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SUBJECT-INDEX**ADMINISTRATION OF JUSTICE:**

Criminal justice - Faulty investigation and deficient prosecution - Directions given to State Governments to examine all orders of acquittal and record reasons for failure of each prosecution case - A standing committee of senior officers of police and prosecution departments should be vested with this responsibility - Home Department of every State Government will incorporate in its existing training programmes for investigation/prosecution officials, course-content drawn in light of instant judgment.

(Also see under: Penal Code, 1860; and Investigation)

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(See under: Army Rules) 270

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r.16-A - Extension of service in 'exigency of service' - Senior most Major General in DRDO recommended by Selection Board for promotion as Lieutenant General - Extension of service granted by Presidential orders - Held: President of India was conscious of the fact while granting extension in service to appellant that his case for promotion as Lieutenant General was under consideration - Extension of service granted to the senior most eligible officer for the purpose of consideration of his promotional claim, for all intents and purposes will be deemed to satisfy the parameters of 'exigency of service', stipulated in r. 16A - Administrative Law - Legitimate expectation. (Also see under: Service Law; and Constitution of India, 1950)

Major General H.M. Singh, VSM v. Union of India and Anr. 270

AUCTION:

Auction sale - Rights of auction purchaser in the property purchased - Held: Cannot be extinguished except in cases where the said purchase can be assailed on grounds of fraud or collusion - In the instant case, there was no allegation of fraud or collusion as regards auction purchase by a third party - At the time of auction purchase, the value of property purchased by him was not in excess of his bid - Besides, no objection was raised to attachment proclamations and notices in

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newspapers for auction - Auction sale was confirmed and possession of property was handed over to auction purchaser - Mutation proceedings were finalized - Challenge raised by first respondent ought to have been rejected on the ground of delay and laches - Interference by High Court even on ground of equity was clearly uncalled for - Impugned order passed by High Court set aside - Right of appellant-auction purchaser in plot in question confirmed - Delay/laches - Equity.

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CODE OF CIVIL PROCEDURE, 1908:

(1) s.100 - Second appeal - Jurisdiction of High Court - Held: High Court should not interfere with a concurrent finding of fact unless it is perverse.
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(2) s. 148.
(See under: Madhya Pradesh Accommodation Control Act, 1961) 18

(3) O. 27, r. 8B and r 8A r/w O. 41, r. 5 - 'Government' - Connotation of - Appeal by Jal Sansthan against order rejecting objection u/s 34 of Arbitration and Conciliation Act - High Court, on an application for stay, directing appellant to

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deposit entire award amount - Plea that such a condition could not have been imposed on government organization like appellant - Held: "Government" means either a Central Government or a State Government and in certain cases public officer in the service of a State - Legislature has deliberately used a restrictive definition and its scope cannot be expanded to cover an agency or instrumentality of State by interpretative process - It cannot be accepted that appellant Jal Sansthan would come within the extended wing of the Government - However, order of High Court modified and appellant directed to furnish security for entire award amount - Interpretation of statutes - Restrictive construction - Constitution of India, 1950 - Art. 12.

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(4) O. 41, r. 5.
(See under: Arbitration and Conciliation Act, 1996) 64

CODE OF CRIMINAL PROCEDURE, 1973:

(1) s.125 - Maintenance to wife and daughter - Appellant-husband denying paternity of the child and challenging the order as regards maintenance to her - Two DNA test reports excluding him to be biological father of the child - Held: Impugned judgment is set aside so far as it directs payment of maintenance to the child - However, payments already made shall not be recovered.
(Also see under: Evidence Act, 1972)

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(2) (i) s. 239 - Discharge of accused - Accused charged with offences punishable u/s 109 IPC and s. 13(2) r/w s. 13 (1) (e) of Prevention of Corruption Act - Acquiring of properties disproportionate to known sources of income - Held: At the stage of consideration of an application for discharge, probative value of the materials has to be gone into and court is not expected to go deep into the matter and hold that materials would not warrant a conviction - In the instant case, while passing the orders of discharge, court has not sifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against accused, but whether that would warrant a conviction - Orders impugned suffer from grave error and, as such, set aside.

(ii) ss. 227, 239 and 245 - Discharge of accused - Explained.

