

Judiciary Digest

Current & Conceptual Weekly

9th September - 15th September, 2024

Property Rights Against Arbitrary Demolition.....	1
Overturns Dowry Death Conviction, Upholds Cruelty Charges.....	2
On Domestic Violence Victim Rights.....	3
Proving Property Claims Beyond Certified Copies.....	4
Past Exam Highlights.....	4
Clear Concept: Divorce by Mutual Consent under Hindu Marriage Act.....	7
Then vs Now: Completion of investigation under CrPC and BNSS.....	8

Property Rights Against Arbitrary Demolition

In a landmark decision in *Javedali Maheubmiya Saiyed v. State of Gujarat & Anr.*, the Supreme Court of India firmly opposed the demolition of properties based solely on allegations of criminal activity. The Court underscored the importance of adhering to the rule of law, stating that actions taken without due legal process are incompatible with the principles of justice.

Court's Observation on the Case

A three-judge bench consisting of Justices Hrishikesh Roy, Sudhanshu Dhulia, and SVN Bhatti presided over a petition brought forward by a Gujarat resident whose family home faced demolition after an FIR was lodged against a family member. The Court made it clear that an unproven criminal allegation against an individual does not warrant the demolition of a legally constructed property, emphasising that family members cannot be punished for the actions of others.

Rule of Law as the Cornerstone

The bench was unequivocal in its assertion: "In a country where actions of the State are governed by the rule of law, the transgression by a family member cannot invite action against other members of the family or their legally constructed residence." The Court reinforced that any criminal charge must be substantiated in court, and actions like demolition should only follow established legal procedures.

Demolition as an Unlawful Punitive Measure

Expressing concern, the Court referred to the demolition threats as "inconceivable in a nation where law is supreme." The judges warned that such actions could be perceived as undermining the legal framework, akin to "running a bulldozer over the laws of the land." This statement reflects the seriousness with which the Court views extrajudicial measures that circumvent proper legal channels.

Immediate Court Directions

In response to the petition, the Court issued a notice and directed that the status quo regarding the petitioner's property be maintained. The petitioner's counsel, Senior Advocate Iqbal Syed, provided evidence demonstrating the family's legal ownership and long-term residence in the property for over two decades. The Court's intervention ensures the property remains intact while legal proceedings continue.

Growing Judicial Concern over "Bulldozer Actions"

This ruling is consistent with a broader concern expressed by the Supreme Court regarding the use of demolitions as punitive measures. On September 2, 2024, another bench led by Justice BR Gavai indicated that pan-India guidelines might soon be formulated to prevent authorities from demolishing homes as a form of punishment without due process.

Overturms Dowry Death Conviction, Upholds Cruelty Charges

In the case of *Chabi Karmakar & Ors. vs. The State of West Bengal*, the Supreme Court overturned the dowry death conviction of a husband, sister-in-law, and mother-in-law, while maintaining the cruelty charges against the husband. The Court found insufficient evidence to link the wife's death to dowry demands, a crucial requirement under Section 304-B of the Indian Penal Code (IPC).

Lack of Evidence for Dowry Death Conviction

The prosecution failed to prove that the wife had been subjected to cruelty or harassment in relation to dowry demands shortly before her death. Although both the trial court and the High Court had sentenced the accused to life imprisonment for dowry death, the Supreme Court ruled that the connection between dowry demands and the death was not adequately established.

The Legal Criteria for Dowry Death

The bench, comprising Justices Sudhanshu Dhulia and JB Pardiwala, referred to the *Rajinder Singh vs. State of Punjab* (2015) case to outline the essential conditions for a conviction under Section 304-B of IPC:

1. The woman's death must be due to burns, bodily injury, or occur under abnormal circumstances.
2. The death must occur within seven years of marriage.
3. The woman must have experienced cruelty or harassment from her husband or relatives shortly before her death.
4. The cruelty or harassment must be connected to dowry demands.

Insufficient Evidence for Dowry Demand

After reviewing the evidence and witness testimonies, the Court found no explicit link between the alleged cruelty and dowry demands. General statements about dowry demands were not considered sufficient for a conviction under Section 304-B of IPC. The Court emphasised the need for concrete proof that the cruelty experienced by the wife was directly related to dowry demands.

Cruelty Charges Upheld

While the dowry death conviction was overturned, the Supreme Court upheld the husband's conviction under Sections 306 (abetment of suicide) and 498A (cruelty) of IPC. The husband was sentenced to three years of rigorous imprisonment and fined Rs. 25,000 for each count.

