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# **IMPORTANT CASE LAWS**

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**Chennai – 28**

## **SUPREME COURT CITATIONS**

- ❖ **(2008) 6 MLJ 615 (SC)**  
**G.Rama Vs. T.G.Seshagiri Rao (dead) by Lrs.**

Code of Civil Procedure (5 of 1908), section 96 read with Order 41 – Hindu Succession Act (30 of 1956), Section 14 – Hindu Adoptions and Maintenance Act (78 of 1956), Section 19(2) – No issue framed and no evidence let to substantiate that the appellant was occupying the premises in lieu of maintenance – Mere possession does not attract Section 14 of Hindu Succession Act, 1956 – Appeal dismissed.

- ❖ **(2008) 3 MLJ (CrI) 406 (SC)**  
**Shail Kumari Devi and Another Vs. Krishan Bhagwan Pathak**  
**@ Kishun B.Pathak**

Code of Criminal Procedure, 1973 (2 of 1974), Sections 125(1)(2) and 354(c) – Maintenance granted to wife and daughter challenged in revision – Amount reduced – Ceiling fixed as Rs.500/- - removed and amended as such amount as it ‘thinks fit’ – Payment to be made from date of order or if so ordered, from date of application – Provisions for interim maintenance though not expressly provided before amendment but, it provides implied power to Magistrate – Remedy provided is summary in nature – No infirmity in the order granting interim maintenance by the learned Magistrate even before the amendment of Section 125.

- ❖ **(2008) 3 MLJ (CrI) 593 (SC)**  
**Suraj Singh Vs. State of U.P.**

Code of Criminal Procedure, 1973 (2 of 1974), Section 378 – Indian Penal Code (45 of 1860), Section 302 – Murder case – Appeal against acquittal – Powers of Appellate Court – Has full power to re-appreciate, review and reconsider evidence and come to its own conclusions both on questions of fact and of law – No fetters on the plenary power to review the whole evidence – However, Appellate Court not to upset the acquittal order without very convincing reasons and comprehensive consideration – “Proof beyond reasonable doubt” and “benefit of doubt” – Explained – Eye witness account found trustworthy – Minor variations between medical evidence and ocular evidence – Would not take away probative value of ocular evidence – Order of High Court setting aside order of acquittal of Trial Court upheld Appeal dismissed.

❖ **(2008) 6 MLJ 832 (SC)**

**United India Insurance Co. Ltd. Vs. Ajay Sinha and Another.**

(A) Constitution of India (1950), Article 39A – Legal – Services Authorities Act (39 of 1987), Sections 22-A, 22-B, 22-C (8), 22-D- Indian Penal Code (45 of 1860), Sections 479, 460 – Interpretation – Burglary in respondent shop – Claim of respondent repudiated – Application to hear before Permanent Lok Adalat – Issue raised as to pecuniary jurisdiction and criminal case pending – over ruled – High court reversed but Division Bench held criminal case pending is no bar – Genuineness of the claim itself in dispute – Provisions which limit Permanent Lok Adalat – Terms “relating to” an “offence” must be interpreted broadly – This case falls outside the jurisdiction of Permanent Lok Adalat – Appeal allowed.

❖ **(2008) 6 MLJ 842 (SC)**

**Jagdish Singh Vs. Madhuri Devi**

(A) Hindu Marriage Act (25 of 1955), Section 13(1) – Divorce petition by husband – On grounds ‘cruelty’ and ‘desertion’ – Wife allegedly insisted on living separately from-in-laws was rude to in-laws, causing mental agony to appellant – Finally leaving matrimonial home in appellant’s absence – Taking all her jewellery but leaving minor daughter behind – Not responding to appellant’s entreaties to her to return home – Filing suit just to harass appellant, alleging appellant likely to marry second time – Not caring even to attend daughter’s marriage although informed of same – Family Court granting divorce – High Court allowing appeal by wife – In Civil Appeal, held, High Court’s order ‘cryptic’ – High Court not recorded reasons by reversing Family Court’s Judgment – High Court not considered entire evidence but relied on defence evidence – Although Family Court recorded reasons for not relying on same – High Court wrong in observing no cruelty on desertion by wife – High Court to bear in mind, Family Court observed demeanour of witnesses, applied its mind and arrived at its conclusions – High Court to deal with said conclusions and reasons recorded therefore – High Court failed to do same – Matter remanded to High Court for fresh disposal in accordance with law.

**HIGH COURT CITATIONS**

❖ **(2008) 6 MLJ 562**  
**M.Saraswathy Vs. Poosari K.Palanisamy**

(A) Code of Civil Procedure (5 of 1908), Section 100 – Second Appeal – Land assigned by Government in favour of plaintiff – Suit for permanent injunction by plaintiff/appellant – Suit for cancellation of patta issued in favour of plaintiff/appellant by defendant/respondent – Dismissal of both suits – Appeal preferred by plaintiff/appellant before lower appellate Court dismissed – Second Appeal – Substantial questions involved are 1) Whether Courts below right in dismissing suit on basis of subsequent events 2) Whether contentions of respondent barred by principles of res judicata – Held, since settled conditions have been violated by appellant, no impediment for cancellation of patta by R.D.O. – Respondent got every right to agitate the appeal preferred by appellant before lower appellate Court – No interference with concurrent findings of lower Courts.