(Also see under: Prevention of Corruption Act, 1988)

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CONSTITUTION OF INDIA, 1950:

(1) Art. 12.
(See under: Code of Civil Procedure, 1908) 64

(2) Arts. 14 and 16 - Claim for promotion - Held: Recommendations of Selection Board were merely

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recommendatory in nature and, therefore, appellant had no fundamental right for promotion solely on the basis of such recommendation - However, non-consideration of claim of appellant would violate fundamental rights vested in him under Arts. 14 and 16, as respondents were desirous of filling up the said vacancy and appellant being the senior most serving Major General eligible for consideration had fundamental right of being considered against the said vacancy, and also the fundamental right of being promoted if he was adjudged suitable - The action of authorities in depriving the appellant due consideration for promotion to the rank of Lieutenant General, would have been arbitrary and resulted in violation of his fundamental right under Art. 14.

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CRIMES AGAINST WOMEN:

(1) (See under: Penal Code, 1860) 9
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(2) (See under: Dowry Prohibition Act, 1961) 1

DECREE:

Compromise decree - Execution - Executing court holding the decree as contrary to provisions of the Act and granting the tenant time to deposit arrears of rent and on his doing so, dismissing the execution application - Held: Such an order amounts to modification of decree and is without jurisdiction on the part of executing court, therefore, a nullity - Executing court cannot go beyond the decree - It has no jurisdiction to modify a decree - It must execute the decree as it is - Such a void

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order can create neither legal rights nor obligations
- Madhya Pradesh Accommodation Control Act,
1961 - ss. 12(1) (a) and 13.

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DELAY/LACHES:

(See under: Auction) 249

DELHI EXCISE ACT, 2009:

s.61 r/w ss.58,59 and 60 - Vehicle used in
commission of offence under the Act - Seized -
Released by High Court exercising powers u/s 451
of the Code - Held: General provisions of s. 451
of the Code have to yield where a statute makes a
special provision with regard to confiscation and
disposal of the property - s.61 of the Act with its
non-obstante clause, puts an embargo on
jurisdiction of courts to make any order with regard
to the property used in committing any offence and
seized under the Act - Magistrate or High Court,
while dealing with a case of seizure of vehicle under
the Act, has no power to pass an order for interim
custody of such vehicle on security or for its release
- Impugned order of High Court set aside - Code
of Criminal Procedure, 1973 - ss.451, 452 and
457.

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DOWRY PROHIBITION ACT, 1961:

s.3 - Conviction - Sentence of imprisonment for 3
months and fine imposed by trial court - Reduced
by High Court to sentence already undergone (4
days) - Held: Imposition of sentence is in the realm
of discretion of court and unless sentence is found
to be grossly inadequate, appellate court would
not be justified in interfering with discretionary order

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of sentence - In the instant case, minimum sentence
fixed by legislature is five years, however, court in
an appropriate case after recording the reason may
award sentence lesser than five years, but fine shall
not be less than Rs.15,000/- or the amount of the
value of such dowry, whichever is more - Without
recording any reason whatsoever it was not
permissible for trial court to award sentence less
than five years - High Court failed in its duty to
take up the matter in its revisional power u/s 401
r/w s.386(e) of Code of Criminal Procedure and
enhance the punishment commensurate to offence
committed by accused - High Court grossly erred
in reducing the sentence to four days - Sentence
set aside and matter remanded back to High Court
to determine quantum of punishment - Code of
Criminal Code, 1973 - s.401 r/w s.386 (e) -
Sentence/Sentencing.

*Savarala Sai Sree v. Gurramkonda
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EMPLOYEES' PROVIDENT FUNDS AND
MISCELLANEOUS PROVISIONS ACT, 1952:

s. 2 (b).

(See under: Interpretation of Statutes) 157

ENVIRONMENT (PROTECTION) ACT, 1986:

s. 3(3) - National Regulator - Order of Supreme
Court dated 6.7.2011 directing for appointment of
National Regulator - Held: The Regulator so
appointed u/s 3(3) can exercise only such powers
and functions of Central Government under the Act
as are entrusted to it and obviously cannot exercise
powers of Central Government u/s 2 of Forest
(Conservation) Act, 1980, but while exercising such
powers under Environment Protection Act, he will

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ensure that National Forest Policy, 1988 is duly implemented - Union of India is directed to appoint a Regulator with offices in as many States as possible under sub-s. (3) of s. 3 of Environment (Protection) Act - Forest (Conservation) Act, 1980 - National Forest Policy, 1988 - EIA Notification dated 14.09.2006.

