

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 24.10.2019

JUDGMENT DELIVERED ON : 19.05.2020

CORAM :

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

SECOND APPEAL NO.1776 OF 2001

1. Manickam(died)
2. Kumar
3. Chinnathambi @ chandiramohan (died)
4. M.Sekar
5. A.Vasanth
6. M.Shyamal
7. Thirurmalai selvi
8. Padmavathi
9. Rajeswari
10. Barathi

...Appellants/
Plaintiffs

(Appellants 4 to 10 brought on record as LRs of the deceased 1st appellant viz., Manickam vide order of Court, dated 05.07.2019 made in Cmp.No.961 of 2011)

Versus

1. R.G.Ramasamy
2. P.Krishnan (died)
3. Sowbagayavathi
4. Gunasekaran

(R3 & R4 brought on record as LRs of the deceased R2 viz., P.Krishnan vide order of Court dated 21.10.2010 made in Cmp.No.2508 of 2007)

5. Madavan
6. Annamalai

... Respondents/
Defendants

(R5 & R6 brought on record as LRs of the deceased 3rd Appellant viz., Chinnathambi @ chandiramohan vide order of Court, dated 14.06.2019 made in Cmp.No.431 to 433 of 2013)

Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 3.2.1997 and made in A.S.No.10 of 1996 on the file of learned Subordinate Judge, Tirupattur, Vellore District, confirming the judgment and decree dated 23.2.1996 and made in O.S.No.1167 of 1985 on the file of District Munsif, Tirupattur, Vellore District.

For Appellants : Mr.T.R.Rajagopalan, Senior Counsel
for Mr.T.R.Rajaraman.

For Respondents : Mr.S.Parthasarathy, Senior Counsel
for Mr.P.Dineshkumar - (for R1)
: Ex-parte - R3 to R6.

JUDGMENT

This Second Appeal has been filed by the plaintiffs against the judgment and decree passed by the Sub-Judge, Thirupattur, Vellore District in A.S.No.10 of 1996, dated 03.02.1997 confirming the Judgment and decree passed by the District Munsif, Thirupattur, Vellore District in O.S.No.1167 of 1985, dated 23.02.1996.

2. The appellant herein had filed a suit in O.S.No.1167 of 1985 on the file of the District Munsif, Thirupattur, Vellore District for declaration of title and for recovery of possession of the suit properties and for mesne profits of Rs.6,000/-.

3.The learned District Munsif, Thirupattur by the Judgment dated 23.02.1996 had dismissed the suit without costs. Aggrieved by the same, the plaintiffs had filed an appeal in A.S.No.10 of 1996 on the file of the Sub-Judge, Thirupattur, Vellore District. The learned Sub-Judge, by the judgment dated 03.02.1997 had dismissed the said appeal with costs and thereby confirmed the Judgment and decree passed by the Trial Court.

4.Feeing aggrieved, the plaintiffs have filed the present Second Appeal.

5.For the sake of convenience, the parties are referred to as described before the Trial Court.

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

The suit properties and other properties originally belonged to one J. Munisamy, by virtue of the sale deed dated 22.03.1930. The said J.Munisamy is the paternal uncle of the plaintiffs. The said Munisamy, in respect of the aforesaid properties, had executed a registered settlement deed dated 30.07.1962 in favour of his wife Mangaiammal by giving life interest and after her death the properties shall devolve on the plaintiffs and one Sampangi, who is the brother of the plaintiffs 1 & 2 and they have to enjoy the said properties as absolute owners. Subsequently, in the year 1964, the said Sampangi died as bachelor and his parents also died and hence the plaintiffs 1 & 2 are the only legal heirs of the said

Sampangi. Mangaiammal had enjoyed the properties as per the settlement deed and died on 14.08.1981. Thereafter, the plaintiffs took possession of the properties mentioned in the said settlement deed, except the suit property. The said Mangaiammal had sold the suit property on 01.06.1968 to the first defendant. After the death of Mangaiammal, the first defendant had no right to enjoy the said property and hence the plaintiffs had issued a lawyer's notice dated 05.11.1984 calling upon the first defendant to hand over the possession of the suit property. Though the first defendant had received the said notice, he did not send any reply, hence, the plaintiffs were constrained to file the above suit for declaration of their title and for recovery of possession and also for mesne profits. As the first defendant entered into a sale agreement dated 11.02.1985 with the second defendant in respect of 50 cents of suit properties, the second defendant has also been added as a party to the suit.

