

*** HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
AND
HONOURABLE SRI JUSTICE N. BALAYOGI**

+ F.C.A.Nos. 99 OF 2006 AND 131 OF 2006

%27.02.2018

F.C.A. No.99 of 2006

Between:

Nawab Mir Barkat Ali Khan Waleshan Bahadur,
Prince Mukkaram Jah Bahadur, H.E.H. The Nizam VIII
of Hyderabad rep. by his Special Power of Attorney
Holder Mir Hasan Ali S/o late Mir Hussain Ali, aged
59 years, r/o "Hasan Villa" H.No.8-2-282/A/4,
Road No.3, Banjara Hills, Hyderabad.

... Appellant/

AND

Princess Manolya Jah, Dulkadir Sokak,
Adali cikmazi No.9, Arnavutkoy,
Istanbul, Turkey & another

.... Respondents.

! Counsel for Petitioner

: (1) Sri D.Prakash Reddy &
Sri R.Raghunandan
Senior Counsel for
Sri C.Tulasi Krishna
(FCA No.99 of 2006)

(2) Sri C.V. Mohan Reddy,
Senior Counsel for
Sri C.Sumon
(FCA No.131 of 2006)

^ Counsel for Respondents

: (1) Sri Ch.Pushyam Kiran
(FCA No.99 of 2006)

(2) Sri D.Prakash Reddy &
Sri R.Raghunandan
Senior Counsel for
Sri C.Tulasi Krishna
(FCA No.131 of 2006)

< Gist:

> Head Note:

? Cases referred:

1. AIR 1979 AP 2
2. AIR 1955 MADRAS 652 (FB)
3. AIR 1967 AP 123
4. 2013(3) Mh.L. 193
5. (2011) 11 SCC 1
6. (2009) 13 SCC 22
7. (1995) 5 SCC 709
8. (2008) 13 SCC 102
9. 2014 (1) MPLJ 346
10. 2000 (3) Mh.L.J. 468
11. (1986) 2 SCC 614
12. (2009) 4 SCC 94
13. AIR 2017 Nom.1
14. AIR 2012 ALL. 37
15. 2008 (6) ALD 92 (SC)
16. (2006) 10 SCC 788
17. 2013 (5) ALD 490
18. 1971 (1) SCC 545
19. 1993 ALT Supp.(1) 157
20. 2003(3) ALT 513
21. 1998 (4) ALT 676
22. 2003(2) ALD 638
23. 1969(1) SCC 573
24. 1965 SCC Online AP 56
25. 2008 (6) ALD 92
26. AIR 1951 SC 11
27. (2015) 3 SCC 465
28. (2012) 13 SCC 1
29. 2017 (1) ABR 221
30. 2017 ALL MR (Cri) 368
31. AIR 2012 ALL 37
32. Privy Council Part-22 Page 447
33. AIR 1977 Kerala 54



**HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
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F.C.A.Nos. 99 OF 2006 AND 131 OF 2006

COMMON JUDGMENT: (per Hon'ble Sri Justice N. Balayogi)

1. Inasmuch as both these appeals arise out of one and the same judgment and decree, and parties being same, they are heard together and being disposed of by this common judgment:

F.C.A.No.99 OF 2006:

2. The appellant/defendant being aggrieved by the judgment and decree dated 23.06.2006 passed in O.S.No.52 of 1996 by the learned Judge, Family Court, City Civil Courts, at Hyderabad preferred this appeal under Section 19(1) of the Family Courts Act, 1984 on the grounds that:

(a) the judgment and decree of the Family Court is contrary to law, weight of evidence and probabilities of the case; that the Family Court erred in partly decreeing the suit O.S.No.52 of 1996 based on Exs.A.5 to A.8 without considering the objections of the appellant with regard to the admissibility and enforceability of the documents as required under Section 49 of the Registration Act and that Exs.A.7 and A.8 are required to be stamped in accordance with the relevant entries in Schedule 1-A of the Indian

Stamp Act and compulsorily registerable under Section 17 of the Indian Registration Act.

(b) The Family Court erred in altering the issue as to “whether the Agreements dated 9.7.1992 (Ex.A.7) and 18.11.1994 (Ex.A.8) are true, valid and binding on the defendant” from the issue originally framed as to “Whether the said agreements are valid in law and are enforceable ?”. The Family Court erred in holding that the said documents were admissible in evidence under Section 14 of the Family Courts Act, 1984 without recognizing that Section 14 of the Family Courts Act, 1984 only permitted a departure from the ordinary rules of the Indian Evidence Act, 1872 and not from the mandatory and peremptory provisions respectively of the Indian Stamp Act, 1899 and the Indian Registration Act, 1908.

(c) It is contended that Exs.A.5 and A.6 constitute security bonds if not promissory notes and a charge was created in Ex.A.6 over immovable property over the value of Rs.100/- and hence they are improperly stamped and are inadmissible in evidence.

(d) The Family Court erred in considering the appellant’s objection that Exs.A.7 and A.8 are not based upon any consideration and are void, being contrary to Section 25 of the Indian Contract Act. Ex.A.7 contemplates gifts for future which are void under Islamic/Mohammedian

law and are unenforceable and are required to be registerable under Section 123 of the Transfer of Property Act.

(e) It is further contended that Exs.A.7 and A.8 were never meant to be acted upon. Ex.A.7 dated 9.7.1992 was during the subsistence of marriage and Ex.A.8 dated 18.11.1994 was before the divorce became final. Therefore it was only a form of security agreed to by the appellant and was not meant to be acted upon. Further Exs.A.7 and 8 are contingent in nature and have become unenforceable in view of the settlement of jewellery and valuables made by the appellant in favour of the first defendant at the time of divorce.

(f) The Family Court completely ignored Ex.B.4 declaration under which the appellant categorically stated that Exs.A.7 and A.8 documents were never meant to be acted upon and were at any rate withdrawn and cancelled.

(g) The judgments cited by the appellant on inadmissibility of the documents constituting Exs.A.5 to A.8 were not considered by the Family Court.

(h) The recitals of the agreements do not entitle the respondents for any perpetual injunction on the suit schedule property and the agreements themselves do not confer any such right or authority on the respondents.

(i) The Family court committed grave error in recasting the issues and in not considering Issue No.6 of the original issues framed on 27.01.1998 and Issue No.1 of the additional issues framed on 19.08.2005.

(j) It is contended that the reliefs originally sought for by the respondents in reliefs (a) to (d) have not been properly valued and paid Court Fee. In respect of the additional relief claimed from reliefs (e) to (k), there is no valuation made for the said reliefs and no Court Fee thereon has been paid. Hence the suit was liable to be rejected.

(k) The Family Court ought to have recognized that the appellant had already given valuables to the first respondent which were allowed to be retained by her at the time of divorce, which constitute provision for maintenance for their (respondents) benefits.

(l) The Family court erred in ignoring the fact that the second respondent is a beneficiary in the share allotted to the appellant under HEH the Nizam's Jewellery Trust where under the second respondent after the demise of the appellant would receive an amount approximately Rs.4.00 crores.

(m) The Family Court committed serious error in not considering the appellant's contention that the appellant

had no means of income and was under financial crisis compelled by the huge expenditure required for maintaining the Palaces and their establishments. The same being not denied, the Court below ought to have considered in affirmative and ought not to have directed payment of such large amounts to the respondents.

(n) The Family Court failed to consider the provision already made for maintenance, income of the spouse, the back ground and the life style of the spouse claiming maintenance. She had been leading her own life in a lavish style and having been living with other man for the last over ten years, the Family Court considering those facts should have dismissed the suit and claims made by the respondents.

(o) The interest at 6% per annum awarded was excessive and untenable considering the escalation of price of the US Dollar to the Indian Rupee since the institution of the suit and the fact that the rate of interest available internationally over the relevant period.

(p) The Family Court having granted a decree for payment of large amount including payment of alleged 'additional meher', repayment of a loan amount, past rentals etc., ought to have recognized that there was no necessity for directing payment of maintenance in the future as well.

(q) The Family Court ought to have taken into consideration the facts that the appellant never neglected nor refused the second respondent and he had provided for her in the past and would continue to provide for her in the future in discharge of his duty as a responsible and loving parent.

(r) It is contended that the appellant was not liable to maintain the second respondent as per the provisions under Section 3(1)(b) of the Muslim Women (Protection of Rights on Divorce) Act, 1986. It is further contended that the maintenance of the second respondent cannot be for life and would have to be only until she marries, and

(s) It is lastly contended that the Family Court ought to have considered that in any event only a lump sum amount of maintenance is permissible under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

F.C.A.No. 131 OF 2006:

3. The appellants/plaintiffs being aggrieved by the very same judgment and decree dated 23.06.2006 passed in O.S.No.52 of 1996 by the learned Judge, Family Court, Hyderabad, preferred this appeal on the following among other grounds, that :

(a) the Family Court materially erred in not granting the injunction as prayed for restraining the respondents from alienating, encumbering, altering etc of the plaint schedule properties.

(b) It is contended that the injunction granted has been in operation from the date of filing of the suit i.e. 7.5.1996 till date. This fact was not considered, particularly the fact that the material on record would establish that the respondent has not been able to manage his property properly and he being kept in dark about his income and persons acting on his being are secreting and screening the properties.

(c) It is contended that the Family Court erred in holding that the second appellant is claiming Chiran Palace and Cedar Palace basing on Ex.A.7. The relief claimed is only to protect them till the claims of the appellants are satisfied.

(d) It is contended that the Family Court ought to have noticed that though subsequent to Ex.A.7 the respondent executed Ex.A.8, Ex.A.7 was not cancelled or superseded or revoked. Hence under Ex.A.7 the respondent has to transfer the Chiran Palace and Cedar Palace as contemplated therein.

