

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED : 18.03.2020

JUDGMENT PRONOUNCED : 28.05.2020

(The Court was lockdown due to COVID-19 pandemic from 24.03.2020 to 30.04.2020)

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No.675 of 2019

- 1.B.R.R.Holding Private Ltd.,
represented by its Director,
Plot No.392, HMT Hills,
2nd Venture, Opp. JNTU College,
Kulkatpatty,
Hyderabad 500 072.
- 2.B.S.J.R.Holdings Private Limited,
represented by its Director,
H.No.B55, Flat No.202, Srivaishnavi Vihar,
Vengatarao Nagar,
S.R.Nagar Post, Hyderabad 600 038.
- 3.Bhima Agro Farms Private Limited,
represented by its Director,
H.No.2-13/31, S.S.Nagar,
Opp Hyder Nagar,
Hyderabad 500 072.
- 4.B.R.N.R.Holding Private Limited
represented by its Director,
H.No.1-11/195, Flat No.503,
Vema Kamala's Pramila Rao Residency,
Shamlal Buildings, Begumpet,
Hederabad 500 018. ... Appellants/Plaintiffs

vs.

- 1.Chennai Garr Tech Limited,
represented by its Director,
No.111, 3B, Z Block, 13th Street, Anna Nagar,
Chennai - 40.

2.Rukmani Devi

3.D.Kulasekaran

... Respondents/Defendants

Prayer:- Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 02.04.2019 in A.S.No.7 of 2010 on the file of the Mahila Court, Chengalpattu, confirming the judgment and decree dated 27.10.2009 in O.S.No.385 of 2009 on the file of the Subordinate Court, Tambaram.

For Appellants : Mr.T.R.Rajagopalan Senior Counsel
for Mr.P.J.Rishikesh

For R1 : Mr.P.L.Narayanan

For R2 : Mr.S.Sathiaseelan

For R3 : Mr.T.V.Ramanujun Senior Counsel for
Ms.E.Gomathi

JUDGMENT

The plaintiffs in O.S.No.385 of 2009 on the file of the Sub Court, Tambaram, are the appellants herein.

2.The plaintiffs had originally filed O.S.No.251 of 2006 before the Principal Sub Court, Chengalpattu and thereafter, the suit was transferred to the Sub Court, Tambaram and renumbered as O.S.No.385 of 2009.

3.The suit had been filed by the plaintiffs, I) B.R.R.Holdings Private Limited, II) B.S.J.R.Holdings Private Limited, III) BHIMA AGRO FARMS Private Limited and IV) B.R.N.R.Holding Private Limited, seeking declaration of title with respect to the vacant land measuring to an extent of 6.67 acres (2-70-0 Hectares) in Seevaram Village, Tambaram Taluk, Kancheepuram District, and consequential injunction to protect possession.

4.The plaintiffs claimed that they had purchased the suit property for adequate consideration through registered sale deeds in the year 2000 and that they are in possession from that date. The 3rd defendant, D.Kulasekaran had, however, ignored the sale deeds in favour of the plaintiffs and had executed a settlement deed in 2006 with respect to not just the suit property but to a larger extent of land measuring 14.99 acres in favour of his wife, the 2nd defendant, Rukmani Devi. Subsequently, the 2nd defendant, Rukmani Devi, and also the 3rd defendant,

D.Kulasekaran, who joined as a confirming party, had sold the said larger extent of land including the suit property, to the 1st defendant, M/s.Chennai Garr-Tech Limited. The plaintiffs had also sought the reliefs to declare the said settlement deed and the sale deed as null and void and as not binding on them.

5. By judgment and decree dated 27.10.2009, the learned Subordinate Judge, Tambaram, dismissed the suit, insofar as the relief of declaration of title was concerned and also with respect to the declaration to declare the settlement deed executed by the 3rd defendant in favour of the 2nd defendant and the sale deed executed by the 2nd and 3rd defendants in favour of the 1st defendant as null and void. However, the learned Sub Judge found that possession was with the plaintiffs and therefore, granted injunction protecting possession. The learned Sub Judge, also negatived other issues raised by the defendants relating to maintainability of the suit and to the valuation of the suit and the Court fee paid.

6.The plaintiffs, then, filed A.S.No.7 of 2010 before the District Court at Chengalpattu. This was made over to the Mahila Court, Chengalpattu. The defendants filed Cross Objection questioning the findings given with respect to possession, maintainability of the suit and the valuation of the suit and the Court fee paid. Both the Appeal Suit and the Cross Objection were heard together and disposed of by a judgment dated 02.04.2019. The Appeal Suit was dismissed and the Cross Objection was partly allowed only with respect to the finding relating to the possession of the suit property. The learned First Appellate Judge held that the defendants were in possession of the property and therefore, set aside the grant of permanent injunction against the defendants. The learned Judge, however, found that the suit was maintainable and that the suit had been properly valued and necessary Court fee had been paid.

7.The plaintiffs then, filed the present Second Appeal. The Second Appeal had been admitted. The substantial questions of law were re-framed as follows on 16.10.2019:-

"1.Whether the Courts below are right or right in holding that the life interest of Saradammal in the suit properties would not get enlarged solely on the ground that Ex.A1 does not specifically recite that the properties are settled on her for her maintenance?

2.Whether the Courts below are right in accepting the rival title claimed by the defendants, more so, when such rival claim is barred by limitation in view of Article 65 of the Limitation Act?

3. Whether the Courts below are right in accepting the plea of adoption of the third defendant by Saradhaambal and Dhanakoti Naicker over looking the contradictory evidence that is available on the factum of adoption?

4. Whether the Courts below are right in holding that the third respondent is a adopted son would qualify as a reversioner under Ex.A1 particularly when the reversionary right is restricted to "Children born of her"?"

O.S.No.385 of 2009 - Sub Court, Tambaram, (O.S.No.251 of 2006 - Principal Sub Court, Chengalpattu.): -

8. In the plaint, it had been stated that the suit property measuring 6.67 acres / 2-70-0 hectares along with a larger extent of land measuring 14.99 acres, originally belonged to S.Arumuga Naicker and his two sons, A.Dhanakotti Naicker and A.Parthasarathi Naicker, who also held several other properties. A family settlement and partition deed was executed amongst the three and registered as Document No.1918/1941 in the Sub Registrar's Office, Periyamet on 31.08.1941. Apart from other properties, the land measuring 14.99 acres in S.No.38/2 was allotted to A.Dhanakotti Naicker, but however settled in favour of his wife, Saradammal. The following recital was made out in the document.

"That the party hereto hereby settles upon Saradambal wife of the party hereto of the second party of the said caste and sect and residing with her husband and at the address above said the land described as items-4 (b) (i) of the family assets in Schedule 'A' hereto and which amongst others have been allotted to the share of the party hereto the second part to be henceforth held and enjoy by her during the period of her natural life without any right of alienation by way of sale, mortgage, gift or exchange and after her life time the said property shall vest with in the children born of her, who shall take the same absolutely and for ever in equal shares and in default of any such issue, the property shall vest in her husband the party hereto of the second part and in his right heirs that the party hereto of the second part shall hold and enjoy with full rights of alienation absolutely and forever."

9. It had been stated in the plaint that A.Dhanakotti Naicker and his wife, Saradammal had no issues. It was further stated that Saradammal had executed a document in writing on 21.08.1963, abandoning, surrendering, renouncing and disclaiming her interest in the property allotted to her in favour of her husband

A.Dhanakotti Naicker on the ground that there was no possibility of her getting a child. It was, therefore, stated in the plaint, that A.Dhanakotti Naicker had become the absolute owner of the land measuring 14.99 acres. He then sold the western portion measuring 7.50 acres to A.Radhakrishna Chetty and A.R.Sampath Chetty, both sons of Rajamannar Chetty, under a sale deed dated 27.11.1963, registered as Document No.3097/1963, in the office of the Sub-Registrar, Saidapet. He, later, sold an extent of 5.96 acres out of the remaining 7.49 acres on 05.03.1964, by a sale deed bearing Document No.588/1964, registered in the office of the Sub Registrar, Saidapet, to A.Radhakrishna Chetty and A.R.Sampath Chetty and their younger brother, Narayanaswamy Chetty, all sons of Rajamannar Chetty. It was therefore stated that, the sons of Rajamannar Chetty became the owners of 13.46 acres out of the 14.99 acres. The remaining 1.53 acres was sold by A.Dhanakotti Naicker, his wife, Saradammal and the 3rd defendant, D.Kulasekaran, who was described as their adopted son, to M/s.Power Centre Private Limited by a sale deed dated 04.06.1975, registered as Document No.492/1975 in the office of the District Registrar, Madras South. In the said sale deed, it had also been covenanted as follows:

"1st vendor is the owner of an extent of Ac.1.53 cents of land situate in the village Seevaram Perungudi more particularly described in Schedule 'A' hereunder written WHEREAS second vendor is the owner of an extent of 5 cents of land situate in the same village and more particularly described in the Schedule 'B' hereunder written: WHEREAS the third vendor is the adopted son of the first and second vendors and he has joined in the execution of these presents by way of abundant caution in order to convey to the purchaser his interest if any in the properties mentioned in Schedules 'A' and 'B' hereunder written."

SCHEDULE 'A' All the piece and parcel of land situate in No.144, Village of Seevaram in Survey No.38/2 bounded on the north by Radhakrishna Chettiar land, South and West by Gears India and on the East by Pillayar Koil extent 1.53 cents (ent.3097/1963 and 588/1964)."

10. It had been therefore stated in the plaint that in the said document, there was an assertion that A.Dhanakotti Naicker, was the owner of the said 1.53 acres. Further in the boundary of the suit schedule property, the lands of the purchaser in the earlier sale deeds were shown. It was therefore claimed that the 3rd defendant knew about the earlier sale transactions and was bound by them.

11.The plaintiffs claimed to have purchased 6.67 acres from the legal heir of A.Radhakrishna Chetty and others. It was

stated in the plaint that the 3rd defendant, whose adoption was denied by the plaintiffs, is estopped from challenging the right of A.Dhanakotti Naicker to deal with the total extent of 14.99 acres. It was stated that even otherwise, since he had not subsequently challenged the sale deeds, any claim by him is barred by the law of limitation.

12. It had been further stated in the plaint that subsequent to their purchase, A.Radhakrishna Chetty, A.R.Sampath Chetty and Narayanaswamy Chetty, partitioned the property by a registered Document No.1296/1979 dated 25.07.1979, in the office of the Registrar, Madras. Thereafter, their respective sons had further partitioned the properties among themselves. The plaintiffs have jointly and independently purchased an extent of 6.67 acres in S.No.38/2A from the respective allottees. The details of the purchase of the plaintiffs had been given in the plaint at paragraphs 9 to 13, which are as follows:

"9.The 1st plaintiff's purchases are as follows:

S.No .	Date and Document Numbers	Purchased from	Survey Numbers	Extent in Acres
1	06.07.2000 1957/2000	Mr.A.Narayanaswamy, son of Mr.Rajamannar	38/2A (Part)	0-48
2	07.07.2000 2480/2000	Mr.A.Narayanaswamy son of Mr.Rajamannar	38/2A (Part)	0-46½
		Total		0-94½

After the said purchases by the 1st plaintiff, the purchased extent has been separately sub-divided as S.No.38/2A1B and patta No.664 for an extent of 0-88-0 hectares has been granted to the 1st plaintiff which described as item -1 described hereunder:

10.The 2nd plaintiff's purchases are as follows:

S.No .	Date and Document Numbers	Purchased from	Survey Numbers	Extent in Acres
1	20.06.2000 1620/2000	1.Mr.Ramachandran, son of Mr.A.Radhakrishna Chetty 2.Mr.Rajagopal 3.Mr.Venkatesh 4.Mr.Gopi Krishna 5.Mr.Dwaraka Krishna 6.Mr.A.Sridhar Nos.2 to 6 are the sons of Mr.Ramachandran	38/2A (part)	0-14
2	23.06.2000 1925/2000	1.Mr.A.S.Kannan, son of Mr.Sampath Chetty 2.Mr.K.Vinodh, son of Mr.A.S.Kannan	38/2A	0-40
3	21.06.2000 1926/2000	Mr.A.S.Kannan, son of Mr.Sampath Chetty	38/2A (part)	0-40
4	06.07.2000 1956/2000	Mr.A.Narayanaswamy, son of Mr.Rajamannar	38/2A (part)	0-25
5	22.06.2000 2640/2000	1.Mr.A.S.Kannan, son of Mr.Sampath Chetty 2.Mr.K.Vinodh, son of Mr.A.S.Kannan	38/2A (part)	0-40
6	26.06.2000 2641/2000	1.Mr.A.S.Kannan, son of Mr.Sampath Chetty 2.Mr.K.Vinodh, son of Mr.A.S.Kannan	38/2A (part)	0-40
7	07.07.2000 2479/2000	Mr.A.Narayanaswamy, son of Mr.Rajamannar	38/2A (part)	0-25
		Total		2-24

After the said purchases by the 2nd plaintiff, the purchased extents have been separately sub divided as S.No.38/2A1C for an extent of 0-90-5 hectares and patta No.665 has been granted to the 2nd plaintiff, which is item-2 described hereunder:

11.The 3rd plaintiff's purchases are as follows:

S.No .	Date and Document Numbers	Purchased from	Survey Numbers	Extent in Acres
1	17.07.2000 1995/2001	Mr.A.S.Kannan, son of Mr.Sampath Chetty	38/2A	0-20
2	17.07.2000 1996/2001	Mr.A.Vinodh, son of Mr.A.S.Kannan	38/2A	0-20
3	18.07.2000 1997/2001	Mr.A.Vinodh, son of Mr.A.S.Kannan	38/2A	0-21
			Total	0-61

After the said purchases by the 3rd plaintiff, the purchased extents have been separately sub divided as S.No.38/2A1F for an extent of 0-24-5 hectares and patta No.668 has been granted to the 3rd plaintiff, which is item - 3 described hereunder:

12.The 4th plaintiff purchases are as follows:

S.No .	Date and Document Numbers	Purchased from	Survey Numbers	Extent in Acres
1	16.06.2000 3007/2001	1.Mr.Ramachandran, son of Mr.Radhakrishna Chetty 2.Mr.A.Rajagopal 3.Mr.Venkatesh 4.Mr.Gopi Krishna 5.Mr.Dwaraka Krishna 6.Mr.A.Sridhar Nos.2 to 6 sons of Mr.Ramachandra Chetty	38/2A	0-48

2	19.06.2000 3008/2001	1.Mr.Ramachandran, son of Mr.Radhakrishna Chetty 2.Mr.A.Rajagopal 3.Mr.Venkatesh 4.Mr.Gopi Krishna 5.Mr.Dwaraka Krishna 6.Mr.A.Sridhar Nos.2 to 6 sons of Mr.Ramachandra Chetty	38/2A	0-48
3	21.06.2000 3009/2001	1.Mr.Ramachandran, son of Mr.Radhakrishna Chetty 2.Mr.A.Rajagopal 3.Mr.Venkatesh 4.Mr.Gopi Krishna 5.Mr.Dwaraka Krishna 6.Mr.A.Sridhar Nos.2 to 6 sons of Mr.Ramachandra Chetty	38/2A	0-48
4	22.06.2000 3034/2001	1.Mr.Ramachandran, son of Mr.Radhakrishna Chetty 2.Mr.A.Rajagopal 3.Mr.Venkatesh 4.Mr.Gopi Krishna 5.Mr.Dwaraka Krishna 6.Mr.A.Sridhar Nos.2 to 6 sons of Mr.Ramachandra Chetty	38/2A	0-48

5	18.06.2000 3035/2001	1.Mr.Ramachandran, son of Mr.Radhakrishna Chetty 2.Mr.A.Rajagopal 3.Mr.Venkatesh 4.Mr.Gopi Krishna 5.Mr.Dwaraka Krishna 6.Mr.A.Sridhar Nos.2 to 6 sons of Mr.Ramachandra Chetty	38/2A	0-48
6	17.06.2000 3036/2001	1.Mr.Ramachandran, son of Mr.Radhakrishna Chetty 2.Mr.A.Rajagopal 3.Mr.Venkatesh 4.Mr.Gopi Krishna 5.Mr.Dwaraka Krishna 6.Mr.A.Sridhar Nos.2 to 6 sons of Mr.Ramachandra Chetty	38/2A	0-24
			Total	2-64

After the said purchases by the 4th plaintiff, the purchased extents have been separately sub divided as S.No.38/2A1D for an extent of 1-70-0 hectares and patta No.666 has been granted to the 4th plaintiff, which is item-4 described hereunder:

13.The joint purchases by all the four plaintiffs are as follows:

S.No .	Date and Document Numbers	Purchased from	Survey Numbers	Extent in Acres
1	15.07.2000 1916/2001	Mr.A.S.Kannan, son of Mr.Sampath Chetty	38/2A	0-06

2	23.06.2000 1621/2000	1.Mr.Ramachandran, son of Mr.Radhakrishna Chetty 2.Mr.Rajagopal 3.Mr.Venkatesh 4.Mr.Gopikrishna 5.Mr.Dwarakakrishna 6.Mr.A.Sridhar Nos.2 to 6 are sons of Mr.Ramachandran	38/2A	0-04
3	26.06.2000 1638/2000	Mr.A.S.Kannan, son of Mr.Sampath Chetty	38/2A	0-13½
		Total		0-23½

After the said joint purchase by the plaintiffs, the purchased extents have been separately sub divided as S.No.38/2A1E for an extent of 0-10-0 hectares and patta No.667 has been granted to the plaintiffs, which is item-5 described hereunder:"

13. It had been claimed in the plaint that the plaintiffs are in absolute and exclusive possession of the suit properties. They have also mutated the patta and other Government records in their names. Along with the plaint, the registration copies of the sale deeds in the favour of the plaintiffs and the patta, chitta and adangal extract in the name of the plaintiffs had also been filed. It was stated that the plaintiffs are sister concerns.