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

It is true that by virtue of the sale deed dated 22.03.1930, the suit property originally belonged to J. Munisamy. It is false to allege that the said Munisamy had executed a settlement deed dated 30.07.1962 in favour of Mangaiammal by giving life interest and after her death, the property shall devolve on the plaintiffs and one Sampangi. To the knowledge of the first defendant, no such settlement deed was executed by the said J. Munisamy. The said Munisamy had bequeathed his properties under a registered Will dated 25.09.1967 in favour of his wife - Mangaiammal and others. As per the said Will, the said Mangaiammal got the suit property. The said J. Munisamy died on 12.10.1967 and after the death of the said Munisamy, the Will came into force and Mangaiammal took possession of the suit property as an absolute owner and sold the same to the first defendant under a registered Sale Deed dated 01.06.1968 for valid consideration and from that date onwards, the first defendant is in possession and enjoyment of the suit property. The said facts were known to the plaintiffs, but they did not raise any objection. The first defendant had mortgaged the suit property on 07.08.1971 with the Agricultural Chit Fund at Jolarpet and subsequently, discharged the same. The Patta in respect of the suit property also transferred to the name of the first defendant and he has been enjoying the suit property by paying Kist. The notice sent by the plaintiffs was misplaced and hence reply was not sent immediately and after tracing the same, the first defendant had sent a reply on 20.10.1985. The plaintiffs are not entitled to the relief of declaration, delivery of possession and mesne profits. Therefore, the first defendant prayed to dismiss the suit.

8.The averments made in the additional written statement filed by the first defendant are in brief as follows:-

It is true that on 11.02.1985 the first defendant entered into a sale agreement with the second defendant, but the second defendant has not come forward to get the execution of the sale deed within the stipulated time and hence, the said agreement has been cancelled. The first defendant alone is in possession and enjoyment of the entire suit property and therefore, the second defendant is not a necessary party in the suit. Therefore, the first defendant prayed to dismiss the suit.

9.Based on the aforesaid pleadings, the learned District Munsif had framed necessary issues and tried the suit. During trial, on the side of the plaintiffs, the first plaintiff was examined as PW.1 and one more witness was examined as PW.2. They had marked Exs.A1 to A28 as exhibits. On the side of the first defendant, first defendant examined himself as DW.1 and also examined two more witnesses as DW.2 & DW.3. He marked Exs.B1 to B14 as exhibits. The Court summons which were sent to PW.2 & PW.3 were marked as Exs.C1 & C2 respectively. Since the second defendant remained ex-parte, no witness was examined on his side.

10.The learned District Munsif, after considering the materials placed before him found that though under Ex.A1-Settlement deed life interest was given to the said Mangaiammal, by virtue of Section 14(1) of the Hindu Succession Act, 1956, the said right was enlarged into an absolute right and hence, Ex.B3, Sale deed executed by her in favour of the first defendant is valid. Accordingly, he dismissed the suit. Aggrieved by the same, the plaintiffs had filed an appeal in A.S.No.10 of 1996 on the file of the Sub-Judge, Thirupattur, Vellore District.

11.The learned Sub-Judge, came to the conclusion that since a life interest was given to the said Mangaiammal under Ex.A1, and no possession given immediately, the said document is not a settlement deed and it is only a Will. So, the said Munisamy was entitled to execute another Will, during his life time and accordingly, he executed Ex.B7-Will on 25.09.1967. He further found that since no restriction was imposed in Ex.B7 Will, the said Mangaimmal is entitled to alienate the suit property and accordingly, he held that the Sale deed which was executed by her in favour of the first defendant (Ex.B3) is valid. He also found that since the first defendant has been in possession and enjoyment of the suit property from the date of 01.06.1968 with the knowledge of the plaintiffs, he has perfected title by adverse possession also. Finally, he dismissed the said appeal. Aggrieved by the same, the plaintiffs have filed the present Second Appeal.

12.This Court at the time of admitting the Second Appeal, has formulated the following substantial questions of law:-

'' 1. Is the learned Subordinate Judge right in holding that Ex.A-1 settlement deed is only a Will after having given a finding that possession was given pursuant to the settlement deed in favour of Mangai Ammal?

2. Is the learned Subordinate Judge right in holding that under Section 14(1) of the Hindu Succession Act the Limited Estate given under the settlement deed get enlarged when the deceased Mangai Ammal got possession after the commencement of the Act and the possession was traceable to a document which clearly comes within Section 14(2) of the Act?

