TAMIL NADU STATE JUDICIAL ACADEMY

** VOL. XIX — PART 09 — SEPTEMBER 2024**

IMPORTANT CASE LAWS

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SUPREME COURT – CIVIL CASES

Prabhavathi @ Prabhamani Vs. Lakshmeesha M.C [SLP(C) No. 28201/2023]

Date of Judgment: 12.08.2024

Hindu Marriage Act, 1955 - A party responsible for the breakdown of a marriage cannot use the irretrievable collapse of the marriage to their advantage.

The appeal was filed challenging the order passed by the division bench of the High Court of Karnataka whereby the amount of the permanent alimony granted to the appellant/wife has been reduced from Rs 25,00,000/- to Rs 20,00,000 and the respondent/husband was directed to pay the reduced amount within 3 months.

The facts of the case were that, the husband left his wife and their child shortly after the child was born out of wedlock. The husband filed petition for divorce on the grounds of cruelty, which was initially granted by the family court but later reversed by the High Court, and the petition was remanded back to the family court. The family court granted divorce decree again on the ground of irretrievable breakdown of the marriage, but this was again set aside by the High Court and remanded for reconsideration. On the third round of litigation, the family court again granted the relief of divorce and ordered the husband to pay permanent alimony of Rs. 25,00,000 (Rs. 25 lakhs). The High Court upheld the divorce but reduced the alimony to Rs. 20,00,000 (Rs. 20 lakhs). Aggrieved by this order, the appellant/wife had preferred the present appeal.

The Supreme Court observed, that the husband had deserted his wife and child, subjected them to cruelty, and failed to support them financially. Further, the Court

observed that, the couple had been living separately since 1992 and thus, the Court decided to uphold the divorce decree. Further, the Court by allowing the appeal, ordered the husband to pay an additional sum of Rs. 10,00,000/- (Rs. 10 lakhs) to the wife, bringing the total alimony to Rs. 30,00,000 (Rs. 30 lakhs) and granted the wife ownership of the property where she and her son resided and prohibited the husband from interfering with their peaceful possession.

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Usha Devi & Ors. Vs. Ram Kumar Singh & Ors.[Civil Appeal No. 8446 of 2024]

Date of Judgment: 05.08.2024

Art 54 of the Limitation Act, 1963 – Once there is a specific date fixed for performance, the limitation period would be 3 years from the said date.

The defendant appealed against the judgment passed by the High Court of Jharkhand confirming the judgment of the first appellate Court, decreeing the suit for specific performance filed by the respondents.

The facts of the case were that a sale agreement dated July 22, 1983, was entered between the plaintiff and one Bihari Lal, a co-sharer who had later died. The agreement stipulated the sale of land for Rs. 70,000, with an initial payment of Rs. 1,000. Although the remaining balance was allegedly paid by the plaintiff on September 20, 1985, and possession was granted, the formal sale deed was never executed. A subsequent agreement on December 17, 1989, adjusted the sale price and measurements but similarly failed to lead to the execution of the deed. Further, the plaintiffs filed a suit for specific performance in September 1993, the defendants contested the validity of the agreements, asserting that they were forged and that the suit was barred by limitation. The trial court dismissed the suit, citing that it was filed beyond the three-year limitation period prescribed by Article 54 of the Limitation Act. The first appellate court, however, decreed the suit in favor of the plaintiffs, leading to a further appeal by the defendants to the High Court, and the High Court upheld the appellate court's decision.

The Supreme Court observed that, once there is a specific date fixed for performance, the limitation period would be three years from the said date. In the sale agreement dated 17/12/1989 it is specifically mentioned that the sale deed would be executed within one month from the date of agreement, thus, expiring on January 16, 1990. The suit, filed in September 1993, was therefore barred by limitation. Thus, the Apex Court allowed the appeal and acknowledged that the

plaintiffs had paid Rs. 80,000 in total and ordered the defendants to return the said amount with interest, emphasizing that despite the suit's dismissal, fairness required restitution.

