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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS

❖ 2009-3-L.W. 374

The Collector, Land Acquisition and Another Vs. Jaswant Singh and Others.

Land Acquisition Act (1894), Section 18 / Interest on the amount of solatium, Execution, Powers of Executing Court, whether it could go beyond the decree, Scope – Held: As laid down in 2006(8) SCC 457. “ If claim for interest on solatium had been made and the same has been negated either expressly or by necessary implication by the judgment or decree of the reference court or of the appellate court, the execution court will have to necessarily reject the claim for interest on solatium based on Sunder’s case on the ground that the execution court cannot go behind the decree – But if the award of the reference court or that of the appellate court does not specifically refer to the question of interest on solatium or in cases where claim had not been made and rejected either expressly or impliedly by the reference court or the appellate court, and merely interest on compensation is awarded, then it would be open to the execution court to apply the ratio of Sunder’s case and say that the compensation awarded includes solatium and in such an event interest on the amount could be directed to be deposited in execution; otherwise, not” – Case remitted back.

❖ **2009 (2) Crimes 326 (SC)**

**Bimla Devi and Another.... Appellants Vs. State of Jammu and Kashmir
.... Respondents.**

Ranbir Penal Code – Sections 306 and 498-A- Death of deceased by burn injuries in matrimonial home – Prosecution of appellant husband along with his brother for said offences – Trial Court framed charge under Section 302 read with Section 34 RPC – The trial Court proceeded on the premises that from the beginning two versions of the deceased were there; one relating to suicide and other relating to murder – Even though the charge was framed under Section 302 read with Section 34 RPC the trial court felt that the appropriate conviction would be under Sections 306 and 498-A of RPC – The conclusions were questioned before the High Court – By the impugned judgment High Court held that whatever be the charge framed the question was appreciation of evidence and accordingly upheld the conviction – Appeal against judgment of High Court upholding the conviction of appellant for offence punishable under Sections 306 and 498-A of Code – Plea of appellant that ingredients of Sections 306 498-A were absent and in any event no question was put under Section 313 of the Code of Criminal Procedure, 1973 relating to these offences – Relying upon decision in case of Shamnsaheb M.Multtani V. State of Karnataka held that case ought to be remanded back – However held that in the instant case no useful purpose would be served in remanding matter since it was more than 20 years old and appellant had served part of custodial sentence – Apart from that in the instant case, in the examination under Section 313 of the Code no question was put up relating to demand of dowry and abetment of suicide – That being so, conviction held liable to be set aside – Appeal allowed (Paras 9 to 12).

❖ **2009 (2) Crimes 351 (SC)**

**Bakshish Ram & Another.... Appellants Vs. State of Punjab
Respondent.**

Interim Bail – Grant of – Conviction of appellants under Section 304-B read with Section 498-A IPC by Trial Court – Appeal – Dismissed by High Court – confirming conviction and sentence – Application by appellants for grant of interim bail pending appeal – Plea that appellant no.1 may be granted bail as he was the only bread earner of his family and appellant no.2 may be granted bail as she being a 80 years old lady was suffering from various old age related ailments – Held where a serious offence had been committed and the accused had been held guilty for the said offence, then his application for grant of bail should not be decided leniently during the pendency of appeal – The seriousness and gravity of the offence must be looked into before granting the bail – Instantly, accused were convicted by Trial Court for harassing, torturing and compelling the deceased to end her life by committing suicide, and the said conviction was confirmed by High court – So far as appellant no.1 was concerned, only reason assigned for grant of bail was that he was the only bread earner of the family – In the light of decisions of Apex court, contention of the appellant held not justified to release him on bail for the alleged offence for which he had been convicted by the Courts – With regard to the case of appellant. 2/ looking at her age held not fair to hold her back in jail during the pendency of appeal – Application for grant of bail disposed of (Paras 8 to 14).

HIGH COURT CITATIONS

❖ **2009-3-L.W. 369**

Annie Anandhi, Zareena @ Gladys Vs. The District Manager, Food Corporation of India, 623, Aziz centre, Thousand lights, Chennai.

C.P.C., Order 8, Rule 4,5., Order 39, Rule 1,2/ Terminal Benefits of deceased employee, if can be attached, Constitution of India, Article 226 / Mandamus – Writ Petition was filed praying this court to issue a writ of mandamus, directing the respondent to release the terminal benefits of late husband (A) of the petitioners herein who worked in the respondent Corporation forthwith – Plaintiff filed application under Order 38 Rule 5 C.P.C. to order conditional attachment before judgment, all the monetary death benefits arising out of the death which are lying in the hands of the 9th defendant and I.A. under Order 39 Rule 1 and 2 C.P.C. to grant interim injunction restraining the 9th defendant, Food Corporation of India from disbursing the monetary benefits arising out of the death of A to the defendants 3 to 8 pending disposal of the suit, and it was allowed – CRP was filed against that – Held: effect of both the prayers in the applications is that the amounts due to the deceased employee should not be released to his legal representatives – Trial court as well as the lower Appellate court, committed an illegality in granting an order of interim injunction restraining the Food Corporation of India from releasing the terminal benefits of the deceased employee – The trial court as well as the lower Appellate Court have failed to appreciate the fact that the amounts due to the deceased employee are towards Provident fund, Leave Salary, Gratuity, etc. payable under different statutes which are all welfare legislations – When that amount is blocked, it will certainly cause great prejudice to the legal heirs of the employee – 2004(1) L.W. 125 will certainly apply – Civil revision petition is allowed.

