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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS

2010 (12) SCALEL 470

GOPAL SWAROOP
vs
KRISHNA MURARI MANGAL & ORS.

WILLS – INDIAN SUCCESSION ACT, 1925 – SECTION 63 – EVIDENCE ACT, 1872 – SECTION 68 – Execution of unprivileged wills – Proof of – Section 68 of Evidence Act is against the use of a Will in evidence unless one attesting witness has been examined to prove the execution – Suit for partition and separate possession – Plaintiff respondent claimed partition of joint family property with his father defendant 1 as the 'karta' of the joint family – During pendency of the suit, defendant 1 died – Appellant set up a Will allegedly executed by defendant 1 according to which share of deceased testator was to devolve exclusively upon the former – Suit filed by respondent decreed by the trial Court holding plaintiff respondent entitled to 1/5th share in the joint family property – Court also held that the Will set up by appellant had been duly proved and that in terms thereof the property left behind by the deceased would devolve exclusively upon appellant – On appeal, High Court held that execution of Will had not been proved in as much as the solitary witness DW.2 did not prove that the testator had signed the Will in presence of witness 'M' and that 'M' had also signed the Will as a witness –DW.2 had in clear and unambiguous terms stated that not only he but 'M', the other attesting witness to the Will was also present at the time the testator affixed his signature on the Will – Whether the Will propounded by appellant and purporting to have been attested by two witnesses has been validly proved – Allowing the appeal, Held,

The Trial Court and the Single Judge of the High Court held, in the present case, concurrently held the execution of the Will to have been satisfactorily proved. The Letters Patent Bench has, however, reversed that finding primarily on the ground that the execution of the Will is not proved in terms of Section 68 of the Evidence Act read with Section 63 of the Indian Succession Act.

It is evident that in cases where the document sought to be proved is required by law to be attested, the same cannot let be in evidence unless at least one of the attesting witnesses has been called for the purpose of proving the attestation, if any such attesting witness is alive and capable of giving evidence and is subject to the process of the Court. Section 63 of the Indian Succession Act deals with execution of unprivileged Wills and, inter alia, provides that every Testator except those mentioned in the said provision shall execute his Will according to the rules stipulated therein.

From a conjoint reading of the two provisions extracted above it is evident that a Will is required to be attested by two or more witnesses each of whom has seen the Testator

signing or affixing his mark on the Will or has seen some other person signing the Will in the presence and by the direction of the Testator or has received from the Testator a personal acknowledgment of the signature or mark or his signature or the signature of such other person and that each of the witnesses has signed the Will in the presence of the Testator. Section 68 of the Evidence Act is against the use of a Will in evidence unless one attesting witness has been examined to prove the execution.

A careful analysis of the provisions of Section 63 would show that proof of execution of a Will would require the following aspects to be proved: (1) That the Testator has signed or affixed his mark to the Will or the Will has been signed by some other person in the presence and under the direction of the Testator. (2) The signature or mark of the Testator or the signature of the persons signing for him is so placed has to appear that the same was intended thereby to give effect to the writing as a Will. (3) That the Will has been attested by two or more witnesses each one of whom has signed or affixed his mark to the Will or has been seen by some other person signing the Will in the presence and by the direction of the Testator or has received from Testator a personal acknowledgement of the signature or mark or the signature of each other person. (4) That each of the witnesses has singed the Will in the presence of the Testator.

The deposition of Shri Vilas Tikhe clearly proves that Panna Lal had executed a Will in favour of the appellant, Gopal Swaroop and had signed and affixed his signature in his presence. The Trial Court and the High Court have concurrently held that the Will has been signed by the Testator in the presence of the attesting witnesses. First and the foremost requirement prescribed under Section 63 of the Indian Succession Act, 1925 is, therefore, clearly satisfied.

Coming then to the second requirement namely, the placement of the signature of the Testator on the Will, we find that the signature of the Testator appear at the right hand bottom part of the Will. The placement of the signature on the document is, therefore, appropriate and clearly suggestive of the fact that the document was intended to be given effect to as a will. We must also mention that no argument was advanced by learned counsel for the respondent on the requirement of an appropriate placement of the signature of the Testator on the document.

That brings us to the third requirement, namely, that the Will must be attested by two or more witnesses each of whom has seen the Testator signing and affixing his mark to the Will or has seen some other person signing in the presence and by the direction of the Testator. The deposition of Shri Vilas Tikhe in our opinion satisfies this requirement also in as much as the witness has in clear and unambiguous terms stated that not only he but Shri Manoj, the other attesting witness to the Will was also present at the time the Testator affixed his signature on the Will. It is noteworthy that, the above statement has not been questioned in cross-examination nor any suggestion made to the effect that while Shri Vilas Tikhe, the witness may have been present, Manoj was not so present at the time the Will was signed by the Testator. As a matter of fact, the witness has made a categoric statement that Manoj met the Testator in the Court and was taken along and that not only at the time of signing of the Will by the Testator, but even before the Registrar, Manoj Kumar was present in person. The witness has while answering a question in cross-examination specifically stated that Manoj was present even at the time the witness signed the Will in question.

In the matter of proof of documents as in the case of the proof of Wills, it is idle to expect proof with mathematical certainty. The test to be applied always is the test of satisfaction of a prudent mind in such matters. Applying that test to the case at hand we have no manner of doubt that the Will executed by Shri Panna Lal which is a duly registered document is not surrounded by any suspicious circumstances of any kind and is proved to have been duly and properly executed.

(2010) 4 MLJ (Crl) 716 (SC)

Dharambir
vs
State (NCT of Delhi) and Another

Juvenile Justice Act (53 of 1986) –Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 2(K) – Juvenile Section 7(A) – Procedure to be followed when claim of juvenility is raised before any Court – Determination of age – Proceeding initiated under 1986 Act – Applicability of 2000 Act.

FACTS IN BRIEF:

Appellant was convicted under Section 302 read with 34 IPC, 1860, Conviction was confirmed by the High Court, Before the Supreme Court, appellant pleaded he should be given the benefit of the Juvenile Justice Act, 2000.

QUERY:

Whether or not the appellant, who was not a juvenile, within the meaning of the Juvenile Justice Act, 1986 when the offences were committed but had not completed 18 years of age on that date, will be governed by the Act of 2000 and be declared as a juvenile in relation to the offences alleged to have been committed by him?

Held:

Proviso to sub-section (1) of Section 7A contemplates that a claim of juvenility can be raised before any Court and has to be recognized at any stage even after disposal of the case and such claim is required to be determined in terms of the provisions contained in the Act of 2000 and the rules framed thereunder, even if the juvenile has ceased to be so on or before the date of the commencement of the Act of 2000. The effect of the proviso is that a juvenile who had not completed eighteen years of age on the date of commission of the offence would also be entitled to the benefit of the Act of 2000 as if the provisions of section 2(k) of the said Act, which defines "juvenile" or "child" to mean a person who has not completed eighteenth year of age, had always been in existence even during the operation of the 1986 Act. It is, thus, manifest from a conjoint reading of Section 2(k), 2(l), 7A, 20 and 49 of the Act of 2000, read with Rules 12 and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 that all persons who were below the age of eighteen years on the date of commission of the offence even prior to 1.4.2001 would be treated as juveniles even if the claim of juvenility is raised after the have attained the age of eighteen years on or before the date of the commencement of the Act of 2000 and were undergoing sentences upon being convicted.

2010 (6) CTC 547

Gaddam Ramakrishnareddy and others
vs
Gaddam Rami Reddy and others

Hindu Succession Act, 1956 (30 of 1956), Section 14(1) – Life estate created by husband – Wife managing properties in question – Donee's desire was that property should ultimately go to son – Right of Wife does not blossom into an absolute right – Right was created for Wife for first time under Settlement Deed, but not in lieu of maintenance – Hence, provisions of Section 14(1) have no application.

Facts:

Special Leave Petitions arose out of a Suit for Recovery of Possession filed by son of the Donor. Wife of the Donor claimed absolute right on the basis of the life estate granted for the first time in the Settlement Deed. Supreme Court held that the right of the wife will not blossom into an absolute right and dismissed the SLPs confirming the decree for possession.

