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SUBJECT - INDEX

A.P. RIGHTS IN THE LAND AND PATTADAR PASS BOOKS ACT, 1971, Sec.9 – A.P. ASSIGNED LAND (PROHIBITION OF TRANSFER) ACT, 1977 - Petitioners filed revision petitions u/Sec.9 of the Act to 2nd respondent-Joint Collector, for correction of entries in revenue records in respect of subject lands - It was dismissed by 2nd respondent holding that subject lands are Government lands as per pahanies - Aggrieved by same, Petitioners filed present writ questioning that order and also for issuance of pass books - It was contested by 2nd respondent that subject lands were originally assigned lands and instead of filing appeal before competent authority against resumption order, petitioners have preferred revision u/Sec.9 for correction of entries in revenue records.

Held, a perusal of pahanies from years 1960-61 till 1995-96, entry in pattadar column, except for years 1960-61, names of assignees is shown and entry in possessory column, names of petitioners' vendor and his father were shown - When it comes to years 2000-01 till 2006-07, entry in pattadar column, it was shown as Government land and entry in possessory column, name of Hyderabad Metro Water Pipeline is shown - The authorities in exercise of suo motu power cannot correct revenue entries after a period of 37 years, which is not legally permissible - It is not case of respondents that entries were made fraudulently and that act of fraud necessitated correction of entries suo motu - Altering entries in pahanies at its own discretion, without issuing notice and conducting enquiry, is nothing short of taking away property

rights of party whose name is recorded - In view of above facts and circumstances, both writ petitions are allowed. **(Hyd.)** ***495***

A.P. STATE JUDICIAL SERVICE RULES, 2007 AND ANDHRA PRADESH PUBLIC EMPLOYMENT (REGULATION OF AGE OF SUPERANNUATION) ACT, 1984, Sec.3(1-A) - Administrative Committee resolved not to continue temporary services of said Judicial Officers including petitioner herein beyond age of 58 years - Accordingly committee passed a resolution and same also got approval of the Full Court - Thereafter a recommendation was made to Government and Government issued an order retiring petitioner with effect from 31-08-2015, last day of month on which he had completed 58 years of age - Aggrieved by same, Petitioner herein has come up with present writ petition - Among several grounds that petitioner has raised, he contended that as per Section 3(1-A) of A.P. Public Employment (Regulation of Age of Superannuation) Act, 1984 a person is entitled to continue in service up to age of 60 years and hence procedure prescribed by proviso to that section ought to have been followed if benefit of continuation up to 60 years was to be denied to petitioner.

Held, once it is found that petitioner was appointed only temporarily, it would follow as a corollary that he can always go back to his parent department - Once he goes back to his parent department, he is entitled as of right to continue to be in service up to the age of 60 years as stipulated unless his services were terminated for any misconduct pursuant to any disciplinary proceedings - Since High Court committed a mistake in referring to age of 58 years, Govt. fell into an error in thinking that petitioner should go home instead of repatriating him to post of Assistant Public Prosecutor and allowing him to continue in service up to normal age of retirement - Since this has not been done, petitioner is entitled to relief - Therefore, writ petition is allowed and impugned order is set aside - Government is directed to post petitioner as an Assistant Public Prosecutor and allow him to continue up to normal age of retirement of 60 years. **(Hyd.)** ***503***

CRIMINAL PROCEDURE CODE, Sec.125 (1) & 125(4) - HINDU MARRIAGE ACT, Sec.13 - Criminal revision filed by petitioner/husband against order of lower Court granting maintenance to 1st respondent-wife, Rs.4000/- p.m. and 2nd respondent-minor son, Rs.2000/- p.m.

Petitioner/husband contends in view of decree passed by Civil Court granting divorce on ground of desertion 1st respondent not entitled for maintenance and in view

of Bar u/Sec.125(4) Cr.P.C as 1st respondent as voluntarily left matrimonial house and refusing to live with petitioner.

In instant case, petitioner/husband working as Constable and is drawing salary of Rs.18,000/- p.m. and he has sufficient means - Even though marital relationship has come to end, by virtue of provisions u/Sec.125(1)(b) Cr.P.C. 1st respondent continued to enjoy status of wife of petitioner for purpose of claiming maintennce - A woman after divorce becomes a destitute and if she cannot maintain herself or remains unmarried, man who was, once, her husband continues to be under a statutory duty and obligation to provide maintenance to her.

Petitioner further contends since decree of divorce was passed on ground of desertion by respondent, she would not be entitled to maintenance for any period prior to passing or decree u/sec.13 of Hindu Marriage Act.

In above circumstances, petitioner cannot deny maintenance to 1st respondent wife on ground that there is a civil Court decree for divorce on ground of desertion - Criminal revision is liable to be set aside - However since there is a decree for divorce, petitioner is only liable to pay maintenance to 1st respondent from date of decree for divorce and petitioner is liable to pay maintenance to 2nd respondent-son as per order passed by Court below - Criminal revision, dismissed. **(Madras)** ***71***

ARBITRATION AND CONCILIATION ACT(INDIAN),1996, Sec.42 – CIVIL PROCEDURE CODE, Sec.24 - Contention was that lower court did not consider factum of respondents themselves filed O.P. for interim measure u/Sec.9 of Arbitration Act and thereby according to Sec.42 of said Act, that very same Court has jurisdiction to try all subsequent applications including proceedings challenging award passed, and that transfer of same to Additional Chief Judge, invoking Section 24 CPC by learned Chief Judge, by impugned Order is unsustainable.

Held, Chief Judge, got jurisdiction being Principal Civil Court of Original Jurisdiction under Section 2(1) (e) of Act, 1996 to entertain application u/Sec.34 r/w Sec.42 of Act does not mean he shall decide and cannot transfer as he can either retain with him to decide by himself or made over to any Additional District Judge and even once made over and assigned either to decide himself or remade over and assign by transfer to any other Additional District Judge, as not only District Judge but also the Additional

District Judges as may as they are all put together to be termed as District Court-Cum- Principal Civil Court including within meaning of Section 2(i)(e) of Act, 1996 - However, on facts as Chief Judge, is unsustainable in directing I Additional Chief Judge to try O.P. along with pending E.P. on file of Court, same is set aside to extent of joint trial/common enquiry - Consequently, learned I Additional Chief Judge by virtue of this order shall decide both matters independently and at best simultaneously if at all so to do is convenient and necessary - Hence, Revision is allowed in part. **(Hyd.) 485**

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2017 (1) L.S. (Hyd.) 485

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Dr.Justice
B. Siva Sankara Rao

Dhruv Medical Centre ..Petitioner
Vs.
Vijay Shanker Patel
& Anr., ..Respondents

INDIAN ARBITRATION AND CONCILIATION ACT, 1996, Sec.42 – CIVIL PROCEDURE CODE, Sec.24 - Contention was that lower court did not consider factum of respondents themselves filed O.P. for interim measure u/Sec.9 of Arbitration Act and thereby according to Sec.42 of said Act, that very same Court has jurisdiction to try all subsequent applications including proceedings challenging award passed, and that transfer of same to Additional Chief Judge, invoking Section 24 CPC by learned Chief Judge, by impugned Order is unsustainable.

Held, Chief Judge, got jurisdiction being Principal Civil Court of Original Jurisdiction under Section 2(1) (e) of Act, 1996 to entertain application u/Sec.34 r/w Sec.42 of Act does not mean he shall decide and cannot transfer as he can either retain with him to decide by himself or made over to any Additional District Judge and even once made over and assigned either to decide himself or remade over and assign by transfer to any other Additional District Judge, as not only District Judge but also the Additional District Judges as may as they are all put together to be termed as District Court-Cum- Principal Civil Court including within meaning of Section 2(i)(e) of Act, 1996 - However, on facts as Chief Judge, is unsustainable in directing I Additional Chief Judge to try O.P. along with pending E.P. on file of Court, same is set aside to extent of joint trial/common enquiry - Consequently, learned I Additional Chief Judge by virtue of this order shall decide both matters independently and at best simultaneously if at all so to do is convenient and necessary - Hence, Revision is allowed in part.

Mr.Sharad Sanghi, Advocate for the Petitioner.
Mr.S.S. Prasad, Advocate for the Respondents.

O R D E R

1. The revision is maintained by M/s.Dhruv Medical Center, a partnership firm with Office at Vinayak Towers near Bowenpally, Secunderabad, against Vijay Shanker Patel and his wife Smt. Sumanthi Patel. It is impugning the order of the Chief Judge, City Civil Court, Hyderabad dated 08.08.2016 passed in the Tr.O.P.No.312 of 2016 by transferring the arbitration O.P.No.2139 of 2015 pending on the file of IX Additional Chief Judge, City Civil Court, Hyderabad to the file of I Additional Chief

Judge, City Civil Court, Secunderabad, to be tried along with E.P.No.32 of 2015 pending on the file of I Additional Chief Judge, City Civil Court, Secunderabad.

2. The contentions in the grounds of revision vis-à-vis the submissions of the learned counsel for the revision petitioner supra impugning the transfer order supra are that the impugned order dated 08.08.2016 is opposed to Section 42 of the Indian Arbitration and Conciliation Act, 1996 (for short 'the Act') which speaks on jurisdiction that, notwithstanding anything contained elsewhere in this part or in any other law for the time being in force where with respect to an arbitration agreement in application under this part has been made in a Court that Court alone shall have jurisdiction over the arbitral proceedings and of subsequent applications arisen out of that agreement and arbitral proceedings shall be made in that Court and in no other Court. It is the contention therefrom that the lower Court did not consider the factum of the respondents themselves filed O.P.No.1123 of 2014 on the file of X Additional Chief Judge, City Civil Court, Hyderabad, for interim measure under Section 9 of the Act. Thereby according to Section 42 of the Act supra that very same Court (X Additional Chief Judge, CCC, Hyderabad) alone shall have jurisdiction to try all subsequent applications including the proceedings challenging the award passed, invoking Section 34 of the Act which is the present arbitration O.P. pending as 2139/2015 before that Court and transfer of the same to the I Additional Chief Judge, CCC, Secunderabad invoking Section 24 CPC by the learned Chief Judge, CCC, Hyderabad, by the impugned order dated 08.08.2016 in Tr.O.P.No.312 of 2016 is unsustainable which is nothing but assumed jurisdiction not provided and further that Court is no way subordinate to the Chief Judge, City Civil Court, but for at equal footing and lower Court also not considered the same in proper prospective so also of the Constitution Bench expression in Bharat Aluminium Company Vs. Kaiser Aluminium Technical Services Inc. (2012) 9 SCC 552) in relation to territorial jurisdiction on arbitration case holding that both the Courts where the arbitration Tribunal has passed the award and the Courts where the property is situated shall have jurisdiction to try the application under Section 34 of the Act and it is for the petitioner to file Section 34 application in O.P.No.2139 of 2015 to choose any of the 2 places and it is left open to the Chief Judge to transfer the same despite opposed. It is also the contention that the learned Chief Judge did not appreciate of no provision in the Act for transfer of the proceedings arisen out of the Act to another Court to try along with the proceedings which are not arisen out of the Act, but under the provisions of the general law including from reading of Section 19 of the Act that it is only in the event of 2 proceedings arisen out of the Act if pending before 2 different Courts, the same can be tried by one Court to avoid conflict in decisions and multiplicity. The learned Chief Judge also did not properly consider there is nothing to adjudicate in the E.P.No.32 of 2015 the lis covered by arbitration O.P.No.2139 of 2015 under Section 34 of the Act, for transfer despite opposed, that too prejudice to the revision petitioner. In the event of O.P.No.2139 of

2015 by virtue of the transfer decided by the I Additional Chief Judge, CCC, Secunderabad, the same will be without jurisdiction and orders passed being nullity and the expressions of the Apex Court Constitution Bench in Kiransingh v. Chaman Paswan (AIR 1954 SC 340) at Para 7 supports to the same and thereby, the impugned order is liable to be set aside by allowing the revision.

3. Whereas the learned counsel for the respondents submits that impugned order no way requires interference, the transfer is not a bar by invoking Section 24 CPC and Additional Chief Judge so far as the transfer concerned within the jurisdiction of Chief Judge who got right to made over and withdraw the matter made over including on administration grounds or on request of the parties, thereby the revision is liable to be dismissed and several contentions raised have no locus to stand.

4. Heard both sides and perused the material on record.

5. Section 2(1)(e) of the Act defines that, Court means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes. As per Section 19 of the Act the arbitral Tribunal shall not be bound by the code of CPC or the Indian Evidence Act. Subject to this part, the parties are free to agree on the procedure to be followed by the arbitral Tribunal in conducting its proceedings. Failing any agreement referred to Sub Section (2) supra the arbitral Tribunal may, subject to this part, conduct the proceedings in the manner it considers appropriate. The power of the arbitration Tribunal under Sub Section 3 supra includes the power to determine the admissibility, relevancy, materiality and weight of any evidence. The Apex Court in M/S. Indtel Technical Services Vs. W.S. Atkins Plc (2008 (10) SCC 308) held where arbitration agreement is silent as to law and procedure followed in implementing it, the law governing such agreement would ordinarily be the same as governing the contract itself. Section 34 of the Act says recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub Sections 2 and 3. Sub Section 4 says on receipt of application under sub Section (1) supra the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral Tribunal any opportunity to resume the arbitral proceedings or to take such other action as in the opinion of the arbitral Tribunal will eliminate the grounds by setting aside the arbitral award.

6. Here Court as defined in Section 2(1)(e) of the Act is the Principal Civil Court of original jurisdiction in a District which is obviously the District Court which is envisaged by Section 2 (4) CPC and clause (17) of Section 3 of the General Clauses Act. Section 2 (4) CPC which defines district mean the local limits of the jurisdiction of

a principal civil Court of original jurisdiction (hereinafter called a district Court), and includes the local limits of the ordinary original civil jurisdiction of High Court. As per Section 3 CPC which deals subordination of Courts for the purpose of code that District Court is subordinate to High Court and every civil Court of grade inferior of a civil Court and every Court of small causes is subordinate to the High Court and District Court. Section 4(1) CPC which is the saving provision says in the absence of any specific provision to the contrary, nothing in this code shall be deemed to limit or otherwise effect any special or local law now in force or any special jurisdiction to confer, or any special forum of procedure prescribed, by or under or in any other law for the time being in force. As per Section 15 CPC every suit shall be instituted in the Court of the lowest grade competent to try it. As per Section 22 CPC on the power to transfer where suit may be instituted in more than one Court, any defendant after notice to the other parties may at the earliest opportunity apply to have the suit transferred to another Court and the Court to which such application is made, after considering the objections of the other parties if any shall determine in which of the several Courts having jurisdiction, the suit shall proceed.

7 7. As per Section 24 CPC it is the general power of transfer and withdrawal, which reads as follows:

> "24. General power of transfer and withdrawal—
>
> (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—
>
> (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or
>
> (b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and—
>
> (i) try or dispose of the same; or
>
> (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn
>
> (2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of any order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.
>
> (3) For the purposes of this section,—
>
> (a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court; (b)

"proceeding" includes a proceeding for the execution of a decree or order.]

(4) the Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it."

8. In this regard this Court in Gurram Veeranna Vs. Gorrela Ramanna (1969 (2) ALT 346) from the practical view point and the practice in voyage observed that made over and withdrawal made by the Court are different from the power of transfer under Section 24 CPC. Regarding the scope of Section 24 CPC on the issue as to whether the Additional District Judge is subordinate to the Principal District Judge for transfer of the case as per Section 3 read with Section 24 CPC, in Manchukonda Venkata Jagannadham Vs. Chettipalli Bullamma and Others (2011 (3) ALD 354), learned single Judge of this Court observed that the general power of transfer and withdrawal vested in District Court cannot be exercised in respect of a matter pending in Court of Additional District Judge for Additional District Judge is not subordinate Court to District Judge and the phrase Additional Judge contained in Section 24 (3)(a) CPC cannot be construed as Additional District Judge and for such transfer, transfer application to be filed in High Court and not before the Principal District Judge to transfer any matter from Additional District Judge Court and for that referred also Sections 2 and 11(2) of the Civil Courts Act. Section 2 (a) defines Court means a civil Court established or deemed to be established under this Act and as per Sections 10 and 11, the Government in consultation with High Court by notification established such number of district Courts as may be deemed necessary and appoint District Judge for each District. As per Section 11(1) where in the event of the High Court the state of business pending in a district Court so requires the Government may after consultation with the High Court appoint one or more Additional District Judges to the District Court for such period as may be deem necessary. As per Section 11(2) an Additional District Judge was appointed shall perform all or any of the functions of the District Judge under this Act or any other law which the District Judge may assign to him and the performance of these functions same powers as the District Judge. From the above, the District Judge and Additional District Judge form part of only district Court and there for each there is only one District Judge, Additional District Judges along with Principal District Judge function under the district Court and even for statistical purpose Additional District Court is constituted for functioning of the Additional District Judge, it is only the District court which consists of Principal District Judge and Additional District Judges from the definition and the functions of the Additional District Judge is the work assigned to him by the Principal District Judge and all put together is only one district Court.

9. It is within this power the Principal District Judge may confer power on any Additional District Judge within the district to exercise the functions of the Principal District Judge. Once such power is conferred for that area so far as filing and disposal including transfer of cases concerned that

Additional District Judge conferred with the powers of District Judge as per Sections 10 and 11 shall be called as Principal District Judge for all purpose since power is already delegated to say even from there is concurrent jurisdiction to entertain transfer applications and once the Principal District Judge delegated to the part of the district by conferring the power. Generally wisdom of Principal District Judge not to entertain not only the filing of original petitions and other matters to exercise the power as a Principal District Judge by the Additional District Judge from the power conferred but also any transfer application. As once the power conferred unless it is cancelled the power cannot be set at naught by intruding into it by District Judge out of his judicial wisdom.

10. From this coming back to the expression Manchukonda supra it is observed that as per the said definitions contained in Sections 10 and 11 of A.P. Civil Courts Act, 1972 read with Section 24 CPC once there is one District Court and within the district Court besides the Principal District Judge there may be more than one Additional District Judges they perform same functions for the Additional District Judges to function those assigned by Principal District Judge which is the power of the distribution of the work and said power is different from power under Section 24 CPC for withdrawal and transfer and when power can be exercised by the district court only in case of matter pending before subordinate court since Additional District Judge is not subordinate to the Principal District Judge, Principal District Judge has no power to withdraw a case from the Additional District Judge and transfer to some other Court, in Section 24 CPC the word is used not the District Judge, but District Court. For that conclusion relied upon the expression in Western India Match Co. Limited Vs. Haji Abbas Hussain Mullah Eshan Ali (1961(2) An.W.R 255) holding the Chief Judge and Additional Chief Judge of City Civil Court are the Courts of coordinate jurisdiction and a division bench of this Court in New Jaji Labour Society, Vijayawada Vs. Haji Abdul Rahaman Saheb (1992 (1) An.W.R 220 (DB) upholding making over of a case or proceedings under A.P. Land Grabbing (Prohibition) Act by the principal District Judge to the Additional District Judge referring to Section 11(2) of the AP Civil Courts Act which provides for making over and assigning of Principal District Judge to Additional District Judge for deciding. Another Bench earlier to it of this Court in S. Srinivasa Rao Vs. High Court of A.P. (1988 (2) ALT 586) in relation to Section 20 of the AP Buildings (Lease, Rent and Eviction) Control, 1960, observed that Chief Judge, City Small Causes Court, Hyderabad, either can try or assign to any Additional Chief Judge, City Small Causes, Hyderabad, as per Sections 5 and 6 of A.P. Civil Courts Act (equal to Sections 10 and 11). In Kvaerner Cementation India Limited Vs. Bharat Heavy Plate and Vessels Limited (2001 (6) ALD 272) it was held by another single Bench of this Court in relation to Section 34 of the Act 1996 that application for setting aside the award under Section 34 of the Act filed before the Principal District Judge can be validly assigned to any Additional District Judge from the reading of provision with reference to Section 11 of the A.P. Civil Courts Act as District Judge got the power to make over or assign the case instituted before him to the additional district judge. In Prabhakar Rao H. Mawle Vs. Hyderabad State Bank (1963 (1) An.W.R 182) a Division Bench of this Court categorically held that the Chief Judge and

Additional Chief Judges of City Civil Court are not subordinate Courts but all constitute the City Civil Court.

11. From the above as also referred supra from the expression in Gurram Veeranna supra, the District Court can assign or make over any case to any additional district Judge rather trying by Principal District Judge of the district Court and the assigning includes withdrawal and make over to another district Judge on the administrative grounds which are not be considered as transfer under Section 24 CPC since transfer is different to make over, assigning and withdrawal.

12. From this coming to another single Judge expression of this Court in T. Niranjan Vs. Sri Ch. Ramesh Chander Reddy (MANU/AP/0979/2012) contra to Manchukonda supra referring to it and it is in relation to transfer a case filed before the Chief Judge, City Civil Court, made over to II Additional Chief Judge, back to the Chief Judge from connected cases pending before the Chief Judge the issue arisen there it is observed referring to Section 24 CPC that Senior Civil Judges and Junior Civil Judges are no doubt subordinate to the District Judge and District Court is subordinate to the High Court. The District Court at any stage can transfer any suit, appeal or other or other proceeding before it for trial and disposal to any Court subordinate to it and competent to try or dispose of the same or withdraw any suit, appeal or other proceeding in any Court subordinate to it and there is no need to mention additional or assistant judges are subordinate to the district judge and the Punjab High Court in Obrien, M.W. Vs. Haji Abdul Rahman (1913 Indian Cases (6) in a civil revision of 1911 observed referring to Section 24 (3) CPC of 1908 that district Judge got power to transfer a case to the Court of Additional District Judge and negated the plea of the decree passed by the additional district judge is a nullity from district Judge has no jurisdiction to transfer.

13. From these 2 expressions one is contra to the other, reference is made to the Division Bench of this Court in Tadikonda Surya Venkata Satyanarayana Murthy Vs. Tammana Seethamahalakshmi and Others (2016 (5) ALD 482 (DB), which answered the reference saying as per Section 2(4) CPC district means the local limits of the jurisdiction of the principal civil court of original jurisdiction. Therefore the expression district court also denotes the principal civil court of original jurisdiction of a district and all other civil courts of original jurisdiction even if presided over by officers of the very same rank and status will not be treated as district Courts and they do not happen to the Principal Civil Court of the district. The expression judge defined in Section 2(8) CPC to mean presiding officer of the civil Court and need not be presiding officer of the principal civil Court of original jurisdiction. Section 2(1) provides general power of transfer and withdrawal to the principal civil Court of original jurisdiction to a District and to High Court the emphasis in clause (a) of sub Section 3 of Section 24 CPC is not simple on additional Judges and assistant Judges, but is actual on Courts of Additional and Assistant Judges vis-à-vis District Court. This important aspect has not been taken note of in Manchukonda supra the fact that Principal District Judge cannot sit in judgment or appeal against the judgment of the Additional District Judge is not a ground to hold that Principal District Judge would not even got power to transfer a case

pending on the file of one Additional Judge to another. The transfer is not a judgment as held by the Apex Court in Asrumati Debi Kumar Vs. Rupendra Deb Raikot (AIR 1953 SC 198) that was followed by Division Bench of the Madras High Court and also a Full Bench of A.P. High Court in M.Subbarayudu Vs. The State (AIR 1955 AP 87). Thus Principal District Judge has power to withdraw a suit, appeal or other proceeding pending on the file of one Additional District Judge and transfer to other Additional District Judge.

14. From the above it is not only made over and assigning of work, but also the power to withdraw and remade over or reassign to another Court by transfer. The Principal District Judge of the Principal District Court can do transfer from Additional District Judge to another Additional District Judge of the same district court. Here district Court is one though District Judges including the Principal District Judge or more than one. The word Principal Civil Court of original jurisdiction used in Section 2(e) reference to the Court and not to the judge. Thus any Principal or Additional District Judge from the Principal District Judge made over or withdrawn or made over to another can decide of statute including any of them from such power as Principal Court of original jurisdiction.

15. From this even the expression in Managing Director, Sundaram Finance Limited, Madras and Another Vs. G.S. Nandakumar (2001 (4) ALD 660) referred under Sections 8 and 9 read with Section 2(1)(e) of the Act 1996 what all says is only the District Court that is competent to pass the interim orders and not for interim protection and there is nothing to say it is only the Principal District Judge alone and not the Additional District Judge much less Principal District Judge cannot made over or withdraw or transfer. In fact Section 3(17) of the General Clauses Act which defines a District Judge to mean a Judge of a Principal Civil Court of original jurisdiction, but shall not include a High Court in exercise of ordinary or extra ordinary jurisdiction. If it is to be read with Section 2(4) CPC and Sections 5 and 6=10 and 11 of A.P. Civil Courts Act and Section 2(1)(e) of the Act, 1996, it is clear that it is the district Court which is single even there are Principal District Judge and Additional District Judges which all form part of the Principal Civil Court of original jurisdiction and any decision rendered by any of them is the same from the Principal District Judge or from the power conferred by the Principal District Judge on Additional District Judge to exercise the original jurisdiction. Once entertained and made over or withdrawn or transfer to another Additional District Judge same decided by the Additional District Judge is within the meaning of decision of District Court to say principal Court of original jurisdiction of the district which is meaning of the Court and that is also the meaning that can be seen from Section 2(c) of the old Arbitration Act 1940. The expression of the Allahabad High Court I.T.I. Limited Vs. District Judge, Allahabad and Others (AIR 1988 All 313) even was considered and answered in Sunder Finance Limited supra to that conclusion and no more requires any further discussion thereon in this regard.

16. In L.K. Phanesh Babu and Another Vs. Mohd. Akbar and Another (2003 (1) ALD 778) it was held that High Court even in exercise of powers under Section 24 CPC cannot order transfer of rent control case under Act 1996 to a Civil Court from

the Rent Controller in the absence of a new provision in the Rent Control Act. It is no doubt to say the learned Chief Judge should not have been transferred the arbitration matter to try along with regular civil Court under execution. Coming to the other expression of Dr. Reddy's Laboratories Vs. Pulletikurthi Varaha Chandra (2004 (4) ALD 719) it is observed as a general principle under Section 24 CPC of the exercise of the power of transfer that, it is not as a matter of course or routine for mere asking but if there exists any similarity of cause of actions and commonality of parties or reliefs claimed in one matter to the other for withdrawal from one court and transfer to the other Court where the other matter is pending for common trial and disposal.

17. Coming to the other expression on the general power of transfer in J.S. Ravichandra Vs. Statistical Analysis and Research Bureau, Chennai (2000 (1) ALD 277) it is held that transfer of consumer dispute pending before the District Consumer Forum to a civil Court is impermissible for no enabling provision in saying the Consumer District Forum is not subordinate to the District Court either what is further observed of Consumer District Forums are not subordinate to the High Court is not the right conclusion from subsequent expressions of those are subordinate to the High Court and within the supervisory jurisdiction of High Court to entertain a writ petition or revision petition against the orders passed, but for to say if there is a machinery provided under the provisions of that Act writ petition is substituted without availing that remedy to invoke as a matter of course.

