Maharajan, J.

Madras Motor and General Insurance Company Ltd. Madras *v.* **Madathi Ammal**

1*st March*, 1974.
A.A.O. No. 220 of 1972.

Motor Vehicles Act (*IV of* 1939), *sections* 10, 96 (2) (b) (*ii*)—*Motor accident—Driver's licence not renewed within thirty days of expiry—Insurance Company claiming exemption under section* 96 (2) (b) (*ii*)—*No express clause in the policy—Insurance company not entitled to exemption under section* 96 (2) (b) (*ii*).

Section 96 of the Motor Vehicles Act gives an option to an insurance company to incorporate in the policy any of the conditions mentioned in section 96 (2) (*b*) (ii). The Insurance Company may, therefore, incorporate in the policy " a condition excluding driving by a named person or persons or by any person who is not duly licensed or by any person who has been disqualified for holding or obtaining a driving license or to exclude driving by all these three classes of persons". It is open to the company to refuse to cover a risk brought about by a person who at the time of the accident had held a license but had no effective license covering the period of the accident.

Inasmuch as the Insurance Company had, in the instant case, exercised its option and thought it right to cover an accident caused by a person who had held a license prior to the date of the accident (that is, a license that had expired prior to the date of the accident) but had not chosen to renew it during the period allowed by law, the company cannot be exonerated from liability in respect of the accident.

A. Devanathan, for Appellant.

V. Ratnam, for Respondent.

S.J. *Appeal dismissed.*

G. Ramanujam, J.

State of Madras *v.* **A. K. Vetham Pillai.**

18*th March*, 1974.
C.R.P. No. 1825 of 1973.

Civil Procedure Code (*V of* 1908), *section* 80—*Suit for injunction—Suit against the State—Notice under section* 80—*Whether necessary.*

Every suit, including a suit for injunction will have some reference to a past state of right, claim on denial as between the public authority and the concerned party and hence will come within the ambit of the phraseology of section 80, Civil Procedure Code.

N. Thiagarajan, for Additional Government Pleader, for Petitioner.

R. Krishnamachari, for Respondent.

S.J. *Petition allowed.*

Kailasam and *Maharajan, JJ.*

The State Electricity Board, Tamil Nadu, Madras *v.* **The Sree Meenakshi Mills Ltd., Madurai.**

21*st March*, 1974.
A.A.O. No. 518 of 1973.

Arbitration Act (*X of* 1940), *section* 16 (1) (*c*)—*G.O.M. granting exemption to new industrial units—Mill establishing a branch—Branch whether a new industrial unit—Scope of Arbitration.*

In a dispute referred to an Arbitrator, he had to consider whether the branch of a

Mill established at a particular place was a "new industrial unit" within the meaning of the G.O.M. 3059-P.W.D., dated 9th July, 1956. The Arbitrator made an award that the branch was not a "new industrial unit". On the question whether the branch was a "New Industrial Unit", Held :

The Arbitrator had nowhere considered the question whether the expression "New Industrial Unit" was intended to embrace only new industrial concerns or also new industrial units established by pre-existing concerns. The Arbitrator had not interpreted the G.O.s having in mind the relevant considerations which ought to govern their interpretation. The proper course would be to remit the award under section 16 (1) (*c*) of the Arbitration Act for fresh consideration after taking into account the relevant factors pointed out by the Court.

P. Venkatachalapathy, for Appellant.

M. R. Narayanaswami and others for Respondents.

S.J. *Award remitted.*

Kailasam and
Maharajan, JJ.

Padmanabhan Nair *v.*
Chinnan Nadar.

2nd April, 1974.

L.P.A. No. 63 of 1971.

Travancore-Cochin—Holdings (Stay of Execution Proceedings) Act (VIII of 1950), *section* 4*—Landlord and tenant—Suit for eviction—Tenant in arrears of rent—Deposit of rent belatedly—Tenant whether entitled to benefits of Travancore-Cochin Act VIII of* 1950.

