently purchased by third party – suit restored and decreed later and preliminary decree passed – during pendency of final decree proceedings petition filed by third party purchaser to implead himself as a party to the proceedings – opposed as hit by doctrine of lis pendence – allowed by trial court and on revision High Court expressed that as on the date of purchase of the property, no suit was pending and therefore it cannot be stated that the purchase was hit by doctrine of lis pendens – (para 5) trial court ordered confirmed on revision – CRP dismissed.

2012-2-TLNJ 186 (Civil)

Rukmani Ammal
Vs
Karuppa Gounder

Adverse possession – Suit for declaration and injunction claiming title on adverse possession – trial court decreed suit but appellate court reversed the finding – on further appeal High Court held that possession of one co owner does not necessarily become possession of an alien – further under article 64 and 65 Limitation Act long possession is not necessarily an adverse possession unless accompanied by open assertion of title – has to be pleaded and proved the date of commencement, nature of possession, knowledge of real owner etc. – findings of appellate court confirmed – Second Appeal dismissed.

2012 – 1- L.W. 189

The General Manager, Southern Railway, Chennai-3. and Ors
Vs
R. Thangaraja

Hindu Marriage Act, (1955), Sections 5, 16/Legitimacy of children of void and voidable marriage/Child born out of wedlock during subsistence of first marriage, Right of.

Words and Phrases/’Legitimate’.

Question in this Second Appeal is whether a Court under Section 16(1) of the Hindu Marriage Act, 1955, can legitimate a son, born before the marriage of his parents and when the first marriage of the father of the child with another person, was subsisting, when the child was born.

Plaintiff (Head Constable in R.P.F.) filed the suit to declare that TM was his legitimate son and KM was his wife and sought for a direction to the defendants (Southern Railway) to include KM and TM, in his official records, as his legally wedded wife and his legitimate son.

Trial Court granted a decree of declaration that TM is the legitimate son of the plaintiff and mandatory direction was also granted to include the names of both KM and TM, as wife and son – Lower appellate Court confirmed the decision – Defendants preferred this Second Appeal.

Plaintiff had married ‘MT’ (1st wife) and filed a petition in the Family Court for divorce – During the subsistence of the marriage, he seems to have developed illicit intimacy with KM and had begotten a child even before the filing of the Divorce Petition – Appellant-a-Head Constable in the Railway Protection Force, apprehending disciplinary action that he was having illicit relationship, with KM, during the subsistence of the 1st marriage with MT, had not disclosed the above fact to the department.

Under Section 16 legitimacy of the child is determined on the basis of marriage, whether valid or void or voidable.

Section 16 does not deal with the rights of children born through concubinage, but deals with legitimacy of the children born through void or voidable marriage.

Concept of acknowledgment of paternity available in Mohammedan Law, cannot be imported to Hindus – To attract Section 16 of the Act, there should be a marriage.

Both plaintiff and his second wife, have deposed that there was no marriage, when the child was born.

Intention of the legislature in engrafting a rule of legal fiction in ordaining the children, though illegitimate, to be treated as legitimate, is confined only to a case, where there is a void or voidable marriage and not in the case, where there is no marriage at all – It is also settled legal position, while interpreting a provision, the Court cannot re-legislate on the subject against the will expressed in the enactment.

Both the Court below have erred in applying Section 16(1) of the Hindu Marriage Act, in declaring the legitimacy of the child born to the plaintiff and KM, not through a wedlock and during the subsistence of the first marriage of the plaintiff.

2012-2-TLNJ 197 (Civil)

Thulasi Ammal and Ors

Vs

A. Sivakumar and Ors

Civil Procedure Code 1908 as amended, Section 3(1) – Suit for partition – plaintiffs claimed share on the property already sold to one of the defendants on the allegation that sale is not valid – trial court preliminary decree for partition – on appeal the defendant contended that the suit was barred by limitation and was not considered by trial court – the High Court expressed that the office of the trial court must be more vigilant and act as a sentinel quivive to check every suit before it is within the period of limitation as contemplated under the act and place a report before the trial judge when it is admitted and felt that nowadays courts not following the procedure (para 43) – further held that plea of limitation can not be raised at the appellate stage when not raised in trial court – but held that alleged sale is valid and binding and made to clear family debts – (para 67) plaintiff not entitled to question the same – Appeal Suit allowed with regard to certain items of properties.

