JUDICIARY WALLAH

LEGAL PULSE

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HIGHLIGHTS

- RECENT CASE LAWS
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5 Selections In Himachal Judiciary 2024 From Judiciary Wallah's Batches/IGP Program

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CASE LAWS 1

CIVIL LAW

2018 AMENDMENT TO THE SPECIFIC RELIEF ACT DOES NOT APPLY RETROSPECTIVELY

- **Case title: Annamalai v. Vasanthi and Others**
- **Bench: Justices JB Pardiwala and Manoj Misra**
- **Forum:** Supreme Court
- **Observations:**
  - The Supreme Court clarified that the 2018 amendment to the Specific Relief Act, 1963 (hereinafter 'SRA'), which made specific performance a mandatory relief, is prospective in nature and does not apply to suits or transactions predating its enforcement on 1 October 2018.
  - An agreement to sell was executed between the appellant-buyer and the respondent-vendor. Despite lacking termination rights and having accepted additional consideration after a six-month period had lapsed, the respondent attempted to terminate the contract. The buyer filed a suit for specific performance.
  - The appellant contended that acceptance of additional consideration demonstrated that the contract subsisted and that the subsequent termination was wrongful. The respondent argued that the suit was not maintainable as the buyer had not sought a declaratory relief challenging the termination.
  - The Trial Court dismissed the suit for specific performance, holding that absence of a declaration invalidating termination rendered the claim non-maintainable.
  - The First Appellate Court reversed the Trial Court, observing that acceptance of additional consideration amounted to a waiver of the right to terminate, and therefore specific performance could be directly sought.
  - The High Court, in a second appeal, restored the Trial Court ruling, prompting the buyer to approach the Supreme Court.
  - The Supreme Court observed that, prior to the 2018 amendment to the SRA, grant of specific performance was discretionary and governed by the law prevailing at the time of suit. Since the impugned judgment was delivered on 2 February 2018, prior to the amendment's commencement, the unamended law applied. The Court referred to **Katta Sujatha Reddy v. Siddamsetty Infra Projects (P) Ltd (2022),** clarifying that although that judgment was later reviewed and recalled, even the review did not state that the amended provisions would apply to pre-amendment suits.

- The Supreme Court further held that acceptance of additional money signified waiver of the right to forfeit/terminate and acknowledged the continuing existence of the contract, rendering the purported termination a wrongful repudiation. Thus, the buyer was entitled to seek specific performance without first obtaining a declaration.
- Accordingly, the High Court decision was set aside and the First Appellate Court's decree for specific performance was restored.

CONCEPT NOTE ON RELIEF OF SPECIFIC PERFORMANCE

- Specific performance is a statutory equitable remedy that compels a party to perform the contractual obligations promised, instead of merely paying damages for breach. It is granted where monetary compensation is not an adequate remedy (**Section 10** of the Specific Relief Act, 1963 (hereinafter 'SRA')).
- Under the SRA framework, Courts examine whether:
  - The contract is valid and enforceable,
  - The terms are certain and capable of performance, and
  - Damages would be insufficient to place the aggrieved party in the same position.
- Following the 2018 amendment, specific performance is treated as a more mandatory remedy than a discretionary one. Courts typically enforce performance except in circumstances expressly excluded under the statute.

IF THE PLAINTIFF IS NOT IN POSSESSION AND THE TITLE IS DISPUTED, A MERE SUIT FOR INJUNCTION IS INSUFFICIENT

- **Case title: S. Santhana Lakshmi & Ors. v. D. Rajammal**
- **Bench: Justices Ahsanuddin Amanullah and K. Vinod Chandran**
- **Forum:** Supreme Court
- **Observations:**
  - The matter concerned a suit for injunction under the Specific Relief Act, 1963 (hereinafter 'SRA'), where the plaintiff sought to restrain the defendant from alienating or interfering with the alleged peaceful enjoyment of the suit property, despite not being in possession and without seeking a declaration of title or recovery of possession.
  - The dispute arose between siblings over immovable property: the plaintiff claimed ownership on the basis of a Will purportedly executed by their father; the defendant asserted that the property was ancestral, held as joint family property, and that he was in possession pursuant to a family arrangement.
  - The plaintiff contended that the Will conferred full title upon her, and therefore injunction should be granted to prevent alienation and disturbance; the defendant argued that he was in admitted possession and asserted co-ownership, making a bare injunction suit not maintainable without a claim for declaration and recovery of possession.
  - The Trial Court accepted the Will, held in favour of the plaintiff, and granted injunctions restraining alienation and interference.
  - The First Appellate Court reversed the decree, finding the Will invalid and holding that the property was ancestral, thereby rejecting the plaintiff's claim.