On Domestic Violence Victim Rights

In *X and Ors. v. The State and Anr.*, the Delhi High Court upheld a maintenance order under the Domestic Violence Act, dismissing an appeal by the husband and his family. The ruling reaffirmed that maintenance under the Domestic Violence (DV) Act is distinct from Section 125 of the Criminal Procedure Code, emphasising the Act's primary aim of providing swift relief to domestic violence victims, irrespective of the wife's financial independence.

Case Background: Maintenance and Rent Awarded

The trial court had ordered the husband to pay Rs. 15,000 per month as maintenance and an additional Rs. 10,000 for rent. The High Court agreed with the lower court's findings that there was prima facie evidence of domestic violence, in line with Section 23 of the DV Act, which empowers magistrates to grant interim orders when domestic violence is demonstrated or imminent.

Maintenance Calculation: Ensuring Fairness

One of the key points of contention was the husband's claim of reduced income. The court rejected these claims, noting a common tactic in matrimonial disputes where parties understate their earnings. The court confirmed that when exact income figures are unclear, it is reasonable to estimate based on lifestyle and other indicators, ensuring maintenance reflects the family's true financial standing.

Focus on Interim Maintenance: Prioritising Victim Safety

The court emphasised that any woman who can demonstrate prima facie evidence of domestic violence is entitled to interim relief. The judgement underlined the importance of securing immediate protection and financial support for potential victims, placing their safety and well-being ahead of extended financial investigations.

Husband's Obligations: Accountability in Maintenance

Addressing the husband's argument that he had to support his parents and children, the court found inconsistencies in his claim, particularly given his stated employment at his father's partnership firm. This discrepancy suggested a potential attempt to avoid appropriate maintenance payments, reinforcing the husband's responsibility to provide for his wife as required by law.

Precedents Supporting Maintenance Calculations

The High Court referred to prior rulings, such as *Bharat Hegde v. Saroj Hegde* and *Annurita Vohra v. Sandeep Vohra*, which support the court's discretion in estimating income based on available evidence. These precedents guide courts in determining maintenance when financial details are obscured or disputed, ensuring fairness in such rulings.

Proving Property Claims Beyond Certified Copies

In *H Mahadev vs. K N Rajamma & Others*, the Karnataka High Court ruled that beneficiaries of a gift deed must prove their property claims through witness testimony and cannot rely solely on certified copies of the deed. This landmark decision establishes important guidelines for proving property titles under gift deeds in court.

Section 90 of the Evidence Act: Limited Presumption

The case centred around Section 90 of the Indian Evidence Act (IEA), which allows courts to presume the authenticity of documents older than 30 years under certain conditions. The High Court clarified that while this presumption applies to the authenticity of documents, it does not replace the need to prove the execution of such documents through proper legal procedures.

Case Background: Contesting Property Ownership

In this case, the plaintiff claimed ownership of property inherited from her grandfather through her mother. However, the defendants argued that the property had been gifted to them by the plaintiff's mother through a registered gift deed. Initially, the trial court sided with the defendants based on certified copies of the gift and sale deeds.

The appellate court reversed this decision, pointing out that the trial court misapplied Section 90 by accepting certified copies instead of original documents. Moreover, the appellate court noted that the attester or scribe of the gift deed should have been examined, something the trial court failed to do.

Importance of Original Documentation and Witnesses

The High Court upheld the appellate court's decision, emphasising the significance of original documents in property disputes. Without the original gift deed in court, the plaintiff could not properly challenge its authenticity. To invoke the presumption under Section 90, the court explained that the document must be in the handwriting of the executant, which certified copies cannot verify.

Setting a Precedent: Thorough Documentation and Witness Testimony

This ruling underscores the critical role of original documentation and witness examination in establishing property claims. It highlights the limitations of relying solely on certified copies of legal documents, especially in complex property disputes. By clarifying the application of Section 90, the High Court sets a strong precedent for future cases involving gift deed beneficiaries and their property title claims.

Past Exam Highlights

Prelims

- | | |
|---|-----------------------|
| 1. Which is the biggest source of tax revenues for the Government of India? | (A) Entertainment tax |
| | (B) Gift tax |

- (C) Corporate (Corporation) tax
(D) Wealth tax

(C) Corporate (Corporation) tax

Explanation: The biggest source of tax revenues for the Government of India is corporate tax. It comprises a significant portion of the tax revenue and is essential for the fiscal health of the nation.