14. It was also stated that the 1st defendant, M/s. Chennai Garr-Tech Limited, had attempted to trespass into the suit property claiming that they have purchased 13.46 acres in S.No.38/2, from the 2nd defendant, Rukmani Devi, wife of the 3rd defendant, D.Kulasekaran. This area included the properties already purchased by the plaintiffs. In the sale deed in favour of the 1st defendant, dated 14.03.2006 and registered as Document No.1578/2006, in the office of the Sub-Registrar, Neelangarai, the 3rd defendant had also been added as a confirming party. In the recitals, it was stated as follows:

"WHEREAS the schedule mentioned property was allotted to Tmt.Saradhambal wife of Danakotti Naicker, by the said family partition and settlement deed only, with life interest without any right of alienation. Thereafter, the property was absolutely settled to the children of Tmt.Saradhambal wife of Danakotti Naicker.

WHEREAS the said Tmt.Saradhambal and Danakotti Naicker had no issues however T.Kulasekaran, the confirming party to this deed was adopted as their only son by adoption deed dated 13.09.1962."

15. It was also subsequently stated as follows:

"WHEREAS the confirming party executed a settlement deed and settled absolutely with all rights title interest claim etc., to and in favour of his wife Smt.Rukmani Devi, the vendor herein vide settlement deed dated 25.01.2006 vide Document no.412/2006 registered before the S.R.O.Neelangarai."

16. It had been stated in the plaint that the 1st defendant and the 2nd and 3rd defendants in collusion have concocted, fabricated and brought about forged documents. It had been stated that the settlement deed dated 25.01.2006 registered as Document No.412/2006 in the office of the Sub Registrar, Neelangarai and the sale deed dated 14.03.2006, registered as Document No.1578/2006 also registered in the office of the Sub Registrar, Neelangarai are both void and not binding on the plaintiffs. It had been stated that the 3rd defendant had no right, title or interest over the property. He was not in possession. He did not have patta. He had not paid any kist. It was also stated that the 3rd defendant was not the adopted son of Dhanakotti Naicker. It had been claimed that he has nothing to do with Dhanakotti Naicker. It was stated that he was an impersonator.

17. It was further stated in the plaint that the adoption of the 3rd defendant is not true and valid, even though in the sale deeds executed by A.Dhanakotti Naicker dated 27.11.1963 and 05.03.1964, it had been stated that he had, along with his wife, on 15.09.1962, adopted one Kulasekaran, aged about 17 years. It was stated that since the 3rd defendant was not born to Saradammal, he would not get any title. It was stated that the claim of the 3rd defendant is also barred by limitation, since he had not challenged the sale deeds of the years 1963 and 1964 executed by A.Dhanakotti Naicker, within 12 years from the date of his attaining majority. It was claimed that he had attained majority in 1965. He had not challenged the sale deeds for the past 42 years. It had also been stated that the plaintiffs and their predecessors have prescribed the title by adverse possession. It had been stated that since sales deed in favour of the 1st defendant has cast a cloud on the title of the plaintiffs, the suit had been filed seeking declaration of title and permanent injunction and also to set aside the settlement deed in favour of the 2nd defendant and, the sale deed in favour of the 1st defendant.

18. The 1st defendant filed their written statement. In the written statement, it had been stated that Saradammal had not executed any writing in favour of A.Dhanakotti Naicker, her husband, stating that there was no possibility of her getting a

child and that she had abandoned, surrendered, renounced and disclaimed her interest in the property settled on her. It was stated that the 1st defendant had purchased the suit schedule property together with a larger extent of property totally measuring 13.46 acres from the 2nd and 3rd defendants by sale deed dated 14.03.2006, registered as Document No.1578/2006 in the office of the Sub-Registrar, Neelangarai.

19. It was further stated that the property and other properties originally belonged to S.Arumuga Naicker. Arumuga Naicker had two sons, Dhanakotti Naicker and Parthasarathi Naicker. There was a partition among them for division of the properties and accordingly, a partition and family settlement deed dated 31.08.1941 was executed. The suit schedule property was allotted to Saradammal, wife of A.Dhanakotti Naicker. Saradammal was given only a right of enjoyment without any power of alienation. After her life time, the property was to devolve on to her issues in equal shares and in default of any issue, the property would devolve on to her husband, A.Dhanakotti Naicker. It was stated that A.Dhanakotti Naicker and Saradammal did not have any issues. However, they had jointly adopted the 3rd defendant, D.Kulasekaran, as their son, through an adoption deed dated 13.09.1962. A.Dhanakotti Naicker died on 20.10.1978. Saradammal died on 16.08.1984. They left behind the 3rd defendant, D.Kulasekaran, their adopted son as the only heir to succeed to the properties left behind by them.

20. It was stated that by the partition and settlement deed dated 31.08.1941 neither Saradammal nor her husband, Dhanakotti Naicker had any power to alienate or otherwise deal with the property. It was stated that the 3rd defendant, by virtue of adoption, inherited the property. The 3rd defendant had executed a settlement deed in favour of the 2nd defendant on 25.01.2006 vide Document No.412/2006, registered in the office of the Sub Registrar, Neelangarai. The 2nd defendant therefore became the absolute owner of the entire property. The 1st defendant had purchased the suit schedule property from the 2nd defendant by sale deed dated 14.03.2006, registered as Document No.1578/2006, in the office of the Sub Registrar, Neelangarai, in which document, the 3rd defendant had also signed as a confirming party.

21. It was stated that the 1st defendant had invested a huge sum of money and had then got the sale deed registered. It was stated that the 1st defendant had been put in possession of the property by the 2nd and 3rd defendants. They were in actual possession. It was stated that the revenue records had been mutated to their names. They have become absolute owners of the property. It had been stated that the sale deeds executed by Dhanakotti Naicker in the years 1963 and 1964 in favour of

Radhakrishna Chetty and others, are void and not binding on the 2nd and 3rd defendants. It was stated that the relevant clause in the partition and settlement deed dated 31.08.1941 was as follows:

"That the party hereto hereby settles upon Saradambal wife of the party hereto of the second party of the said caste and sect and residing with her husband and at the address above said the land described as items-4 (b) (i) of the family assets in Schedule A hereto and which amongst others have been allotted to the share of the party hereto the second part to be henceforth held and enjoy by her during the period of her natural life without any right of alienation by way of sale, mortgage, gift or exchange and after her life time the said property shall vest with in the children born of her, who shall take the same absolutely and for ever in equal shares and in default of any such issue, the property shall vest in her husband the party hereto of the second part and in his right heirs that the party hereto of the second part shall hold and enjoy with full rights of alienation absolutely and forever."

22. It was stated that the plaintiffs, who claimed to be purchasers of the suit schedule property from the legal heirs of Radhakrishna Chetty and others, did not obtain any valid title. They were also not in possession. It had been stated that the property tax receipts and other documents were in the names of the 2nd and 3rd defendants. It had been stated that the 1st defendant is the absolute owner and is in possession of the suit property. It had been stated that the suit should be dismissed.

23. The 2nd and 3rd defendants filed a common written statement. In the common written statement, it had been stated that the suit property was originally settled upon Saradammal, wife of Dhanakotti Naicker, by a registered family settlement and partition deed dated 31.08.1941, registered as Document No.1918/1941 in the office of the Sub Registrar, Periyamedu.

24. It had been stated that the claim of the plaintiffs that Saradammal had executed a writing on 21.08.1963 in favour of her husband, abandoning, surrendering, renouncing and disclaiming her interest in the property, since there was no possibility of getting a child, is false. It was stated that the claim of the plaintiffs that Dhanakotti Naicker had become the absolute owner of the property is not correct. It had also been stated that the sale deeds dated 27.11.1963 and 05.03.1964 are not binding on the 3rd defendant. They are both void documents.

25. It had been stated that the 3rd defendant had been legally adopted by Dhanakotti Naicker and Saradammal. It had

been admitted by them in the sale deeds that the 3rd defendant is their adopted son. It had been stated that after the death of Saradammal, the property devolved on to the 3rd defendant. It was stated that the 3rd defendant had no knowledge about the sale deeds mentioned in the plaint. It was also stated that there was no necessity to verify with the Registration Department. It had been stated that the revenue records were in the name of the 3rd defendant and he had also paid taxes to the Government.

26. It was claimed that since the property is a vacant site in the possession of the 1st defendant, title follows possession. It was stated that the 3rd defendant had every right to execute settlement deed in favour of his wife, the 2nd defendant and, the 2nd defendant had therefore, every right to execute a sale deed in favour of the 1st defendant. It was stated that both these documents were true and valid. It was therefore stated that the suit should be dismissed.

27. The 2nd defendant filed an additional written statement. In the additional written statement, it had been stated that since in the registered settlement deed dated 31.08.1941, Saradammal was only given a life interest and in view of the fact that the 3rd defendant was the adopted son, Dhanakotti Naicker had no legal authority or right to execute any sale deed in respect of the property allotted to Saradammal. It was also stated that the sale deeds dated 27.11.1963 and 05.03.1964 did not confer any right on the purchasers. It was stated that the documents were void, since they have been executed by a person, who had no title, share or interest in the property. It was stated that the sale deeds were void ab-initio.

28. It was further stated that the plaintiffs are not entitled to claim the relief of declaration of title based on void documents. It was once again denied that Saradammal had executed any document in writing on 21.08.1963, surrendering her life interest to Dhanakotti Naicker. It was stated that the plaintiffs have not approached the Court with clean hands. The right of the plaintiffs to file a single suit was also questioned. It was stated that there was no cause of action as against the 2nd defendant. It was stated that the suit was also not properly valued for the purposes of Court fee and jurisdiction. It was also stated that the plaintiffs were not in possession of the suit property. It was therefore stated that the suit should be dismissed.

29. The 3rd defendant also filed an additional written statement. In the additional written statement, it had been stated that the person, who signed the plaint, was not competent to represent the plaintiffs. It had been stated that the powers of attorney granting him right were invalid documents. It was

again reiterated that Dhanakotti Naicker did not have any right or title over the property and therefore, any sale deed executed by him was not binding on the 3rd defendant. It was stated that the 3rd defendant had become the absolute owner of the suit property in view of the adoption made by Dhanakotti Naicker and Saradammal. It was therefore stated that the suit should be dismissed.

30. The plaintiffs filed a rejoinder to the written statement and additional written statements. In the rejoinder, it had been reiterated that the suit is maintainable and that it had been properly valued and necessary Court fee paid. It had also been stated that they were in possession of the suit property and they have put a factory and office buildings. They have also put up a compound wall and have put up a security shed and have obtained electricity and telephone connection. They have also appointed day and night watch and ward security guards.

31. They again denied that the 3rd defendant was the adopted son of Dhanakotti Naicker and Saradammal. It was stated that the plaintiffs have filed a power of attorney document in favour of Kembur Srinivasa Prasad. Necessary permissions have been granted by the Court under Order III Rule 1 to 5 of CPC to file the suit.

32. It was stated that the plaintiffs have also appointed Umashankar Viswanathan as their power of agent by document dated 01.10.2007. It was also stated that both the power of attorney agents are employees of M/s.Maytas Group concerns and they are aware of the facts of the case. It was stated that the sale deeds executed by Dhanakotti Naicker in the years 1963 and 1964 are valid documents and binding on the 3rd defendant. It was stated that the 1st defendant did not have the means to pay the sale consideration to the 2nd and 3rd defendants. It was stated that the suit is maintainable, properly valued and proper Court fee was paid. It was therefore stated that the suit should be decreed.

33. On the basis of the above pleadings, the learned trial Judge framed the following issues:

"1. Whether the sale deeds dated 27.11.1963 and 05.03.1964 executed by Dhanakotti Naicker are true and valid?

2. Whether the plaintiffs prescribed the title to the suit properties by adverse possession?

3. Whether the 3rd defendant is adopted son of Dhanakotti Naicker and Saradammal?

4. Whether the settlement deed dated 25.01.2006 executed by the 3rd defendant in favour of the 2nd defendant

is true and valid and binding upon the plaintiffs?

5. Whether the sale deed dated 14.03.2006 executed by the 2nd and 3rd defendants in favour of the 1st defendant is true and valid and binding upon the plaintiffs?

6. Whether the suit property is properly valued and Court fee paid is correct?

7. Whether the single suit filed by plaintiffs is valid and proper and the suit is represented by competent person?

8. Whether the plaintiffs are in possession of the suit properties?

9. Whether the plaintiffs are entitled for declaration and permanent injunction as prayed for?

10. For what reliefs the plaintiffs are entitled?"

34. The plaintiffs and the defendants were then invited to adduce oral and documentary evidence. During trial, on the side of the plaintiffs, one witness, Umashankar Viswanatham was examined as P.W1. Ex.A1 to Ex.A69 were marked. On the side of the defendants, two witnesses were examined. D.Khirubha Nathan was examined on behalf of the 1st defendant as D.W1 and the 3rd defendant D.Kulasekaran, examined himself as D.W2. Ex.B1 to Ex.B78 were marked.

35. Among the exhibits filed on the side of the plaintiffs, Ex.A1 is the Registration copy of the family settlement and partition deed dated 31.08.1941, Ex.A64 and Ex.A65 are the Relinquishment Deeds executed by Saradammal in favour of Dhanakotti Naicker dated 21.08.1963, Ex.A2 is the Registration copy of the sale deed by A.Dhanakotti Naicker to Radhakrishna Chetty and another dated 27.11.1963, Ex.A3 is the Registration copy of the sale deed by A.Dhanakotti Naicker to Radhakrishna Chetty and another dated 05.03.1964, Ex.A4 is the Registration copy of the sale deed executed by A.Dhanakotti Naicker to M/s.Power Centre Private Limited, dated 04.06.1975, Ex.A5 to Ex.A7 are the copies of partition deed, Will and the order of Court granting Letters of Administration to the will of Radhakrishna Chetty, Ex.A8 to Ex.A28 are the Registration copies of the sale deeds in favour of the plaintiffs executed by the family members / legal heirs of Radhakrishna Chetty and his brothers in the months of June and July 2000, Ex.A29 to Ex.A59 are the revenue documents with respect to the suit properties in the names of the plaintiffs, Ex.A61 is the Registration copy of the settlement deed executed by the 3rd defendant in favour of the 2nd defendant dated 25.01.2006, Ex.A62, dated 14.03.2006, is the Registration copy of sale deed executed by the power of attorney agent of the 2nd and 3rd defendants in favour of the 1st defendant and Ex.A66 is the Encumbrance Certificate from 01.01.1941 to 30.06.1974.

36. Among the documents filed on the side of the defendants, Ex.B24 and Ex.B25 dated 15.09.1962 are the adoption invitation card and adoption deed of the 3rd defendant, Ex.B39 is the invitation card for the betrothal of Kulasekaran dated 22.11.1972, Ex.B47 and Ex.B48 dated 16.09.1978 and 20.10.1978 are the death ceremony invitation and death certificate of Dhanakotti Naicker, Ex.B55, dated 28.01.1984 is the legal heirship certificate of Dhanakotti Naicker, Ex.B58, dated 16.08.1984 is the death certificate of Saradammal, Ex.B7, dated 21.05.1999, is the sale agreement entered between the 3rd defendant and the 1st defendant, Ex.B8, dated 13.03.2006, is the registered general power of attorney deed executed in favour of J.Vijayaranga, by the 2nd and 3rd defendants, Ex.B4, is the registered settlement deed executed by the 3rd defendant Kulasekaran in favour of the 2nd defendant, Rukmani Devi, dated 25.01.2006, Ex.B6, is the balance sheet and profit and loss accounts of the 1st defendant for the annual year 2005-2006 and Ex.B78 is the marriage album of the 3rd defendant.

37. The learned Subordinate Judge, Tambaram, first took up issue Nos.1 and 2 for discussion together. They related to whether the sale deeds dated 27.11.1963 and 05.03.1964 executed by Dhanakotti Naicker were true and valid and whether the plaintiffs had prescribed their title by adverse possession.