- The High Court, in second appeal, restored the Trial Court's decree, holding title proved on the strength of the Will and applying the presumption that possession follows title.
- The Supreme Court observed that when possession is admitted to be with the defendant and title is in serious dispute, a suit seeking injunction simplicitor is not maintainable; in such circumstances, the proper remedy is a suit for declaration of title accompanied by consequential relief of possession under SRA.
- The Court emphasised that even if title were to be shown in favour of the plaintiff, absence of a prayer for recovery of possession renders a suit for mere injunction legally unsustainable, especially where the defendant simultaneously asserts ownership rights.
- Allowing the appeal, the Supreme Court held that the High Court erred in interfering with the First Appellate Court's decision, reaffirming that a plaintiff who lacks possession and whose title is disputed must necessarily seek declaratory relief and possession, and cannot rely solely on an injunction action.

CONCEPT NOTE ON INJUNCTION SUITS v. DECLARATORY SUITS

Injunction Suits (Sections 36–42 of the Specific Relief Act, 1963)

- An injunction is a preventive remedy meant to restrain or compel certain acts.
- A simple injunction suit may be filed when the plaintiff's possession is admitted or proved and the only threat is interference.
- The plaintiff may not always need to seek declaration if their title is not in dispute.

Declaratory Suits (Section 34 of the Specific Relief Act, 1963)

- A declaratory decree determines the legal character or right to property.
- It is necessary when the plaintiff's title is disputed, denied, clouded, or unclear.
- When the plaintiff seeks protection of possession and their title is questioned, a declaration + injunction is the proper remedy.

A DECISION RENDERED IN FAVOUR OF A DECEASED PARTY, WHOSE LEGAL HEIR WAS NOT BROUGHT ON RECORD, LACKS LEGAL VALIDITY

- **Case title: Vikram Bhalchandra Ghongade v. The State of Maharashtra & Ors.**
- **Bench: Justices P.S. Narasimha and A.S. Chandurkar**
- **Forum:** Supreme Court
- **Observations:**
  - The Supreme Court held that a judgment delivered in favour of a party who had died before the hearing of their case is legally inoperative, as such adjudication amounts to a nullity in law.
  - The plaintiff had succeeded before the Trial Court in a civil suit. The defendants filed a first appeal against the decree; however, both defendants died during the pendency of the appeal, prior to the appeal being heard. Despite no steps being taken to bring the legal heirs of the deceased appellants on record, the First Appellate Court proceeded to hear and allow the appeal in favour of the deceased parties. The High Court affirmed the appellate decision.

- The plaintiff contended before the Supreme Court that the appellate judgment was a nullity, as it had been rendered in favour of appellants who were not alive at the time of hearing and whose legal representatives had not been substituted in accordance with the Code of Civil Procedure, 1908 (hereinafter 'CPC').
- The Lower Courts rejected the plaintiff's objections regarding execution, holding the First Appellate Court's judgment valid.
- The High Court upheld the First Appellate Court's decision, thereby negating the plaintiff's challenge to the validity of the appellate decree.
- The Supreme Court observed that since both defendants died prior to the hearing of the appeal, the proceedings had abated, and the resulting judgment was without legal foundation. The Court clarified that **Order XXII Rule 6** of the CPC applies only where a party dies after the hearing has concluded but before pronouncement of judgment; thus, the appellate judgment could not be saved under that provision. In the absence of legal heirs being brought on record, the appellate decree was held to be a nullity, and only the decree of the Trial Court would govern the rights of the parties. The Bench referred to earlier decisions including **Rajendra Prasad v. Khirodhar Mahto (1994 SC), Amba Bai v. Gopal (2001), and Bibi Rahmani Khatoon v. Harkoo Gope (1981).**
- Accordingly, the appeal was allowed.