18. Coming to the other Division Bench expression in Dr. V. Rajeshwar Rao Vs. M. Yadagiri Reddy and Others (2007 (2) ALD 17 (DB) it is in relation to A.P. Land Grabbing Prohibition Act, Section 8 on competency of special Courts to direct transfer of suit pending in civil Court for adjudication in holding although special Court have all the trappings of a regular civil Court, it cannot invoke to Section 24 CPC to direct transfer as District Court under Section 24 CPC cannot even withdraw a suit pending before any subordinate Court and direct transfer to the special Court under the Act since jurisdiction of district Court and special Court are mutually exclusive.

19. Coming to the three Judge bench expression of the Supreme Court in State of West Bengal and Others Vs. Associated Contractors (2015 (1) SCC 32) under the Arbitration Act, 1996 referring to Sections 2(1)(e), 8, 11, 9, 34 and 42 of the Act and it was held that when High Court within the original jurisdiction granted permission under clause (12) of the LPA in respect of arbitration agreement entertained the proceeding and granted ad interim exparte injunction under Section 9 of the Act before commencement of arbitral proceedings and subsequent award passed and the award challenged, which was when questioned under Article 227 of the Constitution before the High Court on the ground of jurisdiction of district Court is excluded before Principal Civil Court of District say when original proceeding filed before the High Court, Sections 34 r/w 42 proceedings should also be filed before the High Court and not before the District Court. 20) This decision though says as per Section 2 (i) (e) of the Act, the competent Court is the Principal Civil Court or a High Court exercising original jurisdiction and no other Court, it no where says, Principal Civil Court to mean only the Principal District Judge.

It even no where says where Section 9 proceedings filed before the District Court made over to Additional District Judge, Sections 34 and 42 proceedings under the Act can be said to be filed before said Additional District Judge alone, for the reason High Court consists of several Benches and all put together is the High Court and District Court consists of several District Judges and all put together is the District Court. What the provision says is, if filed before one District Court, has to be filed before that District Court and not before another District Court or High Court or vice-versa as the case may be.

21. Coming to the constitution Bench of the Apex Court placed reliance in Bharat Aluminium Company (supra) what it is held mentioned in the grounds of revision clause (3) no way requires repetition however that expression is not saying an arbitration proceeding interim measure of principal arbitral proceedings taken from a District Court and subsequent from the award passed challenged under Section 34 filed before the same Court cannot be made over by the Principal District Judge of the district Court to another District Judge of the District Court. In Pottabathuni Srikanth vs Sreeram City Union Finance Limited (2015 (6) ALD 629 (DB), it was held in relation to execution of arbitration award as per Section 36 r/w Section 2 (i) (e) of the Act, that execution application must be filed in Principal Civil Court. It did not say as only before Principal District Judge and he shall not even made over to any additional District Judge.

23. The application of the provisions of C.P.C in Section 24 C.P.C Orders 38, 39 C.P.C nowhere in dispute. The Division Bench expression of this Court in M/s.ICICI Bank Limited vs M/s.IVRC Limited (2015 (6) ALD 486) can be said to be one of the authorities on it.

24. Thus, the Principal District Judge who is herein the Chief Judge, City Civil Court, Hyderabad, is within the meaning of the Principal Civil Court of original jurisdiction under Section 2(1)(e) of the Act, 1996 got jurisdiction to entertain the application impugning the award under Section 34 of the Act either to decide by him or to make over to another Chief Judge to mean any Additional Chief Judge of the City Civil Court within the City Civil Court's jurisdiction. However the fact remains that there are no grounds in the case on hand to transfer the Section 34 arbitration O.P. proceedings covered by O.P.No.2139 of 2015 from the file of X Additional Chief Judge, City Civil Court, Hyderabad to the file of I Additional Chief Judge, City Civil Court, Secunderabad, where E.P.No.32 of 2015 is pending to decide with the same by clubbing for the issues involved in both matters are not one and the same and the scope of lis therein respectively is also different. Thereby the interim order passed by this Court on 02.11.2016 having heard the matter and reserved for orders pending disposal authorizing the I Additional Chief Judge, CCC, Secunderabad not to club the matters but for at best to decide independently and simultaneously holds good.

25. Accordingly and in the result, the revision is allowed in part while holding that the Chief Judge, CCC, Hyderabad got jurisdiction being the Principal Civil Court of original jurisdiction under Section 2(1)(e) of the Act, 1996 to entertain the application under Section 34 r/w Section 42 of the Act does not mean he shall decide and cannot made over or transfer as he can either to retain with him to decide by himself or

made over to any Additional District Judge and even once made over and assigned either to any Additional District Judge, got power to withdraw and either to decide himself or remade over and assign by transfer to any other Additional District Judge, as not only the District Judge (which term include Chief Judge) but also the Additional District Judges as may as they are all put together to be termed as District Court-cum-Principal Civil Court including within the meaning of Section 2 (i) (e) of the Act, 1996. However, on facts as the Chief Judge, City Civil court, Hyderabad is unsustainable in directing the I Additional Chief Judge to try the O.P.No.2139 of 2015 along with the pending E.P.No.32 of 2015 on the file of that Court, same is set-aside to the extent of joint trial/ common enquiry. Consequently the learned I Additional Chief Judge by virtue of this order shall decide both the matters independently and at best simultaneously if at all so to do is convenient and necessary.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

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2017 (1) L.S. (Hyd.) 495

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
A. Rajasheker Reddy

Smt.Chavali Anilaja & Ors., ..Petitioners

Vs.

The District Collector,
R.R. District & Ors., ..Respondents

A.P. RIGHTS IN THE LAND AND PATTADAR PASS BOOKS ACT, 1971, Sec.9 – A.P. ASSIGNED LAND (PROHIBITION OF TRANSFER) ACT, 1977 - Petitioners filed revision petitions u/Sec.9 of the Act to 2nd respondent-Joint Collector, for correction of entries in revenue records in respect of subject lands - It was dismissed by 2nd respondent holding that subject lands are Government lands as per pahanies - Aggrieved by same, Petitioners filed present writ questioning that order and also for issuance of pass books - It was contested by 2nd respondent that subject lands were originally assigned lands and instead of filing appeal before competent authority against resumption order, petitioners have preferred revision u/Sec.9 for correction of entries in revenue records.

Held, a perusal of pahanies from years 1960-61 till 1995-96, entry

in pattadar column, except for years 1960-61, names of assignees is shown and entry in possessory column, names of petitioners' vendor and his father were shown - When it comes to years 2000-01 till 2006-07, entry in pattadar column, it was shown as Government land and entry in possessory column, name of Hyderabad Metro Water Pipeline is shown - The authorities in exercise of suo motu power cannot correct revenue entries after a period of 37 years, which is not legally permissible - It is not case of respondents that entries were made fraudulently and that act of fraud necessitated correction of entries suo motu - Altering entries in pahanies at its own discretion, without issuing notice and conducting enquiry, is nothing short of taking away property rights of party whose name is recorded - In view of above facts and circumstances, both writ petitions are allowed.

Mr.D. Vathsalendra, Advocate for the Petitioners.
G.P. for Revenue (TS) R1 to R4.
Mr.Darsi Ranganath Kumar, Advocate for the Respondent 6.

C O M M O N O R D E R

Writ Petition No.21088 of 2012 is filed questioning the order dated 08-02-2002 whereby the lands of the petitioners in Sy.No.176/2, 176/3 & 176/4 of Azeeznagar Village, Moinabad Mandal, Ranga Reddy District, are sought to be resumed. Writ Petition No.2649 of 2010 is filed assailing the order dated 20-11-2009 passed by the 4th respondent-Tahsildar, Moinabad Mandal, refusing to correct the entries in the revenue records and record the names of the petitioners as pattedars in respect of the subject lands in question.

2. Inasmuch as the subject matter is connected in both the writ petitions and the parties are one and the same, they are heard together and being disposed of by way of this common order. It would suffice to advert to the facts in WP No.2649 of 2010.

3. Facts stated are:-Lands in Sy.No.176/2, 3 and 4, situated at Aziznagar Village, Moinabad Mandal, Ranga Reddy District belongs to Abdul Hussaini and Mohd. Khaja and their names have been recorded in the revenue records and reflected in pahanies till the year 1966. Thereafter, the said lands were sold to different persons by them through registered sale deeds. P. Ramachander Rao claimed title to the subject lands based on a registered document dated 25-02-1967 and he in turn sold to one B. Dharma Rao, who is father of three sons and after the demise of B. Dharma Rao, his three sons, among themselves executed GPA in favour of one of them to deal with the subject lands i.e. B. Krishna Sagar, from whom the 1st petitioner purchased an extent of Ac.1-00 under a registered sale deed No.82/96, dated 04-01-1996, 2nd petitioner purchased an extent of Ac.2-00 under a registered sale deed No.3815/97, dated 03-06-1997 and 3rd petitioner purchased an extent of Ac.0-20 hectares under a registered sale deed No.8408/97, dated 05-12-1997 respectively, which are part of Sy.No.176/2, 3 and 4

situated at Aziznagar Village, Grampanchayat, Moinabad Mandal, Ranga Reddy District. That since the date of purchase, petitioners are in possession of the respective lands without any interference. Subsequently, the petitioners made several requests for entering their names in revenue records and also for issuance of patta pass books in their favour. That when the petitioners came to know about suspicious discrepancies in the revenue records and also the Government claiming right over the subject land from the year 2001 as Government land, they preferred revision petitions under Section 9 of the Andhra Pradesh Rights in the Land and Pattadar Pass Books Act, 1971, to the 2nd respondent-Joint Collector, Ranga Reddy District, for correction of entries in revenue records for the years 2001 to 2007 in respect of the subject lands. The said revision was dismissed by the 2nd respondent vide proceedings in Case No.D1/7791/2008, dated 20-11-2009 holding that pahanies from the years 1955-56 till 2006-07 showed the classification of subject lands either as Kharij Khata or Laoni Patta and thus subject lands are Government lands. Aggrieved by the same, petitioners filed writ petition, being WP No.2649 of 2010 questioning the order dated 20-11-2009 as being illegal, arbitrary and contrary to the principles of natural justice and for consequential direction for making entries of their names in revenue records and also for issuance of patta pass books in their favour.

4. In the counter affidavit filed by 2nd respondent-Joint Collector, Ranga Reddy District, it is their case that originally the land in Sy.No.176 admeasuring Acs.220-37 guntas situated at Azeeznagar Village of Moinabad Mandal is Government Land, classified as 'Gairan Sarkari' and as per the faisal patti for the year 1961-62, there were 53 landless poor persons, who were cultivating the land in the said Sy.No.176 un-authorizedly, without any valid certification and authorization and under those circumstances, the then Tahsildar, Hyderabad West Taluk, considering their possession over the lands, granted laoni pattas in the year 1961 to all the 53 persons under the Laoni Rules, 1950, which were repealed by uniform revised assignment policy issued in GO Ms.No.1406, dated 25-07-1958. After allotting the laoni pattas to the 53 persons in respect of the land in Sy.176, the same was sub-divided into more than 50 parts. Out of the 53 persons, land in Sy.No.176/2 (Acs.2-23 guntas), 176/3 (Acs.2-02 guntas) and 176/4 (Ac.2-33 guntas) was assigned to Abdul Hussain, Mohd. Khaja and Pasha Miyan in the year 1960-61 and their names reflected in the pahanies for the years 1975-76. But the original assignees have sold the assigned lands in contravention of the provisions of the AP Assigned Land (Prohibition of Transfer) Act, 1977 (for short, 'the Act'). Having noticed this, the 4th respondent-Mandal Revenue Officer (Tahsildar) initiated action under the provisions of the Act and resumed the subject lands vide proceedings No.B/1250/01, dated 08-02-2002 and handed over the subject lands to the 6th respondent-Deccan Infrastructure Holdings, which is a subsidiary of 5th respondent-AP Housing Board, on 10-04-2007 along with the other resumed lands and since then the subject lands are under the custody of the 6th respondent. That instead of filing appeal

before the competent authority against the resumption order dated 08-02-2002, which is subject matter in WP No.2649 of 2012, the petitioners have preferred revision under Section 9 of the Act for correction of entries in revenue records. That after perusing the records, revision filed by the petitioners was dismissed vide proceedings dated 20-11-2009, which is subject matter in WP No.2649 of 2010.

5. Counter affidavit of the 6th respondent is to the effect that it is a subsidiary unit of 5th respondent created under Section 21-A of the AP Housing Board Act, 1956, and incorporated as a Company under the Companies Act, 1956, pursuant to the permission granted by the Government vide G.O.Ms.No.42, Housing (HB.1) Department, dated 27-10-2006. That the subject lands were initially allotted to the AP Housing Board along with other lands by the Government on payment of market value vide GO Ms.No.1559, dated 19-12-2007 and the 5th respondent-AP Housing Board, in turn transferred it to the 6th respondent towards its equity share. As such, the 6th respondent is the lawful owner and possessor of the subject lands. Hence, the writ petitions are liable to be dismissed.

6. Heard Smt. D.Vathsalendra, learned counsel for petitioners, learned Government Pleader for Revenue (TS) for respondents 1 to 4, Sri C.Buchi Reddy, learned Standing Counsel for respondent no.5 and Sri Darsi Ranganath Kumar, learned Counsel for respondent no.6.

7. Learned counsel for the petitioners strenuously contended that the action of the 2nd respondent refusing to entertain revision to correct the names of the petitioners in the revenue records is illegal, non-exercise of jurisdiction, when admittedly the petitioners purchased the subject lands in the years 1996-97 under registered documents from one of the sons of B. Dharma Rao (i.e. B. Krishna Sagar) being the GPA holder, and the names of the petitioners' vendor and his father are shown in the pahanies from the years 1975-76 till 1995-96. It is stated that part of the subject land was acquired by the Government to lay pipe line and the compensation paid to the vendor of the petitioners and at that time no claim was made that it is a Government land, but surprisingly from the year 2001, the respondents claiming it as a government land. It is also contended that the resumption order dated 08-02-2002 is bad in law and unsustainable as no enquiry was conducted nor any opportunity given to the rightful owners muchless to the petitioners and no procedure worth naming is followed before passing the order of resumption of the subject lands. It is further contended that resumption of lands is not permissible after this long length of time and the authorities cannot unsettle the settled things. It is also contended that there was no condition imposed as to non-alienation in the original assignment made to the landless poor persons and therefore resumption order passed on the ground of violation of conditions of assignment cannot stand to the test of reason besides violation of principles of natural justice. It is contended that when the Government has no title to the subject lands, transfer of subject lands in favour of the 6th respondent does not

arise and any such transfer is not valid in the eye of law.

8. On the other hand, learned Assistant Government Pleader for Revenue contended that the lands in Sy.No.176 being 'gairan sarkari' lands, the subject lands, which is part of land in Sy.No.176, were assigned to 54 beneficiaries being landless poor persons by way of Laoni pattas in the year 1960-61 and Abdul Hussain, Mohd. Khaja and Pasha Miyan were amongst the 54 beneficiaries, who in turn sold the subject lands to various persons in contravention of the non-alienation clause mentioned in the pattas. It is further contended that as the beneficiaries have sold the subject lands in contravention of the provisions of the Act of 1977, the 4th respondent-MRO (Tahsildar), Moinabad Mandal, after causing enquiry, issued proceedings dated 08-02-2002 resuming the lands to the Government and subsequently handed over to 5th respondent-AP Housing Board on 10-04-2007, after following due procedure. It is also contended that petitioners have remedy of filing appeal against the order dated 08-02-2002 of 4th respondent, but the petitioners filed revision under Section 9 of the Act of 1977 for correction of entries in revenue records, which was ultimately dismissed by the 2nd respondent after considering the records. It is also contended that when once the transfer of subject lands itself is not permissible in law, the subsequent transfer of lands in favour of the petitioners is not valid and is void transfer, and as such the petitioners cannot claim any right or interest over the subject lands based on such transfer.

9. Learned standing counsel for the 5th respondent and the learned counsel for the 6th respondent made submissions on the lines of the submission made by learned Asst. Government Pleader for Revenue.

10. Now the short point that arises for consideration is whether the action of the revenue authorities resuming the subject lands at this length of time on the ground of violation of non-alienation condition, by the assignees is sustainable in law.

11. Tracing the genealogy of the matter, land in Sy.No.176 admeasuring Acs.220-37 guntas situated at Azeeznagar Village of Moinabad Mandal is stated to be Government land, classified as 'gairan sarkari' which means barren Government land. The Faisal patti for the year 1961-62 showed that landless poor persons, identified 52 in numbers were cultivating the lands and by virtue of shivaijama (tax deposit) for cultivating the lands and were in possession of the lands, the then Tahsildar, Hyderabad West Taluk, granted Laoni pattas to them in the year 1961 under the Laoni Rules, 1950. The fact remains the assignees of the subject lands in the above said Sy.No.176 were granted pattas under the Laoni Rules, 1950, even according to impugned order dated 08-02-2002 in proceedings no.B/1250/2001 in WP No.21088 of 2002 and permissions were given for alienation under Section 47 and 48 of the AP (TA) Tenancy and Agricultural Lands Act, 1950, pursuant thereto several transactions took place. It is the case of learned counsel for the petitioners that there was no such non-alienation clause in the laoni patta of the assignees from whom the title eventually flown to the petitioners. Whereas it is the case of learned Asst. Government Pleader for Revenue that even the pattas under the Laoni Rules, 1950, could not have been granted, for the reason, as on that date, issuance of the pattas to

the landless poor persons, assignment of land was governed by the uniform revised assignment policy formulated vide GO Ms.No.1406, dated 25-07-1958 and in view of the said policy, the lands assigned to the landless poor person cannot be alienated to any third parties and on proof of any such violation, the State has power to resume the lands. The revenue records and counter of respondent no.2 also shows that the subject land as Laoni patta as such the contention of learned Asst. Government Pleader cannot hold good. The assignment granted under the Loani Rules does not prohibit alienation.

12. In fact, AP Assigned Lands (Prohibition of Transfers) Act, 1977, not applicable to the assignment made in 1961 under the Laoni Rules, as there was no condition of non-alienation in order of assignment. Issuance of a show cause notice, should not be an empty ritual. It should provide a reasonable and fair opportunity to recipient of show cause notice to defend his title and possession of valuable right to property. Facts gathered by the respondents without the petitioners' knowledge, who is in possession of the property, behind his back and without giving an opportunity to deny or rebut the factual assertion, vitiates the proceedings. (see JOINT COLLECTOR, RANGA REDDY DISTRICT vs. P. HARINATH REDDY, (2009 (4) ALT 1 (DB) & DASARI NARAYANA RAO vs. DEPUTY COLLECTOR AND MANDAL REVENUE OFFICER, SERILINGAMPALLI, RR DISTRICT (2010 (4) ALT 655).

13. By way of transfer, the lands went into the hands of one P. Ramchandra Rao, by way of registered deed, registered in the year 1965 and to B. Dharma Rao, by way of registered deed, registered in the year 1967, and again on his demise, through his sons, represented by one of his sons, GPA holder, to the hands of the petitioners in the years 1996-97 by way of registered deed. The machinery to resume the subject lands was set in motion in the year 2002, by which time the subject lands have come into the hands of the petitioners.

14. Even otherwise it is to be tested whether authorities could exercise power of resumption and alter the revenue records after long lapse of time.

15. It is true that there is no limitation prescribed for exercise of corrective power, but the legal position is well settled by a catena of decisions of this Court as well as the Supreme Court that even when there is no period of limitation prescribed for exercise of power, such power must be exercised within a reasonable period. What would constitute reasonable time would again depend upon the facts of each case. By virtue of long lapse of time and intervening delay led to creation of third party rights, sometimes, bona-fide third party rights which cannot be trampled. No limitation is prescribed, it does not mean there would be no time limit. Action should be exercised immediately on the happening of violation or within a reasonable time.

16. The Supreme Court rendered in the case of STATE OF H.P. vs. RAJKUMAR BRIJENDER SINGH (2004 (10) SCC 585) held that exercise of revisional power after unduly long and unexplained period was impermissible; and held as under:

> "We are now left with the second question which was raised by the respondents before the High Court,

namely the delayed exercise of the power under sub-section (3) of Section 20. As indicated above, the Financial Commissioner exercised the power after 15 years of the order of the Collector. It is true that sub-section (3) provides that such a power may be exercised at any time but this expression does not mean there would be no time limit or it is in infinity. All that is meant is that such powers should be exercised within a reasonable time. No fixed period of limitation may be laid but unreasonable delay in exercise of the power would tend to undo the things which have attained finality. It depends on the facts and circumstances of each case as to what is the reasonable time within which the power of suo motu action could be exercised. For example, in this case, as the appeal had been withdrawn but the Financial Commissioner had taken up the matter in exercise of his suo motu power, it could well be open for the State to submit that the facts and circumstances were such that it would be within reasonable time but as we have already noted that the order of the Collector which has been interfered with was passed in January, 1976 and the appeal preferred by the State was also withdrawn sometime in March, 1976. The learned counsel for the appellant was not able to point out such other special facts and circumstances by reason of which it could be said that exercise of suo motu power after 15 years of the order interfered was within a reasonable time. That being the position, in our view, the order of the Financial Commissioner stands vitiated having been passed after a long lapse of 15 years of the order which has been interfered with. Therefore, while holding that the Financial Commissioner would have power to proceed suo motu in a suitable case even though an appeal preferred before the lower appellate authority is withdrawn, may be, by the State. Thus the view taken by the High Court is not sustainable. But the order of the Financial Commissioner suffers from the vice of the exercise of the power after unreasonable lapse of time and such delayed action on his part nullifies the order passed by him in exercise of power under sub-section (3) of Section 20."

17. A perusal of the pahanies from the years 1960-61 till the year 1995-96, it is clear that entry in pattedar column, the names of the assignees are reflected and entry in possessory column, the names of the petitioners' vendor and his father are shown. The pahanies from the years 2000-01 to 2006-07 entry in pattader column, the subject lands are shown as Government lands. The case of the petitioners is that no notice is issued to them, though they are in possession of the subject lands from the date of purchase of the lands by way of registered deeds. There is no proof or material produced to show that notices were issued to the petitioners nor opportunity of hearing was afforded to them in the matter before taking a decision to resume the subject lands on the purported ground of violation of conditions of assignment by the assignees. Section 4 of the Act, 1977, prescribes the machinery and the mode for redressing the violation and for restoring the

land, other than notified, to the assignee or utilization of resumed land under notified area by the Government in the public interest for public purpose. Rule 3 of the AP Assigned Lands (Prohibition of Transfers) Rules, 1977, made under Act, 1977, stipulates a detailed procedure that is to be followed for eviction of the transferee and taking possession and restoration of assigned lands, which includes, among other things, issuance of notice to the person who acquired the assigned land in contravention of the provisions of the Act, 1977. The transferee being a purchaser of the lands for valuable consideration and in possession of the lands, any proceedings concluded without noticing transferee, behind his back, affecting his valuable property rights has to be invalidated not only the ground of equity but also on the ground of principles of natural justice. Precisely for this reason 3 of the Rules contemplates issuance of such a notice to the transferee and it is mandatory. In this case no notice is issued to the petitioners who are transferees of the assigned land. Transferee of the assigned land as employed in Rule 4 of the Rules is to be construed as the person in possession of the assigned land and on whose name the assigned land is last transferred as the predecessors in-title of the transferee, whose name is shown in the possessory column as person in possession, may not be interested in prosecuting the case, as whatever title he had it sand transferred to the transferee. Though it is mentioned in the impugned order dated 8-2-2002 that notice is issued to all the persons who are in unauthorized possession of the government land, no notice is issued to the petitioners, who claim to be in possession and are the transferees of the assigned lands which is in violation of principles of natural justice. Rule 4 of the Rules requires communication of list of assigned lands to the Registration department. This Rule is followed much in breach than in practice by the authorities, which is one of the reasons for defeating the object of the enactment of the Act, 1977.

18. One more fact in this case, which cannot be lose sight is that part of the subject land was acquired by the Government to lay a pipe line of surplus water and issued gazette notification being GO Rt.No.1997and 1998, dated 11-12-1986 showing the vendor of the petitioners as owner and occupier of the subject lands in Sy. No. 176/2, 3 and 4. It has also come on record that the vendor of the petitioners agreed to give away part of the subject land for laying pipe line to metro water works department provided compensation towards land is paid. Thereafter, the vendor of the petitioners filed claim petition before the Land Acquisition authorities in File No. F/697/1987, dated 31-12-1988 and an award was passed in favour of the vendor of the petitioners and an amount Rs.4,785/- was awarded as compensation and paid to the vendor of the petitioners. The resumption order is conspicuously silent about acquisition of part of the subject land from the vendor of the petitioners in the year 1987 recognizing him as the owner and possessor of the subject lands. At no point of time, the land acquisition officer ever stated in his proceedings that the subject lands are government lands. Except extracting Section 3(1) of Act, 1977, no reasons are stated for resuming the subject lands. Similarly, the respondent-authorities before transferring the resumed lands to the 5th and 6th respondents have not followed the procedure by calling for claims if any from the persons in possession of the lands, which is mandatory under Section 4 of the

Act, 1977. As noted above, no notice was issued to the petitioners and opportunity of hearing to them before passing the impugned order, which is a mandatory requirement under Rule 4 of the Rules.

19. On the above analysis, the impugned order dated 8-2-2002 passed by the respondent-MRO (Tahsildar), Moinabad Mandal, Ranga Reddy District, is unsustainable and it is accordingly set aside.

20. With reference to the order dated 20-11-2009 passed by the 2nd respondent-Joint Collector, Ranga Reddy District, in refusing enter the names of the petitioners in the revenue records in respect of the subject lands, which is impugned in WP No.2649 of 2010 is concerned, the said order is not sustainable in law for more than one reason. A perusal of the pahanies from the years 1960-61 till 1995- 96, entry in pattedar column, expect for the years 1960-61, the names of the assignees is shown and the entry in possessory column, the names of the petitioners' vendor and his father's are shown. When it comes to the years 2000-01 till 2006-07, the entry in pattedar column, it is shown as government land and the entry in possessory column, the name of Hyderabad Metro Water pipe line is shown. It is not discernable how after more than 37 years, entry in pattedar column, it can be recorded Government land in respect of the subject lands. The record reflects continuously for a period of 37 years, the names of the assignees are shown in pattedar column and the names of the petitioners' vendor and his father is shown in the possessory column. The authorities in exercise of suo motu power cannot correct the revenue entries after a period of 37 years, which is not legally permissible. It is not the case of the respondents that the entries were made fraudulently and that act of fraud necessitated correction of entries suo motu. Altering the entries in pahanies at its own discretion, without issuing notice and conducting enquiry, is nothing short of taking away the property rights party whose name is recorded. (see KALLEM PENTA REDDY vs. MANDAL REVENUE OFFICER, SAROORNAGAR MANDAL, RANGA REDDY DISTRICT (2013 (5) ALD 471), SULOCHANA CHANDRAKANT GALANDE vs. PUNE MUNICIPAL TRANSPORT (2010) 8 SCC 467).