T.N. Godavarman Thirumulpad v. Union of India & Ors. 88

EQUITY:

(See under: Auction) 249

EVIDENCE:

(1) Circumstantial evidence -- DNA test - Rape and murder - Held: Advancement in scientific investigation should be taken recourse to - In the instant case, investigating agency ought to have sought DNA profiling of blood samples, which would have given a clear picture.

(Also see under: Penal Code, 1860; and Investigation)

State of Gujarat v. Kishanbhai etc. 197

(2) Evidence as to title - Held: Revenue records do not confer title - In a given case, conferment of Patta as such does not confer title.

(Also see under: Suit)

Union of India and Others v. Vasavi Co-op. Housing Society Ltd. and Ors. 180

EVIDENCE ACT, 1872:

(1) s.112 - Birth during marriage, conclusive proof of legitimacy - Rebuttal by two DNA tests - Held: DNA test is scientifically accurate - When there is a conflict between a conclusive proof envisaged under law and a proof based on scientific

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advancement accepted by the world community to be correct, latter must prevail over former - Husband's plea that he had no access to wife when child was begotten, stands proved by DNA test report and in the face of it, he cannot be compelled to bear fatherhood of the child, when scientific reports prove contrary.

(ii) s.112 - Birth during marriage - Presumption as regards legitimacy of child - Held: s.112 does not create a legal fiction but provides for presumption - Where there is evidence to the contrary, presumption is rebuttable and must yield to proof. (Also see under: Code of Criminal Procedure, 1973)

Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik & Anr. 120

(2) s. 116.

(See under: Madhya Pradesh Accommodation Control Act, 1961) 166

FIR:

Delay in registering the FIR - Held: In the instant case, not only is delay of seven hours in registration of complaint unexplained, but the same is also rendered extremely suspicious.

(Also see under: Penal Code, 1860; and Investigation)

State of Gujarat v. Kishanbhai etc. 197

FOREST (CONSERVATION) ACT, 1980:

(See under: Environment (Protection) Act, 1986) 88

IDENTIFICATION/TEST IDENTIFICATION PARADE:

Held: Though witness had seen accused for the

first time on date of occurrence, no test identification parade to get accused identified was conducted.
(Also see under: Penal Code, 1860; and Investigation)

State of Gujarat v. Kishanbhai etc. 197

INTERPRETATION OF STATUTES:

(1) Construing of an expression which has not been defined - 'Basic wage', not explained in the Order granting Hill Development Allowance - Held: When an expression is not defined, one can take into account the definition given to such expression in a statute as also the dictionary meaning - Employees' Provident Funds and Miscellaneous Provisions Act, 1952 - s. 2 (b).

(Also see under: Service Law)

Kichha Sugar Company Limited Th. Gen. Mang. v. Tarai Chini Mill Majdoor Union, Uttarkhand 157

(2) Non-obstante clause in a statute - General provisions and special provision - Interpretation of.

State (NCT of Delhi) v. Narender 109

(3) Restrictive construction.

(See under: Code of Civil Procedure, 1908) 64

INVESTIGATION:

(1) Rape case - Failure of prosecution to examine the doctor who had examined prosecutrix - Effect of - Explained.

(Also see under: Penal Code, 1860)

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(2) (i) Serious lapses in investigation and prosecution of a rape and murder case - There have

been serious lapses committed by investigating and prosecuting agencies and there are deficiencies in the process of establishing the guilt of accused before trial court - investigating officials and prosecutors involved in presenting the case, have miserably failed in discharging their duties - They have been instrumental in denying to serve the cause of justice.

(ii) Arrest of accused - Held - Though accused was acknowledged to be in police station since 9 p.m., he was formally arrested at 6.40 a.m. on the following day - There are inconsistent statements on record in this regard.

(iii) Entries in Station Diary - Though IO had been apprised about commission of crime, he left Police Station without making any entry in Station Diary or in any other register, depicting the purpose of his departure.

