

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 03.08.2018

PRONOUNCED ON : 10.08.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

S.A.Nos.1632 of 2000 and 462 of 2001

S.A.No.1632 of 2000

State Bank of India,
Siruthozhil Branch,
Salem - 7.

rep.by The Chief Manager
Thiru.N.A.Rajagpalan,
now having the office at
Cherry Road, Salem - 7

... Appellant/2nd Defendant/Appellant

Vs.

1.S.Muthusami (Deceased)

2.S.M.Jaganayagam

3.M.Sadasivam

4.S.Lakshmikanthan

5.State Bank of India,
Coimbatore Branch
represented by the
Regional Manager.

(R1 died. His LR's are already on
record as R2 and R3 vide Court
order dt.16.07.2018)

Plaintiff/Defendant 1 & 3

... Respondents/Respondents

S.A.No.462 of 2001

S.Lakshmikanthan

3rd Defendant W.O.S

... Appellant/Appellant in A.S.

Vs.

1.S.Muthusami (Deceased)

2.S.M.Jaganayagam

3.M.Sadasivam

...Plaintiff 1 to 3 in O.S
...Respondent 1 to 3 in A.S
Respondent

4.State Bank of India
rep. By its Regional Manager,
Coimbatore.

5.Branch Manager,
State Bank of India, Salem -7.

Defendant 1 & 2 in O.S
... Respondents 4 & 5 in A.S /Respondent

(R1 died. His L.Rs are already on
record as R2 and R3 vide Court
order dt.25.07.2018)

PRAYER in S.A.No.1632 of 2000: Second Appeal filed under Section
100 of C.P.C., against the Judgment and decree dated 28.09.1999
and made in A.S.No.1 of 1999 on the file of the Principal
District Judge of Salem, confirming the Judgment and decree
dated 11.08.1998 and made in O.S.No.1679 of 1996 on the file of
Principal District Munsif, Salem.

For Appellant : Mr.K.Chandrasekaran
For R2 & R3 : Mr.P.Jagadeesan
For R4 : Mr.S.Pushpakaran
For R5 : Set exparte

PRAYER in S.A.No.462 of 2001: Second Appeal filed under Section
100 of C.P.C., against the Judgment and decree dated 28.09.1999
made in A.S.No.98 of 1998 on the file of the Court of the
Principal District Judge of Salem, confirming the Judgment and
Decree dated 11.08.1998 made in O.S.No.1679 of 1996 on the file
of the Court of the Principal District Munsif, Salem.

For Appellant : Mr.S.Pushpakaran
For R2 & R3 : Mr.P.Jagadeesan
For R4 & R5 : Mr.K.Chandrasekaran
for Mr.K.S.Sundar

C O M M O N J U D G M E N T

S.A.No.1632 of 2000 has been filed by the second defen-
dant against the judgment and decree passed by the Prinicipal
District Judge, Salem in A.S.No.1 of 1999 dated 28.09.1999,
confirming the judgment and decree passed by the Principal Dis-
trict Munsif, Salem in O.S.No.1679 of 1996 dated 11.08.1998.

2. S.A.No.462 of 2001 has been filed by the third defendant against the judgment and decree passed by the Principal District Judge, Salem in A.S.No.98 of 1998 dated 28.09.1999, confirming the judgment and decree passed in O.S.No.1679 of 1996 on the file of the Principal District Munsif, Salem.

3. The respondents 1 to 3 in both the second appeals have filed a suit in O.S.1679 of 1996 on the file of the Principal District Munsif, Salem to declare that the mortgage executed by one Sennammal in respect of suit property in favour of the State Bank of India, Siruthozhil Branch, Salem on 09.11.1987 is void and in-operative and to restrain the defendants from claiming any right or interest over the suit property.

4. The learned District Munsif by the judgment and decree dated 11.08.1998, has decreed the suit as prayed for without cost. Aggrieved by the same, the third defendant has filed an appeal in A.S.No.98 of 1998 and the second defendant has filed an appeal in A.S.No.1 of 1999 on the file of the Principal District Judge, Salem. The learned Principal District Judge by the common judgment dated 28.09.1999 has dismissed both the appeals with costs. Feeling aggrieved, the second defendant has filed the Second Appeal in S.A.No.1632 of 2000 and the third defendant has filed the Second Appeal in S.A.No.462 of 2001. For the sake of convenience, the parties are referred to as described before the trial Court.