(e) It is contended that the creation of charge under Ex.A.7 over the properties makes it amply clear that

Ex.A.7 was intended to be acted upon and the same has to be enforced.

(f) It is contended that the Family Court ought to have noticed that Ex.A.7 would show that the respondent had created an interest, which would take effect on a future date in favour of second appellant and the same does not require any stamp duty or registration and at any rate it is in the nature of a family settlement on the occasion of marriage between the husband and wife and it does not require any stamp duty or registration. Even though the documents are inadmissible in evidence, the same can be looked into for the purpose of adjudication of issues before the Court. The finding of the Family Court that as compensatory payment is contemplated, the second appellant/second plaintiff is not entitled to Chiran Palace and Cedar Palace is not correct.

(g) It is contended that the Family Court ought to have seen that Ex.A.7 is an understanding and arrangement between wife and husband, as such, it must be given due weight and the same has to be given effect to in the proceedings before the Family Court to effectuate the intention of the parties at the time of execution of it.

(h) It is contended that the family Court failed to see that Ex.B.4 is illegal, invalid and inoperative, the same is not proved in accordance with the law and the same is

not binding on the appellants and execution of such document shows the conduct and the manner in which the respondent is conducting his affairs and how persons claiming to represent are exercising their undue influence on him.

(i) It is contended that the Family Court ought to have granted interest at 18% per annum as claimed for, in view of the fact that pending proceedings, no maintenance and no legal expenses are given.

(j) It is contended that the Family Court erred in not granting the reliefs H to I as prayed for in the plaint and in not considering the Clauses 5,6,8,9 and 10 of Ex.A.8. Further that the respondent had created trusts in favour of his other divorced wives and children born to them. Hence the appellants are entitled to for reliefs H to I as prayed for in the plaint.

(k) It is further contended that as per the solemn understanding and as per clauses 5 to 10 of Ex.A.8, the trust and the house will be provided before 10.02.1996. The appellant and respondent had agreed for payment of \$5000 per month towards rent. In view of the fact that the said understanding failed and a decade lapsed and there being huge inflation of real estate and rental at its minimum, the Family Court ought to have directed the respondent to pay a sum of \$15000 towards rent for the residential

accommodation of the appellants till the trust and the house are created and purchased; and

(I) It is lastly contended that the Family Court ought to have seen that \$10000 per month towards maintenance is too low and the same has to be enhanced to \$30000 per month.

4. Since both the appeals being FCA.Nos.99 and 131 of 2006 arise out of the judgment and decree dated 23.06.2006 made in OS.No.52 of 1996 on the file of learned Judge, Family Court, City Civil Courts, Hyderabad, for the sake of convenience, the parties herein are referred to as 'Plaintiffs' and 'Defendant' as arrayed in the suit.

5. The Family Court having considered the pleadings and denial by the defendant thereon, framed the following issues for settlement on 27.01.1998.

- (i) Whether the suit instituted by a so called GPA Nazil Lalani on behalf of the plaintiff is maintainable?
- (ii) Whether the plaintiffs are entitled to claim past and future maintenance from the defendant on the basis of the agreements dt. 09.07.1992 and 18.11.1994 ?
- (iii) Whether the suit instituted on 07.05.1996 is barred by limitation?
- (iv) Whether the plaintiffs are entitled to a charge of the plaint schedule properties in respect of their claims ?

- (v) Whether the plaintiffs are entitled to the permanent injunction as prayed for?
- (vi) Whether the agreements dt.09.07.1992 and 18.11.1994 are valid and enforceable?
- (vii) Whether the suit is maintainable under Section 7 of the Family Courts Act ?
- (viii) To what relief.

6. Subsequently the following additional issues were framed for settlement by the Family Court on 09.08.2005.

- (i) Whether the agreements dt.09.07.1992 and 18.11.1994 are valid in law and are enforceable?
- (ii) Whether the plaintiffs are entitled to the amounts claimed in the suit towards past and future maintenance?
- (iii) Whether the plaintiffs are entitled to the amounts or properties and other benefits or reliefs as per the agreements of 09.07.1992 and 18.11.1994 executed by the defendant?
- (iv) Whether the claims based on the agreements dt.09.07.1992 and 18.11.1994 are barred by time ?
- (v) Whether a declaration and a mandatory injunction can be granted without seeking specific performance of the agreement ?
- (vi) Whether the relief sought for in this suit are properly valued and whether the Court Fee has been properly and correctly paid and whether the suit is liable to be dismissed for not payment of proper Court Fee.?
- (vii) Whether the plaintiffs are entitled to the injunction as prayed for in respect of the plaint schedule properties ?

7. At the time of arguments, since many issues and additional issues are similar in nature, the Court below had to

necessarily reconstitute the issues and accordingly reconstituted the issues as follows:

- (i) Whether the acknowledgment and debt executed by defendant on 30.03.1993 and 10.01.1996 under Ex.A.5 and A.6 are true valid and binding on the defendant ?
- (ii) Whether the agreements dated 09.07.1992 and 18.11.1994 under Exs. A.7 and 8 are true, valid and binding on the defendant?
- (iii) Whether the plaintiffs are entitled to past and future maintenance as prayed for by them?
- (iv) Whether the second plaintiff is entitled to the Chiran Palace and Cedar Palace properties ?
- (v) Whether a charge can be created over the suit schedule properties ?
- (vi) Whether the plaintiffs are entitled to permanent injunction as prayed for ?
- (vii) Whether the relief sought for in the suit are properly valued and whether Court Fee has been properly and correctly paid and whether this suit is liable to be dismissed for non payment of proper Court Fee ?
- (viii) Whether the suit is barred by limitation ?
- (ix) Whether the suit instituted by so called GPA Nazil Lalani on behalf of the plaintiffs is maintainable?
- (x) Whether the suit is maintainable under Section 7 of the Family Court Act ?
- (xi) To what relief.

8. Before the Family court, on behalf of the plaintiffs P.Ws.1 and 2 were examined and Exs.A.1 to A.26 were got marked. On behalf of the defendant, D.Ws1 to 3 were examined and Exs.B.1 to B.10 were got marked.

9. Upon thorough scrutiny of the oral and documentary evidence on record and considering the contentions advanced by the learned Counsel on either side, the Family Court partly decreed the suit. Aggrieved thereby, both the parties, to the extent insofar as the impugned judgment and decree goes against them, preferred the aforesaid appeals on the grounds referred supra.

10. Besides advancing arguments in both the appeals by learned Senior Counsel appearing on either side, they have also filed their respective written arguments.

11. The main question involved in both the appeals is :

“whether Ex.A.5 and A.8 documents require stamp duty and registration, if so can they be received in evidence to assist the Court for effectual adjudication of the disputes by virtue of Sections 14 and 20 of the Family Courts Act.”

12. The appellant in FCA No. 99 of 2006 is the defendant in O.S.No.52 of 1996 and Respondent in FCA No.131 of 2006. Hence they are referred to as arrayed in OS.No.52 of 1996 as ‘plaintiffs’ and ‘defendant’.

13. In fact before the trial Court, both the parties at the time of arguments have not pressed the GPA issues and also maintainability of the suit under Section 7 of the Family Courts Act. Therefore the issues 9 and 10 were answered accordingly.

14. Similarly the trial Court also settled Issue No.8 as to ‘whether the suit is barred by limitation’ finding Ex.A.6 dated 10.01.1996 was executed within three years from the date of

Ex.A.5. So far as Ex.A.7 it is dated 9.7.1992 and Ex.A.8 is dated 18.11.1994 whereas suit in O.S.No.52 of 1996 was filed on 7.5.1996, which is within three years from 10.01.1996, the date of Ex.A.6 and also within three years from the date of Ex.A.8 dated 18.11.1994. Accordingly it was concluded that the suit is within time. These findings and issues 8 to 10 are not challenged in the present appeals.

15 The discussions and conclusions and the material before the trial Court is that O.S.No.52 of 1996 was filed by the Princess Manolya Jah and Niloufer Elif Jah, being minor is represented by mother, first appellant, against Nawab Mir Barkat Ali Khan, HEH Nizam VIII of Hyderabad for arrears of maintenance and also for future maintenance. The first plaintiff, who is the first appellant in FCA No. 131 of 2006 and first respondent in FCA No. 99 of 2006 was examined as P.W.1, and the defendant in the suit and appellant in FCA No.99 of 2006 was examined as DW.1. There is no dispute that the second plaintiff Nelofer Elif Jah is the daughter of PW.1 and DW.1.

16. The admitted facts spell out from the evidence of PW.1 and DW.1 and evident from Ex.A.1 dated 4.8.1990-Marriage Certificate are that the marriage between PW.1 and DW.1 was solemnized on 1.8.1990. Out of wedlock, the second plaintiff was born to them on 27.3.1991 in Perth, Western Australia. As per Ex.A.3, Divorce Certificate dated 15.10.1994 was issued by the A.P. State Wakf Board, Hyderabad certifying that divorce has been taken effect between first plaintiff-Princess Manolya Jah and

defendant-Nawab Mir Barkat Ali Khan on 30.09.1994 in accordance with the tenets of Islamic Sunni law and thereafter there exists no relationship between them as wife and husband. It is the evidence of P.W.1 and DW.1 that subsequent to the divorce, DW.1 made attempt to take back 'first talak' pronounced by him, but ultimately P.W.1 and DW.1 entered into Ex.A.8 agreement wherein it was stated that divorce has become final on 10.02.1995. DW.1 specifically stated in the evidence that divorce has become final as mentioned in Ex.A.8 on completion of *Iddah*. During the cross examination DW.1 admitted that under Ex.A.4 he had taken back 'first talak' and divorced wife Manolya Jah as his wife. With regard to divorce of PW.1, his evidence in cross is that earlier divorce of 1994 was not cancelled, but it is put on hold. Ex.A.23-divorce certificate dated 4.8.1995 shows earlier divorce certificate Ex.A.3 was cancelled.

