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Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

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PART - 8 (30TH APRIL 2018)

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Held - It is for the petitioner to demonstrate before trial Court during the suit proceedings as to how he is entitled to such relief - When he valued property in question fully and properly and paid requisite Court fee, trial Court had no power to determine as to the extent of relief that could be claimed by him at the very threshold and require him to amend his suit prayer accordingly - It may be noticed that it is not the case of trial Court that plaint did not disclose any cause of action whereby it could have rejected plaint under Order 7 Rule 11 CPC – Revision is allowed. **(Hyd.) 333**

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Held - When original tenant dies, legal heirs inherit the tenancy as joint tenants

and occupation of one of the tenant is occupation of all the joint tenants - It is not necessary for landlord to implead all legal heirs of the deceased tenant, whether they are occupying the property or not and It is sufficient for landlord to implead either of those persons who are occupying the property, as party - An eviction petition against one of the joint tenant is sufficient against all the joint tenants and all joint tenants are bound by the order of the Rent Controller as joint tenancy is one tenancy and is not a tenancy split into different legal heirs –Appeal is allowed. **(S.C.)** ***189***

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WORKMEN'S COMPENSATION ACT, Sec.3(1) - Appeal preferred by insurance company against order passed by Commissioner for Workmen's Compensation - Essential question that falls for consideration is whether the accident occurred out of and in course of employment and whether applicants are entitled to compensation.

Held - Accident occurred out of and in the course of employment only - Presence of deceased at spot can only be attributed his employment - Proximity in time and the place of accident are also critical - Impugned order of the Commissioner is confirmed and appeal is accordingly dismissed. **(Hyd.)** ***329***

--X--

UNIFORM CIVIL CODE

R. Divowkanand,
Presidency University.

ABSTRACT

In constitution of India, Part IV provides us Directive Principles of State Policy. Despite these principles.But the execution is very important in the administration of the country. Such a directive is given in the Constitution of 44 to create the responsibility of the state to implement only one civilian code, Overthe Supreme Court has issued several directions for its implementation.But, due to overuse Politics is still a distant dream. When there is not a uniform law about personal matters such as marriage, Divorce, adolescents etc. Various personal laws apply to different personal laws. These laws have been foundtheir origin and authority in their religious lessons and practices that provide gender discrimination. All of the paper has achieved a balance between freedom of religion and equal rights by division 'Necessary religious practices' and 'secular activities'. An hour requires a uniform civil code implementation People need to be slow and slow, especially after learning about the scope of the minorities Extent.

Keywords: essential religious practices, personal laws,Right to Freedom of Religion, Right to Equality, secular activities, Uniform Civil Code etc.

INTRODUCTION:

In India, there is a criminal code that applies equally to all, regardless of religion, caste, gender and habitation. However, a similar signal is not specific to divorce and inheritance and we are still regulated by individual laws. These personal laws vary in their origins, philosophy, and application. In this way, there is a big impediment in bringing people who are governed by various religions under a roof.

Article 44 of the Constitution of India states, "The state seeks to provide citizenship to citizens of the same civil code on the territory of India."

The Indian Supreme Court, in the historic case of Sarla Mudgal[1], has insisted that all Indians need a uniform civil code in private legal matters. The Supreme Court has reminded the Indian government of its emergency responsibility to implement the same civil code to protect the repression and encouragement of national unity and consolidation. The decision authority shook waves in the camps of the political and religious clergy of Mangan. Since the establishment of the Constitution in 1950, no government in the center has always been strong enough to implement the same civilian rule for all citizens of India in marriage, heritage, heritage and adoption. Article 44 of the Indian Constitution to introduce a uniform civil code for all citizens of India.Such signals exist in most modern countries. Dr. B.R. Because Ambedkar was a broader supporter of the Uniform Civil Code, he did not receive more than the status of Directive Principal because of opposition from its members. This

directive principle is intended to achieve a more lengthy equality for all citizens, not at the same time. The state was entrusted with this huge work. Nevertheless, no government has taken significant steps so far.

UNIFORM CIVIL CODE IN RELATION WITH THE FUNDAMENTAL RIGHTS

Long-term legal battle between fundamental rights mentioned in Part III Under Part IV of the Directive Principles (DPSP) of the Constitution and State Policy, a An important feature of balance between consensus and both is considered The basic structure of the constitution[2]. However, even before the founding, there are various judgments have either enforced a DPSP in contravention of a fundamental right[3] or have upheld a fundamental right in ignorance of a DPSP[4] Despite the judicial fallacies, the established precedent provides a means of evaluation on testing the efficacy of the harmonious balance. Thus, the enforceability of a DPSP depends on whether it does not violate a fundamental right and vice versa.

History of Uniform Civil Code

It was first raised as a demand in the 1930s by the All India Women's Conference, seeking equal rights for women, irrespective of religion, in marriage, inheritance, divorce, adoption and succession.

While the Constituent Assembly and Parliament considered such a Uniform Civil Code desirable, they did not want to force it upon any religious community in a time of strife and insecurity. They left it as a Directive Principle of the Constitution, hoping it would be enacted when the time was right.

Uniform Civil Code are laws that are distinguished from public law and cover marriage, divorce, inheritance, adoption and maintenance. In India, these personal laws differ from each major religious community on the basis of customs and scriptures. Hence, there has always been a debate on the need for Uniform Civil Code in India. In this article, Shivam Mittal provides a detailed insight into the history of Uniform Civil Code in India. Gender equality across religions is one cry that is the same as the prevailing and bigger international law.

Where gender equality is a mission close to achievement; How can Indian society be allowed to be left behind? Divorce, inheritance, property and maintenance among others are issues where the law seems lacking and especially the regressive to woman, especially in the Khap societies and the Muslims. Article 14 of Indian Constitution maintains that "The State shall not deny any person equality before the Law of India and the prohibition of discrimination on grounds of religion, race, caste, sex or place of birth ', then why are Muslim women bereft of the same rights as Hindu women[5].

Critical Legal Theorists also in their work argue that the neutrality and impartiality of the works of the rich and the powerful; impressing that the law tends to protect them against

the demands of the poor and the subaltern (women, ethnic minorities, the working class, indigenous people, the disabled, homosexuals, etc.) for greater justice. But this apparent reality can be very easily dealt with if the law is set by either unbiased or neutral framers or collectively by all the societies, minor or major. There should only be one law making a law and uniformity in legal discourse and structure; if anything, codification is only going to be a boom and not bane for the country.

Post-colonial period, the framers of the Indian constitution and Mr. Nehru, were convinced that a certain amount of modernization is required before a uniform civil code is imposed on citizens belonging to different religions including Muslims. The issue was sensitive and a uniform civil code could be seen by the citizens as an invasion on their culture and religion. The framers felt that certain time should elapse before such a proposal can be undertaken. In backdrop of partition, where chaos and bloodshed became the order of the day, again brining an issue regarding religious laws would not have been a wise decision. However, over 60 years later as well, the dream of a Uniform Civil Code remains unrealized.

Need of Uniform Civil Code

India is a diverse land with many religions. The oldest part of the Indian judicial system is individual laws governing Hindus and Muslims.

The Uniform Civil Code (UCC) in India proposes to replace the personal laws based on the scriptures and customs of each major religious community in the country with a common set governing every citizen.

The constitution has a provision for **Uniform Civil Code in Article 44 as a Directive Principle of State Policy** which states that **"The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India."**

To provide equal status to all citizens

In the modern era, a secular democratic republic should have common civil and personal laws for its citizens irrespective of their religion, class, caste, gender etc.

To promote gender parity

It is commonly observed that personal laws of almost all religions are discriminatory towards women. Men are usually granted upper preferential status in matters of succession and inheritance. Uniform civil code will bring both men and women at par.

To accommodate the aspirations of the young population

A contemporary India is a totally new society with 55% of its population is below 25 years of age. Their social attitudes and aspirations are shaped by universal and global principles of equality, humanity, and modernity.Their view of shedding identity on the basis of any religion has to be given a serious consideration so as to utilize their full potential towards nation building.

To support the national integration

All Indian citizens are already equal before the court of law as the criminal laws and other

civil laws (except personal laws) are same for all. With the implementation of Uniform Civil Code, all citizens will share the same set of personal laws. There will be no scope of politicization of issues of the discrimination or concessions or special privileges enjoyed by a particular community on the basis of their particular religious personal laws.

Conclusion

• Article 44 depends on the concept, which is not a central relationship religion and personal law in a civilized society.

• Influence India's integrity by bringing all the material behind these article communities on the general stage of governing matters now a different personal law.

• In the Shah Bano case, the Supreme Court has expressed concern that the 44th anniversary is long lasting it is a dead letter and recommended the initial law to implement it.

• At the end of the day, the UCC can emerge only through a transformation process, which preserves India's rich legal herige, with all the individual laws being equal parts. On the same occasion, the Supreme Court also sought the Indian government the Prime minister should have a fresh look at Article 44 and Endeavor India's territory is safe for a uniform civil code for all citizens.

• The UCC can emerge only through a transformation process, which preserves India's rich legal herige,with all the individual laws being equal parts.The codification and implementation of UCC may not necessarily usher in the expected equality among genders and religions.

• Major sensitization efforts are needed to reform current personal law reforms which should first be initiated by the communities themselves

• Current institutions need to be modernized, democratized and strengthened for this change. Sincere efforts towards women empowerment have to be taken for all women of all religions.

• The plural democracy is an identity of the modern India. Therefore, efforts should be focused on harmony in plurality than blanket uniformity for flourishing Indian democracy.

• The matter being sensitive in nature, it's always better if the initiative comes from the religious groups concerned.

(Footnotes)

[1] Sarala Mudgal, President Kalyani V/s. Union Of India, AIR 1995 SC 1531

[2] Minerva Mills Ltd. v. Union of India, (1980) 2 SCC 591.

[3] P. A. Inamdar v. State of Maharashtra, (2005) 6 SCC537.

[4] State of Gujarat v. Miozarpur Moti Kureshi Kssab Jamat, (2005) 8 SCC 534.

[5]Madhu

Keshwar "Codified Hindu Law Myth and Reality".

---THE END ---

2017(3) L.S. 329

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

Present:
The Hon'ble Mr.Justice
D.V.S.S.Somayajulu

National Insurance
Co. Ltd. ..Appellant

Vs.

K. Venkata Narasamma
& Ors., ..Respondents

WORKMEN'S COMPENSATION ACT, Sec.3(1) - Appeal preferred by insurance company against order passed by Commissioner for Workmen's Compensation - Essential question that falls for consideration is whether the accident occurred out of and in course of employment and whether applicants are entitled to compensation.

Held - Accident occurred out of and in the course of employment only - Presence of deceased at spot can only be attributed his employment - Proximity in time and the place of accident are also critical - Impugned order of the Commissioner is confirmed and appeal is accordingly dismissed.

Mr.Ravi Shankar Jandhyala, Advocate for the Appellant.

Mr.Chandrasekhar Reddy, Gopi Reddy, Advocate. For the Respondents.

J U D G M E N T

This appeal is filed by the insurance company against the order dated 20.01.2005 passed in W.C.No.88 of 2002 by the Commissioner for Workmen's Compensation and Asst. Commissioner of Labour, Nalgonda.

The applicants have filed the case before the Commissioner claiming compensation for the death of one Sri Kampasati Venkanna, who died in an accident that occurred on 15.10.2002. The said Venkanna was a driver of a lorry bearing No.AP-16U 6367 belonging to the first opposite party and insured with the second opposite party.

The case of the applicants is that the deceased took the lorry with a load on 15.10.2002 to Bibigudem. As there was a shortage of labourers to unload the lorry, he parked the lorry and was waiting for the coolies to come and unload the lorry. At that point of time, he walked across the road and was hit by a unknown lorry. The injuries were fatal and caused his death. The case was therefore filed seeking compensation of Rs.3,00,000/-.

The first opposite party remained ex parte. The second opposite party filed a counter denying the case set up by the applicants.

On behalf of the applicants, AW.1 was examined and Exs.A.1 to A.6 were marked.

For the opposite parties, one witness was examined as RW.1 and Ex.B.1 was marked. Basing on the pleadings, evidence etc., the Commissioner awarded compensation of Rs.3,57,587/- with interest and costs. It is this order that is now assailed in the appeal.

This Court has heard Sri Ravi Shankar Jandhyala, learned counsel for the appellant/ insurance company and Sri Chandrasekhar Reddy Gopi Reddy, learned counsel for the respondents/ applicants.

The essential grounds that are urged in the appeal are that there is no connection between the accident and the employment and that the accident occurred on a public road. On the other hand, the learned counsel for the respondents/ applicants argued that in the written statement that is filed before the Commissioner, none of the present issues were raised. Therefore, it is his contention that the respondents cannot now raise these issues in the appeal. Nevertheless, as the points that are raised are a part of the evidence and are part of the issues raised before the Commissioner during the course of evidence and arguments, this Court considered the same.

The essential question that falls for consideration is whether the accident occurred out of and in the course of employment and whether the applicants are entitled to compensation.

The facts which are not in dispute are that the deceased drove the lorry to Bibiguda and parked the fully loaded lorry in the rice mill. The loaded lorry could not be unloaded because of the shortage of coolies. The deceased then decided to come to the bus stand to catch a bus stating that he will return the next day. At that point of time, on the road just outside the mill, he met with a fatal accident.

AW.1 the witness for the applicant is not an eye witness. RW.1 the witness examined for the opposite parties is an investigator, who is also not an eye witness to the accident. Therefore, neither of them are actually competent witnesses to speak about the accident. However, the examination of RW.1 (investigator) discloses the following factors a) the distance between the place of the accident and the mill was only 100 meters; b) on the date of accident the deceased Venkanna was 'on duty on lorry No.AP-16U-6367'; c) the deceased was in search of labour for unloading purpose because the mill labourers were availing the 'festival of Dasara'; and d) the lorry was 'not unloaded' when the accident occurred.

Therefore, from the examination of RW.1, it is clear that he admits that the deceased was looking for labourers at the time of his death and also admits that on the date of the accident, the deceased Venkanna was on duty.

The learned counsel for the appellant/ insurance company basing on three judgments i) **Mackinnon Mackenzie & Co. v. Ibrahim Mahmmod Issak (**1969 ACJ 422), ii) **A.C. Roay & Co. (P) Ltd. v. Taslim & another (**1967 ACJ 194); and iii) **Executive Engineer, R.C.P. Central Workshop Division, Suratgarh v. Veera (**1975 ACJ 243) argued that the applicant was not 'on duty' at the time of the accident

and the accident did not occur out of and in the course of employment. He stressed mainly on **Mackinnon Mackenzie & Co.**'s case (1 supra), wherein the Hon'ble Supreme Court of India held that the accident in the course of his employment means an accident in the course of work in which the workman is employed to do. The words 'arising out of employment' were interpreted as per him to mean that during the actual course of employment. In other words, he urged that there should be a relationship between the accident and employment. The learned counsel stressed the fact that at the time of death in this case the deceased was walking across the road and was not either driving the lorry or even near the lorry. According to the learned counsel, there is no connection between the actual accident and the employment. Relying on other two cases also, he pointed out that the connection is not established.

In reply to this, the learned counsel for the respondents/applicants relying upon i) **General Manager, B.E.S.T. Undertaking, Bombay v. Mrs. Agnes (**AIR 1964 SC 193); ii) **Superintending Engineer, Tamilnadu Electricity Board v. Sankupathy, (TMT) (**2005 (1) LLJ 763); iii) **New India Assurance Company Ltd. Secunderabad v. P. Padmavathi (**2005 (5) ALD 185); iv) **New India Assurance Co. Ltd., Gudivada v. Mandava Krishna Kumari (**2012 (4) ALD 266); v) **Branch Manager, New India Assurance Co. Ltd. V. Siddappa (**2004 ACJ 1639); and vi) **Premila v. Shaliwan (**2006 ACJ 890) argued that the theory of notional extension of employment is applicable to the facts and circumstances of this case also. The majority decision in **Mrs. Agnes**'s case (4 supra) is to the following effect:

"Under S. 3(1) of the Act the injury must be caused to the workman by an accident arising out of and in the course of his employment. The question, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the "down tool" signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension as both the entry and exit by time and space. The scope of the such extension must necessarily depend on the circumstances of a given case. An employment may end or may begin not only when the employee begins to work or leaves his tools but also when he uses the means of access and egress to and from the place of employment."

Similarly, the Division Bench of Madras High Court also held that the notional extension of employment extends to accidents that occurred while he was proceeding to the work also. A learned single Judge of this Court in **P. Padmavathi**'s case (6 supra) held that the words 'arsising out of and in the course of employment' have to be interpreted liberally keeping in view the fact that the Workmen's Compensation Act is a beneficial Legislation. The facts in **P. Padmavathi**'s case show that the accident occurred to a cleaner of the lorry who was actually bringing tiffin to the driver of the lorry after it is parked. The learned counsel also pointed out that in **Mandava Krishna Kumari**'s case (7 supra), the facts reveal

that the vehicle was stopped and while the driver was cooking food for himself, his lungi caught fire and he died because of the burn injuries. The learned single Judge held that the accident occurred out of and in the course of employment. Therefore, the learned counsel argued that in this case also the injury must be held to have occurred out of and in the course of employment.

On a review of facts, the evidence on record and the case law cited across the bar in this case, this Court is of the opinion that the accident occurred out of and in the course of employment only. The deceased was present at that spot only because of his employment and as the coolies were not found, he parked the lorry. The lorry was admittedly not unloaded as per the evidence of RW.1. RW.1 also admitted that the driver was on duty at that point of time. The presence of the deceased at that spot can only be attributed his employment. If he was not in the 'course of his employment', he would not have been on the road in Bibinagar very close to the Rice mill. The proximity in time and the place of accident are also critical. This Court also notices the judgment of the Hon'ble Supreme Court of India in the case of **Manju Sarkar v. Mabish Miah** (2014) 14 SCC 21) wherein the Hon'ble Supreme Court awarded compensation to a driver who met with a factal road accident after he parked his truck at the godown and left the place. This case was followed in the judgment of **Daya Kishan Joshi v. Dynemech Systems Pvt. Ltd. (**2017 SCC Online 980).