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SUPREME COURT - CRIMINAL CASES

Mulakala Malleshwara Rao & Anr. Vs. State of Telangana & Anr. [Special Leave Petition (Crl.) No.3981/2023]

Date of Judgment: 29.08.2024

Section 14 of the Hindu Succession Act of 1956 states that any property owned by a female Hindu is her absolute property, whether it was acquired before or after the Act came into effect. This includes both movable and immovable property. Therefore the father has no authorization to file a complaint for recovery of Stridhana.

This Criminal Appeal was filed by the appellant against the order of the High Court of Telangana dated 22nd December 2022, which refused to quash proceedings under C.C.No.1369 of 2022. The case arose from a complaint by the father (Respondent No.2) of the appellant's former daughter-in-law, claiming that the appellants, her in-laws, failed to return jewelry (stridhana) given during her marriage.

The primary question of law to be addressed was whether the father of a divorced daughter has the locus standi to file a complaint for the recovery of her stridhana. The facts reveal that the complainant's daughter was married in 1999, divorced in 2016, and remarried in 2018. Despite these events, in 2021, the complainant filed an FIR under Section 406 IPC claiming non-return of the stridhana by her in-laws. No complaint had been made earlier by the daughter, and the separation agreement following the divorce had settled all issues, including property division.

The Court reiterated the established jurisprudence that stridhana is the exclusive property of a woman, citing precedents such as *Pratibha Rani v. Suraj Kumar* (1985 2 SCC 370) and *Rashmi Kumar v. Mahesh Kumar Bhada* (1997 2 SCC 397). A woman has absolute ownership of her stridhana, and no one else, including her husband or father, has any right over it unless explicitly authorized.

In this case, the complainant's daughter did not authorize her father to recover the stridhana, and no power of attorney was executed under Section 5 of the Power of Attorney Act, 1882.

Furthermore, the Court emphasized that criminal proceedings should not be used as a means of harassment or vengeance. Given that there was no evidence that the appellants had possession of the stridhana or misappropriated it, and the complaint was filed more than five years after the divorce, the proceedings lacked merit.

Thus, the Apex Court held that the proceedings initiated under Section 406 IPC and Section 6 of the Dowry Prohibition Act were not maintainable and quashed the charges, stating that the complaint was filed without sufficient grounds or authorization.

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Frank Vitus Vs. Narcotics Control Bureau & Ors. [S.L.P. (Crl.) No. 6339-6340 of 2023]

Date of Judgment: 08.07.2024

Art.21 of the Constitution of India, 1950 states that No person shall be deprived of his life or personal liberty except according to procedure established by law. Imposing arbitrary bail conditions will infringe the right of the accused as guaranteed by Art. 21.

In this case, the appellant, was prosecuted under Sections 8, 22, 23, and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). He was arrested on May 21, 2014, and later granted bail by an order dated May 31, 2022, which imposed certain conditions. The appellant contested two conditions imposed by the court: obtaining a certificate of assurance from the Nigerian High Commission that he would not leave the country and dropping a PIN on Google Maps to ensure his location was available to the investigation officer.

Section 439 of the Code of Criminal Procedure, 1973 (CrPC), empowers courts to impose conditions while granting bail. The NDPS Act, through Section 37, limits bail provisions, especially for serious offences. However, the court must ensure that bail conditions are reasonable and not arbitrary or excessive. In this case, the conditions imposed were challenged on the grounds of being overly restrictive and violating Article 21 of the Constitution of India, which guarantees the right to privacy.

The condition to drop a PIN on Google Maps was reviewed by the court. Based on an affidavit from Google LLC, it was clarified that sharing a PIN does not enable real-time tracking of a user, making the condition redundant and ineffective in serving its intended purpose. The court concluded that this condition infringed on the appellant's right to privacy and violated Article 21.