The landlord obtained a decree for eviction against the tenant for arrears of rent. Subsequently, the Travancore-Cochin Act VIII of 1950 came into force. The tenants did not pay the arrears of rent for three years subsequent to the decree and for over one year subsequent to the Act. The landlord filed an E.P. for recovery thereof. This petition was dismissed for some reason. The landlord once again filed an E.P. after some years for eviction. The tenant took some time to deposit the rent and deposited the same and claimed protection under the Travancore-Cochin Act VIII of 1950.

Held, Even if the Act required a wilful and intentional failure to pay the rent arrears as a condition precedent to the Court denying the tenants the protection of the Act, that condition would be fully satisfied in this case. The tenants had failed to pay the rent accruing due after the commencement of the Act and had thereby disentitled themselves to the protection under the Act. The Court had no option but to direct execution of the decree which had been granted for eviction even prior to the commencement of the Act.

T.R. Ramachandran and *T.R. Rajagopalan,* for Appellant.

K. Sarvabhauman and *T.R. Mani,* for Respondent.

S.J. ——— *Appeal allowed.*

Ramaprasada Rao, J.

N. S. Ramamoorthy *v.*
N. S. Laxmana Achary.

11th April, 1974.

C.R.P. No. 2052 of 1972.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960)*—Petition for eviction—Wilful default — Tenant withholding rent and providing for amenities—No conscious non-payment of rent.*

The tenant incurred expenditure for providing necessary amenities such as water-tap which the landlord did not provide and also by paying house-tax thereon. The tenant did not pay the rent for some months and the landlord filed a petition for eviction on the ground of wilful default. The lower Court ordered eviction. On revision filed by tenant,

Held: In the peculiar circumstances of this case as the expenditure was incurred for an amenity which the landlord did not provide and which was necessary for living, though the expenditure was unauthorised, the resultant non-payment of the rent by the tenant cannot he held to be due to indifference or conscious avoidance. The order of the Court below was liable to be set aside.

P. Anantha Krishnan Nair, for Appellant.

S. Balasubramaniam and *K. S. Lakshmikumar,* for Respondents.

S.J. ——— *Petition allowed.*

Ramaprasada Rao, J.

T. C. Purushothaman *v.*
D. V. Krishnan.

11th April, 1974.

C.R.P. No. 1709 of 1972.

Arbitration Act (X of 1940), *sections* 33, 30 (a), (b), (c)*—Partnership—Misunderstanding between partners—Reference to arbitration—Award—Objection to award that it had been substituted—Objection comes within section* 33 *—No time limit for raising objection.*

Where the complaint of a party to an arbitration agreement is that there has been a substitution of the award, then, in substance and effect the objection of that party is that the award produced into Court was never in existence so far as he is concerned. The objection comes

within the four corners of the real intendment and purpose of the prescription in section 33 of the Arbitration Act.

The objection which could be raised under section 33 of the Arbitration Act is not covered by any prescription as to time under the provisions of the Limitation Act. Hence the objection could be raised at any time. The period of limitation which is irrevocable in circumstances where an attack is made against an award is only with reference to such objections which could squarely come within claues (*a*), (*b*) or (*c*) of section 30 of the Arbitration Act. If, however, the objection could be brought within the four corners of the intendment of section 33, then, there is no period which limits an action by an aggrieved party in relation to such an award.

K. Parasaran and *P. Seshadri*, for Petitioners.

K. Sarvabhauman, for Respondents 1 and 2.

S.J. ——— *Petition dismissed.*

N. S. Ramaswami, J.

Koneridas *v.*
N. Subbiah Naidu.

16*th April*, 1974.

C.R.P.No. 1342 of 1973.

Civil Procedure Code (*V of* 1908), *section* 11, *Order* 22, *rule* 5—*Suit for partition—Death of the plaintiff—Legal representative impleaded—Rival claimant —Order passed in interlocutory application as to who is legal representative—Whether* res judicata.