17. Mr. Mir Hasan Ali who filed additional written statement in the main suit in the capacity of Special Power of Attorney Holder of the defendant was examined as DW.2. His evidence is that he was appointed as Special Power of Attorney Holder for the defendant to represent him in the present suit.

18. The main contention of the defendant i.e. appellant in FCA No. 99 of 2006 is that Exs.A.5 to A.8 are not admissible in evidence because Exs.A.5 and A.6 have not been stamped and Exs.A.7 and A.8 have not been stamped and registered. It is further contended that since the Stamp Act and the Registration Act have not been specifically mentioned under Section 14 of the

Family Courts Act, they cannot be excluded and hence those documents cannot be received in evidence and relied on for want of stamp duty and registration. Section 20 of the Family Courts Act has no overriding effect on the Stamp Act and Registration Act.

19. Per contra, it is the contention of the plaintiffs, i.e. appellants in FCA No.131 of 2006 that by virtue of Section 14 of the Family Courts Act read with Section 20 thereof, the Family Courts Act has overriding effect on the provisions of any law. They are not inconsistent and the Indian Evidence Act has no application to the Family Court Act and the Family Court may receive as evidence any report, statement, document, information or matter that may assist to it to deal effectually and adjudicate the family disputes. The suit in O.S.No.52 of 1996 was filed by the plaintiffs seeking maintenance for them past and future and also permanent injunction with regard to certain immovable properties. In the plaint, the first plaintiff/P.W.1 herself is described as daughter of Mr. Onur, but not as the wife of DW.1. In Ex. A.8 it was clearly recited that the divorce between P.W.1 and D.W.1 would become final on 10.2.1995. P.W.1 is not seeking any declaration that divorce between P.W.1 and DW.1 is invalid. In all aspects, P.W.1 herself showing as the guardian of second plaintiff filed the suit in the capacity as divorced wife of DW.1. Therefore DW.1 also admitted that the marriage between P.W.1 and D.W.1 was not subsisting as on the date of filing the suit.

20. It is further contended by the learned Counsel for the plaintiffs that Exs.A.5 and A.6 are not promissory notes and hence

need not be stamped and Exs.A.7 and A.8 do not deal with immovable property in *praesenti* and that there is no extinguishment of rights of the defendant in *praesenti* and no conferment of rights over the immovable property in *praesenti*. The rights in favour of the second plaintiff by virtue of Exs. A.7 and A8 would accrue only after the death of the defendant and hence they need not be stamped and registered. Section 14 of the Family Courts Act reads as under:

“APPLICATION OF INDIAN EVIDENCE ACT, 1872: A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (I of 1872).”

21. A perusal and complete reading of Section 14 of the Family Courts Act postulates that the Family Court may receive as evidence any documents, reports, information, or matter that may in its opinion assist to it to deal effectually with a dispute whether or not it is relevant or admissible under the Indian Evidence Act, 1872.

22. At this juncture, it is apt to extract Ex. A.5, which reads :

“Ex.A.5:

“ACKNOWLEDGEMENT OF DEBT:

MUKARRAM JAH
27 HAVELOCK STREET
WEST PERTH.

TO

MANOLYA JAH

This is a note to acknowledge the fact that I owe my wife, Manolya the sum of USS 240,000.00 (Two hundred and forty thousand US Dollars) to be repaid by the 1st September, 1993.

Dated the 30th day of March, 1993.

Sd/- Mukarram Jah."

23. In the case of **SMT.PULLURU VAJRAMMA Vs. MORE AGAIAH** (AIR 1979 AP 2) this Court held that Section 4 of the Negotiable Instruments Act prescribes requirements for a promissory note:- 1) it must be a written document, (2) the maker must have signed it, (3) there must be an unconditional promise to pay and (4) the promise must be to pay a certain sum of money to a certain person, called the payee, or to his order. In the matter of **KUPPUSAMI CHETTIAR** {AIR 1955 MADRAS 652 (FB)} it was held that mere omission of the expression 'to the order of' would not affect the document in the least, if otherwise, it fulfills the definition of a promissory note, and that actually, a promissory note need not contain that expression and that it is sufficient if there is unconditional undertaking to pay a certain sum of money to a certain person. These requirements are present in the promissory note. In the matter of suit which was the subject matter in the aforesaid decision, it was observed that the document/promissory note had already been received in evidence and formed part of the record and hence the lower Court is right in refusing to recognize the document as a promissory note. Similarly in the case of **AHADURRINISA BEGUM Vs VASUDEV NAICK** (AIR 1967 AP 123) this Court while dealing with Section 2(22) of Indian Stamp Act held as under:

“5. Now a promissory note as defined in the Indian Stamp Act is as follows:-

2. (22) Promissory note:- 'Promissory note' means a promissory note as defined by the Negotiable Instruments Act, 1881:

it also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen.

It will thus be plain that under sub-section (22) of section 2 of the Indian Stamp Act, a promissory note has been defined to be an instrument answering its definition as given in the Act plus something more, that is, an instrument will be a promissory note under the Indian Stamp Act if it promises the payment of any sum of money out of any particular sum which may or may not be available, or upon any condition or contingency which may or may not be performed or happen. Admittedly the latter part of the definition of promissory note appearing in section 2(22) of the Indian Stamp Act is not relevant for the purposes of this case. We have therefore to look to the definition of promissory note as is given in the Act. Under section 4 of that after the promissory note is defined to be an instrument in writing (not being a bank-note or a currency note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument. On a close and analytical reading of section 4 of the Act it will be evident that the section recognises three kinds of promissory notes.

(1) A promise to pay a certain sum of money to a certain person.

(2) a promise to pay a certain sum of money to the order of a certain person, and

(3) a promise to pay the bearer.

While the second and the third kinds of instrument were undisputably negotiable, an instrument failing under the first category formerly was not negotiable under the Indian law. It was however, valid as between the immediately parties and was capable of assignment as an ordinary chose in action though not by negotiation, but Act 8 of 1919 amended Section 13 of the Act. Under the amended section 13 such a note also is now negotiable unless there are words like 'only to' which specifically restrict its negotiability.

6. It can thus be broadly stated that in order that an instrument may fall within the definition of promissory note continued in section 4 of the Act, it is necessary that there should be

(1) unconditional undertaking to pay,

(2) the sum should be a sum of money and it should be certain,

(3) the payment should be to or to order of, a person, who is certain, or to the bearer of the instrument, and

(4) the maker should sign it.

It is however, clear that apart from fulfilling the above said terms of definition of promissory note the instrument must further satisfy the following three tests:-

- 1. The promise to pay must be the substance of the instrument,*
- 2. there must be nothing else inconsistent with the character of the instrument as substantially a promise to pay, and*
- 3. the instrument must be intended by the parties to be a promissory note.*

It will thus be obvious that the first and essential requisite in regard to a promissory note is certainty—certainty as to the person is make the payment, the person to receive, it, the time and place of payment, the conditions of liability and also a certain amount to be paid. The main question therefore, in deciding whether a document is a promissory note is to consider whether in substance and primary intention of the parties it was a promissory note and whether it contains the necessary recitals and is not intended to record a different kind of transaction altogether. It must follow that the question whether the words in a given document amount to mere acknowledgment or to a promise, has to be decided on the intention of the parties keeping in view the real characteristics of the document.

7. In this background if the note in question is carefully considered, it becomes plain that the suit document fulfills all the requirements of section 4 of the Act and consequently satisfies the requirement of Section 2(22) of the Indian Stamp Act. The instrument under consideration promises to pay a certain sum of money to a certain person. Merely because it does not contain the words 'order' or 'bearer' it cannot be argued that it is not a promissory note. Such an argument will be inconsistent with Section 4 of the Act itself. Even without therefore, going into Section 13 and drawing upon that amended section and even if consideration is exclusively confined to Section 4 of the Act, I have no manner of doubt that a promise to pay a certain sum of money to a certain person would be a promissory note provided it satisfies the other requirements of the definition. If it is made necessary in order to apply Section 4 of the Act that the instrument must be not only payable to a certain person, but it must also in all cases be made payable to his order or to the bearer, the result would be that the first category of the instruments contemplated by Section 4 of the Act will have to be ignored. That the Legislature treats these types of documents also as promissory note the right to purpose of the definition is further made clear from Illustration 'b' to Section 4 of the Act. It is as follows:

(b) I acknowledge myself to be indebted to B in
Rs. 1,000, to be paid on demand, for value received.

Unhampered by consideration of any decision, therefore, a plain reading of Section 4 of the Act would make it abundantly plain that a promissory note containing an unconditional undertaking signed by the maker and which promises to pay a certain sum of money to a certain person would certainly be a promissory note within the definition of that term. A document therefore, which contains simply a promise to pay on demand a certain sum to a specified person is a promissory note though there may be no words of negotiability. Such documents fully satisfy the requirements of Section 4 of the Act. I am therefore, satisfied that the suit instrument is a promissory note and has been properly held to be so by the Court below."

24. A plain reading of Ex.A.5 goes to suggest that the defendant acknowledged the fact that he owe his wife Manolya

the sum of US\$240,000.00 to be repaid by 1st September, 1993. It does not fulfill any of the conditions required under Section 4 of the Negotiable Instruments Act or Section 2(22) of the Indian Stamp Act. Whatever is stated in Ex.A.5 is that the defendant acknowledged the amount due to be repaid. None of the four conditions discussed hereinabove, in particular, (1) un conditional undertaking to pay (2) payment should be to or to order of, a person, who is certain, or to the bearer of the instrument, were fulfilled to test the document as promissory note. It is nothing but acknowledging the amount due to his wife Manolya, the first plaintiff herein.

