A SHREYA VIDYARTHI

v.

ASHOK VIDYARTHI & ORS.

(Civil Appeal Nos. 3162-3163 of 2010)

B DECEMBER 16, 2015

[RANJAN GOGOI AND N.V. RAMANA, JJ.]

Hindu law – Hindu undivided family – Hindu widow – Role assigned – Held: Hindu Widow is not a coparcener in C *the HUF of her husband and, thus, cannot act as Karta of the HUF after the death of her husband – Hindu Widow can act as the Manager of the HUF in her capacity as the guardian of the sole surviving minor male coparcener – Two expressions Karta and Manager are not synonymous –* D *Expression 'Manager' may be understood as denoting a role distinct from that of the Karta – In a case where male adult coparcener has died and there is no male coparcener surviving or where the sole male coparcener is a minor, the HUF does not come to an end – Mother of the male* E *coparcener can act as the legal guardian of the minor and also look after his role as the Karta in her capacity as his (minor's) legal guardian – On facts, respondent was the only surviving male coparcener after the death of his father and was a minor – Materials on record indicate that the natural* F *mother of minor played a submissive role in the affairs of the joint family and the step mother played an active and dominant role in managing the said affairs, in her capacity as the step mother of the respondent and the said role was not opposed by the natural mother – Step mother had* G *purchased the suit property out of the joint family funds namely insurance money, thus, the suit property was a joint family property, the respondent was entitled to seek partition thereof and on that basis the apportionment of shares in the suit property between the respondent and the eighth*

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defendant-respondent's step sister's adopted daughter rightly made by the High Court. A

Dismissing the appeals, the Court

HELD: 1.1 The appellant came to be impleaded in the suit following the death of defendant No. 2 and thereafter on the death of defendant No. 1. From the facts recorded by the High Court it is clear and evident that the appellant had participated in the proceeding before the High Court at various stages through counsels. In its order the High Court observed that full opportunity of hearing on merits was afforded to the appellant. There can hardly be any justification to remand the matter to the High Court for a fresh consideration by setting aside the impugned order. [Para 14] [1200-C-D, F] B C

1.2 The affidavit of step mother in suit filed by natural mother discloses that she was looking after the family as the Manager taking care of the respondent No.1-step son; that she had received the insurance money following the death of her husband and the same was used for the purchase of the suit property. The virtual admission by the predecessor-in-interest of the appellant of the use of the insurance money to acquire the suit property is significant. The insurance amounts constitute the entitlement of all the legal heirs of the deceased though the same may have been received by step mother as the nominee of her husband. [Para 15] [1200-H; 1201-A-B, D] D E F

1.3 The fact that the family was peacefully living together at the time of the demise of the father; the continuance of such common residence for almost 7 years after purchase of the suit property in the year 1961; that there was peace and tranquility in the whole family were rightly taken note of by the High Court as evidence G

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A of existence of a joint family. The execution of sale deed in the name of step mother and the absence of any mention thereof that she was acting on behalf of the joint family has also been rightly construed by the High Court with reference to the young age of the respondent-21
B years which may have inhibited any objection to the dominant position of step mother in the joint family, a fact also evident from the other materials on record. The conclusion reached by the High Court on the issue of existence of a joint family is correct. [Para 16] [1202-E-
C G; 1203-A]

1.4 A Hindu Widow is not a coparcener in the HUF of her husband and, therefore, cannot act as Karta of the HUF after the death of her husband. The two expressions i.e. Karta and Manager may be understood
D to be not synonymous and the expression 'Manager' may be understood as denoting a role distinct from that of the Karta. Hypothetically, the case of HUF may be taken where the male adult coparcener has died and there is no male coparcener surviving or as in the facts of the
E instant case, where the sole male coparcener (respondent) is a minor. In such a situation obviously the HUF does not come to an end. The mother of the male coparcener can act as the legal guardian of the minor and also look after his role as the Karta in her
F capacity as his (minor's) legal guardian. [Para 18] [1203-G-H; 1204-A-B]

1.5 In the instant case, RV was the step mother of the respondent who at the time of the death of his father
G was a minor. The respondent was the only surviving male coparcener after the death of his father. The materials on record indicate that the natural mother of respondent, had played a submissive role in the affairs of the joint family and the step mother had played an
H active and dominant role in managing the said affairs.

The said role of step mother was not opposed by the natural mother. Therefore, the same can very well be understood to be in her capacity as the step mother of the respondent and, therefore, consistent with the legal position which recognizes a Hindu Widow acting as the Manager of the HUF in her capacity as the guardian of the sole surviving minor male coparcener. Such a role necessarily has to be distinguished from that of a Karta which position the Hindu widow cannot assume by virtue of her dis-entitlement to be a coparcener in the HUF of her husband. Regrettably the position remain unaltered even after the amendment of the Hindu Succession Act in 2005. [Para 20] [1204-F-H; 1205-A-C]

1.6 The apportionment of shares of the parties in the suit property made by the High Court, does not disclose any illegality or infirmity so as to justify any correction. Having held and rightly that the suit property was a joint family property, the respondent was found entitled to seek partition thereof and on that basis the apportionment of shares in the suit property between the respondent and the contesting eighth defendant was rightly made by the High Court in accordance with the reliefs sought in the suit. [Para 23] [1205-G-H; 1206-A]

Smt. Sarbati Devi & Anr. v. Smt. Usha Devi **1984 (1) SCC 424 : 1984 (1) SCR 992**; *Commissioner of Income Tax v. Seth Govindram Sugar Mills Ltd.* **AIR 1966 SC 24 : 1965 SCR 488**; *Controller of Estate Duty, Madras v. Alladi Kuppuswamy* **1977 (3) SCC 385 : 1977 (3) SCR 721**; *Sushila Devi Rampuria v. Income Tax Officer and Anr.* **AIR 1959 Cal 697 – referred to.**

Case Law Reference

1984 (1) SCR 992	**referred to**	**Para 15**
1965 SCR 488	**referred to**	**Para 17**

A **1977 (3) SCR 721 referred to Para 17**

AIR 1959 Cal 697 referred to Para 18

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3162-3163 of 2010

B From the Judgment and Order dated 12.08.2009 and 24.11.2009 of the High Court of Judicature at Allahabad in First Appeal No. 693 of 1987 and Civil Misc. Recall Application No. 262907 of 2009 in FA No. 693 of 1987

C Z. M. Naiyer, Sr. Adv., Satish Vig, Vikas Sachdeva, Ashutosh Sharma, Advs. for the Appellant.

S. B. Upadhyay, Sr. Adv., Vijaiendra Nigam, Y.K.S. Chauhan, Ms. Kumud Lata Das, V. Sushant Gupta, Dr. Kailash Chand, Advs. for the Respondents.

D The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. The appellant before us is the 8th Defendant in Suit No. 630 of 1978 which was instituted by the first-respondent herein as the plaintiff. The said suit filed E for permanent injunction and in the alternative for a decree of partition and separation of shares by metes and bounds was dismissed by the learned Trial Court. In appeal, the High Court reversed the order of the Trial Court and decreed the suit of the respondent-plaintiff with a further declaration that he is F entitled to 3/4th share in the suit property, namely, House No. 7/89, Tilak Nagar, Kanpur whereas the appellant (defendant No. 8 in the suit) is entitled to the remaining 1/4th share in the said property. Aggrieved, these appeals have been filed.

2. The relevant facts which will have to be noticed may G be enumerated hereinunder.

In the year 1937 one Hari Shankar Vidyarthi married Savitri Vidyarthi, the mother of the respondent-plaintiff. Subsequently, in the year 1942, Hari Shankar Vidyarthi was

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married for the second time to one Rama Vidyarthi. Out of the aforesaid second wedlock, two daughters, namely, Srilekha Vidyarthi and Madhulekha Vidyarthi (defendants 1 and 2 in Suit No. 630 of 1978) were born. The appellant-eighth defendant Shreya Vidyarthi is the adopted daughter of Srilekha Vidyarthi (since deceased) and also the legatee/ beneficiary of a Will left by Madhulekha Vidyarthi.