In an interlocutory application filed in a suit the trial Court decided who was the legal representative of the deceased plaintiff on the basis of a will. The enquiry was made under Order 22, rule 5, Civil Procedure Code, and was summary in character. Even though witnesses might be examined in support of the contention of either party to that proceeding, still the proceeding was summary in character on the question whether this order would be *res judicata* in a further suit to decide the validity of the will,

Held, the finding of the Court below regarding the validity of the will is not *res judicata* in any suit that might be instituted by the revision petitioner herein.

M. Velusami, for Petitioner.

N. Sivamani, for Respondent No. 1.

S.J. ——— *Petition dismissed.*

Ramaprasada Rao, J.

K. A. Loganatha Naicker *v.*
S. R. Balasundaram Mudaliar.

19*th April*, 1974.

C.R.P.No. 2066 of 1972.

Tamil Nadu Buildings (*Lease and Rent Control*) *Act* (*XVIII of* 1960), *section* 10 (3) (c)—*Petition for eviction—Additional accommodation—Finding necessary—Hardship the tenant is likely to suffer would outweigh the advantage to the landlord or* vice versa.

It is imperative for the authorities, in cases arising under section 10 (3) (*c*) of the Tamil Nadu Act (XVIII of 1960), to give a specific finding whether the hardship the tenant is likely to suffer would outweigh the advantage to the landlord or *vice versa*. Unless this aspect is noticed and adjudged upon by the statutory authorities, there is no complete enquiry as contemplated in regard to the petitions arising under section 10 (3) (*c*) of the Act.

V. Janakiraman and *V. Gajapathy*, for Appellant.

T. K. Subba Rao and *N. S. Damodaran*, for Respondent.

S.J. ——— *Petition allowed.*

Gokulakrishnan, J.

Gopalakrishna Pillai *v.* **Maruthappan.**

26th April, 1974.

S.A. No. 360 of 1971.

Hindu Law—Joint family—Suit for partition and possession—Alienation by father—Whether for family necessities and antecedent debts—Burden of proof and nature thereof.

The nature of proof that an alienee of Hindu joint family property had to give in respect of debts incurred by a father of minors was limited in character and if the Courts were satisfied that the alienees had made sufficient enquiry as regards the existence of family necessity it could be construed that the burden had been discharged by the alienees. In the same way if the alienees were able to establish that there were antecedent debts, the application of the money borrowed for the same need not be proved by the alienees.

K. Venkataswami, P. Venkataraman and *K. Govindarajan*, for Appellant.

P. Ramaswami, for Respondent.

S.J. *Appeals allowed.*

Veeraswami, C.J. and *Varadarajan, J.*

S. Natarajan *v.* **The Superintendent of Police, Tirunelveli.**

29th April, 1974.

W.A. No. 53 of 1972.

Fundamental Rules, Rule 54 (2) *and* (3)—*Government Servant under suspension—Enquiry—Complete exoneration—Competent authority passing order under Rule* 54 (3)—*Validity —Scope.*

As a result of an enquiry a Government servant who was under suspension was found not guilty without any observation or limitation or condition, suggesting thereby that the Government servant was completely exonerated. The competent authority passed an order under clause (3) of rule 54 of the Fundamental Rules. On a contention by the Government servant that his case would come only within rule 54 (2) as the Enquiry Officer's finding was accepted without any remarks,

Held, accepting the contention that to assume jurisdiction to pass an order under clause (3) of rule 54, the competent authority must record a finding that the Government Servant had not been completely exonerated. Also no opportunity had been given to the Government servant as required by the principles of natural justice.

It was directed that the Government servant's period of suspension would be treated as on duty under rule 54 (2) of the Fundamental Rules.

K. K. Venugopal and *S. Balathandapani*, for Appellant.

The Government Pleader, for Respondent.