The second condition, requiring a certificate from the Nigerian High Commission, was based on a precedent from Supreme Court Legal Aid Committee v. Union of

India (1994) 6 SCC 731, where similar conditions were imposed on foreign nationals in NDPS cases. However, the court noted that embassies may not be able to provide such assurances, and it would be unfair to deny bail based on non-compliance with an impossible condition. If a constant vigil is kept on every movement of the accused, it would amount to keeping the accused in some kind of confinement even after he is released on bail and infringes his right under Art. 21 of the Constitution. Such condition cannot be a condition of bail.

Therefore, the apex court held that the conditions of dropping a PIN on Google Maps and obtaining a certificate from the Nigerian High Commission were unreasonable. These conditions were deleted from the bail order, upholding the appellant's right to privacy and fair treatment under the law.

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Allarakha Habib Memon Etc. Vs. State of Gujarat [Criminal Appeal No(s). 2828-2829 of 2023

Date of Judgment: 08.08.2024

Section 162 of the CrPC – If a police officer deliberately delays recording the FIR after receiving information about a cognizable offense and prepares it after reaching the scene following deliberation and discussion, such a complaint cannot be treated as an FIR. Instead, it becomes a statement made during the investigation and is, therefore, hit by Section 162 Cr.P.C.

The criminal appeal was filed by the appellants against the judgment of the High Court of Gujarat, which had affirmed their conviction under Section 302 IPC read with Section 120B IPC. The appellants were accused of conspiring to murder the deceased due to personal animosity.

The prosecution presented two eyewitnesses, PW-11 (the first informant and cousin of the deceased) and PW-12 (a police constable). PW-11 claimed to have been present at the scene and lodged the FIR. PW-12, an independent witness, testified about recovering the crime weapons but did not lodge a report. The prosecution relied on this evidence to link the accused to the crime, asserting that the murder was premeditated and that the appellants were part of a criminal conspiracy.

The question of law that arose was whether the conviction of the accused-appellants under Sections 302 read with 120B IPC was justified, given the inconsistencies and contradictions in the testimonies of the witnesses, as well as the procedural lapses in the handling of evidence.

Section 162 CrPC bars the use of statements made to police during an investigation as evidence, except to contradict the witness. In *State of A.P. v. Punati Ramulu*, (1994 Supp (1) SCC 590) the Court held that an FIR delayed by police for deliberation becomes a statement made during investigation and is inadmissible under Section 162. Section 26 of the Indian Evidence Act, 1872, states that confessions made by an accused while in police custody are inadmissible unless

made in the immediate presence of a magistrate. In this case, the so-called confessions are inadmissible as the accused were arrested and presented to the hospital by police officers. Therefore, the injury report notings by the Doctor (PW-2) are clearly hit by Section 26, and such admissions cannot be accepted as incriminating evidence under Section 21.

The court scrutinized the FIR, which was registered based on PW-11's oral statement. The court held that PW-12's statement, being the earliest information available, should have been treated as the FIR, and PW-11's statement should have been relegated to a Section 161 CrPC statement. The court also found that the disclosure statements made by the accused were not proved as per law and that no new facts were discovered during the investigation.

The confessions recorded by PW-2, a medical officer, were deemed inadmissible under Section 26 of the Evidence Act, as they were made while the accused were in police custody. Furthermore, the forensic evidence (FSL reports) linking the weapons to the crime was also questioned, as the chain of custody of the recovered weapons was not properly established.

Thus, the apex court held that the prosecution had failed to establish the guilt of the accused-appellants beyond a reasonable doubt. The inconsistencies in the testimonies, procedural lapses, and inadmissible evidence led the court to quash the conviction and acquit the appellants, giving them the benefit of the doubt. The impugned judgments were set aside, and the appellants were acquitted.

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HIGH COURT - CIVIL CASES

Senthil @ Senthil Kumar Vs. Anbalagan [S.A.No. 841 of 2021]

Date of Judgment: 02.09.2024

The natham patta has more evidentiary value, unlike the revenue patta, the natham patta need not be accompanied by the title documents.