2012 (3) CTC 205

K. Manoharan

Vs

T. Janaki Ammal and Ors

And

T. Janaki Ammal and Ors

Vs

K. Monoharan and Anr

Specific Relief Act, 1963 (47 of 1963), Section 16(c) – Suit for Specific Performance – Total Sale consideration fixed as ₹ 42,66,000/- - Amount of ₹ 25,00,000/- paid as advance – Balance of ₹ 17,66,000/- to be paid within 21/2 months from date of Agreement – Purchaser has to prove his continuous readiness and willingness to perform his part of contract from date of contract till date of hearing – Mere pleadings is not enough – Purchaser had paid ₹ 25,00,000/- as advance and deposited balance sale consideration of ₹ 17,66,000/-, on date of filing of Suit itself – It cannot be stated that purchaser was not ready and willing to perform his part of contract – Purchaser was always ready and willing to perform his part of contract – He is entitled to decree for Specific Performance.

Evidence Act, 1872 (1 of 1872), Sections 91 & 92 – When terms of transaction are reduced into writing, it is not possible to lead evidence to contradict its terms – As between parties to an instrument, oral evidence of intention is not admissible for purpose of either construing deed or proving intention of parties – Evidence adduced to prove oral Agreement between parties, for allotment of six plots for Defendants, in no way contradicts or varies with terms of Agreement of Sale – Hence, evidence adduced to establish oral Agreement for allotting six plots is admissible in evidence and not in contravention of Sections 91 & 92.

Transfer of Property Act, 1882 (4 of 1882), Section 53-A – Registration Act, 1908 (16 of 1908), Section 17(1-A) – There is a clause in Agreement of Sale to effect that possession was handed over to Plaintiff for forming a layout – Trial Court held that since possession was handed over to Plaintiff, Agreement for Sale need to be registered – Whether Agreement for Sale referring to instance of delivery of possession, requires registration – Only when Agreement for Sale, which speaks about delivery of possession, is filed to claim benefit of part performance, Court has to find whether document is registered or not – When document is not registered then benefit of Section 53-A cannot be claimed – Since Plaintiff is not seeking protection or claiming benefit under Section 53-A, and seeks only permanent injunction restraining alienation of suit property, it is a relief independent of clause of handing over possession – Hence, there is no embargo for Plaintiff to rely upon Agreement of Sale – Finding of Trial Court that Agreement of Sale is invalid, set aside – Judgment of Single Judge in AIR 2009 Madras 110 approved – Impugned judgment and decree set aside – Appeal allowed in part.

2012 – 2- L.W. 216

The Divisional Manager, The Oriental Insurance Company Ltd, Vellore
Vs
R. Malliga & Ors

Motor Vehicles Act (1988), Section 149(2)/ Breach of policy condition, ‘ pay and recover’; Scope of.

Insurer can validly defend the proceedings initiated against in it on the premise that the owner of the vehicle has committed breach of the conditions by entrusting the vehicle to a person, who is not duly licensed – When the Insured himself placed the vehicle in charge of a person who does not hold a driving licence, it can be said that he is guilty of breach of the promise that the vehicle will be driven by a licensed driver.

Respondent was not having a valid driving licence to drive the vehicle at the time of the accident.

There is a clear breach of the specified conditions of the policy as referred to in Section 149(2) (a) (ii) – Insurer has discharged its burden – Owner of the vehicle alone is liable to pay the compensation.

Claimants are the daughter and son of the deceased and they are in a state of penury – Insurance Company to pay the compensation awarded and recover it from the owner of the vehicle.

2012 – 2- L.W. 228

Tmt. Shanthi & Anr
Vs
D. Venkataraman

C.P.C., Order 17, Rules 2,3, Constitution of India, Article 227.

Held: If the Judgment and Decree are passed exparte, it is open to the parties either to file an application under Order 9 Rule 13 of CPC., to set aside the exparte decree or to file a regular first appeal against the said judgment and Decree – Revision is not maintainable – Judgment and Decree passed by the learned District Munsif, Ambattur can only be construed as an exparte decree and it cannot be construed as a Judgment on merits.

2012-2-TLNJ 244 (Civil)

Padmaja Ashok
Vs

Dr. E. Rajasree Cause title amended vide order of Court dt.9.6.2008 made in C.M.P.No.2995/07 and Ors

Adverse Possession – Property was settled by the aunt of the 1st plaintiff's husband during his minority – Plaintiff's father in law was managing the estate of the plaintiff's husband – plaintiff's husband died and plaintiff claimed property as legal heir – father in law refused and claimed that the property is in his name in the revenue records – therefore suit for declaration and delivery of possession filed but father in law of plaintiff died during pendency of the suit – legal heirs impleaded and suit decreed – on appeal contended that power of attorney without proper stamp duty was admitted – further father in law prescribed title by adverse possession and all his legal heirs are entitled to share – High Court considering the facts and legal position held that there was no adverse possession by father against his son and was acting only in trust on behalf of son (para 17-19) – further held that documents not properly stamped once admitted in evidence cannot be challenged at any stage before the same court – but penalty can be imposed (para 25 & 28) – procedure followed by trial court condemned (para 15) trial court finding confirmed and appeal suit dismissed with direction.

