THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

APPEAL SUIT No.252 of 1997

JUDGMENT:

The unsuccessful defendants in O.S.No.97 of 1985 on the file of Principal Subordinate Judge, Chittor, preferred this appeal against the judgment and decree dated 14th day of October, 1996, whereunder the suit filed for partition of ‘A’ and ‘B’ schedule property into three equal shares and to allot two such shares to the plaintiffs and for delivery of possession of two shares to the plaintiffs and other consequential reliefs, was decreed.

2. For convenience of reference, the ranks given to the parties in O.S.No.97 of 1985 before the trial Court will be adopted through out the Judgment.

3 (a). The plaintiffs filed the suit for the aforesaid reliefs alleging that one Booditha Muneppa own and possessed the plaint schedule property and Munemma was his wife and they were blessed with two daughters namely Papamma and Seethamma, not blessed with any mail issue. Seethamma’s husband was pre-deceased her issueless. Booditha Muneppa during his life time, while, he was in sound, disposing state of mind and out of free will and volition, executed a registered Will dated 05.09.1947, which is his last Will and testament, under Ex.A.1 bequeathing his property to his wife-Munemma with life or limited or restricted interest and after her death to his daughters namely Papamma and Seethamma to enjoy the property with restricted interest and after their death to the children of Papamma, who survived, with absolute interest. Thus, the children of Papamma i.e., plaintiff Nos. 1 and 2 and defendant No.1 became the absolute owners of the schedule property after the death of Muneppa, who died on 14.03.1949 and after the death of Munemma, who died about 15 days prior to filing of the present suit. Hence, the plaintiffs and

defendant No.1 are entitled to claim the plaint schedule property in equal shares.

(b) The plaintiffs demanded defendant No.1 for partition of the plaint schedule property, but no purpose was served. On the other hand, defendant No.1 claimed that he is the absolute owner of schedule property and that the plaintiffs have no right to claim share in the property as Munemma executed a Gift Deed marked as Ex.A.2 in his favour. In fact, Munemma had no right to alienate the property and if there is any such Gift Deed, the same is not binding on the plaintiffs and it can be ignored, in view of the terms of EX.A.1—Will. Therefore, the defendants are not entitled to claim any right much less absolute right in the schedule property and finally prayed for passing of a preliminary decree for partition as stated above.

4 a) Second defendant filed Written Statement denying the material allegations *inter alia* contending that Booditha Muneppa died in the year 1949 leaving his wife—Booditha Munemma and grand mother of first defendant and she had two daughters namely Papamma and Seethamma. Seethamma died issueless and her husband pre-deceased to her. Plaintiffs and defendant No.1 are the daughters of Papamma and Papamma during her life time has been living with her husband and children. Booditha Munemma has been enjoying the property of her husband with absolute rights by paying land revenue to the Government including house tax. The limited or restricted interest created under Ex.A.1—Will in favour of Munemma became absolute interest by virtue of the provisions of Hindu Succession Act (for short "the Act") as she is in possession and enjoyment of the property by the date of the said Act.

b) It is further contended that the limited or restricted interest created in the property under Ex.A.1—Will by her husband, in lieu of her maintenance, is became absolute and therefore the schedule property is her separate property. B. Muneppa had no male children and even one of his daughter—Papamma had only three daughters i.e., plaintiff Nos. 1 and 2 and defendant No.1 and his another daughter namely Seethamma died issueless. Therefore, Muneppa during his life time wanted to adopt one of his grand sons and hence Munemma brought second defendant from his childhood and virtually adopted him as per the wishes of her late husband and the second defendant alone was treated as heir of Munemma and living with her and that Munemma executed a registered Settlement Deed on 02-08-1985 in favour of second defendant, delivered possession of the property in favour of second defendant and thus all the properties stands in the name of second defendant from the date of Settlement Deed and he has been paying property tax to the concerned authorities. Hence, the plaintiffs have no right in the schedule property, they are not entitled to claim any share in the property, finally he prayed to dismiss the suit.