CONCEPT NOTE ON ABATEMENT UNDER ORDER XXII OF THE CODE OF CIVIL PROCEDURE, 1908

Abatement refers to the automatic cessation of a suit or appeal, wholly or partly, when a party dies and, despite the right to sue surviving, no steps are taken within the prescribed time to substitute their legal representatives.

- Under **Order XXII** of the CPC, where a party dies and the right to sue survives, an application to bring their legal representatives on record must be filed within the limitation period (ordinarily 90 days).
- If such an application is not filed in time, the suit or appeal abates as against the deceased party.
- Abatement may be set aside upon establishing sufficient cause for the delay, supported by applications for condonation of delay and for substitution.
- Where the right in question is joint or unseverable, abatement against one party may cause the entire suit or appeal to fail.
- Where the cause of action is personal in nature (such as defamation or matrimonial relief), the proceeding terminates entirely upon the party's death.

A DECREE RENDERED AS A NULLITY REMAINS OPEN TO CHALLENGE AT ANY STAGE, INCLUDING DURING EXECUTION PROCEEDINGS

- **Case title: Vikram Bhalchandra Ghongade v. The State of Maharashtra & Ors.**
- **Bench: Justices P.S. Narasimha and A.S. Chandurkar**
- **Forum:** Supreme Court

- **Observations:**
  - The Supreme Court reiterated that a decree that is a nullity in law can be challenged at any stage, including during execution proceedings, as previously recognised in **Kiran Singh and others v. Chaman Paswan and others (1954).**
  - The dispute related to land originally allotted to an ex-serviceman, Arjunrao Thakre. After his death, the land was re-allotted to other individuals, prompting his legal heirs to file a civil suit challenging such re-allotment.
  - The Appellant contended that the decree passed by the First Appellate Court was void, as both appellants before that Court (Defendants 4 and 5) had died before the appeal was decided, and their legal heirs were never brought on record in accordance with the Code of Civil Procedure, 1908 (hereinafter 'CPC'). Therefore, the decree of the Trial Court, which had declared the re-allotment illegal, remained executable.
  - The Respondents argued that the doctrine of merger applied and that the Trial Court's decree stood substituted by the First Appellate Court's decree; hence, execution of the original decree was not permissible.
  - The Trial Court passed a decree in 2006 in favour of the plaintiffs, declaring the re-allotment illegal. The Executing Court, however, later declined execution, holding that the decree had merged into the Appellate decree.
  - The High Court upheld the Executing Court's decision, reasoning that the First Appellate Court's decree, having modified the Trial Court decree in 2010, remained operative and enforceable.
  - The Supreme Court observed:
    - The appeal before the First Appellate Court had abated on account of the death of both appellants therein and non-substitution of their legal heirs as required under the CPC.
    - Any decree passed thereafter was nullity and incapable of execution.
    - Since the First Appellate Court's decree was void ab initio, there was no merger of the Trial Court decree into the appellate decree.
    - The original decree of the Trial Court thus revived and continued to be operative and executable.
    - A challenge to a decree that is a nullity can be raised at any time, even at the stage of execution.
  - Concluding that the High Court had erred in treating the First Appellate Court's decree as enforceable, the Supreme Court set aside the impugned order and held that the Trial Court decree was validly executable.

CONCEPT NOTE ON EXECUTION OF DECREES AND ABATEMENT & SUBSTITUTION

1. **Execution of Decrees** Execution is the enforcement of a Court's decree by the decree-holder against the judgment-debtor. Under Code of Civil Procedure, 1908 (hereinafter 'CPC'), **Sections 36 to 74** and **Order XXI**, only a valid and subsisting decree can be executed. An Executing Court cannot question the merits of the decree, but it may refuse execution if the decree is a nullity.