2. Give the correct response: 'Decree' includes
(A) any adjudication from which an appeal lies as an appeal from an order.
(B) return of plaint.
(C) rejection of plaint.
(D) any order of dismissal for default.

(D) Any order of dismissal for default.

Explanation: As per Section 2(2) of the Code of Civil Procedure, 1908, a decree does not include "any adjudication from which an appeal lies as an appeal from an order" or "an order of dismissal for default."

3. Point out the correct. A Plaint may be returned by the Court for amendment under
(A) Order 6 Rule 16 of C.P.C.
(B) Order 6 Rule 17 of C.P.C.
(C) Order 7 Rule 11 of C.P.C.
(D) Order 7 Rule 10 of C.P.C.

(B) Order 6 Rule 17 of C.P.C.

Explanation: Under Order 6 Rule 17 of the Code of Civil Procedure, 1908, the Court may allow a plaint to be amended at any stage of the proceedings.

4. A 'Caveat' remains in force
(A) before the expiry of Ninety days from the date on which it was lodged.
(B) after the expiry of Ninety days from making order of the Court of law.
(C) after the expiry of Ninety days when it comes to the knowledge of the other Party.

- (D) after the expiry of Ninety days from the date on which it was lodged.

(A) Before the expiry of Ninety days from the date on which it was lodged.

Explanation: As per Section 148A of the Code of Civil Procedure, a caveat remains in force for 90 days from the date it was lodged.

5. The Principle of Res Judicata is based on
(A) Substantive Law
(B) Law of Evidence
(C) Law of Principle
(D) Law of Procedure

(D) Law of Procedure

Explanation: The principle of Res Judicata is primarily procedural in nature and is governed by Section 11 of the Code of Civil Procedure, 1908.

6. 'Preliminary decree' may be passed in suits for
(A) Partition
(B) Pre-emption
(C) Dissolution of partnership
(D) All of the above

(D) All of the above

Explanation: Preliminary decrees may be passed in suits for partition, pre-emption, or dissolution of partnership, among other matters. (Section 2(2) Explanation, CPC)

7. The offence of personation at an election is punishable for imprisonment for
(A) one year or with fine or both.
(B) two years or with fine or both.
(C) five years or with fine or both.
(D) three years or with fine or both.

(B) Two years or with fine or both.

Explanation: As per Section 171F of the Indian Penal Code, personation at an election

is punishable with imprisonment for up to two years, or with fine, or with both.

8. Which among the following is a non-compoundable offence?

- (A) Section 147, I.P.C.
- (B) Section 298, I.P.C.
- (C) Section 334, I.P.C.
- (D) Section 491, I.P.C.

(A) Section 147, I.P.C.

Explanation: Section 147 (Rioting) of the Indian Penal Code is a non-compoundable offence.

9. The period of limitation for taking cognizable of the offence under section 323, I.P.C. is

- (A) six months
- (B) one year
- (C) two years
- (D) three years

(B) One year

Explanation: The period of limitation for taking cognizance of the offence under Section 323, I.P.C., is one year, as per the Limitation Act.

10. 'A' indulges voluntarily in sexual intercourse with a married woman 'B' without the consent of

her husband. 'B' is liable to be tried with 'A' as an

- (A) Abettor
- (B) Adulteress
- (C) Jointly as co-accused
- (D) None of the above

(D) None of the above

Explanation: Under the amended laws in India, adultery is no longer a criminal offence. Hence, neither 'A' nor 'B' would be criminally liable.

Mains

Discuss the 'doctrine of caveat emptor'. Does the Indian law recognise this doctrine? If so, to what extent? [15 Marks]

Ans. The doctrine of caveat emptor, which translates to "let the buyer beware," is recognized in Indian law through the Sale of Goods Act, 1930 (SOGA). This principle places the onus on buyers to exercise due diligence and examine goods before purchasing them.

Section 16 of SOGA explicitly incorporates caveat emptor, stating that there is no implied warranty or condition regarding the quality or fitness for any particular purpose of goods supplied under a contract of sale. This means that buyers are responsible for ensuring the goods meet their requirements and are free from defects.

However, the application of caveat emptor in Indian law is not absolute and is subject to several exceptions:

1. Fitness for purpose: If the buyer informs the seller about a particular purpose for which the goods are being purchased, and relies on the seller's skill or judgment, there is an implied condition that the goods shall be reasonably fit for that purpose.
2. Sale by description: In sales by description, there is an implied condition that the goods shall correspond to the description.