21. In view of above facts and circumstances, both the writ petitions are allowed. As a sequel thereto, miscellaneous petitions, if any, pending in the writ petitions, are disposed of. There shall be no order as to costs.

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2017 (1) L.S. (Hyd.) (D.B.) 503

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice Ramasubramanian &
The Hon'ble Ms.Justice Uma Devi

K.Vijayakumar ..Petitioner

Vs.

The State of A.P. & Ors., ..Respondents

A.P. STATE JUDICIAL SERVICE RULES, 2007 AND ANDHRA PRADESH

W.P.No.28557/15 Date:3-3-2017

PUBLIC EMPLOYMENT (REGULATION OF AGE OF SUPERANNUATION) ACT, 1984, Sec.3(1-A) - Administrative Committee resolved not to continue temporary services of said Judicial Officers including petitioner herein beyond age of 58 years - Accordingly committee passed a resolution and same also got approval of the Full Court - Thereafter a recommendation was made to Government and Government issued an order retiring petitioner with effect from 31-08-2015, last day of month on which he had completed 58 years of age - Aggrieved by same, Petitioner herein has come up with present writ petition - Among several grounds that petitioner has raised, he contended that as per Section 3(1-A) of A.P. Public Employment (Regulation of Age of Superannuation) Act, 1984 a person is entitled to continue in service up to age of 60 years and hence procedure prescribed by proviso to that section ought to have been followed if benefit of continuation up to 60 years was to be denied to petitioner.

Held, once it is found that petitioner was appointed only temporarily, it would follow as a corollary that he can always go back to his parent department - Once he goes back to his parent department, he is entitled as of right to continue to be in service up to the age of 60 years as stipulated unless his services were terminated for any misconduct pursuant to any disciplinary proceedings - Since High Court committed a mistake in referring to age of 58 years, Govt. fell into an error in thinking that petitioner should go home instead of repatriating him to post of Assistant Public Prosecutor and allowing him to continue in service up to normal age of retirement - Since this has not been done, petitioner is entitled to relief - Therefore, writ petition is allowed and impugned order is set aside - Government is directed to post petitioner as an Assistant Public Prosecutor and allow him to continue up to normal age of retirement of 60 years.

Mr.G.U.R.C. Prasad, Advocate for the Petitioner.

G.P. for Law & Legislative Affairs (AP).

Mr.P.Raviprasad (SC for HC for TAP).

O R D E R

1. The petitioner, who was ordered to be retired on attaining the age of superannuation at 58 years, has come up with the present writ petition.

2. Heard Mr. G.U.R.C. Prasad, learned counsel for the petitioner and Mr. P.Ravi Prasad, learned Standing Counsel for the High Court of Telangana and Andhra Pradesh.

3. The petitioner was originally appointed as Assistant Public Prosecutor on 10-6-1998. While working as such, he was selected and appointed temporarily as a Junior Civil Judge, under G.O.Rt.No.182, Law Department, dated 03-02-2014. He joined the post on 28-02-2004.

4. While taking up the cases of

Judicial Officers for review, upon completion of 58 years of age, the case of the petitioner was also taken up by the Administrative Committee of the High Court on 05-8-2015. Apart from the petitioner, there were 2 other persons by name B.Chengalraya Naidu and K.Vijaya Kumar, who were also working as Judicial Officers, on a temporary basis. The Administrative Committee resolved on 05-8-2015 not to continue the temporary services of the said Judicial Officers including the petitioner herein beyond the age of 58 years. Accordingly, the committee passed a resolution and the same also got the approval of the Full Court. Thereafter, a recommendation was made to the Government and the Government issued G.O.Rt.No.1017, dated 29-8-2015, retiring the petitioner with effect from 31-8-2015, the last day of the month on which he had completed 58 years of age. Aggrieved by the said order, the petitioner has come up with the present writ petition.

5. The contentions of Mr. G.U.R.C. Prasad, learned counsel for the petitioner, are as follows:

(1) that the petitioner was appointed as a Junior Civil Judge on a temporary basis from the post of Assistant Public Prosecutor, in accordance with the Special Rules for Andhra Pradesh State Judicial Service, 1962;

(2) that when the 1962 Rules were repealed and a new set of rules, namely, Andhra Pradesh State Judicial Service Rules, 2007 were issued, the appointments made prior to the commencement of the 2007 Rules were not only saved but also declared to be deemed to have been made under the 2007 Rules, by virtue of Rule 26(2) of the 2007 Rules;

(3) that the persons who were directly recruited to the State Judicial Service are required to be placed on probation and persons who were appointed otherwise to the Judicial Service are placed on officiation in terms of Rule 9 of the 2007 Rules;

(4) that by virtue of Rules 10 and 11 of the 2007 Rules which respectively deal with confirmation of probation and discharge of unsuitable probationers and by virtue of the decision of the Supreme Court in Dayaram Dayal v. State of M.P. (1997) 7 SCC 443), the petitioner should be deemed to have been confirmed as a Judicial Officer and hence to retire him on attaining the age of 58 years, the procedure prescribed in Rule 23 ought to have been followed;

(5) that while retiring the petitioner on attaining the age of 58 years, the respondents did not follow the procedure prescribed by Rule 23 of the Andhra Pradesh Judicial Service Special Rules, 2007, but wrongly invoked Section 3(1) of the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984;

(6) that the performance of the petitioner as a Judicial Officer was consistently rated as "good" both qualitatively and quantitatively and hence he cannot be deemed to be a person of no utility value for the invocation of the public interest clause;

(7) that in the past, the High Court continued in service several Judicial Officers appointed by the method of recruitment by transfer, beyond the age of 58 years and

up to the age of 60 years and hence the action of the High Court is discriminatory in nature;

(8) that a person by name C.Rajender Reddy, who was appointed temporarily as a Civil Judge from the post of Superintendent of the Subordinate Court, was given the benefit of extension up to 60 years in May, 2015;

(9) that Section 3(1-A) of the A.P. Public Employment (Regulation of Age of Superannuation) Act, 1984 entitles a person to continue in service up to the age of 60 years and hence the procedure prescribed by the proviso to Section 3(1-A) ought to have been followed if the benefit of continuation up to 60 years was to be denied to the petitioner; and

(10) that in any case, if the petitioner was treated still as an employee in the Directorate of Prosecution, he could only have been sent back on repatriation, since the age of retirement of all Government Servants (including that of Assistant Public Prosecutors) was enhanced to 60 years by the State of Andhra Pradesh under G.O.Ms.No.147, Finance Department, dated 30-6-2014, by which Section 2(1) of the Act was amended.

6. We have carefully considered the above submissions.

7. In order to understand the real propensity of the contentions raised by the learned counsel for the petitioner, it is necessary to have a look at the very constitution of the Judicial Service in the State of Andhra Pradesh. Therefore, we shall take a peep into its history.

8. The Andhra Pradesh State Judicial Service was originally constituted way back on 01-4-1958, to comprise of 3 categories of Judicial Officers, namely, (1) Senior Civil Judges, (2) Junior Civil Judges and (3) Judicial Magistrates of Second Class. Though the Andhra Pradesh State Judicial Service was constituted with the above 3 categories of posts way back on 01-4-1958, the Special Rules governing the service were issued for the first time only under G.O.Ms. No.2207, Home Department, dated 04-12-1962. These Rules, known as Andhra Pradesh State Judicial Service Rules, were issued in exercise of the powers conferred by Article 234 read with proviso to Article 309 of the Constitution of India.

9. The scheme of these Rules, to the extent they are necessary for the disposal of the present case is as follows:

(i) Rule 3 of the Rules stipulated that the Andhra Pradesh State Judicial Service shall consist of 3 categories of officers, namely, Category-I — Senior Civil Judges, Category-II — Junior Civil Judges and Category-III – Judicial Magistrates of Second Class.

(ii) Rule 4 of the Special Rules prescribed the method of appointment to all the 3 categories of posts. Sub-rule (2) of Rule 4 indicated that the appointment to the category of Junior Civil Judges shall be by direct recruitment. However, the proviso to Rule 4(2) stipulated that recruitment to 2 out of 20 vacancies shall be by transfer from full members or approved probationers in certain categories of posts in the High Court Service or in the Subordinate Court Service or in the Police Prosecution Service or in the Law Department or Legislature Department.

(iii) In other words, 10% of the vacancies in the category of Junior Civil Judges could be filled up by the method of recruitment by transfer from the staff working in certain other services including those in the Department of Prosecution.

(iv) In addition to the aforesaid 2 methods of recruitment, namely, direct recruitment and recruitment by transfer, the Special Rules of the year 1962 also contemplated temporary promotions and appointments, under Rule 11.

Sub-rules (2) and (3) of Rule 11 of the A.P. State Judicial Service Rules, 1962 deal with temporary appointments to the posts of Judicial Magistrates and Junior Civil Judges and hence these 2 sub-rules are extracted as follows:

"(2) Where the appointment of a person as Judicial Magistrate of II Class or Junior Civil Judge in accordance with these rules would involve excessive expenditure on travelling allowance or exceptional administrative inconvenience, the High Court or the Governor as the case may be, may appoint any other person in the list of approved candidates. A person appointed under this rule shall not be regarded as a probationer in the service or be entitled by reason only of such appointment to any preferential claim to future appointment to the service.

(3) (i) Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in the category of Judicial Magistrate of the Second Class or Junior Civil Judge and there would be undue delay in making such appointments in accordance with these rules :—

(a) the High Court may make a temporary appointment to the category of Judicial Magistrate of the Second Class of a person who is a full member or an approved probationer in any category specified in the proviso to clause (a) of sub-rule (1) of the Rule 4 or promote temporarily to the category of Junior Civil Judge a person who is Judicial Magistrate of the Second Class.

(b)(i) the Governor may in consultation with the High Court made a temporary appointment to the category of Junior Civil Judges of a person, who is a full member or an approved probationer in any Category specified in the first proviso to sub-rule (2) of Rule 4 :

Provided that no person shall be appointed or promoted under this clause unless he possesses the qualifications prescribed in Rule 12.

Explanation :—Determination of the age in the manner laid down in Notes (1) and (2) and the provisos under clause (b) of Rule 12 shall also be applicable to the temporary appointment under this clause.

(ii) A person appointed or promoted under clause (1) shall be replaced by a qualified member of the service or an approved candidate as soon as possible to hold the post under these rules and the person appointed or promoted shall not be regarded as probationer in the post or be entitled by reason only of such appointment or promotion to any preferential claim to future appointments or promotions thereto.

The services of a person appointed

under clause (i) shall be liable to be terminated by the appointing authority at any time without notice and without any reason being assigned."

(v) Sub-rules (2) and (3) of Rule 11 may have to be read together with Rule 11-A, which deals with the date of commencement of probation and hence Rule 11-A is also extracted as follows:

"**Rule 11-A. Date of commencement of probation of persons first appointed temporarily**:— Notwithstanding anything in sub-rules (1) and (2) of Rule 11, a person appointed temporarily under sub-rule (1) or sub-rule (2) aforesaid shall be deemed to have been on probation from the date of the order of regular appointment or from such earlier date as may be specified by the appointing authority."

(vi) Rule 14 of the 1962 Rules contained prescriptions relating to probation. Rule 16 contained stipulations relating to suspension of probation for want of vacancy, special tests to be passed, extension of probation, discharge of unsuitable probationers and termination of probation. The first proviso under Clause (d) of Rule 16 stipulated that if no orders are passed regarding probation within one year from the date of completion of the prescribed or extended period of probation, the probation of a person shall be deemed to have been automatically declared with retrospective effect from the date of completion of the prescribed or extended period of probation.

(vii) Rule 5(1) of the 1962 Rules required the High Court to prepare lists of persons considered suitable for appointment both by direct recruitment as well as by transfer to the posts of Junior Civil Judges. But the preparation of such lists should be preceded by an examination held in accordance with the scheme specified in the Schedule to the Special Rules. The Schedule to the 1962 Rules contained the scheme of the examination.

10. The Special Rules of the year 1962 issued under G.O.Ms.No.2207, Home Department, dated 04-12-1962, came into force on 01-4-1958 by virtue of Rule 1(2). These Special Rules underwent an amendment under G.O.Ms.No.124, Law Department, dated 05-8-1996. Rule 5(1), though amended in 1996, retained the requirement of selecting candidates only through the examinations held in accordance with the scheme specified in the Schedule, both for direct recruitment and for appointment by transfer.

11. The 1962 Rules were repealed by a new set of Rules known as the Andhra Pradesh State Judicial Service Rules, 2007 issued under G.O.Ms.No.119, Law Department, dated 02-8-2008. The State Judicial Service was reconstituted under the 2007 Rules to consist of 3 categories of posts, namely, (1) District Judges, (2) Senior Civil Judges and (3) Civil Judges. Rule 4 of these Rules also prescribed, under sub-rule (2), the method of appointment to all the 3 categories of posts. Clause (d) of sub-rule (2) of Rule 4 deals with appointments to the categories of Civil Judges. While sub-clause (i) of Clause (d) provides for direct recruitment to the posts of Civil Judges from among the eligible Advocates on the basis of written test and viva voce as prescribed by the High Court,

sub-clause (ii) of Clause (d) prescribes recruitment by transfer to the posts of Civil Judges from among confirmed members or approved probationers of certain other services. But Rule 4(2)(d)(ii) makes it clear that such recruitment by transfer would also be on the

basis of written and viva voce tests as prescribed by the High Court.

12. Just as the 1962 Rules contained a provision for temporary appointments under Rule 11, the 2007 Rules also contains a provision for temporary appointments under Rule 14. Rule 14(2) of the 2007 Rules which deals with temporary appointments to the posts of Junior Civil Judges reads as follows:

"(2) Where it is necessary in the public interest owing to the exigency in the service to fill up immediately vacancies in the category of Civil Judges and there would be undue delay in making such appointment in accordance with Rules 4, 5 and 6, the Governor may in consultation with the High Court make temporary appointments from among the confirmed members or approved-probationers of any category specified in clause (d)(ii) of sub-rule (2) of Rule 4.

Provided that no person shall be appointed under sub-rule (2) unless he is eligible to be appointed as per sub-rule (2) of Rule 5."

13. Rule 26(1) of the 2007 Rules repealed (i) the Special Rules for A.P. State Higher Judicial Service and (ii) the Special Rules for A.P. State Judicial Service. But sub-rule (2) of Rule 26 saved the appointments made under the previous Rules and created a deeming fiction that the appointments made prior to the commencement of the 2007 Rules shall be deemed to have been made under the 2007 Rules. Rule 26(2) of the 2007 Rules reads as follows:

"(2) The appointments made or actions initiated prior to the commencement of these Rules shall not be, effected and are deemed to have been made or initiated under these Rules."

14. Therefore, there can be no dispute about the fact that all the appointments made under the 1962 Rules are saved and such appointments are deemed to have been made under the 2007 Rules. But the actual question is as to what was the nature of the appointment that was given to the petitioner.

15. The claim of the petitioner in his writ petition is that he was appointed by the method of recruitment by transfer, on temporary basis under G.O.Rt.No.182, Law Department, dated 03-02-2004. But the stand taken by the High Court is that the petitioner was appointed only on temporary basis under the 1962 Rules and that therefore he has no right to continue as a Judicial Officer.

16. It must be borne in mind that different consequences follow, if the appointment of the petitioner was by the method of recruitment by transfer or if his appointment was on temporary basis. Rule 11(2) of the 1962 Rules makes it clear that a person appointed as a Junior Civil Judge on temporary basis under the said Rule, will not be regarded as a probationer. Therefore, such a person will not be entitled

to the benefit of the deeming fiction created for the satisfactory completion of probation under the first proviso to Rule 16(d) of the 1962 Rules. The first proviso to Rule 16(d) of the 1962 Rules reads as follows:

"Provided that in respect of a probationer who is otherwise qualified for a declaration of probation if no orders are passed regarding his probation within one year from the date of his completion of the prescribed or extended period of probation, his probation, subject to other provisions of these rules, shall be deemed to have been automatically declared with retrospective effect from the date of completion of the prescribed or extended period of probation and a formal order to that effect may be issued for the purpose of record."

17. A person who was never placed on probation, cannot seek a deemed declaration of probation under the proviso to Rule 16(d) of the 1962 Rules. Therefore, a person who was appointed under Rule 11(2) of the 1962 Rules on a temporary basis, cannot claim that by virtue of long efflux of time, he must be deemed to have completed his probation and must be deemed to have become an approved probationer or a full member of the Judicial Service, not being liable to be repatriated to the Department from which he was brought as Judicial Officer.

18. The real test to find out whether a person was appointed as a Junior Civil Judge by the method of recruitment by transfer in terms of the proviso to Rule 4(2) of the 1962 Rules or whether he was appointed only on temporary basis under Rule 11(2) and not placed on probation, is to see whether he was selected after an examination conducted in accordance with Rule 5 read with the Schedule to the 1962 Rules or not.

19. If that test is applied, it could be seen that the petitioner was not subjected to a process of selection in terms of Rule 5(1) read with the Schedule to the 1962 Rules, for the purpose of appointing him by the method of recruitment by transfer. On the contrary, the petitioner himself claims in para-5 of his Affidavit in support of the writ petition that he never had an opportunity to appear for the examination for selection of Junior Civil Judges and that he merely appeared for an oral interview. Additionally, it is asserted in para-11 of the counter affidavit filed on behalf of the High Court that the petitioner did not undergo the process of selection in the form of examination prescribed under the Schedule to the Rules, for appointment as Civil Judge (Junior Division) by the method of recruitment by transfer.

20. Therefore, it is clear that the petitioner was not appointed by the method of recruitment by transfer in terms of the proviso to Rule 4(2) of the 1962 Rules. Hence, he cannot be considered as a person appointed by the method of recruitment by transfer in terms of Rule 4(2)(d)(ii) of the 2007 Rules. On the contrary, the appointment of the petitioner was under Rule 11(2) of the 1962 Rules and hence he will be deemed to be only a temporary appointee under Rule 14(2) of the 2007 Rules.

21. As we have pointed out earlier, the 2nd part of Rule 11(2) of the 1962 Rules makes it clear that a temporary appointee will not be regarded as a probationer. This

Rule stands reiterated by Rule 11A which says that a person appointed on temporary basis under Rule 11(2) will be deemed to be on probation only from the date of the order of regular appointment. The petitioner was never regularly appointed so as to have the benefit of being placed on probation under Rule 11A of the 1962 Rules.

22. Once it is clear that the petitioner was not recruited by the method of transfer to the post of Junior Civil Judge, but appointed only on temporary basis, it follows as a corollary that he continued to be a person who was holding a substantive post in the category of Assistant Public Prosecutor. Therefore, his temporary appointment as a Junior Civil Judge was liable to be cancelled at any time and the petitioner liable to go back to his substantive post, namely, that of Assistant Public Prosecutor. The petitioner's lien in the post of Assistant Public Prosecutor could not have been severed since he was neither appointed substantively to the post of Junior Civil Judge as required under Fundamental Rule14 nor did he acquire any lien in the post of Junior Civil Judge. In such circumstances, it is futile on the part of the petitioner to oppose his repatriation to the parent unit and to the substantive post.

23. Keeping in mind the picture that has emerged from the above discussion, let us now take up for consideration the contentions of the learned counsel for the petitioner one after another.

24. The 1st contention of the learned counsel for the petitioner is that the petitioner was appointed by the method of recruitment by transfer in accordance with the Special Rules. But this contention is belied by the facts. The petitioner did not write any examination as prescribed by Rule 5(1) read with the Schedule to the 1962 Rules to be appointed by the method of recruitment by transfer. He was appointed only temporarily under Rule 11(2). Hence, the 1st contention is rejected.

25. The 2nd contention of the petitioner revolves around the savings clause contained in Rule 26(2) of the 2007 Rules. But nothing turns on the savings clause. The petitioner was a temporary appointee in terms of Rule 11(2) of the 1962 Rules. Therefore, by virtue of Rule 26(2) of the 2007 Rules, he will be deemed to be a temporary appointee in terms of Rule 14(2) of the 2007 Rules. Hence, the 2nd contention does not take the petitioner anywhere.

26. The 3rd contention of the petitioner revolves around the placement of a directly recruited person on probation and a person recruited by transfer on officiation. Based upon Rule 9 of the 2007 Rules, it is contended by the learned counsel for the petitioner that the petitioner was placed on officiation, when he was appointed by the method of recruitment by transfer and that since no order discharging him as an unsuitable probationer was passed, his probation is deemed to have been declared.

27. But the said contention is based upon the presumption that he was appointed by the method of recruitment by transfer. We have already pointed out that the petitioner was appointed temporarily under Rule 11(2) and the Rule made it clear that such a person will not be regarded as a probationer. If the petitioner was not placed on probation, the question of any reference to Rule 9 does not arise. Hence, the 3rd contention is rejected.

28. The 4th contention of the learned counsel for the petitioner is that if a probationer had not been discharged before the expiry of the original or extended period of probation, he will be deemed to have completed the period of probation by virtue of a combined reading of Rules 10 and 11 of the 2007 Rules. Therefore, the petitioner claims that he could have been retired before completing the normal age of retirement only in accordance with the procedure prescribed by Rule 23 of the 2007 Rules that mandates a notice of not less than 3 months' duration.

29. But the aforesaid contention is also based upon the presumption that the petitioner was recruited by the method of transfer and was placed on probation. We have found on facts that the petitioner was not recruited by the method of transfer and that the petitioner was never placed on probation so as to have the benefit of deemed declaration of probation. Hence, the question of following the procedure prescribed under Rule 23 did not arise. Insofar as the High Court is concerned, the temporary appointment of the petitioner came to an end and the petitioner had to go back to his parent department.

30. Under amended F.R. 14A (as amended by G.O. Ms.No.127, Finance Department, dated 08-5-2012), a Government employee whose lien was automatically suspended under F.R. 14(g), will have his lien automatically terminated in the parent department, on the date on which his probation is declared in the new department or on the date on which his probation is deemed to have been declared or on the date on which he completes 3 years of service in the new department. F.R. 14A as amended by G.O.Ms.No.127, dated 08-5-2012, reads as follows:

"(e) The lien of a Government employee, which was automatically suspended from the date of his relief in the parent department under clause (g) under FR-14 shall automatically get terminated in the parent department on the date on which his probation is declared in the new department or on the date on which his probation is deemed to have been declared in the new department, or on the date on which he/she completes 3 years of service in the new department, **whichever is earlier**."

31. But for the invocation of F.R. 14A, the case of the petitioner should fall under F.R. 14(g), which reads as follows:

"The Lien of (i) a Government employee, appointed outside the regular line from the date of his relief; (ii) a Government employee who resigned/are relieved from a post to join in a different post to which he is selected by direct recruitment, from the date of his resignation/relief from the old post; and (iii) a Government employee who is transferred from one department to another on request or otherwise by way of departmental transfers from the date of his relief shall stand automatically suspended even if it is not mentioned in such orders and such Govt. employees shall automatically acquire provisional lien in the new departments, in which they join."

32. For the invocation of F.R. 14(g), 3 contingencies are to be satisfied. None of the 3 contingencies was satisfied in the case of the petitioner. Therefore, the petitioner's lien over the post of Assistant

Public Prosecutor never got suspended under F.R. 14(g) and as a consequence, it never got automatically terminated under F.R. 14A, so as to enable the petitioner to stake a claim over the post of Junior Civil Judge on a regular or permanent basis.

33. The 5th contention of the petitioner revolves around the fact that the Government invoked Section 3(1) of the A.P. Public Employment (Regulation of Age of Superannuation) Act, 1984, instead of following the procedure prescribed by Rule 23 of the 2007 Rules. This contention has to be taken up along with the last contention which is based upon the amendment to Section 3(1) of the Act made under G.O.Ms.No.147, Finance Department, dated 30-6-2014. Under Section 3(1) of the Act, the age of retirement of a Government employee in the State of Andhra Pradesh was prescribed as 58 years. But by G.O.Ms.No.147, Finance Department, dated 30-6-2014, the age of retirement was made as 60 years. Therefore, what the respondents ought to have done is (1) that the High Court should have terminated the temporary appointment and sent the petitioner back to his parent department to be posted as Assistant Public Prosecutor and (2) that the State Government ought to have continued him as an Assistant Public Prosecutor up to the age of 60 years as per Section 3(1) of Act 23/1984.

34. The 6th contention of the petitioner is that he maintained a consistently good academic record as reflected by the Annual Confidential Reports (ACR) and that therefore he cannot be retired in public interest on the ground that he was not of continued utility. But this contention is based upon the presumption that the petitioner had become a full member of the Judicial Service. The question of examining the fitness of a person to continue beyond the age of 58 years would arise only in the case of a member of the State Judicial Service. The petitioner was never a full member or approved probationer of the State Judicial Service. Hence his ACRs and fitness to continue beyond the age of 58 years are of no relevance.

35. The 7th and 8th contentions of the petitioner are about the continuance of other persons similarly placed like him beyond the age of 58 years. But these contentions are completely flawed, as a person appointed on temporary basis cannot compare his case with that of a person appointed by the method of recruitment by transfer and who became a full member or approved probationer of the State Judicial Service. Hence, these two contentions are also rejected.

36. The 9th contention of the petitioner is that under Section 3(1-A) of Act 23/1984, a Judicial Officer is entitled to continue up to the age of 60 years and that under the proviso to the said section, he can be retired only if certain conditions are satisfied. The claim of the petitioner is that neither the conditions stipulated in the proviso to Section 3(1-A) nor the procedure prescribed therein was followed.

37. But this contention also proceeds on the presumption that the petitioner was a full member of the State Judicial Service. He was actually not. Therefore, this contention does not hold water.

38. That leaves us with the last contention to which we have made a

reference while dealing with the 5th contention. This contention revolves around the question of repatriation and the age of retirement in such cases.

39. As we have indicated earlier, one set of consequences would follow if the petitioner had been appointed as a Judicial Officer by the method of recruitment by transfer and a set of completely different consequences would arise if the petitioner had been appointed only temporarily as a Judicial Officer without being placed on probation. If the petitioner had been appointed by the method of recruitment by transfer, after being selected through a process of examination, then the petitioner's services should normally be continued up to the age of 60 years, unless upon a review made in terms of Rule 23 of the 2007 Rules he was found to be unfit to continue. But in the case on hand, this situation did not arise.

40. Once it is found that the petitioner was appointed only temporarily, it would follow as a corollary that he can always go back to his parent department. Once he goes back to his parent department, he is entitled as of right to continue to be in service up to the age of 60 years as stipulated under G.O.Ms.No.147, dated 30-6-2014, unless his services were terminated for any misconduct pursuant to any disciplinary proceedings. But unfortunately, the recommendation made by the High Court not to continue his temporary services was misunderstood by the Government to be a recommendation for retirement of a Judicial Officer in terms of the 2007 Special Rules. This is why the Government Order impugned in the writ petition came to be passed compulsorily retiring the petitioner upon attaining the 58 years of age. The High Court could have been more careful in informing the Government that the petitioner was just repatriated to his parent department, without making a reference to his age. Repatriating a temporary employee to his parent department has no nexus with his age. Since the High Court committed a mistake in referring to the age of 58 years, the Government fell into an error in thinking that the petitioner should go home.

