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Topic of the Month

"The Constitution of India is acknowledged as one of the best Constitutions of the world as the great vision and rich experience of great men and women of this country with patriotism, selfless service, sacrifice and concern for the people of this country are behind the making of it. Our Constitution is dynamic with the provision available for amendment to meet the changes, challenges and needs of the society from time to time. Of course, the basic structure of the Constitution cannot be amended. A good Constitution in a democratic set-up is important but much more important is the system it contemplates and the manner in which the system works. Further, realising the hopes and aspirations of the people as embodied in the Constitution largely and effectively depends upon the people in charge of governance which in turn depends on the character, the ability, the vision, the commitment and the concern of the people, who occupy various positions in governance of the country including the constitutional functionaries. It may be stated that the chair being the same occupant makes all the difference. Gandhiji said :

> *"There is no human institution which is without dangers. The greater the institution, the greater the chances of abuse. Democracy is a great institution and, therefore, it is liable to be greatly abused. The remedy, therefore, is not avoidance of democracy, but reduction of possibility of abuse to a minimum."*

Churchill's words "the little man with a little pencil with little ballot vote" should not be forgotten. All rules of interpretation leading to the protection and enhancement of the dignity of individual should be preferred to other interpretations leading to contrary position."

[*Justice P.K. Goswami Memorial Law Lecture on Common Man and the Constitution of India by Justice Shivaraj V. Patil, reported in (2005) 2 SCC (J)*].

NEWS AND VIEWS

Man's income basis for maintenance to be paid: Court

What should be the basis of maintenance that a man should pay to his estranged spouse in a case of domestic violence? The Delhi High Court ruled that the man's income should be the parameter and not his family's property.

Justice Shiv Narayan Dhingra made the observation while setting aside a family court order directing a man of an affluent family to pay Rs.45,000 per month to his wife while his monthly income was just Rs.41,000.

'After attaining self sufficiency and being employed, a man's own income has to be the basis for fixing maintenance for his dependants whether wife, parents or children,' said the judge.

Justice Dhingra reduced the maintenance amount from Rs. 45,000 to Rs. 20,000 while hearing a petition filed by the husband who contended that the sessions court was wrong in awarding maintenance amount to wife merely on the basis of his family's status and properties belonging to his parents.

'The existing properties in the name of father, mother or sister-in-law cannot be considered as the properties of the spouse. Properties of his brothers or parents cannot be a basis for fixing maintenance. Status of a man is not determined from the status of his brother or parents,' the court said.

(Legal India Portal/4-09-2010)

In service law there is no place for the concept of adverse possession or holding over : SC

The Supreme Court in a judgement, while ordering removal of a reader in the department of Kannada, Gulbarga University after 17 years, has ruled that there is no place for the concept of adverse possession or holding over in service jurisprudence.

A bench comprising Justices Aftab Alam and R M Lodha also imposed a cost of Rs 50,000 on the appellant, Dr. M.S. Patil, who was appointed as a reader in the Department of Kannada on February 1, 1993.

The Apex Court rejected the argument of the petitioner that he should not be removed at this stage as he had already worked on the post for over 17 years.

'We are unimpressed. In service law there is no place for the concept of adverse possession or holding over,' the Court noted.

'Helped by some University authorities, the interim order passed by a court and delay in final disposal of the matter, the appellant has been occupying the post all these years.

The equitable considerations are, thus, actually against him rather than in his favour.

A notification dated August 13, 2004 the appellant was discharged from the service of the University from the post of reader in Kannada, but was asked to continue on ad hoc basis until the appointment of the incumbent to the post.

His position was thus only ad hoc till the appointment of the new incumbent and in that position, he was continuing on the basis of the directions of the court to maintain status quo.

We see no reasons to continue with ad hoc arrangements any further and we do not wish to stand any longer in the way of the post being filled up on the regular basis,' the Court ruled.

Justice Alam, in his judgement for the bench directed the University to complete the selection process on the basis of a fresh notification within six months.'

