

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.01.2015

Delivered on : 05.02.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

S.A.No.476 of 2006

N.Kuppusamy Naidu ... Appellant/Defendant

-Vs-

Saroja ... Respondent/Plaintiff

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 12.12.2002 made in A.S.No.37 of 1997 on the file of the Additional District Judge/Fast Track Court No.III, Chengalpattu at Poonamallee and the judgment and decree dated 13.02.1995 made in O.S.No.1632 of 1981 on the file of the District Munsif Court, Poonamalle.

For Appellant : Mr.N.Damodaran

For Respondent : Mr.K.Ravindranath

JUDGMENT

The defendant in the original suit O.S.No.1632 of 1981 on the file of the District Munsif, Poonamalle is the appellant in the second appeal. After obtaining permission to file the suit as an indigent person, the respondent herein filed the above said suit against the appellant herein for a declaration of her title in respect of plaint 'A' schedule property, for recovery of possession of plaint 'A' Schedule property from the appellant herein/defendant, for a direction against the appellant/defendant to pay a sum of Rs.1000/- towards the loss of income from the plaint 'A' schedule property and also for future mesne profits.

2. The suit was decreed in part granting a declaration in favour of the respondent herein/plaintiff declaring her title to plaint 'A' schedule properties, granting the relief of recovery of possession in respect of Items 1 and 2 of plaint 'A' schedule properties, directing the appellant/defendant to pay a sum of Rs.1000/- towards the loss of income from Items 1 and 2 of the plaint 'A' schedule properties and directing payment of mesne profits from the date of suit till recovery of possession of Items 1 and 2 of the plaint 'A' schedule properties at the rate of

Rs.1000/- per annum. As against the disallowed portion of the claim, the respondent herein/plaintiff preferred an appeal in A.S.No.49 of 1999 before the lower appellate Court. The appellant herein/defendant preferred an appeal in A.S.No.37 of 1997 challenging that part of the decree granted in favour of the respondent herein/plaintiff.

3. After a joint hearing of both the appeals, the learned lower appellate Judge (Additional District Judge, FTC III, Chengalpattu at Poonamallee) dismissed both the appeals filed by the respondent herein/plaintiff and the appellant herein/defendant by a common judgment and decree dated 12.12.2002 and thereby confirmed the decree passed by the trial Court, without any modification. As against the dismissal of the appeal filed by the respondent herein/plaintiff in A.S.No.49 of 1995, she did not file any further appeal. On the other hand, the appellant herein/defendant alone has chosen to file the present second appeal on the file of this Court, challenging the dismissal of his appeal in A.S.No.37 of 1995 preferred before the lower appellate Court and praying for setting aside the decree passed against him by the trial Court in O.S.No.1632 of 1981.

4. The above said suit O.S.No.1632 of 1981 was filed by the respondent herein/plaintiff against the appellant herein/defendant for the reliefs indicated supra, based on the plaint averments that are, in brief, as follows:

One Munusamy Naidu, the maternal grandfather of the respondent herein/plaintiff owned extensive properties in the form of cultivable lands, houses and vacant house sites in the village of Iyyappanthangal. The said Munusamy Naidu had one son by name Panjalai Naidu through his first wife and 6 sons by names Parthasarathy, Devarajalu, Venu, Adikesavalu, Nainiappa Naidu and Veeraraghavalu Naidu and two daughters by names Kannammal and Pattammal through his second wife. The said Kannammal is the mother of the respondent herein/plaintiff and the appellant herein/defendant. Munusamy Naidu died leaving his last Will and testament dated 01.06.1938 bequeathing his properties to his sons and daughters. Under the said Will dated 01.06.1938, the properties described in plaint 'A' Schedule had been bequeathed in favour of Kannammal, the mother of the respondent herein/plaintiff. On the death of Munusamy Naidu, the legatees under the Will took possession of the respective properties bequeathed in their favour. Kannammal, the mother of the respondent herein/plaintiff took possession of the properties bequeathed in her favour and was enjoying the same exclusively as absolute owner till her death in the year 1951. The property thus obtained by Kannammal under the Will of her father being her stridhana property, the respondent/plaintiff alone became the absolute owner of the same. She allowed her father Nagappa Naidu to manage her properties on her behalf. The said Nagappa Naidu sold Items 4 and 5 of the plaint 'A'

schedule properties some time before the marriage of the respondent/plaintiff to meet her marriage expenses. After her marriage, the respondent/plaintiff settled at Karivelu Village with her husband and hence she had entrusted the management of her properties to her father till his death in January 1971. After the death of Nagappa Naidu, the respondent/plaintiff entrusted the management of her property to her only brother, who is none other than the appellant/defendant. After furnishing accounts for the income derived from the properties, the appellant/defendant began to evade furnishing accounts. Panchayat conveyed by the respondent/plaintiff to get the accounts for the income derived from the properties regularly from the appellant/defendant did not yield fruitful result, as the appellant/defendant refused to furnish accounts in spite of his undertaking given before the Panchayatdar, Veeraraghavalu Naidu. Item No.5 is a house property and it would fetch an income not less than Rs.30/- per mensem and income derived from Items 1 and 2 of the plaint 'A' schedule shall not be less than 15 bags of paddy per fasli at the rate of 5 bags of paddy per bogum, as the lands are three bogum lands. But, the respondent /plaintiff would restrict her claim to Rs.1000/- towards income for two faslis prior to the filing of the suit and claim future mesne profits from the date of filing of the plaint at the rate of Rs.1500/- per year. Since the demand made by the respondent/plaintiff was not met with, she was forced to file the suit for the reliefs indicated supra.