5. Plaintiffs filed rejoinder contending that none of the items of property was acquired by late Munemma and that the schedule property was acquired by late Muneppa, the maternal grand father of the plaintiffs and they are in possession and enjoyment of Muneppa with absolute rights. Muneppa executed a Will during his life time in sound and disposing state of mind bequeathing the schedule property in favour of his wife with limited or restricted interest and after her death to his daughters namely Seethamma, Papamma and thereafter to the children of his daughters with absolute rights. Therefore, the alleged Settlement Deed dt. 02.08.1985 in favour of second defendant is without any authority since Munemma is not competent to execute a Settlement Deed in favour of defendant No.2.

6. Second defendant filed Additional Written Statement almost reiterating the contentions raised in the Written Statement and brought to the notice of the Court with certain facts about issuance of pattadar passbooks in favour of Munemma during her life time.

7. First defendant filed a Memo adopting the Written Statement

filed by the 2nd defendant.

8. On the strength of above pleadings, the trial Court framed the following five issues and three additional issues: (extracted)

> i) Whether the plaintiffs are entitled for a share in suit schedule properties?
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> ii) Whether the suit schedule properties are the absolute properties of Munemma, grand mother of 1st defendant and if she settled the same in favour of 2nd defendant on 2.08.1985?

iii) Whether the suit is in time ?

> iv) Whether the plaint schedule is correct ?
>
> v) To what relief?

ADDITIONAL ISSUES

i) Whether late testator named B. Muneppa is not owner of suit schedule properties ?

ii) whether the 2nd defendant is adopted son of Munemma ?

iii) To what relief ?

9. During trial, Parvathamma was examined as PW.1 and Exs. A.1 to A.8 were marked on behalf of plaintiffs. On behalf of defendants, DWs. 1 to 3 were examined and Exs. B.1 to B.10 were marked.

10. Upon hearing the arguments of both the counsel and considering oral and documentary evidence on record, the trial Court passed a preliminary decree, along with other consequential reliefs, declaring that the plaintiffs are entitled to 2/3rd share in the schedule property.

11. Aggrieved by the Judgment and Decree, the unsuccessful defendants preferred the appeal, on various grounds, mainly contending that by virtue of Section 14(1) of the Act, the limited

interest created in favour of Munemma is enlarged into absolute interest and thereby Settlement Deed executed in favour of 2nd defendant is valid. The Will dated 5.09.1947 was executed in favour of Munemma, creating limited interest on Munemma and after her death to her daughters with limited interest and thereafter with absolute rights in favour of their children. Thus, by the date of commencement of Hindu Succession Act, the said Munemma was in possession and enjoyment of the property and by virtue of the provisions of Section 14(1) of the Act, she became the absolute owner and hence she is entitled to execute a Settlement Deed in favour of Second defendant. Therefore, the findings of the trial Court are erroneous and finally prayed to set aside the preliminary decree passed by the trial Court by dismissing the suit.

12 a) Learned Counsel for the defendants/appellants would submit that the limited interest became absolute interest of Munemma as PW.1 admitted that limited interest was created in lieu of her maintenance by her husband-Muneppa. Thus, the preliminary decree passed by the trial Court is erroneous.

b) It is further contended that when limited interest of Munemma became absolute interest by virtue of Section 14 (1) of the Act, she is competent to execute a Settlement Deed marked as Ex.A.2 in favour of D.2. But this fact was not considered by the trial Court in proper perspective, committed an error in passing a preliminary decree and he finally prayed to set aside the preliminary decree and judgment of the trial Court, while, dismissing the suit.

13. Heard the learned counsel for Defendants/appellants. None appeared for Plaintiffs/respondents. Considering the contentions of the learned counsel for defendants/appellants, perusing the decree and judgment of the trial court, including oral and documentary evidence on record, the points that arise for consideration are as follows:

i) Whether the limited or restricted interest created under Ex.A.1--Will in favour of Munemma, grand mother

of plaintiffs and first defendant, became absolute interest by virtue of section 14(1) of Hindu Succession Act? If so, whether Munemma is competent to execute Ex.A.2-Settlement Deed dt.2.08.1985 in favour of D.2 ?

ii) Whether the plaintiffs are entitled to claim partition of the schedule property into three equal shares and for allotment of two such shares and other consequential reliefs ?