3. The dispute in the present case revolves around the question whether the suit property, as described above, was purchased by sale deed dated 27.9.1961 by Rama Vidyarthi from the joint family funds or out of her own personal funds. The suit property had been involved in several previous litigations between the parties, details of which may now require a close look.

4. In the year 1968 Suit No. 147/1968 was instituted by Savitri Vidyarthi (mother of the respondent-plaintiff) contending that the suit property being purchased from the joint family funds a decree should be passed against the daughters of Rama Vidyarthi from interfering with her possession. This suit was dismissed under the provisions of Order VII Rule 11 CPC on account of failure to pay the requisite court fee. In the said suit the respondent-plaintiff had filed an affidavit dated 24.2.1968 stating that he had willfully relinquished all his rights and interests, if any, in the suit property. The strong reliance placed on the said affidavit on behalf of the appellant in the course of the arguments advanced on her behalf needs to be dispelled by the fact that an actual reading of the said affidavit discloses that such renunciation was only in respect of the share of Rama Devi in the suit property and not on the entirety thereof. Consistent with the above position is the suit filed by the respondent-plaintiff i.e. Suit No. 21/70/1976 seeking partition of the joint family properties. The said suit was again dismissed under the provisions of Order VII Rule 11 CPC for failure to pay the requisite court fee. It also appears that Rama Vidyarthi

A the predecessor-in-interest of the present appellant had filed Suit No. 37/1969 under Section 6 of the Specific Relief Act for recovery of possession of two rooms of the suit property which, according to her, had been forcibly occupied by the present respondent-plaintiff. During the pendency of the aforesaid suit
B i.e. 37/1969 Rama Vidyarthi had passed away. The aforesaid suit was decreed in favour of the legal heirs of the plaintiff-Rama Vidyarthi namely, Srilekha and Madhulekha Vidyarthi on 4.2.1976.

5. It is in the aforesaid fact situation that the suit out of
C which the present appeals have arisen i.e. Suit No. 630 of 1978 was filed by the present respondent-plaintiff impleading Srilekha Vidyarthi (mother of the appellant) and Madhulekha Vidyarthi (testator of the Will in favour of the appellant) as defendants 1 and 2 and seeking the reliefs earlier noticed.
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6. The specific case pleaded by the plaintiff in the suit was that the plaintiff's father, Hari Shankar Vidyarthi, died on 14.3.1955 leaving behind his two widows i.e. Savitri Vidyarthi (first wife) and Rama Vidyarthi (second wife). According to
E the plaintiff, the second wife i.e. Rama Vidyarthi had managed the day to day affairs of the entire family which was living jointly. The plaintiff had further pleaded that Rama Vidyarthi was the nominee of an insurance policy taken out by Hari Shankar Vidyarthi during his life time and that she was also receiving a
F monthly maintenance of a sum of Rs. 500/- on behalf of the family from the "Pratap Press Trust, Kanpur" of which Hari Shankar Vidyarthi was the managing trustee. In the suit filed, it was further pleaded that Rama Vidyarthi received a sum of Rs. 33,000/- out of the insurance policy and also a sum of Rs.
G 15,000/- from Pratap Press Trust, Kanpur as advance maintenance allowance. It was claimed that the said amounts were utilized to purchase the suit property on 27.9.1961. It was, therefore, contended that the suit property is joint family property having been purchased out of joint family funds. The
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plaintiff had further stated that all members of the family including the first wife, the first respondent and his two step sisters i.e. Srilekha and Madhulekha Vidyarthi had lived together in the suit property. As the relationship between the parties had deteriorated/changed subsequently and the plaintiff-respondent and his mother (Savitri Vidyarthi) were not permitted to enter the suit property and as a suit for eviction was filed against the first respondent (37 of 1969) by Rama Vidyarthi the instant suit for permanent injunction and partition was instituted by the respondent-plaintiff.

7. The plaintiff's suit was resisted by both Srilekha and Madhulekha, primarily, on the ground that the suit property was purchased by their mother Rama Vidyarthi from her own funds and not from any joint family funds. In fact, the two sisters, who were arrayed as defendants 1 and 2 in the suit, had specifically denied the existence of any joint family or the availability of any joint family funds.

8. The Trial Court dismissed the suit by order dated 19.8.1997 citing several reasons for the view taken including the fact that respondent-plaintiff was an attesting witness to the sale deed dated 27.9.1961 by which the suit property was purchased in the name of Rama Vidyarthi; there was no mention in the sale deed that Rama Vidyarthi was representing the joint family or that she had purchased the suit property on behalf of any other person. The learned Trial Court further held that in the year 1955 when Hari Shankar Vidyarthi had died there was no joint family in existence and in fact no claim of any joint family property was raised until the suit property was purchased in the year 1960-61. The Trial Court was also of the view that if the other members of the family had any right to the insurance money such a claim should have been lodged by way of a separate suit. Aggrieved by the dismissal of the suit, the respondent-plaintiff filed an appeal before the High Court.

A 9. Certain facts and events which had occurred during the pendency of the appeal before the High Court will require a specific notice as the same form the basis of one limb of the case projected by the appellant before us in the present appeal, namely, that the order of the High Court is an ex-parte order
B passed without appointing a legal guardian for the appellant for which reason the said order is required to be set aside and the matter remanded for a *de novo* consideration by the High Court.

10. The first significant fact that has to be noticed in this
C regard is the death of Madhulekha Vidyarthi during the pendency of the appeal and the impleadment of the appellant as the 8th respondent therein by order dated 31.08.2007. This was on the basis that the appellant is the sole legal heir of the deceased Madhulekha. The said order, however, was curiously
D recalled by the High Court by another order dated 10.10.2007. The next significant fact which would require notice is that upon the death of her mother Srilekha Vidyarthi, the appellant-defendant herself filed an application for pursuing the appeal in which an order was passed on 16/18.05.2009 to the effect
E that the appellant is already represented in the proceedings through her counsel (in view of the earlier order impleading the appellant as legal heir of Madhulekha). However, by the said order the learned counsel was given liberty to obtain a fresh vakalatnama from the appellant which, however, was not
F so done. In the aforesaid fact situation, the High Court proceeded to consider the appeal on merits and passed the impugned judgment on the basis of consideration of the arguments advanced by the counsel appearing on behalf of the appellant at the earlier stage, namely, one Shri A.K.
G Srivastava and also on the basis of the written arguments submitted on behalf of the deceased Srilekha Vidyarthi. It is in these circumstances that the appellant has now, inter alia, contended that the order passed by the High Court is without appointing any guardian on her behalf and contrary to the
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provisions of Order XXXII Rules 3, 10 and 11 of the CPC. A

11. Insofar as the merits of the appeal are concerned, the High Court took the view that on the facts before it, details of which will be noticed in due course, there was a joint family in existence in which the second wife Rama Vidyarthi had played a predominant role and that the suit property was purchased out of the joint family funds namely the insurance money and the advance received from the Pratap Press Trust, Kanpur. Insofar as the devolution of shares is concerned, the High Court took the view that following the death of Hari Shankar Vidyarthi, as the sole surviving male heir, the respondent-plaintiff became entitled to 50% of the suit property and the remaining 50% was to be divided between the two wives of Hari Shankar Vidyarthi in equal proportion. Srilekha and Madhulekha Vidyarthi, i.e. defendants 1 and 2 in the suit, as daughters of the second wife, would be entitled to share of Rama Vidyarthi, namely, 25% of the suit property. On their death, the appellant would be entitled to the said 25% share whereas the remaining 25% share (belonging to the first wife) being the subject matter of a Will in favour of her minor grand-children (sons of the respondent-plaintiff), the respondent-plaintiff would also get the aforesaid 25% share of the suit property on behalf of the minors. Accordingly, the suit was decreed and the order of dismissal of the suit was reversed. B C D E

12. The aforesaid order of the High Court dated 12.08.2009 was attempted to be recalled by the appellant-8th defendant by filing an application to the said effect which was also dismissed by the High Court by its order dated 24.11.2009. Challenging both the abovesaid orders of the High Court, the present appeals have been filed. F G

13. Having heard learned counsels for the parties, we find that two issues in the main arise for determination in these appeals. The first is whether the High Court was correct in passing the order dated 24.11.2009 on the recall application H

A filed by the appellant and whether, if the appellant had really been proceeded ex-parte thereby rendering the said order untenable in law, as claimed, should the matter be remitted to the High Court for reconsideration. The second question arising is with regard to the order dated 12.08.2009 passed B by the High Court in First Appeal No. 693 of 1987 so far as the merits thereof is concerned.

