

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.08.2015

CORAM :

THE HON'BLE MS. JUSTICE K.B.K.VASUKI

Second Appeal Nos.1658 to 1660 of 2000

SA.No.1658 of 2000

1.Ramaswamy
2.Varalakshmi
3.Selvalakshmi (minor)
4.Rajeswari (minor)
5.Murali (Minor)
(Appellants 3 to 5 minors are represented
by their mother and guardian Varalakshmi) .. Appellants
Vs.

1.Pandarinathan
2.Muthukrishnan
3.Kannammal
4.Saroja
5.Seethalakshmi (deceased)
(Appellants 2 to 5 recorded as legal heirs
of the deceased fifth respondent as per
order dated 6.2.2015 made in memo dated 3.2.2014) .. Respondents

SA.No.1659 of 2000

1.Ramaswamy
2.Varalakshmi
3.Selvalakshmi (minor)
4.Rajeswari (minor)
5.Murali (Minor)
(Appellants 3 to 5 minors are represented
by their mother and guardian Varalakshmi) .. Appellants
Vs.

1.Muthukrishnan
2.Seethalakshmi (deceased)
(Appellants 2 to 5 recorded as legal heirs
of the deceased fifth respondent as per
order dated 6.2.2015 made in memo dated 3.2.2014) .. Respondents

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SA.No.1660 of 2000

1.Ramaswamy
2.Varalakshmi

.. Appellants

Vs.

1.Pandarinathan
2.Kannammal
3.Saroja

.. Respondents

For Appellants : M/s.M.Ravi in all the second appeals.

For Respondents : M/s.V.Raghavachari

for Mr.S.M.Loganathan for R1 in
SA.Nos.1658 & 1660 of 2000.

SA.No.1658 of 2000

R2 to R4 - Notice served, no appearance

R5 - Died, LRs impleaded as A2 to A5)

SA.No.1659 of 2000

R1 - Notice Served, no appearance

R2 - Died, LRs impleaded as A2 to A5.

SA.No.1660 of 2000

R2 & R3 - Notice served, no appearance

Second Appeals are filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 31.01.2000 made in A.S.Nos.3, 2 and 4 of 1999 on the file of the Additional District Judge, Perambalur reversing the Judgment and Decree dated 26.02.1998 made in O.S.Nos.58/1990, 76/1988 and 59/1990 on the file of the Subordinate Judge, Ariyalur respectively.

COMMON JUDGMENT

All the three second appeals are arising out of three suits OS.Nos.76 of 1988, 58 of 1990 and 59 of 1990.

2.The suit in OS.No.76 of 1988 is filed by one Rukmaniammal against Ramasamy, Vijayaraghavan, Andalammal and others for declaring that Ex.A3 settlement deed dated 08.03.1985 executed by Rukmaniammal in favour of Ramasamy and Vijayaraghavan was obtained by playing fraud, misrepresentation, undue influence and by breach of trust and for setting aside the same and for other consequential reliefs.

3.OS.No.58 of 1990 is filed by Ramasamy and Vijayaraghavan against Pandarinathan, Madhavan and Muthukrishnan for declaring the plaintiffs' title to the suit property on the strength of Ex.A3 Settlement deed and for consequential permanent injunction or alternatively for recovery of possession with mesne profits.

4.OS.No.59 of 1990 is filed by Andalammal against Jayalakshmi and Rukmani for permanent injunction restraining them from alienating or encumbering the suit properties till the properties are partitioned by metes and bounds.

5.One more suit filed along with above mentioned three suits is OS.No.57 of 1990 filed by Govindammal against Ramasamy, Vijayaraghavan, Advocate Receiver and others for declaring her right to the suit property and for permanent injunction.

6.During the pendency of the suits, Rukmaniammal/plaintiff in OS.No.76 of 1988 died and one Muthukrishnan, who was the third defendant in OS.No.58 of 1990 was impleaded as her legal heir and as the second plaintiff in OS.76/1988.

The second defendant in O.S.76/1988 and in OS.57/1990 by name Vijayaraghavan who was the second plaintiff in OS.58 of 1990 died and his legal heirs, wife and children were impleaded as other plaintiffs and defendants respectively in the suits.

The plaintiff in OS.No.59 of 1990 by name Andalammal, who was the third defendant in OS.76 of 1988, died and her son Ramasamy and daughter Varalakshmi who were her legal heirs and who were the defendants 1 and 4 in OS.No.57 of 1990 and the plaintiffs 1 and 3 in OS.No.58 of 1990 were impleaded as the plaintiffs 2 and 3 in OS.59/1990.

The first defendant in OS.No.59 of 1990 by name Jayalakshmi died and the defendants 1 and 2 in OS.No.58 of 1990 by names Pandarinathan and Madhavan were impleaded as her legal heirs as the defendants 3 and 4 in OS.59/1990.

7.While the claim for title made by Govindammal in OS.No.57 of 1990 is based on Ex.B6 partition deed dated 27.09.1983, the claim for title made by Ramasamy and Vijayaraghavan in OS.58 of 1990 is based on Ex.A3 settlement deed dated 08.03.1985, which is sought to be set aside in OS.No.76 of 1988 filed by Rukmaniammal.

