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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS

2009 (13) SCALE 671

Urban Improvement Trust, Bikaner
Vs
Mohan Lal

PRACTICE & PROCEDURE – CONSTITUTION – ARTICLE 136 – Frivolous and vexatious litigation – Governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice – Petitioner Trust allotted a Plot to the respondent in 1991 – Respondent paid the allotment price of Rs.3,443/- in 1992 and took possession in 1997 – In 1998, the petitioner – Trust allotted to respondents and delivered possession of the adjacent strip – Thereafter, the Trust without notice to the respondent and without resorting to any acquisition proceedings, laid a road in the said plot – Feeling aggrieved, the respondent met the officers of the Trust and complained to them – He also gave a written complaint seeking restoration of the plot – Respondent approached the District Forum in 2005, praying for restoration of the plot or for allotment of an alternative site and award of damages of Rs.200,000/- - District Forum disposed of the complaint directing refund of the allotment price paid with interest at 9% per annum – State Commission allowed the appeal filed by the respondent and directed allotment of an alternative plot and also awarded Rs.5,000/- as compensation – National Commission dismissed the revision petition filed by the petitioner Trust – Whether any interference is called for with the judgment of the National Commission Held No.

2009 (13) SCALE 394

Surender Kumar
Vs
Union of India and ors.

SERVICES – COMPULSORY RETIREMENT – Quantum of sentence – Appellant was working as Assistant Supervisor in the Military Farm – He was served with charge sheet wherein it was alleged, firstly, that he had misappropriated about 320 kg. of Soda-bi-carbonate, secondly, that he had failed to feed the animals in his charge with the said Soda-bi-carbonate as a result of which he had jeopardized the health of the animals and thirdly, that he had willfully disobeyed the lawful orders of his superior officer – Regular departmental inquiry was conducted wherein the appellant was given all the opportunities to defend himself – He was found guilty on all the three counts – He was awarded the punishment of compulsory retirement – An appeal was filed by the appellant against the said penalty which was dismissed – Appellant moved the Tribunal which also agreed with the findings as also the punishment awarded by the department – Writ petition filed by the

petitioner was dismissed by the High Court – Whether the punishment of compulsory retirement was disproportionate – Held No.

<u>2009 (13) SCALE 143</u>

Arulvelu & Another
Vs
State Represented by the Public Prosecutor & Another

CRIMINAL LAW – I.P.C. – SECTION 304-B & 498-A – Cr.P.C. – SECTION 378 – Dowry death – Appeal against acquittal – Unless the judgment of the trial Court is perverse, Appellate Court would not be justified in substituting its own view and reverse the judgment of acquittal – Deceased, mother of two children, committed suicide by hanging herself – Prosecution case that accused husband had sent the deceased many times to her father for getting money and car and since the car was not given to first accused, he had beaten and tortured deceased and ultimately deceased became disgusted with her life and committed suicide – In the suicide note, deceased had not implicated any of the accused – No credible evidence to suggest that soon before her death deceased had been subjected to cruelty or harassment by the accused in connection with any demand of dowry – Material contradictions in statements of PW.1, deceased's father, and PW.3 – Trial Court acquitted accused, disbelieving prosecution case – Whether High Court was justified in reversing judgment of acquittal – Held, No – Whether judgment of the trial Court could be termed as perverse – Held, No.

The approach of the High Court in the impugned judgment in not in consonance with the settled principles of criminal jurisprudence. The High Court while reversing the judgment of the trial court observed that "in all probabilities, I am inclined to hold that there was demand of dowry and the deceased was harassed by the first accused and therefore, she committed suicide." In criminal cases the conviction can be sustained only when there is clear evidence beyond reasonable doubt. The accused cannot be convicted on the ground that in all probabilities the accused may have committed the crime. The approach of the High Court is wholly fallacious and unsustainable in law.

We have carefully perused the judgment of the trial court and the impugned judgment of the High Court. The trial court very minutely examined the entire evidence and all documents and exhibits on record. The trial court's analysis of evidence also seems to be correct. The trial court has not deviated from the normal norms or methods of evaluation of the evidence. By no stretch of imagination, we can hold that the judgment of the trial court is based on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it and consequently the judgment of the trial court is perverse.