14. The detailed facts in which the appellant-8th defendant came to be impleaded in the suit following the death of Madhulekha Vidyarthi (defendant No. 2) and thereafter on the C death of Srilekha Vidyarthi (defendant No. 1) has already been seen. From the facts recorded by the High Court in its order dated 24.11.2009 it is clear and evident that the appellant had participated in the proceeding before the High Court at various stages through counsels. Therefore, there is no escape from D the conclusion that the order passed in the appeal was not an ex-parte order as required to be understood in law. The appellant was already on record as the legal heir of Madhulekha Vidyarthi (defendant No. 2) and was represented by a counsel. The High court had passed its final order after hearing the said E counsel and upon consideration of the written arguments filed in the case. In its order dated 24.11.2009 the High Court has observed that full opportunity of hearing on merits was afforded to the appellant. Even before us, the appellant has been heard at length on the merits of the case. In these circumstances F there can hardly be any justification to remand the matter to the High Court for a fresh consideration by setting aside the impugned order.

15. Insofar as the merits of the order of the High Court is G concerned, the sole question involved is whether the suit property was purchased by Rama Vidyarthi, (defendant No.1) out of the joint family funds or from her own income. The affidavit of Rama Vidyarthi in Suit No. 147 of 1968 filed by Savitri Vidyarthi discloses that she was looking after the family as the

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Manager taking care of the respondent No.1, her step son i.e. the son of the first wife of Hari Shankar Vidyarthi. In the said affidavit, it is also admitted that she had received the insurance money following the death of Hari Shankar Vidyarthi and the same was used for the purchase of the suit property along with other funds which she had generated on her own. The virtual admission by the predecessor-in-interest of the appellant of the use of the insurance money to acquire the suit property is significant. Though the claim of absolute ownership of the suit property had been made by Rama Vidyarthi in the aforesaid affidavit, the said claim is belied by the true legal position with regard to the claims/entitlement of the other legal heirs to the insurance amount. Such amounts constitute the entitlement of all the legal heirs of the deceased though the same may have been received by Rama Vidyarthi as the nominee of her husband. The above would seem to follow from the view expressed by this Court in ***Smt. Sarbati Devi & Anr. vs. Smt. Usha Devi***[1] which is extracted below. (Paragraph 12)

> "12. Moreover there is one other strong circumstance in this case which dissuades us from taking a view contrary to the decisions of all other High Courts and accepting the view expressed by the Delhi High Court in the two recent judgments delivered in the year 1978 and in the year 1982. The Act has been in force from the year 1938 and all along almost all the High Courts in India have taken the view that a mere nomination effected under Section 39 does not deprive the heirs of their rights in the amount payable under a life insurance policy. Yet Parliament has not chosen to make any amendment to the Act. In such a situation unless there are strong and compelling reasons to hold that all these decisions are wholly erroneous, the

[1] 1984 (1) SCC 424

A Court should be slow to take a different view. The reasons given by the Delhi High Court are unconvincing. We, therefore, hold that the judgments of the Delhi High Court in *Fauza Singh case* and in *Uma Sehgal case* do not lay down the law correctly.
B They are, therefore, overruled. We approve the views expressed by the other High Courts on the meaning of Section 39 of the Act and hold that a mere nomination made under Section 39 of the Act does not have the effect of conferring on the
C nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid
D discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them."

16. The fact that the family was peacefully living together
E at the time of the demise of Hari Shankar Vidyarthi; the continuance of such common residence for almost 7 years after purchase of the suit property in the year 1961; that there was no discord between the parties and there was peace and tranquility in the whole family were also rightly taken note of by
F the High Court as evidence of existence of a joint family. The execution of sale deed dated 27.9.1961 in the name of Rama Vidyarthi and the absence of any mention thereof that she was acting on behalf of the joint family has also been rightly construed by the High Court with reference to the young age
G of the plaintiff-respondent (21 years) which may have inhibited any objection to the dominant position of Rama Vidyarthi in the joint family, a fact also evident from the other materials on record. Accordingly, there can be no justification to cause any

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interference with the conclusion reached by the High Court on the issue of existence of a joint family.

17. How could Rama Vidyarthi act as the Karta of the HUF in view of the decision of this Court in ***Commissioner of Income Tax vs. Seth Govindram Sugar Mills Ltd.***[2] holding that a Hindu widow cannot act as the Karta of a HUF which role the law had assigned only to males who alone could be coparceners (prior to the amendment of the Hindu Succession Act in 2005). The High Court answered the question in favour of the respondent-plaintiff by relying on the decision of this Court in ***Controller of Estate Duty, Madras Vs. Alladi Kuppuswamy***[3] wherein the rights enjoyed by a Hindu widow during time when the Hindu Women's Rights to Property Act, 1937 remained in force were traced and held to be akin to all rights enjoyed by the deceased husband as a coparcener though the same were bound by time i.e. life time of the widow (concept of limited estate) and without any authority or power of alienation. We do not consider it necessary to go into the question of the applicability of the ratio of the decision in ***Controller of Estate Duty, Madras (supra)*** to the present case inasmuch as in the above case the position of a Hindu widow in the co-parcenary and her right to co-parcenary property to the extent of the interest of her deceased husband was considered in the context of the specific provisions of the Estate Duty Act, 1953. The issue(s) arising presently are required to be answered from a somewhat different perspective.

18. While there can be no doubt that a Hindu Widow is not a coparcener in the HUF of her husband and, therefore, cannot act as Karta of the HUF after the death of her husband the two expressions i.e. Karta and Manager may be understood to be not synonymous and the expression "Manager" may be understood as denoting a role distinct from

[2] AIR 1966 SC 24
[3] [1977 (3) SCC 385]

A that of the Karta. Hypothetically, we may take the case of HUF where the male adult coparcener has died and there is no male coparcener surviving or as in the facts of the present case, where the sole male coparcener (respondent-plaintiff - Ashok Vidyarthi) is a minor. In such a situation obviously the HUF B does not come to an end. The mother of the male coparcener can act as the legal guardian of the minor and also look after his role as the Karta in her capacity as his (minor's) legal guardian. Such a situation has been found, and in our opinion rightly, to be consistent with the law by the Calcutta High Court C in ***Sushila Devi Rampuria v. Income Tax Officer and Anr.***[4] rendered in the context of the provisions of the Income Tax Act and while determining the liability of such a HUF to assessment under the Act. Coincidently the aforesaid decision of the Calcutta High Court was noticed in ***Commissioner of Income*** D ***Tax vs. Seth Govindram Sugar Mills Ltd. (supra).***

19. A similar proposition of law is also to be found in decision of the Madhya Pradesh High Court in **Dhujram v. Chandan Singh & Ors.**[5] though, again, in a little different context. The High Court had expressed the view that the word E 'Manager' would be consistent with the law if understood with reference to the mother as the natural guardian and not as the Karta of the HUF.