5. The suit was resisted by the appellant herein/defendant on the basis of the pleadings made in the written statement, in which besides general denial of the plaint averments, the other averments are, in brief, as follows:

The plaint averment that Late Munusamy Naidu, maternal grandfather of the respondent/plaintiff and the appellant/defendant died leaving a Will and Smt. Kannammal, the mother of the respondent/plaintiff and appellant/defendant became entitled to the plaint 'A' schedule properties as legatee under the Will of Munusamy Naidu is not denied and on the other hand, admitted. However, on the death of Kannammal, the respondent/plaintiff, the appellant/defendant and their father became entitled to the properties left by Smt. Kannammal. The father of the respondent/plaintiff also sold items 3 and 4 of the plaint 'A' schedule to one Veeraragavalu Naidu of Kattupakkam in the year 1958 for the marriage expenses of the respondent/plaintiff. The appellant/defendant had nothing to do with the above said sale transaction. Nagappa Naidu, the father of the respondent/plaintiff had borrowed various amounts from several persons to meet the marriage expenses of the respondent/plaintiff. Subsequent to the marriage of the respondent/plaintiff, which took place in 1959, the respondent/plaintiff along with the appellant/defendant and others sold part of Item No.5 measuring 34 x 79 comprised in S.No.261/3, leaving a small portion of the plot, under a sale deed dated 23.11.1963, to one Mrs.Paunammal w/o.Logamatha Chettiar. The

remaining properties, namely Items 1 and 2 of the plaint schedule were sold by the appellant/defendant in 1979 to clear the debts incurred by the father and the family debts incurred for the funeral and other ceremonies of their father and also to meet the family expenses. As such, excepting the house site left for the use of the appellant/defendant in plaint Item No.5 in which the appellant / defendant is living, no other property of the respondent/plaintiff is available regarding which the relief of declaration, recovery of possession and damages can be claimed by the respondent/plaintiff. The suit filed by the respondent/plaintiff is also bad for non-joinder of necessary parties, as the purchasers of the suit properties have not been made parties to the suit. The respondent/plaintiff has been given her share in the entire suit properties and hence, she shall not be entitled to any claim in the suit properties and the suit should be dismissed.

6. After framing necessary issues, a trial was conducted in which the respondent/plaintiff appeared as the sole witness (PW1) on her side and produced one document as Ex.A1, whereas the appellant/defendant figured as the sole witness (DW1) and produced two documents as Exs.B1 and B2 on his side.

7. The learned trial Judge, on an appreciation of evidence, came to the conclusion that the respondent herein/plaintiff was entitled to a declaration of her title to plaint 'A' schedule properties and for a direction in respect of Items 1 and 2 of plaint 'A' schedule properties to handover possession to her only. The learned trial Judge also came to the conclusion that the appellant/defendant was liable to pay Rs.1000/- being the loss of income from Items 1 and 2 of the plaint 'A' Schedule property prior to the filing of the suit and that from the date of filing of the suit till delivery of possession, the appellant/plaintiff was entitled to a sum of Rs.1000/- per annum towards mesne profits.

8. In clause 1 of the decree, declaration of the respondent/plaintiff's title was granted in respect of plaint 'A' schedule properties in general, without excluding the items 3 to 5. However, in respect of the prayer for recovery of possession, the learned trial Judge, taking into consideration the admissions made by the respondent/plaintiff to the effect that her father alienated two items of properties to meet the marriage expenses of the respondent/plaintiff and that such sale was for the benefit of the respondent/plaintiff and the further fact that she did not question the validity of such sale, held that she would not be entitled to such recovery of those two items sold by her father. However, noticing the mistake committed by the respondent/plaintiff in referring those two items wrongly as plaint items 4 and 5 instead of 3 and 4, the learned trial judge held that the respondent/plaintiff was not entitled to the relief of recovery of possession of items 3 and 4 as they were with the alienees. Similarly, based on the admission of the respondent/plaintiff that