38. During the course of discussion on the above issues, the learned Judge examined Ex.B25, adoption deed of the 3rd defendant and also extracted the portion in the adoption deed, which stated that the parties therein had declared that the ceremonies of giving and taking in adoption and other religious ceremonies under the Hindu Law have been duly performed. The learned Judge also took into consideration Ex.B24, which is the invitation for adoption.

39. The learned Judge held that the 3rd defendant had proved the fact that he was the adopted son of Dhanakotti Naicker and Saradammal. The learned Judge also stated that any person, who did not have lawful title, cannot have the right to alienate the property. The learned Judge finally held that under Ex.A1, Saradammal was given only life interest and it was further observed that the property was allotted to Dhanakotti Naicker and given to Saradammal with a right to enjoy during her life time and thereafter, to be devolved to the children born of her.

40. It was held that since Dhanakotti Naicker and Saradammal adopted the 3rd defendant on 15.09.1962, the 3rd defendant was vested with all rights as a child born of her. It was also held that though Saradammal had executed Ex.A64 relinquishing her right in the property, Dhanakotti Naicker "would not" have any title over the property and he "could not" become the absolute

owner as the relinquishment deed was executed after the execution of the adoption deed. It was finally held that the relinquishment deed will not give absolute title to Dhanakotti Naicker. It was therefore held that through the sale deeds executed on 27.11.1963 and 05.03.1964, Dhanakotti Naicker did not and cannot convey absolute title to the purchasers. With respect to prescription of title by adverse possession, the learned Judge held that the plaintiffs have filed patta, chitta and adangal relating only to the years 2004 and 2006 but they have not filed any document of possession and enjoyment prior to 2000. It was therefore held that the plaintiffs cannot be held to have prescribed title by adverse possession. In view of the above reasonings, both the issues were answered "not in favour of the plaintiffs."

41. The learned Judge, then, took up issue No.3, which related to whether the 3rd defendant was the adopted son of Dhanakotti Naicker and Saradammal. The learned Judge, on the basis of Ex.B24, invitation card for adoption and Ex.B25, adoption deed and also the recitals in Ex.A4, sale deed executed in the year 1975, wherein, it had been covenanted that the 3rd defendant was the adopted son of Dhanakotti Naicker and Saradammal, held that the 3rd defendant was the adopted son of Dhanakotti Naicker and Saradammal and answered the issue in favour of the 3rd defendant.

42. The learned Judge, then, took up issue Nos.4 and 5. In view of the findings arrived for issue Nos.1 and 3, these issues were answered that the settlement deed dated 25.01.2006 and the sale deed dated 14.03.2006 are both binding on the plaintiffs.

43. The learned Judge, then, took up issue Nos.6 and 7. These related to the valuation of the suit and the maintainability of the suit. The learned Judge observed that the defendants have not let in any evidence that the Court fee was not properly paid. It was stated that a single suit filed by the plaintiffs is maintainable owing to the fact that the power of attorney agent for all the four Private Limited Companies had filed the suit. It was stated that the plaintiffs had filed an application seeking permission to be represented by their power of attorney agent and the Court had granted such permission. It was therefore stated that the suit filed by the power of attorney agent was maintainable.

44. The learned Judge, then, took up issue No.8 relating to possession of the suit property. The learned Judge examined the patta and other revenue documents filed on behalf of the plaintiffs, particularly, Ex.A39 - Ex.A53 and Ex.A54 - Ex.A59 and Ex.A69. The sale deeds, Ex.A8 to Ex.A28, were also examined by the learned Judge. The learned Judge observed that the suit

property is a vacant land and further observed that the revenue records were available from the year 2004 onwards. The learned Judge finally held that by filing patta, chitta and the sale deeds, the plaintiffs have proved that they are in possession and enjoyment of the suit property. It was also observed that the 1st defendant had not taken any steps to mutate the revenue records. The learned Judge held that the plaintiffs were in possession and answered the issue in favour of the plaintiffs.

45. In view of the above findings, the learned Judge dismissed the suit with respect to the relief of declaration, but granted injunction protecting the possession of the plaintiffs. The suit was also dismissed with respect to the reliefs claimed to declare that the settlement deed in favour of the 2nd defendant and the sale deed in favour of the 1st defendant were null and void and not binding on the plaintiffs.

A.S.No.7 of 2010 and Cross Objection in A.S.No.7 of 2010 (Mahila Court, Chengalpattu.):

46. The plaintiffs, then, filed A.S.No.7 of 2010 before the District Court at Chengalpattu. The same Appeal Suit was then made over to the Mahila Court Chengalpattu. The plaintiffs had challenged the findings of the learned trial Judge, negating their claim for declaration of title and also negating their claim to declare the settlement deed executed by the 3rd defendant in favour of the 2nd defendant and the sale deed executed by the 2nd and 3rd defendants in favour of the 1st defendant as null and void and to set aside the same. The defendants filed Cross Objection, questioning the findings of the learned trial Judge relating to possession of the property and also with respect to maintainability of the suit and with respect to valuation of the suit and payment of Court fee.

47. In the appeal, the plaintiffs filed I.A.No.242 of 2010 under Order XLI Rule 27 of CPC seeking permission to produce additional documents. The additional documents sought to be produced were patta, chitta, kist receipts, adangal, certified copy of A Register and encumbrance certificate, with respect to the suit property.

48. Pending the said application, the plaintiffs filed a further affidavit in the said application seeking to produce further additional documents. The further documents sought to be produced were encumbrance certificate and also birth certificate of the 3rd defendant, D.Kulasekaran, and the records in O.S.Nos.2391 and 8871 of 1985, on the file of the IX Assistant City Civil Court, Chennai, and also records relating to O.S.No.470 of 2013 on the file of the District Munsif Court, Alandur. The application was allowed.

49. The plaintiffs, then, filed further applications in I.A.Nos.296 and 297 of 2011 under Order VI Rule 17 (4) of CPC and under Order XLI Rule 2 CPC respectively seeking to amend the plaint and to incorporate the additional grounds of appeal in the Memorandum of First Appeal. The applications to file additional documents having been allowed, these applications were also allowed. Thereafter, paragraph No.20A was incorporated in the plaint.

50. In the said paragraph No.20A, the plaintiffs stated that they had come to know after the filing of A.S.No.7 of 2010 that the 3rd defendant, D.Kulasekaran was a biological / natural son of A.Dhanakotti Naicker and Devaki Ammal, the second wife of A.Dhanakotti Naicker. It was also stated that the 3rd defendant had two elder sisters, Krishnaveni and Saroja. It was therefore stated that the adoption of the 3rd defendant was void in law, in view of the provisions of Hindu Adoptions and Maintenance Act, 1956. After the amendment of the plaint was carried out, incorporating the above paragraph No. 20A, the 3rd defendant filed an additional written statement before the First Appellate Court.

51. In the additional written statement, the 3rd defendant denied the averments made in paragraph No.20A of the plaint. He stated that he and his two sisters, Krishnaveni and Saroja, were born to Thiagarajan and Devaki Ammal. He asserted that Dhanakotti Naicker had never married Devaki Ammal at any point of time. He also stated that Dhanakotti Naicker's only legally wedded wife was Saradammal. He further stated that even if it is to be presumed that he was the son of Dhanakotti Naicker and Devaki Ammal, then, as an illegitimate son of Dhanakotti Naicker, he would still be entitled to get all rights as any legitimate son. He further reiterated that he was lawfully adopted by Dhanakotti Naicker and Saradammal.

52. After permitting amendment of the plaint and taking on record the additional written statement, the learned First Appellate Judge framed the following additional issues:

1) Whether the claim of the plaintiffs that the 3rd defendant, D.Kulasekaran, was the son of A.Dhanakotti Naicker and Devaki Ammal is true? and whether there was any prohibition under Section 16 of the Hindu Marriage Act, 1955 in taking the 3rd defendant on adoption by A.Dhanakotti Naicker and Saradammal?

2) Whether Saradammal was allotted to 14.99 acres of land in 1941 as her share in lieu of maintenance or in lieu of arrears of maintenance?

3) Whether the claim of the plaintiffs that the suit property was the absolute property of Saradammal, in view

of the provisions of Hindu Women's Right to Property Act, 1937, is correct?

4) Whether the claim of the plaintiffs that Saradammal became the absolute owner of the property under the provisions of Section 14 (1) of Hindu Succession Act, 1956 and in accordance with the ratio laid down in Thulasamma's case, is correct?

5) Whether Saradammal had a right to execute the release deed, Ex.A64 and Ex.A65? and whether in view of the same, Dhanakotti Naicker became the absolute owner of the said 14.99 acres of land?

6) Whether D.Kulasekaran, was barred by the law of limitation to raise objections against Ex.A2 and Ex.A3?

7) Whether the plaintiffs, without seeking declaration to set aside Ex.B25, adoption deed dated 15.09.1962, can question the settlement deed executed by the 3rd defendant in favour of the 2nd defendant in Ex.B4 and the sale deed executed by the 2nd defendant in favour of the 1st defendant in Ex.A62?

8) Whether the arguments, which have been putforth in the first appeal and which have not been pleaded in the plaint, can be accepted or not? and whether arguments contra to the plaint can be permitted to be advanced in the first appeal?

9) Whether the first appeal and the cross objection can be allowed or not?

53. In view of the amendment to the plaint and the filing of the additional written statement, the learned First Appellate Judge permitted the plaintiffs to adduce additional evidence. This was recorded in the First Appellate Court itself. The plaintiffs, then, examined two further witnesses, Manoj Krishna as P.W2 and Panneer Selvam as P.W3. They also marked further documents, Ex.A70 to Ex.A100. These documents included the Patta as Ex.A74, Extracts of A Register as Ex.A75 - Ex.A78, Chitta as Ex.A76, Kist Receipt as Ex.A77, Adangal as Ex.A78, Encumbrance Certificates as Ex.A80 to Ex.A86, Birth Certificate of the 3rd defendant as Ex.A87, Documents relating to O.S.No.2391 of 1985 on the file of the IXth Assistant City Civil Court, Chennai, as Ex.A90 to Ex.A93, Computer extract of the birth certificate of the 3rd defendant as Ex.A94, and documents relating to O.S.No.470 of 2013 on the file of the District Munsif Court, Alandur, as Ex.A96 to Ex.A100.

54.The First Appellate Court did not frame points for determination as envisaged under Order XLI Rule 31 of CPC.

55. The First Appellate Court however framed additional issues and answered both the issues framed by the trial Court and also the additional issues. This procedure is alien to the

procedure stated in the Order XLI Rule 31 of Code of Civil Procedure.

56. The First Appellate Court first took up for consideration issue No.3 framed by the trial Court and issue Nos.1 and 8 framed by the First Appellate Court itself. Issue No.3 framed by the trial Court related to whether the 3rd defendant was the adopted son of Dhanakotti Naicker and Saradammal. Additional issue No.1 was whether the 3rd defendant was the biological son of Dhanakotti Naicker and Devaki Ammal and whether there was a bar in taking the 3rd defendant on adoption by Dhanakotti Naicker and Saradammal under the provisions of Section 16 of the Hindu Marriage Act, 1955. Additional issue No.8 was whether arguments can be advanced in the first appeal, in the absence of pleadings and whether arguments can be advanced contra to the averments in the plaint.

57. The learned First Appellate Judge in the course of the judgment listed out the divergence in facts as pleaded by the plaintiffs and defendants. The learned Judge examined the documents relating to O.S.No.2391 of 1985 and O.S.No.8871 of 1985, which were both jointly tried by the IXth Assistant City Civil Court, Chennai, wherein, one of the issues in O.S.No.8871 of 1985 was whether, Dhanakotti Naicker and Saradammal had taken the first defendant therein, namely D.Kulasekaran, who was the 3rd respondent in the First Appeal on adoption.

58. The learned Judge observed that as a fact, the learned IXth Additional Judge had returned a finding that the adoption was a fact established and consequently stated that the said finding is binding on the parties to the First Appeal. It was also observed that on evidence, the IXth Assistant City Civil Court, had found that the husband of Devaki Ammal was Thiagarajan. The learned First Appellate Judge also rejected the birth certificate produced as Ex.A 37, in which the name of the parents of D.Kulasekaran was given as Dhanakotti Naicker and Devaki Ammal. The learned Judge observed that the said document cannot be considered as a conclusive proof, since a birth certificate is not sufficient to hold that marriage had been proved.

59. The learned Judge also held that arguments advanced in the First Appellate stage questioning the parentage of the 3rd respondent D.Kulasekaran cannot be accepted or considered. The learned Judge also found fault with the appellants who had not examined the two sisters of the D.Kulasekaran namely Krishnavalli and Saroja in this regard.

60. The learned Judge also observed that in the adoption deed, it had been specifically covenanted that necessary rituals

and ceremonies regarding adoption had already been conducted and therefore, stated that no further proof is required with respect to adoption. The learned Judge also placed reliance on Section 12 of the Hindu Adoptions and Maintenance Act, 1956, wherein, it had been stated that every adopted child gets equal rights as a naturally born child. The learned Judge also held that there was no bar in taking the 3rd respondent D.Kulasekaran in adoption by Dhanakotti Naicker and Saradammal and therefore, answered the issue holding that adoption had been proved.

61. The learned Judge then took up for consideration additional issue Nos. 2, 3 and 4 framed by the First Appellate Court. Additional issue No.2 related to whether the property was allotted to Saradammal in lieu of maintenance or in arrears of maintenance in the document executed in the year 1941. Additional issue No.3 was whether Saradammal had obtained full rights in view of the Hindu Women's Right to Property Act, 1937 and additional issue No.4 was whether Saradammal had obtained absolute rights in view of Section 14(1) of the Hindu Succession Act 1956 and in accordance with the judgment of the Hon'ble Supreme Court in Tulasamma's case. The learned Judge observed from Ex.A1 namely the Partition-cum-Settlement deed, it could be deduced that S.Arumuga Naicker was a learned person, because the document was executed in English. Further in the document, a property worth Rs.2,000/- had been also allotted for the benefit of Hindu and Muslim pilgrims. A property was also allotted to Gunabhushani Ammal, a daughter who had returned back to the family owing to failed marriage and an amount of Rs.1,500/- had also been set aside for the benefit of an unmarried daughter Vedavalli Ammal. With respect to the suit property, it was observed that the property was allotted to Dhanakotti Naicker and in turn settled in the name of Saradammal. The learned Judge examined the provisions under Section 18 of the Hindu Adoptions and Maintenance Act 1956, and stated that a Hindu wife is entitled to live separately, if her husband had deserted her or had treated her with cruelty or if he is suffering from leprosy or if he has any other wife or concubine living or had converted to another religion. The learned Judge found that none of the said clauses or stipulations apply to the present case. It was therefore found that there was no necessity for the property to be settled in favour of Saradammal. It was also found that the judgment of the Hon'ble Supreme Court in Tulasamma's case would not apply to the facts of the present case.

62. The learned Judge rejected the contention that, Section 14 (1) of the Hindu Succession Act, 1956 is attracted to the present case and stated that Saradammal had only a restricted right. It was also found that if the property been allotted in lieu of maintenance, then Saradammal would not have subsequently

executed a release deed. It was also found that Saradammal did not have any pre-existing right to claim maintenance and it was therefore held that D.Kulasekaran, being the adopted son would acquire right over the property on the death of Saradammal and that Dhanakotti Naicker would not get any right and had no right to deal with the property, much less convey the property to third parties.

63. The learned Judge finally found that the property was not allotted to Saradammal either in lieu of maintenance or as arrears of maintenance. It was also found that the property would not become the absolute property of Saradammal and it was therefore found that Saradammal had no right to execute a release deed.

64. The learned Judge then took up for consideration issue No.1 framed by the Trial Court and additional issue Nos. 5 and 6 framed by the First Appellate Court. Issue No.1 framed by the Trial Court was whether the sale deed executed by Dhanakotti Naicker on 27.11.1963 and on 05.03.1964 were true and binding and additional issue No.5 was with respect to the relinquishment deed executed by Saradammal and whether she could have written such a document and whether Dhanakotti Naicker had acquired absolute rights over the 14.99 acres of land and additional issue No.6 was whether D.Kulasekaran, the 3rd respondent was barred by the law of limitation from questioning Ex.A2 and Ex.A3 namely, the two sale deeds executed by Dhanakotti Naicker. The learned Judge found that in the release deed dated 21.08.1963, marked as Ex.A64 and Ex.A65, Saradammal had not stated that the property was settled on her in lieu of maintenance. On the other hand, she had stated that she could not manage the property and therefore was releasing the property in favour of Dhanakotti Naicker. The learned Judge found that the document was executed subsequent to the taking on adoption of D.Kulasekaran on 15.09.1962. It was therefore held that on the death of Saradammal, it should be "deemed" that title had passed to D.Kulasekaran. The learned Judge also stated in the course of judgment that, to defeat the provisions of Sections 4,6,7 and 8 of the Hindu Minority and Guardian Act, 1956. Dhanakotti Naicker, with the help of an Advocate who had studied law, or with the help of a document writer who knew law and having obtained advice from them had stated in Ex.A2 and Ex.A3 sale deed that a sum of Rs.37,500/- and Rs.24,000/- respectively be kept in the Corporation Bank in the name of a minor D.Kulasekaran.