8.The subject matter of Ex.A3/settlement deed, the validity of which is challenged in OS.No.76 of 1988 filed by Rukmaniammal are two items in Udayapalayam Taluk, T.Palur Revenue village, Udayanatham vattam, Kodali Village (ie) (i)Ayan Nanja SF.No.370 out of 4.59 measuring 4.43cents and (ii)Ayan Nanja SF.No.385/4 measuring 0.71 cents.

The same are the suit properties in OS.No.58 of 1990 filed by Ramasamy and Vijayaraghavan.

One of the items in SF.No.370 measuring 4.43/4.59cents is the suit property in OS.57 of 1990 filed by Govindammal.

The suit in OS.No.59 of 1990 filed by Andalammal is in respect of 9 items including the properties covered in Ex.A3 settlement deed and OS.Nos.57 and 58 of 1990.

9.The property which is the subject matter of all the four suits originally belonged to one Krishnan and the plaintiffs and the defendants in all the four suits are his male and female descendants. All the four suits were tried together and disposed of by common judgment and decree dated 26.02.1998. The Trial Court in the common judgment rendered the following findings :-

(i)Ex.A3 settlement deed dated 08.03.1985 was validly executed by Rukmaniammal in favour of Ramasamy and Vijayaraghavan and was duly given effect to.

(ii)Ex.B6 partition arrangement was not true and enforceable and not binding on either Rukmaniammal or Ramasamy or Vijayaraghavan, as such, Govindammal/plaintiff in OS.No.57 of 1990 was not entitled to claim any title over the property.

(iii)The plaintiff-Govindammal was not in possession and enjoyment of the property covered in OS.No.57 of 1990 during the relevant point of time. The plaintiff-Govindammal in OS.No.57 of 1990 failed to prove the alleged interference into her alleged possession and failed to prove the cause of action.

(iv)The valid execution of Ex.B5-Power of Attorney by Jayalakshmi in favour of Pandarinathan and Madhavan who were the defendants 3 and 4 in OS.No.59 of 1990 was not established and the same was not binding on either Andalammal or Ramasamy and Varalakshmi, who were the first plaintiff and the plaintiffs 2 and 3 in OS.59/1990.

(v)The defendants 3 and 4 in OS.No.59 of 1990 by names Pandarinathan and Madhavan have no right over the property, but they having claimed title against the owner, are to be restrained from effecting alienation or encumbrance over suit items.

(vi)The second plaintiff -Muthukrishnan in OS.No.76 of 1988 did not prove the genuineness and valid execution of Ex.B16 Will in his favour and as per Ex.A13 Will the remaining property of Rukmaniammal are bequeathed to Andalammal and the second plaintiff Muthukrishnan in OS.No.76 of 1988 was not entitled to represent Rukmaniammal and to pursue the suit relief.

On the basis of the findings so rendered, the trial court dismissed OS.Nos.76 of 1988 and 57 of 1990 and decreed the suits in OS.Nos.58 and 59 of 1990.

10.The aggrieved parties preferred AS.Nos.2 to 5 of 1999 before the lower appellate court. AS.No.2 of 1999 was filed by the second plaintiff- Muthukrishnan against the dismissal of OS.No.76 of 1988. AS.No.3 of 1999 was filed by the defendants 1 to 3 -Pandarinathan, Madhavan and Muthukrishnan against the judgment and decree of declaration and permanent injunction granted in OS.No.58 of 1990. AS.No.4 of 1999 was filed by the defendants 3 and 4 -Pandarinathan and Madhavan against the decree granted in OS.No.59 of 1990. AS.No.5 of 1999 was filed by plaintiff/Govindammal against the dismissal of OS.No.57 of 1990. The lower appellate court also heard all the appeals together and disposed of the same by common judgment and decree dated 31.01.2000, with the following findings:

(i)The plaintiff in O.S.57/1990 - Govindammal failed to prove the partition of the property belonging to Abbyee Chettiar among his three daughters and failed to prove the execution of Ex.B6 partition deed and Ex.B6 is anti dated document forgedly created and Govindammal is dis-entitled to claim any right under Ex.B6.

(ii)The suit property, after the death of Abbyee Chettiar, was succeeded by Govindasamy Chettiar and Govindasamy Chettiar and his only son Krishnasamy Chettiar became the co-sharers of the common family properties and the first wife of Govindasamy Chettiar by name Kannammal predeceased him and after the death of Govindasamy Chettiar, his surviving second wife by name Ammaniammal under section 3(2) of Hindu Women's Rights to Property Act 1937 got restricted right in $\frac{1}{2}$ share belonging to Govindasamy Chettiar and her restricted right became blossomed into absolute right under section 14 of the Hindu Succession Act 1956 and after the death of Ammaniammal, her only daughter Andalammal succeeded to $\frac{1}{2}$ share belonging to her mother.