she sold a portion of items 5 and the fact that she had not chosen to exclude the alienated portion and describe the remaining portion with boundaries so that the unsold portion could be separately identified, the learned trial judge held that the respondent/plaintiff was not entitled to the relief of recovery of possession of items 5 also. Accordingly the learned trial judge restricted the relief of recovery of possession to Items 1 and 2 of the plaint 'A' schedule alone and damages for use of the property prior to the filing of the suit and future mesne profits arrived at Rs.1000/- per annum in respect of Items 1 and 2 of the suit properties alone. Both the parties preferred separate appeals before the lower appellate Court. A.S.No.37 of 1997 was filed by the appellant herein/defendant contending that the respondent/plaintiff should have been non-suited for all the reliefs. The respondent/plaintiff filed an appeal in A.S.No.49 of 1995 contending that the trial Court ought to have granted the other relief of recovery of possession in respect of unsold portion of Item No.5 of the plaint 'A' schedule property. The lower appellate court dismissed both A.S.No.49 of 1995 and A.S.No.37 of 1997. As against the dismissal of A.S.No.49 of 1995, the respondent/plaintiff has not filed any second appeal. The appellant/defendant alone has filed the present second appeal against the decree of the lower appellate court dismissing his appeal A.S.No.37 of 1997. Even in the second appeal, the respondent/plaintiff has not chosen to file any cross objection challenging the dismissal of her appeal.

9. At the time of admission of the second appeal, the following questions were formulated as Substantial Questions of Law involved in this second appeal:

1. Whether the plaintiff is entitled to maintain the suit for declaration of title and for possession when she is estopped from claiming exclusive title to the suit properties due to her conduct in treating the suit properties as joint family properties as would be evident from Ex.B1-Sale deed and the sale effected by her father with respect to items 3 and 4 of the suit properties?

2. Whether the lower appellate court as a final court of fact, erred in law and misdirected itself in not considering the oral as well as documentary evidence adduced by the respective parties and to arrive at its own independent conclusion on each issues as per Section 96 and Order 41 Rules 30 and 31 of CPC and as per the dictum laid down in 1999 LW 55 (SN)?

At the time of hearing further arguments, the following additional substantial question has been formulated as the third substantial question of law:-

<https://hcservices.ecourts.gov.in/hcservices/> "3. Whether the Courts below are right in

granting a decree for declaration in respect of items 3 to 5 while holding that the respondent/plaintiff are not entitled to the relief of recovery of possession, mesne profits and other reliefs in respect of items 3 and 4 on the ground that the respondent/plaintiff acquiesced in the sale of items 3 and 4 by her father and on the ground the unsold portion of item 5 has not been separately shown?"

10. The sole defendant in the original suit is the appellant and the sole plaintiff in the original suit is the respondent. They are brother and sister. One Nagappa Naidu was their father. The said Nagappa Naidu, through his first wife had one son by name Panjalai Naidu and through his second wife he had six sons and two daughters, by names Kannammal and Pattammal. The said Kannammal was the mother of the appellant as well as the respondent. One N.Munusamy Naidu was the maternal grandfather of the parties to the suit. He had extensive properties in the form of cultivable lands, houses and house sites in Iyappanthangal Village. He died leaving a registered will dated 01.06.1938. A certified copy of the said will registered as Document No.13/1938 has been produced and marked on the side of the respondent herein/plaintiff as Ex.A1. It is the clear case of the respondent herein/plaintiff that the properties described in the plaint 'A' schedule are the properties bequeathed to her mother Kannammal under the above said will. The said contention of the respondent/plaintiff is not disputed by the appellant/defendant. It is also not disputed by the appellant/defendant that the will came into effect on the death of the testator, namely Munusamy Naidu, who died long before the Hindu Sucession Act coming into force.

11. It is also an admitted fact that besides Kannammal, others were also legatees under the original will dated 01.06.1938, a certified copy of which has been produced as Ex.A1. The properties bequeathed in favour of each legatee had been provided in a separate schedule and the properties described in Schedule 8 (a) of the will were the properties bequeathed in favour of Kannammal, mother of the parties to the suit. The respondent/plaintiff also took a clear plea that their mother Kannammal died in the year 1951. The said averment made by the respondent/plaintiff has not been disputed. Hence it is crystal clear that Kannammal, the mother of the parties to the suit, died much before the date on which the customary law of inheritance was replaced by a statute, namely the Hindu Succession Act, 1956. The property having been bequeathed in favour of Kannammal by her father late Munusamy Naidu, it partook the character of her stridhana properties as per customary Hindu Law applicable to the parties before the enactment of Hindu Succession Act, 1956. Even though there were certain differences of opinion regarding the scope of definition of stridhana properties, by long established practice and by a line of decisions by the courts upto the Privy

council, it has been held that whatever be the way in which a woman gets the properties, such properties, except the property got by inheritance, would be her absolute property, namely stridhana property. The same can be ascertained from the authoritative text of Hindu Law by Mulla. Therefore, the concurrent finding of the courts below that the properties bequeathed in favour of Kannammal by her father Munusamy Naidu were the stridhana properties of Kannammal has got to be upheld. That is the reason why the appellant/defendant has not taken a stand that he became entitled to the properties as a legal heir of his mother Kannammal. On the other hand, he has chosen to take a novel plea that the properties that came to Kannammal as a legatee under Ex.A1-Will, were treated after her death, by her husband, namely Nagappa Naidu, the appellant/defendant and the respondent/plaintiff, as their joint family property and that by way of acquiescence, the respondent/plaintiff had recognised the character of those properties to be the joint family properties. In support of his contention, the appellant/defendant relied on the plaint averment itself that the father of the parties to the suit had sold away two items of the suit properties known as Odaikal field and Perambodai field to meet the marriage expenses of the respondent/plaintiff and that even after her marriage, the respondent/plaintiff chose to join with the appellant and others in the execution of another sale deed in respect of a portion of item 5 of the plaint 'A' schedule property. According to the appellant/defendant, the same would show that the respondent/plaintiff never treated the properties of her mother Kannammal as her absolute property, having got it under the customary rule of inheritance and on the other hand, she allowed her father and her brother to treat the same as their joint family property and part with the same.

