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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS CIVIL CASES

(2014) 8 Supreme Court Cases 294

Gaiv Dinshaw Irani

v.

Tehmtan Irani

Date of Judgment : 25.4.2014

- A Tenancy and Land Laws – Tenancy – Leasehold tenancy rights – Succession – Whether can be bequeathed – In absence of specific provisions in tenancy laws of State concerned, general law of succession will apply
- B Tenancy and Land Laws – Tenancy – Relinquishment/surrender of joint tenancy in favour of one tenant – Revocation of consent to relinquish/surrender of tenancy – Subsequent transfer i.e. after the said revocation of tenancy rights by lessor (Municipal Corporation) in name of that one tenant – Validity.
- C Civil Procedure Code, 1908 – Ss. 96 & 100 and Or. 41 R. 33 – Relief – Subsequent events – Moulding of relief – appellate court has power to mould relief taking into consideration subsequent developments when the same have direct bearing on relief claimed or on entire purpose of suit – Constitution of India – Arts. 136 and 142 – Equity – Moulding of relief

AIR 2014 SC 2665

Municipal Corporation, Gwalior

v.

Puran Singh

Date of Judgment : 2.7.2014

- A. Hindu Law – Joint family property – Claim of joint possession and ownership – Has to be pleaded and proved – Facts showing jointness in ownership and possession should be reflected in plaint itself.

Civil P.C. (5 of 1908) O.6, R.1.

- B. Hindu law – Joint family – Suit for declaration of title and injunction – Ancestors of plaintiffs not belonging to one family, but three different family having three different castes – Plea of joint possession of the plaintiff cannot be accepted.
- C. Evidence Act (1 of 1872) , S. 35-Khasra entries – Do not convey title – Entries are only relevant for purposes of paying land revenue and has nothing to do with ownership.

2014 – 4 – LW.736

Mathai Mathai

v.

Joseph Mary and Others

Date of Judgment : 25.04.2014

Transfer of Property Act (1882), Section 58(b) simple mortgage, 58(d) usufructuary mortgage, difference,

Contract Act, Section 11, parties competent to contract, who are, Section 2 interpretation clause,
Kerala Land Reforms Act (1963), Section 4-A/simple mortgage, usufructuary mortgage, difference,
Question is whether mortgage deed is valid,

Mortgage is a contract – whether minor can be a mortgagee – Rights and liabilities – Simple and usufructuary mortgage, distinction – Possession to be handed over, effect of - Mortgage deed in this case ab initio void.

Mortgage deed is not valid mortgage because mortgagee at the time of execution and registration of the document was a minor, aged 15 years – She was not represented by her natural guardian, we cannot hold mortgage in the name of minor is valid – Mere possession, effect of.

No recital in the deed which delivers possession of the land to the mortgagee under the deed.

2014 (5) CTC 778

Raheeda Khatoon (D) through L.Rs.

v.

Ashiq Ali

Date of Judgment : 10.10.2014

Mulla's Muhammadan Law, Section 152(3) – Muslim Law by Tyabji, Section 394 – Oral Gift – Validity of – Suit for declaration and recovery of possession – Contention of Plaintiff that she took care of one 'A', her neighbor till his ripe age of ninety and being pleased with her services he gifted his house to her by way of Oral Gift in 1968 and possession was given to her – However, clear stipulation in written Gift Deed of the year 1970 produced in Suit that said 'A' was in possession of premises – Moreover, established from Family Register and Voters List that Plaintiff was staying in her house with her husband during relevant period – Contention of Plaintiff that she was receiving rent from tenants in property, not substantiated by production of Rent Receipts – Said contention negated by Rent Receipts issued by donor after execution of alleged Gift Deed – Plaintiff not in possession of title Deeds nor land mutated in her favour by Revenue Authorities – Held, Plaintiff not in actual possession nor in constructive possession of property – In such circumstances, no valid gift made in favour of Plaintiff – Decree and Judgment of Original and Appellate Court allowing set on inference, held, erroneous – Order of High Court dismissing Suit, upheld – However, conclusion of High Court that Gift Deed was not valid for want of registration, held, irrelevant as possession was not handed over in favour of Plaintiff – Appeal dismissed – Registration Act, 1908 (16 of 1908), Section 17 – Constitution of India, Article 136.

(2014) 8 Supreme Court Cases 902

Ram Daan

v.

Urban Improvements Trust

Date of Judgment : 01.08.2014

- A Specific relief Act, 1963 – Ss. 38, 5 and 6 – Suit for permanent injunction restraining defendant (respondent Trust) from dispossessing appellant-plaintiff from suit land, without claiming title – Maintainability - Plaintiff being in possession has a good title against everybody except rightful owner – In absence of any assertion of respondent's ownership in written statement, legal character of respondent not known – Instead respondent submitted before Supreme Court that real owner of suit land was State of Rajasthan, which is not respondent – Even assuming respondent had some authority to evict appellant, no proceedings in accordance with law taken by respondent against appellant – Held, appellant entitled to decree of permanent injunction as prayed for, subject to right of real owner to evict appellant in accordance with law – Rajasthan Land Revenue Act, 1956 (15 of 1956) – S. 91 – Evidence Act, 1872 – S.