41. In other words, the order that could have been passed in the case of the petitioner was (1) to repatriate him to the post of Assistant Public Prosecutor and (2) to allow him to continue in service up to the normal age of retirement prescribed by A.P. Act 23/1984 as amended by G.O.Ms. No.147, dated 30-6-2014. Since this has not been done, the petitioner is entitled to relief.

42. Therefore, the writ petition is allowed and the impugned order is set aside. The Government is directed to post the petitioner as an Assistant Public Prosecutor and allow him to continue up to the normal age of retirement of 60 years. The petitioner will be entitled to full pay and allowances in the post of Assistant Public Prosecutor, from 01-9-2015, the date on which he stood relieved by the impugned order up to the date of his reinstatement with all consequential benefits. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

--THE END --

2017(1) L.S. (Madras) 71

IN THE HIGH COURT OF MADRAS

Present:
The Hon'ble Mr. Justice
V.Bharathidasan

C.Lakshmanan ..Petitioner

Vs.

Indumathi & Anr., ..Respondents

CRIMINAL PROCEDURE CODE, Sec.125 (1) & 125(4) - HINDU MARRIAGE ACT, Sec.13 - Criminal revision filed by petitioner/husband against order of lower Court granting maintenance to 1st respondent-wife, Rs.4000/- p.m. and 2nd respondent-minor son, Rs.2000/- p.m.

Petitioner/husband contends in view of decree passed by Civil Court granting divorce on ground of desertion 1st respondent not entitled for maintenance and in view of Bar u/ Sec.125(4) Cr.P.C as 1st respondent as voluntarily left matrimonial house and refusing to live with petitioner.

In instant case, petitioner/ husband working as Constable and is drawing salary of Rs.18,000/- p.m. and he has sufficient means - Even though marital relationship has come to end, by virtue of provisions u/Sec.125(1)(b) Cr.P.C. 1st respondent continued to enjoy status of wife of petitioner for purpose of claiming maintennce - A woman after divorce becomes a destitute and if she cannot maintain herself or remains unmarried, man who was, once, her husband continues to be under a statutory duty and obli-gation to provide maintenance to her.

Petitioner further contends since decree of divorce was passed on ground of desertion by respondent, she would not be entitled to maintenance for any period prior to passing or decree u/ sec.13 of Hindu Marriage Act.

In above circumstances, petitioner cannot deny maintenance to 1st respondent wife on ground that there is a civil Court decree for divorce on ground of desertion - Criminal revision is liable to be set aside - However since there is a decree for divorce, petitioner is only liable to pay maintenance to 1st respondent from date of decree for divorce and petitioner is liable to pay maintenance to 2nd respondent-son as per order passed by Court below - Criminal revision, dismissed.

Mr.S. Nambi Arooran, Advocate for the Petitioner.
D.R. Arunkumar, Legal Aid Counsel, Advocate for the Respondent.

J U D G M E N T

Prayer: Criminal Revision Case filed under section 397 r/w 401 of the Code of Criminal Procedure, to call for the records of the lower Court and to set aside the order dated 20.07.2013 passed in M.C.No.528 of 2011 by the learned I Additional Judge, Family Court, Chennai and allowing the criminal revision case.)

1. The Criminal Revision Case has been filed against the order of granting maintenance to the respondents. The first respondent herein is the wife and the second respondent herein is the minor son of the petitioner. Earlier, the respondents filed a petition in M.C.No.528 of 2011 under Section 125 Cr.P.C. seeking maintenance before the Court below against the petitioner. The Court below allowed the said petition and directed the petitioner to pay a sum of Rs.4,000/- per month to the first respondent/ wife and to pay a sum of Rs.2,000/- to the second respondent/son as maintenance, totalling a sum of Rs.6,000/- per month. Challenging the above said order, the present

criminal revision case has been filed by the petitioner.

2. The brief facts leading to file the present revision case is as follows:-

According to the respondents, the marriage between the petitioner and the first respondent took place on 25.05.2008. Out of the said wedlock they blessed with a son, the second respondent herein. The petitioner was working as a constable in Central Industrial Security Force at Jarkhand. After the marriage they lived together for some time. Thereafter, the petitioner started quarrelling and demanded dowry from the first respondent family and. In the year, 2009 the petitioner driven out the first respondent along with his minor son from the matrimonial house and the first respondent took shelter in her parent's house and living there along with her son, since the first respondent maintain herself and the minor son and the petitioner herein is working as a Constable and drawing a salary of Rs.30,000/- per month having sufficient means and she sought for maintenance at the rate of Rs.5,000/- each to both the respondents. The petitioner herein contested the above application filing counter affidavit denying the allegation made by the respondents that he had treated the respondents cruelly, and it is only the first respondent has quarreled with the petitioner and left the matrimonial house on her own. Inspite of several efforts taken by the petitioner for reunion, the first respondent and her family members ill-treated him and threatened him that not to come to the house of the first respondent. He further submit that he is not drawing a salary of Rs.30,000/- per month, but he only receiving a salary of Rs.14,000/- per month. He further contended that since the first respondent willfully or wantonly deserted the petitioner without any reason she is not entitled to get maintenance. He further submitted that pending the above maintenance case, he filed a petition in H.M.O.P.No.360 of 2011 for divorce on the file of the Sub Court, Tambaram on the ground of cruelty and desertion and exparte order of divorce was granted by the Civil Court by order dated 16.08.2012. In view of the decree passed by the Civil Court on the ground of desertion, the first respondent is not entitled for getting any maintenance from the petitioner. Considering the above materials, the Court below granted maintenance at the rate of Rs.4,000/- per month to the first respondent and Rs.2,000/- per month to the second respondent and totaling a sum of Rs.6,000/- per month. Challenging the above order, the present criminal revision case has been filed.

3. Even though notice was served on the respondents and the name of the respondents printed in the cause list, non appearance for the respondents. In the above circumstances, this Court appointed Mr.D.R.Arunkumar, the learned Legal Aid Counsel for the respondents.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.

5. The learned counsel appearing for the petitioner would submit that in view of the decree passed by the Civil Court granting divorce on the ground of desertion, the first respondent is not entitled for maintenance and in view of the Bar under Section 125(4) Cr.P.C. as the first respondent has voluntarily left the matrimonial house and refusing to live with the petitioner. Apart from that the first respondent having sufficient means to maintain herself and she does not requires any maintenance from the petitioner and the maintenance amount granted by the Court below is very high as the petitioner is only getting a salary of Rs.18,000/- per month and his pay slip was also produced to establish the same.

6. Per contra, the learned counsel appearing for the respondents would contend that the decree passed by the Civil Court is only

an exparte decree and this petitioner only driven out the first respondent from the matrimonial house, she along with her minor son have taken shelter in her parent's house. The learned counsel for the respondents further submitted that after the divorce, she has no obligation to live with the petitioner, and after the decree, the marriage between the petitioner and the first respondent do not subsist, but she continued to be the wife of the petitioner, as per Section 125(1)(b) Cr.P.C. The petitioner has to pay the maintenance at least from the date of granting of decree. In support of his contention, the learned counsel appearing for the respondent relied upon a Judgment of the Hon'ble Supreme Court in ROHTASH SING Vs. SMT.RAMENDRI AND OTHERS reported in AIR 2000 SUPREME COURT 952 and another judgment in CHATURBHUJ Vs. SITA BAI reported in 2008 (2) SCC 316 and also another Judgment of this Court in AJITHKUMAR Vs. SIMMI AND ANOTHER reported in 2017 (1) MWN (Cr.) 407.

7. I have considered the rival submissions.

8. Section 125(1) Cr.P.C. provides that if a person having sufficient means neglects or refuses to maintain his wife who unable to maintain herself, or his legitimate or illegitimate minor child, whether married or unmarried, who unable to maintain themselves, or his legitimate or illegitimate child even though attain majority, where such child is, by reason of any physical or mental upnormality or injury unable to maintain herself, or his father or mother, who are unable to maintain himself or herself on proof of such neglect or refusal liable to pay maintenance. The object of the maintenance proceedings is compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. Under the law the burden is placed in the first place upon the claimants to prove that a person from whom claiming maintenance having sufficient means and claimants are unable to maintain themselves.

9. In the instant case, the petitioner who is the husband of the first respondent, and father of second respondent, now working as Constable in Central Industrial Security Force, he has sufficient means. Even as per the salary slip also submitted by the petitioner, he is drawing a salary of Rs.18,000/- per month and it is also proved by the respondents that they are living in the parental house of the first respondent and they are unable to maintain themselves. In the above circumstances, the petitioner has a legal obligation to pay the maintenance to the respondents.

10. So far as the contention of the learned counsel appearing for the petitioner regarding the divorce proceedings wherein, a competent civil Court granted decree for divorce on the ground of cruelty and desertion. The above said decree of the civil Court is also marked as Ex.R4. A perusal of the decree shows that it is an exparte decree and the above divorce petition filed on the ground of cruelty and desertion and the decree was passed on 16.08.2012. As rightly contended by the learned counsel appearing for the petitioner that there is a Bar under Section 125(4) Cr.P.C., that the wife who refused to live with her husband without any sufficient reasons is not entitled for maintenance. But the above bar is clearly supposes subsistence of marital relationship between the parties, if the marriage is in subsistence, the wife has a legal obligation to live with her husband and when she refused to live with her husband, when the marriage is in subsistence, the bar under Section 125(4) Cr.P.C. will coming into force preventing the wife from seeking maintenance. But, in the instant case, the decree for divorce was passed as early as 16.08.2012, and thereafter the first respondent is a divorced women, the marriage between the petitioner and first respondent do not subsists from the date of above decree, the first respondent has no legal obligation to live with the petitioner.

11. Even though the marital relationship has come to an end, by virtue of the provision

under Section 125(1)(b) Cr.P.C. the first respondent continued to enjoy the status of wife of the petitioner for the purpose of claiming maintenance. In the above circumstances, the first respondent who continued to be the wife of the petitioner and unable to maintain herself, and remains unmarried, and the petitioner has a statutory obligation to provide maintenance to her. The Hon'ble Supreme Court in a Judgment reported in AIR 2000 SUPREME COURT 952(supra) has held as follows:-

10. Learned counsel for the petitioner then submitted that once a decree for divorce was passed against the respondent and marital relations between the petitioner and the respondent came to an end, the mutual rights, duties and obligations should also come to and end. He pleaded that in this situation, the obligation of the petitioner to maintain a woman with whom all relations came to an end should also be treated to have come to an end. This plea, as we have already indicated above, cannot be accepted as a woman has two distinct rights for maintenance. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125(4). In another capacity, namely, as a divorced woman, she is again entitled to claim maintenance from the person of whom she was once the wife. A woman after divorce becomes a destitute. If she cannot maintain herself or remains unmarried, the man who was, once, her husband continues to be under a statutory duty and obligation to provide maintenance to her.

11. Learned counsel for the petitioner then contended that the Maintenance has been allowed to the respondent from the date of the application. The application under Section 125 Cr.P.C. was filed by the respondent during the pendency of the civil suit for divorce under Section 13 of the Hindu Marriage Act. It is contended that since the decree of divorce was passed on the ground of desertion by respondent, she would not be entitled to Maintenance for any period prior to the passing of the decree under Section 13 of the Hindu Marriage Act. To that extent, learned counsel appears to be correct. But for that short period, we would not be inclined to interfere.

12. Recently, Three Judges Bench of the Hon'ble Supreme Court approved the above Judgment in MANOJ KUMAR Vs. CHAMBPA DEVI in Special Leave to Appeal (Crl) No.10137 of 2015 dated 06.04.2017, held as follows:-

"Having perused the impugned order, we are satisfied, that the same is based on the two decisions rendered by this Court, firstly, Vanamala(smt) vs. H.M.Ranganatha Bhatta (smt), (1955) 5 SCC 299, and secondly, Rohtash Singh Vs. Ramendri (Smt) and others 2000 (3) SCC 952. Section 125 of the Criminal Procedure Code, including the explanation under sub-section (1) thereof, has been consistently interpreted by this Court, for the last two decades. The aforesaid consistent view has been followed by the High Court while passing the impugned order."

and dismissed the SLP.

13. In the above circumstances, the petitioner cannot deny the maintenance to the first respondent on the ground that there is a civil court decree for divorce on the ground of desertion and I find no merit in the criminal revision case and the same is liable to be dismissed. However, since there is a decree for divorce from 16.08.2012, the petitioner is only liable to pay maintenance to the first respondent from the date of decree for divorce, namely, 16.08.2012 and the petitioner is liable to pay maintenance to the second respondent as per the order passed by the Court below.

14. In the result, the Criminal Revision Case is dismissed and the petitioner is directed to pay the past maintenance to the first respondent from 16.08.2012. Consequently, connected M.P. is closed.

--- THE END ---

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SUBJECT - INDEX

A.P. CO-OPERATIVE SOCIETIES ACT, 1964:

---Secs.51 and 60 - Petitioner, secretary of 2nd respondent, contended that 1st respondent passed an order against him relying on an enquiry report holding him liable for some amount which was confirmed by A.P. Co-operative Tribunal - Present writ petition challenges same. ***10***

A.P. CHARITABLE AND HINDU RELIGIOUS INSTITUTIONS AND ENDOWMENTS ACT, 1987,

---Secs.15, 28 - Petitioner filed Writ Petition seeking a direction to Executive Officer to permit him to function as a member of founder family of 3rd respondent temple, on rotation basis, along with his brother i.e., 4th respondent - Commissioner of Endowments framed certain charges against petitioner - Questioning same petitioner filed Writ Petition which was allowed. ***13***

CIVIL PROCEDURE CODE, 1908: ---Secs.13,14,35,35-A,36,44-A - FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT, 1933 - JUDGMENT OF FOREIGN COURT - Execution petition for execution of order passed by English Court - Order passed by English Court can be executable in India - Comity of nation - Order of English Court has to be respected. ***1***

---Or.7, Rule 11(a) & Or.14, Rule 2(2) - "Rejection of plaint" - "Preliminary issue"- Scope of preliminary issue under Or.14, Rule 2(2) is limited only to two areas, one is jurisdiction of Court and other, bar to suit as created by any law for time being in forced - Whole purpose of trial on preliminary issue to save time and money - Though it is not a mini trial, Court can and has to look into entire pleadings and materials available on records to extent not in dispute - But that is not situation as far as enquiry under Or.7, Rule 11 is concerned - That is only on institutional defects - Court can only see whether plaint or rather pleadings of plaintiff, constitute a cause of action - In other words under Or.7, Rule 11 Court has to take a decision looking at pleadings of plaintiff and not on rebuttal made by defendant or any other material produced by defendant.

Thus for an enquiry under Or.7, Rule 11 (a) only pleadings of plaintiff/ petitioner can be looked into even if it is at stage of trial of preliminary issues under Or.14, Rule 2(2) - But entire pleadings on both sides can be looked into under Or.14, Rule 2(2) to see whether Court has jurisdiction and whether there is a bar for entertaining suit.

As such scope of Or.14, Rule 2(2) of CPC is wider than Or.7, Rule 11(a) of CPC. **17**

---Or.23, Rule 1(3) (a) - Withdrawl of suit - "Formal defect"- Suit filed for permanent injunction; trial in the suit commenced; witnesses were examined on both sides and when suit posted for judgment at that stage appellant filed application for withdrawl of suit - Trial Court allowed Application with a liberty to file fresh suit and directed to pay costs of Rs.3000 to respondents - High Court set aside order of trial Court in revision filed by respondents holding that appellants failed to establish eithr "formal defects" or sufficient grounds for withdrawl of suit - Hence appellants preferred preset Appeal by way of Special leave.

In this case, appellants have filed suit describing survey no.192/9, but respondents are set to have transferred patta for suit property settling as survey no.

192/14 - Defect in survey No. of suit property goes to very core of subject matter of suit and entire proceedings would be fruitless if decree holder is not able to get deree executed successfully and thus, said defect is constituted to be a "formal defect" within meaning of Or.23, Rule 1(3)(a) CPC.

View taken by trial Court that suit suffered from a formal defect to allow appellants to withdraw suit with permission to institute a fresh suit, is correct - High Court was not right in interfering with discretion exercised by trial Court permitting appellants to withdraw suit with liberty to file fresh suit - Impugned order passed by High Court cannot be sustained - Accordingly impugned order of High Court is set aside and restored order of trial Court with modification by enhancing costs imposed on appellants from Rs.3000 to Rs.10000 - Appeal, allowed. ***16***

CRIMINAL PROCEDURE CODE:

---Sec.386 - Powers of appellate Court to order for "Retrial" - High Court set aside Judgment of coviction and sentence recorded by trial Court and matter was remitted back to trial Court to proceed afresh in accordance with law.

Circumstances that should exist for warranting Retrial must be such that whether trial was undertaken by Court having no jurisdiction or trial was vitiated by serious illegality or irregularity on account of misconception of nature of proceedings or that irregularity has resulted in miscarriage of justice.

In this case, High Court has not shown as to how alleged lapses pointed out by High Court have resulted in miscarriage of justice - When accused prefers an appeal against their conviction and sentence appellate Court is duty bound to consider evidence on record and indepedently arrive at the conclusion - In cosidered view of this Court, High Court erred in remitting matter back to trial Court for fresh trial and impugned order cannot be sustained - Impugned judgment of High Court, set aside - Appeals, allowed - Matter remitted back to High Court for cosideration of matter afresh. ***17***

---Sec.482 - INDIAN PENAL CODE, Sec.302 - Murder - Charges framed against respondent - High Court set aside charges framed against respondent.

Appellant contends that High Court seriously erred by not taking into consideration fax message which was sent by one of witnesses to appellants - Name of respondent/accused had been disclosed in a fax message - It is not open to High Court at stage when prayer for setting aside the charges was made to determine veracity of factual position - Impugned order passed by High Court, set aside - Trial Court shall proceed with matter and frame charges against respondent. ***12***

---Sec.482 & 200 - INDIAN PENAL CODE, Secs.147, 448 & 427 - Petitioner/defacto complainant contends that his relatives started picking up quarrel with him in respect of some property and they have criminally trespassed in to his property and damaged some properties - Hence petitioner filed complaint before respondent/Police and same was registered in crime No. for offences of above said provisions of IPC.

Respondent/Police without examining petitioner and witnesses referred crime as "mistake of fact" on same day - Petitioner filed petition before Magistrate to transfer case for further investigation and Magistrate dismissed said petition - Hence petitioner/de-facto complainant filed present petition to set aside order of Magistrate and pass further order directing competent agency to conduct further investigation.

In this case, from perusal of records it could be seen that respondent Police has filed two different charge sheets i.e., charge sheet copy served to petitioner and referred charge sheet filed before Court, containing different contents and that both charge sheet are same to effect that complaint is closed as, 'mistake of fact' - From this, it is clear that statements and other materials which are submitted along with final report by respondent/Police are being only desk work done at Police Station itself - Even though it is alleged by the respondent/ Police that there is civil dispute in respect of properties it is not case of petitioner that respondent/police has expected to decide civil matter.

From perusal of records it could be seen that respondent/Police had made up their mind to close the complaint as mistake of fact - Therefore to meet ends of justice, this Court feels to direct District Crime Branch to appoint responsible Officer not below rank of Deputy Superintendent of Police to look into complaint of petitioner and to file final report before Magistrate concerned - Order passed by Magistrate, set aside and Criminal petition allowed with above direction. ***11***

CONSTITUTION OF INDIA:

---Art.22(5) - Detention of detenue - Earliest opportunity for making representation against detention order.

Under Cl.5 of Art.22 of Constitution of India an obligation is cast on authority for making detention order to afford detenu earliest opportunity of making a representation against detention order.

"..There is no period described under the Constitution or under the detention law concerned, within which the representation should be dealt with. The requirement however is that there should not be supine indifference, slackness or callous attitude in considering representation. Any unexplained delay in the disposal of representation would be a breach of constitutional imperative and it would render the continued detention impermissible and illegal".(1991 (1) SCC 476. ***6***

---Art.226 - It is well settled, that a direction cannot be issued to legislature to enact a law - Power to enact legislation is a plenary constitutional power which is vested in Parliament and State Legislature under Arts. 245 & 246 of Constitution - Legislature as repositary of sovereign legislative power is vested with authority to determine whether a law should be enacted.

Directions issued by High Court are unsustainable and accordingly set aside - Appeal filed State, allowed. ***19***

---Art.227 - CIVIL PROCEDURE CODE, Or.18, R.17 - Recall of witness - Plaintiff filed suit for partition and other reliefs - Defendants filed their written statement and contesting suit - After commencement of trial plaintiff filed I.A under Or.18, Rule 17 of CPC to recall D.W.1 for further cross-examination - Taking into consideration case of both parties trial Court dismissed petition.

Reasoning given by plaintiff for further cross examining D.W.1 based on evidence of DW2 cannot be accepted, which was rightly rejected by trial Court.

In this case, evidence was closed on 7-9-2016 and suit posted for arguments - Suit was filed in year 2003 and same is kept pendig for more than 13 years, at fag end of trial, present application has been filed by plaintiff seeking for further cross examination of D.W.1 which cannot be accepted and which was rightly rejected by trial Court - No error or irregularity in order passed by trial Court - Order of trial Court, justified - CRP, dismissed. ***19***

CIVIL PROCEDURE CODE:

---Secs.47 & 50 & Or.21, Rules 16 & 32 - "Execution proceedings" - Execution of decree for permanent injunction granted in favour of plaintiff/DHR as against heirs of JDR - Suit filed for permanent injunction over disputed land - Decre granted for permanent injunction - High Court held that decree for permanent injunctin cannot be enforced against legal heirs of JDR as injunction does not travel with land.

In considered opinion of this Court right which had been adjudicated in suit in present matter and findings which have been recorded as basis for grant of injunction as to disputed property which is heritable and partible would enure not only to benefit of legal heir of decree holder but also would bind legal representatives of judgment debtor - It is apparent from section 50 CPC that when JDR dies before decree has been satisfied it can be executed against legal representatives - Sec.50 of CPC is not confined to a particular kind of decree - Decree for injunction can also be executed against legal representatives of deceased JDR - No doubt it is true that a decree for injunction normally does not run with land - In absence of statutory provisions it cannot be enforced - However, in view of specific provision contained in Sec.50 CPC such decree can be executed against Legal representatives - Impugned order passed by High Court, set aside - Appeals, allowed. ***22***

CONSUMER PROTECTION ACT, 1986:

---Secs.2(b),2(c),2(d) - Whether a complaint can be filed by a Trust under the provisions of the Consumer Protection Act, 1986-

Apex Court held that Trust would not come under the definition of Complainant or Consumer - Hence Trust Can not file complaint. **19**

CONTEMPT OF COURTS ACT:

Sec.19 - LETTERS PATENT, Cl.15 - CONSTITUTION OF INDIA, Art.136 - Petitioner in contempt case filed present appeal under Cl.15 of Letters Patent - Registry raised objection as to how appeal was maintainable - Hence matter posted before Division Bench on issue of maintainability of Appeal.

Appellant contends that appeal is maintainable under Cl.15 of Letters Patent and restriction u/Sec.19 of Contempt of Courts Act would have no application - Appellant further contends that Sec.19 of Act provides for an appeal against order passed in exercise of "the jurisdiction to punish", but appeals under Cl.15 of Letters Patent need not be contoured by such narrow parameters. ***7***

---Sec.15 - INDIAN PENAL CODE, Secs.420 r/w Secs.120-B & 109 - Private complaint filed against respondent for offences punishable under above said provisions of IPC - In case of any criminal contempt of subordinate Court High Court may take action on a reference made to it by subordinate Court or on a motion made by Advocate General.

In the instant case, alleged criminal contempt was of Subordinate Court and therefore, action could have been taken on a reference made to High Court by Subordinate Court or on a Motion made by Advocate General, but proceedings had been initiated in pursuance of applications submitted by 1st respondent. ***5***

CRIMINAL PROCEDURE CODE, 1973,

---Sec.340(1) - INDIAN PENAL CODE, 1860, Secs.190 & 200 - Contradictory statement in a judicial proceedings by itself not always sufficient to justify prosecution - Statement or fabrication of false evidence for purpose

of using same at any stage of judicial proceedings attracts Secs.190 & 200 of IPC - Court having prima facie satisfaction of offence - Even after forming opinion Court has to decide if complaint is required to be filed - Then only Court may file complaint. 1

---Sec.439(2) - CANCELLATION OF BAIL - Single Judge of High Court heard and dismissed bail petition - Subsequently bail petition heard by Chief Justice and granting bail, since Additional Advocate General had expressed his no objection - State filed for cancellation of bail before Supreme Court on the ground for ensuring fair trial and possible accused may hamper fair trial - Granting bail by ignoring material evidence is contrary to principles of law - Such granting of bail is liable to be cancelled. 4

---Sec.439 - INDIAN PENAL CODE, Sec.307, 506(ii) and 302 - "Anticipatory bail" - In this case several persons were booked and arrested for offence of murder - One of them is petitioner/A3 who was arrested on 21-1-2017 - Since then he is in jail.

Petitioner submits that at time of occurrence he was present in hospital where his wife was admitted and she had also delivered and that petitioner is implicated in this case and he is in jail for the past 59 days.

Govt., Advocate contends that petitioner is an evil spirit and anti social element and his past is not good.

However, granted bail - Considering facts and circumstances of case it calls for imposition of appropriate conditions in bail order.

While Court was at close of order counsel for petitioner submits that petitioner may not be asked to cut keruvely trees as part of bail condition because petitioner has to undergo indignation, it is condemning him even before condemning him a convict and it is in violation his human right and human dignity and he cannot be made a caricature - If such condition is imposed petitioner will be put to shame and his head down before his near and dear ones

Advocate also showed Names item in Hindu with regard to this recent trends of Court directing removal of trees remarked as "the cutting down of trees demands hard work and you are asking the accused to cut down trees which I think cannot be done single handedly. You need a team for that - It would be very hard to cut down 100 trees in 20 days (a condition imposed by the Judge in Ariyalur)".

This Court expressed view "it is wrong and not in law to punish some one while granting bail - Judge can only grant or refuse to grant, a bail, depending gravity of case".

In this case even to day petitioner is innocent because he has not been convicted after a "fair trial" - He is innocent like any other person till he is convicted in a manner known to law - His such presumption of innocence itself in his basic human right.

Under guise of imposition of bail condition, there shall not be imposition of any onerous condition - Conditions which are in nature of and which could not be complied with by accused would be like by granting bail on hand and taking it away by another hand.