65. The learned Judge stated that Dhanakotti Naicker should have obtained permission from the Court under the provisions of Guardians and Wards Act,1880, before executing such sale deeds.

The learned Judge therefore held that the two sale deeds were not valid documents. The learned Judge also found that right from the beginning, Dhanakotti Naicker always wanted to grab the property and had acted accordingly and had therefore stated in the sale deeds that part of the consideration was kept in a Bank account in the name of D.Kulasekaran. It was also found that plaintiffs did not produce any document to show that possession was actually handed over to the purchasers A.Radhakrishna Chetty and others.

66. The learned Judge also addressed the document of adoption Ex.B25, which was not registered and the stamp paper had been purchased in the name of a Muslim person. The learned Judge stated that the appellants had not sought any relief to set aside the adoption. It was found that in Ex.A1, S.Arumuga Naicker had set aside a property for the benefit of both Hindu and Muslim pilgrims and therefore, the learned Judge presumed that S.Arumuga Naicker and his family members had good relationship with Muslim families and therefore, in order to repay the gratitude to S.Arumuga Naicker, some Muslim friend would have purchased the stamp paper in his name. It was also stated that in 1941, Mahatma Gandhi had launched the Indian Independence Movement and at that time had also stressed upon Hindu - Muslim unity and therefore, it was no surprise that a Muslim person had purchased the stamp papers in his name and that, if the Court held otherwise, it would defeat the object of Secularism.

67. The learned Judge further found that Section 43 of the Transfer of Property Act, would not apply to the facts of this case and also held that the recital in Ex.A2 and A3 can be taken as a dying declaration under Section 32(5) of the Indian Evidence Act. The learned Judge also found that the principle of Caveat Emptor would apply and if the appellants had approached a very good Advocate and had obtained an opinion, then, the said Advocate would have given good advice as was given by the Advocate in Ex.B44 sale deed in favour of M/s. Power Centre Limited. Therefore, the learned Judge stated that if proper legal advice had been received by the appellants from a good Advocate, then they would have also have joined D.Kulasekaran in their sale deed. Since they have not called upon D.Kulasekaran to execute the sale deed and since the appellants have not explained why they have not obtained good legal advice, the issue has to be answered against the appellants. It was also found that the appellants have purchased the property from Rajamannar and family through brokers at low price with evil intention to make further profit and therefore the appellants did not have a proper motive. Therefore, it was held that the appellants did not obtain good title for the property. The

issues were therefore answered against the appellants.

68. The learned First Appellate Court then took up issue Nos.4 and 5 framed by the Trial Court and additional issue No.7, framed by the First Appellate Court. Issue No.4 related to whether the settlement deed dated 25.01.2006 executed by D.Kulasekaran in favour of the 2nd defendant Rukmani Devi is a true and binding document and whether it would bind the appellants and issue No.5 was whether the sale deed executed by the 2nd defendant in favour of the 1st defendant dated 14.03.2006, is also a true document and binding on the appellants. Additional issue No.7 was whether the plaintiffs can seek the relief to set aside the two documents, without seeking the relief to set aside the adoption of the 3rd defendant. The learned Judge observed that since, Saradammal had no right to relinquish the property and since, Dhanakotti Naicker did not consequently acquire any right over the property, the sale deeds executed by Dhanakotti Naicker are null and void, in view of the fact that in Ex-A1, it had been provided that after Saradammal the property will devolve on to the children born of her and since, according to Section 12 of the Hindu Adoptions and Maintenance Act, 1956, an adopted child would get equal rights as a natural son, the property had devolved on to the 3rd defendant. It was held that the 3rd defendant had every right to execute the settlement deed in favour of the 2nd defendant. It was also observed that the appellants had not sought the relief to set aside the adoption. The appellants had not produced any evidence to show that the document is a fraudulent document. With respect to the suit filed by the 2nd respondent, the explanation given by the 3rd respondent that at that particular point of time, there was misunderstanding between himself and the 2nd respondent, had been accepted by the learned Judge. With respect to the sale consideration, the learned Judge found as a fact that the document had been referred under Section 47 (A) of the Indian Stamp Act and therefore stated that this issue cannot be raised. The learned Judge finally held that both the documents were binding and that the plaintiffs cannot seek to set aside both the documents without seeking a declaration that the adoption was null and void.

69. The learned Judge then took up for consideration issue No.2 framed by the Trial Court. This issue related to whether the appellants had prescribed title by adverse possession. The learned Judge found that the appellants have not sought such a relief in the suit. They have not stated that they have been in a possession for the continuous period of five years. There was also no evidence in the record. It was also observed that the Revenue documents do not reflect whether the property was an Agricultural property or not and also the nature of produce which had been laid in the property. The learned Judge therefore

held that the appellants have not prescribed title in manner known to law for the necessary period of limitation required under the Limitation Act. The issue was answered against the appellants.

70. The learned Judge then took up issue Nos.6 - 8, framed by the Trial Court. These issues related to whether the suit was properly valued and whether the plaintiffs can file a single suit and whether the plaintiffs were in possession of the suit property. The learned Judge held that the Trial Court had properly decided that the suit had been valued and that necessary Court fee has been paid. The learned Judge also found the suit as framed and filed was maintainable. The learned Judge, then took up the issue of possession. The learned Judge examined Section 54 of the Transfer of Property Act. It was stated in the document filed on the side of the appellants that they had only paper possession. The learned Judge found that the finding of the Trial Court that the appellants were in possession was not borne out by any records and that they were not in physical possession. The learned Judge therefore found that possession was with the respondents and set aside the finding of the Trial Judge on this aspect.

71. The learned Judge then took up issue Nos.9 and 10 of the Trial Court and additional issue No.9. These related to the conclusions to be given in the First Appeal and in view of reasons stated, the learned Judge dismissed the First Appeal and partly allowed the cross objection, determining that the respondents were in possession and therefore set aside the grant of permanent injunction by the Trial Court.

S.A.No.675 of 2019

72. Questioning the judgment of the First Appellate Court, the plaintiffs filed the present Second Appeal. The substantial questions of law which were originally framed at the time of admission were re-framed on 16.10.2019, as follows:-

"1. Whether the Courts are right or right in holding that the life interest of Saradhaambal in the suit properties would not get enlarged solely on the ground that Ex.A1 does not specifically recite that the properties are settled on her for her maintenance?

2. Whether the Courts below are right in accepting the rival title claimed by the defendants, more so, when such rival claim is barred by limitation in view of Article 65 of the Limitation Act?

3. Whether the Court below are right in accepting the plea of adoption of the third defendant by Saradhaambal and Dhanakoti Naicker over looking the contradictory evidence that is available on the factum of adoption?

4. Whether the Courts below are right in holding that the third defendant is a adopted son would qualify as a reversioner under Ex.A1 particularly when the reversionary rights is restricted to "Children born of her"?"

73. Heard arguments advanced by Mr.T.R.Rajagopalan, learned Senior Counsel for Mr.P.J.Rishikesh, the appellants, Mr.P.L.Narayanan, learned counsel for the first respondent, Mr.S.Sathyaseelan, learned counsel for the 2nd respondent and Mr.T.V.Ramanujun, learned Senior Counsel for Ms.E.Gomathi, the 3rd respondent.

74. This Court places its deep appreciation for the erudite arguments advanced by the learned Senior counsels/Counsels who advocated the cause of their respective clients with much persuasion. Written arguments had also been submitted on behalf of the appellants and each one of the respondents.

75. Even before entering into a discussion on the substantial questions of law framed, this Court is under an obligation to answer two issues raised by the respondents.

1. That the appeal has to necessarily fail in view of the fact that the witnesses on the side of the appellants/plaintiffs were power of attorney agents and did not speak from personal knowledge about the evidence adduced by them.
2. The Second Appeal having been laid against concurrent judgments of the Trial Court and the First Appellate Court, much caution should be subscribed by this Court and findings on facts can be called for interference only if they are held to be perverse and against normal standards of reasoning.

76. With respect to the first issue regarding competency of the witnesses who have been examined on behalf of the plaintiff, a perusal of the records shows that before the Trial Court the plaintiffs examined as P.W.1, Umasankar Viswanathan. In his proof affidavit, he stated that he was an employee of M/s.Maytas Property Private Limited, which "is entering" into a development contract with the plaintiffs, and therefore, the plaintiffs had authorized him to give evidence on their behalf in the case. He also claimed to be acquainted with the facts of this case. It must be kept in mind that the plaint had been signed and verified by Kemburu Srinivasa Prasad, Power Agent of the plaintiffs. In his verification affidavit, he also claimed that he was well acquainted with the facts of the case. It is seen from the judgment of the learned Trial Court Judge, while examining the issue of the maintainability of the suit that necessary permission under Order III Rule 2 of the Code of Civil Procedure had been granted prior to institution of the plaint

granting permission to the power of attorney to present the plaint. The primary documents around which determination of the issues raised by the plaintiffs and contested by the defendants are either registered documents or revenue documents, except for the adoption deed Ex.B25, relied on by the 3rd defendant. Interpretation of the recitals in the registered documents have been called for by both the parties concerned. Such interpretation revolves around examining the documents as a whole and oral evidence can be adduced only with respect to admissibility and relevancy of the said documents. In the First Appeal, the appellants herein had filed a further application under Order XLI Rule 27 of the Code of Civil Procedure, seeking permission to file additional documents. They also later filed applications seeking to amend the plaint and the Memorandum of grounds of appeal. The appellants were permitted to adduce further oral evidence. Before the First Appellate Court, the plaintiffs examined as PW-2 V.Manoj Krishna, who claimed in his proof affidavit to be the Manager of the first appellant, M/s.B.R.R.Holding Private Limited. He also stated that he had been assisting the appellants in the purchase of the suit properties, though the sale deeds which have been marked as Ex.A8 to A28. He also claimed that he was authorized to file proof affidavit and to tender oral and documentary evidence pursuant to the Board Resolutions dated 21.08.2010, 23.08.2010, 25.08.2010 and 27.08.2010 of the four plaintiffs respectively. He had also filed certified extracts of the said Board Resolution as Ex.A70 - A73. PW-3, Panneerselvam, at the time of Examination in Chief was working as Sub-Registrar, Neelangarai Sub-Registrar Office.

77. During cross examination of PW.1, the very first question put to him was whether he knew the facts of the case and he answered in the affirmative. He also stated that he was tendering evidence in his capacity as power of attorney agent of the plaintiffs and that the plaintiffs were sister companies. It had been argued by the learned Senior Counsel for the 3rd respondent that P.W.1 had joined M/s.Maytas Property Private Limited, only on 01.11.2006, much after the purchase of the properties by the plaintiffs. It was also pointed out that the witness had not personally visited or seen the suit property. The competency of P.W.2 was also seriously put to test during cross examination. He claimed that he was born on 06.08.1965. Questions were put to him that he did not know the vendors. He however claimed that, he knew the legal heirs of A.Radhakrishna Chetty. He also stated that he was present when the sale deeds were executed. In this connection, the learned counsel for the 2nd respondent relied on (2010) 10 SCC 612, Man Kaur Vs. Hartar Singh Sangha, wherein, the Hon'ble Supreme Court had stated that a Power of Attorney holder who has no personal knowledge cannot be examined to speak about the averments in the plaint. That was

a suit for Specific Performance. The issues surrounded proof of readiness and willingness. A Power of Attorney agent was examined and he stated that he was unaware of the transaction and that he was only authorized to sign the plaint. In those circumstances, the Hon'ble Supreme Court held that where the party to the suit does not appear in the witness box and state his own case on oath and does not offer himself to be cross examined, a presumption would arise that the case put forth by him is not correct.

78. In the instant case, as is seen from the cause title, the plaintiffs are Private Limited Companies. The witnesses have been given Powers of Attorney and also authorization through Board Resolutions to adduce evidence on behalf of the plaintiffs. In (1996) 6 SCC 660, United Bank of India Vs. Naresh Kumar, it had been stated by the Hon'ble Supreme Court that de hors Order XXIX Rule 1 of the Code of Civil Procedure, a company can duly authorize any person to sign the plaint or the written statement. It had been stated as follows in paragraph 10 of the said judgment.

"...In addition thereto and de hors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual..."

79. Further, as stated above, the documents which are called for interpretation to resolve the issues raised and to answer the substantial question of law are all registered/public/revenue documents. In the written statement, the respondents had uniformly denied execution of Ex.A-64 /A-65, which are the certified copy and registration copy of the same document namely, the document of relinquishment and surrender executed on 21.08.1963 by Saradammal, wife of A.Dhanakotti Naicker. However, production of Ex.A-64 and A-65 proved execution and registration and interpretation there upon is a question of law. This Court can very well understand that the plaintiffs could never have produced any witnesses who were alive around the time of execution of such documents. It is to be pointed out that though there was a denial in the first instance, the genuinity of the document was not challenged when it was produced and marked as an Exhibit. There was no objection raised as is seen from the markings in the documents that have been marked as Exhibits. In view of these facts, I held that the

appellants cannot be non suited on the ground raised.

80. The second ground taken was that the appellants are challenging concurrent findings on facts and unless such findings are found to be perverse, the scope of this Court in a Second Appeal to re-examine facts is very limited. The Second Appeal has been admitted and at the time of admission, ten substantial questions of law had been framed. Subsequently, even before the Second Appeal could taken up for final hearing, it meandered through a round about course and finally, the substantial questions of law have been re-framed to four, which have been extracted above.

81. Section 103 of the Code of Civil Procedure is as follows:-

"103. Power of High Court to determine issue of fact.--In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,--
(a) which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or
(b) which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in section 100."

82. Even before answering the substantial questions of law as framed above, the issue whether the Court can entertain a Second Appeal when concurrent findings have been given on facts will have to be addressed.

83. The learned counsel for the 2nd respondent relied on, i. (2019) 6 SCC 46, S.Subramaniam Vs. S.Ramasamy, ii. (2019) 8 SCC 637, State of Rajasthan Vs. Shiv Dayal, iii. (2020) SCC Online SC 186, C.Dotta Narayan Reddy Vs. C.Jeyarama Reddy, and stated that unless the findings of the Court below are perverse or against the provisions of law and judicial pronouncements, interference with the impugned judgment and decree is impermissible in law. The learned counsel also stated that there could be interference only if concurrent findings have been rendered,

- a. on facts and law without any pleadings; or
- b. finding based on no evidence; or
- c. It was based on misreading of material and documentary evidence, or
- d. If the same is rendered against by provision of law; or
- e. The decision is one which no Judge acting judicially and reasonably have reached.

84. A cursory reading of the judgment of the Trial Court reveals that while answering the primary issue Nos.1 and 2, namely whether the sale deeds dated 27.11.1963 and 05.03.1964, executed by Dhanakotti Naicker are true and valid and whether the plaintiffs have prescribed title through adverse possession, the learned Judge had stated that Dhanakotti Naicker "would not" have denied title over the property even though Saradammal had executed Ex.A-64 and he "could not" become absolute owner. It is seen that there has been no extract of the evidence recorded anywhere in the judgment. The learned Judge had held that in favour of the 3rd defendant with respect to adoption by holding that the plaintiffs have "not" proved the adoption, but that, the defendants have proved the fact by adducing oral and documentary evidences.

85. While coming to the judgment of the learned First Appellate Court Judge, while advertent to issue of adoption and the question raised regarding Ex.B25 and the stamp papers having been purchased in the names of two different Muslim individuals as seen from the original, in the names of two different Muslim persons, the learned First Appellate Court had without any evidence on this aspect, proceeded to give a very strange explanation. The learned Judge stated that in Ex.A1, a property had been set aside for use of Hindu and Muslim pilgrims and in 1941 Mahatma Gandhi had launched Indian Independence Movement and at that time had also stressed upon Hindu - Muslim unity and therefore, there was no surprise that out of gratitude to the family, a Muslim person had purchased the stamp paper in his name and that if the Court held otherwise it would defeat the object of Secularism. The said reasoning of the learned Judge is very strange to say at the least.

86. The First Appellate Court had also given his own reasonings regarding obtaining legal advice and found fault on the appellants on this ground also.

87. Under Order XLI Rule 31 of Code of Civil Procedure, it had been stated that the overall judgment of the First Appellate Court should state

- a) the points for determination
- b) the decision thereon
- c) Reasons for the decision
- d) Where the decree appealed from is reversed or varied the relief to which the appellant is entitled.