110 – Property Law – Possessory title – Good against all but real owner – Civil Procedure Code, 1908, Or. 7 and Or. 2 R. 2

- B Tenancy and Land Laws – Rajasthan Land Revenue Act, 1956 (15 of 1956) – S.91 – Eviction – If after eviction, evicted person re-enters possession of land, fresh eviction proceedings have to be initiated in accordance with law against him – Specific Relief Act, 1963, S.6.**

SUPREME COURT CITATIONS CRIMINAL CASES

2014 (5) CTC 680

Nandlal Wasudeo Badwaik

v.

Lata Nandlal Badwaik

Date of Judgment : 06.01.2014

Indian Evidence Act, 1872(1 of 1872), Section 112 – Legitimacy of Child – Conclusive proof – Presumption thereof – DNA Test – Nature of proof – Evidentiary Value – Child born during continuance of valid marriage – Husband disputes legitimacy of child and sought for DNA Test – DNA Test reveals that Husband is not biological father of Child – How to balance – Whether DNA Test would be sufficient to hold that father is biological father – Rebuttable presumption – When there is conflict between conclusive proof envisaged under law and proof based on scientific advancement accepted by world community to be correct, latter must prevail over former – DNA Test is scientifically accurate.

Indian Evidence Act, 1872(1 of 1872), Section 112 – Presumption – Distinction – Rebuttable presumption – Irrebuttable presumption – Conclusive proof – Presumption of act depends on satisfaction of certain circumstances – Section 112 does not create legal fiction but provides for presumption – Legal fiction assumes existence of fact, which may really exist.

(2014) 8 Supreme Court Cases 909

Shyam Narain Pandey

v.

State of Uttar Pradesh

Date of Judgment : 22.07.2014

- A Criminal Procedure Code, 1973 – S. 389(1) – Stay of conviction – Approach of court – Considerations involved – Loss of public employment/promotion prospects, held, not at all a relevant consideration – Held, stay of conviction can be granted only in exceptional circumstances, though sentence may be suspended but only after recording reasons therefor – No hard-and-fast rule or guidelines can be laid down as to what those exceptional circumstances are where stay of conviction can be granted – Further held, court should be wary in staying conviction especially where offence alleged against convict is punishable with death or life imprisonment or for a period of not less than 10 yrs, or where offence involves moral turpitude – If conviction is stayed in such cases, it would have serious impact on public perception on integrity of judicial institution and would shake public confidence in judiciary – It is only in rare and exceptional cases of irreparable injury coupled with irreversible consequence resulting in injustice, when stay of conviction may be granted
- B Words and Phrases – “Convict” – Meaning – Held, “convict” means declared to be guilty of criminal offence by court of law on finding accused guilty of charges proved against him – Further held, when a convict prays for stay of conviction, he is asking for stay of operation of effects of declaration of being guilty – Criminal Procedure Code, 1973, Ss. 389 and 354

(2014) 8 Supreme Court Cases 918

Richhpal Singh Meena

v.

Ghasi Alias Ghisa And Ors

Date of Judgment : 04.07.2014

- A. Penal Code, 1860 – Ss. 302/304/304-A or Ss. 325/326/337/338 and Ss. 299, 300, 34, 149, 72 and 447 – Offences affecting life as contrasted with offences relating to hurt – Relative scope – Offences in which death is the end result as against those in which death is not the end result – Scheme of IPC, explained – Death of a person due to an act or omission of accused – Conviction and sentencing – Determination of appropriate offence for which accused to be held guilty in such a case – Five-step inquiry which must be carried out by court in this regard – Indicated
- Court to inquire as to : (i) whether there is a homicide; (ii) if yes, whether it is a culpable homicide or a “not-culpable homicide”; (iii) if it is culpable homicide, whether the offence is one of culpable homicide amounting to murder (S. 300 IPC) or a culpable homicide not amounting to murder (S.304 IPC); (iv) if it a “not-culpable homicide”, then whether a case under S. 304-A IPC is made out; and (v) though in most cases the person who has committed homicide (culpable or not culpable) can be identified, but it is quite possible in some cases, that conclusive or specific evidence is lacking to actually pin down the person who has committed homicide (culpable or not culpable): in such cases, the accused would have to be given the benefit of S. 72 IPC
 - Treating the offence concerned as one of voluntarily causing grievous hurt, ignoring or overlooking the fact as to commission of homicide in a given case – Held, not permissible
 - In present case, (i) there was a homicide i.e. death of S, which resulted from injuries inflicted on him by accused assailants, (ii) said homicide was a culpable one in view of fact that assailants had a common intention to cause grievous injuries in question of S which were sufficient to cause death in normal course, (iii) said culpable homicide amounted to offence of murder failing under S. 300 Thirdly IPC – Thus, applying the aforesaid five-step inquiry, held, alteration of conviction of accused under S. 302 IPC to that under S. 325 IPC by High Court, not sustainable – Hence, set aside – Conviction under Ss. 302 and 447 IPC passed by trial court, restored
- B. Penal Code, 1860 – S.72 – Applicability of - Explained
- C. Penal Code, 1860 – Ss. 299 to 304 and 325 & 326 – Knowledge and intention – Inferences of – Knowledge of consequences of one’s intentional actions – Held, accused must be deemed to know the consequence of his act, unless it was accidental or unintentional – Criminal Trial – Mens rea.

2014 CRI. L.J. 3697

Balbir

v.