(iii)After the death of Krishnasamy Chettiar, S/o.Govindasamy Chettiar through his first wife Kannammal, his two wives by names Jayalakshmi and Rukmaniammal got each $\frac{1}{4}$ th share in his $\frac{1}{2}$ share and on the death of the first wife Jayalakshmi as issueless, her $\frac{1}{4}$ th share was succeeded by other widow Rukmaniammal and Rukmaniammal thus became the owner of $\frac{1}{2}$ share. Out of three documents, Ex.A3 settlement deed, Ex.A13 Will and Ex.B16 Will executed by Rukmaniammal in favour of Ramasamy and Vijayaraghavan; in favour of Andalammal and in favour of Muthukrishnan respectively, Ex.A3 settlement deed and Ex.A13 Will are fabricated documents and are invalid and the execution of Ex.B16 Will is duly executed by Rukmaniammal in sound state

of mind and on the strength of the same, Muthukrishnan succeeded to the property. But the suit in OS.76/1988 filed for declaring Ex.A3 settlement deed as null and void is barred by limitation and the same is liable to be dismissed.

(iv)As Ex.A3 settlement deed is forged document, the plaintiffs in OS.58/1990 did not get any right on the strength of the same and are dis-entitled to get recovery of possession of property and mense profit and the suit in O.S.58/1990 is liable to be dismissed.

(v)After the death of Jayalakshmi and Rukmaniammal, the legal heirs of Rukmaniammal having not been impleaded in OS.59/1990, the relief sought for in O.S.59/1990 stood abated. After the death of Jayalakshmi, her power of attorneys by names Pandarinathan and Madhavan had no right to act on behalf of the principal and any transaction effected by them in respect of the property in question is only on their own capacity, as such, the relief of permanent injunction restraining them to alienate and create encumbrance over the suit property is not maintainable and the suit O.S.59/1990 filed for the relief of permanent injunction is liable to be dismissed. As the properties were in possession of Pandarinathan and Madhavan, the Advocate Receiver is directed to restore their possession.

On the basis of such findings, the lower appellate court, partly allowed AS.2/1999 based on the finding rendered against Ex.A3 settlement deed dated 8.3.1985 and partly dismissed the appeal by dismissing the suit in O.S.76/1988 on the ground of limitation.

AS.3/1999 was allowed by setting aside the judgment and decree made in O.S.58/1990 and O.S.58/1990 was dismissed.

AS.4/1999 was allowed by setting aside the judgment and decree made in O.S.59/1990 and O.S.59/1990 was dismissed.

AS.5/1999 was dismissed by confirming the judgment and decree made in O.S.57/1990.

11.Aggrieved against the judgment and decree of the lower appellate court in OS.Nos.76 of 1988 and 58 and 59 of 1990, Ramasamy Vagaira are now before this Court by way of present second appeals SA.Nos.1658 to 1660 of 2000.

12.The plaintiff Govindammal in OS.No.57 of 1990 did not prefer any second appeal against the rejection of her claim and dismissal of her suit by the trial court as confirmed by the lower appellate court in AS.No.5 of 1999.

13.All the three second appeals are admitted on the following substantial questions of law :

SA.No.1658 of 2000

"1.Whether the lower appellate court is right in setting aside the findings of the trial court that on the evidence available on record the deed of settlement was genuine and the plaintiffs got absolute title and are entitled to the decree as prayed for.

2.Whether the deed of settlement which has already conferred vested right to the plaintiffs can be held to be not genuine by reason of a subsequent will alleged to have been executed by the settlor."

SA.No.1659 of 2000

"1.Whether the lower appellate court was right in partly allowing the appeal, having held that the suit is barred by limitation and the suit having been dismissed on that ground.

2.Whether the findings on the deed of settlement arrived at by the trial Court can be set aside in appeal when the appellate court agrees that the suit is barred by limitation."

SA.No.1660 of 2000

"Whether the lower appellate Court is right in refusing permanent injunction on the ground that the plaintiffs should have asked for partition having held that the defendants have no absolute right in the properties."

14.The additional substantial questions of law framed during the course of arguments are :-

1.Whether the provisions of the Hindu Law of Inheritance (Amendment) Act II of 1929 is applicable to the facts of the present cases.

2.Whether the female heirs of both the sons of the original owner/Krishnan by names Abbyee Chettiar and Govindasamy Chettiar or the 2nd wife of his grand son by name Krishnasamy through one of the sons acquired any right over the property by virtue of Act II of 1929 and Hindu Women's Rights to Property Act, 1937 and Hindu Succession Act, 1956.

15.Heard the rival submissions made on both sides and perused the records.

16.As already stated, out of four suits, four appeals arose before the lower appellate Court and out of four appeals, only three second appeals are filed before this Court.