14. **POINT NO.1**: The core issue to be decided by this Court is the applicability of Section 14(1) of Hindu Succession Act. Undisputedly, Muneppa executed Ex.A.1—Will in favour of his wife Munemma without reference about grant or bequeath in lieu of her maintenance in the document, but created limited or restricted interest to enjoy the property during her life time and after her death to his daughters namely Seethamma and Papamma during their life time and vested remainder is conferred to the children of Papamma and Seethamma. Admittedly, Seethamma died issueless and her husband pre-deceased to her. Therefore, the question of devolving any absolute interest on the children of Seethamma does not arise.

15. Plaintiffs and defendant No.1 are the children of Papamma, but whereas D.2 is the son of D.1 and great grand son of Munemma. Second defendant's main contention is that since the property was bequeathed under Ex.A.1—Will by Muneppa in favour of Munemma in lieu of her maintenance or towards pre-existing right, her limited interest, enlarged into absolute interest, after the commencement of Hindu Succession Act. But, this contention was not accepted by the trial Court assigning its own reasons. Now the findings recorded by the trial Court is under challenge. The learned counsel for defendants/appellants, drawn the attention of the admissions in the evidence of PW.1 that the property was bequeathed under Ex.A.1 in lieu of her maintenance. In the cross examination by the counsel for defendants at page No.66, PW.1

admitted as follows:

> “ ***properties were given to Munemma for her enjoyment by her husband, and she was getting maintenance out of the property, given to her for enjoyment by paying the revenue kist”. He further drawn my attention to other part of cross examination that “ we got the death certificate of my grand father, B. Muneppa and except the suit lands, my grand mother—Munemma got no other properties for her maintenance, we filed the suit after the death of our grand father-Munemma***”.

16. Taking advantage of these two admissions about the source of maintenance of Munemma, the learned counsel, would contend that the admissions are suffice to conclude that bequeath was made in lieu of maintenance of Munemma or in lieu of pre-existing right. If these pieces of evidence is taken into consideration, it is clear that Munemma was getting maintenance from the property bequeathed under Ex.A.1, but it is not clear that bequeath was in lieu of her maintenance. The document under Ex.A.1 is also silent whether the bequeath is in lieu of maintenance. However, this stray admission about getting maintenance from this property is not suffice to accept the contention of the learned counsel for appellants that bequeath was in lieu of maintenance to Munemma. Therefore, it is evident from the recitals of Ex.A.1 and the evidence on record that Muneppa executed Ex.A.1 creating limited interest in favour of his wife.

17. Now the question is whether the limited interest created under the Will would enlarge into an absolute interest in the property?.

18. The learned counsel for defendants/appellants relied on a judgment of Apex Court in **V. Tulasamma and others v. Sesha Reddy (dead) by L.Rs** in support of his contentions. Before adverting to the law laid down by the Apex Court and other Courts, it is apposite to extract Section 14(1) of the Act, for better appreciation, accordingly extracted hereunder:

> “Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her

as full owner thereof and not as a limited owner".

19. A bare reading of Section 14(1) of the Act, any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. The explanation annexed to Section 14(1) clarified about the nature of classification which includes by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance etc. Therefore, taking advantage of the word 'devise', the learned counsel for appellants, would contend that Will is a devise, by which, a limited interest was created in favour of Munemma, by Muneppa, under Ex.A.1—Will. But sub-section (2) is an exception to sub-section (1) and according to it, the property acquired by way of Gift or under a Will or any other instrument or under a decree or order of a civil Court or under an award where the terms of the Gift, Will or other instrument or the decree, order or award prescribes restricted interest in the property. Therefore, a bequeath under Ex.A.1, creating restricted or limited interest, will not enlarge into an absolute interest since sub-section (2) is an exception to sub-section (1) of Section 14 of the Act.