We also fail to arrive at the conclusion that the discussion and appreciation of the evidence of the trial court is so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse and the findings rendered by the trial court are against the weight of evidence. The law is well settled that, in an appeal against acquittal, unless the judgment of the trial court is perverse, the Appellate Court would not be justified in substituting its own view and reverse the judgment of acquittal.

Unquestionably, the Appellate Court has power to review and re-appreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallized by aforementioned judgments of this Court. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court.

We have re-examined the entire case because of the conflicting judgments of the Trial Court and the High Court. On careful marshalling of the entire evidence and the documents on record, we arrive at the conclusion that the view taken by the trial court is a possible and plausible view. The judgment of the trial court cannot be termed as perverse. The High Court ought not to have substituted the same by its own possible view. The impugned judgment of the High Court cannot stand the scrutiny of the well settled legal position which has been crystallized for more that 80 years since the case of Sheo Swarup. In the facts and circumstances of this case, we are constrained to set aside the impugned judgment of the High Court.

WORDS AND PHRASED – EXPRESSION 'PERVERSE' – Meaning – Judicial decisions – Dictionary meaning – Expression means that findings of the subordinate authority are not supported by evidence brought on record – 'Perverse finding' means a finding which is not only against the weight of evidence but is altogether against the evidence itself.

The expression 'perverse' has been dealt with in number of cases. In Gaya Din (Dead) through LRs. & Others v. Hanuman Prasad (Dead) through LRs. & Others (2001) 1 SCC 501 this Court observed that the expression 'perverse' means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.

In Parry's (Calcutta) Employees' Union v. Parry & Co. Ltd. & Others AIR 1966 Cal. 31, the Court observed that 'perverse finding' means a finding which is not only against the weight of evidence but is altogether against the evidence itself.

In Triveni Rubber & Plastics v. Collector of Central Excise, Cochin AIR 1994 SC 1341, the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.

In M.S. Narayanagouda v. Girijamma & Another AIR 1977 Kar. 58, the Court observed that any order made in conscious violation of pleading and law is a perverse order.

In Moffett v. Gough, 1 L.R. lr. 371, the Court observed that a perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

In Godfrey v. Godfrey 106 NW 814, the Court defined 'perverse' as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct etc.

2009 (13) SCALE 177

Pandurang Chandrakant Mhatre & ORS.
Vs
State of Maharashtra

CRIMINAL LAW – I.P.C. – SECTION 147, 148, 302/149, 304/34, 307/149 & 326/149 – Unlawful assembly – Where a large number of persons are alleged to have participated in the crime only those accused to be convicted whose presence clearly established and overt acts proved – Incident took place between two rival political factions – Prosecution case that during annual fair at a temple, A-3 returned to the temple with a group of about 20 persons allegedly armed with weapons like iron bar, swords, pharashi, sticks etc. and started attacking the people assembled there – Villagers rushed towards temple and many persons got seriously injured – Police party reached at place of incident when informed at about 4.15 a.m. – FIR was registered at 6.00 a.m. at the instance of PW.2 – Trial Court acquitted all the accused persons rejecting evidence of eye witnesses holding that because of a sudden attack, all prosecution witnesses ran helter-skelter and must not have been in a position to see actually who assaulted them, it being a night time – On appeal, High Court convicted eight accused, for offence u/s 302/149, I.P.C. affirming acquittal of five – Evidence of eye witnesses corroborated by medical evidence in respect of the deceased as well as injuries sustained by witnesses – Presence of witnesses at the time of incident not doubtful – Evidence on record that at lease five persons chased the deceased and then attacked him – Whether conviction of appellants as recorded by the High Court Sustainable.

CRIMINAL LAW – I.P.C. – SECTION 302/149 – Cr.P.C. – SECTION 154 & 157 – Delay in dispatching FIR to the Magistrate – If evidence of eye witnesses is found cogent, convincing and credible, delay in receipt of copy of FIR by the concerned court would not be of much significance.

CRIMINAL LAW – Cr.P.C. – SECTION 154 – FIR – Evidentiary value – A cryptic information about commission of a congnizable offence irrespective of nature and details of such information may not be treated as FIR.

