cannot possibly been adjudicated in these proceedings. On the contrary, the evidence in these proceedings indicates the respondent has been willing to resume matrimonial life as long as the parties returned to the flat after the second child was born, it cannot be said that by refusing to go back to the village thereafter, the respondent had deserted the matrimonial home. The essential ingredients of desertion are absent in the present case. The Court is unable to accept the contention that the criminal complaint is false and that by itself is indication of the respondent to desert the matrimonial home. It is not possible to overlook these evidence actually recorded in the instant case in order to determine if a case of desertion is made out by the appellant.

- [*Suram Pal Singh* v. *Savita*, I (2007) DMC 833 (SC)].

—**Sections 23 and 25—Matrimonial discord.**—Wife and daughter leaving matrimonial home and living with parents. An agreement was settled between parties. Husband agreed to provide monthly maintenance, house and car for the use of wife and daughter besides to meet medical and educational expenses. Failure on part of husband to discharge obligations undertaken. Trial Court directing husband to pay arrears of maintenance. High Court refusing to interfere with order of trial Court. Discretionary power exercised by Court cannot be said to be perverse or irrational so as to warrant interference by Supreme Court. Serious contentions of husband as undue financial burden which husband is unable to perform requires consideration during trial of case. Expeditious trial was desired.

- [*Ravi Singhal* v. *Manali Singhal*, AIR 2001 SC 3952 : 2001 AIR SCW 3925 : 2001 (8) SCC 1 : 2001 (3) SCJ 576 : 2001 (10) SRJ 79 : 2001 (6) Scale 580 : 2001 (7) Supreme 293].

Hindu Law

—**Ancestral property—Sale of.**—Where facts of the case showed that one of share holders of joint property of a Hindu family sold said property but he could not get consent of other share holder/joint owners of the said property a fore sale of the property was declared to be void and illegal by trial Court when rest of joint owners of said ancestral property filed suit in respect thereof.

- [*Jogeshar Dewangan* v. *Teekaram Dewangan*, **2016 (1) Civ LJ 51 (Chhatt)**].

—**Blending of joint family property.**—Joint family property—Blending of said property—Property separate or self acquired of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by owner into common stock with intention of abandoning his separate claim.

- [*D.S. Lakshmaiah* v. *L. Balasubramanyam*, AIR 2003 SC 3800 : 2003 AIR SCW 4347 : 2003 (10) SCC 310 : 2003 (5) SLT 116 : 2003 (9) SRJ 363 : 2003 (7) Scale 1 : 2003 (6) Supreme 540].

—**Claim on joint Hindu property.**—It is settled that for joint possession and ownership over any property, *firstly* the plaintiffs are required to plead

tortured and cruelty was being practised on her. The appellant has also stated that respondent No. 1 was threatening to take away her life by administering pills which are ordinarily used for developing photographs, although there is no other evidence on that point. If the relations between the husband and wife have reached such a stage that the husband was going about telling every body who came to see him on her behalf that he would let her go only if she gave a deed of divorce, the possibility of his taking recourse to that unfortunate step, cannot be completely excluded. In any case, the apprehension that he may do so, will have a serious effect on the mind of the wife. She is and to feel unsafe in the company of such a person.

■ [*Kuldeep Kumar Dogra* v. *Monika Sharma*, AIR 2010 HP 58].

—**Section 9—Illicit relation alleged by husband—Restitution of conjugal rights denied by Court.**—Restitution of conjugal rights. When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district Court, for restitution of conjugal rights and the Court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

■ [*Subodh Ranjan Das* v. *Dipali Das*, AIR 2011 Gau 30].

—**Section 9—Wife cruel—Divorce.**—She has also stated that on account of beating abortion took place and she remained under treatment for about one month. She has also stated about the complaint lodged by her under Sections 498-A and 406, IPC. Thus, it is clear that the relations between the husband and wife were not cordial. It has also been observed by the Judge, Family Court that on the basis of material it was revealed that the lady namely Sonia came in 'nata' and is living with the applicant as his wife. [Indian Penal Code, 1860, Sections 498-A and 406].

■ [*Rajesh Meghwal* v. *Sharda*, AIR 2011 Raj 62].

—**Section 9—Marriage—Dissolution of.**—Transfer of petition—Wife filed transfer petition filed by husband under Section 9—Matter referred to Lok Adalat conducted by Supreme Court—Under settlement, both parties agreed to withdraw proceedings—Wife acknowledged receipt of Rs. 1,10,1000/- in full and final settlement of her claim for maintenance—Parties agreed to file petition under Section 13-B of the Act for dissolution of marriage—Marriage dissolved—Transfer petition disposed off.