20. In **Tulasamma's** case (1 supra), the Apex Court held that even if any bequeath is made under the Will, in lieu of maintenance, would enlarge into absolute interest in the property. If the principle laid down in the above said case is applicable to the present facts of the case, there is subsistence in the contention of the learned counsel for defendants/appellants. But in the latter judgment of Apex Court in ***Shivden Kaur (dead) by LRs and another v. R.S. Grewal***, a Division Bench of Apex Court placing reliance on a judgment reported in ***Karmi v. Amru(AIR 1971 SC 745)***, held as follows:

> “ If a Hindu female has been given only a life interest through Will or Gift or any other document referred to in Section 14 of the 1956 Act, the said rights would not stand crystallized into absolute ownership as interpreting the provisions to the effect that she would acquire absolute ownership/title into the property by virtue of the provisions of Section 14(1) of the 1956 Act, the provisions of Sections 14(2) and 30 of the 1956 Act would become otiose. Section 14(2) carves out an exception to the rule provided in sub section (1) thereof, which clearly provides that if a property has been acquired by a Hindu female by a will or gift, giving her only a life interest. It would remain the same even after commencement of the 1956 Act and such a Hindu female cannot acquire absolute title”.

21. The Apex Court did not place reliance on **Tulasamma’s** case (1 supra) since the full bench of the Court did not even referred or considered the full bench judgment of Apex Court in **Amru’s** case in **Amru’s** case, which is a judgment of coordinate bench. Thus, the law declared in **Tulasamma’s** case is contrary to **Amru’s** case referred above.

22. A similar question came up in **Sadhu Singh v. Gurdwara Sahib Narike**, wherein a Division Bench of Apex Court had an occasion to answer a similar question and held as follows:

> “When he thus validly disposes of his property by providing for a limited estate to his heir, the wife or widow has to take it as the estate falls. This restriction on her right so provided, is really respected by the Act. It provides in Section 14(2) of the Act, that in such a case, the widow is bound by the limitation on her right and she cannot claim any higher right by invoking Section 14(1) of the Act. In other words, conferment of a limited estate which is otherwise valid in law is reinforced by this Act by the introduction of Section 14(2) of the Act and excluding the operation of Section 14(1) of the Act, even if that provision is held to be attracted in the case of a succession under the Act. Invocation of Section 14(1) of the Act in the case of a testamentary disposition taking effect after the Act, would make Sections 30 and 14(2) redundant or otiose. It will also make redundant, the expression “property possessed by a female Hindu” occurring in Section 14(1) of the Act. An interpretation that leads to such a result cannot certainly be accepted. Surely, there is nothing in the Act compelling such an interpretation. Sections 14 and 30 both have play. Section 14(1) applies in a case where the female had received the property prior to the Act being entitled to it as a matter of right, even if the

right be to a limited estate under the Mitakshara law or the right to maintenance".

23. In the latter judgment in **Jagan Singh (dead) through LRs. V. Dhanwanti and others**, their Lordship Justice P. Sathasivam and Justice H.L.Gokhale held in para Nos. 10 and 13 as follows:

> " Section 14(1) will not apply to any which is given by way of a gift or under a Will. Testator had made a Will and under that he had created a restricted estate in favour of his wife and thereby, it is permissible".

24. Similarly, in ***Gaddam Ramakrishnareddy and others v. Gaddam Ramireddy and others***, a Division Bench of Apex Court held as follows:

> " When life estate created by donee in favour of widow was not in lieu of her maintenance as she was already managing properties. Widow's rights are to be governed by sub section (2) of Section 14 and her right does not blossom into absolute estate as contemplated under Section 14(1)".

25. In ***Kothi Satyanarayana v. Galla Sithayya and others***, a Division Bench of Apex Court held as follows:

> " only question which was canvassed at the hearing was whether in the facts of the case, sub-section (1) or sub Section (2) of Section 14 of the Act was applicable and when it was not disputed that sub section (2) of Section 14 was an exception to Sub-section (1) thereof and if the situation was covered by sub-section (2), the transformation provided for in sub-section (1) would not take place. Settlement deed was instrument contemplated under sub section (2) and admittedly it created a restricted estate in favour of the widow. Therefore, sub-section (1) of Section 14 would not be attracted".