(UNI/04-09-2010)

Supreme Court expresses concern over non-execution of decree passed 34 years ago

The Supreme Court has expressed concern over a case in which both the decree holder and the judgement debtor died awaiting the execution of a decree passed 34 years ago.

In the present case a decree was passed by the trial court on October 25,1976 against Hansraj in a suit for recovery of Rs 60,000 which were borrowed by him.

A bench comprising Justices Markandey Katju and T.S. Thakur while dismissing the appeals of legal heirs of Maya Devi noted 'What is striking about the case is that a decree passed in favour of the respondent as far back as on October 25, 1976 remains to be executed even after the lapse of 34 years during which period the decree holder as also the judgement debtor have both passed away leaving behind the legacy of litigation to the next generation.

The chequered history of a bitter fight which has brought the parties to this court for the second time amply demonstrates that the real troubles of a plaintiff start only after he obtains a decree, thanks to the long winding legal procedures and the ingenuity of the lawyers who often exploit the same to the benefit of one party at the cost of the other.' A suit was filed by late Maya Devi for recovery of Rs 60,000 against late Hansra and the suit was decreed in her favour 34 years ago.

In execution of a decree SCS no 9, sector-27/D Chandigarh was attached and finally sold in a public auction on April 17, 1978 for a sum of Rs 82,000 in favour of decree holder who was permitted by the court to participate in the auction.

Auction scene was challenged by the legal representative of Mrs Rajkumari Batra (since dead).

A written compromise was arrived at between the parties in June 16, 1979 which provided that the DH would deposit a sum of Rs 35,000 for payment to the JD where upon the JD was to hand over the vacant possession of the property to the DH.

JD, however, filed an application for quashing the compromise on the grounds that it was void since it had been brought about by fraud.

The application was dismissed by the executing court. Punjab and Haryana High Court also dismissed petition of the JD.

The Supreme Court also dismissed petition of JD on January 5,1982.

Second round of litigation was initiated by JD by filing fresh objections before the executing court contending that the property being residential is exempted from attachment as the decree was a simple money decree. DH also filed an application for restoration of execution proceedings which were earlier adjourned sine die.

Justice Thakur dismissing the appeal also laid emphasis that the court must give reasons for exercise of power in a particular manner so that appellate court or the authority may have the advantage of examining the reasons that prevailed with the court or the authority making the order so that the issue of proper and reasonable application of mind by the court can be examined by the superior court.

(UNI/13-09-2010)

LEGAL JOTTINGS

Legal briefs from Supreme Court

(Case No: Civil Appeal No. 52 of 2005)

Shalimar Chemical Works Ltd. V. Surendra Oil & Dal Mills & Ors.

Date of Decision : 27-08-2010.

Judge(s): Hon'ble Mr. Justice Aftab Alam and Hon'ble Mr. Justice R.M. Lodha.

Subject Index: Suit for permanent injunction - allegations of infringement of registered trade mark - Civil Procedure Code, 1908 - Order 41, Rule 27 - production of additional evidence - the trial court dismissed the suit of the appellant on the ground that the appellant did not file the trade mark registration certificates in their original - the learned single judge allowed the appellant's application for accepting the originals of the trade mark registration certificates and the allied documents as additional evidence and further allowed the appellant's suit granting decree of permanent injunction against the defendants/respondents. However, the Division Bench viewed that there was no occasion or justification for admitting the original trade mark registration certificates at the appellate stage as additional evidence, therefore, restored the judgement passed by the trial court - appeal - the learned single judge rightly allowed the appellant's plea for production of the original certificates of registration of trade mark as additional evidence but seriously erred in proceeding simultaneously to allow the appeal and not giving the defendants/respondents an opportunity to lead evidence in rebuttal of the documents taken in as additional evidence. The division bench was again wrong in taking the view that in the facts of the case, the production of additional evidence was not permissible under Order 41, Rule 27 - impugned order of the Division Bench set aside and the matter remitted to the learned single judge to proceed in the appeal from the stage the original of the registration certificates were taken on record as additional evidence - appeal allowed - no costs.