Keeping in view the fact that the Workmen's Compensation Act is a beneficial Legislation meant to be liberally interpreted, this Court holds that the injury was an injury arsing out of and in the course of employment. As decided by learned single Judges of this Court, when a cleaner bringing tiffin or a driver cooking food for himself, were held to be entitled to compensation, this case is also on equal footing. Even the judgment of **Mackinnon Mackenzie & Co.** (1 supra) was the case of seaman/deck hand who was missing on board a ship. The body was not found despite search and there was no proof available to show how the seaman died. Nobody saw the missing seaman at the socalled place of accident. The Commissioner held a local inspection of the ship also. The evidence available did not show that it was a stormy night for the seaman to fall overboard. In these circumstances, the Additional Commissioner held that there was no material to hold that the death of the seaman took place on account of an accident which arose out of his employment. This finding of the Commissioner was upheld by the Hon'ble Supreme Court in the cited judgment (**Mackinnon Mackenzie & Co.**). These facts are not present in this case. The proximity to the parked lorry; the cause of death are all apparent from the record. As was held by various Courts, a purposive and liberal interpretation is necessary in this case. The legislative intent contained therein is required to be interpreted with a view to give effect thereto (as per **Oriental Insurance Co. Ltd. v. Mohd. Nasir** (2009) 6 SCC 280). There was a casual connection to his employment and the accident was reasonably incidental to his employment. Above all the decisions in **Manju Sarkar** (10 supra) and **Daya Kishan Joshi** (11

supra) come to the aid of the workman in this case. For all the above reasons, this Court finds that there are no reasons to disagree with the findings of the lower Court. Hence, the impugned order of the Commissioner dated 20.01.2005 in W.C.No.88 of 2002 is confirmed. The appeal is accordingly dismissed. In the circumstances of the case, there shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

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2017(3) L.S. 333

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

Present:
The Hon'ble Mr.Justice
Sanjay Kumar

Mir Firasath Ali Khan ..Appellant
Vs.
Versu Sayeeduddin Zafar ..Respondent

CIVIL PROCEDURE CODE, Sec.26 and Order 7 Rule 11- Civil revision petition – Petitioner prayed before Trial Court seeking a Direction against defendant to execute and register a sale deed in favour of the plaintiff in respect of the suit schedule property - Office of trial Court raised an objection that suit prayer relates to a larger extent than can be claimed by the petitioner as per the suit agreement and returned the plaint.

Held - It is for the petitioner to demonstrate before trial Court during the suit proceedings as to how he is entitled to such relief - When he valued property in question fully and properly and paid requisite Court fee, trial Court had no power to determine as to the extent of relief that could be claimed by him at the very threshold and require him to amend his suit prayer accordingly - It may be noticed that it is not the case of trial Court that plaint did not disclose any cause of action whereby it could have rejected plaint under Order 7 Rule 11 CPC – Revision is allowed.

Mr.D. Vijaya Kumar, Advocate For the Petitioner.

J U D G M E N T

The petitioner in this civil revision petition is the plaintiff in OS SR No.887 of 2018 on the file of the learned XII Additional District and Sessions Judge, Ranga Reddy at Vikarabad. The said suit was filed with the following prayer:

i) Directing the defendant to execute and register a sale deed in favour of the plaintiff in respect of the suit schedule property i.e., land admeasuring Ac.3-30 guntas in Sy.No.4 and land admeasuring Ac.2-00 guntas in Sy.No.6 total admeasuring Ac.5-30 guntas situated at one Compact at Shaipur Village under the Limits of Tandur Municipality, Tandur Mandal, R.R.District (presently

Vikarabad District), which is more fully described in the plaint schedule.

ii) And in the event the defendant failed to execute and register the sale deed in favour of the plaintiff in respect of the suit schedule property, this Honble Court may be pleased to execute and register the sale deed in favour of the plaintiff and put the plaintiff in possession of the suit schedule property.

iii) To award the costs of the suit, and
iv) To any other relief or reliefs for which the plaintiffs entitled to may also be awarded in the circumstances of the case and interest of justice.

The office of the trial Court raised an objection on 04.04.2018, which reads as under:

C.F.R.No. of 2018 dated 4-4-2018
This is a suit file under section 26 order 7 rule 1 and 2 C.P.C, suit for specific performance in respect of land bearing Sy.Nos.4, extent Ac.3-30, in survey number 6 extent Ac.2-00 situated at Saipur village of Tandur Mandal as per the agreement of sale dated 17-2-2015

The agreement of sale dated 17-2-2015 is executed only for an extent of Ac.2-00 in survey number 6 situated at Shaipur village, but the plaintiff praying to this Court for directions to the defendants to execute registered sale deed in favour of the plaintiff to an extent of Ac.5-30 guntas in Sy.No.4 and 6.

How the suit is maintainable for claiming Ac.5-30 guntas against the agreement of sale dated 17-2-2015 filed in this suit.

Hence the Plaint is returned.

SFO

Returned. Time (7) days.

Thereupon, the petitioner-plaintiff re-submitted the suit stating as follows:

Objections complied herewith. Hence resubmitted.

4-4-2018

The suit is filed for specific performance as per the agreement of sale dated 17-2-2015 and as per clause No.4 of agreement of sale he agreed to sale his other property covered with Memorandum of Conformation of Oral Hiba dated February 2015 and executed on 18/04/2015 for remaining land of the defendant. Hence the suit is maintainable as per the agreement and receipt. Hence resubmitting. Sd/- 04/04/2018 The office however opined that the objections required to be heard on two points:

(1) The point of limitation

(2) How the suit for the entire schedule of property Ac.5-30 guntas is maintainable, when the Agreement of Sale is for Ac.2-00 guntas and another receipt is for Ac.2-00 guntas.

The matter was accordingly directed to be posted for hearing on the Bench and, by order dated 12.04.2018, the trial Court returned the suit stating as under:

Heard the counsel for plff, the agreement of sale is executed to an extent of Ac.2.00 in Sy.No.6, and clause no.4 in the agreement of is pertaining to remaining

portion of his land i.e. 3.30 gts in Sy.No.4 and the 1st party assures second party after completion of sale transaction under agreement of sale dt.17/2/2015 only the future transaction takes place. Therefore suit is not maintainable to the entire extent of Ac.5.20 gts and it is maintainable to extent of Ac.2.00 only in Sy.No.6 only. Hence counsel is directed to restricted his prayer to the extent of two acres only.

Aggrieved by the direction to restrict his suit prayer as a condition precedent for entertainment of the suit, the petitioner-plaintiff is before this Court.

Section 26 CPC deals with institution of suits and states that every suit shall be instituted by the presentation of a plaint and that, in every plaint, facts shall be proved by affidavit. Order 7 CPC deals with the plaint. Order 7 Rule 1 details the particulars to be contained in the plaint. Order 7 Rule 7 requires the relief sought to be specifically stated in the plaint. Order 7 Rule 10 CPC deals with the return of the plaint at any stage if it has been presented before the wrong Court. Order 7 Rule 11 details the situations where the plaint can be rejected by the trial Court. This Court, in exercise of its power under Article 227 of the Constitution and Section 126 CPC, framed the Andhra Pradesh Civil Rules of Practice and Circular Orders 1980 (hereinafter, The Civil Rules of Practice). Chapter II of the Civil Rules of Practice deals with the Form of Proceedings. Rule 8 therein deals with the form of the plaint etc. Rule 9 speaks of the cause title of the plaint etc. Rule 10 deals with the names etc. of the parties. Rule 11 deals with address for service. Rule 12 deals with suits by or against numerous parties. Rule 14 deals with proceedings in respect of immovable property and reads as under:

Proceedings in respect of immovable property:-

Every plaint, original petition and memorandum of appeal, in which relief is sought with respect to immovable property, shall state, as part of the description thereof the registration district, sub-district, the name of the village, Municipality or Corporation in which the property is situate, the survey number of the house number, if any, the market value of the property and the value for purpose of court-fee and jurisdiction as computed according to the provisions of the Andhra Court Fees and Suits Valuation Act, 1956 and in cases where the court-fee payable on the rental value, the annual rental value of the property for which it is let, and there shall be annexed thereto a statement duly filled in and signed by the party of the particulars mentioned in Form No.8. In the absence of the said particulars, the proceedings may be received but shall not be admitted or filed until the provisions of this rule have been complied with.

Rule 16 deals with the list of documents to be filed along with the plaint. Rule 20 deals with the presentation of proceedings and reads as under:

20. Presentation of Proceedings:-

(1) All plaints, written statements, applications, and other proceedings and documents may be presented to or filed in court by delivering the same by the party in person or by his recognised agent or by his Advocate or by a duly registered clerk of the Advocate to the Chief Ministerial

Officer of the Court or such other officers as may be designated for the purpose by the Judge before 4.00 p.m. on any working day. Provided that in case where the limitation expires on the same day they may be received by a Judge even after 4.00 P.M.

(2) The Officer to whom such documents were presented shall at once endorse on the documents the date of presentation, the value of the stamp fixed, and if the proceedings, are thereby instituted, shall insert the serial number.

(3) In case of paper bearing court fee stamps, he shall, if required issue a receipt in form No.17 in Appendix III-L to these rules.

(4) Every plaint or proceeding presented to or filed in court shall be accompanied by as many copies on plain paper of the plaint or proceeding and the document referred to in Rule 16, as there are defendants or respondents unless the court otherwise dispenses with such copies of the documents by reason of their length or for any other sufficient reason. Rule 23 states that where, upon examination, the plaint is found to be in order, it shall be entered in the register of suits, and the Judge shall pass orders as to the issue of summons or otherwise. In the aforestated scheme, there is no power vesting in the trial Court at the time of registration of the suit to venture into the merits of the matter or possible disputed issues. In the present case, the objection raised by the office of the trial Court, which was thereafter sustained by the trial Court, is that the suit prayer relates to a larger extent than can be claimed by the petitioner-plaintiff as per the suit agreement. This is not an issue which could have been gone into by the trial Court at the time of registration of the plaint. It is for the petitioner-plaintiff to demonstrate before the trial Court during the suit proceedings as to how he is entitled to such relief. When he valued the property in question fully and properly and paid requisite Court fee thereon, the trial Court had no power to determine as to the extent of relief that could be claimed by him at the very threshold and require him to amend his suit prayer accordingly.

It may be noticed that it is not the case of the trial Court that the plaint did not disclose any cause of action whereby it could have rejected the plaint under Order 7 Rule 11 CPC. In fact, it did not even do so. It merely returned the plaint requiring the petitioner-plaintiff to restrict his prayer to a lesser extent.

The order dated 12.04.2018 passed by the trial Court to this effect is therefore unsustainable in law and is accordingly set aside. The trial Court is directed to examine the plaint presented by the plaintiff only in the context of the parameters prescribed in the Code of Civil Procedure, 1908, and the Civil Rules of Practice and if it is found to be in order, register the same as per Rule 23 of the Civil Rules of Practice.

The civil revision petition is accordingly allowed. Pending miscellaneous petitions, if any, shall also stand closed. No costs.

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2017(3) L.S. 337

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

Present:
The Hon'ble Mr.Justice
M.S. Ramachandra Rao

Y. Venkata Ramana
& Ors., ..Petitioners

Vs.

Yellaboyani Venkatamma
@ Y. Munivenkatamma ..Respondents

CIVIL PROCEDURE CODE, Sec.151 - Whether court below had rightly exercised its discretion in dismissing petitioners' application to reject written Statement filed by respondent to counter claim by petitioners - After lapse of nine years, without permission of Court, respondent/ plaintiff filed Written Statement to the petitioners' counter claim.

Held – Under proviso to Rule 1 of Order VIII, Court normally has power to extend time for filing Written Statement by respondent to the counter claim made by petitioners only for a period not later than 90 days, that too for reasons to be recorded in writing - Respondent should have filed an application seeking permission of Court to file such Written Statement but he did not do so - Civil Revision Petition is allowed - Written Statement filed by respondent in answer to counter claim of petitioners is struck off the record and shall not be considered for any purpose.

Mr.V. Nitesh, Advocates for the Petitioners.
Mr.Gade Venkateswara Rao, Advocate. For the Respondent.

J U D G M E N T

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1. This Revision Petition is filed by the petitioners under Article 227 of the Constitution of India challenging the order dt.12-10-2017 in I.A.No.101 of 2017 in O.S.No.290 of 2007 of the Principal Junior Civil Judge, Punganur, Chittoor District.

2. The petitioners are defendants in the suit.

3. The said suit was filed by the respondent declaring that a decree in respect of item-8 of O.S.No.178 of 1997 passed by the said Court in I.ANo.1094 of 2003 on 12-02-2007 is not binding on the respondent and for injunction restraining the petitioners from interfering in any way with the peaceful possession and enjoyment of the plaint schedule properties.

4. The said suit was filed on 05-11-2007. The petitioners herein filed a Written Statement raising counter claim on 05-07-2008.

5. The respondent/plaintiff did not immediately file any Written Statement to the said counter claim made by the

petitioners.

6. After lapse of nine years, on 18-11-2016, without permission of the Court, the respondent/plaintiff filed Written Statement to the petitioners' counter claim.

7. After the trial commenced in 2017, when the matter was coming up for marking of documents and cross examination of P.W.1, the petitioners/defendants filed I.A.No.101 of 2017 invoking Order VIII Rules 6-A (3) and 6-G and Section 151 CPC praying the Court to reject the Written Statement of the respondent/plaintiff filed in answer to the counter claim of the petitioners/defendants without leave of the Court.

8. In the affidavit filed in support of the said application, they contended that the respondent having remained silent after the filing of the counter claim by the petitioners, filed his answer to the counter claim by way of Written Statement on 18-11-2016 along with her chief examination affidavit without the leave of the Court and the same is liable to be rejected since the rules relating to Written Statement filed by a defendant shall apply to a Written Statement filed by a plaintiff in answer to a counter claim made by the defendant.

9. Counter was filed by the respondent opposing this application stating that copy of the Written Statement had not been supplied to her; contents of the Written Statement filed by the petitioners were not gone through by her counsel; and when the respondent was preparing chief examination affidavit, she came to know that the petitioners had filed counter claim; thereafter at the request and also with the permission of the Court, she had filed Written Statement answering counter claim filed by the petitioners along with chief examination affidavit and document. She contended that even during the marking of the documents, neither the petitioners nor their counsel raised any objection in respect of filing of the Written Statement by the respondent to the counter claim raised by the petitioners and that the said application I.A.No.101 of 2017 was filed only to protract the proceedings.

10. By order dt.12-10-2017, the Court below dismissed the said application. It observed that counter claim had been filed on 05-07-2008 by the petitioners and the respondent had stated in his affidavit in the I.A. that copy of the Written Statement filed by the petitioners had not been supplied to her; and though the respondent did not take any permission of the Court, as per Order VIII Rule 6-A (3) of the CPC, the respondent was at liberty to file Written Statement in answer to the counter claim of the petitioners within such period as may be fixed by the Court. It held that the petitioners did not take any objection at the time of filing of the Written Statement by the respondent to the counter claim which was filed on 18-11-2016, that later, the matter was posted for trial from time to time, and once the Written Statement and counter claim filed by the petitioners are on record, it is the duty of the respondent to file Written Statement in answer to the

counter claim. It observed that if at all there is any grievance with regard to the title between the respondent and petitioners, they can contest the suit by examining the witnesses and by placing necessary documents.

11. Assailing the same, petitioners have filed this Revision Petition.

12. Heard Sri V.Nitesh, learned counsel for the petitioners and Sri Gade Venkateswara Rao, learned counsel for the respondent.

13. Learned counsel for the petitioners contended that the provisions relating to filing of a Written Statement are made applicable by order VII Rule 6-G to the filing of the Written Statement in answer to a counter claim by a plaintiff also; that as per proviso to Order VIII Rule 1, Written Statement had to be filed within 30 days unless the defendant is allowed to file the same on such other day as may be specified by the Court for reasons to be recorded in writing, but even such period shall not be later than 90 days from the date of service of summons; and merely because at the time when the respondent/ plaintiff filed his Written Statement in answer to the counter claim of the petitioners, no objection had been raised specifically by the petitioners, the duty of the Court to record reasons while receiving it when it is filed with a delay of nine years cannot be abdicated by it; and the Court cannot absolve itself of such responsibility particularly when such inordinate delay is there on the part of respondent/plaintiff to file the Written Statement in answer to the counter claim of the petitioners. He pointed out that even the Court below had recorded a finding that the respondent/plaintiff's counsel had received copies of the Written Statement and the plea of the respondent/ plaintiff that she was not supplied with copy of the Written Statement-cum-counter claim is incorrect; and in such circumstances, the exercise of jurisdiction by the Court below in refusing to entertain the objection raised by the petitioners is unsustainable. He contended that the Court below had failed to exercise jurisdiction vested in it by law by refusing to reject the Written Statement filed by respondent in answer to the counter claim made by the petitioners.

14. Learned counsel for the respondent however refuted the said contentions. He stated that since no objection had been raised at the time of filing of the Written Statement by the respondent on 18-11-2016 to the counter claim made by the petitioners, the petitioners are deemed to have waived any such objection and the order passed by the Court below is correct.

15. I have noted the contentions of the parties.

16. From the facts narrated above, it is clear that the petitioners, who are defendants in the suit, had filed Written Statement-cum-counter claim on 05-07-2008. Nine years later, on 18-11-2016, without seeking permission of the Court, the respondent/plaintiff filed his Written Statement in answer to the said counter

claim.

17. The question is "whether the court below had rightly exercised its discretion in dismissing petitioners' application to reject the said Written Statement filed by the respondent to the counter claim by the petitioners or not?"

18. Order VIII Rule 6 (A) permits a defendant, in addition to his right of pleading a set-off under Rule 6, to raise by way of counter claim against the claim of the plaintiff, any right or claim in respect of cause of action accruing to the him against the plaintiff either or after the filing of the suit. However, he is required to file the counter claim before he delivered his defence or before the time limited for delivering his defence has expired.

19. Order VIII Rule 6-G makes applicable the rules relating to a Written Statement by a defendant to apply to a Written Statement filed by the plaintiff in answer to a counter claim.

20. Therefore Order VIII Rule 1 CPC is applicable to the respondent/plaintiff. It states: "R.1. Written Statement:- The defendant shall, within thirty days from the date of service of summons onlhim, present a Written Statement of his defence: Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons."

21. This provision has been interrupted by the Supreme Court in **Salem Advocate Bar Association, T.N. Vs. Union of India** (2005) 6 S.C.C. 344)**.** The Supreme Court held that though a Written Statement had to be filed within 30 days as per Act 46 of 1999, the rigour of this provision was reduced by Amendment Act 22 of 2002 which enabled the Court to extend the time for filing Written Statement on recording sufficient reasons therefor, but the extension can be maximum of 90 days. It also considered the question whether the Court has any power or jurisdiction to extend the period beyond 90 days. It held that though maximum period of 90 days to file the Written Statement had been provided, consequences on failure to file Written Statement within the said period had not been provided for in Order VII Rule 1 CPC; that the provision in Order VIII Rule 1 providing that the higher limit of 90 days to file Written Statement is directory, but however added that the order extending time to file Written Statement cannot be made in a routine manner, and time can be extended only in exceptionally hard cases. It held that while extending time, it has to be borne in mind that the Legislature has fixed the time limit of 90 days and the discretion of the Court to extend the time shall not be frequently and routinely exercised so as to nullify the time fixed under Order VIII Rule 1 CPC.

