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S.A.No.44 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

S.A.No.44 of 2017

A/M Audhikesava Perumal and
Bashyakara Swamy Thirukoil
Reptd. By its Executive Officer

.. Appellant

vs.

1. G.Devarajan (died)

2.R.Loganathan

3.D.Sarojini Devarajan

4.D.Kulasekaran

..Respondents

(R3 and R4 brought on record as LR's of the deceased R1 i.e., Devarajan vide Court order dated 01/01/2024 made in CMPs 1262, 1267 & 1270 of 2024)

Second Appeal filed under Section 100 of CPC to set aside the decree and judgment passed in A.S.No.188 of 2014 dated 18.11.2015 by the XVII Additional Judge, City Civil Court, Chennai – 600 001 and confirming the decree and judgment passed in O.S.No.6256 of 2009 on the file of II Assistant Judge, City Civil Court, Chennai – 600 104 dated 28.01.2014.

For Appellant : Mr.N.Velmurugan

For Respondents : Mr.R.Pravesh for R3 and R4



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JUDGMENT

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There was one Sholingapuram Nagamma, who seems to have possessed sufficient wealth even in the early period of 20th century to purchase a property on her own in the city of Chennai. Paying Rs.5,000/- , a princely sum in those days, on 09.12.1915 she purchased suit schedule mentioned property from one Jaganatha Pillai. After having enjoyed the property for about 7 years, she executed a document on 22.12.1922, which has been filed as Ex.A1. The present suit relates to interpretation of this document.

2. The plaintiff appeals to this Court.

3. As per Ex.A1, Sholingapuram Nagamma gave life estate to her only daughter Venkatarathnamma with the following conditions:

- i) that the donee shall enjoy the property as long as she is alive;
- ii) that she is entitled to let out the property and enjoy the income which is derived therefrom;
- iii) that she has to pay taxes and maintain the property and appropriate the remaining amount herself;



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iv) that she had no power of alienation of the property;

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v) that in case the donee had no children, the property was to go to the plaintiff temple Arulmighu Adhikesava Perumal and Bashyakara Swamy Thirukoil.

4. It is not disputed by either side that Venkatarathnamma was enjoying the property as long as she was alive. She sold the property to the defendants under Ex.A2 dated 09.07.1986. The second defendant relinquished his right in favour of the first defendant as per Ex.A3 dated 01.02.1989. There is no dispute that the Executive Officer was authorized to present the suit by the Board of Trustees of the plaintiff temple as is clear from Ex.A4 and the said authorization stood confirmed by the Commissioner, Hindu Religious & Charitable Endowment Department under Ex.A6.

5. On the strength of the authorization, the Executive Officer of Arulmighu Adhikesava Perumal and Bashyakara Swamy Thirukoil filed a suit seeking for a declaration that the sale deed dated 09.07.1986 executed by Sholingapuram Nagamma in favour of the defendants Devarajan and Loganathan is null and void and not binding on the temple and for a consequential relief of recovery of possession of the property



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with a prayer for assessment of damages for past and future mesne profits.

6. The written statement admitted to the purchase of Sholingapuram Nagamma and execution of Ex.A1 settlement deed dated 22.12.1922 in favour of Venkatarathnamma. Their specific case was that when the Hindu Succession Act came into force, the limited estate which had been granted to Venkatarathnamma bloomed into absolute estate and therefore, she had a right to alienate the property. On the basis of these pleadings, the learned trial Judge framed the following issues:

- “1. Whether the plaintiff is entitled for declaration and recovery of possession as prayed for?*
- 2. Whether the suit claim is barred by limitation?*
- 3. Whether the plaintiff is entitled for damages as prayed for?*
- 4. To what other relief?”*

7. On the side of the plaintiff, one P.Sakti, the Executive Officer was examined as PW1 and Exs.A1 to A10 were marked. On the side of the defendants, G.Devarajan, the defendant entered the witness box as DW1 and marked Exs.B1 to B11.



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8. On a consideration of the oral and documentary evidence, the learned trial Judge came to the conclusion that the suit is not barred by limitation and held that the donee Venkatarathnamma had only life estate and that does not bloom into an absolute estate and decreed the suit.