S.J. *Appeal allowed.*

N. S. Ramaswami, J.

A. R. Veerappa Gounder *v.* **Sengoda Gounder.**

30th April, 1974.

C.R.P. No. 2828 of 1973.

Civil Procedure Code (*V of* 1908), *Order* 20, *rule* 18—*Suit for partition and separate possession—Preliminary decree passed—Application for ascertainment of profits and allotment of share therein—Final decree passed without considering application—Application subsequently dismissed—Whether application can be entertained after final decree.*

In a suit for partition of common properties, profits accruing therefrom subsequent to the filing of the suit are also properly to be divided among the sharers. When the preliminary decree directs division of the properties it means that not only the properties described in the plaint schedule but also the profits derived therefrom, after the filing of the suit till

the date of the final decree, have to be divided according to the shares declared in the decree. The mere fact that there is a final decree in respect of the property described in plaint schedule, which does not incorporate the profits derived after filing of the suit, is not a ground to refuse the request that the profits should be ascertained and divided. Till that is done, the suit for partition cannot be said to have been completely disposed of in spite of the Court having already passed a final decree. When a final decree is passed, if it does not cover all the properties that are to be divided, the suit must be held to be still pending and not completely disposed of.

K. Doraiswami, for Petitioner.

N. Sivamani, for Respondent.

S.J. *Petition allowed.*

Ramanujam, J.

Chinnammal *v.* **Kaveri.**

20*th June*, 1974.

S.A. No. 1203 of 1973.

Hindu Succession Act (*XXX of* 1956), *section* 14 (1)—*Suit for declaration of title —Joint family property—Property given to widow for maintenance—Whether becomes her absolute property after the Hindu Succession Act.*

Though the Explanation to section 14 (1) (of the Hindu Succession Act) defines property as including the property given in lieu of maintenance, still having regard to the object of section 14 (1), such property cannot be brought under that section unless it is possible to say that the widow is a limited owner of the property on the date of the commencement of the Act.

N. Maninarayanan, for Appellant.

S. Nagaswami Iyer, P. Venkataraman and *V. Venkataswamy*, for Respondent.

S.J. ——— *Appeal allowed.*

Kailasam, J.

Vellayammal *v.* **Sivakami Ammal.**

28*th June*, 1974.

I.A. No. 1175 of 1974.

Hindu Succession Act (*XXX of* 1956), *section* 14 (1)—*Death of husband in* 1955—*Widow getting life estate by Act XVIII of* 1937—*Remarriage of widow in* 1958—*Effect of.*

P died in 1955 and his widow became entitled to a life estate in his separate properties, according to the provisions of Act XVIII of 1937. Subsequently, when the Hindu Succession Act, came into force in 1956, the life estate became enlarged into one of an absolute estate. The widow remarried in 1958. On the questions whether she would lose all her rights in the property already vested in her,

Held, after the widow became an absolute owner in 1956 under the Hindu Succession Act she will not be deprived of the property by reason of her subsequent remarriage. Once a Hindu widow gets the property absolutely, there can be no divesting.

Venkatachari, for Appellants.

S.J. ——— *Appeal dismissed.*

Ramanujam, J.

V. Manonmani Nadachi *v.* **C. Ramaswami Nadar.**

1*st July*, 1974.

S.A. No. 1468 of 1971.

Transfer of Property Act (*IV of* 1882), *section* 92—*Amendment in* 1929—*Doctrine of equitable subrogation—Effect of amendment.*

The true position appears to be that after the amendment of section 92 (of the Transfer of Property Act) in 1929, the third paragraph of the section has restricted the application of the doctrine of equitable or conventinal subrogation by requiring an agreement to be in writing and registered, while before the amendment such an agreement could either be express or implied.

G. V. Henderson and *J. Samuel*, for Appellant.

S. Padmanabhan, for Respondent.

S.J. ——— *Appeal allowed.*

K. Veeraswami, C. J. and *Natarajan, J.*

Mrs. Sankari Mahalingam *v.* **The Urban Land Tax Tribunal, Madras.**

2*nd July*, 1974.