Vazir

Date of Judgment : 01.07.2014

- A. Criminal P.C. (2 of 1974), S. 386 – Appeal against acquittal – Interference – Not permissible if view taken by High Court is a reasonably possible view.
- B. Evidence Act (1 of 1872), S. 32 – Oral dying declaration – Reliability – Murder case – Dying declaration made before witness who took deceased to hospital giving details of alleged conspirators and minute

particulars does not appear to be a natural voluntary statement of a dying man – Driver of car in which deceased was taken to hospital also not examined – Thus, there is no corroboration to lend assurance to dying declaration – Further recording of statement of witnesses before whom dying declaration was made three days after incident cast doubt on dying declaration – Dying declaration is not reliable.

Penal Code (45 of 1860), S. 300

- C. Evidence Act (1 of 1872), S.9 – Test identification parade – Non-holding of – Murder case – Incident does not seem to have lasted for a long time – Eye-witnesses sitting outside hall not having sufficient opportunity to see faces of accused who were on run – On such facts, failure to hold identification parade is a serious drawback in the prosecution case.

Penal Code (45 of 1860), S. 300

- D. Penal Code (45 of 1860), Ss. 300, 120 B – Murder and criminal conspiracy – Proof – allegation that accused persons pursuant to conspiracy committed murder of Head Priest of ashram and his disciple due to previous enmity – Name of assailants surfaced three days after incident when statements of eye-witnesses were recorded – Delay in recording statement of eye-witnesses not explained – Dying declaration giving minute diverse particulars about assailants not credible – Evidence on record creates some suspicion, but does not prove offence to hilt – Accused are, therefore, entitled to benefit of doubt.

2014 CRI. L.J. 3806

Pradeep Kumar

v.

State Of Haryana

Date of Judgment : 02.07.2014

- A. Penal Code (45 of 1860), Ss. 304-B, 498A – Dowry death – Deceased wife dying within 9 months of marriage because of burn injuries – Deceased in part of dying declaration stating that she was harassed by husband for not bringing money – Further stating that husband had earlier threatened her of death and on fateful day set her ablaze after pouring kerosene – Fact of demand of money corroborated by her father – Accused husband liable to be convicted for dowry death and under S. 498A.
- B. Evidence Act (1 of 1872), S. 32 – Dying declaration – Inconsistent Statements – Case of bride burning – Declaration recorded in two parts – First part making up case of stove blast – Second part of declaration was tutored by her husband – Second part of declaration which inculpated her husband inspiring confidence – Has to be treated as dying declaration.

HIGH COURT CITATIONS CIVIL CASES

(2014) 7 MLJ 37

R. Nagarajan

v.

Sundaravelu

Date of Judgment : 19.08.2014

Property Laws – Sale by Guardian – Cancellation of sale deeds – Absence of sanction – Hindu Minority and Guardianship Act 32 of 1956 (Act), Section 8 – Properties are ancestral properties of Appellant/Plaintiff's father who died intestate – 1st Defendant/mother had to sell property for family necessity and for purpose of marriage of 2nd Defendant/sister – Property sold to Respondents/Defendants 5 and 4 – On date of sale, Appellant was minor – After attaining majority, Appellant challenged sale by claiming 5/12th share in suit property – Trial Judge held alienation void and decreed suit as prayed for – Respondents challenged same – Lower Appellate Court set aside judgment of Trial Court – Second Appeal – Contention of Appellant that in absence of sanction from Court under Section 8, sale is voidable at instance of Appellant – Whether Lower Appellate Court legally right in holding that since Appellant not prayed for setting aside sale of his share, suit is not maintainable – Whether in suit by minor for share in joint family property, is it necessary to ask for setting aside sale – Whether sale by guardian of minor without obtaining sanction from Court for sale valid – Held, Section 8(2) of Act specifically states that without previous sanction of Court, natural guardian shall not alienate – One minor chooses to repudiate sale within limitation, i.e., within 3 years from date of attaining majority, alienation for binding necessity no longer available – Appellant has right to avoid alienation in terms of Section 8 and till alienation set aside, it is valid – Appellant has to set aside sale if wants to avoid transfers and recover properties from purchasers – But Appellant has not asked for prayer for setting aside sale, instead, asked for preliminary decree declaring his share in suit properties – Appellant ought to have prayed for cancellation of sale deeds expressly or impliedly and pay required Court fees – As prayer for setting aside sale not asked for, sale cannot be cancelled – Having failed to seek prayer for cancellation of sale deeds by paying Court fees, relief sought for by Appellant cannot be granted – Appeal dismissed.

(2014) 7 MLJ 48

Rajamani .

v.

Arthanari Gounder

Date of Judgment : 23.06.2014

Property Laws – Suit for partition – Oral Partition – Respondent/Plaintiff filed suit for partition claiming that co-owners enjoying suit property for sake of convenience without any partition by metes and bounds – Appellant/Defendant resisted claiming that sub-divisions were made and separate pattas issued based on oral partition – Trial Court dismissed suit holding that property divided by metes and bounds – Lower Appellate Court granted preliminary decree for partition – Second Appeal – Whether Lower Appellate Court erred in ignoring separate pattas granted evidencing partition and separate possession and enjoyment – Held, Revenue Authorities made sub-divisions leading to issuance of separate pattas – Enjoyment of separate portions and mutation of Revenue Records besides sub-division admitted by Respondent in plaint itself – Evidence of witness shows that there was partition earlier – Properties were divided by metes and bounds – Parties enjoying properties allotted to them respectively – Appellants proved oral partition by preponderance of probabilities – Respondent failed to prove case of co-owners enjoying portions without partition by metes and bounds – Finding of Lower Appellate Court set aside – Appeal allowed.