CRIMINAL LAW – CRIMINAL TRIAL – Interested witnesses – Evidence of interested witnesses may be relied upon if such evidence is otherwise trustworthy – Evidence of such witnesses has to be examined with great care and caution to obviate possibility of false implication or over-implication.

<u>2009 (14) SCALE 724</u>

HDFC BANK LTD.
Vs
J.J. Mannan @ J.M John Paul & ANR.

CRIMINAL LAW – Cr.P.C. – SECTION 438 – I.P.C. – SECTION 420, 467, 468, 471 & 120-b – Anticipatory bail – Provisions of Section 438, Cr.P.C. cannot be invoked to exempt accused from surrendering to the court after the investigation is complete and if charge sheet is filed against him – Once the investigation makes out a case against him and he is included as an accused in the charge sheet, the accused has to surrender to the custody of the court and pray for regular bail – Appellant – Bank filed a complaint alleging that respondent in his capacity as the Managing Director of a company applied for a loan for purchase of machinery from one M/s K – Loan was duly sanctioned and after signing of necessary documents, six cheques for the loan amount of Rs.2,03,40,000/- drawn in the name of M/s. K were handed over to respondent No.1 – Subsequently, by a letter, the Bank informed M/s. K that a sum of Rs.2,03,40,000/- had been disbursed to them on account of respondent No.1 and requested them to confirm the same – M/s. K wrote back to the Bank stating that it had not received any payment – On enquiry it was disclosed that no machineries had in fact been purchased by respondent No.1 and that the respondent had colluded with another company with the intention of cheating the Bank – Moneys were finally credited to the account of respondent No.1 – A complaint was filed against respondent No.1 for offences u/s 419, 420, 468, 473 r/w 120B, I.P.C. – Respondent filed an application for grant of anticipatory bail – High Court granted the bail holding that since the investigating agency had already seized all relevant and vital documents and had recorded statements of all important witnesses, custodial interrogation of respondent No.1 was not required – Respondent had never appeared in Court even during trial – Whether such a blanket order could have been passed u/s 438, Cr.P.C. upto the end of the trial – Held, No – Whether respondent No.1 was entitled to be granted anticipatory bail – Held, No.

Having carefully considered the submissions made on behalf of the respective parties and the decision referred to in support of their respective cases, we are of the view that the role of the Respondent No.1 in the entire episode did not entitle him to the relief of Anticipatory Bail, much less a blanket order of bail. However, that is now a closed chapter. But what is of relevance is whether the High Court should have worded its order in such a way that it could be interpreted to mean, as has been done by all concerned, that the Respondent No.1 was not required to even appear and surrender before the Court during the entire investigation stage and the trial. Taking advantage of the same, the Respondent No.1 has successfully avoided the Court from the very initial stage of investigation and even the trial. Such kind of an order is not contemplated under Section 438 Cr.P.C. as has been repeatedly explained by this Court. The said position has been clearly enunciated in Adri Dharan Das's case (supra). Furthermore, it has also been consistently indicated that no blanket order could be passed under Section 438 Cr.P.C. to prevent the accused from being arrested at all in connection with the case. To avoid such an eventuality it was observed in Adri Dharan Das's case (supra) that Anticipatory Bail is given for a limited duration to enable the accused to surrender and to obtain regular bail. The same view was reiterated in Salauddin's case (supra) wherein it was, inter alia, observed that Anticipatory Bail should be of limited duration only and primarily on the expiry of that duration or extended duration, the Court granting Anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted.

The object of Section 438 Cr.P.C. has been repeatedly explained by this Court and the High Courts to mean that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. But at the same time the provisions of Section 438 Cr.P.C. cannot also be invoked to exempt the accused from surrendering to the Court after the investigation is complete and if charge-sheet is filed against him. Such an interpretation would amount to violence to the provisions of Section 438 Cr.P.C. since even though a charge-sheet may be filed against an accused and charge is framed against him he may still not appear before the Court at all even during the trial. Section 438 Cr.P.C. contemplated arrest at the stage of investigation and provides a mechanism for an accused to be released on bail should he be arrested during the period of investigation. Once the investigation makes out a case against him and he is included as an accused in the charge-sheet, the accused has to surrender to the custody of the Court and pray for regular bail. On the strength of an order granting Anticipatory Bail, an accused against whom charge has been framed, cannot avoid appearing before the trial court. If what has been submitted on behalf of the appellant that the Respondent No.1 has never appeared before the trial court is to be accepted, it will lead to the absurd situation that charge was framed against the accused in his absence, which would defeat the very purpose of Sub-Section (2) of Section 240 Cr.P.C.