■ [*Sarita Singh* v. *Rajeshwar Singh*, (2010) 1 Femi-Juris CC 157 (SC)].

—**Section 9—Petition for restitution of conjugal right—Disposal of.**—Facts showed that in instant case, Family Court dismissed petition filed for restitution of conjugal right by husband prior to be filed written statement by women and that too merely on the ground that husband did not want to go paternal house of his wife. Further writ petition filed against impugned order passed by Family Court was allowed on the ground that impugned order should not have been passed in cursory manner but that should have been passed accordance with law.

■ [*Pawan Gupta* v. *Sarita* alias *Pinki Gupta*, **2016 (1) Civ LJ 569 (All)**].

living of the spouses. No absolute parameter thus can either be evolved or applied irrespective of these singular determinants. The requirement however of an unbearable relationship effecting the foundational faith to hold the alliance cannot be eschewed.

■ [*Suresh Gurjar* v. *Usha Gurjar*, AIR 2014 Raj 140].

—Sections 13 and 9—Divorce—Desertion as a cruelty—Not proved.—An application under Section 13 of the Hindu Marriage Act was filed by the appellant on 2.1.2004, before the said date, an *ex parte* decree upon application filed by the respondent under Section 9 of the Hindu Marriage Act for restitution of conjugal rights was passed against the appellant because the appellant did not attend the Court even after service of notice upon the appellant. But she did not comply with the said decree and living separately in spite of the fact that a decree for restitution of conjugal right has already been passed by the Judge, Family Court. Therefore, in our opinion, trial Court has rightly arrived at with the finding that the respondent has not deserted the appellant. More so, he made his all efforts for living together but in spite of decree passed under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, the appellant did not choose to live with the respondent, therefore, there is no question to accept the application filed under Section 13 of the Hindu Marriage Act for divorce on the ground of desertion. The Family Court has rightly considered the evidence on record for the purpose of deciding the issue of desertion.

■ [*Vardhi* v. *Narayan Lal*, AIR 2011 Raj 118].

—Sections 13 and 13(1)(ib)—Marriage at gun-point not valid.—It is not in dispute that no criminal complaint was lodged by the appellant for such forcible taking away by deceit and marriage by show of force at the point of a pistol. The plaint does not allege that no family member of the appellant was present during marriage or that the guests during the marriage ceremony were extremely limited because of the nature of the marriage being performed, much less the relatives of the respondent alone present at the time of marriage. The appellant in his evidence before the trial Court reiterated the story of deceit and forceful marriage but again did not lead any evidence whatsoever on the issue that because of the nature of the marriage being solemnized, none of his family members were present or that extremely limited number of guests were present. The name of the priest or even location of marriage has also not been stated. Court is therefore satisfied that this ground sought to be urged in the plaint was but a ploy to build up a case for divorce only.

■ [*Deepak Kumar Singh* v. *Gauri Devi*, AIR 2014 Pat 51].

—Sections 13 and 13(B-1)—Divorce—By mutual consent.—When the matter is pending before this 'Court and the file of divorce petition is also in this Court, what for these parties should be relegated to the District Court and it may not be in the larger interest of parties themselves also. It is only a case where it may be a matter of form but in imparting justice, the approach of the Courts should be to see that the parties are not unnecessary put to inconvenience or are being subjected to further more heavy expense of litigation as

guardian in violation of Section 8(2) is in essence nothing more than seeking a setting aside of the transfer and as a consequential relief to claim possession. Therefore, as long as the transaction by the guardian retains its validity, the relief of possession cannot possibly be granted.

He has further relied on the decision of Full Bench in the case of *Jadav Prabhatbhai Jethabhai* v. *Parmar Karsanbhai Dhulabhai*, AIR 2001 Guj 118.

- [*Vishad Padmanabh Mafatlal* v. *State of Gujarat*, AIR 2013 Guj 251].

—Section 8(3)—Transfer of immovable property by natural guardian.—To impeach a transfer of immovable property by the certificated guardian without the permission of a Court, the minor must sue within the prescribed period of three years after attaining majority. Once that is so a *fortiori* it follows that the position of a Hindu minor assailing a similar transaction of his natural guardian is no different and identical consideration would be applicable to the case under Section 8(3) of the 1956 Act.

A transfer of immovable property by the natural guardian of a Hindu minor far from being void or being a nullity is in fact one which fully binds the other party. The minor can always avail the benefit thereof and after ratifying or accepting the same enforce the contract. Such a transaction is perfectly valid until duly avoided by the minor. Not only that precedent is unanimous that he can avoid the same only by restoration of any benefits received under such a transfer and if he does not choose to do so, the Court would refuse to avoid such a transfer.