The judgment under appeal does not confirm to the requirements of Order XLI Rule 31 of Code of Civil Procedure.

The Substantial Question of Law Answered :

Substantial Question of Law No.3.

88. Though not directly germane to the relief sought in the

plaint, the vexed issue of the identity crisis suffered by the 3rd defendant is taken up first for consideration. This is the 3rd substantial question of law. The question of law has been framed to examine whether the Courts below were right in accepting the plea of adoption by Saradammal and Dhanakotti Naicker of the 3rd defendant, D.Kulasekaran, over looking the contradictory evidence that is available in the factum of the adoption. While examining this substantial question of law at first glance, there appears to be an affirmation in the question itself that contrary evidence is actually available with respect to the factum of adoption. The contradictory evidence available is primarily with respect to oral evidence. But documents speak more clearly. Chapter VI of the Indian Evidence Act 1872 relates to exclusion of oral by documentary evidence. The general principle which emanates from Sections 91 - 100 is that, when there is a specific averment in a document, no amount of oral evidence can be given in contra to such averment. The evidence available touching upon the factum of adoption of the 3rd defendant by Saradammal and Dhanakotti Naicker can now be taken up for examination.

89. The first document is Ex.B24, which is the invitation card for the adoption ceremony and the second document Ex.B25, which is the adoption deed dated 15.09.1962. Ex.B24 has been quite seriously questioned by the learned Senior Counsel for the appellant. However, I have examined the original marked document, Ex.B24. It is an invitation for taking on adoption as a son on the 13th day of Avani month of Subhakrithu year, according to the Tamil calender. It is equivalent to 15.09.1962.

90. The invitation stated that on that day, i.e. Saturday, between 8am and 9am, invitation has been extended to bless the boy D.Kulasekaran, who is to be taken on adoption by A. Dhanakotti Naicker and Smt.Saradammal at Srimath Vishnusithan Bakthajana Sabha at Chintadripet, Chennai. Ex.B24 is plain and simple. It is an invitation to attend an adoption ceremony extended by A. Dhanakotti Naicker and Smt.Saradammal who intended to take on adoption D.Kulasekaran on 15.09.1962 and that the main function is to be held between 8am and 9am at Srimath Vishnusithan Bakthajana Sabha, Chennai. Ex.B25 is the adoption deed. This also has been seriously questioned by the learned Senior Counsel for the appellant who pointed out the stamp papers have been purchased in the names of two Muslim individuals. As pointed out earlier, the learned First Appellate Judge had taken great pains to explain as to why and how the stamp papers could have been purchased in the name of Muslim parties. Such explanation is not required. Such explanation is rejected. However, the fact is that the adoption deed has been executed and then signed by the A.Dhanakotti Naicker and Saradammal, who are the adoptive parents and also by Devaki

Ammal, who is the natural mother of the boy D.Kulasekaran, who was taken in adoption. Among the recitals it had been stated as follows:-

"...We the said Dhanakoti Naicker and SaradambalAmmal have this day in a meeting of relations, elders and friends held at "Srimath Vishnusithan Bakthajana Sabha" No.12, New Bungalow Street, Chintadripet, Madras-2, have duly adopted CHI.KULASEKARAN son of the said Devaki Ammal aged fourteen years and ten months (born on 29.10.1947) Hindu, Naicker caste, residing with his mother at Dera Venkatasamy Naidu street, Triplicane, Madras - 5, as our son and I, the said Devaki Ammal, being the natural mother of KULASEKARAN, having given the said KULASEKARAN in ADOPTION to the said DHANAKOTI NAICKER and SARADAMBAL AMMAL:

AND WE ALSO DECLARE that the ceremony of giving and taking in Adoption and other religious ceremonies under the Hindu Law to which we are subject have been duly performed..."

91. Arguments advanced that substantial evidence should have been adduced to actually prove adoption are rejected by me. The issue of purchase of stamp papers in the name of the strangers, is an issue which this stage and at this period of time, no Court could venture to examine. But, the fact of adoption has been reiterated in several further documents.

92. Ex.A.2 is the registration copy of a sale deed executed by Mr.A.Dhanakotti Naicker in favour of Mr.A.Radhakrishna Chetty. A true typed version of the said document is available. In the said document, it had been covenanted as follows:-

"Whereas the Vendor and his wife, had on 15.09.1962, taken in adoption, a boy named Kulasekaran, now in his seventeenth year, and the adoption had been made conforming to all the conditions, formalities and essentials of a valid adoption, as laid down in the Hindu Adoption and Maintenance Act of 1956:"

93. Ex.A3, is a registration copy of a sale deed executed by A.Dhanakotti Naicker in favour of A.Radhakrishna Chetty and others dated 05.03.1964. Again it had been stated as follows:-

"Whereas the Vendor and his wife, had on 15.09.1962, taken in adoption, a boy named Kulasekaran, now in his seventeenth year, and the adoption had been made conforming to all the conditions, formalities and essentials of a valid adoption, as laid down in the Hindu Adoption and Maintenance Act of 1956:"

94. Ex.A4 is a registration copy of a sale deed executed by A.Dhanakotti Naicker in favour of M/s.Power Centre Private Limited, dated 04.06.1975. In the said document in which the 3rd defendant D.Kulasekaran has also signed as the 3rd vendor, it had been covenanted as follows:-

"Whereas the Third Vendor is the adopted son of the First and Second Vendors and he has joined in the execution of these presents by way of abundant caution in order to convey to the Purchaser his interest, if any, in the properties mentioned in Schedules 'A' and 'B' hereunder written;"

95. It is also seen that in two totally unrelated suits in O.S.No.2381 of 1985 and O.S.No.8871 of 1985, which were tried jointly and which came up for consideration before the IXth Assistant City Civil Court, Chennai, and in which D.Kulasekaran was a party, the second issue in O.S.No.8871 of 1985 was whether A.Dhanakotti Naicker and Saradammal had taken on adoption the 1st defendant thereon D.Kulasekaran on 15.09.1962. The Court on appreciation of evidence held that A.Dhanakotti Naicker and Saradammal had taken the 1st defendant therein D.Kulasekaran in adoption on 15.09.1962. The learned Senior Counsel for the appellants however stated that, the said finding would not act as res judicata, in view of the fact that the plaintiffs were not parties therein. However, that line of argument is also rejected by me, since, on the basis of the evidence available and in the presence of a necessary party namely D.Kulasekaran, it had been held that he had been taken in adoption by A.Dhanakotti Naicker and Saradammal. A competent Court had pronounced a definite ruling on the said issue. It still stands. It was not taken up on appeal. It is binding.

96. The contradictory evidence as projected in the substantial question of law primarily revolves around the amendment made to the plaint in paragraph 20A before the First Appellate Court. This amendment was pursuant to production of additional documents by the appellants including the birth certificate of D.Kulasekaran. A birth certificate can be used as a relevant piece of evidence to establish the date of birth of the individual and certainly, not with respect to other aspects for which necessary evidence will have to be produced. The birth certificate is issued by the Corporation authorities on the basis of information given. Before issuing the birth certificate, the Corporation authorities do not make any personal verification of the facts. The only verification they make is whether a child was actually born and whether such child was born on the given date mentioned and whether it was a male or female child. These are verified from the hospital records. There cannot be any doubt about the name of the mother. If

paternity is an issue, evidence regarding the same will have to be adduced. Therefore, even though I will have to express displeasure over the reasons given by the learned First Appellate Judge, with respect to the reasons for the names of strangers found in the stamp papers in the adoption deed Ex.B25, which reasons are straight away rejected by me, still since documentary evidence is available to show that subsequent to the adoption on 15.09.1962, both A.Dhanakotti Naicker and Saradammal have executed documents affirming such adoption, and since these documents are relied by the appellants themselves, without any further discussion on this point, I unhesitatingly answer that the Courts below were right in upholding the adoption of the 3rd defendant D.Kulasekaran by A.Dhanakotti Naicker and Saradammal.

97. As stated above, the further statement in the said substantial question of law regarding "Contradictory evidence that is available" is an affirmative statement and I would hold that the documentary evidence extracted above is more than sufficient to hold that the 3rd respondent D.Kulasekaran was indeed the adopted son of A.Dhanakotti Naicker and Saradammal.

98. Substantial Question of Law No.1:

I would next take up the first substantial question of law namely, whether the Courts below were right in holding that the life interest of Saradammal in the suit properties would not get enlarged solely on the ground that Ex.A1 does not specifically recite that the property was settled for maintenance. Even before entering into a discussion on this question, it must be pointed out that the learned counsel for the 1st respondent had raised a preliminary objection that no issue had been framed touching on this aspect by the Trial Court and consequently the question of law cannot be examined at this stage. With due respects to the learned counsel, I must point out that discussion in answering issue No.1 framed by the Trial Court naturally revolves around examining whether Saradammal had any right to renounce her interest in the suit property and that would further necessitate examining the provisions of Section 14 of the Hindu Succession Act, 1956. Hence, answer to this substantial question of law would also necessarily require examination on Section 14 of the Hindu Succession Act, 1956. Section 14 of the Hindu Succession Act 1956 is as follows:-

" (1) Any property possessed by a female Hindu, whethei 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 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."

99. Both parties relied on Ex.A1 and have argued extensively on the interpretation of the relevant clause in Ex.A1. It is the contention of the appellants that it should be interpreted that Section 14 (1) applies and the limited right given to Saradammal under Ex.A1 had blossomed into an absolute right, whereas, the respondents have argued that only a restricted right had been given to Saradammal and on her death, the property would flow to the 3rd defendant, D.Kulasekaran. Even before examining the provisions of law and the judgments cited, a brief narration of facts is required. The suit schedule property measuring 6.67 acres, at Seevaram village, Tambaram Taluk, Kancheepuram District was originally part of a larger extent of 14.99 acres in survey No.38/2. This was one of the several holdings of land and properties by S.Arumuga Naicker. On 31.08.1941, a family settlement and partition deed was executed among S.Arumuga Naicker and his two sons A.Dhanakotti Naicker and Parthasarathy Naicker. This was registered as Document No.1918/1941 in the office of the Sub Registrar, Periamet. Ex.A1 is a certified xerox copy. A typed version had also been produced.

100. However, I would give the extracts from a reading of Ex.A1 as it is. A perusal of the document shows that S.Arumuga Naicker was categorised as the party of the first part, A.Dhanakotti Naicker his son was categorised as the party of the second part and A.Parthasarathy Naicker another son was categorised as the the party of the third part. It was stated that the three of them formed a joint and undivided Hindu family. It was stated that the family also consisted of an unmarried daughter Vedavalli Ammal who was a minor aged 14 years and other daughters Gunabhushani Ammal, Dhanalakshmi Ammal, Mohanambal Ammal and Sakkubhai Ammal. It had been further stated that Gunabhushani Ammal was staying in the family owing to marital unhappiness and therefore there was an obligation to provide for her. Further, provisions had to be made for the unmarried daughter Vedavalli Ammal. It has been further stated that the parties had agreed to effect a division of the joint Hindu family status. It was further provided that the parties

settle upon Saradammal, wife of A.Dhanakotti Naicker, the land described as item No.4(b)(i) in schedule (A) which had been allotted to A.Dhanakotti Naicker and that the property shall be held and enjoyed by her during the period of her natural life without any rights of alienation by way of sale or by mortgage or exchange and after her life time, the said property shall vest in the children born of her who shall take the same absolutely and forever in equal shares and in default of any such issue, the property shall vest in her husband.

101. The issue which now arises for consideration is whether this settlement of a property which had been allotted to the share of her husband in a partition deed executed by the husband and his brother and father and simultaneously settled on to her would enlarge into an absolute title in the hands of Saradammal. Both the Courts below held that Saradammal had only a restricted right over the property and therefore, it would not enlarge as an absolute right and that therefore, the 3rd defendant as the only heir would get all rights of Saradammal on her death. In this connection, the learned counsel for the respondents had relied on (2008) 12 SCC 392, G.Rama Vs. T.G.Seshagiri and (2018) 12 SCC 1, Ranvir Dewan Vs. Rashmi Khanna and another.

102. In (2008) 12 SCC 392, G.Rama Vs. T.G.Seshagiri, the facts were that the property in question in that case was originally purchased by T.G.Seshagiri and his uncle T.K.Vasudeva Murthy, under a registered deed. Subsequently, T.K.Vasudeva Murthy relinquished his right to T.G.Seshagiri, who therefore became the absolute owner. The appellant G.Rama was the daughter-in-law of T.K.Vasudeva Murthy. She lost her husband and was permitted to reside in the house as a licensee. The Hon'ble Supreme Court in the first instance found that no issue had been framed regarding Section 14 and no evidence was also let in on the issue whether she was permitted to possess the property in lieu of maintenance. Reliance was placed on (1994) 2 SCC 111, Bhura Vs. Kashi Ram, wherein it had been held as follows:-

"the testator's intention of only creating a life interest in her and nothing more and the various expressions used therein are indicative of and are reconcilable only with the hypothesis that the testator was creating an estate in favour of ... (the female Hindu) only for her lifetime and not an absolute estate' [(1994) 2 SCC 111] .

20. Thus, in view of the fact that there were no indications, either in the will or externally, to indicate that the property had been given to the female Hindu in recognition of or in lieu of her right to maintenance, it was held that the situation fell within the ambit of sub-section (2) of Section 14 of the Act and that the

restricted life estate granted to the female Hindu could not be enlarged into an absolute estate. Learned counsel for the respondents relied strongly on this judgment and contended that there was no proposition of law that all dispositions of property made to a female Hindu were necessarily in recognition of her right to maintenance whether under the Shastric Hindu law or under the statutory law. Unless the said fact was independently established to the satisfaction of the court, the grant of the property would be subject to the restrictions contained therein, either by way of a transfer, gift or testamentary disposition. Learned counsel also distinguished the three cases cited by the learned counsel for the appellant that in each, the circumstances clearly indicated that the testamentary disposition was in lieu of the right of maintenance of the female Hindu. We think that this contention is well merited and needs to be upheld."

(emphasis supplied)

The Hon'ble Supreme Court therefore concluded as follows:-

"24. As noted above, no issue was framed and also no evidence was led to substantiate the plea that the appellant was occupying the premises in lieu of maintenance. In view of this factual position and the proposition of law referred to above, the inevitable conclusion is that the appeal is without merit, deserves dismissal, which we direct. No costs."

(emphasis supplied)

In the instant case, discussion on issue No.1 framed by the Trial Court necessarily revolved around Section 14 of the Hindu Succession Act, 1956.

103. In (2018) 12 SCC 1, Ranvir Dewan Vs. Rashmi Khanna and another, the facts were that the testator had a wife and son and a daughter. He executed a Will with respect to his properties. With respect to the suit property, he bequeathed the ground floor to his son and the first floor to his daughter with absolute rights of ownership. He also gave a life interest to his wife to reside in the house till her death. This disposition, the Hon'ble Supreme Court held, would not enlarge into an absolute right since only a restricted right was given. The absolute right had already been granted to son and daughter.

104. The Hon'ble Supreme Court on these facts held as follows:-

"31. In other words, the question that arises for consideration in this appeal is, what is the true

nature of the right received by Mrs Pritam in the suit house through will dated 24-8-1986 from her husband viz. "absolute" by virtue of Section 14(1) of the Act or "life interest" by virtue of Section 14(2) of the Act.

32. In order to decide the question as to whether the appellant's case falls under Section 14(1) or (2) of the Act, it is necessary to first examine as to what is the true nature of the estate held by the testator. Second, what the testator had intended and actually bequeathed to his wife by his will; and lastly, the right in the property received by Mrs Pritam viz. absolute interest by virtue of sub-section (1) or "life interest" by virtue of sub-section (2) of Section 14 of the Act.

33. Coming now to the facts of the case, it is not in dispute that the suit house was the self-acquired property of late Mr Dewan. It is also not in dispute as one can take it from reading the contents of the will that Mr Dewan had intended to give only "life interest" to his wife in the suit house, which he gave to her for the first time by way of disposition of his estate independent of her any right. It is also not in dispute that it was confined to a right of residence to live in the suit house during her lifetime and to use the income earned from the suit house to maintain herself and the suit house. It is also not in dispute that the testator gave to his son ground floor of the suit house and first floor to his daughter with absolute right of ownership. The testator also permitted both of them to get their names mutated in the municipal records as absolute owners and also get them assessed as owners in the wealth tax assessment cases.

34. So far as other properties viz. one plot at Ghaziabad, share in HUF and movable properties were concerned, Mr Dewan gave these properties to Mrs Pritam, his wife absolutely.

35. It is a settled principle of law that what the testator intended to bequeath to any person(s) in his will has to be gathered primarily by reading the recitals of the will only.

36. As mentioned above, reading of the will would go to show that it does not leave any kind of ambiguity therein and one can easily find out as to how and in what manner and with what rights, the testator wished to give to three of his legal representatives his self-acquired properties and how he wanted to make its disposition.

