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LEGAL UPDATES

Smriti Debbarma (D) v. Prabha Ranjan Debbarma, C.A. No. 878 of 2009



Weakness of The Defence Cannot Be A Justification To Decree The Suit

Section 101-102 of Indian Evidence Act

Onus of proof shifts, but this happens when in a suit; the plaintiff has been able to create a high degree of probability to shift the onus on the defendant. In the absence of such evidence, the burden of proof lies on the plaintiff and can be discharged only when he is able to prove title.



Bench : Justices Sanjiv Khanna and J.K. Maheshwari

Smriti Debbarma (D) v. Prabha Ranjan Debbarma, C.A. No. 878 of 2009



Defendants Cannot Be Dispossessed from The Property Unless The Plaintiff Establishes A Better Title

Section 101-102 of Indian Evidence Act, 1872

Decree of possession cannot be passed in favour of the plaintiff on the ground that defendants have not been able to fully establish their right, title and interest in the property. A person in possession in the assumed character as the owner, has a legal right against the entire world except the rightful owner.



Bench : Justices Sanjiv Khanna and J.K. Maheshwari

Enforcement Directorate v. Kapil Wadhawan
CRL.A. No. 701-702 of 2020



Day of remand should be included for considering default bail claim

Section 167 of CrPC

The remand period will be calculated from the date when the Magistrate remanded the accused. When the day of remand order is included in the stipulated period under Section 167(2), the same would encourage the prosecution to promptly comply with Section 57 CrPC.



Bench : Justices K.M. Joseph, B.V. Nagarathna and Hrishikesh Roy.

Vikas Rathi v. State of U.P.
CRL.A. No. 644 of 2023



Section 319 Cr.P.C. Power Is To Be Exercised Only if Strong & Cogent Evidence Occurs Against A Person

Section 319 of CrPC

The Supreme Court reiterated that though exercise of jurisdiction under Section 319 of the Code of Criminal Procedure is discretionary, it ought to be done only where strong and cogent evidence occurs against a person from the evidence before the Court.



Bench : Justices A.S. Oka and Rajesh Bindal

Ajay Dabra v. Pyare Ram
SLP (Cr.) No. 15793 of 2019



Being Short of Sufficient Funds to Pay Court Fee is Not a Reason to Condone Delay in Filing Appeal

Section 96 & 149 of CPC

An appeal has to be filed within the stipulated period, prescribed under the law. Belated appeals can only be condoned, when sufficient reason is shown before the court for the delay.



Bench : Justices P.S. Narasimha and Sudhanshu Dhulia

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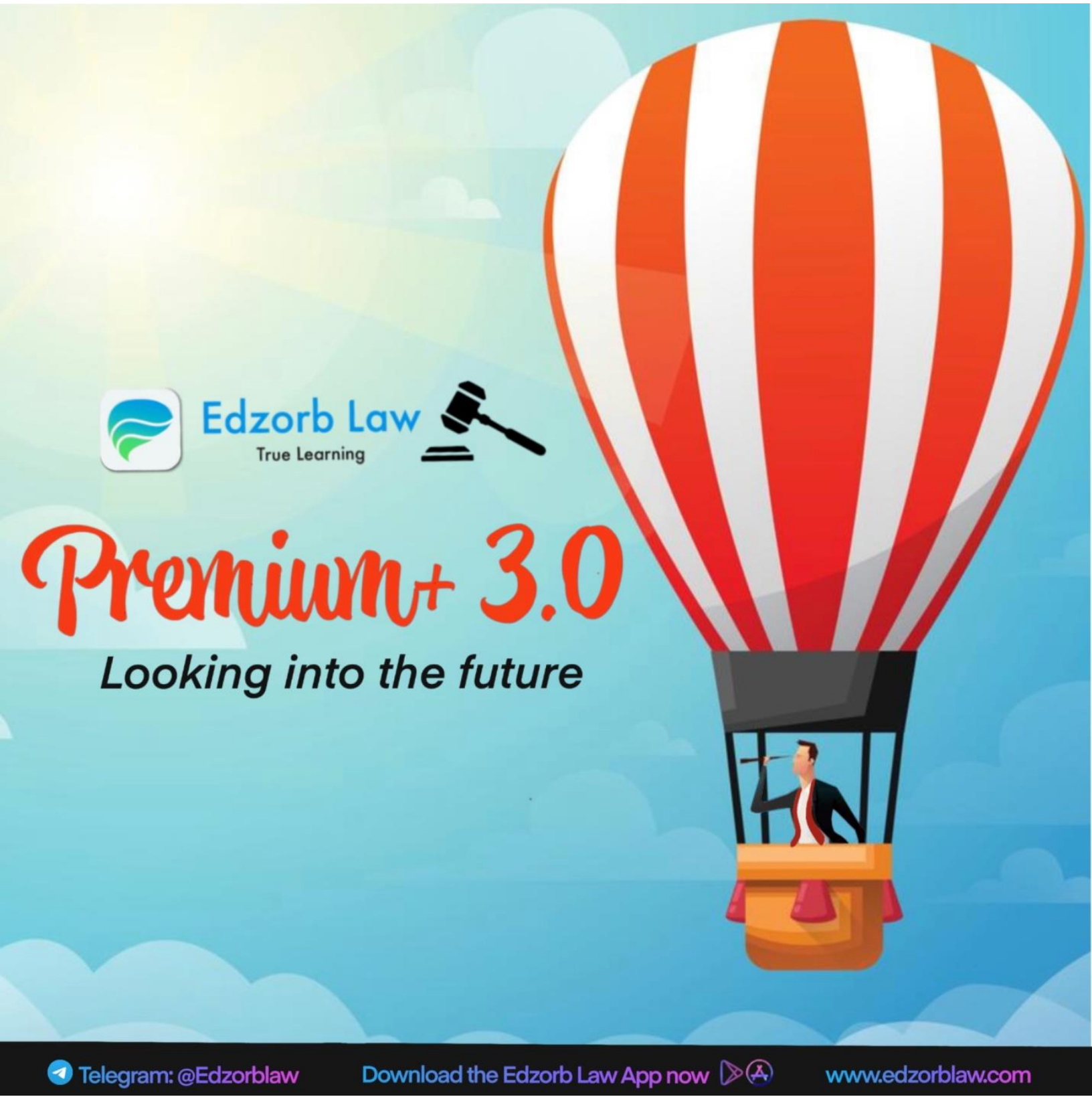