25. It is necessary to extract Ex.A.6, which reads thus:

"Ex.A.6:

" ACKNOWLEDGEMENT OF DEBT

BY: MUKARRAM JAH

TO: MANOLYA JAH (ONUR)

I enclose a copy of a note dated 30 march 1993 wherein I had acknowledged a debt to you of US\$240,000.00 to be repaid to you by 1 September 1993.

Due to circumstances beyond my control, about which you are aware, I was unable to repay the said amount. I am executing this further note to acknowledge the sum of US dollars \$330,000.00 (Three hundred and thirty thousand US Dollars) which represents the original amount of US\$240,000.00 plus interest to date, to be repaid to you with interest at the rate of 10% per annum, to be compounded annually from this date until full payment, as soon as may circumstances permit. In the case of my death, before full payment is made, the said sum shall be a first charge over my estate.

This note now supersedes my note of 30 March 1993.

Sd/ Mukarram Jah

Dated this 10th day of January, 1996."

26. A close perusal of Ex.A.6 goes to suggest that the executant Mukarram Jah endorsed by enclosing a copy of Ex.A.5 specifically stating that he acknowledged the debt due to the plaintiff the sum of US \$ 240,000.00 to be repaid by 1st September, 1993. Due to circumstances beyond his control, he is unable to repay the said amount, as such, the executant under Ex.A.6 acknowledged a sum of US\$ 330,000.00 which represents the original amount of US\$240,000.00 plus interest to be repaid at 10% per annum, to be compounded annually from the date of subject document until full payment, as soon as the circumstances permit him. In case of his death before full payment is made, the said sum shall be a first charge over his estate.

27. In the chief evidence affidavit, D.W.1 did not state anything about the Exs.A.6 and A.7. He only deposed that during subsistence of marriage between PW.1 and DW.1, she managed to obtain the alleged agreement dated 9.7.1992 which is Ex.A.7, and it was arrayed as without consideration and executed only for the purpose of securing the first plaintiff/PW.1 in the event of his demise.

28. Similarly it is his evidence that the alleged document Ex.A.8 dated 18.11.1994 was also without consideration and the same was not meant to be acted upon and both are executed out of India, at the relevant time which were never intended to be enforced. His evidence is that they are inadmissible in evidence as they are not properly stamped and registered. The maintenance of various properties and palaces is very high and

there is no income from any of the said properties. On the other hand, the said properties are subjected to payment of heavy property tax and wealth tax duties. His further evidence is that the second plaintiff who is their daughter is one of the beneficiaries in respect of the jewellery Trust created by his grand father where under he has been granted a life interest and the share allotted to him would be distributed among his heirs after his demise. In the properties which he got from his grand father he has only life interest and after him, they succeeded to his legal heirs. The clear admission of DW.1 in chief itself is that the second plaintiff is one of the heirs who is entitled to a share in the said amount. As a matter of fact, the second plaintiff would receive an amount of over Rs.4.00 crores from the jewellery trust. During the cross examination, he admits that the signatures shown in the Certified Copy of counter affidavit in I.A.No.599 of 1996 are that of Mohd. Asadullah Khan, the deponent therein. At para 8 of the said counter, it was stated that the value of the suit schedule properties is thousand times than the alleged claim of the petitioners/plaintiffs therein. Ex.A.11 is the certified copy of counter affidavit of Khairuddin Ali Khan in I.A.No.520 of 2001 in O.S.No.52 of 1996. Similarly Exs.A.12 and A.13 are also the certified copies of the counter affidavits filed in IA Nos. 622 and 627 of 1996 by Asadullah Khan. He further deposed that John Butler and Stephen Crooks, Barristers and Solicitors were his advisors and Philips Fox, Barristers and Solicitors were also his advisors in Australia. He consulted the above advisors in connection with the disputes with Ms. Helen @ Aysha. Ex.A.15-A

is the photocopy of the Court case PT No.3618 of 1980 in Australia between him and Helen. Exs.A.16 to A.22 are the opinions and correspondence of John Butler and Stephen Crooks. Exs.A.16 to A.22 are dated 17.5.1989, 18.5.1989, 6.6.1989, 18.5.1989, 19.5.1989, undated and 26.5.1989 respectively.

29. With regard to Exs.A.5 to A.8, the evidence of DW.1 in cross examination is that the contents in Exs.A.5 and A.6 are correct and bear his signatures. Similarly Exs.A.7 and A.8 also bear his signatures. It is his further evidence that Ex.A.7 and A.8 have been signed by him voluntarily and further a reading of Ex.A.7 shows that it is a Will and prior to executing Exs.A.7 and A.8 he had not taken any legal opinion. In Ex.A.8 it was specifically mentioned that the said document will come into effect with effect from 10.02.1995.

30. D.W.2 is the GPA holder, representing the defendant and by virtue of GPA dated 3.7.2002, the power of attorney is still subsisting. His evidence is that after the cross examination of Defendant, he informed to him that Exs.A.7 and A.8 were never sought to be acted upon and that to obviate any future misunderstanding and he wanted to give a declaration revoking and cancelling the said agreements. Accordingly after return back to India, DW.1 executed Ex.B.4 dated 26.12.2005 before the Assistant Consular Officer, Consulate General of India, Istanbul (Turkey) which was signed by the defendant and he identified his signature in the said document.

31. It is also the evidence of DW.2 that the first plaintiff had given an interview to Turkish news paper 'HURRIYET' published on 26.1.2006 which is marked as Ex.B.5 and Ex.B.6 is its English translation. It reads "*Present day Romeo and Juliet Textile businessman Turkey Uzun has been together with ex beauty queen Manolya Onur for the last twelve years. The pair who had no intention of getting married the last twelve years claim that this is not due to any problems but on the contrary they have a wonderful relationship.*' *We are the present day Romeo and Juliet claims Manolya Onur.*"

32. D.W.3 is the Translator of Ex.B.6. To substantiate the same, he deposed that he worked with World Bank Branch in Saudi Arabia with Turkish Diplomats for a period of seven years and he also appeared as an Interpreter and Translator of Turkish language. His evidence is that he has seen the news item published in the daily news paper 'HURRIYET' dated 26.1.2006 and that the true translation of the said news item has been done and certified by him and the same is being filed as Ex.B.10. The translation of DW.3 also shows in its words: "the well known textile business typhoon, Mr. Turgay Uzun has stated that he has spent his most beautiful days with former Beauty Queen of Turkey, Manolya Onur and stayed with her exactly for twelve years. Now without any engagement during these days both have never come to the table to make (Nikah), to marry with each other. They also never came across to any controversy during these days. In contrary they have lived with good relations with each during

these days". Exs.B.6 and B.10 go to suggest that Mr.Turgay Uzun and Manolya Onur were together for 12 years and they have intended to marry or never came in controversy and that during those days, they have lived with wonderful relationship. Though DW.3 was cross examined at length, nothing favourable was elicited in favour of the plaintiffs and she never suggested to DW.3 or DW.1 that Manolya Onur never lived with Turgay Uzun.

33. With regard to Exs.A7 and A8, according to the evidence of P.W.1, it was executed at Geneva during subsisting of their marriage. Subsequently, there was an agreement under Ex.A8 between P.W.1 and D.W.1. During cross-examination, the evidence of D.W.1 is that Exs.A7 and A8 were executed by him not with an intention to act upon them, but they are executed as security to P.W.1 in case of his demise. Under Ex.A7, D.W.1 expressed his intention to give Chiraan Palace situated at Hyderabad, Cedars Palace situated at Fern Hills, Ooty in the state of Tamilnadu to the 2nd plaintiff. There is no gift and acceptance in respect of Exs.A7 and A8 properties. In Ex.A7 itself it is mentioned that in case during his life time if D.W.1 deals with those two immovable properties, which prevents the said immoveable properties passing absolutely to the 2nd plaintiff, then compensatory payment for the said properties has to be paid by the successor in title, his heirs, etc.

34. In Ex.A8 it is mentioned that P.W.1 and D.W.1 have agreed in full and final settlement of the disputes after the divorce became final on 10.2.1995 in accordance with Sharia Law. It is an

admitted fact which is clear from the evidence of P.W.1 and D.W.1 that at the time of marriage and subsequently no meher was decided. P.W.1 stated that there is no mention of meher amount in Ex.A1 and she was 35 years running and she married to the defendant on 1.8.1989. There is clear mention under Ex.A8 that the plaintiff P.W.1 agreed to accept an additional meher of US \$ 7,00,000.00 in full and final settlement. Mullah on Mohamedan Law explains that Meher is the same as Dower and said words can used interchangeably. Mulla in his book, on the topic of dower observes that the amount of dower may be fixed either before or at the time of marriage or after marriage and can be increased after marriage. It is an admitted fact that Exs.A7 and A8 are executed by D.W.1 voluntarily while marriage was subsisting. The word additional has been used to show that dower/mehar has been increased.

35. “On the occasion of marriage” occurring in exemption to entry 49 of Schedule 1A has to be interpreted in the light of legal principles relating to Muslim Law enunciated by Mulla. “Occasion” means during the subsistence of the marriage in view of Mullas enunciation of Dower and Meher, as otherwise strict interpretation of the word would lead to absurd results which the legislature never intended and must be avoided at any cost.