22. In the instant case, admittedly the Written Statement was filed by the

respondent/plaintiff in answer to the counter claim of the petitioners on 18-11-2016, nine years after such counter claim had been filed by the petitioners on 05-07-2018.

23. As per Order VIII Rule 1 CPC, such Written Statement ought to have been filed by the respondent within 30 days from the date of receipt of the Written Statement-cum- counter claim of the petitioners.

24. As per the proviso to Rule 1 of Order VIII, the Court normally had power to extend the time for filing such Written Statement by the respondent to the counter claim made by the petitioners only for a period not later than 90 days, that too for reasons to be recorded in writing.

25. For such reasons to be recorded in writing, the respondent/plaintiff should have filed an application seeking permission of the Court to file such Written Statement in answer to the counter claim of the petitioners beyond the period of 30 days.

26. Admittedly he did not do so. The fact that the respondent did not do so and the petitioners did not object at the time of filing such Written Statement in answer to the counter claim, in my considered opinion, cannot absolve the Court below of it's duty to record reasons in writing why it received the Written Statement filed by the respondent in answer to the counter claim of the petitioners beyond the period of 30 days. Admittedly no such reasons have been recorded by the Court below.

27. Also the only reason assigned by the respondent is that he could not file the Written Statement in answer to the counter claim of the petitioners within time was that copy of the Written Statement-cum-counter claim had not been supplied to his counsel. Even the Court below found this excuse to be incorrect on verifying the record.

28. Once this is so, no indulgence could have been shown by the Court below to allow respondent's Written Statement in answer to the counter claim made by the petitioners and it ought to have rejected the same by allowing the application filed by the petitioners. But it had allowed the Written Statement filed by the respondent in answer to the counter claim to remain on record, as a matter of routine, which the Supreme Court in the above case said cannot be done.

29. The Supreme Court had permitted extension of time beyond 90 days only in exceptionally hard cases. In the present case, the negligence of the respondent or his counsel in reading the Written Statement-cum- counter claim of petitioners and consequently failing to file his response cannot bring the case of the respondent in the category of an exceptionally hard case. By such erroneous exercise of jurisdiction, the Court below had practically nullified the period fixed by Order VIII Rule 1 CPC.

30. Therefore, the Civil Revision Petition is allowed; order dt.12-10-2017 in I.A.No.101 of 2017 in O.S.No.290 of 2017 of the

Principal Junior Civil Judge, Punganur, is set aside; and the said I.A. is allowed and the Written Statement filed by the respondent/plaintiff in answer to the counter claim of the petitioners is struck off the record and shall not be considered for any purpose. No costs.

31. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

--- THE END ---

50. We may note with profit that honour killings are condemned as a serious human rights violation and are addressed by certain international instruments. The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence addresses this issue. Article 42 reads thus:-

"Article 42 – Unacceptable justifications for crimes, including crimes committed in the name of so-called "honour"

1. Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called "honour" shall not be regarded as justification for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour.

2. Parties shall take the necessary legislative or other measures to ensure that incitement by any person of a child to commit any of the acts referred to in paragraph 1 shall not diminish the criminal liability of that person for the acts committed."

51. Once the fundamental right is inherent in a person, the intolerant groups who subscribe to the view of superiority class complex or higher clan cannot scuttle the right of a person by leaning on any kind of philosophy, moral or social, or self-proclaimed elevation. Therefore, for the sustenance of the legitimate rights of young couples or anyone associated with them and keeping in view the role of this Court as the guardian and protector of the constitutional rights of the citizens and further to usher in an atmosphere where the fear to get into wedlock because of the threat of the collective is dispelled, it is necessary to issue directives and we do so on the foundation of the principle stated in Lakshmi Kant Pandey v. Union of India (1984) 2 SCC 244), Vishaka and others v. State of Rajasthan and others (1997) 6 SCC 241) and Prakash Singh and others v. Union of India and others (2006) 8 SCC 1).

52. It is worthy to note that certain legislations have come into existence to do away with social menaces like "Sati" and "Dowry". It is because such legislations are in accord with our Constitution. Similarly, protection of human rights is the élan vital of our Constitution that epitomizes humanness and the said conceptual epitome of humanity completely ostracizes any idea or prohibition or edict that creates a hollowness in the inalienable rights of the citizens who enjoy their rights on the foundation of freedom and on the fulcrum of justice that is fair, equitable and proportionate. There cannot be any assault on human dignity as it has the potentiality to choke the majesty of law. Therefore, we would recommend to the legislature to bring law appositely covering the field of honour killing. In this regard, we may usefully refer to the authority wherein this Court has made such recommendation. In Samrendra Beura v. Union of India and others (2013) 14 SCC 672), this Court held:-

"16. Though such amendments have been made by Parliament under the 1950 Act and the 1957 Act, yet no such amendment has been incorporated in the Air Force Act, 1950. The aforesaid provisions, as we perceive, have been incorporated in both the statutes to avoid hardship to persons convicted by the Court Martial. Similar hardship is suffered by the persons who are sentenced to imprisonment under various provisions of the Act. Keeping in view the aforesaid amendment in the other two enactments and regard being had to the purpose of the amendment and the totality of the circumstances, we think it apt to recommend the Union of India to seriously consider to bring an amendment in the Act so that the hardships faced by the persons convicted by the Court Martial are avoided."

53. Mr. Raju Ramachandran, learned senior counsel being assisted by Mr. Gaurav Agarwal, has filed certain suggestions for issuing guidelines. The Union of India has also given certain suggestions to be taken into account till the legislation is made. To meet the challenges of the agonising effect of honour crime, we think that there has to be preventive, remedial and punitive measures and, accordingly, we state the broad contours and the modalities with liberty to the executive and the police administration of the concerned States to add further measures to evolve a robust mechanism for the stated purposes.

I. Preventive Steps:-

(a) The State Governments should forthwith identify Districts, Sub-Divisions and/or Villages where instances of honour killing or assembly of Khap Panchayats have been reported in the recent past, e.g., in the last five years.

(b) The Secretary, Home Department of the concerned States shall issue directives/ advisories to the Superintendent of Police of the concerned Districts for ensuring that the Officer Incharge of the Police Stations of the identified areas are extra cautious if any instance of inter-caste or inter- religious marriage within their jurisdiction comes to their notice.

(c) If information about any proposed gathering of a Khap Panchayat comes to the knowledge of any police officer or any officer of the District Administration, he shall forthwith inform his immediate superior officer and also simultaneously intimate the jurisdictional Deputy Superintendent of Police and Superintendent of Police.

(d) On receiving such information, the Deputy Superintendent of Police (or such senior police officer as identified by the State Governments with respect to the area/ district) shall immediately interact with the members of the Khap Panchayat and impress upon them that convening of such meeting/gathering is not permissible in law and to eschew from going ahead with such a meeting. Additionally, he should issue appropriate directions to the Officer Incharge of the jurisdictional Police Station to be vigilant and, if necessary, to deploy adequate police force for prevention of assembly of the proposed gathering.

(e) Despite taking such measures, if the meeting is conducted, the Deputy

Superintendent of Police shall personally remain present during the meeting and impress upon the assembly that no decision can be taken to cause any harm to the couple or the family members of the couple, failing which each one participating in the meeting besides the organisers would be personally liable for criminal prosecution. He shall also ensure that video recording of the discussion and participation of the members of the assembly is done on the basis of which the law enforcing machinery can resort to suitable action.

(f) If the Deputy Superintendent of Police, after interaction with the members of the Khap Panchayat, has reason to believe that the gathering cannot be prevented and/ or is likely to cause harm to the couple or members of their family, he shall forthwith submit a proposal to the District Magistrate/ Sub-Divisional Magistrate of the District/ Competent Authority of the concerned area for issuing orders to take preventive steps under the Cr.P.C., including by invoking prohibitory orders under Section 144 Cr.P.C. and also by causing arrest of the participants in the assembly under Section 151 Cr.P.C.

(g) The Home Department of the Government of India must take initiative and work in coordination with the State Governments for sensitising the law enforcement agencies and by involving all the stake holders to identify the measures for prevention of such violence and to implement the constitutional goal of social justice and the rule of law.

(h) There should be an institutional machinery with the necessary coordination of all the stakeholders. The different State Governments and the Centre ought to work on sensitization of the law enforcement agencies to mandate social initiatives and awareness to curb such violence.

II. Remedial Measures:-

(a) Despite the preventive measures taken by the State Police, if it comes to the notice of the local police that the Khap Panchayat has taken place and it has passed any diktat to take action against a couple/family of an inter-caste or inter-religious marriage (or any other marriage which does not meet their acceptance), the jurisdictional police official shall cause to immediately lodge an F.I.R. under the appropriate provisions of the Indian Penal Code including Sections 141, 143, 503 read with 506 of IPC.

(b) Upon registration of F.I.R., intimation shall be simultaneously given to the Superintendent of Police/ Deputy Superintendent of Police who, in turn, shall ensure that effective investigation of the crime is done and taken to its logical end with promptitude.

(c) Additionally, immediate steps should be taken to provide security to the couple/ family and, if necessary, to remove them to a safe house within the same district or elsewhere keeping in mind their safety and threat perception. The State Government may consider of establishing a safe house at each District Headquarter for that purpose. Such safe houses can cater to accommodate (i) young bachelor-bachelorette couples whose relationship is being opposed by their families /local community/Khaps and (ii) young married couples (of an inter-caste or inter-religious or any other marriage being opposed by

their families/local community/Khaps). Such safe houses may be placed under the supervision of the jurisdictional District Magistrate and Superintendent of Police.

(d) The District Magistrate/Superintendent of Police must deal with the complaint regarding threat administered to such couple/family with utmost sensitivity. It should be first ascertained whether the bachelor-bachelorette are capable adults. Thereafter, if necessary, they may be provided logistical support for solemnising their marriage and/or for being duly registered under police protection, if they so desire. After the marriage, if the couple so desire, they can be provided accommodation on payment of nominal charges in the safe house initially for a period of one month to be extended on monthly basis but not exceeding one year in aggregate, depending on their threat assessment on case to case basis.

(e) The initial inquiry regarding the complaint received from the couple (bachelor-bachelorette or a young married couple) or upon receiving information from an independent source that the relationship/ marriage of such couple is opposed by their family members/local community/Khaps shall be entrusted by the District Magistrate/ Superintendent of Police to an officer of the rank of Additional Superintendent of Police. He shall conduct a preliminary inquiry and ascertain the authenticity, nature and gravity of threat perception. On being satisfied as to the authenticity of such threats, he shall immediately submit a report to the Superintendent of Police in not later than one week.

(f) The District Superintendent of Police, upon receipt of such report, shall direct the Deputy Superintendent of Police incharge of the concerned sub-division to cause to register an F.I.R. against the persons threatening the couple(s) and, if necessary, invoke Section 151 of Cr.P.C. Additionally, the Deputy Superintendent of Police shall personally supervise the progress of investigation and ensure that the same is completed and taken to its logical end with promptitude. In the course of investigation, the concerned persons shall be booked without any exception including the members who have participated in the assembly. If the involvement of the members of Khap Panchayat comes to the fore, they shall also be charged for the offence of conspiracy or abetment, as the case may be.

III. Punitive Measures:-

(a) Any failure by either the police or district officer/officials to comply with the aforesaid directions shall be considered as an act of deliberate negligence and/or misconduct for which departmental action must be taken under the service rules. The departmental action shall be initiated and taken to its logical end, preferably not exceeding six months, by the authority of the first instance.

(b) In terms of the ruling of this Court in Arumugam Servai (supra), the States are directed to take disciplinary action against the concerned officials if it is found that (i) such official(s) did not prevent the incident, despite having prior knowledge of it, or (ii) where the incident had already occurred, such official(s) did not promptly apprehend

and institute criminal proceedings against the culprits.

(c) The State Governments shall create Special Cells in every District comprising of the Superintendent of Police, the District Social Welfare Officer and District Adi-Dravidar Welfare Officer to receive petitions/ complaints of harassment of and threat to couples of inter-caste marriage.
(d) These Special Cells shall create a 24 hour helpline to receive and register such complaints and to provide necessary assistance/advice and protection to the couple.

(e) The criminal cases pertaining to honour killing or violence to the couple(s) shall be tried before the designated Court/Fast Track Court earmarked for that purpose. The trial must proceed on day to day basis to be concluded preferably within six months from the date of taking cognizance of the offence. We may hasten to add that this direction shall apply even to pending cases. The concerned District Judge shall assign those cases, as far as possible, to one jurisdictional court so as to ensure expeditious disposal thereof.

54. The measures we have directed to be taken have to be carried out within six weeks hence by the respondent- States. Reports of compliance be filed within the said period before the Registry of this Court.

55. The Writ Petition is, accordingly, disposed of. There shall be no order as to costs.

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2018 (1) L.S. 179 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
R.K. Agarwal &
The Hon'ble Mr.Justice
Abhay Manohar Sapre

Apollo Zipper India
Limited ..Appellant

Vs.

W. Newman & Co. Ltd. ..Respondent

TRANSFER OF PROPERTY ACT, Sec.106 - Issue involved in present appeal relates to grant of leave to the respondent/defendant to defend summary eviction suit filed by the appellant against them in relation to suit premises.

Held - In an eviction suit filed by landlord against tenant under the Rent Laws, when the issue of title over tenanted premises is raised, landlord is not expected to prove his title like what he is required to prove in a title suit - Appeal is allowed.

Mr.Tamali Wad, A. Malhotra, Prince Anthony,Advocattes for the Appellant.
Mr.Reshmi Rea Sinha, Advocates. For the Respondent.

C.A.No.4249/18 Date: 20-4-2018

J U D G M E N T

(per the Hon'ble Mr.Justice Abhay Manohar Sapre)

Leave granted.

2. This appeal is directed against the final judgment and decree dated 13.06.2017 passed by the High Court at Calcutta in APD No. 510 of 2015 whereby the Division Bench of the High Court allowed the appeal filed by the respondent herein and set aside the order dated 14.10.2015 passed by the Single Judge of the High Court and granted unconditional leave to the respondent to defend the suit and remanded the suit for its trial on merits.

3. The short issue involved in this appeal relates to grant of leave to the respondent (defendant) to defend the summary eviction suit filed by the appellant against them in relation to the suit premises.

4. In order to appreciate the issue involved, it is necessary to set out the background facts which led to filing of the summary eviction suit leading to passing of the impugned order.

5. The background facts of the case are as follows:

6. The appellant is the plaintiff whereas the respondent is the defendant in a summary suit out of which this appeal arises.

7. There is a Hotel in the city of Kolkata called "Great Eastern Hotel" (hereinafter referred to as "GEH"). It is situated in Old Court House Street (Hemanta Basu Sarani), Kolkata. The Hotel has been in existence for the last more than a century. It is a heritage Hotel. The Hotel building has several floors and consists of several shops, business premises including the Hotel. The building and the Hotel was owned and run by the Company called "Great Eastern Hotel Limited" (hereinafter referred to as "GEHL").

8. The shops and business premises in the Hotel building are mostly on the ground floor and were let out by GEHL to different persons as their tenants. One such business premises (No.18) measuring around 6000 sq. feet, which is the subject matter of this appeal (hereinafter referred to as the "suit premises"), was let out by GEHL, a century back, to the respondent for non-residential purpose. The monthly rent of the suit premises at the relevant time was Rs. 40,000/-.

9. In the year 1975, the State of West Bengal passed an Act called "The Great Eastern Hotel (Taking Over of Management) Act, 1975 (Act XXXII of 1975)" (hereinafter referred to as "the Act 1975"). The Act 1975 was passed to provide for taking over of the management of the undertaking of the GEHL as defined under Section 2(d) for a limited period of five years in public interest and also to secure its proper management. Pursuant thereto, the State Government took over the management of the undertaking of the GEHL.

10. The Act of 1975 was followed by another Act passed by the State of West Bengal on the expiry of five years in 1980 called "The Great Eastern Hotel (Acquisition of

Undertaking) Act, 1980 (Act No XXVII of 1980)" (hereinafter referred to as "the Act 1980"). The Act 1980 was passed for the acquisition of the undertaking of the GEHL.

11. On 18.06.1981, the State Government issued a notification under Section 3(1) of the Act 1980 whereby the undertaking of GEHL stood transferred to and vested absolutely in the State Government with effect from 17.07.1980.

12. The Governor issued a notification under Section 3 (2) of the Act 1980 for better and efficient management and administration of the GEH, and directed therein that the undertaking of the GEHL shall stand transferred to and vest in the Great Eastern Hotel Authority (for short, "GEHA") constituted under Section 5 (1) of the Act 1980.

13. Consequent upon enacting of the Act 1980 and issuance of the aforementioned notification under the Act of 1980, the State Government (GEHA) became the owner of the GEHL (which included the land, Hotel building, assets and the management of GEHL) by operation of law.

14. As a consequence thereof, the respondent, who was originally the tenant of GEHL, became the tenant of the State Government, i.e., GEHA on the same terms and conditions with effect from 17.07.1980. The respondent too accepted this transfer of ownership of the suit premises and accordingly started paying monthly rent of L40,000/- to GEHA which they paid till 2005.

15. On 05.10.2005, the Governor issued another notification under Section 3(2) of the Act 1980 and directed therein that all the fixed and current assets of the GEHA be vested in the Company called "Apollo Zipper India Limited" (appellant herein).

16. As a result of issuance of this notification, all the assets (fixed and current) of GEHA stood vested in the appellant-Company with effect from 05.10.2005. This is how the appellant became the absolute owner of GEHA including the suit premises let out to the respondent.

17. By letter dated 24.02.2006, GEHA informed the respondent about the transfer of their entire assets to the appellant with effect from 05.10.2005 followed by another letter dated 28.04.2006 of the Advocates of GEHA sent to the respondent informing them about the transfer of ownership and assets of GEHA to the appellant with effect from 05.10.2005 including transfer of the suit premises to the appellant.

18. On 17.05.2012, the appellant sent a quit notice to the respondent under Section 106 of the Transfer of Property Act, 1882 (hereinafter referred to as "the TP Act") and terminated the respondent's tenancy with effect from 03.06.2012 and demanded arrears of rent and vacant possession of the tenanted premises from the respondent. On receipt of the quit notice, the respondent did not reply to it. (See page180 of SLP-order of the Single Judge).

19. This led to filing of the summary suit being Civil Suit No.201/2012 by the appellant against the respondent on the original side of the High Court at Calcutta claiming therein

arrears of rent (Rs.39,20,000/-), the vacant possession of the suit premises and mesne profits at the rate of Rs. 40,000/- per day.