Held:

In the instant case, Pullareddy created a life interest in favour of his wife, Sheshamma, in respect of the plaint schedule property, but also gifted the property in question to the Respondent No. 1 herein, G. Ramireddy, who was then a minor. The principal object of the Deed of Gift executed by Pullareddy was that the property should ultimately go to G. Ramireddy, the Respondent No.1 herein. The question which we have to consider in this case is whether in view of the intervention of the Hindu Succession Act in 1956, after the execution of the Deed of Gift, it can be said that the gift intended in favour of G. Ramireddy stood extinguished by operation of Section 14(1) of the Act.

The consistent view which has been taken by this Court since the decision in V. Tulasamma's case (supra) is that the provisions of Section 14(1) of the Hindu Succession Act, 1956, would be attracted if any of the conditions contained in the Explanation stood fulfilled. If, however, a right is created in a Hindu female for the first time in respect of any property under any instrument or under a decree or order of a Civil Court of under an award, where a restricted estate in such property is prescribed, the provisions of sub-section (1) of Section 14 would have no application by virtue of sub-section (2) thereof.

At this stage it would be worthwhile to set out the relevant portion of the Deed of Gift executed by Pullareedy, marked Exhibit A-11 in the Suit and extracted in the judgment of the Trial Court. The same reads as follows:

> "As I have great affection towards my wife and my minor son Rami Reddy and believed that they will look after me with all comforts, I hereby make an arrangement that here after my wife Sheshamma shall enjoy as she likes, the income from the lands which stand in my name, in Patta No.8 situated at Maddula Parva Village and in Patta No.354 sistuated at Muchanapalli village shown in the Schedule below, without any right to alienate the said land to any one or to give the said land on long lease and after the death of my wife, my minor son Rami Reddy shall get possession of my land along with his share of land and enjoy the same with an absolute right thereon."

(2010) 10 Supreme Court Cases 259

ABDUL SAYEED
vs
STATE OF MADHYA PRADESH
and
RAFIQUE
vs
STATE OF MADHYA PRADESH
and
RAIS ALIAS TOUN AND OTHERS
vs
STATE OF MADHYA PRADESH

Criminal Trial – Identification – Identification of accused – Identification by witnesses in a crowd of assailants – Specific reference to acts of each assailant by witnesses – Difficulty of – Held, in cases where there are large number of assailants, it can be difficult for witnesses to identify each assailant and attribute specific role to him – Herein, very large number of assailants attacked both deceased persons and caused injuries to them with deadly weapons – Incident stood concluded within few minutes – Thus, it is natural that exact version of incident revealing every minute detail i.e. meticulous exactitude of individual acts, cannot be given by eyewitnesses – Penal Code, 1860 – Ss. 34, 149 and 302 – Attack by large group – Attribution of specific role to each assailant – Impossibility of – Conviction confirmed.

Criminal Trial – Witnesses – Injured witness – Testimony of Reliability – Special evidentiary status accorded to his testimony – Trivial contradictions or omissions in his testimony, immaterial – Held, where witness to occurrence was himself injured in the incident, testimony of such witness is generally considered to be very reliable, as he is a witness that comes with an inbuilt guarantee of his presence at the scene of crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone – Thus, deposition of injured witness should be relied upon unless there are strong grounds for rejection of his evidence on basis of major contradictions and discrepancies therein – Herein, PW 2 (injured witness) gave graphic description of entire incident – His presence on the spot cannot be doubted as he was injured in the incident – His deposition must be given due weightage – His deposition also stood fully corroborated by evidence of PWs 1 and 4 (eyewitnesses) – Depositions so made cannot be brushed aside merely because there were some trivial contradictions or omissions.

Criminal Trial – Appreciation of evidence – Medical evidence vis-à-vis ocular evidence – If contradictory – Effect of - Principles reiterated – Held, where eyewitnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities cannot be accepted as conclusive – Eyewitnesses' account requires careful independent assessment and evaluation for its credibility, which should not be adversely prejudged on basis of any other evidence, including medical evidence, as sole touchstone for test of such credibility.

Summing up position of law in cases where there is contradiction between medical and ocular evidence, held, though ocular testimony of witness has greater evidentiary value vis-à-vis medical evidence, but when medical evidence makes ocular

testimony improbable, that becomes a relevant factor in the process of evaluation of evidence – However, where medical evidence goes so far that it completely rules out all possibilities of ocular evidence being true, ocular evidence may be disbelieved – Herein, very large number of assailants were attackers, thus witnesses were not able to state as to how many injuries and in what manner the same were caused by accused – In such fact situation, discrepancy in medical evidence and ocular evidence is bound to occur – However, it cannot tilt balance in favour of appellant –accused herein – Conviction confirmed.

Criminal procedure Code, 1973 – Ss. 215, 216, 218, 221 and 464 – Framing of charge – failure to frame proper charge – Interference, if warranted - Held, unless accused is able to establish that defect(s) in framing charge(s) has caused real prejudice to him; that he was not informed as to what was the real case against him; or that he could not defend himself properly, no interference is required on mere technicalities.

Criminal Procedure Code, 1973 – Ss. 211, 215, 216, 218, 221 and 464 – Framing of charge – Error/Omission in – Effect, if any in present case – No charge framed under S. 34 IPC – Conviction of appellant-accused by High Court with the aid of S. 34, if permissible – Whether non-framing of charge fatal to prosecution – Held, absence of charge under one or other or various heads of criminal liability for the offence cannot be said to be by itself prejudicial to accused – Before conviction for substantive offence without charge can be set aside, case of prejudice to accused will have to be made out – Hence, submission of appellants for acquittal on aforesaid ground of non-framing of charge under S. 34, unsustainable – Penal Code, 1860, S. 34.

Penal Code, 1860 – S. 34 or S.149 – conviction of accused with aid of S. 34 in place of S. 149 – When permissible – Held, there is no bar in law on such conviction if there is evidence on record to show that such accused shared a common intention to commit the crime and no apparent injustice or prejudice is shown to have been caused by application of S. 34 in place of S. 149.

Penal Code, 1860 – S. 34 – Scope of – Vicarious/Constructive liability under – When arises – Ingredients to establish liability under, reiterated – Circumstances under which S. 34 can be invoked, laid down.

Held:

Section 34 IPC carves out an exception from general law that a person is responsible for his own act, as it provides that a person can also be held vicariously responsible for the act of others if he has the "common intention" to commit the offence. The phrase "common intention" implies a prearranged plan and acting in concert pursuant to the plan. Thus, the common intention must be there prior to the commission of the offence in point of time. The common intention to bring about a particular result may also well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances existing thereto. The common intention under Section 34 IPC is to be understood in a different sense from the "same intention" or "similar intention" or "common object". The persons having similar intention which is not the result of the prearranged plan cannot be held guilty of the criminal act with the aid of Section 34 IPC.

(2010) 10 Supreme Court Cases 361

V.P. SHRIVASTAVA
vs
INDIAN EXPLOSIVES LIMITED AND OHTERS

Penal Code, 1860 – Ss. 415 and 420 – Cheating – Ingredients of - Mere failure to perform the promise, held, by itself not enough –To hold a person guilty of cheating, reiterated, it is necessary to show that at time of making promise he had fraudulent or dishonest intention to deceive or to induce person so deceived to do something which he would not otherwise do – Such a culpable intention right at the time of entering into an agreement cannot be presumed merely from his failure to keep the promise subsequently – In present case, there were no specific averments that appellant, a retired senior employee of FACIL, officer-in-charge of supply of ammonium nitrate by FCIL at the time had dishonestly "induced" respondent IEL to enter into any agreement/arrangement with FACIL – On the contrary, complaint clearly reveals that IEL was fully conscious of precarious financial health of FACIL at time IEL decided to enter into tripartite agreement – Basis of complaint was that by deliberately suppressing fact that FCIL had already been referred to BIFR after erosion of net worth and thus likely to be declared a "sick company", appellant induced IEL to pay about ₹.4.2 crores as advance payment and in return FACIL did not supply goods as promised – Mere mention of words "defraud" and "cheat" in complaint is not sufficient to infer that appellants had dishonest intention right at the beginning – A tripartite agreement was signed after due deliberations considered to be in the interest of all parties concerned – Held, at best, it was a case of breach of contract, for which FCIL was already defending civil suit filed by IEL – Criminal Procedure Code, 1973 – S. 482 – Corporate Laws – Company Law - Corporate criminal liability - Senior employee of company – Criminal liability for failure of company to meet contractual commitments for which employee concerned was officer-in-charge.