(Case No: Cr. Appeal No.1198-1199 of 2005)

Prathap & Anr. V. State of Kerala

Date of Decision: 27-08-2010.

Judge(s): Hon'ble Mr. Justice B. Sudershan Reddy and Hon'ble Mr. Justice Surinder Singh Nijjar.

Subject Index: Indian Penal Code, 1860 - sections 302 and 149 - punishment of murder and rioting with deadly weapons - conviction and sentence under - the deceased assaulted the appellants, thus, seeking revenge the accused/ appellants assembled in furtherance of a common object, armed with deadly weapons inflicted various injuries with their weapons upon the deceased. The deceased succumbed to the injuries - the High Court while acquitted other accused from the charges but confirmed the conviction of the appellants - appeal - PW-16/doctor opined that the death was due to the cumulative effect of all the injuries. Medical evidence is consistent with the eye-witnesses account given by PW-1, PW-2, PW-4 and PW-5 - held no reason at all to disbelieve the evidence of the eye-witnesses. The weapons used by the appellants and the injuries caused have been specifically mentioned by PW1 and PW2. Recoveries of the swords used by them were made at the instance of the appellants - medical evidence also leads to the conclusion that the death has resulted from the injuries caused by the appellants and the other accused with their respective weapons. Further, the PW-1 elaborated that there was previous enmity between the deceased and the accused persons. So there was clear motive for the appellants to assault the deceased. The accused persons who had been acquitted were not known to PW1 and PW2 - held no interference with the impugned order of the lower courts - appeals dismissed.

(Case No: Cr. Appeal No.1599 of 2010 with Crl. A.

No. 1600-1605 of 2010)

Babubhai v. State of Gujarat & Ors. with Ganeshbhai Jakshibhai Bharwad & Ors.

Date of Decision : 26-08-2010.

Judge(s): Hon'ble Mr. Justice P. Sathasivam and Hon'ble Dr. Justice B.S. Chauhan.

Subject Index: Clubbing of FIRs - Indian Penal Code, 1860 - sections 147, 148, 149, 302, 307, 332, 333, 436 & 427 - Bombay Police Act, 1951 - Section 135 - Prevention of Damages of Public Property Act, 1984 - sections 3,7 - charges for the commission of the offences under - some altercation took place between the 2 communities, about 2000-3000 persons from both the communities, all with sticks, dhariyas, swords etc, attacking each other. The police resorted to teargas shells, several rounds of firing were resorted to in order to disperse the mob. In the incident, more than 20 persons were injured and three houses were set on fire and 1 person died - FIR was registered - another FIR registered on the same day where the accused persons assaulted & killed 2 persons with deadly weapons like revolver, dhariyas and sticks and also caused serious injuries to complainant and also caused minor and major injuries to other persons - chargesheet was filed - the High Court passed the judgement and clubbed the investigation of the FIR along with the investigation of the other - appeals - on comparing both the FIRs, Hon'ble Supreme court found that both the incidents had occurred at the same place in close proximity of time, therefore, they are two parts of the same transaction. The scene of offence panchnamas establish clearly that the incidents in both the cases could not be distinct and independent of each other - evidence on record showed that not only investigation in respect of both the FIRs had not been fair and has caused serious prejudice to one party but even before the High Court conduct of the party and investigating agency has not been fair - held that in exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, if considers necessary, it may direct for investigation de novo, thus, the order of the High Court modified to the extent that the charge sheets in both the cases and any order consequent thereto stand quashed and directed to conduct fresh investigation in accordance with law - appeals disposed.

(Case No: Civil Appeal No(s).1801 of 2007)

Mahendra Nath Yadav v. Sheela Devi

Date of Decision : 25-08-2010.

Judge(s): Hon'ble Mr. P. Sathasivam and Hon'ble Mr. Justice B.S. Chauhan.