20. The suit was filed under Chapter XIII-A (Rule 1-B) of the Rules of the High Court at Calcutta (original side), 1914 (for short, "The Rules"). The appellant filed evidence by way of affidavit in support of their case. The respondent on being served of the summons of the suit also filed affidavit opposing the suit of the appellant.

21. It may be mentioned here that the appellant filed another Civil Suit No.53/2007 against the respondent in the High Court at Calcutta for permanent injunction restraining them from carrying out any changes in the nature and character of the suit premises and from transferring and alienating the suit premises to any third party.

22. Similarly, the respondent also filed one suit (Title Suit No.1183/2012) in the City Civil Court at Calcutta against the appellant for a declaration that the quit notice dated 17.05.2012 sent by the appellant to the respondent under Section 106 of the TP Act is void, that the respondent is a monthly tenant of the suit premises, and also prayed for issuance of mandatory injunction against the appellant, who was made defendant No.1 in the said suit, and Bharat Hotels Ltd., GEHA and the State of West Bengal as defendant Nos. 2, 3 and 4 respectively, directing them to accept the monthly rent from the respondent(plaintiff) at the rate of Rs. 1600/- in respect of the tenanted premises. This suit is pending.

23. The respondent also filed Writ Petition No.569/2004 in the High Court at Calcutta challenging therein the rate of monthly rent of the suit premises.

24. Coming now to the facts of the summary suit filed by the appellant (C.S. No.201 of 2012) out of which this appeal arises, the appellant (plaintiff) claimed that they are entitled to a decree for eviction against the respondent from the suit premises and also a decree for arrears of rent and mesne profits under Rule 6 of the Rules because the respondent has failed to raise any arguable and substantial defense on merits in support of their case in answer to the appellant's summary suit.

25. The respondent, however, raised essentially three grounds to oppose the appellant's suit by way of defense and sought leave to defend the suit on the said grounds.

26. First, the suit, as filed by the appellant by taking recourse to the provisions of the TP Act, is not maintainable. According to the respondent, the suit should have been filed under the West Bengal Premises Tenancy Act, 1997 (for short, "the Tenancy Act") because the monthly rent of the suit premises is less than the limit prescribed under Section 3(f) of the Tenancy Act (monthly rent is Rs. 1600/- whereas the limit prescribed is Rs. 10,000/-.)

27. Second, the respondent has not attorned to the appellant inasmuch as it is also not clear as to who is the owner of the suit premises, viz., the appellant-Company or Bharat Hotels limited and, therefore, the appellant is required to prove their title over

the suit premises. It is more so for want of any attornment made by the respondent of the appellant's ownership and the tenancy in question. This, according to the respondent, needs an elaborate trial in the suit.

28. Third, the monthly rent of the suit premises is Rs. 1600/- whereas the respondent is paying Rs. 38,400/- towards maintenance charges to the landlord. It was contended that since there is a dispute as to whether the monthly rent is Rs. 40,000/- or Rs. 1600/-, the same also needs an elaborate trial on merits in the suit.

29. The Single Judge, by order dated 14.10.2015, declined to grant leave to defend to the respondent and decreed the appellant's suit by passing an eviction decree against the respondent in relation to the suit premises. The Single Judge held that none of the grounds raised by the respondent to seek leave to defend the suit are prima facie arguable and nor have any merit and nor these grounds constitute any substantial defense, which may require an elaborate trial on such grounds and, therefore, no case is made out to grant any leave to defend the suit to the respondent.

30. In other words, the Single Judge held, that the summary suit is maintainable under the provisions of the TP Act, that the monthly rent of the suit premises is L40,000/-, that the respondent has attorned to the appellant, that the appellant has prima facie proved their title over the suit premises, that the provisions of the Tenancy Act has no application because the monthly rent of the suit premises is above the prescribed limit of Rs. 10,000/- and lastly, to record these findings, no elaborate trial in the suit is required inasmuch as such findings can be recorded on the basis of the documents filed by the parties.

31. The respondent felt aggrieved and filed appeal before the Division Bench of the High Court. By impugned judgment, the Division Bench allowed the respondent's appeal, set aside the order of the Single Judge and granted unconditional leave to defend the suit to the respondent and remanded the suit for its trial on merits.

32. The Division Bench was of the view that there is some dispute regarding the title over the suit premises as to who is the owner of the suit premises, namely, whether the appellant-Company or the other Company,i.e., M/s Bharat Hotels Ltd.

33. In other words, the Division Bench held that the question of title over the suit premises needs to be gone into detail in the suit with a view to find out as to who is the actual owner of the suit premises and hence an arguable case in defense has been made out by the respondent while seeking leave to defend the summary suit.

34. The plaintiff (appellant) felt aggrieved and filed this appeal by way of special leave against the judgment of the Division Bench in this Court.

35. Heard Mr. Mukul Rohtagi and Mr. Ranjeet Kumar, learned senior counsel for the appellant and Mr. Jaideep Gupta, learned senior counsel for the respondent.

36. Mr. Mukul Rohatgi, learned senior counsel for the appellant (plaintiff) while assailing the legality and correctness of the impugned judgment, mainly reiterated the same submissions, which were urged by the appellant before the two Courts below in support of their case.

37. In substance, his submission was that the reasoning and the conclusion arrived at by the Single Judge is just, proper and legal and hence the order of the Single Judge deserves to be restored by setting aside the impugned judgment.

38. Learned counsel urged that none of the three grounds raised by the respondent for grant of leave to defend the suit were either arguable or had any prima facie merit therein. In other words, the submission was that all the three grounds were raised for the sake of raising having no arguable and substantial defense whether on facts or in law and, therefore, Single Judge was justified in declining to grant leave to defend the suit to the respondent and was justified in passing decree for eviction against the respondent.

39. On merits, learned counsel pointed out with reference to each ground that the documents on record would prima facie show that firstly, the monthly rent was L40,000/-, Secondly, the appellant was the owner of the suit premises, thirdly, the respondent had duly attorned to the appellant and fourthly, the suit was rightly filed by invoking the provisions of the TP Act because the provisions of the Tenancy Act had no application to the suit premises due to monthly rent of the suit premises exceeding the limit specified under Section 3 (f) of the Tenancy Act.

40. In reply, Mr. Jaideep Gupta, learned senior counsel for the respondent supported the impugned judgment and contended that no case is made out to interfere in the impugned judgment. Learned counsel then elaborated his submission in support of the impugned judgment and prayed for dismissal of the appeal.

41. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal, set aside the impugned judgment and restore the order of the Single Judge.

42. In our considered opinion, the reasoning and the conclusion arrived at by the Single Judge while declining to grant leave to defend the suit to the respondent and decreeing the appellant's suit for eviction deserves to be restored as against the impugned judgment passed by the Division Bench.

43. In other words, we are of the considered opinion that the grounds, which were pressed in service by the respondent, to seek leave to defend the suit are neither arguable nor have any prima facie merit therein and, therefore, there does not arise any need to have any trial in the suit on merits on such grounds. This we say for the following reasons.

44. The first question that arises for consideration in this appeal is whether the respondent attorned to the appellant or whether the appellant is required to prove their title over the suit premises or whether

there exists any doubt or confusion over the issue of title of the suit premises so as to grant leave to defend to the respondent to probe these questions elaborately on merits in the summary suit filed by the appellant against the respondent for eviction.

45. It is a settled principle of law laid down by this Court that in an eviction suit filed by the landlord against the tenant under the Rent Laws, when the issue of title over the tenanted premises is raised, the landlord is not expected to prove his title like what he is required to prove in a title suit.

46. In other words, the burden of proving the ownership in an eviction suit is not the same like a title suit. (See Sheela & Ors. v. Firm Prahlad Rai Prem Prakash, 2002(1) R.C.R.(Rent) 351 : 2002 (3) SCC 375, Para 10 at page 383 and also Boorugu Mahadev & Sons & Anr. v. Sirigiri Narasing Rao & Ors. 2016(1) R.C.R.(Rent) 94 : 2016(1) Recent Apex Judgments (R.A.J.) 593 : 2016 (3) SCC 343, Para 18 at page 349).

47. Similarly, the law relating to derivative title to the landlord and when the tenant challenges it during subsistence of his tenancy in relation to the demised property is also fairly well settled. Though by virtue of Section 116 of the Evidence Act, the tenant is estopped from challenging the title of his landlord, yet the tenant is entitled to challenge the derivative title of an assignee of the original landlord of the demised property in an action brought by the assignee against the tenant for his eviction under the Rent laws. However, this right of a tenant is subject to one caveat that the tenant has not attorned to the assignee. If the tenant pays rent to the assignee or otherwise accepts the assignee's title over the demised property, then it results in creation of the attornment which, in turn, deprives the tenant to challenge the derivative title of the landlord. [See Bismillah De (dead) by Legal Representatives v. Majeed Shah. 2017(1) R.C.R.(Rent) 113 : 2017(1) Recent Apex Judgments (R.A.J.) 375 : 2017 (2) SCC 274 Para 24]

48. It is equally well-settled law with regard to attornment that it does not create any new tenancy but once the factum of attornment is proved then by virtue of such attornment, the old tenancy continues. (See Uppalapati Veera Venkata Satyanarayanaraju & Anr. v. Josyula Hanumayamma & Anr. AIR 1967 SC 174).

49. In the case at hand, we find that it is not in dispute that the original owner of the suit premises was GEHL, who had created the original contract of tenancy with the respondent in relation to the suit premises.

50. It is also not in dispute that the GEHL was then acquired by the State by Act of 1975 and the Act of 1980, as a consequence thereof, the suit premises stood vested in an authority called the GEHA by operation of law as per Section 3 read with Section 5 of the Act 1980 with effect from 17.07.1980 and 22.06.1981.

51. It is also not in dispute that the respondent accepted this change of ownership and accordingly started paying monthly rent to the GEHA from 1980 as monthly tenant of the GEHA and which

they paid till 2005.

52. It is also not in dispute that in terms of the notification issued by the Governor on 05.10.2005 under Section 3(2) of the Act of 1980, the suit premises then stood transferred and vested in the appellant-Company (see notification dated 05.10.2005) by operation of law and the appellant accordingly became the owner of the suit premises with effect from 05.10.2005.

53. It is further not in dispute that the GEHA and their lawyer, vide letters dated 24.02.2006 and 28.04.2006, informed the respondent about the change of ownership of the suit premises and the appellant acquiring the ownership of the suit premises vide notification dated 05.10.2005.

54. In our considered opinion, the aforementioned undisputed facts, which are matter of record, are sufficient to hold in the eviction suit that the appellant became the owner of the suit premises with effect from 05.10.2005.

55. In our considered view, the respondent also attorned to the appellant and accepted the ownership of the appellant over the suit premises, which is prima facie proved by the three facts and circumstances as set out below.

56. First, when the appellant sent a quit notice dated 17.05.2012 to the respondent under Section 106 of the TP Act determining the tenancy and calling upon the respondent to pay the arrears of rent and vacate the suit premises, despite receipt of the quit notice, they did not reply to it.

57. In our view, the respondent ought to have replied to the notice at the first available opportunity, which they failed to do so. It amounts to waiver on their part to challenge the invalidity or infirmity of the quit notice including the ownership issue raised therein.

58. In the case of Parwati Bai v. Radhika, 2003(1) R.C.R.(Rent) 607 : AIR 2003 SC 3995, the question arose as to whether the tenancy was terminated in accordance with the provisions of Section 106 of the TP Act. The defendant despite receiving the notice from the plaintiff did not reply to it.

59. This Court held that if the defendant does not raise any objection to the validity of quit notice at the first available opportunity, the objection will be deemed to have been waived. The following Para 6 of the decision is apposite which reads as under:

"6. The singular question to be examined in the present case is whether the tenancy was terminated in accordance with the provisions of Section 106 of the Transfer of Property Act. The receipt of notice by the defendant is admitted in the written statement. The defendant has not raised any specific objection as to the validity of the notice. An objection as to invalidity or infirmity of notice under Section 106 of the TP Act should be raised specifically and at the earliest; else it will be deemed to have been waived even if there exists one. It cannot, therefore, be said that the notice in the present case suffered from any infirmity. A copy of the notice was exhibited

and proved by the plaintiff as Ext. P-4."

60. Second, the respondent by letters dated 13.06.2006, 27.06.2006, 05.07.2006 and 11.07.2006, sent to the appellant on the question of ownership of the suit premises and payment of rent had expressed their willingness to attorn and continue the tenancy with the appellant and also offered to pay rent to the appellant. (See pages 198 & 199 of the SLP Paper Book-order of the Single Judge)

61. Third, the respondent in their civil suit (No.1183 of 2012) filed against the appellant in Paras 15, 17, 18 and relief clause (e) of the plaint admitted the ownership of the appellant over the suit premises and went to the extent of seeking the mandatory injunction against the appellant directing them to accept the monthly rent of the suit premises from the respondent.

62. In other words, reading of the aforementioned paras in the respondent's plaint including the relief clause (e) would go to show that the respondent was all along willing to accept and indeed actually accepted the ownership of the appellant over the suit premises and, therefore, sought mandatory injunction against the appellant to accept them as tenant. The conduct of the respondent, therefore, disentitles them to now raise a new plea questioning the title of the appellant over the suit premises and a plea of attornment. Both, in our opinion, are wholly misconceived pleas and, therefore, deserve to be rejected.

63. As mentioned above, the title of the landlord over the tenanted premises in a suit for eviction cannot be examined like a title suit. Similarly, the attornment can be proved by several circumstances including taking into consideration the conduct of the tenant qua landlord.

64. The aforesaid three circumstances, in our opinion, are, therefore, more than sufficient to record a finding that the appellant was prima facie able to prove their title over the suit premises so also was able to prove the factum of "attornment" made by the respondent in relation to the suit premises in appellant's favour thereby entitling the appellant to determine the contractual tenancy which was devolved upon them by operation of law.

65. In the light of the foregoing discussion, we are unable to agree with the view taken by the Division Bench that there was some dispute or confusion as to who is the owner of the suit premises. In our view, there was neither any dispute and nor confusion and nor any ambiguity over the question of title over the suit premises which needed any elaborate inquiry.

66. This takes us to examine the next question as to what was the monthly rent of the suit premises - whether Rs. 1600/- towards monthly rent and Rs. 38,400/- towards maintenance charges as claimed by the respondent or Rs. 40,000/- as claimed by the appellant.

67. In our view, the monthly rent of the suit premises was Rs. 40,000/-. It is for the reason that Firstly, the respondent had been paying Rs. 40,000/- per month to their previous landlord - GEHA for a long time;

Second, the bifurcation of Rs. 40,000/- was being sought by the respondent so that they may get the benefit of applicability of the Tenancy Act to defend therein tenant's right which they failed to prove and lastly, the rent receipts filed by the parties clearly proved that the monthly rent of the suit premises was Rs. 40,000/- and not Rs. 1600/-.

68. This takes us to examine the next question as to whether the suit filed by the appellant invoking the provisions of the TP Act was maintainable or it should have been filed under the Tenancy Act.

69. In our opinion, the appellant rightly filed the suit by invoking the provisions of the TP Act. It is for the reason that once the monthly rent of the suit premises was found to exceed the limit prescribed under Section 3(f) of the Tenancy Act, the provisions of the Tenancy Act had no application to the suit premises.

70. Section 3(f) of the Tenancy Act says that any premises let out for non-residential purpose when carries more than Rs. 10,000/- as monthly rent in the areas included within the limits of Municipal Corporation, the provisions of the Tenancy Act will not apply.

71. In the case at hand, the monthly rent of the suit premises was Rs. 40,000/- and, therefore, the appellant was well within their right to file summary suit against the tenant's eviction and for recovery of the arrears of rent by taking recourse to the provisions of the TP Act read with Rule 1(B) of The Rules applicable to the suits filed on the original side jurisdiction of the High Court at Calcutta.

72. In the light of the foregoing discussion, we are of the view that the respondent failed to raise any arguable and substantial defense as required under Rule 6 read with Rule 9 of the Rules and the three grounds raised for seeking leave to defend the suit were only for the sake of raising and had no factual or/and legal foundation to stand for trial in the suit and hence no leave can be granted to the respondent on such grounds under Rule 9 of the Rules. It was, therefore, rightly declined by the Single Judge but wrongly granted by the Division Bench.

73. In view of the foregoing discussion, the appeal succeeds and is allowed. Impugned judgment is set aside and that of the Single Judge is restored.

74. The respondent is granted six months' time to vacate the suit premises subject to the condition that they shall deposit the entire arrears of rent up to date at the rate of Rs. 40,000/- per month within one month from the date of this order and also deposit six months' rent by way of damages for use and occupation within one month in advance.

75. The entire amount, as directed above, be deposited with the High Court. The appellant shall be entitled to withdraw the sum so deposited. The respondent shall also furnish the undertaking in this Court within two weeks stating therein that they will vacate the suit premises within six months from the date of this order and will

also deposit the sum, as directed above, in time. Failure to file the undertaking and deposit of the amount will entitle the appellant to execute this order against the respondent on the expiry of one month.

76. As a consequence of this judgment, all the pending cases mentioned above such as, C.S. No.53/2007, Title Suit No.1183/ 2012, and W.P. No. 569 of 2004 which were filed by the parties against each other in various Courts in relation to the suit premises and, if pending till date, stand accordingly disposed of.

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2018 (1) L.S. 189 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
R.K. Agarwal &
The Hon'ble Mr.Justice
Abhay Manohar Sapre

Suresh Kumar Kohli ..Appellant
Vs.
Rakesh Jain & Anr., ..Respondents

CIVIL PROCEDURE CODE, 1908 - Sec.47, r/w Order XXI Rule 26 - Appellant is owner of a shop and his father, along with one another, let out shop premises on a monthly rental to father of Respondent No. 1 and Respondent No. 2 - Owner sent a legal notice terminating the tenancy – Father of respondent no.1 passed away - Tenants failed to vacate suit premises and appellant filed Eviction Petition on the ground of bona fide need - Additional Rent Controller, decreed eviction petition in favour of appellant - Point for consideration is whether in light of present facts, the status of the heirs and legal representatives of the deceased tenant will be of joint tenants or of tenants-in-common.

Held - when original tenant dies, legal heirs inherit the tenancy as joint tenants and occupation of one of the tenant is occupation of all the joint tenants - It is not necessary for landlord to implead all legal heirs of the deceased tenant, whether they are occupying the property or not and It is sufficient for landlord to implead either of those persons who are occupying the property, as party - An eviction petition against one of the joint tenant is sufficient against all the joint tenants and all joint tenants are bound by the order of the Rent Controller as joint tenancy is one tenancy and is not a tenancy split into different legal heirs – Appeal is allowed.