Penal Code, 1860 – Ss. 405 and 406 – Criminal breach of trust – Ingredients of – Entrustment/dominion over property – Misappropriation – Held, there was nothing in complaint which even remotely suggested that respondent IEL had entrusted any property to appellant accused – No evidence that appellants had dominion over any of properties of respondent, which they dishonestly converted to their own use – Complaint quashed – Criminal Procedure Code, 1973, S. 482.

Criminal Procedure Code, 1973 – S. 482 – Quashing of complaint – Complaints alleging commission of offences under Ss. 420, 406 and 120-B IPC, etc. – Held, no prima facie case made out against appellants in respect of alleged offences under Ss. 420 and 406 IPC, hence question of alleged conspiracy between appellants does not arise – Complaint lacks any such substance regarding conspiracy – It was a fit case where High Court should have exercised its jurisdiction under S. 482 CrPC – Complaint case, quashed – Penal Code, 1860, Ss. 420, 406 and 120-B.

Criminal Procedure Code, 1973 – S. 482 – Exercise of power under – Circumstances under which the inherent jurisdiction may be exercised, reiterated: (i) to give effect to an order under the Code: (ii) to prevent an abuse of the process of court; and (iii) to otherwise secure the ends of justice – No inflexible rule can be laid down therefore though.

(2010) 4 MLJ 776 (SC)

Prithi
vs
State of Haryana

Constitution of India (1950), Article 136 – Indian Penal Code (45 of 1860), Section 302 read with 149 – Section 307 read with Sections 149, 148 and 201 – Indian Evidence Act (1 of 1872), Sections 60, 153, 154 – Accused convicted under Section 302 read with 149 and under Section 307 read with 149, 148 and 201 I.P.C., - Proof of 'corpus delicti' necessity of - Dead body not found – Evidence of eyewitness P.W.9 accepted by both trial Court and High Court – Said evidence proves factum of death of deceased and commission of crime by accused – Eye-witness though interested his evidence was trustworthy, corroborated by recover of guns and cartridges from site – No error by High Court in confirming conviction of accused.

FACTS IN BRIEF:

The accused were convicted and sentenced for murdering one 'A.C.' And causing injury to others. The body of 'A.C.' was not found. The High Court confirmed the conviction and sentence. A Criminal Appeal by way of Special Leave was filed by A5.

QUERY:

Whether the fact that the body of the person allegedly murdered by the accused, had not been recovered, lead to the conclusion that the factum of murder has not been established?

Held:

P.W.9 has been accepted by the trial Court as well as the High Court as a reliable witness. Once P.W.9 is accepted, his evidence proves the fact death of Ami Lal and also renders the Commission of Crime by the accused (including the appellant) certain. It is true that he is a related witness inasmuch as he happens to be the brother of the deceased but that would not render his evidence unworthy of credence. Nothing inherently improbable has been brought out which may justify rejection of the testimony of P.W.9. The conduct of P.W.9 does not seem to be improbable. Moreover, his presence at the time and the place of incident is also established. The evidence of P.W.9 further gets corroborated by the recovery of a gun and empty as well as unused cartridges from the site.

That P.W.6 sustained injuries is also established from the evidence of Dr. 'A.K.' (P.W.1) who medically examined him immediately after the incident. Merely because he did not name the assailants, his evidence cannot be thrown over board in its entirety.

Words and Phrases: 'Corpus delicti' generally means, when applied to any particular offence, the actual commission by some one of the particular offence charged. (Words and Phrases, Vol.9A, 2nd reprint, 1976, West Publishing Co.)

(2010) 8 MLJ 369 (SC)

Afcons Infrastructure Ltd. And Another
vs
Cherian Varkey Construction Co. (P) Ltd. and Others

Code of Civil Procedure (5 of 1908), Section 89 and Order 10 Rule 1-A – Settlement of disputes outside Court – Alternative dispute resolution process – Reference to ADR Process – Procedure to be adopted by Court under Section 89 of Code.

FACTS IN BRIEF:

Aggrieved by the order of the trial court referring the matter to arbitration and the order of the High Court affirming the said reference, an appeal has been filed.

QUERY:

Whether Section 89 of the Code of Civil Procedure empowers the Court to refer the parties to a suit to arbitration without the consent of both parties?

Held:

Rule 1A of Order 10 requires the Court to give the option to the parties, to choose any of the ADR process. This does not mean an individual option, but a joint option or consensus about the choice of the ADR process. On the other hand, Section 89 vets the choice of reference to the Court. There is of course no inconsistency. Section 89 of the Code gives the jurisdiction to refer to ADR process and Rules 1A to IC of Order 10 lay down the manner in which the said jurisdiction is to be exercised. The scheme is that the Court explains the choices available regarding ADR process to the parties, permits them to opt for a process by consensus, and if there is no consensus, proceeds to choose the process.

Where there is no pre-existing arbitration agreement between the parties, the consent of all the parties to the suit will be necessary, for referring the subject matter of the suit to arbitration under Section 89 of the Code.

If both parties do not agree for conciliation, there can be no 'conciliation'. As a consequence, as in the case of arbitration, the Court cannot refer the parties to conciliation under Section 89, in the absence of consent by all parties. As contrasted from arbitration, when a matter is referred to conciliation, the matter does not go out of the stream of Court process permanently. If there is no settlement, the matter is returned to the Court for framing issues and proceeding with the trial.

2010 (11) SCALE 82

Sansar Chand
Vs.
State of Rajasthan

WILD LIFE – WILDLIFE (PROTECTION) ACT, 1972 [AS AMENDED BY WILDLIFE PROTECTION (AMENDMENT) ACT, 2002] – CHAPTERS IV, V, VA, VI & VIA – CONSTITUTION – ARTICLE 48A & 51A(g)] – EVIDENCE ACT, 1872 – SECTION 24 – Trading in tiger, leopard and other animal skins and parts – Organized nature of wildlife crimes – Appellant has long history of such activities, starting with 1974 arrest for 680 skins including tigers, leopards and other animals – In the subsequent years the appellant and his gang has established a complex, interlinking smuggling network to satisfy the demand for tiger and leopard parts and skins outside India's borders – On 05.01.2003, police arrested on 'B' who was travelling in a train with a carton containing leopard's skin – During investigation 'B' made a disclosure statement to the police that the two leopard skins were to be handed over to appellant – Appellant was convicted for offence under the Wildlife (Protection) Act – All the courts below have found the appellant guilty of offences charged – Apart from the extra judicial confession made by co-accused 'B', there was other corroborative material on record which established appellant's guilt – Extra judicial confession made by co-accused was voluntary and was not the result of Inducement, threat or promise as contemplated by Section 24 of the Evidence Act – Whether conviction of appellant as recorded by courts below was sustainable – Dismissing the appeal.

Article 51(A) (g) of the Constitution states that it is the duty of every citizen of India to protect and improve the natural environment including the wild life.

The Wildlife (Protection) Act, 1972 was enacted for this constitutional purpose. Chapter III of the said Act prohibits hunting of wild animals except in certain limited circumstances. Chapter IV enables the State Government to declare any area as a sanctuary or national park, and destruction or removal of animals from those areas is prohibited except under very limited circumstances. Chapter V & VA prohibits trade or commerce of wild animals, animal articles or trophies. Chapter VI makes violation of the provisions of the Act a criminal offence. By the Wildlife Protection (Amendment) Act, 2002 the punishment has been increased vide Section 51 as amended, and the property derived from illegal hunting and trade is liable to forfeiture vide Chapter VIA.