❖ **2009 (2) TLNJ 593 (Civil)**

**V.R.Narayanasamy (died) & Others Appellants.
Vs.**

**Rajammal rep. by power agent Mr.Kanagaraj
and 2 Others Respondents.**

Indian Evidence Act 1872- Section 68 – Suit for partition – One of the parties claimed rights under a registered will – Attesting witness not examined – Trial Court decreed – On appeal the High Court expressed that attesting witness is different from registration witness – as per Evidence Act, the proof of will is not exempted from examining atleast one of the attesting witness whether it is admitted or specifically denied or not – Courts in dealing such circumstances must be very vigilant in deciding proof of will – Registration of will alone would not mean that it is proved – Appeal allowed in part.

❖ **2009 (3 CTC 493
R.Pannerselvam Vs. A.Subramanian and Another.**

Specific Relief Act, 1963 (47 of 1963) Section -38 – Suit for bare injunction – Question of considering title of either of parties would not arise – Only in a case where there is paucity of evidence relating to proof of possession, title of plaintiff can be gone into incidentally – When there is clear evidence that plaintiff is in possession, Lower Appellate Court is not correct in holding that plaintiff has not proved his title and hence he is not entitled to permanent injunction – Even trespasser in established possession is entitled to injunction – Suit for bare injunction is maintainable.

❖ **(2009) 3 MLJ (Crl) 26
S.Swaminathan Vs. State, rep. by the Inspector of Police, Thanjavur.**

- (A) Code of Criminal Procedure, 1973 (2 of 1974), Sections 438 – Anticipatory Bail – Scope – Sessions Court or High Court – Can very well give direction to release an accused on bail in the event of arrest or his appearance before the concerned Magistrate to execute the bond and sureties - Such a direction would not at all prevent the police officer from arrest and taking into custody of the accused – Anticipatory bail order becomes operative and effective at the very moment of arrest – Term “in the event of such arrest” connotes wider meaning and it covers the arrest not only by the police officer but also by the Magistrate and other person.
- (B) Code of Criminal Procedure, 1973 (2 of 1974), Section 438 – Anticipatory Bail – High Court and the Sessions Court can direct an accused at the pre-arrest stage to appear for execution of bond/sureties before the Magistrate concerned by way of complying the pre-condition in consonance with the orders passed, thereafter, to surrender before the police for interrogation – While so, the power of the police to arrest an Accused is retained – Purpose of execution of bond / sureties, is to ensure compliance of conditions by the Accused – Such a bond can be executed either before a police officer or before the jurisdiction Magistrate concerned and there is no prohibition or specification in the Code – His appearance before Magistrate in complying the condition cannot be said to be a ‘surrender’ which is altogether different from appearance – It goes without saying that he is not at all surrendering since he is already enjoying the conditional immunity and his personal liberty cannot be impeached by the Magistrate.

❖ 2009 (2) TLNJ 33 (Civil)
A.Janaki Vs. J.John Kennedy

Civil Procedure code 1908 as amended - Section 11 - Prior petition by husband for divorce dismissed as not maintainable – Subsequent suit for declaration – Defendants is not the wife of plaintiff – Suit dismissed – but appeal allowed – On second appeal the High Court held that previous proceedings between the same parties and earlier findings bar fresh suit – 2nd suit barred by res judicata – Second Appeal allowed.

❖ **2009 (2) TLNJ 298 (Civil)**
V.Muniasamy Vs. Karuppayi Devi

Civil Procedure Code 1908 as amended - Order 9, Rule 13 – Suit by wife claiming permanent alimony – petition filed – set aside exparte decree – Trial court allowed petition on condition directing, depositing a fixed sum calculated at a rate from suit date till exparte order – on revision in High Court felt the condition onerous, illegal and set aside in the interest of justice – trial court directed to reconsider the application afresh – C.R.P.(PD) is allowed.

❖ **2009 (2) TLNJ 39 (Civil)**
R.Kalaiarasan S/o Late Raghavelu Vs. M.Lingam & Others

Civil Procedure code 1908 as amended - Order 18, Rule 17 – Suit for permanent injunction and declaration – Trial completed – posted for judgment – Petition to reopen to recall PW1, fled and allowed on cost as in interest of justice – on revision the High court held that the power to recall and re-examine should not be exercised lightly to be used in exceptional circumstances – C.R.P. (PD) is allowed.