The Second Appeal has been filed by the appellant/defendant, challenging the concurrent judgments passed in favour of the respondent/plaintiff by the trial court and affirmed by the first Appellate Court regarding the recovery of possession.

The brief fact of the case is that the suit 'B' schedule property is part of the 'A' schedule property. The respondent and his ancestors have been in possession of the suit properties for the past 100 years, and based on this long possession, the respondent was granted a patta under the Natham land settlement scheme in 1998. While so, the appellant encroached upon the suit 'B' property, and therefore the respondent sought recovery of possession of the "B" schedule property and a mandatory injunction for the removal of constructions by the appellant. The appellant/defendant contested the suit stating that the suit 'B' schedule property is part of his property, which was purchased under an unregistered title deed in 1966 and he is in possession of the same. The trial court held in favour of the respondent, disbelieving the appellant's title documents as they were unregistered, and determined that the patta granted under the Natham Land Settlement Scheme established his right to the property. The first appellate court upheld the trial court's decision and dismissed the appeal. The appellant contended that the courts below erred in their judgments, particularly in relying on the Natham patta, claiming that the respondent failed to prove his title to the suit property, especially since there was no declaration of title. Additionally, the appellant claimed that the patta was issued wrongly and that the amendment of the suit, which changed the description of the encroached property, should have been dismissed. On the other hand, the

respondent contended that the patta was validly issued based on the long possession of the respondent's ancestors and that the appellant's claims were unfounded.

The court observed that the Natham patta is granted for Natham lands to regularize the occupation of lands by villagers for habitation purposes and that the Natham patta cannot be equated to the revenue patta, as it has more evidentiary value than the revenue patta. Unlike the revenue patta, the Natham patta need not be accompanied by title documents. Furthermore, the respondent's possession of the property deserved protection, and the appellant's title claims were without merit.

While dismissing the appeal, the court rejected the appellant's contention based on unregistered documents and held that the appellant had indeed encroached upon the property, as evidenced by the Advocate Commissioner's report.

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The Divisional Manager, M/s. National Insurance Company Limited, Divisional Office, Vs. R. Sundari & Anr. [CMA.No.501 of 2024]

Date of Judgment: 27.08.2024

The gratuitous passenger in a private vehicle would not be covered under the policy insurance which is an "Act Policy"

The Civil Miscellaneous Appeal has been filed by the appellant, National Insurance Company, challenging the order of the Motor Accident Claims Tribunal, which directed the appellant to compensate the first respondent for injuries sustained in a car accident.

The brief facts of the case is that on 13.10.2014, the first respondent, R. Sundari, was traveling in a Maruti Omni car owned by the second respondent. The car driven rashly and negligently, fell into a pit, resulting in injuries to the first respondent. The first respondent filed a claim petition under Section 166(1) of the Motor Vehicles Act, 1988. The tribunal awarded her ₹4,87,834 with 7.5% interest per annum, directing the appellant to pay the amount and recover it from the car owner since the insurance policy was an "Act Policy." The appellant contended that the car was insured under an "Act Policy," which covers only third-party risks and does not include compensation for gratuitous passengers. On the other hand, the second respondent contended that the tribunal's pay and recovery order was justified.

The court referred to the apex court's findings in the case of National Insurance Company Limited Vs Balakrishnan & anr. [2013 (1) SCC 731] and observed that the insurance policy of "Act Policy" did not cover the risk of inmates of the car or a pillion rider of the scooter.

The court, while allowing the appeal, set aside the tribunal's order and held that the owner of the car/second respondent was liable to pay the compensation, and the

appellant could recover any amount already deposited. The court also upheld the quantum of compensation.

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B. Joseph Clarance Peeris Vs. J. Mary Immagulate Rogerigo [C.M.A.(MD) No.528 of 2024]

Date of Judgment: 22.08.2024

Section 10(1)(x) of the Indian Divorce Act - The very long period of separation amounts to mental cruelty

The Civil Miscellaneous Appeal has been filed by the appellant, challenging the dismissal of his divorce petition by the trial court on the grounds of mental cruelty.