20. In the present case, Rama Vidyarthi was the step F mother of the respondent-plaintiff -Ashok Vidyarthi who at the time of the death of his father - Hari Shankar Vidyarthi, was a minor. The respondent plaintiff was the only surviving male coparcener after the death of Hari Shankar Vidyarthi. The materials on record indicate that the natural mother of Ashok G Vidyarthi, Smt. Savitri Vidyarthi, had played a submissive role in the affairs of the joint family and the step mother, Rama Vidyarthi i.e. second wife of Hari Shankar Vidyarthi had played an active and dominant role in managing the said affairs. The

[4] AIR 1959 Cal 697

H [5] 1974 MPL J554

aforesaid role of Rama Vidyarthi was not opposed by the natural mother, Savitri Vidyarthi. Therefore, the same can very well be understood to be in her capacity as the step mother of the respondent-plaintiff-Ashok Vidyarthi and, therefore, consistent with the legal position which recognizes a Hindu Widow acting as the Manager of the HUF in her capacity as the guardian of the sole surviving minor male coparcener. Such a role necessarily has to be distinguished from that of a Karta which position the Hindu widow cannot assume by virtue of her dis-entitlement to be a coparcener in the HUF of her husband. Regrettably the position remain unaltered even after the amendment of the Hindu Succession Act in 2005.

21. In the light of the above, we cannot find any error in the ultimate conclusion of the High Court on the issue in question though our reasons for the aforesaid conclusion are somewhat different.

22. Before parting we may note that the history of the earlier litigation between the parties involving the suit property would not affect the maintainability of the suit in question (630 of 1978). Suit No.37 of 1969 filed by Rama Vidyarthi was a suit under Section 6 of the Specific Relief Act whereas Suit No.147 of 1968 and Suit No. 21/70/1976 filed by first wife Savitri Vidyarthi and Ashok Vidyarthi, respectively, were dismissed under Order VII Rule 11 CPC on account of non-payment of court fee. In these circumstances, the suit out of which the present appeal has arisen i.e. Suit No. 630 of 1978 was clearly maintainable under Order VII Rule 13 CPC.

23. The apportionment of shares of the parties in the suit property made by the High Court, in the manner discussed above, also does not disclose any illegality or infirmity so as to justify any correction by us. It is our considered view that having held and rightly that the suit property was a joint family property, the respondent-plaintiff was found entitled to seek partition thereof and on that basis the apportionment of shares

A in the suit property between the plaintiff and the contesting eighth defendant was rightly made by the High Court in accordance with the reliefs sought in the suit.

24. For the aforesaid reasons, we do not find any merit in these appeals, the same are being accordingly dismissed. However, in the facts of the case we leave the parties to bear their own costs.

B

Nidhi Jain Appeals dismissed.

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SUBJECT INDEX

ADMINISTRATIVE LAW:

Administrative discretion – Held: Administrative discretion can never be unregulated, omnipotent and fanciful.

Lalaram & Others v. Jaipur Development Authority & Anr. 403

ANDHRA PRADESH POLICE (CIVIL) SUBORDINATE SERVICE RULES:

r.15.

(See under: Service Law) 897

ANTI-DUMPING:

Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 – rr.20, 21 and 13 – Levy of anti-dumping duty during the interregnum between the expiry of a provisional duty notification and the imposition of a final anti-dumping duty – Validity – Held: There can be no levy of anti-dumping duty in the "gap" or interregnum period between the lapse of the provisional duty and the imposition of the final duty – Customs Tariff Act – s.9A – General Agreement on Tariffs and Trade (GATT) – Art.VI – European Community Council Regulation No. 1225 of 2009 dated 30.11.2009.

Commissioner of Customs, Bangalore v. M/s. G.M. Exports & Others 848

ARBITRATION ACT, 1940:

(i) s.30 – Arbitration agreement between four business groups owned by four brothers (NK, AK, RK and MK) and their families – For affecting partition of the business into four equal lots – During pendency of the arbitral proceedings company petition filed by MK in Bombay High Court, wherein settlement regarding the partition of the properties was done between two brothers (MK and RK) – Another company case filed by RK in Rajasthan High Court – Arbitration award passed – AK filed application u/s 17 of Arbitration Act before Delhi High Court to make the award rule of the Court – Delhi High Court set aside the arbitration award in view of the orders of Bombay High Court and Rajasthan High Court – Held: When the courts of competent jurisdiction at Bombay and Rajasthan were allowed to proceed and decide the family arrangement, the proceedings and orders of those courts cannot be ignored on account of pendency of an award still waiting to be made rule of the Court – Award has to be set aside on the ground that it was otherwise invalid on the date it was being considered for being made rule of the Court – Agreement/settlement between the parties in 1994 and 1995 approved by Rajasthan High Court and Bombay High Court will prevail over the award as the award had not acquired the status of decree as it was yet not made rule of the Court – AK not honouring his undertaking to withdraw his application u/s.17 and attempt by his son to obstruct the scheme of family settlement of 1994 (while his father had signed the settlement as Head of the

family) were impermissible conduct of approbate and reprobate – Status of head of the family as a 'Karta' under Hindu Law deserves to be kept in mind – Junior members of the family are bound by decisions of 'Karta' in matters of family business and property unless proved that act of the 'Karta' was fraudulent and for immoral purpose – Settlements of 1994 and 1995 are affirmed – Orders passed by Delhi High Court upheld – Hindu Law – Companies Act, 1956.

(ii) s.30(c) – Ground under, for setting aside award – Scope of.

Rajni Sanghi v. Western Indian State Motors Ltd. & Ors. 217

BIHAR INDUSTRIAL AREAS DEVELOPMENT AUTHORITY ACT, 1974:

State of Bihar (predecessor-in-interest of the respondent State) transferred an interest in land admeasuring 350 acres for a period of 99 years by a document dated 18.3.1969 – To appellant-Company for setting up industry – Show Cause Notice issued by the Authority to appellant for surrender of unutilized 150 acres of land out of the allotted 350 acres of land by taking action u/s. 6(2-a) of the Act and Clause 4 (xiv) of the document dated 18.03.1969 – Subsequently 100 acres of the land out of the 150 acres was cancelled by order dated 17.11.2008 – Appellant-Company's writ petition against the order dated 17.11.2008 dismissed – Held: Respondent-Authority has the

power u/s. 6(2-a) to cancel the allotment of land only in the case of allotment made by it – In the case of property transferred by the State (prior to the Act) can be dealt with by the Authority only in terms of the original document by which the property was transferred – Clause (xiv) of the terms and Conditions of the document dated 18.3.1969 (by which the property in question was transferred by the State) does not contemplate taking possession of part of the land – It only contemplates termination of the Grant in the event of failure to use the land for specified purpose – Thus, it can only be invoked in case of total failure – Allottee-Company since established the industry, cannot be said not to have utilised the land for specified purpose – Clause (xiv) r/w clause (v) shows that it was never intended by the Grant that every inch of the land must be utilised for the purpose of establishment of industry.

Tata Steel Ltd. v. State of Jharkhand & Others 1

BIHAR SPECIAL COURTS ACT, 2009:

(i) Special Courts under – Establishment of – Held: The establishment of Special Courts under the Bihar Special Courts Act is not violative of Art. 247 of the Constitution – Constitution of India, 1950 – Art. 247.

(ii) Chapter III – Confiscation of property or money or both – Held: Chapter III of the both the Acts, namely, Orissa Special Courts Act, 2006 and Bihar Special Courts Act, providing for confiscation of property or money or both neither violates Article 14 nor Article 20(1) nor Article 21 of the Constitution – Constitution of India, 1950 – Arts.

14, 20(1) and 21.
(iii) Provision relating to appeal – Held: The provision relating to appeal in the Act is treated as constitutional on the basis of reasoning that the power subsists with the High Court to extend the order of stay on being satisfied.
(Also see under: Orissa Special Courts Act, 2006 as also under: Bihar Special Courts Rules, 2010)

Yogendra Kumar Jaiswal etc. v. State of Bihar & Ors. 1037

BIHAR SPECIAL COURTS RULES, 2010:
r.12(a) and (f) – Held: Sub-rules (a) and (f) of r.12 of the Bihar Special Court Rules being violative of the language employed in the Bihar Special Courts Act are ultra vires – Anything contained therein pertaining to the summary procedure is also declared as ultra vires the Bihar Special Courts Act – Bihar Special Courts Act, 2009.