Subject Index: Hindu Marriage Act, 1955 Sections 13 and 9 - petition for divorce and restitution of conjugal rights - differences arose between the parties after marriage - customary dissolution of marriage held through the Panchayat. In order to give legal effect to the said customary divorce, the appellant approached the Family Court under Section 13, seeking divorce on the ground of desertion and cruelty - the respondent also filed a petition u/sec.9 for restitution of conjugal rights - the Family Court decreed the suit mainly on the ground that the marriage stood dissolved through Panchayat and dismissed the petition filed by the wife. However, the High Court reversed the said order in both the cases - appeal - Hon'ble Supreme Court concluded that the High Court rightly held that dissolution of marriage through Panchayat as per custom prevailing in that area and in that community permitted, cannot be a ground for granting divorce under Section 13 - no interference with the impugned judgement of the High Court - appeal dismissed - no costs.

(Case No: Criminal Appeal No(s).1560 of 2010)

Keshav Dutt v. State of Haryana

Date of Decision: 19-08-2010.

Judge(s): Hon'ble Mr. Altamas Kabir and Hon'ble Mr. Justice Mukundakam Sharma.

Subject Index: Prevention of Corruption Act, 1988 - section 13(1)(d) - conviction and sentence under whether the opinion of a handwriting expert can be admitted in evidence without examination of the handwriting expert - whether a person who is charged of an offence under Section 7 read with Section 13(1)(d), and is subsequently acquitted of the charge under Section 7, can still be convicted under Section 13(1)(d) - the accused persons, in discharge of their duties, came to the complainant's house for checking the electric meter - demanded bribe money of Rs. 2,000/- - trap was laid by the Vigilance Inspector - the accused persons apprehended - the Appellant had neither received the bribe money nor was he present at the spot when the same was received by the accused persons - it is only the report of the handwriting expert, which connects the Appellant with the offence on account of Ex.PR which is said to be in his handwriting - Hon'ble Supreme Court held that since the Appellant had neither received the money nor was he present at the spot from where the other accused were apprehended, his case has to be treated on a different footing and since his complicity has not been established beyond doubt, he must be given the benefit of doubt - conviction & sentence of the appellant set aside - appeal allowed - acquittal.

(Case No: Criminal Appeal Nos. 628 of 2005)

G. Parshwanath v. State of Karnataka

Date of Decision : 18-08-2010.

Judge(s): Hon'ble Mr. Harjit Singh Bedi and Hon'ble Mr. Justice J.M. Panchal.

Subject Index: Indian Penal Code, 1860 - sections 302 and 201 - punishment of murder and causing disappearance of evidence - conviction and sentence for the commission of offences under - the prosecution alleged that the appellant had dislike for his deceased wife as he was suspecting that he had not fathered the child and he was contemplating to marry another girl. The burnt & charred bodies of deceased & her child were found. The appellant was suspected as responsible for the murders of the deceased and, therefore, was arrested - the Ld. trial court concluded that case against the appellant for commission of offences was proved beyond pale of doubt and sentenced him. The High Court affirmed the said orders - appeal - the fact not disputed that the case against the appellant rests on circumstantial evidence - at the time of the incident deceased with her child was residing with the appellant. The evidence of PW-12 establishes beyond shadow of doubt that the appellant had visited his house at about 1.00 P.M. had left the same and come back when the fire fighters were extinguishing the fire PW4, fireman admitted that the door was locked from outside - the evidence of P.W. 21/doctor showed presence of kerosene on both the dead bodies. Further, the post mortem reports concluded that both the deceased were alive when they had received the burn injuries - on perusal of the photographs, the trial court and the High Court rightly held that the suicide theory put forth by the defence is not only improbable but also impossible. Even the evidence of the mother of the deceased showed that the deceased was subjected to harassment - Hon'ble Supreme Court opined that the appellant was suspecting character of the deceased & this constitutes sufficient motive on the part of the appellant to kill his wife and child - appeal dismissed.

(Case No: Civil Appeal No. 6519 of 2010)

Venture Global Engineering v. Satyam Computer Services Ltd. & Anr.