(2014) 7 MLJ 82

Jayaraman

v.

Gopalasamy Chettiar

Date of Judgment : 15.07.2014

Property Laws – Possession of Title – Appreciation of Evidence – Evidence Act, 1872, Section 114 – Deceased 1st and 2nd Respondents/Plaintiffs filed suit against Appellant/Defendant seeking relief of declaration of their title over suit property and also for permanent injunction – District Munsif dismissed suit on ground that Paimash number mentioned in Ex.A1/Registered sale deed executed by third party individual does not correlate with survey numbers mentioned – Also, found that no records like survey land extract filed by Plaintiffs to prove factum that old Paimash now assigned as survey numbers mentioned – On appeal, First Appellate Court reversed judgment of Trial Court – Second appeal – Whether First Appellate Court right in reversing judgment of Trial Court, since it failed to appreciate both oral and documentary evidences in proper perspective – Held, perusal of judgment of Trial Court reveals that old Paimash number does not correlate with survey numbers mentioned – No records like survey land extract filed by Plaintiffs to prove that old Paimash number now assigned as survey numbers mentioned – Ex.A4/Kachayat book showing payment of kist by Plaintiffs and Ex.A5/Kachayat Book showing payment of kist by Plaintiffs verified correctly examined by Trial Court with right conclusion that those documents did not contain patta number and extent of land – Ex.B7/patta issued to Defendant in respect of survey numbers mentioned – Suit property is comprised in one of the survey numbers mentioned, same stands in name of Defendant – Ex.A.11/certified copy of Survey Land Register, same stands in name of Defendant – Ex.B6/certified copy of Survey and Settlement Register, same stands in name of Defendant – With reference to Ex.A16, Tahsildar effected transfer of patta in respect of suit lands wrongly in name of 1st Respondent/Plaintiff- Defendant presented application to Tahsildar requesting to re-transfer patta in his name – Patta re-transferred in name of Defendant after detailed enquiry – Appeal and revision against re-transfer of patta by 1st respondent/Plaintiff dismissed, same not denied by Plaintiff dismissed, same not denied by Plaintiffs – Judgment of Lower Appellate Court perverse – Lower Appellate Judge miserably failed to appreciate both oral and documentary evidences in proper perspective, same resulted in wrongly reversing judgment of Trial Court – Judgment and decree of Lower Appellate Court set aside – Judgment and decree of Trial Court restored – Appeal allowed.

2014 (5) CTC 118

Udhayakumar @ Kumar

v.

G. Kishore Kumar

Date of Judgment : 20.8.2014

Code of Civil procedure, 1908, Order 13, Rule 3 & Order 7, Rule 14 – Rejection of Inadmissible Documents – Power of Court – After commencement of Trial, Plaintiff seeking permission to produce six documents – Three documents received by Trial Court – Revision against Order refusing to receive remaining three documents – Third document not pressed in Revision – Document Nos. 1 & 2 are papers without any authenticity – Court has power to reject irrelevant or inadmissible documents at any stage of proceedings – Trial Court rightly disallowed document Nos. 1 & 2 – Impugned Order does not warrant any interference – C.R.P. dismissed.

2014 (5) CTC 296

M.R.F. Limited

v.

Singapore Airlines Limited

Date of Judgment : 3.2.2014

International Law – Carriage by Air Act, 1972 (69 of 1972), II Schedule, Rules 29 & 30 – Limitation Act, 1963 (36 of 1963), Section 29(2) – Carriage by Air Act enacted to give effect to Convention for unification of certain Rules

relating to International carriage by air signed at Warsaw – Carriage by Air Act is a Special enactment – Carriage by Air Act being International Law prevails over General law.

Carriage by Air Act, 1972, II Schedule, Rules 29 & 30 – Limitation Act, 1963 (36 of 1963, Section 29(2), Article 14 – Suit for recovery of money on account of damage caused to Cargo – Time limit prescribed by Carriage by Air Act is two years – Plaintiffs initially moved Consumer forum – Forum returned Complaint, granting liberty to Plaintiffs to move Civil Court – Time spent in Consumer Forum does not automatically save limitation as Consumer Forum is only a Quasi-Judicial Tribunal – Suit presented before Civil Court thereafter, held, barred by limitation – Suit fails.

2014 – 4 – LW.637

M/s. Hindustan Unilever Limited

v.

Reckitt Benckiser (India) Limited and another

Date of Judgment : 17.07.2014

C.P.C., Section 20, Order 7, Rule 11 – Rejection of plaint, cause of action, goodwill, advertisement disparaging, suit for.

Suit was filed by respondents for permanent injunction restraining revision petitioner/s defendants from disparaging goodwill and reputation of product under name “HARPIC” and to pay damages – Rejection of plaint – cause of action.

It was contended that civil court has no jurisdiction and entitled to seek relief before MRTP commission or ASCI (Advertising Standards council of India).