2. **Abatement and Substitution under Order XXII of the CPC Order XXII** of the CPC requires that when a party dies, their legal representatives must be brought on record within the limitation period. Failure to do so results in abatement of the suit or appeal. Since both appellants before the First Appellate Court had died and no substitution occurred, the appeal had abated in full, rendering any decree thereafter void.

RESORT TO SECTIONS 45 AND 73 OF THE EVIDENCE ACT IS CONFINED TO ADMITTED DOCUMENTS FOR COMPARING HANDWRITING OR SIGNATURES

- **Case title: Hussain Bin Awaz v. Mittapally Venkataramulu & Ors.**
- **Bench: Justices M.M. Sundresh and Satish Chandra Sharma**
- **Forum:** Supreme Court
- **Observations:**
  - The Supreme Court clarified that **Section 45** read with **Section 73** of the Indian Evidence Act, 1872 (hereinafter 'Evidence Act') may be invoked only where the document relied upon for comparison of handwriting or signatures is an admitted document, thereby limiting the scope of handwriting comparison in civil disputes.
  - The dispute concerned a 50-year-old land ownership issue in which the respondent-plaintiff filed a civil suit in 2015 seeking declaration of title, relying on the findings of an earlier suit of 1975. The appellant-defendants contended that the written statement in the 1975 suit bore a forged signature of their grandfather.
  - The defendants argued that the document central to the plaintiff's case was fabricated and therefore sought forensic examination under **Section 45** of the Evidence Act by comparing the questioned signature with alleged specimen signatures in a 1974 written statement. The plaintiffs opposed, asserting that the signatures from 1974 were not admitted signatures and existed only in aged photostat copies.
  - The Trial Court dismissed the application holding that:
    - The alleged specimen signatures of the grandfather were not admitted or properly available,
    - Files concerning the original documents were untraceable, and
    - Photostat copies of nearly 50-year-old documents were unfit for comparison.
  - The High Court, however, set aside this rejection and allowed the request for forensic examination, reasoning that such an expert opinion would aid in the "interests of justice."
  - The Supreme Court observed that:
    - In a suit for declaration and injunction, the burden lies on the plaintiff to prove their own title,
    - **Sections 45** and **73** of the Evidence Act permit handwriting comparison only where there exists an admitted standard for comparison,
    - No such admitted document was available in this case, rendering the High Court's direction unsustainable.
  - Concluding that the High Court had exceeded the permissible scope of the statutory provisions, the Supreme Court allowed the appeal and restored the Trial Court's order refusing the request for forensic examination of the disputed document.

CONCEPT NOTE ON EXECUTION UNDER CODE OF CIVIL PROCEDURE 1908

Execution is the legal process by which a successful party (the "decree-holder" or "DH") in a civil suit enforces or implements the order or judgment passed by the Court against the losing party (the "judgment-debtor" or "JD"). It is the final and most crucial stage of litigation, giving practical effect to the Court's decision. A decree-holder cannot take the law into their own hands; they must approach the Court for formal execution. The adage "Execution is the fruit of litigation" aptly describes its importance.

Legal Framework: The law governing execution proceedings in India is primarily contained in:

Part II (Sections 36 to 74) of the Code of Civil Procedure, 1908 (hereinafter 'CPC), which lays down the substantive law.

Order XXI of the CPC, which contains the procedural rules. Order XXI is exhaustive and comprehensive, containing 106 rules, and deals with all aspects of executing decrees and orders.