2010 (11) SCALE 332

Sudhakaran
Vs.
State of Kerala

CRIMINAL LAW – I.P.C – SECTION 84 & 302 – Murder of wife – Plea of insanity – No evidence indicating that appellant husband was suffering from mental illness at the crucial time – Appellant had killed his wife by assaulting her with a chopper on her neck in the bedroom of his house – Prosecution case that at about 7.30 p.m. on the day of the incident, appellant came out of his house carrying his eight months old child in one arm – He asked PW5 as to whether he could hold the child and when PW.5 stepped towards the appellant to take the child, he saw that the appellant was carrying a chopper in the other hand – PW.5 and his son (PW.1) rushed into their house and closed the door – Though their window, PW.1 saw, in the torch light, that shirt of appellant was blood stained and he was also carrying a blood stained chopper – According to PW.5, appellant had confessed to the crime of killing his wife – Deceased was found lying on a cot in her bedroom with blood splattered all over her – When all

the neighbours had gathered in the house of appellant he had confessed to all of them that he had killed his wife – Trial Court convicted appellant for the offence u/s 302, IPC – Trial Court considered defence pleaded by appellant u/s 84, IPC and held. That the appellant was capable of understanding the nature of the act and the consequence thereof – On appeal, High Court affirmed the conclusions reached by the trial Court – Defence u/s 84, IPC was held to be not proved – Whether judgment of the High Court was sustainable – Dismissing the appeal.

So far as the actual physical murder is concerned, all the circumstances adverted to above, chillingly point towards the guilt of the appellant. PW1 and PW5 has clearly stated how the appellant had approached them with a chopper soaked in blood in one hand and his 8 months old son in other arm. The blood stained chopper remained in the possession of the appellant till he was asked to put the same on the ground. PW1 actually saw the blood stained chopper in the hand of the appellant when he pointed the torchlight on the appellant through the window. After entrusting the child to PW3, the appellant went away. The dead body of his wife was discovered by the neighbours which was soaked in blood. According to the PW3 there was so much blood on the body that she seemed to have taken a bath in a pool of blood. The ocular evidence has been corroborated by medical evidence. The doctor, PW9, who conducted the post mortem, has clearly stated that the injuries which were found on the body of the deceased could have been caused with a weapon which was seized from the appellant.

2010 (10) SCALE 564

Alka Gupta
Vs.
Narender Kumar Gupta

CIVIL PROCEDURE – C.P.C. – ORDER II RULE 2; SECTION 11 – Frame of suit – Suit to include the whole claim – A suit cannot be dismissed as barred by Order 2 Rule 2 in the absence of a plea by defendant to that effect and in the absence of an issue thereon – Cause of action for second suit being completely different from the cause of action for the first suit, bar under Order 2 Rule 2 of the Code not attracted – Appellant and respondent entered into a partnership to run an institute for preparing students for competitive examinations, under the name and style of 'T' institute – Appellant entered into an 'agreement to sell' (Bayana Agreement) under which she agreed to sell the property – Property agreed to be sold included goodwill of the firm 'T' Institute, having its office at Rohini, Delhi in which first party was also partner of 50% - Under the said agreement, total consideration agreed was ₹21,50,000/- and appellant received ₹7,50,000/- as advance – Appellant filed suit for recovery of ₹12 lakhs under the said agreement alleging that respondent had paid in all ₹9.5 lakhs towards the agreed price – Suit decreed directing respondent to pay ₹12 lakhs with interest – Appellant filed another suit against respondent, for rendition of accounts in regard to partnership firm of 'T' Institute – Suit resisted by respondent on preliminary ground that the suit was barred by res judicata – Trial Court dismissed suit on ground that the suit was barred by Order 2 Rule 2 and by principle of constructive res judicata – On appeal, Single Judge held that the suit was barred by Order 2 Rule 2 of the Code and that appellant had settled all her claims with respondent under the Bayana Agreement – No issue was framed as to whether the suit was barred by Order 2 Rule 2 of the Code – Whether dismissal of the suit by the High Court under Order 2 Rule 2 of the Code, in absence of

any plea by the defendant and in absence of an issue in that behalf, was sustainable – Held, No – Whether bar under Order 2 Rule 2 of the Code was attracted – Held, No Whether second suit was barred by constructive res judicata – Held, No – Allowing the appeal.

The Object of Order 2 Rule of the Code is two-fold. First is to ensure that no defendant is sued and vexed twice in regard to the same cause of action. Second is to prevent a plaintiff from splitting of claims and remedies based on the same cause of action. The effect if Order 2 Rule 2 of the Code is to bar a plaintiff who had earlier claimed certain remedies in regard to a cause of action, from filing a second suit in regard to other reliefs based on the same cause of action. It does not however bar a second suit based on a different and distinct cause of action.

2010 9 SUPREME COURT CASES 218

Arun Kumar Agrawal and Another
vs.
National Insurance Company Ltd., & Others

Civil Appeal No.5843 of 2010[†], decided on July 22, 2010

Motor Vehicles Act, 1988 – S. 166 – Death of housewife/mother not having regular income, in motor accident – Determination of compensation – Criteria for – Value of services rendered by wife to/mother of the family – Claimant husband and minor child pleading that deceased, by engaging in painting and handicrafts was earning ₹50,000 per annum and used to look after domestic affairs of the family and due to her death appellants deprived of care, love, affection and comfort of her company – Tribunal initially assessed income of deceased housewife at ₹5000 p.m., awarding compensation of ₹6 lakhs – Subsequently Tribunal reduced compensation to ₹2,50,000 on basis that deceased was actually not an earning member, such amount being too much – High Court dismissing appeal on ground that neither claimant was dependent upon deceased and services rendered by her could be estimated as ₹1250 p.m. – Justification – Held, (per curiam) gratuitous services rendered by wife with true love and affection to children and husband and managing household affairs cannot be equated with services rendered by others – It is not possible to quantify any amount in lieu of services rendered by wife/mother to the family – However, for award of compensation some pecuniary estimate has to be made – Term "services" to be given a broad meaning – To be construed taking into account loss of personal care and attention given by deceased housewife – Dependants entitled to adequate compensation in lieu of loss of gratuitous services rendered by deceased to her children as a mother and to her husband as a wife – Reasons assigned by Tribunal for reducing amount of compensation wholly untenable and approach adopted by High Court ex facie erroneous and unjustified – Orders of High Court and Tribunal, set aside – Appellants entitled to compensation of ₹6 lakhs alone with interest at the rate of 6% per annum – Costs of ₹50,000 awarded to appellant – Held [per A.K.Ganguly. J, (concurring)], time has come to scientifically assess value of the unpaid homemaker – Gender bias has been

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[†] *Arising out of SLP (C) No. 19655 of 2004. From the Judgment and Order dated 30.04.2004 of the High Court of Judicature at Allahabad in First Appeal from Order No.2408 of 2003.*

reflected in High Court judgment whereby it accepted Tribunal's reasoning of assessing the victim's income at a lesser amount – Tort Law – Compensation – Death of non-earning housewife/mother – Determination of compensation.

Motor Vehicles Act, 1988 – Ss.166 & 163-A and Sch.II – Death of non-earning housewife/mother in motor accident – Compensation – Computation of – Detailed guidelines laid down – Notional income under Sch.II – Structured formula – When applicable – Held, S.163-A does not apply to cases in which claim for compensation is filed under S.166 – However, even in a S.166 action in absence of any other definite criteria for determination of compensation to dependants of non-earning housewife/mother, held it is reasonable to rely upon criteria specified in Sch. II, Cl.6 and then apply appropriate multiplier – Approach of computing compensation by comparing gratuitous services of a housewife/mother with work of a skilled worker, housekeeper, servant or employee, disapproved of.