HIGH COURT CITATIONS

<u>2009 (4) TLNJ 417 (Civil)</u>

Aathi Chettiar
Vs
P. Vaikuntavalli and others

<u>Tamil Nadu Court Fees and Suit Valuation Act 1955, Section 7, and 30</u> – Suit for recovery of possession – Court fee paid under Section 7(2) of the act treating suit lands as ryotwari land – suit property consist of land and building and subject matter of earlier proceedings – application filed seeking determination of proper court fee payable – rejected by trial court – on revision the High Court held that it is the substance of relief at not form which will be determinative of valuation of payment of court fee – Suit filed for recovery of possession on the verdict of prior proceedings – court fee paid held correct – CRP dismissed.

A combined reading of Section 7 and Section 30 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, it is apparent that Section 30 enacts that suits for possession of immovable property not otherwise provided for must be valued at the market value of the property which shall be computed in the manner prescribed by sub section 2(a) of Section 7 of the said Act i.e. on the basis of multiple of revenue for the land. That being so, ryotwari land should be valued under Section 7(2)(a) and the court should not conjecture upon the nature of such land by taking into consideration the probabilities of its user in future or its potentialities.

<u>2009 (4) TLNJ 427 (Civil)</u>

Elango
Vs
Kasthuri

<u>Civil Procedure Code 1908 as amended, Order 26, Rule 9</u> – Suit for injunction to restrain land lord from evicting plaintiff – plaintiff sought appointment of advocate commissioner – allowed by trial court – on revision in High Court held that appointment of advocate commissioner cannot be sought indirectly to note down factum of possession under pretext of nothing physical features – trial court order set aside – CRP (PD) is allowed.

According to the petitioner, the lease was given to the respondent for a period of three years and the respondent had agreed to vacate the premises on the expiry of the lease period of three years and accordingly on 17.2.2008, he vacated the premises and also got the refund of Rs.1,00,000/-, which he had paid as advance. Pending the suit, the respondent has filed the said application for appointment of an Advocate Commissioner to note down the features relating to the fact that the respondent had been in possession of the property and the electricity service connection had been disconnected to the suit property.

It is the case of the respondent that the petitioner was trying to dispossess the respondent unlawfully by resorting to illegal methods of disconnecting the electricity service connection with an ulterior motive to paralyze the business of the respondent and force him to vacate from the suit property.

In the counter filed by the petitioner in the said application, it is stated that the lease was given to the respondent for a period of three years and as agreed, the respondent vacated the premises and also got the refund of Rs.1,00,000/-. Therefore, it was submitted by the petitioner that no Advocate Commissioner can be appointed in order to collect or gather evidence in respect of one party.

The court below appointed an Advocate Commissioner by the impugned order on the ground that for the purpose of elucidating the matter in dispute and to find out as to whether the electricity service connection is disconnected, there is necessity for appointment of an Advocate Commissioner and thus allowed the petition by the impugned order. Hence, this Civil Revision Petition has been filed.

This court carefully considered the arguments of the learned counsel on either side. Order 26 Rule 9 of CPC reads as follows:-

“Commission to make local investigation: In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.

Provided that where the State Government has made the rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.”

It is evident from the aforesaid provision of law that a court may appoint an Advocate Commissioner in any suit where it deems a local investigation is requisite for the purpose of elucidating any matter in dispute. It is necessary to point out that in the affidavit filed in support of the said application, it is stated by the respondent that he is likely to be dispossessed at any time and he need to prove that he is in possession of the suit property, which necessitated him to file this petition for appointment of an Advocate Commissioner to inspect the physical features of the suit property, indirectly seeking to note down the factum of possession under the pretext of noting of the physical features. Such a reason ought to have been rejected by the court below as untenable.