This Court is guided by law and also by (judicial) conscience and not subscribing to new found ideology of imposing such "odd onerous and obnoxious" conditions in bail order - Thus imposing of odd conditions in bail orders is against law - Bail granted; two sureties and petitioner shall execute a bond for Rs.15,000/-, ***21***

DIVORCE ACT(INDIAN), 1869:

---**Sec.10(ix) and (x) -** Petitioner filed O.P. for dissolution of marriage making a host of allegations against his wife/respondent - Respondent filed counter-affidavit and denied all allegations and instead made allegations against petitioner asserting that she was willing to join petitioner and prayed for dismissal of OP - Lower Court agreed with petitioner and granted his prayer of dissolution of marriage - Respondent made an appeal and during its pendency, original petitioner died and his mother was brought on record as respondent No. 2 in appeal - Counsel for petitioner argued that as his client died, cause in appeal does not survive for adjudication. ***14***

EVIDENCE ACT (INDIAN) 1955:

---Secs.91 & 92 - SPECIFIC RELIEF ACT, 1963, Sec.20 - Plaintiff/appellant filed suit for specific performance based on sale agreement - Trial Court decreed suit as prayed for on premise that execution of sale agreement and endorsement are not denied - Lower appellate Court reversed judgment and decree of trial Court.

Plaintiff/appellant contends that in terms of Sec.91 & 92 of Evidence Act a presumption has to be drawn - Lower appellate Court has reversed decree of trial Court on mere surmise - Having received amount it is not open to defendant to contend to contrary and that too sale agreement along with endorsement - Sec.20 of Specific Relief Act speaks about discretion which is certainly a judicial discretion - Lower appellate Court is a final Court of fact and law - Trial Court has found that defendant was living in suit property - Period of two years mentioned in sale agreement in respect of suit property has been discussed in teeth of statement by plaintiff in her evidence as P.W.1.

Lower appellate Court further observed that if there is a need for sale defendant would have received entire consideration and executed it - When once it is found that claim of plaintiff with respect of tenancy is found to be not correct, presumption u/Secs.91 & 92 of Evidence becomes rebuttable one.

This Court is of view that there is no perversity in judgment and decree rendered by lower appellate Court in exercise of judicial discretion - 2nd appeal stands, dismissed. ***15***

GUARDIAN AND WARDS ACT, 1980:

--- Sec.25 - HINDU MINORITY AND GUARDIANSHIP ACT, 1956, Secs.7,10, 12, 13 & 17.

""Welfare of minor to be paramount consideration in deciding custody of child."

Hindu Minority Guardianship Act lays down principles on which custody disputes are to be decided - Sec.7 of this Act empowers Court to make order as to Guardianship - Sec.17 enumerates matters which need to be cosidered by Court in appointig Guardian and among others, enshrines principles of welfare of minor child and this is also stated very eloquently in Sec.13 of Act.

Supreme Court in the case of Gaurav Nagpal Vs. Sumedha Nagpal stated:

"The word "welfare" used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical well-being. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its parens patriae jurisdiction arising in such cases.

The trump card in the appellant's

argument is that the child is living since long with the father. The argument is attractive. But the same overlooks a very significant factor. By flouting various orders, leading even to initiation of contempt proceedings, the appellant has managed to keep custody of the child. He cannot be a beneficiary of his own wrongs. The High Court has referred to these aspects in detail in the impugned judgments."

An infant typically responds preferentially to the sound of its mother's voice by four weeks, actively demands her presence and protests her absence by eight months, and within the first year has formed a profound and enduring attachment to her. Psychological theory hypothesizes that the mother is the center of an infant's small world, his psychological homebase, and that she "must continue to be so for some years to come." Developmental psychologists believe that the quality and strength of this original bond largely determines the child's later capacity to fulfill her individual potential and to form attachments to other individuals and to the human community.

In this case, factors in favour of respondent mother or weightier than those in favour of appellant/father and it is a fit case where respondent mother deserves a chance to have custody of child for time being i.e., at least for one year and not merely visitation rights - Ordered accordingly. **20**

HINDU MARRIAGE ACT, 1955:

---Sec.13(1)(ia)(ib) and Sec.13-B - Divorce - Petitioner/husband originally filed petition for grant of divorce againt 2nd petitioner wife - Subsequently at intervention of friends and relatives both parties compromised disputes between them.

O.P got amended and converted into petition u/Sec.13-B of Act to enable parties to seek divorce by mutual consent by withdrawing adverse allegations made one and another - Petitioners requested Family Court to waive period of 6 months, i.e. waiting period of 6 month as they have been living separately since long time and as they have compromised the matter and are now seeking divorce by mutual consent - However Court below refused to entertain their request and waive period of six months which is mandatory period of waiting.

In the present case, when parties have withdrawn spiteful and discardant allegations after amecably and are seeking divorce by mutual consent in terms of compromise when parties have been living separately for more than period of six months this Court considered that Family Court which is required to function under reconciliatory mode, shall permit parties to have matter settled amicably and shall dispose of O.P for grant of decree of divorce by dissolution of marriage by not insisting upon for completion of waiting period of 6 months, where waiting period had already elapsed during pendnecy of original proceedings in Family Court - CRP, allowed. **13**

---Sec.16 - INDIAN EVIDENCE ACT, Secs.114 & 90 - 1st Plaintiff and plaintiffs 2 & 3 daughters of 1st plaintiff have filed suit for partition as legal heirs of one Govindarajan - 1st Defendant contends that 1st plaintiff is not legally wedded wife of Govinda Rajan and plaintiffs 2 & 3 are not born through Govinda- Rajan and 1st plaintiff, they never lived as husband and wife and hence plaintiffs are not entitled to seek and obtain half share in suit property as legal heirs of deceased Govinda Rajan.

It is case of plaintiffs that 1st plaintiff and deceased Govinda Rajan had been living as husband and wife for several years and that Society had recognized them as husband and wife and various documents had been placed by plaintiffs in support of same.

In this case, no doubt as regards ceremony of marriage between 1st plaintiff and deceased Govinda Rajan adequate material is not forthcoming - In this situation it has to be seen whether on basis of long cohabitation between 1st plaintiff and deceased Govinda Rajan whether presumption of marriage could be inferred.

Law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for number of years - When it is shown and established that man and woman have been living together for a long time as man and wife law will presume that they were living together only in consequence of valid marriage and in such a situation presumption should be drawn u/Sec.114 of Indian Evidence Act in favour of them living together as husband and wife in consequence of valid marriage.

In this case, defendants have miserably failed to place any acceptable and reliable material to discharge presumption - Trial Court has erred in rejecting plaintiffs case without proper appreciation of issues involved in matter - Plaintiffs have established without any doubt that they are legal heirs of deceased Govinda-Rajan - On account of long cohabitation presumption of valid marriage could be inferred plaintiffs 2 & 3 as such would also be entitled to claim share in suit property as legal heirs of deceased Govinda Rajan u/Sec.16 of Hindu Marriage Act, 1955 - No infirmity is found with reference to findings and conclusions of 1st appellate Court in upholding plaintiffs case and rejecting defence version - 2nd appeal dismissed ***18***

INDUSTRIAL DISPUTES ACT, 1947: ---Sec.11-A - Misconduct and negligence of Godown - Keeper of Bank - Punishment of dismissal - Respondent Godown keeper appointed by appellant-Bank to look after Godown maintained by Bank - Godown keeper permitting borrower to take away goods pledged by him with an understanding said borrower would replace goods after some time - Borrower replaced goods with an inferior quality - In Inquiry misconduct of Godown keeper is proved and he was dismissed from service.

Labour Court found punishment imposed upon respondent/workman to be harsh and therefore punishment of dismissal was substituted by punishment of stoppage of 5 increments and further directed to reinstate Godown keeper with back wages.

Appellant-Bank challenged award before High Court - Single Judge upheld award and Division Bench confirmed award as well as order passed by single Judge. ***5***

LEGAL SERVICES AUTHORITIES ACT, 1987:

-- Plaintiffs alleged that defendants Nos.1 to 4 got a recital made in agreement with an evil intention and brought some sale deeds taking advantage of Registered Sale Agreement-cum-General Power of Attorney executed by plaintiffs and their family members in their name and also in name of defendant No.5 - Plaintiffs have applied for legal aid by way of exempting from payment of Court fee - Secretary of respondent No.3 issued certificate exempting respondent No.4 (plaintiff No.1) from payment of Court fee - This action of respondent No.3 is questioned in this writ petition by defendant No.6 in suit. ***9***

MADRAS ESTATES LAND ACT: ---SEC.3(2)(D) - A.P. (ANDHRA AREA) ESTATES (ABOLITION AND CONVERSION INTO RYOTWARI), ACT 1948, Secs.3, 11,56(1)(2) and 56(2) - A.P.CHARITABLE AND HINDU RELIGIOUS INSTITUTIONS AND ENDOWMENT ACT, 1987 - LIMITATION ACT, 1963, Sec.14 - Appellant having felt threatened of being dispossessed from

agricultural land, over which he was a "ryotwari pattadar", filed Original Suit No.32/1974 before District Munsif and also prayed for an injunction, to restrain erstwhile landlord-respondent No.1– Sri Sangameswara Swamy Varu from interfering with appellant's possession and it was held, that appellant was a cultivating tenant in respect of above agricultural land, long prior to notified date 17.01.1959, and that, appellant had occupancy rights over above land, prior to taking over of 'Inam Estates' by State Government, under 1948 Act - And further that, with effect from notified date 17.01.1959, relationship of landlord and tenant, between erstwhile landowner Sri Sangameswara Swamy Varu– respondent no.1, and ryot stood terminated. ***3***

MEDICAL TERMINATION OF PREGNANCY ACT, 1971:

---Sec.3(2)(i) - CONSTITUTION OF INDIA, Art.21 - As per directions of this Court Medical Board consisting of 7 Doctors upon evaluation of petitioner No.1, the said Medial Board has concluded that her current pregnancy is of 24 weeks and condition of fetus is not compatible with extra-uterine life - In other words fetus would not be able to survive outside uterus.

Importantly, Medical Board reported that continuation of pregnancy can gravely endanger physical and mental health of petitioner No.1 and risk of her termination of pregnancy is within acceptable limits with insitutional back up.

Report of Medical Board clearly warranrts inference that continuance of pregnancy involves risk to life of pregnant woman and a possible grave injury to her physical or mental health as required by Sec.3(2)(i) of Act - As such this Court considered it appropriate in interets of justice and particularly to permit petitioner no.1 to under go medical termination of her pregnancy under provisions of Medical Termination of Pregnancy Act.

Writ petition, allowed in terms of prayer (a) seeking direction to respondents to allow petitioner No.1 to undergo Medical Termination of her pregnancy. **15**

MOTOR VEHICLES ACT, 1988:

---Secs.168 & 173 - Motor accident - While deceased and others were travelling in Tata Sumo, there was head-on-collusion betwen Tata Sumo and truck comig from opposite direction - As result of which deceased died on spot and some other passengers sustained injuries - Claimants wife of one of deceased and her five minor children claimed totoal compensation of Rs.55.20,400/- and another claimants wife of other deceased and her 3 minors children claimed Rs.54,62,500/- - Tribunal awarded compensation of sum of Rs.24,89,500/- and Rs,24,09,500/- respectively and that Insurance Company was exonerated from liability and award passed only against owner of Tata Sumo in both claim cases.

Appeals filed for enhancement of compensation - High Court dismissed appeals filed by claimannts and held that Insurer was not liable because passengers are occupants were being carried in a private vehicle as "gratuitious passengers".

In view of view taken by this Court in all previous decisions which are referred in this case, appeals are allowed and impugned order is modified to the extent that Respondent No.3 United India Insurance Co., is accordingly directed to pay awarded sum to appellants thereafter Company would be entitled to recover the entire paid awarded sum from owner(insured of offending vehicle Tata Sumo-Respondent No.1). ***22***

PARTNERSHIP (INDIAN)ACT, 1932:

---Secs.14, 43, 47 - Plaintiff filed O.S. against appellants and others for multiple

reliefs - He also filed an I.A. to restrain defendants 1, 4 and 15, their men and agents from changing nature of suit schedule property or otherwise dealing with same - Inter alia, plaintiff alleged that defendant Nos.1 to 4 entered into a development agreement with defendant No.15 in respect of property of partnership firm without his consent and knowledge - Lower Court initially made an interim order in favour of plaintiff, later made it absolute - Aggrieved by same, defendants/appellants filed various C.M.As.

Held, development agreement, though entered after firm was purportedly dissolved, still binds plaintiff and all other partners irrespective of whether they were parties to resolution or not - Plaintiff proceeded on premise that he is entitled to 1/5th share in suit schedule property and allotment of 1/5th share in partnership firm - After asset is thrown into partnership stock, his pre-existing right over property cannot be recognized - Since development agreement binds plaintiff, he cannot prevent defendant No.15 from proceeding in accordance with same - Plaintiff has not raised plea that development agreement is vitiated by fraud or that if same is implemented it affects his interests either financial or otherwise - Plaintiff has neither claimed relief of invalidating development agreement, nor raised any plea that terms of development agreement are commercially not viable - In absence of these averments, plaintiff has failed to establish that execution of development agreement would cause irreparable loss or injury to his interests and consequently he failed to establish existence of elements of balance of convenience in his favour for grant of injunction - Plaintiff has not disputed fact that in pursuance of development agreement, defendant No.15 has paid Rs.50 lakhs to firms and Rs.52 lakhs towards building and development fee - Court therefore of opinion that loss that may be suffered by defendants would outweigh advantage that may be conferred on plaintiff, if injunction is granted - Accordingly, Court hold that plaintiff failed to prove existence of elements of balance of convenience and irreparable injury in his favour - For aforementioned reasons, impugned order is set aside and C.M.As are allowed. ***6***

PENAL CODE, 1860:

---Sec.16 - INDIAN EVIDENCE ACT, Secs.114 & 90 - 1st Plaintiff and plaintiffs 2 & 3 daughters of 1st plaintiff have filed suit for partition as legal heirs of one Govindarajan - 1st Defendant contends that 1st plaintiff is not legally wedded wife of Govinda Rajan and plaintiffs 2 & 3 are not born through Govinda- Rajan and 1st plaintiff, they never lived as husband and wife and hence plaintiffs are not entitled to seek and obtain half share in suit property as legal heirs of deceased Govinda Rajan.

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Law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for number of years - When it is shown and established that man and woman have been living together for a long time as man and wife law will presume that they were living together only in consequence of valid marriage and in such a situation presumption should be drawn u/Sec.114 of Indian Evidence Act in favour of them living together

as husband and wife in consequence of valid marriage.

In this case, defendants have miserably failed to place any acceptable and reliable material to discharge presumption - Trial Court has erred in rejecting plaintiffs case without proper appreciation of issues involved in matter - Plaintiffs have established without any doubt that they are legal heirs of deceased Govinda-Rajan - On account of long cohabitation presumption of valid marriage could be inferred plaintiffs 2 & 3 as such would also be entitled to claim share in suit property as legal heirs of deceased Govinda Rajan u/Sec.16 of Hindu Marriage Act, 1955 - No infirmity is found with reference to findings and conclusions of 1st appellate Court in upholding plaintiffs case and rejecting defence version - 2nd appeal dismissed ***18***

---Secs.34, 302, 307 - Petitioners along with two others were found guilty and they were convicted and sentenced to suffer imprisonment for life - Remand period of petitioners was 94 days - Because set-off was not granted by Sessions Judge, remand period was not added to petitioners' imprisonment period - There was no opposition from Public Prosecutor other than submitting that period of detention shall be set-off as per amendment to Sec.428, Cr.P.C. ***14***

---Sec.302 - Murder - Conviction - Trial Court convicted accused for offence u/sec.302 r/w 149 of IPC basing on the evidence of injured eye witnesses who are related to deceased.

There are six eye witnesses and three of them are injured eye witnesses, which is a weighty factor to show actual presence of these witnesses at scene of offence.

Moreover credibility and trust-worthiness of all these eye witnesses could not be shaken by accused persons - Once it is found that these witnesses, who are eye witness were present and they have truthfully narrated incidence as it happened and their depositions are worth of credene, conviction can be based on their testimonies even if they were related to deceased - Appeal, dismissed. ***11***

---Secs. 498-A & 306 - CRUELTY - Husband developing intimacy with another woman - Wife committing suicide guided by rumours of husband's relationship with another woman - As such would not amount to cruelty and such an event not constituting offence or establish guilty of accused-appellant u/Sec.306 of IPC - Husband cannot be held guilty u/Sec.498-A of IPC. ***2***

---Sec.366 - POCSO ACT, 2012, Sec.12 - Petitioner submits that crime was registered on complaint lodged by father of victim girl, wherein it is stated that petitioner and his daughter (victim girl) were in love, both are majors and they left their respective houses without consent of their parents and got married at Temple - Defacto complainant coming to know about marriage which was not acceptable to parents of either side lodge present complaint - Petitioner/accused was taken into custody by Police and he is in Jail - Bail Application filed.

It is further submitted that petitioner and daughter of de-facto complainant are major that they got married on their mutual consent and their marriage certificate and photograph were seized by Police. **8**

SERVICE LAW:

--Departmental inquiry was conducted against respondent No.1-Employee into certain charges of miscoduct - Charges were proved and as a result disciplinary authority inflicted punishment of dismissal from service upon respondent No.1-

Employee - High Court has altered penalty of dismissal to that of stoppage of two increments for a period of three years - Interference of High not justified - It is not function of High Court to impose a particular punishment even if punishment imposed is shockingly disproportionate - High Court at best can remand matter to disciplinary authority for imposition of lessor punishment without naming same. **2**

SUCCESSION ACT:

---Sec.384 - (INDIAN) EVIDENCE ACT, Sec.45 - Revision is filed against dismissal order of lower Court passed in I.A. filed by present revision petitioners who sought to send documents, viz., so-called unregistered Will and unregistered adoption deed to expert to compare with so-called admitted thumb marks of deceased person contained in so-called registered Will.**10**

TELANGANA PREVENTION OF DANGEROUS ACTIVITIES OF BOOT LEGGERS, DECOITS, DRUG OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND LAND GRABBERS ACT, 1986:

---Secs.3(2) - INDIAN PENAL CODE, Secs.379 & 420 - "Goonda" defined - Detention order of detenu - In the detention order, it is alleged that detenue has been "indulging in series of property offences by diverting attention of ATM users and committing theft of their money.

For terming a person as "goonda" he must be a habitual offender - In this case, neither detention order nor counter affidavit has referred to any previous criminal back ground of detenu except two criminal cases, detenu is not alleged to have any other criminal history - Two cases alleged to have been committed with in span of three weeks from each other, do not justify respondent to term detenue as "habitual offender" and consequently brand him as "goonda" for purpose of invoking provisions of Act, which is an exception to ordinary penal law. ***7***

TENANCY LAW:

---Suit for eviction - Appellants filed suit in Civil Court for eviction of respondents - Premises in question were out side ambit of rent legislation and because of this reason civil suit for possession/ejectment was filed - During pendency of suit premises was brought within sweep of rent legislation by requisite notification - Trial Court decreed suit - District Judge allowed appeal on ground that premises in question was included in Municipal limits because of which rent act became applicable to suit premises - High Court dismissed 2nd appeal filed by appellant - Hence this civil appeal.

Rights of parties stand crystallised on date of institution of suit and therefore, law applicable on date of filing of suit will continue to apply until suit is disposed of or adjudicated.

If during pendency of suit Rent Act becomes applicable to premises in question, that would be of no consequence and it would not take away jurisdiction of civil Court to dispose of suit validly instituted.

Judgment of first appellate Court as well as High Court is set aside - Decree passed by trial Court, restored - Appeal, allowed. **12**

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Law Summary

(Founder: Late Sri.G.S.GUPTA)

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HYDERABAD HIGH COURT

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SUBJECT - INDEX

A.P. BUILDINGS (LEASE, RENT AND EVICTION) CONTROL ACT, 1960:

---Secs. 3(a)(i)(a), 10(2)(i)(ii)(b) and 20 - The respondents herein filed a petition against petitioner herein under the Act, 1960 for eviction of petitioner from schedule premises and to deliver vacant possession with costs - Said petition was allowed with costs by directing petitioner to vacate schedule premises within two months from date of order failing which, respondents are at liberty to evict petitioner as per law contemplated - Advocate fee also fixed at Rs. 2000/- - However, respondents preferred an appeal u/Sec.20 of Act to set aside findings in respect of wilful default aspect and costs and it was allowed - Being aggrieved by aforesaid order, petitioner filed present civil revision petition.

Held, it is established from evidence of R.W.1 that since 2002, there is no good running of business in schedule property - Since then, petitioner is continued in schedule property as if he is running Intel Computers in schedule property - But in Ex-C2, it is very clear that petitioner is using schedule property for domestic purpose - Thus, it is clear that petitioner has deviated from agreement by using schedule premises for domestic purpose apart from commercial purpose - In view, of above discussion, this Court find no perversity or illegality in impugned order and decree passed by Rent Controller - The instant petition is accordingly dismissed. ***469***

A.P. CIVIL RULES OF PRACTICE AND CIRCULAR ORDERS, 1990:

---Rules 60 and 115 - In a suit for declaration of title and perpetual injunction, trial court granted whereas in appeal, appellate court reversed it against which present revision if filed.

Held, though appellate Court found that trial Court has not marked documents, it has not taken any steps to mark documents and went on proceeding on merits as set aside order, instead of remanding matter to trial Court - In view of same, without going into merits of case, this Court deem it appropriate to set aside impugned order and remit matter to trial Court for deciding afresh by marking documents filed by both parties - Accordingly, revision petition is allowed setting aside impugned order and matter is remitted to trial Court. ***67***

A. P. CO-OPERATIVE SOCIETIES ACT:

---& BANKING REGULATION ACT, Sec. 1-A – CIVIL PROCEDURE CODE, Sec.34 - Co-operative Tribunal reduced rate of interest agreed between parties from 21 to 6 percent per annum - Same is challenged in present writ petition by bank on ground that it is contrary to Sec.21-A of the Banking Regulation Act - It was further stated that Sec.34 of Code of Civil Procedure is not applicable to proceedings under Andhra Pradesh Co-operative Societies Act, 1964.

Held: Co-operative Tribunal constituted under the provisions of A.P. Co-operative Societies Act is not a Civil Court and provisions of Sec.34 CPC are not applicable to it in order to enable it to reduce future rate of interest – Sec.21-A of Banking Regulation Act comes into operation - Consequently, order passed by A.P. Co-operative Tribunal, to extent of reducing rate of interest is held to be without jurisdiction and award of Arbitrator is upheld - Writ petition is, accordingly, allowed. ***201***

---Sec.60 - Second respondent passed orders holding petitioners jointly and severally liable along with employees of Co-operative Society for loss caused to

Society - Plea taken by petitioners that duties and responsibilities discharged by them do not come under provisions of Sec.60(1) of Act and notices issued to them were beyond jurisdiction of second respondent were negative - Petitioners filed OAs before A.P. Co-operative Tribunal - Their appeals were dismissed - Challenging said orders, present Writ Petitions were filed.

Held: Employees of Co-operative bank are governed by a settlement entered with Andhra Pradesh Co-operative Banks Association with their employees and their conduct and service rules are regulated by such settlement - Primary responsibility for irregularities committed in affairs of society rests on office bearers of society and employees working therein - Though employees of bank are connected in process of sanction of loans and bank itself is a society, no action can be taken against employees of another Society, "bank" in respect of irregularities committed in a society - In any event, joint and several liability cannot be mulcted on petitioners - In view of above, proceedings taken against petitioners are held to be without jurisdiction - Accordingly, Writ Petitions are allowed by setting aside impugned orders of Co-operative Tribunal. ***316***

A.P. (ANDHRA AREA) ESTATES (ABOLITION AND CONVERSION INTO RYOTWARI) ACT, 1948:

---Sec.11(a) and A.P. RIGHTS IN LAND AND PATTADAR PASSBOOKS ACT, 1971 - Writ Appeal filed by Mandal Revenue Officer was dismissed by Division Bench of this Court - After that, Petitioners who are legal representatives of S.Ramanaiah, pursued matter and brought to notice of Tahsildar, about said decision and sought issuance of Pattadar pass books and title deeds under Act - Tahsildar requested Joint Collector, for necessary instructions - Joint Collector passed impugned order purporting to exercise as Revisional Authority and set aside ryotwari patta granted to S.Ramanaiah by Settlement Officer - He held that entire land was classified as Swarnamukhi river and vested in Govt. free from all encumbrances - Present Writ Petition was filed against that order.

Held, Division Bench in Writ Appeal had accepted said affidavit filed by Tahsildar and given a finding that land claimed by S.Ramanaiah for grant of ryotwari patta is not part of river poramboke and was eligible for grant of patta - This finding operates as res judicata and cannot be re-agitated in this Writ Petition by respondents - Therefore, conduct of Joint Collector, first respondent, in insisting that Settlement Officer's action in granting patta to S.Ramanaiah is dubious, even though Commissioner, Appeals in his proceedings independently appreciated material produced by S.Ramanaiah before Settlement Officer and upheld grant of patta, amounts to gross insubordination, warranting initiation of disciplinary proceedings against him - How, as Revisional Authority under this Act, he can comment on or refuse to accept ryotwari patta granted under A.P. (Andhra Area) Estates (Abolition and Conversion into ryotwari) Act, 1948, by incorporating same in revenue records, is wholly inexplicable and Government Pleader could not give any satisfactory explanation for same - For all above said reasons, Writ Petition is allowed and impugned order of 1st respondent is set aside. ***439***

A.P. (T.A) LAND REVENUE ACT, 1317 Fasli:

--The 6th respondent filed appeal under Sec.158(1) of the Act and 3rd respondent passed interim order granting stay on proceedings of 4th respondent - Though petitioner raised preliminary objections regarding maintainability of appeal filed by

6th respondent by placing reliance under Secs.158(4) and 159(2) of Act, the 3rd respondent passed orders by overruling objections raised by petitioner stating that appeal is maintainable - Aggrieved by same, present writ petition is filed.

Held, Sec.158(4) of Act provides an appeal in case of any order or decision is varied or reversed on revision or review in revenue records - But after remand order is passed by 3rd respondent, the 4th respondent refused to alter revenue records, as such, it does not amount to any variation or reversal of entries in revenue records - On reading of Section 158(1) and (4) of Act, Court view that appeal does not lie against proceedings refusing to reverse entries in revenue records - In view of above legal position, Court view that the 3rd respondent was not correct in overruling objection raised by petitioner by placing reliance on Sec.158(1) of the Act alone, as such impugned proceedings overruling objection of petitioner regarding maintainability of appeal, is liable to be set aside and accordingly same is set aside and appeal filed by 6th respondent is dismissed - Accordingly, the writ petition is allowed. ***348***

A.P. PANCHAYAT RAJ ACT, 1994:

Sec.22(2) - District Judge granted ad interim injunction against petitioner, who is an elected Sarpanch from holding office, on O.P. filed by first respondent - Consequently, District Collector directed Upa Sarpanch to discharge additional functions as Sarpanch - Present writ petition is filed against order of lower Court.