The brief facts of the case is that the appellant and the respondent were married on 14.09.1989 and the respondent had left the matrimonial home on 09.06.1990 while being pregnant and later gave birth to a child. Despite efforts by the appellant to reconcile, the couple remained separated. The appellant sought a divorce, alleging that the respondent subjected him to mental cruelty by claiming disinterest in the marriage and trying to separate him from taking care of his cancer patient father, accusing him of adultery, and also failing to inform him of their child's birth. On the other hand, the respondent contended that the appellant had illicit intimacy with several women and made false allegations of adultery against her and that the conciliation sessions held by the elders and the priest had failed; and that she was always willing to live with the appellant. The trial court dismissed the petition, stating that the appellant had not proven the cruelty allegations. In the appeal, the appellant contended that the prolonged separation since 1990 itself amounted to cruelty and that continuing the marriage was futile.

The court observed that both parties had been living separately since 1990, which would show that the marriage is dead and that the appellant had indeed suffered mental cruelty due to the respondent’s false accusations, separation, and refusal to reconcile.

While allowing the appeal, the court held that such a long separation constituted mental cruelty, as held by the apex court in *Samar Ghosh vs. Jaya Ghosh* [(2007) 4 SCC 511], and dissolved the marriage on the grounds of mental cruelty.

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Ramesh Flowers Private Limited Vs. Mr. Sumit Srimal [C.R.P(MD)Nos.1853 & 1854 of 2024]

Date of Judgment: 13.09.2024

Order 8 Rule 1 CPC - The courts cannot extend the period for filing a written statement after the expiry of 30 days without the condone delay petition from the defendant.

The Civil Revision Petitions have been filed by the petitioner, challenging the orders of the trial court, which had taken on file the written statement that was filed beyond the stipulated period and dismissed the application filed for rejection of the written statement.

The brief fact of the case is that the petitioner had instituted a suit against the respondent, a former employee, seeking an injunction to restrain him from engaging in activities that were allegedly detrimental to the company's interests. The vakalat was filed on 26/9/22, and the matter was adjourned from time to time for filing written statement. When the matter was posted on 2/8/23, the written statement was filed. The petitioner filed an Interlocutory Application to reject the written statement, but the trial court dismissed the application. The petitioner contended that the trial court had erred in accepting the written statement, as it was filed beyond the stipulated period. On the other hand, the respondent contended that the trial court had, on its own, extended the time for filing the written statement and relied on the decision of the Apex Court in the case of *R.N. Jadi and Brother v. Subhashchandra* [2007 (4) CTC 326], invoking the maxim of equity, namely, *actus curiae neminem gravabit* (an act of court shall prejudice no man).

The court observed that in *Salem Advocate Bar Association, T.N. v. UOI* [(2005) 6 SCC 344], the Apex Court recognized the upper limit of 90 days as a directory but cautioned that extensions for filing written statements should not be routine and should only occur in exceptional cases. The legislature has set the 90 days limit, and courts should not frequently extend it, as it would undermine Order VIII Rule 1. In

Kailash v. Nanhku and others [(2005) 4 SCC 480], the Apex Court noted that defendants seeking time extensions should not be granted extensions merely upon request, especially after 90 days period has passed. Any extension must be exceptional, justified with reasons recorded in writing by the court, and demonstrate that the deviation from the prescribed timeline is warranted due to circumstances beyond the defendant's control. The court relied on its previous findings in *Athiappa Gounder v. Athiappa Pandaram* [(1967) 1 MLJ 392 (FB)], which observed that even though the mistake of the court should not harm a party, no party can take advantage of the lapse committed by the court, particularly when it is contrary to the statute. When the statute has prescribed a certain timeline, it is incumbent on the defendant to adhere to it.