Date of Decision : 11-08-2010.

Judge(s): Hon'ble Mr. Justice P. Sathasivam and Hon'ble Mr. Justice Asok Kumar Ganguly.

Subject Index: Arbitration & Conciliation Act, 1996 - section 34(2)(b)(ii) - interpretation of Civil Procedure Code, 1908 - Order VIII Rule 9 - application for additional pleadings - the appellant entered into a Shareholders Agreement and a Joint Venture Agreement with the first respondent, for establishing the second respondent/Co.. The appellant and the first respondent each held 50 per cent shareholding in the second respondent - the appellant alleged concealment and dereliction of duty as a joint venture partner - disputes cropped up - referred to arbitration - the sole arbitrator gave his award whereby the appellant is to transfer its entire shareholding in the second respondent to the first respondent - the appellant filed a suit seeking a declaration to set aside the award and also prayed for a permanent injunction against the transfer of shares under the arbitral award. Meanwhile, the chairman of the first respondent confessed that the balance sheets had been fraudulently inflated. The appellant filed application for additional pleadings which was allowed by the trial court. However, the High Court held that the petition for additional pleading is not maintainable, hence, the petition - whether by allowing the amendment, the court will allow material facts to be brought on record in the pending case - setting aside proceeding, Hon'ble Supreme court concluded that if the concealed facts, disclosed after the passing of the award, have a causative link with the facts constituting the award, such facts are relevant in a setting aside proceeding and award may be set aside as affected or induced by fraud, therefore, the appellant is allowed to bring the materials on record by way of amendment in plea for setting aside the award - impugned orders of the High Court set aside and of the trial court restored - appeal allowed - no costs.

Legal briefs from High Court of J&K

(Case No. LPAOW No. 73 of 2001)

Satbir v. Union of India & Ors.

Date of Judgment: 31-08-2010

Judge(s): Hon'ble Justice Dr. Aftab H. Saikia, Chief Justice and Hon'ble Mr. Justice Mohammad Yaqoob Mir

Subject Index: Army Act - Army Rules and Regulation - Rules 22, 23, 24 and 18 - Appellant was stated to have fired Gun-shot, being on Sentry duty, injuring one Subedar. It was contended by appellant that he found suspicious movement near the Gate which made him to fire the Gun-shot. Court of Enquiry was instituted which found the appellant to have fired with intention to kill Subedar. Based on the Court of Enquiry report, Commandant proceeded to record evidence under Rule 22. Statements of 13 witnesses were recorded, out of them 2 were cross-examined by the appellant, regarding other witnesses it was recorded by Commandant that appellant had declined to cross-examine. Appellant was charged and Court Martial was conducted. Appellant was found guilty, as such was convicted and punished to 7 years imprisonment and termination from service - Writ Petition against the findings of Court Martial dismissed - Further appeal - Alleged by appellant - violation of Rules 22, 23 and 180, for the

Commandant having not afforded opportunity to cross-examine witnesses - Held by the Hon'ble Court - Rules 22, 23 and 180 are mandatory to be followed and accused should be given opportunity of cross-examining all the witnesses whose statements are recorded by the Commandant or any other person directed by him - record of proceedings reflects that accused cross-examined 2 witnesses and declined to examine 3, regarding other witnesses it was though recorded by the Commandant but record does not disclose if accused was allowed and he refused to cross-examine witnesses - this being so, mandatory Rules were violated and the Court Martial proceedings were vitiated as a result - Court Martial proceedings set aside, leaving open to the authorities concerned to proceed afresh.

(Case No. LPA(OW) No. 41 of 2010 & LPA(OW) No. 42 of 2010)

Board of Director, CCSB Ltd. v. Registrar Cooperative Societies & Anr.