37. Law relating to interpretation of Sections 14 (1) and (2) of the Act is fairly well settled by a

series of decisions of this Court. However, the discussion on the interpretation of Sections 14(1) and (2) of the Act can never be complete without mentioning the first leading decision of this Court in V. Tulasamma v. Sesha Reddy [V. Tulasamma v. Sesha Reddy, (1977) 3 SCC 99] . In this decision, their Lordships (three-Judge Bench) interpreted succinctly sub-sections (1) and (2) of Section 14 of the Act and then on facts involved in that case held that the case falls under Section 14(1) of the Act. This decision is referred by this Court in every subsequent case dealing with the issue relating to Section 14 of the Act and then after explaining its ratio has applied the same to the facts of each case to find out as to whether the case on hand attracts Section 14(1) or 14(2) of the Act. Indeed, we find that attempts were made in past for reconsideration of the law laid down in V. Tulasamma [V. Tulasamma v. Sesha Reddy, (1977) 3 SCC 99] , but this Court consistently turned down the request. (See Gullapalli Krishna Das v. Vishnumolakayya Venkayya [Gullapalli Krishna Das v. Vishnumolakayya Venkayya, (1978) 1 SCC 67] , Bai Vajia v. Thakorbhai Chelabhai [Bai Vajia v. Thakorbhai Chelabhai, (1979) 3 SCC 300] and Thota Sesharathamma v. Thota Manikyamma [Thota Sesharathamma v. Thota Manikyamma, (1991) 4 SCC 312] .)

38. In V. Tulasamma [V. Tulasamma v. Sesha Reddy, (1977) 3 SCC 99] , the learned Judge, S. Murtaza Fazal Ali, J. speaking for the Bench, succinctly and in a lucid manner while analysing the true scope of Sections 14(1) and (2) of the Act held as under: (SCC pp. 102-03)

"(3) Section 14(1) and the Explanation thereto of the Hindu Succession Act, 1956, provide that any property possessed by a female Hindu, whether acquired before or after the commencement of the 1956 Act, shall be held by her as full owner thereof and not as a limited owner; and that "property" includes both movable and immovable property acquired by her by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether from 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 the 1956 Act. The language is in the widest

possible terms and must be liberally construed in favour of the females so as to advance the object of the Act and promote the socio-economic ends, namely, to enlarge her limited interest to absolute ownership in consonance with the changing temper of the times sought to be achieved by such a long legislation.

(4) Section 14(2) provides that nothing contained in Section 14(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 decree, order or award prescribes a restricted estate in such property. It is in the nature of a proviso and has a field of its own without interfering with the operation of Section 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14(1) or in a way so as to become totally inconsistent with the main provision.

(5) Section 14(2) applies only to instruments, decrees, awards, gifts, etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise pre-existing rights. In such cases, a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in that sphere. Where, however, an instrument merely declares or recognises a pre-existing right such as a claim to maintenance or partition or share to which the female is entitled, Section 14(2) has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14(1) and the restrictions placed, if any, under the document would have to be ignored. Thus, where a property is allotted or transferred to a female in lieu of maintenance or a share at a partition, the instrument is taken out of the ambit of sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.

(6) The use of terms like "property acquired by a female Hindu at a partition", "or in lieu of maintenance", or "arrears of maintenance" etc. in the Explanation to Section 14(1) clearly makes sub-section (2) inapplicable to these categories which have been expressly excepted from the operation of sub-section (2).

(8) The words "restricted estate" in Section 14(2) are wider than limited interest as indicated in Section 14(1) and they include not only limited interest but also any other kind of limitation that may be placed on the transferee."

39. Similarly, while explaining the ratio of V. Tulasamma [V. Tulasamma v. Sesha Reddy, (1977) 3 SCC 99] and how one has to read the ratio for being applied to the facts of a particular case, this Court in Sadhu Singh v. Gurdwara Sahib Narike [Sadhu Singh v. Gurdwara Sahib Narike, (2006) 8 SCC 75] again succinctly discussed the applicability of Sections 14(1) and (2) of the Act and on facts involved therein held that the facts involved would attract Section 14(2) of the Act. Balasubramanyan, J. speaking for the two-Judge Bench held in paras 13, 14 and 15 as under: (Sadhu Singh case [Sadhu Singh v. Gurdwara Sahib Narike, (2006) 8 SCC 75], SCC pp. 86-87)

"13. An owner of property has normally the right to deal with that property including the right to devise or bequeath the property. He could thus dispose it of by a testament. Section 30 of the Act, not only does not curtail or affect this right, it actually reaffirms that right. Thus, a Hindu male could testamentarily dispose of his property. When he does that, a succession under the Act stands excluded and the property passes to the testamentary heirs. Hence, when a male Hindu executes a will bequeathing the properties, the legatees take it subject to the terms of the will unless of course, any stipulation therein is found invalid. Therefore, there is nothing in the Act which affects the right of a male Hindu to dispose of his property by providing only a life estate or limited estate for his widow. The Act does not stand in the way of his separate properties being dealt with by him as he

deems fit. His will hence could not be challenged as being hit by the Act.

14. When he thus validly disposes of his property by providing for a limited estate to his heir, the wife, 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.

15. Dealing with the legal position established by the decisions in Tulasamma [V. Tulasamma v. Sesha Reddy, (1977) 3 SCC 99] and Bai Vajia v. Thakorbhai Chelabhai [Bai Vajia v. Thakorbhai Chelabhai, (1979) 3 SCC 300] the position regarding the application of Section 14(2) of the Act is summed up in Mayne on Hindu Law thus: (SCC pp. 135-36, para 61)

'61. ... (4) Sub-section (2) of Section 14 applies to instruments, decrees, awards, gifts, etc. which create independent and new titles in favour of females for the first time and has no application where the

instrument concerned merely seeks to confirm, endorse, declare or recognise pre-existing rights. [The creation of] a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in [such a case]. ... where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.' (See p. 1172 of the 15th Edn.)"

40. Reading of the aforementioned principle of law laid down in V. Tulasamma [V. Tulasamma v. Sesha Reddy, (1977) 3 SCC 99] and Sadhu Singh [Sadhu Singh v. Gurdwara Sahib Narike, (2006) 8 SCC 75], 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 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 case [Sadhu Singh v. Gurdwara Sahib Narike, (2006) 8 SCC 75] would apply.

42. A fortiori, Plaintiff 2, late Mrs Pritam received only "life interest" in the suit house by the will dated 24-6-1986 from her late husband and such "life interest" was neither enlarged nor ripened into an absolute interest in the suit house and remained "life interest" i.e. "restricted estate" till her death under Section 14(2) of the Act. This we say for the following factual reasons arising in the case.

42.1. First, the testator, Mr Dewan being the exclusive owner of the suit house was free to dispose of his property the way he liked because it was his

self-earned property.

42.2. Second, the testator gave the suit house in absolute ownership to his son and the daughter and conferred on them absolute ownership. At the same time, he gave only "life interest" to his wife i.e. a right to live in the suit house which belonged to son and daughter. Such disposition, the testator could make by virtue of Section 14(2) read with Section 30 of the Act.

42.3. Third, such "life interest" was in the nature of "restricted estate" under Section 14(2) of the Act which remained a "restricted estate" till her death and did not ripen into an "absolute interest" under Section 14(1) of the Act. In other words, once the case falls under Section 14(2) of the Act, it comes out of Section 14(1). It is permissible in law because Section 14(2) is held as proviso to Section 14(1) of the Act.

42.4. Fourth, the effect of the will once became operational after the death of the testator, the son and the daughter acquired absolute ownership in the suit house to the exclusion of everyone whereas the wife became entitled to live in the suit house as of right. In other words, the wife became entitled in law to enforce her right to live in the suit house qua her son/daughter so long as she was alive. If for any reason, she was deprived of this right, she was entitled to enforce such right qua son/daughter but not beyond it. However, such was not the case here.

42.5. Fifth, the testator had also given his other properties absolutely to his wife which enabled her to maintain herself. Moreover, a right to claim maintenance, if any, had to be enforced by the wife. She, however, never did it and rightly so because both were living happily. There was, therefore, no occasion for her to demand any kind of maintenance from her husband.

42.6. Sixth, it is a settled principle of law that the "life interest" means an interest which determines on the termination of life. It is incapable of being transferred by such person to others being personal in nature. Such person, therefore, could enjoy the "life interest" only during his/her lifetime which is extinguished on his/her death. Such is the case here. Her "life interest" in the suit house was extinguished on her death on 12-9-2016.

42.7. Seventh, as mentioned above, the facts of the case on hand and the one involved in Sadhu Singh [Sadhu Singh v. Gurdwara Sahib Narike, (2006) 8 SCC 75] are found to be somewhat similar. The facts

of Sadhu Singh [Sadhu Singh v. Gurdwara Sahib Narike, (2006) 8 SCC 75] were that the husband executed a will in favour of his wife of his self-acquired property in 1968. Though he gave to his wife absolute rights in the properties bequeathed but some restrictions were put on her right to sell/mortgage the properties and further it was mentioned in the will that the said properties after wife's death would go to the testator's nephew. Due to these restrictions put by the testator on his wife's right to sell/mortgage, it was held that the wife received only the "life interest" in the properties by will and such "life interest", being a "restricted estate" within the meaning of Section 14(2) of the Act, did not enlarge and nor ripen into the absolute interest under Section 14(1) but remained a "life interest" i.e. "restricted estate" under Section 14(2) of the Act. It was held that such disposition made by the husband in favour of his wife was permissible in law in the light of Section 14(2) read with Section 30 of the Act. In our view, the facts of the case on hand are similar to the facts of Sadhu Singh case [Sadhu Singh v. Gurdwara Sahib Narike, (2006) 8 SCC 75] and, therefore, this case is fully covered by the law laid down in Sadhu Singh case [Sadhu Singh v. Gurdwara Sahib Narike, (2006) 8 SCC 75] .

43. In view of the foregoing discussion, we are of the considered opinion that there is no error in the impugned judgment [Pritam Dewan v. Rashmi Khanna, 2016 SCC OnLine Del 3854] , which has rightly held that the case of Mrs Pritam (Plaintiff 2) falls under Section 14 (2) of the Act insofar as it relates to the suit house.

44. We, therefore, find no merit in the appeal, which thus fails and is accordingly dismissed. "

(emphasis supplied)

105. A careful perusal of the said judgment shows that the Hon'ble Supreme Court had contended that the wife would get only a restricted right since life interest was alone given to her in a house which was bequeathed to a son and a daughter. Therefore, the testator can give only a restricted right. It was also stated that a Will can become operational, only after the death of the testator and when it became operational, the son and daughter became absolute owners of the property. The wife can only enforce her right to live in the house. It was also found in the fact that other properties were also given to the wife for her maintenance. It was also held that a life interest cannot be transferred to any other person, since it is personal in nature. It extinguishes on his/her death. Reliance was also placed on (2006) 8 SCC 75, Sadhu Singh Vs. Gurudwara Sahib Narike,

106. In the instant case, it would be fruitful to extract the clause which had been summarized from Ex.A1 in full.

"That the party hereto hereby settles upon Sardambal Ammal wife of the part hereto of the second party of the said caste and sect and residing with her husband and at the address above said the land described as items-4 (b) (I) of the family assets in Schedule A hereto and) which amongst others have been allotted to the share of the party hereto the second part to be henceforth held and enjoy by her during the period of her natural life without any right of alienation by way of sale, mortgage, gift, or exchange and alter her life time the said property shall vest with in the children born of her, who shall take the same absolutely and for ever in equal shares and in default of any such issue the property shall vest in her husband the party hereto of the second part and in his right heirs that the party hereto of the second part shall hold and enjoy with full rights of alienation absolutely and forever."

107. The learned First Appellate Judge had entered upon discussion on Section 18 of the Hindu Adoptions and Maintenance Act, 1956. Such a discussion was totally unwarranted. It relates to maintenance with specific reference to entitlement to live separately and also claim maintenance. In the instant case as seen above, Saradammal was residing along with A.Dhanakotti Naicker. She did not live separately. Therefore, the provisions under Section 18 of the Hindu Adoptions and Maintenance Act, 1956, would not get attracted to the facts of this case.

108. The learned counsel for the respondent had also relied on (2006) 8 SCC 75, Sadhu Singh Vs. Gurudwara Sahib Narike. This judgment had been relied on by the Hon'ble Supreme Court in (2018) 2 SCC 1, Ranvir Dewan Vs. Rashmi Khanna and another, (referred supra).

109. The facts of this case are that, Ralla Singh had a wife Isher Kaur and two nephews. They had no children. On 1968, he executed a Will. He died on 19.03.1977. His wife gifted the property to a Gurudwara on 21.01.1980. The appellant Sadhu Singh filed a suit seeking recovery of possession claiming that in the Will, Isha Kaur took only a life estate and the properties were to vest with the appellant and his brother. It was stated that she had no right to gift the property to Gurudwara. It was stated that she was bound by the terms of the Will. The Hon'ble Supreme Court while examining, held as follows:-

"14. When he thus validly disposes of his property

by providing for a limited estate to his heir, the wife, 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.

15. Dealing with the legal position established by the decisions in *Tulasamma* [(1977) 3 SCC 99 : (1977) 3 SCR 261] and *Bai Vajia v. Thakorbhai Chelabhai* [(1979) 3 SCC 300] the position regarding the application of Section 14(2) of the Act is summed up in Mayne on Hindu Law thus:

"Sub-section (2) of Section 14 applies to instruments, decrees, awards, gifts, etc., which create independent and new title in favour of females for the first time and has no application where the instruments concerned merely seek to confirm, endorse, declare or recognise pre-existing rights. The creation of a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in such a case. Where property is allotted or transferred to a female in lieu of maintenance or a share at partition the instrument is taken out of the ambit of sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee."

(emphasis supplied)

110. The Hon'ble Supreme Court held that a Will must be harmoniously interpreted and all the clauses of the Will must be reconciled and given effect. The Hon'ble Supreme Court held as follows in paragraph 20:-

"20. Thus the first attempt must be to reconcile all the clauses in the will and give effect to all of them. When we make that attempt in the context of what this Court had indicated in the decision quoted above, we find that the apparent absolute estate given to his wife by the testator is sought to be cut down by the stipulations that the property must go to his nephews after the death of the wife, that the wife cannot testamentarily dispose of the property in favour of anyone else and the further interdict in the note that the wife during her lifetime would not be entitled to mortgage or sell the properties. Thus on reconciling the various clauses in the will and the destination for the properties that the testator had in mind, we have no hesitation in coming to the conclusion that the apparent absolute estate in favour of Isher Kaur has to be cut down to a life estate so as to accommodate the estate conferred on the nephews."

(emphasis supplied)

111. Though the distinct factum was that the Will must be read as a whole, and a bequeath was given to the nephews, it was held that, the Will must be upheld. It must also be kept in mind that in paragraph 14 extracted above, the Hon'ble Supreme Court had actually observed as follows:-

"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."

(emphasis supplied)

112. The learned counsel for the respondents also relied on (2003) 1 SCC 212, Gulabrao Balwantrao Shinde & Ors Vs. Chhabubai Balwantrao Shinde & Ors., for the proposition that a finding that properties were given in lieu of maintenance to the second wife and had enlarged into full ownership cannot be recorded in the absence of pleadings and evidence to that effect. The learned counsel relied on the head note of the said judgment. A careful reading of the judgment shows that there was no document granting any right to the second wife. The facts are that Balwantrao Shinde had two wives, Anjanabai and Chhabubai. The plaintiffs were the children of Anjanabai and the defendants were Chhabubai and her children. Chhabubai claimed that as a

second wife she had a right to live in the property. There was no document to that effect. In the absence of any such document giving her such a right, the Hon'ble Supreme Court held that the Court cannot grant any right to her.

113. The facts in the present case are distinguishable. The suit property measuring 6.67 acres in S.No.38/2b, Seevaram Village, Tambaram Taluk, Kancheepuram District, was part of a larger extent of 14.99 acres and several other properties belonged to S.Arumuga Naicker who formed a joint Hindu family with his sons A.Dhanakotti Naicker and A.Parthasarathi Naicker. The three of them entered into a registered family settlement and partition deed, registered as Document No. 1918/1941 on 31.08.1941, registered in the Office of the Sub-Registrar, Periamet. Properties were allotted to each one of them. Very specifically in the deed, it was also mentioned that one of the daughters Gunabhushani Ammal had come back to the family, in view of marital unhappiness and therefore, required maintenance. Further Vedavalli Ammal as a minor unmarried daughter also had to be provided for. These two facts had been stressed by the learned counsel for the respondents who stated that the provisions made for Gunabhushani Ammal and Vedavalli Ammal in the deed specifically mentioned that they required to be maintained by the family. It was stated that therefore the property given to Gunabhushani Ammal and the provisions for marriage made to Vedavalli Ammal were borne out of necessity. A reading of the document shows that the property was given to Gunabhushani Ammal with full rights of alienation. It was settled on to her absolutely. Therefore, such settlement will not come either under Section 14(1) or under Section 14(2) of the Hindu Succession Act 1956. It was a pure and simple absolute settlement. The provision made for the Vedavalli Ammal was in terms of money to be provided at the time of her marriage. Again this provision cannot be stretched to bring it either under Section 14(1) or under Section 14(2) of the Hindu Succession Act. The two provisions are both independent settlements made on the daughters of the family. They have not been carved out of any specific allotment made to either S.Arumuga Naicker or A.Dhanakotti Naicker or A.Parthasarathi Naicker.