Indian Stamp Act 1899, Section 35, 38 and 61 – See Adverse Possession (para 17-19).

2012-2-TLNJ 276 (Civil)

Shanmugam and Ors
Vs
Lakshmiammal and Anr

Partition – Suit filed for recovery of property on the basis of an alleged will – property already settled by the original owner in favour of another – trial court dismissed suit and appellate court confirmed dismissal of suit – on further appeal High Court also felt that the suit is bad for partial partition – also felt that after parting with the rights on the property by a settlement, the settler has no competency to deal with same property and plaintiff cannot claim any right on the said property (para 9) – Second Appeal dismissed.

2012-2-TLNJ 281 (Civil)

Jagadeesan
Vs
T. Kriupakaran and Ors

Civil Procedure Code 1908 as amended, Order 41, Rule 27 – Petitions filed to receive certain documents as additional evidence and to adduce additional evidence were dismissed by the lower appellate Court independently before hearing the appeal – CRP filed in High Court – held the lower appellate Court committed error in dismissing the application independently without deciding the appeal on merits – order of lower appellate Court set aside – CRP allowed with direction.

2012 – 2- L.W. 301

Muthammal W/o Late Balu Chettiar and Ors
Vs

Indirani Ammal W/o P. Subramania Chettiar, Vanniar Street, Poonamallee Post, Chennai – 600 056

Adverse Possession/Permissive possession is not adverse.

In the present case, sister allowing her brother to reside therein out of affection or kindness – After some time they cannot be allowed to plead adverse possession – In all such case the legal possession always remains with the owner.

2012-2-TLNJ 327 (Civil)

**Ponnuvel Nadar and Anr
Vs
Ghouse Bhasha**

Civil Procedure Code 1908 as amended, Section 47 – The petitioners cannot in an application under Section 47 CPC raise a contention regarding the sufficiency of value fixed by the Court on 27.06.2003, after having allowed the order to become final – with all challenging the said order – CRP dismissed.

2012-2-TLNJ 329 (Civil)

**Manoharan
Vs**

Thiruthuraipoondi Co-op, Urban Bank Ltd., E-603, rep by its Secretary. Thiruthuraipoondi post, Thiruvarur District.

Tamil Nadu Buildings (Lease And Rent Control) Act 1960, Section 29, and Section 106 of The Transfer of Property Act – Suit filed for ejection by the Co-operative Bank since the Co-Operative society is exempted from the Tamil Nadu building lease and rent control act under section 29 – Suit decreed on the ground that notice under section 106 of the Transfer of property Act is valid – The judgment confirmed in Appeal – Unsuccessful defendant filed Second Appeal on the grounds that land lord did not prove the bona fide requirement of the premises, receiving rent after the Quit Notice amounts to waiver of notice, there was holding over of tenancy and intention to renew the lease – held the land lord is not required to prove the requirements of the premises or for any bona fide cause after the quit notice near receiving of rent after the notice would not amount to waiver of notice – There was no holding over of tenancy – There was no intention on the part of Bank to continue the defendant as a tenant – Second Appeal dismissed.

HIGH COURT CITATIONS CRIMINAL CASES

2012 (2) CTC 741

M. Ramesh

Vs

The Inspector of Police, D-6 Anna Square Traffic Investigation, Chennai

Indian Penal Code, 1860 (45 of 1860), Section 304 Part II – Offence of drunken driving – Whether act of driver/Accused person causing death of person due to drunken driving can be charged under Section 304, Part II of IPC – Held, where allegation has been made that accident has been caused by act of alleged Accused and material would disclose that he was in drunken mood at relevant point of time, investigation agency is bound to register case under Section 304 Part II of IPC – Police directed to register case under Section 304 Part II of IPC wherever if it is found that act of drunken driving resulted in death of innocent persons.

Criminal Jurisprudence – Offence of drunken driving – Theory of deterrent punishment – Quantum of punishment – Exercise of judicial discretion – Nature and scope – Limitations – Practice of Magistrate Court imposing lenient punishment of fine in cases of drunken driving is against public interest and such practice is deprecated – Motor Vehicles Act nowhere states that in all cases fine alone is to be imposed – Court will have to understand that punishment imposed will have to be deterrent not only to Accused but also to other who are likely to commit such offence – Crime of drunken drive taking away innocent life of people is considered to be crime against society even though it is actually committed against individual.

Criminal Jurisprudence – Imposition of Punishment – Reformatory theory of punishment – Discretion of Courts – How to be exercised – Limitations – Discretion of Court in awarding quantum of punishment should be exercised by taking into consideration public interest – Judicial discretion cannot be exercised mechanically – Judicial Magistrates are directed to consider facts and circumstances of each case and award appropriate punishment for drunken driving without mechanically imposing fine alone.
