

**Vol-IV
Part-4**

April, 2009

IMPORTANT CASE LAWS

Compiled by

Tamil Nadu State Judicial Academy

Chennai – 28

HIGH COURT CITATIONS

❖ **2009-2-L.W. 385**
G.Rama Vs. T.G.Seshagiri Rao (D) by Lrs.

Hindu Succession Act (1956), Section 14(1) / Nature of the possession for applicability of the Section, Scope, **Hindu Adoption and Maintenance Act** (1956) Section 19.

Mere possession does not attract Section 14 – Held: As rightly contended by learned counsel for the respondent there was no issue framed regarding Section 14 of the Act; Even no evidence was led specifically to show that in lieu of maintenance she (appellant) was permitted to possess the property – It is relevant to note that the trial court made a reference to Section 19 of the ‘Maintenance Act’ – Unfortunately the High Court did not take note of Sub Section (2) of Section 19.

No evidence was led to substantiate the plea that the appellant was occupying the premises in lieu of maintenance – Appeal dismissed.

❖ **2009-2-L.W. 392**
A.Janaki Vs. J.John Kennedy

Hindu Marriage Act (1955), Section 7-A (Introduced by Tamil Nadu Act 21 of 1967) Special Marriage Act (1954), Sections 4 and 15/Suya Mariyadhai Marriage, Christian Marriage Act.

Suit was filed by husband (respondent in Second Appeal) praying for decree declaring that the defendant is not the wife of the plaintiff and he is a born CSI Christian

and the defendant is a born Hindu and due to compulsion, the marriage was conducted, and plaintiff printed a separate marriage invitation following the Christian customs and the defendant printed a separate marriage invitation in the Hindu Marriage form – According to the plaintiff, the marriage itself is void in law and they would not be considered as husband and wife in law that the Suyamariadhai marriage could be conducted only between two Hindus and not between a Hindu and a Christian – Held: findings rendered by the District Court in O.P.No.1 of 1995, on 02-07-1997 have become final and the same could not be re-opened now by filing another suit by differently wording the prayer and as the present suit is certainly barred by constructive res judicata.

Admittedly, prayer in the suit is to pass a judgment and decree declaring that the defendant is not the wife of the plaintiff, whereas the first appellate Court while allowing the appeal, granted a decree of declaring that the marriage which took place between the plaintiff and the defendant on 29.01.1992 is not valid.

Lower appellate court has lost sight of the prayer sought for by the plaintiff and definitely exceeded its jurisdiction to grant a new prayer which was not even asked for by the plaintiff in the plaint.

Suit has been filed as a counter-blast to the maintenance Petition filed by the wife in M.C.No.165 of 2005 – Plaintiff is guilty of suppression of facts and a person who is guilty of suppression of facts; and who does not come to the court with clean hands, does not deserve any sympathy from the temples of law – Second Appeal allowed.

❖ **2009-2-L.W. 398**
S.Subbiah Kone Vs. Shiek Mohammed

C.P.C., Order 18, R.3-A/Court's permission, Scope – revision was preferred by defendant against order of lower court dismissing applications (IAs) filed by him – First respondent filed the suit for declaration and for mandatory injunction, represented by his power of attorney and she was examined as P.W.1 at the first instance – After her cross-examination, the first respondent filed proof affidavit for his chief examination – Two applications were filed by defendant, one, to reject the chief examination produced by the first respondent on the strength of the absence of getting permission by the first respondent under Order 18, rule 3-A CPC, and another questioning the non-obtaining permission – Learned Principal District Munsif, Tirunelveli, dismissed both the applications – Held: at the time of trial what has prevented the plaintiff from examining himself at the first instance, has to be specifically pleaded by him and the same has to convince the Court also.

❖ **2009-2-L.W. 457**

Deivanai Ammal Vs. 1. Kumarayee 2.Panchavarnam 3. Sathuragiriyan

CPC Order 8, Rule 1, Stamp Act, Section 35 / Practice, Admissibility of, unregistered sale deed, scope – Petitioner filed an application under Order 8, Rule 1 (3) C.P.C Praying the court to receive and mark an un-registered sale deed dated. 13.03.1991 in evidence for collateral purpose – Learned District Munsif has dismissed the application by observing that since the document is an unregistered one and not sufficiently stamped, it could not be looked into even for collateral purpose – C.R.P. is field against that order.

Held: Document assailed, namely, unregistered sale deed has to be received at this stage and the respondents are at liberty to object it at the time of marking through defendants and the court below shall decide the legal enforceability of the document at the time of final hearing of the case.

❖ **2009-2-L.W. 460**

**V.K.John Vs. W.S. Seetharam, Prema Chandrasekhar,
T.R.T.Thirumalvasi.**

Original side Appeals filed under Order XXXVI Rule 11 of Original Side Rules read with Clause 15 of the Letters Patent against the order of the learned single judge dated. 30.09.2008, made in A.No.3317 of 2008 in C.S.No.423 of 1995 consequent upon the order dated. 30.09.2008 passed in A.No.3317 of 2008 in the said suit.