Petitioner failed to point out any specific provision regarding bar of civil court’s jurisdiction – case of action in plaint arose within jurisdiction of city civil court, Chennai giving Chennai address – Plaint cannot be rejected under O.7, R.11, of CPC.

(2014) 6 MLJ 654

R. Karuppusamy

v.

P. Sivaraj

Date of Judgment : 3.7.2014

- A. Civil procedure – Suit for specific performance – Declaration – Specific Relief Act, 1963 (Act 1963), Sections 10, 14 and 34 – Appellant/Defendant entered into agreement with Respondent/Plaintiff to sell property – As land was vacant in unapproved lay out and sought to be purchased as house site – Condition inserted to put up shed by Appellant, get assessed to house tax to avoid impediment for registration – Though was put up shed, same was not assessed to tax – Appellant issued notice cancelling agreement – Respondent filed suit for specific performance – Trial Judge granted decree of specific performance and directed Appellant to execute sale deed – Appeal – Whether suit for specific performance not maintainable without prayer for declaration that unilateral cancellation by Appellant is invalid – Held, on failure by other party to perform contract, aggrieved party have two remedies, damages or specific performance – In neither case, party shall be required to seek declaration that cancellation of agreement by other party is bad – Section 34 of Act 1963 does not make it obligatory on court to grant declaration of status wherein such declaration may be sought for – Act does not say that contract cannot be specifically enforced by other party who is not at fault without seeking declaration that cancellation is bad – Nothing in Section 10 of Act 1963 suggest that when breach is committed by unilaterally cancelling

agreement, contract cannot be specifically enforced without seeking declaration – No provision in Indian Contract Act says that remedy of specific enforcement of contract cannot be sought for without seeking declaration that act of non-performance or cancellation by other party to agreement is bad – Appeal allowed in party.

- B. Civil Procedure – Suit for specific performance – Specific relief Act, 1963 (Act 1963), Section 16(c) – whether Respondent entitled to relief of specific performance – Whether Respondent has proved his readiness and willingness to perform his part of obligations under agreement for sale – Held, Appellant issued Notice terminating agreement casting blame on Respondent for non-completion of transaction within time – Conjoint reading of agreement, notice and reply notice make it clear that Appellant simply dragged on till expiry of time – Appellant allowed time stipulated in agreement to lapse – Respondent expressed readiness and willingness to do his part of obligations under Agreement – Trial Court rightly held that Respondent complied with Section 16(c) of Act 1963 by specifically pleading his readiness and willingness – Appellant instead of performing obligations under agreement, attempted to wriggle out of commitment by claiming that agreement opposed to public policy and unilaterally terminating agreement – Finding that Respondent entitled to relief of specific performance confirmed – Trial Judge passed decree for specific performance directing execution of sale deed in respect of vacant site only exclusive of shed – Absence of any direction as to what should be done with shed is flaw in judgment and cannot be corrected in appeal – Suit remitted back for rendering specific finding as to what should be done with shed and to pass full-fledged decree.

(2014) 6 MLJ 704

Vijaya .

v.

Ranganathan and Ors

Date of Judgment : 25.06.2014

Civil procedure – Decree of Suit – Non-Appearance of Parties – Chief-Examination – Code of Civil Procedure, 1908, Order 17, Rule 2 – Plaintiffs filed suit for partition and for permanent injunction – Before Trial Court, 2nd Plaintiff examined, but 4th Defendant examined in part – Since 4th Defendant did not appear for further examination, Trial Court proceeded to decide suit on merits and decreed the same - On appeal, decree of Trial Court confirmed – Second appeal by legal representatives of 3rd and 4th defendants – Whether Lower Courts right in deciding suit on merits, when evidence of 4th Defendant is in half-way and decision of Lower Courts correct and proper – Held, since 4th Defendant works in army he cannot avail leave as and when he wishes – Non-appearance of 4th Defendant at the time of trial understandable – Ex-parte decree could have been passed instead of deciding matter on merits under Order 17 Rule 2 of Code 1908 – Though Defendants made averments in written statement relying upon alleged Will, they did not produce the same before Trial Court at the time of chief examination of 4th Defendant – 4th Defendant would have thought that Will could be produced on next hearing, since his chief examination was not completed – When Defendants solely relied upon alleged Will for claiming their right over suit properties, unless it is proved that alleged Will is genuine or not, Trial Court should not have proceeded to decide matter on merits – But, could have passed ex-parte decree – Lower Courts could have given opportunity to 4th Defendant to let in evidence and decided suit on merits – Defendants should be given another opportunity to let in evidence before Trial Court – Decree of Lower Courts set aside – Matter remitted back to Trial Court – Appeal allowed.

2014 (5) CTC 832

Sekar

v.