The court further observed that trial courts shall not extend the thirty-day limitation provided under Order 8 Rule 1 of the CPC for filing a written statement without a written request and reasons from the defendant. The court noted that the respondent did not file any application for condonation of delay, and the trial court had mechanically allowed the delayed filing without following the proper procedure.

While allowing the revision petition, the court set aside the trial court's order dated 02.08.2023, which accepted the written statement, and held that the trial court's acceptance of the written statement was improper, as it was done without recording reasons or considering an application for condonation of delay. However, the respondent was granted liberty to file the written statement along with a proper application for condonation of delay, which the trial court would consider based on merits.

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G.Muthu Vijayakumar S/o.M.Ganesan Rep.by his power agent G.Sarojini Vs. N. Subramanian & Ors. [S.A.(MD) No. 262 of 2017]

Date of Judgment: 28.08.2024

Order 1 Rule 10 (2) CPC & Order 2 Rule 2 CPC – Purchaser of suit property subsequent to sale agreement and before the filing of a suit for specific performance is a necessary party, and in the absence of such impleadment, the specific performance decree does not bind the purchaser.

The Second Appeal has been filed by the appellant/ third plaintiff, challenging the dismissal of the suit for declaration of ownership and recovery of possession of a property by the trial court and confirmed by the first Appellate Court.

The plaintiffs purchased the property on 21.01.1998 from Ganesan, the power of attorney for the original owner, N. Subramanian, the first respondent. Meanwhile, Ravichandran, the second respondent obtained a decree for specific performance on 29.04.1999, based on an agreement with Subramanian, and sold the property to Krishnaveni, the third respondent on 23.11.2000. Upon the knowledge of Ravichandran's decree, the plaintiffs filed suit for declaration and recovery of possession. The trial court dismissed the suit and held that the third respondent was a bona fide purchaser and that the decree obtained by Ravichandran was binding on the plaintiffs. The first appellate court upheld this decision, leading to the second appeal. The appellant contended that since he had already obtained title to the property before the specific performance suit was filed, the decree in that suit was not binding on him, as he was not impleaded in the proceedings and, the plaintiffs had acquired title before the institution of the specific performance suit, they should have been included as necessary parties, and their prior registered title should prevail over the decree obtained by Ravichandran. The third respondent contended that she was a bona fide purchaser for consideration, having purchased the property from Ravichandran on 23.11.2000 after he obtained the decree for specific

performance in O.S. No. 162 of 1998 and she had no knowledge of the plaintiffs' rights over the property, as the sale transaction in favour of the plaintiffs was not reflected in the encumbrance certificate she had obtained.

The court observed that it is settled principle of law that the registration of the document gives notice to the world that such document has been executed. Applying the ratio in *Kasturi vs. Iyyamperumal* [(2005) 6 SCC 733], the court held that the plaintiffs herein were necessary parties and since they were not impleaded in the previous suit for specific performance, the decree passed in that suit does not bind them. The court noted that the third respondent could consider filing a suit for damages against Ravichandran and possibly the Registration Department due to the failure to reflect the plaintiffs' prior sale transaction in the encumbrance certificate.

While allowing the second appeal, the court held that the plaintiffs are prior title holders by their registered sale deed and should have been made parties to the specific performance suit; therefore, the decree obtained by Ravichandran could not bind the plaintiffs. The court set aside the judgments of the lower courts, declared the plaintiffs as the rightful owners of the property, and granted them recovery of possession.

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Marathal (Died) & Anr. Vs. Kanniammal (Died) & Ors. [Second Appeal No.339 of 2019]

Date of Judgment: 26.07.2024

Section 90 of Indian Evidence Act- Presumption under section 90 is applicable to will Which Is over 30 years Old and Produced From Proper Custody to draw a presumption regarding its due execution and attestation

The Second Appeal has been preferred by the legal heir of the Plaintiff against the Judgment and Decree of the First Appellate Court which reversed the Judgment of the Trial Court in dismissing the suit.