3.Is the learned Subordinate Judge right in holding that the defendants have prescribed title by adverse possession when the succession opened in favour of the plaintiffs only on 14.08.1981 and the suit is filed within 12 years?''

13. Heard Mr.T.R. Rajagopalan, learned Senior counsel for Mr.T.R.Rajaraman, learned counsel for the appellants-plaintiffs and Mr.S.Parthasarathy, learned Senior counsel for Mr.P.Dineshkumar for the first respondent.

14. Substantial questions of law 1 to 3:

The learned Senior counsel for the appellants-plaintiffs has submitted that it is nobody's case that Ex.A1 is not a settlement deed and it is only a Will. He further submitted that in Ex.A1, it is clearly stated that on the date of execution of the said document itself, possession was handed over to Mangaiammal and that being so, the first Appellate Court should not have held that the said document is not a settlement deed and it is only a Will and as such, the said J. Munisamy is entitled to execute another Will. He further submitted that the first defendant himself admitted in his evidence that Ex.A1 is a settlement deed and hence the First Appellate Court erred in holding that the said document is a Will. He further submitted that the First Appellate Court failed to consider that after executing Ex.A1-settlement deed, the said J. Munisamy had no right to execute Ex.B7-Will. He further submitted that Ex.A1 does not specifically state that the properties mentioned in the said document were given to the said Mangaiammal only in lieu of maintenance or for arrears of maintenance. Further he submitted that the Courts below failed to consider that even after the execution of Ex.A1-settlement deed, the said Mangaiammal lived with the said J. Munisamy till his death, and as such, there was

no necessity for executing Ex.A1-settlement deed in lieu of maintenance. He further submitted that since, the properties mentioned in Ex.A1 Settlement deed were not given to the said Mangaiammal in lieu of maintenance, the restrictions imposed on the said document that she can enjoy the property till her life time will bind on her and hence, the provisions under Section 14 (2) of the Hindu Succession Act, 1956 alone will apply and therefore, the said property will not become an absolute property. He further submitted that since only a life interest was given to the said Mangaiammal under Ex.A1, the said Sale deed executed by her in favour of the first defendant under Ex.B3 will not bind the plaintiffs-reversioners. He further submitted that it is well settled that a person, who claims adverse possession has to plead and prove the same, but in this case, the first defendant has not at all taken a plea of adverse possession either in his written statement or in his additional written statement and hence, the First Appellate Court ought not to have held that the first defendant perfected title by adverse possession. He further submitted that the Courts below erred in rejecting the claim of the appellants-plaintiffs and therefore, he prayed to allow the Second Appeal and set aside the Judgements and decrees passed by the Courts below, and decree the suit as prayed for.

15. The learned Senior counsel for the appellants-plaintiffs, in support of his contentions, relied upon the following decisions:-

i) Sadhu Singh Vs. Gurdwara Sahib Narike
(2006) 8 SCC 75;

ii) Jagan Singh (dead) Through Lrs. Vs.
Dhanwanti and another (2012) 2 SCC 628; and

iii) Ranvir Dewan Vs. Rashmi Khanna and
another (2018) 12 SCC 1.

16. Per contra, the learned Senior counsel appearing for the first respondent-first defendant has submitted that there is no evidence that Ex.A1 came into force and hence, the First Appellate Court had rightly held that the said document was not a settlement deed, but a Will and therefore, there is no bar for the said J. Munisamy for executing another Will. He further submitted that already the father of the plaintiffs 1 & 2 and one Dhanapal had filed a suit in O.S.No.294 of 1994 on the file of the District Munsif, Thirupattur, Vellore District against the first defendant and the said Mangaiammal, in which the said first plaintiff herein was examined as PW.7 and he had admitted that the said J.Munisamy executed a Will in favour of the said Mangaiammal and that being so, the plaintiffs are estopped from denying Ex.B7-Will. He further submitted that in that suit, the

first plaintiff herein, while examining as PW.7, did not depose anything about Ex.A1 settlement deed and therefore now, the plaintiffs cannot rely upon Ex.A1. Further, he submitted that even assuming that Ex.A1-settlement deed was executed by the said J. Munisamy, since he gave the properties to his wife, it has to be presumed that the said properties were given only in lieu of maintenance and hence, in view of Section 14(1) of the Hindu Succession Act, 1956, the life interest given to the said Mangaiammal had enlarged into an absolute right and it binds upon the plaintiffs. He further submitted that admittedly, the first defendant has been in possession and enjoyment of the suit properties from the date of Ex.B3-Sale deed, dated 01.06.1968 to the knowledge of the plaintiffs and as such, the first defendant has perfected his title by adverse possession also. He further submitted that taking into consideration of the aforesaid facts the Trial Court has dismissed the plaintiffs' suit and it was confirmed by the First Appellate Court and in the said concurrent factual findings, this Court cannot interfere and therefore, he prayed to dismiss the Second Appeal.