Mr.Rajiv Raheja, K. Paari Vendhan, Sethu Mehendran, Advocates for the Appellant.
Mr. Rahul Gupta, Kaveeta Wadia, Advocates. For the Respondents.

C.A.No. 3996/2018 Date: 19-4-2018

J U D G M E N T

(per the Hon'ble Mr.Justice R.K.Agarwal)

Leave granted.

2. The present appeal is directed against the final judgment and order dated 05.12.2013 passed by the High Court of Delhi in CM (M) No. 880 of 2012 whereby learned single Judge of the High Court allowed the petition filed by the Respondent No. 1 herein against the judgment and order dated 08.06.2012 passed by the Additional Rent Controller in Ex Petition No. 51 of 2012 wherein the objections filed by the Respondent No. 1 herein under Section 47 read with Order XXI Rule 26(1) of the Code of Civil Procedure, 1908 (in short 'the Code') were rejected.

3. Brief facts:-

(a) Suresh Kumar Kohli-the appellant herein is the owner of shop bearing No. 3, Building No. 2656, Ajmal Khan Road, Karol Bagh, New Delhi (in short 'the suit premises'). On 15.11.1975, his father, along with one another, let out the suit premises on a monthly rental of Rs. 450/- to Late Shri Ishwar Chand Jain, father of Respondent No. 1 herein, and Ramesh Chand Jain-Respondent No. 2 herein. The tenants started a family business under the name and style of M/s Rakesh Wool Store. Shri Rakesh Jain - Respondent No. 1 herein was inducted as a partner in the family business on 02.04.1979.

(b) On 25.04.2009, the owner sent a legal notice to Respondent No. 2 herein and his father Late Shri Ishwar Chand Jain terminating the tenancy with effect from 31.05.2009. Shri Ishwar Chand Jain died on 08.03.2010.

(c) Since the tenant failed to vacate the suit premises, the appellant herein filed Eviction Petition bearing No. E-304/2010 under Section 14(1)(e) read with Section 25-B of the Delhi Rent (Control) Act, 1958 (hereinafter referred to as 'the Act') on the ground of bona fide need. The Additional Rent Controller, New Delhi, vide judgment and order dated 30.11.2011, decreed the eviction petition in favour of the appellant herein.

(d) Being aggrieved by the decree in favour of the appellant herein, Respondent No. 2 herein preferred Rent Control Revision being No. 212 of 2012 before the High Court. Learned single Judge of the High Court, vide judgment and order dated 08.05.2012, dismissed the revision. Aggrieved by the above order, Respondent No. 2 herein preferred Review Petition being No. 383 of 2012 before the High Court. Learned single Judge of the High Court, vide judgment and order dated 17.08.2012, dismissed the review petition filed by Respondent No. 2 herein.

(e) Meanwhile, Respondent No. 1 herein filed objections in Execution Petition No. 51/2012 under Section 47 Order XXI Rule 26(1) before the Additional Rent Controller, New Delhi claiming that he being a necessary party as he inherited rights in a joint family business and he was not aware of the pendency of the eviction proceedings. The Additional Rent Controller,

vide judgment and order dated 08.06.2012, rejected the objection petition filed by Respondent No. 1 herein.

(f) Aggrieved by the order dated 08.06.2012, Respondent No. 1 herein preferred CM (Main) No. 880 of 2012 before the High Court. Learned single Judge of the High Court, vide judgment and order dated 05.12.2013, allowed the petition filed by the Respondent No. 1 herein.

(g) Aggrieved by the judgment and order dated 05.12.2013, the appellant has preferred this appeal by way of special leave before this Court.

4. Heard Mr. Dhruv Mehta, learned senior counsel for the appellant and Mr. Huzefa Ahmadi, learned senior counsel for the respondents and perused the records.

Point(s) for consideration:-

5. The only point for consideration before this Court is whether in the light of present facts and circumstances of the case, the status of the heirs and legal representatives of the deceased tenant will be of joint tenants or of tenants-in-common.

Rival submissions:-

6. Learned senior counsel appearing for the appellant contended that the High Court failed to appreciate the fact that Respondent No.2, apart from being a tenant in his own right, was also one of the heirs and legal representative of the deceased - Shri Ishwar Chand Jain and, thus, his estate and interest was amply represented and the absence of Respondent No.1 was not fatal to the maintainability of the Eviction Petition filed by the appellant against the tenant-Respondent No.2. Learned senior counsel further contended that Respondent No.2 and his father late Shri Ishwar Chand Jain were joint tenants when their tenancy was determined, and therefore, eviction suit filed by the landlord-appellant against one of the joint tenant was perfectly valid and maintainable. The death of one of the joint tenant after termination of the tenancy will have no effect as right of the party crystallized on the date of service of the notice and termination of the tenancy.

7. Learned senior counsel further contended that the High Court erred in holding that Respondent No.1 was a necessary party to the suit for eviction on the ground that the tenancy between the parties is tenancy-in-common and not a joint tenancy. He finally contended that the High Court erred in law in applying the provisions of the Hindu Succession Act, 1956 while interpreting the status of Respondent No.1 qua the suit shop after the death of his father who was the original tenant in the suit premises. The Act, being a special Act and the "tenant" having been defined in the said Act, the provisions of the Rent Act will prevail over the provisions of the Hindu Succession Act, 1956. In support of his plea, learned senior counsel relied upon the following decisions of this Court, viz., H.C. Pandey v. G.C. Paul (1989) 3 SCC 77, Mohd. Usman v. (Mst.) Surayya Begum (1990) 2 RCR (Rent) 408, Mst. Surayya Begum v. Mohd. Usman and Others (1991) 3 SCC 114 and Harish Tandon v. Addl. District Magistrate, Allahabad, U.P. and

Others (1995) 1 SCC 537.

8. On the other hand, learned senior counsel appearing for the respondents contended that on a careful perusal of the provisions of the Act and the definition of 'Tenant' given thereunder read with Section 19 of the Hindu Succession Act, 1956, the intention of the legislature would not be to exclude the former Act from the operation of the latter and the High Court was right in placing reliance on Section 19 of the Hindu Succession Act,1956 to hold that on the death of a tenant, his legal heirs hold the tenancy estate as tenants-in-common and not as joint tenant.

9. Learned senior counsel further submitted that the present appeal deserves to be dismissed as the appellant has acted in a clandestine manner to undermine the interest of Respondent No. 1 in the suit premise and the High Court was right in setting aside the order of the Additional Rent Controller and directing the impleadment of Respondent No. 1 in the eviction petition. He finally contended that the findings of the High Court in the present case should not be interfered with as the same would lead to grave injustice to the respondents. In support of his aforesaid pleas, learned senior counsel has relied upon the following decisions of this Court, viz., Boddu Venkatakrishna Rao and Others v. Smt. Boddu Satyavathi and Others AIR 1968 SC 751, Gian Devi Anand v. Jeevan Kumar and Others (1985) 2 SCC 683and Uttam v. Saubhag Singh and Others (2016) 4 SCC 68.

Discussion:-

10. The issue at hand is what would be the status of the succeeding legal representatives after the death of the statutory tenant. In this regard, it would be worthy to discuss the two capacities, viz., tenancy-in-common and joint tenancy, and the rights that one holds in these two different capacities.

Fundamentally, the concepts of joint tenancy and tenancy-in-common are different and distinct in form and substance. The incidents regarding the co-tenancy and joint tenancy are different: joint tenants have unity of title, unity of commencement of title, unity of interest, unity of equal shares in the joint estate, unity of possession and right of survivorship.

11. Tenancy-in-common is a different concept. There is unity of possession but no unity of title, i.e. the interests are differently held and each co-tenant has different shares over the estate. Thus, the tenancy rights, being proprietary rights, by applying the principle of inheritance, the shares of heirs are different and ownership of leasehold rights would be confined to the respective shares of each heir and none will have title to the entire leasehold property. Therefore, the estate shall be divided among the co-tenants and each tenant in common has an estate in the whole of single tenancy. Consequently, the privity exists between the landlord and the tenant in common in respect of such estate.

12. In Boddu Venkatakrishna Rao (supra), this Court has held as under:-

"5. Let us now consider the position in law. The law has been summarised in Mulla's Transfer of Property Act (Fifth Edition) at page 226. As early as 1896 it was held by the Judicial Committee of the Privy Council in Jogeswar Narain Deo v. Ram Chandra Dutt that "The principle of joint tenancy appears to be unknown to Hindu law except in the case of coparcenary between the members of an undivided family." and that it was not right to import into the construction of a Hindu will an extremely technical rule of English conveyancing. Many years later the principle was reiterated in the case of Mt. Bahu Rani v. Rajendra Baksh Singh.."

13. In Gian Devi (supra), this Court has held as under:

"34. It may be noticed that the Legislature itself treats commercial tenancy differently from residential tenancy in the matter of eviction of the tenant in the Delhi Rent Act and also in various other Rent Acts. All the grounds for eviction of a tenant of residential premises are not made grounds for eviction of a tenant in respect of commercial premises. Section 14(1)(d) of the Delhi Rent Act provides that non-user of the residential premises by the tenant for a period of six months immediately before the filing of the application for the recovery of possession of the premises will be a good ground for eviction, though in case of a commercial premises no such provision is made. Similarly, Section 14(1)(e) which makes bona fide requirement of the landlord of the premises let out to the tenant for residential purposes a ground for eviction of the tenant, is not made applicable to commercial premises. A tenant of any commercial premises has necessarily to use the premises for business purposes. Business carried on by a tenant of any commercial premises may be and often is, his only occupation and the source of livelihood of the tenant and his family. Out of the income earned by the tenant from his business in the commercial premises, the tenant maintains himself and his family; and the tenant, if he is residing in a tenanted house, may also be paying his rent out of the said income. Even if a tenant is evicted from his residential premises, he may with the earnings out of the business be in a position to arrange for some other accommodation for his residence with his family. When, however, a tenant is thrown out of the commercial premises, his business which enables him to maintain himself and his family comes to a standstill. It is common knowledge that it is much more difficult to find suitable business premises than to find suitable premises for residence. It is no secret that for securing com- mercial accommodation, large sums of money by way of salami, even though not legally payable, may have to be paid and rents of commercial premises are usually very high. Besides, a business which has been carried on for years at a particular place has its own goodwill and other distinct advantages. The death of the person who happens to be the tenant of the commercial premises and who was running the business out of the income of which the family used to be maintained, is itself a great loss to the members of the family to whom the death, naturally, comes as a great blow. Usually, on the death of the person who runs the business and maintains his family

out of the income of the business, the other members of the family who suffer the bereavement have necessarily to carry on the business for the maintenance and support of the family. A running business is indeed a very valuable asset and often a great source of comfort to the family as the business keeps the family going. So long as the contractual tenancy of a tenant who carries on the business continues, there can be no question of the heirs of the deceased tenant not only inheriting the tenancy but also inheriting the business and they are entitled to run and enjoy the same. We have earlier held that mere termination of the contractual tenancy does not bring about any change in the status of the tenant and the tenant by virtue of the definition of the "tenant" in the Act and the other Rent Acts continues to enjoy the same status and position, unless there be any provisions in the Rent Acts which indicate to the contrary. The mere fact that in the Act no provision has been made with regard to the heirs of tenants in respect of commercial tenancies on the death of the tenant after termination of the tenancy, as has been done in the case of heirs of the tenants of residential premises, does not indicate that the Legislature intended that the heirs of the tenants of commercial premises will cease to enjoy the protection afforded to the tenant under the Act. The Legislature could never have possibly intended that with the death of a tenant of the commercial premises, the business carried on by the tenant, however flourishing it may be and even if the same constituted the source of livelihood of the members of the family, must necessarily come to an end on the death of the tenant, only because the tenant died after the contractual tenancy had been terminated. It could never have been the intention of the Legislature that the entire family of a tenant depending upon the business carried on by the tenant will be completely stranded and the business carried on for years in the premises which had been let out to the tenant must stop functioning at the premises which the heirs of the deceased tenant must necessarily vacate, as they are afforded no protection under the Act. We are of the opinion that in case of commercial premises governed by the Delhi Act, the Legislature has not thought it fit in the light of the situation at Delhi to place any kind of restriction on the ordinary law of inheritance with regard to succession. It may also be borne in mind that in case of commercial premises the heirs of the deceased tenant not only succeed to the tenancy rights in the premises but they succeed to the business as a whole. It might have been open to the Legislature to limit or restrict the right of inheritance with regard to the tenancy as the Legislature had done in the case of the tenancies with regard to the residential houses but it would not have been open to the Legislature to alter under the Rent Act, the law of succession regarding the business which is a valuable heritable right and which must necessarily devolve on all the heirs in accordance with law. The absence of any provision restricting the heritability of the tenancy in respect of the commercial premises only establishes that commercial tenancies notwithstanding the determination of the contractual tenancies will devolve on the heirs in accordance with law and the heirs who step into the position of the deceased tenant will continue to

enjoy the protection afforded by the Act and they can only be evicted in accordance with the provisions of the Act. There is another significant consideration which, in our opinion, lends support to the view that we are taking. Commercial premises are let out not only to individuals but also to Companies, Corporations and other statutory bodies having a juristic personality. In fact, tenancies in respect of commercial premises are usually taken by Companies and Corporations. When the tenant is a Company or a Corporation or anybody with juristic personality, question of the death of the tenant will not arise. Despite the termination of the tenancy, the Company or the Corporation or such juristic personalities, however, will go on enjoying the protection afforded to the tenant under the Act. It can hardly be conceived that the Legislature would intend to deny to one class of tenants, namely, individuals the protection which will be enjoyed by the other class, namely, the Corporations and Companies and other bodies with juristic personality under the Act. If it be held that commercial tenancies after the termination of the contractual tenancy of the tenant are not heritable on the death of the tenant and the heirs of the tenant are not entitled to enjoy the protection under the Act, an irreparable mischief which the Legislature could never have intended is likely to be caused. Any time after the creation of the contractual tenancy, the landlord may determine the contractual tenancy, allowing the tenant to continue to remain in possession of the premises, hoping for an early death of the tenant, so that on the death of a tenant he can immediately proceed to institute the proceeding for recovery and recover possession of the premises as a matter of course, because the heirs would not have any right to remain in occupation and would not enjoy the protection of the Act. This could never have been intended by the Legislature while framing the Rent Acts for affording protection to the tenant against eviction that the landlord would be entitled to recover possession, even if no grounds for eviction as prescribed in the Rent Acts are made out.

35. In our opinion, the view expressed by this Court in Ganapat Ladha case and the observations made therein which we have earlier quoted, do not lay down the correct law. The said decision does not properly construe the definition of the “tenant” as given in Section 5(11)(b) of the Act and does not consider the status of the tenant, as defined in the Act, even after termination of the commercial tenancy. In our judgment in Damadilal case this Court has correctly appreciated the status and the legal position of a tenant who continues to remain in possession after termination of the contractual tenancy. We have quoted at length the view of this Court and the reasons in support thereof. The view expressed by a seven Judge Bench of this Court in Dhanapal Chettiar case and the observations made therein which we have earlier quoted, lend support to the decision of this Court in Damadilal case. These decisions correctly lay down that the termination of the contractual tenancy by the landlord does not bring about a change in the status of the tenant who continues to remain in possession after the termination of the tenancy by virtue of the provisions of the

Rent Act. A proper interpretation of the definition of tenant in the light of the provisions made in the Rent Acts makes it clear that the tenant continues to enjoy an estate or interest in the tenanted premises despite the termination of the contractual tenancy."

14. This Court, in H.C. Pandey (supra), has held as under:-

"4. It is now well settled that on the death of the original tenant, subject to any provision to the contrary either negativing or limiting the succession, the tenancy rights devolve on the heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs.

There is no division of the premises or of the rent payable thereof. That is the position as between the landlord and the heirs of the deceased tenant. In other words, the heirs succeed to the tenancy as joint tenants...."

15. In Mohd. Usman (supra), the High Court of Delhi has held as under:-

"5. I find no force in the contention raised by the learned counsel for respondent No.1. The provision regarding inheritance of tenancy in respect of Mahomedans and Hindus is not different. The Supreme Court in Gian Devi Anand's case (Supra) has no doubt observed that tenancy right which is inheritable devolves on the heirs under the ordinary law of succession. It only means that only those heirs who would be entitled to inherit the property of a deceased tenant under the ordinary law of succession would be entitled to inherit even the right of tenancy after the death of the tenant. This position is amply clear from the fact that even under Section 19 of the Hindu Succession Act 1956 which prescribes the mode of succession of two or more heirs provides that if two or more heirs succeed together to the property of an intestate they shall take the property as tenants in common and not as joint tenants and in-spite of this the Supreme Court in H.C. Pandey's case (supra) has observed that the heirs of a deceased tenant succeed to the right of tenancy as joint tenants. The Supreme Court in H.C. Pandey's case (supra) has observed as follows:-

"It is now well settled that on the death of the original tenant, subject to any provision to the contrary either negativing or limiting the succession, the tenancy rights devolve on the heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable there. That is the position as between the landlord and the heirs of the deceased tenant. In other words, the heirs succeed to the tenancy as joint tenants. In the present case it appears that the respondent acted on behalf of the tenants, that he paid rent on behalf of all and he accepted notice also on behalf of all. In the circumstances, the notice was served on the respondent was sufficient. It seems to us that the view taken in Ramesh Chand Bose (AIR 1977 Allahabad 38) (supra) is erroneous where the High Court lays

down that the heirs of the deceased tenant succeed as tenants in common. In the Transfer of Property Act notice served by the appellant on the respondent is a valid notice and therefore the suit must succeed."

6. In the light of the above observations of the Supreme Court there can be no doubt that even if one of the legal heirs is not a party to proceedings for eviction filed by the landlord against the legal heirs of the original tenant, that heir who has been left out cannot later on come forward and agitate his or her right in the tenancy. In the present case, I find that Surayya Begum who claims to be living in the same disputed premises alongwith other legal heirs after the death of Khalil Raza has chosen to file her objections after the whole round of litigation is over and after the other legal heirs have lost right upto the Supreme Court. It is thus clear that these objections are filed only to defeat the decree and delay the execution of the decree. In my view, therefore, even if Surayya Begum was not a party to the previous litigation between the parties she has no right to object to the execution of the decree and the Additional Rent Controller ought to have dismissed the objections on that ground alone.

7. In the circumstances, the petition is allowed. The order of the Additional Rent Controller Delhi dated 2 nd September, 1989 is set aside. The objections filed by respondent No.1 are dismissed. Respondent No.1 Mst. Surayya Begum is however given on month's time to vacate the premises. No costs."