CPC., Order 7, Rule 11(d)/Rejection of plaint, at fag end of trial, whether permissible, (Indian) Succession Act (1925) – Appeals (OSAs) were preferred against order of rejection of Plaint – Appellant herein filed the suit for partition and separate possession of the suit properties – Third defendant filed the Application against the plaintiff/appellant and respondents 2 and 3 herein praying for rejection of plaint on the ground that originally the suit for partition was laid on the foundation that the plaintiff is entitled to the share of his father as per intestate succession, and now by amending the plaint, the plaintiff is projecting the case that he is entitled to get share in the suit properties by way of testamentary succession and that the plaint does not disclose any cause of action for the testamentary succession.

Held: An application under Order 7 Rule 11 (d) can be filed if the allegations in the plaint appeared to be barred by any law and for this purpose, the averments made in the plaint alone are relevant and the Court would not be entitled to consider the entire defence at this stage.

❖ **2009-2-L.W. 752**
C.Pazhamalai Pilli (died) Chellaperumal, Sivanesan, Kaliyaperumal
Kasilingam, Thiruvarakamoorthi Vs. W.S. Seetharam, Prema
Chandrasekhar, T.R.T.Thirumalvasi.

Easements Act (1882), Sections 15, 17-A/Right of path, Easements

by Prescription Models, stated.

Plaintiffs who are the residents, claimed easement right by prescription – Held: In a suit for injunction, based on a prescriptive easement, the Plaintiff must also seek a declaration that he has to acquired the prescriptive right of easement.

Acquiescence is the foundation of the right by prescription.

Question is whether, it could be held that the plaintiffs have been using the road as of right – Plaintiffs and other villagers have access to the suit pathway as of right for more than 20 years – Evidence show uninterrupted than 20 years – Evidence show uninterrupted user for a long years and presumption has to be raised that user has been 'as of right' – Issuance of patta would not in any way weaken the evidentiary value of Ex.A11 FMB in which there is a clear mention of suit path.

Contention that user and enjoyment of the suit path would amount to total destruction of servient tenement rejected.

❖ **2009-2-L.W. 761**

V.S.Krishnan Vs. Government of Tamilnadu rep. by its Special Secretary, Finance Department, Fort St. George, Chennai – 9., The Registrar, City Civil Court, Chennai.

Constitution of India, Article 226/Medical Expenses / Reimbursement claims of State Government employee, Prescribing of 60 days period as time limit for making application, challenged as arbitrary,

Constitution of India, Article 14/Paragraph (a) of letter No.57995/Salaries/99-1 dated 10th October 1999, whereby the Special Secretary to Government prescribed time limit of 60 days from the date of discharge from the hospital for claiming medical reimbursement, held, arbitrary and illegal.

Tamilnadu Government Employees Health Fund Scheme/Financial Assistance, Order dated. 16.2.2008, Scope.

Writ Petition was filed by Court employee in the City Civil Court praying for declaration that the order passed by the 1st respondent in letter No.57995/Salaries/99-1 dated 10th October, 1999, in so far as prescribing 60 days time limit for making application for financial assistance under the Tamilnadu Government Employees Health Fund Scheme and the Order dated. 16th February, 2008 passed by second respondent, Registrar, City Civil Court, Chennai as illegal and arbitrary and consequent direction sought to be issued the respondents to reimburse the petitioner the medical expenses with 12% interest.

Held: Scheme for medical reimbursement under the Tamilnadu government Employees Health Fund Rules, 1991 is a beneficial legislation, wherein no time limit is fixed by the Government under the Rule – Government has no jurisdiction to frame a time limit of 60 days from the date of discharge from the hospital to file a claim for medical reimbursement – Impugned order dated 16th February 2008 passed by the Registrar, City Civil Court, Chennai being passed on the basis of clause (a) of the aforesaid illegal letter dated. 10th October 1999 is also set aside – Case remitted to the respondents.

Constitution of India, Article 14/Paragraph (a) of letter no. 57995/Salaries/99-1 dated. 10th October 1999 – See Constitution of India, Article 226/Medical Expenses/Reimbursement claims of State Government employee, Prescribing of 60 days.

Tamilnadu Government Employees Health Fund Scheme/Financial Assistance, Order/Financial Assistance, Order dated 16.2.2008, Scope – See Constitution of India, Article 226 / Medical expenses /Reimbursement claims of State Government employee, Prescribing of 60 days, Constitution of India, Article 14/Paragraph (A) of letter No.57995/Salaries/99-1 dated. 10th October 1999.

❖ **2009 (2) CTC 495**
Nandi Khanna and Another Vs. Suneel Aiyer and another.

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (18 of 1960), Sections 10(2)(i), 11(4) & 7(2) – Wilful Default – Whether tenant entitled to take shelter under Section 7(2) and seek adjustment of advance – Tenant is competent to ask landlord to adjust arrears of rent from advance amount when such advance is over and above one month's rent- Decision reported in K.Selvaraj V. J.Narayanan, 2008 (2) CTC 375, clarified and distinguished – On facts, arrears being over and above excess rental advance, held, tenant not entitled to seek adjustment and claim that no willful default has been committed.