17.The learned Senior counsel for the first respondent-first defendant, in support of his contentions, relied upon the following decisions:-

- i) S.Nazeer Ahmed Vs. State Bank of Mysore and others (2007) 11 SCC 75;
- ii) Jagannathan Pillai Vs. Kunjithapadam and others (1987) 2 SCC 572;
- iii) M.Shanmugha Udayar Vs. Sivanandam and 8 others 1993 -2-LW-72;
- iv) Jayalakshmi Ammal Vs. Kaliaperumal 2014-2-LW-894; and
- v) T.S.Ganesan Vs. Smt. Parvatham Ammal and others 2008 (4) CTC 135.

18.There is no dispute that the suit properties and other properties originally belonged to one J. Munisamy, who is the paternal uncle of the plaintiffs. According the plaintiffs, the said J. Munisamy gifted the suit properties to his wife-Mangaiammal under a registered settlement deed dated 30.07.1962 (Ex.A1) by giving life interest to her and after her death the properties shall devolve upon the plaintiffs and they can enjoy the same as absolute owners. They had produced the said original settlement deed and marked as Ex.A1. Though the first defendant in his written statement had denied the execution of Ex.A1-settlement deed, during his cross examination, he has admitted that the said J. Munisamy had executed the Ex.A1-settlement deed

in favour of the said Mangaiammal. Further Ex.A1-settlement deed is a registered document and that since the first defendant is a subsequent purchaser, in view of Section 3 of the Transfer Property Act (TP ACT), it has to be presumed that he had notice with regard to execution of Ex.A1 settlement deed and therefore, he cannot contend that he had purchased the property without knowledge of Ex.A1-settlement deed.

19.In Ex.A1, it is stated that it is a settlement deed and on the date of the execution of such document itself, the possession of the properties mentioned therein were given to the said Mangaiammal and in such case, the burden is on the person, who claims that the said document is not a settlement deed and it is only a Will. In this case, the first defendant neither in his written statement nor in his additional written statement has pleaded that the said document is not a settlement deed and it was only a Will. Therefore, the finding of the First Appellate Court that Ex.A1 is not a Settlement Deed and it is only a Will and as such the said J. Munisamy is entitled to execute Ex.B7-Will is not correct. Since the said J.Munisamy executed the settlement deed (Ex.A1), thereafter, he had no right to execute Ex.B7-Will in respect of the properties covered under Ex.A1-settlement deed. Of course the said Will is valid in respect of other properties, which are not covered under Ex.A1. In Ex.A1, the said J. Munisamy gave life interest to his wife-Mangaiammal and after her death the properties shall devolve upon the plaintiffs.

20.The question involved in this matter is whether Section 14(1) of the Hindu Succession Act, 1956 or Sub-Section (2) of Section 14 of the Hindu Succession Act, 1956 applies. If Sub-Section (1) of Section 14 of the Hindu Succession Act, 1951 applies, then the limited right given under Ex.A1 settlement deed to the said Mangaiammal will enlarge into absolute right and consequently the sale deed executed by her in favour of the first defendant under Ex.B3 is valid and bind upon the plaintiffs. If sub-section (2) of Section 14 of the Hindu Succession Act, 1956 applies, the sale deed executed by the said Mangaiammal (Ex.B3) in favour of the first defendant will not bind upon the plaintiffs and consequently, the plaintiffs are entitled for the relief of declaration and recovery of possession of the suit properties.

21.In S.Nazeer Ahmed Vs. State Bank of Mysore and others (cited supra) the Hon'ble Supreme Court has held as follows:

" The respondent in an appeal is entitled to support the decree of the trial court even by challenging any of the findings that might have been rendered by the trial court against himself. For supporting the decree passed by the trial, it is not

necessary for a respondent in the appeal, to file a memorandum of cross-objections challenging a particular finding that is rendered by the trial court against him when the ultimate decree itself is in his favour''.