W.P. No. 1075 of 1974.

Tamil Nadu Urban Land Tax Act (*XII of* 1966), *section* 2 (1) (*B*)—*Urban land—Low lying area—Whether urban land— "Is capable of being used"—Meaning of.*

The expression "is capable being used" (in section 2 (1) (*B*) of the Tamil Nadu Urban Land Tax Act), is only descriptive of the kind of land which is capable, that is to say which can be used as a building site. The expression "is capable" does not mean that the land should be levelled —ready made so that a house can be straightaway put upon that.

V. Krishnaswami Iyer and *L. K. Sankaran*, for Appellant.

S.J. ——— *Petition dismissed.*

N. S. Ramaswami, J.

Ramachandran *v.*
A. K. Ali.

11*th July*, 1974.

C.R.P. No. 1280 of 1974.

Madras Buildings (Lease and Rent Control) Act (XVIII of 1960), *section* 10 (2) (i) *—Petition for eviction—Wilful default—Payment of rent before petition— Acceptance by landlord—Whether acts as waiver.*

It is settled law that even where rent in received without protest after notice of termination of tenancy, unless there are circumstances to show that the landlord intended that the tenancy was to subsist there is no question of waiver of the forfeiture.

R. S. Venkatachari and *R. Manivannan*, for Appellant.

V. Veeraraghavan, for Respondent.

S.J. ——— *Petition dismissed.*

Gokulakrishnan, J.

Shanmugham *v.*
Jayaraman.

24*th July*, 1974.

S.A. No. 1121 of 1972.

Tamil Nadu Court-fees and Suits Valuation Act (XIV of 1955), *section* 37 (3)*—Suit for partition—Right of defendants to claim respective share—Court-fee to be paid—Necessary before declaration of rights.*

The defendants in a partition suit are at liberty to claim their respective shares as if they have filed the suit after paying proper Court-fees for the same. In the absence of any Court-fee being paid, the parties to the suit who claim such relief cannot get the same from the Court. Even for a declaration of certain rights, it is necessary for the parties to pay the appropriate Court-fees and it is incumbent upon the Court to decide such question of paying the Court-fee before any declaration or relief is granted.

K. Swamidurai and *P.T. Saraswathi*, for Appellant.

R. Krishnamurty, for Respondent.

S.J. ——— *Case remanded.*

Maharajan, J.

Durgamma *v.*
D. Kamakshamma.

25*th July*, 1974.

A.A.A. No. 18 of 1973.

Civil Procedure Code (V of 1908), *section* 11 *—Execution proceedings—Order passed — Appealable—No appeal filed — Objection raised at a subsequent stage—Whether permissible—Constructive* res judicata.

Where an appealable order prejudicial to the judgment-debtor was passed, but the judgment-debtor failed to prefer an appeal against such an order, he would be barred from disputing the correctness of that order at a subsequent stage. The judgment-debtor would be barred by the principles of constructive *res judicata* from raising the same objection at a later stage of the execution proceedings.

G. Dasappan, for Appellant.

K. Ramamoorthy, Amicus Curiae, for Respondent.

S.J. ——— *Appeal dismissed.*

Maharajan, J.

Ayyamperumal Gounder *v.* **Parthasarathi Naicker.**

13*th September*, 1974.

A.A.A.O.No. 192 of 1973.

Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act (XXI of 1972), section 2 (c)—"Cultivating tenant"—Usufructuary mortgage—Lease-back arrangement with mortgagee—Mortgagor whether cultivating tenant—"Belong"—Meaning of.

The question was whether a person, who has usufructurarily mortgaged his agricultural land and has obtained a lease-back of the same from the usufructuary mortgagee and is in cultivation thereof, can be regarded as a cultivating tenant entitled to the benefits of the Tamil Nadu Act XXI of 1972.