16. Further, in Surayya Begum (Mst) (supra), this Court has held as under:-

"7. The learned advocates representing the decree holders in these two appeals have argued that when the tenancy rights devolve on the heirs of a tenant on his death, the incidence of tenancy remains the same as earlier enjoyed by the original tenant and it is a single tenancy which devolves on them. There is no division of the premises or of the rent payable, and the position as between the landlord and the tenant continues unaltered. Relying on Kanji Manji v. Trustees of the Port of Bombay and borrowing from the judgment in H.C. Pandey case it was urged that the heirs succeed to the tenancy as joint tenants. The learned counsel for the appellants have replied by pointing out that as the aforesaid two decisions were distinguished by this Court in the latter case of Textile Association, it was not open to the landlords to support the impugned judgments by relying upon the earlier two cases.

8. So far as Section 19 of the Hindu Succession Act is concerned, when it directs that the heirs of a Hindu dying intestate shall take his property as tenants-in-common, it is dealing with the rights of the heirs inter se amongst them, and not with their relationship with a stranger having a superior or distinctly separate right therein. The relationship between the stranger and the heirs of a deceased tenant is not the subject matter of the section. Similar is the situation when the tenant is a Mohammedan. However, it is not necessary for us to elaborate this aspect in the present appeals. The main dispute between the parties, as it appears from their respective stands in

the courts below, is whether the heirs of the original tenants who were parties to the proceeding, represented the objector heirs also. According to the decree holder in Miss Renu Sharma's case their interest was adequately represented by their mother and brothers and they are as much bound by the decree as the named judgment debtors. In Surayya Begum's case respondent 1 has denied the appellant's claim of being one of the daughters of Khalil Raza, and has been contending that the full estate of Khalil Raza which devolved upon his heirs on his death was completely represented by respondents 2 to 9.

In other words, even if the appellant is held to be a daughter of Khalil Raza the further question as to whether her interest was represented by the other members of the family will have to be answered."

17. In Harish Tandon (supra), this Court has held as under:-

"20. The Act with which we are concerned is a statute which purports to regulate the relationship between the landlord and the tenant and in many respects contains provisions for achieving that object which are different from the Transfer of Property Act. As such it was open to the framers of the Act to look to the interest of the tenant as well as the landlord and to prescribe conditions under which the tenant can continue to occupy a building and having contravened any of the conditions prescribed shall be deemed to have ceased to occupy the building.

21. On the question as to whether any contravention by Ganpat Roy, one of the heirs of Sheobux Roy, will be a ground for eviction from the whole premises, the High Court was of the opinion that after the death of Sheobux Roy, his five sons became tenants in common and not joint tenants of the premises because of which contravention by one of the tenants shall not be a ground for eviction, so far the other co-tenants are concerned. In support of this finding, reliance was placed by the High Court on a judgment of this Court in Mohd. Azeem v. Distt. Judge. From the facts of that case it appears that the original tenant had died in 1969 leaving behind a widow, three sons and a daughter. In connection with sub-section (3) of Section 12, after making reference to the Full Bench judgment of Allahabad High Court it was said:

"The Full Bench proceeded on the basis that the heirs become joint tenants and answered the main problem by saying that if any member of the family of such joint tenants built or acquired a house in vacant state the tenancy would be deemed to have ceased. In framing these questions for reference and in answering the referred questions, the definition of `tenant' was lost sight of. All the heirs as normally reside with the deceased tenant in the building at the time of his death become tenants. The definition does not warrant the view that all the heirs will become a body of tenants to give rise to the concept of joint tenancy. Each heir satisfying the further qualification in Section 3(a)(1) of the Act in his own right becomes a tenant and when we come to Section 12(3) of the Act, the words `the tenant or any member of his family' will refer to the heir who has become a tenant

under the statutory definition and members of his family." However, this Court in the case of H.C. Pandey v. G.C. Paul in connection with the same Act said:

"It is now well settled that on the death of the original tenant, subject to any provision to the contrary either negativing or limiting the succession, the tenancy rights devolve on the heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs.

There is no division of the premises or of the rent payable therefor. That is the position as between the landlord and the heirs of the deceased tenant. In other words, the heirs succeed to the tenancy as joint tenants."

22. The attention of the learned Judges constituting the Bench in the case of H.C. Pandey v. G.C. Paul was not drawn to the view expressed in the case of Mohd. Azeem v. Distt. Judge. There appears to be an apparent conflict between the two judgments. It was on that account that the present appeal was referred to a Bench of three Judges. According to us, it is difficult to hold that after the death of the original tenant his heirs become tenants-in-common and each one of the heirs shall be deemed to be an independent tenant in his own right. This can be examined with reference to Section 20(2) which contains the grounds on which a tenant can be evicted. Clause (a) of Section 20(2) says that if the tenant is in arrears of rent for not less than four months and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand, then that shall be a ground on which the landlord can institute a suit for eviction. Take a case where the original tenant who was paying the rent dies leaving behind four sons. It need not be pointed out that after the death of the original tenant, his heirs must be paying the rent jointly through one of his sons. Now if there is a default as provided in clause (a) of sub-section (2) of Section 20 in respect of the payment of rent, each of the sons will take a stand that he has not committed such default and it is only the other sons who have failed to pay the rent. If the concept of heirs becoming independent tenants is to be introduced, there should be a provision under the Act to the effect that each of the heirs shall pay the proportionate rent and in default thereto such heir or heirs alone shall be liable to be evicted. There is no scope for such division of liability to pay the rent which was being paid by the original tenant, among the heirs as against the landlord what the heirs do inter se, is their concern. Similarly, so far as ground (b) of sub-section (2) of Section 20, which says that if the tenant has wilfully caused or permitted to be caused substantial damage to the building, then the tenant shall be liable to be evicted; again, if one of the sons of the original deceased tenant wilfully causes substantial damage to the building, the landlord cannot get possession of the premises from the heirs of the deceased tenant since the damage was not caused by all of them. Same will be the position in respect of clause (c) which is another ground for eviction, i.e., the tenant has without the permission in writing of the

landlord made or permitted to be made, any such construction or structural alteration in the building which is likely to diminish its value or utility or to disfigure it. Even if the said ground is established by the landlord, he cannot get possession of the building in which construction or structural alterations have been made diminishing its value and utility, unless he establishes that all the heirs of the deceased tenant had done so. Clause (d) of sub-section (2) of Section 20 prescribes another ground for eviction - that if the tenant has without the consent in writing of the landlord, used it for a purpose other than the purpose for which he was admitted to the tenancy of the building or has been convicted under any law for the time being in force of an offence of using the building or allowing it to be used for illegal or immoral purposes; the landlord cannot get possession of the building unless he establishes the said ground individually against all the heirs. We are of the view that if it is held that after the death of the original tenant, each of his heirs becomes independent tenant, then as a corollary it has also to be held that after the death of the original tenant, the otherwise single tenancy stands split up into several tenancies and the landlord can get possession of the building only if he establishes one or the other ground mentioned in sub-section (2) of Section 20 against each of the heirs of original tenant. One of the well-settled rules of interpretation of statute is that it should be interpreted in a manner which does not lead to an absurd situation."

18. Further, in Uttam (supra), this Court has held as under:-

"9. Also of some importance are Sections 19 and 30 of the said Act which read as follows:

"19. Mode of succession of two or more heirs.-If two or more heirs succeed together to the property of an intestate, they shall take the property-

(a) save as otherwise expressly provided in this Act, per capita and not per stirpes; and

(b) as tenants-in-common and not as joint tenants.

* * *

30. Testamentary succession.-Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him or by her, in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.

Explanation.-The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba or kavaru shall, notwithstanding anything contained in this Act, or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this section."

10. Before analysing the provisions of the

Act, it is necessary to refer to some of the judgments of this Court which have dealt, in particular, with Section 6 before its amendment in 2005, and with Section 8. In Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum, the effect of the old Section 6 was gone into in some detail by this Court. A Hindu widow claimed partition and separate possession of a 7/24th share in joint family property which consisted of her husband, herself and their two sons. If a partition were to take place during her husband's lifetime between himself and his two sons, the widow would have got a 1/4th share in such joint family property. The deceased husband's 1/4th share would then devolve, upon his death, on six sharers, the plaintiff and her five children, each having a 1/24th share therein. Adding 1/4th and 1/24th, the plaintiff claimed a 7/24th share in the joint family property. This Court held: (SCC pp. 386-87, paras 6-7)

14. On application of the principles contained in the aforesaid decisions, it becomes clear that, on the death of Jagannath Singh in 1973, the proviso to Section 6 would apply inasmuch as Jagannath Singh had left behind his widow, who was a Class I female heir. Equally, upon the application of Explanation 1 to the said Section, a partition must be said to have been effected by operation of law immediately before his death. This being the case, it is clear that the plaintiff would be entitled to a share on this partition taking place in 1973. We were informed, however, that the plaintiff was born only in 1977, and that, for this reason, (his birth being after his grandfather's death) obviously no such share could be allotted to him. Also, his case in the suit filed by him is not that he is entitled to this share but that he is entitled to a 1/8th share on dividing the joint family property between 8 co-sharers in 1998. What has therefore to be seen is whether the application of Section 8, in 1973, on the death of Jagannath Singh would make the joint family property in the hands of the father, uncles and the plaintiff no longer joint family property after the devolution of Jagannath Singh's share, by application of Section 8, among his Class I heirs? This question would have to be answered with reference to some of the judgments of this Court.

15. In CWT v. Chander Sen, a partial partition having taken place in 1961 between a father and his son, their business was divided and thereafter carried on by a partnership firm consisting of the two of them. The father died in 1965, leaving behind him his son and two grandsons, and a credit balance in the account of the firm. This Court had to answer as to whether credit balance left in the account of the firm could be said to be joint family property after the father's share had been distributed among his Class I heirs in accordance with Section 8 of the Act. This Court examined the legal position and ultimately approved of the view of four High Courts, namely, Allahabad, Madras, Madhya Pradesh and Andhra Pradesh, while stating that the Gujarat High Court view contrary to these High Courts, would not be correct in law. After setting out the various views of the five High Courts mentioned, this Court held:

"21. It is necessary to bear in mind the Preamble to the Hindu Succession Act,

1956. The Preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus.

22. In view of the Preamble to the Act i.e. that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in Class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by Section 8 he takes it as karta of his own undivided family.

The Gujarat High Court view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under Section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in Section 8. Furthermore as noted by the Andhra Pradesh High Court that the Act makes it clear by Section 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today the property which devolved on a Hindu under Section 8 of the Hindu Succession Act would be HUF in his hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in Class I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in Class I of Schedule under Section 8 of the Act included widow, mother, daughter of predeceased son, etc.

23. Before we conclude we may state that we have noted the observations of Mulla's Commentary on Hindu Law, 15th Edn. dealing with Section 6 of the Hindu Succession Act at pp. 924-26 as well as Mayne Hindu Law, 12th Edn., pp. 918-19.

24. The express words of Section 8 of the Hindu Succession Act, 1956 cannot be ignored and must prevail. The Preamble to the Act reiterates that the Act is, inter alia, to 'amend' the law, with that background the express language which excludes son's son but includes son of a predeceased son cannot be ignored.

25. In the aforesaid light the views expressed by the Allahabad High Court, the Madras High Court 8, the Madhya Pradesh High Court, and the Andhra Pradesh High Court, appear to us to be correct. With respect we are unable to agree with the views of the Gujarat High Court noted hereinbefore."

17. In Bhanwar Singh v. Puran, this Court followed Chander Sen case and the various judgments following Chander Sen case. This Court held:

"12. The Act brought about a sea change in the matter of inheritance and succession amongst Hindus. Section 4 of the Act contains a non obstante provision in terms whereof any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Act, ceased to have effect with respect to any matter for which provision is made therein save as otherwise expressly provided.

13. Section 6 of the Act, as it stood at the relevant time, provided for devolution of interest in the coparcenary property. Section 8 lays down the general rules of succession that the property of a male dying intestate devolves according to the provisions of the Chapter as specified in Class I of the Schedule. In the Schedule appended to the Act, natural sons and daughters are placed as Class I heirs but a grandson, so long as father is alive, has not been included. Section 19 of the Act provides that in the event of succession by two or more heirs, they will take the property per capita and not per stirpes, as also tenants-in-common and not as joint tenants.

14. Indisputably, Bhima left behind Sant Ram and three daughters. In terms of Section 8 of the Act, therefore, the properties of Bhima devolved upon Sant Ram and his three sisters. Each had 1/4th share in the property. Apart from the legal position, factually the same was also reflected in the record-of-rights. A partition had taken place amongst the heirs of Bhima.

15. Although the learned first appellate court proceeded to consider the effect of Section 6 of the Act, in our opinion, the same was not applicable in the facts and circumstances of the case. In any event, it had rightly been held that even in such a case, having regard to Section 8 as also Section 19 of the Act, the properties ceased to be joint family property and all the heirs and legal representatives of Bhima would succeed to his interest as tenants-in-common and not as joint tenants. In a case of this nature, the joint coparcenary did not continue."

19. From a perusal of lease deed dated 15.11.1975, we find that the suit premises was let out jointly to late Shri Ishwar Chand Jain and Shri Ramesh Chand Jain, son of late Shri Ishwar Chand Jain. Thus, both of them were joint tenants and upon the death of Shri Ishwar Chand Jain, Respondent No. 1 inherited the tenancy as joint tenant only. Further, in view of a catena of decisions of this Court on the subject as well as the principles laid down in H.C. Pandey (supra), we are of the opinion that the High Court erred in holding that the decisions relied upon by learned senior counsel for the appellant are not applicable to the facts of the present case on the premise that in the given case itself the validity and binding nature of the notice given to one of the legal representatives of the deceased tenant under Section 106 of the Transfer of property Act, 1882 on other legal representatives was determined only on the basis of the fact that they hold the tenancy as joint tenants and notice given to one means notice given to all.

Conclusion:-

20. We are of the view that in the light of H.C. Pandey (supra), the situation is very clear that when original tenant dies, the legal heirs inherit the tenancy as joint tenants and occupation of one of the tenant is occupation of all the joint tenants. It is not necessary for landlord to implead all legal heirs of the deceased tenant, whether they are occupying the property or not. It is sufficient for the landlord to implead either of those persons who are occupying the

property, as party. There may be a case where landlord is not aware of all the legal heirs of deceased tenant and impleading only those heirs who are in occupation of the property is sufficient for the purpose of filing of eviction petition. An eviction petition against one of the joint tenant is sufficient against all the joint tenants and all joint tenants are bound by the order of the Rent Controller as joint tenancy is one tenancy and is not a tenancy split into different legal heirs. Thus, the plea of the tenants on this count must fail.

21. Even otherwise, the intervention at this belated stage of execution proceedings, in the fact and circumstances of the case, seems to be a deliberate attempt to nullify the decree passed in favour of the appellant herein as when Respondent No.1 filed objections under Section 47 Order XXI of the Code, he claimed to be in possession of the suit premises, however, he failed to produce any evidence except two rent receipts for the months of December, 1993 and January 1994 that too when the Respondent No. 1 in his objection petition filed in the execution proceedings of the eviction decree has himself admitted that the there exists a dispute between him and Respondent No. 2 and they had parted their ways.

22. In light of the above discussion, the judgment and order dated 05.12.2013 passed by learned single Judge of the High Court is set aside. The judgment and order dated 30.11.2011 passed by the Additional Rent Controller is hereby restored.

The appeal is allowed.

--- THE END ---

Law Summary

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ANDHRA PRADESH HIGH COURT

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SUBJECT - INDEX

ARBITRATION AND CONCILIATION ACT, 1996:

--- & CONSTITUTION OF INDIA, Article 227 - Challenging an Arbitration Award, company which suffered the award, has come up with revision - Very maintainability of revision as against an Arbitration Award is questioned by respondent.

Held - Courts do not have administrative superintendence over arbitrators and arbitral tribunals - Once a judicial remedy is provided as against an arbitral award and such remedy is either extinguished or exhausted, no party can take recourse to the writ jurisdiction of this Court - Articles 226 or 227 are not the panacea for all diseases -Objection as to maintainability of revision is liable to be sustained and the revision is liable to be dismissed. **285**

CIVIL PROCEDURE CODE:

---Sec.26 and Order 7 Rule 11- Civil revision petition – Petitioner prayed before Trial Court seeking a Direction against defendant to execute and register a sale deed in favour of the plaintiff in respect of the suit schedule property - Office of trial Court raised an objection that suit prayer relates to a larger extent than can be claimed by the petitioner as per the suit agreement and returned the plaint.

Held - It is for the petitioner to demonstrate before trial Court during the suit proceedings as to how he is entitled to such relief - When he valued property in question fully and properly and paid requisite Court fee, trial Court had no power to determine as to the extent of relief that could be claimed by him at the very threshold and require him to amend his suit prayer accordingly - It may be noticed that it is not the case of trial Court that plaint did not disclose any cause of action whereby it could have rejected plaint under Order 7 Rule 11 CPC – Revision is allowed. **333**

---Sec.34 - INTEREST ACT,Sec.3(b) – Issue was on question of interest - Respondent/ Plaintiff supplied material to Appellant/ Defendant for which payment was not made completely – Suit was filed for recovery of the balance sum along with interest - No clause in the understanding between parties for payment of interest - Appellant / Defendant preferred instant appeal against the judgment and decree of Trial Court where in it ultimately passed a decree holding that Respondent/Plaintiff was entitled to interest till the date of the decree.

Held - Law is very well settled that in absence of any contract for payment of interest, interest can be demanded as per Sec.3 (b) of the Interest Act, 1978 - Where the contract is silent about the interest, legal mandate as per settled law on this subject is that a party should demand the principal along with interest through a written notice and then Court is empowered to grant interest from date mentioned in the notice - Court has discretion to award interest at a rate it considers just and equitable more so U/sec.34 CPC - Lower

Court did not commit any error in awarding interest – Appeal stands dismissed.

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---Sec.39(1) & (4) - Trial court decreed suit and also allowed the Execution petition preferred by the Decree holder/2nd Respondent to send for amounts of the Judgment-debtor/ 1st Respondent, lying to the credit of the petitioner, who is the garnishee – Both the Judgment debtor and also the garnishee are residing outside the jurisdiction of the Trial court, which passed decree – Assailing same, garnishee preferred present revision.

Held – Execution petition filed by decree-holder before court below, which passed decree is not maintainable and said decree has to be transferred, as per provisions under sub sections (1) and (4) of Section 39 of CPC to court of competent jurisdiction for purpose of execution of such decree – Order of execution petition by court below is set aside – Civil revision petition is allowed. ***12***

---Sec.151 - Whether court below had rightly exercised its discretion in dismissing petitioners' application to reject written Statement filed by respondent to counter claim by petitioners - After lapse of nine years, without permission of Court, respondent/plaintiff filed Written Statement to the petitioners' counter claim.