Constitution of India – Arts. 15 and 14 – Gender equality – Homemakers – Quantification of women's unremunerated domestic work and recognition in gross domestic product – Absence of laws in respect of – Held, (per A.K.Ganguly, J.) Parliament should have a rethink for property assessing value of homemakers' work – Suitable amendments to Motor Vehicle Act, matrimonial laws and other related laws for giving compensation when victim is a woman and a homemaker, recommended – Courts and tribunals should factor in these considerations in assessing compensation for housewives who are victims of road accidents and quantifying the amount for awarding "just compensation" – Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) – General Recommendation 17 – Constitution of Cambodia – Art. 36 – Human and Civil Rights – Gender equality.

Allowing the appeal with costs.

HIGH COURT CITATIONS

(2010) 7 MLJ 787

C. Velu @ Venkatesalam and Others
vs
S. Kandasamy Chettiar (Died) and others

Code of Civil Procedure (5 of 1908), Section 47 and Order 21 Rule 72-A – Court auction sale – Blatant and gross irregularities in conduct of sale – Invocation of Section 47 CPC cannot be found fault with – Consequently after facing dismissal of application filed under Section 47, filing of revision petition also cannot be found fault with.

FACTS IN BRIEF:

Aggrieved by the order passed by the Executing Court whereby the Executing Court dismissed the REA and confirmed the sale in favour of one of the decree holders, a revision petition has been filed on various grounds.

QUERIES:

1.Whether the High Court could entertain revision in view of the substantial points decided relates to validity of Court auction sale in the order passed by the executing Court in the application filed under Section 47 of CPC?

2. Whether the executing Court is justified in permitting one of the decree holders to participate in the Court auction sale, without fixing the reserve price as contemplated under Order 21 Rule 72-A CPC?

It is a case where ex facie and prima facie clear that after passing the order in the application filed under Order 21 Rule 72-A of C.P.C. no proclamation at all was made. On the date of sale itself, just some time before the conduct of sale, such permission to bid was granted to one of the decree holders and that too without fixing the reserve price. The fact also remains that for the first time when the sale was scheduled to be held, such permission was given. It is not case where on previous several scheduled auction sale dates there were no bidders. The Court also on seeing that there were no other bidders participated, except R4, did not order for fresh sale. As such, considering the blatant and gross irregularities in the conduct of sale and that too in view of the gross defects detailed and delineated in this order under Point No. 2 infra, Court is of the view that invocation of Section 47 of CPC cannot be found fault with and consequently after facing dismissal of the application filed under Section 47 C.P.C., the filing of CRP cannot also be found fault with.

Code of Civil Procedure (5 of 1908), Order 21 Rule 72-A(2) – Court auction sale – Non-adherence to mandatory prevision as contained in Order 21 Rule 72-A-Effect of.

The Executing Court should have necessarily taken into account the very object of the said Order 21 Rule 72-A of CPC. The Executing Court is enjoined to fix a reserve price, which should not normally be less than the amount to be recovered under the mortgage and the upset price already fixed before granting permission to R4/Decree holder to bid was not reserve price. It is based on a wholesome and healthy principle, so to say, a decree holder, who ventured to lend money based on a mortgage should not be allowed to simply snatch away the mortgaged property for a song and that too by specifying cryptically the value of the mortgaged property grossly lower than the dues under the mortgage. In the case of ordinary bidders other than the decree holder, the position is somewhat different and at present in this case, Court need not dilate on that as it is quite obvious. But, in the event of the decree holder being allowed to participate as one of the bidders in the public auction, necessarily the Court should fix the reserve price, as otherwise, there is every likelihood of the decree holder snatching away the property for a lesser price and over and above that, there is also the likelihood of the Decree holder proceeding further with the execution proceedings and also recovering the remaining unsatisfied decretal amount from the mortgagors, which would be grossly oppressive.

2010 (6) CTC 426

R. Chandrasekaran
vs
C. Umamaheswari

Guardian and Wards Act, 1890 (8 of 1890), Section 7(1), 8 & 10- Custody of minor child – Relevant considerations – Duty of Court – Welfare of child is paramount consideration – Determinative factors – Discretion and jurisdiction of Court – Trial Court ordered custody of two minor children in favour of father — Wife filed Application for judicial separation – Wife has also filed a Petition to appoint her as guardian of minor children – Trial Court allowed Application filed by mother – Hence, father filed Civil Miscellaneous Application before High Court – Contention of father that Court ordered custody of children contrary to desires and wishes of children – Whether Court considering Application for custody of children would be bound to consider desire and wishes of children – Held, welfare of child is paramount consideration while considering Application for custody – Heavy duty cast upon Court to exercise judicial discretion judiciously while considering question as to which parent, care and control of minor child should be committed – Minor children express their desire to live under custody of father – Hence, due weightage should be given for desire of children – Appeal allowed – Law laid down in Gaurav Nagpal v. Sumedha Nagpal, 2009 (1) SCC 42 followed and applied.

Facts:

Appellant/father filed Civil Miscellaneous Appeal under Section 47(a) of Guardians and Wards Act challenging the validity of order passed by District Court by ordering custody of minor children in favour of wife.

Held:

I have examined both the minor children viz., Vigneswaran aged 12 years and Sanjuktha aged 14 years in the presence of the parties and their respective Counsel. Minor Vigneswaran categorically stated that even though he had stayed with his mother for five years, he opted to stay with his father and his sister Sanjuktha, who has always been living with the father. When questioned, both the children expressed their desire to be with the father as their guardian, in preference to the mother, the Respondent herein. In fact, the children raised a question emphatically and wanted an answer to be elicited from the Respondent as to why the mother preferred the boy child and not the girl child for whom she never showed any affection or sought for her custody all these years and shown any interest even to seet her. The examination of the children in the open Court clearly showed that contrary to the allegations of the Respondent that the children are tutored, the children appeared normal and they are clear about what they conveyed. In fact, they expressed their desire to stay together and under the care of the father, the Appellant herein. After talking to the children in the open Court, I have no doubt that as far as the custody cases are concerned, when the children appeared well informed on the nature of proceedings going on and are capable of expressing their preferences coherently and with clarity, it is better that we allow the children to decide their guardian rather than by the rights of the parents. The Apex Court pointed out in the decision reported in Rosy Jacom v. Jacom A. Chakramokkal, 1973 (3) SCR 918 that the object and purpose of the 1890 Act was to give tdue protection of the rights of the ward's health, maintenance and education. In the decision reported in Nil Ratan Kundu and another v. Abhijit Kundu, 2008 (4) CTC 425 (SC): 2008(9) SCC 413 the Apex Court referred to decisions of the Apex Court on this issue as well as the law prevailing in other countries only to point out that the first and paramount consideration is the welfare of the child and not of the parent. Hence, heavy duty is cast on the Court to exercise its judicial discretion judiciously while considering the question as to which parent the care and control of the minor child should be committed. In paragraph 56 of the judgment, the Apex Court pointed out as follows:

> "56. In our judgment, the law relating to custody of a child is fairly well-settled and it is this. In deciding a difficult and complex question as to custody of minor, a Court of law should keep in mind relevant statutes and the right flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a humane problem and is required to be solved with human touch. A Court while dealing with custody cases, is neither bound by statues proper by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the Court is exercising parens partriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical conforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the Court must consider such preference as well, though the final decision should rest with the Court as to what is conducive to the welfare of the minor."

(2010) 8 MLJ 436

Mani
vs
Chellam

Maintenance – Recovery of interim maintenance – Attachment of salary of husband – Dismissal of HMOP as not pressed – Does not exonerate husband from liability to pay interim maintenance – Revision petition dismissed.

FACTS IN BRIEF:

Aggrieved by the order passed by the lower Court in rejecting the contentions and objections raised by the revision petitioner/husband as against the execution petition filed by wife for recovery of interim maintenance, revision petition has been filed.

QUERY:

Whether order for recovery of interim maintenance can be executed in view of dismissal of HMOP itself as not pressed?

Held:

Interim maintenance awarded could be recovered by the beneficiary concerned if the said amount has not been paid by the person bound to pay. In this case, it is evident that in view of the H.M.O.P. No. 38 of 2003 having been not pressed by the revision petitioner that H.M.O.P. was dismissed and that it does not mean that the revision petitioner suo motu legally exonerated himself from the liability which he incurred to pay interim maintenance as per the order of the Court. If the interpretation of the learned counsel for the revision petitioner is accepted, it would amount to giving a premium to the person liable to pay interim maintenance not to respect it and the order of the Court would be set at naught by simply not pressing the HMOP.