Date of Decision: 20-08-2010

Judge(s) : Hon'ble Mr. Justice J.P. Singh and Hon'ble Mr. Justice Mohammad Yaqoob Mir

Subject Index: J&K Co-operative Societies Act, 1989 - Section 30 -The appellant Board of Director of Bank registered under the Co-operative Societies Act was superseded by the order of the Registrar Co-operative Societies in terms of Section 30(1), having issued show cause notice which was not replied by the appellant. Order of supersession was challenged before Special Tribunal, which set aside the order - In challenge against the order of Special Tribunal, the Hon'ble Single Bench of the High Court restored the order of the Registrar Co-operative Societies - Further appeal by the Board of Directors - Contended that the Co-operative Society being a Bank, Board of Directors could only be superseded in terms of Section 30(7) where the Reserve Bank could direct it to be done in public interest amongst other contingencies, and further that order of the Registrar was based on no grounds as contemplated in Section 30(1) - Held by the Hon'ble Court - Section 30(7) of the Co-operative Societies Act does not control Section 30(1), both have independent application - Section 30(7) gives additional power to the Registrar to supersede the Banking Co-operative Society However, the order of the Registrar was not sustainable under Section 30(1) - it is imperative for the Registrar to form an 'opinion' as to the existence of contingencies as enumerated in Section 30(1) - order of the Registrar proceeded only on the ground that the Board of Directors/appellant had not furnished reply within stipulated time which meant that they had no reasonable ground to show against the supersession of the Board - no 'opinion' was formed by the Registrar as envisaged in Section 30(1) - Order of Single Bench set aside and the order of Registrar superseding the Board of Directors quashed.

Case No. CIMA No. 48 of 2008

United India Insurance Co. Ltd v. Devi Dass and Devi Dass & ors v. United India Insurance Co. Ltd

Date of Decision: 27-08-2010

Judge(s): Hon'ble Mr. Justice Mansoor Ahmad Mir

Subject Index: Motor Accidents Claim - Section 166 Motor Vehicles Act - Claim petition was filed by the petitioner seeking award of fair compensation for the death of his wife in an accident said to have been caused by the Driver of the Bus in which deceased was travelling, by colliding the Bus in rash and negligently against a truck. Deceased was said to be housewife having some income from tailoring job. No evidence was lead by the Insurance Company as well as the Owner/Driver of the offending vehicle. Tribunal awarded an amount of Rs. 4,34,000/- along with an interest @ 7%, assessing income of the deceased to be Rs. 3000/- per month and applying the multiplier of 12 - Appeal against the award - Observed by the Hon'ble Court - There is no method to measure the contribution of the Housewife to the family in terms of money - going by the fact that even labourer also can earn Rs. 200/250 per day, a housewife can be presumed to be contributing not less than Rs. 4500/- money worth per month to the family - the Tribunal has assessed the income of deceased to be Rs. 3000/- per month, which is quite reasonable - since other side did not lead evidence there was no occasion for the Tribunal to arrive at different conclusion - Award held sustainable - Appeal dismissed.

(Case No. CIMA No. 156 of 1997)

Rajinder Kumar Sehgal v. Swarna Devi & ors

Date of Decision: 18-08-2010

Judge(s): Hon'ble Mr. Justice J.P. Singh

Subject Index: Section 20 & 39 - J&K Arbitration Act, Svt. 2002, and Section 69 of Partnership Act - A petition was filed under Section 20 of the J&K Arbitration Act by one Radhey Sham seeking reference of dispute to arbitrator. Appellant resisted the petition on the ground that the disputes raised in the Petition pertained to the affairs of M/s Sehgal Goods Carrier, a Partnership Firm constituted vide Partnership Deed dated 14.10.1991, *inter alia*, in respect of Contract which had to be carried out for 35 Border Road Task Force in objections it was alleged that since the Partnership concern was not registered - the firm or its partners could not sue or be sued and arbitration petition was incompetent - District Judge held that Section 69 of Partnership Act would not affect the proceedings filed by one partner of

unregistered firm against other partner, the bar would get attracted if partners or the Firm itself sues third party - matter was referred to arbitration - Appeal against the order of District Judge - Held by the Hon'ble Court - The distinction referred to by the learned District Judge restricting the application of Section 69 of the Jammu and Kashmir Partnership Act only to the cases where the suit or other proceedings were taken against the third party, *ex-facie* appears erroneous, in that, a plain reading of the provisions of Section 69 of the Partnership Act, does not indicate any such intention of the legislature as projected by the learned District Judge. The expression by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm appearing in Section 69(1), leaves no manner of doubt that a Suit filed by a partner of Unregistered Firm against the firm or any person alleged to be or to have been a partner, too was barred - Appeal allowed - Order of District Judge making reference to arbitrator rejected.