❖ **2009 (2) TLNJ 463 (Civil)**
Vijayapandian Vs. Pappa
Respondent cross objector in Cross Objection No.25 of 2007

Hindu Marriage Act 1955 Maintenance – The appellant / husband has challenged the order of the family court awarding maintenance to the wife – Cross objections filed by the wife in the appeal for enhancement of maintenance – Dismissing the appeal and allowing the cross objection, the High Court held that the amount awarded towards maintenance is low – wife should be awarded maintenance a decent living and should commensurate with the status of her husband – A.S. is 32 of 2002 is dismissed and Cross objection No.25 of 2007 is allowed.

❖ **2009 (2) TLNJ 174 (Civil)**
Ramasundara Asarai & Others. Vs.
The Government of Tamil Nadu rep. by its Collector, Tirunelveli District & Others.

Hindu Religious and Charitable and Endowments Act 1959 Section 6(2) – Suit for declaration that the temple belongs to their community – Suit dismissed – first appeal dismissed – Second Appeal filed in High Court – Held, both the courts below have erroneously held that there was no evidence with regard to the establishment of the suit temple by the plaintiff ancestors – taxes being levied by the plaintiff for community people for the temple festival – plaintiff's community people purchased properties for the suit temple – Suit temple not a denomination temple – No appeal by the Government or the HR & CE Department against the finding not suit temple has been administered and maintained by the plaintiff's ancestors – it is open to the plaintiff's to approach the authorities to appoint trustees from their community – Second Appeal is dismissed with observations.

❖ **2009 (2) TLNJ 147 (Civil)**
M.Ganesan Vs. The Management of Tamil Nadu Electricity Board & Another.

Indian Evidence Act 1872 - Section 114 – Worker removed from service by electricity department on allegations of misconduct - raised dispute before conciliation officer – Proceedings failed – industrial dispute raised – Petition filed to frame preliminary issue whether dismissed person as worker – dismissed by labour court – writ petition filed and allowed – On further appeal by dismissed worker to intra court bench it was held that management not permitted to take such stand – estopped as management treated him workman while issuing charge sheet for the alleged misconduct – Appeal by worker allowed.

❖ **2009 (1) TLNJ 63 (Civil)**
A.Santhosamary & Another Vs. J.Anthoney Emmanuvel

Indian Divorce Act 1869 – Petition for divorce filed by husband – Wife filed petition for interim maintenance under Section 141 of Act seeking interim maintenance for her minor child in the sum of Rs.3,000/- p.m. and for a sum of Rs.15,000/- towards cost of the litigation – Family court ordered interim maintenance of minor child in the sum of Rs.600/ p.m. and 2,000/- towards cost of litigation – Civil revision petition filed by wife in High Court – Held – A child 3 ½ years now a days require at least a sum of Rs.40/- to 50/- per day so as to meet all his requirement including medical, transport and other basic facilities and it would come to Rs.1,200/- per month – Interim maintenance increased to Rs.1,200/- p.m. and no interference in litigation – Civil Revision Petition is allowed.

❖ **2009 (3) CTC 539**
R.Palanisami and 2 Others Vs. R.Subramania Gounder and 6 Others.

A Suit for partition is laid claiming a 1/3rd share based on the purchase of the same by the grand father of the plaintiffs. The suit was dismissed on the ground that the pleadings were lacking in so far as the other shares are concerned and that proper parties were also not impleaded. The Appellate Court also confirmed the same.

Held: At this juncture I would like to point out the onus of proof as well as the onus probandi is on the plaintiffs to prove their case. Hence, I call up and recollect the definition of onus probandi, as found in Black's Dictionary, as under:

“Onus Probandi: The burden of proof. The strict meaning of the term ‘onus probandi’ is that, if no evidence is adduced by the party on whom the burden is cast, the issue must found against him”

Para 5

It is trite proposition of law that there cannot be any piecemeal partition and in partition suit, all necessary parties should be added and only in their presence comprehensively a partition suit could be decided. As such, both the Courts below were right in dismissing the Suit with the aforesaid finding that the Suit was bad for non-joinder of necessary parties and also bad for adequate pleadings in support of the plaintiff's prayer.

Para 10

Code of Civil Procedure, 1908 (5 of 1908), Section 100 – Second Appeal – Concurrent finding that Suit bad for non-joinder of proper parties – Effect of – Fresh proceedings are not barred when Suit is dismissed on ground of absence of proper parties.

Held: Whereas the learned counsel for the defendants would appropriately and correctly point out that this is not a case where one or two parties left out unwittingly. But here the very nature and vendor of the Plaint itself would bespeak that the plaintiffs themselves are not aware of the owners of the remaining 1/3rd undivided share and in such a case, if the matter is remitted back, it would not serve the purpose.

Para 14

A bare perusal of the above decisions would evince and convey that fresh proceedings are not bared in view of the earlier proceedings having dismissed for want of adding all necessary parties

Para 16