17.As far as SA.No.1659 of 2000 arising out of OS.No.76 of 1988 is concerned, the same is filed by the defendants in OS.76/1988 against one of the findings rendered by the lower appellate court against the validity of Ex.A3 settlement deed. The suit is filed for declaring Ex.A3 settlement deed as null and void and obtained by fraud, misrepresentation, undue advantage and breach of trust. The trial Court negatived such claim and upheld the genuineness and valid execution of Ex.A3 in favour of the defendants therein, who were the plaintiffs in OS.No.58 of 1990 and accordingly dismissed OS.No.76 of 1988 and decreed OS.No.58 of 1990. The lower appellate Court in the appeals filed by the second plaintiff in OS.No.76 of 1988 and the defendants in OS.No.58 of 1990 (AS.Nos.2 of 1999 and 3 of 1999 respectively) reversed such findings and held Ex.A3 settlement deed to be not legally valid and accordingly negatived the claim made on the strength of such settlement deed by the plaintiffs in OS.No.58 of 1990. However, the lower appellate court in AS.2/1999, in spite of the finding in favour of the plaintiffs in OS.76/1988 on main controversy in issue, confirmed the judgment and decree of the trial court in dismissing OS.76/1988 in favour of the defendants on different issue of limitation. The effect of dismissal of the suit on the ground of limitation is confirming the judgment and decree of the lower appellate court in dismissing the suit on the ground of limitation, as such, the appeal ought to have been dismissed in its entirety and the question of partly allowing the appeal on the basis of one of the findings and partly dismissing the appeal on the issue of limitation does not arise. To that extent, the judgment and decree of the lower appellate court is contrary to law and is legally unsustainable. Further, though the lower appellate court, while setting aside the finding of the trial court on one aspect in favour of the appellants/plaintiffs and against the respondents/defendants, is justified in dismissing the suit on different aspect, the respondents/defendants cannot be said to be aggrieved by the dismissal of the suit and cannot be legally permitted to maintain any further appeal against the correctness of the finding so rendered and no independent second appeal is maintainable against one of the findings rendered by the lower appellate court in AS.2/1999 upon one of the issues involved in OS.76/1988. The substantial questions of law framed in SA.1659/2000 are answered as stated above.

18.Even otherwise, as the lower appellate court rendered the same finding in AS.No.3 of 1999 (arising out of OS.No.58 of 1990) against the validity of Ex.A3/settlement deed dated 08.03.1985 and such finding is now under challenge in SA.1658/2000 by the plaintiffs Ramasamy and others in OS.58/1990, who are the defendants in OS.76/1988, such defendants in OS.76/1988 being the plaintiffs in OS.58/1990 and respondents in AS.3/1999 and appellants in SA.1658/2000 are at liberty to agitate the correctness of such finding given in AS.2/1999 on the validity of Ex.A3 settlement deed in their SA.No.1658 of 2000.

19.As far as SA.No.1660 of 2000 is concerned, the same is filed by the plaintiffs against rejection of the suit reliefs claimed in OS.No.59 of 1990. OS.No.59 of 1990 was filed by Andalammal for injunction restraining the defendants, Jayalakshmi, Rukmani, Pandarinathan and Madhavan from alienating and encumbering the suit items 1 to 9 until the partition is effected by metes and bounds. As already stated, Andalammal and Jayalakshmi and Madhavan died during the pendency of the suit OS.No.59 of 1990 and the appeal in AS.4/1999 and Ramasamy and Varalakshmi were impleaded as the plaintiffs 2 and 3 in OS.59/1990 as legal heirs of the deceased plaintiff Andalammal. The second defendant/Rukmani was recognised as legal heir of the deceased first defendant/Jayalakshmi.

20.According to the plaintiffs in the suit OS.No.59 of 1990 (originally numbered as OS.No.192 of 1984), the property originally belonged to one Krishnan Chettiar and after his death, his estate was succeeded by his two sons by names Abbyee Chettiar and Govindasamy Chettiar and after the death of Abbyee Chettiar, the joint family properties were succeeded by the surviving son Govindasamy Chettiar by survivorship.

21.It is the further case of the plaintiffs that Govindasamy Chettiar died interstate during 1944 leaving behind his second wife/Ammaniammal, only son through first wife/Krishnasamy Chettiar and the daughter through second wife/Andalammal, who is the plaintiff in OS.59/1990 and on the death of Govindasamy Chettiar, his son acquired $\frac{1}{2}$ share and his second wife Ammaniammal acquired $\frac{1}{2}$ share under Hindu Women's Rights to Property Act 1937 and such right got enlarged by virtue of section 14(1) of the Hindu Succession Act, 1956 and on her death during 1977, Govindasamy's son Krishnasamy and daughter of Ammaniammal-Andalammal became entitled to each $\frac{1}{2}$ share and thus, Krishnasamy and Andalammal became entitled to $\frac{3}{4}$ and $\frac{1}{4}$ share respectively. It is also their case that Govindasamy also from and out of the income derived from his profession as Astrologer acquired properties, in which, the son and daughter are entitled to $\frac{1}{2}$ share. While the plaintiff and her brother have been in possession and enjoyment of their respective shares, the brother Krishnasamy died leaving behind him his two wives by names Jayalakshmi and Rukmani and the defendants 3 and 4 by names Pandarinathan and Madhavan by dominating the widows of Krishnasamy started creating documents and started dealing with the properties and attempted to interfere with the plaintiffs' joint possession of the properties. By stating so, the suit was filed against the widows of Krishnasamy arraying them as the defendants 1 and 2 and against Pandarinathan and Madhavan arraying them as the defendants 3 and 4 in their capacity as power of attorneys of the defendants 1 and 2. The relief sought for therein is not to create or encumbrance over the suit properties numbering 1 to

9 till the same are partitioned by metes and bounds between the plaintiff/Andalammal and the defendants 1 and 2 Jayalakshmi and Rukmani/widows of her brother Krishnasamy.