Held – Under proviso to Rule 1 of Order VIII, Court normally has power to extend time for filing Written Statement by respondent to the counter claim made by petitioners only for a period not later than 90 days, that too for reasons to be recorded in writing - Respondent should have filed an application seeking permission of Court to file such Written Statement but he did not do so - Civil Revision Petition is allowed - Written Statement filed by respondent in answer to counter claim of petitioners is struck off the record and shall not be considered for any purpose.

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---Or.1 Rules 9 and 13, Or.VI Rule 17 and Sec.141 - Aggrieved by Order of Court below in allowing review application, Petitioner/2nd Defendant preferred instant revision – Petitioner contended that they can ask for amendment of pleadings of plaintiff including in schedule, to avoid multiplicity of proceedings.

Held - Non-joinder or mis-joinder of parties has to be taken at or before settlement of issues and otherwise it would be deemed waived same, however, is not a bar for non-taking of plea regarding non-joinder of necessary party since same is fatal to very maintainability of the suit - Where defendant wants to contest that certain properties, which are liable for partition not included, the defendant is entitled by filing a written statement schedule in asking to consider those properties also for partition - There is nothing in law to permit any party to amend pleadings of opposite party contrary to the very wording of Order VI Rule 17 C.P.C.

Revision is disposed of and there is nothing to interfere against review order of trial Court, but defendant if suit is based on joint possession by payment of fixed

court fee can show in the written statement schedule in seeking for inclusion of property also as part of the properties liable for partition. ***236***

---Order V and Order XX Rule 4 - Instant Appeal suit by Appellant/ Defendant challenges Judgment and Decree passed ex parte by Trial Court.

Held – Learned Judge of Trial Court in impugned Judgment, except saying that he perused contents of sworn affidavit and documents marked, did not make any endeavor to render Judgment in accordance with provisions of Order XX Rule 4 of CPC and also did not adhere to mandatory provisions of Order V of CPC relating to Rules with respect to Issue and Service of Summons – Appeal suit is allowed. ***149***

---Or.I Rule 9 & Sec.100 – A.P (TELANGANA AREA) TENANCY & AGRICULTURAL LANDS ACT, 1950, Sec.38-E – Suit for partition – Non-disclosure of factum of plaintiff having a sister - Aggrieved by Judgment and Decree passed by Trial Court and First Appellate Court, instant Second Appeal.

Held – A suit for partition is not maintainable without impleading all the members of joint family - Though provisions of Order I Rule 9 say that no suit shall be defeated by reason of misjoinder or non-joinder of parties but proviso makes it clear that if necessary party is not impleaded in a suit or an appeal, it will have to be dismissed on that ground – During pendency of final decree, if one of the parties to preliminary decree dies, his legal representatives have to be brought on record – Shares allotted to parties in preliminary decree, as per their entitlement, may vary in final decree by operation of law – Second appeal is dismissed. ***183***

---Or.VI Rule17 r/w Sec.151 – Petitioner preferred instant revision against Order of Trial Court permitting respondent to amend plaint – Amendment is being sought for almost 11 years after date of institution of suit.

Held – On ground of mere delay, however long it maybe, an application for amendment cannot be rejected provided facts of case warrant allowing of amendment – Order of Trial Court is sustainable both under facts and law – Impugned Order brooks no inference – Civil Revision Petition is dismissed. ***175***

---Order VII Rule 11 – Aggrieved by rejection of Appellant's/Defendant counter-claim by both Trial Court and First Appellate Court in terms of Order VII Rule 11 CPC in a suit for recovery of possession, appellant has come up with present second appeal.

Held - Whenever defence to a suit can survive even if counter-claim goes, then Court will be entitled to invoke Order VII, Rule 11 CPC and reject counter-claim – But if defence to suit is so intertwined with counter-claim that rejection of counter-claim will have effect of killing defence to suit, then Court cannot invoke Order VII, Rule 11 of CPC to reject counter-claim – Instant case, defence to suit, depends for its survival

upon counter-claim - Second appeal is allowed. ***140***

---Or.12, Rules 1 and 6 – Appeal suit against Judgment and Order of Trial Court – Defendants 1&2 executed sale deed in favour of plaintiff agreeing to sell plaint property and even plaintiff paid advance amount – Defendants 1&2 asked plaintiff to receive back advance amount and to return agreement executed by him on ground that certificates for registration could not be secured – Plaintiff called upon 1st defendant to perform contract –Defendants 1&2 filed written statements and 3rd defendant also filed his written statement.

Held – Instant case, knowing fully about existence of sale agreement in favour of plaintiff, 3rd defendant purchased property – Plaintiff proved his readiness and willingness to perform his part of contract and it is defendants who went back agreement of sale and executed unreasonably in favour of 3rd defendant – Appeal suit is allowed, decreeing suit as prayed for – Judgment and Order of Trial court is set aside. ***105***

---Order XXI Rule 37 – Upon the failure of Judgment-debtor to pay decreed amount, decree-holder filed E.P. for the recovery of the decreed money and for arrest of Judgment-debtor - Trial Court dismissed the prayer of arrest of judgment-debtor – Hence, instant Civil Revision.

Held – Despite Judgment-debtor denying contentions of decree-holder that he possessed certain movable and immovable properties, decree-holder did not file any proof or scrap of paper on whom burden lies to support his contentions and also did not establish the means of judgment-debtor – Decree-holder can proceed against properties of judgment-debtor rather than person of judgment-debtor – Decree-holder is at liberty to file an affidavit of particulars of alleged properties of judgment-debtor or a fresh petition lies under Rule 41 of Order XXI of CPC - High court sitting in revision cannot interfere with impugned order - Civil Revision Petition is dismissed. ***80***

---Order XXVI Rule 9 and Sec.75 - Petitioner filed an IA before Trial Court for appointment of advocate commi-ssioner for inspection to note down physical features of plaint schedule property in suit for bare injunction – Trial court dismissed IA and impugning said Order, petitioner preferred instant revision.

Held - Lower Court went wrong in saying in a suit for injunction, purpose to note down physical features is fishing out information – There is no such rule which says in which suit, a commissioner can be appointed, and cannot be appointed as in any civil suit, a commissioner can be appointed, where the Court thinks fit – Petitioner is given liberty to file a fresh petition before Lower court. ***59***

---Or.37 – Summary Procedure – Respondent, who is defendant in original suit filed an application under Order 37 Rule 3(5) of CPC seeking leave of Trial Court to defend suit and court granted him leave on a condition to deposit a certain sum

within a time frame – He later filed an IA before Trial Court and it allowed IA of respondent, holding that he was entitled to cross-examine petitioner on affidavit filed by him for passing Judgment and to argue matter – Aggrieved thereby petitioner/plaintiff preferred instant revision.

Held – Thrust of the Summary procedure prescribed under Order 37 CPC is to prevent unreasonable obstruction by a defendant who has no real defence – Right of defendant to cross-examine plaintiff or his witness flows from leave to defend granted under Order 37 Rule 3(5) CPC – Unless and until defendant complies with conditional order, whereby he was granted leave to defend , it is not open to him to seek to cross-examine either plaintiff or any witness examined on his behalf or to advance arguments – Order under revision is set aside – Civil Revision Petition is allowed. ***8***

CONSTITUTION OF INDIA:

---Arts.14, 16, 19 & 21 - In the instant second appeal, appellant contended whether Judicial Courts would have subject matter jurisdiction over any decision taken by an association and whether rules, regulations and bylaws of an unregistered association can be put for the scrutiny of judicial Courts and struck down rule as arbitrary upon touch stone of Articles 14, 16, 19 and 21 of Constitution of India ? - Appellants application for permanent membership in 1st respondent club was refused as he was not elected – He contended that rejection of his permanent membership is illegal and against principles of natural justice as club did not assign any reasons for his rejection.

Held – Unless by express mode or by necessary implication barred, Courts jurisdiction permeates into every civil matter including that of private organisations, associations and even clubs – Secret balloting was conducted wherein appellant was not elected - No violation of principles of natural justice or procedure - Second appeal is dismissed. ***18***

(INDIAN) CONTRACT ACT:

---Sec.25 - Aggrieved by a preliminary decree for partition and a decree of cancellation of a Gift Settlement deed and two registered Sale deeds, defendants have come up with instant appeal - R1 filed a suit before Trial Court seeking partition and separate possession of her 1/3rd share in suit schedule property and also seeking a declaration that a Gift Settlement deed and registered sale deeds are null and void and not binding on her.

Held - Gift settlement is valid to the extent of 1/3 share of appellant - On a property owned or inherited by several persons, if one contributes something, he would not become the owner of the property - At the most, he may be entitled to demand contribution from the co-owners - Appeal stands dismissed. **267**

---Sec.51 - INCOME TAX ACT, Sec.230A - Suit for specific performance – Defendants had approached plaintiff and expressed their willingness to sell plaint schedule property

and plaintiff agreed to purchase the same - Defendants failed to procure necessary documents so as to enable plaintiff to get the sale deed registered in their favour.

Held - Plaintiff is not in breach and is entitled to specific performance of the contract of sale - Registration of the sale deed within 90 days was not possible due to defendants alone - Plaintiff is entitled to a decree for specific performance – Appeal stands allowed. ***247***

CRIMINAL PROCEDURE CODE:

---Sec.145(1) – SCOPE, OBJECT AND JURISDICTION – Stated – Tahsildar passed order u/Sec.145(1) basing on material placed before him that there existed dispute with respect to subject land which was likely to cause breach of peace - Contention that order of Tahsildar is contrary to Sec.145(1) Cr.P.C., it is an abuse of power and excess of jurisdiction conferred on him.

Held - Object of Sec,145(1) Cr.P.C. is to maintain law and order and prevent the breach of peace by maintaining one or other of the parties in possession, and not for evicting any person from possession - Order u/Sec.145(1) Cr.P.C. is passed primarily to ensure that a breach of peace does not occur and import of such an order cannot travel beyond that - It is incumbent upon administrative authorities to pass a speaking and reasoned order – As long as there is information on record in this regard, it is wholly unnecessary for the Executive Magistrate to await police report before passing order u/Sec.145(1) Cr.P.C.

Satisfaction u/Sec.145(1) Cr.P.C that a dispute which is likely to cause breach of peace exists concerning any land is that of Executive Magistrate which constitutes the foundation for exercise of power conferred by Sec.145(1) Cr.P.C., is neither absolute nor unfettered, but is circumscribed by conditions, stipulated in Section itself that executive Magistrate should make an order in writing stating grounds of satisfaction - Mere existence of dispute would, however, not suffice for what is required u/sec.145(1) Cr,P.C. is that existing dispute concerning any land must be one which is likely to cause breach of peace,

In this case only material on record which forms basis for passing an order U/ sec.145(1) Cr.P.C. is evidently FIR dated 13-5-2017 which refers to an incident which allegedly occurred on 7-5-2017 – Allegations in FIR dt13-5-2017 can undoubtedly, Form basis of Tahsildar's satisfaction that dispute concerning land which is likely to cause breach of peace – Fact however remains that alleged incident which forms only basis for exercise of power u/sec.145(1) Cr.P.C. is said to have taken place on 7-5-2017 five months prior to 17-10-2017 when Tahsildar passed impugned order and material on record does not refer to any other incident in interregnum - Order of Tahsildar set aside and matter remitted for consideration afresh and in accordance with law – Writ appeal and writ petition are allowed. ***89***

---Sec.302 r/w 24(8) – Aggrieved by Order passed by Magistrate in an application

under Section 302 r/w 24(8) of Cr.P.C., where by Petitioner/de facto complainant was denied permission to prosecute through private Advocate, instant petition is preferred.

Held – Proviso to Section 24(8) of amended Act No.5 of 2009 Cr.P.C. seeks that Court may permit victim to engage an Advocate of his or her own choice to assist prosecution – Assisting prosecution does not merely mean assisting public prosecutor u/Sec.301 of Cr.P.C. but also to conduct prosecution independently - This proviso even extends in a Sessions Case – Dismissal Order of Lower Court is set aside and Criminal petition is allowed. ***144***

---Sec.473(2) - INDIAN PENAL CODE, Secs.498A and 376(2)(n)(f) – Petitions filed to cancel bail granted to accused.

Held - when investigation is completed and there is no allegation that appellant may flee the course of justice and there is no allegation that during this period he had tried to influence the witnesses, no cancellation of bail is warranted - There are no such allegations in present case - Hence, this Court opines that it is not a fit case for cancelling bail granted to respondents/accused - Criminal Petitions are dismissed. ***322***

ESSENTIAL COMMODITIES ACT:

---Sec.6-A – A.P. PUBLIC DISTRIBUTION SYSTEM (CONTROL) ORDER, 2008, Cl.17 – A.P. SCHEDULED COMMODITIES (LICENSING, STORAGE AND REGULATION) ORDER, 2008 – Cases filed for illicitly transporting PDS rice without valid documents, u/S.6-A of E.C. Act - Seizure for illicitly transporting PDS rice without any valid documents - Purchasing PDS rice interrupting process of smooth functioning of public distribution system in contravention of Control Order, 2008 - Confiscation of seized stock in favour of government and imposing penalty on owners of lorries.

Sessions Judge in appeals modified the Orders, of Confiscation passed by the Collector to some extent – Once there are violations, which clearly prone to seizure and initiation of proceedings under provisions of E.C. Act for violation of Control Order and prone to confiscation, no way require interference, but for if at all to consider interference on quantum of confiscation of seized stock though not to reduce vehicle penalty.. **25**

HINDU MARRIAGE ACT:

--- Sec.5(ii)(b) - **CENTRAL CIVIL SERVICES (CONDUCT) RULES** - Writ Appeal preferred by Appellants/Union of India against direction issued in a writ petition to pay family pension to Respondent/Second wife of deceased government servant – Appellants contend that Central Civil Service Rules prohibits government servants from entering into a marriage, while having a spouse living – Respondent contends that marriage with first wife stood automatically annulled on account of her physical disability for procreation of children.

Held - Marriage of respondent with deceased government servant was void on account of Section 5(i) of Hindu Marriage

Act – Respondent is not entitled to family pension under Rule 54(7)(a) of Central Civil Service Rules as there was no legally valid marriage with deceased government servant – Family pension, cannot be construed as a property left behind by a deceased government servant - Writ appeal is allowed. ***65***

---Sec.12 - Aggrieved by dismissal of petition for annulment of marriage and grant of a decree for restitution of conjugal rights at instance of his Wife/Respondent, Husband/ Petitioner has come with present appeal – Appellant contended that respondent did not allow him to have conjugal relationship and when he took her for treatment she was found to be suffering from schizoform illness which makes her unfit for sexual relationship.

Held – Appellant failed to establish any of grounds mentioned in Section 12 of Hindu Marriage Act, to enable him to get a decree of annulment of marriage and therefore decree for restitution of conjugal rights is also confirmed – Husband's appeal stands dismissed. ***200***

---Sec.13 – Challenging Lower Court's Order Petitioner/ Wife has filed instant revision contending that Respondent/Father is not entitled with visitation rights.

Held – Disputes between father and mother in relation to custody of children is expected to strike a just and proper balance on rights, requirements and sentiments - Order of Lower Court in allowing petition to extent of permitting father to see and interact with children once in a week, no way requires interference - Even when custody is retained with mother, right of father to see child at intervals cannot be ignored – Civil Revision Petition is dismissed. ***136***

LEGAL SERVICES AUTHORITIES ACT, 1987:

---Writ petitioner has challenged an award passed by permanent LokAdalat – Dispute as to who is lawfully wedded wife of deceased employee – Issue for consideration is whether permanent LokAdalat could have entertained a dispute of this nature.

Held – Status of a person cannot be adjudicated by permanent LokAdalat and it can be adjudicated only by Civil Court – Writ petition is allowed and award of permanent lokadalat is set aside. ***163***

MOTOR VEHICLES ACT:

---Secs. 146, 147 and 149 – It is a Case of driver not having appropriate driving licence - Appellant/Claimant by way of instant appeal assails Judgment of Court below on ground that Court erred in not directing insurance company to pay award amount and to recover the same from insured.

Held – Driver had driving licence to drive light motor vehicle and he was driving a heavy goods vehicle – Not a case where insurer can be made absolutely liable – But it is a case where insurer can be directed to pay and recover compensation from insured – Appeal is allowed in part and Compensation amount awarded by Court below shall be paid by second respondent

and then recover from first respondent.
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NATIONAL LEGAL SERVICES AUTHORITY (LOK ADALATS) REGULATIONS, 2009:

--- **& ANDHRA PRADESH STATE LEGAL SERVICES AUTHORITY REGULATIONS, 1999 -** Writ Petitioners contended that certain respondents in collusion got suit in Trial Court referred to Lok Adalat and without any notice to petitioners, Lok Adalat had passed Award.

Held – Even if some parties to dispute originally instituted remained exparte, that hardly justifies Lok Adalat to ignore them while considering passing of an award - Parties who are set exparte also have certain rights to pursue their claim further - Impugned Lok Adalat Award is not sustainable and same is accordingly set aside – Writ petition is allowed. ***61***

(INDIAN) PARTNERSHIP ACT,1932:

---Sec.69 - Appellant/ Insurance company preferred instant appeal against Judgment and Decree passed by Trial Court - Respondents were carrying business in prawn culture and entered into a contract with appellants for insuring crop of prawn in 10 tanks which were later affected and entire crop has died – Appellants denied entire claim and stated that respondents did not inform them of loss within time stipulated and there was non-disclosure of material facts as well.

Held –Respondents firm is not registered as on date of filing of suit and bar of section 69 of Indian Partnership Act, 1932 squarely applies as they were seeking to enforce a contract – Claim is deemed to have been abandoned in view of clause of which says that suit should be filed within 12 months – Appeal is allowed and suit filed stands dismissed. ***157***

(INDIAN) PENAL CODE:

---Secs. 148, 149, 302 & 324 - CRIMINAL PROCEDURE CODE, Sec.374(2) – Trial Court convicted all the ten accused – Aggrieved thereby, ten accused preferred instant appeal.

Held – position of law as to contradiction between medical evidence and ocular evidence can be crystallised to effect that ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes ocular testimony improbable – In instant appeal Medical evidence outweighs the ocular evidence – Actual eye witnesses were clearly tutored and planted eye witnesses further diluted their testimony – Prosecution suppressed genesis and origin of occurrence – Benefit of doubt would therefore have to be given to accused – Appeal is allowed and impugned judgment is set aside.. **34**

---Secs.302, 307 & 498-A - Prosecutions case rested essentially upon the dying declarations – Appellant/ Accused was held guilty for murdering of his wife/deceased by Trial Court.