12. It is the further contention of the appellant/defendant that after the death of his father in the year 1971, he alone enjoyed the properties barring items 3 and 4, the properties sold by his father and that since items 1 and 2 of the plaint 'A' schedule has been sold by him in favour of third parties, the suit filed against him for declaration and recovery of possession in respect of those properties without impleading the purchasers, could not be maintainable. It is also the contention of the appellant/defendant that having admitted the fact of alienation of items 3 and 4 to third parties by her father, the respondent/plaintiff could not successfully claim a declaration and recovery of possession in respect of those items also and that since the relief had been sought for in general in respect of the plaint schedule properties, the suit should be dismissed for non-joinder of necessary parties.

13. Excepting the party witnesses, who figured as PW1 and DW1 respectively, no independent witness came to be examined. Though the fact that the maternal grandfather of the parties to the suit, namely Munusamy Naidu died leaving the original of Ex.A1-registered will has been admitted, in order to avoid any technical

plea of defence being taken by the appellant/defendant, the respondent/plaintiff had chosen to file a petition under Order 41 Rule 27 CPC in I.A.No.9 of 2002 in A.S.No.49/1995 before the lower appellate court. The same was allowed by the lower appellate court and one Iyyalu Naidu, husband of the respondent herein/plaintiff was examined as PW2 before the lower appellate court, to comply with the conditions stipulated under Section 68 and 69 of the Indian Evidence Act, 1872. PW2 was categorical in his assertion that none of the attestors of the will, was alive at the time of the examination of the witnesses in the said suit; that the other persons, who were present at the time of execution of the Will, including the scribe, died subsequently and that the same was the reason why they could not be examined. It is his further assertion that he had seen the signatures of the testator Munusamy Naidu in other documents and he could show with certainty as to whether a particular signature was that of the testator Munusamy Naidu or not.

14. It is pertinent to note that Ex.A1 is the certified copy of the registered will of Munusamy Naidu dated 01.06.1938. Though certified copy of the will has been produced as Ex.A1, it is not in full shape insofar as the schedules annexed to the will are not found in Ex.A1. Besides, one cannot say whether the original will bears the signature of the testator Munusamy Naidu by seeing the certified copy alone. That is the reason why permission to adduce additional evidence before the lower appellate court was sought for by the respondent/plaintiff and after obtaining the permission of the court, a certified xerox copy of the will in full shape, was produced and marked as Ex.A2 through PW2, who identified the signatures to be that of the testator Munusamy Naidu in accordance with the provision found in Section 69 of the Indian Evidence Act, 1872.

15. Above all, it is an admitted fact that the properties described in plaint 'A' schedule were the properties bequeathed on Kannammal, the mother of the parties to the suit under the original of Ex.A1-will left by her father late Munusamy Naidu. It shall be pertinent to note that the will of Munusamy Naidu dated 01.06.1938 contains nine schedules. Out of nine schedules, the 8th schedule has been sub-divided into schedule 8(a), 8(b) and 8(c). Properties included in Schedule - 8(a) of the will were the properties bequeathed in favour of Kannammal, the mother of the parties to the suit. Similarly, the properties included in Schedule 8(c) of the Will had been bequeathed in favour of Pattammal, the sister of Kannammal. The property described in schedule 8(b) had been bequeathed in favour of one P.Munusamy Naidu, brother-in-law of the testator. The properties described in schedule '9' had been bequeathed jointly in favour of the sons of the testator. The following tabulation will show the schedules in the will bequeathed to each of the legatees.

Sl.No.	Schedule	Legatee
1	1	K.P.Kanniah Naidu
2	2	K.M.Devarajulu Naidu
3	3	K.M.Parthasarathy
4	4	K.M.Venugopal Naidu
5	5	K.M.Adhikesavalu Naidu
6	6	K.M.Nainiappa Naidu
7	7	K.M.Veeraraghavalu Naidu
8	8(a)	Kannammal (mother of the parties to the suit)
9	8(b)	P.Munusamy Naidu (brother-in-law of the testator)
10	8(c)	Pattammal
11	9	All the sons of the testator

Out of the nine schedules, the first seven schedules, namely Schedule Nos.1 to 7 were the properties bequeathed in favour of the seven sons of the testator Munusamy Naidu. Only in respect of the properties bequeathed in their favour, the testator provided a condition that his sons would not have any power of alienation and the same would go to his grandsons through the respective sons. Yet another condition has also been prescribed to the effect that in case any one of the seven sons of the testator would die leaving a female issue without having a male issue, then half of the properties bequeathed in his favour should go to the daughter of such son and the remaining half should go to a son to be adopted by the legatee from the issues of other sons.