(Also see under: Penal Code, 1860; and Administration of Justice)

State of Gujarat v. Kishanbhai etc. 197

LEAVE AND LICENCE:

Licence - Suit for possession stating that defendants-respondents were gratuitous licensees - Alternative plea of eviction on ground of bona fide need - Held: Alternative plea would be redundant if plaintiff's case of defendants being gratuitous licensees was accepted by court - First appellate court accepted plaintiff's case that defendants were in occupation as licensees and not as tenants - High Court has not set aside that finding of fact on its merits and dismissed the suit simply because plea of tenancy was, in its opinion,

contradictory to plea of licence set up in earlier part of plaint - That was not a proper approach or course to follow - Judgment of High Court set aside and that of first appellate court restored.

(Also see under: Practice and Procedure)

Praful Manohar Rele v. Smt. Krishnabai Narayan Ghosalkar & Ors. 44

MADHYA PRADESH ACCOMMODATION CONTROL ACT, 1961:

(1) s. 12(1)(c) - Suit for eviction - Tenant denying title of landlord - Held: Under s. 111(g) of Transfer of Property Act, lease is determined by forfeiture, if lessee denies lessor's title - Denial of landlord's title or disclaimer of tenancy by tenant is an act which is likely to affect adversely and substantially the interest of landlord -- It is, therefore, covered by s. 12(1)(c) - In the instant case, respondent denied appellant's title - s. 116 of Evidence Act is clearly applicable - High Court erred in setting aside concurrent finding of fact recorded by courts below that respondent had denied title of appellant - Impugned judgment of High Court set aside and eviction decree passed by trial court and confirmed by first appellate court u/s 12(1)(c) restored - Transfer of Property Act, 1882 - s. 111(g) - Evidence Act, 1972 - s. 116.

(Also see under: Code of Civil Procedure, 1908)

Keshar Bai v. Chhunulal 166

(2) ss.12(1)(a) and 13 - Suit for eviction and arrears of rent - Compromise decree - Execution - Executing court granting time to tenant to deposit rent and on his doing so, dismissing execution

application - Held: s. 13 indicates that payment or deposit of rent into court by judgment debtor (tenant) is contemplated only during the pendency of suit for eviction or an appeal (by the tenant) against a decree or order of eviction - It has no application to execution - Further, power of court to enlarge time u/s. 148 CPC can be exercised only in a case where period is granted by court for doing any act prescribed by Code - It has no application where period is stipulated by agreement between parties - Order of executing court granting time to tenant to deposit rent being a nullity, failure of landlord to challenge it would not deny him the right to recover possession - Execution petition allowed - Code of Civil Procedure, 1908 - s. 148 - Practice and procedure. (Also see under: Decree)

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MEDICAL JURISPRUDENCE:

DNA test - Nature and evidentiary value of - Explained.

(Also see under: Evidence Act, 1872)

Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik & Anr. 120

NATIONAL FOREST POLICY, 1988:

(See under: Environment (Protection) Act, 1986) 88

PANCHNAMA:

Held: In the instant case, inquest panchnama was drawn before registration of FIR.

State of Gujarat v. Kishanbhai etc. 197

PENAL CODE, 1860:

(1) ss. 299, 302 and 307 - Victim shot at from a distant range - Death of victim on the way to village - Acquittal by trial court - Conviction by High Court u/s 302 of accused who fired shots - Held: The doctor, who conducted post-mortem examination, found no internal injuries and opined that gun was fired from a distant range - He further opined that death was caused because of shock but he has not stated that it was due to injuries caused by appellant or that deceased profusely bled which could have caused shock - It is not shown that injuries found on the person of deceased were of such nature, which in the ordinary course could cause shock - It, therefore, creates a doubt as to whether deceased suffered shock on account of injuries sustained by him - However, it has been proved that appellant shot at deceased with an intention to kill him or at least he had the knowledge that the act would cause death - Allegations proved constitute an offence u/s. 307 - Conviction of appellant altered from s. 302 to s. 307 and he is sentenced to rigorous imprisonment for ten years.

M. B. Suresh v. State of Karnataka 99

(2) (i) s. 376 - Rape - Held: In a case involving charge of rape, evidence of prosecutrix is most vital and is on par with evidence of an injured witness - If it is found credible and inspires total confidence, it can be relied upon even sans corroboration - Court may, however, if it is hesitant to place implicit reliance on it, look into other evidence to lend assurance to it short of corroboration required in the case of an accomplice - Evidence - Evidentiary value of evidence of prosecutrix.