36. P.W.1 in the evidence specifically deposed that before their marriage she met D.W.1 in the year 1989 for the first time and married him on 1.8.1990 at Chiran Palace Mosque at Hyderabad, by the time of marriage P.W.1 was admittedly in

Australia. Three months prior to marriage she was in Australia, thereafter she came to Turkey to visit her family and again went back to Australia, from there they went to Hyderabad for Nikah. Before marriage in 1989, she gave US \$ 50,000 twice to the defendant. She also sent some cash from her account and paid for tickets for herself and his workers between Australia and Istanbul. The total amount comes to US \$ 2,40,000 and he promised to repay with interest. Because the defendant was in need of money and he had to pay huge interest for borrowing this money, he promised to pay back the aforesaid money with interest and executed Ex.A5 and subsequently executed Ex.A6 acknowledgment acknowledging it. The borrowing of the amount are spoken and which were reflected in Exs.A5 and A6 and D.W.1 admitted execution of the same.

37. In the case of **SHIVANAND vs. SUJATA** (2013(3) Mh.L.. 193) the Apex court held Section 14 of the Family Courts Act provides for exception to the general rule of evidence regarding admissibility of statements and documents if permissible by the court etc., It has been so provided looking to the nature of the cases which are decided by the Family Courts. The Court should not go into technicality and should take a decision on the material before it in a broad based manner. The parties appear before the Court personally and advocates are not allowed, hence the technical aspect is to be ignored and whatever material is placed before the Court, which it considers necessary to assist it and to deal it effectively can be looked into.

38. Section 14 of the Family Courts Act is a special legislation and the principles of admissibility of documents as provided under the Evidence Act are not relevant in such cases. Therefore, there is no doubt that the Family Court is competent to receive the document though not proved as per strict proof as per the Evidence Act. Respondent-wife had preferred petition asking for declaration that she is entitled to possessory right over her matrimonial home. She also prayed for permanent injunction restraining appellant-husband from obstructing and/or preventing her entry in the said matrimonial home/flat and also prayed for permanent injunction restraining her forcible dispossession from the said flat. Respondent-wife also filed another petition asking for maintenance of herself under section 18 of the Hindu Adoption and Maintenance Act, 1956. Both the said petitions were respectively filed on 22.10.2001 and 17.9.2002 and were taken before the same Family Court and were disposed of by a common judgment and order, dated 30.2.2004. The appellant-husband preferred appeals challenging the said judgment. Considering the facts and circumstances and the material available on record, the trial Court had not at all erred in appreciating the said evidence and coming to the conclusion as to desertion of respondent-wife from the matrimonial home from 6th October, 2001. There is no merit in both the appeals and the same are dismissed with costs.

39. In the case of **REVANSIDDAPPA vs. MALLIKARJUN** ((2011) 11 SCC 1) the Apex court held that While interpreting the amended Section 16(3) of Hindu Marriage the Court must keep in view the constitutional values enshrined in the

Preamble of our Constitution which focuses on the concept of equality of status and opportunity and also on individual dignity. The Court has to remember that relationship between the parents may not be sanctioned by law but the birth of a child in such relationship has to be viewed independently of the relationship of the parents. A child born in such relationship is innocent and is entitled to all the rights which are given to other children born in valid marriage. This is the crux of the amendment in Section 16(3). The Supreme Court cannot interpret a socially beneficial legislation on the basis as if the words therein are cast in stone. Such legislation must be given a purposive interpretation to further and not to frustrate the eminently desirable social purpose of removing the stigma on such children. This is a case where the property rights of children born through legitimate marriage and void marriage and in such circumstances held that the benefit given under the amended Section 16 of the Hindu Marriage Act is available only in cases where there is marriage and such marriage is void or voidable in view of the provisions of the Act.

40. In another case in ***PHOOL PATTI v. RAM SINGH*** ((2009) 13 SCC 22) the Apex Court held that the Court cannot aid words to a statute or change its language, particularly when on a plain reading meaning becomes clear. Their Lordships further held that “in our opinion there seems to be inconsistency between the decisions of this Court in ***BHOOP SINGH CASE v. RAM SINGH MAJOR*** ((1995) 5 SCC 709) and ***K.RAGHUNANDAN v. ALI HUSSAIN SABIR*** ((2008) 13 SCC 102) insofar as the interpretation to the exception in clause (v) of Section 17(2) of the

Registration Act is concerned. *Prima facie* it seems to us that the decision in **BHOOP SINGH CASE** does not lay down the correct law since Section 17(2)(vi) on its plain reading has nothing to do with any pre-existing right. All that seems to have been stated therein is that if a decree is passed regarding some immovable property which is not a subject-matter of the suit then it will require registration. As already explained above, if a suit is filed in respect of property A but the decree is in respect of immovable property B, then the decree so far as it relates to immovable Property B will require registration. This seems to be the plain meaning of clause (vi) of Section 17(2) of the Registration Act.”

41. Similarly in the case of **MADHVI vs. PUSHPENDRA** (2014(1) M.P.L.J. 346) wherein it was held that the Evidence Act is not made applicable in a mechanical manner. The discretion is vested with the Family court to receive any evidence, any report, any relevant statement, documents, information etc., which is necessary for its assistance to deal effectually with a dispute. It is made permissible in the statute whether or not such documents are relevant or admissible in the Evidence Act. Thus, the powers are vested with the Family Court to take those documents on record. Needless to mention that the Family Court is bound to function as per the enabling provisions and the statute by which it was created. Evidence Act cannot be pressed into service mechanically in proceedings of an appeal under Section 14 of the said Act.

42. In another decision in *ROMILA JAIDEV vs. JAIDEV RAJNIKANT* (2000(3) Mh.L.J. 468) it was held that Letters Patent would be included in expression “any law for the time being in force” occurring in section 20 of the Family Courts Act and would certainly be covered by the expression “instrument”. The overriding effect given to the Family Courts Act is confined not only to the Code of Civil Procedure but also to the Evidence Act. The Evidence Act is also an instrument having effect by virtue of law.

43. In the decision of *BHARAT SINGH v. NEW DELHI TUBERCULOSIS CENTRE* ((1986) 2 SCC 614) the Apex Court held that it is always the duty of the Court to give such a construction to a statute as would promote the purpose or object of the Act. A construction that promotes the purpose of the legislation should be preferred to a literal construction.

44. In the case of *CENTRAL BANK OF INDIA v. STATE OF KERALA* ((2009) 4 SCC 94) the Apex Court held that Article 254 contains mechanism for resolution of conflict between Central and State legislations enacted with respect to any matter enumerated in List III.

45. In another case in *M.L.A.JABBAR SAHIB v. M.V.V.SASTRI* the Apex Court held that if a non-testamentary instrument creates a charge of the value of Rs.100/- or upwards, the document must be registered under Section 17(1)(b) of the Indian Registration Act. But there is no provision of law which

requires that an instrument creating the charge must be attested by witnesses.

46. In the case of *RACHAKONDA RAMAKOTESWARA RAO AND ORS. vs. MANOHAR FUEL CENTRE AND ANR.* in an unreported judgment of this Court in C.R.P.No.3546 of 2002, dated 28.8.2002 it was held that for admitting the document in evidence, it is got to be duly stamped although the purpose might be a different one under Section 35 of the Stamp Act.

47. In the case of *K.RAGHUNANDAN v. ALI HUSSAIN SABIR* ((2008) 13 SCC 102) the Apex Court held that Section 17(1) of the Registration Act, 1908 specifies documents for which registration is compulsory and Section 17(2) carves out an exception therefrom in respect of decree or order. Even if the disputed passage in question was not the subject-matter of the suit, a compromise decree was still permissible under the CPC (Amendment) Act, 1976. A property which is not the subject-matter of the suit or a proceeding comes within the purview of exception contained in Section 17(2)(vi). If compromise is entered into, in respect of an immovable property, comprising other than that which was the subject-matter of the suit or the proceedings, the same would require registration.

48. In support of the contention of the defendant, i.e. appellant in FCA. No. 99 of 2006 that in the absence of conflicts between two acts, the question of applying Section 20 of the Family Courts Act, 1984 does not arise. Reliance is placed on the decision of the Bombay High Court in *SHIVARAM DODANNA*

SHETTY Vs. SOU. SHARMILA SHIVARAM SHETTY {AIR 2017 Nom.1).The said decision deals with the limitation for filing appeal. It was held that considering the scheme of Family Courts Act 1984 and the object and purpose for its enactment, largely the Act is procedural in nature. The Act of 1984 provides for special forum to decide matrimonial related disputes and prescribes for special rules and procedure. In this context, the non obstante provision in Section is required to be construed. The Bombay High Court was of the view in the said case that considering the scheme of both the enactments and the purpose behind amending the provisions of Section 28(4) of the Hindu Marriage Act of 1955 it would not be appropriate to apply different periods of limitation, one in case of orders passed by the Family Courts and in another by the regular Civil Courts and such an approach would frustrate very purpose of legislation.

49. In the case of ***MOHD. NADIM Vs. TALIYA FATIMA @ SHAMA PARVEEN*** (AIR 2012 ALL.37) the Allahabad High Court dealt Sections 7, 8 and 20 of the Family Courts Act, 1984 in order to appreciate the controversy involved therein. Section 7 of the Family Courts Act consists of two parts. The first relates to civil jurisdiction and the other to the criminal jurisdiction, but this too is limited to Chapter IX of Code of Criminal Procedure. Besides this, under Section 7(2)(b) a provision has been made for conferment of jurisdiction on the Family Court by any other enactment also.

50. A reading of Ex.A.8 goes to suggest that due to the differences, the defendant-husband who is the appellant in FCA No. 99 of 2006 pronounced first talak in accordance with Sharia Law whereas the plaintiff-wife, who is the appellant in FCA No. 131 of 2006 demanded settlement pursuant to eventual finalization of divorce. She gave written demands and accordingly PW.1 and DW.1 arrived at a full and final settlement after divorce became final in accordance with Sharia Law i.e. on 10.02.1995. According to the terms and conditions thereof, the plaintiff-wife agreed to accept additional Mehr of US \$ 7,00,000 in full and final settlement; that the husband-DW.1 agreed to pay to the first plaintiff-wife a sum of US \$ 300,000.00 in full and final settlement of the loans he had taken from her, which includes interest on the loan amounts; and that the first plaintiff-wife accepts the above amounts to be paid to her in cash or in kind after 10.02.1995 when the divorce becomes final. The husband also agreed to pay the wife interest at bank rate on the loan amount of US \$ 300,000.00 after 10.02.1995 till amount is fully discharged.