16. It is also pertinent to note that so far as the properties bequeathed in favour of Kannammal, P.Munusamy Naidu and Pattammal described in Schedules 8(a), 8(b) and 8(c) of the will respectively are concerned, no such condition has been prescribed. In fact, the properties bequeathed in favour of Kannammal and Pattammal as per Schedule 8(a) and 8(c), have been described to be the properties given to them as stridhana properties with absolute rights of disposition. Similarly, the property bequeathed in favour of P.Munusamy, the brother-in-law of the testator, which is described in Schedule 8(b) has not been subjected to any such condition restraining the power of alienation. It has been described to be a gift (inam). In addition, it has been described in Schedule 8(b) that P.Munusamy Naidu would get the property described therein absolutely with all powers of alienation and creating encumbrance. It has been described in vernacular as follows:

"என் மைத்துனர் பா.முனுசாமி நாயுடு நிரேஷ்டேடியாக வித்தொத்தி
தானாதி வினமியவிக் கிரையங்களுக்கு ஒருத்தாய் ஆண்டு
அனுபவித்துக் கொள்ளவம். "

Similarly, the properties described in Schedule 8(a) and 8(c) have been described to be the properties given to them as stridhana properties without any restriction regarding the power of alienation. Similar recitals are found in all the three schedules.

17. A perusal of the same will make it clear that the testator, while intending to confer life estate in respect of Schedules 1 to 7 and 9 in the will in favour of his sons and the vested remainder to the sons of the sons of the testator in equal shares, no such restriction has been imposed in respect of the properties bequeathed on Kannammal and Pattammal. The recitals of the will are crystal clear that they had been given absolute right as stridhana properties. An attempt was made by the appellant herein/defendant to contend that even the properties bequeathed in favour of Kannammal and Pattammal should ultimately go to the male issues of the sons of the testator. Such an attempt was made by cross-examining the witnesses examined on the side of the plaintiff with such a suggestion. The same was emphatically denied by the witnesses. When the document itself is clear that the limited estate was conferred on the sons of the testator alone in respect of schedules 1 to 7 and 9 and absolute title has been conferred in respect of properties described in Schedules 8(a), 8(b) and 8(c), such a futile attempt made by the appellant/defendant has been rightly rejected by the courts below.

18. Even otherwise, the appellant/defendant being the brother of the respondent/plaintiff and thus being son of Kannammal, cannot claim that the property had devolved upon him and his father as joint family property. A meek attempt came to be made by making a suggestion to PW2 that the properties dealt with by the testator in the will dated 01.06.1938, certified copies of which have been produced as Exs.A1 and A2, being the ancestral properties of the testator Munusamy Naidu, he did not have the power to execute a Will in favour of his daughter Kannammal. If at all the testator Munusamy Naidu would not have validly bequeathed the property in favour of Kannammal, the appellant/defendant being the son of Kannammal and Nagappa Naidu, the father of the parties to the suit, being the husband of Kannammal, could not have got any right under the Will. In the absence of will, they also could not have got any right or title to the said properties. The above said suggestion in the cross examination of PW2 is quite unwarranted and contrary to the admitted factual matrix that the properties described in Plaint 'A' schedule were the properties bequeathed on Kannammal under the will of her father dated 01.06.1938, certified copies of which are marked as Exs.A1 and A2.

19. The entire defence plea of the appellant/defendant proceeded based on the admission that Kannammal was the absolute owner of the properties having got them from her father under the Will dated 01.06.1938. However, the appellant/defendant wanted to project a plea of defence that though the properties were the

stridhana properties of Kannammal, after her death it was never treated as a stridhana property falling into the hands of the respondent/plaintiff and on the other hand, it was all along treated as joint family properties of the family consisting of the appellant and his father. Such a contention cannot be countenanced. When it has been admitted that plaint 'A' schedule properties were the stridhana properties of Kannammal, on her death, the same would have been inherited by her legal heirs as per the law of inheritance prevailing on the date of her death. We have seen supra that the death of Kannammal took place in the year 1951. In 1951, the inheritance to stridhana property was governed and regulated by the customary Hindu Law. In respect of stridhana properties of a female dying intestate before the Indian Succession Act, 1956 came into force, the presence of daughter would have excluded the son and even the husband. Therefore, on the death of Kannammal, the respondent/plaintiff became entitled to all the five items of properties described in plaint 'A' schedule. According to Mitakshara Law as supplied by Madras School of Thought governing inheritance to the stridhana property of a female in the presence of daughters, sons and other heirs would be excluded. However, the daughters would take only a limited estate and on the death of daughter, who got a limited estate by inheritance, the property would not go to her stridhana heirs and on the other hand, it would go to the stridhana heirs of the mother from whom she inherited the same. It has been made clear in § 169 of the text of Hindu Law by Mulla. For better appreciation, the same is reproduced here under:-

" According to and Madras schools, the rule laid down in § 168 sub-§ (3), as to property inherited by a female from a male, applies also to the property inherited by her from a female. Consequently, a female inheriting property (stridhana) from a female takes only a limited estate in such property, and at her death, the property passes not to her heirs, but to the next stridhana heir of female from whom she inherited it."