9. This prompted the filing of a regular appeal before the XVII Additional Judge, City Civil Court, Chennai in A.S.No.188 of 2014. The learned Appellate Court concurred with the findings of the trial Court that the suit is not barred by limitation but differed on the interpretation of the Hindu Succession Act.

10. The learned Appellate Judge held that Venkatarathnamma had taken possession of the property as a limited owner and by virtue of the operation of Section 14(1) of Hindu Succession Act, she became the absolute owner of the property. On the basis of this finding, the lower Appellate Court allowed the appeal and dismissed the suit on 18.11.2015.

11. Against the reversal finding, the present second appeal was brought forth before this Court by the plaintiff. On 02.11.2017, this second appeal was admitted on the following substantial questions of



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law:

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“1. Whether the settlement deed executed by Sholingapuram Nagamma bequeathing the suit property in favour of the temple is valid in law after the life time of Tmt.Venkatarathnamma who has only a life time interest?

2. Whether the provision of law Section 14(2) of Hindu Succession Act will apply to the properties owned by the Public Religious Institutions?

3. Has not the lower appellate Court committed an error of law in totally misconstruing the provision of Section 14 of the Hindu Succession Act, 1956 in view of the admitted position and finding rendered that the suit property absolutely belonged to Sholingapuram Nagamma and in any case, in view of Section 14(2) of Hindu Succession Act, 1956, the defendants are not entitled for absolute right?”

12. I heard Mr.N.Velmurugan for the appellant and Mr.R.Pravesh for Mr.P.V.Ramanujam for the respondents. I have carefully gone through the records and I have analysed the facts and circumstances of the case based on the submissions made by the respective counsel.

13. For the sake of convenience, the parties shall be referred to as “plaintiff” and “defendants”.

14. I have gone through Ex.A1 which is an undisputed document.



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15. Ex.A1 is in Telugu and the translation of the same in English has been filed as Ex.A10. On the translation, there is no dispute. The translated copy has been provided by Dr.M.Sampath Kumar, Head of the Department, Department of Telugu, University of Madras, Chennai- 5. Insofar as the contents of the translation, there is no dispute between the plaintiff and the defendants. In order to satisfy myself on the contents, I requested the Telugu Translator attached to this Court to go through the same and to confirm the contents thereof. She has also gone through the translation and has stated that the translation as provided by the plaintiff is true and correct. The translated copy of Ex.A1, marked as Ex.A10 reads as follows:

“I Sholingapuram Nagamma, adopted daughter of Tayaramma of Vysya caste and Vaishnava religion, residing at No.29, Krishnan Street, Peddanayudupet, Chennai, according my own intention executes the settlement deed on December 22, 1922. The settlement deed is mentioned in the schedule as given below:

This house with site is purchased on 9th December 1915, from Jagannadhan Pillai for Rs.5000.00 and I am happily living in the house with all rights from the date of purchase.

Now I am suffering from some ill health from some



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months. This is the reason why I got an idea to donate my house to the temple of Sri Adi Kesavaperumal, for divine service, situated at Door No.32-26, Western row, Acharyappan Street, Peddanayudupet, Jorge Town, Cennapattanam, permanently and executed the following settlement deed.

I have only one daughter by name Sholingapuram Venkata Ratnamma, age 19 years and I have no other children. She is depending on me. Therefore, I have the responsibility to show some thing for her safety and living. She can enjoy this house property upto her death. After that this house and land are to be handed over to the temple for divine service. This is shown in the schedule given below.

From today onwards the house and land are handed over to Sholingapuram Venkata Ratnamma and she can enjoy the house and land with all rights. She has to pay the tax, and repair charges from the rent and the remaining amount generated from the house can be enjoyed by her. She can enjoy the property until her death. But she has no right to sale the house and land or to mortgage for any purpose. If she gives birth to some children, her children also can enjoy the property. But they have no right to sale house and land or to mortgage or to donate to any one. If Venkata Ratnamma has no children, the house and land automatically goes to the temple of Sri Adikesava Perumal.



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After Sholingapuram Venkata Ratnamma the house and land can be taken by Rajasree Duggi Kondaiah Setty the 'Dharmakarta' of the temple or to any body who will be 'Dharmakarta' at that time. The house can be given for rent and the amount received can be utilized for the services of the god and if any amount remains, that amount is to be used for daily 'puja'.