With regard to the above Proposition of law there is no quarrel. The respondent in an appeal is entitled to challenge a particular finding of the trial court against him without filing a memorandum of cross objections.

22.In Sadhu Singh Vs. Gurdwara Sahib Narike (cited supra), after referring to several decisions including the case in V.Tulasamma Vs. Shesha Reddy reported in (1997) 3 SCC 99 the Hon'ble Supreme Court has observed in paragraph No.11 as follows:-

"11. On the wording of the section and in the context of these decisions, it is clear that the ratio in V. Tulasamma Vs. V. Shesha Reddi (supra) has application only when a female Hindu is possessed of the property on the date of the Act under semblance of a right, whether it be a limited or a pre-existing right to maintenance in lieu of which she was put in possession of the property. The Tulasamma ratio cannot be applied ignoring the requirement of the female Hindu having to be in possession of the property either directly or constructively as on the date of the Act, though she may acquire a right to it even after the Act. The same is the position in Raghubar Singh Vs. Gulab Singh (supra) wherein the testamentary succession was before the Act. The widow had obtained possession under a Will. A suit was filed challenging the Will. The suit was compromised. The compromise sought to restrict the right of the widow. This Court held that since the widow was in possession of the property on the date of the Act under the will as of right and since the compromise decree created no new or independent right in her, Section 14(2) of the Act had no application and Section 14(1) governed the case, her right to maintenance being a pre-existing right. In Mst. Karmi Vs. Amru & Ors. [AIR 1971 SC 745], the owner of the property executed a will in respect of a self-acquired property. The testamentary succession opened in favour of the wife in the year 1938. But it restricted her right. Thus, though she was in possession of the property on the date of the Act, this Court held that the life estate given to her under the will cannot become an absolute estate under the provisions of the Act. This can only be

on the premise that the widow had no pre-existing right in the self-acquired property of her husband. In a case where a Hindu female was in possession of the property as on the date of the coming into force of the Act, the same being bequeathed to her by her father under a will, this Court in Bhura & Ors. Vs. Kashi Ram [(1994) 2 SCC 111], after finding on a construction of the will that it only conferred a restricted right in the property in her, held that Section 14(2) of the Act was attracted and it was not a case in which by virtue of the operation of Section 14(1) of the Act, her right would get enlarged into an absolute estate. This again could only be on the basis that she had no pre-existing right in the property. In Sharad Subramanyan Vs. Soumi Mazumdar & Ors. [JT 2006 (11) SC 535] this Court held that since the legatee under the will in that case, did not have a pre-existing right in the property, she would not be entitled to rely on Section 14(1) of the Act to claim an absolute estate in the property bequeathed to her and her rights were controlled by the terms of the will and Section 14(2) of the Act. This Court in the said decision has made a survey of the earlier decisions including the one in Tulasamma. Thus, it is seen that the antecedents of the property, the possession of the property as on the date of the Act and the existence of a right in the female over it, however limited it may be, are the essential ingredients in determining whether sub-Section (1) of Section 14 of the Act would come into play. What emerges according to us is that any acquisition of possession of property (not right) by a female Hindu after the coming into force of the Act, cannot normally attract Section 14(1) of the Act. It would depend on the nature of the right acquired by her. If she takes it as an heir under the Act, she takes it absolutely. If while getting possession of the property after the Act, under a devise, gift or other transaction, any restriction is placed on her right, the restriction will have play in view of Section 14(2) of the Act."

23. In the case of Jagan Singh (dead) Through Lrs. Vs. Dhanwanti and another (cited supra) the Hon'ble Supreme Court has observed in paragraph No.13 to 17 as follows:-

"13. Section 14 of the Hindu Succession Act, 1956 undoubtedly declares in Sub-section (1) thereof that a property of a female hindu is her absolute property, but it creates an exception in

Sub-section (2) which provides that Sub-section (1) will not apply to any property which is given away by instruments such as by way of a gift or under a will. In the present case Umrao Singh had made a will, and under that he had created a restricted estate in favour of respondent No.1 which was permissible under this section 14 (2).

14. Section 14 of the Hindu Succession Act, 1956 reads as follows:

"14. Property of a female Hindu to be her absolute property.- (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 of 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 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."

15. The issue raised in this Civil Appeal is no-longer res-integra. In Navneet Lal Vs Gokul and others reported in 1976 (1) SCC 630, a bench of three judges of this court was concerned with an almost identical situation, wherein a life estate was created by the testator in favour of his wife. After going through the will, this Court held that it was permissible for the testator to create a limited estate in favour of his wife by making a will.