Poongavanathammal

Date of Judgment : 27.08.2014

Code of Civil procedure, 1908, Section 2(11), Order 22, Rules 2,3, 4, 5 & 9 – Partition Suit – Final decree proceedings – Application for passing Final Decree allowed and confirmed in Appeal – Second Appeal before High Court – Preliminary objection that Second Appeal is not maintainable, since 11th Respondent died even before Judgment was passed by First Appellate Court and that her Legal Representative was not brought on record – When Appellant/Respondent in Appeal dies and right to sue survives, Legal Representatives of deceased Appellant/Respondent have to be brought on record, before Court proceeds further – Court cannot postpone decision, as to who are Legal Representatives of deceased Appellant/Respondent, to be decided along with Appeal – If Legal Representatives are not brought on record, Appeal automatically abates and Appellate Court cannot modify decree, directly or indirectly – Appeal against dead person is nullity – 11th Respondent died on 14.07.2004 and Judgment in Appeal was rendered on 24.1.2007 – Whether husband of 11th Respondent, can be decided only after he is brought on record – Non-impleadment of Legal Representatives of deceased 11th Respondent is fatal to case of Appellants – Lack of diligence and negligence attributed to Appellants – Since Legal Representatives of 11th Respondents were not brought on record, judgment of Lower Appellate Court is nullity and inoperative – Impugned Judgment set aside – Matter remitted – Second Appeal disposed of.

2014 – 4 – LW.875

Subbiah.

V.

Alagarsami (died) and others

Date of Judgment : 22.09.2014

Will/Proof of, disinheritance, effect of,

Succession Act, Section 63/Will, suspicious circumstance, disinheritance, effect.

Will – whether proved – Mental condition of executants five days prior to death – whether proved – Suspicious circumstance – What is – Mentioning executant's sister's daughters as her daughters, whether suspicious circumstance.

Held: Testatrix must have been under care and custody of defendants – Not suspicious circumstance to state them as daughters – Disinheritance of husband's heirs – Effect of.

HIGH COURT CITATIONS CRIMINAL CASES

(2014) 4 MLJ (CrI) 1

Suresh @ Surendra

v.

State

Date of Judgment : 20.08.2014

Murder – Robbery – Conviction and Sentence – Indian Penal Code, 1860, Sections 302, 380 and 392 – A1 to A5 entered house and after committing murder of D1 and D2, decamped with jewellery and cash from house – Conviction and sentence – On appeal, Court confirmed conviction and sentence - Appeal by A3 – Whether prosecution has satisfactorily proved A3 committed murder and robbery – Whether Trial Court was justified in upholding sentence and conviction – Held, prosecution satisfactorily proved from evidence of prosecution witnesses that D1 and D2 were murdered in house – Just because body of D2 had some jewellery, which perhaps accused were not able to remove, cannot be concluded that it was not murder for gain – No reasons to disbelieve identification of Appellant by prosecution witnesses both in Identification Parade as well before Court and is substantive evidence – Recovery of part of bangles from possession of Appellant by Investing Officer under cover of Mahazar was corroborated by independent witness – Bangles recovered from Appellant find place in Exhibit list and also identified by son of deceased – Accused not given satisfactory explanation as to how gold bangle of deceased came to his possession – When evidence of prosecution witness who saw Appellant in house of deceased around time, inference can be drawn that Appellant was part of gang that committed murders and robbery – Prosecution proved case beyond reasonable doubt – Appeal dismissed.

(2014) 4 MLJ (CrI) 10

A. Meenakshi Sundaram

v.

Additional Superintendent of Police

Date of Judgment : 01.08.2014

Discharge – Framing of Charge – Validity of - Code of Criminal Procedure, 1973, Sections 239 and 240 – Case registered against Petitioner/A3 alleging illegal source of income – Petitioner submitted discharge petition – Trial Court dismissed petition holding that prima facie case made out against accused and sufficient ingredients to frame charges against Petitioner – Revision – Whether Trial court was justified in dismissing discharge petition – Held, obligation to discharge accused arises when Court considers charge against accused to be groundless – When there is prima facie material to frame charge against accused then charge cannot be said to be groundless one and accused cannot be discharged – At time of framing of charge/discharge by Court against accused, exercise of evaluating materials in golden scales not to be ventured into in meticulous fashion – At time of framing of charge, enough if material on records supports triable issues – Court at time of framing of charge not required to evaluate every material placed by police along with charge sheet – In depth appreciation of evidence at time of framing of charge not permissible in eye of law – View taken by Trial Court that prima facie case made out against Petitioner to frame charge on basis of Complaint cannot be found fault with – After framing of ‘charge’, there cannot be a discharge – At time of framing of charge, Court to look into records of case including documents filed by prosecution under Section 173 CrPC and oral hearing of accused but nothing beyond that – Necessary charges

framed against Petitioner/ A3 and other accused – When main case on file of Trial Court pending at Part-Heard stage, trial of main case should reach its logical conclusion – Petition dismissed.

(2014) 4 MLJ (Crl) 89

Ashok Kumar

v.

State

Date of Judgment : 11.08.2014

Criminal Laws – Harassment to Suicide – Evidence of Prosecution witness and Dying declaration – Reliability of – Tamil Nadu prohibition of Harassment of Women Act, 1998, Section 4-B – Code of Criminal procedure, 1973, Section 357 – Appellant/Accused threatened deceased/victim to elope with him, due to which deceased immolated herself at her employer's house – Trial Court found Appellant guilty under Section 4-B Act 1998 – Appeal – Whether evidence of prosecution witness and dying declaration given by victim sufficient to hold Appellant guilty of offence committed – Held, victim prior to suicide was subjected to harassment by Appellant, as he threatened by keeping photographs of herself – Dying declaration of victim to Metropolitan magistrate stated that due to continuous harassment caused by Appellant, victim self-immolated herself, same is cogent, coherent and convincing one – Act of Appellant in harassing victim were direct and proximate cause, which drove her to self-immolate herself by pouring kerosene – Conduct of Appellant amounts to harassment suicide, same proved by prosecution beyond all reasonable doubt – Trial Court rightly convicted Appellant – Fine amount deposited before Trial Court by appellant converted as compensation amount and be paid to PW's/Parents of deceased victim – Appeal dismissed.