26. A similar question came up before a Division Bench of this Court in ***T.K. Subhash v. Smt Kamala Bhai and others*** , wherein it was held in para No.15 as follows:

> " Right of a female Hindu to bequeath the property given for her life, Where a property is given to a female Hindu only for her life under a Will, she has no right to bequeath the property to be enjoyed by legatees after her lifetime".

From the principles laid down in the above judgments, the consistent law declared by the Apex Court is that a bequeath creating limited or restricted interest under the Will would not enlarge into absolute interest and thereby Munemma being the legatee under Ex.A.1-Will is not competent to execute Ex.A.2-Settlement Deed. Therefore, the question of conferring any title on defendant No.2 by virtue of Ex.A.2 does not arise and Ex.A.2-Settlement Deed is not binding on the plaintiffs. Since the limited or restricted interest on Munemma was not enlarged into an absolute interest, the Settlement Deed under Ex.A.2 is invalid and it will not confer any right on D.2 over the property.

27. In terms of Ex.A.1—Will, the property was devolved upon the children of Seethamma and Papamma. Moreover, when Seethamma died issueless, the children of Papamma are alone entitled to claim right in the property, bequeathed under Ex.A.1 after the death of Munemma and her children Seethamma and Papamma. Undisputedly, Munappa, Munemma, Seethamma and Papamma are no-more. Therefore, the plaintiff Nos. 1 and 2 and D.1 being the children of Papamma alone are entitled to claim absolute interest in the property in terms of Ex.A.1—Will. Second Defendant is not entitled to claim any interest in the property by virtue of Ex.A.2—Settlement Deed, as it is invalid since Munamma had no absolute interest in the property. Hence, the plaint schedule property is the property of Plaintiff Nos. 1 and 2 and first defendant and they are entitled to equal shares i.e., 1/3rd each.

28. The validity of bequeath marked as Ex.A.1 is not challenged basing on the principle of rule against perpetuity; so, no endeavour is made to decide the validity of Ex.A.1.

29. The trial Court after elaborate consideration of evidence on record, with reference to the law laid down by the Apex Court, rightly held that the restricted or limited interest created under Ex.A.1 in favour of Munemma was not enlarged into absolute interest by virtue of Section 14(1) of the Act, but Section 14(2), which is an exception to 14(1) of the Act, alone is applicable and Munemma was entitled to enjoy the property of her husband during her lifetime without any power of alienation. In view of the law declared by the Apex Court referred to above, the findings of the trial Court are totally in consonance with the law declared by the Apex Court. Hence, the findings of the trial Court do not call for interference of this Court even after re-appraisal of entire evidence with reference to law. Hence, the findings of the trial Court is hereby confirmed and the point is answered in favour of the plaintiffs and against the defendants.

30. **POINT No.2**: In view of my findings on Point No.1, the plaintiff Nos. 1 and 2 are entitled to 1/3rd share each in the estate of Munappa in terms of Ex.A.1, being the great grand daughters, who are entitled to enjoy the property with absolute rights.

31. Learned counsel for defendants/appellants contended that Item Nos. 4 and 5 of Plaint 'A' schedule are belonging to Seethamma and those items are exclusive properties of Seethamma, the same are not liable for partition. However, it is for the legal heirs of Seethamma to dispute the right of the plaintiffs to claim partition of item Nos. 4 and 5 of plaint 'A' schedule property. The trial Court declined to accept this contention, the schedule property is the exclusive property of Seethamma is not correct on the ground that plaintiffs and D.1 are only legal heirs of Papamma and not Seethamma and the legal heirs of Papamma are alone entitled to seek partition of the property. Accordingly, this Point is answered in favour of the plaintiffs and against the defendants.

32. In view of my findings on point No.1, the impugned decree and judgment passed by the trial court do not call for any interference

of this Court as it is totally in accordance with law. Hence, the appeal is devoid of merits and deserves to be dismissed.

33. In the result, the appeal is dismissed confirming the decree and judgment dt.14.10.1996 passed by Principal Subordinate Judge, Chittor, in O.S.No.97 of 1985.

As a sequel to it, miscellaneous petitions, if any pending in this appeal, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 01.09.2015

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THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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APPEAL SUIT No.252 of 1997

Dt. 01-09-2015

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