Yogendra Kumar Jaiswal etc. v. State of Bihar & Ors. 1037

CENTRAL EXCISE ACT, 1944:
Export and Import Policy 1997-2002 – Notification no.8/97-CE dated 01.03.1997 – Benefit of the said Notification available to goods manufactured by EOU using indigenous raw material only – Assessee, if entitled to claim benefit of Notification no.8/97-CE.

M/s. Meridian Industries Ltd. v. Commissioner of Central Excise 35

CIRCULARS / GOVERNMENT ORDERS / NOTIFICATIONS:
Notification no.8/97-CE dated 01.03.1997.
(See under: Central Excise Act, 1944) 35

CODE OF CIVIL PROCEDURE, 1908:
(1) O.XXII – Manner in which the legal representatives of plaintiffs or defendants ought to be brought on record – Held: Rules of procedure under Order XXII CPC are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties – Procedure is meant only to facilitate the administration of justice and not to defeat the same.

Banwari Lal (D) by LRs. & Anr. v. Balbir Singh 287

(2) O.XLI, r 27, s. 115 – Revisional power – Exercise of – Production of additional evidence in appellate court – Held: It is clear from sub-rule (1) of r. 27 that the parties are not entitled to produce additional evidence whether oral or documentary in the appellate court, but for the three situations mentioned therein – Parties are not allowed to fill the lacunae at the appellate stage – On facts, no application was moved before the trial court seeking scientific examination of the document, nor can it be said that the appellant with due diligence could not have moved such an application to get proved the documents relied upon by him – When appeal was pending before the lower appellate court, the High Court, in revision, should not have

interfered in the matter of requirement of additional evidence – Thus, order passed by the High Court set aside – However, the first appellate court directed to decide the application for additional evidence afresh.

A. Andisamy Chettiar v. A. Subburaj Chettiar 190

(3) Necessary party.
(See under: Doctrines/Principles) 565

CODE OF CRIMINAL PROCEDURE, 1973:

(1) s.278 – Rape case – Recording of testimony of prosecutrix through video conferencing – Complainant prosecutrix-PW5 a citizen of Ireland filed a complaint against appellant alleging rape – Four witnesses examined before examining PW5 – Trial court accepted prayer to record testimony of PW5 through video conference – Appellant challenged the procedure adopted by trial court, while recording the statement of PW5 through video conferencing by filing petition u/s.482 Cr.P.C. – High Court laid down procedure for recording such statement – In the instant appeal, appellant alleged that the procedure postulated by High Court was not fair to him – Held: In addition to the steps and safeguards provided in the impugned order, further parameters require to be adopted, while recording the statement of PW5 – Plea that recording of the video-graphic testimony of the witness should be furnished to the appellant is rejected.

Sujoy Mitra v. State of West Bengal 920

(2) (i) s.432(7) & (6) – Whether s.432(7) CrPC clearly gives primacy to the Executive Power of the Union and excludes the Executive Power of the State where the power of the Union is coextensive – Whether the Union or the State has primacy over the subject-matter enlisted in List III of the Seventh Schedule to the Constitution of India for exercise of power of remission – Whether there can be two Appropriate Governments in a given case u/ s.432(7) CrPC – Held (per majority): The status of Appropriate Government whether Union Government or the State Government will depend upon the order of sentence passed by the Criminal Court as has been stipulated in s.432(6) and in the event of specific Executive Power conferred on the Centre under a law made by the Parliament or under the Constitution itself then in the event of the conviction and sentence covered by the said law of the Parliament or the provisions of the Constitution even if the Legislature of the State is also empowered to make a law on the same subject and coextensive, the Appropriate Government will be the Union Government having regard to the prescription contained in the proviso to Art.73(1)(a) of the Constitution – Cases which fall within the four corners of s.432(7)(a) by virtue of specific Executive Power conferred on the Centre, the same will clothe the Union Government the primacy with the status of Appropriate Government – Barring cases falling u/s.432(7)(a), in all other cases where the offender is sentenced or the sentence order is passed within the territorial jurisdiction of the concerned State, the State Government would be

the Appropriate Government – Constitution of India, 1950 – Seventh Schedule, List III –Sentence / Sentencing – Remission.

(ii) s.432(1) and (2) – Whether suo motu exercise of power of remission u/s.432(1) is permissible in the scheme of the section, if yes, whether the procedure prescribed in sub-section (2) of the same section is mandatory or not – Held(per majority): No suo motu power of remission is exercisable u/s.432(1) CrPC – It can only be initiated based on an application of the person convicted as provided u/s.432 (2) and that ultimate order of suspension or remission should be guided by the opinion to be rendered by the Presiding Officer of the concerned Court – Sentence / Sentencing – Remission.

(iii) s.435(1) – Whether the term "Consultation" stipulated in s.435(1) CrPC implies "Concurrence"'.

Union of India v. V. Sriharan @ Murugan & Ors. 613

(3) ss.432 and 433 – Whether the "Appropriate Government" is permitted to exercise the power of remission u/ss.432/433 CrPC after parallel power has been exercised by the President under Art.72 or the Governor under Art.161 or by this Court in its Constitutional power under Art.32 – Held (per majority): The exercise of power u/ss.432 and 433 of CrPC will be available to the Appropriate Government even if such consideration was made earlier and exercised u/Art.72 by the President or

u/Art.161 by the Governor –As far as the application of Art.32 of the Constitution by Supreme Court is concerned, the powers u/ss.432 and 433 are to be exercised by the Appropriate Government statutorily and it is not for the Supreme Court to exercise the said power and it is always left to be decided by the Appropriate Government – Sentence / Sentencing – Remission.

Union of India v. V. Sriharan @ Murugan & Ors 613

(4) s. 482 – Power of High Court under – Case of kidnapping, rape and murder of a girl aged 13/14 years – Summoning order against four accused – Challenge to – High Court quashed the summoning order on the ground that the statement of the witnesses recorded by the police were doubtful since they had been tendered about a month after the incident – Held: Statements of witnesses recorded, disclose a prima facie case, leading to an offence triable under the provisions of the Penal Code, as such cannot be overlooked – Reason for the delayed recording of statements disclosed in the daily diary report – Evaluation of the truth or falsity thereof, would be possible only after evidence is recorded, in the matter – At the present juncture to quash the proceedings initiated against the accused by quashing the summoning order in exercise of the power vested in the High Court u/s. 482 not made out – Order passed by the High Court set aside – Accused to appear before the Judicial Magistrate, in furtherance of the summoning order.

Madan Razak v. State of Bihar and Others 211

COMPANIES ACT, 1956:
(See under: Arbitration Act, 1940) 217

CONSTITUTION OF INDIA, 1950:
(1) (i) Arts. 14, 20(1) and 21.
(ii) Art. 247.
(See under: Bihar Special Courts Act, 2009) 1037

(2) (i) Arts. 14 and 20(3).
(ii) Arts. 14, 20(1) and 21
(iii) Art.199.
(iv) Art. 247.
(See under: Orissa Special Courts Act, 2006) 1037

(3) Art.51(c).
(See under: International Law) 848

(4) (i) Arts.142, 14 and 21 – Powers under Art. 142 – Nature and extent of the power – Discussed.

(ii) Art.166 – Executive power of the State – Scheme of executive functioning – Conduct of business of the Government of a State – Valid executive decision in terms of the Rules of Business – Held: Any decision to be construed as an executive decision as contemplated u/Art.166, would essentially has to be in accordance with the Rules of Business – The Rules depending upon the scheme thereof, may or may not, accord an inbuilt flexibility in its provisions in the matter of compliance.