5. The averments made in the plaint are, in brief, as follows:

a) The suit property originally belonged to one Pattakara Semmalai Gounder, the father of the first plaintiff and grandfather of the plaintiffs 2 and 3. He borrowed some amount from one Perianna Pillai. In lieu of mortgage, he executed a sale deed dated 16.11.1936 in favour of the said Pattakara Semmalai Gounder. For the purpose of discharging the said loan, the said Pattakara Semmalai Gounder borrowed a loan from one Ramachandra Chettiar and as a security for the said loan, the said Pattakara Semmalai Gounder directed the said Perianna Pillai to execute a sale deed in favour of the said Ramachandra Chettiar. Accordingly, the said Perianna Pillai had executed a sale deed on 11.08.1943 in favour of the said Ramachandra Chettiar. Though the sale deed dated 16.11.1936 and 11.08.1943 were executed, the possession of the suit property continued to be with the said Pattakara Semmalai Gounder and his sons. The said Ramachandra Chettiar died leaving behind his wife Sennammal. He had no issues. The said Pattakara Semmalai Gounder discharged the loan, which was borrowed from the said Ramachandra Chettiar and got sale deed dated 04.03.1947 from the said Sennammal. The said Pattakara Semmalai Gounder continued

in possession and enjoyment of the suit property.

b) Ramachandra Chettiar's mother-Thayammal and his brothers viz., Nagalinga Chettiar, Venkatarama Chettiar and Thiagaraja Chettiar filed a suit in O.S.No.55 of 1947 on the file of the Sub-Judge, Salem. Against Pattakara Semmalai Gounder and Sennammal to declare that the sale deed executed by the said Sennammal dated 04.03.1947 in favour of Pattakara Semmalai Gounder was not binding on them as the said Sennammal got only life interest in the suit property. The said suit was decreed on 13.07.1948 holding that the sale deed dated 04.03.1947 was not binding on the reversioners and they are entitled to succeed to the estate of the deceased Ramachandra Chettiar after the life time of Sennammal. As against the said judgment and decree, Pattakara Semmalai Gounder filed an appeal in A.S.No.49 of 1949 on the file of the Principal District Judge, Salem and the same was also dismissed on 29.07.1950, confirming the judgment and decree passed in O.S.No.55 of 1947.

c) Pattakara Semmalai Gounder died in the year 1971 leaving behind the first plaintiff and one Natarajan as his sons. The first plaintiff and his brother Natarajan have partitioned the properties and in the said partition, the suit property was allotted to the first plaintiff. The reversioners of the said Ramachandra Chettiar attempted to trespass over the suit property by saying that they got decree in their favour. Hence, the first plaintiff has filed a suit in O.S.No.289 of 1986 on the file of the Sub-Court, Salem, for declaration and permanent injunction restraining the said persons from taking forcible possession of the suit property. In the said suit, a compromise decree was passed declaring that the first plaintiff is the absolute owner of the suit property and hence, the first plaintiff became the absolute owner of the suit property. The entire suit property is in possession of the plaintiffs. The second plaintiff has obtained an encumbrance certificate in respect of the suit property in the month of September 1990 and found that the said Sennammal had created a mortgage fraudulently in favour of State Bank of India on 09.11.1987 in respect of the suit property for the loan obtained by the third defendant. Immediately, the plaintiffs applied for the registration copy of the mortgage deed and after getting copy of the said document they came to know that the said Sennammal and the third defendant have committed fraud along with the bank. Hence, the plaintiffs sent a notice dated 13.09.1990 to the said Sennammal and the second defendant. The defendants 1 and 2 have received the said notice on 18.09.1990. The second defendant alone has sent a reply belatedly on 15.11.1990 with false averments. After executing the sale deed dated 04.03.1947, the said Sennammal had no right, title or interest over the suit property. Hence, the plaintiffs were constrained to file the

above suit for the aforesaid reliefs.