(2014) 4 MLJ (Crl) 211

Kumar @ Magilmanan and Anr

v.

State

Date of Judgment : 31.07.2014

Murder – Conviction – Evidence of prosecution witness – Reliability of – Indian Penal Code, 1860, Section 302 read with Section 34 – Appellants/Accused alleged to have stabbed deceased on failure to return money borrowed from Appellants – Prosecution Witness stated that they witnessed occurrence – Trial Court convicted Appellants under Section 302 r/w 34 Code 1860 – Appeal – Whether Appellants are assailants as deposed by prosecution witnesses – Held, evidence of PW unbelievable, as statements made in cross-examination that deceased was well dressed contrary to defence from investigating officer that at the time of inquest deceased was bare bodied – PW's failed to state in whose car deceased was taken to hospital – No evidence adduced by PW's to show at what time deceased was admitted in hospital and by whom – No entry of medico-legal case registered in Accident Register – Doctor in casualty department not examined as to whether deceased was brought dead or alive to hospital – Deceased found with only lungi at mortuary, same probablises defence version that, due to criminal antecedents he was killed somewhere and someone brought him dead to hospital – Later, story concocted as if PW's witnesses saw attack on deceased and brought him to hospital for treatment – Conviction against Appellants set aside – Appellants acquitted – Appeal allowed.

2014 – 2 – LW.(Crl.) 417

Mariyadoss

v.

State

Date of Judgment : 18.06.2014

I.P.C., Sections 375, 376 r/w.511/Rape of mute girl,

Evidence Act, Section 119/dumb witness, evidence of, how to be recorded, amendment w.e.f. 15.3.2013, Madras High Court Circular in R.O.C.No. 1729/2010/RR, dated 2.6.2010 to all the Subordinate Courts, Rape of mute girl, Sections 6,8/Res gestate, rape, evidence.

Criminal Trial/Rape of mute girl, Dumb witness, evidence, recording of, Madras High Court Circular in R.O.C.No.1729/2010/RR, dated 2.6.2010 to all the Subordinate Courts,

Rape of a Mute Dalit girl – Whether proved – Evidence, appreciation of, how to be done – P.W.2 does not know to read and write – Court has requisitioned the services of PW7 from Special School to interpret P.W.2 evidence – For the failure of the Court to record the actual signs of dumb witness, accused cannot be acquitted – P.W.2 did not speak about penetration – Medical evidence show only an attempt to rape – Examination of dumb, deaf witness, how to be done, questions to dumb witness by signs and gestures – method, proving of – Procedure.

Recording of evidence of dumb witness, amendment to section 119, effect of – Help of interpreter, need for – Court's duty to record signs and gestures of dumb witness, failure of, effect – Madras High Court Circular in R.O.C.No.1729/2010/RR, dated 2.6.2010 to all the Subordinate Courts – Direction to judicial officers, videographing, need for.

Conviction modified to Section 376 r/w.511 I.P.C

2014 – 2 – LW.(Cri.) 475

A. Rejendra Kumar, Assistant Commissioner of Police, Ambattur

V.

Kaja Moideen and others

Date of Judgment : 14.08.2014

National Investigation Agency Act (2008), Sections 21(2), 22(3),

I.P.C. Sections 341, 307, 302 r/w.120(B), 341, 307,

Unlawful Activities (Prevention) Act (1967), Section 43D(2).

Rejection of police custody – Challenge to, appeal whether maintainable – Provisions of NIA attracted, since the accused is alleged to have been involved in offences under the Unlawful Activities (Prevention) Act – Impugned order passed by Special Court and not Sessions Court – Section 22(3) of the NIA Act states that the powers of the Special Court and not Sessions Court – Section 22(3) of the NIA Act states that the powers of the Special Court shall be exercised by the Sessions Court of the division in which such offence was committed – offence was committed within sessions division of Tiruvallur – In the absence of a Special Court, the District and Sessions Court, Tiruvallur, has the jurisdiction – Under Section 21(2), every appeal against the order of a Special Court shall be heard by a bench of two Judges of the High Court.

Joint interrogation necessary – NIA act attracted when, scope of – Offences under unlawful activities act – Police custody granted.

(2014) 3 MLJ (Cri) 663

Moulana

v.