Held: A reading of sub-section (2) of Sec.22 of Panchayat Raj Act, in vivid terms, demonstrates that pending decision by District Court, member shall be entitled to act as if he is qualified - In instant case, admittedly election O.P. filed by 1st respondent is still pending consideration for a decision - In view of language employed in above section, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that impugned orders passed by District Judge and consequential proceedings issued by District Collector cannot be sustained in eye of law and are without jurisdiction - For aforesaid reasons, writ petition is allowed, setting aside order by Court of Principal District Judge. ***190***

A.P. RIGHTS IN LAND AND PATTADAR PASSBOOKS ACT, 1971:

---Sec.9 – A.P. ASSIGNED LAND (PROHIBITION OF TRANSFER) ACT, 1977 - Petitioners filed revision petitions u/Sec.9 of the Act to 2nd respondent-Joint Collector, for correction of entries in revenue records in respect of subject lands - It was dismissed by 2nd respondent holding that subject lands are Government lands as per pahanies - Aggrieved by same, Petitioners filed present writ questioning that order and also for issuance of pass books - It was contested by 2nd respondent that subject lands were originally assigned lands and instead of filing appeal before competent authority against resumption order, petitioners have preferred revision u/Sec.9 for correction of entries in revenue records.

Held, a perusal of pahanies from years 1960-61 till 1995-96, entry in pattadar column, except for years 1960-61, names of assignees is shown and entry in possessory column, names of petitioners' vendor and his father were shown - When it comes to years 2000-01 till 2006-07, entry in pattadar column, it was shown as Government land and entry in possessory column, name of Hyderabad Metro Water Pipeline is shown - The authorities in exercise of suo motu power cannot correct revenue entries after a period of 37 years, which is not legally permissible - It is not case of respondents that entries were made

fraudulently and that act of fraud necessitated correction of entries suo motu - Altering entries in pahanies at its own discretion, without issuing notice and conducting enquiry, is nothing short of taking away property rights of party whose name is recorded - In view of above facts and circumstances, both writ petitions are allowed. **495**

--Petitioners, while filing this writ against order of impugned order contented that it was open to respondents Nos. 3 and 4 to go into validity of Will on basis of which petitioners had obtained pattadar passbooks and title deeds, since powers of a Civil Court were not conferred on respondent Nos.3 and 4.

Held, 4th respondent sent a report to 3rd respondent and asked latter to treat it as an appeal, is thus a procedure unknown to law - On a presumption that land is escheated to Government, a person cannot be dispossessed firstly and then forced to establish his title in a Court of law - It is for state to recover possession of it - Therefore, contention of Special Government Pleader that Government is owner of land because it escheated to Government is without merit - The effect of amendment is that sub-section (1) of Section 213, which makes a probate necessary, was held by sub-section (2) not to apply in case of Wills of Indian Christians also, which was not there earlier.

Accordingly, Writ Petition is allowed and order of 3rd respondent as confirmed by 2nd respondent are both set aside as wholly without jurisdiction - However, this will not preclude 1st respondent from suing in an appropriate Court for declaration of its title and recovery of possession of land from petitioners, if it is so advised. ***417***

A.P. (SC, ST & BCS) REGULATION OF ISSUE OF COMMUNITY CERTIFICATES ACT, 1993:

--- Respondent authorities caused enquiries into social status of petitioner twice in past and categorically held findings in favour of appellant - Subsequently, based on District Level Scrutiny Committee's Report, respondent No.2 cancelled ST status of petitioner - Respondent No.1 too dismissed appeal of appellant confirming order of respondent No.2 - High Court of Judicature at Hyderabad set aside order passed by respondent No.1 in a writ petition filed by appellant and directed to pass fresh orders - Respondent No.1 again rejected appeal upholding earlier orders of respondent No.2 - Present writ petition is filed against those orders.

Held: In view of law laid down in judgments, this Court finds absolutely no justification on part of respondents in initiating enquiry once again - Very enquiry held against petitioner for third time is unsustainable and untenable in eye of law - Enquiry was conducted behind back of petitioner which was not denied by respondents and said action is unhesitatingly a patent violation of principles of natural justice and same vitiates entire proceedings - Respondent No.2 in impugned orders of cancellation observed that school records need not be considered and said finding is contrary to Rule 8(d)(5) of the Rules framed under Act which mandates consideration of school records also during course of enquiry - Respondent No.2, after Report submitted by committee, did not afford an opportunity of making representation to petitioner, as mandated under Sec.5 of Act - A reading of appellate order passed by respondent No.1 also shows that appellate authority did not consider any of points urged by petitioner - Petitioner too was acquitted of charges of alleged offences punishable u/Secs.471,

418 and 420 IPC - For above said reasons, writ petition is allowed, setting aside orders passed by respondent No.1-State government. ***237***

A.P. STATE JUDICIAL SERVICE RULES, 2007 AND ANDHRA PRADESH PUBLIC EMPLOYMENT (REGULATION OF AGE OF SUPERANNUATION) ACT, 1984:

---Sec.3(1-A) - Administrative Committee resolved not to continue temporary services of said Judicial Officers including petitioner herein beyond age of 58 years - Accordingly committee passed a resolution and same also got approval of the Full Court - Thereafter a recommendation was made to Government and Government issued an order retiring petitioner with effect from 31-08-2015, last day of month on which he had completed 58 years of age - Aggrieved by same, Petitioner herein has come up with present writ petition - Among several grounds that petitioner has raised, he contended that as per Section 3(1-A) of A.P. Public Employment (Regulation of Age of Superannuation) Act, 1984 a person is entitled to continue in service up to age of 60 years and hence procedure prescribed by proviso to that section ought to have been followed if benefit of continuation up to 60 years was to be denied to petitioner.

Held, once it is found that petitioner was appointed only temporarily, it would follow as a corollary that he can always go back to his parent department - Once he goes back to his parent department, he is entitled as of right to continue to be in service up to the age of 60 years as stipulated unless his services were terminated for any misconduct pursuant to any disciplinary proceedings - Since High Court committed a mistake in referring to age of 58 years, Government fell into an error in thinking that petitioner should go home instead of repatriating him to post of Assistant Public Prosecutor and allowing him to continue in service up to normal age of retirement - Since this has not been done, petitioner is entitled to relief - Therefore, writ petition is allowed and impugned order is set aside - Government is directed to post petitioner as an Assistant Public Prosecutor and allow him to continue up to normal age of retirement of 60 years. ***503***

ARBITRATION AND CONCILIATION ACT, 1996:

---Sec.9 - Petitioner herein filed petition u/ Sec.9 of Arbitration Act seeking injunction restraining respondents from alienating or encumbering petition schedule property or parting with their possession thereof of creating therein third party rights by any means whatsoever during pendency of arbitration proceedings - Court below returned petition for want of jurisdiction against which Petitioner filed this Petition.

Held, requirement, first and foremost, is that Court upon which such exclusive jurisdiction is sought to be conferred must have inherent jurisdiction – Sec.20 of Act of 1996 merely adds a facet in this regard - Therefore, if Court does not have jurisdiction inherently to deal with matter, parties cannot confer jurisdiction upon it by agreement - Convenience of parties cannot be determinative of jurisdiction of a Court - If such argument is accepted, it would be open to a litigant to confer exclusive jurisdiction upon a Court without reference or regard to territorial and pecuniary jurisdiction also - On above analysis, this Court find that Court below did not commit any error in returning petition for want of jurisdiction-Civil Revision Petition is accordingly dismissed ***I***

---Secs.9, 37, 42 – CIVIL PROCEDURE

CODE, Order 39, Rules 1 & 2 - An interim ex parte order to maintain status quo was passed in arbitration O.P. - Appellant/ respondent questioned very jurisdiction of Court to entertain O.P. - After several adjournments, docket order under appeal was passed extending interim order - As Court below failed to pronounce final orders despite lapse of more than 50 days and as 90 days had elapsed since passing of interim order, this appeal was preferred.

Held, Supreme Court observed that a party to a suit who is being restrained from exercising a right must be informed as to why Court, instead of following requirement of putting him on notice under Rule 3, took recourse to procedure under proviso thereto and this Court also stressed on mandatory nature of this statutory requirement in many cases - Having granted an unreasoned ex parte order of status quo in respect of alienation of petition schedule properties, Court below did not even endeavour to dispose of I.A within 30 days, as statutorily mandated, notwithstanding appellant herein raising a crucial jurisdictional aspect - That apart, Court below blindly extended interim order completely ignoring said objection - Viewed thus, approach of Court below was erroneous on facts and in law on more counts - Civil Miscellaneous Appeal is accordingly allowed setting aside order under appeal. ***88***

---Secs.9, 37 - INDIAN EASEMENTS ACT, 1882, Secs.52, 64 - HMDA filed these appeals against ex parte order of injunction granted to hotel which is a licensee, from taking further action, including eviction - Licensee's application for renewal was pending with HMDA and there was no default in payment of license fee by hotel.

Held, it is not open to licensee to assert any leasehold rights over licensed premises after expiry of license period and seek to prolong its occupation thereof - Its status upon expiry of license period is that of a trespasser - Court below seems to have been unmindful of distinction between a license and a lease, as is clear from order passed in Arbitration O.P, where it used terms 'license' and 'lease' interchangeably - As is clear from statute and case law, only remedy for licensee, if it makes out a case, is to sue for damages and it cannot resort to trespassing over licensed premises after expiry of license period - Appeals are accordingly allowed. ***114***

---Sec.42 – CIVIL PROCEDURE CODE, Sec.24 - Contention was that lower court did not consider factum of respondents themselves filed O.P. for interim measure u/Sec.9 of Arbitration Act and thereby according to Sec.42 of said Act, that very same Court has jurisdiction to try all subsequent applications including proceedings challenging award passed, and that transfer of same to Additional Chief Judge, invoking Section 24 CPC by learned Chief Judge, by impugned Order is unsustainable.

Held, Chief Judge, got jurisdiction being Principal Civil Court of Original Jurisdiction under Section 2(1) (e) of Act, 1996 to entertain application u/Sec.34 r/ w Sec.42 of Act does not mean he shall decide and cannot transfer as he can either retain with him to decide by himself or made over to any Additional District Judge and even once made over and assigned either to decide himself or remade over and assign by transfer to any other Additional District Judge, as not only District Judge but also the Additional District Judges as may as they are all put together to be termed as District Court-Cum- Principal Civil Court including within meaning of Section 2(i)(e) of Act, 1996 - However, on facts as Chief Judge, is unsustainable in directing I Additional Chief Judge to try O.P. along

with pending E.P. on file of Court, same is set aside to extent of joint trial/common enquiry - Consequently, learned I Additional Chief Judge by virtue of this order shall decide both matters independently and at best simultaneously if at all so to do is convenient and necessary - Hence, Revision is allowed in part. ***485***

CIVIL PROCEDURE CODE:

---Sec.2(11), Or.1, Rl.10, O.XXII Rules 1, 3, 9 and 10 - A suit for partition and separate possession of 1/11th suit schedule property was filed by the respondent No.1 herein - Plaintiff executed registered sale deed in respect of 1/11th undivided share in favour of revision petitioners who filed I.A. under O. XXII Rule 10 of CPC to implead them as defendants 19 and 20 - Application was allowed which was filed to transpose defendant Nos. 19 and 20 as Plaintiff Nos. 2 and 3 to step into shoes of deceased-plaintiff - It was opposed by respondents 2 to 19 - Objections were accepted by trial Court and prayer for transposition was accordingly rejected against which this Revision was filed.

Held, refusal of prayer for transposition on technical grounds in considered view of this Court defeats object and scheme of Section 2 (11), Order 1 Rule 10 and Order XXII Rules 1 and 10 of CPC - In a suit for partition, position of parties is interchangeable - Order XXII, Rule 10 provides for impleading a purchaser to come on record and continue or defend suit - Once a purchaser is on record, demise of purchaser's vendor does not automatically result in abatement, because purchaser fits into definition of a Legal Representative under Section 2 (11) of CPC and is already on record.

Court exercises its discretion in particular fact and circumstances of a given case and orders transposition of parties - In case on hand, refusal of prayer to transpose revision petitioners is unsustainable - Revision is, accordingly, allowed. ***57***

---Sec.75, Or.20, Rule 12,18 and Or.26 Rules 1 to 10, and 13 and 14, 16 - Suit for partition and separate possession was decreed - First appeals filed by plaintiffs against preliminary decree still pending - An advocate Commissioner was appointed who submitted report on division of properties - Ascertainment of properties is not subject matter of revisions - Defendants filed objections, sought for examination of Commissioner by filing I.A.s - They were dismissed against which present revisions arise - Respondents/plaintiffs submit that impugned orders of lower Court no way require interference.

Held, a reading of several other provisions of Rules 13 and 14 of Order 26, Rule 10 of Order no way takes away power of Court to consider if at all necessary even in any partition final decree proceedings, from report of Commissioner with reference to objections of parties to call for Commissioner as a Court witness to cause examine with a right of cross examination to both parties.

Accordingly, these two revision petitions are disposed of directing trial Court, irrespective of dismissal of earlier petitions on application of parties to call for Commissioner to be examined with reference to report in relation to division of properties for parties have no such right to consider objections of parties to report and if necessary to re-entrust warrant to Commissioner and after hearing where found such necessity does not arise and still there is any necessity of any cloud to be cleared by Commissioner, to cause examine Commissioner as a Court witness, with right of cross examination to both parties. ***73***

---Sec.115 - INDIAN PENAL CODE, Secs.406, 420 and 506 - Decree holder's execution petition was dismissed by lower Court on ground that Decree Holder was a resident of Vijayawada and that except judgment debtors 2 and 3, others were residents of Bhimavaram of West Godavari District and that even third judgment debtor was not residing within limits of Hyderabad city and held that Decree Holder used Lok Adalat mechanism as a tool and was intending to execute award illegally and contrary to provisions of Act - Aggrieved by it, Decree Holder filed this revision petition.

Held, Decree Holder ought to have first filed execution petition before a competent Civil Court of City Civil Court Unit of Hyderabad District and ought to have sought transfer of decree to the competent Civil Court of Ranga Reddy District as 'A' Schedule property is situated within local limits of District Court at Ranga Reddy District - Be that as it may, as Execution Proceedings are already instituted in competent Executing Court at Ranga Reddy District, this Court, while exercising its suo motu powers of transfer and supervisory jurisdiction, deems it appropriate to permit Decree Holder to continue to proceed with execution proceedings in said Executing Court instead of driving Decree Holder from pillar to post - On above analysis, this Court finds that order impugned is unsustainable and is liable to be set aside - In result and for reasons afore-stated, order impugned is set aside and learned Judge of lower Court is directed to entertain Execution Petition filed by Decree Holder and dispose of same in strict accordance with procedure established by law. ***352***

---Or.1, Rule 10 and Or.XXII, Rules 5 & 6 - The lower Court held that an application under Order 1 Rule 10 of CPC was maintainable to bring legal representatives of deceased on record after death of concerned parties for passing of a final decree - It also held that after passing of preliminary decree, there could be no abatement on death of parties - Since rights of parties are already determined before death of deceased, death of parties does not have any effect on proceedings - Present Petition is filed assailing that order.

Held, a reading of Order XXII Rule 6 of CPC., clearly states that notwithstanding anything contained in foregoing rules, whether cause of action survives or not, there shall be no abatement by reason of death of either party between conclusion of hearing and pronouncement of judgment - Since hearing is already over and preliminary decree is also passed, question of proceedings getting abated, due to death of plaintiffs after passing of preliminary decree and before passing of final decree, would not arise - Hence, an application to bring legal representatives of deceased need not be under Order XXII Rule 3 of CPC., but an application under Order 1 Rule 10 of CPC to add them as parties is maintainable - Accordingly, Civil Revision Petition is dismissed. ***460***

---Or.6, Rl. 17 - Suit was for recovery of money based on mortgage of property of defendants 2 to 5 - Evidence was closed and matter was posted for arguments - At that stage, I.A. was filed by defendants seeking to amend written statement - Amendment was resisted by plaintiff/ petitioner - But Court below had allowed plea of defendants/respondents - Present Revision is filed to challenge same.

Held: There was no due diligence on part of defendants in seeking amendment and there is no explanation to same except

putting blame on advocate - Further, there is no explanation why this plea could not have been taken at earliest point of time - Inasmuch as, learned Judge failed to take into consideration of crucial aspect of due diligence on part of defendants in seeking amendment and further explanation offered being not convincing, merely because amendment may help defendant as one more defence for defeating claim of petitioner/plaintiff, amendments cannot be allowed and very purpose of amendment to CPC under Or.VI, Rule 17 would be defeated - In facts of present case, notwithstanding very persuasive argument of learned counsel for respondents, Court unable to sustain order under revision - Accordingly, Civil Revision Petition is allowed setting aside order of lower Court. ***281***

---Or.VI, R.17 - Plaintiff filed O.S. for recovery of suit schedule property by evicting defendants 1 and 2 and other reliefs - Paintiff's property was a oral gift by his mother - Trial Court decreed suit claim of plaintiff holding that plaintiff is entitled to recover possession of suit property - Defendants/appellants filed this appeal challenging order on various counts and sought setting aside of order.

Held: It is in interest of justice that a suit shall be decided on all points of controversy and accordingly, it is needed that party shall be allowed to alter or amend their pleadings during pendency of suit that includes appeal suit as continuation of suit - Material on record is insufficient to decide lis and plaint also requires amendment to declaratory relief and consequential relief of possession by permitting to amend and also to implead suo moto other necessary parties and thereby remands matter directing trial Court for early disposal - Appeal is allowed. ***247***

---Or.VII, Rl.11 r/w Sec.151 - INDIAN REGISTRATION ACT, 1908, Sec.49 – Amendment to Sec.17(1)(g) of Registration Act by A.P. Act 4 of 1999 - Petitioner/ defendant in suit filed I.A. under Or.VII, Rule 11 r/w 151 of CPC to reject plaint in O.S. on various grounds - Respondent-plaintiff filed counter raising several contentions and prayed for dismissal of petition - Trial Court rejected contention of defendant on ground that agreement is admissible in law and suit for specific performance is maintainable based on unregistered agreement of sale and thereby plaint cannot be rejected by exercising power under Order VII, Rule 11(a) or (d) of CPC - Present revision is filed against that judgment.

Held, in view of law laid down by Apex Court, this Court cannot exercise its power under Art. 227 of Constitution of India though order is wrong, since power can be exercised only to keep subordinate Courts and Tribunals within its bounds - Therefore, this Court unable to exercise power under Article 227 of Constitution of India to interfere with findings recorded by trial Court since trial Court acted within its bounds and passed order, which is under challenge - In result, revision petition is dismissed. ***140***

---Or.VII Rule 11 (d) - INDIAN LIMITATION ACT - Plaintiff filed a suit seeking direction to defendants to execute and register sale deeds - Defendants filed I.A. in support of petition to reject plaint on question of limitation period - Lower Court dismissed petition which is impugned herein.

Held, it is a mixed question of fact and law practically whether date can be straightaway be taken as knowledge of fraud played by defendants on plaintiff, merely because of certificate issued by Tahasildar of land is not available as per revenue record - That is crux to be decided only on letting in evidence - If that is to be

established, plaint can be said barred by limitation - If not, it is within time - Once such is a mixed question of fact and law, it does not permit to reject plaint from that single sentence, that too when law is very clear from expressions supra that a plaint on its face value by taking allegations as if true if barred by limitation, then only to reject plaint and not otherwise though power of rejection is available right from filing of suit till end of trial - In view of above, there is nothing to interfere with impugned order herein, while sitting in revision - In result, Civil Revision Petition is dismissed. ***9***

---Or.XVIII, Rule 15(3) r/w Sec.151 - Revision Petitioners are defendants in original suit - They are legal representatives of one deceased person - Respondent filed I.A. under Order XVIII Rule 16(3) r/w Sec.151 CPC - The revision petitioners opposed prayers in I.A - Trial Court allowed them through order impugned against which this revision arose.

Held: If procedure stipulated in sub-Rule 3 Rule 16 is extended for correction of evidence available on record, in considered view of this Court, such procedure leads to an anomalous situation as pointed out by this Court (in an earlier decision) - In case on hand, insertion of word 'not' at instance of respondent in impugned sentence is illegal and secondly contrary to explicit procedure provided under Rules 4 and 6 of Order XVIII of CPC and not within jurisdiction of Court - Revision is accordingly allowed and order impugned in revision is set aside. ***183***

---Or. XVIII Rule 1 – EVIDENCE ACT, Secs.101 to 104- The plaintiff filed suit for specific performance basing on agreement of sale and consequential perpetual injunction - Defendant filed written statement denying very nature of document - Plaintiff filed memo before trial court with a prayer to direct defendant to begin trial for which defendant filed objections - However, trial Court overruled objections and directed defendant to begin trial - Hence, defendant filed present revision petition.

Held, out of 4 issues framed by trial Court, burden of proof lies on plaintiff on three issues, which includes core issue of proving document - In such circumstances, directing defendant to begin trial is contrary to Order XVIII Rule 1 CPC and Sections 101 to 104 of Indian Evidence Act - Trial Court has not expressed any opinion on whom burden of proof lies on issue Nos.2, 3 and 4 - Having regard to facts and circumstances of case and also principle enunciated in cases cited supra, Memo filed by plaintiff is not sustainable either on facts or in law - If order of trial Court is allowed to stand, certainly it would amount to miscarriage of justice - Hence, it is liable to be set aside - In result, Civil Revision Petition is allowed, setting aside order of trial Court. ***453***

---O.21, R. 14 - Transfer of Property Act, Sec. 55 - Indian Succession Act, Sec.63 - Indian Evidence Act, Sec.68 - Lower Court observed that settlement deed executed by J.Dr. in favour of his son has its legal effect as to passing of title in favour of settlee and transfer of rights by postponing enjoyment is a valid transfer and held that objections raised by D.Hr are unsustainable and from gift covered by Ex. B1 held that J.Dr. is not having saleable interest in respect of E.P. Schedule property and eventually dismissed both Execution Petitions.

Held: Lower Court should have seen factum of Will is not proved as contemplated by Sec.63 of Indian Succession Act and once not proved J.Dr. got no absolute rights over entire property - It is from ancestral property of J.Dr. and his son who thereby got undivided interest and for undivided

interest of J.Dr. only settlement/gift deed cannot be executed of joint family property which is void abinitio and even to treat as relinquishment of so called settlement since void and there are no circumstances compelling or necessitating execution - Trial Court went wrong in blindly relying upon document as if same is proved without examination of at least one of attestors to prove as contemplated by Sec.68 of Evidence Act for not even discussed from D.Hr. disputing saying same as fraudulent to defeat creditors - Thus matters require reconsideration from scope of law involved with reference to facts on record - Accordingly, and in result, both revision petitions are allowed and impugned orders of lower Court are set aside and execution petitions are restored and lower Court is directed to conduct fresh enquiry. ***212***

---Or.XXI R.89, 90, 91, 92 - Revision Petitions are filed on grounds that Executing Court should not have issued sale certificate without bringing legal representatives of deceased-sole Judgment Debtor on record when he died before confirmation of sale and as such said sale certificate is not valid under law - Basing on said sale certificate, GPA holder of Decree Holder, who is auction purchaser, is trying to take possession of property and as such sale certificate is not binding on petitioners, as they are not parties to same.

Held, confirmation of sale done and sale certificate even issued later dates back retrospectively from date of sale - Law is very clear from very wording of Rule 92 CPC that, if no application by Judgment Debtor or any person claiming through him or any person having interest over property otherwise even within statutory time after Court auction sale to say 60 days, it is automatic duty of Court to confirm and for that no application of auction purchaser even required and once from sale effected Decree Holder's amount is satisfied, there is also no obligation to Decree Holder to bring legal representatives of Judgment Debtor even if Judgment Debtor died before confirmation of sale and after Court auction sale for when no need of auction purchaser to apply, there is practically no need to bring any legal representative by auction purchaser, much less any duty of Court to confirm sale in absence of Decree Holder or Judgment Debtor or any of their legal representatives - Accordingly, all four revisions are dismissed. ***47***

---Or.39 and Sec.151 - A temporary injunction order was passed in favour of plaintiff against defendant in relation to plaint schedule property who sought police aid to enforce orders which was dismissed - Defendant's CMA against said order in lower appellate Court ended in dismissal - Defendant's application for appointment of Advocate-Commissioner ended in dismissal - CRP filed by defendant before this Court was also ended in dismissal on contest.

Held: From the temporary injunction order once in force and there are specific allegations by plaintiff against defendant that despite injunction order defendant illegally trying to interfere and threatening to dispossess and thereby police aid is to be granted, there is basis to consider same to grant police aid - Factum of wife of defendant filing another suit and obtaining ex parte ad interim injunction order no way comes in way of granting police aid for police to assist to enforce Court orders passed in favour of plaintiff because of their independent claims of respective properties and for their claims are not one and same - Having regard to above, dismissal of police aid application by lower court is unsustainable, and same is accordingly set aside by granting police aid

as sought for - Accordingly, and in result, revision is allowed. ***165***

---Or.43, Rule 1, Or.9, Rule 13 - Respondent herein instituted suit against appellant herein for specific performance of Agreement of Sale - Execution of Registered Sale Deed in favour of plaintfiff-respondent was directed ex parte - Defendant-appellant filed I.A. to set aside ex parte judgment - Plaintiff-respondent filed counter affidavit - I.A. was dismissed against which present appeal is filed.

Held, despite correct address given, no steps were taken by plaintiff in suit to serve appellant herein on correct address - Endorsement made on legal notice got issued by plaintiff prior to institution of suit does not have any bearing on present application - Senior Civil Judge rendered ex parte judgment in a cryptic manner and without even discussing about evidence on record - In view of above reasons, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that impugned order cannot be sustained in eye of law and appellant herein is certainly entitled for opportunity of prosecuting case on merits.

Appeal is allowed, setting aside order passed by Senior Civil Judge - Consequently, I.A. is allowed and Court below shall proceed with adjudication of O.S, in accordance with law, and dispose of same as expeditiously as possible. ***48***

CRIMINAL PROCEDURE CODE:

---Secs. 2 (h), (i) and (y), 53, 53 A, 54 - CONSTITUTION OF INDIA, Arts.20, 21 - This revision is filed against order of lower Court directing petitioner/Accused No. 1 to undergo medical test/potency test for Erectile Dysfunction - Petitioner contended that it was nothing but intruding into personal liberty and privacy and to compel him against his wish and such invasive tests will be contrary to and violative of rights against self-incrimination under Article 20(3) of Constitution of India, that same was subjecting him to oppressive and degrading treatment, that it was also prohibitive under Article 21 of Constitution of India.

Held, what material speaks is Erectile dysfunction may be outcome of different causes - It no way speaks, it cannot be deciphered of specific causes as is so, statistics on different causes not possible to give - Once such is the case, test can be permitted for submitting to same is not a testimonial compulsion and not within meaning of "to be a witness" but for furnishing of information in its larger sense and no way affects Right to Life for same is within sweep of 'such other tests' to cover by provisions of law - Hence, order of Court below no way requires interference - Accordingly, and in result, order of lower court is upheld by dismissing revision against it within scope of law. ***364***

---Sec.125 - Contention of petitioner/husband was maintenance case was allowed ignoring dissolution of marital tie and therefore question of neglect of a divorced wife did not arise - He further contested that she did not aver that she was unable to maintain herself - Petitioner filed this revision against impugned order of lower court in awarding maintenance of Rs.10,000.