If Venkata Ratnamma possesses children, they can enjoy the property and after them, the 'Dharmakartas' can take over the property and it can be utilised as said before. The 'Dharmakartas' has no right either to sale or to donate it to any body. Only the children born to Venkata ratnamma can enjoy the property but the adopted children have no right on this property. From today onwards, I have no right or responsibility on this house and site. The original documents, and the settlement deed are handed over to Duggi Kondaiah Setty, the 'Dharmakarta' of the temple.”

16. Mr.Velmurugan would argue that Section 14(2) of the Hindu Succession Act, 1956 alone will be applicable and not Section 14(1) on the ground that the donee/vendor Venkatarathnamma should be treated only as custodian of the property as the property vested with the plaintiff on the date of execution of the document itself. Secondly, he would



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submit that the dominant intention of the donor Sholingapuram Nagamma was to benefit the temple and since she had a daughter living with her, she created some provision for her. The Court while interpreting a document should give importance to the dominant intention and not to any subsidiary intention which arises therefrom.

17. Mr.Pravesh would contend that treating Venkatarathnamma as a custodian would not be proper as she had been given all the rights to enjoy the property other than the right of alienation. He would state that this Court could look into dominant intention or otherwise in the document, if not, for Section 14(1) of the Hindu Succession Act. He would submit that this is a classic case where Section 14(1) would apply and on the coming into force of the Hindu Succession Act, Venkatarathnamma would become the absolute owner of the property. Therefore, he would plead for confirmation of the decree of the lower appellate Court and dismissal of the second appeal.

18. The test as to whether Section 14(1) or Section 14(2) would apply, has been settled by a judgment of the Supreme Court in ***C.Masilamani Mudaliar and Others Vs. Idol of Sri Swainathaswami Thirukoil and Others*** reported in (1996) 8 SCC 525. In that judgment, three judges of the Supreme Court were pleased to held in paragraph 27



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as follows:

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“27. As held by this Court, if the acquisition of the property attracts sub-section [1] of [Section 14](#), sub-section [2] does not come into play. If the acquisition is for the first times, without any vestige of pre-existing right under the instrument, document or device etc. then sub-section [2] of [Section 14](#) gets attracted. Sub-section [2] being in the nature of an exception, it does not engulf and wipe out the operation of sub-section [1]. Sub-section [2] of [Section 14](#) independently operates in its own sphere. The right to disposition of property by a Hindu under [Section 30](#) is required to be understood in this perspective and if any attempt is made to put restriction upon the property possessed by a Hindu female under an instrument, document or device, though executed after the Act had come into force, it must be interpreted in the light of the facts and circumstances in each case and to construe whether Hindu female acquired or possessed the property in recognition of her pre-existing right or she gets the rights for the first time under the instrument without any vestige of pre-existing right. If the answer is in the positive, sub-section [1] of [Section 14](#) gets attracted. Thus construed, both subsections [1] and [2] of [Section 14](#) will be given their full play without rendering either as otios or aids as means of avoidance. “

19. In other words, the principle laid down in this judgment shows that if the property has been given for pre-existing right of maintenance, then it blooms into an absolute estate by virtue of Section 14(1) of Hindu Succession Act. If the property has been given for the first time without



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any such right, then Section 14(2) operates. Following the famous case of ***Tulasamma Vs. Sesha Reddy*** reported in ***(1977) 3 SCR 261***, the Bench was pleased to hold that Section 14(2) is an exception to Section 14(1) of Hindu Succession Act and being an exception, the Court should interpret the exception strictly and not in an expansive manner.

20. Now I have to apply the law to the facts of the case. It is relevant to extract the following clause in Ex.A1:

“I have only one daughter by name Shokingapuram Venkata Rathinammal, aged 19 years and I have no other children. She is depending on me. Therefore, I have the responsibility to show some thing for her safety and living. She can enjoy this house property upto her death. After that this house and land are to be handed over to the temple for divine service.....”