16. Later, in Amar Singh Vs. Assistant Director of Consolidation reported in 1988 (4) SCC 143, this Court in terms held in paragraph 5 as follows:

"5. ...The right of a bhumidhar with transferable rights to bequeath his holding or any part thereof by a will is expressly recognised by

Section 169 (1) of the Act".

17. In Amar Singh (supra) this Court explained an earlier judgment Ramji Dixit Vs. Bhirgunath reported in AIR 1968 SC 1058. In that matter after the death of the owner, the land had devolved upon his wife as a Hindu widow's estate. A dispute arose about the alienations effected by her, and it was held that undoubtedly she had the right to alienate. But as can be seen, in that matter the estate had devolved by inheritance, and not by will. That is why in para 8 of Amar Singh (Supra) this Court specifically observed that the facts in Ramji Dixit were quite distinguishable. Besides, as held by this Court in Mst. Karmi Vs. Amru reported in AIR 1971 SC 745, a widow who succeeds to the property of her deceased husband on the strength of his will, cannot claim any right other than those conferred by the will. Thus life estate given to her under a will cannot become an absolute estate under the provisions of Section 14 (2) of the Hindu Succession Act, 1956."

24. Recently, in Ranvir Dewan Vs. Rashmi Khanna and another (cited supra) reiterating the principles of law laid down in the case of Sadhu Singh Vs. Gurdwara Sahib Narike (cited supra), the Hon'ble Supreme Court in paragraph Nos.40 & 41 has held as follows:-

"40. Reading of the aforementioned principle of law laid down in the cases of V. Tulasamma and Sadhu Singh (supra), it is clear that the ambit of Section 14(2) of the Act must be confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right, under a gift, will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property. Where, however, property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of Section 14(2) of the Act, even if the instrument, decree, order or award allotting the property prescribes a "restricted estate" in the property.

41. Applying the principle laid down in the aforementioned two cases to the facts of the case on hand, we are of the considered opinion that the case of plaintiff No.2-Mrs. Pritam does not fall under Section 14 (1) of the Act but it squarely falls under Section 14 (2) of the Act. In other

words, in our view, in the facts of this case, the law laid down in Sadhu Singh's case (supra) would apply."

25. From the aforesaid decisions, it is clear that the ambit of Section 14 (2) of the Hindu Succession Act, 1956 must be confined to cases where the properties acquired by a female Hindu, for the first time as grant, without any pre-existing right, under a gift, will, instrument, decree, order or award, the terms of which prescribe a "restricted estate" in the property. Where, however, property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is by virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of Section 14(2) of the Act, even if the instrument, decree, order or award allotting the property prescribes a "restricted estate" in the property. It is also clear that any acquisition of possession of property (not right) by a female Hindu after the coming into force Hindu Succession Act, cannot normally attract Section 14(1) of the Act. It would depend upon on the nature of the right acquired by her. If she takes it as an heir under the Act, she takes it absolutely, If while getting possession of the property after the Act under a device, or other transaction any restriction is placed on her right, the restriction will have play in view of Section 14(2) of the Act.

26. In the case of Jagannathan Pillai Vs. Kunjithapadam and others (cited supra) a Widow had inherited the property from her husband before the commencement of the Hindu Succession Act, 1956. It appears that she had sold the suit property and bought back the same, prior to the commencement of the said Act. Taking into consideration of the said facts, the Hon'ble Supreme Court has held that since she re-acquired and regained the property even before the commencement of the said Act, by virtue of the operation of the Section 14(1) of the Act, the limitation which previously inhered in respect of the property disappeared upon the coming into operation of the said Act. Whereas in the instant case the facts are totally different. In this case, the said Mangaiammal did not inherit the property as legal heir of her husband. On the contrary, she acquired property only through Ex.A1-settlement deed, that too after the commencement of the Hindu Succession Act, 1956, therefore the aforesaid decision will not apply to the facts of this case.

27. In the case of M.Shanmugha Udayar Vs. Sivanandam and 8 others (cited supra) in a partition deed executed on 11.07.1932, some of the items of the properties were allotted to the mother of the appellant therein for her life. Taking into consideration of the said fact, a Division Bench of this Court has held that the mother of the appellant there in was in possession of the

property under Ex.A1 on the date of commencement of Section 14 of the Hindu Succession Act, 1956, and hence, the life estate held by the mother was enlarged and she became full owner of the estate. But, in this case, as already pointed out the suit property was not given to the said Mangaiammal through partition or in lieu of maintenance and hence, the aforesaid decision will not apply to the facts of this case.