2010 (4) TLNJ 433 (Civil)

The Commissioner, H.R. & C.E.
Administration Department
vs
K.Kanagadurga Bai

Hindu Religious and Charitable Endowments Act, Act 22 of 1959 - Section 6(11) & 6(20) – HR & CE department passed order holding that institution claimed by plaintiff is a public institution and plaintiff is not hereditary trustee – therefore suit filed for declaration that he is the hereditary trustee – decreed – on appeal by the department High Court expressed that merely because members of general public are allowed to worship the temple it cannot be concluded that the temple is public one – further held that succession to the office of hereditary trustee is regulated by usage or as provided by founder – Appeal by department dismissed – Appeal Suit is dismissed.

2010 (4) TLNJ 460 (Civil)

Kannikumar and others
vs
S. Kasturibai Ammal and others

Civil Procedure Code 1908 as amended, Order 39 Rule 2A – (Duty of court in applications under Order 39) – **Suit for partition and preliminary decree passed – injunction application filed by some defendants – ordered by trial court – alleged some items alienated and petition filed to punish for disobedience and to annul the sale deeds executed after injunction order – trial court dismissed applications as property sold was not subject matter of suit – on revision High Court held that the identity of the suit property and the property said to be sold are not clear – in such case trial court is not correct in coming to the conclusion on the basis of the pleadings – further held that a duty is cast upon court by directing the parties to adduce evidence in support of their rival contentions – Civil Revision Petitions Allowed.**

2010 (4) TLNJ 499 (Civil)

M.V. Jayavelu
vs
E. Umapathy

Civil Procedure Code 1908 as amended, Order 7, Rule 11 – **Suit for specific performance – petition filed under Order 7, Rule 11 to reject plaint as suit was filed on the basis of a rental deed and not duly stamped – plaintiff has no cause of action – petition dismissed by trial Court – on Revision the High Court expressed that when there is no proof of agreement of sale, plaintiff has no cause of action – held further that court has got inherent powers to see that vexatious litigations not permitted – CRP allowed.**

2010 (4) TLNJ 520 (Civil)

V. Sowrirajan
vs
Dhanam

Civil Procedure Code 1908 as amended, Order 7 , Rule 11 – (Rejection of plaint) – **Suit for bare injunction claiming adverse possession – defendant resisted suit and filed application for rejection of plaint as relief of declaration not sought and no proper court fee paid – trial court held dismissed application holding that plaintiff seeks injunction claiming title on possession – no need of declaration and dismissed the petition – on revision by the defendant High Court held that suit cannot be rejected as it is filed on the basis of possession and alleged disturbance by defendant – suit or injunction proper and no need for plaintiff to pray for declaration of title – further held payment of court fee as per Sec 27(a)(ii) of the TNCF Act arise when pleading in the plaint is made about denial of title and rejection of plaint under Order 7, R 11B CPC arise only direction to pay additional court fee not obeyed – Civil Revision Petition dismissed.**

2010 (4) TLNJ 530 (Civil)

Megbood Bi
vs
Natesa Padayachi

Civil Procedure Code 1908 as amended, Order XXVI Rule 10A & B – See Evidence Act 1872, Section 45.

Evidence Act 1872, Section 45 – Suit for recovery of money – defendant alleged payment of interest in written statement – during trial receipt produced but denied by plaintiff – application filed by defendant to compare signature with admitted documents of plaintiff and allowed – further contemporaneous document executed at relevant was directed to be produced – defendant did not produce a contemporaneous document but wanted by another petition to compare with admitted signatures in plaint, vakalat etc – dismissed – on revision High Court opined that plaintiff can only produce contemporaneous documents and defendant cannot be expected to produce such documents – trial court order set side and further held that signature to be compared by expert with available signatures – Civil Revision disposed with direction.

2010 (4) TLNJ 541(Civil)

R. Nagarajan and Another
vs
Naveenchander Singh and others

Civil Procedure Code 1908 as amended, Order 18, Rule 3A – Suit for declaration – Petition filed to examine seventh plaintiff after examination of two other plaintiffs and two witnesses on the said of plaintiff – allowed – on revision High Court expressed that in a case where the plaintiffs are more than one and some of them were examined as witnesses on the plaintiff's side and before the examination of other plaintiffs some other witness were examined, there is no need to apply for permission under Order 18, Rule 3A – Civil Revision Petition dismissed.

2010 (6) CTC 454

The Regional Manager, Tamil Nadu Handloom Wears's Cooperative Society Ltd., Thanjavur and others
vs
V. Natarajan

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (T.N. Act 18 of 1960), Section 10(3)(a)(iii) – Owner's occupation for non-residential purposes – Ingredients of – Landlord is entitled to order of eviction if (a) building is non-residential in character; (b) Landlord should be carrying on business on date of Application for eviction; (c) Landlord should not be occupying any building of his own; (d) claim should be bona fide.

Facts:

Owner of building sought eviction of tenant on the ground that he required it bona fide of his own occupation to run a business, and that he had the necessary experience in such business Landlord was in possession of one room in upstairs of tenanted property. Eviction order confirmed. Reference between possession and occupation stressed.

Held:

As per Section 10(3)(a)(iii) of the Act, the following ingredients are necessary to maintain the Petition for eviction:

a. building should be non-residential in character;
b. Landlord should be carrying on business on date of application of eviction;
c. Landlord should not be occupying any building belonging to him;
d. Claim should be bona fide and not found to be indirect or false attempt to evict tenant to obtain more rent or to harass tenant.

Therefore, we will have to see whether the Landlord has proved the above ingredients to sustain the order of eviction.

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (T.N. Act 18 of 1960), Section 10(3)(a)(iii) – Owner's occupation – Landlord obtained possession of one room in upstairs of tenanted property – Such act only results in getting possession – Landlord admittedly did not occupy such room – Possession cannot be equated with occupation.

It is admitted that the Respondent is the owner of the building and in the upstairs portion, he got possession, but it is not a case of the Revision Petitioners that the Respondent/Landlord has occupied that portion. As per Section 10(3)(a)(iii) only in case the Landlord or any member of his family is not occupying for his business a nonresidential building, he is entitled to evict the tenant from other premises. The fact that the Landlord is having possession cannot be equated with occupation.

In this case, it is not disputed by the Revision Petitioners that the Landlord/Respondent has occupied the upstairs portion and it is admitted by the tenants that the Landlord has not occupied the upstairs portion, but he is having the possession of the same. According to me, the possession of the premises cannot be equated to occupation and as per Section 10(3)(a)(iii), occupation is the main criteria and not the possession.

Regarding the 3rd criteria, it has been stated supra that the possession of upstairs portion cannot be equated to occupation and no proof has been adduced by the tenants that the Landlord is occupying other building of his own.

2010- 5- L.W. 878

C.S. Devakumar and others
vs
K.S. Krishnakumar and others

(Indian) Succession Act (1925), Sections 222, 276/Probate, Grant of, Section 63/Will, Attestation, Proof Genuineness, Suspicious Circumstance, What is, Propounder, Whether beneficiary, Effect of signature in the Will, Comparison by Court, whether permissible.

Evidence Act (1872), Section 68/Attesting witness, Signature by testatrix, variation in effect, Comparison by Court, Permissible, Effect of.

Ex.P2-Will, is a registered document and PW-2, one of the attesting witnesses, was examined to prove the document-PW-2 deposed that the testatrix signed the Will in his presence and also in the presence of another attesting witness – It is also in evidence that the attesting witnesses signed in the presence of the testatrix at the same time – PW-2 also deposed that the testatrix was in good health at the time of execution of the Will and that she had good eye sight.

Propounder proved that the Will was duly executed – Even if the propounder took an active role, that could not be cited against the propounder, if he is not a beneficiary, excluding the other legal-heirs – Unless it is shown that the propounder is a sole beneficiary or derives substantial benefits in-contrast to others, then only the taking part of the propounder in the due execution of the Will would be put against the propounder as a suspicious circumstance.