CRIMINAL LAW

INORDINATE DELAY IN FRAMING OF CHARGE MAIN CAUSE BEHIND STAGNATION OF CRIMINAL PROCEEDINGS

- **Case Title: Aman Kumar v. The State of Bihar**
- **Bench: Justices Aravind Kumar and N.V. Anjaria**
- **Forum:** Supreme Court
- **Observations:**
  - The Supreme Court expressed serious concern over the prolonged delay in the framing of charges in criminal cases, despite the explicit mandate under **Section 251(b)** of the Bharatiya Nagarik Suraksha Sanhita (BNSS), which requires charges in cases triable by a Sessions Court to be framed within 60 days from the first hearing. The Bench remarked that such inordinate delays were one of the principal causes of stagnation in criminal proceedings across the country.
  - Justice Aravind Kumar observed during the hearing that the practice of allowing months or even years to pass before charges are framed "defeats the very purpose of expeditious justice." The Court questioned why both civil and criminal trials suffered from similar procedural sluggishness, noting, "In civil cases, issues are not framed for years; in criminal cases, charges are not framed for years. We want to know the difficulties or else we will issue directions for all Courts across the country."
  - Taking cognizance of the systemic nature of the problem, the Bench proposed to issue nationwide guidelines to ensure compliance with the statutory timeframe. The Court appointed Senior Advocate Siddharth Luthra as amicus curiae, alongside counsel for the State of Bihar, and also sought the assistance of the Attorney General for India. The matter was directed to be relisted after two weeks for further hearing.

- The Court took note of submissions that there is often a significant gap between the filing of a chargesheet and the actual framing of charges, despite the accused remaining in custody. Referring to similar observations made by other benches, including Justice Sanjay Karol's order highlighting delays in Maharashtra where hundreds of cases were pending without charge-framing, Justice Kumar remarked that the Court "will not wait for data from District Courts but will issue directions applicable pan-India."
- Reiterating the legal mandate under **Section 251(b)** of the BNSS, the Bench stated that charges in Sessions' triable cases must be framed within 60 days of the first hearing. The Court warned that failure to adhere to this timeline frustrates the commencement of the trial and undermines the criminal justice process itself.
- In conclusion, the Court signaled its intent to lay down binding procedural guidelines across all Courts to ensure timely framing of charges, observing that "unless charges are framed, the trial cannot begin, and justice delayed at this stage is justice denied."

CONCEPT NOTE ON ENSURING SPEEDY TRIAL UNDER BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

Framing of Charge under Section 251 BNSS: The Foundational Stage

Section 251 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter 'BNSS') governs the framing of charges, an essential step that crystallises the accusations against the accused and enables them to prepare an effective defence.

Mandatory timeline: In cases exclusively triable by the Court of Session, the Judge must frame charges within sixty days from the first hearing on the charge.

Additional BNSS Mechanisms Strengthening Speedy Trial

- **Restrictions on adjournments: Section 346** of the BNSS provides for day-to-day trial and limits adjournments to two per party.
- **Section 392** of the BNSS details the procedures for pronouncing judgment in criminal trials, requiring it to be done either immediately after the trial ends or within 45 days with notice to the parties.
- **Under-trial prisoner reforms: Section 479** of the BNSS mandates release on bail for first-time offenders accused of non-heinous offences after completion of one-third of the maximum sentence.
- **Trial in absentia: Section 356** of the BNSS permits trial and judgment against proclaimed offenders who wilfully abscond.

THREATENING A WITNESS UNDER SECTION 195A IPC IS A COGNIZABLE OFFENCE; POLICE CAN DIRECTLY REGISTER FIR

- **Case Title: State of Kerala v. Suni @ Sunil (and connected case)**
- **Bench: Justices Sanjay Kumar and Alok Aradhe**
- **Forum:** Supreme Court
- **Observations:**
  - The Supreme Court held that the offence of threatening a witness under **Section 195A** of the Indian Penal Code, 1860 (hereinafter 'IPC') is cognizable, thereby authorizing the police to register an FIR and conduct investigation without requiring a prior complaint from the concerned Court.

MAINS PRACTICE CORNER

12

MAINS MODEL ANSWERS

Q.1. Write a short note on: (10 Marks)

Ans. (i) History of Limitation law in India

The history of limitation law in India reflects a gradual evolution toward a unified legal framework. Initially, different regions under British rule followed varied rules, leading to inconsistency. To address this, the Limitation Act of 1859 was introduced, marking the first attempt to codify limitation periods for legal actions. However, in cases of adverse possession, the Act operates substantively by extinguishing the original owner's right to property if not claimed within the statutory period.