Held - Inconsistencies in dying declarations, in the absence of any direct evidence as to the incident, would

necessitate benefit of doubt being extended to accused - There is no independent corroborative evidence - In these circumstances, Court necessarily has to extend the benefit of doubt to the accused - Appeal is accordingly allowed, acquitting appellant by setting aside the judgment of Trial Court. ***259***

---Sec.304-B - INDIAN EVIDENCE ACT,Sec.113-B - Appellant / A1 preferred instant appeal assailing Judgment of Trial Court - Deceased/Wife was alleged to have committed suicide due to harassment by the appellant.

Held - Proximity between death of deceased and harassment by appellant is clinching aspect, which would prove guilt of accused - Material evidence, suffers from several inconsistencies and is not sufficient to invoke the presumption adumbrated U/sec.113-B of Indian Evidence Act, in order to throw the burden on the appellant - Hence, impugned judgment is not sustainable and the same is liable to be set aside - Appeal is allowed. ***240***

---Secs. 302 & 498-A - Accused is husband of deceased – Case of prosecution is that after birth of children disputes arose between accused and deceased – Accused got addicted to alcohol – On the day of alleged offence, both accused and deceased went to forest for firewood and did not return – Later, dead body of deceased was found with severe injuries to cheeks, neck and head.

Held – No eye witnesses and entire case rests on circumstantial evidence – It is clear that duty is cast upon prosecution to prove circumstances relied upon and same should form a chain so as to connect accused with crime – Extra judicial confession are not proved by any legal evidence - Circumstances relied upon by prosecution are not proved and failed to establish case – Criminal appeal is allowed and Conviction and sentence recorded in impugned Judgment are set aside. ***167***

---Secs. 302 and 498A - Deceased was found hanging - Appeal is preferred against judgment passed by Trial Court whereby, appellant was found guilty for offences punishable u/Sec.498-A and 302 of IPC - Deceased was given in marriage to appellant and they led happy marital life for some time - Subsequently, appellant harassed deceased demanding certain money – Counsel for appellant does not dispute convictionU/S 498-A of IPC but contends that appellant deserves to be acquitted from the charge of Section 302 IPC.

Held - In view of Sec.464 Cr.P.C., it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the court is of the opinion that a failure of justice would in fact occasion - Conviction of appellant/accused for the offence u/Sec.302 of IPC is set aside - However, appellant is convicted for offence u/Sec. 306 of IPC – Appeal is allowed in part. ***316***

PROVINCIAL INSOLVENCY ACT,

---Secs.10(2), 37, 43 and 45 – Instant Second

appeal preferred against Decree and Judgment of Lower Appellate Court – Whether sale deed obtained by respondent in an auction held by official Receiver is legally valid or sale deeds obtained by appellants in a private sale are valid.

Held – All sales and dispositions of property and payments duly made and all acts done by Insolvency Court or Receiver, will remain valid despite subsequent annulment of adjudication – Second Appeal stands dismissed confirming Judgment and Decree of first appellate Court. ***224***

SPECIFIC RELIEF ACT:

---Sec.41(h) - Trial Court dismissed Respondent's/Plaintiff suit on finding that Appellants/Defendants did not encroach upon respondents property but both appellants and respondents encroached the road margin and made construction and therefore, respondents cannot seek for mandatory injunction to stop construction by appellants - Whereas, Lower Appellate Court held that since appellants constructed house on road margin blocking passage to respondent's land from road, respondents deserve mandatory injunction.

Held – Lower appellate Court did not consider evidence on record touching aspect of respondent's encroachment - If verdict of first appellate court is vitiated by perverse finding due to non-consideration or misconsideration of material evidence on record, then High Court in Second Appeal can interfere with – Second Appeal is allowed by setting aside Judgment and decree passed by lower appellate Court. ***127***

SECURITIZATION & RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002:

---Sec.13(8) & 17(1) - Petitioners seek a direction to set aside auction sale of their properties by Respondents/ State Bank of India - Counsel for respondent contended that it is not open to petitioners to come before this Court by way of writ petition reiterating their challenge to the auction sale when the same issue is pending before Debt Recovery Tribunal.

Held - it is ultimately for High Court to decide as to whether individual case before it requires adherence to self-imposed restraint from entertaining it or warrants deviation therefrom - Sale held by bank fell foul of statutory mandate as petitioners were not afforded required 30 days clear notice to exercise their right of redemption, as requisite gap was not maintained between the date of receipt of Rule 8(6) notice and the publication of Rule 9(1) sale notice whereupon their right of redemption under amended Section 13(8) of SARFAESI Act stood prematurely extinguished - Writ petition is accordingly allowed holding that sale held by bank stands vitiated on grounds more than one - Sale certificate shall also stand cancelled. ***293***

(INDIAN) STAMP ACT:

---Art.35(a) and Sec.33 – Question as to whether petitioners are to be mulcted with higher stamp duty by treating the mortgage deed as one burdened with transfer of

possession to the mortgagee necessitating payment of higher stamp duty.

Held - To attract stamp duty under Article 35(a) mortgagor must hand over possession of subject property to mortgagee – In the instant case possession of scheduled properties was not handed over to mortgagee – Handing over possession to mortgagee cannot be assumed unless clear intention is expressed in the mortgage deed – Hence petitioners cannot be mulcted with higher stamp duty by invoking Article 35(a) of schedule I-A of the Indian Stamp Act – Contrary action of the respondents is not sustainable – Writ petition is not allowed. ***1***

WORKMEN'S COMPENSATION ACT, Sec.3(1) - Appeal preferred by insurance company against order passed by Commissioner for Workmen's Compensation - Essential question that falls for consideration is whether the accident occurred out of and in course of employment and whether applicants are entitled to compensation.

Held - Accident occurred out of and in the course of employment only - Presence of deceased at spot can only be attributed his employment - Proximity in time and the place of accident are also critical - Impugned order of the Commissioner is confirmed and appeal is accordingly dismissed. ***329***

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Law Summary

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

2018 (1)

SUPREME COURT

(Vol.93)

SUPREME COURT

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SUBJECT - INDEX

ADVOCATES ACT:

---Secs.17, 29 & 33 – Civil Appeal - Whether foreign law firms/lawyers are permitted to practice law in India.

Held - Practice of law includes litigation as well as non litigation - Advocates enrolled with the Bar Council alone are entitled to practice law - Provisions of the Advocates Act does not allow foreign law firms or foreign lawyers to practice profession of law in India – Regulations of Advocates Act applies to individuals and firms/ Companies also. ***69***

CIVIL PROCEDURE CODE:

---Sec.47, r/w Order XXI Rule 26 - Appellant is owner of a shop and his father, along with one another, let out shop premises on a monthly rental to father of Respondent No. 1 and Respondent No. 2 - Owner sent a legal notice terminating the tenancy – Father of respondent no.1 passed away - Tenants failed to vacate suit premises and appellant filed Eviction Petition on the ground of bona fide need - Additional Rent Controller, decreed eviction petition in favour of appellant - Point for consideration is whether in light of present facts, the status of the heirs and legal representatives of the deceased tenant will be of joint tenants or of tenants-in-common. ***1***

Held - When original tenant dies, legal heirs inherit the tenancy as joint tenants and occupation of one of the tenant is occupation of all the joint tenants - It is not necessary for landlord to implead all legal heirs of the deceased tenant, whether they are occupying the property or not and It is sufficient for landlord to implead either of those persons who are occupying the property, as party - An eviction petition

against one of the joint tenant is sufficient against all the joint tenants and all joint tenants are bound by the order of the Rent Controller as joint tenancy is one tenancy and is not a tenancy split into different legal heirs –Appeal is allowed. ***189***

---Sec. 50 & Order 21 Rule 16 - Executability of a decree for permanent injunction against the Legal representatives of Judgment-debtor – After the death of judgment-debtor, his legal heirs in violation of decree for permanent injunction tried to forcibly dispossess the decree-holder from scheduled property and contended that they were not bound by the decree for permanent injunction.

Held – When right litigated upon is heritable, decree would not normally abate and can be enforced by legal representatives of decree holder and against judgment-debtor or his legal representatives – It is apparent from Section 50 of CPC that when a judgment-debtor dies before decree has been satisfied, it can be executed against legal representatives - It would be against public policy to ask decree-holder to litigate once over again against legal representatives of judgment-debtor when cause and injunction survives – Impugned Order of High court is set aside - Appeal is allowed. **6**

---Or.6 Rule 17 - CONSTITUTION OF INDIA, Art.227 - Appeal against the Judgment of High Court, where by, the Order of Trial Court allowing an application filed by appellant for amendment of written statement was set aside – Case, which was sought to be set up in proposed amendment was an elaboration of what was stated in written statement.

Held – Whether an amendment should be allowed is not dependent on whether case which is proposed to be set up will eventually succeed at the Trial – In enquiring into merits, High Court transgressed limitations on its jurisdiction under Article 227 and in exercise of its jurisdiction under Article 227, High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess evidence upon which the inferior court or tribunal has passed an Order - View taken by High Court is impermissible – Impugned Judgment is set aside – Appeal is allowed. ***1***

CONSTITUTION OF INDIA:

---Articles.141 & 226 - **SARFAESI ACT, 2002,** Sec.13(4) – Instant appeal assails interim Order passed in a Writ petition by High Court, staying further proceedings at stage of Section 13(4) of SARFAESI Act – Appeal against interim order has also been dismissed by Division Bench observing that counter affidavit having filed, it would be open for appellant to seek modification/ variation of interim order.

Held – Writ petition ought not to be entertained if alternative statutory remedies are available - Discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in given facts of a case and in accordance with law – Writ petition ought not to have been entertained and interim order granted for mere asking without assigning special reasons, and that too without even granting an opportunity to appellant to contest maintainability of writ petition – Impugned Orders are therefore contrary to law laid down by Supreme Court under Article 141 of Constitution and are unsustainable – Appeal is allowed. ***39***

CRIMINAL PROCEDURE CODE:

--- & Sec.144 and 151 – INDIAN PENAL CODE, Secs.300 and 302 - Writ Petition

has been preferred seeking directions to State Governments and the Central Government to take preventive steps to combat honour crimes.

Held – Writ allowed - Measures havebeen directed

Preventive Steps :

(a) The State Governments should forthwith identify Districts, Sub-Divisions and/or Villages where instances of honour killing or assembly of Khap Panchayats have been reported in the recent past, e.g., in the last five years.

(b) The Secretary, Home Department of the concerned States shall issue directives/advisories to the Superintendent of Police of the concerned Districts for ensuring that the Officer Incharge of the Police Stations of the identified areas are extra cautious if any instance of inter-caste or inter- religious marriage within their jurisdiction comes to their notice.

(c) If information about any proposed gathering of a KhapPanchayat comes to the knowledge of any police officer or any officer of the District Administration, he shall forthwith inform his immediate superior officer and also simultaneously intimate the jurisdictional Deputy Superintendent of Police and Superintendent of Police.

(d) On receiving such information, the Deputy Superintendent of Police (or such senior police officer as identified by the State Governments with respect to the area/district) shall immediately interact with the members of the KhapPanchayat and impress upon them that convening of such meeting/gathering is not permissible in law and to eschew from going ahead with such a meeting. Additionally, he should issue appropriate directions to the Officer Incharge of the jurisdictional Police Station to be vigilant and, if necessary, to deploy adequate police force for prevention of assembly of the proposed gathering.

(e) Despite taking such measures, if the meeting is conducted, the Deputy Superintendent of Police shall personally remain present during the meeting and impress upon the assembly that no decision can be taken to cause any harm to the couple or the family members of the couple, failing which each one participating in the meeting besides the organisers would be personally liable for criminal prosecution. He shall also ensure that video recording of the discussion and participation of the members of the assembly is done on the basis of which the law enforcing machinery can resort to suitable action.

(f) If the Deputy Superintendent of Police, after interaction with the members of the KhapPanchayat, has reason to believe that the gathering cannot be prevented and/or is likely to cause harm to the couple or members of their family, he shall forthwith submit a proposal to the District Magistrate/Sub-Divisional Magistrate of the District/ Competent Authority of the concerned area for issuing orders to take preventive steps under the Cr.P.C., including by invoking prohibitory orders under Section 144 Cr.P.C. and also by causing arrest of the participants in

the assembly under Section 151 Cr.P.C.

(g) The Home Department of the Government of India must take initiative and work in coordination with the State Governments for sensitising the law enforcement agencies and by involving all the stake holders to identify the measures for prevention of such violence and to implement the constitutional goal of social justice and the rule of law.

(h) There should be an institutional machinery with the necessary coordination of all the stakeholders. The different State Governments and the Centre ought to work on sensitization of the law enforcement agencies to mandate social initiatives and awareness to curb such violence. ***159***

---Sec.482 – Appellants/Accused preferred instant appeal against impugned Judgment, whereby High Court partly allowed their application seeking quashing of FIR.

Held – In impugned Judgment, High court concluded that some part of FIR in question is bad in law because it does not disclose any cognizable offence against accused persons and only a part of FIR is good as it discloses a prima facie case against accused persons – In doing so, High court virtually decided all the issues arising out of the case - While examining whether factual contents of FIR disclose any prima facie cognizable offences or not, the High Court cannot act like an investigating agency nor can exercise powers like an appellate court. ***20***

HINDU SUCCESSION ACT, 1956:

---& HINDU SUCCESSION (AMENDMENT) ACT, 2005 - Whether Appellants/Daughters could be denied their share on ground that they were born prior to enactment of Hindu Succession Act, 1956 and therefore cannot be treated as coparceners – Whether with passing of Hindu Succession (Amendment) Act, 2005, appellants would become coparcener "by birth" in their "own right in same manner as son" and are therefore, entitled to equal shares as that of son?

Held – By virtue of Section 6 of the Act as amended, it is apparent that status conferred upon sons under old section to treat them as coparceners since birth also confers upon daughters as well since birth - In present case, suit for partition was filed in year 2002 and during pendency of this suit, u/Sec. 6 of Hindu Succession Act was amended as decree was passed by trial Court in year 2007 – Thus, rights of appellants got crystallised in year 2005 and this event should have been kept in mind by trial Court as well as High Court – Share will devolve upon Appellants/Daughters as well – Appeals are allowed and Judgment of High Court is set aside. **27**

MOTOR VEHICLES ACT:

---Secs. 2(30) & 50 – First respondent was owner of vehicle involved in accident – First respondent contended that he had already sold vehicle to second respondent prior to accident and handed over documents including registration certificate – Second respondent further contended that he had sold vehicle to third respondent who in turn sold it to petitioner – Tribunal held that first respondent jointly liable together with driver of vehicle – High Court has allowed appeal of first respondent and held that there was evidence that first respondent transferred **80** vehicle and appellant who is last admitted

owner is liable to pay compensation – Hence present appeal.

Held – Person in whose name motor vehicle stands registered, would be treated as owner – Person whose name is reflected in records of registering authority is the owner - However, where a person is a minor, guardian of minor would be treated as owner and where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, person in possession of vehicle under agreement is treated as owner – In present case, first respondent was 'owner' of vehicle involved in accident within meaning of section 2(30) of the act and is liable to pay compensation – Appeal is allowed and Judgment of High Court is set aside. ***60***

TRANSFER OF PROPERTY ACT,

---Sec.106 - Issue involved in present appeal relates to grant of leave to the respondent/ defendant to defend summary eviction suit filed by the appellant against them in relation to suit premises.

Held - In an eviction suit filed by landlord against tenant under the Rent Laws, when the issue of title over tenanted premises is raised, landlord is not expected to prove his title like what he is required to prove in a title suit - Appeal is allowed. ***179***

(INDIAN) PENAL CODE:

---Secs.120-B, 201 & 498-A – Appellant's wife committed suicide by hanging – Appellant in appeal was acquitted of offence u/Sec.498-A but conviction u/s 201 was maintained on ground that appellant did not give intimation to police of unnatural death and no post-mortem was conducted

Held – High Court is not justified in maintaining conviction u/s 201 of IPC only on ground that no communication was given to police and post-mortem had not been performed – Prosecution has not been able to satisfy ingredients u/s 201 of IPC – Sessions Court is not justified in convicting appellant u/Sec. 201 of IPC and High Court maintaining the same – Appeals are allowed and conviction of appellant u/s 201 IPC is set aside. ***53***

---Secs.120-B, 420, 467, 468, 471 and 506 – SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, Sec.3 - Legality of remand order passed by the Sessions Court and the order of the learned Magistrate taking cognizance thereafter.

Held - Sessions Court Order should have been construed only as a remand order for further enquiry - Learned Magistrate of Trial Court was expected to apply his independent mind while taking cognizance but observed that Sessions court has already made out a prima facie case - High Court clearly misconstrued Lower Court order and proceeded on an erroneous footing - Appeal is allowed and complaint be considered by trial court afresh - Impugned judgment is set aside. **98**

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

---& CONSTITUTION OF INDIA, Article.21 - Whether any unilateral allegation of mala fide can be ground to prosecute officers who dealt with the matter in official capacity and if such allegation is falsely made what is protection available against such abuse.

Held - Procedural safeguards so that provisions of Scheduled Castes and

the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are not abused:

i) There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.

ii) In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.

iii) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

iv) Any violation of direction (ii) and (iii) will be actionable by way of disciplinary action as well as contempt. The above directions are prospective.

Proceedings in the present case are clear abuse of process of court and are quashed. ***103***

SPECIFIC PERFORMANCE:

---Trial Court dismissed counter claim preferred by Appellant/Defendant, whereby he prayed for delivery of possession of suit property - Appellant had mortgaged suit property with Bank – Later appellant entered into an agreement intending to sell suit property to respondent No.1/ Plaintiff – Appellant contended that plaintiff has taken illegal possession of suit property and has been in receipt of unlawful gains on account of being in illegal possession and receiving income from the suit property

Held – Court accepted counter claim made by appellant and hold that he was entitled to recovery of possession – On score that Appellant was wrongfully denied and deprived of earnings from suit property for last so many years, he would be entitled to reasonable return – But at same time he had retained and enjoyed said sum which he had received by way of advance from first Respondent/ Plaintiff – Neither would first Respondent be entitled to any interest on sum of which was given by way of advances under suit agreement to Appellant nor would Appellant be entitled to any sum by way of mesne profits of wrongful possession of suit property by first Respondent – Suit for specific performance filed by first Respondent was dismissed – Appeal allowed. ***149***

TENANCY ACT;

---Sub-letting - Eviction suit-Ground for eviction - Held- landlord is able to make out only one ground of several grounds of eviction, he is entitled to seek the eviction of his tenant from the suit premises on basis of that sole ground which he made out under Rent Act - There is no need for the landlord to make out all grounds which he has taken in plaint for claiming eviction of tenant under Act - Appeal allowed. ***47***

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LAW SUMMARY

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