22.The defendants 3 and 4 in their written statement denied the right of the original plaintiff Andalammal to get any share in the suit properties. It is also their case that any injunction against alienation can be restricted insofar as the share of the plaintiff Andalammal if any in the suit properties and not in respect of the entire property.

23.As already stated, the suit in OS.59/1990 was decreed by the trial Court and the judgment and decree made in the suit was set aside in AS.No.4 of 1999 and consequentially OS.No.59 of 1990 was dismissed by the lower appellate court. As rightly argued by the learned counsel for the defendants herein, the relief of permanent injunction sought for in the suit being restricted till the properties are partitioned between the plaintiff/sister on one hand and the widows of the deceased brother on the other hand and as the so called co-sharers i.e., widows of Krishnasamy died during the pendency of the suit and the defendants 3 and 4 having been arrayed only as the power of attorneys of the defendants 1 and 2 and their authority to act on behalf of the principal i.e., the defendants 1 and 2, having come to an end on the death of their principal, no relief is maintainable against the power of attorneys. As a matter of fact, the trial court in OS.No.59 of 1990 arrived at a conclusion that valid execution of Ex.B5/Power of Attorney by Jayalakshmi in favour of the defendants 3 and 4, is not established and is not binding on either Rukmani, Ramasamy, Varalakshmi or Vijayaraghavan since deceased and other sharers of the family properties and the same is also confirmed by the lower appellate court. The lower appellate court negatived the claim of the defendants 3 and 4 Pandarinathan and Madhavan under the female heirs of Abbyee Chettiar. The lower appellate court in para 26 of its judgment found that Abbyee Chettiar having died during 1925 without any male heirs, his widows got no right over the property and the entire property was succeeded by Govindasamy Chettiar by survivorship. The lower appellate court further arrived at the conclusion in the same para that after the death of Govindasamy Chettiar, his son Krishnasamy through predeceased first wife and his surviving wife Ammaniammal each got half share and Ammaniammal got her share under section 3(2) of Hindu Women's Rights to Property Act 1937 and the same got enlarged by virtue of Section 14 of Hindu Succession Act, 1956 and her $\frac{1}{2}$ share was succeeded to by her only daughter Andalammal and Andalammal and Krishnasamy thus became equal sharers in the property left by Govindasamy Chettiar. By deciding so, the lower appellate Court reversed the findings of the trial court to the effect that the plaintiff/Andalammal in OS.No.59 of 1990 and her brother Krishnasamy

were entitled to $\frac{1}{4}$ share and $\frac{3}{4}$ share respectively in the property left by Govindasamy Chettiar. It is further decided by the lower appellate court that the half share belonging to Krishnasamy on his death was succeeded by his two widows Jayalakshmi and Rukmani. It is also held in para 37 that after the death of the first wife Jayalakshmi, the junior wife Rukmani succeeded to her half share and Ex.A13/Will executed by Rukmani can only be in respect of her half share.

24.The lower appellate court after rendering specific finding against the right claimed by the descendants of Abbyee Chettiar to get any share in the property and after upholding the right of heirs of Govindasamy Chettiar to get equal share in the property, proceeded to say in para 38 of its judgment that the defendants 3 and 4 in OS.No.59 of 1990 cannot act on behalf of the principal in creating any encumbrance over the property. The lower appellate court also arrived at a specific finding that the plaintiffs having admitted that no right is acquired by Pandarinathan and Madhavan over the suit property, are not entitled to any injunction pending partition and the remedy available to the plaintiffs is only to go for suit for recovery of possession against Pandarinathan and Madhavan and the question of seeking any injunction against them from alienating or encumbering the property belonging to third party does not arise.

25.The lower appellate court was of the view that any alienation or encumbrance created by the defendants 3 and 4/Pandarinathan and Madhavan on their own account will be without any legal right and the same is not binding on the rightful owners and on the basis of such findings, the lower appellate court set aside the decree of injunction granted by the trial court and dismissed the suit in OS.No.59 of 1990. As the factual finding rendered by the lower appellate court is based on evidence and as this court finds no fault with such finding, the substantial question of law framed in SA.1660/2000 is decided against the plaintiffs.