There is nothing wrong for the Court to compare the signatures in Ex.P2-Will and to come to its conclusion as to the genuineness of the Will.

Held:

The Will has to be proved like any other document. At least one of the attesting witnesses should be examined for proving the Will, as per Section 63 of the Indian Succession Act, read with Section 68 of the Indian Evidence Act, Further, the registration of the Will also established the genuineness of the Will. However, we will make it clear that mere registration of the Will is not sufficient to prove that the Will was duly executed. In the present appeal, Ex.P2 – Will, is a registered document and further PW-2, one of the attesting witnesses, was examined to prove the document. PW-2 categorically deposed that the testatrix signed the Will in his presence and also in the presence of another attesting witness viz., Mr. R. Kumar. It is also in evidence that the attesting witnesses signed in the presence of the testatrix at the same time. PW-2 also deposed that the testatrix was in good health at the time of execution of the Will and that she had good eye sight.

2010- 5- L.W. 897

Dr. Sundara Rajan
vs
Susana Ravi Sekar

C.P.C., Order 26, Rule 6/ Appointment of Commissioner when permissible – Plaintiff/ respondent has not filed any application for amending the plaint so as to include the prayer of recovery of possession – Plaintiff's stand in that he is in possession of the suit property and his possession is attempted to be interfered with by the revision

petitioner – There is no need to note the physical features of the suit property and there is no need to measure the suit property – Appointment of Commissioner would only facilitate the collection of evidence which is not permissible under law – Commissioner cannot be appointed on the ground that it would not cause any prejudice to other side.

2010- 5- L.W. 936

Angamuthu
vs
Saroja & 15 others

C.P.C., Order 6, Rule 17/Amendment, delay, No reasons, whether can be allowed. Suit for partition was filed by the respondents 1 to 3 – Plaintiffs filed the petition under Order 6 Rule 17 of CPC for amending the plaint to include a relief of declaration that the Gift Settlement Deed is not binding upon the plaintiffs and also certain pleadings with regard to jurisdiction and court fee.

Plaintiffs alleged that the 1st respondent filed an additional Written Statement, in which he has pleaded that his father had executed a Gift Settlement Deed in his favour, and hence the relief of declaration that the Deed is not binding upon the plaintiffs is to be incorporated in the plaint and so the amendment petition may be allowed.

In the additional written statement, a defence was raised that on 7.9.2004 itself, the plaintiffs were put on notice with regard to the above said Gift Settlement Deed, but only on 15.10.2009, after a lapse of five years, the petition was filed.

II Additional District Munsiff has allowed the application - When petition for amendment is filed after the trial is commenced in the Suit, the party who seeks to amend shall show before the Court that he could not make the amendment petition earlier to the commencement of the trial, inspite of his due diligence.

The affidavit is silent as to the exercise of due diligence by the plaintiffs to bring the amendment into the suit anterior to the commencement of the trial – Court has to record its reasons for allowing the amendment application, that inspite of exercise of due diligence by the party, who seeks amendment after the starting of the trial, he could not prefer amendment petition earlier – CRP allowed.

2010- 5- L.W. 832

Indrakumar Mahendran
vs
G.R. Pathmaraj and others

C.P.C., Order 7, Rule 11/Rejection of plaint, Cause of action, Scope,

Constitution of India, Article 227/Rejection of plaint.

"Lis" involved in the suit is as to whether the shares held by the petitioner herein are held by him in trust for and on behalf of last G or as to whether it is his individual

holding and whether there could be a decree of permanent injunction to restrain the petitioner from dealing with those shares.

Prima facie, it appears that the plaintiff has not pleaded a case of a declaration of trust or a trust deed.

Test would be as long as the claim discloses some cause of action or if it raises some questions, which is fit to be decided, even if the facts of the case reveals that the plaintiff may not succeed, is not a ground to strike down the plaint.

To decide as to whether the case of the plaintiff is correct, it is necessary that the parties should face trial – Unless the parties lead evidence this fact cannot be proved or disproved – CRP dismissed.

The application filed by the petitioner herein, who is the third defendant in the suit is for rejection of the plaint, primarily on the ground that the plaint does not disclose a case of action. Though the learned counsel for the first respondent raised a technical objection to the various contentions raised by the learned Senior counsel for the petitioner, it is seen that in both Interlocutory Applications in I.A. No. 3713 of 2000 and I.A. No. 13714 of 2000, the first respondent filed a common counter and the applications were heard together and dismissed by a common order and in the absence of any conflict of interest, in these Interlocutory Applications between the petitioner and the third respondent company, ends of justice would be met only, if the petitioner is allowed to canvass all the points.

2010- 5- L.W. 843

A. N. Mehta
vs
K. Thomas & another

C.P.C., Order 18, Rule 3-A, Tamil Nadu Buildings (Lease and Rent Control) Act (1960) / Demolition and reconstruction / Evidence by landlord, necessity, Authorisation to another person to give evidence and seeking to examine himself at a later stage, whether permissible, Scope.

Revision petitioner tenant submitted that the second respondent herein having authorized P.W.1 to give evidence on his behalf is not entitled to examine himself at a later stage and having given the power to P.W.1 to give evidence, cannot examine himself later and that is against the provisions of Order 18 Rule 3A of CPC.

Held:

Proceedings are pending before the Rent Control Court and therefore, the provisions of the Code of Civil procedure cannot be applied strictly to the rent Control Proceedings. – To give evidence regarding the means of the landlord, the second respondent herein wants to examine himself as P.W.2. – In any application for eviction on the ground of demolition and reconstruction, the landlord has to prove the means and that fact can be spoken to only by the landlord and it cannot be spoken to be third party – Lower Court has allowed the application permitting the second respondent herein to examine himself as P.W.2 – No reason to interfere.

2010- 5- L.W. 858

Kliyan and others
vs
Padmanathan and others

Motor Vehicles Act (1988), Section 164, Award passed by Lok Adalat/Review, Scope, Constitution of India, Article 227/Revision(CRP) against order passed by MAC Tribunal (Principal District Judge) in unnumbered CMA in MACTOP refusing to review the Award passed before Lok Adalat, etc., Scope.

Petitioner and the respondents / Claimants had entered into a compromise and settled the matter before the Lok Adalat and in pursuance of the same, an Award was passed – Driver who drove the vehicle at the time of accident was not having valid license and it was not noted at the time of entering into the compromise – Therefore, a review application was filed before the tribunal – Held: CRP NPD 3348 of 2010: Once the case has been referred to the Lok Adalat by the tribunal, it goes out of its file - It is a settled law that any award passed by the Lok Adalat cannot be taken on appeal – However, it has been brought to the notice of this court that a mistaken has been committed by the insurer, that it did not note the fact that the driver who drove the vehicle at the time of accident had no valid license – Tribunal ought to have referred the application to the Lok Adalat for review and disposal – Impugned order of the tribunal is liable to be interfered with.

Tribunal ought to have considered the entitlement of the revision petitioners / claimants and ordered for disbursement of compensation without furnishing any security: CRP NPD Nos.1958 to 1960 of 2010 – But, the tribunal had exceeded its limit and imposed a condition on the claimants to furnish immovable security for Rs.1,25,000/- each which is not sustainable in law.

Constitution of India, Article 227/Revision (CRP) against order passed by MAC Tribunal (Principal District Judge) in unnumbered CMA in MACTOP refusing to review the Award passed before Lok Adalat, etc., Scope – See Motor Vehicles Act (1988), Section 164 , Award passed by Lok Adalat/Review, Scope.

(2010) 4 MLJ 735

Chennai Covari Logistics, rep. by its Partner Elango and R. Muralidharan and Others
vs
S. Egyasamy, Proprietor, Salem Fuels, rep. by Powr of Attorney C.R. Thiyagarajan

Negotiable Instruments Act (26 of 1881), Section 138 – Code of Criminal Procedure, 1973 (2 of 1974), Section 313, 313(1)(b) – Section 311 – Trial Court questioning accused for second time under Section 313 Cr.P.C. after hearing arguments of both sides – No illegality in trial Court re-opening case for further examination of accused under Section 313, Cr.P.C.