6. The averments made in the written statement filed by the second defendant and adopted by the first defendant are, in brief, as follows:

The allegations that in lieu of mortgage, the said Pattakara Semalai Gounder had executed a sale deed in favour of one Periyanna Pillai on 16.11.1936 and subsequently at the request of said Pattakara Semalai Gounder, the said Periyanna Pillai had executed a sale deed dated 11.08.1943 in favour of Ramachandra Chettiar, are all false. In O.S.No.55 of 1947, it was held that the aforesaid sale deeds are real sale deeds. It is false to state that the said Pattakara Semalai Gounder had discharged the loan to the said Ramachandra Chettiar and got a sale deed dated 04.03.1947 and thereby, the said Pattakara Semalai Gounder became the absolute owner of the suit property. The said Sennammal had only a life Estate and hence, the sale deed dated 04.03.1947 did not confer any title to the said Pattakara Semalai Gounder. The reversioners of the said Ramachandra Chettiar filed a suit in O.S.No.55 of 1947 and the same was decreed in their favour and declared that the aforesaid sale deed is not binding upon them. The appeal filed by the said Pattakara Semalai Gounder also dismissed. The said Sennammal became the absolute owner of the suit property, after passing of the Hindu Succession Act, 1956. Only thereafter the first plaintiff has filed a suit in O.S.No.289 of 1986 against the reversioners of the said Ramachandra Chettiar. The said Sennammal was not impleaded as a party and therefore, the decree passed in the said suit would not bind upon the said Sennammal. It is false to state that the suit property is in possession of the plaintiffs. It is the said Sennammal, who was in possession of the suit property and the patta was also issued to her. It is true that the said Sennammal mortgaged the suit property in favour of the second defendant on 09.11.1987 for the loan advanced to the third defendant. In fact, the second defendant has filed a suit against the third defendant in O.S.No.507 of 1990 on the file of the Sub-Court, Salem and the same is pending. The said Sennammal has executed a registered Will dated 24.03.1986 in favour of the third defendant and thereafter she died. After her death, the third defendant becomes entitled to the suit property. The allegation that the second defendant colluded with the third defendant is false. Therefore, the defendants 1 and 2 prayed to dismiss the above suit.

7. The averments made in the written statement filed by the third defendant are, in brief, as follows:

The allegation that the said Sennammal had executed a sale deed in favour of Pattakara Semmalai Gounder on 04.03.1947 and that too, for discharging the loan is not correct. The suit in O.S.No.289 of 1986 was a collusive suit, in which, the said

Sennammal has not been added as a party and hence, the alleged compromise decree will not bind upon the third defendant. The said Sennammal is the aunt of the third defendant and she got every right to deal with the suit property. She had created a mortgage in favour of the second defendant by exercising her absolute right. She also executed a Will dated 23.04.1986, in favour of the third defendant and thereafter she died on 14.07.1989 and hence the third defendant is entitled to the suit property. The mortgage which was executed by the said Sennammal is valid and binding on everyone concerned. The plaintiffs are not in possession of the suit property. There is no cause of action for filing the suit and therefore the third defendant prayed to dismiss the above suit.

8. Based on the aforesaid pleadings, the learned District Munsif has framed necessary issues and tried the suit. During trial, on the side of the plaintiffs, the first plaintiff examined himself as P.W.1 and also marked Ex.A1 to Ex.A29 as exhibits. On the side of the defendants, the third defendant examined himself as D.W.1 and also marked Ex.B1 to Ex.B9 as exhibits.

9. The learned District Munsif, after considering the materials placed before him, found that the Ex.A1 Sale Deed dated 04.03.197 will bind upon the said Sennammal and after executing the said sale deed, she never took back the possession of the suit property and hence on the date of commencement of the Hindu Succession Act, 1956 she was not in possession of the suit property and therefore she will not get any absolute right over the suit property by virtue of Section 14(1) of the Hindu Succession Act, 1956. He further found that the said Sennammal had no right to execute the mortgage deed in favour of the State Bank of India (second defendant). Accordingly, he decreed the suit as prayed for. Aggrieved by the same, the third defendant has filed an appeal in A.S.No.98 of 1998 and the second defendant has filed an appeal in A.S.No.1 of 1999 on the file of the Principal District Judge, Salem. The learned Principal District Judge by the common judgment dated 28.09.1999 has dismissed both the appeals, confirming the judgment and decree passed by the trial Court. Feeling aggrieved, the second defendant has filed S.A.No.1632 of 2000 and the third defendant has filed S.A.No.462 of 2001.