❖ **(2008) 6 MLJ 523**  
**Harakh Chand Golecha, Chennai and Another Vs. Sri Chandraprabha Jain Swetamber Temple, rep. by its Potedar R.Prakash Chand Golecha, Chennai & Another.**

Code of Civil Procedure (5 of 1908), Section 92 – Leave to sue dismissed – Challenged – Suit for approval of scheme of the trust first respondent temple – Alleged written constitution of the trust was not implemented – Respondents contended temple is a private temple, hence Section 92, Code of Civil Procedure (5 of 1908) will not be attracted – Necessary ingredients of Section 92 fulfilled or not – Absence of pleading with respect to breach of trust – Plaint makes clear that for proper and efficient administration of temple and its properties, it became necessary to file suit – Ingredients satisfied – Matter remitted back with directions – OSA allowed.

❖ **(2008) 6 MLJ 735**  
**M.Shanmugam and Another Vs. M.Arumugam.**

Code of Civil Procedure (5 of 1908), Order 26, Rule 9 – Appointment of Advocate Commissioner – Application seeking appointment of Advocate Commissioner, dismissed on the ground of availability of report of Advocate Commissioner in an earlier suit between the same parties – Revision against that order – Report of the Advocate

Commissioner in the earlier suit pertains to physical features and nothing to do with the present requirement of inspection – Certain factors need to be elucidated with the help of Advocate Commissioner – Dismissal of application, not proper – Revision allowed.

❖ **(2008) 6 MLJ 513**  
**Chairman, Tamil Nadu Electricity Board, Chennai and Others Vs. D.V.Cholan**

Constitution of India (1950), Articles 226, 14, 16 – Compassionate appointment – Petitioners' mother appointed after death of employee –Mother opting or VRS – Thereafter appointment given to petitioner/son – Challenged – Particulars about mother's employment not disclosed in application – Object underlying compassionate appointment – To tide over immediate financial stringency in which family is thrown on sudden demise of sole bread is thrown on sudden demise of sole bread-earner – But family not under financial stringency – No justification for getting compassionate appointment – Writ appeal allowed.

❖ **(2008) 6 MLJ 534**  
**S.Panchatcharam Vs. S.Sambandha Mudhaliar and Another**

Limitation Act (36 of 1963), Section 5 – Suit dismissed for non-prosecution – Delay of 1657 days in setting aside the order of dismissal – Dismissed as no satisfactory explanation was given – Challenged – Except bald allegation that counsel responsible, delay not explained satisfactorily – Order needs no interference.

❖ **(2008) 6 MLJ 539**  
**A.Gunasekaran Vs. K.Damayanthi**

Specific Relief Act “(47 of 1963), Sections 16 and 20 – Suit for specific performance – Question whether time is the essence of the contract – Parties had agreed to complete the contract – Parties had agreed to complete the contract within a particular time – Intention to make time the essence of the contract, expressed in unequivocal terms – Purchaser failed to perform his part of the contract within the stipulated time – Contract

is voidable at the option of the seller – Purchaser is not entitled to the relief of specific performance – Appeal dismissed.

❖ **(2008) 6 MLJ 587**  
**Periyaya Vs. M.Rajagopal and Another**

(A) Specific Relief Act “(47 of 1963), Section 20 – Relief specific performance – Discretion of Court – Exhibit A-1 is only a receipt acknowledging receipt of a sum – There is no recital to show that the property was agreed to be sold at a particular rate – Jurisdiction to decree specific performance is discretionary – Court is not bound to grant such relief merely because it is lawful to do so – Person who seeks specific performance, should come to Court with clean hands and divulge the entire matter – Plaintiff should prove that he was ready and willing to perform his part of the contract at all times – One party cannot take unfair advantage over another – If the plaintiff has not approached the Court with clean hands, Court is free to deny the relief of specific performance – On facts held that the plaintiff is not entitled to the relief performance

❖ **(2008) 6 MLJ 597**  
**Udhayakumar Vs. Krishnamoorthy @ S.K.Moorthy**

(A) Specific Relief Act (47 of 1963), Sections 34 and 38 – Plaintiff seeking declaration that he is entitled to construct dilapidated building and for consequential relief of permanent injunction – Suit dismissed in entirety by Trial Court – First Appellate Court granting decree for injunction alone, after rejecting the claim for declaratory relief – Plaintiff seeks injunction against the lawful owner – Relief of injunction consequential to the declaratory relief – Main relief of declaration has been rejected concurrently and not challenged – Consequential relief of injunction cannot be granted – Judgment of First Appellate Court, set aside.

❖ **(2008) 3 MLJ (CrI) 241**  
**M.Palani Vs. Meenakshi**

Protection of Women from Domestic Violence Act (43 of 2005), Sections 2(a), 2(f), 2(q), 12(1), 20 read with Section 26 – Order of interim maintenance challenged – Factum of marriage disputed – Admitted sexual intercourse existed between parties – Domestic relationship existed between parties – Both of them have at least shared household at the time of having sex – Report of Protection Officer not obtained – Report

not necessary when order passed by civil court or family Court – No interference called for.