As far as the factum of possession is concerned, the court alone could gather evidence through the parties and it cannot entrust the said matter to the Advocate Commissioner to collect evidence. Likewise, disconnection of electricity service connection can be proved by other means and evidence and it is not necessary to appoint an Advocate Commissioner for the said purpose. The judgement relied by the respondent rendered in the case of Karthikeyan Vs. Kannan @ Rajendran [2008-2-TLNJ-93-Civil] has no application to the case on hand, as the said suit was filed for specific performance and appointment of Advocate Commissioner was made to note down features of the suit property.

Taking into consideration the facts and circumstances involved in this case and also the decisions relied on by the learned counsel for the petitioner, this court is of the considered view that the impugned order appointing an Advocate Commissioner is unsustainable in law and hence, the same is liable to be set aside and accordingly, it is set aside.

2009 (4) TLNJ 430 (Civil)

Kalyani Ragunath
Vs
K. Muthuramalingam

Tamil Nadu Buildings (Lease and Rent Control) Act 1960, Section 4, 18A – Application filed before the appellate authority in rent control proceedings seeking fixation of fair rent – ordered by court – on revision the High Court felt that under the act or rules appointment of commissioner for determination of fair rent not envisaged – appellate authority has to determine the value on available record – advocate commissioner can only perform ministerial act and not a judicial act – order appointing commissioner set aside – CRP (NPD) is allowed.

It is to be borne in mind that neither the TN Buildings (Lease and Rent Control) Act, 1960 nor the rules framed thereunder envisages the appointment of a Commissioner for the purpose of inspecting and submitting a report regarding the determination of fair rent in an application under Section 4 of the Act, in the considered opinion of this Court. But generally a Commissioner is appointed to assist the Court by placing a report of local investigation. However, an order appointing a Commissioner ought not to become a lever to protract the litigation.

At this stage, this Court recalls the observation made in the decision in Tulamaya Chettri and another V. Younarayan Pradhan AIR 2004 Sikkim 39 wherein it is observed as follows:

"Ordinarily we would not have interfered with an order appointing an amin commissioner but in the case at hand parties have closed their evidence and when the matter was at the stage of arguments the respondents came up with prayer for appointment of a commissioner. In view of the admitted fact that parties have already closed their evidence, acceding to the prayer for appointment of an amin commissioner at this belated stage would amount to permitting the respondents to fill up lacunae in their evidence thus leading to a roving inquiry. A learned single Judge of the Calcutta High Court in Satish Agarwal V. Tirath Singh, 1996 AIHC 1791 has held that when the matter awaits arguments, the prayer made by the defendants for local investigation, if allowed would amount to filling up lacunae in their evidence and such prayer should not be allowed."

On a careful consideration of respective contentions and in view of the fact that an appointment of an Advocate Commissioner is an interlocutory and procedural one and bearing in mind of the fact that the main R.C.A.No.1087 of 2005 is ripe for hearing of the final arguments of the respective sides, it is for the Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai to act based on the available oral and documentary evidence on the basis of the facts and circumstances of the case especially when the two Engineers' reports are very much available on record and in regard to the difference in area (460 sq.ft. – 453 sq.ft = 7 sq.ft.) is only a pure question of material fact to be appreciated by the learned Appellate Authority during the course of arguments of main R.C.A.No.1087 of 2005 pending on his file and in fact, an Advocate Commissioner can only perform a ministerial act and not a judicial act in regard to the fixation of fair rent under Section 4 of the Act and moreover, it is not the case of the Appellate Authority that there is insufficient or doubtful evidence available on record and in that view of the matter, the order passed by the Appellate Authority, in M.P.No.57 of 2006 dated 31.03.2006 appointing an Advocate Commissioner etc., is not correct in the eye of law and resultantly, the civil revision petition is allowed.

In the result, the Civil Revision Petition is allowed. The order of the Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai in M.P.No.57 of 2006 'is set aside. The learned Appellate Authority is directed to take up the main R.C.A.No.1087 of 2005 for hearing finally and to dispose of the same within three months from the date of receipt of copy of this order. It is also observed by this Court that at the time of hearing of the appeal if the Appellate Court after scanning the evidence on record comes to the conclusion that the point involved in the subject matter cannot be resolved on the basis of the evidence on record, then it may consider/direct the respondent/tenant to file an application praying for appointment of an Advocate Commissioner and it shall provide due opportunity to the revision petitioner/landlady to file a counter and to dispose of the same on merits together with the hearing of the main RCA and to dispose of the same. Considering the facts and circumstances of the case, the parties are directed to bear their own costs. Consequently, connected miscellaneous petition is closed.