10. At the time of admitting these Second Appeals, this Court has formulated the following substantial questions of law:-

In S.A.No.1632 of 2000

" Whether the widow namely Sennammal on the death of the husband Ramachandra Chettiar, in the background of she having executed a sale

deed, which had been set aside in a subsequent judicial proceedings and the title of the buyer from Sennammal having been sorted out amicably between the parties to the earlier suit, was in possession of any property, which got itself enlarged into an absolute estate under Section 14 of the Hindu Succession Act, 1956 on the said Act coming into force?"

In S.A.No.462 of 2001

'a) Whether Sennammal had not become the absolute owner and possessor of the suit property on and from the date of coming into force of the Hindu Succession Act viz., 17.06.1956, when (i) under Ex.A.4. Judgment made in O.S.No.55 of 47, Ex.A.1, Sale Deed was declared as not binding on the suit property and hence, the regained all her right over the same and (ii) the said declaration r/w Ex.B.1 to 6, Revenue Records would establish that she remained in possession of the suit property as the widow of Ramachandra Chettiar as on the date of coming into force of the said Act?

b) Whether the Court below was right in holding to the effect that the word 'property' appearing in Ex.A.4, Judgment in O.S.No.55 of 1947 has to be ignored and it has to be taken as meaning that Ex.A.1, Sale Deed is binding on all others except the reversioners, contrary to the final and binding declaration made in the said Judgment that Ex.A1, Sale Deed is not binding on the property, especially when, the said Judgment was not under challenge before it and hence, the said finding is beyond the scope of its Jurisdiction?

c) Whether the Court below was right in holding suo-moto that Semmalai Gounder's possession was adverse to Sennammal, when the respondents 1 to 3 / plaintiffs have not even pleaded that they have perfected their title by adverse possession over the suit property, muchless, proved the same and it was also conscious of it and held that they have not pleaded adverse possession?

d) Whether the present suit filed by the respondents 1 to 3 for a relief of declaration alone without any prayer for consequential

reliefs, is maintainable?''

11. Heard Mr.K.Chandrasekaran, learned counsel for the appellant and Mr.P.Jagadeesan, learned counsel for the respondent Nos.2 and 3 and Mr.S.Pushpakaran, learned counsel appearing for the respondent No.4 in S.A.No.1632 of 2000 and Mr.S.Pushpakaran, learned counsel for the appellant and Mr.P.Jagadeesan, learned counsel for the respondent Nos.2 and 3 and Mr.K.Chandrasekaran for Mr.K.S.Sundar, learned counsel appearing for the respondent Nos.4 and 5 in S.A.No.462 of 2001.

12. Substantial Questions of law in both the Second Appeals:-

The learned counsel for the appellants in both the appeals have submitted that originally the suit property belonged to one Ramachandra Chettiar by virtue of the sale deed dated 11.08.1943 and the said Ramachandra Chettiar died without issues before the commencement of the Hindu Succession Act, 1956 and hence his widow viz., Sennammal by virtue of Hindu Women's Rights to Property Act, 1937 succeeded to the said property as life interest holder. They further submitted that even though the said Sennammal had executed a sale deed in favour of Pattakara Semmalai Gounder on 04.03.1947, subsequently, the reversioners of her husband had filed a suit in O.S.No.55 of 1947 and in the said suit, it was held that the said Sennammal had no right to execute the said sale deed. They further submitted that after commencement of the Hindu Succession Act, 1956 by virtue of Section 14 (1) of the said Act, the said Sennammal became absolute owner of the said property. They further submitted that in the suit filed by the first plaintiff, i.e., in O.S.No.289 of 1986, the said Sennammal was not added as party and the decree passed in the said suit will bind upon the said Sennammal. They further submitted that the said Sennammal being absolute owner of the suit property had executed a mortgage deed in favour of the second defendant on 09.11.1987 for the loan obtained by the third defendant. They further submitted that the said Sennammal subsequently, executed a registered Will in favour of the third defendant on 24.03.1986 and thereafter she died on 14.07.1989, and after her death, the third defendant has become absolute owner of the suit property. They further submitted that the plaintiffs are not in possession of the suit property and therefore, they prayed to allow the Second Appeals and dismiss the suit.