(iii) Writ jurisdiction – Writ of mandamus – Features of.

Lalaram & Others v. Jaipur Development Authority & Anr. 403

(5) Art.166.
(See under: Land Acquisition) 403

(6) Article 226.
(See under: Contract) 91

(7) Art.226 – Right to assail appellate order in Writ jurisdiction – Concept of necessary and proper party – Respondent no.5 was allotted a fair price shop – The allotment was cancelled – He preferred appeal – Appellant got herself impleaded in the appeal on the ground that she had been subsequently allotted the shop after cancellation of the allotment of respondent no.5 – Appellate authority restored the allotment made to respondent no.5 and cancelled the allotment of appellant, the subsequent allottee – Appellant preferred Writ petition – High Court dismissed the same on ground that appellant had no right to continue the litigation being a subsequent allottee – Whether appellant was a necessary party to the lis and the Writ court was obliged to adjudicate the controversy on merits – Held: Appellant was neither a necessary nor a proper party – The appellate authority permitted her to participate but that neither changes the situation nor does it confer any legal status on her – No locus was conferred on appellant, the subsequent allottee, to challenge the order passed in favour of

the former allottee – She is a third party to the lis in this context – It was the first allottee who could have continued in law, if his licence would not have been cancelled – He was entitled in law to prosecute his cause of action and restore his legal right – Restoration of the legal right is pivotal and the prime mover – The eclipse being over, he has to come back to the same position – His right gets revived and that revival of the right cannot be dented by the third party.

Poonam v. State of U.P. & Ors. 565

(8) Art. 300A. (See under: Registration Act, 1908) 927

(9) Seventh Schedule, List III. (See under: Code of Criminal Procedure, 1973) 613

CONSUMER PROTECTION ACT, 1986:

s. 13(2)(a) – Procedure on admission of complaint – Limitation period for filing written statement or giving version of the opponent as per the provisions of s. 13(2)(a) – Held: Opposite party is given 30 days time for giving his version and the said period for filing or giving the version can be extended by the District Forum, but extension should not exceed 15 days – Three Judge Bench of this Court in *Dr. J.J. Merchant* case rightly held that the District Forum can grant a further period of 15 days to the opposite party for filing his version or reply and not beyond that.

New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd. 179

CONTRACT:

Tenders invited by Municipal Corporation for replacement of existing street lights by LED fittings – Appellant (one of the bidders) offered to reduce its price bid if exclusive advertising rights were given to it – Technical bid of the appellant accepted while that of the other bidder rejected – Work order issued to the appellant – Unsuccessful bidder challenged the grant of work order by filing writ petition – High Court quashed the work order – Held: Power u/Art. 226 of the Constitution should be cautiously exercised in the matters of awarding contracts keeping in mind the public interest – In the facts of the case, High Court erred in holding that work order was illegally given to the appellants – However, the Municipal Corporation was not justified in giving the advertisement rights to the appellants without inviting tender for it as the same was not part of the work for which tender was floated and was severable applying the doctrine of severability contained in s. 57 of Contract Act – Therefore, advertising rights given in the work contract is quashed while rest of the work contract is upheld – Constitution of India – Art. 226 – Judicial Review – Scope of – Contract Act, 1872 – s. 57 – Doctrine – Doctrine of severability.

(Also see under: Judicial Review and also Doctrines/Principles)

Elektron Lighting Systems Pvt. Ltd. and Anr. v. Shah Investments Financial Developments and Consultants Pvt. Ltd and Ors. Etc. 91

CONTRACT ACT, 1872:
s. 57 – Doctrine of severability.
(See under: Contract) 91

CUSTOMS TARIFF ACT:
s.9A.
(See under: Anti-Dumping) 848

CUSTOMS TARIFF (IDENTIFICATION, ASSESSMENT AND COLLECTION OF ANTI-DUMPING DUTY ON DUMPED ARTICLES AND FOR DETERMINATION OF INJURY) RULES, 1995:
rr.20, 21 and 13.
(See under: Anti-Dumping) 848

DIRECTIVE PRINCIPLES:
Directive Principles of State Policy.
(See under: International Law) 848

DOCTRINES/ PRINCIPLES:
(1) Doctrine of legitimate expectation – Applicability of – When – Discussed and explained.
(Also see under: Government Grants Act, 1895)

State of Uttar Pradesh and Others v. United Bank of India and Others 118

(2) Doctrine of natural justice – Applicability of – Held: Its applicability has to be adjudged regard being had to the effect and impact of the order and the person who claims to be affected; and that is where the concept of necessary party become significant – In absence of a necessary party, no adjudication can take place and, in fact, the non-

joinder would be fatal to the case – Code of Civil Procedure, 1908 – Necessary party.

Poonam v. State of U.P. & Ors. 565

(3) Doctrine of severability – Applicability of.
Elektron Lighting Systems Pvt. Ltd. and Anr. v. Shah Investments Financial Developments and Consultants Pvt. Ltd and Ors. Etc. 91

(4) Principle of '*ejusdem generis*' – Applicability of.

Rajni Sanghi v. Western Indian State Motors Ltd. & Ors. 217

EDUCATION / EDUCATIONAL INSTITUTIONS:
(1) Admission – Super-specialty courses – Reservation based on residence or institutional preference – Challenge to.

Dr. Sandeep S/o Sadashivrao Kansurkar and Others v. Union of India and Others 328

(2) Medical College – MBBS course – Application by Medical Institute-respondent no.1 – Seeking renewal of permission for increase in admission capacity of MBBS students for the academic year – Pursuant thereto inspection of Medical Institute – Certain deficiencies found and decision taken by Committee not to renew the permission for admission of increased students – Another inspection carried out, deficiencies found and the same decision conveyed – Writ petition – Direction by High Court to Medical Council of India-appellant

to conduct re-inspection of respondent no.1-Institute – Held: If infrastructure of any training institute is not sufficient to train and groom its students, even if they pass out at the final examination, may not turn out to be good professionals – Once the apex body supervising education in the field of medicine has set-up a particular set of standards, it would not be proper on the part of the judiciary to direct that body to digress from the standards so fixed – Since all the norms had not been fulfilled, which were necessary for the purpose of grant of permission to have 50 additional students, the High Court was not justified in directing the appellant to have additional inspection – Direction by the High Court was also not in consonance with the schedule of dates fixed – Thus, the direction given by the High Court is set aside – Establishment of Medical College Regulations, 1999.

Medical Council of India v. Mediciti Institute of Medical Sciences (MIMS) & Ors. 164

ESTABLISHMENT OF MEDICAL COLLEGE REGULATIONS, 1999:
(See under: Education / Educational Institution) 164

EUROPEAN COMMUNITY COUNCIL REGULATION NO. 1225 OF 2009 DATED 30.11.2009:
(See under: Anti-Dumping) 848

GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT):
Art.VI.
(See under: Anti-Dumping) 848

GOVERNMENT GRANTS ACT, 1895:

(1) ss. 2 and 3 – Transfer of Government land – Nazul land – Held: Land in dispute was a Government property (Nazul land) maintained by State authorities in accordance with Nazul Rules – Lessee is not authorised to transfer or sublet the demised premises without previous sanction of the lessor – Nothing on record to show that the lessee in the present case had obtained any written sanction from the lessor before mortgaging its leasehold interest in the property and hence the mortgage is bad in law – Appellant-Bank not being lessee of the land, cannot get any right over it – Mortgage decree is also bad in law as the same was passed without issuing notice to the State of U.P. – High Court erred in giving direction to convert the leasehold as freehold interest in favour of the Bank by applying doctrine of legitimate expectation – Doctrine could not have been applied in cases of invalid expectation – Nazul Rules – rr. 13 and 16 – Doctrine of Legitimate expectation.