Held, there is no bar legally u/ Sec.125 Cr.P.C. proceedings to claim maintenance even after divorce by wife - He cannot avoid maintenance that too when law is very clear in purposive interpretation required from expression of Apex Court applied in Badsha case - Petitioner's claim that he was not having means was hard to believe in face of evidence and hence maintenance be reduced from Rs.10,000/

- to Rs. 8,000/- per month and in other respects, no way requires interference - Hence, Revision is allowed in part. ***402***

---Sec.145 - A question arose as to both criminal proceedings and civil proceedings can go parallel to each other.

Held, ….even sections 145 to 147 proceedings initiated before filing of civil suit those cannot be continued after civil Court is seized of matter - After filing of civil suit, question of initiation of said proceedings in relation to property covering lis does not arise....no way sustains and even it is revision petitioner that invoked police for initiation of Sec.145 Cr.P.C proceedings that is not a ground much less for 3rd respondent herein so to submit even to continue proceedings, from above settled expressions of law - Accordingly, and in result, Criminal Revision Case is allowed and impugned order is set aside. ***465***

---Sec.482 - INDIAN PENAL CODE, Sec.500 - CIVIL PROCEDURE CODE, Or.38, Rule 5 - Petitioner filed suit for recovery of amount on basis of promissory note executed by 2nd respondent-defacto complainant and filed I.A under Or.38, Rule 5 seeking conditional order of attachment - Senior Civil Judge ordered conditional attachment directing complainant to furnish 3rd party security to suit claim within 48 hours from time of receipt of notice and in event of failure to furnish security Field Assistant is directed to attach property.

Complainant contends that in his absence Field Assistant allegedly attached property without issuing notice at instance of petitioner and on account of such acts petitioner suffered substantial loss to his prestige, esteem, lowered his status and at time of attachment a beat of tom tom was made in village announcing that property of de facto complainant is going to be attached and as such complainant sustained huge loss particularly loss of his status in eye of society and hence filed complaint u/sec.500 IPC against petitioner.

Petitioner contends that statement made during pendency of proceedings would not attract offence punishable u/sec.500 IPC and in absence of any allegation that in view of said statement property was attached question of attracting offence punishable u/Sec.500 IPC as defined u/sec.499 does not arise and apart from that Field Assistant who attached property is responsible if prestige of de facto complainant is lowered because of such attachment but not petitioner and therefore requested to quash proceedings.

In this case, act done in pursuance of judicial proceedings would not amount to defamation as defined u/sec.499 IPC in view of absolute privilege attached to such act - Even otherwise attachment was effected by Field Assistant who is a Court Officer and not by petitioner.

If defacto complainant is aggrieved by any act of Field Assistant i.e., beat of tom tom and attachment of property at best he is liable for such act, but not petitioner and in absence of any allegation against petitioner he cannot be made responsible for such acts and attachment of property is procedural act done by Field Assistant adhering to such procedure would not constitute offence punishable u/Sec.500 IPC - This Court find no ground to proceed against petitioner - Proceedings are liable to be quashed - Criminal petition is allowed. ***396***

---Sec.482 - Indian Penal Code, Secs.420, 120-B - A.P. (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act, 1994, Secs. 4, 13 (1) - Allegation against petitioner is that he, along with others, appointed six persons and some others in 23 posts of class IV employees without sanction or

permission from Government and thus got their appointment orders by cheating government - Though initially crime was registered for violations under Act 2 of 1994 and Sec.120-B IPC, while taking cognizance, charge is framed only u/Sec.420 of IPC - This petition is filed u/Sec.482 of Cr.P.C to quash proceedings against petitioner/ accused.

Held, a prima facie perusal of charge does not make out guilty intention on part of petitioner for offence punishable under Sec.420 IPC - Further, when employees approached this Court, this Court directed government to regularize their services and accordingly their services were regularized and some of employees were also said to have retired from service by taking their emoluments - In these circumstances, it is established that petitioner neither cheated government, nor de facto complainant - Therefore, allowing criminal prosecution to continue against petitioner would be abuse of process of law.

Having regard to above facts and circumstances, Court do not find any reason to interfere with decision taken by respective governments for withdrawal of criminal prosecution pending against petitioner u/ Sec.321 of Cr.P.C.

Proceedings against petitioner are hereby quashed and criminal petition is accordingly allowed. **19**

DETENTION ORDER:

--- Petitioner sought quashing of detention orders against her husband (detenu) passed by respondent No. 2, confirmed by respondent No. 1 on ground that orders and grounds were served in Malayalam, native tongue of detenu but rest of documents were supplied in English or Telugu, which were not known languages of detenu.

Held, said respondent is duty bound to provide under Section 8 of the Act relied upon documents in known language of detenu, within 5 days from date of detention - It cannot be believed that said respondent was not aware about procedure - It is not first case in this state that they never had experience of same - Thus it seems that respondent No.3 was determined to detain detenu under any circumstances, thus he succeeded into getting detention order passed - Due to carelessness of respondent No. 3, detenu could not make effective representation, which is his right provided under law - Thus his liberty was curtailed, for 7 months, as provided by Constitution of India - Therefore, Court hereby quash detention order - Accordingly, this writ petition is allowed. ***330***

DOMESTIC VIOLENCE ACT, 2005:

---Secs.2(a), 12, 17, 18, 20 and 23 – CRIMINAL PROCEDURE CODE, Sec.482 - Petitioner, daughter-in-law, sought quashing of proceedings against her initiated by 2nd respondent/complainant, her mother-in-law under provisions of Domestic Violence Act - 2nd respondent sought protection from her son and daughter-in-law and for maintenance - Both petitioner and her husband were living separately from 2nd respondent.

Held, in view of facts and circumstances, and law laid down in decisions, as petitioner herein had not been living or lived with 2nd respondent/ complainant, in Court considered view, case cannot be filed under Act, as it does not fulfill conditions required u/Sec.2(f) of Act - Thus it is a sheer misuse of protection guaranteed under Act - Criminal petition is accordingly allowed and proceedings against petitioner are quashed. ***83***

ESSENTIAL COMMODITIES ACT, 1955:

---Sec.3 - Fertilizer Control Order, 1985 - Petitioners, wholesale dealers in fertilizers were restrained from selling fertilizers outside their respective districts passed by fourth respondent, against which they filed this writ.

Held, in absence of any restriction in clauses of Control Order, this Court is of opinion that Government cannot impose any restriction either by Government Order or Circulars - In view of above, all writ petitions are allowed by declaring that petitioners, who are wholesale dealers are entitled to sell their product outside their districts also, but within territorial jurisdiction of concerned state. ***387***

---Sec.6-A and A.P. SCHEDULED COMMODITIES DEALERS (LICENSING, STORAGE AND REGULATION) ORDER, 2008 - Order of District Collector to confiscate seized stock was challenged before Court of Principal District and Sessions Judge, and learned Judge rendered common judgment setting aside order of District Collector and further directing appellants Nos.1 and 2 to pay penalty of Rs. 50,000/- each to Government - Its validity was challenged by State to issue a writ of certiorari - Writ Petitions were also filed by Axis Bank Limited, praying for a direction to Respondents 1 and 2 to return goods covered by Criminal Appeal named above - Another writ was filed praying for a direction to Respondents 1 to 4 authorities to release seized stock of soyabean as per direction in Criminal Appeal.

Held, it is also evident from order of Principal Sessions Judge that record of Collector (Civil Supplies) demonstrates that Axis Bank furnished details of farmers who pledged goods and borrowed loans along with photostat copies of letters - It is also important to note that District Collector also overlooked completely claim filed by Bank and documents filed by Bank - No plausible explanation is forthcoming as to why said claim of Bank was completely ignored, despite above said orders of this Court - On thorough analysis of entire material, Principal Sessions Judge came to a categoric conclusion that without any evidence as to clandestine business, District Collector arrived at impugned finding - It is a settled law that unless order impugned is patently perverse and suffers from inherent lack of jurisdiction, a Writ in nature of Certiorari cannot be issued - In instant case, this Court does not find any such contingencies - In view of above reasons and having regard to findings recorded by learned Principal Session Judge, this Court holds that unofficial Respondents 1 to 11 in W.P. No. 6129 of 2016 do not fall under definition of 'Dealer' u/Sec.2-K of the Control Order, 2008 - In result, W.P. Nos. 6127 and 6129 of 2016 are dismissed and W.P. Nos. 5778 and 12673 are allowed, directing Respondents 1 to 4 to return seized stocks as per the Judgment of Principal Sessions Judge, within a period of two weeks from date of receipt of this order. ***478***

EVIDENCE ACT(INDIAN):

---Sec.45 - CIVIL PROCEDURE CODE, Sec.151 - Contention of petitioner/defendant that signature and matter in promissory note were filled up on different dates - District Judge dismissed Application seeking to send same for scientific examination through experts, stating that as of date no expert is available to determine such aspect - Hence present CRP.

In absence of scientific expert, even if argument of petitioner was to be considered, on account of impracticability involved, it would be only a futile exercise - Therefore CRP is liable to be dismissed. ***174***

---Sec. 45 - Revision is filed by revision petitioner/Plaintiff against direction of Court to defendant to give his specimen signatures before court to facilitate sending of vakalat, written statement, exhibit A-1 promissory note, with exhibit A2-endorsement thereon, and specimen signatures that may be taken in open court to an expert for examination and furnishing a report with his opinion.

Held, view point being projected by plaintiff that if defendant is called upon to furnish his signatures in open court, he might designedly disguise his signatures while making his signatures on papers in open court is also having considerable force and merit - Unless defendant makes available to Court below any documents, with his signatures, of authentic and reliable nature more or less of a contemporaneous period, and unless such documents are in turn made available to expert along with suit promissory note, expert will not be in a position to furnish an assured opinion, in well considered view of this Court - Court below did not advert to any of relevant aspects of matter and failed to deal with material contentions of plaintiff and simply allowed petition just on mere askance of defendant - For above stated reasons, this Court finds that trial Court is not justified in passing order impugned in this revision - In result, Civil Revision Petition is allowed and order passed in I.A in O.S is set aside. ***99***

--Sec.116 - CIVIL PROCEDURE CODE, Or.15-A - Petitioner/plaintiff claims respondents/defendants abruptly stopped payment from March 2015 and their defence thereby is liable to struck off - Contention of respondents/defendants is that after disposal of Special Leave Petition before Supreme Court, there is no jural relationship between them and petitioner - Observations of Court below under impugned orders says that without ascertaining jural relationship is subsisting or not, respondents are not to be directed to deposit alleged rents and applications were dismissed against which present revisions filed.

Held, from mere giving of notice by so-called paramount owner to tenants or landlord does not absolve liability of tenants to pay rents to landlord or to vacate by voluntary surrender of possession by terminating tenancy - Any right of paramount owner to maintain ejectment suit against owner of premises and also by showing tenants as codefendants does not even enable tenants to avoid payment of rents or damages for use and occupation so long as continuing in possession without surrender, unless evicted by paramount owner.

Having regard to above, revisions are allowed by setting aside dismissal orders passed by lower Court and tenants are directed to pay or deposit arrears of rent. ***26***

HINDU MARRIAGE ACT, 1955:

---Secs.9 and 13(1)(i-b) - Appellant in O.P. sought for dissolution of marriage on grounds of desertion - Respondent/wife filed a criminal case against appellant/husband u/Sec.498-A which ended in acquittal - Court below relied upon evidence of respondent and R.Ws 2 and 3 and rendered a finding that respondent was driven out of home by appellant for non-payment of additional dowry and negatived claim of desertion.

Held, Court below has failed to take note of fact that criminal complaint given by respondent against appellant u/Sec.498-A IPC ended in acquittal - No piece of documentary evidence such as any further complaints against appellant for dowry harassment has been filed - Respondent has not even issued any legal notice to

appellant to effect that she is willing to join him and requested him to take her back to matrimonial home - In absence of such evidence, Court are of opinion that it is not safe to place reliance on mere ipsi-dixit of respondent and R.W.s 2 and 3 - This conduct of respondent, in Court opinion, clearly suggests that latter herself has abandoned matrimonial home without sufficient cause and such abandonment constitutes desertion - Therefore, Court are of opinion that this is a fit case where marriage between appellant and respondent needs to be dissolved - For foregoing reasons, Civil Miscellaneous Appeals are allowed. ***104***

LAND ACQUISITION ACT:

---Secs. 4(1), 5A, 9(1), 9(3), 10 and 55 - Contention of Petitioners was that at time of issuance of notification u/Sec.4(1) of Act, District Collector has no jurisdiction to issue said notification and hence all subsequent proceedings should be held void - They further contented that though such a plea was not raised in earlier round of litigation, they were not precluded from raising such a plea in present round of litigation - Hence they prayed to declare impugned order passed by District Collector rejecting their objections was bad in law.

Held, petitioners cannot take such a plea after matter was remanded for consideration of their objections in an enquiry u/Sec. 5-A of Land Acquisition Act - In view of reasons given in impugned order in respect of common objections, it cannot be said that objections were not properly considered - Hence order passed by District Collector was in accordance with order passed by this Court and it is upheld - In view of above findings recorded, Writ Petitions fail and are accordingly dismissed. ***428***

LEGAL SERVICES AUTHORITIES ACT, 1987 – 'LOK ADALT AWARD' - Defendant alleged that Lok Adalat Award was obtained by plaintiff in collusion with defendant's counsel - Hence he filed this revision requesting for setting aside of award as he has already discharged mortgage debt.

Held, complex questions of fact and issue of fraud cannot be resolved except after a full-fledged trial in a suit but not in this revision and that as an efficacious alternative remedy by way of a civil suit is available to revision petitioner/defendant, revision petition cannot be entertained in facts and circumstances of case - As a sequel, this Court further finds that it is just and fair to relegate petitioner to a civil suit while dismissing revision petition as not maintainable - In that view of matter, Civil Revision Petition is dismissed as not maintainable. ***274***

LIMITATION ACT(INDIAN):

---Sec.5 – CIVIL PROCEDURE CODE, Or.9, Rl.13 - Suit was filed for declaration of title and permanent injunction - An ex parte decree was passed - Defendants/ respondents prayed for setting aside of same by filing an application under Or.IX Rule 13 of CPC and a petition under Sec.5 of Limitation Act seeking condonation of delay of 394 days in filing said application - A counter was filed by Plaintiff/Petitioner - The said application was allowed against which present revision is filed.

Held, an ex parte decree was passed on 7-6-2011 - Plaintiff/petitioner herein filed Execution Petition on 16-4-2012 - According to defendants, they came to know of passing of ex parte decree only after receipt of notice in said E.P - Record further discloses that defendants/ respondents herein filed an application under

Order IX, Rule 13 of CPC and so also present application on 6-7-2012 - Therefore, Court below correctly found that payment of suit costs by defendants on 17-9-2012 would not come in way of defendants to maintain present application - Explanation offered by defendants is not tainted with any malafides nor it amounts to adopting any dilatory strategy - For aforesaid reasons, Civil Revision Petition is dismissed. **69**

MOHAMMEDAN LAW (GIFTS):

---INDIAN LIMITATION ACT, Sec. 65 - Plaintiffs claimed declaration of title, recovery of possession and other consequential reliefs putting forth gift deed - Defendants denied claims and banked on oral gifts and also on aspect of limitation period - Trial Court gave preference to gift deed of plaintiffs to oral gifts claimed by defendants and also held that suit was within time and were not barred by limitation and accordingly decreed suit against which present appeal was filed.

Held: Under Mahomedan law, three prerequisites of a gift need to be established for proving a gift - They are: declaration of the gift by donor; acceptance of gift by done and most importantly, delivery of gifted property - PW.2 only deposed about his attesting gift deed - Except that he has not stated anything about aforesaid prerequisites - Therefore, though Ex-A8 is a registered gift deed, same cannot be accepted for proving prerequisites - Plaintiffs have miserably failed to prove oral and written gift allegedly made in their favour by Alla Rakha through his GPA - Trial Court has not properly appreciated facts and evidence and came to a wrong conclusion - So at outset, plaintiffs due to their failure to establish their case, cannot succeed on weakness of defendants case and therefore they do not deserve reliefs claimed in suit - Plaintiffs suit is held not maintainable, cross objections filed by them are liable to be dismissed - In result, this appeal filed by the respondents/defendants is allowed by setting aside decree and judgment passed by trial Court. ***221***

MOTOR VEHICLES ACT:

---Secs.147, 149, 170 and 173 - Tribunal came to conclusion that accident occurred due to rash and negligent driving by driver of jeep and it is not in dispute - Tribunal came to conclusion that while policy covered risk of five passengers, jeep was carrying ten passengers and that owner had violated terms of policy and, therefore, driver, owner and insurer of jeep were liable to pay compensation equally - Aggrieved by same, claimants and injured preferred separate appeals.

Held, where there is no evidence to show that owner has permitted driver to carry more number of passengers than permitted or where there is nothing on record to say that it was within knowledge of owner, then liability cannot be fastened on owner of vehicle - Making an allegation that owner has permitted more number of passengers to be carried in a vehicle or authorized driver to carry unauthorized passengers, amounts to an allegation against owner of vehicle and same has to be proved by independent evidence - Therefore, Court hold that Insurance Company is liable to pay compensation without prejudice to right of recovering same from owner of vehicle - Consequently, both appeals are allowed. ***14***

NEGOTIABLE INSTRUMENTS ACT:

---Sec.138 - INDIAN EVIDENCE ACT, Sec.45 - Lower Court held that age of ink cannot be determined by expert - Petitioner/ accused maintained revision impugning dismissal order u/Sec.138 of Negotiable Instruments Act – Revision petitioner submitted that age of ink and writings can be determined which was countered by learned counsel for 2nd respondent.

Held: To subserve ends of justice, impugned dismissal order was set aside and allowed application of accused to refer the disputed cheque signature to determine age to expert for opinion (per T.Nagappa Vs. Y.R.Muralidar AIR 2008 SC 2010) - Thus expression says age of signature may determine even age of ink cannot be determined if age of signature is determined from age of ink it impliedly included therein - From above, impugned order of lower Court is liable to be set aside for same is unsustainable - With above observations, Criminal Revision Case is allowed to entertain fresh application being filed by petitioner/accused before lower Court to consider and pass orders, pursuant to above observations and conclusions. ***286***

---Secs.138, 142 - Cheques issued by accused bounced and complainant filed case for punishing accused u/Secs.138 and 142 of Act - Court below acquitted accused as it found complainant has not proved guilt of accused beyond all reasonable doubt that cheques were issued for legally enforceable debt or liability - Complainant filed present appeal against that judgment.

Held: Circumstances of not proving Ex. P-1 agreement of sale and source for making advance payment of Rs.45,00,000/- to accused and also not producing any receipt for refund of Rs.10,00,000/- probablises defence of accused that cheques were issued not for legally enforceable debt or liability - For foregoing reasons, as complainant failed to prove guilt of accused beyond all reasonable doubt for offence punishable u/Sec.138 of Act, trial Court acquitted him – Court not find any reason to interfere with said findings - Appeal is devoid of any merit and same is accordingly dismissed at stage of admission. ***304***

---Secs.138, 142 & 142-A - Impugned order is after completion of trial and in course of hearing argument saying either Court, which entertained private complaint by taking cognizance and Court, which deals with on transfer have no jurisdiction, for place where complainant presented cheque that was returned dishonoured does not constitute part of cause of action to confer jurisdiction against which present revision is filed.

Held, as per amended Act, sub-section (2) of Section 142 and Section 142(A) of Negotiable Instruments Act, it is clear that place of collecting bank also gives jurisdiction to maintain a complaint - Thereby, order of lower Court returning complaint in not entertaining at fag end of trial is since unsustainable and it is also liable to set aside - Accordingly, Criminal Revision Case is allowed. ***450***

PENAL CODE:

---Secs.147, 148 and 302 r/w Sec.149 - Nine applicants/accused in a sessions case for the offences u/Secs.147, 148 and 302 r/w Sec.149 of Indian Penal Code, filed Criminal Appeal which was admitted by this Court - At time of filing of appeal, appellants have not filed application for grant of bail - Present application is filed by them based on a judgment of the Supreme Court in Kashmira Singh Vs. State of Punjab and pleaded that they have been undergoing imprisonment for last 5 1/2 years, besides their being in jail for three months during pendency of trial and that, though Criminal Appeal filed by them is ready for hearing, same could not be taken up as, the Criminal Appeals pertaining to the year 2010 are still being heard - It is further pleaded that as disposal of Criminal Appeal filed by them is likely to take some more time, they and their family members will be put to a lot of suffering due to their prolonged incarceration pending appeal.

Held, as observed by Supreme Court in Kashmira Singh, it would be a travesty of justice if life convicts are allowed to be incarcerated beyond a reasonable period in expectation of disposal of their appeals in future, which remained a great uncertainty - At same time, Court also cannot ignore fact that requirement of consideration of bail applications in individual cases based on merits will consume substantial judicial time, which would inevitably impinge upon its time required to be devoted for disposal of main Criminal Appeals - As such Court have invited suggestions in this regard from appellants and a senior learned counsel who happened to be present in Court at the hearing, and also two learned Public Prosecutors appearing for the States of Andhra Pradesh and Telangana - On considering their valuable suggestions and after a thorough evaluation of relevant factors, Court inclined to indicate broad criteria on which applications for grant of bail pending Criminal Appeals filed against conviction for offences, including one u/Sec.302 IPC, and sentencing of appellants to life among other allied sentences are to be considered.

Broad criteria cannot be understood as invariable principles and Bench hearing bail applications may exercise its discretion either for granting or rejecting bail based on facts of each case - Needless to observe that grant of bail based on these principles shall, however, be subject to provisions of Sec.389 of Code of Criminal Procedure.

Learned Public Prosecutor for State of Andhra Pradesh submitted that all applicants herein are entitled to be released on bail by applying afore-mentioned criteria - Accordingly, applicants are released on bail subject to conditions stipulated hereinbefore. ***122***

---Secs.153-A & 295-A – CRIMINAL PROCEDURE CODE, Sec.482 - A case was booked against accused/petitioner on grounds that he, along with other accused financially contributed and fully supported publication of a book that hurt sentiments of Muslims - Petitioner filed for quashing of proceedings of same.

Held, as allegations made against Petitioner are only with regard to making contribution and supporting publishing of book, without any specific allegations with reference to any acts of mens rea or any deliberate and malicious intention to outrage religious feelings or insulting any religion and that uncontroverted allegations are vague and do not make out ingredients of Secs.153-A and 295-A of IPC - Court considered opinion that allowing criminal proceedings against petitioner would amount to abuse of process of law - Accordingly, proceedings pending against Petitioner registered for offences punishable u/Secs.153-A and 295-A IPC are quashed and criminal petition is allowed. ***108***

---Secs.302 and 379 - On appreciation of oral and documentary evidence, lower Court has convicted and sentenced appellant/accused u/Secs.302 and 379 of IPC - Case of prosecution is mainly based on circumstantial evidence in general and last seen theory in particular and alleged recovery of MOs. 1 to 4 - This appeal is filed questioning same.

Held: In absence of motive, Prosecution must establish all links in chain of circumstances to justify conviction of accused - There was no probability of PW.4 seeing appellant and deceased together - Similarly, on own admission of PW.5, there is no need for appellant and deceased to pass through his house - Though PW.9 sought to cover up this lacunae by stating that PWs. 4 and 5 saw appellant and deceased together while returning from busstand, neither of these

witnesses have spoken to this fact - In conclusion, Court hold that Prosecution failed to prove motive, last seen theory and also recoveries without proper and credible evidence and Court below has failed to appreciate this aspect which convicting appellant - In light of above discussion, Criminal Appeal is allowed - Conviction and sentence recorded against appellant/ accused for offences punishable u/Secs.302 and 379 are set aside. ***206***

---Sec.306 - PW2-De facto Complainant filed present appeal against acquittal judgment of Metropolitan Sessions Judge, and to punish respondent Nos. 1 to 4 accused for offences charged as deceased, daughter of PW2/Defacto complainant died in house of accused and prosecution succeeded in leading evidence to show that shortly before commission of crime, they were seen together and hence burden was on accused to explain regarding circumstances which led to unnatural death of deceased.

Held, mere allegations would not suffice - On date of occurrence of alleged offence, if there was abetment and in pursuance thereof, deceased committed suicide that is relevant - None of prosecution witnesses has proved that abetment of accused led to committal of suicide of deceased - In absence of evidence in this regard, it will not be possible for Court to convict accused u/Sec.306 IPC - Hence, there is no merit in Criminal Appeal and same is accordingly dismissed. ***95***

---Sec.500 – CRIMINAL PROCEDURE CODE, Sec.482 - Petition was filed seeking to quash proceedings on ground that Court ought not to have taken cognizance for offence punishable u/Sec.500 IPC as it was barred by limitation and that Directors of Company are not vicariously liable even if alleged act of A-4 was accepted.

Held, commencement of limitation from date of acquittal would arise only, in case, Court takes cognizance for malicious prosecution - But Court did not take cognizance for said offences - In such a case, it can safely be concluded without any hesitation that complaint filed by petitioners against respondents is beyond three years, but Chief Metropolitan Magistrate, did not apply his mind while taking cognizance for offence u/Se.500 IPC and committed an error - A paper publication was made on basis of information furnished by A-5, complainant and if complaint is within limitation, A-5 would be liable but no vicarious liability can be attached to petitioners for said offences as there is no concept of vicarious liability in penal law unless said statute covers same within its ambit - When a complaint is filed u/Sec.500 IPC, it must disclose each and every detail of such statements - But here, except making bald allegations that a defamatory statement was published as news item in a paper, no other material is brought on record to proceed further against petitioners for said offences - In view of law declared by various Courts, statements made in steps taken to initiate judicial proceedings would fall within absolute privileged statement - In view of immunity attached to such statements no prosecution for offence punishable u/Sec.500 of IPC is maintainable, thereby prosecution is groundless and liable to be quashed in view of law and guidelines laid down by Apex Court - In result, Criminal Petition is allowed by quashing proceedings. ***127***

--Sec.326 - CRIMINAL PROCEDURE CODE, Sec.197 - First respondent filed complaint after 15 years having failed to get compensation from government - Trial Court had taken cognizance of offence u/ Sec.326 IPC and numbered complaint - Petitioner filed petition u/Sec.245 Cr.P.C., for discharge and same was dismissed - Hence, criminal revision case - Question for consideration is whether alleged act committed by petitioner falls outside

purview of discharge of his official duty or not.

Held: Simply because there is no period of limitation that itself would not enable parties to file vexatious complaints with an ulterior motive to force accused to face rigour of criminal trial - If Courts allow complaints without scrutinizing reasons for abnormal coupled with unexplained delay certainly it would amount to encouraging litigant public to file complaints using Court as forum to settle their scores, which they failed to achieve by other legal means - This Court is very much conscious of Sec.486 Cr.P.C., and at the same time, Court shall not lose sight of conduct and bonafides of complaints in approaching Court after long lapse of time.