2010 (1) TLNJ 60 (Civil)

Ramasamy
Vs
Thangavel

Civil Procedure Code 1908 as amended, Order 21, Rule 65 read with Section 151 CPC- Suit decreed execution petition filed to realize decree amount – property brought to sale upset price earlier fixed as 2,00,000/- reduced to 1,25,000/- - on petition by the execution court – on revision by JD, High Court expressed that the executing court reduced upset price taking consideration of facultative aspects relaying to property – Order of executing court confirmed – CRP is dismissed.

2010 (1) TLNJ 101 (Civil)

Radha & Others
Vs
M. Shanthi

Civil Procedure Code 1908 as amended, Order 39, Rule 1- In a suit for declaration of title status quo ordered by trial court – on appeal intra court bench held that when plaintiff and

defendant seek their rights and if the land is a vacant site till a decision is taken in the suits, status quo may be granted – either parties not to be allowed to do any construction –OSA is disposed with direction.

It is not in controversy that the plaintiff has filed a suit for declaration that the suit property belonged to her; that the same was purchased by one Rani from the power of attorney of the owner and the said Rani also sold the property to the mother of the plaintiff and the mother of the plaintiff in turn executed a settlement deed in favour of the plaintiff and thus, she derived title to the property and she is in possession of the property.

It is also not in controversy that the property measuring 4.2 acres belonged to two persons namely Dhandapani and Shanmgam and the entire property was plotted out and sold to different persons and O.S. No. 6486/2004 was originally filed by Dhandapani and the present plaintiff and her mother were shown as defendants and an exparte decree came to be passed and an application to set aside the exparte decree was ordered on condition of payment of costs. A perusal of the plaint in O.S. No. 6486/2004 would indicate that the declaration is sought for, the vast area of property including the property in question. Apart from that, as rightly pointed out by the learned counsel for the respondent/plaintiff recovery of possession has not been asked for. The plaintiff in the present suit has averred that the plaintiff is actually in possession of the property and sought for declaration in respect of the property. The only question that would arise for consideration would be whether the status quo order now ordered by the learned single Judge n the interlocutory application in the suit has got to be sustained.

Considering the facts and circumstances of the case, the Court is of the opinion that it is a fit case where status quo has got to be maintained for the reason that the property, in respect of which, the plaintiff has sought for the reason that the property, in respect of which, the plaintiff has sought for declaration and the defendants who are the appellants herein who are prosecuting the suit in O.S. 6486/2004 and the property mentioned in the said suit, are actually common property. It is also admitted, at present, the property is a vacant site. Till a decision is taken in the suit, either of the parties should not be allowed to raise any construction. Under such circumstances, the trial Judge, on considering the factual position, has taken a correct view that status quo has got to be maintained. The Court is of the opinion that the order of the learned single Judge does not require any interference. Therefore, the order passed by the learned single Judge is sustained. After the exparte decree passed in O.S. No. 6486/2004 is set aside, it could be taken on file of this Court for the purpose of joint trial of both the suits, to take a decision in the matter, on appreciation of the evidence to be let in by both the parties. Accordingly, the appeal is disposed of. No costs. Consequently, M.P. No. 1 of 2009 is closed.

<u>**2010 (1) TLNJ 128 (Civil)**</u>

Chinnammal
Vs
Chinnathambi

<u>Specific Relief Act 1963 –</u> Specifc performance of agreement to sell –suit was dismissed by Trail Court and First Appellate Court – Plaintiff filed Second Appeal in High Court held, both the courts below completely relied upon the oral uncorroborated evidence of DW1 – defendant had not chosen to examine the panchayathars to prove his case – plaintiff had

established that she had wherewithal to purchase the property – plaintiff was was infact ready and willing to perform her part of the contract – court below have returned a perverse finding – Second Appeal is allowed – plaintiff entitled to a decree of specific performance.