13. The learned counsel for the respondents 2 and 3, has submitted that the said Sennammal had clearly admitted in Ex.A1 Sale Deed that possession was already with the said Pattakara Semmalai Gounder and subsequently, she did not take possession from the said Pattakara Semmalai Gounder and as such, she did not become absolute owner of the suit property by virtue of Section 14(1) of the Hindu Succession Act, 1956. He further

submitted that in the suit filed by the reversioners of the said Ramachandra Chettiar, it was not held that the said sale itself is void, on the contrary, it was held that the said sale will not bind upon the said reversioners only and therefore, as far as the said Sennammal is concerned, the Ex.A1 Sale Deed will bind upon her. He further submitted that in the year 1986, the reversioners of the said Ramachandra Chettiar tried to trespass into the suit property by saying that they got decree in their favour in the earlier suit and hence the first plaintiff had filed a suit against the reversioners in O.S.No.289 of 1986. He further submitted that since the said Sennammal did not make any attempt to trespass into the suit property, there was no necessity to implead her as defendant in O.S.No.289 of 1986. He further submitted that since the said Sennammal had sold the property to the said Pattakara Semmalai Gounder even before the Hindu Succession Act, 1956 came into force, it cannot be said that she possessed the suit property on the date of commencement of the aforesaid Act. In support of the above contentions, he relied upon the decision in Naresh Kumari (Smt.) (Dead) by L.Rs and another Vs. Shakshi Lal (Dead) by L.Rs. and another, 1999 (III) MLJ 49 (SC).

14. The learned counsel for the respondents 2 and 3 further contended that even assuming that on the date of execution of the Ex.A1 Sale Deed, the said Sennammal no right to alienate the suit property, by virtue of Section 43 of the Transfer of Property Act, 1882, she precluded from claiming any right over the suit property. He further submitted that the trial Court as well as the first Appellate Court, after taking into consideration of all the aforesaid facts, have rightly come to the conclusion that the said Sennammal did not acquire any absolute right by virtue of Section 41(1) of Hindu Succession Act, 1956 and in the factual concurrent findings, this Court cannot interfere and therefore, he prayed to dismiss the Second Appeals.

15. The case of the plaintiffs is that, originally the suit property belonged to the father of the first plaintiff namely Pattakara Semmalai Gounder ancestrally and the said Pattakara Semmalai Gounder had borrowed some amount from one Perianna Pillai and in lieu of executing the mortgage deed, he executed a sale deed dated 16.11.1936 in favour of the said Perianna Pillai. Their further case is that for discharging the said loan, the said Pattakara Semmalai Gounder borrowed a loan from one Ramachandra Chettiar and at the request of Pattakara Semmalai Gounder, the said Perianna Pillai had executed a sale deed on 11.08.1943 in favour of the said Ramachandra Chettiar. Their further case is that even though the aforesaid sale deeds were executed, the possession of the suit property was only with the said Pattakara Semmalai Gounder. Their further case is that

the said Ramachandra Chettiar died without issues and thereafter this widow Sennammal after receiving the loan amount from the said Pattakara Semmalai Gounder had executed Ex.A1 Sale Deed dated 04.03.1947, in favour of the said Pattakara Semmalai Gounder and he continued to be in possession and enjoyment of the suit property without any interruption.

16. It is seen from Ex.A4 (copy of the judgment passed in O.S.No.55 of 1947), after Ex.A1 sale deed, the mother and brothers of the said Ramachandra Chettiar had filed a suit in O.S.No.55 of 1947 stating that they are the reversioners of the said Ramachandra Chettiar, that the said Sennammal had only life interest by virtue of the Hindu Women's Rights to Property Act, 1937 and that the said Sennammal had only life interest in the estate of the deceased Ramachandra Chettiar and hence, Ex.A1 Sale Deed executed by the said Sennammal will not bind upon them. In that suit, it was held that the aforesaid sale will not bind upon the said reversioners only. It was not held that the sale itself is void as contended by the appellants.