26.Before going into the correctness of the findings rendered by the lower appellate court on merits, it is but necessary to go into the legal issue raised by the learned counsel for the first respondent/Pandarinathan regarding the right of the female heirs of Abbyee Chettiar and Govindasamy Chettiar, not only under 1937 Act, but also under Hindu Law of Inheritance (Amendment) Act (Act II of 1929) raised as additional substantial questions of law before this Court. For better appreciation of the legal issue raised herein, the genealogy of Krishnan is extracted below:-

KRISHNAN

Abbyee Chettiar
Chettiar
Died on 21.05.1925

----- Survivorship -----

Govindasamy
died on 13.12.1944

Govindammal
Ammaniammal
first wife
died in 1930
28.11.1977

Kasthurai

Second wife
died in 1962

Kannammal

first wife

second wife
died on

Jankam
died in 1933

Rengammal
died in 1978

Ramanujath-
ammal
died in 1984

Krishnasamy
ammal
died on 21.1.83

Andalammal

died on 1.9.1990
(PW1) plaintiff in
OS.59/1990

Govindammal (DW8)
wife |
plaintiff in
16.8.1988 |
Plaintiff in |

(i)Madhavan
(ii)Govindarasu
(iii)Guruvar
OS.57/1990

(i)Pandarinathan (DW2)
(ii)Sambayee
(iv)Saroja

Jayalakshmi
first wife

died on

Rukmani |
second

died on
20.11.84
OS.76/1988

No issue

No issue

Ramasamy
PW2/
plaintiff in
OS.58/1990

Varalakshmi
Vijayaragavan

27.The Act No.II of 1929 called as Hindu Law of Inheritance (Amendment) Act 1929 is passed to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his

estate. As per section 1(2), the Act applies to such persons in respect only of the property of males not held in co-parcenary and not disposed of by Will. The order of succession of certain heirs is given in Section 2, as per which, a son's daughter, daughter's daughter, sister and sister's son shall, in the order so specified, be entitled to rank in the order of succession next after a father's father and before a father's brother. Provided that a sister's son shall not include a son adopted after the sister's death.

28.The learned counsel for the first respondent herein has, in the course of his argument by invoking the provisions of Hindu Law of Inheritance (Amendment) Act (Act No.II of 1929), sought to alter the line of succession of Abbyee Chettiar and Govindasamy Chettiar. The learned counsel for the contesting respondent in support of his stand, on the basis of Act No.II of 1929 relied on the decision of the three judges larger Bench of the Apex Court reported in AIR 1970 SC 789 (Fateh Bibi etc. v. Charan Dass).

29.It is contended on the side of the contesting respondent before this court that by virtue of Act II of 1929, after the death of Abbyee Chettiar, his two wives namely Govindammal and Kasthuri as per the observation of the Apex Court in the decision cited supra, became the life estate holders and on the death of the first wife Govindammal in 1930, her daughter Jankam became the life estate holder and after her death in 1933, her daughter Govindammal who is the plaintiff in O.S.57/1990, i.e., daughter's daughter of Abbyee Chettiar, became the life estate holder and the succession opens for the reversioner to have vested interest in the estate, only after the life estate of Govindammal terminates. In the mean while, by virtue of Hindu Women's Rights to Property Act 1937, the surviving female heirs i.e., second wife and grand daughter through the first wife and two daughters through the second wife got restricted right in the property belonging to Abbyee Chettiar and the restricted right got enlarged into absolute right under section 14 of Hindu Succession Act 1956, as such, Govindasamy Chettiar's branch cannot maintain any legal claim for entire estate of Abbyee Chettiar and the reliefs sought for based on such claim are not maintainable. The learned counsel for the first respondent has also drawn the attention of this court to the facts involved in the judgment of the Hon'ble Supreme Court cited supra and the principles laid down therein in support of such contention raised herein.

30.The reading of the Apex Court judgment in AIR 1970 SC 789 (Fete h Bibi etc. v. Charan Dass) cited supra, would certainly support the legal stand raised on the side of the first respondent herein. In the case decided by the Hon'ble Supreme Court, one Kirparam was the last owner of the properties, Kirparam died leaving behind his wife/Bishandevi, son/Charanji Lal and daughter/Mayadevi. After the death of Kirparam his son Charanji Lal was the last male holder of entire property, after the death of Charanji Lal during 1925 his mother Bishan Devi become heir to the property left by Charanji Lal,

after her death in 1946, Maya Devi was in possession of property as life estate holder till her death in 1950. The Charan Dass who was the son of Maya Devi filed the suit claiming right to succeed to the property of Kirparam in his capacity as his grandson through his daughter. The trial court found that the plaintiff/Charan Dass as the sister's son of Charanji Lal who was the last male holder got preferential claim on the strength of Act II of 1929. It is held so, by negating the claim of the reversioner defendant that the succession opened on the death of Charanji Lal only after the death of Maya Devi in 1950.