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P. Sivakumar v. State
CRL.A. No. 1404-1405 of 2012



Conviction Under Section 498A IPC Not Sustainable When The Marriage Was Null and Void.

Section 498A of IPC,1860

When the marriage between the parties has been held to be null and void by the judgment, the conviction under Section 498-A IPC would not be sustainable.



Bench : Justices B.R. Gavai and Vikram Nath

Makhijani Pushpak Harish v. The State of Gujarat
CRL.A. No. 1193 of 2023



Seeking Pre-Deposit of Bank Guarantee for Grant of Bail Is Unsustainable

Section 437 of CrPC, 1973

The Supreme Court has set aside an order whereby a pre-condition of furnishing bank guarantee was imposed on the accused by the Trial Court and the High Court while granting bail. The Bench has regarded such practice to be unsustainable and bad.



Bench : Justices KrishnaMurari and Ahsanuddin Amanullah

State Through CBI v. Hemendhra Reddy
CRL.A. No. 1300 – 1302 of 2023



No Bar against conducting Further Investigation after Final Report

Section 173(8) of CrPC, 1973

The SC held that it is not necessary that the order accepting the closure report should be reviewed, recalled or quashed before carrying out further investigation under Section 173(8) CrPC. The principle of double jeopardy would, therefore, not be applicable to further investigation.



Bench : Justices Surya Kant and J.B. Pardiwala

Nazma Naz v. Rukhsana Bano
CRL.A. No. 820 of 2022



Fault of Subordinate Court Staffs, Delay in Complying An Order, Not Reasons to Transfer A Case

Section 407 of CrPC, 1973

Because of any fault or shortcoming on the part of the staff of the Subordinate Court and for that matter, any delay in compliance by the Court were hardly the reasons for the High Court to immediately adopt the course of transferring the matter and that too, to a different station.



Bench : Justices Dinesh Maheshwari and Aniruddha Bose

Ms. P v. State of Madhya Pradesh
C.A. No. 740 of 2022



Circumstances Where Bail Granted to The Accused Under Section 439 (1) of the Cr.P.C. Can Be Cancelled

Section 439 of CrPC, 1973

High Court or Sessions Court have a wide discretion in deciding an application for bail under Section 439 Cr.P.C. However, the said discretion must be exercised after due application of the judicial mind and not in a routine manner.