State

Date of Judgment : 12.08.2014

Criminal procedure – Proceedings - Quashing of – Code of Criminal Procedure, 1973 (Code 1973), Section 482 – Prevention of Corruption Act, 1988 (Act 1988), Sections 8, 13(1)(d) and 13(2) – Petitioner/accused No.2 and other accused charged in respect of alleged offence under Section 8 read with Section 13(2) read with Section 13(1)(d) of Act 1988 – Pending proceedings, Petitioner filed petition under Section 482 of Code 1973 to quash charge framed against him under Section 8 read with Section 13(2) read with section 13(1)(d) of Act 1988 – Whether proceedings against Petitioner pending before Trial Court could be quashed under Section 482 of Code 1973 – Held, scope of interference with order framing charge in terms of Section 482 of Code 1973 is limited – Word under Section 8 of Act 1988 is very wide and it applies to private person, if he induces public servant to do act by corrupt or illegal means – Aiders/Abettors could also be dealt with along with public servants in trial of main case – Section 8 of Act 1988 is complimentary to Section 7 of Act 1988 – Departmental action recommended against regional Transport Officer, Motor Vehicle Inspector and other staff by Investigating Officer in his final report – But, in respect of Petitioner and others, charge sheet filed and charges framed in respect of accused Nos. 1 to 7 under Section 8 read with Section 13(2) read with Section 13(1)(d) of Act 1988 -As against accused No.3, non bailable warrant pending and main case stands posted to some other date before Trial Court - Only mode of prosecuting Petitioner and other accused is by means of conducting trial of main case as visualized under Act 1988 – Open to Petitioner to approach Trial Court and seek for expediting hearing of main case – Petition disposed of.

(2014) 3 MLJ (Crl) 701

A. Gurusamy

v.

M. Singamuthu

Date of Judgment : 27.06.2014

Criminal procedure – Private Complaint – Dismissal of – Sale agreement entered into between Petitioner/complainant and 1st accused – Power of Attorney executed by complainant in favour of 2nd accused/wife of 1st accused with understanding that it would be acted only if problem created by divorced wife of complainant – Complainant filed private complaint alleging that 2nd accused fraudulently utilized Power of Attorney and executed sale deed in favour of 3rd accused/son of 1st and 2nd accused – Respondents/accused resisted that breach of trust may not result in penal offence of criminal breach of trust, unless there is evidence of mental act of fraudulent misappropriation, when it involves civil wrong in respect of which with mens rea gives rise to criminal prosecution - Lower Court dismissed private complaint holding that matter was of civil nature and no criminal offence made out – Revision - Whether Lower Court justified in dismissing private complaint filed by complainant for various criminal offences against Respondents – Held, complaint rejected at threshold, being purely of civil nature – Also, other attending circumstances as pleaded by complainant were not gone into by Lower Court – Petitioner entitled to succeed in revision case – Magistrate order set aside – Trial Court directed to issue notice to Respondents and proceed in accordance with law – Revision allowed.

(2014) 3 MLJ (Crl) 730

T. Velnadar

v.

P. Ayyanathan

Date of Judgment : 25.07.2014

Negotiable Instruments – Dishonour of Cheques – Negotiable Instruments Act, 1881, (Act), Section 138 – Code of Criminal Procedure, 1973 (CrPC), Section 391 – Allegation that Respondent/Accused issued three cheques to Appellant/Complainant to discharge loan debt – When presented, three cheques in question dishonoured – Trial Court held that Appellant failed to prove cases against Respondent/Accused – Appeal – Whether Trial Court was justified in holding that Appellant failed to prove dishonour of cheques – Whether additional evidence can be permitted to be produced under Section 391 CrPC – Held, evidence of Appellant/complainant not in consonance with averments made in complaint – Legal Notice not issued within 15 days time limit in case of 1st cheque – Return Memo, Debit Advice and Legal Notice unerringly point out that Notice issued after long period of 5 months – Issuance of

legal notice not in accordance with ingredients of Section 138 of Act – Legal Notice not proved to be issued in case of 2nd cheque – In case of 3rd cheque, Appellant did not file return memo or debit advice to support complaint – Averments of Appellant that Cheques issued by Accused in respect of loan borrowed and dishonor not established – Purpose of Section 391 CrPC not to enable prosecution to produce evidence at later stage which could have been produced at first trial – Appellant cannot be permitted to produce documents as evidence at appellate stage since documents were very much available before Trial Court – Trial Court rightly acquitted Respondent/accused – Appeal dismissed.

2014 (5) CTC 808

C. Ponnusamy

v.

Chinnamman Construcitons

Date of Judgment : 14.08.2014

Negotiable Instruments Act, 1881 (26 of 1881), Sections 10 & 20 – Indian Partnership Act, 1932 (9 of 1932), Sections 22, 39, 42(c), 45, 46, 49, 59, 61 & 72 – Dishonour of Cheque issued by a Partnership Firm – Partner of Firm borrowed money on 22.9.2005 for needs of business – Later such Partner died on 22.10.2005 - Other partners continued – Post-dated Cheque dated 20.3.2006 presented for collection – Returned unpaid – Complaint filed against Firm and other Partners – Complaint dismissed on ground that role played by other Partners not specifically stated – Primary responsibility on Complainant to make necessary averments so as to make other Accused vicariously liable – Firm dissolved as per communication sent to Income Tax Department and Inspector of Factories prior to date of borrowal – Appeal against acquittal filed – Non-compliance of provisions of Partnership Act after dissolution of Firm – Effect of, and scope discussed – Post-dated Cheque is deemed to be a Bill of Exchange – It becomes a Cheque on date mentioned on instrument – Postponement of date of payment of Cheque to a future date, does not make Cheque payable otherwise than on demand – Dissolution does not automatically result in cessation of business – No Public Notice with regard to dissolution – Partners are liable to third parties – Law on subject discussed – Complainant not produced evidence to establish loan transaction on or after date of dissolution – Dismissal of Complaint is upheld – Appeal dismissed.