(ii) ss. 376 and 450 - Conviction and sentence of 7 years RI by courts below - Held: - In the instant case, it would be extremely dangerous to rely on evidence of prosecutrix - She was declared hostile - She refused to acknowledge the statement made by her to police - The evidence of her brother is far from satisfactory - The conscience of the Court would not permit it to rely on such evidence - Further, the doctor, who had examined the prosecutrix, was not examined in court - From MLR produced in court, it cannot be inferred that prosecutrix was raped by appellant - This is a case where appellant must be given benefit of doubt - Accordingly, his conviction and sentences u/ss 376 and 450 set aside.

Hem Raj S/o. Moti Ram v. State of Haryana 9

(3) ss.376, 302, 201, 363, 369 and 394 - Rape and murder of a six year old girl - Her legs amputated above ankles and anklets stolen - Circumstantial evidence - Conviction by trial court and sentence of death - Acquittal by High Court giving the accused benefit of doubt - Held: High Court has rightly pointed out several missing links in the chain of circumstances leading to failure of prosecution to establish guilt of accused - Further, there are several lapses committed by investigating/prosecuting agency - There are several discrepancies and inconsistencies in the evidence produced by prosecution before trial court - Judgment of High Court needs no interference -- Directions given to identify erring officers and take appropriate departmental action against them in accordance with law - Investigation - Bombay Police Act 1951 - s. 135(1) - Circumstantial evidence.

(Also see under: Investigation)

State of Gujarat v. Kishanbhai etc. 197

PRACTICE AND PROCEDURE:

(1) Plea of termination of licence and alternatively eviction on ground of bona fide need - Held: Plaintiff-appellant had set up a specific case that defendants were occupying the suit premises as licensees and licence had been validly terminated - In reply to the notice, case of defendants was that they were in occupation of suit premises not as licensees but as tenants - Plaintiff was, therefore, entitled on that basis alone to ask for an alternative relief of a decree for eviction on grounds permissible under Rent Act.

(Also see under: Leave and Licence)

Praful Manohar Rele v. Smt. Krishnabai Narayan Ghosalkar & Ors. 44

(2) (See under: Madhya Pradesh Accommodation Control Act, 1961) 18

PREVENTION OF CORRUPTION ACT, 1988:

s. 13(2) r/w 13(1) (e) - Allegations that State Ministers purchased properties in the names of their relatives - Income tax paid by persons in whose names properties were acquired - Held: While passing the order of discharge, the fact that accused other than two Ministers have been assessed to and paid income tax cannot be relied upon to discharge the accused persons particularly in view of the allegation made by prosecution that there was no separate income to amass such huge properties - Property in the name of an income tax assessee itself cannot be a ground to hold that it

actually belongs to such an assessee - Code of Criminal Procedure, 1973 - s. 239.

State of Tamilnadu By Ins. of Police Vigilance and Anti Corruption v. N. Suresh Rajan & Ors. 135

RAILWAY SERVANTS (DISCIPLINE AND APPEAL)

RULES: 1968:

Part-III - Penalty 6(vii).

(See under: Service Law) 59

RENT CONTROL AND EVICTION:

(See under: Madhya Pradesh Accommodation Control Act, 1961) 166

SEIZURE AND CONFISCATION:

(See under: Delhi Excise Act, 2009) 109

SENTENCE/SENTENCING:

(See under: Dowry Prohibition Act, 1961) 1

SERVICE LAW:

(1) 'Basic wage' - Connotation of - Reckoning of leave encashment and overtime wages in basic wage to grant Hill Development Allowance - Held: Those wages which are universally, necessarily and ordinarily paid to all the employees across the board are basic wage - Where the payment is available to those who avail the opportunity more than others, the amount paid for that cannot be included in the basic wage - Therefore, amount received as leave encashment and overtime wages is not fit to be included for calculating Hill Development Allowance.