28. In the case of Jayalakshmi Ammal Vs. Kaliaperumal (cited supra) it was held that in view of the consent given by the first wife for the second marriage, the husband had settled certain properties in favour of the first wife by giving life interest. Under such circumstances, this Court has held that the said property was given only in lieu of maintenance and hence, by virtue of the Section 14(1) of the Hindu Succession Act, 1956, the said property has become her absolute property. Whereas, in the present case, Ex.A1-settlement deed does not specifically state that the properties were given to Mangaiammal in lieu of maintenance. On the other hand, it has been stated that since she has no issues, she made a request to J.Munisamy, to transfer the properties in her favour and out of love and affection, her husband executed the settlement deed by giving life interest to the said Mangaiammal. Therefore, the aforesaid decision also will not apply to the facts of this case.

29. In the case of T.S.Ganesan Vs. Smt. Parvatham Ammal and others (cited supra) the learned Single Judge of this Court relying on C.Masilamani Mudaliar and Others Vs. Idol of Swaminatha Samy, Swaminathasamy Thirukoil and Others, 1996 (8) SCC 525 distinguished the decision of the Hon'ble Supreme Court in Sadhu Singh Vs. Gurdwara Sahib Narike (cited supra) and held as follows:-

"37.From the facts of the case, it is clear that the suit property, which a residential house, has been given to the defendant by her husband to reside therein. In such circumstances, there is a strong presumption that it is given to her in recognition of her right to maintenance. Section 14 (1) of the Act will apply not only to ancestral property but also to separate and self acquired properties, as seen from the decision of the Supreme Court Tulasamma's case. It is also clear that the pre-existing right to maintenance has received the statutory recognition in the Hindu Adoption and Maintenance Act, 1956, as noted by the Supreme Court C.Masilamani Mudaliar and others Vs. Idol of Sri Swaminathaswamy, Swaminathaswamy Thirukoil and others, 1996 (8) SCC 525. If the intention of the Legislature is to recognise the rights of a Hindu female in the property given to

her by her husband. In recognition of a pre-existing right of maintenance by way of enacting a statute, it cannot be said that the provisions such a statute could be considered to limit or abridge the prevalent customary rights existing prior to such an enactment."

30. In the case of C.Masilamani Mudaliar and others Vs. Idol of Sri Swaminathaswamy, Swaminathaswamy Thirukoil and others (cited supra), taking note of the fact that in the Will in Specific terms a life estate was created for maintenance of wife, the Honourable Supreme Court came to the conclusion that such a right would blossomed into a fullfledged ownership right, since life estate was given in recognition of Hindu female right to maintenance. But, in this case as already pointed out that in Ex.A1, it is not at all stated that the properties were given to said Mangaimmal in lieu of maintenance. Further in Sadhu Singh Vs. Gurdwara Sahib Narike's case, the facts in Tulasamma's case was taken into consideration and distinguished the said decision. In the case of Ranvir Dewan Vs. Rashmi Khanna and another reported in 2018 (12) SCC 1 also the Hon'ble Supreme Court has considered Thulasamma's case and distinguished the same following the principles of law laid down in Sadhu Singh's case. In Thulasamma's case, the Hon'ble Supreme Court has held that where a property is allotted or transferred to a female in lieu of maintenance or a share at a partition, such instrument is taken out of the ambit of sub-section (2) and it would be governed under Section 14(1) despite any restrictions placed on the powers of transferee. So, it is clear that if the property is allotted or transferred to a female Hindu in lieu of maintenance or a share at a partition, the instrument is taken out of the ambit of sub-section (2) and it would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.

31. In this case, as already pointed out that there is no recital in Ex.A1 that the properties were given to the said Mangaimmal in lieu of maintenance. Further, apart from the properties covered under Ex.A1-settlement deed, the said J. Munisamy had some other properties also. So, if the said Mangaimmal wanted to claim maintenance, she could claim maintenance in respect of other properties of her husband. Therefore, it has to be presumed that the properties, which were given under Ex.A1, is not in lieu of maintenance. Under such circumstances, this Court is of the view that Section 14(2) of the Hindu Succession Act, 1956, alone will apply and hence, the properties, which were given under Ex.A1, will not enlarge into an absolute property to the said Mangaimmal. So, the sale deed which was executed in favour of the first defendant (Ex.B3) will not bind the plaintiffs (reversioners).