In light of foregoing discussion, Court considered view that taking of cognizance of offence by trial court under Sec.326 IPC without prior sanction for prosecution of petitioner is not legally sustainable - Therefore, it is a fit case to discharge petitioner for offense u/Sec.326 IPC - In result, Criminal Revision case is allowed, setting aside order of lower Court. ***294***

---Sec.420 - TELANGANA PREVENTION OF DANGEROUS ACTIVITIES OF BOOTLEGGERS, DACOITS, DRUG OFFENDERS, GOODAS, IMMORAL TRAFFIC OFFENDERS AND LAND GRABBERS ACT, 1986, Sec.3(2) - INFORMATION TECHNOLOGY ACT, 2008, Sec.66(c) and (d) - Case of petitioner was that he was detained illegally u/Sec.3(2) of the Act 1 of 1986 as offences registered against him were private in nature and all were settled with complainants and he was not a threat to the public order and peace - Government Pleader's contention was that detenu cheated public at large and created panic in minds of public and therefore impugned detention order passed by third respondent was justified.

Held: It is not in dispute that all cases registered against detenu are on account of a single incident of cheating companies - It is admitted fact that in all matters except case registered at Saket Police Station, New Delhi, detenu has already compromised with complainants therein and all those crimes have been quashed by this Court - Case of respondent is that detenu was involved in as many as five offences in limits of Hyderabad police Commissionerate and also in New Delhi - However, no rowdy sheet has been opened against detenu as per Andhra Pradesh Police Standing Orders - Accordingly, in Court considered opinion, detenu cannot be considered as Goonda and there is no threat from him to peace, tranquility and social harmony in society - In view thereof, order passed by second respondent is not sustainable and same is accordingly quashed - For foregoing discussion and in result, Writ Petition is allowed and police are directed to set detenu at liberty forthwith, if not required in any other case. ***310***

NOTARIES ACT, 1952:

---Secs.3, 5, 10 and Notary Rules - Request for renewal of licence by notaries was rejected based on a memo wherein Central Government has decided to fix number of notaries to be appointed in each State - Challenging said Memo, present writ petitions are filed.

Held, once an application was made within period prescribed along with requisite fee and if case of applicant does not fall within any one of catego-ries enumerated in Section 10 of Act, authorities have no option except to renew the request - Section 10 of Act gives power to Government to remove a person as notary from register main-tained by it under Section 4 of the Act, if his case falls under any of six

grounds referred to in Section 10 of Act.

It is needless to mention that in case if application for renewal is sought to be rejected, a notice shall be issued to aggrieved person, giving him opportunity to explain reasons thereof - Having regard to above, impugned Memo, which is made basis for rejecting renewal, is set aside and the writ petitions are allowed. **340**

PREVENTION OF CORRUPTION ACT, 1988:

---Sec.13(1)(a) and (d) - INDIAN PENAL CODE, Secs. 34, 120-B - Revision petitioner/Accused No. 8 was caught with unexplained amount and a crime was registered against him along with others - Revision petitioner filed Crl.M.P u/Sec.239 of Cr.P.C seeking for his discharge, saying that investigation and cognizance order of Special Judge are unsustainable and baseless - Special Judge dismissed it against which present Revision case arose.

Held, once entries in Books of Accounts are relevant and admissible, leave about evidentiary value of it, as held by learned Special Judge, all these constitute prima facie accusation to frame charge - Contention that all those are with no basis and are ultimately insufficient to sustain accusation, if put to trial, are premature to decide - In view of above, there are no grounds to interfere with impugned discharge dismissal order passed by learned Special Judge - Accordingly, Criminal Revision Case is dismissed. **334**

REGISTRATION ACT(INDIAN):

--- Sec.49 - Indian Stamp Act, Sec.35 - Plaintiff raised objection to two documents produced by defendants on ground that they were not properly stamped and could not be admitted in evidence even for collateral purpose as per Section 49 of the Registration Act - His objection was overruled by Court below - Aggrieved by said order, plaintiff preferred this revision.

Held, petitioner disputes entering into such agreement - It was signed by her mother and she was a minor - It was not registered nor sufficiently stamped - It in effect a deed of partition with metes and bounds and specifying extent of land each of them would own, whereas sale deed did not specify respective shares and prima facie all three are equal owners - Having regard to law laid down by Supreme Court in Yellupu Uma Maheshwari, Court considered opinion that both documents are not admissible in evidence and cannot be relied upon even for collateral purposes - Court below erred in admitting in evidence agreement and document - Order under revision is set aside - Civil Revision Petition is allowed. ***325***

SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989:

---Secs.3(1)(ii), 3(1)(v), 3(1)(x), 3(1)(xv), 3(1)(viii) - INDIAN PENAL CODE, Secs.307, 506, 447, 324, 350, 442, 349 - Appellant filed petition for reframing of charges against accused in view of Amendment to SC, ST (POA) Act and sought Court below, which is special Court, to take cognizance of offence u/Sec.14(1) of Act and submitted that Amendment Act empowers Special Court to take cognizance of offences under Act - However, Court below rejected petition holding that Amendment Act cannot be given retrospective effect.

Held: Sec.193 of Criminal Procedure Code applies only to a court of Sessions and not to Special Court specified u/Sec.14 of the SC/ST Act - Therefore, Special Court can exercise original jurisdiction - In view of law laid down by Apex Court in Constitutional Bench

judgment and Full Court judgment of Rajasthan High Court, impugned order is set aside - Consequently trial Court is directed to consider present petition filed by appellants afresh and after giving opportunity to both parties, pass orders in accordance with law. ***194***

---Secs.302 and 34 - Appellants/accused filed this appeal against their conviction u/ Sec.302 read with Sec. 34 of IPC.

Held: Prosecutor failed to establish motive and in face of various inconsistencies and suspicious circumstances in which dying declaration is shrouded, Court of opinion that it is wholly unsafe to base conviction of appellants solely on purported dying declaration of deceased - Court below, has committed illegality in mainly relying upon Ex. P.11 for basing conviction in absence of any corroborative evidence - For aforementioned reasons, Criminal Appeal is allowed - Conviction and sentence recorded against appellants/accused in impugned judgment is set aside. ***176***

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Law Summary

(Founder: Late Sri.G.S.GUPTA)

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CIVIL PROCEDURE CODE:

---Sec.149 and Or.7, Rule 11(c) - "Deficit Court fees" - Condonation of delay in payment - Trial Court condoned delay.

Held, Respondent/plaintiff ought to have explained delay in paying the deficit Court fees and trial Court ought to have recorded its satisfaction with regard to same.

In this case, admittedly respondent/ plaintiff has not filed any Application for condonation of delay u/Sec.149 of CPC in payment of deficit Court fees - Impugned order of trial Court, set aside and consequently suit is struck off from file of trial Court - Civil Revision Petition is allowed. **9**

---Or.6, Rule 17, r/w Sec.151 - RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, Sec.18 - SECURITIZATION AND RECONS-TRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY ACT, 2002, Sec.34 - LIMITATION ACT, Art.58 - Originally 1st respondent/plaintiff filed suit for declaration to declare the sale deed as null and void and for permanent injunction - In view of the written statement filed by petitioner/9th respondent 1st respondent / plaintiff filed I.A for amendment of plaint to include prayer of declaration to declare that plaint schedule properties belongs to 1st respondent's Company'and for injunction and other consequential amendment in plaint as mentioned in I.A.

According to 1st respondent/ plaintiff petitioner is tracing a rival claim of title with regard to plaint schedule property in written statement and said contention is not correct and petitioner has to prove same by letting oral and documentary evidence and in view of said contentions of petitioner in written statement it is necessary to 1st respondent/plaintiff to file Application for amendment to include prayer of declaration of title in addition to permanent injunction already prayed for.

Petitioner/9th defendant opposed Application stating that 1st respondent/ plaintiff did not mention about earlier title and plaintiff has no right against owners to claim relief on basis of Inam abolition proceedings and he did not seek relief in respect of properties while filing plaint originally and that present amendment seeking relief of declaration is barred by limitation and if Application filed by 1st respondent/plaintiff is allowed it would be nothing but allowing 1st respondent to introduce a new case and facts by amendment and therefore Application for amendment is not maintainable and if it is allowed it will cause irreperable loss and damage to petitioner.

District Judge considering averments in affidavits plaint and written statement and various judgments relied on by Counsel allowed Application for amendment - Against said order petitioner filed present Revision Petition.

1st respondent/plaintiff contends that amendment sought for is pre-trial amendment and amendment is necessitated as petitioner is disputing title of 1st respondent/plaintiff and that amendment sought is not barred by limitation as Application for amendment has been filed within 3 years from date of filing written statement wherein petitioner had disputed title of 1st respondent/plaintiff.

In this case, amendment sought for declaration is not barred by limitation, when same is filed within 3 years from date of filing of written statement, when defendant has disputed title of plaintiff and it is well settled that a pre-trial amendment must be liberally considered and District Judge has considered all materials on record and Judgments relied on by parties in proper perspective and has allowed Application - There is no irregularity or illegality in the order warranting interference by this Court - CRP, dismissed. **36**

---Or. XVI, Rules 14 and 20 - Question arose as to whether original defendant can summon original plaintiff to adduce evidence, when entire evidence on side of original plaintiff is already over.

Held, absence of plaintiff to prove alleged breach may be a ground to other side to insist upon Court to draw an adverse inference against respondent/original plaintiff - When position of law is such, applicant/ original defendant cannot compel original plaintiff to get herself examined, since evidence on her side is already over - It is prerogative right of original plaintiff to examine any witnesses on her side - It is choice of original plaintiff as to whom to be examined as witness - Hence contention of applicant/original defendant that original plaintiff to be summoned to give evidence cannot be sustained at this stage - That apart, rival contentions raised in suit shall be decided only after a full fledged trial in suit - Burden of proof is always lies on party who raised such rival contentions, to prove their case based on evidence and documents available on record - Once evidence is over, it is not open to original defendant to compel original plaintiff to adduce evidence - Captioned application is accordingly, dismissed. ***58***

CONTRACT ACT, 1872:

---Sec.2 - Trial Court held that alleged oral agreement of sale of immovable property was not legally valid - On appeal, first appellate Court reversed finding of trial court - It held that plaintiffs in specific performance suit have proved payment of Rs. 20,000/- only and there was no proof for further payment of cash and kind therefore directed plaintiffs to pay balance sale consideration of Rs.13,985/- within a period of 3 months and get sale deed executed and registered at his cost - Present appeals are filed against that judgment.

Held, Section 2 of Indian Contract Act, Interpretation Clause makes clear that Exs. B2 and B3 in only a proposal, demanding higher price - There is no evidence placed by respondents to indicate he accepted proposal - Further, there is no evidence to show that subsequent to these two letters of year 1990, price was finalised later and agreement arrived - Contrarily, respondents themselves admit that panchayat convened in the year 1996 failed - Exhibits show there was exchange of notices in year 1997 but only in month of December 1998, suit for specific performance filed - Thus looking at any angle, case of respondents has no legs to stand - For above said reasons, these two Second Appeals are allowed - Lower Appellate Court's judgments are set aside - Trial Court's judgments are restored**.**

CRIMINAL PROCEDURE CODE:

---Sec.125 (1) & 125(4) - HINDU MARRIAGE ACT, Sec.13 - Criminal revision filed by petitioner/husband against order of lower Court granting maintenance to 1st respondent-wife, Rs.4000/- p.m. and 2nd respondent-minor son, Rs.2000/- p.m.

Petitioner/husband contends in view of decree passed by Civil Court granting divorce on ground of desertion 1st respondent not entitled for maintenance and in view of Bar u/Sec.125(4) Cr.P.C as 1st respondent as voluntarily left matrimonial house and refusing to live with petitioner.

In instant case, petitioner/husband working as Constable and is drawing salary of Rs.18,000/- p.m. and he has sufficient means - Even though marital relationship has come to end, by virtue of provisions u/Sec.125(1)(b) Cr.P.C. 1st respondent continued to enjoy status of wife of petitioner for purpose of claiming maintennce - A woman after divorce becomes a destitute and if she cannot maintain herself or remains unmarried, man who was, once, her husband continues to be under a statutory duty and obli-gation to provide maintenance to her.

Petitioner further contends since decree of divorce was passed on ground of desertion by respondent, she would not be entitled to maintenance for any period prior to passing or decree u/sec.13 of Hindu Marriage Act.

In above circumstances, petitioner cannot deny maintenance to 1st respondent wife on ground that there is a civil Court decree for divorce on ground of desertion - Criminal revision is liable to be set aside - However since there is a decree for divorce, petitioner is only liable to pay maintenance to 1st respondent from date of decree for divorce and petitioner is liable to pay maintenance to 2nd respondent-son as per order passed by Court below - Criminal revision, dismissed.

65

EVIDENCE ACT:

--- Sec.45 - CIVIL PROCEDURE CODE, Or.26, Rule 10A - Expert opinion - Appointment of Commissioner for scientific investigation - Revision petitioner/plaintiff filed suit for partition - Respondent/defendant relied upon Will executed by one VC in their favour.

Petitioners/plaintiffs contend that said Will is anti-dated and fabricated and that said VC had executed mortgage deeds in their favour which are registered document and they are subsequently discharged and that they are in possession of said documents and that therefore with regard to truth and genuineness of Will they wanted to compare signature found in alleged Will with signature found in mortgage deed - Application filed by petitioners was resisted by defendants on main objection that if documents are sent out side Court it will be lost and same should not be sent out side Court, it is for expert to come to Court and verify document in Court itself - Trial

Court dismissed Application filed by petitioners stating that burden is on defendants who produced document and Application filed by plaintiff not maintainable.

Or.26, Rule 10-A CPC provides for appointment of Commission for scientific investigation - As scientific investigation contemplated in Or.26, Rule 10-A CPC includes report of Forensic Expert, Court can appoint a Commissioner-Advocate Commissioner to send documents to be compared with other admitted documents and get a report from Forensic Expert - Though petitioners/plaintiffs have asked for only for comparison of document u/Sec.45 of Evidence Act and not for appointment of Commission under Or.26, Rule 10-A CPC, Court has got power to exercise same and appoint Commissioner in this regard.

Trial Court should have allowed application to send documents for obtaining opinion of expert - CRP, allowed on condition that plaintiffs to pay sum of Rs.20,000/- as costs to defendants. ***23***

---Secs.68, 73 and 114 - INDIAN SUCCESSION ACT, 1925, Sec.63 - Trial Court held that there was no partition effected in year 1965 and alleged Will of Appulinga Padayachi in favour of Jambulinga Padayachi and marked as Ex. B14 is not genuine - Aggrieved by findings of Trial Court, plaintiffs 1,5 and 6 preferred First Appeal and on re-appreciation of evidence, First Appellate Court held that findings of Trial Court regarding genuineness of Will marked as Ex.B14 is erroneous and it should not have arrived to said conclusion based on comparison of signature in his naked eye - Aggrieved by judgment of First Appellate Court, present Second Appeal has been preferred by plaintiffs.

Held: Recitals found in Ex.B5 to B7 coupled with sale deeds in favour of Appulinga Padayachi in respect of Item 3 to 6 and Will-Ex.B14 apart from other evidence categorically indicates that they are self-acquired properties of Appulinga Padayachi - When there is no evidence to show at time of partition of those properties, there was joint family property with adequate source to purchase, merely on presumption contra to documents, Courts cannot voluntarily hold that newly acquired properties are joint family properties.

For aforesaid reasons, substantial questions of law raised by appellant deserves no merit in interfering considered judgment of Trial Court - In result, second appeal stands dismissed. ***15***

---Sec.92- "Oral understanding" - "Written contract"- Development of property - Payment of service charges - Trial Judge decreed suit and dismissed counter claim of defendant.

When there is written contract, oral understanding that the plaintiffs are to pay towards service charges as alleged by defendant is not acceptable and therefore contention of appellant/ defendant regarding service charges and counter claim not maintainable - Both appeal suits are liable to be dismissed. ***3***

HINDU MARRIAGE ACT:

--- Sec.13(1) (ia) - "Cruelty" - "Mental agony" - "Divorce" - Family Court granting divorce - Husband filed present Appeal.

In this case, family Court has not even referred to alleged acts of cruelty stated to have caused mental agony and suffering to invoke Sec.13 (1)(ia) of Act - Merely recording evidence of wife as to acts of appellant/husband, Family Judge granted decree for divorce - Trial Court ought to have briefly recorded alleged acts of cruelty - Even in ex parte judgment there should be a brief record of facts and discussion on

evidence with reference to acts of cruelty and as to how Court has to come to conclusion to attract Sec.13(1)(ia) of Act - Impugned judgment and decree of Family Court, set aside - Appeal allowed. ***1***

LAND ACQUISITION ACT, 1894:

---Secs.4(1) & 9 - Land measuring an extent of Ac.8.47 belonging to claimants for purpose of allotting housing plots to Adi Dravidars who do not have any housing plot - Land Acquisition Officer determining compensation at Rs.1,050/- per cent - Claimants dissatisfied with compensation amount determined by Land Acquisition Officer preferred Appeal before Sub-Judge - Appellate Judge after hearing both sides and appreciating evidence on record came to conclusion that what was fixed by LAO is not just and fair compensation and therefore revised compensation @ Rs.2500 per cent - Hence Department has directed present 2nd Appeal.

Appellant contends that Special Judge enhanced compensation based upon document relating to smaller extent of 5 1/2 cents and therefore it has to be eschewed from consideration.

In this case Govt., has collected 112 sale statistics and relied upon 82nd document and arrived at compensation at Rs.1050 per cent and that was enhanced by Special Judge under impugned Judgment - Specimen sale deed relating to land in question can be relied upon and looked into subject to criteria that (i) nature and use of land (ii) proximity between data land and land acquired and (iii) other attending circumstances that whether neighbouring lands are developed, under developed or vacant land - Keeping above principles in mind the facts on record are to be considered.

After going into records this Court finds that since learned Sub- Judge in order to arrive at fair and reasonable amount of compensation has recorded statement of witnesses and marked certified copy of sale deed and hence substantial question of law is also negatived against appellant.

After going through sale deeds relating to data land which is situated in a close proximity to land acquired 1st appellate Court has granted a minimum compensation of Rs.2500 per cent and it is just and reasonable and same does not warrant any interference of this Court, since it is neither be termed as arbitrary nor exorbitant - Amount of compensation fixed by first appellate Court is just and fair - No merits in 2nd appeal and hence it is liable to be dismissed - Judgment and decree of learned Sub-Judge are confirmed. **31**

NEGOTIABLE INSTRUMENTS ACT:

-- Secs.138,86 & 87 - Defendant filed this appeal against judgment and decree of lower Court for rejecting his contention of material alteration of promissory note by plaintiff on ground that same was not raised at time of filing written statement and same was raised only in additional written statement.

Held, a material alteration would change legal character of instrument, and extinguish liability under instrument - In case on hand, date of promissory note has been so altered so as to prove that it was within three years i.e., within period prescribed under Limitation Act - If this is not a material alteration, nothing else could be termed as a material alteration - Managing Director of plaintiff in his evidence has specifically admitted that plaintiff has got accounts and borrowing by defendant was reflected in accounts as well as in income tax returns of plaintiff - Though he would say that he would produce documents, he has not chosen to do so - In light of above, Court constrained to hold that suit promissory note has been materially altered so as to render it void

under Section 87 of Negotiable Instruments Act and as such plaintiff is not entitled to a decree on basis of said document - Appeal is allowed setting aside the judgment and decree of the Trial Court. ***43***

SUCCESSION ACT(INDIAN):

-- Sec.63(c) - INDIAN EVIDENCE ACT, Secs. 68, 69 & 71- According to plaintiffs that attesting witnesses signed in Will could not be traced out and their whereabouts were not known - Therefore PW2 was examined to prove signature found in Will with that of testator - Hence it was contended that Will was proved in manner known to law and hence plaintiffs are entitled for grant of Letters of Administration - It was countered by defendants who argued that without examining attesting witnesses, Will cannot be admitted in evidence.

Held, when there is no attesting witness found, then Section 69 of Indian Evidence Act comes into play, before resorting Section 69 of Evidence Act, Plaintiff should establish either factum of death of attesting witnesses or their non-availability by convincing evidence - Then in event of attesting witnesses do not support Will, propounder can resort to Section 71 of Indian Evidence Act for proving document by other mode - Without establishing execution and attestation of Will, same cannot be admitted in evidence - Therefore, this Court is of view that since document in question Will, has not been proved in manner known to law, and same cannot be used as an evidence, hence question of deciding its truth and genuineness does not arise at all - In result, suit is dismissed. **50**

TAMILNADU BUILDINGS (LEASE & RENT) CONTROL ACT, 1960:

---as amended by Act 23 of 1973, Sec.10(3)(a) (iii) - Eviction of tenant - "Bonafide requirement" - Petitioners/ landlords filed RCOP for relief of own use and occupation of their premises on bonafide requirement.

Respondent/tenant contends that demand of petitioners is not bona fide and respondent is carrying on business for past 30 years in the demised premises and not having any building nearby premises and his only alternative is to wind up business which would affect him and his family - Rent Controller ordered eviction - Rent Control Appellate Judge allowed RCA on ground that Revision petitioners/Landlords have not required premises for own use and occupation and their requirement is not bonafide.

This Court after considering various Judgments on case of own use and occupation and bonafide requirement of landlord and said Judgments are squarely applicable to facts and circumstances of present case and petitioners have proved their bonafide requirement and they have succeeded in their case u/Sec.10(3)(a) (iii) of Act.

A person who is occupying landlords tenanted portion of property as tenant must always bear in mind that he/ she only a licensee to occupy and will have to handover possession, whenever on demand made by landlord since that will create cordial relationship and good faith on human beings.

In this case, as per evidence, petitioners clearly stated that they wanted premises for own use and occupation and hence CRP is ought to be allowed by giving reasonable period of time for eviction of respondent/tenant - CRP, allowed. ***26***

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Law Summary

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SUPREME COURT

(Vol.90)

SUPREME COURT

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CIVIL PROCEDURE CODE:

--- Order IX Rule 13 - In a suit for recovery of money - Court should have put the parties at least to terms and then disposed of the matter on merits expeditiously. ***27***

---Order 27 Rule 5B - Order 27 Rule 5B(2) the case at hand is against the State Government and local bodies, it is the duty of the Court to make, in the first instance, every endeavor to assist the parties to settle in respect of subject matter of the suit and, if for any reason, settlement is not arrived at then proceed to decide the suit on merits in accordance with law. ***28***

ARBITRATION AND CONCILIATION ACT, 1996, Sec.8 - ARBITRATION - Agreement - Maintainability of suit - Applicability of precedent - - Parties had entered into deed of partnership containing arbitration Clause - Respondents filed civil suit - Appellant moved application under Section 8 of Act, 1996 raising objection to maintainability of suit in view of arbitration agreement between parties - Trial Court dismissed Application, relying upon judgment in N. Radhakrishnan v. Maestro Engineers - Appellant preferred petition before High Court - High Court had also chosen to go by dicta laid down in N. Radhakrishnan - Hence, present appeal - Whether view of High Court in following dicta laid down in case of N. Radhakrishnan was correct or not - Whether dispute raised by Respondents in suit was incapable of settlement through arbitration **I**

CONSTITUTION OF INDIA:

---Arts.21, 47 & 142 - Schedule 7 list I,II,III Entry 51 - MOTOR VEHICLES ACT, 1988, Sec.185 - Drunk and driving - Road accidents - Liquor shops on National Highways.

Material placed on record indicates

i) India has high rate of road accidents and fatal road accidents;

ii) there is high icidence of road accidents due to driving under influence of alcohol;

iii) the existence liquor vends on National Highways cause for road accidents on National Highways;

iv) Advisories have been issued to State Govt., and Union Terrtors to close down liquor vends on National High ways and to ensure that no fesh licences are issued in future.

Therefore all States and Union Terrotors shall forthwith cease and desist from granting licences for sale of liquor along National and State Highways.

Where a National or State Highway passes through a city, town or through area of jurisdiction of local authority, it would completely deny sence and logic to allow sale of liquor along that stretch of Highway - Once it is an accepted position that presence of liquor vends along Highways poses grave danger to road safety an exception cannot be craved out to permit sale of liquor along a stretch of Highway which passes through limits of city, town

or local authority - Such an exception would be wholly arbitrary and violative of Art.14.

This Court accordingly hereby direct and order as follows:

(i) All states and union territories shall forthwith cease and desist from granting licences for the sale of liquor along national and state highways;

(ii) The prohibition contained in (i) above shall extend to and include stretches of such highways which fall within the limits of a municipal corporation, city, town or local authority;

(iii) The existing licences which have already been renewed prior to the date of this order shall continue until the term of the licence expires but no later than 1 April 2017;

(iv) All signages and advertisements of the availability of liquor shall be prohibited and existing ones removed forthwith both on national and state highways;

(v) No shop for the sale of liquor shall be (i) visible from a national or state highway; (ii) directly accessible from a national or state highway and (iii) situated within a distance of 500 metres of the outer edge of the national or state highway or of a service lane along the highway.

(vi) All States and Union territories are mandated to strictly enforce the above directions. The Chief Secretaries and Directors General of Police shall within one month chalk out a plan for enforcement in consultation with the state revenue and home departments. Responsibility shall be assigned inter alia to District Collectors and Superintendents of Police and other competent authorities. Compliance shall be strictly monitored by calling for fortnightly reports on action taken.

(vii) These directions issue under Article 142 of the Constitution. ***36***

CRIMINAL PROCEDURE CODE:

---Sec.482 - Claim for compensation was made on basis of false and fraudulent documents - If on basis of false and fraudulent documents a claim is made which leads to award to compensation in land acquisition matter, interest of State is certainly compromised or adversely affected - Matter cannot be termed as a civil dispute simplicitor - Crime was therefore rightly registered - View taken by High Court justified - Appeal dismissed. ***23***

PENAL CODE:

---Secs.300 & 302 – CRIMINAL PROCEDURE CODE, Sec.378 – Sessions Court convicted two accused for offence of murder – High Court acquitted accused – Complainant preferred appeal against acquittal.

CIRCUMSTANTIAL EVIDENCE – Mere fact that accused may have absconded immediately after incident and fact that false information may have been given about whereabouts of dead body are not enough to complete chain of circumstances.

MOTIVE - No motive can be made out for reason that PW-5, who is only witness competent to speak of motive has been declared hostile and in fact he states that there were no illicit relations between lady concerned and deceased - Motive for crime has not been sufficiently made out.

LAST SEEN THEORY – Would be in realm of hearsay and last seen also cannot be said to be made out.

EXTRA JUDICIAL CONFESSIONS – Though recovery may have taken place extra judicial confessions to PWs 6 & 7, in any case being weak evidence, cannot be relied upon in facts and circumstances of case.

Hence, acquittal of accused, proper - Appeal, dismissed. ***32***

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