Subsequent acts refined and expanded the law:

- **Limitation Act of 1871:** Consolidated limitation rules and introduced the concept of acquiring ownership through possession.
- **Limitation Act of 1877**: Replaced the 1871 Act, retained categorization of suits, and clarified the starting point of limitation periods, especially in cases of fraud or mistake.
- **Limitation Act of 1908:** Provided a comprehensive structure with 183 articles, clearly dividing limitation periods for suits, appeals, and applications. It remained in force for over five decades.

Finally, the Limitation Act of 1963 replaced the 1908 Act and came into force on 1st January 1964, offering a modern and streamlined approach to limitation law in India.

(ii) Object and nature of the Limitation Act, 1963

The Limitation Act, 1963 (hereinafter 'Act') is a procedural law that prescribes specific time limits within which legal actions such as suits, appeals, and applications must be initiated. Its primary objective is to ensure timely justice, prevent stale claims, and promote judicial discipline. By setting deadlines for legal remedies, it protects defendants from indefinite threats of litigation and encourages plaintiffs to act diligently.

The Act is based on the legal maxim 'vigilantibus non dormientibus jura subveniunt', meaning "the law aids those who are vigilant, not those who sleep over their rights." This principle emphasizes the importance of prompt action in seeking justice. Another guiding maxim is interest republicae ut sit finis litium, which means "it is in the interest of the State that there should

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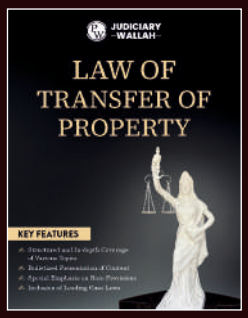
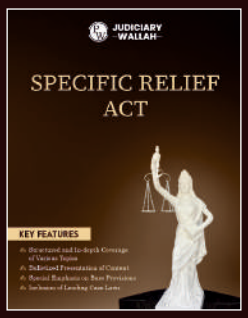
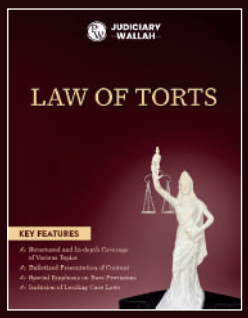
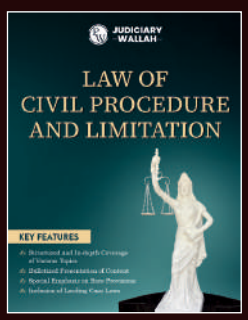
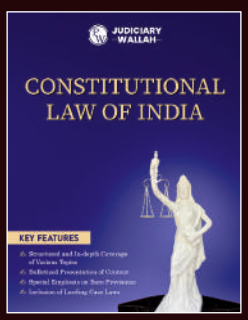
OUR BOOKS

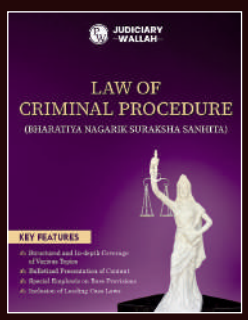


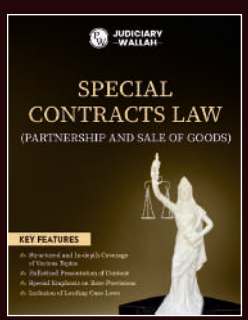


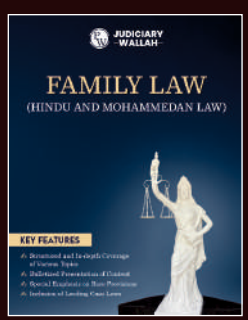


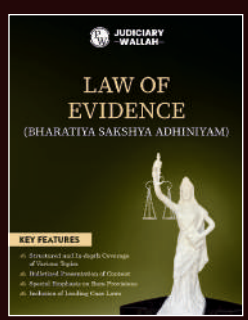


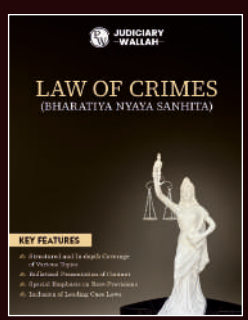












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