114. In the document it had been further stated that among the properties allotted to A.Dhanakotti Naicker, land measuring 14.99 acres in Seevaram village, shall be settled in favour of his wife Saradammal. This was described as item No.14(b)(i) of Schedule A to the document. Among the terms for such settlement was that the property shall be hold and enjoyed by her during her natural life without any alienation by way of sale, mortgage, gift or exchange and after her life time, the property shall vest with the children born of her. The recitals stated above have been interpreted by the learned counsel for the

respondents and also by the Courts below, as being a restricted right. In this connection, the ratio laid down in (2006) 8 SCC 75, Sadhu Singh Vs. Gurudwara Sahib Narike (referred above), that a life interest cannot be alienated will have to be examined. In that case, the life interest was granted by a Will and the document as a whole was examined by the Hon'ble Supreme Court and they found that the intention was that the property should actually devolve to the nephews of the testator. It was held that a limited right to stay in the house cannot be alienated. In the present case, the father S.Arumuga Naicker and his two sons A.Dhanakotti Naicker and A.Parthasarathy Naicker, had all jointly and consciously divided the properties amongst of them under the partition deed and further under the very same deed had settled one property which was allotted to A.Dhanakotti Naicker to his wife Saradammal. It was stated that if any children are born to her after her death, the property will go to her children. If no children are born to her, the property will go back to A.Dhanakotti Naicker. It must be kept in mind that evidence is available for the fact that three children had been born to A.Dhanakotti Naicker and Saradammal, but all three had unfortunately died. She was a lady who had to be provided for. As a wife/daughter-in-law, she had to be maintained. There was a duty cast on both A.Dhanakotti Naicker and S.Arumuga Naicker, and settlement of the property was on a lady who had a pre-existing right in view of her status as wife of A.Dhanakotti Naicker.

115. The primary intention of the parties to Ex.A1 was to settle a property on Saradammal during her life time. The primary intention was not for the property to be reverted back either to her children or back to her husband. There were no children available. Birth of children was not perceived as a certain possibility. Three children had been born and had died. This fact has to be contrasted with the facts in (2006) 8 SCC 75, Sadhu Singh Vs. Gurudwara Sahib Narike and Ranvir Dewan Vs. Rashmi Khanna and another, (both referred above).

116. In both those cases, the primary intention was that the property must devolve to the children and owing to that, since there had been a denial of bequeath to the widow/wife, she was given a right to stay in the house. In Ex.A1 in the instant case, the terms are very clear. The property was allotted to Saradammal for her life time. At that time she had no children. This was a distinguishable factor. The question arises as to what would happen after her life time. After her life time, if she has children, it will go to them. If she has no children, it will come to her husband. It was an allotment in her name. During her life time, with respect to her right to stay in the house, there was no restriction at all.

117. Now, it would be fruitful to re-examine the wordings of Section 14 of Hindu Succession Act 1956. It must also be kept in mind that every wife acquires a pre-existing right of maintenance, the minute she gets married. Every husband has a pre-existing duty to maintain his wife. It is a natural effect of marriage. As a matter of fact, law has today developed to such an extent that in Domestic Violence Act, the right of a live-in partner to seek protection of residence has also been recognized. Be that as it may, under Section 14, the word used is not "wife" or "widow" or "any such relation". The words used are "female Hindus". The property can be acquired either by inheritance or by devise or at a partition or in lieu of maintenance or as arrears of maintenance or by gift or by her own skill or by purchase or by prescriptive or in other manner. Thus in some form or the other, the property should be acquired by a female Hindu. If it is so, then, she gets full ownership thereof and not limited ownership. The words "limited owner" has to be contrasted with the words "restricted estate" as given in Section 14 (2) of the Act.

118. In a restricted estate, the terms are specifically mentioned in the deed. In the instant case, the very fact that Saradammal was given the right to live till her death showing that she had been granted a limited right of ownership and not a restricted estate. The possibility of her begetting children was considered to be remote and that is why it was further provided that in the absence of children, the property would go back to her husband. The property was not allotted to the children/husband and then a right to live was granted to her. The property was primarily allotted to her. Her right as limited owner will naturally blossom into full ownership. It blossomed on the very day, the Hindu Succession Act, 1956, came into force. When it has so blossomed, she has every right to execute a deed with respect to the property. The arguments that she had no right of alienation in any manner has no credence since, as a wife, she had a pre-existing right to any property allotted to A.Dhanakotti Naicker. That right was not only a right to be maintained during her life time, but also a right to reside in the property during her life time. Therefore, I hold that on facts, the right of Saradammal had blossomed into absolute estate. In this connection, reference with much advantage can be made to (1977) 3 SCC 99 116, V.Tulasamma & Ors Vs. V.Sesha Reddi.

"61. We would now like to summarise the legal conclusions which we have reached after an exhaustive considerations of the authorities mentioned above on the question of law involved in this appeal as to the interpretation of Sections 14(1) and (2) of the Act of 1956. These conclusions may be stated thus:

"(1) The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure Shastric Hindu law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or recognising such a right does not confer any new title but merely endorses or confirms the pre-existing rights.

(2) Section 14(1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the socio-economic ends sought to be achieved by this long needed legislation.

(3) Sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own without interfering with the operation of Section 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14(1) or in a way so as to become totally inconsistent with the main provision.

(4) Sub-section (2) of Section 14 applies to instruments, decrees, awards, gifts, etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise pre-existing rights. In such cases a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in this sphere. Where, however, an instrument merely declares or recognises a pre-existing right, such as a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14(1) and the restrictions placed, if any, under the document would have to be ignored. Thus where

a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.

(5) The use of express terms like 'property acquired by a female Hindu at a partition', 'or in lieu of maintenance', 'or arrears of maintenance', etc. in the Explanation to Section 14(1) clearly makes sub-section (2) inapplicable to these categories which have been expressly excepted from the operation of sub-section (2).

(6) The words 'possessed by' used by the Legislature in Section 14(1) are of the widest possible amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same. Thus, where a widow gets a share in the property under a preliminary decree before or at the time when the 1956 Act had been passed but had not been given actual possession under a final decree, the property would be deemed to be possessed by her and by force of Section 14(1) she would get absolute interest in the property. It is equally well settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser without any right or title.

(7) That the words 'restricted estate' used in Section 14(2) are wider than limited interest as indicated in Section 14(1) and they include not only limited interest, but also any other kind of limitation that may be placed on the transferee."

62. Applying the principles enunciated above to the facts of the present case, we find:

"(i) that the properties in suit were allotted to the appellant Tulasamma on July 30, 1949 under a compromise certified by the Court;

(ii) that the appellant had taken only a life interest in the properties and there was a clear restriction prohibiting her from alienating the properties;

(iii) that despite these restrictions, she continued to be in possession of the properties till 1956 when the Act of 1956 came into force; and

(iv) that the alienations which she had made in 1960 and 1961 were after she had acquired an absolute interest in the properties."

63. It is, therefore, clear that the compromise by which the properties were allotted to the appellant

Tulasamma in lieu of her maintenance were merely in recognition of her right to maintenance which was a pre-existing right, and, therefore, the case of the appellant would be taken out of the ambit of Section 14 (2) and would fall squarely within Section 14(1) read with the Explanation thereto. Thus the appellant would acquire an absolute interest when she was in possession of the properties at the time when the 1956 Act came into force and any restrictions placed under the compromise would have to be completely ignored. This being the position, the High Court was in error in holding that the appellant Tulasamma would have only a limited interest and in setting aside the alienations made by her. We are satisfied that the High Court decreed the suit of the plaintiffs on an erroneous view of the law.

67. The short question that arises for determination in this appeal is as to whether it is sub-section (1) or sub-section (2) of Section 14 of the Hindu Succession Act, 1956 that applies where property is given to a Hindu female in lieu of maintenance under an instrument which in so many terms restricts the nature of the interest given to her in the property. If sub-section (1) applies, then the limitation on the nature of her interest are wiped out and she becomes the full owner of the property, while on the other hand, if sub-section (2) governs such a case, her limited interest in the property is not enlarged and she continues to have the restricted estate prescribed by the instrument. The question is of some complexity and it has evoked wide diversity of judicial opinion not only amongst the different High Courts but also within some of the High Courts themselves. It is indeed unfortunate that though it became evident as far back as 1967 that sub-sections (1) and (2) of Section 14 were presenting serious difficulties of construction in cases where property was received by a Hindu female in lieu of maintenance and the instrument granting such property prescribed a restricted estate for her in the property and divergence of judicial opinion was creating a situation which might well be described as chaotic, robbing the law of that modicum of certainty which it must always possess in order to guide the affairs of men, the legislature, for all these years, did not care to step in to remove the constructional dilemma facing the courts and adopted an attitude of indifference and inaction, untroubled and unmoved by the large number of cases on this point encumbering the files of different courts in the country, when by the simple expedient of an amendment, it could have silenced judicial conflict

and put an end to needless litigation. This is a classic instance of a statutory provision which, by reason of its inapt draftsmanship, has created endless confusion for litigants and proved a paradise for lawyers. It illustrates forcibly the need of an authority or body to be set up by the Government or the Legislature which would constantly keep in touch with the adjudicatory authorities in the country as also with the legal profession and immediately respond by making recommendations for suitable amendments whenever it is found that a particular statutory provision is, by reason of inapt language or unhappy draftsmanship, creating difficulty of construction or is otherwise inadequate or defective or is not well conceived and is consequently counterproductive of the result it was intended to achieve. If there is a close inter-action between the adjudicatory wing of the State and a dynamic and ever-alert authority or body which responds swiftly to the drawbacks and deficiencies in the law in action, much of the time and money, which is at present expended in fruitless litigation, would be saved and law would achieve a certain amount of clarity, certainty and simplicity which alone can make it easily intelligible to the people.

68. Since the determination of the question in the appeal turns on the true interpretation to be placed on sub-section (2) read in the context of sub-section (1) of Section 14 of the Hindu Succession Act, 1956, it would be convenient at this stage to set out both the sub-sections of that section which read as follows:

"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 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." Prior to the enactment of Section 14, the Hindu law, as it was then in operation, restricted the nature of the interest of a Hindu female in property acquired by her and even as regards the nature of this restricted interest, there was great diversity of doctrine on the subject. The Legislature, by enacting sub-section (1) of Section 14, intended, as pointed by this Court in S.S. Munna Lal v. S.S. Rajkumar [AIR 1962 SC 1493 : 1962 Supp 3 SCR 418] "to convert the interest which a Hindu female has in property, however, restricted the nature of that interest under the Shastric Hindu law may be, into absolute estate". This Court pointed out that the Hindu Succession Act, 1958 "is a codifying enactment, and has made far-reaching changes in the structure of the Hindu law of inheritance, and succession. The Act confers upon Hindu females full rights of inheritance and sweeps away the traditional limitations on her powers of disposition which were regarded under the Hindu law as inherent in her estate". Sub-section (1) of Section 14, is wide in its scope and ambit and uses language of great amplitude. It says that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as full owner thereof and not as a limited owner. The words "any property" are, even without any amplification, large enough to cover any and every kind of property, but in order to expand the reach and ambit of the section and make it all comprehensive, the Legislature has enacted an explanation which says that property would include "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 also any such property held by her as stridhana immediately before the commencement" of the Act. Whatever be the kind of property, movable or immovable, and whichever be the mode of acquisition, it would be covered by sub-section (1) of Section 14, the object of the Legislature being to wipe out the disabilities from which a Hindu female suffered in regard to ownership of property under the old Shastric law, to abridge the stringent provisions against proprietary rights which were often regarded as evidence of her perpetual tutelage and to recognise her

status as an independent and absolute owner of property. This Court has also in a series of decisions given a most expansive interpretation to the language of sub-section (1) of Section 14 with a view to advancing the social purpose of the legislation and as part of that process, construed the words "possessed of" also in a broad sense and in their widest connotation. It was pointed out by this Court in *Gummalapura Taggina Matada Kotturuswami v. Satre Veerayya* [AIR 1959 SC 577 : 1959 Supp 1 SCR 968 : 1959 SCJ 437] that the words "possessed of" mean "the state of owning or having in one's hand or power". It need not be actual or physical possession or personal occupation of the property by the Hindu female, but may be possession in law. It may be actual or constructive or in any form recognised by law. Elaborating the concept, this Court pointed out in *Mangal Singh v. Rattno* [AIR 1967 SC 1786 : (1967) 3 SCR 454 : (1968) 1 SCJ 468] that the section covers all cases of property owned by a female Hindu although she may not be in actual, physical or constructive possession of the property, provided of course, that she has not parted with her rights and is capable of obtaining possession of the property. It will, therefore, be seen that sub-section (1) of Section 14 is large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or was subsequently acquired and possessed, she would become the full owner of the property.

69. Now, sub-section (2) of Section 14 provides that 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. This provision is more in the nature of a proviso or exception to sub-section (1) and it was regarded as such by this Court in *Badri Pershad v. Kanso Devi* [(1969) 2 SCC 586 : (1970) 2 SCR 95]. It excepts certain kinds of acquisition of property by a Hindu female from the operation of sub-section (1) and being in the nature of an exception to a provision which is calculated to achieve a social purpose by bringing about change in the social and economic position of women in Hindu society, it must be construed strictly so as to impinge as little as possible on the broad sweep of the ameliorative provision contained in sub-

section (1). It cannot be interpreted in a manner which would rob sub-section (1) of its efficacy and deprive a Hindu female of the protection sought to be given to her by sub-section (1). The language of sub-section (2) is apparently wide to include acquisition of property by a Hindu female under an instrument or a decree or order or award where the instrument, decree, order or award prescribes a restricted estate for her in the property and this would apparently cover a case where property is given to a Hindu female at a partition or in lieu of maintenance and the instrument, decree, order or award giving such property prescribes limited interest for her in the property. But that would virtually emasculate sub-section (1), for in that event, a large number of cases where property is given to a Hindu female at a partition or in lieu of maintenance under an instrument, order or award would be excluded from the operation of the beneficent provision enacted in sub-section (1), since in most of such cases, where property is allotted to the Hindu female prior to the enactment of the Act, there would be a provision, in consonance with the old Shastric law then prevailing, prescribing limited interest in the property and where property is given to the Hindu female subsequent to the enactment of the Act, it would be the easiest thing for the dominant male to provide that the Hindu female shall have only a restricted interest in the property and thus make a mockery of sub-section (1). The Explanation to sub-section (1) which includes within the scope of that sub-section property acquired by a female Hindu at a partition or in lieu of maintenance would also be rendered meaningless, because there would hardly be a few cases where the instrument, decree, order or award giving property to a Hindu female at a partition or in lieu of maintenance would not contain a provision prescribing restricted estate in the property. The social purpose of the law would be frustrated and the reformist zeal underlying the statutory provision would be chilled. That surely could never have been the intention of the Legislature in enacting sub-section (2). It is an elementary rule of construction that no provision of a statute should be construed in isolation but it should be construed with reference to the context and in the light of other provisions of the Statute so as, as far as possible, to make a consistent enactment of the whole statute. Sub-section (2) must, therefore, be read in the context of sub-section (1) so as to leave as large a scope for operation as possible to sub-section (1) and so read, it 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. This constructional approach finds support in the decision in *Badri Pershad* case where this Court observed that sub-section (2) "can come into operation only if acquisition in any of the methods enacted therein is made for the first time without there being any pre-existing right in the female Hindu who is in possession of the property". It may also be noted that when the Hindu Succession Bill 1954, which ultimately culminated into the Act, was referred to a Joint Committee of the Rajya Sabha, clause 16(2) of the Draft Bill, corresponding to the present sub-section (2) of Section 14, referred only to acquisition of property by a Hindu female under gift or will and it was subsequently that the other modes of acquisition were added so as to include acquisition of property under an instrument, decree, order or award. This circumstance would also seem to indicate that the legislative intentment was that sub-section (2) should be applicable only to cases where acquisition of property is made by a Hindu female for the first time without any pre-existing right – a kind of acquisition akin to one under gift or will. 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 sub-section (2), even if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property.