31. Aggrieved against the decree, the defendant preferred an appeal wherein the decree of the trial court was confirmed. The same was challenged by way of Second Appeal raising two grounds (1) the plaintiff never set up any claim as a preferential heir, being the sister's son of last male holder under Act II of 1929; and (2) Act II of 1929 does not apply to the case as the last male holder died long before coming into force of the Act. The learned single judge of the High Court decided the issues holding that the succession to the estate of Charanjilal opened on his death during 1925 and the heir to Charanji Lal was on the date was his paternal uncle Bisan Singh who was the contesting defendant in the suit and the life estate of mother and sister of Charanji Lal intervened after his death, will not affect the rights of the defendants as the Act has no retrospective operation. The single judge of High Court by holding so reversed the decree of the lower Courts. The plaintiff preferred LPA.No.42 of 1959 before the Division Bench. The Division Bench following the earlier full bench decisions of Madras High Court reported in (AIR 1937 Mad 699 (FB) - Lakshmi v. Anantharama) and (AIR 1936 All 507 (FB) - Rajpali Kunwar v. Sarju Rai) reversed the judgment of the learned single judge by holding that the Act will apply even to cases where the last male-holder dies intestate before the passing of the Act and the limited female heirs is alive after coming into force of the Act, as the succession to the deceased male member must be considered to open only after the passing of the Act and will be governed by the provisions of the Act and the plaintiff being sister's son of the last male holder was the preferential son. When the Same was challenged by the defendant in the Supreme Court, the Supreme Court held the judgment of Letters Patent Bench to be correct. The Supreme Court further held that the Act is applicable to the case of male dying intestate before that date if he was succeeded by a female heir who died after that date. It has further held that succession in such cases to the estate of the last Hindu male who died intestate did not open until the death of the life estate holder. It has also been held that during the lifetime of the life estate holder, the reversioners in Hindu Law have no vested interest in the estate and that they have a mere spes successionis. Applying the same legal principle, it is held that the succession of the last female heir sister Maya Devi died during 1950 and the plaintiff as sister's son of Charanji Lal is thereafter under Act II of 1929 entitled to succeed to his estate. It is also further

observed therein that the question as to who is the nearest reversionary heir or what is the class of reversionary heir will fall to be settled at the date of the expiry of the ownership for life or lives. The death of a Hindu female life estate holders opens the inheritance to the reversioners and the one most nearly related at the time to the last full owner becomes entitled to the estate.

32.The Apex Court in the judgment above cited laid down the following principles: (i) the Hindu Law of Inheritance (Amendment) Act (Act II of 1929) which came into operation on February 21,1929, applies not only to the case of a Hindu male dying intestate on or after 21.2.1929, but also to the case of such a male dying intestate before that date if he was succeeded by a female heir who died after that date. (ii)it is not applicable to the cases, where the property is being held in co-parcenary and the property is disposed of by Will, but is applicable only to the separate property of a male who dies intestate. (iii) it makes them heirs only when the propositus is a male and the property in respect to which it is sought to be applied is his separate property; and (iv)succession in such cases opens, only on the termination of the life estate and the Act will apply in considering the heirs of the last male holder at the termination of the life estate.

33.This Court is bound by the principles laid down by the Apex Court as stated above. This Court can have no quarrel with the legal proposition laid down by the Apex Court that the Act No.II of 1929 applies not only to the case of a Hindu male dying intestate on or after February 21, 1929, but also to the case of such a male dying intestate before that date if he was succeeded by a female heir who died after that date and succession in such cases to the estate of the last Hindu male, who died intestate did not open until the death of the life estate holder and during the lifetime of life estate holder, the reversioners in Hindu law have no vested interest in the estate and they have a mere spes successionis. The point of time for the applicability of the Act is, when the succession opens viz., when the life estate terminates. Further, as far as the Hindu Law of Inheritance (Amendment) Act, (Act No.II of 1929) is concerned, the same is as per the interpretation of the Apex court in the decision reported in AIR 1970 SC 789 (Fateh Bibi etc. v. Charan Dass), applicable only when the propositus is a male and the property in respect of which it is sought to be applied is the property of male not held in co-parcenary and the property not disposed of by Will, but is his separate property.

34.Insofar as the property of the original owner Krishnan is concerned, the same is both the courts below, held to be ancestral in nature and on his death, it was in the hands of Abbyee and Govindasamy Chettiar as co-parcenary. If that is so, Act II of 1929 is as per the ratio laid down by the Apex Court not applicable to the ancestral property held by Abbyee Chettiar and Govindasamy Chettiar. That being the legal and factual position, the contention raised on

the side of the contesting respondent for applying the order of succession under Act II of 1929 is liable to be rejected and the finding of the court below that on the date of death of Abbyee Chettiar, the entire estate was succeeded by Govindasamy Chettiar and his only son Krishnasamy through his predeceased wife Kannammal, need not be interfered with and the first additional substantial question of law is accordingly answered against the first respondent.

35. The fact which remains undisputed is that Govindasamy Chettiar died on 13.12.1944, leaving behind him his only son Krishnasamy through his predeceased first wife Kannammal and his second wife Ammaniammal and his daughter Andalammal through Ammaniammal. It is true that the Hindu Women's Right to Property Act, 1937 confers right to property on Hindu women, but the Full Bench of our High Court while testing the validity of such Act in Umayal Achi case in 1945 (1) MLJ 108 held therein that the Act would not apply to agricultural lands. The issue relating to non-applicability of the 1937 Act to agricultural land was resolved only by Amendment Act 26/1947 and by virtue of such Amendment Act, the Act 1937 was made applicable to agricultural lands with effect from 26.11.1946 i.e., effective date of Amendment Act. In that event, the finding of the lower appellate court that the only son of Govindasamy chettiar through his first wife Kannammal i.e., Krishnasamy and the second wife of Govindasamy Chettiar i.e., Ammaniammal on the death of Govindasamy Chettiar in 1944, became entitled to equal $\frac{1}{2}$ share and the share belonging to Ammaniammal, on her death in 1977 was succeeded either by Krishnasamy and Andalammal or Andalammal solely, is legally unsustainable. On the other hand, Krishnasamy/son was the only heir entitled to succeed to the entire estate left behind by Govindasamy Chettiar.