FACTS IN BRIEF:

The accused, who were facing the charge under Section 138, N.I. Act, were questioned under Section 313 Cr.P.C. after the complainant had examined his witnesses. When both the prosecution and defence side arguments had been heard and the case was posted for judgment, the Magistrate posted the case for further examination of the accused under Section 313(1)(6), Cr.P.C. Revision had been filed on the ground that questioning the accused, for a second time under Section 313 Cr.P.C., after hearing both sides' arguments, is not permissible in law.

QUERY:

Whether the learned Magistrate is empowered to question the accused under Section 313 Cr.P.C. for a second time when the case is posted for judgment?

Held:

It is the duty of the trial Court to question the accused under Section 313, Cr.P.C., regarding all the incriminating materials against him thereby giving an opportunity to the accused to explain those circumstances and if (there is) any omission it would cause prejudice only to the accused.

(2010) 4 MLJ (Crl) 721

Jacob Chacko Theketala
vs
State of Tamil Nadu, represented by CBI, New Delhi, Camp at Chennai

Indian Penal Code (45 of 1860), Section 255, 258 and 420 – Code of Criminal Procedure, 1973 (2 of 1974), Section 428 – Set-off of period undergone as undertrial prisoner – Accused neither arrested nor remanded to custody in connection with present case but he is in jail in respect of another case during period of trial – Held, appellant, entitled to benefit of set-off under Section 428 Cr.P.C. only from date he produced in Court on basis of issuance of P.T. Warrant, till judgment date.

FACTS IN BRIEF:

Appellant A4 pleaded guilty of charges under Sections 255, 258 and 420, I.P.C. and was convicted and sentenced by the trial Court. An appeal was filed by him against the trial Court's judgment challenging the non-remission of the period of imprisonment, prior to the date of judgment.

QUERY:

Whether the appellant, who was not arrested by the police nor remanded to custody in connection with the present case but was in jail during the period of trial, can claim the benefit of set-off under Section 428, Cr.P.C. for the period he was in prison during the period of trial in this case?

Held:

Though the appellant was confined in prison at Pune as undertrial prisoner in respect of another case, he being not arrested in this particular case and being not remanded pending investigation, no benefit can be given to him under Section 428, Cr.P.C. But after filing the final report, the accused was produced on the basis of P.T. warrant issued by the trial Court on 23.1.2006. The accused being produced before the Court from the prison on the basis of the P.T. Warrant the trial Court ought to have remanded him to judicial custody in this case. But the Special Court had failed to do so. The accused being confined in jail throughout the trial period and being produced before the trial Court periodically, merely because he was not brought as an under trial prisoner on record for no fault, he should not be made to suffer. It should be deemed that the appellant A4 was only under trial prisoner in the present case. Therefore, the appellant must be given the benefit of Section 428 Cr.P.C., to set-off the period of detention only from 23.1.2006. The jail authorities are directed to grant set-off to the appellant A4 from 23.1.2006 to 30.1.2008.

(2010) 8 MLJ 229

Senthilnathan
vs
S. Karuppiah and Others

Code of Civil Procedure (5 of 1908), Order 23 Rule 3 and Order 20 Rule 18 – Partition suit – Compromise memo recorded – Duty cast on Court to pass decree.

FACTS IN BRIEF:

Aggrieved by the order passed by the Court below dismissing the partition suit for default after recording the compromise on the ground that no stamp papers were furnished by the plaintiff, a revision petition has been filed.

QUERY:

Whether the Court below is justified in dismissing the partition suit for default after recording the compromise?

Held:

In this case, it is seen from the order passed on 8.3.1991 that after recording the compromise, the lower Court adjourned the case for payment of Court fee for passing the final decree. It is seen from the memo of compromise, properties were allotted to the petitioner and the respondent. Therefore, there is no need to pass a preliminary decree in such situation and the Court ought to have passed the final decree on the compromise memo.

(2010) 8 MLJ 260

A. Iqbal Ahamed
vs
J. Tajmul Hussain and Others

Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960), Sections 10(20)(i), 10(3)(a)(iii) – Eviction petition – Unregistered lease deed – Can be looked into for collateral purpose.

FACTS IN BRIEF:

Aggrieved by the order passed by the Rent Controller holding that the lease deed being an unregistered one could not be marked as an exhibit in the Rent Control Petition, a civil revision petition was filed by petitioner/tenant.

QUERY:

Whether an unregistered document is admissible in evidence?

Held:

It is the case of the petitioner that under the lease deed, dated 7.1.1955, executed by the predecessors in interest of the respondents herein in favour of the father of the petitioner herein, the petition premises has been leased out for a period of 99 years and that too for no rent. To prove that contention only, the said lease deed is sought to be marked as an exhibit. Even though, an unregistered lease deed can be looked into for a collateral purpose namely to ascertain the nature and character of the possession of the party to the document, since in this case, the nature and character of the possession of the petitioner is not in dispute, but is admitted to that of a tenant, there is no need to prove the nature and character of the possession of the petitioner/tenant; for no other purpose, the unregistered lease deed, dated 7.1.1955 can be looked into.

(2010) 8 MLJ 291

Kamalambal Ammal
vs
M.S. Amruddin, rep. by his Power Agent M.A. Azeez

Specific performance – Oral agreement of sale – Question of "sufficient means" of plaintiff.

FACTS IN BRIEF:

An appeal has been filed by the plaintiff against the order passed by the trial Court dismissing the plaintiff's suit for specific performance based on an oral agreement of sale.

QUERY:

Whether the plaintiff is entitled to the equitable relief of specific performance?

Held:

When the defendant has denied the execution and existence of the alleged oral agreement, the main point falling for consideration is, whether the said oral agreement of sale is true or not. Only if the Court finds that the said oral agreement is true, the question of considering the plaintiff's means would arise. As rightly held by the trial Court, plaintiff has not established the said oral agreement on 22.2.2002. In Court's considered view, the main issue before the trial Court was the correctness of the alleged oral agreement of sale and therefore, it cannot be said that the trial Court had not gone into the question of "sufficient means" of the plaintiff.

2010 7 MLJ 919

Life Insurance Corporation of India by its Divisional Manager, Vellore and Another
Vs
A. Devaki, W/o Late Annadurai

Code of Civil Procedure (5 of 1908), Section 100 – Second Appeal – Seeking to set aside the concurrent findings of the lower courts – Second Appeal dismissed with cost.

Facts in Brief:

Life Insurance Corporation of India repudiated its contract with the insured, on the ground that the deceased-insured had suppressed in the proposal form, the fact of his suffering from chronic duodenal ulcer. The respondent filed the suit for the recovery of a sum of Rs.59,000/-, being the sum assured and interest thereon from the appellant. Lower Court decreed the Suit and First Appellate Court confirmed the same. Aggrieved by the same, the appellant has preferred as second appeal.

Queries:

1. Whether the Courts below had committed error of law in testing the validity of the contract of insurance on the basis of nexus between suppressed ailment and cause of death?

2. Whether it is true to state that K.Annadurai, the husband of the Plaintiff suppressed the fact that he was suffering from disease?

Held:

The appellant shall be perfectly justified in repudiating the contract provided it establishes the fact of suppression of material fact, which would have influenced the decision of the insurer on the question, whether to accept or reject the proposal or to claim higher rate of premium. In such an event, the repudiation of the contract by Life Insurance Corporation

of India, the appellant/defendant could not be challenged on the ground that the death was not due to the above said disease and since the nexus between the disease the death was not established, the insurer shall not be justified in repudiating the contract.

Clear and cogent evidence has been adduced on the side of the respondent/plaintiff that the deceased was not suffering from any kind of ailment and he was not treated at any time for chronic Duodenal Ulcer. The Courts below have rightly come to the conclusion that the repudiation of policy is not valid and that the appellant/defendant is bound to pay the sum assured.

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