The Plaintiff had filed a suit for partition claiming certain share over the property owned by her mother namely Mrs. Palaniammal. The Defendants who are the siblings of the Plaintiff contended that Mrs. Palaniammal had executed an unregistered "Will" bequeathing the property in favour of her only son/Marappan and that on the death of Mrs. Palaniammal, Mr. Marappan took possession of the property and he has been in enjoyment of the same. The learned Trial Judge came to the conclusion that the "WILL" of Mrs. Palaniammal had not been proved and therefore decreed the suit. On Appeal by the Defendants, the First Appellate Court held that the "WILL", being more than 30 years old, on the date of the production before the Court, was entitled to the benefit of Section 90 of the Indian Evidence Act and therefore, dismissed the suit.

The Hon'ble High Court observed that as per Section 90 of the Indian Evidence Act, if any document which is more than 30 years old and it is produced from proper custody, the Court may presume that the signatures on every part of such document is that of the person who executed the document and if it is a document which requires execution or attestation, it was duly executed and attested by the persons who is said to have executed and attested this document. Therefore, the

Court observed that by the very texture of Section 90, documents which require attestation, such as mortgage, settlement deed or "WILL" are not excluded. Following the Judgment of the Privy Council in Basant Singh v. Brij Raj Saran Singh, [ILR (1935) 57 All 49] and the Hon'ble Apex Court in the case of Kalidindi Venkata Subbaraju v. Chintalapati Subbaraju, [AIR 1968 SC 947], the Hon'ble High Court laid down the following principles:

(i) if an attesting witness is available, then he/she should be examined in terms of Section 68 of Evidence Act;

(ii) if the said witness is not available, then the route under Sections 69 to 71 is available to the profounder;

(iii) if the "WILL" is more that 30 years old and produced from proper custody, Section 90 is available to the Court to draw a presumption regarding its "due execution" and "attestation";

(iv) if the "WILL" is more that 30 years old and produced from proper custody, it is shown that the attesting witnesses are alive and not produced

v) the presumption under Section 90 or under Section 114 illustration (g) should be guided by the principle governing "may presume" under Section 4 of the Indian Evidence Act, 1872.

Thus, the Court, while dismissing the Appeal, held that when a Will, which is more than 30 years old, is produced from proper custody, the presumption under Section 90 of the Indian Evidence Act would be applicable to such will.

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Danish Menon Vs. Nusra Iqbal [C.R.P.(PD).No.2660 of 2024]

Date of Judgment: 02.09.2024

Section 151 CPC- Muslim Wife Who Files suit For Divorce Is Entitled To Claim Interim Maintenance

The Civil Revision Petition has been preferred by the Husband/ Petitioner to set aside the order of the Trial Court which allowed interim maintenance to the wife/ Respondent. The question that arose for consideration before the Hon'ble High Court was whether a Muslim wife, who had presented a plaint in terms of Section 2(viii) of the Dissolution of Muslim Marriage Act, 1939, was entitled to receive an interim maintenance pending disposal of the said proceedings.

The Court observed that the husband had a duty to maintain the wife and the child as per the pristine Islamic law and the statutory duty imposed under the Dissolution of Muslim Marriage Act. Further as per Section 2(ii) of the Act, if the husband was not providing maintenance to his wife for a period of two years, the same was a ground for divorce. Moreover, the court emphasized that the husband's duty to provide maintenance is an obligation under Islamic law. Though the Act does not have a provision for granting interim maintenance, the court cannot shut its eyes when the wife comes to the court saying that she has no means. The court added that the Dissolution of Muslim Marriage Act was introduced to ameliorate the status of Muslim women and thus had to be given a purposive interpretation. Further, the Court observed that even as per the Protection of Women From Domestic Violence Act, the wife could claim relief of protection order, residence order, monetary relief, custody order, and compensation order before the Civil court, family court, or criminal court. The Court further observed on following the judgment of Division Bench in *Hajee Mahomed Abdul Rahman vs. Tajunnissa Begum, (1953) 66 LW 40,* when the relationship between the parties is admitted, this Court has inherent powers to grant interim maintenance. Thus, the court stated that the Family court could direct the Husband/Petitioner to pay interim maintenance under the Act.