51. Ex.A.8 further shows that on the demand of the plaintiff-wife, the defendant-husband agreed to create a trust in accordance with the tradition of his family to ensure the same status and position for Niloufer as the husband has bestowed on his other children by his previous marriages. He also agreed to provide US \$ 10,000.00 per month towards maintenance of P.W.1 and second plaintiff. The trustees will be directed to purchase a four bedroom apartment in a fully secure building in the area of Bebek or Etelier as per the request of the wife for the residence of

herself and their daughter. The house to be purchased by the trustees will be with the approval of the wife and the wife will have the power to request the trustees to sell the house if necessary and to purchase a similar house in another locality of Istanbul. It was agreed that the trust should and must be created and the house must be purchased before 10.02.1995. Until the house is purchased, the husband agreed to pay US \$ 5000.00 for the rent of their apartment. The husband/defendant agreed to provide jewellery for Niloufer which will be held by the trust. The trustees will be directed about the disposal and utilization of the jewellery in consultation with the wife, who has indicated that the jewellery should not be touched until Niloufer reaches the age of 30. In the event the wife desires to remarry after the divorce becomes final on the 10.02.1995, the maintenance allowance will be reduced from US \$ 10,000.00 to US. \$ 5,000.00 for the maintenance of Neloufer. Accordingly P.W.1 and D.W.1 through Ex.A.8 says that an arrangement was made for maintenance of P.W.1 and their daughter, Neloufer and four bed room apartment would be purchased for their residence and the trustees will be directed about the disposal and utilization of the jewellery in consultation with the wife-first plaintiff. Under Ex.A.8, no particular property was transferred. It is only a family arrangement made for maintenance of plaintiffs.

52. Under Ex.A.7 agreement, it was agreed that the Chiran Palace with six acres of land appurtenant thereto will be transferred absolutely to Princes Nilufer on the demise of the said Prince including furniture and fittings but excluding all or any of the

articles stored in the basement of the said Chiran Palace. Similarly the property at Fern Hill, Ooty in the State of Tamil Nadu, known as Cedars Palace, excluding the hotel as it exists today but including the land upto the lake subject however to a maximum of seven acres, along with all furniture and fittings including accessories will be transferred to the Princes Nelufer absolutely on the demise of the said Prince. So far a plain reading of Ex.A.7 goes to suggest that Chiran Palace and Cedars Palace will be transferred to the Princes Nilufer, i.e. second appellant in FCA No.131 of 2006 on the demise of DW.1. It was further agreed that the said Prince will provide for Princes Nilufer's maintenance, her personal needs, medical and educational expenses by setting up a reserve fund not exceeding US \$ 10,000.00 per month from her date of birth i.e. 27.03.1991. According to this circumstances, the Prince (DW.1) further stipulated at his convenience to make a gift of US \$ 1200,000.00 in cash or kind to her within reasonable time. It is also further stipulated that D.W.1 will nominate an immovable property other than the properties referred to above as a marital home which will pass absolutely to the Princess after his demise along with all furniture, fittings, decorations and accessories. It was further agreed that if the said Prince deal with the Chirran Palace and the Cedars Palace during his life time, which prevents the said immovable properties passing absolutely to the donees as stated therein, then compensatory payment for the said properties has to be paid by the successor in title, his heirs, executors and administrators out of the estate of the said Prince, DW.1 and the said compensatory payment being treated as first

charge on his assets. Therefore the terms and conditions in Ex.A.7 stipulates with regard to Chiran Palace and Cedars Palace that the said two properties will be transferred to second plaintiff only after the death of DW.1 and no right or interest or any interest in the immovable property is created or transferred in favour of plaintiffs.

53. Section 285 of the Mahomedan Law defines Mahr or dower which means a sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage. If dower were the bride price a post nuptial agreement to pay dower would be void for want of consideration, but such an agreement is valid and enforceable.

54. Section 286 thereof postulates that the husband may settle any amount he likes by way of dower upon his wife, though it may be beyond his means, and though nothing may be left to his heirs after payment of the amount. But he cannot in any case settle less than ten dirhams. The said provision further postulates that the amount stipulated, whether excessive or beyond the means of the husband, is no defence to the wife's claim.

55. Section 287 thereof stipulates that the amount of dower may be fixed either before or at the time of marriage or after marriage and can be increased after marriage. So there is no stipulation for fixation of dower and it may be fixed either before or at the time of marriage or after marriage.

56. Exs.A.7 and 8 are executed after marriage and before finalization of the divorce. No immovable property was transferred under Exs.A.7 and 8 either in favour of first plaintiff-wife or second plaintiff-daughter. Ex.A.7 stipulates the settlement of Chiran Palace and Cedar's place only after the death of DW.1, i.e. after happening of certain acts.

57. In the case of ***K.B. SAHA AND SONS PVT LTD Vs.DEVELOPMENT CONSULTANT LIMITED*** {2008 (6) ALD 92 (SC)} it was held that Section 108 (o) of the Transfer of Property Act requires the lessee to use the property as a man of ordinary prudence would use his property and not to use it for a purpose different to that for which it was leased. Letting out or leasing out the property for a particular named officer cannot be the 'purpose' of letting. The purpose of letting out would be residential or non-residential or for a particular business. Ultimately the Apex Court held that although the premises was leased out exclusively for the named officer of the respondent, the fact that it was subsequently used for the residence of some other officer of the respondent would not constitute 'change of user' so as to hit by Section 108(o) of the Transfer of Property Act.

58. In the case of ***REVANA SIDDAPPA AND ANOTHER Vs. MALLIKARJUN AND OTHERS*** {(2011)11 SCC 1} the Apex Court held that it is well known that the Court cannot interpret a socially beneficial legislation on the basis as if the words therein are cast in stone. Such legislation must be given a purposive

interpretation to further and not to frustrate the eminently desirable social purpose of removing the stigma on such children.

59. In the case of *SOM DEV AND OTHERS Vs. RATI RAM AND ANOTHER* {(2006) 10 SCC 788}, wherein the appeal was filed by the contesting defendants in a suit filed by Respondent No.1 therein for recovery of possession of the suit property in enforcement of a right of pre-emption claimed by him. The plaintiff claimed that a half-share in the suit property had been relinquished in favour of himself and his brother by one S, a co-owner with the assignor of the contesting defendants and the said relinquishment had been recognized by the Court by decreeing the claim made by the plaintiff and his brother in Civil Suit No. 398 of 1980. Thus, having become a co-owner with the assignor of the contesting defendants, the plaintiff was entitled to enforce a right of pre-emption and recover possession of the property from the assignee of the other co-owner. Ultimately the Apex Court held that it cannot be accepted that the decree was a compromise decree. It was really a decree on admission and the admission was of the pre-existing right set up by the plaintiffs as created by S. The decree by itself did not create any right in immovable property. It merely recognized the right put forward by the plaintiffs in that suit based on an earlier family arrangement or relinquishment by the defendant in that suit and on the basis that the defendant in that suit had admitted such an arrangement or relinquishment. Therefore the said decree cannot be held to be not admissible or cannot be treated as evidencing the recognition

of the rights of the plaintiff and his brother as co-owners for want of registration under Section 17(2) of the Registration Act nor can the relief obtained therein by the plaintiff and his brother be ignored. The Apex Court further held that if a suit is decreed on the basis of compromise and that compromise takes in property that is not the subject matter of the suit, such a compromise decree would require registration. Yet there is a line of authorities to the effect that even if there is inclusion of property that is not the subject matter of the suit, if it constitutes the consideration for the compromise, such a compromise decree would be considered to be a compromise relating to the subject matter of the suit and such a decree would also not require registration in view of Clause (vi) of Section 17(2) of the Registration Act.

60. In ***GOLLA DHARMANNA Vs. SAKARI POSHETTY @ WADOOR POSHETTY*** {2013 (5) ALD 490} this Court held that merely because stamp duty and penalty had been paid and provisions of the Indian Stamp Act, 1989 had been complied with, it would not make document admissible in evidence, if document was required to be registered.

61. In ***JUPUDI KESAVA RAO Vs. PULAVARTHI VENKATA SUBBARAO AND OTHERS*** {1971 (1) SCC 545}, their Lordships held that Section 35 imposed a bar on the reception of any but the original instrument and forbade the reception of secondary evidence. Section 36 thereof only lifted that bar in the case of an original unstamped or insufficiently stamped document to which no exception as to admissibility was taken at the first

stage. Under the provisions of Section 12 of the Stamp Act if promissory note was not duly stamped and accordingly if any question arose as to its admissibility in evidence the same may have to be held to be inadmissible.

62. From the above decisions, it is settled principle that the Court cannot interpret a socially beneficial legislation on the basis as if the words therein are cast in stone. Such legislation must be given a purpose interpretation to further and not to frustrate the eminently desirable social purpose of removing the stigma on such social purpose. It flows from the mandate of Article 37 of Constitution which provides that it is the duty of the State to apply the principle enshrined in Chapter IV in making laws.

63. The non obstante clause has to be given restricted meaning and when the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. In other words, there requires to be a determination as to which provision answers the description and which does not. While interpreting the non substance clause, the Court is required to find out the extent to which the legislature intended to do so and the context in which the non obstante clause is used.