(Case No. Civil 2nd Appeal No. 14/2003 & Civil 2nd Appeal No. 15/2003)

Mushtaq Ahmed Rafiquee v. Gh. Mohd. Dar & Ors., And Mohd. Iqbal Rafiquee v. Ghulam Mohammad Dar & Ors.

Date of Judgment : 25-03-2010

Judge(s): Hon'ble Mr. Justice Hasnain Massodi

Subject Index: Section 139 Land Revenue Act – Contesting respondents filed two suits, challenging two sale deeds alleged to have been executed by the proforma respondent in favour of the appellants. It was contended that the contesting respondents were owners in possession of Plot of land at Rawalpora, Budgam. Out of that land, proforma respondent got mutation attested in his name in respect of some land, which mutation was set aside later-on. Trial court decreed the suits in ex-parte. First appellate court upheld the decrees partly to the extent of Declaratory relief. In second appeal, question for determination was 'whether the jurisdiction of Civil Court was barred under Section 139 Land Revenue Act'. Held – No – Observed by the Hon'ble High Court – The controversy involved, was not thus within the competence of the Revenue Officer nor could the Revenue Officer deal with, dispose of or take cognizance of the controversy projected by the contesting respondents before the Civil Court. The Revenue Officer was not competent to pass a declaratory (decree), declaring the sale deeds null and void. It may be recalled that in order to oust the jurisdiction of the Civil Court under Section 139 Land Revenue Act, it is necessary that the matter sought to be brought out from the jurisdiction of the Civil Court, must be of such character and chemistry which a Revenue Officer is empowered by Land Revenue Act, to dispose of or take cognizance of.

(Case No. CIA No. 72/2008

Superintending Engineer, Electric Div. and ors. V. Reyaz Ahmed Sofi and anr.

Date of Judgment: 16-04-2010

Judge(s): Hon'ble Mr. Justice Muzaffar Hussain Attar

Subject Index: Section 96/Order XLI Rule 1 CPC – Suit for damages decreed by the District Judge Baramulla on 23-08-2007. Appeal filed against the judgment, not accompanied by copy of Decree. Application filed for placing on record copy of Decree, already allowed and copy of Decree placed on record. Another application pending for permission to amend the memorandum of appeal, throwing challenge to Decree. Held – In view of the plain language of Section 96 of CPC read with Order XLI Rule 1, an appeal can be filed against a decree and certified copy of decree sheet is to accompany memorandum of appeal. No appeal in this case is filed against the decree sheet placed on record with memorandum of appeal. The only conclusion which can be drawn is that, in law, no appeal is pending on the files of this Court as the statute does not authorize and recognize an appeal against a judgment – Appeal dismissed.

CASE COMMENTS

Shivjee Singh v. Nagendra Tiwari & Ors.
(AIR 2010 SC 2261)

In the present case, Hon'ble Supreme Court has settled the principle of law that before taking cognizance in a complaint, it is not necessary for the Magistrate to examine all the witnesses named in the complaint. It has also been held by Hon'ble Court that the expression "sufficient ground" only means satisfaction that prima facie case is made out against person accused, and does not mean sufficient ground for the purpose of conviction. It is profitable to quote the observations of Hon'ble Court:-