The said principle has been applied in Venkateswaralu vs. Raghavalu reported in AIR 1957 Andhra Pradesh 604 and was followed in Subbiah Chetti vs. Veerajinnu Ammal and others reported in AIR 1979 MADRAS 85.

20. It is not in dispute that Kannammal did not leave any will and she did not make any bequest in any other form. Admittedly, she died intestate. Therefore, as per the law of inheritance, prevailed as on the date of her death, the respondent/plaintiff alone could inherit her properties. On the coming into force of the Hindu Succession Act, 1956, such a limited estate of the respondent/plaintiff would have enlarged into an absolute property by virtue of Section 14 of the Hindu Succession Act, 1956, provided she was in possession of the properties, when the Hindu Succession Act, 1956 came into force. Let us see and it

would be seen in the discussions infra that the respondent/plaintiff was in possession of plaint 'A' schedule properties when the Hindu Succession Act, 1956 came into force and items 3 and 4 came to be alienated on her behalf by her father two years later.

21. Yet another attempt was made by the appellant/defendant to project it as a case of throwing the property into hatchpot by clubbing the suit properties with the joint family properties. There is absence of evidence to prove the same. The fact that the respondent/plaintiff allowed her father to alienate two items of the properties described in plaint 'A' schedule is sought to be projected as an acquiescence in her after treating the property as his own or his joint family property. The appellant/defendant seeks support for such a contention from the pleadings made in the plaint whereby, the respondent/plaintiff has admitted that her father sold away two items of plaint 'A' schedule properties locally known as Odaikal field and Perambodai field for the purpose of performing the marriage of the respondent/plaintiff. However, in the plaint, while referring to those properties alienated by the father, the plaintiff wrongly referred to them as items 4 and 5, whereas in the plaint 'A' schedule the properties have been shown as items 3 and 4. The same has been correctly stated by the appellant/defendant in his written statement that items 3 and 4 of the plaint 'A' schedule were the properties sold by the father of the parties to the suit to one Veeraraghavalu Naidu of Kattupakkam to meet the marriage expenses of the respondent/plaintiff. However, the appellant/defendant added that he had nothing to do with the said transaction. The same will show that his claim that the properties were treated as joint family properties of the appellant and his father was only an imagination and could not be true.

22. Ex.B1 is the certified copy of the sale deed dated 16.11.1963, registered as document No.3092/1963 whereby a part of the property described as item 5 in plaint 'A' schedule, along with the other properties adjoining it came to be sold in favour of one Paunammal wife of Loganatha Chettiar by the respondent/plaintiff and others. The mere fact that the respondent/plaintiff joined with others in executing the said sale deed shall not be enough to show that she treated plaint 'A' schedule properties as the joint family properties of her father. The age of the respondent/plaintiff as on the date of filing of the suit came to be noted as 35 years. The correctness of the age stated therein has not been disputed. According to the defence plea of the appellant/defendant made in the written statement, items 3 and 4 were sold by father of the parties to the suit to one Veeraraghavalu Naidu of Kattupakkam village in the year 1958. If the age of the respondent/plaintiff is calculated with reference to the age stated in the plaint, she might not have completed 18 years of age in 1958. The same could be the reason why the father of the parties to the suit chose to sell those two items to third party, that too, for the purpose of meeting the marriage expenses of the respondent/plaintiff.

Therefore, the fact that the father of the respondent/plaintiff, chose to sell two items of her property for meeting her marriage expenses when she was presumably a minor can be viewed as an alienation for the benefit of the respondent/plaintiff. Hence the fact that the father was allowed to alienate items 3 and 4 to a third party to meet the marriage expenses of the respondent/plaintiff cannot be projected as one supporting the case of the appellant/defendant.

23. Furthermore, after the death of the father and after the filing of the pauper OP, having smelt the same, the appellant/defendant, chose to execute a sale deed in respect of items 1 and 2 of the plaint schedule properties on 19.07.1978 in favour of one Pattammal wife of Arumugam, which sale deed was registered as document No.963/1978 in the office of the Sub Registrar, South Chennai Registration District. The sale consideration noted therein is Rs.13,500/-, out of which Rs.1,669/- alone is said to have been received in cash on the date of execution of the sale deed. The balance amount was stated to have been received on various dates for discharging his other debts incurred from 1975 onwards. Besides contending that the sale deed is a sham and nominal deed created to defeat the claim of the respondent/plaintiff, the respondent/plaintiff has taken a clear stand that the said sale deed shall not be binding upon her and the same is also hit by the principles of lis pendens.