- [*Vishad Padmanabh Mafatlal* v. *State of Gujarat*, AIR 2013 Guj 251].

—Sections 11, 8, 6, 4(c) and 4(b)—Sale of minor's property—By her sister, acting as her guardian—Validity of.—Such sale comes within Section 11—It would be *ab initio* void in view of statutory prohibition—Minor after attaining majority can repudiate such sale in any manner she likes—Minor after attaining majority repudiate earlier sale of her property by her sister—By selling it—This subsequent sale is valid in law and transferee acquires valid title—Earlier sale being *ab initio* void has no legal sanctity.

- [*Madhegowda (dead) by LRs* v. *Ankegowda (dead) by LRs.*, AIR 2002 SC 215 : 2001 AIR SCW 4874 : 2002 AIR Kant HCR 80 : 2001 (9) JT 596 : 2002 (1) SCC 178 : 2001 (5) SCJ 269 : 2001 (8) Scale 197 : 2001 (8) Supreme 292].

—Section 13—Custody of minor.—Psychology of an 8 year old child has also to be kept in mind. No infirmity found in the reasoning of the Principal Judge that in the background of the pendency of the Section 304-B of Penal Code prosecution, the environmental difference that it makes, it was not in the interest of the minor child to be handed over to the father. Also if the minor child was suddenly handed over to the father whom he had never seen since birth or was put in the company of the paternal grandparents whom he had also never seen, the child might suffer from trauma which might make things more difficult for him having lost his mother soon after birth. The security and togetherness which he shall experience with his maternal grand-parents having lived with them from the time of his birth shall be replaced by an entirely strange environment suddenly. This shall certainly would not be in

Muslim Law

—Distinguished from Hindu law of inheritances.—Unlike the classical Indian law, female sex is no bar to inherit property. No woman is excluded from inheritance only on the basis of sex. Women have, like men, right to inherit property independently, not merely to receive maintenance or hold property 'in lieu of maintenance'. Moreover, every woman who inherits some property is, like a man, its absolute owner; there is no concept of either *stridhan* or a woman's 'limited estate' reverting to others upon her death.

The same scheme of succession applies whether the deceased was male or a female. This is one of those salient features of Muslim law of succession which distinguish it from modem Hindu law of inheritance.

- [*Muktar Ahmed* v. *Mahmudi Khatoon*, AIR 2011 Jhar 28].

—Enforcement of pre-emptive right.—When a Muslim wants to enforce the pre-emptive right that is conferred on him by custom. Which is followed strictly. The essence of this pre-emptive right is firstly he must express his intention to purchase the property immediately on receiving the information of sole. It is only if such a demand is not complied with, a cause of action arises for him to file suit within a period of one year from date of sale to enforce the right of preemption.

- [*Maheboobsab Buransab Maniyar* v. *Mohadinsab Maheboobsab Maniyar*, AIR 2013 Kant 29].

—Gift between Muslim couples—Habiba.— Merely recite the fact of a prior gift; such a writing need not be registered. On the other hand, it may itself be the instrument of gift; such a writing in certain circumstances requires registration. He further says that if there is a declaration, acceptance and delivery of possession coupled with the formal instrument of a gift, it must be registered. Conversely, the author says that registration, however, by itself without the other necessary conditions, is not sufficient. [Transfer of Property Act, 1882, Sections 129 and 123—Registration Act, 1908, Sections 17 and 49].

- [*Hafeeza Bibi* v. *Shaikh Farid*, AIR 2011 SC 1695].

—Gift—Immovable property gifted to wife, is not irrevocable.—The parameters for gifts (under Mohammedan Law) are clear and well defined. Gifts pertaining to the corpus of the property are absolute. Where a gift of corpus seeks to impose a limit, in point of time (as a life interest), the condition is void. Likewise, all other conditions, in a gift of the corpus are impermissible. In other words, the gift of the corpus has to be unconditional. Conditions are however permissible, if the gift is merely of a usufruct.

- [*V. Sreeramchandra Avdhani* v. *Shaik Abdul Rahim*, AIR 2014 SC 3464 : 2014 (8) SCJ 146 : 2014 (9) SCC 350 : 2014 (6) ALT 40.1 (DN SC)].

—Gift to bride—Land gifted to bride.—On examining contents of gift deed it could be said that the intention of the donor in the gift deed was to transfer the corpus of the immovable property to the donee, and not merely a usufruct therein. The conditions depicted in the gift deed, that the donee would not have any right to gift or sell the gifted property, or that the donee