"Examination of all the witnesses cited in the complaint or whose names are disclosed by the complainant, in furtherance of the direction given by the Magistrate in terms of proviso to S. 202(2) is not a condition precedent for taking cognizance and issue of process against the persons named has accused in the complaint. ..... Non-examination on oath of any or some of the witnesses cited by the complainant is, by itself, not sufficient to denude the concerned Magistrate of the jurisdiction to pass an order for

taking cognizance and issue of process, provided he is satisfied that *prima facie* case is made out for doing so. ....In other words, only those witnesses are required to be examined which the complainant considers as material to make out a *prima facie* case for issue of process. The choice being of the complainant, he may choose not to examine other witnesses. Consequence of such non-examination is to be considered at the trial and not at the stage of issuing process when the Magistrate is not required to enter into detailed discussions on the merits or the de-merits of the case, that is to say whether or not the allegations contained in the complaint, if proved, would ultimately end in the conviction of the accused. He is only to see whether there exists sufficient ground for proceeding against the accused."

Sidhartha Vashisht @ Manu Sharma v. State
AIR 2010 SC 2352

In this case the Hon'ble Supreme Court, apart from deciding important questions of law, has reminded the Public Prosecutors of their duty of fair play at the trial of criminal cases and also has discussed the consequences of him not acting fairly. It is worthwhile to to quote the observations of the Hon'ble Court:-

"A public prosecutor has wider set of duties than to merely ensure that the accused is punished, the duties of ensuring fair play in the proceedings, all relevant facts are brought before the Court in order for the determination of truth and justice for all the parties, including the victims. These duties do not allow the prosecutor to be lax in any of his duties as against the accused."

"The public prosecutor is under a duty of disclosure under the Cr.P.C., Bar Council Rules and relevant principles of common law. Nevertheless, a violation of this duty does not necessarily vitiate the entire trial. The trial would only be vitiated if non-disclosure amounts to a material irregularity and causes irreversible prejudice to the accused...."

Another important principle laid down in the case is that statement of accused recorded under Section 313 Cr.P.C., cannot be treated as evidence, and further that the entire prosecution evidence need not be put to accused to seek his explanation on each and every fact stated in the prosecution evidence.

Spl. Land Acquisition Officer v. Karigowda
(AIR 2010 SC 2322)

In the case under discussion, Hon'ble Supreme Court has considered the question whether, manufacturing or commercial activity carried on by the agriculturist, either himself or through third-party, as a continuation of the agricultural activity, that is, using the yield for production of some other final product, can be the basis for determining the fair market value of the acquired land, within the parameters specified under section 23 of the Land Acquisition Act. In response to the question for determination, Hon'ble Court observed that the courts have been exercising their discretion by adopting different methods, *inter alia* the following methods have a large acceptance in law; (a) Sales Statistics Method, (b) Capitalization of Net Income Method, and (c) Agriculture Yield Basis Method. It depends on the facts and circumstances of a given case as to how the courts apply any of the aforesaid methods. It has been observed as under:-

"..... the consequential or remote benefits occurring from an agricultural activity, is not a relevant consideration for determination of the fair market value on the date of Notification issued under S. 4(1) of the Act. It is only the direct agricultural crop produced by the agriculturist from the acquired land or its price in the market at best, which is a relevant consideration to be kept in mind by the Court while applying any of the known and accepted method of computation of compensation or the fair market value of the acquired land."

As a consequence, it has been held that sericulture activity, though dependent on agriculture produce, is only a commercial activity and not a direct agricultural activity, therefore cannot form basis for determining compensation for acquired land.

LEGAL MIND - TEASER

In response to the problem posed in August Issue, we have not received adequate response, as such, we shall await further response and the solution will be published in the next Issue.

The next problem is as under :-

"In a criminal case pending before the Court, matter is posted for framing of charge against accused. Accused is already exempt from personal appearance by an order of the Court, on the ground that the accused is seriously ill. The matter had been adjourned number of times with assumption that the accused will cause appearance after gaining some health. It has been reported, to the belief of the Court, that accused is so seriously ill that he cannot be produced in Court except on great danger to his life. The Court is stuck up on framing charge and not able to proceed ahead."

Suggest the procedure to be followed by the Court to ensure framing of charge and further trial in the matter.

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