17. According to the appellants, by virtue of Section 14(1) of the Hindu Succession Act, 1956, the limited right of the said Sennammal over the suit property enlarged into absolute right. For proper appreciation, Section 14 of the Hindu Succession Act, 1956 is quoted here under:

'14(1) 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.

Explanation - In this sub-section, 'property' includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift, from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and it also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any 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 prescribe a restricted estate in such property.'

18. A plain reading of the aforesaid provision shows that on

the date of commencement of the said Act, if any property possessed by a female hindu, shall be held by her as full owner thereof. But in this case, in Ex.A1, it is clearly stated that even before the execution of the said sale deed, the possession of the suit property was only with the said Pattakara Semmalai Gounder. Further it is stated in Ex.A1 Sale Deed that she will not claim any right over the said property. So, it is clear that on the date of commencement of Hindu Succession Act, 1956, the said Sennammal was not in possession of the suit property.

19. In Naresh Kumari (Smt.) (Dead) by L.Rs and another Vs. Shakshi Lal (Dead) by L.Rs. and another (supra), the Hon'ble Supreme Court in paragraph No.11 of the judgment has observed as follows:-

'11. The question on these facts is, whether still the appellants can claim to fall under Sub-sec.(1) of Sec.14. There could be no doubt that before a benefit of Sub-Sec.(1) of Sec.14, even by the widow (Smt.Kesri), could be conferred, she has show that she is possessed of this property in dispute in lieu of her limited right of maintenance. The question is whether she was possessed of this property, to claim full right under Sub-sec.(1) which she acquired before the 1956 Act came into force. The admitted fact is, she transferred all her right to the appellants through the said sale deed before the 1956 Act came into force. Thus, she could not be said to be possessed of this property. Thus, by her own conduct, she herself relinquished all her right and even lost possession in it through the said transfer. Thus, she could not be said to be possessed of this property before the coming into force of the 1956 Act.'

20. The aforesaid observation of the Hon'ble Supreme Court will squarely apply to the facts of this case. In this case also, the limited owner viz., Sennammal had sold the property before the Hindu Succession Act, 1956, came into force. Thus, by her own conduct, she herself relinquished of her right and even lost possession in it through the said transfer. Thus, she could not be said to be in possession of the suit property on the date of commencement of the Hindu Succession Act, 1956.

21. It is seen from Ex.A19 (a certified copy of the decree passed in O.S.No.289 of 1986), the first plaintiff has compromised the matter with the reversioners of the said Ramachandra Chettiar and a compromise decree was passed. By virtue of the said compromise decree, the reversioners have relinquished all the rights over the suit property after receiving a sum of Rs.3,75,000/-. Already the said Sennammal had

transferred her rights over the suit property to the said Pattakara Semmalai Gounder through Ex.A1 Sale Deed. The reversioners of the said Ramachandra Chettiar had relinquished their rights over the suit property through Ex.A19 and thus, the first plaintiff has become absolute owner of the suit property. Since already the said Sennammal had sold her rights over the suit property vide Ex.A1 sale deed and when she did not interfere with the possession of the first plaintiff, there was no necessity to implead her as party in O.S.No.289 of 1986. As already pointed out that on the date of commencement of the Hindu Succession Act, 1956, the said Sennammal was not in possession of the suit property. Under the said circumstances, it cannot be said that she got absolute right over the suit property by virtue of Section 14(1) of the Hindu Succession Act, 1956.

22. The learned counsel for the appellants contended that the said Pattakara Semmalai Gounder was in possession of the suit property only as a lessee and as such, it has to be construed that the said Sennammal was in possession of the suit property on the date of commencement of Hindu Succession Act, 1956. For that, there is no evidence. Even in the written statement, the defendants 1 to 3 have not pleaded that the said Pattakara Semmalai Gounder was in possession of the suit property only as lessee. Therefore, the aforesaid contention cannot be accepted.