❖ **(2008) 3 MLJ (Crl) 517**  
**S.K.Abdul Khader Vs. Lubaina Farzana and Others.**

Code of Criminal Procedure, 1973 (2 of 1974), Section 125 – Muslim Women (Protection of Rights on Divorce ) Act (25 of 1986), Sections 3 and 5 – Petition by first respondent seeking maintenance – Impugned order of trial Court directing payment of maintenance – Revision Petition – Petition was filed by first respondent under Section 125 Cr.P.C. without accepting validity of talaq – As such, Special Act not attracted – Trial Court has not given any finding that there was valid talaq and first respondent is divorcee – In said circumstances only application filed by first respondent under Section 125 and order passed based on consent given by husband / petitioner – As such, order passed by trial Court could not be challenged by petitioner who had consented for paying maintenance amount – No infirmity in order passed by trial Court – Revision Petition dismissed.

❖ **(2008) 3 MLJ (Crl) 578**  
**Dr.L.Prakash Vs. Superintendent, Puzhal Central Prison-1,**  
**Puzhal, Chennai.**

Constitution of India (1950), Article 226 – Tamilnadu Prison Rules, 1983, Rule 298 – Habeas Corpus Petition – Petition by life convict who is orthopaedic surgeon seeking provisions of personal computer or laptop at his own cost for his exclusive use inside prison – Petitioner not entitled to possess personal computer or laptop of his own in cell where he is lodged – Nevertheless his right to enrich himself in medical field could not be curtailed – As such, Superintendent of Central Prison directed to allow petitioner to use any of computers available in prison – Directions issued.

❖ **(2008) 6 MLJ 898**  
**R.S.Sivaswami Vs. S.Soundrammal**

Original Side Rules, 1956, Order 25 Rule 52, Order 25 Rule 52, Order 1 Rule 7 – Code of Civil Procedure (5 of 1908), Section 148-A – Original petition seeking probate of will – Filing of Caveat – Delay of ‘4’ days in filing affidavit in support of Caveat – Though affidavit was filed out of time, Court has the power to condone the delay, in the interest of justice – No infirmity in the order of the Single Judge – O.S.A. dismissed.

❖ **(2008) 6 MLJ 782**  
**P.K.Pandian Vs. Komala**

Indian Evidence Act (1 of 1872), Sections 65, 67, 74, 76 and 77 – Certified copy of power of attorney – Admissibility of, in evidence – Certified copy of the registered power of attorney, is a public documents are admissible in evidence – Trial Court not correct in rejecting the document on the ground that no proper factual foundation has been laid in the plaint for production of secondary evidence – Directions issued – Civil revision petition allowed.

❖ **(2008) 6 MLJ 363**  
**R.Nandakumar Vs. Dindigul Co-op. Housing Building Society Limited, rep. by its Secretary, Dindigul.**

Code of Civil Procedure (5 of 1908), Order 26 Rule 9, Order 41 Rule 27 – Scope of receiving additional evidence at appellate stage – Objections for commissioner report at trial Court filed belatedly – Basic principles requisite for admission of additional evidence at appellate Court not fulfilled – Appointment of Advocate Commissioner for the second time not permitted – Revision dismissed.

❖ **(2008) 6 MLJ 501**  
**International Sri Vaishnava Dharma Samrakshanaa Society, rep. by its President Sri Swami Govinda and Another. Vs. Censor Board, Chennai and Others.**

Constitution of India (1950), Articles 19(1)(a), 19(2), 226 – Film “Dasavatharam” alleged to consist of offending scenes such as clash between Saivaites and Vaishnavaites – Film yet to be released for public exhibition – Respondents reiterates that no such offending scenes – Censor board a statutory body, its certificate cannot be taken lightly – Apprehension of petitioners only on surmises – Title “Dasavatharam” not an intellectual

property and nobody can claim copyright – Freedom of expression cannot be curtailed on mere belief, myth and fiction – Writ petition dismissed.

❖ **(2008) 6 MLJ 346**

**E.R.Sathishkumar and Another Vs. K.S.Krishnamoorthy**

Indian Evidence Act (1 of 1872), Section 108 – Specific Relief Act (47 of 1963), Sections 34 and 35 – Suit filed to declare the plaintiffs' brother, as dead, in view of the fact that he was not known or heard about for more than 7 years – Suit returned by trial Court, on the grounds that the defendant was a relative and that the suit is not maintainable – Order challenged in revision – A decree for declaration is only a right in *personam* and not a right in *rem* – Plaintiffs have filed the suit with a view to get the benefits from the City Municipal Corporation, on account of termination of the services of their brother – Since the suit is not filed against the City Municipal Corporation, even if a decree is granted, it would not bind the City Municipal Corporation and would remain only as a paper decree – Hence, the suit framed is not maintainable – C.R.P. dismissed.