Held: There is no anomaly about a person who has usufructuarily mortgaged his land with a lease-back being a cultivating tenant of the land; the equity of redemption may, no doubt, belong to him, but the right of possession to which belongs undoubtedly to his landlord, who is the usufructuary mortgagee.

If the meaning "to pertain to" is attributed to the word "belong", the land can be said to "belong" to the usufructuary mortgagee, who, under the mortgage, had become entitled to exclusive possession of the property as well as to lease it out to others, including the appellant, the holder of the equity of redemption. The word "belong" does not necessarily connote the concept of absolute ownership. It may also denote a person to whom the tangible right of possession of a land pertains.

S. Rajarama Iyer and *Srinivasavaradan*, for Appellant.

V. Sridevan and *P.A. Daivasigamani*, for Respondent.

S.J. ——— *Appeal allowed.*

Ramaprasada Rao, J.

Neelayathakshi Ammal *v.* **The Authorised Officer, Land Reforms, Coimbatore.**

6*th September*, 1974.

C.R.P.No. 1603 of 1973.

Pleadings—Land Tribunal—Absence of pleading—Enquiry—Parole evidence let in—If can be accepted.

In matters, which are summarily disposed of by specially constituted Tribunals under special enactments, the rigour of pleadings, which are required in a regular civil action, is not so very tight and poignant. The absence of pleadings may well be substituted by parole evidence in the course of enquiry. So long as such testimony of witnesses examined before the special Tribunals do not savour of untruth or is viewed as an attempt to wriggle out of truth, then it is for the Court to accept such uncontroverted testimony.

Varadarajan, for Petitioners.

Additional Government Pleader No. II, for Respondent.

K. Chandramouli for *N. Varadarajan* and *T.R. Rajagopalan*, for Appellant.

The Additonal Government Pleader. for Respondent.

S.J. ——— *Petition allowed.*

N.S. Ramaswami, J.

Official Receiver, Madurai *v.* **Dindigul Co-operative Land Mortgage Bank Ltd., through its Secretary.**

30*th September*, 1974.

A.A.A.O.No.128 of 1973 and 26 of 1974.

Provincial Insolvency Act (V of 1920), section 28—Court-sale—Insolvency petition presented earlier—Adjudication subsequent to Court-sale—Court-sale whether valid.

Once an adjudication is made and that dates back to the date of presentation of the insolvency petition it naturally follows that the vesting of the property in the Official Receiver or the Court, as the case may be, also dates back to the date of presentation of the petition.

Once the property is deemed to have vested in the Official Receiver, a sale without notice to him would be one without jurisdiction as far as he is concerned. The Official Receiver steps into the shoes of the judgment-debtor, once the property vests in him. When the Official Receiver is in the position of the judgment-debtor a sale without notice to him is certainly invalid as far as he is concerned.

Raj and *Raj*, for Appellant.

M. Veluswamy and *D. Anandan*, for Respondent.

S.J. ——— *C.M.S.A.No.* 26 *dismissed.*
C.M.S.A. No. 128 *allowed.*

Ramaprasada Rao, J.

Ramaswamy Goundar *v.* **Palaniappan.**

20*th September*, 1974.

C.R.P.No.122 of 1973.

Tamil Nadu Cultivating Tenants Protection Act (*XXV of* 1955), *section* 3 (4) (*a*) *Cultivating tenant—Encroachment on demised land —Whether act of waste by tenant.*

If there is an encroachment on the land, which the tenant is aware of, or which has resulted from acts of omissions and commissions on the part of the cultivating tenant, that situation also can be reasonably interpreted as posing a situation where the cultivating tenant has ceased to cultivate that portion of the land so encroached upon.

S. Nainar Sundaram, for Petitioner.

E. Padmanabhan for *S. Ramalingam*, for Respondent.

S.J. ——— *Petition allowd.*