32. Insofar as adverse possession is concerned, it is well settled that a person, who claims adverse possession must plead and prove the same. In this case, the first defendant has not set up a plea of adverse possession in his written statement or in his additional written statement. The issue with respect to adverse possession also not framed before the Trial Court. There was no evidence adduced with regard to adverse possession. Under such circumstances, the First Appellate Court ought not to have held that the first defendant has perfected his title by way of adverse possession.

33. In view of the decision of the Hon'ble Supreme Court in Sadhu Singh Vs. Gurdwara Sahib Narike (2006) 8 SCC 75; Jagan Singh (dead) Through Lrs. Vs. Dhanwanti and another reported in (2012) 2 SCC 628; and Ranvir Dewan Vs. Rashmi Khanna and another reported in (2018) 12 SCC 1, the Second Appeal must succeed and the Judgments of the Courts below are liable to be set aside. Accordingly, the substantial questions of law are answered in favour of the appellants-plaintiffs.

34. In the result, the Second Appeal is allowed. The Judgments and decrees passed by the Courts below are set aside. The suit is decreed as follows:-

i) that it is hereby declared that the plaintiffs are the absolute owners of the suit properties;

ii) that the first defendant is directed to deliver the vacant possession of the suit properties to the plaintiffs within three months from the date of receipt of a copy of this judgment;

iii) that in respect of mesne profits, a separate enquiry under Order XX Rule 12 of CPC., is ordered; and

iv) that considering the facts and circumstances of the case, the parties are directed to bear their respective costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

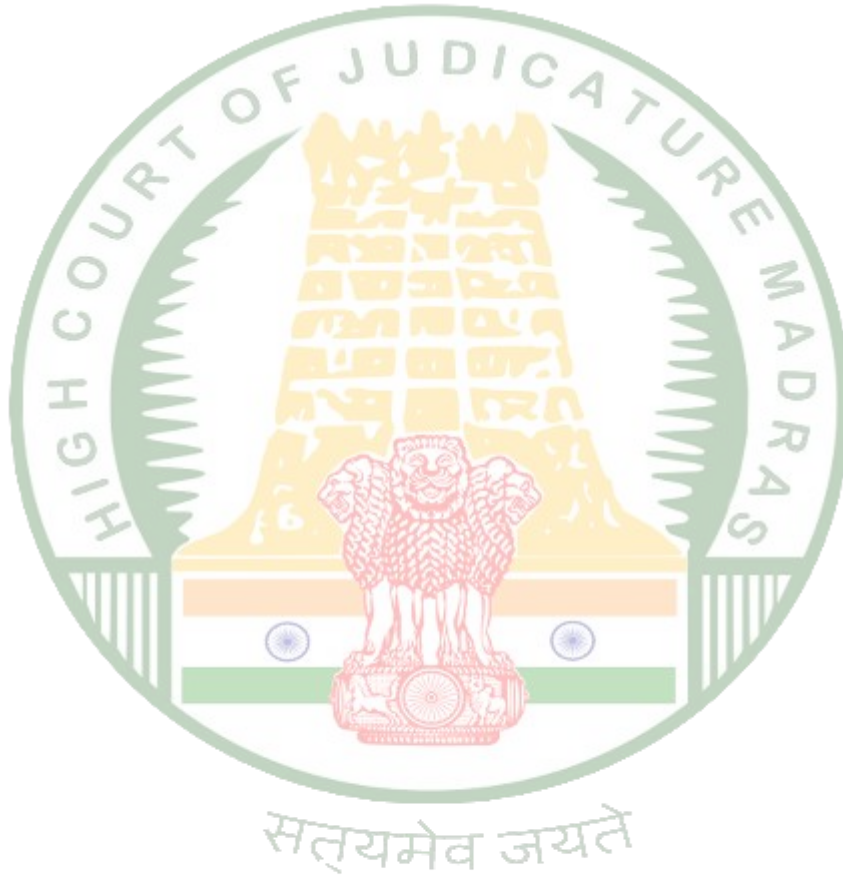
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To

- 1.The Subordinate Judge, Tirupattur, Vellore District.
- 2.The District Munsif Court, Tirupattur, Vellore District.
- 3.The Section Officer, VR Section,
High Court of Madras.

Second Appeal No.1776 of 2001

SR (CO)
CS/06/11/2020



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