3. Merchantable quality: When goods are bought from a seller who deals in such goods, there is an implied condition that the goods are of merchantable quality.
4. Sale by sample: In sales by sample, there are implied conditions that the bulk shall correspond with the sample and that the buyer shall have a reasonable opportunity to compare the bulk with the sample.
5. Usage of trade: Any usage or custom of trade can negate the principle of caveat emptor.

Furthermore, the Consumer Protection Act, 2019, has significantly diluted the doctrine of caveat emptor by providing additional protections to consumers and imposing stricter liabilities on sellers and manufacturers.

In conclusion, while Indian law recognizes the doctrine of caveat emptor through SOGA, its application is limited by various statutory exceptions and evolving consumer protection laws. The trend in Indian jurisprudence has been towards greater consumer protection, shifting the balance from caveat emptor towards caveat venditor. ("let the seller beware")

Clear Concept: Divorce by Mutual Consent under Hindu Marriage Act

Divorce by mutual consent under the Hindu Marriage Act (HMA) is provided for in Section 13B. Here are the key aspects:

Requirements for Mutual Consent Divorce

1. The parties must have been living separately for at least one year before filing the petition.
2. They must mutually agree that the marriage should be dissolved.
3. The petition must be filed jointly by both parties.

Procedure

1. The parties file a joint petition in the district court.
2. After filing, there is a mandatory 6-month waiting period before the second motion can be made.
3. The second motion must be made within 18 months of filing the petition.
4. If the petition is not withdrawn and the court is satisfied after inquiry, it can pass a decree of divorce.

Key Judicial Interpretations

1. Consent Withdrawal: In *Sureshta Devi v. Om Prakash*, the Supreme Court held that consent can be unilaterally withdrawn by either party before the divorce decree is passed. The consent must continue until the decree is granted.
2. Waiving the Waiting Period: In *Amardeep Singh v. Harveen Kaur*, the Supreme Court ruled that the 6-month waiting period is directory, not mandatory. Courts can waive this period if:
 - The statutory 1-year separation period is already over.
 - All reconciliation efforts have failed.
 - The parties have genuinely settled their differences.
 - The waiting period would only prolong agony.

3. **Living Separately:** The term "living separately" does not necessarily mean living in different physical locations. It refers to not living together as husband and wife, even if under the same roof.
4. **Cooling-off Period:** The 6-18 month period between filing and decree is intended as a cooling-off period for the parties to reconsider their decision.
5. **Withdrawal of Consent:** If consent is withdrawn before the decree, the court cannot grant divorce by mutual consent. The other party would then need to file for divorce under other grounds in Section 13.
6. **Irretrievable Breakdown:** While not explicitly mentioned in the HMA, courts have used the concept of irretrievable breakdown of marriage in conjunction with mutual consent divorce to grant relief in appropriate cases.

The mutual consent divorce provision aims to provide a relatively simpler and less acrimonious way for couples to end their marriage when both agree it cannot continue. However, the courts still maintain safeguards to ensure the decision is well-considered and not taken in haste.

Then vs Now: Completion of investigation under CrPC and BNSS

Here are the key differences between the CrPC and BNSS regarding completion of investigation:

1. **Mandatory forensic investigation:**
 - The BNSS mandates forensic investigation for offences punishable with 7 years or more imprisonment.
 - This was not mandatory under the CrPC.
 - Forensic experts must visit crime scenes to collect evidence and record the process.
2. **Timelines:**
 - The BNSS prescribes specific timelines for different stages of investigation, which were not present in the CrPC.
 - For example, medical reports in rape cases must be forwarded to the investigating officer within 7 days.
3. **Electronic filing:**
 - The BNSS allows for electronic filing of FIRs, which must be signed by the complainant within 3 days.
4. **Videography:**
 - The BNSS makes videography of search and seizure mandatory, which was not required under CrPC.
5. **Use of technology:**
 - The BNSS emphasises greater use of technology in investigations, including audio-video recording of searches conducted without warrants.
6. **Progress updates:**
 - The BNSS requires informing the victim about the progress of investigation within 90 days, which was not specified in CrPC.
7. **Time limit for certain cases:**
 - The BNSS specifies a 60-day time limit for completion of investigation in rape and POCSO cases.

Overall, the BNSS aims to make investigations more time-bound, technologically advanced, and forensically rigorous compared to the CrPC. It introduces several new procedural requirements and timelines to expedite the investigative process.