24. In the background of the above facts, the trial court, after appreciation of evidence adduced before it, barring the evidence of PW2 and Ex.A2 which came to be adduced in the appellate stage, rendered a finding that the respondent/plaintiff having admitted the alienation of items 3 and 4 of the plaint 'A' schedule properties, could not sustain her claim for recovery of those two items. The trial court also held that though it has been admitted by both parties that a portion of item 5 of the plaint 'A' schedule properties alone had been alienated under the original of Ex.B1, there was absence of proper description of the remaining portion of item 5 of plaint 'A' schedule properties regarding which, she could claim the relief of recovery of possession. Accordingly, the trial court negatived her prayer for the relief of recovery of possession of items 3 to 5.

25. So far as items 1 and 2 are concerned, holding that Ex.B2-Sale deed would not be binding on the respondent/plaintiff, the trial court held that she was entitled to a declaration of title, recovery of possession in respect of those two items and also rendition of accounts in respect of the income derived from those two items. The appellant/defendant had taken a stand that since the alienation made by him under the original of Ex.B2 was prior to the numbering of the Pauper O.P as a suit, the respondent/plaintiff ought to have made the purchaser under the said document a party-defendant and that the failure to make the purchaser under Ex.B2-Sale deed as a party-defendant would make the

suit liable to be dismissed as one bad for non-joinder of necessary parties.

26. Per contra, it was contended by the respondent/plaintiff that since the alienation took place during the pendency of the lis i.e. after the filing of the pauper OP, the alienee under Ex.B2 was not a necessary party and if at all the purchaser under Ex.B2 was interested in contesting the case, he would have very well come to the court with an application for impleading and that the judgment rendered and the decree passed against the appellant/defendant would be very much binding on the purchaser under the original of Ex.B2-Sale Deed based on the principle of lis pendens as per Section 52 of the Transfer of Property Act, 1882. The said contention of the respondent/plaintiff was rightly accepted by the trial court and the plea of non-joinder of necessary parties on the ground that the purchaser under Ex.B2 was not impleaded was rightly rejected, as he was only a purchaser pendente lite. So far as items 3 and 4 and part of item 5 are concerned, admittedly, they were alienated in favour of third parties. Having admitted such alienation, the respondent/plaintiff cannot sustain her claim either for declaration or for recovery of possession, that too without seeking the concerned sale deeds to be set aside on legally available ground. Since the purchasers of items 3 and 4 and part of item 5 were not made parties to the suit, the appellant/defendant had taken a plea that it would make the suit bad for non-joinder of necessary parties and that in any event, the inclusion of the properties, which were already alienated would amount to mis-joinder of properties and causes of action. This aspect was not properly considered by the trial court.

27. A perusal of the judgment of the trial court makes it clear that the trial court made proper discussion regarding the claim of the respondent/plaintiff for declaration of title in respect of items 1 and 2 of plaint 'A' schedule and came to a correct conclusion that the alienation of those two items made by the appellant/defendant would not be binding on the respondent/plaintiff and that it would not affect her title in respect of those two properties. The learned trial judge correctly relied on the admission of the respondent/plaintiff that items 3 and 4 of the plaint 'A' schedule had been alienated by her father to meet her marriage expenses and the fact that she was not either questioning or challenging the same, to arrive at a conclusion that she was not entitled to the relief of recovery of possession of those two items, namely items 3 and 4 of plaint 'A' schedule. However, the learned trial judge committed an error in holding that the respondent/plaintiff was entitled to declaration of her title to the entire 'A' schedule property and for recovery of possession of items 1 and 2 of the 'A' schedule property. The learned appellate Judge also failed to notice the said mistake committed by the trial court and simply confirmed the decree passed by the trial court. Since the respondent/plaintiff has admitted the alienation of items 3 and 4 of the properties by her father and the said sale

is not questioned by her in the manner known to law, she shall not be entitled to a declaration of her title in respect of those two items. Similarly, since the respondent/plaintiff has admitted that a portion of 5th item of plaint 'A' schedule was sold by her along with others under the original of Ex.B2, her claim for declaration of title to the entirety of the said item should have been negatived.

28. Even though technically speaking she might be entitled to seek a declaration of the unsold portion of item 5, she should have been non-suited for the relief of declaration of title in respect of the unsold portion of item 5 also, since the prayer was not restricted to the unsold portion by giving proper description of unsold portion of item 5. Though the respondent/plaintiff filed an appeal against the decree of the trial court in respect of the disallowed portion of her claim, namely recovery of possession of items 3 to 5 of plaint 'A' schedule, the said appeal was rightly dismissed by the lower appellate court. As against the said dismissal she has not chosen to file any second appeal or a cross objection in this second appeal. Even otherwise, on merits she shall not be entitled to the relief of recovery of possession in respect of those properties. In addition, the respondent/plaintiff shall not be entitled to a declaration of title as claimed by her in respect of items 3 to 5.