State of Uttar Pradesh and Others v. United Bank of India and Others 118

(2) (i) Applicability of the Act – Held: The Act does not apply to instrumentalities and bodies corporate controlled by the State.
(ii) s.2 – Transfer of land or any interest therein by the Government – Is not governed by the Transfer of Property Act, 1882 – They are to be ascertained from the tenor of the document made by the Government evidencing such transfer.

Tata Steel Ltd. v. State of Jharkhand & Ors. 1

HIGHER JUDICIAL SERVICE RULES, 2009:

r.24 – Premature retirement – Of judicial officer – On the basis of his Annual Confidential Reports past records and other relevant material – Held: The Annual Confidential Report which formed the basis of premature retirement cannot be said to be a report in the eyes of law not being truthful assessment of the various constituents of the judicial officer's work and conduct – However, other considerations, apart from the Annual Confidential Reports, were sufficient justifying the premature retirement in terms of r. 24 when read in conjunction with Full Court Resolution of High Court – Judicial Service.

Shakti Kumar Gupta v. State of Jammu and Kashmir and Another 250

HINDU LAW:

(1) Hindu undivided family – Hindu widow – Role assigned – Held: Hindu Widow is not a coparcener in the HUF of her husband and, thus, cannot act as Karta of the HUF after the death of her husband – Hindu Widow can act as the Manager of the HUF in her capacity as the guardian of the sole surviving minor male coparcener – Mother of the male coparcener can act as the legal guardian of the minor and also look after his role as the Karta in her capacity as his (minor's) legal guardian – On facts, respondent was the only surviving male coparcener after the death of his father and was a minor – Materials on record indicate that the natural mother of minor played a submissive role in the affairs of the joint family and the step mother played

an active and dominant role in managing the said affairs, in her capacity as the step mother of the respondent and the said role was not opposed by the natural mother – Step mother had purchased the suit property out of the joint family funds namely insurance money, thus, the suit property was a joint family property, the respondent was entitled to seek partition thereof.

Shreya Vidyarthi v. Ashok Vidyarthi & Ors. 1190

(2) (See under: Arbitration Act, 1940) 217

HINDU SUCCESSION ACT, 1956:

s.14(1) – Right of Hindu female – If in a Will, suit property is given to wife by her husband to enjoy and hold the same by way of maintenance during her life time then by virtue of s.14(1) her limited right becomes absolute right to the suit property.

Jupudy Pardha Sarathy v. Pentapati Rama Krishna and Others 374

INTERNATIONAL LAW:

Treaty obligations – How domestic legislation must be construed when it is made in furtherance of an international treaty – Discussed – Constitution of India – Art.51(c).

Commissioner of Customs, Bangalore v. M/s. G.M. Exports & Others 848

INTERPRETATION OF STATUTES:

Exemption notification – Interpretation of – Held: To be given strict interpretation and unless

assessee able to make out a case in its favour, it is not entitled to claim benefit thereof.

M/s. Meridian Industries Ltd. v. Commissioner of Central Excise 35

JAIPUR DEVELOPMENT AUTHORITY ACT, 1982:
(See under: Land Acquisition) 403

JUDGMENTS / ORDERS:
Ratio decidendi – How to ascertain.

Poonam v. State of U.P. & Ors. 565

JUDICIARY:
(1) Higher judiciary.
(See under: Higher Judicial Service Rules, 2009) 250

(2) Higher judiciary – Appointment of Judges to the higher judiciary – Improvement in the working of the collegium system – Issuance of guidelines to make the collegium system of judges more transparent and accountable – Government of India to finalize the existing Memorandum of procedure (MOP) by supplementing it in consultation with the Chief Justice of India – The Chief Justice of India will take a decision based on the unanimous view of the collegiums comprising the four senior most puisne Judges of the Supreme Court – They would take into consideration suggestions on the issues of eligibility criteria, transparency in the appointment

process, Secretariat, complaints and other matters in the MOP.

Supreme Court Advocates-on-Record Association and Another v. Union of India 975

JUDICIAL REVIEW:

Scope of – In administrative decisions and exercise of powers in awarding contracts – Discussed. (Also see under: Contract)

Elektron Lighting Systems Pvt. Ltd. and Anr. v. Shah Investments Financial Developments and Consultants Pvt. Ltd and Ors. Etc. 91

JURISDICTION:

Territorial jurisdiction. (See under: Negotiable Instruments Act, 1881) 153

LAND ACQUISITION:

Rajasthan Land Acquisition Act, 1953 – Land of appellants had been compulsorily acquired, in the exercise of the State's power of eminent domain by invoking an expropriatory legislation – State Government was to purportedly allot developed land to the land oustees in lieu of compensation – However, plots offered to the appellants till now not developed – Procrastinated legal tussle spanning over three decades – Issue pertaining to adequate reparation to the appellants – Held: As per the successive circulars including the one dated

13.12.2001, it was incumbent on the State Government to allot developed land with all the essential attributes thereof – It would be indefensible and too farfetched for the respondents to contend that the circular dated 13.12.2001 cannot be construed to be a policy reflecting the executive decision as contemplated u/Art. 166 and is not enforceable, as the subject matter thereof had not been laid before the Chief Minister u/r.31 of the Rajasthan Rules of Business u/Art.166 of the Constitution – The predominant facts herein, justifiably demand a fitting relief modelled by law, equity and good conscience – In the singular facts and circumstances of the case and for the sake of complete justice, the appellants are entitled to be allotted their quota of 15% developed land in the terms of policy/circular dated 13.12.2001 in one or more available plots as enumerated by them in their affidavit dated 17.8.2015 – Respondents directed to accommodate them accordingly – Jaipur Development Authority Act, 1982 – Constitution of India, 1950 – Art.166 – Rajasthan Rules of Business u/Art.166 of the Constitution – r.31.

Lalaram & Others v. Jaipur Development Authority & Anr. 403

LAND LAWS:

Nazul Lands.
(See under: Government Grants Act, 1895) 118

LIMITATION:

(See under: Protection of Women from Domestic Violence Act, 2005) 65

LIMITATION ACT, 1963:
Article 91(a).
(See under: Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992) 993

MADRAS INSTITUTE OF DEVELOPMENT STUDIES (MIDS) FACULTY RECRUITMENT RULES, 2001:
(See under: Service Law) 276

M.P. CO-OPERATIVE SOCIETIES ACT, 1960:
(See under: Registration Act, 1908) 927

M.P. CO-OPERATIVE SOCIETIES RULES, 1962:
(See under: Registration Act, 1908) 927

M.P. VISHESH NYAYALAYA ADHINIYAM, 2011:
Retrospective applicability of – Discussed – Prevention of Corruption Act, 1988 – s.13(1)(e).

Ramendra @ Raman Dhuldhue v. State of Madhya Pradesh 985

MATRIMONIAL LAWS:
'Divorce' and 'Judicial Separation' – Distinction between.

Krishna Bhatacharjee v. Sarathi Choudhury and Anr. 65

NAZUL RULES:
rr. 13 and 16.
(See under: Government Grants Act, 1895) 118

NEGOTIABLE INSTRUMENTS ACT, 1881:

(i)ss. 138, 142 and 142A – Proceedings u/s. 138 – Territorial jurisdiction for – Held: s. 142(2)(a) as amended through the Negotiable Instruments (Amendment) Second Ordinance, 2015 vests jurisdiction for initiating the proceedings in the court where the cheque is delivered for collection, where the payee/holder of cheque maintains an account – Jurisdiction – Territorial jurisdiction.

(ii) s. 142A – Vis-a-vis provisions of Cr.P.C. – Overriding effect of – Held: In view of non-obstante clause in sub section (1) of s. 142A provisions of Cr.P.C. would have to give way to the provisions of the Act, on the issue of jurisdiction.

M/s Bridgestone India Pvt. Ltd. v. Inderpal Singh 153

ORISSA MINISTERIAL SERVICE (METHOD OF RECRUITMENT AND CONDITIONS OF SERVICE OF LOWER DIVISION ASSISTANT IN THE OFFICE OF DEPARTMENT OF SECRETARIAT) RULES, 1951:

rr.3, 9.