It is true that PW.1 admits that there was some dispute between the plaintiff's brothers and the defendant. She infact disputed that there was a suit filed before the Court of District Munsif, Mettur. If at all the plaintiff was a party to such a suit, the suppression there of may be taken serious note of by the Court. When the plaintiff was not a party to the said suit it is quite possible that she would not have been aware of the suit. In fact the boundary dispute is between the plaintiff's brothers and the defendant. Suppression of material fact cannot be attributed to her as she was not a party to the suit proceedings marked before this Court as Exs.B1 to B3. Very strangely the Courts below chose to accept the case of the case of the defendant that Ex.A1 was concocted as there was a dispute between the plaintiff's brothers and the defendant.

The defendant was the only witness deposed on his side. Very categorically he has stated in the written statement that the panchayathars compelled him to sign in the blank stamp paper so as to clinch a compromise, but the same was misused by the plaintiff. In the face of voluminous materials to establishment that the defendant in fact executed Ex.A1 agreeing to sell his property to the plaintiff, the defendant should have examined the panchayathars to disprove the case of the plaintiff that the unlettered plaintiff received the blank signed stamp papers from the panchayathars and fabricated Ex.A1. Such a story of the defendant is found to be a false story reeled out before the Court just for the purpose of defence. Quite unfortunately the said defence without any material on record was accepted by the Courts below.

If at all the dispute between the plaintiff's brothers and the defendant was not thrashed out in the aftermath of the signature obtained in blank paper by the panchayatharas, the defendant would have definitely made serious attempt to retrieve such a blank signed stamp paper from the panchayathars. Except the ipse dixit of the defendant none of the panchayathars was examined to establish that in fact the defendant put his signature in a blank stamp paper and handed over to the panchayatharas and the same fell to the hands of the defendant who misused the same.

Coming to the readiness and willingness of the plaintiff to perform her part of the contract, the Court finds that even before the expiry of time frame fixed under Ex.A1, the plaintiff issued a notice through her counsel on 09.12.1988 calling upon the defendant to perform his part of the contract. Within five days from the date of expiry of the time frame fixed under Ex.A1, she laid a suit before the competent Court seeking the prayer for specific performance of the agreement of sale. The plaintiff having produced Ex.A4 has established that she had wherewithal to purchase the property. Therefore it is held that the plaintiff was infact ready and willing to perform the part of the contract but it was only the defendant who evaded the call made by the plaintiff to perform the part of his contract.

The plaintiff has established that Ex.A1 was infact executed by the defendant in her favour agreeing to sell the suit property for a sum of Rs. 29,000/- having received sale advance of Rs. 5000/-. It is also found that she was ready and willing to perform her part of the contract. Therefore, it is found that the Courts below have returned a perverse finding without properly adverting to the evidence on record and also without applying the correct principles of law.

In view of the above the judgments of the Court below are set aside. The plaintiff is entitled to a decree for specific performance of the agreement of sale. The plaintiff is directed to deposit the balance consideration on or before 04.02.2010 and the defendant is directed to execute the sale deed on or before 18.02.2010 failing which the Court shall, on expiry of the time frame fixed above shall execute the sale deed in favour of the plaintiff after verifying the fact that the plaintiff has complied with the above direction. The suit is decreed infavour of the plaintiff and the appeal is allowed. There is no order as to costs.

2010 (1) CTC 416

The Special Tahsildar, Adi Dravidar Welfare, Tirupattur
Vs
P.K.Govindasamy Gounder

Land Acquisition Act, 1894 (1 of 1894), Section 23 – Determination of market value – Market value of land depends upon facts and circumstances of each case – consideration mentioned in Sale Deed conveying land similarly situate would be relevant factor if such Sale Deed is nearer of date of Notification under Section 4(1) and it should be a *bona fide* transaction and land conveyed must be adjacent to land acquired possessing similar advantages – Order by Court enhancing detection on account of difference between extent of land acquired and land covered by comparable Sale Deed held to be correct.

Facts: An extent of 2.92 Acres of land was notified to be acquired and person interested in land appealed against Award of Land Acquisition Officer. The Subordinate Judge who heard the Appeal relied on 2 Sale Deeds as the Sale Deeds were proximate to the date of notification and situate adjacent to land acquired. The Sub-Judge detected $1/3^{rd}$ from the consideration shown in the comparable Sale Deed as it was for a very small extent.