29. As discussed above, the respondent/plaintiff shall not be entitled to a declaration of title claimed by her in respect of items 3 and 4 as she has admitted the sale of the said properties by her father for her marriage expenses. He shall be estopped, because of such admission, from contending that she continued to possess title in respect of those two items, that too, without seeking a declaration that the sale effected by her father in respect of items 3 and 4 for her marriage expenses was not binding on her. In fact, she has not chosen to give the particulars of the sale deed executed by her in respect of items 3 and 4 and she has not chosen to make the purchasers of items 3 and 4 as parties to the suit. The same can be taken as acquiescence on her part in the alienation of those two items by her father to meet her marriage expenses, which shall disentitle her to question the validity of the said transaction, after a lapse of nearly 16 years. But, the said estoppel cannot be stretched further to hold that the respondent/plaintiff by her conduct treated the suit properties as joint family properties as contended by the appellant/defendant. Hence the first substantial question of law is answered accordingly holding that the rule of estoppel will apply in respect of items 3 and 4 of the suit properties alone and it shall not be expanded as an estoppel against disputing the contention of the appellant/defendant that the suit properties are joint family properties.

30. The second substantial question of law has been

formulated as, if the learned lower appellate judge erred in law by

not considering the oral and documentary evidence, re-appraising the same and arriving at an independent conclusion on each issue. A reading of the judgment of the lower appellate court will make it clear that the lower appellate court not only considered the evidence adduced before the trial court both oral and documentary but also the additional evidence adduced before the lower appellate court and recorded as per Order 41 Rule 28 CPC after getting permission under Order 41 Rule 27 CPC. Therefore, the second substantial question of law, has got to be answered accordingly that the judgment of the lower appellate court cannot be said to be vitiated as one not in accordance with Section 96 and Order 41 Rules 30 and 31 CPC. The foregoing discussions providing answers to the first and second substantial questions of law shall make it clear that the courts below have not committed any error in decreeing the suit in respect of the prayer for declaration of title, recovery of possession and mesne profits relating to items 1 and 2 alone. The learned trial judge in the discussion made it clear that the respondent/plaintiff accepted the alienation of items 3 and 4 by her father on her behalf and hence she would not be entitled to seek recovery of possession in respect of those items. The said decision was taken on the basis that the alienation made by the father of the respondent/plaintiff to meet her marriage expenses was valid and binding on her. In the foregoing discussions also this court has pointed out that the sale effected in respect of items 3 and 4 by the father of the respondent/plaintiff to meet her marriage expenses was presumably made while she was a minor. The same was not set aside at the instance of the respondent/plaintiff within the period of limitation after her attaining majority and hence the sale made by the father of the respondent/plaintiff in respect of items 3 and 4 remains unassailed. As such the learned trial judge, ought not to have granted the relief of declaration in respect of items 3 and 4 of the plaint 'A' schedule.

31. Similarly, though it is an admitted case of the parties that a portion of item 5 of the plaint 'A' schedule alone was alienated by the respondent/plaintiff along with others under the original of Ex.B2-sale deed and a small portion was left unsold, the respondent/plaintiff has not chosen to restrict the claim of title and other reliefs in respect of the unsold portion of item 5 of the plaint 'A' schedule. In addition, the respondent/plaintiff has not chosen to describe the unsold portion of item 5 of the plaint 'A' schedule distinctly with identification marks and boundaries. Even restricting the relief of declaration to the unsold portion shall be quite impossible. It is pertinent to note that the respondent/plaintiff has not even furnished the area of the unsold portion with other descriptions. Hence the reasons assigned by the trial court for non-suiting the respondent/plaintiff for the relief of recovery of possession in respect of item '5' should have been applied for denying the relief of declaration of title in respect of item 5 also. The learned trial judge, due to haste, failed to consider the above said aspect

and the same resulted in granting the relief of declaration in respect of item 5 also. The same would show non-application of mind on the part of the trial court.

32. The lower appellate court has also failed to notice the above said discrepancy. Had it noticed it, it ought to have modified the decree by restricting the relief of declaration to items 1 and 2 of plaint 'A' schedule alone and thereby non-suiting the respondent/plaintiff for all the reliefs in respect of items 3 to 5 of the plaint 'A' schedule. Thus the third substantial question of law urged during the course of argument, has got to be answered accordingly in favour of the appellant/defendant and against the respondent/plaintiff. The resultant position shall be the modification of the decree of the trial court by restricting the operation of the decree granted in favour of the respondent/plaintiff in all respects to items 1 and 2 alone and dismissing the suit in respect of items 3 to 5 of plaint 'A' schedule in every respect.

In the result, the second appeal shall stand allowed in part. The decree of the trial court dated 13.02.1995 is confirmed only in respect of items 1 and 2 of the plaint 'A' schedule and the decree of the trial court is modified by dismissing the suit in respect of items 3 to 5 in all respects. However, there shall be no order as to cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

asr/-

To

1.The Additional District Judge/Fast Track Court No.III
Chengalpattu at Poonamallee

2.The District Munsif, Poonamallee.

Copy to:

The Section Officer, V.R.Section, High Court, Madras

1 cc to Mr. D.Gopinath, Advocate, SR.No.6873

1 cc to Mr.N.Damodaran , Advocate, SR.No.6317

in S.A.No.476 of 2006

jsv(co)

pmk.19.3.2015