❖ **2009-1-L.W. (Crl) 386**
Rev. Samuel D.Stephens and others Vs. Pastor A.Samuel Ramasamy.

Criminal Procedure Code, Section 363(5), 482, Criminal Rules of Practice, R.339/Certified Copies of documents, furnishing to accused, scope Criminal Trial/Certified copies, furnishing of, scope.

Crl. O.P. was filed seeking to set aside the Docket return in Copy Application and for a direction to the learned to the learned Judicial Magistrate No.II, Poonmallee to grant certified copies of documents filed along with the compliant –

Held: Order taking cognizance is a judicial order, and Section 363(5) is attracted – Accused is entitled to get a copy of part of the record of a criminal case to enable him to seek appropriate remedy before the higher forum – Accused cannot be deprived of his right to get certified copies of the document filed along with the complaint so as to defend himself in the case as long as such furnishing of certified copies would not prejudice the case of the respondent.

❖ **2009-1-L.W. (Crl) 394**
1.Rajagopal S/o. Pitchai 2. Daniel, S/o. Yovan, 3. Karmegal S/o Muhu Subramanian 4. Hussain @ Zakir Hussain S/o Husal Abdulkhaar 5.

Tamil @ Tamil Selvan S/o. Chinnaiya 6. Kasi @ Kasi Viswanathan S/o. Venkatchalam 7. Pattu Rajan S/o Natarajan 8. Sethu s/o Vasudevan 9. Muruganandam s/o Arumughm.

Vs.

The Inspector of Police, J-7, Velachery Police Station, Chennai. Crime No.1047 of 2001.

State Rep. by Inspector of Police, (Law and Order, J-7, Velachery Police Station, Chennai – 42.

Vs.

1. Rajagopal S/o. Pitchai 2. Daniel, S/o. Yovan, 3. Karmegal S/o. Muhu Subramanian 4. Hussain @ Zakir Hussain S/o. Husal Abdulkhaar 5. Kasi @ Kasi Viswanathan S/o. Venkatchalam 6. Pattu Rajan S/o Natarajan

Crl.A.No.637 of 2004 has been filed under Section 374 (2) Cr.P.C., and Crl.A No.748 of 2004 under Section 378 (1) Cr.P.C., against the Judgment of the Additional Sessions Judge, Chennai at Poonamallee in S.C.No.3 of 2003 dated. 26.4.2004

I.P.C., Sections 299 and 300, 302/Murder , Motive, Section 109 r/w 364, 304(1), 201.

Evidence Act, Sections 27/recovery, 32 /Circumstantial Evidence/”Last seen Theory”, benefit of doubt, when cannot be granted, scope,

Criminal P.C., Ss. 161, 464/Charge, framing of, Practice/Finger print, Super-Imposition test, Scope of, DNA Test, Benzidine Test, Scope.

❖ **2009-2-L.W. 304**

M.G.Sethurajan vs. C.Paramasivam

Constitution of India, Article 227/Practice, Adjourment, CPC., Order 7, Rule 11.

Civil Revision Petition is filed under Article 227 seeking a direction to the learned Principl District Munsif, Srivilliputtur, to dispose of I.A.No.1853 of 2005 in O.S.No.657 of 2004 at an early date – Suit was filed seeking a decree declaring the plaintiff’s right, title and interest in the suit property and grant permanent injunction.... – Petitioner – fifth defendant in the said Suit, filed I.A.No.1853 of 2005 and prayed for rejection of the plaint – Without passing orders, the said Interlocutory Application was totally adjourned

56 times by the learned Principal District Munsif, srivilliputhur and the case was being posted for clarification 35 times.

Learned Principal District Munsif, Srivilliputhur, is directed to dispose of I.A.No.1853 of 2005 on the next hearing date, i.e., on 04.03.2009 and if the same is not possible due to any reason, the said Interlocutory Application shall be disposed of on or before 31.3.2009.

Surya devi Rai V. Ram Chander Rai 2003- 3 L.W. 693 = 2003 MLF 60 (SC) – Referred to.

❖ **2009-2-L.W. 307**
Mittalal Vs. Revenue Divisional Officer, Office of the Revenue Divisional Officer, Kumbakonam

Constitution of India, Article 227/CPC., Order 26/Advocate Commissioner, appointment of, Ascertain market value in land acquisition matters, scope, Land Acquisition Act / Advocate Commissioner, appointment of.

Since there is no prohibition in appointing the Advocate Commissioner to ascertain the real market value of the land, the Order made in I.A.No.265 of 2007 in L.A.O.P.No.15 of 2006, on the file of the Learned Principal Subordinate Judge, Kumbakonam, is set aside – Civil Revision Petition allowed.

Sreekantan V & another V. The Revenue Divisional Officer, 2002-1-L.W. 620.

K.Krishna Reddy and others v.Special Deputy Collector, Land Acquisition Unit II, Lmd Karim Nagar, Andhrapradesh 1988 4 SCC 163; and Satheeshkumar v. Special Tahsildar (LA), reported in 2000-1 KLT 416: - Referred to.