64. In the instant case, Exs.A.5 and A.6 are the acknowledgments executed by DW.1. According to PW.1 before marriage in 1989, she gave US \$ 50,000 twice and she also sent

some cash from her account and also paid for tickets for herself and his workers between Australia and Istambul, totaling to US \$ 2,40,000/-, and DW.1 acknowledged the same and executed Ex.A.5 initially and later he could not pay, and other hand, he (DW.1) executed Ex.A.6- acknowledgment agreeing to pay with interest at 10% per annum, to be compounded annually, while superseding Ex.A.5.

65. It is also admitted that, as already discussed hereinabove, DW.1 executed Ex.A.7 according to which, the second plaintiff, daughter of PW.1 and DW.1 is entitled to the properties only upon the death of DW.1 and he (DW.1) has retained rights to deal with the properties in his life time. It is further admitted that a trust is created by his grand father with regard to Nizams jewellery and he got a share in the trust, to which the second plaintiff being one of the heirs is entitled to share in the said amount and accordingly the second plaintiff would get about Rs.4.00 crores from the said trust after his demise. It is also admitted that DW.1 was in the habit of executing agreements like Ex.A.8 and similarly he executed in favour of Helen Simpson and also Jamila Boularis. He agreed to pay 700.00 US \$ as maintenance to his wife. He also executed GPA to contest the matter in favour of DW.2 and DW.3-Turkish Translator.

66. As per Ex.A.8, DW.1 has to pay a sum of US \$ 15,000 equivalent to Rs.6,75,000/- per month towards maintenance. With effect from September, 1995, he paid only

6000 US \$ and since two years he stopped payment of maintenance.

67. Under Exs.A7 and A8 no right, interest are created in the immovable property or any tangible interest in the property was transferred in favour of plaintiffs. Only the defendant created maintenance in the properties, that too after his death under Ex.A8. The decision in *BHOOP SINGH* case (supra) does not lay down the correct law since Section 17(2)(vi) on its plain reading has nothing to do with any pre-existing right. All that seems to have been stated therein is that if a decree is passed regarding some immovable property which is not a subject matter of the suit, then it will require registration. If the decree or compromise has pre-existing right, it need not require any registration. In Exs. A.5 and 6, DW.1 has not only acknowledged the amount due to P.W.1, but also executed Ex.A.7 intending to give Chiran Palace situated at Hyderabad, and also Cedar's place situated in the State of Tamilnadu along with appurtenant land and other furniture, fittings etc. to second plaintiff after his death. It was also agreed to purchase four bedroom apartment for their residence. Under Ex.A.7, no immovable property was transferred or any right or title or interest was created to the second plaintiff and different commitments will be enforced after his (DW.1) death. Ex.A.8 deals with maintenance and also amounts due acknowledged under Exs.A.5 and A.6. P.W.1 and D.W.1 should have joint custody and guardianship of their daughter, second plaintiff-Nilufer. As per Sections 285 and 286 of the Mahomedan Law, wife is entitled to

receive Mahr or dower from her husband in consideration of the marriage. As per Section 286 thereof, husband can settle any amount he likes even behind his means and he cannot in any case settle less than ten dirhans and even dower may be fixed either before or at the time of marriage or after the marriage and can be increased after marriage. Accordingly there was an agreement between P.W.1 and D.W.1 in terms of Mahomedan Law as discussed supra and DW.1 is not disputing the execution of Exs.A.5 to A.8. But according to him, they were executed as security to PW.1 and without any intention to act upon them. Since DW.1 admitted execution of Exs.A.5 to A.8, he cannot take advantage of non stamping and non registration of the said documents on the principle that a wrong doer cannot take disadvantage of his own wrong. Mehre or dower or maintenance is a pre existing accrued right for the wife and children; for the wife, it will accrue on account of marriage and for child it will accrue by birth.

68. The Law Commission in its 59th Report stressed that the procedures regarding family disputes should be simplified to enable the parties to get speedy redressal. To achieve this object, the Parliament enacted the Bill for establishment of Family Courts for speedy and effective settlement of family disputes and Family Courts Act was enacted by the Parliament in 1984. Thus the family disputes of different nature pertaining to different communities are settled under one roof. The provisions of the Evidence Act are not strictly adhered to. Evidence on affidavit also

is made permissible. Thus strict procedures of proof as laid down in the Indian Evidence Act have been given a go-by and procedures are simplified to settle the matters thereby avoiding delay in trial. As a measure to simplify the procedural technicalities and avoid consequential delays in proceedings, the Act takes away the right of parties to engage legal practitioners. By way of Section 14 of the Family Courts Act, a Family Court being the special enactment, has precedence over other acts concerning the family matters for Section 20 thereof. If the matters in the Family Court are of civil in nature, they are governed by Civil Procedure Code as provided in Order XXI thereof. The limitation for filing appeal to the High Court is 30 days from the judgment or final order of the Family Court. Delay applications are maintained under Section 19.

69. Section 14 of the Family Courts Act provides for exception to the general rule of evidence regarding admissibility of statements and documents if permissible by the Court. The Court should not go into technicality and should take a decision on the material on the material before it in a broad based manner. The parties appear before the Court personally and advocates are not allowed, hence the technical aspect is to be ignored and whatever material is placed before the Court, which it considers necessary to assist it and to deal it effectively can be looked into. Section 14 of the Family Courts Act is a special legislation and the principles of admissibility of documents as provided under the Evidence Act are not relevant in such cases. Therefore, there is no doubt that the Family Court is competent to receive the

document though not proved as per the strict proof as per the Evidence Act.

70. Section 35 of the Indian Stamp Act raised a bar only in cases which were expressly included by proviso (a) to Section 35 thereof and in others where the party seeking to rely on the document was not agreeable to pay the deficiency in the stamp together with the penalty in terms of the said proviso. The whole object of Section 35 of the Stamp Act was that the Government revenue due by way of stamp should be protected. But even then Section 36 carved out an exception thereto and allowed the reception of an insufficiently stamped instrument in evidence when it had been admitted without objection at the initial stage. Indian Evidence Act however does not purport to deal with the admissibility of documents in evidence which require to be stamped under the provisions of the Indian Stamp Act.

71. Once the time for raising objection to the admission of the documentary evidence is passed, no objection based on the same ground can be raised at the later stage. Even though the husband raised an objection at the time of marking the document and such marking of the document in view of Section 20 of the Family Court is only for the purpose of coming to a right decision. As we have expressed our view, Section 35 of the Stamp Act imposed a bar on the reception of any but original instrument and forbade the reception of secondary evidence. Section 36 thereof only lifted that bar in the case of an original unstamped or insufficiently stamped document to which no exception as to

admissibility was taken at the first stage. It did not create any exemption in the case of secondary evidence which a copy would undoubtedly be.

72. Exs.A.7 and A.8 are in recognition of pre existing rights and the need not require registration. More so, Section 14 of the Family Courts Act empowers the Family Court to receive those documents to deal with effectually the family disputes.

73. Under Ex.A.7 and 8, no right, title or interest is passed in favour of the plaintiffs. They gives rise to pre recognition of the existing right of maintenance for wife and daughter, more so, DW.1 himself admitted that in the trust created by his grandfather, he has life interest and the share allotted to him would be distributed among his heirs and therefore the second plaintiff being one of the heirs is entitled to share in the amount and she would receive an amount over Rs.4.00 crores. As we have discussed hereinabove, it is not a case of decree creating right, title or interest for the wife and daughter, however, a pre-existing right accrued to the plaintiffs for maintenance and they acquired right as per the family arrangement between P.W.1 and DW1 in the property , that too, after the death of DW.1. The Family Court has not granted any injunction in favour of P.W.1 and D.W.1 (wife and husband) having found that Exs.A.7 and 8 have not created any right, interest or title in favour of them. As per the said documents, interest was created after the death of DW.1, i.e husband of the first plaintiff, who is the father of the second plaintiff. They only sought for maintenance for the first plaintiff

based on Sharia law in terms of which, the husband-DW.1 executed Exs.A.7 and A.8 through which pre customary accrued right had been floated for the plaintiffs which was upheld by the Family Court. The family arrangement between P.W.1 and D.W.1 settled under Exs. A.5 to A.8 and acknowledgment of the amounts due to P.W.1 are suffered no defect on the ground of want of registration. Hence grant of relief cannot be ignored on account of not admissible in evidence.

74. Thus the powers are vested with the Family Court to take those documents on record. Needless to mention that the Family court is bound to function as per enabling provisions and the statute by which it was created. Evidence Act cannot be pressed into service mechanically in proceedings of an appeal under Section 14 of the Family Courts Act. Consequently the argument advanced to this effect must fail.

75. In this background, one has to turn to the provisions of Section 20 where the Act shall have overriding effect, which reads as under :

"20. Act to have overriding effect.---The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

76. Letters Patent would be included in expression any law for the time being in force, and would certainly be covered the expression "instrument". The overriding effect given to the Act is thus confined not only to the Code of Civil Procedure but also to the Evidence Act. The Evidence Act is also an instrument having

effect by virtue of law. Looking to the provision of the restricted right of an Advocate to appear in a matter obviously, the Advocates Act of 1961 also has effect to that extent.

77. The contention of the plaintiffs, i.e. appellants in FCA.No.131 of 2006 is that the Family Court allowed the interest only at 6% per annum, but they are entitled to interest at the rate of 10% per annum. It is submitted the suit was filed in the year 1995 claiming maintenance of US\$ 5000 each and a rental allowance of US \$ 5000. The suit was decreed on 23.06.2006. According to the record, 21 years have elapsed from the date of institution of the suit.

78. Section 34 of CPC lays down as under:

“Interest:(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit,1[with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

2[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.”

79. The plaintiffs contended that the interest has to be calculated on the dollar value, but they have not produced any

rule or document showing interest rate. The rate of interest on dollars does not exceed 4%. The plaintiffs did not produce rate of interest showing on the dollar value at the time of filing suit or at the date of decree.