“ From today onwards, the house and land are handed over to Sholingapuram Venkata Rathinamma and she can enjoy the hosue and land with all rights. She has to pay the tax, and repair charges from the rent and the remaining amount generated from the hosue can be enjoyed by her. She can enjoy the property until her death. But she has no right to sell the house and land or to mortgage for any purpose.....”

21. A reading of this clause shows that Venkatarathnamma was the only daughter of Sholingapuram Nagamma and she was at a very



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young age of 19 years on the date of the document. Therefore, the mother Nagamma, who was suffering from ill-health, as seen from the documents, wanted to make some provisions for maintenance of her daughter. As to what happened to the father of Venkatarathnamma, who was husband of Nagamma, there has been no evidence let in by the both sides. Being the parent, Nagamma wanted to make a provision for her daughter and this is clear from the very deed itself.

22. Insofar as unmarried daughters are concerned, as per pristine Hindu Law, she has to be under the custody of her parents till she is given in her marriage. It is only on her marriage, all the rights that she enjoys in the family of her parents gets transferred to her husband. This has been so observed in *Ambu Bai Ammal Vs. Soni Bai Ammal* reported in (1941) *ILR Mad 13 (FB)*. Therefore, there was a pre-existing right to be maintained for Venkatarathnamma at the hands of Nagamma. It is also clear from the document that Nagamma had written the document favouring Venkatarathnamma only in order to discharge this duty.

23. When there is a pre-existing right of maintenance, as held by Supreme Court in *Masilamani Mudaliar's* case, operation of Section 14(1) kicks in. I am unable to agree to the submission of



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Mr.Velmurugan that Venkatarathnamma was only a custodian and therefore, she does not have the right of alienation. I come to this conclusion because the aforesaid extracts of the document show that Venkatarathnamma was entitled to not only live in the property but also to let out the same and also consume the income generated from the said property. A custodian by the name of the word merely protects the property from being dissipated. A custodian cannot consume the usufructs or usurp it to himself. Such an act would be a ground itself for removal of the custodian. Therefore, I am not willing to treat Venkatarathnamma as custodian of the property but on the contrary I would hold that Venkatarathnamma was given the property in lieu of maintenance for her to enjoy during her lifetime. That she had taken possession of the property by virtue of the document dated 22.12.1922 is clear as the document itself states that a possession had been handed over to Venkatarathnamma on the date of execution of the document.

24. Turning to the next point of Mr.Velmurugan that the Court has to give importance to the dominant intention of the document which was to vest the property with the temple rather than application of Section 14(1) of the Hindu Succession Act also does not appeal to me.

Mr.Velmurugan would have been absolutely correct regards this right of



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the temple to enforce, the dominant intention of the donor to give the property to the temple, if it had not been for the intervention of the Hindu Succession Act, 1956. The Parliament by enacting the Hindu Succession Act had made it clear that when property is given in lieu of maintenance or in lieu of pre-existing right of maintenance, then a female hindu should not be held as a limited owner but should be treated as an absolute owner. If I were to agree with Mr.Velmurugan and give importance to the dominant intention of the document, I would be rendering a verdict against Section 14(1). Section 14(1) having been declared as law of the land, I have to apply the law as it stands. Consequently, though the intention of Nagamma was to benefit the temple after the life time of her daughter, since Venkatarathnamma took benefit of the gift and had been enjoying the property on the date of coming into force of the Hindu Succession Act, she was perfectly entitled to alienate the property as she became the absolute owner by virtue of Section 14(1) of Hindu Succession Act.

25. The position of law has been correctly analysed and applied by the learned XVII Additional Judge, City Civil Court at Chennai. Therefore, it does not require any interference.



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WEB COPY 26. In fine, this second appeal stands dismissed. The judgment and decree of the Court of XVII Additional Judge, City Civil Court at Chennai in A.S.No.188 of 2014 dated 18.11.2015 in reversing the judgment and decree of the II Assistant Judge, City Civil Court, Chennai in O.S.No.6256 of 2009 dated 28.01.2014 stands confirmed. Considering the fact that the appellant is a religious institution, I am not imposing costs.

07.02.2024

Index:Yes/No
Neutral Citation:Yes/No
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To

1. XVII Additional Judge, City Civil Court, Chennai
2. II Assistant Judge, City Civil Court, Chennai



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V. LAKSHMINARAYANAN, J.

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