Bench : Justices N.V. Ramana, Krishna Murari and Hima Kohli

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Law Paper 1 (12th feb, 2022)

1 1/5 / 3

Ques. 1 Sec. 21 (1), of Code of Civil procedure provides that, no objection as to place of suing will be allowed by an appellate or revisional court unless following conditions are satisfied :

* rule of convenience
* maxim vigilantibus non dormientibus jura subveniunt

Court of first Instance

1. The objection was taken at first instance in court
2. It was taken at earliest possible opportunity and in cases where issues are settled at or before settlement of issues; and
3. There has been consequent failure of justice

Ques 2. Reservation of posts in government services is a broad and infamous subject. The basis of reservation was always to bring every class of people on equal footing majorly on financial and social aspects. So the basis and limit of reservation should still be the financial status as discrimination on caste and class level has been decreased but financial gap has been increased from past recent years.

* Indira Sawhney case
* Balaji v/s State of Mysore

* provision missing Art. 16, 335, 338, 340, 341 & 342

1 1/5 / 3

Ques 3 No, a remand order cannot confer jurisdiction on the subordinate court when such court originally do not have such power. It is settled principle that no appellate court can confer jurisdiction on a subordinate court, however high appellate court may be as, jurisdiction of a court is determined by statue. In case of Venkatarma v Angathayammal it is held that

2 / 3

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an appellate court remanding a case to an inferior court cannot confer jurisdiction on court if it inherently lacked the same.

Ques 4.

* Start with Sec 9 of CPC along with explanations of the section
* Meaning of Civil Suit
→ Kehar Sinha V/s Custodian General Narayan
→ Shankar Narayan Potti V/s K. Sreedevi

A suit is of civil nature if the principal question therein relates to the determination of a civil right and its enforcement.

It is subject matter of suit which determines whether it is suit of civil nature or not.

In a suit in which right to property or to an office is contested whether it is of civil nature or not, what needs to be determined is whether it entirely depends on religious rites or ceremonies or not? If its decision doesnot entirely depends on religious rites or ceremonies it is a suit of civil nature.

(i) Right to take out religious procession is a suit of civil nature

(ii) Right of Pardanasheen Lady to observe parda is a suit of civil nature

(iii) Right to franchise is a suit of civil nature

11/5/3

Ques 5

* Provision
* Maxim

Doctrine of res judicata applies between co-defendant only if plaintiff claimed any relief and he cannot get his relief without trying and deciding a case between the co-defendants. However it has been revealed that requisite conditions should be fulfilled to apply principle of resjudicata as between defendants and that are:

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1) There must be conflict of interest between the defendants concerned
2) it must be necessary to decide the conflict in order to give the reliefs which plaintiff claims.
3) the question between plaintiff the defendants must have been finally decided.
4) the co-defendants were necessary or proper party in former suit. (Govindammal by LRs vs Vaidyanathan)

* Sec 11 CPC

Res judicata

- suit which is finally decided by competent court
- In this a case is heard & finally decided
- Subsequent suit on same subject matter is prohibited
- Objective is to prevent multiple litigation

* section 10 CPC

Res subjudice

- A suit which is pending in a competent court
- In res subjudice, case is pending in court
- subsequent suit on same subject matter is stayed.
- Objective is prohibition of concurrent justice

2/3

Maxims / Nemo debet bis vexare pro una et eadem causa

Manohar Lal vs Seth Hiralal

Res judicata

- In this suit is finally heard & decided which cannot be presented further as a suit
- Object is to prohibit multiplicity of litigation
- It is result of judgment of court

Re Estoppel

→ Sec 115 IEA
→ Pickard vs Sears

- In this a person cannot be allowed to change his position if he makes another to believe in good faith
- Its object is to protect right of such person who acts in good faith
- It is based on act of parties

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According to sec-173(3) In case superior officer of police has been appointed under sec 158 and State government by order directs, then report shall be submitted through that officer
While orders of Magistrate are pending, such an Officer may also direct officer in charge of police to make further investigation if required.

(c) Doctrine of election with illustration
Section 35 of Transfer of Property Act discusses the doctrine of election. It states that when a person / transferor in same transaction confers benefit on owner of property and to transferee, the owner is put to election either to accept benefit of transfer or refuse it.
Its essentials are - that transfer should be in same transaction
- Benefit & burden must come from same transaction.
- benefit is directly given to owner

For example, ashwini proposes to transfer property of Rohan to Divyansh and gives 10,000 to husband wife of Rohan. This is not case of direct benefit to Rohan thus Rohan has no duty to elect
As stated benefit and transfer must be inseparable and interdependent

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Remarks :-

1. Answer not in Answer format rather on notes format.
2. Don't copy things from Internet. The Answer on Internal & External aid near exact copy.
3. Missed out on lot of Questions.
4. Next time copies won't be evaluated if they are not in Answer format.
5. Always mention the section no. on top & not at last.

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