(See under: Service Law) 308

ORISSA SPECIAL COURTS ACT, 2006:

(i) Constitutionality of – Accumulation of extensive properties disproportionate to the known sources of income by persons who had held or are holding high political and public offices – Special Courts under the Act for speedy trial for certain class of offences and for confiscation of properties – Held:

The Orissa Special Courts Act is not hit by Art. 199 of the Constitution – Constitution of India, 1950 – Art.199.

(ii) Special Courts under – Establishment of – Held: The establishment of Special Courts under the Orissa Special Courts Act is not violative of Art. 247 of the Constitution – Constitution of India, 1950 – Art. 247.

(iii) ss.5 and 6 – Provisions pertaining to declaration and effect thereof – Held: The provisions pertaining to declaration and effect of declaration as contained in ss.5 and 6 of the Orissa Special Courts Act, and the Bihar Special Courts Act, are constitutionally valid as they do not suffer from any unreasonableness or vagueness – Bihar Special Courts Act, 2009.

(iv) Chapter III – Confiscation of property or money or both – Held: Chapter III of the both the Acts, namely, Orissa Special Courts Act and Bihar Special Courts Act, 2009, providing for confiscation of property or money or both neither violates Article 14 nor Article 20(1) nor Article 21 of the Constitution – Constitution of India, 1950 – Arts. 14, 20(1) and 21.

(v) Procedure for confiscation and proceedings before the Authorised Officer – Held: The procedure provided for confiscation and the proceedings before the Authorised Officer do not cause any discomfort either to Article 14 or to Article 20(3) of the Constitution – Bihar Special Courts Act, 2009 – Constitution of India, 1950 – Arts. 14 and 20(3).

(vi) Provision relating to appeal – Held: The provision relating to appeal in the Act is treated as constitutional on the basis of reasoning that the power subsists with the High Court to extend the order of stay on being satisfied.

(vii) s.18(1), proviso – Held: The proviso to s.18(1) of the Orissa Special Courts Act does not fall foul of Art.21 of the Constitution – Constitution of India, 1950 – Art.21.

(viii) s.19 – Held: The provisions contained in s.19 pertaining to refund of confiscated money or property does not suffer from any kind of unconstitutionality.

Yogendra Kumar Jaiswal Etc. v. State of Bihar & Ors. 1037

PENAL CODE, 1860:

(1) s.53 r/w s.45 – Whether imprisonment for life in terms of s.53 r/w s.45 of IPC meant imprisonment for rest of the life of the prisoner or a convict undergoing life imprisonment has a right to claim remission and whether as per the principles enunciated in paras 91 to 93 of Swamy Shraddananda (2) case, a special category of sentence may be made for the very few cases where the death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond application of remission – Held (per majority): Imprisonment for life in terms of s.53 r/w s.45 of IPC only means imprisonment

for rest of life of the convict – The right to claim remission, commutation, reprieve etc. as provided under Art.72 or Art.161 of the Constitution will always be available being Constitutional Remedies untouchable by the Court – The ratio laid down in Swamy Shraddananda case that a special category of sentence; instead of death can be substituted by the punishment of imprisonment for life or for a term exceeding 14 years and put that category beyond application of remission is well-founded – Constitution of India – Arts.72 and 161 – Sentence / Sentencing – Remission.

Union of India v. V. Sriharan @ Murugan & Ors. 613

(2) s.325 and s.320, Clause (7) – Offence of voluntarily causing grievous hurt – Appellant inflicted two lathi blows on the head of PW-2 – Trial Court convicted appellant u/s.302 IPC as also u/s.307 IPC – High Court set aside appellant's conviction u/s.302 IPC and modified his conviction u/s.307 IPC as conviction u/s.325 IPC – Held: PW-2 sustained fracture or dislocation of the bone which clearly falls in the category of grievous hurt as expressly mentioned in clause (7) of s.320 IPC – Having regard to the nature of injuries and the X-ray report, the High Court rightly convicted the appellant u/s.325 IPC.

Sakharam v. State of Madhya Pradesh & Anr. 269

(3) s.325.
(See under: Sentence/Sentencing) 269

PENSION REGULATIONS FOR THE ARMY 1961:

Regn. 173 – Entitlement Rules for Casualty Pensionary Awards, 1982 – Rule 12 and Notes (1) and (2) – Disability pension – Respondent was enrolled in Indian Army – During leave period, he went to stay at the house of his sister – While staying there, he accidentally fell down and sustained multiple injuries – He was invalidated from service – Respondent claimed disability pension – Armed Forces Tribunal held that he was entitled to disability pension for 75% disability from the date of invalidation – Held: The 1982 Entitlement Rules are beneficial in nature and ought to be liberally construed – But there has to be a reasonable causal connection between the injuries resulting in disability and the military service – On facts, the tribunal failed to appreciate that the accident resulting in injury to the respondent was not even remotely connected to his military duty and it falls in the domain of an entirely private act – Order of the tribunal accordingly set aside.

Union of India & Ors. v. 3989606 P, Ex-Naik Vijay Kumar 295

PREVENTION OF CORRUPTION ACT, 1988:

(1) s.13(1)(e) – Sanction to prosecute the accused – Grant of sanction – Validity.

Balbhadra Parashar v. State of Madhya Pradesh 987

(2) s.13(1)(e).
(See under: M.P. Vishesh Nyayalaya Adhiniyam, 2011) 985

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005:

ss. 2(a), 3(iv) and 12 – Application u/s. 12 – By the wife – Seeking seizure of Stridhan articles in possession of her husband – Dismissed on the grounds that the application was not maintainable as the wife has ceased to be an 'aggrieved person' u/s. 2(a) as the parties had been judicially separated and that the application was barred by limitation – Held: The Act being a legislation to provide for more effective protection of the rights of the women guaranteed under the Constitution, a more sensitive approach is expected from the Court – Before dismissing a petition under the Act, on the ground of its maintainability, there has to be a thorough deliberation on the issues raised – In the present case, the applicant-wife has not ceased to be an 'aggrieved person' u/s. 2(a) because even after decree of judicial separation marital status between the parties is not snapped – Retention of Stridhan by the husband is a continuing offence – As long as the marital status remains and Stridhan remains in the custody of husband, wife can always put forth her claim u/s. 12 – Application cannot be said to be barred by limitation.

Krishna Bhatacharjee v. Sarathi Choudhury and Anr. 65

RAJASTHAN RULES OF BUSINESS U/ART.166 OF THE CONSTITUTION:

r.31.

(See under: Land Acquisition) 403

REGISTRATION ACT, 1908:

s.69 – Jurisdiction of authorities under the Act – Whether the Deed of Extinguishment and the subsequent sale deeds registered by the Sub-Registrar under the Act could be cancelled by the Sub-Registrar or by his superior authority in exercise of powers conferred under the Act – Held (per curiam): In view of the difference of opinion, matter directed to be placed before Hon'ble the Chief Justice of India, for constituting appropriate Bench – M.P. Co-operative Societies Act, 1960 – M.P Co-operative Societies Rules, 1962 – Constitution of India – Art. 300A.

Satya Pal Anand v. State of M.P. and Others 927

RIGHT TO INFORMATION ACT, 2005:

ss.2(f), 8(1)(a), (d),(e) and 10(1) – Information under the Act – To what extent can be given – Whether can be denied to the public, by Reserve Bank of India on the ground of economic interest, commercial confidence and fiduciary relationship with other Banks – Held: All the information that the Government generates is not required to be given out to the public – Thus, RBI cannot be put in a fix, by making it accountable to every action taken by it – However, in the present case RBI is accountable – The disclosure of information sought for does not go against the economic interest of the nation – There is no relationship of 'trust' / fiduciary relation between RBI and other Banks – Even if it is held that RBI had fiduciary relationship with other Banks, s.2(f) would still make the