80. A reading of Section 34 CPC goes to suggest that in the case of decree for payment of money, the Court can order interest on such rate as it deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit with further interest at such rate not exceeding six percent per annum from the date of decree till the date of payment or such earlier date as the Court deems fit. If the liability in relation to the sum so adjudged has arisen out of a commercial transaction, the rate of such further interest may exceed 6% per annum but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions.

81. The counsel for the appellant in F.C.A. No.99 of 2006 relied on the following Judgments - *JUPUDI KESAVA RAO v. PULAVARTHI VENKATA SUBBARAO* (1971(1) SCC 545); *M.CHENNA BASAMMA vs. M.V.BHADRAIAH* (1993 ALT Supp.(1) 157); *SMT.BOLLEDDULA LAKSHMI DEVI vs. BOLLEDDULA PAPANNA AND ORS.* (2003 (3) ALT 513); *JAMUNABAI AND ANR. Vs. SHARADABAI AND ORS.* (1998 (4) ALT 676); *GOLLA DHARMANNA vs. SAKARI POSHETTY @ WADOOR*

POSHETTY AND OTHERS (2013(5) ALD 490); *RACHAKONDA RAMAKOTESWARA RAO AND ORS. Vs. MANOHAR FUEL CENTRE AND ANR.* (2003(2) ALD 638); *M.L.A.JABBAR SAHIB v. M.V.V.SASTRI* (1969 (1) SCC 573); *BAHADURRINISA BEGUM vs. VASUDEV NAICK* (1965 SCC Online AP 56); *SMT. PULLURU VAJRAMMA vs. MORE AGAIAH* (AIR 1979 AP 2); *K.B.SAHA AND SONS PVT. LTD. v. DEVELOPMENT CONSULTANT LTD.* (2008 (6) ALD 92); *MANGAN LAL DEOSHI v. MOHAMMAD MOINUL HAQUE* (AIR 1951 SC 11); *K.RAGHUNANDAN v. ALI HUSSAIN SABIR* ((2008) 13 SCC 102); *PHOOL PATTI v. RAM SINGH* ((2009) 13 SCC 22); *PHOOL PATTI v. RAM SINGH* ((2015) 3 SCC 465); *SOM DEV v. RATI RAM* ((2006) 10 SCC 788); *CENTRAL BANK OF INDIA v. STATE OF KERALA* ((2009) 4 SCC 94); *INDRA KUMAR PATODIA v. RELIANCE INDUSTRIES LTD.* ((2012) 13 SCC 1); *SHIVRAM DODANNA SHETTY v. SOU.SHARMILA SHIVRAM SHETTY* (2017 (1) ABR 221); *PARIJAT VINOD KANETKAR v. MALIKA PARIJAT KANETKAR* (2017 ALL MR (Cri) 368); *MOHD. NADIM v. TALIYA FATIMA @ SHAMA PARVEEN* (AIR 2012 All37); *MOHD. ASLAM KHAN v. KHALILUL REHMAN KHAN* (Privy Council Part-22 Page 447) and *BEEPATHUMMA v. MOHAMED NAKOOR MEERA ROWTHER* (AIR 1977 Kerala 54).

82. The above judgments have no relevance of the facts of the present case, particularly in view of Sections 20 and 14 of the Family Courts Act.

83. In view of the facts and circumstances discussed hereinabove, we are of the considered view that the findings of the Family Court that Exs.A.5 to 8 are admissible in evidence and that Exs. A.6 to 8 are true, valid and binding on DW.1 are legal, valid and do suffer from any legal infirmities. Dower or mahr amount was not fixed at the time of marriage. While subsisting the marriage, R.W.1 and D.W.1 entered into a final agreement Ex.A.8 for full and final settlement, under which DW.1 offered US \$ 7,00,000.00 in full and final settlement and the same is accepted by P.W.1. Further, it was agreed by DW.1 under Ex.A.8 to provide sum of US \$ 10,000 per month for maintenance to P.W.1 and second plaintiff until trust is created and also agreed to pay US \$ 5000.00 per month towards payment of rent of the apartment of P.W.1 and second plaintiff till DW.1 constructs or purchases a house for residential purpose. They have also agreed that DW.1 should pay US \$ 25,000 towards five months arrears of rent. Further finding that during the subsistence of the marriage whatever gifts DW.1 made to P.W.1 cannot be treated as part of dower amount or amount of maintenance which can be given after the divorce. Further DW.1 himself agreed to pay US \$ 10,000 per month towards the maintenance of P.W.1 and second plaintiff until a trust is created.

84. By virtue of Section 3 of the Muslim (Protection of Rights and Divorce) Act, 1986, DW.1 is liable to pay maintenance to P.W.1 even after the iddath period is over after divorce is given and he himself agreed to pay US \$ 7,00,000 as Mehr to P.W.1

befitting his financial and social status as he is the VIII Nizam and he has also agreed to create a trust and till the trust is created, he has agreed to pay IS \$ 10,000 per month for the maintenance of PW1 and 2nd plaintiff and further agreement in Ex.A.8 says that if P.W.1 remarries, then the maintenance amount would be reduced to US \$ 5000 per month which would be paid to 2nd plaintiff shows that he agreed to pay US \$ 5000 per month to P.W.1 even after the divorce which has become final on 10.02.1995. The amount paid by D.W.1 so far are to be deducted from the maintenance payable to PW.1.

85. The findings of the Family Court that Ex.A.7 document did not create any right in favour of the second plaintiff in respect of Chiran Palace at Hyderabad and Cedar's Palace situated in Ooty, Tamilnadu and that the second plaintiff cannot claim right over the said two palaces basing on Ex.A.7 and therefore second plaintiff is not entitled to Chiran Palace, at Hyderabad and Cedar's Palace, at Ooty is legal and valid, because no right or interest was transferred under Ex.A.8, which can be enforced only after the death of DW.1. For the due payment, a charge was created over the suit schedule properties belonging to DW.1 and rejected the plea of grant permanent injunction in view of charge created over the suit schedule properties. The Court has to remember that relationship between the parents may not be sanctioned by law but the birth of a child in such relationship has to be viewed independently of the relationship of the parents. A child born in such relationship is

innocent and is entitled to all the rights which are given to other children born in valid marriage, which is the crux of the amendment in Section 16(3) of the Hindu Marriage Act. The courts also cannot interpret a socially beneficial legislation on the basis as if the words therein are cast in stone. Such legislation must be given a purposive interpretation to further and not to frustrate the eminently desirable social purpose of removing the stigma on such children.

86. The Indian Evidence Act is not made applicable in a mechanical manner. The discretion is vested with the Family court to receive any evidence, any report, any relevant statement, documents, information etc., which is necessary for its assistance to deal effectually with a dispute. It is made permissible in the statute whether or not such documents are relevant or admissible in the Evidence Act. Thus, "the powers are vested with the Family Court under Section 14 of the Family Court Act to take those documents on record. Needless to mention that the Family Court is bound to function as per the enabling provisions and the statute under Section 20 of the Family Court Act by which it was created. Evidence Act cannot be pressed into service mechanically in proceedings of an appeal under Section 14 of the Family Court Act. The overriding effect given to the Family courts under Section 20 of the Family Court Act is confined not only to the Code of Civil Procedure, but also to the Evidence Act which itself is also an instrument having effect by virtue of law. It is always duty of

the Court to give such construction to a statute as would promote the purpose or object of the Act.”

87. After the non-testamentary instrument creates a charge of the value of Rs.100/- or upwards the document must be duly stamped as required under Section 35 of the Stamp Act and registered under Section 17(1)(b) of the Indian Registration Act. There is no provision of law which requires that an instrument creating the charge must be attested by witnesses.

88. In case of Exs.A5 and A6, which are acknowledgments, even presuming for a moment without finding that they are promissory notes, under the provisions of Section 12 of the Stamp Act, if promissory note was not duly stamped and accordingly if any question arose as to the admissibility in evidence, the same has to be held to be inadmissible, but by virtue of Section 14, as already discussed above, irrespective of whether they are admissible or inadmissible or properly stamped or not they can be received by the Family court.

89. The defendant who is examined as D.W.1 in the chief as well as cross-examination admitted execution of Exs.A5 to A8 documents admitting the amount due to the 1st plaintiff and also recognizing the pre-existing right accrued to the 1st plaintiff by operation of law, the moment of the marriage took place between P.W.1 and D.W.1 and by birth of the 2nd plaintiff. The decree passed by the Family Court by itself did not create any right in immovable property, but having recognized the right put-forward

by plaintiffs in the suit and as admitted by D.W.1, he voluntarily executed Exs.A5 to A8. Therefore, having admitted the execution of the documents Exs.A5 to A8, now it is not open to the defendant to question the admissibility of the documents, more particularly in view of Section 20 and 14 of Family Courts Act.

90. Further, we are of the considered view that since the provisions of Evidence Act have no application, the Family Court can receive documents Exs.A5 to A8 and the question of admissibility of Stamp Duty, registration and relevancy do not arise and the Court can receive those documents to adjudicate the dispute between parties. Since it is a recovery of money and maintenance, the Family Court also rightly awarded interest @ 6% per annum.

91. Thus the findings of the Family Court are legal, valid and do not suffer from any legal infirmities.

92. For the foregoing discussion and in the result, both the appeals are dismissed with costs, confirming the judgment and decree dated 23.06.2006 passed in OS.No.52 of 2006 on the file of learned Judge, Family Court, Hyderabad.

93. Consequently, miscellaneous petitions pending, if any, in both appeals shall stand closed.

(JUSTICE SURESH KUMAR KAIT)

(JUSTICE N.BALAYOGI)

27.02.2018
Msnr/Skmr