Held: Determination of the market value of the land depends upon facts and circumstances of each case, amongst them would be the price of the land, amount of consideration mentioned in a deed of sale executed in respect of similarly situated land near about the date of issuance of notification under Section 4(1) of the Act. The area of the land, nature thereof advantages and disadvantages occurring therein amongst others would be relevant factors for determining the actual market value of the property. The purpose for which the land is sought to be acquired would also assume significance. It is on the above mentioned factual back drop and legal principles governing, grant of compensation, the market value of acquired lands are required to be determined.

(i) When sale is within a reasonable time of the date of notification under Section 4(1); it should be a *bona fide* transaction;
(ii) It should be of the land acquired or of the land adjacent to the land acquired; and it should possess similar advantages.

The above factors are present in Exs. A2 and A3 sale deeds and therefore Court below was right in taking Exs.A2 and A3 as comparable sale. Fixing of market value at Rs.8.50 per sq.ft. cannot be said to be on the higher side. It cannot be contended that the Court below erred in fixing the market value per square feet and the substantial questions of law 1 and 2 are answered against the appellant.

Of course, when large tracts are acquired, the transaction in respect of small extent of properties do not offer a proper guideline. It is fairly well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired lands subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for forming roads and other civic amenities to develop the land so as to make plots for residential purposes.

2010 (1) CTC 424

R. Jagadeesan
Vs
N.Ayyasamy and another

Evidence Act, 1872 (1 of 1872), Section 45 – Expert Opinion – Age of writing – Duty of Court – Non-availability of scientific method – Sending documents for opinion in respect of age of writing is only futile – Direction not to send documents henceforth unless new methods are invented to find out age of writings was issued.

Constitution of India, Article 21 – Criminal Jurisprudence – Fair trial – Right of accused to request for expert opinion – Fair trial is sine qua non of criminal jurisprudence as has been recognized under Article 21 – Accused can very well request Court to forward document for expert opinion – It is for Court to first of al take a decision as to availability of expert.

Evidence Act, 1872 (1 of 1872), Section 40 – Procedure for appointing expert – Court should first ascertain whether or not particular individual is expert in particular field for particular purpose before seeking opinion of such expert.

Facts: Person accused of an offence under Section 138 of Negotiable Instruments Act filed Petitions before the Magistrate requesting him to forward the cheques for examination by Director of Forensic Science to express opinion regarding age of writings as well as signature found in cheque. Forensic Department represented that there is no scientific method available to assess the age of any writing.

Held, that there can be no denial of the fact that the accused needs to be afforded a fair trial to exhaust all his defences available to him. Fair trial is the sine qua non of criminal jurisprudence and the same has been recognized as a fundamental right under Article 21 of the Constitution of India. To prove that the handwriting was not made by him or that the signature was not made by him, the accused can very well request the Court to forward the document for expert opinion. But the question is, in respect of the age of the writings on a document whether there is any expert in terms of Section 45 of the Evidence Act, who shall be competent to examine the same scientifically and to offer his opinion. The term expert denotes, persons specially skilled in the particular field. Under Section 45 of the Evidence Act, it is for the Court to first of all take a decision as to whether a particular individual is an expert in the particular field for a particular purpose. In such a way, if it is found that there is an expert who can find out the age of the writings on a document by means of any scientific method, certainly he would fall within the ambit of Section 45 of the Evidence Act to offer such opinion. But the learned counsel for the petitioner would submit that there is no such scientific method available for offering any such opinion.

In view of the above clear and unambiguous statement made by no less a person that the Head of the Department of Forensic Science, I am of the view that the whole exercise adopted in various Courts in this State to send the disputed documents for opinion to the Forensic Department in respect tof the age of the writings and the documents is only futile. If any document is so sent, certainly the department will say that no opinion could be offered. As a matter of fact, the Assistant Director would inform the Court that already many such documents, which were sent to them by various Courts in the State for such opinion, have been returned by them with the report that no such opinion could be offered.

In view of all the above, in my considered opinion, sending the documents for opinion in respect of the age of the writing on documents should not be resorted to hereafter by the Courts unless, in future, due to scientific advancements, new methods are invented to find out the age of the writings.