36. As far as the male heir Krishnasamy is concerned, he died in 1983 leaving behind his two wives, by names Jayalakshmi and Rukmani without any issues. It may be true that on the date of his death, 1956 Act was in force. The combined reading of sections 8 and 10 of the Hindu Succession Act would say that if there are more than one widows, both the widows shall come under class I heirs and they together shall get one share. However, in order to decide the right of Junior wife Rukmani along with senior wife Jayalakshmi, in the property of Krishnasamy the date of marriage between Krishnasamy and Rukmani is more relevant and in the absence of any particulars to hold the marriage between them as void or voidable, the second wife Rukmani cannot be held to have acquired any right along with Jayalakshmi over the property of Krishnasamy. Only in the event of any finding on this aspect, the issue whether both Jayalakshmi and Rukmani were entitled to equal share in the property of Krishnasamy or it is only Jayalakshmi, who was entitled to get the entire share of Krishnasamy, can be decided. Only when Rukmani is held to have any right over the property of Krishnasamy, the question of going into her right to execute any settlement deed in favour of Ramasamy and deceased Vijayaraghavan and the validity of settlement deed does arise herein.

37. Irrespective of the right if any of Rukmaniammal over the property of Krishnasamy, the right of other widow Jayalakshmi to succeed to the property of her deceased husband cannot be denied. The fact that cannot be disputed is that on the death of Jayalakshmi, the only legal heir to succeed to the estate was only Andalammal, who was Krishnasamy's sister by half blood. If that is so, on the date of death Andalammal in 1990, the son, daughter and husband of Andalammal were under section 15 of Hindu Succession Act 1956 firstly entitled to succeed to the property and the second additional substantial question of law is accordingly answered.

38. As far as the daughter Varalakshmi is concerned, while she was impleaded in the suit filed by others in her individual capacity, she was impleaded in O.S.58/1990 as one of the legal heirs of Vijayaraghavan, who was one of the settlees under Ex.A3. Whereas, Muthukrishnan, who was the husband of Andalammal, was not impleaded in any of the suits, as such, the question of going into the validity of execution of Ex.A3 settlement deed purportedly executed by Rukmaniammal in favour of Ramasamy and deceased Vijayaraghavan cannot be gone into, in his absence. Further, as per the evidence of Andalammal as PW1, her husband Muthukrishnan died during 1971. In that event, the property belonging to Andalammal shall devolve upon both her children Ramasamy and Varalakshmi and the claim of Ramasamy and legal heirs of Vijayaraghavan for any title over the property on the strength of Ex.A3 settlement deed executed by Rukmaniammal is legally not maintainable and the question of going into the valid execution of the same by Rukmaniammal does not arise herein. The substantial questions of law 1 and 2 raised in SA.1658/2000 are accordingly answered against the plaintiffs.

39. The remedy if any available to Ramasamy is to seek partition in respect of entire estate between himself and his sister Varalakshmi. As both the parties, who are entitled to the suit property, are now available before this court and having regard to the pendency of the litigation for longer period, both Ramasamy and Varalakshmi can be held entitled to preliminary decree for partition in respect of the suit properties in OS.58/1990.

40. To sum up, after the death of the original owner Krishnan, his sons Abbye Chettiar and Govindasamy Chettiar were entitled to succeed the properties belonging to their father as co-sharers and after the death of Abbye Chettiar, the entire family properties being ancestral properties belonging to Krishnan devolved upon his other son Govindasamy Chettiar by survivorship and on the death of Govindasamy, his only son Krishnasamy succeeded to the same and after the death of Krishnasamy and his widow or widows, his sister by half blood Andalammal, who was the daughter of Govindasamy through second wife Ammaniammal succeeded to the same as class II heir of Krishnasamy and on the death of Andalammal, her son and daughter Ramasamy and Varalakshmi are entitled to get equal share in the same.

Accordingly, both Ramasamy and Varalakshmi are entitled to preliminary decree for partition in their suit OS.58/1990 in respect of the suit properties. In view of the same, the judgment and decree made in AS.2/1999 and 4/1999 arising out of O.S.76/1988 and 59/1990 call for no interference by this court.

41. In the result, OS.58/1990 is decreed by passing preliminary decree for equal shares in favour of Ramasamy and Varalakshmi in respect of the suit properties and SA No.1658 of 2000 is accordingly disposed of. No costs.

SA.Nos.1659/2000 and 1660/2000 are dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

tsh/rk

To

- 1.The Additional District Judge, Perambalur.
- 2.The Subordinate Judge, Ariyalur.

+ 6 ccs to Mr.M. Ravi, Advocate SR.41025, 41286, 41285, 41284, 41024, 41023/15

+ 2 ccs to Mr. S.M. Loganathan, Advocate Sr.41078, 41079

Copy to: The Section Officer, VR Section, High Court, Madras.

SA.Nos.1658 to 1660 of 2000

AK(CO)
Eu 09.10.15

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