23. In Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and others, AIR 1959 SC 577, the Hon'ble Supreme Court in paragraph No.11 has observed as follows:-

'11. In the case before us, the essential question for consideration is as to how the words 'any property possessed by a female Hindu, whether acquired before or after the commencement of this Act' is S. 14 of the Act should be interpreted. Section 14 refers to property which was either acquired before or after the commencement of the Act and that such property should be possessed by a female Hindu. Reference to property acquired before the commencement of the Act certainly makes the provisions of the section retrospective, but even in such a case the property must be possessed by a female Hindu at the time the Act came into force in order to make the provisions of the section applicable. There is no question in the present case that Veeravva acquired the property of her deceased husband before the commencement of the Act. In order that the provisions of S. 14 may apply to the present case it will have to be further established that the property was possessed by her

at the time the Act came into force. It was the case of the appellant that the estate of Veerappa was in actual possession of the second defendant and not Veeravva at the relevant time. On behalf of the respondent it was urged that the words "'possessed by'" had a wider meaning than actual physical possession, although physical possession may be included in the expression. In the case of Venkayamma v. Veerayya (S) AIR 1957 Andh-Pra280; Viswanatha Sastri J, with whom Satyanarayana Raju J. agreed, expressed the opinion that "'the word possessed'" in S. 14 refers to possession on the date when the Act came into force. Of course, possession referred to in S. 14 need not be actual physical possession or personal occupation of the property by the Hindu female but may be possession in law. The possession of a licensee, lessee or a mortgagee from the female owner or the possession of a guardian or a trustee or an agent of the female owner would be her possession for the purpose of S. 14. The word "'possessed'" is used in S. 14 in a broad sense and in the context possession means the state of owning or having in one's hands or power. It includes possession by receipt of rents and profits''. The learned Judges expressed the view that even if a trespasser were in possession of the land belonging to a female owner, it might conceivably be regarded as being in possession of the female owner, provided the trespasser had not perfected his title. We do not think that it is necessary, in the present case to go to the extent to which the learned Judges went. It is sufficient to say that "'possessed'" in S. 14."

24. From the aforesaid decision, it is clear that possession referred to in Section 14 of the said Act need not be actual physical possession or personal occupation of the property by the Hindu female but may be possession in law. The possession of a licensee, lessee or a mortgagee from the female owner or the possession of a guardian or a trustee or an agent of the female owner would be her possession for the purpose of Section 14. It is also clear that the word 'possessed' is used in Section 14 in a broad sense and in the context, possession means the state of owning or having in one's hands or power. But in this case as already pointed out, the defendants 1 to 3 have not pleaded in their written statements and they have not adduced any evidence that the said Pattakara Semmalai Gounder was in possession of the suit property only as a lessee. Admittedly, the said Sennammal had sold the property under Ex.A1. Under the said circumstances, she cannot claim that she possessed property on

the date of commencement of the Hindu Succession Act, 1956.

25. It is also relevant to refer to Section 43 of the Transfer of Property Act, 1882, which reads thus:-

''43. Transfer by unauthorised person who subsequently acquires interest in property transferred.- Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration

A, a Hindu who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorised to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.''

26. Even assuming that the said Sennammal had erroneously represented that she had a right to transfer the suit property and executed Ex.A1 Sale Deed in favour of Pattakara Semmalai Gounder, if subsequently she acquired any right by virtue of Section 14(1) of the Hindu Succession Act, 1956, in view of Section 43 of the Transfer of Property Act, the said benefit should automatically go to the said Pattakara Semmalai Gounder. So, he is entitled to retain the suit property. The Courts below after taking into consideration of all the aforesaid facts have rightly rejected the claim of the defendants. In the said concurrent factual findings, this Court cannot interfere. Accordingly, these substantial questions of law are answered against the appellants.

27. In the result, both the Second Appeals are dismissed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Principal District Judge,
Salem.

2.The Principal District Munsif,
Salem.

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

+1cc to Mr.S.Pushpakaran, Advocate, S.R.No.55394

+1cc to Mr.K.S.Sunder, Advocate, S.R.No.55127

+1cc to Mr.K.Chandrasekaran, Advocate, S.R.No.55126

+1cc to Mr.P.Jagadeesan, Advocate, S.R.No.54998 & 54999

S.A.Nos.1632 of 2000 and 462 of 2001

AD(CO)
GSP(08/10/2018)



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