The court, while dismissing the Revision Petition, held that courts have power under Section 151 of the Code of Civil Procedure to grant interim maintenance to a Muslim woman who has filed for divorce under the Dissolution of Muslim Marriage Act 1939.

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Miss Rachel Pothurajulu Vs. C.R.Kannikaparameshwari [CRP (PD) No. 366 of 2024]

27.08.2024

Extension of stay would be necessary only if the original order of stay that had been granted by the Court was restricted by time

The Civil Revision Petition has been filed by the Judgment Debtor against the order passed by the Executing Court in directing the petitioner to handover possession of the schedule property to the Respondent. The Trial Court ordered eviction of the Judgment Debtor on the grounds available under section 21(2) (a) of the Act . Aggrieved by it, the Civil Revision Petitioner had filed an Appeal before the Appellate Court and interim stay was also granted to her. During the pendency of the stay , the Decree Holder/ Respondent had filed an Execution Petition and the Executing Court had held that since stay has not been extended, the Respondent was entitled for delivery of possession.

The Hon'ble High Court observed that the Appellate Court had granted an unconditional stay and not one limited by time. The Executing Court ought not to have directed the Petitioner to get the stay extended. Extension of stay would be necessary only if the original order of the stay that had been granted by the Court was restricted by time. Further, the Hon'ble Court observed that perusal of the order passed by the Appellate Court would make it clear that no such limitation had been placed by the learned Judge.

Thus, the Court, while allowing the Appeal held that Executing Court should wait for final disposal of the Appeal before proceeding further with the Execution Petition.

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HIGH COURT – CRIMINAL CASES

R.Lalithsharma Vs. State rep. By The Inspector of Police, H-5, New Washermenpet Police Station [Crl.R.C.No.243 of 2024]

Date of Judgment: 12.08.2024

Letter Given To Police Officer Admitting Guilt Hit by Section 25 Of Evidence Act, Not Admissible As Evidence

The Criminal Revision Petition has been preferred by the accused/ Petitioner to set aside the order of the Trial Court which allowed a petition filed by the prosecution to receive two additional documents, one of which was a letter admitting guilt given to the police.

The brief facts of the case is that the complainant was running an Indigenous chit fund and was also a money lender. The petitioner approached the defacto complainant for financial assistance, and the complainant loaned him ₹1.85 crore on the promise that he would be made a partner in the petitioner's company. Additionally, the petitioner handed over custody of 550 MT of steel angles and iron scrap to the complainant. Later, the complainant filed a complaint upon discovering that the materials had been transferred to the godown of one Mr. Ganesan without his knowledge and that he had not been made a partner in the petitioner's business, as promised. A chargesheet was filed, and witnesses were examined. During the examination, the Investigating Officer, who conducted a major part of the investigation, deposed that the petitioner had given him a handwritten letter admitting guilt. The prosecution subsequently filed a petition under Section 242(2) of the Cr. P.C. to submit the letter as additional evidence, which the Trial Court had allowed.

The Court observed that as per Section 25 of the Indian Evidence Act (Section 23 of the Bharatiya Sakshya Adhiniyam 2023), any confession made to a police officer is not proof of his guilt in connection with the offense. Further, the Court observed

that though it was claimed that these two letters were available earlier, neither of it was listed as a document in the charge sheet nor any witnesses referred to it. Moreover, the Court observed that the case was at the penultimate stage and the reason given to file a petition to bring on record these two letters during cross examination of Prosecution witnesses discloses the same was nothing but to fill up the lacuna, which was not permissible.

Thus, the Court, while allowing the revision Petition, held that any letter given to a police officer admitting guilt is hit by Section 25 of the Indian Evidence Act.

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