(Also see under: Interpretation of Statutes)

Kichha Sugar Company Limited Th. Gen. Mang. v. Tarai Chini Mill Majdoor Union, Uttarkhand 157

(2) Departmental inquiry - Charges proved - Punishment - Doctrine of proportionality - Railway employee - Removal from service on charges of demanding and accepting meager amounts - Held: Removal of employee from service for the charges levelled against him shocks the judicial conscience of Court - Deprivation of retiral benefits in addition to loss of service is entirely incommensurate with the charge of appellant having taken very small sums of money for issuance of Fit Certificate to other Railway employees - Appellant shall be deemed to have been compulsorily retired under Part-III Penalty 6(vii) of 1968 Rules and shall be entitled to retiral or other benefits - Railway Servants (Discipline and Appeal) Rules: 1968 - Part-III - Penalty 6(vii).

Ishwar Chandra Jayaswal v. Union of India & Ors.

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(3) (i) Promotion - Major General in DRDO - Recommended by Selection Board for promotion as Lieutenant General - Granted extensions to enable his case for promotion to be considered by Appointment Committee of the Cabinet - ACC not granting approval to recommendations, as rules would not permit promotion on extension - Held: Selection Board had recommended promotion of appellant as Lieutenant General on merits - ACC did not in any manner upset the finding recorded by Selection Board nor did it negate the said recommendation - Therefore, appellant must be deemed to have been found suitable for promotion as Lieutenant General, even by ACC and, as such, he deserves promotion to the rank of Lieutenant General from the date due to him and he shall be deemed to have been in service as Lieutenant

General and entitled to all monetary benefits which would have been so due to him.

(ii) Promotion during extension of service - Held: The vacancy against which appellant was considered had arisen well before date of his superannuation, but since Service Selection Board was convened only two days prior to date of his superannuation as Major General, respondents must squarely shoulder the blame and responsibility of the delay - It is not as if the vacancy came into existence after appellant had reached the age of retirement on superannuation - Denial of promotion to him mainly for the reason that he was on extension in service, is unsustainable besides being arbitrary - Therefore, the basis on which the claim of appellant for promotion as Lieutenant General was declined by ACC is rejected - Accordingly, operative part of order of ACC set aside - Administrative Law - Legitimate expectation.

(Also see under: Army Rules; and Constitution of India, 1950)

Major General H.M. Singh, VSM v. Union of India and Anr.

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SUIT:

Suit for title and possession - Onus - Held: In a suit for declaration of title and for possession, burden always lies on plaintiff to make out and establish his case by adducing sufficient evidence and the weakness, if any, of the case set up by defendants would not be a ground to grant relief to plaintiff - In the instant case, trial court as well as High Court rather than examining in depth, the question, as to whether plaintiffs have succeeded in establishing their title to suit land, went on to examine in depth

the weakness of defendants' title - Plaintiffs have not succeeded in establishing their title and possession over suit land - Judgment of trial court, affirmed by High Court, is set aside.

(Also see under: Evidence)

Union of India and Ors. v. Vasavi Co-op. Housing Society Ltd. and Ors. 180

TRANSFER OF PROPERTY ACT, 1882:

s. 111(g).

(See under: Madhya Pradesh Accommodation Control Act, 1961) 166

WORDS AND PHRASES:

Expressions 'basic wages', 'Hill Development Allowance' - 'Compensatory allowance' - Connotation of.

Kichha Sugar Company Limited Th. Gen. Mang. v. Tarai Chini Mill Majdoor Union, Uttarkhand 157

WORKMEN'S COMPENSATION ACT, 1923:

(i) s.30, first proviso - Substantial question of law - Appeal before High Court against order of Commissioner awarding compensation - Held: In terms of 1st proviso, no appeal is maintainable against any order passed by Commissioner unless a substantial question of law is involved - In the instant case, High Court has neither referred to nor determined any question of law much less a substantial question of law existence whereof was a condition precedent for maintainability of an appeal u/s. 30 - Inasmuch as High court remained oblivious of the basic requirement of law for maintainability of an appeal before it and inasmuch as it treated the appeal to be one on facts, it

committed an error which needs to be corrected.

(ii) Claim petition - Death of a driver - Commissioner awarding compensation - High Court setting aside the award holding that relationship of employer and employee was not proved - Held: Commissioner had recorded a finding of fact that deceased was employed as a driver by owner of vehicle no matter the owner happened to be his brother - That finding could not be lightly interfered with or reversed by High Court - Order of High Court set aside and that passed by Commissioner restored.

Smt. T.S. Shylaja v. Oriental Insurance Co. & Anr. 35