70. This line of approach in the construction of sub-section (2) of Section 14 is amply borne out by the trend of judicial decisions in this Court. We may in this connection refer to the decision in *Badri Pershad* case. The facts in that case were that one Gajju Mal owning self-acquired properties died in 1947 leaving five sons and a widow. On August 5, 1950, one Tuisi Ram Seth was appointed by the parties as an arbitrator for resolving certain differences which had arisen relating to partition of the properties left by Gajju Mal. The arbitrator made his award on October 31, 1950 and under clause 6 of the award, the widow was awarded certain properties and it was expressly stated in the award that she would have a widow's estate in the properties awarded to her. While the widow was in possession of the properties, the Act came into force and the question arose whether on the coming into force of the

Act, she became full owner of the properties under sub-section (1) or her estate in the properties remained a restricted one under sub-section (2) of Section 14. This Court held that although the award gave a restricted estate to the widow in the properties allotted to her, it was sub-section (1) which applied and not sub-section (2), because inter alia the properties given to her under the award were on the basis of a pre-existing right which she had as an heir of her husband under the Hindu Women's Right to Property Act, 1937 and not as a new grant made for the first time. So also in *Nirmal Chand v. Vidya Wanti* (dead) by her legal representatives [(1969) 3 SCC 628] there was a regular partition deed made on December 3, 1945 between Amin Chand, a coparcener and Subhrai Bai, the widow of a deceased coparcener, under which a certain property was allotted to Subhrai Bai and it was specifically provided in the partition deed that Subhrai Bai would be entitled only to the user of the property and she would have no right to alienate it in any manner but would only have a life interest. Subhrai Bai died in 1957 subsequent to the coming into force of the Act after making a will bequeathing the property in favour of her daughter Vidyawanti. The right of Subhrai Bai to bequeath the property by will was challenged on the ground that she had only a limited interest in the property and her case was covered by sub-section (2) and not sub-section (1). This contention was negatived and it was held by this Court that though it was true that the instrument of partition prescribed only a limited interest for Subhrai Bai in the property, that was in recognition of the legal position which then prevailed and hence it did not bring her case within the exception contained in sub-section (2) of Section 14. This Court observed: "If Subhrai Bai was entitled to a share in her husband's properties then the suit properties must be held to have been allotted to her in accordance with law. As the law then stood she had only a life interest in the properties taken by her. Therefore the recital in the deed in question that she would have only a life interest in the properties allotted to her share is merely recording the true legal position. Hence it is not possible to conclude that the properties in question were given to her subject to the condition of her enjoying it for her lifetime. Therefore the trial court as well as the first appellate court were right in holding that the facts of the case do not fall within Section 14(2) of the Hindu Succession Act, 1956."

It will be seen from these observations that even though the property was acquired by Subhrai Bai under the instrument of partition, which gave only a limited interest to her in the property, this Court held that the case fell within sub-section (1) and not sub-section (2). The reason obviously was that the property was given to Subhrai Bai in virtue of a pre-existing right inheriting in her and when the instrument of partition provided that she would only have a limited interest in the property, it merely provided for something which even otherwise would have been the legal position under the law as it then stood. It is only when property is acquired by a Hindu female as a new grant for the first time and the instrument, decree, order or award giving the property prescribes the terms on which it is to be held by the Hindu female, namely, as a restricted owner, that sub-section (2) comes into play and excludes the applicability of sub-section (1). The object of sub-section (2) as pointed out by this Court in Badri Pershad case while quoting with approval the observations made by the Madras High Court in Rangaswami Naicker v. Chinnammal [AIR 1964 Mad 387 : ILR (1964) 1 Mad 570 : 77 Mad LW 9] is "only to remove the disability of women imposed by law and not to interfere with contracts, grants or decrees etc. by virtue of which a woman's right was restricted" and, therefore, where property is acquired by a Hindu female under the instrument in virtue of a pre-existing right, such as a right to obtain property on partition or a right to maintenance and under the law as it stood prior to the enactment of the Act, she would have no more than limited interest in the property, a provision in the instrument giving her limited interest in the property would be merely by way of record or recognition of the true legal position and the restriction on her interest being a "disability imposed by law" would be wiped out and her limited interest would be enlarged under sub-section (1). But where property is acquired by a Hindu female under an instrument for the first time without any pre-existing right solely by virtue of the instrument, she must hold it on the terms on which it is given to her and if what is given to her is a restricted estate, it would not be enlarged by reason of sub-section (2). The controversy before us, therefore, boils down to the narrow question whether in the present case the properties were acquired by the appellant under the compromise in virtue of a pre-existing right or they were acquired for the first time

as a grant owing its origin to the compromise alone and to nothing else.”

(emphasis supplied)

119. The reasonings of the Hon'ble Supreme Court directly applies to the present case. Saradammal had been granted the property prior to the introduction of the Hindu Succession Act 1956. She was given a right to reside in the property only because she was the wife of A.Dhanakotti Naicker. Therefore, she had a pre-existing right of maintenance. The right given to her became absolute right in her hand, the minute Hindu Succession Act, 1956, came into force. She had every right to deal with the property. The object of Section 14(1) will have to be bestowed to Saradammal. The distinction between Section 14(1) and Section 14(2) can be reduced to plain terms. If a property is settled on to a Hindu female, then notwithstanding the covenants in the deed, it will blossom into absolute estate. If a property is settled to a third party and then a Hindu female is permitted to reside in the property, then she acquires only a restricted right.

120. As a matter of fact, the learned First Appellate Judge had gone to the extent of stating that like Ex.A4 sale deed dated 04.06.1975, executed by A.Dhanakotti Naicker, Saradammal and D.Kulasekaran, the present appellants should also have obtained opinion from an Advocate who had studied law or from brokers who knew law and should have insisted that D.Kulasekaran should also be a party to the sale deeds. I hold that these reasonings cannot stand the scrutiny of this Court. A.Dhanakotti Naicker had acquired absolute rights. He had further rights to execute the sale deeds in Ex.A2 and A3. It must also be mentioned that in both the sale deeds, it has been very specifically mentioned that one half of the sale consideration had been deposited in the bank account in the name of D.Kulasekaran to be enjoyed by him, once he attains the age of majority. Therefore, he had also received sale consideration under Ex.A2 and A3 and at this stage is bound by the said documents.

121. The learned Judge has expanded his arguments stating that such amounts were deposited to get over the fact that A.Dhanakotti Naicker had not obtained permission from the Court. I am not able to comprehend this line of reasoning. There is no evidence. There are no pleadings. It is to be seen that the 3rd defendant D.Kulasekaran had received one half of the sale consideration under Ex.A2 and A3. Therefore, the sale deeds are binding on him. He cannot plead ignorance or innocence and seek indulgence from this Court.

122. In view of all the above reasonings, I hold that even

though Ex.A1 does not specifically recite that the property had been settled on Saradammal in lieu of maintenance, the very fact that she was a wife of A.Dhanakotti Naicker and the very fact that not only her husband, but also his father and brother had consciously settled the property in her favour, shows that they settled the property only to provide for her, since she did not have any children. Therefore, I answer this substantial question that the limited interest of Saradammal had got enlarged into an absolute estate and she had every right to dispose the property and every further transaction pursuant to such disposition are valid and binding. To reiterate, the property had devolved only under Section 14(1) of the Hindu Succession Act, 1956, to Saradammal. As a natural consequence, the document executed by her in Ex.A64/ Ex.A65 renouncing her rights to A.Dhanakotti Naicker is perfectly valid. The findings of both the Courts below in this regard are therefore set aside. They are not based either on facts or law.

123. Substantial Question of Law No.4:

I would now take the substantial question of law No.4, namely, whether the Courts were right that the 3rd defendant as an adopted son would qualify reversion under Ex.A1 or when the reversionary right is restricted to children born of her. Again the question of law has to be divided into two parts.

124. Section 12 of the Hindu Adoptions and Maintenance Act, 1956, is as follows:-

"12. Effect of adoptions- An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family.

Provided that-

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption."

125. I have already answered substantial question of law No.3, upholding adoption. Naturally the 3rd defendant gets the

rights as a naturally born son, but the second half of the question, namely, whether he would get reversionary right has to be negatived, since Saradammal's right had blossomed into an absolute right and the 3rd defendant had also received sale consideration from the properties sold by A.Dhanakotti Naicker and therefore, the issue of reversionership would not arise.

In Ex.A2, it had been covenanted as follows:-

"Whereas the purchasers, in view of the circumstance that the Vendor's heir presumptive, to wit, the adopted son, is a minor, had suggested that a moiety of the purchase money, may be reserved with them for being invested in the Canara Banking Corporation, Mylapore, Madras, in a fixed deposit in the name of the minor Kulasekharan, represented by the Vendor herein as his natural and legal guardian, and the Vendor has agreed thereto;

Now this Deed of Absolute Sale Witnesseth that in consideration of the payment of by by the purchasers to the Vendor of the sum of Rs.70,500/- (Rupees Seventy thousand and five hundred only) as follows:-

1.
2. A sum of Rs.35,200/- (Rupees Thirty five thousand and two hundred and fifty only) reserved with the Purchasers for immediate investments in the name of the minor adopted son of the Vendor by his guardian, the Vendor in a fixed deposit for one year with the Canara Banking Corporation, Cutchery Road, Mylapore, Madras.
3."

In Ex.A3, it had been covenanted as follows:-

"Whereas, the Vendor and his wife, had on 15.09.1962, taken in adoption a boy named Kulasekharan, now in his Seventeenth year, and the adoption had been made conforming to all the conditions formalities and essentials of a valid adoption, as laid down in the Hindu Adoption and Maintenance Act of 1956;

Whereas the Purchasers, in view of the circumstances that the Vendor's heir presumptive, to wit, the adopted son is a minor had suggested

that a moiety of the purchase money reserved with them for being invested in the Canara Banking Corporation, Mylapore, Madras, in fixed deposit in the name of the minor Kulasekharan, represented by the Vendor herein as his natural and legal guardian, and the Vendor has agreed thereto;

Now this deed of absolute sale Witnesseth:- that in consideration of the payment by the Purchasers, to the Vendor, of the sum of Rs. As follows:-

1. ...

2. A sum of Rs.24,000/- reserved with the Purchasers for immediate investment in the name of the minor adopted son of the Vendor by his guardian, the Vendor, in a fixed deposit for one year with the Canara Banking Corporation, Mylapore.

3."

It is therefore clear that the 3rd defendant had received consideration for the sale deeds under Ex.A2 and Ex.A3.

126. The substantial question is answered that as an adopted son, he would get every right as a naturally born son. But, with respect to the property in question, Saradammal's right had blossomed into an absolute right, the minute the Hindi Succession Act, 1956, came into force and she had dealt with the property and subsequently, A.Dhanakotti Naicker had sold the property and in those sale deeds, the 3rd defendant had received one half of the sale consideration and therefore, the sale deeds were binding on him. There can be no issue of reversionary right at all. The findings of both the Courts below in this regard are set aside.

127. Substantial Question of Law No.2:

I will now take the substantial question of law No.2. The 3rd respondent D.Kulasekaran had settled the entire extent of property measuring 14.99 acres in favour of his wife, the 2nd respondent Rukmani Devi. This was on 25.01.2006. This document has been marked as Ex.B4. Even before examining Ex.B4, the question as framed shows that the rival claim of the respondents is actually barred by limitation in view of Article 65 of the Limitation Act. According to Article 65 of the Limitation Act, the limitation is 12 years for the possession of immovable property or any interest therein based on title. While executing Ex.B4, D.Kulasekaran had very specifically stated that his father A.Dhanakotti Naicker had sold away the property in the year 1963 and 1964 and thereafter, the purchaser had further sold away the property to various third parties and companies. He finally stated that the settlee namely the 2nd defendant Rukmani Devi, his own wife, should file necessary civil and criminal cases with respect to those documents and seek a relief of declaration and also seek to cancel those documents. Therefore, it is very evident that he is aware of the execution of the sale deeds in the year 1963 and 1964 and hence had also stipulated in the settlement deed that there is a cloud over the title and hence cast the burden on the 2nd respondent to clear that cloud. It is very evident that the 3rd respondent himself is aware that there is a huge question mark over his title. Therefore, if he had any intention of clearing such a cloud or suspicion over his title, he should have initiated some legal action within the period stipulated by the law of limitation.

128. It has been a contention of the learned counsel for the respondents that, as a defendant in the suit, D.Kulasekaran need not take any step whatsoever. I reject such contention. There was no property for him available in his hands in his name to first settle the property in the name of his wife. He was conscious of that fact. He knew that the property had been sold in 1963 and 1964. He had benefited from such sale. Even if he intended to claim any right, he should have claimed such a right only within the period of limitation stipulated by law. It is his choice. He has consciously taken a decision not to claim such right. He had shifted the burden to his wife. She had made a half hearted attempt by filing a suit. She later withdrew the suit and abandoned the cause of action. Any plea taken questioning the title of the plaintiffs has been rejected by this Court. In the first place as repeatedly pointed out, Saradammal had absolute right over the property under Section 14(1) of the Hindu Succession Act, 1956. Having acquired such absolute right, she had every right to dispose of the property. She accordingly, relinquished her right in favour of her husband A.Dhanakotti Naicker.

129. Later, A.Dhanakotti Naicker, sold the property by two registered documents. D.Kulasekaran received one half of the sale consideration in both the sale transactions. The entire issue ceases there. Neither A.Dhanakotti Naicker nor D.Kulasekaran can raise any issue with or against the purchasers. D.Kulasekaran chose not to raise any issue. He was happy with the sale consideration, he received. He should let matters rest. I hold that both the Courts erred in holding in accepting the rival title claimed by the respondents, particularly, when they have not raised any counter claim on that issue. If they had raised a counter claim, naturally the issue of limitation would stare in their face. Therefore, having received consideration and having chosen not to question the sale deed, the 3rd respondent had no right or title to settle the property in favour of the 2nd respondent. There was no property available to be settled. He was aware of this fact. Consequently, the 2nd respondent also had no right or title to sell the property to the 1st respondent. None of them can claim any right over the property. The rival title claimed by them is negatived and rejected by me. The question is answered against them. The findings of both the Courts below are set aside.

130. Conclusion:

In view of the above reasons, I set aside the judgment and decree dated 27.10.2009 in O.S.No.385 of 2009 of the Subordinate

Court, Tambaram and the judgment and decree dated 02.04.2019 in A.S.No.7 of 2010 of the Mahila Court, Chengalpattu. The Second Appeal is allowed with costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

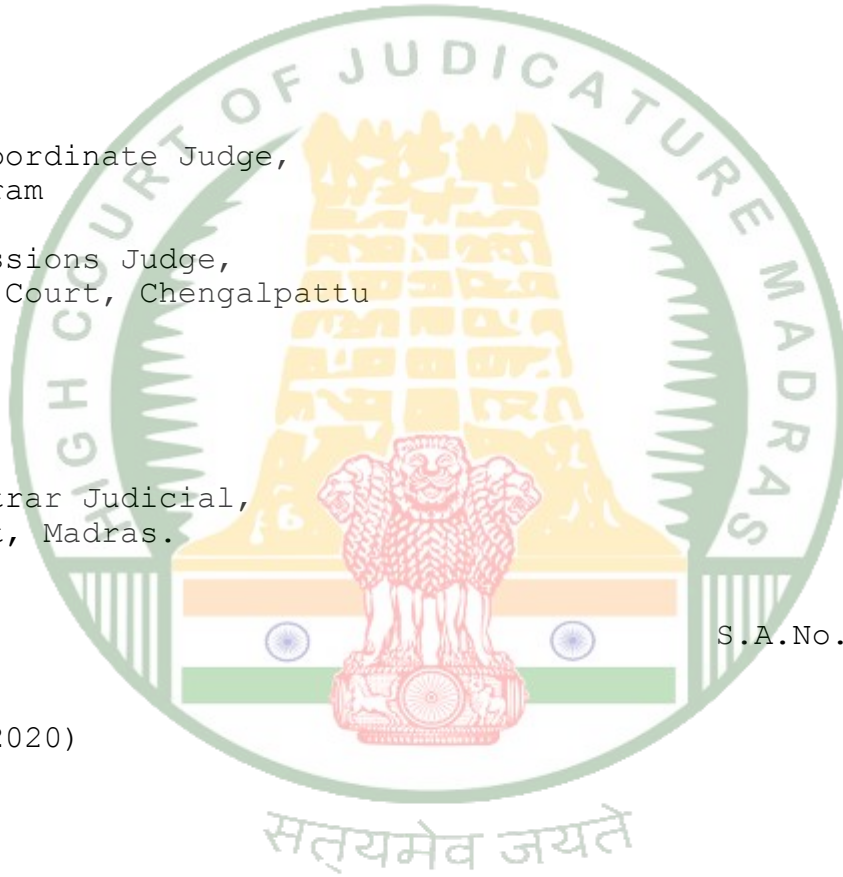
1. The Subordinate Judge,
Tambaram
2. The Sessions Judge,
Mahila Court, Chengalpattu

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High Court, Madras.

KS (CO)
GN (23/06/2020)

S.A.No.675 of 2019



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